

91st Congress }
1st Session }

COMMITTEE PRINT

TAX REFORM ACT OF 1969
H.R. 13270

PART A—TESTIMONY TO BE RECEIVED TUESDAY,
SEPTEMBER 9, 1969

PART B—ADDITIONAL STATEMENTS

(Topic: Foundations)

COMMITTEE ON FINANCE
UNITED STATES SENATE
RUSSELL B. LONG, *Chairman*



SEPTEMBER 9, 1969

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1969

33-758 O

COMMITTEE ON FINANCE

RUSSELL B. LONG, Louisiana, *Chairman*

CLINTON P. ANDERSON, New Mexico

ALBERT GORE, Tennessee

HERMAN E. TALMADGE, Georgia

EUGENE J. MCCARTHY, Minnesota

VANCE HARTKE, Indiana

J. W. FULBRIGHT, Arkansas

ABRAHAM RIBICOFF, Connecticut

FRED R. HARRIS, Oklahoma

HARRY F. BYRD, Jr., Virginia

JOHN J. WILLIAMS, Delaware

WALLACE F. BENNETT, Utah

CARL T. CURTIS, Nebraska

EVERETT MCKINLEY DIRKSEN, Illinois

JACK MILLER, Iowa

LEN B. JORDAN, Idaho

PAUL J. FANNIN, Arizona

TOM VAIL, *Chief Counsel*

EVELYN R. THOMPSON, *Assistant Chief Clerk*

(II)

CONTENTS*

Part A--Witnesses

I. The Role of Foundations in American Life:	
Irwin Miller, chairman of the board, Cummins Engine Co., Columbus, Ind.....	Page 3, 7
Herman Wells, chancellor, Indiana University, Bloomington, Ind.....	5, 31
II. Effect of the Legislation (Proposed Tax) on Beneficiaries:	
Father Theodore M. Hesburgh, president, University of Notre Dame, Notre Dame, Ind.....	83, 87
Frank C. Erwin, Jr., chairman, Board of Regents, University of Texas System, Austin, Tex.....	83, 87
Dr. John Cooper, executive secretary, Association of American Medical Colleges, Evanson, Ill.....	83, 87
Felix Robb, director, Southern Association of Colleges & Schools, Atlanta, Ga.....	83, 87
III. Effect of the Tax as Seen by Foundations:	
J. George Harrar, president, the Rockefeller Foundation, New York, N.Y.....	115, 119
Alan Pifer, president, Carnegie Corp. of New York, New York, N.Y.....	115, 119
David Freeman, president, Council on Foundations, New York, N.Y.....	115, 119
IV. Effect of Program Limitations:	
Merrimon Cuninggim, president, Danforth Foundation, St. Louis, Mo.....	147, 153
Homer Wadsworth, president, Kansas City Association of Trusts & Foundations, Kansas City, Mo.....	149
W. Russell Arrington, president pro tempore, Illinois State Senate, testifying for the Citizens Conference on State Legis- latures, Chicago, Ill.....	151, 188
Elvis Stahr, president, Audubon Society, New York, N.Y.	
V. Effect of Distribution Requirements (Including Problems Raised by Definition of Qualifying Distributions):	
Ben W. Heineman, chairman, Chicago & Northwestern Railway Co., Chicago, Ill.	
Julius Stratton, chairman of the board, the Ford Foundation, New York, N.Y.....	201, 205
McGeorge Bundy, president, the Ford Foundation, New York, N.Y.	
Whitney Young, president, the National Urban League, New York, N.Y.	
Whitney North Seymour, chairman, Council on Library Re- sources & the International Legal Center, New York.....	203, 221

*This contents refers to the page numbers supplied by the printer. These numbers appear at the bottom of the page.

IV

VI. Restrictive effects on the Development of Philanthropy and Operation of Foundations (Including Effects of "Expenditure Responsibility" and Heavy Penalty on Trustees):

James Killian, chairman, board of trustees of Massachusetts Institute of Technology, Cambridge, Mass.....	Page 237, 269
Dana Creel, president, Rockefeller Brothers Fund, New York, N. Y.....	235, 241
Dr. Jonas Salk, director, the Salk Institute for Biological Studies, San Diego, Calif.	
John J. McCloy, Milbank, Tweed, Hadley & McCloy, New York, N. Y.....	239, 277

John W. Macy, Jr., president, Corporation for Public Broadcasting.....	297
--	-----

Part B—Additional Statements

William G. Harley, president, National Association of Educational Broadcasters.....	321
Bernard Berelson, president of the Population Council.....	335

I. THE ROLE OF FOUNDATIONS IN AMERICAN LIFE

Irwin Miller, Chairman of the Board, Cummins
Engine Co., Columbus, Indiana.

Herman Wells, Chancellor, Indiana University,
Bloomington, Indiana.

I. THE ROLE OF FOUNDATIONS IN AMERICAN LIFE

SUMMARY OF STATEMENT BY MR. IRWIN MILLER

A. The role of foundations as seen by a foundation leader.

1. Foundation facts and accomplishments

(a) Facts

- (1) Foundations constitute 8% of total philanthropy.
- (2) Annual foundation giving is \$1.5 billion, or 7 1/2% of the total assets of foundations.
- (3) There are 2,200 foundations, of which only a few hundred are the standard setters.

(b) Accomplishments

- (1) Pioneering roles, for example support by foundations for Dr. Jonas Salk and Dr. Robert Goddard.
 - (2) Strengthening education and educational research.
 - (3) Anticipating social and international problems.
 - (4) Supporting development of writers, artists, and scholars.
 - (5) Health, scientific and population research and programs.
2. Responsibility of Congress and public to examine foundations
- (a) Foundations operate under public trust.

- (b) Foundations inevitably are found to raise questions, doubt and controversy.
 - (c) Periodic examination of foundations by Congress and the public are both good and essential.
3. Proposed tax on foundations is inconsistent with purpose of tax exemption.
 4. Proposed measures to curb fiscal abuses are good, and are supported by most foundations.
 5. Proposed limitations on programs are unwise in that they attempt to eliminate "bad judgments" and in doing so allow for only the most bland kinds of judgments, and only the most bland kinds of activities, by foundations.
 5. The tax and program limitations act as a signal to discourage private philanthropy - and thereby the whole private foundation sector of American life.
 7. Foundations are in fact accountable to the public under existing conditions.
 - (a) Existing law (if fully enforced).
 - (b) Public disclosure and the press.
 - (c) Broad-based boards of trustees.
 - (d) "Market evaluation" by foundation recipients.
 - (e) Congressional inquiry.
 8. Each individual American citizen ought to feel and bear the responsibility to give and to act voluntarily on behalf of the continuing welfare of his country - and not only in response to the compulsion of laws.

SUMMARY OF STATEMENT BY DR. HERMAN B. WELLS

I. The Contribution of Foundations

Foundations early and continuously helped higher education with funds for scholarships (as more students without the ability to pay aspired to advanced education), with funds for facilities and equipment (e.g., the expensive precision instruments of science), with grants for research (In this creative period, each new idea and each discovery opened possibilities to scholars who then sought sponsorship of their investigations.), and with support of a great variety of projects, designed to advance scholarship and society's interests. Often foundations came to the rescue when no other support was available, before government undertook support. In many instances (for example, scholarships), colleges and universities would have had to seek government appropriations -- thus adding to the burden on the taxpayer -- had not foundations supplied the support. The results of the programs, projects and research made possible by foundations have had beneficial repercussions far beyond the campus and region and will extend long past the present time.

II. Detrimental Effect of the Proposed Tax

Taxation of the foundations that can have no other effect than to reduce the funds available to higher education is a critical matter because each dollar -- the last often more than the first -- is important in launching a project, matching a grant, funding scholarships, etc. Furthermore, the size of the reduction is no measure of the potential removed by such an action. At a time of crisis in financing higher education, even the direction of such a move is disheartening. The amount that the tax would yield the Federal Government is relatively minuscule but its detrimental effect on higher education would be major. In addition, once the principle of taxing the foundations is established, there is a strong likelihood that the percentage of reduction will be increased in succeeding years.

A question arises why foundations, which already serve society, should be taxed so that government can serve society. Inevitably, the mechanics of the transfer will involve a cost which need not have been imposed between the funds and their use in the service of society.

Punishment of the abuses of a few foundations should not be visited on the many. Legislation like the Prohibition Amendment which raises a barrier against a problem instead of treating the problem merely induces new

forms of abuse. From my observation it seems to me that most foundations have an excellent record and that their staffs have been conscientious in their commitment to the public interest.

The prohibition against a private foundation engaging in any activities intended to influence governmental legislation has crucial implications for higher education. Much of the scholarship undertaken in such fields as business, education and the social sciences is prompted by a desire to reduce imperfections. That is, both the fact-finding and action resulting are contemplated. Otherwise the research would be an exercise in futility. The most disturbing aspect of the prohibition is the control it threatens over the unpopular idea, the investigation of controversial issues and the concept which is ahead of the times. It is equally important to society that cancer be cured and that poverty be eliminated. However, because the first is non-controversial, they would not be treated alike as research subjects seeking funding.

Foundations are an expression of free enterprise. In their support of higher education they encourage free enterprise in ideas. They provide opportunity to the unusual man and idea. They give vital aid to the small private institution which lacks qualifications or visibility to attract government support. They have stimulated private giving to colleges and universities through such means as challenge grants. They represent an important expression of the volunteer sector. It is patent that our present store of knowledge and many of the gains which have improved our quality of life would have been unrealizable without the encouragement and support of foundations.

Institutions with which I am connected receive support from many foundations, large and small, state, regional and national. (A range of examples from different types of institutions, showing the variety of ways in which foundations have assisted higher education to perform its service to society more effectively, follows in the Statement.)

America's system of higher education is envied by many institutions abroad because of its multiple sources of support which ensure independence of thought and action and freedom from undue influence from any source. The American foundation is one of the instrumentalities by which our independence and freedom are maintained.

STATEMENT OF MR. IRWIN MILLER

Mr. Chairman and members of the Committee, in the time allotted to me this morning, I would like to sketch a background against which other witnesses will fill in specific detail. As I believe the agenda will indicate, a number of foundations and beneficiaries of foundations have coordinated their presentation so that all the major issues can be discussed and repetition avoided.

There will be six panels which in turn will cover (1) the role of foundations in American life, (2) the effect of the legislation (especially the proposed tax) on foundation beneficiaries, (3) the effect of the tax as seen by foundations, (4) the effect of the program limitation (including grants to individuals), (5) the effects of distribution requirements (including problems raised by definition of qualifying distributions, and (6) the restrictive effects on the development of philanthropy and the operation of foundations (including the effects of expenditure responsibility and heavy burdens on trustees).

Whereas these presentations have been coordinated and consolidated, as was requested by the Committee in its August 12th press release, it should be noted that each witness will be testifying for himself and for the institution to which he is attached.

I speak this morning as an individual. But I am neither a disinterested nor an uninterested witness. To identify myself, I am a businessman who lives in Columbus, Indiana. Cummins Engine Company, which I serve as Chairman of the Board, created a foundation some fifteen years ago. Both directly and through the foundation, the Company normally contributes the full five per cent of its pre-tax profits. I currently serve as President of its foundation. I also serve as an officer and director of a foundation created by my family, and I am a trustee of the Ford Foundation.

In respect to my personal life, my wife and I have for some years been in the process of qualifying for the unlimited charitable deduction. Further, we have raised our five children to believe that a responsible sense of concern for the well-being of society in which they live requires that they each contribute to philanthropy the full thirty per cent of their income each year. Finally, it should be noted that I serve as a trustee of a number of institutions which are often recipients of foundation grants.

I state all this to show my bias in this matter. Having done so, I now hope you will hear my opinions. In

expressing them, I must note the enormous complexity of the Foundation Sections of the Bill in my own inexperience in legal complexities.

I.

Let me speak first to the American tradition of private giving and the important place it holds in our national way of life.

Our country today is unique in that our government, more than any other in the world, actively encourages citizens and corporations to concern themselves with the social problems of the nation and to accept personal responsibility for constructive change. This encouragement comes in good part by way of the charitable deduction allowance, and the laws supporting the establishment and operation of foundations.

In the face of great current pessimism, I believe that America will solve its pressing problems of race, poverty, education, urban congestion, and the like. A primary reason for such belief is that there exists a broader and deeper concern about these problems among the individual men and women of this nation, old and young, than can be found in any other country today.

If, as individuals, we should shrug our shoulders, decide there is nothing we can do, that it is all someone else's fault, that "they" ought to do something about it; if we cop out as responsible individuals by blaming government for not acting, and damn government when it acts and requires more taxes to pay for the acts, then we will surely go down the drain.

On the other hand, if each one of us decides he ought to do what he can in his own situation, in his own community, and is willing to change his old attitudes, to give time and money wherever he can see it will make a small difference for the better, then we Americans will very likely provide to the world a demonstration of national achievement which will be without parallel in history.

The government by its example, now has the opportunity to encourage such an active acceptance of responsibility for the welfare of all others by each citizen.

They have made invaluable contributions to American society, and they are capable of still more. They, however, are not the pivot of American society, nor are

they omnipotent or without blemish. There is a lack of adequate knowledge and understanding about their place in American society.

Let me briefly sketch the dimensions of that place. Each year, some \$16 billion in private wealth is given for philanthropic purposes. The greatest philanthropist still is the man in the street, the individual givers who account for nearly 80 per cent of the total (even exclusive of bequests). The private foundations provide only about 8 per cent of total philanthropy. Last year foundations gave \$1.5 billion, or about 7 1/2 per cent of their total assets of some \$20 billion.

There are about 22,000 foundations. Most of them are little more than incorporated channels for giving by individuals and in assets and influence they account for quite a small proportion of the field; more than 12,000 foundations, for example, make grants totaling less than \$10,000 a year.

The potency and significance of private foundations resides in the few hundred with sufficient skills and resources to support efforts toward the solution of problems

important to American society. They also account for most of the funds in the field. More than two-thirds of all foundation assets are held by some 200 of the general purpose foundations. By and large these are the leaders and standard setters in the field.

"Tax free" and "tax exempt" are modifiers that have so commonly come to be used in front of the term foundation that there is a tendency to overlook their essential philanthropic nature. The Treasury Department, which ought to have as keen a sense of the relation between institutions and taxation as anyone, a few years ago portrayed the role of private philanthropy and the part played by foundations in these terms:

Private philanthropy plays a special and vital role in our society. Beyond providing for areas into which government cannot or should not advance (such as religion), private philanthropic organizations can be uniquely qualified to initiate thought and action, experiment with new and untried ventures, dissent from prevailing attitudes, and act quickly and flexibly.

Private foundations have an important part of this work. Available even to those of relatively restricted means, they enable individuals or small groups to establish new charitable endeavors and to express their own bent, concerns, and experience. In doing so, they enrich the pluralism of our social order. Equally important, because their funds are frequently free of commitment to

specific operating programs, they can shift the focus of their interest and their financial support from one charitable area to another. They can, hence, constitute a powerful instrument for evolution, growth, and improvement in the shape and direction of charity.

While the proposals under discussion today are addressed to private foundations, their impact would be felt throughout the entire fabric of the voluntary sector of American life.

One of the philanthropic statesmen of this century, Abraham Flexner, said the level of a given civilization can perhaps be measured "by the extent of private initiative, private responsibility, private organization in all the fields open to human culture." Certainly the accomplishments of our society cannot be measured accurately, or as positively, without taking into account those achievements reached in whole or in part through foundation support.

Robert Calkins, former President of Brookings, summarized foundation achievements as follows:

"Foundations have pioneered and assisted pioneers, scientists, scholars, and innovators; they have helped to create and strengthen colleges, universities, research

laboratories, research institutions, scientific and scholarly organizations, welfare and religious institutions; they have often anticipated social and international problems and mobilized knowledge for dealing with them. In doing these things, they have freed large parts of the world from the curse of diseases, such as malaria and yellow fever; have advanced the art of medical care and the treatment of illness; have provided knowledge for the control of population and the expansion of food supplies; have aided the development of emerging nations; have encouraged educational opportunities for minority groups, and the establishment of area and language studies to afford a better understanding of other cultures. They have demonstrated the value of liberal support for basic research and encouraged large public support; have contributed importantly to our growing knowledge of physical and living nature, and of social organization; have made possible the development of new scientific instruments for studying the atom, the cell, the star, and the nature of life itself; have contributed toward a better understanding of social behavior and informed social policy; have helped to clarify the goal of humanistic scholarship, aided the arts, and broadened the cultural interests and enjoyments of millions of people. They have also supported the development of thousands of scientists, scholars, creative writers, artists, and professional personnel, as well as leaders for business, government, and education. They have encouraged informed approaches to domestic problems, promoted international understanding, and assisted in the search for peace. They have contributed to the international community of scholarship and learning, and built bridges of communication and mutual respect."

But the particular issues at hand cannot be resolved by a recital of the glories of foundations. I do not favor, nor do I think the American public favors, a granting of perpetual approval to institutions simply on the basis of past

laurels. No matter how unsettling it may be to men and organizations convinced that they are doing the right thing in the public interest, it is healthy that the public periodically examines its institutions to judge whether they are still serving their avowed purposes, to determine whether anything has gone sour even with our most cherished practices.

For many institutions this is such a moment. There is not only a taxpayers revolt in the air but also, I believe, fundamental skepticism about many aspects of our public and private life. Men and women are not only asking where we are going but also who is in charge. They are concerned, it seems to me, about whether all the agencies in American life that are dedicated to public purpose -- governmental and non-governmental -- are really working in the public interest. They are calling for some sort of accounting and insisting on greater accountability.

The proposals related to private foundations seem to me to raise fundamental questions about the role of the private sector in affairs of public concern: Is it to be diminished or encouraged? Do the American people still believe

in private philanthropy still important to the attainment of our needs and desires as a people? Or have our community needs and national problems grown so in scale and complexity that private efforts are basically too puny? Would the funds devoted to them best be diverted to government use?

II.

There are several reasons these concerns have coalesced around private foundations. The purposes and ways of foundations are only vaguely understood. Also, while foundations are the post peculiarly American manifestation of the philanthropic impulse, they do not operate as simply as traditional charity; taking the long view, and working with professional skill, they have grown more sophisticated and specialized in their approach to problems and therefore they are less easy to understand. Further, they represent relatively large concentrations of wealth, and bigness in any form stirs suspicion in the American consciousness. Foundations have also concerned themselves with some of the problems that are deeply troubling our society, and almost anything one does in these fields is apt to stir passions. Finally, certain abuses in the field have become apparent, and questions have been raised about the judgment of foundations in certain activities.

These hearings constitute an examination of the obligations of foundations under their contract with American society. Parenthetically, it should be noted that this is the first opportunity foundations have had to testify on a number of the major provisions of this Bill. At bottom, foundations operate under a public trust agreement. Through exemption statutes, American society encourages the application of private wealth to public purpose. Society must be assured both that the privilege is not abused and that the responsibility to deliver a social dividend is met.

In the matter of private foundations, the record seems abundantly clear that the responsibility has been discharged. In terms of advances in education, community life, health, and artistic and cultural resources, the foundations have returned to society many times over what society has granted in the form of exemption from taxation. There is no doubt a point of diminishing return in this sort of quid pro quo. That point would certainly be at hand, for example, if foundation assets were growing at, say, double or triple the growth of the Federal budget or the Gross National Product. In fact, although the growth in the absolute numbers of foundations has been

striking, the growth in foundation assets is not exceptional as compared to other sectors. The Treasury's studies confirm this.

It is equally important that the income produced by foundation assets flow continuously to charitable, educational and scientific purposes. For the most part this is so, and passage of certain features of H.R. 13270, coupled with more systematic enforcement of existing regulations, would provide the public a guarantee of a continuing flow.

III.

Concerning the proposed tax on foundation income, I will be quite brief, not only because succeeding witnesses will treat it in detail but also because it strikes me as the most clear-cut of the several difficult decisions before you with respect to private foundations.

I regard a tax on private foundations as patently inconsistent with the reason society sanctions foundations at all. Whatever foundations earn from their principal is -- by tradition, charter, and law -- intended for distribution for philanthropic purposes, for the public well-being. To

reduce these publicly-dedicated funds by any percentage is to diminish the value to society by just that amount. The judgment Congress and the public must make is whether, all things considered, foundations are likely to continue making valued contributions to American life. If the answer is yes, then why reduce the contribution? If the answer is no, then more fundamental measures than a limited tax are in order. The inference I am forced to draw is that the proposal to tax foundation income is actually punishment for presumed wrong-doing by foundations -- a reaction that is both unjustified and unwise.

IV.

In contrast to the proposed tax, the bill's measures to curb and prevent fiscal abuses are necessary to the public interest and vital to the preservation of private philanthropy.

The public official who abuses his position casts shame not only on himself but on all that public service stands for. Misbehavior in private organizations and institutions clothed with a public interest is quite as sordid. Society loathes the charity racket, and abuses in institutional philanthropy must also be rooted out. The

Treasury has noted, "the preponderant number of private foundations perform their functions without tax abuse," but it has been clear for several years that some abuses exist, and even the few are too many. They include the use of foundations exclusively as tax shelters, the unreasonable accumulation of foundation income instead of regular distribution for philanthropic purposes, the use of foundations for self-dealing and other forms of personal or business advantage, and the concealment of foundation activities. Some of these abuses could be curbed by better enforcement of existing regulations. Others require additional legislation, and several of the proposals before you are effectively drafted to that purpose.

Speaking for myself and for the foundations with which I am associated, I say that both the new measures to curb such abuses and stricter surveillance and enforcement of existing regulations are long overdue. Many other leading foundations share this feeling, and have been on record to that effect. Better enforcement and passage of the abuse related provisions in the bill will probably have the effect of sorting out from the existing thousands of foundations those that are dedicated to philanthropic

purposes and those that serve themselves rather than society. They will discourage future establishment of foundations whose donors enjoy tax advantages without a return in kind to society. At the same time, they will not hobble existing or prospective new foundations that conform to the high ideals of the philanthropic tradition.

V.

But other parts of H.R. 13270 appear to be aimed not at fiscal abuses but at foundation activities . The nation's foundations each year make hundreds of thousands of grants. Not even the most passionate admirers of foundations suppose that some of these actions were not mistakes -- for any number of reasons, ranging from the technical to the judgmental. What is remarkable to me is that so few errors occur, given the wide range of fields in which foundations are active -- from the arts to community health, from manpower training to population problems. Nonetheless, neither the noble purpose nor good works of the vast majority of foundations exempt them from criticism and censure for errors when they occur. My own experience is that foundation trustees and officers are attentive to such criticism. They do not hide behind claims to virtue or infallibility.

Society deserves reasonable protection against the misfeasance of institutions it has given warrant to operate in the public interest. It is the responsibility of Congress to see to the fulfillment of that warranty. But some of the new proposals, ostensibly designed as air-tight guarantees of sound judgment by foundations, are so drawn that they give no added protection over existing law, and indeed only do injury to the public interest.

One set of proposals, for example, would fence off private foundations from activity in areas of public policy. Existing regulations declare lobbying and partisan political activity out of bounds, and, while it is not always easy to draw the line between what is legitimate and what is not in these matters, there are remarkably few instances of foundations skating even close to the edge of the limits now established.

The barriers that the new proposals would erect could well impair, not improve, the judgment and effectiveness of private foundations. One on which I can speak with some intimate experience is the effect on foundation boards of trustees. The penalties proposed for violation of several

of the proposed limitations -- limitations that are necessarily imprecise -- fall not only on a foundation as an institution but also heavily on individual foundation managers, including trustees. This could drive trustees and foundation officials into such an excess of caution that even innocent and benign activities that touch on public policy in such fields as education and conservation would be deprived of foundation support.

The proposals may stem in part from a presumed new aggressiveness of foundations to assist work in controversial fields and to venture into matters subject to pending or future legislation. Throughout most of their history, foundations have at one point or another supported work considered controversial by some segment of the population.

Foundations can inaugurate a teacher pension system, develop new curricula and teaching techniques, increase educational salaries and be applauded for all of these, but then should they support a controversial educational program such as decentralization, the reaction is likely to be, "What are they doing sticking their

noses into educational policy?" The irony of this situation needs to be recognized, for if we are to legislate away all possibilities for bad or controversial judgments, at the same time we will be legislating away all but the most bland kinds of foundation effort.

If foundations were the sole source of aid to the production of information, ideas, activity and opinion on matters of public concern, there would be legitimate reason to consider an exhaustive set of rules governing such activity. But that is not the case. The work supported by foundations on public issues is just one input into a vast marketplace, along with the voices -- some tax-exempt, some not -- of individuals, business enterprises, unions, churches, political parties, trade associations and other organizations, to say nothing of the press. To bar foundations from supporting such work would be to limit the diversity of activity that has strengthened our society.

I do not think the government is well advised to begin making other than the broadest categorical decisions as to what is "good" and what is "bad." Experiment and trial needs to be encouraged, and one "success" most usually outweighs a dozen failures.

These issues will be discussed in detail by later witnesses. Suffice it to say now that the legislative net which has been cast out to catch those judgments alleged to be bad, controversial or imperious will drag in with it far more good than bad fish.

VI.

Apart from these and other specific consequences, some of us feel that the proposed legislation in general is, quite plainly, a signal that future foundations are not welcome. These proposals should be scrutinized, therefore, in the light of whether society would gain or lose from the establishment of new foundations, some of which might in time make extraordinary contributions to American life, just as some foundations formed in the last few decades have superbly carried forward the tradition of the pioneering foundations of the late nineteenth and early twentieth centuries.

One may even ask, do some of these proposals signal the intent of Congress to discourage private philanthropy in general, particularly in matters that are also governmental concerns? On the face of it, such a supposition sounds alarmist, but it is not far-fetched if one regards the private foundation as an outstanding

example of the American genius for organization applied to the age-old philanthropic impulse. Those who regard foundations as a symbol of private initiative fear that the erosion of their flexible capability might mark the first step in a trend toward general containment and withering of private initiative as a whole. And that would be an exorbitant price to pay for the abuses that have blemished the good name of the private foundation and for the offense even some of the most respected foundations may have given at one time or another.

VII.

If those parts of the foundation-related proposals are so detrimental to the benefits society would enjoy from the continuation of foundation philanthropy, then how is the public to be assured that the power that foundations represent is not one day applied to mischievous ends, to political purpose, and in general against the public interest? To repeat, past performance is reassuring, but not enough. Nor are good intentions. The public clearly demands that major institutions affecting the public well-being be accountable to society, and foundations are no exception.

But governmental regulation is not the sole path to accountability, and a thick web of governmental guidelines and restrictions can impair the very flexibility and freedom of action that enable foundations and other voluntary and private philanthropic agencies to respond to changed conditions and needs.

The basic ingredients of a balanced system of accountability, it seems to me, are already at hand. For the government's part, laws to prevent abuses are already on the books. That they have not been sufficiently enforced is a defect that some of us are proposing be remedied by a foundation registration fee earmarked for full and continuing implementation; it would also apply to the necessary new abuse-related provisions. Outside the government, channels of accountability exist, despite the myth that foundations are untouchable. Let me cite a few of the major ones:

The majority of the leading foundations that account for the preponderant resources in the field recognize large public responsibilities, and many go well beyond the legislative requirements of reporting and public disclosure of their activities.

Furthermore, they have broad-based boards of trustees -- men and women of unquestioned dedication to public service and enviable records of judgment and accomplishment. The presence on the boards of foundations of such trustees constitutes a powerful assurance that foundations will act responsibly and will be accountable in the broadest sense to American society.

Foundations are also open to review by the press.

Their performance also undergoes continuing "market evaluation" by academic and community institutions that cooperate with them. These beneficiaries are more objective than one might assume. Since foundation funds are rarely the major support for their ongoing needs, they are colleagues of the foundations rather than patrons and wards. Their collaboration is testimony to the worth of foundation programs for, in accepting their funds, they commit to them their own reputations and some of their own resources.

Finally, Congress does have and has exercised, since 1915, the right to inquiry into activities of foundations.

Altogether, the full exercise of the governmental and marketplace channels will insure that private foundations are accountable to the public for their behavior and performance to an extent fully equal to any other part of the private sector.

VIII.

Despite my preoccupation with the dangers in some of the proposals before you, I want to state my firm conviction that the scrutiny under which the Congress and the Treasury have placed foundations has been salutary.

This has been a sobering and significant chapter in the history of private foundations. It is a vivid illustration of the principle that even institutions of great value to society must constantly review their responsibilities and examine their distant borders to insure that corrosive incursions are not under way.

I close by urging that you adopt those parts of the Bill that are directed toward crippling and preventing abuses, such as self-dealing or inadequate returns to charity, which undermine the public's trust in private

foundations, and that you eliminate those measures, such as the tax and the program limitations, which would vitiate the capacity of the foundations to continue their productive service to the American people.

This is a plea not for private privilege or for the preservation of any single institution, but rather for the reaffirmation of the responsibility which each individual American citizen ought to feel and bear for the continuing welfare of his country, the responsibility to give and to act voluntarily, and not only in response to the compulsion of laws.

STATEMENT OF DR. HERMAN B WELLS

I appreciate the opportunity to appear before this committee. I appear here in the hope that the recounting of my experience with foundations will be useful to the members of the committee as they consider the provisions of H.R. 13270 relating to private foundations.

I speak for no one but myself. Nevertheless, I believe that my views are held generally by presidents of American colleges and universities and members of collegiate faculties.

As former President and now Chancellor of Indiana University, as a current member of the Boards of Earlham College, Howard University, and Indiana Institute of Technology, of the Malpas Scholarship Board of DePauw University and of the Board of Visitors of Tulane University, I wish to express my profound concern about the proposed tax on the investment income of foundations, because I believe that a substantial adverse impact on higher education would result from it.

As you are undoubtedly aware, in the last few decades higher education has had to respond to the need for educating as many qualified youth as possible, for sharing the talents of its academic personnel, and for facilitating investigation and experimentation. Yet, in making this response, colleges and universities

have inevitably become involved in its consequences. Scholarships and fellowships, new facilities and equipment, larger academic staffs, and special provisions for research, all had to be secured. Inflation and campus growth have magnified the problem.

We educators are grateful to Congress for the role it has played in providing colleges and universities with the means to respond. But, in candor, I must attribute much of the early and continuing support to the indispensable role of the private foundations. These foundations have performed a remarkable service of aid with scholarships and fellowships, grants to scholars, implementation of innovative programs, faculty salary supplements, facility and equipment subsidies, underwriting of conferences, incentive grants for private giving, encouragement of comprehensive evaluations and investigations--the list is much too long to detail. Parenthetically, I would point out that this role has in some measure relieved taxpayers of the need to support activities that would otherwise have required tax funds to conduct.

I have included in an appendix to this statement several representative illustrations of projects with which I am especially familiar that could not have

been realized without the support of private foundations. The results have had an effect far beyond the campus and the state involved and will have an influence long past the present time.

When new knowledge, improved methods and extended opportunities for our youth are at stake, there are no ascertainable limits to need. Therefore, I find the threat of a reduction by taxation of the funding available to higher education very disturbing. I would be concerned even if assured that the taxable percentage would never be increased -- an unlikely contingency. For the deflection of any income, relatively small though it may be, from its anticipated use at higher education's frontiers in this time of discovery and widening possibilities would be an ill-afforded move. Moreover, the germinal small grant has time and again proved so effective that it would be misleading to suppose that a small reduction of funds is of negligible concern to educators. The approximately \$65 million which would be realized by the proposed tax in the first year are not critical to the Federal government nor to foundations. They are critical to foundation recipients.

Indeed, the proposition that an organization wholly devoted to opening new paths and encouraging experimentation for the ultimate benefit of society has an obligation to support the government in its services bears a nagging resemblance to robbing Peter to pay Paul. Ironically, a portion of the funds that might have been available for grants would of necessity be swallowed up by the mechanics involved in taxation.

There is a real crisis in the financing of higher education, as you are undoubtedly aware. It will not be lessened by diminishing the ability of foundations to contribute to educational income. A tax on the foundations will inevitably have this effect and, in fact, will increase the pressure on government to provide additional financing.

The motivation for such legislation seems to be, at least in part, a desire to eliminate abuse of privileges heretofore granted foundations. If a few students cheat on examinations, you would neither expect nor desire us to levy a fine on all students. Rather than dealing with the problem, an action of this sort quite clearly punishes the innocent without providing a distinguishable deterrent for the guilty.

Legislation like the Prohibition Amendment which raises a barrier against a problem instead of treating the problem merely induces new forms of abuse. From my observation it seems to me that most foundations have an excellent record and that their staffs have been conscientious in their commitment to the public interest.

An abuse that has been often mentioned is the use of foundations as shelters from taxation. It has been my experience that most rich philanthropists are very ethical in making their gifts, careful always to seek no improper tax advantage. A single dramatic example will make the point.

Indiana University has a magnificent rare book collection which serves not only the immediate University community but scholars from coast to coast and throughout the world. Its core is the personal collection of the late J. K. Lilly and its development has been supported by generous annual grants from the Lilly Endowment.

When Mr. J. K. Lilly made the original gift of his collection, he instructed the appraiser to make a very conservative valuation to avoid even a suspicion of inflated value for tax advantage. The

material in Appendix A proves conclusively that the books were transferred at less than half of what they would have netted at auction. It is interesting also to note that in his collection there was a copy of the first printing of the Declaration of Independence which was given to us with a value listed at \$15,000. The only copy that has come on the market since then brought \$405,000.

Although some reform may in fact be necessary, it can do more harm than good if it inadvertently results in deterring or hobbling the American institution of the foundations, which has contributed immeasurably to the enhancement of life in America.

There is another aspect of the proposed legislation which concerns my colleagues and me greatly. It is the absolute prohibition against a private foundation engaging in any activities intended to influence any governmental legislation. I believe it likely that the prohibition was introduced as the result of two or three projects which raised questions of improper influence and that it is aimed at preventing a repetition of such grants. But the wording has sweeping implications. Any study, any document, any project bearing upon a public issue which has a

foundation subsidy could conceivably be called into question and very likely would be if its subject were controversial or its conclusions unpopular. A foundation-supported conference at Indiana University, or elsewhere, on a question of public policy could be deterred from gaining the benefits of a knowledgeable public official's views, lest his participation be interpreted as an attempt of the conference organizers to influence him in a legislative decision. The Educational Commission of the States, which receives a portion of its support from foundations and which has governors and state legislators among its membership, would surely hesitate henceforth to pursue one of its main objectives, the preparation of studies on education for use by state legislatures. The Carnegie Commission on Higher Education with its staff of experts and exceptional opportunity to assemble and report data never before available would most assuredly not be engaged in this mammoth undertaking without an intent of influencing decisions of governmental bodies.

The crux of the problem is the interpretation of "influence." As long as data made available to public officials through the activities supported by

foundations are generally acceptable, no question is apt to arise. But let the facts be contra-indicative of a viewpoint supported by any group or let them weigh against one side in a controversial issue, what is to prevent that group or side from invoking the provision against "influence"? It is equally important to society that cancer be cured and that poverty be eliminated. However, because the first is non-controversial and the second controversial, they would not be treated alike as research subjects seeking funding.

I sincerely believe that this prohibition will not only penalize all foundations for a very few projects to which objection has been taken but will in fact discriminate against foundation recipients, particularly in education, in their freedom to act and report on matters of public interest. Worse, it subjects them to the not insubstantial danger that a project in the course of its execution may become liable to penalty through some turn of events or opinion.

I hope that foundations will always be free to back new, non-conforming ideas, even though an idea may seem at the moment heretical. History teaches us that today's heresy may be tomorrow's

truth. The earth proved to be round and the moon accessible from earth. Man-made barriers to discovery have deterred but never downed forever the progress of a well-reasoned idea. In the end, as the wise saying goes, truth will out -- and we have learned little if, in this late twentieth century, we still insist on depriving ourselves of the benefits which a later and more acceptant generation will reap from the ideas evolved in our time.

I have heard that there is some concern outside of the academic community with regard to the influence which foundations might have exerted on institutions. This is rather puzzling in view of the small portion of funding that they have supplied to the whole of any institutional budget. The multi-source funding of colleges and universities has, in practice, afforded them freedom of action, thought and experimentation.

It has been of vital importance to scholars to have a source of funding for pioneer ventures and for research that may be controversial. Let me cite a case or two in point that should give pause. When Dr. Robert H. Goddard began his research into rocketry three decades or more ago, it was the Daniel and Florence Guggenheim Foundation which was his sole backer. We have all been

made aware recently of the dramatic importance of that initial research.

The freedom which foundations have to move in advance of popular opinion, to encourage a wide range of initiative, and to respond rapidly and flexibly to ideas (or, remain "relevant," in the students' term) is precisely the virtue of private philanthropy and that freedom must be protected.

It has been no small function of foundation support to encourage the unusual man. In the humanities, a significant example is readily found in the Guggenheim grants, directed by an Indiana University graduate. Many of our leading Indiana University scholars have had an opportunity to accelerate their development as a result of Guggenheim grants. The recognition and promotion of unusual men and ideas have been one of America's greatest assets.

Although I don't agree with the late Herbert Hoover that bureaucracy is devoid of any progressive thought, I believe as he did in free enterprise in our economy, in the organizations of our society and in the commerce of our ideas. As he said, "Ours is a voluntary society. The fabric of American life is woven around our tens of thousands of voluntary associations. That is, around our churches, our professional societies, our women's organizations, our businesses, our labor and farmers' associations -- and not least, our charitable institutions. That is the very nature of American life. The inspirations of progress spring from these voluntary agencies, not from bureaucracy. If these voluntary activities were to be absorbed by government bureaus, this civilization would be over. Something neither free nor noble would take its place."

American higher education -- indeed, America -- owes a great debt to private foundations and to the philanthropists who created them.

As an officer or trustee of educational institutions which have been the recipients of foundation aid, I cannot overemphasize the value it has been to them to receive the enabling grants, whether large enough

to elevate the quality of the institutions or merely the little, extra amount that meant the difference between launching a project and abandoning it when almost in reach. Moreover, there is no question but what foundations have played a major role in stimulating private giving to colleges and universities. The challenge grant, which is a creative concept originated and used by foundations, has not only given the many institutions that have received such grants a new lease on life but has added a significant dividend in the form of instilling an understanding of higher education's needs among an appreciable portion of the private sector. In my experience, individuals and family foundations find pride and satisfaction in being identified with furthering educational and cultural progress. It is in the national interest as much as in every institution's interest that the incentives to voluntary support of higher education not be lessened, directly or indirectly. For many small, private colleges and universities, any dampening of the growth of philanthropic support would be critical. Because of their size they have difficulty in gaining the visibility or in meeting the qualifications necessary to attract government grants. The role of the private foundations in their support has therefore been especially vital, as is illustrated in the report of Earlham College, attached to this Statement as Appendix E.

In the last five years, my own institution has received annually an average in excess of \$2.5 million in foundation grants. A variety of foundations, small and large -- local, regional and national -- and numbering nearly one hundred in any single year, have made these grants. This support has had a determining role in attracting other private donations, in accelerating the training of research scholars, in encouraging students to seek advanced training who otherwise would have been unable to, and in enabling the University to be adequately equipped to accept many Federal grants for projects furthering national interests and for training students in professional fields thought to be insufficiently manned for national requirements.

To illustrate the range, generating influence and educational significance of this funding, I shall cite a few examples from my own institution. Lilly Endowment, Inc., an Indianapolis foundation, donated \$281,000 for a program to improve the teaching of American history in Indiana high schools through refresher courses for teachers. The Lilly Endowment also made a grant of \$98,500 to our relatively new Program in the Study of Religion, making it possible among other things for

us to appoint a scholar in the field of Old Testament and to hold a summer institute on the teaching of the Bible as literature in the public secondary schools. The same Endowment furnished \$78,000 for fellowship support of persons whose interest lies in adult education in religious institutions. Further, the Lilly Endowment has provided substantial funds for the University to develop a program -- and construct a building to house it -- in the archaeology and anthropology of Hoosier and midwestern pre-history.

The Kress Foundation with a grant of \$50,000 initially spurred the development of a graduate program in the history of art, which then attracted a \$300,000 contribution from the Carnegie Foundation to provide fellowships, instructors, resource books and supplies. The Carnegie Foundation also funded in the amount of \$230,000 a project for improving foreign language study in Indiana high schools. Bright junior-class students are selected to spend a summer in France or Germany, after which they become pacesetters in their language classes during their senior year. Funds are raised locally to finance students who cannot afford to pay or are furnished by such sources as the Indianapolis Foundation and the Cummins Foundation. This is a clear example of a beneficial program that would probably not have been possible without foundation aid.

A Rockefeller Foundation grant enabled us to begin our current program in genetics. This support made possible the assembling of a distinguished team of research scholars and teachers which has produced research of world-wide importance and has attracted so many students that the University has become a major center for the training of Ph.D's in the field, many of whom have won distinction and one of whom has recently won a Nobel Prize. The assembling and its initial support were fundamental in helping us to attract and utilize money from many sources, including the Atomic Energy Commission, the National Institutes of Health, and the National Science Foundation.

The Rockefeller Foundation has continued to support for many years the work of this genetics group. Dr. Hermann Muller, one of its members and a Nobel Laureate, did epoch-making investigations in a number of directions, not the least being the establishment of a finer scientific basis for our current understanding of the hazards of radio-active fallout and other forms of radioactivity. Dr. Tracy Sonneborn has opened up an entirely new field in genetics in showing the importance of the non-chromosomal material, that is, elements other than genes, in the determination

of heredity. The work of the Indiana team has far-flung significance, not only for plant and animal improvement, including corn and other grains, but also for the betterment of human health.

At the other end of the spectrum, the Rockefeller Foundation has helped subsidize a strong Latin American music program in the I.U. School of Music.

The pioneering research of Dr. Leslie Freeman in the degeneration and regeneration of the central nervous system, with findings vital to the treatment of paraplegia resulting from war or other injury, received the steady support of the John A. Hartford Foundation to the accumulated extent of \$700,000. The Regenstrief Foundation of Indianapolis has contributed \$272,176 to research in health care.

In another area, the Kellogg Foundation has contributed \$344,840 to provide for the distribution of programs from the film library at Indiana University to educational television stations.

The University programs funded by the Ford Foundation have been many and diverse. I shall cite only a few examples. Through a \$742,000 grant, the School of Education developed a teacher education program combining theory, methods, simulation, practice in the use of closed circuit television and sequentially-ordered

laboratory experiences with children, all culminating in a semester of paid "inter-teaching" and a master's degree. A project for encouragement of Non-Western studies in Indiana colleges, explained briefly in Appendix B, was instituted with the help of a \$200,000 grant. The I. U. School of Business was enabled by a grant of \$150,000 to assist Texas Southern University in developing the curriculum and strengthening the faculty of its School of Business to the extent that it became the first in a predominately-Negro university to be accredited by the American Association of Collegiate Schools of Business.

Also funded by Ford, the Indiana Language Program for improving the teaching of languages in high schools (described in Appendix B) has been a remarkably successful project, justifying the \$1 million in grants which have made it possible. A timely research program, designed to develop and test a practical system of low-cost tutoring as a supplement to classroom instruction, produced results through the aid of a \$368,920 grant which have received immediate application in the Indianapolis school system.

The grants which have been most far-reaching in their effectiveness, increasing greatly our strength, capabilities and quality in international areas, were those made by the

Ford Foundation in 1961 and 1965 in support of research in the problems of international and human resources development, and of the University's graduate programs in international business and in the following foreign areas: Russia and East Europe, Western Europe, the Far East, the Near East, Africa and Latin America (See Appendix C). Totalling in all some \$5.3 million, the largest portion of these grants has been devoted to the support of doctoral candidates, whose training will inevitably benefit numbers of others. Faculty research is a second, important purpose served by the grants. Also, salaries of certain new faculty members have been paid from the grants in whole or in part for periods of one to three years. A small percentage has been spent on library acquisitions. Mainly by these means Indiana University has been enabled to capitalize on potential developed initially on its own but requiring the major impetus of private funding for its realization and resultant distinction.

I have had an opportunity to observe another beneficial and multiplier effect of foundation grants in my position as Chairman of the Indiana Advisory Commission on Academic Facilities. This Commission, as the members of Congress will know, administers and makes recommendations for the

projects eligible for Federal assistance in funding under the Higher Education Facilities Act of 1963 as amended. A condition precedent to any type of Federal assistance is a current capability of the institution to defray a minimum of 25 per cent of the cost. This 25 per cent has had to be raised from a variety of sources: alumni, friends, local corporations, and foundations. The local financing of a large majority of these projects depended in part on foundation funds, and in one instance, the Fort Wayne Art Institute and School of Fine Arts, all of the matching money was received directly from a foundation grant. In the case of Anderson College, grants from private foundations totaling \$1.48 million were added to a federal facilities grant of \$1,076,251 and funds from other sources to provide a sorely-needed general classroom and administration building costing in excess of \$3 million.

Sixteen private and five state-supported institutions in Indiana have participated in and benefited from the program. To date it has resulted in construction of 65 new or, in a few instances, rehabilitated structures worth \$125 million with a Federal subsidy of a little over \$40 million. It is estimated that these facilities will

help to accommodate over 45,000 additional students. It is a demonstrable fact that the program would have been substantially less successful, had it not been for the assistance of foundations. I feel sure that in each of the committee members' states, the story is much like Indiana's.

I wish to emphasize that the support from private foundations to Indiana colleges and universities is pervasive and widespread. In addition to the examples I have cited, the Lilly Endowment aids fourteen Indiana private colleges with substantial annual unrestricted grants. Mr. Herman Krannert of Indianapolis and the Inland Container Corporation Foundation have given major grants for needed buildings to both private and public institutions and for vital cardiac research. In fact, the examples I could cite are legion.

I have used these illustrations from the experience of Indiana University, but other institutions with which I am familiar have similar records of aid, supplied by private foundations, which has enlarged their capabilities, enhanced their quality and elevated their horizons. At Tulane University, for instance, where I serve on the Board of Visitors, early grants from the General Education Board were basic to the development of the institutions, I have been told. In the last five

years, during which I have had an opportunity to observe the benefits of contributions made by foundations to Tulane, it has received \$16 million from them, including grants for medical research, faculty salaries, educational programs at both the undergraduate and graduate level, addition of faculty to the School of Medicine, support of younger faculty members, development of the natural and physical sciences, and -- most importantly -- as a stimulation to fund-raising which produced more than three times the amount of the challenge grant. (See Appendix D.)

Similar challenge grants from the Ford Foundation have aided four private institutions in Indiana and the Indianapolis Symphony Orchestra, closely associated with a fifth private institution, to raise urgently-needed funds. Earlham College received a \$1.6 million grant and raised \$5,500,981. (See Appendix E for a summary of foundation support to this important Indiana Quaker college.) To a grant of \$2 million, Wabash College was able to add \$5,037,302. The University of Notre Dame raised \$24,880,573 in response to a challenge grant of \$12 million. And DePauw University supporters have just completed a drive, meeting the challenge of a \$2 million grant with a total of \$7,124,665 raised.

In the last three years DePauw has received grants totaling \$1.6 million from 28 foundations, to be used in matching a \$2.396 million government facilities grant in the program to which I have already referred for the construction of a science center. Since laboratory facilities and library acquisitions are often difficult for small private universities to fund, this new center is crucial for the development of DePauw's science programs.

DePauw received foundation aid, too, in starting two now-thriving programs; a summer graduate program in American Studies for high school teachers, initially funded by the Coe Foundation, and an African Studies program, begun through a Ford Foundation grant.

The Ford Foundation also helped with a program undertaken by DePauw to improve the humanities background of its faculty members. Through the \$50,000 grant from Ford the program can now be advanced to a stage at which DePauw will be better able to handle it alone.

In these diverse ways, three different types of educational institutions -- a small and a large private university and a state university -- have been enabled by foundation grants to improve their ability to serve scholarship and society.

All over the world, America's system of higher education is esteemed as the best ever developed in any land. Despite all of its insufficiencies, it is the envy of the world. Our system has several well-nigh unique features that have shaped its character and contributed to its world position. They are its emphasis on applied research and public service, first stimulated by the Morrill Act establishing the land-grant colleges, the dual system of public and private support and control, and the large number of institutions, making possible advanced educational opportunity for a significant portion of our American society.

Important as these are, I believe that the most important reason for this universal respect resides in what colleges and universities have been enabled to do as a result of the support of private foundations: the imaginative, creative, boundary-stretching, even revolutionary undertakings which have not only produced enormous immediate and potential benefits but have enlarged the possibilities for higher education in the future.

The face of America has been forever improved by the unique creation of philanthropic foundations that

have assisted educational institutions to serve society in ways never aspired to in any other nation. Such a record deserves encouragement.

Surely a way can be found to remedy those imperfections which may have led to the proposed legislation without lessening the capability of private foundations to assist higher education in adding to that record in the future and without discouraging the patronage to be gained from the establishment of new foundations.

I earnestly hope, and urge the committee's concern, that this Bill in its final form will be free of provisions with reference to private foundations which would have a stultifying effect upon the scientific, intellectual, social and economic progress of our country.

Americans have ever been a dynamic and daring people. Dynamism has been our outstanding characteristic, the wellspring of the America we know that has been a pace-setter for the world. Foundation grants have helped keep us dynamic and moving forward. It is not pioneering, experimentation and hospitality to new ideas that we have to fear but an excess of caution which could invert the face of America and ultimately relegate her to the indistinction of a static society.

APPRAISAL OF THE J. K. LILLY COLLECTION

How modest the appraisal of the J. K. Lilly collection for tax purposes was is documented by actual records of recent auction sales. Duplicates from his collection were sold by I.U. at auction at the Park-Bernet galleries in New York City on November 8, 1962. Here is the record of five items:

	Cost	Appraisal	Selling Price
no. 18 Chaucer	\$17,500	\$20,000	\$47,500
no. 28 Copernicus	2,000	3,500	11,000
no. 34 Dalton	250	350	1,850
no. 44 Eliot Bible	4,500	7,500	10,500
no. 102 Newton	750	1,000	5,500

These items, which cost Lilly \$25,000, were appraised at \$32,350 and were actually sold for \$76,350.

The recent Thomas Streeter sale of rare Americana contained fourteen items of which the Lilly collection has comparable copies. An analysis of these, comparing J. K. Lilly's costs, appraised for tax purposes, and prices the Streeter copies brought, was made by the Lilly librarian for the American Book Collector and published in its October, 1968 issue.

The fourteen items cost Lilly \$24,275 -- the tax appraisal was \$35,125. The comparable copies sold at auction in 1968 for \$174,500.

The most drastic advance in prices was of the first printing of the Declaration of Independence of which only sixteen copies are recorded. Lilly's copy cost him \$12,500 and was appraised for tax purposes at \$15,000. A copy sold at auction in May for \$404,000.

Twenty items from the Lilly collection, therefore, which cost him, during his thirty years of active collecting, \$61,775, were appraised for tax purposes at \$71,475 and comparable copies actually sold at public auction for \$654,850.

It might further be mentioned that since its dedication in 1960 the Lilly Library has attracted as gifts, each year, material of more than double the value of the budget allocated to it from library funds. Appraisals of such material are made by competent outside appraisers and none has ever been questioned by tax authorities.

If the original gift were to be reappraised in the light of today's market, it would be well over \$10,000,000. Additional purchases made possible by grants from the Lilly Endowment and other gifts attracted by the collection have brought the total value of the Lilly Library's present holdings to approximately \$25 - \$30 million.

STATE-WIDE IMPACT IN INDIANA
OF CERTAIN FOUNDATION ASSISTANCE
TO INDIANA UNIVERSITY

Foundation help to institutions of higher education is crucial and unique in many ways. Our experience at Indiana University has demonstrated this in two important respects that are sometimes overlooked in assessing the value of foundation philanthropy to American education and society. For us, foundation assistance has provided, among other things, flexibility and a "multiplier effect" that are not possible with general funds from the state budget nor usually with federal grants. Indiana University has been able to develop and implement some original and exciting ideas that have influenced most of secondary and higher education throughout the state of Indiana. Two examples will illustrate this point.

First is The Non-Western Studies Project, 1959-67: As a result of the interest of several Indiana University faculty members and of the administrations and faculty of several Indiana private colleges, a program was developed to encourage more study of the non-Western world in undergraduate education throughout the state. An earlier survey had shown that the overwhelming

majority of graduates of Indiana universities and colleges finished their education with no understanding of, or even acquaintance with, the history, cultures, and problems of the bulk of the world's population living in Asia, Africa, and Latin America. In view of the interconnected world of the last quarter of the twentieth century in which these young men and women would live in their careers, as citizens, as individuals, this seemed a grievous omission in their educational experience.

Over eight years, with very modest assistance from the Ford Foundation (under \$200,000), the Non-Western Studies Project was able to enlist the cooperation and participation of three-fourths of Indiana's colleges and universities in order significantly to broaden both the curriculum and extra-curricular activities available to most undergraduates. Using the extensive resources of Indiana University in international studies and drawing on the enthusiasm and dedication of administrators and faculty in many colleges, the Project provided over 50 faculty fellowships for training in non-Western studies here and abroad, and for redesigning courses to include non-Western

materials; it also sponsored or helped arrange over a dozen faculty and student workshops, institutes, and seminars; and it assisted institutions in acquiring library and visual materials on the non-Western world.

It is difficult, of course, to measure the full impact of such a cooperative effort, but it is clear that today many Indiana undergraduates have a wider and more internationally-oriented education, one which should prepare them better for tomorrow's world.

The second example is The Indiana Language Program, 1962-70. In the general post-Sputnik atmosphere there was national concern about American deficiencies in the study of foreign languages. Nowhere was this felt more keenly than in Indiana, where despite the University's international renown in linguistics and in language and area studies, the elementary and secondary schools of the state were providing very limited and often totally inadequate instruction in foreign languages. Determined to close this gap and in hopes of providing a model of what could be done in one state, Indiana University developed a comprehensive program to improve the teaching of foreign languages throughout the state. Drawing on

the University's extensive resources in this field and on its earlier initiative in appointing a full-time School Coordinator for Foreign Languages, the Indiana Language Program, with the assistance of just over one million dollars from the Ford Foundation, has sponsored intensive institutes for teachers, the retraining of Cuban refugees as Spanish teachers, a scholarship incentive program for young people interested in careers in foreign languages (including such difficult but crucial languages as Arabic, Chinese, and Japanese), study abroad opportunities for Indiana foreign language teachers, publications useful to students and teachers, and encouragement and guidance on language programs in the schools, including those in elementary schools.

Again, it is difficult to judge the long-run impact of such a program. It has, however, drawn nation-wide attention, study, and emulation, and there is no question that this cooperative effort has radically changed the situation in the state. Whereas in 1962 there were 73 secondary schools which offered no instruction in modern foreign languages, today there are only one or two. Enrollments of secondary school students

have grown between 1960 and today some seven-fold in French, nine-fold in German, four-fold in Spanish, and fifteen-fold in Russian. Students entering the University are now so well-prepared that the introductory language courses at Indiana University have had to be drastically up-graded, and hundreds of new and able teachers well-versed in the latest techniques of language instruction have been trained. Moreover, the Indiana Language Program has been able to place a number of its activities on a nearly self-supporting basis which will permit the University and cooperating schools to continue them past the expiration of the Ford grant in 1970.

In summarizing these two examples I would like to stress two points. First, the foundation assistance involved, while very small compared to the effects obtained and to the share contributed by Indiana University and the participating colleges and schools in the state, was crucial both in permitting the University to use its resources with maximum impact and in extending the benefits of these programs throughout the state of Indiana, thereby influencing the education of countless Indiana citizens, most of whom had no direct contact with the University. Second, the modest sums required,

which were not available from other sources, allowed the initiation of activities which are to be carried on and developed, thus continuing the process of improving education at all levels in the state.

It is apparent, I think, that in these cases the help of the Ford Foundation, building on local concern and initiative and supplementing existing institutional resources and personnel, was not only in the interests of education in Indiana but in the national interest as well.

LATIN-AMERICAN STUDIES

The \$600,000 invested over a five-year period (1966-71) in Latin American Studies at Indiana University under the Ford Foundation International II Grant provides dramatic evidence of how foundation support can double and triple university potential in a particular area at a crucial moment of development.

The university initially provided certain basic investments. Special allocations built a major collection of books and manuscripts dealing with Latin America in the Lilly Rare Books Library. Recruitment of several promising faculty members also sparked interest within particular departments. It was foundation funds, however, which created the catalyst to launch the program in five major areas.

(1) Nearly one-third of the Ford grant matched by extensive funds from the university and library budget went into an impressive building program in library acquisitions.

(2) Ford funds supplemented department allocations for new faculty positions and research grants. In general, Ford funds paid the first two years' salary after which the department assumed the financial

commitment. The number of faculty teaching subjects related to Latin America rose from 8, representing five departments, in 1963, to 40, representing fifteen departments, by 1969.

(3) More ample fellowships made possible from Ford funds in addition to the vastly expanded academic program enabled departments to attract topflight students with Latin American interests from all over the country into M.A. and Ph.D. programs. The number of students in such graduate studies rose from 25 in 1963 to 190 in 1969. In addition, for the first time, Indiana University was able to send promising Ph.D. candidates to the field in the summer of their second year of graduate work to map out dissertation topics. This extremely successful program resulted in considerable savings in time and money when actual dissertation research began and prepared students to compete advantageously at the national level for doctoral fellowships.

(4) Public lectures, art exhibits, and music performances largely backed by Ford funds stimulated new student and community interest in Latin America. Particularly significant was the impact of Indiana University's unique Latin American Music Center, first

established in 1962.

(5) Finally Ford funds enabled Indiana University to explore and open new and exciting programs for student and faculty exchanges with a variety of Latin American institutions. Among the initiatives which bore fruit were the training of economics faculty at the Andres Bello University at Caracas, Venezuela; the student exchange programs with San Marcos and the Catholic Universities in Lima, Peru, and the National University of Rio Grande Jo Sul in Porto Alegre, Brazil; the exchanges with the medical faculty of Guanabara University in Rio de Janeiro; the archeological explorations established with the University of Los Andes in Colombia; the radio and television assistance program to El Salvador; and an educational assistance program in Chile.

Indiana University now produces an average of ten Ph.D.'s and forty M.A.'s each year with specialization in disciplines related to Latin America, in contrast with less than one-tenth that figure six years ago. The University now holds a front rank in terms of library resources and faculty specialists, in contrast to its virtually unknown position in 1962. In sum,

the investment of Ford Foundation funds has resulted in launching a major international studies program, has encouraged Indiana University to make long-range commitments, and has established a new role for the university in this vital world area of study and cooperation.

FOUNDATION SUPPORT OF TULANE UNIVERSITY

Gifts and grants from foundations have shaped the destiny of Tulane University as much as any other single influence - the specific shape of the institution in terms of individual programs embarked upon and maintained over the years, as well as the general character of the institution. Foundation involvement with Tulane dates back to pre-World War II days when the General Education Board helped support a small and struggling institution in a variety of ways.

Between 1919 and 1939, the General Education Board made available the sum of approximately \$4 million as endowment, which constituted a substantial portion of the endowment of the institution at that time. The income from the investment of these funds was devoted not only to the general support of the University but also to the support of the School of Medicine.

Other foundations which have played a significant role in Tulane's development over the years include the Ford Foundation, the Rockefeller Foundation, the Commonwealth Fund, the Sloan Fund, and many smaller but extremely important foundations. For example, the Schlieder Foundation, a locally oriented foundation,

has made available to the University over the past 19 years approximately \$1,700,000 for medical and other research. Likewise, the Stern Family Fund has supported Tulane generously over the years.

Certain specific grants assumed transcending importance at various stages of the development of Tulane University. For example, the General Education Board made available matching grants in 1946 and in 1951, totalling nearly \$3 million, on condition that the University match those sums. This stimulated early fund-raising campaigns which otherwise may not have been embarked upon. All were successful.

The Ford Foundation endowment grants to the general support of the University and to the School of Medicine in 1957, totalling \$6.2 million, made as a part of a distribution to most private institutions in the nation, gave a substantial impetus to the University at that time. The income from the investment of these funds was to be used to improve faculty salaries for ten years, at the end of which time the principal was free to be used for any institutional purpose. Tulane elected to use the principal of these funds in the further development of its educational programs.

Probably the most significant grant in the history of the institution was the Ford Challenge Grant offered in 1964. By terms of the grant, the Ford Foundation agreed to contribute \$6 million if the University would raise \$12 million from private sources. Stimulated by this offer, the University set a total fund-raising goal of \$24.4 million and actually raised nearly \$28 million. It can be said truthfully that the stimulation of the \$6 million offered by the Ford Foundation produced an additional \$22 million for current operating purposes, for physical facilities, and for endowment. This program supported the endeavors of the institution to increase faculty salaries from approximately a "D" average in the AAUP grading scales to a "B" average, assisted in the provision of an urgently needed Library and also a Science Building, and provided other stimuli to the forward movement of the institution.

Shortly after World War II, several Carnegie Corporation grants, followed by a General Education Board grant of \$1 million, enabled the institution to greatly accelerate the development of its graduate program. The production of Ph.D.'s has increased from a few in 1946 to 119 this year. This has been

of inestimable significance not only to this immediate region but the whole nation as well.

A Ford grant of \$500,000 enabled the University to develop a Latin American Studies Program, which has contributed greatly to the educational advancement of our neighbors to the South.

The Commonwealth Fund has provided grants to the School of Medicine which have been of tremendous significance in the development of that institution. A grant made in the 1950's of \$750,000 on a matching basis permitted the institution to add \$1.5 million to its spending level, primarily for faculty and faculty salaries. In recent years two large planning grants from the same Foundation have assisted the faculty of the School of Medicine in planning goals and objectives of the School and its future development.

Also of great assistance to the School of Medicine have been two grants from the Mellon Foundation, each in the amount of \$250,000, devoted to the support of salaries of younger faculty members. The Sloan Foundation has made two grants in the amount of \$250,000 for the support of science at the University. This has assisted the institution in matching larger grants from the

National Science Foundation and has provided an important stimulation to the development of the natural and physical sciences.

Finally, the Rockefeller Foundation has made two grants to the institution, each in the amount of \$250,000, for the support of underprivileged students. These grants have assisted Tulane in making available its educational opportunities to approximately 100 students a year, who otherwise would not have been able to afford to enroll in this institution.

In the past five years, foundation sources have provided gifts and grants of approximately \$16 million.

FOUNDATION SUPPORT AT EARLHAM COLLEGE

Over the last twenty years American higher education has undergone some of the most strenuous demands in the history of the country as we have had to wrestle with large increases in enrollment, costly improvements to keep abreast of developments in the sciences, the provision of educational opportunities for the economically less advantaged segments of our society, an endless spiral of inflation, and the increasingly evident need for drastic improvement in various aspects of teaching. Earlham College, like other institutions, has had to raise large sums of money every year -- beyond its normal income from student tuition and endowment return -- to continue day to day operations. We have also had to raise large sums for capital development plus special program development support outside the normal operating budget. With all of these needs we have been given invaluable assistance by a number of general purpose, company-sponsored and family foundations. Let me give some specific illustrations:

1. Plant Expansion

In the building of approximately eight million dollars

worth of new buildings during the past twenty years Earlham College received substantial funds from Lilly Endowment of Indianapolis, the National Automatic Tool Foundation of Richmond, Indiana, the Carnation Company Foundation of Los Angeles, the Kresge Foundation of Detroit, Michigan, the Baxter Foundation of Indianapolis, and the Ford Foundation of New York.

One of the most important aspects of these foundation gifts is that they provided the "challenge" funds which enabled us to launch general fund-raising drives among our alumni and the general public. Without the stimulus of the major foundation gifts there is real doubt if we would have been able to succeed in these important expansion and campus improvement projects.

2. Improvement of Library Collections and Service

As at all other institutions, Earlham must continue to work to upgrade various of its normal programs. In this connection we have had important assistance for the improvement of our library through special grants from the Given Foundation of Pittsburgh, Pennsylvania, W. K. Kellogg Foundation of Battle Creek, Michigan, Lilly Endowment of Indianapolis and the Ford Foundation of New York.

A good library is a central and tremendously important resource for any educational institution. There never seems to be enough money in the general budget to take care of the ever growing needs of libraries. Foundation support has for Earlham been of great significance in the building of the excellent library service we now have.

3. Science Program Maintenance and Development

Work in the natural sciences is among the most costly aspects of the various programs of any general educational institution. The Defense Department and various other government agencies pour enormous amounts of money in the support of sciences at the large universities. The smaller undergraduate institutions -- which produce a disproportionately large percentage of the undergraduates who go on in advanced study to become scientists -- have considerable difficulty in attracting sufficient funds to acquire the physical facilities, equipment and staff needed to maintain a high level in research and teaching in the sciences. Though Earlham is now beginning to receive significant help from the National Science Foundation, during most of the period

since the end of World War II we have been in very large measure dependent upon private foundation grants for the strengthening and enlargement of our science programs.

We are now well advanced in the planning stage of a \$3,600,000 addition to our science facilities for which we have received a grant of \$1,206,000 in federal funds approved by the Indiana Commission on Educational Facilities.

The new building will provide laboratory space for Chemistry and Biology. In order to make the most efficient use of building funds made available to us we are doing intensive research on mechanical facility location and access, partition location and re-location, furniture design and teaching methods.

This essential research, in which science faculty members, architects and engineers are participating, is sufficiently advanced to assure us that it will produce significant construction cost savings and a high degree of building flexibility, thus providing greater insurance against obsolescence as science knowledge multiplies.

This important investment in educational improvement and obsolescence insurance was financed by grants from the Esso Education Foundation of New York and the Alcoa Foundation of Pittsburgh, together with valuable technical

assistance from the Educational Facilities Laboratory, a subsidiary of the Ford Foundation.

We expect the research to be of such significance that one or more of the findings will be incorporated in the construction of science laboratories for colleges and secondary schools throughout the country, a fact which may produce meaningful savings for both the public and private sectors of education.

And because the general purpose foundations particularly are attracted by projects which have a multiplier effect, we are optimistic about major foundation support for our science building program.

Specific additional assistance with financing science projects has come to Earlham from the Kettering Foundation of Dayton, Ohio, Lubrizol Foundation of Cleveland, Research Corporation (a foundation) of New York, the Shell Companies Foundation, the Smith, Kline and French Foundation of Philadelphia.

4. Special Projects in the National Interest

From time to time the federal government establishes very clear educational objectives to serve the vital interests of the country. In some cases the serving

of these special national interests are assisted by federal grants and contracts. Rarely, however, is such government funding complete. Moreover, most of these tax monies will have traditionally been allocated to large universities. Most of the smaller undergraduate institutions like Earlham have to secure much of their funding for such projects from private sources. Foundations have played an essential role for Earlham in the funding of two types of programs for which the United States government has given urgent encouragement.

a. Education of the Disadvantaged

In order to carry its share of the load in dealing with the education needs of lower income families Earlham has had invaluable assistance from the Rockefeller Foundation of New York and the Cummins Engine Company Foundation and the foundations associated with it of Columbus, Indiana.

b. International Education, Particularly Dealing with So-called Non-Western World

Earlham has been able to develop a very extensive program of international education -- including study abroad programs in a number of countries and a special program in Asian studies,

including the teaching of Japanese language -- through grants received from the Ford Foundation of New York, Lilly Endowment of Indianapolis, and the Watumull Foundation of Honolulu.

c. Urban and Rural Development Programs

Assistance with special programs in the fields of sociology, political science, and economics have been given by the Schwarzhaupt Foundation and the Seasongood Good Government Foundation of Cincinnati.

5. General Educational Improvement

Innovation and experimentation in education -- like research and development in industry -- are essential if colleges and universities are to avoid stagnation and death. Earlham College has during the last twenty years been able to strengthen its educational contribution enormously through vigorous new developments in new methods of teaching in English, chemistry, psychology, physics, biology, mathematics and several other fields. Substantial assistance, without which most of the projects could not have been attempted, have been provided to Earlham by such foundations as Carnegie Foundation of New York, the Danforth Foundation, the Esso Education Foundation, Lilly Endowment.

6. Normal Current Operating Expenses

Without very substantial private contributions our independent colleges and universities would disappear from the American education scene, and a very much greater burden would thereby fall upon the state and federal governments to provide substitute educational services through the public institutions. Here the role of private foundations has been of enormous importance to Earlham College and continues to be year after year. Among the foundations which have been conspicuously significant for Earlham in meeting these on-going needs are such foundations as the following: Conway Scholarship Foundation, the Doan Foundation, Lilly Endowment, the Charles E. Merrill Trust, Standard Oil Company Foundation of Indiana, The McGregor Fund, and literally scores of other less well known foundations attached to a variety of business concerns and families.

During our fiscal year ending June 30, 1969, foundations provided 27.3% of our gift income applicable to the current operating budget.

In the preceding ten years foundations provided \$850,000, which we utilized for budget balancing purposes, 26.2% of our unrestricted gift income for the period.

The contributions of foundations, particularly general purpose foundations, to our overall gift income, that is both designated and undesignated, add up to an even more impressive figure.

During the ten years ending June 30, 1968, Earlham received foundation grants of \$3,710,667, equivalent of 31.2% of total gift income for the period.

Thus it is apparent that any measure which will inhibit the giving of foundations or will divert any significant portion of foundation income will have a direct impact on the financial health of private educational institutions.

I want to emphasize that the leadership role of foundations in providing diverse types of support for Earlham College has been absolutely indispensable in our survival and in our continued growth and improvement. Most important has been the "challenge" and catalytic effect which foundation gifts have provided in stimulating other gifts from other types of private donors. We would earnestly hope that every encouragement would be given to the expansion of the legitimate role of foundations in helping to finance American higher education.

II. EFFECT OF THE LEGISLATION (PROPOSED TAX) ON BENEFICIARIES

Father Theodore M. Hesburgh, President, University
of Notre Dame,
Notre Dame, Indiana.

Frank C. Erwin, Jr., Chairman, Board of Regents, University
of Texas System,
Austin, Texas.

Dr. John Cooper, Executive Secretary, Association of
American Medical Colleges,
Evanston, Illinois.

Dr. Felix Robb, Director, Southern Association of Colleges
and Schools,
Atlanta, Georgia.

II. EFFECT OF THE LEGISLATION (PROPOSED TAX) ON BENEFICIARIES

SUMMARY OF STATEMENT OF FATHER HESBURGH, MR. ERWIN AND DOCTORS COOPER AND ROBB

Representatives of a broad variety of institutions which derive support from foundations--including private colleges and universities, state and municipal universities, medical schools, and educational institutions in the South--are seriously concerned about two legislative proposals affecting private foundations. One, incorporated in the House tax bill, would impose a 7-1/2 percent tax on foundation investment income. The other--not included in the House bill, but recommended by some critics of foundations--would terminate the existence or tax exemption of all foundations after a period of years.

The first of these measures would diminish the current funds with which foundations carry on their work--and with which they support the work of other charitable and educational institutions--by at least \$65,000,000 a year. The second would, over time, have even more drastic effects upon foundation functions. Because the accomplishments of private foundations have been of immense value to American society and, specifically, to the institutions which receive their financial support, representatives of those institutions strongly oppose both the proposals.

Review of the accomplishments of the foundations in several areas demonstrates the undesirable consequences which the proposals would have.

Foundations and Private Universities

Through a system of matching grants, the Ford Foundation's Special Program in Education has stimulated many colleges and universities to develop resources considerably in excess of the original grants. The Rockefeller Foundation, the Sloan Foundation, the Carnegie Foundation and many others have also made major contributions to our private educational system.

Without such assistance, there is serious question whether the independent sector of our dual, private/governmental system of higher education can survive. Yet a tax on foundation income would bring a major reduction of that assistance.

Congress should, then, legislate against any specific abuses in which certain foundations have become involved--but should take care not to diminish the funds with which foundations make their vital contribution to the private educational system.

Foundations and Medical Education

In the field of medical education, too, the resources of private foundations have been of critical importance. They provide a continuing flow of support which, in absolute terms, contributes substantially to the training of our doctors, research technicians, nurses and other medical personnel. Even more important, foundation funds have been of vital assistance in special areas of medical education for which it has proved difficult or impossible to obtain support from other sources.

- Foundation support is, for example, of particular importance
- in sustaining and improving medical school faculties;
 - in establishing new medical schools;
 - in assisting schools which experience financial difficulties;
 - and in developing new techniques of medical education, new curricula, and new methods of relating medical facilities to the provision of health care for our citizens.

Foundations and Public Educational Institutions

Foundations have also afforded key support to state and municipal colleges and universities. In the Southwest, for example, they have enabled such institutions

- to experiment with problems as diverse as beef production and mineral recovery;
- to study inventive skills and consumer needs;
- to assist linguists and teachers to overcome language handicaps;
- to develop new techniques of modern communication for engineers and journalists.

The South: Foundations and Education

The South, with an enormous burden of children to educate and fewer dollars to do the job than any other region, is especially vulnerable to any change in public policy that would limit the flow of private funds for education and make equalization of educational opportunity more difficult. Philanthropic foundations provide a critical margin--either for excellence or for survival--in many Southern educational institutions.

The South's growing economy is beginning to produce indigenous wealth and a new surge of local philanthropic interest in education. Taxation or undue regulation of legitimate foundations will discourage this development at a crucial time.

Educational improvement, innovation, pioneering projects, and needed research funded by national and local foundations are helping the South catch up with the rest of the nation. Important new public kindergarten programs and continuing education are two products of foundation support.

Efforts to transform talented but underprivileged youth from public liabilities to productive, educated citizens provide further dramatic evidence of the dividends accruable from strategic foundation investment in human development.

STATEMENT OF FATHER HESBURGH, MR. ERWIN AND DOCTORS COOPER AND ROBB

Mr. Chairman and Members of the Committee:

I am Theodore M. Hesburgh, president, since 1952, of the University of Notre Dame. With me today I have Dr. John Cooper, who is the president of the Association of American Medical Colleges; Mr. Frank Erwin, who is Chairman of the Board of Regents of the State Universities of Texas; and Dr. Felix Robb, who is the Director of the Southern Association of Colleges and Schools.

The four of us appear before you this morning as representatives of institutions which are, in a sense, bystanders in the present controversy over legislation affecting private foundations. Although I am also a trustee of the Rockefeller Foundation, neither I nor my colleagues are appearing here to represent a "private foundation," or a group of foundations. No matter what definition you finally settle upon for that key term, all of the institutions which we represent will fall beyond it. We will, therefore, be beyond the direct effect of whatever rules you prescribe for foundations.

If we are bystanders, though, we are intensely interested ones. We are, also, a good deal more familiar with the subject of the controversy than bystanders ordinarily are. For both our interest and our knowledge, we are indebted to the very close relationship which

foundations have to the programs of the institutions which we represent. Our institutions receive vital support from foundations; they work continually with foundations; and, in doing so, they have developed a broad experience with foundations' functions and characteristics. Moreover, as individuals, we have served as members or trustees of a considerable variety of private and governmental organizations--ranging from the National Science Board and the Carnegie Commission on the Future of Higher Education to Governor Rockefeller's Select Committee studying private education in the state of New York--which are active in the fields in which foundations work.

Based upon our knowledge of private foundations--and the very considerable benefits which our institutions steadily derive from them--we are seriously concerned about certain aspects of the legislation proposed for foundations.

The four of us have observed the work of foundations from rather different points of view. In discussing the consequences of the proposed foundation legislation, I will draw upon my experience with private educational institutions. Representing the Association of American Medical Colleges, Dr. Cooper will explain the role of foundations in medical education. Mr. Erwin will speak to you of the relationship of private foundations to colleges and universities which derive their principal support from states or local governments. Finally, on behalf of the Southern Association of Colleges and Schools--an organization with 9,000 member and affiliated colleges, universities, secondary and elementary schools serving eleven Southern states

from Virginia to Texas--Dr. Robb will speak to you of the place of foundations in education in the South.

From these varied points of view outside the foundation world, we would like to tell you what we know of that world; how it affects the institutions which we represent; and why we are disturbed about certain parts of the legislation proposed for foundations. As we proceed, we will document our observations with concrete examples and with general statistical data. We will not, however, enter upon an examination of the technical details or ramifications of the House bill, or other specific legislative proposals. Other witnesses are more qualified for those tasks than we are.

At the outset, we would like to make it clear that the four of us wholeheartedly support legislation aimed at the financial abuses in which a minority of private foundations are reported to have become involved. We pretend to no expertise on foundation abuses, because the foundations with which we are familiar have not engaged in them. On the other hand, we recognize that the 1965 Treasury Department Report on Private Foundations and witnesses who appeared before the Ways and Means Committee this spring have made out a strong case for legislative proscription of foundation-donor self-dealing, unwarranted accumulations of income, and certain other practices. To the extent that such practices exist, we share the concern of the Ways and Means Committee about them, and we urge you to deal decisively and effectively with them.

Beyond such steps, however, we are deeply disturbed about one aspect of the House bill and one additional proposal which, while not

incorporated in the House bill, has been advocated by critics of foundations in recent years. In brief, the proposals which concern us are these:

--The House bill would impose a 7-1/2 percent tax upon foundation investment income. The Ways and Means Committee Report estimates that this tax will produce \$65,000,000 of revenue in its first year of operation. According to the House estimates, the revenue effect of the tax would rise rapidly to an annual \$100,000,000. Furthermore, as the next group of witnesses will explain in greater detail, the precedent which the tax would establish for state and local governments seems likely to have an additional substantial monetary impact on foundations.

--Several critics of foundations have recommended terminating the existence or exemption of foundations after a period of years. One proposal would fix a 25-year limit on foundations' tax exemption and qualification to receive deductible charitable contributions. Another would restrict the life of each private foundation to 25 years. Others would require foundations to distribute their assets at a sufficiently high rate to end their existence within a period of 10, 15, or 20 years.

We are deeply concerned both about the proposed tax on foundation investment income and about the adoption of any mechanism whose effect would be to terminate the existence or exemption of all foundations over a period of time. Our combined experience with foundations convinces us that their work has been of immense value to the classes of

institutions which we represent and to American society. We are, therefore, strongly persuaded that any measure which diminishes the current funds with which foundations carry on their work and with which they support the work of other charitable and educational institutions--by an annual \$65,000,000, \$100,000,000, or any like amount--will have major undesirable consequences. For the same reasons, we are convinced that an endeavor--direct or indirect--to curtail the existence or tax benefits of foundations would be thoroughly unfortunate.

To explain the grounds upon which we base these views, we should like to review briefly the work which foundations have done in the four areas with which we are familiar.

A. Foundations and Private Universities .

During more than seventeen years as president of Notre Dame, I have found one of my great preoccupations to be the financing of the University's educational, research and service programs. The progress that my University has recorded during this period can be attributed in no small measure to the support of private philanthropic foundations. Indeed, one major philanthropic organization, the Ford Foundation, looms as the largest single benefactor in Notre Dame's 127-year history.

I shall not presume to speak for my fellow college and university presidents, although I can think of none whom I know personally who would favor the foundation tax which we are discussing. I would like to say a word about how one foundation, the Ford Foundation, is helping

Notre Dame accomplish in ten years what normally would have required thirty years. With equal force I could document what has been accomplished on our campus with support from the Rockefeller Foundation, the Sloan Foundation, the Carnegie Corporation and others.

Specifically, I shall speak about the Ford Foundation's Special Program in Education--perhaps the most magnificent philanthropic program in the history of American higher education--in which a significant number of colleges and universities have been helped to help themselves through challenging matching grants. In the case of Notre Dame, the whole vision of what the University might be has been startlingly, almost unbelievably, altered by two \$6 million matching Ford Foundation grants. With the incentive of these matching grants, between 1960 and 1966, we were able to double or triple the money normally contributed to the University. There is no question in my mind that this gigantic stride forward was made possible by the matching provision. So, aside from what the grants themselves helped underwrite--for example, the 13-story Notre Dame Memorial Library--they have helped generate many additional millions of dollars in support from alumni, from friends, from corporations and even from other foundations.

The best thing about foundation support is, of course, that it is project-oriented for the most part and encourages a university to do new things, to undertake research and launch new educational programs that would be out of the question if one had to rely on operating

income or even the gift support of alumni and friends. For example, the Carnegie Corporation made a capital grant to Notre Dame which underwrote the first, national study of Catholic elementary and secondary education in the United States. Support from the Kellogg Foundation has made possible a program of continuing education that has touched the lives of tens of thousands involved in more than 300 campus conferences each year.

The aid which the major foundations have provided in the years since World War II has proved to be a life-line to the independent half of our nation's unique dual, private/governmental system of higher education. There is serious question whether the independent sector can persevere and continue to provide an educational alternative. With inflation and the spiraling cost of living threatening to impair the philanthropic support of individuals, and with corporations, generally speaking, contributing less than 1 percent of their profits to charitable organizations when they are entitled by law to contribute up to 5 percent, the proposed tax on foundations--or any general measure to end the existence or exemption of foundations--will have the plain and necessary effect of driving our independent colleges into the arms of the government at a time when many feel there is already too much government involvement on the campus. I cannot believe that this is a prospect welcomed by members of this Committee or the Congress.

To state the matter somewhat differently, a 7-1/2 percent tax levied on the investment income of foundations would, in effect, be a tax on Stanford and Johns Hopkins, Vanderbilt and Emory, Notre Dame and

Denver and, indeed, on all the colleges and universities, great and small, in every part of this land, which benefit from the regular and substantial support of these foundations. It would result in less foundation support for the nation's colleges and universities at precisely the time when they are experiencing a financial crisis and need more. The revenue generated by the tax would be of little consequence to the government, but its collection would have the direct effect of reducing the funds normally available to colleges and universities by a similar amount, and the indirect effect of a proportional reduction of the individual contributions which these funds stimulate. Furthermore, it would seem inevitable, once the precedent is set, that the tax would be increased as the states and municipalities and future administrations seek much needed revenues, thereby further reducing the funds available to colleges and universities. Again I say that I cannot believe those results to be acceptable to this Committee or the Congress.

My plea, then, is to legislate against specific abuses which may have been discovered in the administration of certain foundations-- but not to diminish the funds with which foundations make their vital contribution to the private sector's educational system. This is the time for the Congress to take steps to encourage even further private philanthropy to higher education. The proposals of which I have spoken would have exactly the opposite effect.

B. Foundations and Medical Education

In the field of medical education, too, the resources of private foundations have been of critical importance. Review of the relevant data reveals that foundations provide a continuing flow of funds which, in absolute terms, makes significant contributions to the training of our doctors, research technicians, nurses, and other medical personnel. Even more important, foundation funds have been of vital assistance in certain special areas of medical education for which it has proved difficult or impossible to secure support from other sources.

The Association of American Medical Colleges conducts an annual survey of all medical schools in the United States to determine the sources of their funds and the purposes to which the funds are applied. In addition, to assist this Committee in its current inquiry, the Association has conducted a special canvass of several of the larger medical schools to obtain more detailed information on the amounts and purposes of foundation grants in recent years.

The data stemming from these investigations demonstrate convincingly that, overall, the contribution of private foundations to medical education and medical research has been an impressive one. Foundations have repeatedly granted funds to medical schools for operating budgets and capital construction. Such grants for general purposes, however, present only a partial view of the importance of foundation support in

the field of medical education. In several specific areas, foundation funds have been of special significance.

Faculty Salaries

While the federal government annually appropriates large sums for medical research, it has proved exceedingly difficult to obtain government support for the maintenance and upgrading of medical school faculties. Plainly, funds committed to these purposes have major bearing upon the quality of medical practice and the state of medical knowledge throughout the United States. Yet, as a dean of the Harvard Medical School noted in a recent letter to the Association of American Medical Colleges, "We are especially dependent on foundations for teaching funds since the government has neglected this area."

Specific illustrations abound. In recent years the Mellon funds have made substantial grants for faculty support and expansion at Tulane, Vanderbilt, Northwestern, Chicago, Boston University, Brown, Case Western Reserve, Columbia, Cornell, Dartmouth, Duke, Emory, George Washington, Harvard, Temple, Tufts, Washington University (St. Louis), Yale, Johns Hopkins, Jefferson Medical College, Marquette, Pennsylvania, Pittsburgh, the University of Rochester, the University of Southern California, and Stanford.

The comments of administrators at several of the recipient schools provide insight into the importance of the grants:

- "Both the basic sciences and the teaching programs have been immeasurably improved by the infusion of funds. New appointments have been made and the entire faculty stabilized." (Tulane.)
- "The grant has proved to be one of the most timely and beneficial ones we have ever been privileged to receive. It has made possible the strengthening of various departments where the need was pressing." (Vanderbilt.)
- "To say that Mellon funds were invaluable to Northwestern University Medical School would be an understatement. They came at a time when personnel particularly in the basic sciences was in very short supply." (Northwestern.)
- "The funds have been used to stabilize the position of several very promising young scientists, attract new ones, and to start new and important areas of teaching and research at a time when federal funds have become overly restrictive." (Johns Hopkins.)
- "The assistance which we have received each year from the Mellon funds has enabled us to strengthen the faculties of the three departments which do most of the teaching in the first year of medical school." (Jefferson Medical College.)
- "There would be literally no other way which faculty expansion and strengthening could have been financed." (Boston.)
- "These funds have made it possible to bring in people who we would have found very difficult to support in any other way." (Case Western Reserve.)
- "The grant has made it possible for us to maintain academic strength in all of our basic science departments." (George Washington.)

The Mellon grants have not been the only ones supporting the improvement of medical school faculties. During the period from June of 1962 through June of 1969, the Surdna Foundation made grants of \$3,300,000 to the Harvard Medical School for general faculty support. Of that total, \$2,500,000 was allocated to a fund which supports full-time faculty members in the basic medical science and clinical

departments. Six hundred thousand dollars has been used to establish a new professorship in pediatrics. An additional \$200,000 has been used to complete funding of a professorship of preventative medicine. The Josiah Macy, Jr., Foundation has made annually-increasing grants to Washington University (St. Louis), Columbia, and Harvard to expand training in obstetrics. It has, in addition, established a major professorship in obstetrics and gynecology.

The examples could be multiplied at considerable length. Their point, however, should be evident: institutions of medical education are heavily dependent upon private foundations for the resources which support the faculties which train the nation's doctors and medical research personnel.

Establishment of New Medical Schools

As has been the case with the maintenance and improvement of the faculties of existing medical schools, in recent years the federal government has provided little operating support for the establishment of new medical schools. Here again, the need has been evident, and foundations have acted to close the financial gap. Moreover, in this area particularly, their action has carried an impact extending well beyond its immediate dollar effect; for foundation grants have stimulated contributions from a broad variety of other sources--both public and private, and often many times larger than the original foundation grant. In that way, foundation commitments have frequently had a plain and pronounced multiplier effect.

The Kellogg Foundation has given \$8.4 million over the past nine years to establish new medical schools at

- the University of Connecticut
- Rutgers Medical School
- Brown University
- the University of Hawaii
- the University of New Mexico
- Michigan State
- the University of Nevada

Of the grant to Connecticut, the president of the university has said: "The foundation authorized a three-year grant to the University of Connecticut in the amount of \$1,037,500 'to support the establishment of a school of the basic medical sciences...' It is no exaggeration to say that the foundation's grant has had an exciting catalytic effect upon our progress to date. ...This grant is a classic example of what 'venture capital' assistance from a foundation can accomplish."

The business manager of the Rutgers Medical School has commented: "Without the stimulus of the foundation, Rutgers Medical School would still probably be a dream of the future."

Assistance to Medical Schools in Financial Difficulty

The demands upon our medical schools have been particularly great in the past several years. Financial pressures have increased correspondingly. It is hardly surprising, therefore, that a number of schools --particularly in the private sector--have come very close to financial collapse. Repeatedly, foundations have made timely grants to avert such failures.

One foundation has provided almost \$4,000,000 over the past five years to 10 schools which were experiencing severe fiscal difficulties. Included were such schools as Creighton University, in Omaha, Nebraska, the University of Utah, Meharry Medical College, in Nashville, Tennessee, and the University of Vermont. The dean of one of the recipient schools has said: "I should like to once again comment on the extraordinary value of the ... award to our developing School of Medicine. The award permitted a continued growth of the school during an exceptionally critical period in which the program was expanding far more rapidly than the allocations to the School of Medicine from state appropriations. Indeed, I seriously question whether the school could have avoided a substantial collapse...."

Development of New Techniques

If foundation resources have afforded crucial support for medical school faculties, the establishment of new schools, and the assistance of schools in financial difficulty, they have performed services of at least equal value in a different class of endeavor. Nowhere have the innovative capacities of foundations been more evident than in the development of new systems and techniques of medical education, improved medical curricula, and new methods of relating medical facilities to the provision of health care for our citizens. Here again, reference to particular examples is useful.

- The shape of modern medical education owes as much to Abraham Flexner's 1910 report on the subject as to any other single factor. Made possible by a Carnegie grant, the Flexner report advocated--and produced--fundamental revisions in a variety of facets of our system of developing and training doctors.
- In the academic year 1955-1956 the Harvard Medical School utilized a \$1,000,000 grant from the Commonwealth Fund to test pioneering changes in medical curriculum. Based upon the knowledge developed in these initial experiments, major changes in the school's curriculum were adopted two years later. The innovations at Harvard were the basis for far-reaching changes in curriculum at Western Reserve--changes which were supported by the Commonwealth fund, and which have had great effects on medical education across the country.
- Grants to Northwestern University by the John and Mary R. Markel Foundation and the Commonwealth Fund enabled the school to evolve a program which substantially diminishes the time required for the education of doctors. Under this program, Northwestern now admits students from high schools who are able to obtain M.D. degrees in a total of six years. Grants from the Commonwealth Fund to Boston University and Johns Hopkins University permitted the initiation of similar programs at those institutions.
- The Rockefeller Foundation and the Macy Foundation provided the Harvard Medical School with funds to undertake the nation's first undergraduate program designed to assist members of minority groups to enhance their qualifications for graduate study in medicine and dentistry.
- The Carnegie Corporation of New York has provided three-year funding for teaching, research, and administrative programs on the economics of health care.
- The Ford, Rockefeller, and Avalon Foundations have committed themselves to provide a total of \$5,200,000 for the development of a unique laboratory studying human reproductive biology in conjunction with the existing Center for Population Studies at the Harvard School for Public Health. According to a recent Harvard report, "Together these two programs will represent one of the nation's primary concentrations of talent and competence."
- The Commonwealth Fund and the Surdna Foundation have, together, provided funds for the creation and operation of a pilot university-sponsored community health plan. Drawing on the

facilities and personnel of the university's medical school, the program will make comprehensive medical service and health care available to the residents of the surrounding community.

Conclusion

Year after year, foundation dollars afford vital support for the nation's medical schools. In a number of respects, they fulfill needs for which there are no other dollars. Further, by stimulating other support, foundation grants often generate resources which--even measured solely in monetary terms--are of far greater magnitude than the original grant. Finally, in at least one area foundation support has produced results which can only be described as unique; for without the creative impetus supplied by foundations' experimental projects, their studies of system and technique, and their programs for change, many of the advances of modern medical education simply would not have occurred.

With increasing demands being placed on the medical schools for an increased production of health manpower and greater involvement in meeting the health service needs of the country in the face of ever less adequate support from local and federal sources, foundations are a critical part of our effort to meet the expectations of society for a healthier life.

C. Foundations and Public Educational Institutions

Nobody honestly concerned with American education condones illegality or irregularity in private philanthropy. Hence every representative of public higher education endorses all legislation assuring fairness

and equity among taxpayers, donors, foundations, their institutional beneficiaries, and the government.

On the other hand, it is a simple historical fact that both established state universities and developing public institutions could not fulfill their missions without foundation support. Gifts, bequests, special grants under the law have enabled such institutions to grow, to increase their effectiveness, and to serve the whole population. By such means, private philanthropy has provided a tremendous variety of activities which often cannot be supported by government appropriations.

Thus foundations have encouraged innovation and experiment.

They have initiated creative work and kept it alive.

They have made possible new departures in multi-disciplinary study and research.

They have brought public and private institutions into practical cooperation.

They have broadened and strengthened activity aimed at the common welfare.

Drawn from the Southwest alone, the following examples are typical of thousands of similar projects in the United States. Each is recent. Each has the vitality to assure later effectiveness.

Innovation and Experiment

In Texas, private foundations have brought engineering and medical schools to join in studies of the individual and his environment;

numerous academic departments and business organizations to experiment with problems as different as beef production and mineral recovery; inventive skills and consumer needs; biological, mathematical, and space research opening new perspective on geophysics, the world and the solar system.

Creative Work

By gifts of art and libraries, by support of humanities centers and the individuals working in them, foundations have brought to life creative work, which has involved both whole communities and smaller groups concerned with painting, music, and the theater, as well as general studies.

Interdisciplinary Study

Private foundation gifts and grants have helped the scientific linguist and the classroom teacher to overcome the disadvantage of students with language handicaps; the biologist and the oceanographer to establish new methods in marine medicine; the engineer and the journalist to take advantage of modern communication; the computer scientist and scholars in a dozen fields to speed the acquisition and dissemination of knowledge.

Public and Private Institutions

In one state alone, more than thirty joint programs between privately-endowed and tax-assisted institutions have ranged from the single classroom to the whole region.

Common Welfare

Where taxes were unavailable, private foundations have made possible the initial operation of two medical schools and continuing programs of a major teaching hospital. Without foundation grants, the Anderson Hospital and Tumor Institute, host to the next International Congress on Cancer, could not have begun its work or maintained its distinction.

Immediate benefits of such programs are manifest. Taxpayers have been saved money; they have also been given benefits which taxes could not provide. Still more important, however, is the fact that in every such phase of higher education, the university has been assisted in getting ready for the future. In that future, it is not the eminence of an institution which is at stake. It is the people's interest.

By relatively small sums afforded through tax relief this future prospect can be assisted. By depriving foundations of those funds--as the proposed tax would do--that prospect would be diminished or denied. In all institutions which are "public" in the broadest and truest sense, the present system of tax relief is essential to a base of planning now more than half a century old. To shut off or cut down that relatively modest independent funding would close innumerable doors on future educational progress.

D. The South: Foundations and Education

This country desperately needs a strategy for expanding legitimate philanthropy as a vital component of free enterprise--and of the private-public balance in American life--not a precedent for reducing philanthropy through taxation or excessive regulation. If it is the will of Congress to equalize educational opportunity, then Congress should encourage and facilitate the work of reputable philanthropic foundations. Such encouragement is particularly important in the South.

The South lacks resources with which to provide adequate educational opportunity for its people. The entire nation has suffered as a consequence. But the gap between the South and other regions would be much wider except for the investment by national and regional philanthropic foundations in the development of human resources.

Any reduction in foundation support would be adversely felt in the South, with its huge number of children to educate and the fewest public dollars with which to do the job. Mississippi, which in proportion to income makes a greater per capita educational effort than any other state, spent only \$364 per pupil in public schools in 1967-68 compared to New York State's \$1,024. If the South is ever to catch up, it needs more private philanthropy--not less.

Economic limitations have prevented most Southern educational institutions from having enough funds for operation; they have fallen far short of having enough funds for innovation, experimentation, and improvement.

All educational institutions serve best when they are strong, venturesome, and self-renewing. Consistently, ever since the Civil War, when we Southerners have had an educational problem requiring an innovative approach, we have sought and often received foundation support to test our idea, to demonstrate a new approach, or to finance needed research and programs. A substantial flow of money from large national foundations, along with our own regional philanthropies, continues to be essential to education in the South.

WHAT WOULD BE THE DIFFERENCE IF A REDUCTION OF AVAILABLE FOUNDATION DOLLARS WERE BROUGHT ABOUT THROUGH TAXATION?

1) It would tend to discourage new philanthropy just at the time when the South's improving economy is developing indigenous private wealth that is increasingly flowing back to the public through local philanthropy.

2) It would have serious impact upon at least two or three hundred key Southern colleges and universities--public and private--that look to foundations as their "margin for excellence," plus a number of smaller, weaker colleges facing deficits for the first time this past year. To them foundation grants are crucial.

Vanderbilt University's rise to national stature results substantially from foundation grants that stimulated local effort. Emory's great medical center could not have functioned well without Woodruff Foundation money to cover its deficits. As recently as August 22, the Kresge Foundation gave \$1,500,000 to Meharry Medical College in Nashville for a badly needed library. This college--which has educated

approximately half the Negro physicians in the United States--has been literally saved by foundation grants in the past decade.

Strategic grants are helping our colleges predominantly serving black students to improve their curricula, to develop their staffs, and thereby to move into the mainstream. The Carnegie Corporation of New York has underwritten one of these programs over a 5-year period and the Danforth Foundation committed \$5,000,000 over seven years to sustain the Southern Fellowships Fund.

3) Reducing foundation funds would curtail the only money we can get with long-term commitments sufficient to stay with projects and evaluate their results. For instance, over the past five years the cities of New Orleans, Atlanta, Nashville, Huntsville, Alabama, and Durham, North Carolina have received approximately \$3,000,000 each from the Ford Foundation as "seed money" for a world of educational improvements. In Nashville the first public kindergartens were started with new ways of teaching young children. In New Orleans, schools were designated to show what can be accomplished when resources and flexibility to teach individuals are combined. In Durham, research of enormous value about infant and very early child behavior and learning was conducted. In Atlanta, better ways to prepare teachers were discovered. At Huntsville, because of new programs started with foundation funds, that city's school system was recently chosen for participation in a major national educational program.

4) The Kellogg Foundation has done much to enrich life in Georgia through the creation of a dynamic continuing education center at the

University of Georgia. The value of this program is incalculable, and it would not have been initiated without foundation funds.

5) Taxing foundation resources would reduce one of the chief means of attack on the problems of disadvantaged people in poverty-stricken rural areas. For instance, the Danforth Foundation has underwritten three pilot projects in rural counties of Florida, Georgia, and Tennessee for a 5-year interval in the amount of \$1,350,000. These counties--Wheeler, Overton, and Wewahitchka--would never have seen their educational potentiality for something better without foundation funds to show how teaching and learning can be improved with very few dollars.

6) Project Opportunity, operating in Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, and Virginia, is already identifying, motivating, and propelling toward college and fulfillment of their highest potentiality 3,000 bright, academically talented high school youngsters whose record of poverty and deprivation was pressing them into unproductive lives as public liabilities. This dramatic reversal, achieved largely through a system of testing and counselling, is producing constructive citizens who will, in turn, pay taxes. Ford and Danforth Foundations have invested approximately \$2,000,000 in this joint effort by eleven colleges, the College Entrance Examination Board, and the Southern Association of Colleges and Schools. Dividends to the nation can be many times the money spent in the discovery and motivation of these young people. It would be a

human tragedy of serious dimension to deny 7-1/2 percent, or any, of these youngsters their chance to succeed.

7) Regional foundations such as Z. Smith Reynolds, Mary Reynolds Babcock, Woodruff, Rich, Callaway, Stern, and the strategic Southern Education Foundation make an important difference in life in the South. They are taking a keen interest in elementary and secondary schools, and the aggregate of their support is a vital factor in the "growing edge" in Southern education. The public kindergarten movement in the South was initially fueled by foundations, as were many experiments on individualized instruction.

8) Especially in a time of escalating costs and inadequate tax revenues at the state and local levels, it would seem unwise to reduce educational resources of the kind used for stimulus of local effort, for matching purposes (required in many federal programs), and for the kinds of innovation and long-term search for solutions to problems for which public funds are insufficient.

9) In a dozen Southern cities, fine arts and music flourish precisely because of foundation support for our symphony orchestras, art museums, and concert halls. Without the help of national and local foundations, our cities would lose major cultural advantages.

The philanthropy of foundations operating in the South has been accomplished with competence, wisdom, and freedom to operate professionally once grants are made. Because these agencies have traditionally worked quietly, without fanfare, the American public is not fully aware

of their great contribution. Thus it is necessary for those of us who live close to Southern education and who dream of its future to speak up and state how strongly we feel about our vulnerability to any change in public policy that--like the proposed tax on foundations--would limit the flow of private funds for education.

III. EFFECT OF THE TAX AS SEEN BY FOUNDATIONS

J. George Harrar, President, The Rockefeller Foundation
New York, New York.

Alan Pifer, President, Carnegie Corporation of New York,
New York, New York

David Freeman, President, Council on Foundations,
New York, New York.

III. EFFECT OF THE TAX AS SEEN BY FOUNDATIONS

SUMMARY OF STATEMENT OF MESSRS. J. GEORGE HARRAR, ALAN PIFER, and DAVID FREEMAN

A. Introduction

This statement represents the views of The Rockefeller Foundation and Carnegie Corporation, two of the oldest, largest and best known foundations in the country, and of the Council on Foundations, the principal membership organization in the field, representing mainly medium sized and smaller foundations.

B. Opposition on The Tax

We are strongly opposed to the proposed 7 1/2 percent tax on foundation income and believe, for the reasons spelled out in the body of our testimony, that the decision Congress will make on it is a decision about the very nature of the American system.

C. The Role of Income Tax Exemption for Charitable Purposes in American Life

Income tax exemption is part of a centuries old tradition under which charitable organizations have been granted special privileges by the state because they relieve it of responsibilities it would otherwise have to meet with public funds. In the United States all 501(c)(3) charitable organizations have been exempt from income tax since such a tax was first established on a constitutional basis in 1913.

No distinction has ever been made in this provision between different kinds of 501(c)(3) charitable organizations. All have been considered equal by the federal government. Consequently, there has never been any such thing as a qualified, or partial, income tax exemption in the charitable field. The concept has been considered by its nature to be indivisible.

The imposition of an income tax on foundations, however limited the rate, would destroy this principle and constitute a breaching of long-standing and well-proven national practice.

Furthermore, the tax would serve as a clear precedent for future taxation of other classes of charitable organizations, and it would encourage other levels of government to impose their own income taxes, initially on foundations but subsequently on charitable organizations generally. The tax might very possibly, therefore, lead to a substantial weakening of the private non-profit sector and further accretion of the power of government. It is pluralism that is really at stake in the decision on the tax and we believe it should be debated on these terms.

Finally, the tax poses a serious danger to the freedom of private institutions. A threat to raise the level of such a tax, once it is

established, can be used as a convenient means of forcing charitable organizations to terminate activities that are arbitrarily disapproved by someone in authority. This is an extension of the authority of government that could stifle dissent, inhibit experimentation and break the spirit of voluntarism.

D. The Justification for Private Foundations

The private foundation is a development and extension of the individual philanthropic impulse into a more effective and capable form, the advantages of which include continuity, professional staffing, and assured availability of critical masses of funds for problems upon which individual philanthropy can have little impact.

As government moves increasingly into the field of social welfare, the work of private foundations becomes more necessary rather than less. Foundations can move more rapidly and operate more flexibly than government, and foundation-sponsored demonstrations of the need for and feasibility of undertakings in the public interest are a logical precursor of the allocation of substantial government funds to such undertakings.

The historic accomplishments of private foundations are matched by the evident need in the future for precisely the kind of philanthropic activity that they can carry out more ably than any other type of institution.

E. How The Tax Would Affect The Rockefeller Foundation

The Rockefeller Foundation has appropriated all its income and more than \$230 million of its principal toward philanthropic projects many of which have been precursors of government activity in the field of social welfare. The proposed tax on investment income would cost the Foundation's beneficiaries more than \$3 million per year. It would also seriously hamper the overseas programs of the Foundation - whose charter commits it to the well-being of mankind throughout the world - by making it difficult or impossible for the Foundation to satisfy foreign governments of its tax-exempt status.

F. How The Tax Would Affect Carnegie Corporation

Carnegie Corporation was created by Andrew Carnegie in 1911, before the days of income tax, for the "advancement and diffusion of knowledge" among the people of the United States and of certain British colonies. In the 58 years of its history its affairs have been managed by a self-perpetuating board of able and disinterested trustees, with no other consideration than promotion of the greatest possible public benefit.

Over the years the Corporation has supported a wide range of educational activities with grants totaling \$400 million. These grants have been made in every state of the Union and in one way or another have benefited every American citizen. If there had been a 7 1/2 percent tax on the Corporation's income since it was founded, some \$40 million of private support would by now have been denied to a host of worthy institutions and talented individuals. The nation at large would have been the ultimate loser.

In view of Carnegie Corporation's outstanding record of public service, the rectitude with which its affairs have been managed and the keen competition for its grants and limited size of its funds in relation to the enormous opportunities for public good, a tax on the foundation is unwarranted, unfair and entirely contrary to the best interests of the nation.

G. How The Tax Would Affect Smaller Foundations

Foundations across the country concentrate their giving on local educational and charitable institutions. Community chests, colleges, medical schools and other local voluntary organizations will bear the burden of the tax. This result is contrary to the intent of Congress, expressed in other legislation, to encourage strong local organizations through matching grants based on a partnership between the public and private sectors.

Foundations in every state are struggling now to meet the ever-increasing needs for scholarship funds, leadership gifts for capital campaigns, and innovative grants in fields such as health services. The tax will mean that fewer of these challenges can be met, and will heighten the fear, already felt by many, that the House bill signals the beginning of the end of private philanthropy.

H. Further Arguments Against The Tax

1. The burden of the tax will fall on educational, health, and welfare agencies which receive the bulk of foundation support - even though the drafters intended that these agencies should remain fully tax-exempt.
2. The tax applies to all foundations indiscriminately, and thus will be ineffective in correcting abuses.
3. While insignificant in governmental budget terms, the tax will be a serious blow to private educational and charitable institutions. Though not justified as a revenue measure, it is in no sense a user fee.

4. The tax presents an inherent inconsistency - it is an invasion of the tax-exempt status formerly accorded all charities, yet the bill insists that private foundations remain in the tax-exempt category for purposes of federal control over their programs and finances.

5. The tax cannot be justified by the argument that all organizations able to pay should carry some part of the expense of government - many classes of tax-exempt agencies will retain their freedom from tax, and only private foundations, which directly serve the public interest and relieve the government of some of its burdens, are singled out. The tax is a punitive measure - not tax reform.

I. A Proposed Alternative

We recommend that an annual fee be assessed on foundations in proportion to their assets. The amount of this fee should be determined each year at a level sufficient to assure adequate supervision of foundations by the Internal Revenue Service and enforcement of the laws applicable to them.

A. Introduction

In this statement we discuss the effects of the proposed 7 1/2 percent tax on foundation income as seen by the Rockefeller Foundation and Carnegie Corporation of New York, two of the oldest, largest and best known foundations in the nation, and by the Council on Foundations, the principal membership organization in the field, representing mainly medium-sized and smaller foundations. We believe the statement also represents the views of a number of other large foundations which are coordinating their testimony before the committee.

B. Opposition to the Tax

We are strongly opposed to the proposed 7 1/2 percent tax on foundation income and believe that enactment of it by the Congress would be contrary to the national interest. We find no convincing arguments in favor of such a tax and many against it. The latter we believe to be so fundamental that the decision Congress must make is not simply a matter of tax reform but a decision about the very nature of the American system.

C. The Role of Income Tax Exemption for Charitable Purposes in American Life

The history of encouragement of private charity by the state through the granting to it of special privileges goes back to Roman times and has continued unbroken since then. The basic rationale for this arrangement has also remained unchanged, namely that private charity relieves the state of responsibilities it would otherwise have to discharge, and hence should be

given every incentive to flourish. This concept was first given systematic legal recognition in England in the historic Statute of Charitable Uses, of 1601, a measure designed to improve the administration of charity and encourage its development by defining a number of specific charitable purposes which would be officially recognized as such by the state.

The intent of the Statute was to place primary responsibility for the amelioration and solution of economic and social problems in private hands, and its enactment proved to be a powerful stimulus to the expansion of private charity both in Britain and in the American Colonies over the next two centuries. After that, although primary responsibility for social welfare began gradually to shift to the state, there remained - and remains to this day - a clearly recognized place for private philanthropy, as it came to be called, in both countries.

When an income tax was first levied in Britain in 1799 it seemed perfectly natural to exempt charities from it, and it seemed equally natural to do so in the United States when, following passage of the 16th Amendment, the Revenue Act of 1913 established a federal income tax on a constitutional basis. This Act exempted from income tax any "corporation organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual." These words, repeated in subsequent laws, have in the more than half century since 1913 remained the basic charter under which a wide variety of charitable institutions have enjoyed tax exemption.

No distinction has ever been made in the basic provision for income tax exemption between different kinds of 501(c)(3) charitable organizations,

whether churches, educational institutions, welfare organizations or foundations. The state has never presumed to judge whether some charitable purposes were more deserving of tax exemption than others; all have been considered equal. Consequently there has never been any such thing as a qualified, or partial, income tax exemption in the charitable field. There has been total exemption or none. The concept has been considered by its nature to be indivisible.

The imposition of an income tax on foundations - no matter how limited the rate - would destroy the principle of indivisibility and would, thereby, constitute a breaching of long-standing and well-proven national practice. It would, in effect, signify that foundations are now considered to be "less charitable" than other kinds of charitable organizations and therefore less deserving of full tax-exemption. The illogicality of such an assertion, of course, becomes obvious when one remembers that foundations are required by law to distribute their income to charity - for the very kinds of allegedly "more charitable", and hence "more deserving", purposes that would remain fully tax-exempt.

Aside, however, from the illogical and discriminatory features of such a departure from long-standing practice, its greatest harm would lie in the clear precedent it would establish for future taxation of other classes of charitable organizations - churches, colleges, voluntary hospitals, and so on. It would also inevitably encourage other levels of government to impose their own income taxes, initially perhaps only on foundations but subsequently on charitable organizations generally.

A federal income tax on foundations must therefore be recognized as a highly dangerous first step on the road toward the total disappearance from our national life of the traditional income tax exemption enjoyed by

charitable organizations. Such an eventuality would of course greatly weaken the private non-profit sector and diminish the role it plays in our society in favor of further accretion of the power of government. It is in this sense that the decision Congress will make about an income tax on foundations can truthfully be said to be a decision in fact about the very nature of the American system. It is the pluralistic initiative and effort of our private institutions that is really at stake in the legislation, and we believe the issue of the tax should be debated on these terms.

In addition to the financial threat which the tax poses for the entire private, non-profit sector, it poses an equally serious threat to the freedom enjoyed by private institutions in our society. An income tax levied on charitable organizations can serve as a simple and highly effective means by which public authorities can arbitrarily punish them. All that is required to force certain organizations to terminate activities which someone in authority judges to be offensive is a threat to raise the level of their tax. This, we would submit, is a misuse of the income tax power and dangerous doctrine.

We recognize, of course, that there have been abuses by some individuals of the privilege of income tax exemption of foundations, and we favor specific measures to prevent these abuses, such as the prohibitions against self-dealing in the bill now under consideration. But we must at the same time urge every member of the Congress to consider most carefully the full implications for the nation of use of the income taxing power for

punitive purposes. It constitutes an extension of the authority of government that could stifle dissent and criticism, could inhibit experimentation and could break the spirit of voluntarism in our society.

D. Justification for Private Foundations

It has been said that the voluntary philanthropic system which has developed in the United States is the essence of free enterprise. This system appears collectively in many forms: the giving of individual time and talent to worthy causes; individual contributions of money for philanthropic, charitable, religious, and educational purposes; cooperation in common cause to create charitable community organizations; giving for charitable and philanthropic purposes by business corporations; and the creation by individuals of organized philanthropies.

Early in the history of this nation, social welfare was entirely in the hands of the private sector. Fortunately, in more recent years, the government has increasingly entered the field in recognition of the growing needs and demands of a burgeoning society. There has resulted an informal partnership in which the government has become by far the major element in terms of resource investment. But the private contributor, corporate or individual, is senior in experience, demonstrably innovative, and free to move promptly and flexibly in response to need. It is both desirable and proper for the government to take over increasing responsibility for important programs affecting all of its citizens. At the same time, the efforts of the private sector are clearly needed, and private philanthropy should be encouraged and cherished by society and its elected government.

Private philanthropy derives from the charitable impulse of the individual, and for many years in this country the individual was the sole source of giving for the benefit of others. Benjamin Franklin established a philanthropic fund as early as 1790, but the modern organized foundation did not appear until the beginning of the twentieth century when Andrew Carnegie, John D. Rockefeller, Mrs. Russell Sage, the Guggenheims, and others converted their personal resources into organized philanthropies.

III-7

It is noteworthy that these early foundations, which are still among the largest and most influential, were formed at a time when neither individual charitable giving nor the creation of a foundation provided any tax advantage. Rich men established foundations because they believed that philanthropy, like most other human activities, could be most efficiently carried out in an organized form.

Foundations are sometimes referred to as "middlemen" by people who see no reason for what they consider the interposition of an organization between a philanthropically disposed individual and his beneficiaries. The description is inaccurate if the term middleman is taken to mean a conduit or an unnecessary party in a transaction. Foundations are more effective philanthropic instruments than individuals just because of the advantages of organization. Those advantages include continuity, certainty of the availability of funds, the possibility of professional staffing, and the bringing to bear upon selected problems of larger sums of money - and therefore a broader and stronger array of talents - than individual efforts had theretofore been able to supply.

As the foundation phenomenon developed and matured, the organizational principle was adopted for community foundations, corporate foundations, and family foundations, and for the National Science Foundation which is supported by annual grants from the federal government. The achievements to which organized private philanthropy has contributed are well documented but not so widely known as they deserve to be. They include, among many others, the establishment of free public libraries; control of yellow fever,

hookworm, malaria, and other major endemic diseases; the development of modern medical education; pioneering experiments in rocketry; polio vaccine research; the solution of the genetic code that controls plant and animal heredity; research in astronomy which has yielded extraordinary advances in our knowledge of the universe; and research in agriculture and its application to the problems of hunger in many of the less-developed nations. Other achievements include the support of medical research, the improvement of education at all levels, the establishment of fellowship and scholarship programs for the intellectually gifted and for those with leadership potential, and the support of research institutions dedicated to the study and solution of contemporary human problems.

Many areas of art, culture, science, and education, and many social institutions, have benefited enormously from or have been brought into being by the initiative of private foundations. Anyone who studies the record will recognize that private philanthropy has, by reason of its achievements, embedded itself solidly in the American free enterprise system. The bulk of philanthropic giving is by individuals: personal charitable contributions totaled nearly \$16 billion in 1968. The total of foundation grants was less than nine percent of that figure; but because they are organized and professionally staffed, because they are flexible and can supply continuity of effort, and because they can provide critical masses of money when problems require them, foundations are the advance scouts of philanthropy.

It is sometimes argued that although foundations have been advance scouts in the past, the increasing activity of government in the field of social welfare has rendered them superfluous. It seems clear both that that argument is false and that the situation it presupposes would be undesirable if it existed. To be sure, a degree of experimentation is acceptable in

the activities of government. But government is by definition consensual, in this country at least, and that means that what government does in the field of social welfare, as in other fields, should rest upon a common, or at least a widespread, public recognition that it is needed. Government therefore tends to be constrained in supporting those forms of experimentation, or pioneering research, that must precede such a public recognition. The role in which it most plainly fulfills its obligation to the electorate is that of providing official sponsorship, and massive funds beyond the reach of the private sector, once the work of private agencies has clearly documented the existence of a need and, if possible, the viability of a solution.

Looking toward the future, it seems evident that the larger participation of government in social welfare has not diminished the number or variety of problems that most informed citizens see before the nation and the world. On the contrary, the increased rate at which we are able to answer certain kinds of questions about our lives and our universe simply increases the rate at which our answers ask new questions; and in the meantime certain types of problems - some of them indeed raising questions about the role of government - appear unusually intractable and increasingly stubborn. We are arriving at new realizations of the importance of certain problems of social organization and economics; of the effects of the numerousness of the human species both upon the sufficiency of the food supply and upon the quality of the environment; and of the risks and opportunities arising out of our increasing capacity to manipulate both the external environment and our personal environment - our physical selves.

We have not solved the problems of conflict between nations, and it appears increasingly that such conflict is a luxury the species can no

longer afford. Many of our most perceptive young people are raising questions of national and individual purpose that do not seem to be satisfactorily answered by the old truths. In short, there is plenty to be done, and the need for private enterprise in the doing of it can only increase, rather than diminish, regardless of the extent to which government is able to expand its support of research and education. It must be hoped that government and private philanthropy will see themselves as essential partners in human progress, operating in harmony and mutual respect.

E. How the Tax Would Affect The Rockefeller Foundation

Long before there was any public participation in the solution of many of the ills which beset mankind, private philanthropy pioneering in these areas was shedding light through research on fundamental concerns and was taking vigorous action to alleviate conditions responsible for undesirable human conditions.

The Rockefeller Foundation was formed in 1913 - before the income of United States citizens and business corporations was taxed - "to promote the well-being of mankind throughout the world." During the Foundation's earlier years, when government was relatively inactive in the field of social welfare, a good deal of the Foundation's effort went into projects designed to demonstrate that particular human ills were not inevitable but could be remedied by sufficient applications of energy and skill. Federal or state government often supplanted the Foundation as the primary source of funds for projects the importance and feasibility of which had been demonstrated under Foundation auspices, and the same tendency for successful projects to move from Foundation sponsorship to government sponsorship is observable today. It is probably safe to predict that a number of projects now being supported by the Foundation - for which government funding is inappropriate or unavailable - are of a kind that in the future will be felt to lie within the proper sphere of government.

The Foundation's first work was in the field of public health. Its success in the eradication of hookworm in this country and in many others overseas, and its campaigns against malaria, yellow fever and other widespread and devastating endemic diseases, are now classics in the annals of public health. Public health is now largely the province of government.

For more than a quarter of a century the Foundation has sponsored and participated in agricultural research and its application toward improving the quality and quantity of basic foods for the people of less developed countries in which food supplies have long been inadequate. The results have been spectacular: today the "miracle wheats" and "miracle rice" have achieved worldwide fame as basic to the so-called "green revolution." These long-range undertakings, carried on in association with other public and private agencies, offer for the first time the possibility that the world may in the foreseeable future meet its requirements for basic foodstuffs for all of its citizens.

From its earliest beginnings the Foundation has been committed to the philosophy of the reinforcement of educational institutions; the training of individuals with ability and leadership potential is fundamental to the success of its total program. Thus, over the years the Foundation has invested very large proportions of its income and indeed capital resources in its support of professional and general education in universities here and abroad. Simultaneously a scholarship and fellowship program has been developed which over the years has contributed to the academic, scientific and professional development of many thousands of young men and women in this country and overseas. Perhaps this development of intellectual and leadership manpower has through its multiplier effect been the Foundation's greatest contribution to economic and social progress during its more than fifty-five years of existence.

Toward the costs of its philanthropic programs, many of which have relieved government of costs it would otherwise have had to bear, The Rockefeller Foundation has appropriated all of its income and more than \$230 million of its principal. At the Foundation's current rate of

receiving income and realizing capital gain, the proposed 7 1/2 percent tax would cost it more than \$3,000,000 per year. Because the Foundation disburses all its income, the effect of the tax would be simply to reduce the volume of work it is able to do. The burden would fall upon the Foundation's beneficiaries.

The tax would present another problem of special importance to The Rockefeller Foundation. The Foundation's charter, as quoted previously, commits it to the well-being of mankind throughout the world. The Trustees of the Foundation have interpreted that language as a mandate to operate not only in the United States but wherever need appears, having always in mind the fact that illness, poverty, and hunger elsewhere in the world affect also the well-being of American citizens. Thus a substantial fraction of the energies of the Foundation have been expended abroad, at the invitation of foreign governments and with the cooperation of indigenous institutions of research and higher education.

In qualifying, as a private American organization, to carry on philanthropic work in a foreign country, the Foundation has always had to rely upon its status as a tax-exempt entity in the United States. Were it not tax-exempt here, it might very well not be permitted to work in a number of the countries in which it has supported conspicuously successful programs. And in other countries, where it might be permitted to work, it would probably be denied local tax exemption, which would make the importation of scientific equipment and the assignment of staff prohibitive.

For The Rockefeller Foundation, then, the most important difficulty raised by the proposed income tax may be the question whether any foundation so taxed can continue to call itself a tax-exempt institution. Even if the

Congress should include in the law language expressly reaffirming the tax-exempt status of private foundations, there is no assurance that foreign governments, observing the fact of taxation and noting also that private foundations are the only group of entities in the charitable sector to be so taxed, would give credit to the declaration.

There can be no denying the fact that the proposed tax would be a breach in the long-established and often-reaffirmed principle of tax exemption for charitable, scientific, educational, and other philanthropic activities. The work of The Rockefeller Foundation and other foundations would be severely hampered by it, and those we seek to aid would be the direct losers. Moreover, the gain to the government from the imposition of the tax would be a scarcely significant addition to the federal revenues. For all the reasons stated above, The Rockefeller Foundation strongly opposes the proposed tax on investment income of private foundations.

F. How The Tax Would Affect Carnegie Corporation

Carnegie Corporation of New York was established in 1911 before the days of tax-exemption. There were, therefore, no tax advantages involved for Andrew Carnegie, the founder; nor had there been any for him in the many other philanthropies which he had set up previously, such as the Carnegie Institution of Washington, the Carnegie Foundation for the Advancement of Teaching and the Carnegie Endowment for International Peace. With the exception of a legacy for his wife and daughter, Mr. Carnegie gave away his entire fortune in his own life time.

Carnegie Corporation was the last of the great Carnegie philanthropies, the largest and the most general in its purposes. The income from its perpetual endowment fund was to be used over the succeeding years for whatever specific purposes the trustees thought best met the needs of those times, provided only that the purposes fell under the broad heading of "the advancement and diffusion of knowledge among the people of the United States." A smaller fund with similar purposes was set up under the administration of the same board of trustees for the benefit of the British colonies.

Mr. Carnegie believed that Carnegie Corporation would be best administered over the long run if he did not bind the trustees too closely by the terms of his gifts. He selected the most able men of his day to constitute the original board of trustees and placed in their hands sole power to select their successors, on the assumption that able, public-spirited men would select equally good men to succeed them. No evidence has ever been adduced to indicate that the public interest might have been better served by some other system of governance than this self-perpetuating board. The successive members of it, all of whom have served without compensation, have given their time generously and have brought to the management of the

foundation a wide range of experience and talent. In the 58 years of the foundation's history there has been not a single instance of any part of its income inuring to the private benefit of any member of the Carnegie family, any trustee, any employee or any other individual except for services rendered. No consideration has ever existed in the foundation's affairs except furtherance of the greatest possible benefit to the public.

Over the years the Corporation has pursued a variety of interests. It has provided scholarships, fellowships and travel grants to deserving individuals. It has supported research in the sciences, medicine, education and the social sciences. It has fostered education in the arts. It has supported experimental new programs in elementary and secondary education and more recently at the pre-school level. It has enabled a wide range of colleges and universities, both public and private, to try out new approaches to teaching. It has organized and supported independent inquiries into important aspects of the educational system. It has contributed to the training of teachers. It has fostered the development of libraries and adult education programs. It has supported projects aimed at the strengthening of state and local government. It has attempted through the support of language and areas studies in schools and colleges to enhance the nation's capacity to discharge its international responsibilities effectively. It has supported efforts to improve the delivery of health care to the American people and efforts to ameliorate the problems of the great cities. It has worked to improve race relations.

Altogether, in these and other ways, Carnegie Corporation has since 1911 spent \$400 million. In the course of this period it has made grants in every state of the Union, and it would be no exaggeration to say that in one way or another it has brought some benefit to every American citizen - rural

as well as urban, Southern as well as Northern, Western as well as Eastern, of ordinary circumstances as well as privileged, old as well as young, of one race as well as another.

Had there been a 7 1/2 percent income tax on foundations since 1913 the loss to Carnegie Corporation would in total have been \$40 million. But the burden of this loss would not, of course, have fallen on the foundation but on the recipient of its grants. All of the activities listed above would in fact have had to be reduced by the amount of the tax. Similarly, if a tax is now levied, the loss to education, broadly defined, in respect to Carnegie Corporation alone will over just the next ten years be at least \$12 million and probably more. There is no other way this so-called tax on the foundation can be viewed than as private support denied to worthy institutions and talented individuals. In reality it will be a tax on them, and the American people at large will be the ultimate losers.

In view of Carnegie Corporation's outstanding record of public service, in view of the rectitude with which its affairs have always been managed, in view of the keen competition for its grants and the smallness of the funds it has at its disposal each year in relation to the enormous opportunities for public good, a tax on its annual income is totally unwarranted and grossly unfair to this foundation. Far more importantly, however, such a tax is entirely contrary to the best interests of the nation, and it is on these grounds that the trustees and officers of the foundation oppose it so strongly.

G. How The Tax Would Affect Smaller Foundations

The tax on foundation income will limit the ability of foundations across the country to support local educational, health and welfare organizations. For example, it will reduce the amounts available to local charities in Providence, R.I., through the local community fund, by at least \$100,000 a year. This is estimated to be the tax which would be levied on the Rhode Island Charities Trust - all of whose income now goes to the Community Fund. Similar reductions will occur in foundation contributions to Chests and United Funds in hundreds of communities, where small and medium-sized foundations typically concentrate their giving. Thus, at a time when United Funds are struggling desperately to keep up with the demands made, by rising costs and increased service loads, on their member agencies, the real impact of the tax will be felt by those same agencies.

Surely the Congress does not intend this result - legislation over the past several years, such as the Hill-Burton Act, the Community Mental Health Act, etc., has been based on the partnership philosophy, and has made the private philanthropic dollar, demonstrating the concern of local leadership, a prerequisite for federal contributions. Strong local organizations, with volunteer leadership, are vital to the survival of the private sector.

Another field where the impact of the tax will be particularly severe is medical education. The White House report issued this summer points out the current crisis in providing adequate health care services throughout our society, and Dr. Cooper's presentation on behalf of the American Association of Medical Colleges has highlighted the crucial role of foundation support. Three specific examples may help to underline the importance of private foundation activities in this field.

III-19

1. The Commonwealth Fund, for many years a major supporter of medical research and education, recently revised its policies to devote an even greater proportion of its income to the medical and health fields. Even so, and before the reduction in its resources which the tax will cause, it has been forced to decline proposals from major medical schools for development programs.

2. George W. Starcher, President of the University of North Dakota, one of several institutions receiving support for their medical schools from the Hill Family Foundation of St. Paul, Minnesota, writes in part:

"If we could feel that this money siphoned off through federal taxation would come back to the University through some grant from Washington, it would probably still not give us the strong support in new directions which we have received from the Hill Family Foundation. We have enjoyed great freedom and our scientists have made significant strides ahead because of the liberal conditions under which the grants have been awarded by the Foundation. Moreover, we have been helped by the continuous supervision, real interest, and concern expressed by officials of the Foundation."

3. The Dean of the College of Medical Sciences at the University of Minnesota, stressing the importance of broad foundation support during the formation of that institution's program in family practice and community health, concludes that anything done to impair the programs of the well-managed foundations will be a serious blow to medical education.

In a period when health services are becoming increasingly dependent on the tax dollar, chipping away at the remaining sources of private support for innovation and experimentation in the health field will inevitably force further dependence on the federal government.

Most foundations of modest size are active in support of higher education, through scholarships, research grants and gifts to capital needs. Programs such as those of the Markus Foundation in Cleveland, or the Sachs Foundation in Colorado Springs, provide financial support to enable disadvantaged students to attend the colleges of their choice - often by supplying the last five hundred dollars needed to complete a complicated package of loans, college aid funds and employment. The tax will mean that these foundations will be able to help fewer students - even though loan programs are seriously handicapped by rising interest rates and soaring operating costs are forcing colleges to increase their tuition fees almost annually.

Lest it be assumed that colleges are supported by only a few large foundations, it should be noted that, for example, Case Western Reserve University last year received grants totalling four and a half million dollars from more than 230 foundations, representing about 25 percent of all contributed funds. The tax will fall with equal severity on all these foundations, and others supporting their local schools and colleges in every state.

As has been pointed out earlier, the challenge or matching gift has proven to be a particularly effective device for encouraging broad support of capital campaigns conducted by educational and other private institutions. In such gifts each foundation dollar is instrumental in producing at least one additional dollar from other sources. The 7 1/2 percent reduction in foundations' ability to make challenge grants will thus produce a double, or even larger penalty on the grant-receiving institutions.

Finally, many foundation representatives have expressed deep concern that singling out this one segment of the field for imposition of an income tax may signal the beginning of the end of private philanthropy. Whether or not this fear proves well-founded, the immediate effect of imposing the tax, taken together with the other punitive measures contained in the House bill - particularly the treatment of gifts of appreciated property to private foundations - will inevitably be a slowing down of new funds into those foundations.

Available statistics show no appreciable difference in the rate of growth of GNP and the growth of foundation assets. If foundation growth rates are seriously curtailed, the private non-profit sector will again be the loser, for only a reasonable growth rate has enabled foundation dollars to keep up with inflation and the increasing need for the help which foundations provide.

H. Further Arguments Against Tax

The burden of the tax will fall upon the educational, health and welfare agencies which are the major recipients of foundation support. The effect upon a number of such agencies has already been described by earlier witnesses before this Committee. In Sections E., F., and G. of our presentation we have outlined the effects of the tax upon the Carnegie and Rockefeller Foundations, and upon the programs of a number of middle-size and smaller foundations across the country.

While it was plainly the intent of the drafters of the House bill to impose the tax upon private foundations and not upon the other classes of Section 501(c)(3) organizations, the foregoing discussion makes clear that in fact it will be the operating organizations which will bear the real burden. In the most recent survey of foundation giving, educational institutions received 41 percent of the foundation dollar. (Statistics for eight selected years on foundation giving for higher education totaling over \$2 billion will be found in Appendix A.) Thus the tax, though levied upon foundations, would in fact be borne by the very organizations which the bill intended to benefit through continued complete exemption. Some further reasons are:

1. The tax applied without distinction to all private foundations indiscriminately and is therefore a totally ineffective means of correcting the abuses which exist in the field. While a number of provisions of the House bill are addressed to real and specific problems, the proposed tax by its nature is irrelevant to such matters as self-dealing and income accumulation.

2. While the revenue produced by the tax will have minimal effect on governmental budgets, it will be a serious blow to the educational and

charitable organizations discussed earlier in our presentation. Thus, without producing any substantial advantage for government operations or materially reducing the burden on individual taxpayers, it will have serious consequences for key areas of private philanthropy. The tax will, however, produce considerably more revenue than could conceivably be utilized by the Treasury in strengthening its audit and review forces in the foundation field, and the receipts from the tax will become part of the general revenues. It is therefore not in any true sense a user fee or a filing fee such as the alternative measure we propose in the concluding section of this presentation.

3. The singling out of private foundations for taxation on investment income embodies a basic inconsistency. Tax exemption is not to be done away with; indeed, the House bill reaffirms and insists upon the tax-exempt status of private foundations even as it taxes them, and the exemption of other types of philanthropic and non-profit organizations is maintained in fact as well as in word. What the bill does is to impose a tax upon one type of organization, hitherto tax-exempt, which for that purpose is drawn forth from the broad family of Section 501 organizations. Yet for the purpose of maintaining federal control over that type of organization the bill insists that it remain tax-exempt. This inconsistency is the inevitable consequence of attempting to raise revenue from organizations which for other purposes the federal authorities wish to consider exempt from tax.

4. Finally, the case in favor of the tax is basically unsound. While proponents attempt to justify the tax by arguing that all organizations

able to do so should contribute to the support of the government, in fact the proposal makes no effort to require such support from any other class of exempt organizations. A wide variety of tax-exempt organizations, such as trade associations, business leagues, cemetery companies, etc., will retain their freedom from federal income tax. Thus the principle of tax-exemption for charity is breached with regard to private foundations, even though their record of accomplishment demonstrates that they are clearly serving the public interest more directly than most other exempt organizations and thereby relieving government of some of the financial burdens and responsibilities which it would otherwise have to meet.

The measure would, for example, require taxes to be paid from funds which would otherwise have supported cancer research; but it would require no payment at all from the very considerable financial resources of trade associations, whose sole objective is to advance the business interests of their members and which are permitted without limit to influence legislative and administrative decisions to accomplish that end. The tax would take money from the provision of scholarships for poor children; but it would take none from active and influential lobbying organizations exempt under Section 501(c)(4).

This provision of the House bill is surely not tax reform nor the plugging of a loophole. Rather, the tax is a punitive measure against an integral part of the philanthropic structure of our society - the private foundation. We submit that the foundation is a uniquely American phenomenon which does not merit this arbitrary treatment.

I. A Proposed Alternative

It is our belief that the present lack of public and Congressional confidence in foundations would not exist had there been adequate supervision of tax-exempt organizations and enforcement of existing laws by the Internal Revenue Service. Such supervision and enforcement would have prevented or reduced the bulk of the abuses now known to have occurred. It is our understanding that this inadequacy of supervision and enforcement resulted from a shortage of staffing in the Exempt Organizations Branch of I.R.S. occasioned by the fact that no substantial recovery of revenue would result from exposure of abuses in the tax-exempt organization field. We believe that to safeguard the public interest, and also to protect the reputation of the vast majority of foundations which fulfill their charitable mandate in good faith, funds for more adequate supervision of the field must be found.

It seems reasonable to us for foundations to contribute to the cost of their own supervision. We therefore propose that they be required to pay an annual fee for that purpose. We further propose that as a basis for arriving at an equitable distribution of the burden of this charge among foundations the amount payable by each foundation be proportional to its assets. The total to be collected from all foundations should be determined annually by the Secretary of the Treasury on the basis of his estimate of the cost to the Treasury of such supervision.

This proposal would provide a practical solution to the kinds of problems that have disturbed the public and the Congress. At the same time it would avoid the damaging consequences and inconsistencies we find in the proposed tax and have described in previous sections of this statement.

Appendix A

Amounts Contributed by Foundations to U.S. Colleges
and Universities - Eight Survey Years*

1956-57	(904 institutions)	\$ 319,085,152
1958-59	(1,071 institutions)	88,337,037
1960-61	(1,032 institutions)	195,507,178
1962-63	(1,036 institutions)	212,719,999
1964-65	(1,064 institutions)	357,600,709
1965-66	(1,033 institutions)	304,107,178
1966-67	(1,042 institutions)	289,532,440
1967-68	(1,043 institutions)	320,982,109
		<hr/>
		\$2,087,871,802

Note: The 1956-57 total includes \$199,522,710 attributed to the Ford Foundation faculty salary endowment grants.

* Data are from the institutional questionnaire responses to the CPAE Voluntary Support of Education Surveys.

IV. EFFECT OF PROGRAM LIMITATIONS

Merrimon Cuninggim, President, Danforth Foundation,
St. Louis, Missouri.

Homer Wadsworth, President, Kansas City Association of
Trusts and Foundations,
Kansas City, Missouri.

W. Russell Arrington, President Pro-Tempore, Illinois State
Senate, testifying for the Citizens
Conference on State Legislatures,
Chicago, Illinois.

Elvis Stahr, President, Audubon Society,
New York, New York.

IV EFFECT OF PROGRAM LIMITATIONS

SUMMARY OF STATEMENT OF MR. MERRIMON CUNINGGIM

My testimony is confined to the subject of program limitations. Among the unfortunate and, we believe, unintended handicaps that H.R. 13270 imposes on the work of private foundations are:

1. Restrictions on programs of fellowships and awards: The present language of the Bill, though not the intention of the House Committee, would call in question some worthwhile programs, carefully defined, publicly announced and impartially administered. Modifications in the wording of the Bill could eliminate the difficulty.

2. Implications of the prohibition on "any attempt to influence legislation...": Foundations are alarmed that if the present wording of the Bill in Sec. 4945, para. (b)(1) and (c) is retained, the effect will be that grants in any area of current social importance would be off bounds, because of the likelihood that sooner or later projects supported by such grants would point toward a need for new legislation. The House Committee seems to have intended only to make sure that foundations do not engage in partisan political action. (Report, Part 1, p. 33). This laudable purpose can be achieved, and proscriptions of worthy foundation activity can be avoided, by judicious changes in the wording of the paragraphs indicated.

SUMMARY OF STATEMENT OF MR. HOMER C. WADSWORTH

I. Foundation effort marginal to government and to philanthropic giving of individuals. Therefore, foundations provide research and development assistance to agencies, public and private, seeking to advance knowledge and to cope with changing conditions.

II. Most foundations work with government agencies at all levels, and have continuous interchange with government officials -- Examples.

III. Terms of H.R. 13270 section 4945(e)(1) and (2) give concern for following reasons:

A. Question of whether normal contact with government officials is prohibited.

B. Question of whether foundation officers and grantees may serve with federal advisory agencies.

C. Discrepancies, Ways and Means Committee and actual language of bill.

1. Report suggests prohibition of partisan activity; bill as written extends to grant support calculated "to affect the public opinion of the general public or any segment thereof".

2. Report states section 4945(c)(2)
"does not extend to discussions
of broad policy problems and issues
with such members or employees".
Bill reads prohibition of "...any
attempt to influence legislation
through private communication with
any member or employee of a legis-
lative body, or with any person..."

D. Lack of clarity and severe penalties will
drive trustees and officers to undue caution,
numbing foundation effort and driving foundation
effort away from areas of main national concern.

E. Use of term "knowingly", presuming that
advice of counsel will protect against penalties,
too thin a reed to lean on. Problem one of fact,
not law, clarity rather than ambiguity.

IV. Comment on section 4945(f)(1) and (2) and (3):
Expenditure Responsibility.

A. Main concern ambiguity; what does "fully
responsible" mean?

B. Foundations need appropriate reporting
mechanism, but should not interfere with freedom
of grantees.

SUMMARY OF THE STATEMENT OF THE HONORABLE W. RUSSELL ARRINGTON

The thrust of Senator Arrington's testimony focuses on the problem of foundation supported groups that work to strengthen state government and in particular the Citizens Conference on State Legislatures. It is quite apparent that there is a national need for stronger and more effective state and local government.

The proposed section 4945 concerning influencing legislation may proscribe currently acceptable activities of the Citizens Conference. Senator Arrington stressed he was not an officer, trustee or employee of the Conference. Senator Arrington's interest is that the Conference's activities continue to be furnished to the state legislatures. Some of these activities include: 1) Provide advisory and technical services to some 16 state citizen commissions that study and recommend procedures for legislative modernization, 2) Conduct research and publish comparative information about legislative improvement, 3) Conduct media conferences to provide for an exchange between state legislators and editors, publishers, station owners and managers, and 4) Inform the public how the electorate has supported or rejected amendments concerning legislative articles of state constitutions.

H.R. 13270 will effectively prohibit these activities -- even though these activities are non-partisan and do not involve elections for public office. If the "substantial activities" test is abandoned and section 4945 is substituted, the private sector may no longer be an impetus to bringing about legislative modernization.

Legislatures, by legislation, often request the Citizens Conference aid. That may be influencing legislation, even though the state asked for it. Every state legislator in the United States receives information from the Conference about the efforts to modernize. These activities may be prevented. The Conference brings the press and legislators together in the hope that they will influence one another. Undoubtedly legislation does get influenced in the process. Should this be proscribed?

Senator Arrington then goes on to make specific recommendations: 1) Distinguish between partisan and non-partisan and then go on to prohibit partisan activities and

encourage non-partisan activities, 2) If legislation is procedural in the sense it affects structure of government encourage not prohibit involvement in legislative activities, 3) Use disclosure as the method of preventing abuses in the relationships between public officials and foundations, 4) Require foundations to be invited to testify or offer technical advice, and 5) Permit activities that are not engaging in support of or opposition to candidates that are general in nature rather than advocating particular legislation, and are not partisan election campaigns.

STATEMENT OF MR. MERRIMON CUNINGGIM

Introduction

Mr. Chairman and Members of the Committee:

This part of our testimony has to do with those portions of H.R. 13270 that, if finally adopted, would impose serious limitations on the programs of many foundations.

Three of us will speak to the program limitations implicit in the Bill: Mr. Russell Arrington, President Pro Tempore and Majority Leader of the Illinois State Senate, testifying on behalf of the Citizens Conference on State Legislatures, and Mr. Homer Wadsworth, President of the Kansas City Association of Trusts and Foundations, and myself, testifying concerning the effect on foundations.

My name is Merrimon Cuninggim, President of the Danforth Foundation of St. Louis.

We have four major points to make:

- 1) The prohibition against "any attempt to influence legislation..." would inhibit or prevent presently approved activities by foundations that would adversely affect their

freedom to contribute to the general welfare. This is the most serious program limitation of the Bill, and from our different perspectives all three of us will speak to this point.

2) The partial prohibition against grants to individuals might still handicap unduly some worthy programs of fellowships and awards. I will elaborate on this position.

3) The definition of "expenditure responsibility" is either difficult or impossible to fulfill. Mr. Wadsworth will deal with this problem.

4) The language of the Bill on these three subjects seems occasionally to be unclear and imprecise, though we feel that the Report reflects the intention of the House Committee. As all of us will indicate, it is our belief that modifications in the language of the Bill could make its provisions consistent with the purposes of the Committee as expressed in the Report, and thereby could eliminate the dangers we see.

* * * * *

To the extent to which representatives of various foundations feel that H.R. 13270 imposes serious program limitations on their work, they must of necessity speak not with one unified voice but as individuals, each having his own perspective. Most foundations are local or regional in their outreach, and the implications of the Bill are necessarily limited to the geographical and topical areas they serve. Even the national, "general purpose" foundations have their distinctive program emphases, and the testimony of each would differ from that of every other. Yet common threads of concern are discernible. I can speak with assurance only for the foundation I represent, but it is my hope to be illustrative rather than simply unilateral in the treatment of the matters I want to mention.

So that you may know the particular position from which I speak, let me say a brief word about the Danforth Foundation. Our work, since the Foundation's beginning in 1927, has been largely in the field of education. In the past year and a half we have become active also in the field of urban affairs, chiefly in the St. Louis area. No such limitation applies,

however, to our educational efforts; for through our grants, fellowships, workshops, conferences, and by other means we have intimate contacts of one sort or another with eight hundred to a thousand colleges and universities, hundreds of secondary schools and other educational organizations, and upwards of fifteen thousand persons in educational occupations, all across the country. In market value of portfolio we rank 16th in size among national foundations; in amount of annual expenditures - a truer measure, we think, of a foundation's activity - we are 9th. Like many another similar foundation, we believe in and practice full public disclosure of our activities. If it hadn't been for these hearings our new Annual Report might already have been off the press!

Let me direct your attention, first, to the prohibition against grants to individuals, Sec. 4945 (b) (3) on p. 44 and (e) on pp. 46-47 of the Bill. This section is less restrictive than, and thus in our view a considerable improvement on, the "tentative decision" announced by the House Ways and Means Committee in its press release of May 27. The "tentative decision" prohibited all grants to individuals, whereas the Bill as it now stands would allow such grants when the conditions of sub-paragraph (e), pp. 46-47, are met.

It appears to us, however, that the language of the Bill may still be more restrictive than fulfillment of the intention of the House Committee would require. The Committee means to put an end to grants "to enable people to take vacations abroad, to have paid interludes between jobs, and to subsidize the preparation of materials furthering specific political viewpoints." (Report, part 1, p. 33) We of the Danforth Foundation, along with other foundations that sponsor carefully planned and administered programs of fellowships and awards, would heartily applaud this aim. But the language of the Bill outruns this intention and may do considerable harm to reputable programs. I shall draw my illustrations from among the ten or a dozen programs that the Danforth Foundation sponsors or supports, though I beg you to remember that these are only a few among the scores, perhaps hundreds, of such admirable programs sponsored by other foundations.

The first problem is that the language might unintentionally force the cessation of useful programs of awards and prizes, given to recognize excellence or achievement in various fields. Such awards are indeed grants to individuals, and thus would fall under the prohibition of such grants; but they would not qualify as approved exceptions to that

prohibition because they are not scholarships or fellowships and do not aim "to achieve a specific objective. . ."

Recipients are not applicants, expected to "produce a report" or perform some other service, but are simply honorees.

For example, our own Harbison Awards for Gifted Teaching might have to be terminated, even though in recent times both the White House and the Office of Education have expressed keen interest in the Program and a desire to emulate it. These Awards, usually ten per year, are for \$10,000 each; the purpose is not merely to honor teachers of unusual competence but also, and by that means, to emphasize the importance of teaching in the academic process. It is ironic that, whereas the Bill would seem to allow this Program to continue only if it is to "achieve a specific objective. . .," the Internal Revenue Service has ruled that the Award will be tax free to the recipient (under section 74(b) of the Internal Revenue Code), only if he does not have to fulfill some requirement of the Foundation. Perhaps a clause could be added at an appropriate place in the Bill, to indicate that awards coming within section 74(b) are to be excepted from this provision.

A second problem has to do with the wording in lines 22-24 of sub-paragraph (e), p. 46. We agree fully with the Bill's intention to allow approval of those grants to individuals that are "awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary or his delegate. . ." It occurs to us, however, that lest enforcement be more time-consuming and restrictive than was intended, something needs to be said as to how clearance could be secured in advance, how decisions could be reached rapidly when necessary, and what criteria should be used in making judgments. Clearance would be streamlined, to the benefit not merely of the foundations involved but also of the human needs they seek to serve, if the regulations were to spell out the kind of "procedure" that would be judged to be "objective and nondiscriminatory."

It appears to us that "objective" should mean that applicants will be judged on the basis of credentials submitted in compliance with publicly announced eligibilities and instructions; that the various steps in the selection process, also publicly announced in advance, will be such as to provide fair consideration for all applicants; and that final decisions will be in the hands of people, publicly identified, whether in or outside the foundation (and perhaps both), who are qualified by their own experience to make such judgments.

Similarly, "nondiscriminatory" should mean that no irrelevant distinctions of race, creed, color, sex or age will be imposed in the selection. The addition of "irrelevant" is important, for some worthy programs discriminate purposely in order to overcome some current imbalance. For example, our program of Graduate Fellowships for Women is directed to the lack of qualified women in college teaching; and a requirement that this particular program admit men would defeat its central aim. Taking note of this Program, the Advisory Council on Graduate Education of the U.S. Office of Education recommended this spring that the Office of Education explore the possibility of establishing a similar discriminatory program. Various programs by a number of foundations, Danforth included, on behalf of minority groups would also benefit from a clarification of "nondiscriminatory."

"Procedure" should mean that, on the one hand, "the Secretary or his delegate" will undertake to review only a defined program of grants, not the individual grants themselves; and that, on the other hand, foundations will not make episodic grants to individuals outside the framework of some defined program. As is true for all our fellowship programs, and for the host of excellent programs sponsored or supported by other foundations - Commonwealth, Guggenheim, Hazen, Markle,

Woodrow Wilson, etc., etc. - the sponsoring agency would be quite prepared, and should be expected, to hold to the terms of its defined, publicly announced program and to refrain from subsidies to individuals, individually determined. Even the small foundation, making only a few grants to individuals, would not be handicapped if it were allowed to describe in advance the terms under which such grants would be made.

Lastly, "approved in advance" should mean that clearance will be expeditious and unequivocal. Long delays and peculiar requirements or conditions for approval would cut the nerve of foundations' efforts in this regard. Most helpful would be regulations stating that programs coming within the list of requirements enumerated therein need not have a separate ruling in advance. In those instances in which rulings must be sought, a time limit could be specified - say, six weeks - at the end of which, if the appropriate Government official had raised no objection, the foundation's program would be considered approved.

The final problem in respect to grants to individuals turns on the unnecessarily and, we think, unintentionally restrictive language of that part of para. (e) in lines 1-6 on p. 47. The

wording provides that, to escape the prohibition, the grant must be "a scholarship or fellowship grant at an educational institution . . . or that the purpose of the grant is to achieve a specific objective, produce a report or improve or enhance a literary, artistic, musical, scientific or other similar capacity, skill, or talent." At first look the words seem to be broad enough to include any legitimate program; but on more careful examination such questions as the following arise: Must the recipient of a scholarship or fellowship be enrolled as a regular student? What about part-time? What about an auditor? What about study outside the United States? What about independent study? How specific must a "specific objective" be? Do the adjectives, "literary, artistic, musical, scientific," include any educational "capacity," the "skill" of the administrator or the "talent" of the teacher?

I do not mean to carp. Most of the fellowship programs of the Danforth Foundation, as well as those of other foundations, are nicely covered by the Bill's enabling phrases as they now stand. Let me give two brief examples, however, of programs that might be adversely affected by the present language.

First is the Danforth Associate Program, an extensive effort to provide various forms of encouragement and support to faculty members on hundreds of campuses throughout the country, for the purpose of fostering what has been called "the personal dimension" in higher education. These faculty members are committed to the high aim of reversing the trend toward anonymity in campus life. The Foundation makes modest grants to them, to be used for the benefit of their students, and sponsors regional and national conferences for them for the discussion of pertinent issues. Competent outside evaluators have praised this Program for the understanding and constructive action it has quietly brought to bear on problems of student unrest in every section of the country. But those chosen to be Danforth Associates do not hold fellowships, are not expected to "achieve a specific objective," and the quality they "improve or enhance" is not so much peculiarly "literary, artistic, musical, scientific" as it is generally humane, related to their professional vocation as teachers and educators. On the basis of the Bill's present wording, what would happen to this Program is not clear.

Again, our Program of Short-term Leaves for College and University Administrators would be suspect. To provide the kind of support that able, yet harried, university presidents

need today, a fortification of body, mind and spirit, the Danforth Foundation insists that recipients, twenty per year, do not undertake "a specific objective" or "produce a report," or "improve or enhance" anything at all except their ability to cope with their immensely demanding duties. Recipients do not go on vacations, but undertake reading programs, write lectures, study the problems of other institutions, or otherwise fit themselves for the better performance of their own jobs.

Other foundations provide similar programs whose value often turns on the fact that their purposes, and their expectations of recipients, are less specific and more flexible than the language of the Bill now allows. The intent of the Bill, as we understand it, would be well served if modifications of language so as to take these considerations into account were adopted.

The second major limitation of program to which I wish to speak is the prohibition against "any attempt to influence legislation" as defined in section 4945(c), on pp. 44-45 of the Bill, and as commented on by the Report, part 1, p. 33. In my view, this is potentially the most serious issue raised for foundations by any part of the Bill. Each of my fellow witnesses will also testify on this matter.

A host of foundations are understandably and inevitably alarmed by the language of the Bill as it now stands. The wording seems to suggest that "an attempt to affect the opinion of the general public or any segment thereof" (lines 5-6, p. 45), on any matter that might relate to legislation, would be a taxable expenditure incurring heavy penalties. What, then is left for foundations to do? To play safe, they would feel that they must eschew working in any field of the social sciences, perhaps also the humanities, and even the natural sciences, at least in their applicability to human problems. Conservation of our national resources? Air and water pollution? Beautification of our highways? Such innocent-sounding activities would be too dangerous, for they would sooner or later touch on legislation.

Take the grants of the Danforth Foundation as a case in point. We work, by choice, in the fields of education and urban affairs, because we believe that problems in these fields are crucial for our time, and that even though our efforts are bound to be minuscule in comparison with those of government, it is important that private as well as public energies and resources be brought to bear. In our work we have in mind the molding of public opinion, local or national, not merely on behalf of the project itself that is supported by one of our grants, but also on behalf of the purposes or goals that

the project seeks to serve. To support a socially purposeless project would be wasteful and thus preposterous. The pursuit of these purposes could and often does lead to a recognition that changes are needed in regional or national life, and thus eventually to new legislation. To disavow "an attempt to affect the opinion of the general public" would mean, for us, to withdraw from the fields of education and urban affairs, at the very time that private as well as public efforts in these fields are most needed.

To be explicit, let me mention a few of the recent grants of the Danforth Foundation, as representative of those of other foundations, that would be called in question by the current wording of the Bill:

---- to the American Assembly, in cooperation with the American Bar Association, for a series of conferences, based on preparatory studies, of the theme, "Law and the Social Order." This program will undoubtedly result in numbers of specific recommendations by the Assembly for new, though non-partisan, legislation.

---- to the American Bar Association, for support of a program of its Special Commission on Housing and Urban Development Law, to involve

lawyers in solving urban problems and "to attack outmoded laws by working with federal, state and local legislatures."

---- to the American Council on Education, in support of a National Conference on Law and Higher Education, to examine the adequacy of present understandings on the legal status of students, due process, and campus freedom and order.

---- for the Cooperative School Board Project, involving four metropolitan school systems (Boston, Chicago, Los Angeles and New York), four neighboring graduate schools of education, and two other organizations to coordinate and disseminate the findings. This ambitious study of the present and desirable functioning of large city school systems will, we hope, have many repercussions, including legislative ones.

---- to the Education Commission of the States, a formal compact of over forty states for the purpose of bringing governors, legislators and other political leaders into closer association with educators, for the benefit of state systems of education at all levels across

the country. Growing out of ideas advanced by Governor Terry Sanford, Dr. James Conant, and United States Commissioner of Education James Allen, the Danforth Foundation has shared equally with the Carnegie Corporation in furnishing the seed money for this organization, until such time as the states themselves assume its full support. The very establishment of the organization required specific legislative action in each participating state, to join and to appropriate its membership fee.

---- for the Governor's Conferences on Education in Missouri: We have joined with the Kansas City Association of Trusts and Foundations and other groups in supporting these state-wide, non-partisan gatherings to study and make recommendations as to desirable changes in the state's system of public education. Recent legislation on behalf of Missouri's public schools has been based directly on the work of these Conferences.

---- to the Missouri Bar Association, to provide for an examination of procedures in juvenile courts and, as a hoped-for result, beneficial changes in such procedures.

---- to the New York State Education Department:

This was a many-faceted grant to enable the New York State Education Department to work cooperatively with both public and private institutions, large and small: Brooklyn College of the City University of New York, Colgate University, Cornell University, State University of New York College at Fredonia and Vassar College. The aim was to upgrade programs of teacher training and revise standards of certification for teachers, and expected results will call for changes in legislation or in decisions of governmental bodies affecting public schools.

---- to the St. Louis Board of Aldermen, to draw together all the leading individuals and agencies concerned with housing, both public and private, in the St. Louis area. Though the grant was made to the Aldermen, the planning committee for the two major conferences, and for the studies that went into their preparation, was composed of representatives from four universities and from other community agencies. If the

recommendations of these conferences are to be accepted, changes in legislation will occur. ---- to the Southern Association of Colleges and Schools: For over ten years the Danforth Foundation has been working with the Southern Association on behalf of the upgrading of predominantly Negro colleges in particular and strengthening educational opportunities for minority groups in general. A particular series of grants to the Southern Association in recent years have been for the support of their Education Improvement Project, a program of many parts represented by projects in many places throughout the South, both urban and rural. Too complex to be described in a brief sentence or two, the EIP has received support from several governmental agencies, such as the Office of Economic Opportunity, as well as from many foundations; and since the boards of education of nearly every Southern state are cooperating, the result of this program will eventually be felt by legislatures and executive offices of government throughout the South.

These are only a few that might be mentioned. Illustrations could be furnished by countless foundations from many other fields of social concern and human endeavor - population, quality of environment, the arts, public broadcasting, regional planning, the administration of justice, and on and on. Rare would be the foundation, small as well as large, that could not give a multitude of examples -- not the support of politically partisan efforts but of rational, impartial studies and projects. Such grants are not aimless but are directed toward making a difference. Differences are brought about in our society in many ways, to be sure, but one of the important ways which we would be loath to give up is through the changed attitudes and opinions of the public, which ought to, and do, get incorporated eventually in legislative changes, locally or nationally. It would be tragic for America if this kind of activity by foundations were to have to be discontinued.

It is my impression, however, that such an unhappy development for foundations in general was not the intent of the House Committee. In fact, in their Report, part 1, p. 33, they affirm a much more modest and realistic intention. Referring to this provision of the Bill, they explain that

it "applies specifically to expenses incurred in connection with grassroots campaigns or other attempts to urge or encourage the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation." In other words, the aim is to prevent foundations from engaging in partisan politics. With this aim we of the Danforth Foundation are in full accord; and we have reason to believe that the overwhelming majority of other foundations share this conviction. If the Committee's main purpose is to keep foundations from using the old substantiality test of Section 501(c)(3) in order to engage in propaganda, a purpose to which we gladly subscribe, then the dire results of the sweeping language of subparagraph (c), p. 45, can be escaped without doing violence to the laudable intention back of the language. That the Committee itself may have thought so is suggested by a further sentence from the Report, Part 1, p. 33: "This prohibition is substantially similar to the provisions of present law (Sec. 162(e)), which prohibits business deductions for grassroots lobbying activities." It is my conviction that modifications of the present provisions of sub-paragraph (c) could be made so as to enable the language to reflect more accurately the desires of the House Committee, and in the process to leave room for the legitimate functioning of foundations on behalf of the general welfare.

In closing my testimony I wish to reiterate that I do not believe the House Committee meant to impose severe program limitations on legitimate philanthropic agencies. That the Bill's wording in certain places does so is, in each case, an instance in which the language inaccurately reflects the intent. But, though the problem may be more semantics than substance, it is nonetheless serious in its implications for both foundations and their beneficiaries. I thank you gentlemen for the opportunity to present my concern to you.

STATEMENT OF MR. HOMER C. MADSWORTH

The testimony which I wish to present relates mainly to those provisions of H.R. 13270 which define the limits of foundation effort in matters touching upon public policy. I wish also to comment upon those sections which define the responsibilities that foundations assume under the terms of this statute for the expenditures made by agencies receiving grants.

I do wish to associate myself and the parties I represent with the general position taken by other spokesmen on the main features of H.R. 13270. We do not oppose provisions of the bill that outlaw self-dealing. We do not oppose requirements that would assure that private foundations spend their income for charitable purposes. We do not oppose provisions that would require full disclosure of all foundation activities.

On the other hand, we object to the proposed tax on private foundations as fundamentally punitive and totally inconsistent with the effort of our government over many years to encourage private giving and private effort to accomplish worthy public purposes. We join with others in support of a fee payment to provide the Treasury with sufficient funds to maintain an adequate staff for review annually of all foundation activities to assure compliance with the law.

The proposed changes in the law governing foundations, and especially section 4945(c)(1) and (2), seem strangely out of touch with the nature of things in this period of our history. Foundations exist to serve the public interest. Their justification derives from the view that the public interest is best served if private citizens and our agencies of government work together to meet human needs and to advance human knowledge. Thus, we have public and private universities and colleges; public and private institutions to serve the sick and the disabled; public and private agencies administering welfare services; public and private organizations that sponsor a broad range of cultural activities.

These agencies are by no means separate entities that may be distinguished from one another by the way they meet their bills. The contrary is the present condition. This era is marked by the rapid growth and development of mixed enterprises, each quite as dependent on various forms of public support as well as income from gifts and endowment and the like.

A few examples come quickly to mind. There is no longer to be found in this nation a purely private university. Our most affluent universities, each guided by private citizens serving as Boards of Directors or Trustees, receive from 30 to 50 percent of their income from governmental

sources. Many of our medical schools, including those which function under church-related auspices, make up more than one-half of their annual budgets from government grants and contracts. Many of our symphony orchestras and art galleries and museums receive substantial and indispensable assistance from governmental sources, either directly or indirectly.

Foundation efforts are clearly marginal to governmental programs in most fields of endeavor. They are minor activities in dollar terms, too, in relation to private giving by individuals. The total spending of all foundations in the United States is much less than the annual budget of the Office of Education -- a single office among many in the Department of Health, Education and Welfare. This is just as clearly seen at community levels as it is in national terms. HEW spends about 100 million dollars per year in Jackson County, Missouri (Kansas City); the total spending of our Association which is the only organized general purpose foundation group in the community is on the order of \$750,000 per year.

The United Fund effort in Greater Kansas City produces \$7,500,000 per year, to which must be added the considerable income of United Fund agencies from fees and memberships and the like. Therefore, foundation effort in local terms dwindles to very minor proportions -- less than

one percent of the spending of one Federal department among many; less than 10 percent of the amount available to United Fund agencies.

This condition in the country at large has forced many foundations, and especially those which work mainly in our communities, to regard their function as increasingly one of providing research and development assistance to programs designed to help all agencies, public and private, to better cope with constantly changing conditions. To accomplish this task we need full information about the range and quality of current effort. We need good working relations with those who carry the heavy burdens of community services, whether they be government officials or employees of private agencies. It is necessary frequently for foundation officials to join with other parties to create new institutions to meet needs that go beyond the scope of existing programs.

Many examples come to mind from our experience along these lines in Kansas City over the past twenty years. The Association took the initiative in 1951 at the request of City authorities in creating a non-profit corporation to manage and develop the public services available to indigent persons in need of psychiatric care. This effort has produced a wide range of coordinated programs now available to qualified parties in the western third of Missouri, and operates clinical,

teaching and research programs on an annual budget in excess of five million dollars per year.

The successful management of the psychiatric program led the officials of Kansas City to request in 1961 that the Association take the leadership in creating another non-profit corporation to operate the City hospital system. This was accomplished under the terms of a contract between the non-profit corporation and the City government. The City's annual payment of seven million dollars has been doubled by drawing in private support as well as Federal grants for specified purposes. New buildings are under construction, aided by private gifts as well as state appropriations and Federal grants. The University of Missouri recently announced that it would develop a new medical school for the state as an integral part of the program, and has moved its dental school to a new location within the complex.

Quite frequently foundations make grants to public agencies to accomplish useful and important purposes best achieved in this way. For example, our member trusts made a grant of \$480,000 to the School District of Kansas City, Missouri in 1962 to enable the District to operate a college scholarship program for young people from families with limited means. More than 500 students entered college through this program and many have returned to teach in the Kansas City system. The format and practices of the agency created to

manage this activity have now been incorporated into a major Federal program.

Our member trusts created an independent social research agency in 1950, the Institute for Community Studies. This agency receives annual grants. It also performs a wide variety of research services for many parties -- agencies of government at all levels as well as private, non-profit agencies. One of its recent contracts was with the subcommittee on Employment, Manpower and Poverty of the Senate Committee on Labor and Public Welfare.

The foregoing indicates from our experience the basis for our concern with the changes in the tax law proposed in H.R. 13270, and especially Section 4945(c)(1) and (2). We work very cooperatively with many governmental agencies to accomplish useful ends. We find that precisely this kind of joint effort is needed to achieve the results desired. Quite clearly, many of the things we do through grant support are calculated "to affect the opinion of the general public or any segment thereof." Once a task is completed it often becomes legislation, for, in a government by law, acts, many times, must be ratified by statute or ordinance. In addition, every appropriation is an act of legislation. We do not live in a sterile world,³ and we doubt that any such world exists outside of research laboratories.

We are quite aware that there exists a wide range of opinion on many current public questions, and that

foundations will be criticized for grants issued that provide for experimental effort along lines that some people oppose. We respect the open market-place for ideas, ask that others do so, too, and believe that the democratic system functions best under such conditions. We have always published full reports on what we do, and have made our records available to anyone who wanted to have a look at them.

Section 4945(c)(2) would restrict severely our contact with government officials. This portion of the bill reads as follows: "(taxable expenditures includes but is not limited to)...any attempt to influence legislation through private communication with any member or employee of a legislative body, or with any person who may participate in the formulation of legislation, other than through making available the results of non-partisan analysis and research." Are we to refuse to answer letters from legislators? Are we to exclude grantees from answering such letters or conversing with elected officials or "any other person who may participate in the formulation of legislation"? Are those of us who serve on Federal advisory councils -- and I have served on many, and currently hold a seat on the National Advisory Health Manpower Council -- to resign on the ground that our participation is in violation of this provision?

It seems to me that there are serious discrepancies between the Report of the House Ways and Means Committee on

this subject and the actual language of this section of H.R. 13270. The report states the following on page 33, beginning on line 10: "Your committee has determined that a tax should be imposed on expenditures by private foundations for various activities that it believes either should not be carried on by exempt organizations (such as lobbying, electioneering, and 'grass roots' campaigning) or more appropriately are carried on by the other organizations."

I know of no private foundation that would take exception to this position. I know of no private foundation that would not subscribe to penalties for error in this regard. On the other hand, I see no correlation between this statement of purpose and the actual language of Section 4945(c)(1) and (2).

The same sort of discrepancy is to be noted between the Ways and Means Committee report and the Bill on the matter of communications with legislative officials and other persons. The Committee report states on page 33, beginning on line 22, that Section 4945(c)(2) "precludes direct attempts to persuade members of legislative bodies or governmental employees to take particular positions on specific legislative issues. It does not extend to discussions of broad policy problems and issues with such members or employees." (emphasis mine). The section referred to does not make explicit this point. In fact, the language simply prohibits any attempt to influence legislation and by whatever means, and extends the prohibition

to "any other person" other than legislators "who may participate in the formulation of legislation." Once again, it seems to me, a limited objective is taken with an arsenal of weapons sufficient to kill off all but the most hardy of foundation officers and grantees who dare to have an opinion that might conceivably play some part in the formulation of legislation.

The provisions of this section of the Bill, together with the harsh penalties provided for failure to comply with the law, can only have the effect of nixing foundation effort and driving foundation money away from the areas in our national life that currently give us most concern. Trustees are quite human in that they tend to avoid areas of controversy in the normal course of events. They serve in most instances without any compensation, and give freely of their time to consideration of the matters that come before them in the form of requests for aid. They are not likely to risk penalties, nor are they likely to permit their officers to take risks in areas where the law and the regulations are distinctly unclear. This would appear to be the general situation that we shall confront if H.R. 13270 is passed without significant amendments.

I am aware that some of the officials of the Treasury Department do not believe that the penalties set forth in the Act will be operative unless private foundation

trustees or their managers "knowingly" act in support of partisan ends. It has been suggested that having available an opinion of counsel will protect any foundation board or its officers from assault at this point.

This seems to me a very uncertain reed upon which to lean. Quite obviously, an opinion from counsel on such a point is arguable from the standpoint of the facts in the case rather than the law. I doubt very much that the use of the word "knowingly" in the statute will give any aid and comfort to either Trustees or officers faced with the kinds of decisions involved. As in the earlier instance cited, the normal disposition of Trustees faced with such a dilemma is more likely than not to do nothing rather than take the necessary risks -- with or without the benefit of advice of counsel.

It is of some importance, I believe, for this Committee to take into account that much of the business that comes to foundation offices these days originates in legislative action in the Congress. Hardly a day passes without a petition for aid from an agency that is in a strong position to ask a Federal grant if local sources of support for the matching requirement can be cited. This applies to local agencies of government, and even to state governments on occasion, as well as private agencies in the health, welfare and education fields. I have a dozen such requests on my hands at this moment, ranging from requests for a

rehabilitation agency program to the building plans of one of the leading medical schools in the nation.

The nub of this particular matter is simply that the Government must either permit private foundations and private persons to continue to serve public purposes to the maximum extent possible or the Government must revise its matching requirements and fund more generously the costs of facilities and services very much in demand. Tax reform as it relates to foundations will come down in the final analysis to simply this.

No foundation officer or trustee is opposed to prohibitions against partisan activity by private foundations or by grantee organizations. We are well aware that the present law prohibits lobbying, electioneering, and grass-roots campaigning. We know, too, that proper enforcement of the law as it now stands would root out quickly any infractions. We are confident that full disclosure of all foundation activity is the appropriate way to achieve the purposes set forth in the House Ways and Means Report, and without endangering the crucial role that foundations must play in our national and local affairs.

What is not so evident, and is entirely missed by both the House Ways and Means Committee Report and the text of H.R. 13270, is that private foundations and other exempt organizations have less sanction in present law and regulations

for presenting their views to public bodies than business organizations. Mortimer M. Caplin, former Commissioner of Internal Revenue, offers the following comment on this matter:

"Today, the policy justification of the present limitations on exempt organizations' legislative activities is questionable. Since 1962, profit-making businesses have been permitted to claim income tax deductions -- as 'ordinary and necessary' business expenses -- for financing legislative appearances and related activities which are closely connected with their business operations. The 1962 amendment to the Internal Revenue Code overruled the well-established case of Cassmarano v. United States (358 U.S. 498), which had previously denied income tax deductions for this type of lobbying. As the Senate Finance Committee pointed out, it was felt to be desirable 'that taxpayers who have information bearing on the impact of present laws, or proposed legislation, ...not be discouraged in making this information available to the Member of Congress or legislators at other levels of Government.'

"Congress thus recognized in 1962 that it was legitimate for business entities and the trade organizations they support to participate in lobbying for legislation of direct interest to them. Yet, if this is true for business entities, why isn't it equally valid for education and charitable organizations? This 1962 income tax relief for business suggests that Congress should reexamine the entire area of legislative activities of exempt organizations with a view to granting them a broader measure of freedom in the legislative sphere."

Foundation News: November 1968, pp. 162-163

It comes down to this in the most simple and direct terms. Business interests may lobby for their ends, secure tax deduction for the expenses involved, and may live comfortably with the view of the Senate Finance Committee that

it is desirable that they do so. Private foundations and other exempt organizations do not have comparable privileges under present law and regulations. If H.R. 13270 is passed without amendments the rights of such exempt organizations will be further limited, perhaps to the point where they cannot make a significant contribution to the national interest.

Section 4945(f)(1)(2), and (3) set up the terms of private foundation responsibility for funds issued to non-profit agencies other than public charities. Severe penalties are provided for non-compliance for such foundations and for their managers.

The terms of this section suffer mainly from ambiguity. To continue to make grants to many of the organizations which are now our grantees, the Bill would require us to exercise "expenditure responsibility". This means that "the private foundation is fully responsible -- 1) to see that the grant is spent solely for the purpose for which made, 2) to obtain full and complete reports from the grantee on how the funds are spent, and to verify the accuracy of such reports, and 3) to make full and detailed reports with respect to such expenditures" to a designated government official.

Foundations request reports from agencies receiving grants, and would not hesitate to share such information with

Treasury authorities. Every legitimate foundation, of course, wants to know whether its money has been spent wisely and faithfully, in line with the purposes for which the grant was given. But the amount of follow-up and inspection which the Bill requires is excessive, and perhaps even impossible to provide. How could the foundation in every instance "verify the accuracy" of the "full and complete reports from the grantee"? Moreover, the provision is unwise, for what would such supervision do to the hallowed and sound policy of non-manipulation of the grantee that every well-run foundation practices? To fulfill this requirement in full, a foundation would have to exercise a degree of continuing surveillance of a grantee's affairs that would be paternalistic and immensely expensive for any foundation and intolerable for any self-respecting grantee. It is surely a great way to enlarge foundation influence precisely at the point where foundations do not wish to exercise power.

Bearing in mind that the Federal Government and responsible foundations have a common goal -- that of preventing irresponsibility -- let us apply a rule of reason. Do not make us an insurer, with absolute liability for our grantee's conduct. Charge us instead with the responsibility of applying reasonable diligence to our relations with our grantees.

STATEMENT OF THE HONORABLE W. RUSSELL ARRINGTON

Mr. Chairman, my name is W. Russell Arrington. For the record I am an attorney with offices in Chicago, Illinois. I am also Vice President and General Counsel of Combined Insurance Company as well as Director of Alberto Culver Company. I am President Pro Tempore and Majority Leader of the Illinois Senate, a member of the Executive Committee of the National Conference of State Legislative Leaders, the Executive Committee of the National Society of State Legislators and a member of the Advisory Commission on Intergovernmental Relations.

My purpose in being here is to discuss the possible consequences the "Tax Reform Act of 1969" might have to the Citizens Conference on State Legislatures and to the national effort to modernize state legislatures.

Let me assure you that I am not a trustee or officer of the Citizens Conference -- nor have I ever been. I am here as a concerned state legislative leader to point out to you some of the unintended consequences HR 13270, and primarily Section 4945, might have on the private sector's role in strengthening representative government at the state level.

First, let me explain my past involvement with the Citizens Conference. In 1965, the Illinois General Assembly created The

Commission on the Organization of the General Assembly composed of legislators and public members. The Commission was charged with the task of examining the entire scope of legislative procedures and structure in Illinois to derive recommendations for improving the General Assembly. We were one of the first legislatures to take this step. Of the 87 recommendations this Commission felt would improve the General Assembly, 58 were adopted. The efforts of this Commission were a major input into what we consider to be one of the most effective state legislatures in the nation.

One of our problems in the beginning was the lack of a source of information about what legislatures elsewhere had found to be effective in dealing with their work. Another troublesome spot was the lack of advice as to how to proceed to maximize the effectiveness of the Commission itself. These deficiencies were soon solved by the Citizens Conference, an organization which was formed in 1965.

Other state commissions -- about 16 -- have received major assistance from the Citizens Conference. In addition, the Conference dedicated itself to informing the public about the need for strengthening state legislatures.

Let me briefly describe the activities and character of The Citizens Conferences' program.

1. They are national, non-partisan and not-for-profit.

2. They encourage, assist, and provide advisory and technical services for state citizen groups working to support and improve the effectiveness of their legislature.
3. They conduct research and bring together comparative information about legislative improvement in the fifty states.
4. They conduct regional and single-state conferences which bring together state legislators with editors, publishers, broadcasting executives and civic leaders. The purpose is to provide a frank and candid exchange of views about legislative improvement.

The Citizens Conference does not participate in the drafting or construction of particular legislation. They do not lobby for particular legislation. Neither do they participate in campaigns for public office nor do they become involved in voter registration.

I don't feel it necessary to make a strong statement about the need for stronger and more effective state government. Many hearings conducted by this body have documented the need. The urban crises and the prospects of revenue sharing are just two major forces which require the states to participate in a joint partnership with the federal government. The thrust of my testimony concerns groups which are working to strengthen state government -- organizations of which the Citizens Conference on State Legislatures is exemplar.

I have described their activities and their program. I doubt anyone here questions either the worthwhileness of their objectives or the means by which they advance them. Yet HR 13270 will proscribe most of their program. The bill, as written, will effectively prohibit the private sector from working to improve government at any level.

My testimony, then, concerns the proper relationship of 501(c)(3) organizations vis-a-vis governmental bodies -- in specific, the issues which are involved in influencing legislation and elections.

HR 13270 would not allow the Citizens Conference to "carry out propaganda, or otherwise attempt to influence legislation ... (1) through an attempt to affect the opinion of the general public, (2) influence the outcome of any public election, and (3) influence legislation through private communication with any member or employee of a legislative body."

This represents quite a departure from current laws and regulations which concern activities of tax-exempt groups. The current law recognizes the difficulty of forbidding completely contact with government bodies by tax-exempt groups by providing an area of discretion -- the "substantial activities" test which is now applied to the issue of influencing legislation. The House Committee Report (HR 91-413 at page 32) suggests a reason for abandoning the substantial activities test for most 501(c)(3) organizations, as follows:

"Moreover, a large organization, merely because of the substantiality test, may engage without consequence in more lobbying than a small organization; a well-endowed organization may engage in lobbying and, if it loses its exempt educational or charitable status may avoid tax on its investment income by becoming exempt under another provision of the law."

Gentlemen, the dilemma facing the Citizens Conference under the provisos of HR 13270 is a very real one -- it is unlikely state legislatures will be modernized unless public opinion is affected and unless legislation is enacted.

Let me give you an example. The Citizens Conference has written to each of the 7,616 state legislators telling them about the Conference's willingness to help them in improving their legislature. The Conference enclosed materials, such as The Chamber of Commerce of the United States' publication, Modernizing State Government, which explains the kinds of structural and procedural changes which could be made to improve the way in which legislatures conduct their business. Undoubtedly, legislation resulted from this kind of contact. This, I suspect, may be defined as influencing legislation -- an activity which is to be barred to a private foundation.

Some legislatures have passed resolutions creating advisory commissions similar to the one in Illinois which I previously described. In these resolutions, the legislatures have expressly called upon the assistance of the Citizens Conference. Such commissions rely heavily upon the materials, advice and technical assistance of the Citizens Conference. Technical assistance provided to commissions include

providing consultants on internal operations of the legislative process, such as systems for preparing fiscal notes or more effective bill scheduling; consultants on commission organization, material distribution, and public relations are also provided. The Conference's staff is well versed on the methods by which commissions can be most effective. This expertise has been gained by working with many commissions and is invaluable to a commission which is just beginning. At the end of the study phase, these commissions recommend changes in the legislature of their state. When such recommendations are adopted, legislation is oftentimes required. This, I suspect, may be construed to be influencing legislation.

The Conference conducts regional and single state media conferences -- for civic leaders, press, radio and TV executives and legislators. The topic is legislative improvement and a forum is provided for a frank and candid exchange of views between parties sometimes viewed as natural adversaries. Editorials often result which encourage the legislature to take steps to modernize its way of working. Both the legislators and the media participants certainly would be considered to be those "who may participate in the formation of legislation." Editorials which may occur as a result of the conference may be viewed as an "attempt to affect the opinion of the general public." The net result of these conferences may be legislation which is influenced.

Let me take this opportunity to call your attention to an apparent inconsistency in the proposed law. Results of non-partisan analysis and research are allowed to "influence legislation." This same right does not apply to influencing elections. If the proposed "influencing election" section is limited to candidate elections, I see no problem. If, however, the 501(c)(3) organizations cannot make available results of non-partisan analysis or research during non-candidate elections such as constitutional amendments affecting the legislative branch, then the public is deprived of a major source of objective analyses of the issues upon which they must vote.

We must differentiate clearly and precisely between the connotations of "partisan" and "non-partisan." Although they appear to be semantical opposites they are not, nor are they operationally polar extremes. As they concern us today, they describe goals not in conflict, but goals in concert. I hope now to describe the distinction between the two as I see it relating to the influencing of legislation and/or elections.

I speak to you as a partisan. I firmly believe in partisanship in government. Partisanship is a strong factor in every decision I make on substantive issues that come before me as a member of the Illinois State Senate. But decisions regarding the fundamental structure of our basic political institutions, it seems to me, are not of the same generic family. Partisanship within the American political system does not come to bear on questions of how long the state

legislature is in session, how it organizes its committees throughout a session or in the interim between sessions, the professional staff assistance provided committees and members, the size of the respective houses, the regulations describing ethical conduct, or the annual compensation a member should receive.

In a partisan sense, one cannot determine that the Wyoming legislature should meet 40 days every other year and the Massachusetts legislature should meet in continuous session every year. When and how often a state legislature should meet must be based upon the time needed for the particular legislature to make intelligent policy decisions regarding its state's activities. Likewise, providing professional staff assistance to the legislature to insure that it can consider the most complete range of alternatives for the immediate and long-range view, does not gainsay the operation of partisanship within the legislature.

Too many of our state legislatures are so fettered by these non-partisan deficiencies in structure and procedures that their partisan decisions are reactions rather than action to meet their problems. They are impeded from innovating solutions or cures and are forced instead to apply band-aids to cancers. To correct these structural and procedural weaknesses often requires the passage of some legislation -- legislation which is not substantive policy taking us a step closer to the opportunity for a good life for all a state's

citizens, but legislation perhaps to remove a constitutional prohibition against annual sessions, or a limit on the amount of annual salary a legislator may be paid. We are not talking about the decision as to what to do with an egg -- whether to boil it, scramble it, put it in a cake, or make a custard -- but only the decisions regarding and guaranteeing that the chicken will produce the best possible of eggs.

The above distinctions lay the groundwork, I believe, for a revised bill -- a bill which will allow organizations classified as private foundations to mobilize public support to study, recommend and change, if need be, governmental units. Safeguards, of course, need to be maintained. I have alluded to some -- that the activity be non-partisan in nature, national in scope, that it not engage in support of or opposition to candidates, that the activity be general in nature rather than advocating particular legislation, and that partisan election campaigns be avoided.

Another safeguard which could be adopted would be disclosure of all financial transactions between a tax-exempt organization and government officials. Barring modest honoraria seems to me to be unduly restrictive. When an organization, for example, deals with legislative reform it is not unreasonable to look to legislators themselves as speakers or participants on programs.

Disclosure could also be applied to the potential problems of private communication with public officials. If there is a fear that private

correspondence defeats the purposes of national taxing policies, let me suggest that I have found disclosure brings light to most relationships. As a public official I would think this is not too great a price to pay to keep open channels of communication and information with tax-exempt organizations.

Please understand that I appreciate the problems of writing a fair and equitable tax law. In Illinois we just went through that; it's not an easy task. I am asking you to recognize the nation's need to make our federal system work. This is one reason I serve on the Advisory Commission on Intergovernmental Relations. The federal tax system should recognize and encourage the private sector's role in making government work at all levels. Foundations provide most of the seed money and project funds for many of the programs of this kind. Without foundation support, it is a safe bet that national organizations which provide the valuable cross-fertilization of ideas, research data and non-partisan analyses, advice and guidance about how to proceed could not sustain a program of either intensity or duration. We - all of us - benefit from these kinds of programs. Safeguards should exist to prevent possible abuses while encouraging maximum effort from the private sector.

The focus of my testimony has centered around the Citizens Conference and programs to improve our form of government. This, in large part, reflects my occupation, involvement and interests. I do not wish,

however, to leave the impression that my complete concern is for just these kinds of organizations. I also want to point out other tax-exempt organizations provide a valuable service in other fields. Organizations who are concerned about the natural environment, criminal justice, regional planning, family planning, public health and housing need the same kind of consideration. We need to encourage public efforts in many fields.

Our pluralistic society needs vigorous discussion of issues. Such a process ought to be protected, even encouraged.

I trust that you, in the process of your critical evaluation, will arrive at these same conclusions. Current provisions may require some change. My concern is that the many do not suffer as a consequence of the acts of the few.

I thank you, Mr. Chairman, for the opportunity to present this testimony.

V. EFFECT OF DISTRIBUTION REQUIREMENTS (INCLUDING PROBLEMS
RAISED BY DEFINITION OF QUALIFYING DISTRIBUTIONS)

Ben W. Heineman, Chairman, Chicago and Northwestern Railway
Co.,
Chicago, Illinois.

Julius Stratton, Chairman of the Board, The Ford Foundation,
New York, New York.

McGeorge Bundy, President, The Ford Foundation,
New York, New York.

Whitney Young, President, The National Urban League,
New York, New York.

Whitney North Seymour, Chairman, Council on Library Resources and
The International Legal Center
New York, New York

**V. EFFECT OF DISTRIBUTION REQUIREMENTS (INCLUDING PROBLEMS
RAISED BY DEFINITION OF QUALIFYING DISTRIBUTIONS)**

SUMMARY OF STATEMENT BY DR. JULIUS A. STRATTON

This statement is addressed specifically to two aspects of H. R. 13270 -- the definition of a "private foundation" and the concept of qualifying contributions.

"Private foundation" is a term newly introduced to the Internal Revenue Code by the proposed legislation, lumping together for the first time as "private foundations" all 501(c)(3) organizations except certain specified categories. Because of this new definition, many important and worthwhile nonprofit institutions which are not primarily grant-making organizations, which depend heavily on foundation support, and which have never before been thought of as foundations may now be considered so and subject to the new restrictions in the bill.

There are three far-reaching consequences of such redefinition:

1. Such organizations would be subject to the proposed taxes, thereby reducing the funds available for their educational, research, and scientific activities.
2. They would be subject to the many other regulations and program limitations in the bill, limitations which earlier witnesses have discussed.
3. They would have far greater difficulty in obtaining support from philanthropic foundations.

Their difficulty in obtaining such support stems from another newly introduced term in the bill: "qualifying distributions."

Although the broad requirement of paying out current income would not cause serious problems for most foundations, difficulties arise because of the uncertainties surrounding who would be eligible to receive foundation grants and how these grants should be disbursed and managed.

Three general recommendations are made:

1. A more precise definition of "private foundations" should be formulated -- a definition which would include only what have commonly and logically been regarded as philanthropic foundations.

2.

2. A simple test should be established -- based on a concept in the current Internal Revenue Code relating to operating foundations -- under which grants that flow promptly to charity would be qualifying distributions.
3. The penalty provisions in the bill should be reconsidered.

Without clarifying changes of the sort suggested, the traditional role foundations have played in our national development may be seriously impaired.

SUMMARY OF STATEMENT OF MR. WHITNEY NORTH SEYMOUR

Mr. Seymour's statement is directed primarily toward that portion of H.R. 13270 which deals with the definition of an operating foundation.

He describes the organization and work of the Council on Library Resources, an independent, non-profit organization established in 1956 for the sole purpose of aiding in the solution of library problems. Qualifications of staff and Board are cited, to underscore the professional quality of the Council's work. He says that the Council conforms in every sense with the spirit of the proposed legislation. It engages in no self-dealing activities, all of its income is spent in furthering the purpose for which it was formed, it has no endowment, it controls no businesses, it owns no stock. He says it can best be defined in the words of the House Report accompanying H.R. 13270 to describe operating foundations: "organizations which have developed an expertise in certain substantive areas and which provide for the independent granting of funds and direction in those specialized substantive areas."

However, he fears that the language of H.R. 13270 defining operating foundations, eligible to receive qualifying distributions from other foundations, might mean that the Council might possibly be forced to terminate its greatly-needed activities. Although the Council meets unreservedly the provision that all of its income be expended directly for the active conduct of the activities for which it was organized, it cannot devote more than half of its assets to this purpose since it has no "assets" as indicated by the examples in the House Report, and its support comes entirely from one source, the Ford Foundation. Thus, although philosophically the Council is an operating foundation, it might not be considered so under the definition which seems to be established by the legislation.

Mr. Seymour expresses his concern on similar grounds in regard to the International Legal Center, and describes the Center's purpose and organization. He points out that its accomplishments would not have been possible without the initial underwriting provided by the Ford Foundation, that a non-profit service-type organization cannot become viable from inception or even launched without such financial backing. The Center, like the Council, might be placed in jeopardy by ambiguities in the provisions of the bill now before the Committee. In this connection, he asks the Committee to clarify that portion of the definition of an operating foundation which refers to assets, and to the word "directly" as applied to the use of assets.

The Congress' concern that some activities of some foundations may not have conformed with the intent of the original legislation is appreciated. Mr. Seymour expresses the belief that it cannot be the Congress' intention to disrupt the efforts in the public interest of organizations like the Council and the Center. He urges the Committee to consider carefully and rewrite the provisions he has cited in such a way as to eliminate the evils which called them into being, and at the same time clarify them so that the effectiveness of honorable and essential institutions may not be destroyed.

STATEMENT OF DR. JULIUS A. STRATTON

Mr. Chairman and Members of the Committee:

In his opening statement Mr. J. Irwin Miller outlined very briefly the plan of our presentation relating to those sections of H. R. 13270 pertaining to private foundations. For this presentation it has been suggested that my own remarks be focused upon certain aspects of the proposed legislation -- particularly the implications of the broadened definition of "private foundations" and the consequences of the new concept of "qualifying distributions."

Before speaking to these specific points, however, I should like to say a more general and very personal word about foundations. I come before you with a deep concern for the future of philanthropy in our country and for the viability of many institutions whose very existence depends upon funds from private sources -- institutions whose ideas and ideals are basic to our American concept of a democratic society. My own perspective of the needs and benefits of philanthropy has developed over the years that I have spent in the field of education, as a former provost and president of the Massachusetts Institute of Technology, and as a trustee of various colleges and institutions cultivating the arts and the sciences. Then as a trustee of the Ford Foundation during the past

fourteen years and as chairman of its Board since 1966, I have learned something at firsthand of the hazards and complexities as well as the satisfactions of giving. Out of this total experience I have come to the profound conviction that charitable foundations have an obligation to society that goes beyond a merely passive response to pleas for help. They have an obligation to search out new ways and means of meeting pressing needs in our society and supporting responsible institutions and organizations which have the impetence to help in resolving them. Foundations serve the highest national purpose in advancing our tradition of many roads to progress. To this end they must enjoy the freedom to encourage thoughtful experiment and to stimulate constructive innovation.

In saying all this, I do not mean to equate freedom with license. Every witness here today, I am sure, acknowledges the need for clear guidelines and standards of action. We recognize as well that these must be reviewed and revised as the concept of foundations evolves. My particular concern, however, is that some of the rules and guidelines set forth in the bill before you are difficult to interpret, with implications which I can only believe were neither foreseen nor intended, and which if enacted in their present form would have a devastating effect upon the contributions of American philanthropy to the public good.

Consider first the proposed definition of a "private foundation." This is a

term newly introduced to the Internal Revenue Code by the proposed legislation. It is not found in the present Code, although tax specialists have used it, in a generic sense, to describe an organization to which contributions may be deducted only up to 20 percent of an individual's adjusted gross income (whereas contributions to certain other organizations may be deducted up to 30 percent).

Those familiar with the field of private philanthropy will recognize that a technical description of this sort is not intended to nor does it of course describe philanthropic foundations as we have come to know them over the past 50 years. Indeed it may be useful at this point to set forth briefly -- and in a wholly non-technical way -- what those of us who have worked in the foundation field for many years regard as the characteristics of a philanthropic foundation:

- . it is a nongovernmental organization
- . it is a nonprofit organization
- . it has a principal fund of its own
- . it is managed by an independent board of trustees
- . it is established essentially to make grants in support of educational, charitable, scientific, and civic organizations serving the public welfare

In a sense, the present Code comes closer to a useful description, for under it philanthropic foundations are classified as 501 (c)(3) organizations;

501 (c)(3) of course is that section of the Code that includes organizations that are operated exclusively for religious, charitable, scientific, literary, or educational purposes and for those purposes are tax exempt. It should be noted that except for the so-called "20 percent limitation," foundations have always been considered in the same category as all other philanthropies.

In contrast, under the proposed bill -- and here I do my best to summarize the pertinent provision -- a private foundation is defined as any 501(c)(3) organization other than (1) the so-called 30 percent organizations described in Section 170 (b)(1)(B) -- basically educational institutions, hospitals, government agencies, religious organizations, and publicly supported charities; and (2) those organizations which do not receive more than one-third of their support from their own investments and which do normally receive more than one third of their support from publicly-supported organizations or from individual contributions of less than \$5,000.

It should be noted that this proposed new definition of a private foundation does not set forth the positive characteristics of a foundation; instead it lumps together for the first time as "private foundations" all 501(c)(3) organizations except certain specified categories. Moreover, the proposed legislation establishes a legal presumption that in the event of any uncertainty as to whether a 501(c)(3) organization is or is not a private foundation, it is to be considered one.

Because of the way "private foundation" is defined in the bill, many important and worthwhile organizations which are not primarily grant-making foundations -- organizations which have never before been thought of as foundations -- may now be considered private foundations subject to the many new restrictions in the bill.

Under the proposed definition, such distinguished institutions as The Institute for Advanced Study at Princeton, the Brookings Institution, the Council on Library Resources, the Woodrow Wilson National Fellowship Foundation, and the Population Council -- all of which have made contributions of lasting significance to our society -- might be classified as "private foundations." Why? Because they are 501(c)(3) organizations which would not meet the explicit tests set forth in the bill for exclusion from that category -- tests to which I referred earlier. Yet they are, in fact, non-profit institutions of unquestioned merit which depend heavily on foundation support. The Institute for Advanced Study, for example, would become a private foundation under the bill because it does not have the specified characteristics of an educational institution and it receives more than a third of its support from endowment income. As another example of the uncertainties as well as the problems created by the definition, let me quote from a letter which the Ford Foundation recently received from the American Academy of Arts and Sciences:

"We are uncertain about the effect of the bill on the American Academy. According to our performance over the past five years, we qualify as a "30%" organization on the basis of the "mechanical test" of the percentage of "public" support--which is about 40% of our income for each of the years during this period. The nature

of our organization allows us also to qualify under the "facts and circumstances test" as a "30%" organization. At least our lawyers tell us that there is a high probability that we can be granted such an exemption. However, our sources of public support (most notably, subscriptions to our journal, DAEDALUS) are relatively fixed or increase slowly. But we have been growing rapidly in terms of the number of projects and the percentage of our budget supported by private foundations, and consequently next year it is possible that much less than one-third of our income will come from public sources. One large grant from a major foundation could make a significant difference in our ability to pass the mechanical test. Thus, we cannot rely on exemption by the mechanical test. " (emphasis supplied)

One may ask, what difference does it make that hundreds of organizations like these might be reclassified as "private foundations"? The difference is quite tangible, with at least three far-reaching consequences. First, such organizations would be subject to the proposed taxes, thereby reducing the funds available for their educational, research, and scientific activities. Second, they would be subject to the many other regulations and program limitations in the bill, limitations which earlier witnesses have discussed. Third, they would have far greater difficulty in obtaining support from philanthropic foundations.

The difficulty they would meet in obtaining such support stems from another newly-introduced term in the bill: "qualifying distributions." Perhaps it is worth a moment to review the way in which the problem arises. H. R. 13270 contains provisions requiring regular and prompt distributions of income to charity. This objective is highly desirable, and responsible foundations support it fully. Indeed, taken as a whole, foundations last year paid out approximately 7.5 percent of their asset value.

We know of no one among responsible foundations who objects to the requirement of prompt distribution of income to charitable purposes, and there is also widespread agreement that some percentage of asset value, measured over some time-span, is a fair additional safeguard where investment income is very low in relation to capital assets. Moreover, in many cases -- and the Ford Foundation is one -- the proposed 5 percent rate is entirely acceptable, because the foundations concerned are already distributing, as the Ford Foundation does, at a substantially higher rate. But your Committee should be aware that there are a number of public-spirited and effective foundations which would find it hard to meet a 5 percent requirement, especially when measured on a one-year basis, without a sudden change in investment policies whose long-run value for charity has been great. We do not believe that the 5 percent level has been adequately tested either by the Treasury or in the House against the real situation of such foundations, and we hope that the Committee will give careful attention to the arguments which it will receive from foundations which have a problem with the requirement as currently stated. It may well be that the main purpose of the requirement could be met more equitably by a slightly different rate, or by applying the rate to an asset value determined over a somewhat longer time-span.

In any event, it is clear that the broad requirement of paying out current income would not cause serious problems for most foundations. Rather, the problems arise because of the uncertainties surrounding who would be eligible to receive foundation grants and how these grants should

be disbursed and managed. For having established the requirement that certain amounts be distributed each year, the bill then provides that only certain types of distributions will be considered to "qualify" for purposes of meeting the requirement -- distributions in the main to "30 percent" organizations and to an imprecisely-defined new category called "operating foundation."

So far as we can tell from the pertinent provisions of the bill, it appears that grants to such organizations as the American Council of Learned Societies, Educational Facilities Laboratories, the International Legal Center, Resources for the Future, and the Social Science Research Council -- organizations whose records of performance and accomplishment are widely known and respected -- would fall outside the "qualifying distribution" category. This would have two harmful consequences:

First, grants to these organizations would not count in meeting the annual distribution requirements of a foundation.

Second, grants to such organizations would have to come out of a foundation's capital fund -- the base of the income it uses for charitable purposes.

In the face of such economic constraints, foundations would clearly be reluctant to grant funds to such organizations. To be sure, such grants would not be prohibited; but they would not be qualifying distributions, and because foundations would be penalized if their qualifying distribution fell below the required level, the effect of the bill would be to discriminate

against a newly created class of charities -- organizations in our view illogically classified as private foundations.

Many other examples could be given. Individual foundations have developed special areas of philanthropic concern well known to all of us -- like the Sloan Foundation's regular and substantial support of the Sloan-Kettering Institute of Cancer Research; the Rockefeller Foundation's assistance in the advancement of agriculture with the objective of increasing the world's food supply; the Carnegie Corporation's outstanding work in the field of education; the Guggenheim Foundation's encouragement of creative scholarship, research, and writing; the Markle Foundation's assistance in the development of medical education -- and this is but to name a few. For many years, foundations have been the main support, often the sole support, of productive activities of the kind I have cited.

The value in creating such philanthropic instruments for progress in human affairs is two-fold. Important work gets done through concentration on a single field, such as educational television, and secondly, the new entity provides an opportunity to develop a group of knowledgeable directors and specialists, completely independent of the donor foundation.

The "qualifying distribution" concept would also hamper philanthropic efforts to help communities, regions, and the nation as a whole meet new educational, cultural, and social needs. Experience has shown that it is often necessary to create new organizations and institutions to meet changing conditions and unforeseen challenges. On many occasions, it has

been necessary for a single foundation, having embarked upon a particular course of charitable or educational development, to support a research center, an educational agency, or a specialized national agency for a number of years before it can muster wider support. This course might be substantially foreclosed under the bill, because one of the requirements in the definition of an "operating foundation" is that it must be supported by at least five philanthropies, with not more than 25 percent from a single source.

Let us look for a moment at a particular example, the National Merit Scholarships. This program, one of the most successful endeavors of its kind, was established in 1955 largely with the support of the Ford Foundation. It was designed to identify unusually able young people, to interest them in higher education, and to help as many as possible to attend the college or university of their choice. Through 1968, National Merit Scholarships valued at over \$70 million have been awarded to 21,663 young men and women from every part of our country. Under the proposed legislation, the National Merit Scholarship organization would have been a "private foundation" at the time of its establishment because the bulk of its support came from one or two philanthropic foundations. Furthermore, in its early years this organization would not have qualified as an operating foundation. Today, National Merit has broader support and would qualify as a publicly-supported charity. But the point is that under the proposed legislation such an organization would probably not have come into existence in the first place. Surely this is not what the Congress intends.

Aside from their efficiency and effectiveness, new and capable institutions devoted to a well-defined purpose are also a means of assuring that control of innumerable operating organizations is not lodged in the larger foundations. That such foundations have voluntarily decentralized in this manner should be noted as evidence of their conscious and affirmative intention to avoid excessive centralization even in the absence of legislation. Permit me to dwell another moment on the question of responsibility, which seems to be a recurrent thread of concern in many provisions of the bill. I speak to the subject from a personal standpoint, having been privileged, as I noted earlier, to serve as a trustee of a major foundation. Experience has taught me that there is no better way to insure responsibility in fund management and to develop innovative approaches to complex and unsolved problems than to establish a group of capable, dedicated persons devoted to such activity. A good example is the Council on Legal Education for Professional Responsibility, an organization which has done so much to advance clinical law teaching. The Council has on its board such distinguished lawyers as Edward Levi, president of the University of Chicago, Whitney North Seymour, William T. Gossett, and Orison S. Marden. Chief Justice Warren Burger in a speech given in San Francisco several weeks ago, described the Council as --

"A concept devised by lawyers, implemented by lawyers, and financed by the private sector including lawyers and Bar Associations and great philanthropic institutions. This is the American Way of progress and it is better and more enduring than ad hoc improvements imposed by acts of Congress or mandates of courts."

In the same way, Resources for the Future, an organization supported almost entirely by the Ford Foundation, has operated under the management of a board of able men deeply interested in the problems of preserving our natural resources.

I cite these examples to stress the importance of writing legislation that will encourage -- not discourage -- the continued creation of new philanthropic organizations, with independent boards of their own, to meet new and changing situations in a dynamic society. One advantage of foundations is their flexibility and capacity to respond to challenges promptly and responsibly. Not in the spirit of criticism but as a result of my own participation over the years in various government activities, I am convinced that in many important ventures foundations are in a position to act constructively and well in advance of government. The scale of support is necessarily more limited, but the significance of foundation involvement is often substantial. And what is quite telling in this respect is that government itself at all levels -- federal, state, and local -- recognized and values this capability in foundations. In many instances, ideas for foundation action have in fact come from legislators and government officials, and indeed from time to time government draws on the experience and expertise that professional staff members in foundations have acquired in particular matters. These advantages could be lost if the philanthropic foundations -- confronted with the problem of qualifying distributions, a problem compounded by the definition of private foundations -- were to take on huge staffs of their own and attempt to operate directly over a broad spectrum of program areas.

The foregoing and the points on which other witnesses have stressed the need for clarification underscore the need for a continuing effort to match the specifics of a crucial legislative action to the underlying Congressional intent. I make this judgment in respectful understanding of the vast labor already expended by the Congress in the whole of the tax reform bill and of the enormous tasks still ahead of you. But in consequences for society, I earnestly believe these points deserve your close attention.

I may seem to have emphasized too much the problems which relate to the large foundations, but the questions which I have raised affect even the smallest of foundations. For instance, the decision of a small foundation to make a relatively substantial grant in support of a symphony or library in a particular community might, under the proposed language, ironically create problems for the recipient. For one thing, the beneficiary of a major grant from a single source might then be in danger of slipping into the category of a private foundation and thus be subject to the proposed tax; further the beneficiary might become ineligible for "qualifying distributions" from philanthropic foundations. I do not believe these are results the Congress intends.

As possible guidelines for your review of the several provisions in the bill to which I have referred, I would respectfully like to make three general recommendations.

First, I believe that a more precise definition of "private foundations" should be formulated. Without presuming to suggest the specific language of such a definition, I do state my belief that far too many organizations are included in the definition as it now stands. I believe that language can be found to describe the nature and activities of such organizations as the Council on Library Resources, the Brookings Institution, and the Woodrow Wilson National Fellowship Foundation -- language that will clearly distinguish them from grant-making foundations. In my view many of the difficulties in the present bill could be remedied by a more precise definition of "private foundations" -- a definition which would include only what have commonly and logically been regarded as philanthropic foundations.

Second, the objective of a prompt and regular flow of funds to charity might be more readily achieved -- and without unintended and harmful consequences -- by establishing a simple test based on a concept in the same section of the current Internal Revenue Code from which the definition of an "operating foundation" is derived. The basic principle of that provision is that grants to an organization which then promptly applies the funds to charitable purposes are "qualifying" contributions. Under such a provision, grants for endowment -- that is, capital sums which are then invested by the grantee in income-producing securities and thus not promptly expended -- would not constitute qualifying distributions (except for the "30 percent" organizations and publicly-supported charities); on the other hand, grants for operating funds would always qualify provided they were expended in some reasonable length of time for charitable purposes. Such a relatively simple test would, it seems to me, meet the justified concern of the Congress that there be a prompt and regular flow of foundation funds to charity.

Third, the penalties imposed on the trustees and officers of foundations in certain instances are extremely severe and seem to me to be out of proportion to the possible offenses. For example, a heavy tax is imposed on any "foundation manager" who violates the vaguely-defined prohibition against investments that "jeopardize the carrying out of any of . . . (a foundation's) exempt purposes." Harsh penalties are also imposed on "foundation managers" when foundations take actions which may subsequently be interpreted as contrary to other provisions in the bill. I am concerned that the uncertainties that hang over what might otherwise seem the most proper and legitimate actions -- combined with the severity of the potential penalties -- will make it difficult for foundations to find and to hold the caliber of directors and trustees so essential to their well-being and effectiveness. And, perhaps as importantly, I fear that the balance will be tipped against innovation and experiment. These institutions, with men of sound judgment and practical experience managing them, should be prized for their ability and willingness -- after careful study and the exercise of their best judgment -- to try new ideas. It is that invaluable asset -- not found widely in our society -- which seems to me to be threatened. Therefore, I strongly urge this Committee to reconsider the penalty provisions in the bill.

To sum up: Without some clarifying changes of the sort suggested, Congress may seriously impair the traditional role foundations have played in our national development. The restrictions are such that this nation might be deprived of resources which have yielded effective and sound approaches to pressing problems. The question has periodically been raised, why not

let these tax-exempt funds revert to the Treasury and let government carry out these vital activities? The answer is imbedded in a deep philosophical vision of the kind of society we wish to have. From the time of our founding as a nation, the American people have sustained their faith in the value of having other forces at work besides the government. Diversity and pluralism have been more than symbolic words; these concepts have always had deep meaning to us as a people. Moreover, there is little evidence that government is always ready to seize the initiative and to take substantial risks in uncharted areas not only in science and medicine, but also in the social sciences and education.

I firmly believe that the times ahead will test, more severely than any in our history, the strength of our democratic institutions. This is hardly the moment to restrict the capacity of the private sector of our society to meet greater and greater challenges.

STATEMENT OF MR. WHITNEY NORTH SEYMOUR

My name is Whitney North Seymour. I am a partner in the law firm of Simpson, Thacher & Bartlett, New York, a past president of the American Bar Association, and chairman of the Board of Directors of the Council on Library Resources. I also serve as chairman of the Board of the International Legal Center, an independent fund with a similar organization to that of the Council but, as is obvious, of different purpose. I am also a member of the Boards of other organizations concerned in the fields of legal education, research, and public service. We are grateful to the Committee for giving us the opportunity to present testimony directed toward that portion of H.R. 13270 which deals with the definition of an operating foundation.

The Council on Library Resources is a not-for-profit organization incorporated under the laws of the District of Columbia and qualifying as a tax-exempt institution under 501(c)(3) of the 1954 Internal Revenue Code. It is an entirely independent organization -- maintaining its own staff, program, and headquarters -- established in 1956 for the sole purpose of aiding in the solution of library problems, particularly those of research and academic libraries. An initial Ford Foundation grant of five million dollars was succeeded late in 1960 by one of eight million dollars for an additional seven-to-ten year period, and a third grant of five million dollars has recently been made for the three-year period ending June 30, 1971. These funds have been spent on a current basis and have not been available for an endowment.

For the most part the Council has carried forward its purpose through grants to institutions, supporting innovative programs which show promise of helping to solve some of the many problems that beset libraries, in a country and at a time when demands upon them increase in almost geometric progression. We live in a world where information is an essential commodity; our libraries must be prepared to play a vital role in collecting and disseminating that information in a manner that keeps pace with the rate at which it develops.

In the years of its existence the Council has made grants of over thirteen million dollars to support approximately 450 projects. Recipients have included professional organizations and learned societies, public and special-purpose libraries, institutions of higher education, as well as a limited number of individuals with special qualifications. Agencies of the Federal Government have also been assisted by Council funds, for it is often the case that the best method for dealing with a problem area consists in helping or encouraging some Federal agency to take a needed action or to develop a needed service. Members of this important Committee understand better than most the necessary delays in the establishment of programs which are imposed by the legislative and administrative processes. We of the private sector may move more quickly, particularly in experimental or developmental activities. Thus support from the Council on Library Resources has in many instances made possible pioneering efforts in Federal libraries, efforts which have had important and far-reaching positive effects on the entire library community.

For example, the Council's assistance has been a principal factor in the automation efforts at the Library of Congress and, by extension, the libraries of this and other countries. As you gentlemen well know, the operations of all libraries are to a varying degree dependent upon those of the Library of Congress.

Ever since the establishment of the program to furnish catalog cards to libraries in the early part of the century, standardization of procedures and processes in libraries has depended upon its leadership. A 1961 grant to the Library for a general study of automation has been followed by others at each successive stage of development, and the Library is now engaged, with Council help, in the important work of putting current and some retrospective bibliographic records into machine-readable form for the benefit and use of the entire library community. Similarly, a series of Council grants enabled the National Library of Medicine to develop MEDLARS, an outstanding example of automation applied to bibliographic and information retrieval tasks. The work of the National Archives and Records Service and of the National Bureau of Standards has also been furthered by the Council's help.

We have no wish to fill the record by describing at length the many other accomplishments achieved through Council grants. Perhaps a brief listing of some of the areas in which the Council has operated will provide an overview of its influence. Because of the Council's interest, important work has been accomplished in such fields as bibliographic apparatus and techniques, book selection and evaluation, development of permanent/durable paper, preservation and restoration of library materials, storage and retrieval of information, standardization of library techniques, interlibrary cooperation and coordination, administration and management ... these are only a sampling. The projects have been carried out by over two hundred institutions and individuals, ranging alphabetically from the American Academy of Sciences to Yale University, and including such recipients as the American Library Association, the Southwest Missouri Library Service, the New York Public Library, the New England Board of Higher Education, the American Association of Law Libraries. Annual reports

have been published for each year of the Council's existence, and we will be happy to furnish them to the Committee if it wishes.

One further point should be made here about the work of the Council, which goes well beyond the grant-making function. The counsel and advice given by the staff, in correspondence and in interviews, have been of inestimable value to library people beyond number. For much of the library community has developed the habit of turning to the Council on Library Resources for assistance in problem-solving even when no grants or projects are involved.

The staff which provides this counsel and advice is now and has always been a highly professional one, well qualified to evaluate, initiate, encourage, and monitor the innovative programs which have had such a beneficent influence. On the staff are men who have served as Deputy Librarian of Congress, Director of the National Agricultural Library, Director and Principal Librarian of the British Museum, Director of the study of the National Advisory Commission on Libraries. Dr. Fred C. Cole, who has been the Council's president since 1967 and a member of its Board of Directors since 1962, is a scholar of note and past president of Washington and Lee University. Other staff members are experts in computers, systems development, and microforms -- areas of prime importance in the constant evolution of libraries.

The Board of Directors is composed of distinguished professionals: librarians, scientists, educators. They provide a resource of incalculable value. Let me list them here:

Lyman H. Butterfield, Editor-in-Chief of the Adams Papers

Verner W. Clapp, former Deputy Librarian of Congress, past president of the Council

Dr. Fred C. Cole, president

James S. Coles, President of the Research Corporation
William S. Dix, Director of the Princeton University Library
President of the American Library Association
Frederick Hard, President Emeritus of Scripps College
Caryl P. Haskins, President of the Carnegie Institution
of Washington
John A. Humphry, Assistant Commissioner for Libraries,
New York State
Joseph C. Morris, physicist, Vice-President Emeritus of
Tulane University
Philip M. Morse, Professor of Physics, Massachusetts Institute
of Technology
Whitney North Seymour, Chairman
Robert Vosper, Director of the Library, University of
California at Los Angeles, and Professor
of Library Science
Frederick H. Wagman, Director of the University of Michigan
Library
Herman B. Wells, Chancellor of Indiana University
Louis B. Wright, Vice-Chairman, Director Emeritus of the
Folger Shakespeare Library

All, by profession and philosophy, are dedicated to the purpose for
which this Council was formed.

Should the Committee wish, we would be pleased to furnish
statements from the world's leading librarians, educators, and
information scientists testifying to the Council's dynamic role as
catalyst in the essential improvement of library services during the
last thirteen years.

But under H.R. 13270, now before your Committee, the Council on Library Resources might well be forced to terminate its greatly-needed activities. The Council conforms in every way with the spirit of the legislation. We engage in no self-dealing activities. All of our income is spent in furthering the purpose for which the Council was formed. We have no endowment; we control no businesses; we own no stocks. The Council can best be defined in the words used by the House Report accompanying H.R. 13270 to describe operating foundations: "organizations which have developed an expertise in certain substantive areas and which provide for the independent granting of funds and direction of research in those specialized substantive areas."

However, as the bill is now written, it is possible that the Council might not be considered an operating foundation. The legislation provides that an operating foundation, eligible to receive qualifying distributions from other private foundations, is an "organization substantially all of the income of which is expended directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated." This provision the Council meets unreservedly.

But the bill then prescribes two further tests of eligibility. Such an organization must either (1) devote more than half of its "assets" directly to such activities or to functionally related activities, or both, or (2) receive substantially all of its support from five or more exempt organizations, or from the general public, and not more than 25 per cent of the support may be from any one such exempt organization. In regard to the first alternative, the Council on Library Resources has limited assets, other than intangible ones. It has its grant, which is received quarterly and expended currently, and it has the usual furnishings, equipment, books, supplies required for its

daily operation. As concerns the second alternative, its support has come entirely from one source, the Ford Foundation. Thus, if the sections I have cited above were to be strictly interpreted, the Council might not be considered an operating foundation. The cost of its continued support by the Ford Foundation under these circumstances would be increased to a point where it might become infeasible.

I am also concerned on similar grounds with possible adverse effects on another organization of which I am also Chairman, the International Legal Center. The Center was established in late 1966, under a grant from the Ford Foundation, as a non-governmental, non-profit organization. Its headquarters are in New York City and its activities are worldwide.

The primary objective of the Center is to cooperate with the developing countries in their efforts to reform legal education, to improve the competence of the legal profession, and to strengthen legal institutions, within the general framework of each country's legal system and tradition as well as its contemporary needs. The Center seeks as well to increase in the United States and in other developed countries knowledge of and competence in dealing with the legal issues inherent in the process of development. In brief, the Center believes that the time has come for a vigorous and systematic re-appraisal of the role of law and lawyers in the process of development and in the building of modern nations.

For the most part the Center's staff abroad are engaged in the fields of legal education and legal research. A few examples of activities may be in order.

Chile is engaged in a nation-wide effort to make legal education, the legal profession, and the substance of the law more relevant to its development needs. The Center is collaborating in this effort with the active participation of Stanford University and other law schools in the United States. Under the program, a number of Chilean law teachers, law librarians, and deans are brought to the United States, and several American lawyers spend up to two years in Chile improving their own skills and comprehension of the problems of law and development.

In Africa, new law faculties and other institutions of legal education are now being established or strengthened with the assistance of American and European lawyers. During 1968, the Center sponsored 23 such lawyers in 11 African countries, supported in the United States and Europe a number of African law graduates who were preparing for teaching careers, provided financial assistance to make possible continent-wide African Law Reports, and sponsored a summer program offered by the African Law Center at Columbia University.

The Center has just negotiated a contract with the US/AID for the purpose of strengthening Korean legal institutions and encouraging the participation of the Korean legal profession in continuing legal education activities. We are pleased that the US/AID is turning to the Center, as the Department of State has done in the past, to carry out projects for which the Center has a special competence.

It is important to recognize that all this would not have been possible without the initial underwriting provided by the Ford Foundation. A non-profit, service-type organization cannot become viable from inception or even launched without such financial backing. During the first year of operation, the Center

was almost entirely financially dependent upon the Foundation. In the second year, this dependency was reduced to 95 per cent. The projection for the current year is that a further reduction to around 80 per cent financial dependency can be anticipated. In due course it is expected that the Center will no longer require underwriting.

It should be stressed that the Center is independent in character regardless of the origins of its financial support. This is a source of its strength in working overseas in such a sensitive field as law and development. The Center is governed by a Board of Trustees which includes, in addition to myself, the following individuals:

Aron Broches, General Counsel, International Bank for Reconstruction and Development

Sir George Coldstream, formerly Permanent Secretary to the Lord Chancellor and Clerk of the Crown in Chancery

Robert K. A. Gardiner, Executive Secretary, United Nations Economic Commission for Africa

Felipe Herrera, President, Inter-American Development Bank

John B. Howard, President, International Legal Center

Joseph E. Johnson, President, Carnegie Endowment for International Peace

Milton Katz, Director, International Legal Studies, Harvard University

Edward H. Levi, President, University of Chicago

Max F. Millikan, Director, Center of International Studies, Massachusetts Institute of Technology

Victor H. Palmieri, Lawyer and business consultant

Howard C. Petersen, Chairman of the Board, Fidelity Bank

Walter J. Schaefer, Justice, Illinois Supreme Court

Carl B. Spaeth, Chairman, Committee on International Studies, Stanford University

As in the case of the Council on Library Resources and other organizations to which reference has been made in these hearings, the future of the International Legal Center would be placed in jeopardy by a strict interpretation of the definition of an operating foundation as it appears in H.R. 13270. To qualify, the Center (and other similar organizations) must expend substantially all of its income directly for the activities constituting its exempt purposes (which it does) and either devote substantially more than one-half of its assets directly to such exempt purposes, or receive not more than 25 per cent of its support from any one organization.

At present, the Center receives more than 25 per cent from one organization. It is not likely that it could otherwise have come into existence. Therefore, to qualify as an operating foundation, it must meet the "assets test." The Center's assets consist solely of its working balances and its office equipment. If such assets can be considered as meeting the criterion that would qualify the Center and similar bodies as operating foundations, there would appear to be no difficulties except as might arise from the use of the word "directly". Such organizations should be able to carry out their exempt purposes, where that can be done best, through chosen instruments like universities. If such instruments would not be regarded as within the word "directly," some modification should be made so that such choice of instruments for carrying out exempt purposes would not prejudice the exemption. Either the proposed legislation should be clarified on these questions or there should be some statement on record providing the clarification as a matter of legislative history. At present, the ambiguity in the proposed bill is such that many worthy organizations could be put out of operation and others prevented from being started. I cannot believe that this is the intent of the drafters of this bill.

As a lawyer who has taken a particular interest in the improvement of the profession and the service it renders to the public, I cannot fail to mention here two other organizations which would find their activities in the public interest similarly jeopardized by the proposed legislation. Of one, the National Defender Project of the National Legal Aid and Defender Association, Chief Justice Warren E. Burger had this to say in a recent address:

"It has been good, very good to see the American Bar Association and other legal bodies support the National Defender Program because the positive consequence is that we will ultimately have adequate public defender services provided wherever they are needed One of the great things about the development of legal aid and defender programs and the post graduate seminars to train lawyers for these new tasks is that they are private and volunteer efforts of the Profession. The concept is one devised by lawyers, implemented by lawyers and financed by the private sector including lawyers and Bar Associations and great philanthropic institutions.

"This is the American Way of progress and it is better and more enduring than ad hoc improvements imposed by acts of Congress or mandates of courts."

At another point in this address, pointing up the need for further improvement in legal education, the Chief Justice emphasized that: "The recent development of law teaching through 'clinics' is one of the great new steps in legal education since Langdell's 'case method.' With Ford Foundation support, many law schools have begun to offer courses in various fields of law through the 'clinical method,' exposing students to the living problems of living clients as part of the learning process. Now Congress, in Title XI of the Higher Education Act of 1965, has authorized generous appropriations for similar programs in still other schools."

Since 1963 the Ford Foundation has made grants totalling \$6.1 million to the National Legal Aid and Defender Association. In 1968 the Foundation's Trustees made an appropriation of \$5.4 million over a five-year period for the establishment of the Council on Legal Education for Professional Responsibility, which is engaged in grant-making in support of clinical and internship law school programs. I have the privilege of serving on the Boards of both of these organizations.

We have not yet said, and will do so now, that we can understand the Congress' concern that some activities of some foundations may not have conformed with the intent of the original legislation. We heartily agree that such practices must be checked. We understand also that in drafting legislation some arbitrary standard or formula must be established and some very fine lines drawn. However, it appears to us that if these particular guidelines are not reconsidered and broadened, a great many organizations that have made contributions of value in almost every area of concern to this Congress and to this country may be in a very difficult position indeed. For of course the organizations I have mentioned are not the only ones with special expertise which might be affected by the legislation as written.

We cannot believe that in drafting these provisions the distinguished members of the Ways and Means Committee and the House of Representatives intended to disrupt the efforts in the public interest of the Council, the Center, and other similarly situated organizations. We earnestly urge that the members of this Committee consider carefully and rewrite the provisions in such a way as to eliminate the evils which called them into being, and at the same time clarify them so that the effectiveness of honorable and essential institutions may not be destroyed.

VI. RESTRICTIVE EFFECTS ON THE DEVELOPMENT OF PHILANTHROPY
AND OPERATION OF FOUNDATIONS (INCLUDING EFFECTS OF
"EXPENDITURE RESPONSIBILITY" AND HEAVY PENALTY ON TRUSTEES)

Dana S. Creel, President, Rockefeller Brothers Fund,
New York, New York.

Dr. James R. Killian, Jr., Chairman, Board of Trustees,
of Massachusetts Institute of
Technology,
Cambridge, Massachusetts.

Dr. Jonas Salk, Director, The Salk Institute for Biological
Studies,
San Diego, California.

John J. McCloy, Milbank, Tweed, Hadley, & McCloy,
New York, New York.

VI. RESTRICTIVE EFFECTS ON THE DEVELOPMENT OF PHILANTHROPY
AND OPERATION OF FOUNDATIONS (INCLUDING EFFECTS OF
"EXPENDITURE RESPONSIBILITY" AND HEAVY PENALTY ON TRUSTEES)

SUMMARY OF STATEMENT OF MR. DANA S. CREEL

1. The proposed sanctions in H.R. 13270 are excessive and:
 - (1) Include very substantial penalty taxes on foundations which would have the ultimate effect of diminishing funds available for distribution to legitimate philanthropic activities;
 - (2) Subject management, both staff and trustees, to very substantial personal liabilities, which would greatly reduce the ability of foundations to attract the best caliber of trustees and staff; and
 - (3) Create onerous and in some cases impossible requirements on foundation administration.
2. It is suggested that a substantially modified philosophy and system of sanctions be adopted having the ultimate end of promoting and strengthening philanthropic endeavor in our society.
3. An approach along these lines is as follows:
 - (1) Penalties should not be imposed on foundations but only on the wrongdoers, recognizing that a foundation is inanimate and can function only by acts of individuals.
 - (2) Penalties should be flexible, reasonable in nature, with maximum limit, and appropriately related to the acts (or failures to act) which are penalized.
 - (3) Proscribed acts (or failures to act) should be defined with sufficient clarity to enable the decision-makers to determine, without undue complexity and at the time of decision, whether any act (or failure to act) constitutes a transgression.
 - (4) A procedure should be established providing for notice of a proposed penalty, with opportunity for correction within a reasonable period before application of the penalty.

- (5) A reasonable statute of limitations should be made clearly applicable to penalties.

If an approach along these general lines can be substituted for the system of monetary penalties contained in H.R. 13270, I believe that the Congress will have come much closer to meeting its announced goal of developing sanctions which provide "a more rational relationship to improper acts". And in terms of the ability of private foundations to perform in the highest public interest, I believe that such a change is crucial.

SUMMARY OF STATEMENT OF DR. JAMES R. KILLIAN, JR.

1. Impact of the bill on the development of philanthropy and the importance of financial support of educational institutions by private foundations and of their contributions to society.
2. Expanding costs of education and the need for more private contributions.
3. Outline of principal provisions of the bill relating to private foundations.
 - a. 7-1/2 percent investment income tax.
 - b. Penalty taxes for engaging in certain transactions, failure to distribute income, excess business holdings, and improper investments and expenditures.
 - c. Application of private foundation rules to non-exempt trusts.
4. Penalty provisions indiscriminately applied and so severe as to threaten existence of private foundations.
5. Inequity of retroactive application of new rules to existing trusts and foundations.
6. Other provisions of the bill which will curtail charitable contributions.

SUMMARY OF STATEMENT OF MR. JOHN J. MC CLOY

Bill as now drawn embodies a series of provisions discriminatingly hostile to private foundations. These provisions are not supported by any reliable record of general misbehavior on the part of foundations which would justify them. The provisions in question can only be regarded as punitive and, as such, they ignore and would put to serious and unwarranted risk the continued flow of private foundations' grants to the educational, scientific, cultural and charitable well being of our society.

All such provisions which would discourage the creation and growth of private foundations should be eliminated from the Bill. While all measures reasonably designed to correct any abuses of the tax exempt privileges of the foundations should be retained with proper enforcement measures provided.

In accordance with the American tradition of encouragement of private charities, no tax or other discriminatory provisions should be imposed on the non-profit charitable American private foundations. Provision should be made, however, for the assessment of an appropriate annual fee to be levied against all foundations based on a percentage of their assets which would serve to provide the means for a suitable Government agency (presumably the IRS) to conduct comprehensive and sustained audits of the affairs of the private foundations based upon full disclosure and reports.

No discrimination should be contained in the Bill against private charitable foundations in the treatment of gifts to them of appreciated value property. The present Bill is grossly discriminatory in this respect.

A review of the definitions as given in the Bill is required. A number of institutions not generally considered to have been private foundations are under the definitions contained in this Bill to be treated as if they were, and as such would become subject to the discriminatory provisions directed against private foundations. Even with the elimination of these discriminatory provisions, the definitions require review.

Certain of the enforcement provisions include penalties which appear quite excessive, particularly considering the ill-defined nature of some of the alleged offenses.

If the Bill is to impose new limitations on the amount of property which might be held by a private foundation coming from a single donor, an opportunity should be provided for the divestiture of any excess amount in such a manner as to avoid loss of values or the imposition of tax penalties.

Careful and sustained audits of the affairs of foundations are long overdue both from the point of view of protecting the law-abiding and dealing with delinquents. Comprehensive audits would be helpful to all concerned, and would serve as the basis for sound legislation and regulation of foundations as experience of such audits dictated.

The emergence of the Government in a large way into the welfare and educational areas of the nation does not justify limiting the flow of private philanthropy through private foundations. With the challenges the Government faces, all the help which the private foundations with their flexibility and flow of funds can give, will be needed to meet those challenges.

STATEMENT OF MR. DANA S. CREEL

My role is to introduce the subject of the effect on philanthropy of certain of the penalties and administrative responsibilities imposed on foundations by H.R. 1200.

My purpose is not to review these provisions in any detail, but rather to discuss the overall effect of the prescribed penalties for their violation.

The announced objective of the Ways and Means Committee in enacting these penalties was to "provide a more rational relationship between sanctions and improper acts . . ." without necessarily resorting to the revocation of exemption, which is generally regarded as too extreme a penalty in the vast majority of situations.

I wholeheartedly subscribe to this stated objective of the Ways and Means Committee.

However, it would seem that the penalties and remedies proposed do not meet these stated objectives. They are excessive in many cases and tend to diminish the funds of foundations available for the support of legitimate philanthropy, instead of concentrating on preventing or

1. H. Rep. No. 91-413 (Part 1), p.21 (1969)

rectifying the transgression. (See Exhibit A, attached, for summary of proposed sanctions.)

I believe that the proposed system of penalties has many shortcomings. To be specific, the sanctions:

- (1) Include very substantial penalty taxes on foundations which would have the ultimate effect of diminishing funds available for distribution to legitimate philanthropic activities;
- (2) Subject management, both staff and trustees, to very substantial personal liabilities, which would greatly reduce the ability of foundations to attract the best caliber of trustees and staff; and
- (3) Create onerous and in some cases impossible requirements on foundation administration.

In conjunction with some of the questionable substantive provisions which others have discussed, these sanctions coupled with the lack of clarity as to what is prohibited and what is permitted will, in my judgment, drive foundations from the forefront of philanthropic endeavor, which is their logical arena, stultify management, foreshadow a diminishing role for foundations, with possible extinction an end result.

Let me illustrate by considering the effect of the proposed sanctions as they relate to the three headings I have mentioned before.

1. Substantial penalty taxes on foundations would have the ultimate effect of diminishing the funds available to legitimate philanthropic activities. There are six types of proposed sanctions on foundations, ranging from a tax of 5 per cent of the value of excess business holdings for each year held, up to an income tax on the termination of private foundation status equal to the entire net assets of the foundation. For the government to take away the assets of a foundation is not in the interest of philanthropy. It is the ultimate beneficiaries of the foundation funds that really suffer from this kind of punitive provision.

2. Subjecting foundation managers, both staff and trustees, to very substantial personal liabilities would greatly reduce the ability of foundations to attract the best caliber of staff and trustees and will inevitably render them cautious and unimaginative. The proposed sanctions on foundation managers range from 2 1/2 per cent of the amount involved in a self-dealing transaction for each year until corrected (with a maximum of \$10,000 per act) up to a tax of 200 per cent or more of the amount involved

if correction is not made within the 90-day notice period. Even more drastic, there is an overlap of "disqualified persons" and "foundation managers" in the penalty provisions on self-dealing which literally could be read to tax a foundation manager initially at 7 1/2 per cent and additionally at 250 per cent.

An even greater personal liability is contained in the sanctions involved in connection with taxable expenditures, where the foundation manager is subject to a 50 per cent penalty for each taxable expenditure. It is not unusual for a foundation to make grants of several hundred thousand dollars or more. For example, suppose that a foundation makes a grant of only \$100,000 which is determined on audit to be a taxable expenditure affecting the legislative process. This would mean a tax of \$50,000 on a foundation manager. This patently is an unrealistic penalty, particularly since it relates to the nebulous and uncertain definition of what is meant by "influencing legislation."

In this area, it is very easy to make a misjudgment. Consider for example, the question of what is non-partisan

analysis and research. If the grantee is conducting "non-partisan analysis and research", a grant would be permissible. If not, a grant would be a prohibited taxable expenditure. The trouble is that grants are matters of judgment which can be second-guessed upon audit in the light of hindsight and subsequent developments over which the foundation manager has no control.

Another example of the unreasonableness of the proposed penalty structure relates to the making of an investment which is later determined after audit to have been made in such manner as to jeopardize the carrying out of any of the foundation's exempt purposes. It is possible in such a case for the penalties to pyramid in the following way: The basic penalty of 100 per cent of the amount of the investment is to be imposed upon the foundation and presumably at the same time a 50 per cent tax would be imposed on any foundation manager who "participated" in the making of such an investment if he had knowledge that the investment jeopardized any of the foundation's exempt purposes. The foundation might also be subjected to another 100 per cent tax and the manager to another 50 per cent tax if the amount paid or incurred in making the investment is held to be a "taxable expenditure" on the ground that the investment did not fulfill a purpose specified in § 501(c)(3).

Moreover, if the foundation manager has previously

been liable for one of these taxes, a further penalty of 100 per cent might also be imposed upon him and 100 per cent penalty also could be imposed on the foundation under similar circumstances. As a final cap to the pyramid, if a foundation's investments giving rise to these penalties should be deemed "willful repeated acts", regardless of the amount invested, forced termination can be imposed and the assets of the foundation can be confiscated under the guise of a tax on termination of foundation status.

While it is quite true, with respect to a foundation manager, that the bill incorporates a subjective test of knowledge -- whether actual knowledge or constructive knowledge is required is not clear -- as a condition precedent to liability, this condition will provide little practical protection against penalties asserted with the benefit of hindsight. The circumstances under which any foundation portfolio is managed -- particularly in the light of the pressures which will result for higher yield investments caused by the required percentage distribution rules -- could produce hindsight judgments that a given investment did jeopardize the foundation's exempt purposes and, indeed, that the management had knowledge of this fact. Such a possibility is perilously real for those foundations which make investments in economically blighted communities as part of a laudable program of fostering free enterprise

where normal credit lines are not available. Other more conventional investments are not immune from the same destructive scrutiny. In a word, every dollar of a foundation's assets becomes a target for devastating second-guessing as to purposes. The inhibitive consequences of this provision are too clear for further comment. These obviously would be awesome obstacles to the recruitment of the highest quality staff and the service of distinguished individuals as trustees.

These liabilities apply not only to professional staff but to trustees and other persons, and it must be borne in mind that in any acts involving these penalties which also involve a breach of fiduciary responsibility, "foundation managers" would also be subject to an additional liability through surcharge under state equity jurisdiction.

3. The proposed sanctions would create onerous burdens of administration, in some cases impossible to achieve. Additional administrative work is required to comply with the requirements of full disclosure and reporting, and with this there should be no question since it is a thoroughly legitimate requirement for a tax-exempt organization.

However, there are two requirements that are unreasonably burdensome, if not actually impossible of achievement.

The first of these relates to penalty taxes on "self-dealing" between a foundation and a wide range of "disqualified persons", other than foundation managers. An initial penalty tax of 5 per cent of the amount involved in a self-dealing transaction would be imposed on any disqualified person who participated in that transaction, for each year until the transaction was corrected. An additional tax of 200 per cent of the amount involved would be imposed on such a person if correction was not made within the 90-day period after notice from the Internal Revenue Service.

Aside from a question as to the reasonableness of the penalty involved, the greatest difficulty of this provision is that the definition of a "disqualified person" is so broad that it includes persons who are so remote from the foundation that as a practical matter, there is no way of knowing whether they are involved in a proscribed relationship. (See Exhibit B, attached, showing "disqualified persons" as defined in Section 4946.) Further, the foundation managers are not in a position to know, ask - much less demand - revelation of information from such persons which would enable the foundation's manager to obtain the necessary information to insure conformity to these provisions. For example, how could a foundation manager realistically be required to determine the total amount of stock held in all of the corporations with which a foundation

may do business by all "disqualified persons", including all substantial contributors, their ancestors, collaterals, lineal descendants, spouses, and corporations, partnerships or trusts, in which they may hold a 35 per cent or greater interest?

In attacking this specific penalty we are in no way sanctioning self-dealing, but rather pointing out the impracticability of complying with the provision based upon such an extensive definition of "disqualified persons".

The second requirement which places on the management of a private foundation a task which is likely to be impossible to attain involves "expenditure responsibility". This includes "full responsibility" to see that any grant (except those to a publicly-supported or other 30 per cent charities) (1) "is spent solely for the purpose for which made", (2) to "obtain full and complete reports from the grantee on how the funds are spent and to verify the accuracy of such reports", and (3) to "make full and detailed reports with respect to such expenditures to the Secretary or his delegate".

Inevitably there will be cases where a grant, through no fault of the foundation, is spent in part, for purposes outside those for which the grant was made. Similarly, there may be cases where grantees, through no fault of the foundation, fail to report or where a given

report is inaccurate. It is unfair to impose upon a foundation and foundation management liability in such a situation beyond due diligence. Otherwise the provision would constitute an incentive for foundations to engage in direct operations in areas where they otherwise would have funded another organization. To enlist a broader citizenship participation in the leadership and execution of a project than that which can be provided by the grantor foundation, a degree of dependence inevitably has to be placed in the grantee organization. There would be no objection to the "expenditure responsibility" provision if it were modified to require due diligence rather than absolute responsibility.

Up to this point, I have been discussing the detrimental and serious consequences for philanthropy which would arise from the sanctions contained in H.R. 13270.

As a basis for my following comments, I suggest that any system of sanctions should have the following four principal objectives:

- (1) that foundation assets be properly invested to produce a reasonable income, which is in turn applied to legitimate philanthropic purposes;

- (2) that foundation assets not be used to the personal advantage of those intimately related to its creation and management;
- (3) that those responsible for any violation of these objectives be penalized and compelled to make good any loss caused by violation of their fiduciary responsibilities; and
- (4) that those responsible for any violation of proper limitations imposed by law be penalized.

The ultimate purpose, it seems to me, of any approach to a system of sanctions is that it strengthen and promote philanthropic endeavor in our society. This is the basis for a major objection to one segment of the proposed sanctions, namely, those penalties imposed against the foundations.

Penalties relating to a wrongdoing should be imposed on the wrongdoer, not the foundation involved, for this only hurts philanthropy at large by withdrawing funds. I think you will agree that this is not a desirable result.

The question, and it is not an easy one, is to devise a system of penalties, restraints and corrective

measures which will fit the transgressions and not, in the process, set up a rigid system which will have the undesirable derivative and in terrorem effects of those contained in H.R. 13270.

Assuming then that no sanctions should be applied against the assets of the foundation, attention should be turned exclusively to devising proper sanctions against the wrongdoer. It is here, I think, that the proposed sanctions exceed by far reasonable bounds and fail to take into account the fact that the vast majority of foundation managers, staff and trustees are conscientious and sincerely wish to abide by the law and what is expected of them as proper conduct. Just the stigma of being adjudged in violation is a very substantial deterrent and, I would venture, in more than 99 out of 100 cases would be ample reprimand.

I would suggest that a system of penalties be set up which would consist first of a notification of violation with a 90-day period for correction and that, if appropriate corrective steps are not taken within that time, then the application of the minimum tax escalating with continued failure to correct or upon any further similar violation up to a given maximum. I would suggest,

in this connection, that the maximum need not be a large figure because any repeating violator would, I am sure, be removed from office by his Board. There is always, of course, the ultimate sanction of revocation of exemption.

Such a system should have flexible sanctions within a maximum limit of \$5,000 to \$10,000. It must be recognized that the sanctions would not be a wholly adequate remedy for a violation of self-dealing, misapplication of funds or any act which would wrongfully dissipate the assets of a foundation. This would be a situation in which the additional remedy must lie, as I see it, in the courts of equity to enforce restitution for a loss to the foundation which, in these cases, would be a breach of fiduciary responsibility. Some have suggested an equity procedure in the Federal District Courts. I see a system of sanctions combining penalties supplemented by equity actions initiated by state attorneys general, prompted if needed by the Treasury.

In this connection, I note that H.R. 13270 proposes cooperation with state attorneys general and this would seem to be a very desirable development. There are those, as I am sure you are aware, who have urged more adequate state supervision, believing that ideally the flexible

remedies available through equity actions would be the most effective and desirable means of regulating foundations. Sole reliance on the states, however, is not a wholly satisfactory answer at this point, because of the failure of a number of states to undertake aggressive programs of enforcement. I, for one, believe that everything possible should be done to encourage the states to fulfill their responsibility in this respect because I believe firmly that this is not only theoretically but, practically the proper means for the most effective regulation of foundations. But until the day comes when full reliance may be placed in the various states for the exercise of this responsibility, I must reluctantly concede to the necessity of a system of Internal Revenue Service sanctions modified along the lines I have suggested, which basically are as follows:

- (1) Penalties should not be imposed on foundations but only on the wrongdoers, recognizing that a foundation is inanimate and can function only by acts of individuals.
- (2) Penalties should be flexible, reasonable in nature, with a maximum limit and appropriately related to the acts (or failures to act) which are penalized.

(3) Proscribed acts (or failures to act) should be defined with sufficient clarity to enable the decision-makers to determine, without undue complexity and at the time of decision, whether any act (or failure to act) constitutes a transgression.

(4) A procedure should be established providing for notice of a proposed penalty, with opportunity for correction within a reasonable period before application of the penalty.

(5) A reasonable statute of limitations should be made clearly applicable to penalties.

If an approach along these general lines can be substituted for the system of monetary penalties contained in H.R. 13270, I believe that the Congress will have come much closer to meeting its announced goal of developing sanctions which provide "a more rational relationship to improper acts." And in terms of the ability of private foundations to perform in the highest public interest, I believe that such a change is crucial.

Thank you.

PENALTIES IMPOSED BY PRIVATE FOUNDATION PROVISIONS
OF H. R. 13270

Acts or Failures Penalized	Penalties Imposed on Private Foundations (and certain trusts)	Penalties Imposed on Disqualified Persons	Penalties Imposed on Foundation Managers
----------------------------	---	---	--

Termination of Private Foundation Status (Section 507)

Lower of (1) aggregate tax benefits, resulting from tax exemption, to the foundation (income tax savings) and to all substantial contributors (income, gift and estate tax savings), plus interest thereon, or (2) the higher of (a) the value of the net assets of the foundation on the date action to terminate its exempt status was first taken, or (b) the value of the net assets on the date such status was terminated.

The tax may be abated if the foundation operates as a public charity for 60 months or distributes all its assets to public charities within 60 months.

Acts or Failures Penalized	Penalties Imposed on Private Foundations (and certain trusts)	Penalties Imposed on Disqualified Persons	Penalties Imposed on Foundation Managers
Liability for Chapter 42 Taxes (Section 508(e))	Forced termination and liability for tax under Section 507, above, for willful repeated acts or failures to act or a willful and flagrant act or failure to act.		
Self-Dealing (Section 4941)		<u>Initial tax</u> of 5% of the amount involved for each year until corrected, imposed on disqualified persons who participated in the act of self-dealing. Joint and several liability.	<u>Initial tax</u> (if a disqualified person is taxed) of 2 1/2% of the amount involved for each year until corrected, imposed on any manager who participated in the act of self-dealing knowing it to be such. Maximum of \$10,000 per act. Joint and several liability.
		<u>Additional tax</u> of 200% of the amount involved if not corrected within 90 days after notice is mailed. Joint and several liability.	<u>Additional tax</u> (if a disqualified person is taxed) of 50% of the amount involved, imposed on any manager who refused to agree to any part of the correction. Maximum of \$10,000 per act. Joint and several liability.

Acts or Failures Penalized	Penalties Imposed on Private Foundations (and certain trusts)	Penalties Imposed on Disqualified Persons	Penalties Imposed on Foundation Managers
Failure to Distribute Income (Section 4942)	<p><u>Initial tax</u> of 15% of undistributed income for each year such income remains undistributed.</p> <p><u>Additional tax</u>, if an initial tax is imposed, of 100% of undistributed income not distributed within 90 days after notice is mailed.</p>		
Excess Business Holdings (Section 4943)	<p><u>Initial tax</u> of 5% of the value of excess business holdings for each year during which such excess is held.</p> <p><u>Additional tax</u> of 200% of the value of excess business holdings not disposed of within 90 days after notice is mailed.</p>		

Acts or Failures Penalized	Penalties Imposed on Private Foundations (and certain trusts)	Penalties Imposed on Disqualified Persons	Penalties Imposed on Foundation Managers
Investments Which Jeopardize Charitable Purposes (Section 4944)	100% of the amount invested.		If the foundation is taxed, 50% of the amount invested, imposed on any manager who participates in the making of the investment knowing that it is jeopardizing exempt purposes. Joint and several liability.
Taxable Expenditures (Section 4945)	100% of the amount of each taxable expenditure.		50% of the amount of each taxable expenditure, imposed on any manager who agrees to the making of an expenditure knowing it is a taxable expenditure. Joint and several liability.
Repeated Liability for Chapter 42 Excise Taxes (Section 6684)	100% of the Chapter 42 tax if the foundation has, without reasonable cause, either (1) been liable for a Chapter 42 tax previously, or (2) the act or failure to act giving rise to liability for the Chapter 42 tax is "both willful and flagrant".	100% of the Chapter 42 tax if the disqualified person has, without reasonable cause, either (1) been liable for a Chapter 42 tax previously, or (2) the act or failure to act giving rise to liability for the Chapter 42 tax is "both willful and flagrant".	100% of the Chapter 42 tax if the manager has, without reasonable cause, either (1) been liable for a Chapter 42 tax previously, or (2) the act or failure to act giving rise to liability for the Chapter 42 tax is "both willful and flagrant".

PERSONS OR ENTITIES WHO
ARE "DISQUALIFIED PERSONS"
AS DEFINED IN SECTION 4946

- I. A private foundation will be subject to taxes under Section 4941 (self-dealing) if it engages in certain transactions with; under Section 4942 (failure to distribute income to qualifying distributees) if it distributes income to an organization controlled by; and under Section 4943 (excess business holdings) if it holds excess business interests, measured by the aggregate of its own holdings and those of the following:

SUBSTANTIAL CONTRIBUTORS, THEIR FAMILIES AND RELATED ENTITIES:

1. Any person who (by himself or with his spouse) has contributed more than \$5,000 to the foundation in any one calendar year, plus:
 - a. The family of such person (and the family of his spouse, if the spouse has been a contributor), consisting of his (or their):
 - Brothers (whole or half-blood) and their spouses

Sisters (whole or half-blood) and
 their spouses
 Spouse
 Ancestors
 Lineal descendants and their spouses

- b. A corporation in which such persons and their families own (including stock owned by others which is deemed constructively owned under Section 267(c)) more than 35% of the total voting power.
 - c. A partnership in which such persons and their families own more than 35% of the profits interest.
 - d. A trust or estate in which such persons and their families hold more than 35% of the beneficial interest.
2. Any person who (by himself or with his spouse) bequeathed more than \$5,000 to the foundation,
plus:
- a. The family of such person (and the family of his spouse, if the spouse has been a contributor), consisting of his (or their):
 - Brothers (whole or half-blood) and
 their spouses
 - Sisters (whole or half-blood) and
 their spouses
 - Spouse
 - Ancestors
 - Lineal descendants and their spouses
 - b. A corporation in which such persons and their families own (including stock owned

- by others which is deemed constructively owned under Section 267(c)) more than 35% of the total voting power.
- c. A partnership in which such persons and their families own more than 35% of the profits interest.
 - d. A trust or estate in which such persons and their families hold more than 35% of the beneficial interest.
3. Any person who contributed the greatest amount (regardless of the amount) to the foundation in any one calendar year, plus:
- a. The family of such person, consisting of his:
 - Brothers (whole or half-blood) and their spouses
 - Sisters (whole or half-blood) and their spouses
 - Spouse
 - Ancestors
 - Lineal descendants and their spouses
 - b. A corporation in which such persons and their families own (including stock owned by others which is deemed constructively owned under Section 267(c)) more than 35% of the total voting power.
 - c. A partnership in which such persons and their families own more than 35% of the

profits interest.

- d. A trust or estate in which such persons and their families hold more than 35% of the beneficial interest.

4. The creator of the foundation, if it is a trust, plus:

- a. The family of such creator, consisting of:

- Brothers (whole or half-blood) and their spouses
- Sisters (whole or half-blood) and their spouses
- Spouse
- Ancestors
- Lineal descendants and their spouses

- b. A corporation in which such persons and their families own (including stock owned by others which is deemed constructively owned under Section 267(c)) more than 35% of the total voting power.
- c. A partnership in which such persons and their families own more than 35% of the profits interest.
- d. A trust or estate in which such persons and their families hold more than 35% of the beneficial interest.

FOUNDATION MANAGERS, THEIR FAMILIES AND RELATED ENTITIES:

- 5. Any officer, director or trustee of the foundation

(including "an individual having powers or responsibilities similar to those of officers, directors, or trustees"), plus:

- a. The family of such officer, director, trustee or other individual, consisting of:

Brothers (whole or half-blood) and
their spouses
Sisters (whole or half-blood) and
their spouses
Spouse
Ancestors
Lineal descendants and their spouses

- b. A corporation in which such individuals and their families own (including stock owned by others which is deemed constructively owned under Section 267(c)) more than 35% of the total voting power.
- c. A partnership in which such individuals and their families own more than 35% of the profits interest.
- d. A trust or estate in which such individuals and their families hold more than 35% of the beneficial interest.

6. Any employee of a foundation having authority or responsibility with respect to an act or failure to act, plus:

- a. The family of such employee, consisting of:

Brothers (whole or half-blood) and
their spouses

Sisters (whole or half-blood) and
 their spouses
 Spouse
 Ancestors
 Lineal descendants and their spouses

- b. A corporation in which such employees and their families own (including stock owned by others which is deemed constructively owned under Section 267(c)) more than 35% of the total voting power.
- c. A partnership in which such employees and their families own more than 35% of the profits interest.
- d. A trust or estate in which such employees and their families hold more than 35% of the beneficial interest.

**INDIVIDUALS OWNING INTERESTS IN ENTITIES WHICH ARE
 "SUBSTANTIAL CONTRIBUTORS", THEIR FAMILIES AND RELATED
 ENTITIES:**

- 7. Any individual who owns (including stock owned by others which is deemed constructively owned under Section 267(c)) more than 20% of the total voting power of a corporation which is a "substantial contributor" to the foundation,
plus:
 - a. The family of such individual, consisting of:
 - Brothers (whole or half-blood) and
 their spouses

Sisters (whole or half-blood) and
 their spouses
 Spouse
 Ancestors
 Lineal descendants and their spouses

- b. A corporation in which such individuals and their families own (including stock owned by others which is deemed constructively owned under Section 267(c)) more than 35% of the total voting power.
 - c. A partnership in which such individuals and their families own more than 35% of the profits interest.
 - d. A trust or estate in which such individuals and their families hold more than 35% of the beneficial interest.
8. Any individual who is a general partner in a partnership which is a "substantial contributor" to the foundation, plus:
- a. The family of such individual, consisting of:
 - Brothers (whole or half-blood) and
 their spouses
 - Sisters (whole or half-blood) and
 their spouses
 - Spouse
 - Ancestors
 - Lineal descendants and their spouses
 - b. A corporation in which such individuals and their families own (including stock owned by others which is deemed constructively owned

- under Section 267(c)) more than 35% of the total voting power.
- c. A partnership in which such individuals and their families own more than 35% of the profits interest.
 - d. A trust or estate in which such individuals and their families hold more than 35% of the beneficial interest.
9. Any individual who holds more than 20% of the beneficial interest in a trust or unincorporated enterprise which is a "substantial contributor" to the foundation, plus:
- a. The family of such individual, consisting of:
 - Brothers (whole or half-blood) and their spouses
 - Sisters (whole or half-blood) and their spouses
 - Spouse
 - Ancestors
 - Lineal descendants and their spouses
 - b. A corporation in which such individuals and their families own (including stock owned by others which is deemed constructively owned under Section 267(c)) more than 35% of the total voting power.
 - c. A partnership in which such individuals and their families own more than 35% of the profits interest.

- d. A trust or estate in which such individuals and their families hold more than 35% of the beneficial interest.

II. For purposes of Section 4943 (tax on excess business holdings), a private foundation's excess business holdings are measured by the total holdings of itself and all the persons and entities listed above, plus the holdings of:

10. Any private foundation which is "effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question".
11. Any private foundation "all of the contributions to which were made (directly or indirectly) by the same person or persons described in * * * [paragraphs 1 to 9 inclusive, above], or members of their families [consisting of the persons listed in subparagraph a of each of paragraphs 1 to 9 inclusive, above], who made (directly or indirectly) substantially all of the contributions to the private foundation in question."

III. For purposes of Section 4941 (tax on self-dealing), a "government official" also is included.

STATEMENT OF DR. JAMES R. KILLIAN, JR.

Mr. Chairman and Members of the Committee:

My name is James R. Killian, Jr., Chairman of the Corporation of the Massachusetts Institute of Technology. It is a privilege to present this statement and to have the opportunity to express my grave concern about certain provisions of bill H. R. 13270 which affect foundations and other forms of private philanthropy. In discussing the restrictions on the development of philanthropy which would be imposed by this bill in its present form, I speak chiefly out of my experience as an officer of a private college where foundation grants and private philanthropy generally are decisively important to the institution. I hasten to add that I recognize the need for tax reform and the difficulty of accomplishing it. I also recognize the need for stopping the occasional misuse of tax-exempt foundations for purposes ulterior to true philanthropy. But these objectives must be reached with precision and care in ways that will not discourage -- and perhaps dry up -- philanthropic giving.

Educational institutions such as the one I represent derive a substantial portion of their contributions from organizations which meet the bill's

definition of "private foundations." Over the past four years, MIT has received an average of 36% of its private contributions from these foundations. These grants have been profoundly important in maintaining the quality of its education and in enhancing educational opportunity for both students and faculty. The private giving which would be discouraged by this bill has provided 80% of all of our academic buildings, as well as 100% of our endowment. In our forward planning, we have relied on the continuation of grants, gifts, and bequests in amounts greater than we have been receiving in the past few years. I, therefore, look with dismay at any curtailment of foundation or other private support now or in the future.

Clearly at a time when we are deeply concerned everywhere in the country about the funding of all higher education and about the financial future of our private institutions, we should be looking for ways to increase and not diminish the flow of private funds to education. We who are struggling day in and day out to balance budget and to find funds for student aid, student housing, faculty salaries, improved teaching, and new programs to deal with national needs, say to you with all the eloquence at our command that this is no time to compound the problems of our universities by making it harder for them to secure private grants and gifts in the years ahead.

In its present form, the provisions of the bill that would impair the functioning of foundations or result in the confiscation of their capital or discourage the formation of new foundations seem to me to be dangerous and short-sighted. The provisions of the present bill appear to be so severe that if passed in its present form, it will probably constitute the death knell of the foundations as we know them. Certainly, the incentive to form new foundations will be lost.

In contemplating the future financing of our private institutions, I am troubled by the reduction in available funds which will result from the proposed 7-1/2% tax on investment income, but even more troubled by the breach of the tax-exemption principle on income. Should this tax be established, it would be tempting to increase it. I would also be troubled by the precedent created by taxation of foundations as implying the possibility of taxation of our tax-exempt educational institutions.

Foundations make intangible contributions to our educational system along with their financial contributions. I readily acknowledge that foundations provide institutions such as my own not only with needed funds, but with the stimulus of criticism and of fresh and catalytic ideas, thus helping to maintain quality and achieve needed change. They make important contributions to the quality of our society by providing multiple centers

of initiative, by their ability to serve as path finders and to support experiment, and by their capacity to attract into the decision-making, planning and innovative process a wide spectrum of able men and women. I am profoundly troubled by any restrictions on foundations which would inhibit the initiative or innovative spirit we see in the strong ones. I am troubled about those provisions in the bill which could discourage able men and women from accepting posts of responsibility in foundations. Indeed these provisions could reduce the officers and trustees of our responsible foundations to a legion of intimidated men, their initiative, imagination, and boldness dampened by excessive restraint and surveillance and by confiscatory penalties for the innocent misreading of ambiguous provisions in the bill. This is one of the most serious possibilities affecting the future of philanthropy that one finds in this proposed legislation.

I have addressed my remarks within the context of this hearing to those provisions of the bill which relate to foundations. It is clear, however, that one needs to look at the impact of the bill on the future of all philanthropy, and as I indicate later in this statement, the preservation of the great American tradition of benevolence, of voluntary association, of diversity of support for our charities must be looked at in the round because the spirit of generosity is a seamless web, and damage to a part damages the whole.

Let me turn now from these comments to examine briefly some of the specific provisions of the bill which lead me to the general conclusions I have set forth.

The bill proposes the following new taxes on foundations:

1. A 7-1/2 percent tax on investment income, including capital gains. This tax is imposed whether or not all of the income of the foundation is distributed to active charities. Although the present proposed rate is 7-1/2 percent, experience shows that once a tax exemption is breached, almost inevitably progressively higher taxes are later imposed. At the very least, this tax cannot but reduce the giving to institutions by these foundations.
2. A tax on termination of private foundation status. This tax would be equal to the lesser of the net assets of the foundation or the aggregate tax benefits that have been enjoyed by the foundation and its substantial contributors since March 1, 1913, by reason of deductions or exemptions. I particularly deplore the provision for retroactive imposition of taxes that were legally saved under laws previously in effect.
3. A basic tax of 5 percent and a penalty tax of 200 percent if not corrected, on acts of self-dealing with foundations. This tax is automatically imposed on transactions with disqualified persons irrespective of the fairness of the terms of the transaction.
4. An initial tax of 15 percent and a penalty tax of 100 percent if not corrected, on the failure of the foundation to distribute all income. For this purpose, the bill would impose an obligation to distribute a fixed percentage of the fair market value of the assets irrespective of the actual yield.
5. An initial tax of 5 percent, and a penalty tax of 200 percent if not corrected, on the value of excess business holdings. As many private foundations have been funded by holdings in closely-held corporations, this provision will force liquidation of these holdings to the detriment of the foundations and the organizations to which they contribute.
6. A tax of 100 percent on speculative investments. Such investments are ambiguously defined as investments made in such manner as may jeopardize the carrying out of the charitable purpose.

7. A tax of 100 percent on certain expenditures which are deemed to be improper. This provision would in effect require the Commissioner of Internal Revenue to regulate the activities of foundations instead of performing his proper function of administering the tax laws.

In addition to the taxes outlined above, in each case other than the investment income tax and the termination of status tax, a tax up to 50 percent may also be imposed upon the foundation manager.

While approving the objectives of the bill to eliminate occasional abuses of private foundations for non-charitable purposes, I feel that these penalties are too harsh and are indiscriminately imposed against both the offenders and the innocent. Indeed the provisions of the bill are so severe that if it is passed in its present form, it may well mean the end of such foundation. Certainly, no new private foundations will be formed, despite the urgent need for additional foundation support for higher education. The only safe course for existing foundations is to refuse additional contributions, retain their present investments, and distribute more than their income until they disappear.

The penalty taxes are applied not only to new organizations created after passage of the bill, but also to existing foundations that were established in reliance on present and past laws which encouraged their formation and operation. The tendency throughout the bill to impose taxes and penalties ex post facto is, in my opinion, one of the most iniquitous features of the bill.

Of equal concern to me is the proposed application of the private foundation taxes to non-exempt trusts. The bill would impose the 7-1/2 percent investment income tax on trusts which have only charitable beneficiaries and would impose some of the same penalty taxes proposed with respect to private foundations on trusts where only a portion of the beneficial interests are held by a charity. Like many other provisions of the bill, these rules would be applied to trusts already in existence even though they were drawn (and in many cases cannot be changed) in reliance upon laws which afforded them freedom from such taxation and penalties.

As in the case of private foundations, the only apparent relief from these penalty taxes is a provision that the Secretary "may," not "shall," abate the unpaid portion of a tax if the trust distributes all of its net assets to specified types of charities.

Although this discussion is directed principally to the bill's provisions related to private foundations, the true effect of the bill on future philanthropy cannot be viewed or discussed in that context alone. Unfortunately, there are many other provisions in the bill which may have adverse effects on contributions to institutions of higher learning. Among these provisions are:

1. The 30 percent limitation on gifts of appreciated property, whereas other contributions are limited to 50 percent of the contribution base. Moreover, the 30 percent limitation apparently applies to the full value of appreciated property, rather than only to the amount of appreciation.

2. The treatment of appreciation of donated property as a tax preference and the allocation of deductions between tax preferred and taxable income. This combination cannot help but reduce the tax benefits of charitable contributions and in addition, it makes it impossible for a prospective donor to plan his giving because he cannot determine the tax effect of contributions in advance.

3. The income tax, estate tax and gift tax treatment of charitable remainder trusts, particularly as to the application of the new rules to existing trusts, many of which cannot be changed.

In closing, let me reiterate my position as being in no way opposed to appropriate and equitable tax revisions but as deeply concerned lest irreparable harm come to private institutions through oversight or inadvertence.

STATEMENT OF MR. JOHN J. McCLOY

I have sought an opportunity to talk about this Bill which is before you primarily because it affects so profoundly institutions and activities with which I have been associated over a large part of my life. The Bill in its scope and depth seems to me to be one of the most important pieces of proposed legislation which has been in the Congress in recent years, and certainly the most important one in the tax field within that period.

I refer to the entire Bill and not only to the foundation aspects of it, though it is on these aspects that I would wish to concentrate my remarks today.

I might mention that among the institutions affected by the Bill with which I have been associated are The Rockefeller Foundation, of which I was a trustee for a number of years; The Ford Foundation, of which I was Board Chairman for a substantial period; Amherst College, of which I was also Board Chairman for a long time, and, to name one commercial institution with which I was associated, The Chase Manhattan Bank, of which I was also Board Chairman. There have been other foundations and corporations with which I have been associated,

but I do not appear today on behalf of any of these institutions and I wish to express my views and thoughts on the basis of my general judgment and experience, free of any representation of a particular institution or client. For the sake of the record I perhaps should add that I am now practicing law in New York City.

There can be no question of the profound scope and impact of this Bill. I suppose the number of people and institutions which have sought to testify on the Bill, and the urgency with which they address themselves to it, is a convincing indication of the detrimental effect they believe the Bill in its present form could have on American cultural, scientific, social and educational life.

Before dealing with some of what I consider to be very serious defects in the Bill, I would like to make a few observations as to the atmosphere and timing under which the Bill was prepared because I think it explains in part the admixture of some very good and some bad features which I believe appear in it. As an outside observer, I gain the impression that the Bill was prepared under heavy pressure shortly following the election and the advent of a new administration. The amount of work done on the Bill is most impressive, but it still gives signs of need for further thought. I have wondered whether the urgency for

the extension of the surtax and its joinder with the regular tax bill may not have induced undue speed in the consideration of tax reform measures. During the consideration of the Bill, disclosures of abusive use of foundation funds appeared, instances of complete or substantial Federal tax avoidance by individuals and corporations were given wide publicity and any form of tax exemption became extremely unpopular. These conditions, I am inclined to believe, account in part for the presence of a series of provisions relating particularly to foundations which run through the Bill and which seem to carry a persistently punitive note in their nature and import.

I think it is also fair to say that these factors, together with the somewhat unusual procedures adopted by those managing the House version of this Bill due to the time element, have led to an abrupt and too far-reaching reversal of a rather consistent Congressional and governmental principle or policy of encouraging the creation of charitable foundations through constructive tax incentives.

The traditional tax incentive in this country to encourage the creation of foundations and the stimulation of charitable grants has been a major influence in the striking progress of American private philanthropy. The American people carried over from their pioneer period a very strong instinct for private philanthropy. De Tocqueville

writing to a friend in France in the 1830's referred to this tendency which so strongly contrasted with the habits of European society. This was long before there was an income tax, but the income tax provisions which favored the creation of charitable foundations simply continued and nurtured an already highly developed American instinct of private philanthropy.

I will not attempt to detail the benefits to American society which foundations have induced. They have been eloquently, if briefly, outlined by earlier witnesses. I believe that no comprehensive or objective study of the impact of foundation grants on our life has yet been made. I submit that those who contend that foundations have not been beneficial to this country should have the burden of proof and that no case has yet been made to justify the atmosphere of hostility to foundations which appears in the present Bill. I am aware that there is a sort of grand skepticism abroad in the land challenging our Government, our existing institutions and, indeed, many of our modes of life. But this, if we are to remain rational, does not mean that we should first destroy everything we have built up and start with a clean slate. It does mean we should seek the facts of our needs, analyze them and adopt the procedures necessary to deal with them.

This Bill, as I read it, clearly embodies a condemnation of foundations. It singles them out from all other charitable organizations and imposes a tax on their investment income alone. I feel, as I gather does also Irwin Miller, that there is an inherent inconsistency in imposing a tax -- any tax -- on a non-profit organization such as a foundation if it serves a charitable or publicly beneficial purpose. If foundations are good, they should be stimulated -- if they are evil, they should be extinguished. There is no logic in one-half or a 7-1/2% killing of them and, quite frankly, I do not believe this administration or its predecessors have known, or now know, enough to assert with any confidence that the effect of foundations on our society has been bad or to what extent they have been partially bad or partially good. There is a very large field to explore before any such judgment can be reliably made. Some abuses have been disclosed, but the wide affirmative sweep of their benefactors ^{has} ~~have~~ not been appraised. The foundations have certainly made significant contributions to our society and they have had the support of tax exemptions over a substantial period of our national life. Accordingly, I would start out by eliminating from the Bill this punitive or hostile philosophy which pervades the foundation provisions. I would strongly urge the Congress to impose no discriminatory

VI - 29

tax on the income or assets of the private foundations as such at least until a solid case against them can really be made. No reliable record has been made which would justify the hostile attitude taken toward foundations which the proposed tax and a number of other provisions in the Bill embody. Singling out the private foundations from all other charities can only be read as a partial punishment for wrongdoing or suspicion of wrongdoing. The plain fact is that the administration and review of foundation affairs on the part of the Government has, until quite recently, been most inadequate and rudimentary. I imagine that this laxity has been in part based on the assumption and sincere belief on the part of Treasury officials that foundations have been generally beneficial to the country and that such abuses as have occurred in connection with their administration have been limited to a relatively few of them. Indeed, I believe representatives of the Treasury have from time to time expressed such views.

The time has come, however, if only by reason of the exposure of abuses and the general skepticism of the times to provide the means for a comprehensive, objective and sustained review of the affairs of the foundations based on regular audits by the appropriate agency of the Government. I believe it can best be done by the IRS, suitably equipped and staffed for the purpose. We should know much more than

we now do about the manner in which these foundation funds are distributed and spent, about the results achieved and the effect the withdrawal or diminution of these funds from our educational, scientific and charitable beneficiaries would have before we declare, as this Bill purports to do, that the growth and creation of private foundations should be actively discouraged.

This does not mean that we should have to await an audit or survey before we take any action. There are already on the books a number of provisions against abuses or practices inconsistent with the principle of tax exemptions. These, on the basis of such knowledge as we now possess, can and should appropriately be augmented by additional provisions in the present Bill and additional measures for enforcement of the purposes for which the foundations were created and their tax exemption granted. What it does mean is that at least until such audits and reviews have been made and studied no death knell to law abiding foundations should be sounded in the shape of a tax and other discriminatory measures. Until the Congress and the people of the country can intelligently appraise the validity of private foundations and their place in our society, any such hostile forms are out of order. I have had a good bit of experience in the observance of the operations of a number of foundations, large and small. I have seen mistakes made and frustrations of

objectives occur, but I am convinced foundations have played, and continue to play, a most constructive and valuable part in the texture of our society. Indeed, I would say a most important part. My view may be subject to discount because of my former association with foundations, but I firmly believe from what facts are readily observable and from the attitude the Congress has previously taken toward them that the presumptions, at least, are strongly in their favor.

The course to follow, in my judgment, is to continue with the incentive for the creation of foundations on the basis of this presumption and our experience but to provide promptly all the facilities and means necessary to conduct sustained audits and supervision of the foundations by the appropriate Government agency. This should involve an annual fee to be charged the foundations, large enough to provide adequate audits and surveys based on full disclosures. It is important that this should take the form of an auditing fee and not a tax. It should not be a tax to provide general revenue.

We have something of an analogy to follow in the form of the fees charged the banks for the Federal Reserve Audit. The banks of the Federal system are charged an annual sum, depending on the size of the bank, which finances the auditing of the banks by the Federal Reserve. The system over the years has worked out very well. Moreover, these

audits have resulted from time to time in the introduction of a number of statutory and administration reforms in connection with the operation of the banks. They have stimulated legislators and the banks to pass sensible laws and adopt healthy banking practices. I understand the Internal Revenue Service and the Treasury abhor the establishment of any fund which does not constitute general Government revenue, but this is a bureaucratic objection which ought not stand in the way of the adoption of a sound principle. The size of the fee can and should be tailored to fit the need.

This is my principal and strongly held recommendation for the modification of this Bill as it affects foundations. It goes to the heart of the matter, as I realize, but I am convinced it embodies the sound approach for the Government to adopt with respect to foundations. The need for such an audit and survey is great. It is needed to protect the well conducted foundation and deal with the delinquents. Even if the abuses are few and far between, such an audit represents an imperative need and it is proper that the expenses of it should be defrayed by the foundations themselves. Such an examination of foundation affairs by a Government agency, (and I believe the IRS is the best agency to make it), is, I repeat, long overdue. The foundations would not be handicapped by it and the recipients of their grants would not be penalized as they would be by a tax on the foundation

which if it followed the way of all taxes would be subject to increase and thus result in the diminishing of foundation benefits as they reach the beneficiaries. Indeed, I am convinced that the administration of foundations would be greatly improved by such action. It would encourage them to make their own audits and check their own procedures. Abuses could be identified and expeditiously corrected and efficiencies would be accomplished. Both the foundations and the public would know where the country stood in respect of their operations, suspicions, rumors, prejudices and emotions in respect of foundations would be cleared up and the unappraised risks of impairing a significant flow of funds in American private philanthropy would be avoided.

There are many good features in the Bill such as those which provide for fuller reporting, elimination of self-dealing, undue accumulation of funds, better enforcement procedure by the Treasury, better cooperation with the State authorities to encourage the States to do their own policing, etc. These, together with the means to provide for good staffing and good auditing by the auditing Agency, could constitute this Bill the most positive and constructive piece of legislation affecting foundations that has yet appeared.

I have some further suggestions which would do

little more than correct certain other features in the Bill that reflect this hostile philosophy toward foundations to which I have referred.

Prominent among such features is the provision which deliberately discriminates against private foundations in its treatment of gifts to them of property with appreciated value. I am referring to Section 170E of the Bill which would deny the donor the right of deduction for the full appreciated value of the property donated to a private foundation. His deduction under the Bill would either be limited to cost or he would have to pay a tax on the gain. If the donor gave it to any other charitable organization, not a private foundation as defined, he would be able to deduct the appreciated value. Is the Government prepared to contend on the basis of present evidence that a gift to a well run foundation is less beneficial than if it were given to a college, university, a church or any other charitable organization? This provision is clearly in the category of those designed to discourage the growth of existing foundations or the creation of new ones. Again it assumes that foundations are evil without proof. I see every reason to encourage those who have achieved wealth through their ownership of stock in growth companies to make gifts of such stock to foundations. Many prospective donors in this category

are in areas of the country where foundations are rare but where the need for programs of sophisticated giving are very large. The combination of the proposed tax, the discrimination in respect to appreciated grants, the provisions regarding the qualifications for crediting grants against required distribution and the provisions demanding distribution of capital assets really all add up to a savage blow aimed unerringly at the continued vigor of American charitable foundations and these steps are proposed, I submit, without the benefit of any adequate record to support them.

In addition to the above features, there are some really draconian penalties on "foundation managers" (which would include trustees and the staffs of the foundations) for failure to observe the provisions of the Bill, some of which are not too clearly defined. I fear that in their present form these penalties can only discourage responsible participation in foundation management. In my judgment, these penalties should be reviewed and some suggestions as to their improvement have already been made. I recognize the need for improved enforcement measures in regard to foundations. Some other penalties and means of enforcement in addition to the withdrawal of the tax exemption are needed.

I have been very much interested in the attempts made by the drafters of the Bill to compel a just distribution

of a foundation's assets. I observe that a distribution of 5% of the asset value of the foundation may be demanded in any one year. I can see how it would frustrate the charitable purposes of the tax exemption if all the property held by the foundation was in non-income or very low income producing property. If an arbitrary percentage or figure were chosen as the amount to be distributed in any one year, this, on the other hand, might force a slow but sure liquidation of the foundation. This would be more apt to be the case if some of the other provisions prejudicial to the growth of foundations to which I have referred were retained in the Bill.

What the foundation should distribute, and how rapidly, consistent with the purposes of the foundation, are properly matters for the trustees of the foundation to determine and I believe that trustees generally are sensitive to their responsibilities in this respect. Some may be more so in the fact of comprehensive audits.

I was for a time on The Rockefeller Foundation Board of Trustees when Mr. Rockefeller, Jr. attended the meetings. I recall that at one time on his initiative the Board gave consideration to the wisdom of a mandatory program of liquidation for the Foundation. It turned out that the initial grants to the Foundations which totaled some \$500,000,000 substantially increased due to the increased

value of oil stocks held by the Foundation. It was not so very long after the Foundation had been set up that it had expended 500 million dollars in grants and it still had 500 million dollars in assets left to distribute. The Board weighed the pros and cons taking into account the needs of the times and the interests of potential donees and they arrived at the conclusion that the Foundation ought not adopt a mandatory rule for its liquidation over any period of years. As I recall it, all the trustees accepted the principle that capital could be invaded and should be in the face of any pressing need. If the demand arose, it should be met even if it exhausted most or all of the assets of the foundation in one grant.

In the Ford Foundation during the period of my Chairmanship, in most years we spent much more than our income and the Board always felt that any real need which was presented to it should be met irrespective of the invasion of capital. Indeed, we adopted a regular program for doing so. I am told that foundations in the United States as a whole paid out last year over 7% of their asset value and this, of course, without any legal requirement that they do so. I have been associated with some foundations and I know of a number of others which have liquidated all their assets. I would imagine that a substantial percentage do so each year. I am entirely convinced that The Rockefeller

Foundation has justified its continued existence. It has done some very imaginative and constructive things since the question of its possible termination first came up, a number of which were probably never in the contemplation of the original donors. I certainly can identify no deleterious effects on the country flowing from the continued existence of The Rockefeller Foundation long after the death of the original donors. I would at least postpone the inclusion of any provision which would lead to an enforced liquidation of a foundation until after we saw what the audits and the practices under the new law disclosed as to the growth of foundation assets. If they got out of line with the general growth of the country and its philanthropic needs, it would be time enough to move. I see no need for a self-liquidating provision now. I cannot object to a reasonable minimum of required distributions as I do not believe it is consistent with the principle of tax exemption for charitable purposes that non-income producing property be held interminably, or, indeed, for any substantial period of time without applying it to charitable purposes. I am told and believe the arbitrary requirement of 5% is too high certainly with the existing provisions relating to non-qualifying grants. If, as is now the case, income must be distributed within

a reasonable period, I would leave it to the Secretary of the Treasury to determine the minimum figure to be distributed taking into account the reasonable return on capital to be expected, but without introducing any note of enforced liquidation.

I cannot see the advantage of limiting the amount of grants that any one foundation as defined under the Bill could receive from any single source. Nor can I follow the definitions which would identify worthy organizations as private foundations (which do not seem to have the normal attributes of private foundations) thus subjecting them to the severities of the provisions against private foundations (including the tax) contained in the Bill. There is something radically wrong with this part of the Bill. Mr. Stratton has treated this subject in his testimony, as have some others. If some imaginative and constructive project involving a foundation, as defined in this Bill, needs support, why preclude a private foundation from furnishing it all the support it requires? Why disqualify a grant to such an organization in determining the required distribution quotas of the granting foundation? I could name a number of highly meritorious institutions and projects which these provisions would inhibit. Mr. Stratton has only named some of them. I will not go further into this subject

as it already has been dealt with by Mr. Stratton, but I do believe as the Bill now stands unwarranted and unwise prohibitions or impediments to some highly desirable foundation grants are created.

Nor do I see any particular vice in the gift by an owner of a business of stock in that business to a foundation devoted to charitable purposes even though this may constitute the sole asset of the foundation. The vice occurs in any self-dealing or manipulation which results in a frustration of the fundamental charitable purpose of such a tax exempt foundation. Some of the abuses of the charitable purpose seem to center in this type of foundation. I sense that the drafters of the Bill have felt that some restriction on the amount of equity stock held by a foundation might be a desirable way of checking these abuses. If Congress wishes now to place a limitation on the amount of equity stock to be held by a foundation in any one company, this may be a reasonable exercise of its authority but I submit it would be unfair to well intentioned donors and their potential beneficiaries to compel the divestiture of such equity stock in excess of the limitation in such a way as to cause a substantial reduction of the values involved. If, let us say, in good faith the donor in the past had made a grant of equity stock in a closely held corporation which was legal at the time to a private

foundation and he now finds that the foundation must divest itself of a certain portion of the stock to comply with the new law, some equitable device or mechanism for the sale or redemption of that stock under fair conditions and without tax penalties should be provided. There would be no problem for the corporation or the donor or the foundation if the stock consisted of readily marketable securities. It may be difficult to find the right mechanism and it would seem that in some cases the only way to insure an adequate price would be by way of redemption on the part of the corporation of the stock whatever the mechanism. Yet redemption may carry with it a threat of a high dividend tax to the donor or his estate or the corporation. The principle should be recognized that neither the foundation nor its potential grantees of the foundation nor the donors' legitimate interest should be prejudiced by the forced disposal of closely held stock due to newly imposed restrictions on the amount of stock (or other property) which may be held by a foundation.

I mention this situation because I believe the practice of an owner of a closely held business which he has built up of giving it by will or otherwise to a private foundation has been a rather prevalent one throughout this country. The practice is praiseworthy and should be encouraged rather than discouraged, but it will certainly be

discouraged if the owner finds that the new restrictions on the amount of the foundation's holdings would compel divestiture by the foundation in such a way as to interfere with the realization by the foundation of the fair value of the excess stock or to expose the donor, his estate, or the corporation to high tax penalties.

There are a number of other provisions in the Bill capable of clarification and improvement, most of which I believe have been referred to by earlier witnesses, but I wish to stress again my main point which is that the hostile and discriminatory measures poised against private foundations in this Bill should be entirely eliminated, leaving in only those that are well designed to deal with abuses of the tax exempt discretion, and that the means of instituting comprehensive and objective audits of the affairs of private foundations, with the cost defrayed by the foundations themselves, should be promptly instituted. I believe it to be unwise and imprudent on the part of Congress to incorporate in any tax reform bill provisions which would put to risk the steady flow of bequests for educational, scientific, cultural, medical and social purposes which the assets and operations of private foundations have thus far continuously and on the whole effectively and constructively afforded this country.

I find it quite paradoxical to observe at long last

the adoption in Europe of the concept of American charitable foundations at just the time that this Bill containing provisions designed deliberately to discourage the creation and growth of American private foundations, appears in the Congress of the United States. The growth of such foundations in Germany and Italy particularly has to me been a very encouraging step in their advances in the field of private philanthropy. Incidentally, I believe that cooperation between the European and American private foundations could embody some most advantageous results in social, educational and scientific areas.

If it be urged that the need for private foundations in American life has now passed because the Government itself is becoming so heavily represented in the education and welfare field, I can only answer that, in my judgment, with the challenges this country faces the Government is going to need all the supplemental private help it can get and that without the flexibility and continued vigor of American private philanthropy of which the American private foundation has been such an important and outstanding factor since the turn of the century, those challenges are not apt to be met.

STATEMENT BY JOHN W. MACY, JR.
PRESIDENT
CORPORATION FOR PUBLIC BROADCASTING
BEFORE THE
SENATE COMMITTEE ON FINANCE
SEPTEMBER 9, 1969

SUMMARY

The public broadcasting system at both the national and local levels will be adversely affected by a tax on taxable expenditures as provided in the proposed Section 4945.

The adverse affect is believed not to be intended but will occur unless Section 4945 is clarified. A simple clarifying addition to Section 4945 is proposed to resolve this problem.

Also, as discussed by Mr. William Harley, President of the National Association of Educational Broadcasters, in his statement submitted for the record, problems of interpretation are presented by the definition of private foundations in proposed Section 509, and by certain other provisions of the bill.

As Mr. Harley's statement particularly makes clear, the Federal Government over an extended period of years has acted to encourage, develop, and finance public broadcasting in the public interest. In the absence of clarification the effect of H.R. 13270 will be to weaken the system Congress has been trying to establish and strengthen.

Private foundations both large and small have been a major source of financing for national organizations and local stations making up the public broadcasting system.

Without this foundation support the Federal Government would be required to increase its appropriations if public broadcasting is to be provided as stipulated in the Public Broadcasting Act of 1967.

Public broadcasting stations operate in accordance with law and FCC regulations and are specifically prohibited from editorializing or supporting or opposing candidates for elective office. Furthermore, they are bound by the

fairness and equal-time doctrines. Thus public stations are already required by the nature of their licences and existing regulations to avoid the abuses against which the tax reform bill is directed.

The following language is proposed as amendment to section 4945 to clarify the intent of the legislation:

(g) PUBLIC BROADCASTING -

Subsections (b)(1) and (b)(2) shall not apply to amounts paid or incurred for the production or distribution of public affairs programs which are broadcast over noncommercial educational broadcast stations as defined in Section 397 (7) of the Communications Act of 1934, as amended (81 Stat. 368; 47 U.S.C. 397 (7).)

STATEMENT BY JOHN W. MACY, JR.
PRESIDENT
CORPORATION FOR PUBLIC BROADCASTING
BEFORE THE
SENATE COMMITTEE ON FINANCE
SEPTEMBER 9, 1969

Mr. Chairman and Members of the Committee:

My purpose for appearing before you today --- not only on behalf of the CPB but also on behalf of all segments of the noncommercial, educational broadcasting community --- is to discuss the debilitating impact of certain sections of H.R. 13270 on public broadcasting.

These sections as currently written pose a serious threat to a key role of public broadcasting---that of providing genuine public service to the community through the presentation of news, public affairs and discussion programming.

The irony of the situation, Mr. Chairman, is that I am convinced the drafters of H.R. 13270 never intended to pose any threat at all to individual public broadcasting stations, to state and regional networks, to the national production agencies, and to the Corporation, which was established by Congress itself.

In short, public broadcasting finds itself in a crossfire--by accident. Happily we can be removed from that crossfire without any change in the substance of the bill passed by the House. Some clarifying language can do the job.

To be specific, my concern is caused mainly by the proposed Section 4945-- Taxes on Taxable Expenditures--as it will affect financial support of public broadcasting by private foundations.

I am advised by my counsel, Stephen Ailes, Esquire, of the firm of Steptoe and Johnson, that if this section becomes law as it stands, we must

expect private foundations to discontinue giving financial support to public affairs programming. A copy of Mr. Ailes' discussion of the problem is attached to my statement.

It could be argued that the language in Section 4945 is not so restrictive as to prevent a private foundation from making a grant to a production facility or a qualified noncommercial educational station even though the station decides to use the money to present a news show, a panel discussion, or other public affairs programs.

But this is not the point. The problem is that private foundations will not take the very considerable risk and expose themselves to severe penalties if they do undertake financing which could possibly be interpreted as improper under Section 4945. Obviously, a private foundation will avoid such risks and instead extend its financial support to other types of projects.

The practical consequence inevitably will be:

Withdrawal of millions of dollars of foundation grants from the already underfinanced public broadcasting system. A large part of this support--if not all of it--would be discontinued if Section 4945 stands as written. Furthermore, since much of this support typically requires matching funds, these funds also would be lost.

If such a substantial part of total financing is withdrawn, the American public would be deprived of a large and crucial part of the still very limited service they are receiving from public radio and television stations.

In the Public Broadcasting Act of 1967, Congress declared a Federal responsibility for developing and financing public television in the public interest. Any reduction in financing from private sources increases the amount of Federal financing required.

WHAT IS PUBLIC BROADCASTING?

There are today some 185 noncommercial television stations and 400 non-commercial radio stations in operation. A list of these stations is attached, and you will see these stations are dispersed in all parts of the country.

The development of public broadcasting began with the recognition that the air waves are a public resource and should be utilized at least in part in the public interest. The Federal Communications Commission has set aside frequencies to be used only by noncommercial educational radio and television broadcasters.

Adequate frequencies have been reserved to provide a full service for the public. However, actual broadcast operations utilizing these frequencies are considerably fewer in number. Limited resources have prevented the establishment of all the operations that are visualized as ultimately desirable.

Federal assistance in the establishment of noncommercial educational stations was first provided by the Educational Television Facilities Act of 1962. Under the terms of this act, Federal funds were provided under a matching formula for the purchase of broadcasting equipment and facilities. The Public Broadcasting Act of 1967 continued Federal support for facilities on a matching basis and additionally extended the Federal support to noncommercial radio stations.

As a result of the expenditure of more than \$32 million of Federal facilities money, the number of public stations has been doubled since the 1962 act. It is estimated that total Federal expenditures have been accompanied by eleven times that amount in funds committed by state and local governments and private sources.

The existence of available frequencies and even the existence of physical facilities, however, does not provide the public service visualized as necessary and desirable by the Congress. The missing element is programs. Congress created the Corporation for Public Broadcasting (Title II of the Public Broadcasting Act of 1967) in order to provide the means of assisting stations in the program area.

As President of the Corporation for Public Broadcasting, my concern is for all aspects of public broadcasting, not only for the operation of the Corporation itself but also for the activities of organizational units that create and produce

programs that may be used by the public stations as well as for the public broadcasting stations themselves.

The principal role of the Corporation, as I have indicated, is to assist stations in their efforts to provide the communities served by them with programs of diversity and excellence, by assisting them in program production, by facilitating program distribution, and by encouraging the development of national production centers.

The Corporation's initial operations have been financed by a \$5 million Federal appropriation for fiscal year 1969. The Senate has acted to authorize \$20 million for 1970, and the House Committee on Interstate and Foreign Commerce has favorably reported authorization of \$20 million for 1970.

One of the aims of Congress in creating the Corporation was to provide a means of stimulating nonfederal financing for public broadcasting. The Senate report accompanying the legislation creating the Corporation recognized the need for substantial Federal financing for public broadcasting but expressed the hope that eventually the major part of the revenue would come from private sources.

We have been encouraged by the amount of private financing we have received to date. By the end of 1969, our \$5 million of appropriated funds had been augmented by \$2,725,970 of private financing. Our goal for 1970 is an additional \$4 million of private financing.

Private foundations have been the major source of nongovernmental financing for the Corporation and for other organizational units in the public broadcasting system. Now this source of private support would--at least to a large extent--be cut off as a result of the legislation before you. It is this unfortunate and, I am sure, unintended consequence that we ask you to prevent.

THE PUBLIC BROADCASTING STATION

The average public television station operates on a very small budget. (The median for operations in 1967 was \$319,943.) A typical station broadcasts

about ten hours a day with about five hours devoted to instructional television used in classrooms and the other five hours devoted to programs for reception in the home. The programs intended for home use fall into some general categories: programs for children, for continuing adult education, for public affairs, and for cultural affairs.

Most public broadcasting stations are operated by school systems, by city or state governments, or by universities. Thirty-eight public television stations are organized as nonprofit community stations, and these tend to be in the larger cities; for example, New York, Los Angeles, Chicago, New Orleans, and Washington.

Station revenues then come from various local governmental sources in the case of most stations, and from contributions from the general public in the case of the community stations. Additionally, stations to varying extents receive support from Federal agencies, from the Corporation for Public Broadcasting, and from private foundations, both the large foundations and many local or specialized foundations.

Arthur D. Little, Inc., analyzed sources of revenues for public television in the year ending June 30, 1967. Total station operating revenue was \$44.8 million of which \$26.8 million was supplied by local governments or universities for instructional programs for classroom use, and \$18 million was for programs for reception in the home. Foundations provided \$6.3 million of that amount for such local operations.

Foundations, particularly the Ford Foundation, through National Educational Television, have also largely supported programs made available to local stations by way of national distribution. Recently, such national programming has been generously supported by the Ford Foundation, the Carnegie Corporation, and the Sears Roebuck Foundation.

For example, a major source of such programs directed to preschool children is Children's Television Workshop. This workshop is financed in part by the

Office of Education and by private foundations. "Misterogers Neighborhood", the outstanding prize-winning program for children carried by public television, has been continued as a result of a grant from the Sears Foundation.

Withdrawal of foundation support at both the station and national levels would materially affect the very nature of the public broadcasting service as we know it now and would move the industry backward instead of forward toward the fulfillment of its goal of service to the country.

MOST IMPORTANT CONCERN

A single simple solution in the form of clarification to H.R. 13270 will solve this problem.

Public broadcasting is subject to a body of law and regulation that is more stringent than the controls on commercial broadcasting stations. A public station cannot editorialize, for example; it cannot support a candidate for office nor advocate any candidate's cause. Together with commercial stations, the public station shares the responsibility for observing the fairness and equal time doctrines.

So here we would have an anomaly: a key information medium in the community, already required by the nature of its license and existing regulations to avoid the abuses the tax reform bill seeks to prevent, would be prevented from undertaking the activities for which it exists.

The proposed Section 4945 describes taxable expenditures by private foundations and imposes penalties in the form of taxes of 100 percent of any taxable expenditure on the foundation and 50 percent of the amount on the managers of the foundations who knowingly make taxable expenditures.

Subsection (b) states that "the term 'taxable expenditures' means any amount paid or incurred by a private foundation -

- (1) to carry out propaganda, or otherwise attempt to influence legislation,

(2) to influence the outcome of any public election (including voter registration drives carried on by or for such foundation)."

Clearly the amount spent by private foundations to influence legislation or elections is subject to tax.

The question is whether a public broadcasting organization may be given a foundation grant without penalty to the foundation if the station then uses the grant to pay all or part of the costs of presenting news and public affairs programs.

The stations exist in part for that very purpose. Congress in the Public Broadcasting Act of 1967 acted to improve and develop these very public broadcasting stations and the program centers that serve them. The stations and such program centers must operate within a set of rules that assure their activities shall be devoid of the abuses that the tax reform bill seeks to cure. The local station manager has complete authority and responsibility over what programs are actually broadcast in his community.

It would seem, therefore, that a foundation grant made in support of public broadcasting - even in the public affairs area - would not be classed as a taxable expenditure.

Regrettably, this construction of the section is not the only one. I am advised that the foundations themselves view the situation quite differently. How the foundations conduct themselves is, of course, the critical issue. If the foundations believe that the present proposed language prohibits grants for public affairs, then, obviously, no grants are going to be provided. If foundation support is withdrawn, as I am advised it will be, then the public broadcasting system and the communities served by that system will be the losers.

In order to make clear that the intent is not to prevent public broadcasting stations from presenting public affairs programs, such as news programs, documentaries, panel discussions, political debates, and interviews, with the

assistance of financial support from private foundations, I propose a simple addition to the proposed Section 4945 as follows:

(g) PUBLIC BROADCASTING -

Subsections (b)(1) and (b)(2) shall not apply to amounts paid or incurred for the production or distribution of public affairs programs which are broadcast over noncommercial educational broadcast stations as defined in Section 397 (7) of the Communications Act of 1934, as amended (81 Stat. 368; 47 U.S.C. 397 (7))

The Communications Act defines "Noncommercial educational broadcast station" as meaning those stations licensed as such by the Federal Communications Commission and which are owned and operated by a public agency or nonprofit organization or those stations which are owned and operated by municipalities and which broadcast only noncommercial programs for educational purposes. All such stations are specifically required as a condition of their license to present public affairs programs but, equally, are forbidden by Section 399 of the Communications Act from engaging in editorializing or supporting or opposing any candidate for political office. Thus, this existing law which specifically regulates noncommercial stations, together with the requirements for fairness and equal time to which all stations are subject, already fully prevents non-commercial stations from committing the abuses to which Sections 4945 (b)(1) and (2) are directed.

Before I close, Mr. Chairman, I would like to make a general comment about one other aspect of H.R. 13270 as it affects foundation operations.

H.R. 13270 imposes an annual 7.5% tax on the investment income of private foundations. We cannot help but believe that such a tax will result in a reduction in the amount of grants that the public broadcasting system may hope to get from private foundations--assuming we can clear the obstacles to getting

grants. The amount of money available to the foundation for distribution will have to be reduced by the amount of the tax, and only the remainder will be available in the form of grants. In 1967 the total contribution by all foundations was \$18 million. The proposed tax on this total would result in a shrinkage of \$1.4 million. This tax, in other words, will actually be paid for by the public broadcasting recipients of grants since we expect the grants to be reduced by the amount of the tax.

Returning to my main point, in summary, I find no evidence that the Members of the Ways and Means Committee or the Members of the House or Representatives intended that noncommercial, educational broadcasting stations be deprived of private foundation support for broadcasting services so vital as coverage of public affairs.

The foundations themselves, however, cannot be expected to take the risks and expose themselves to the penalties that they feel apply according to the present language of the bill.

The additional language that I have suggested would, I feel sure, in no way change the substance of the bill but would provide the clarification necessary to enable the private foundations to give grants to public broadcasting on their own merit.

I urge you, Mr. Chairman and Members of the Committee, to provide this vital clarification.

STEPTOE & JOHNSON

ATTORNEYS AT LAW

1250 CONNECTICUT AVENUE
WASHINGTON, D. C. 20036
(202) 223-4800

September 3, 1969

LOUIS A. JOHNSON 899-1088
WILLIAM E. MILLER
I. MARTIN LEAVITT
STEPHEN AILES
PAUL F. HIGLEY
HENRY C. HENBERRY
LADLER B. MACCALL
WILLIAM B. DEWANEY
RICHARD A. WHITING
ROBERT J. CORBER
CALVIN H. COBB, JR.
STANLEY C. MORRIS, JR.
GEORGE B. HICHAUM, II
HOWARD LEIGH
RICHARD P. TAYLOR
JOHN E. HOLLAN, JR.
ROBERT D. HALLICK
THOMPSON POWERS
WILLIAM R. CONDRILL
ROBERT H. DOOLINCK
JAMES P. HOLDEN
HERBERT E. FORREST

HUBERT A. SCHNEIDER
JEREMIAH C. WYTERMAN
OF COUNSEL

RICHARD C. CUNNINGHAM
JAMES V. DOLAN
HOWER L. ELLIOTT
LAURENCE J. HOFFMAN
JAMES L. HUGHES, JR.
ROBERT E. McLAUGHLIN
J. GARRET MURR
JAMES H. MURIN, JR.
JAMES H. PROCTOR, II
SCOTT R. SCHENFELD
GLENN J. SEDAN, JR.
S. CORE STEWART, II
STEPHEN R. TIBA
PHILIP R. TRACY
KIMBA H. WOOD

CLARKSBURG, WEST VIRGINIA
UNION BANK BUILDING

CHARLESTON, WEST VIRGINIA
SARAHAN VALLEY BUILDING

Mr. John W. Macy, Jr.
President
Corporation for Public Broadcasting
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Macy:

At your request we have examined the proposed Tax Reform Act of 1969, H.R. 13270, with regard to its impact on the financial support of noncommercial educational radio and television broadcasting. Public broadcasting in the United States receives funds from a variety of sources including the federal, state and local governments, school districts, universities, business and private citizens. In addition, a substantial source of funds in recent years has been those organizations which under the proposed new section 509 are defined as "private foundations." Our analysis reveals that the proposed legislation includes provisions which could, if enacted without clarification, seriously hamper the ability of public, noncommercial broadcasting to continue receiving financial assistance from private foundations.

Taxable Expenditures

H.R. 13270 proposes to amend the Internal Revenue Code by the addition of a new section 4945 which would impose a 100 percent tax on "taxable expenditures" by private foundations. This section also imposes a tax upon the foundation official responsible for the expenditure, for which tax the official is personally liable. "Taxable

Mr. John W. Macy, Jr.
September 3, 1969
Page Two

expenditure" is defined by section 4945(b) to mean, among other things, any amount paid or incurred by a private foundation--

- (1) to carry out propaganda, or otherwise attempt to influence legislation, or
- (2) to influence the outcome of any public election (including voter registration drives carried on by or for such foundation).

This definition of taxable expenditure may create a problem for noncommercial educational broadcasting by limiting the ability of this media to continue to engage in news and public affairs broadcasts. The purpose of public affairs and news broadcasts is to inform or educate--hence to "influence"--the viewer. The most objective presentations of current, newsworthy subjects will in this sense, "influence" the audience. In fact, the reason for such programming would cease to exist if it failed to educate and enlighten the viewer. Thus, it is clearly possible that the language of section 4945(b)(1) and (2) could be construed to include within the ambit of taxable expenditures noncommercial television or radio broadcasts treating with legislative issues or public elections.

There is, however, no specific indication that such an interpretation was contemplated by either the House of Representatives or its Committee on Ways and Means at the time they considered and approved H.R. 13270. Further, there are substantial reasons why public affairs and news programming should not constitute taxable expenditures. Noncommercial educational broadcast stations, unlike their commercial counterparts, are already forbidden from engaging in editorializing or supporting political candidates by section 399 of the Communications Act of 1934, as amended, which provides:

No noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office. 47 U.S.C. §399.

Mr. John W. Macy, Jr.
September 3, 1969
Page Three

The legislative history of this provision, which was part of the Public Broadcasting Act of 1967, emphasizes, however, that the Congress did not intend to prevent educational broadcasters from engaging in public affairs programming. Rather, it appears that the Congress expected these stations to be the leaders in this area. For example, the report of the Senate Commerce Committee states:

Particularly in the area of public affairs your committee feels that noncommercial broadcasting is uniquely fitted to offer in-depth coverage and analysis which will lead to a better informed and enlightened public. S. REP. NO. 222, 90th Cong., 1st Sess 7 (1967).

And the House Committee on Interstate and Foreign Commerce observed:

Considerable testimony was heard that no noncommercial educational station editorializes.

Out of abundance of caution, the bill provides that "no noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office." It should be emphasized that this section is not intended to preclude balanced, fair and objective presentations of controversial issues by noncommercial stations. H.R. REP. NO. 572, 90th Cong., 1st Sess 20 (1967).

In addition to being subject to this prohibition against editorializing, noncommercial educational stations are also subject to the same Federal Communications Commission regulations, such as that imposing the doctrine of fairness (47 CFR §73.123, see Red Lion Broadcasting Co., Inc.

Mr. John W. Macy, Jr.
September 3, 1969
Page Four

v. Federal Communications Commission, United States Supreme Court, October Term 1968, Nos. 2 and 717), and the statutory requirement regarding equal time (47 U.S.C. §315, 48 Stat. 1088, as amended), as are commercial stations. Further, under present FCC policy, any station that fails to offer news and public affairs programs is in serious danger of having its license renewal application denied. Report and Statement of Policy Re: Commission En Banc Programming Inquiry, July 29, 1960, FCC 60-970, 25 Federal Register 7291.

Noncommercial, educational broadcasters, therefore, are already under a legal obligation to present public affairs programming that is free of both editorial comment and support (or opposition) for any candidate. The inclusion of public affairs and news broadcasts by educational stations in the concept of "taxable expenditure" is neither necessary for the control of abuses nor appropriate in view of the provision of the Communications Act and the regulations of the Federal Communications Commission. However, as long as the language of 4945(b)(1) and (2) is open to the broad interpretations discussed above, and as long as the tax penalty to be imposed is so severe, it follows that no private foundation funds will be available for public affairs programs by educational broadcasters unless an unequivocal clarification is obtained.

Definition of Private Foundation

There are presently approximately 164 noncommercial educational television stations and 384 radio stations in the United States. A substantial number of these stations are owned by states, school districts or universities. It is probable that virtually none of these stations would be private foundations under the definition contained in proposed section 509 because they receive almost all of their support from government sources.

There are, however, a substantial number of stations known as "community" stations which receive funds from more diverse sources. It is possible that some few of

Mr. John W. Macy, Jr.
September 3, 1969
Page Five

these stations may not qualify as an organization described in 170(b)(1)(B) of the Internal Revenue Code or under any of the other exemptions from the private foundation category. If clarification of 4945(b)(1) and (2) is not obtained, such a station, as a private foundation, would be prevented from engaging in any public affairs programming. As pointed out above, this would place a station in breach of its legal obligation to serve the public fully and could lead to the loss of its broadcast license.

Tax on Private Foundation Investment Income

H.R. 13270 includes a proposed new section 506 which would impose upon private foundations a tax equal to 7-1/2% of its net investment income for each taxable year. This provision inevitably will result in an equivalent reduction in the amount of funds available for distribution by private foundations which quite possibly could lead to a corresponding substantial decrease in the funds received by educational broadcasting.

Alterations in Charitable Contribution Deduction

Section 201 of H.R. 13270 would amend existing Internal Revenue Code sections 170 and 1011 to eliminate certain advantages accruing to taxpayers who give or sell appreciated property to charity. Under present law a taxpayer who contributes property to charity is allowed a charitable contribution deduction for the fair market value of the property and he pays no tax on the amount of gain resulting from the appreciation. Further, if a taxpayer now sells property to a charity for less than its market value the proceeds of the sale are treated as a recovery of the cost and the seller is allowed a charitable contribution deduction for the appreciation in excess of the sale price. These provisions furnish a strong incentive for prospective donors to support charitable causes through conveyances of appreciated property. Their existence has undoubtedly been responsible for the flow to charitable organizations of a major portion of all contributions.

Mr. John W. Macy, Jr.
September 3, 1969
Page Six

The new provisions would deny the donor a charitable deduction in excess of his own cost in acquiring the property. This change would apply to all gifts of property to private foundations, all gifts of property the sale of which would have resulted in ordinary income or short-term capital gain, all gifts of tangible personal property and all gifts of future interests in property.

The television auctions conducted by many community educational stations for fund-raising purposes may prove a casualty of this change since it will substantially reduce existing incentives for making gifts of property to charity.

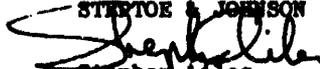
Conclusion

The taxable expenditure provisions in the proposed new section 4945(b)(1) and (2) of the Internal Revenue Code pose a serious threat to the ability of noncommercial educational broadcasting to continue to obtain substantial private funding. While there are no specific indications that the House of Representatives intended to prevent private foundations from giving funds to educational broadcast activities which engage in public affairs programs, the language of 4945(b)(1) and (2) is sufficiently broad and vague to lead to that result. Because of the substantial penalty imposed on taxable expenditures, it is likely that all doubts will be resolved against making grants to educational broadcasters who produce, distribute or carry news or public affairs programs.

It is also likely that the imposition of a 7-1/2 percent tax on the net investment income of private foundations and the alteration of the charitable deduction provisions relating to the gift or sale of appreciated property will result in corresponding reductions of private contributions to noncommercial educational broadcasting.

Very truly yours,

STERTOE & JOHNSON



Stephen Ailes

EDUCATIONAL RADIO AND TELEVISION STATIONS BY STATE, CITY AND CALL LETTER

To distinguish between radio and television operations, all educational FM radio stations in the following listing have been set in italic. TV stations have been set in roman, and AM stations have been set bold face.

ALABAMA

Birmingham *WYSU*(CP)
 WBIQ
 Dozier **WDIQ**
 Mobile **WEIQ**
 Montgomery **WAIQ**
 Cheaha **WCIQ**
 Huntsville **WHIQ**
 Florence **WFIQ**

ALASKA

College **KUAC**

ARIZONA

Phoenix **KFCA**
 KAET
 Tucson **KUAT**
 KUAT

ARKANSAS

Conway **KASC**
 Jonesboro **KASU**
 Little Rock **KETS**

CALIFORNIA

Angwin **KANG**
 Arcata **KHSC**
 Berkeley **KPFA**
 KPFB
 KALX
 Davis **KDVS** (CP)
 Claremont **KSPC**
 LaCanada **KUNF**
 LaSerra **KSDA**
 Loma Linda **KEMR**
 Long Beach **KLON**
 Los Altos Hills **KCLB**
 KPJC
 Los Angeles **KFSR**
 KPFK
 KUSC
 KCET
 KXLU
 Northridge **KEDC**
 Pasadena **KPCS**
 Redding **KIXE**
 Redlands **KUOR**
 Riverside **KUCR**
 Sacramento **KERS**
 KVIE
 San Bernardino **KVCR**
 KVCR
 San Diego **KESB**
 KESB
 KSDS
 San Francisco **KALW**

San Jose
 San Mateo
 Santa Barbara
 Santa Monica
 Stanford
 Stockton
 Torrance

COLORADO

Colorado Springs **KRCC**
 Denver **KRMA**
 Fort Collins **KCSU**
 Greeley **KCBL**
 Gunnison **KWSB**

CONNECTICUT

Bridgeport **WEDW**
 WPKN
 WFSU
 Fairfield **WEDH**
 Hartford **WRTC**
 WESU
 Middletown **WEDN**
 Norwich **WHUS**
 Storrs **WGES** (CP)
 Trumbull **WVUH**
 West Hartford

DISTRICT OF COLUMBIA

Washington **WAMU**
 WETA
 WETA
 WGTB

FLORIDA

Coral Gables **WYUM**
 Gainesville **WRUF**
 WUFT
 Jacksonville **WJCT**
 Miami **WTHS**
 WTHS
 Pensacola **WSRE**
 Orlando **WMEF**
 Tallahassee **WFSU**
 WFSU
 WEDU
 Tampa **WUSF**
 WUSF
 Winter Park **WPRK**

GEORGIA

Athens **WGTV**
 Atlanta **WABE**
 WETV
 WREK

Chatsworth **WCLP**
 Cockron **WDCC**
 Columbus **WJSP**
 Dawson **WACS**
 Pelham **WABW**
 Savannah **WVAN**
 Waycross **WXGA**
 Wrens **WCES**

HAWAII

Honolulu **KHET**
 Waiuku **KMEB**

IDAHO

Lewiston **KLHS**
 Moscow **KUOI**
 KUII
 KCRH
 KBGL

ILLINOIS

Carbondale **WSIU**
 WSTU
 Chicago **WBEZ**
 WMBI
 WMBI
 WTTW
 WJCK
 WNTU
 WEPS
 WRSE
 WNUR
 WHFH
 WYKC
 WGRN
 WQNC
 WKDC
 WLTJ
 WPKS
 WMHS
 WGLT
 WRHS
 WMTB
 WYIK
 WILL
 WILL
 WILL
 WETN
 WPTH
 DeKalb
 Elgin
 Elmhurst
 Evanston
 Glenview
 Galesburg
 Greenville
 Naperville
 Kankakee
 La Grange
 Macomb
 Morrison
 Normal
 Park Forest
 Park Ridge
 Rock Island
 Urbana

INDIANA

Bloomington **WFTU**
 WTTU
 Carmel **WELI**
 Evansville **WEVC**
 WFSR

Source: NAEB 1969 Directory and Yearbook of Educational Broadcasting

Franklin	WFCI
Gary	WGVE
Goshen	WGCS
Green Castle	WGRE
Hartford City	WICI
Huntington	WVSH
Indianapolis	WJJC
	WIAN
	WBDG
	WICR
Muncie	WBST
	WVHI
New Albany	WNAS
North Manchester	WBKE
Notre Dame	WSND
Richmond	WECI
South Bend	WETL
St. John	WCAE
Terre Haute	WISU
Valparaiso	WVUR
Vincennes	WVUT
West Lafayette	WBAA

IOWA

Ames	WOI
	WOI
Boone	KFGQ
	KFGQ
	KTCF
Cedar Falls	KCOB (CP)
Cedar Rapids	KALA
Des Moines	KWLC
	KDPS
	KDPS
Grinnell	KDNC
Iowa City	WSUI
	KSUI
Mt. Vernon	KRNL
Pella	KCUI
Sioux Center	KDCR
Waterloo	KNWS
	KNWS
Haverly	KWAR

KANSAS

Baldwin	KNBU
Emporia	KSTE
Lawrence	KFKU
	KANU
Manhattan	KSAC
	KSDB
Ottawa	KTJO
Parsons	KPPS
Topeka	KTWU
Wichita	KMUW
Winfield	KS WC

KENTUCKY

Ashland	WKAS
Bowling Green	WKGB
Covington	WCVN
Elizabethtown	WKZT
Georgetown	WRVG
Hazard	WKHA
Lexington	WBKY
	WKLE

Louisville	WFPK
	WFPK
	WFPL
Madisonville	WKMA
Morehead	WMKY
	WKMR
Murry	WKMU
Owenton	WKON
Pikeville	WKPI
Rickmona	WEKU
Somerset	WKSO
	WSOC

LOUISIANA

Lafayette	KRY'S
New Orleans	WYES

MAINE

Augusta	WCBB
Brunswick	WBOR
Calais	WMED
	WMED
	WMED
Orono	WMEB
Lewiston	WRJR
Presque Isle	WMEM

MARYLAND

Baltimore	WBAC
Takoma Park	WGTS

MASSACHUSETTS

Amherst	WAMF
	WPCR
	WVUA
	WPAW
Andover	WBUR
Boston	WBRS
	WGBH
	WGBH
	WTBS
Cambridge	WLTT
Lowell	WSOC
Milton	WVCH
South Hadley	WVSB
Springfield	WVAC
	WBRS
Waltham	WCPM
Williamstown	WHSR
Winchester	

MICHIGAN

Adrian	WYAC
Ann Arbor	WUCM
Detroit	WDTR
	WDET
	WTVS
East Lansing	WKAR
	WKAR
	WMSB
Flint	WFBS
Grand Rapids	WYGR
Highland Park	WHPR
Houghton	WGGL
Houghton	WGGL
Interlochen	WIAA
Kalamazoo	WNUK
Marquette	WVNR
	WVNR

Mt. Pleasant	WCMU
	WCMU
Royal Oak	WOAK
Southfield	WSHJ
Spring Arbor	WSAE
Warren	WPHS
Waterford	WTSD (CP)
Ypsilanti	WEMU
University Center	WUCM

MINNESOTA

Appleton	KWCM
Collegville	KSJR
Duluth	KUMD
	WDSE
	KMSU
Mankato	
Minneapolis-	
St. Paul	KTIS
	KUOM
	KTCA
	KTCI
	KSJN
Moorhead	WCAL
Northfield	
St. Cloud	KVSC

Buffalo	KBFL
Clayton	KFUO
	KFUO
	KHRU (CP)
	KWVC
	KBIA (CP)
	KOBC (CP)
Joplin	KCUR
Kansas City	KCSO
	KSOZ
Maberly	KMTS (CP)
Point Lookout	KSOZ
Rolla	WWSH
St. Charles	KCLC
St. Louis	KSLH
	KETC
Warrensburg	KCMW

MONTANA

Bozeman	KGLT
Missoula	KUFM

NEBRASKA

Alliance	KTNE
Barnett	KMNE
Kearney	KOYF
Hastings	KHNE
Lexington	KLNE
Lincoln	KUON
	KUCY
Norfolk	KKNE
North Platte	KPNE
Omaha	KGBI
	KYNE

NEVADA

Las Vegas	KLVX
Reno	KUNR

Source: NAEB 1969 Directory and Yearbook b
of Educational Broadcasting

NEW HAMPSHIRE

Berlin	WEDB
Durham	WENH
	WUNH
Exeter	WPEA
Hanover	WHEH
Keene	WEKW
Littleton	WLED

NEW JERSEY

Glassboro	WGLS
Hackettstown	WNJT
Hanover	WHFH
Newark	WBGO
South Orange	WSOU
Trenton	WTSR

NEW MEXICO

Albuquerque	KNME
	KUNM
	KANW
Las Cruces	KRWG
Las Vegas	KEDP
University Park	KRWG

NEW YORK

Albany	WAMC
Binghamton	WIRW
	WSKG
Buffalo	WBFO
	WNFD
Canton	WSLU
Central Square	WCSO
Clinton	WHCL
Elmira	WECW
Floral Park	WSHS
Geneseo	WGSU
Hempstead	WYHC
Ithaca	WHCU
	WHCU
	WCB
Lake Konkovkoma	WSHR
Loudonville	WYCR
New York	WBAI
	WNYC
	WNYC
	WNYE
	WNDT
	WFUV
	WKCR
	WRVR
Oswego	WRVO
Potdam	WTSC
Rochester	WIRO
	WRUR
	WXXI
Schenectady	WMHT
Springville	WSPE
Syracuse	WAER
	WCNY
Troy	WAER
	WHAZ

NORTH CAROLINA

Asheville	WUNF
Chapel Hill	WUNC
	WUNC
Charlotte	WTVI
Columbia	WUND
Concord	WUNG
Greensboro	WJAG
Greenville	WWWS
High Point	WHPS
Linville	WUNE
Raleigh	WKNC
Winston Salem	WFDD

NORTH DAKOTA

Fargo	KFME
	KDSU
Grand Forks	KFJM

OHIO

Akron	WAPS
	WAUP
	WOUB
Athens	WOUB
	WOUB
	WBWC
Berea	WBCU
Bowling Green	WBGU
	WCDR
Cedarville	WCET
Cincinnati	WGUC
	WBOE
Cleveland	WRUW
	WVIZ
Columbus	WOSU
	WOSU
	WOSU
	WCBE
Delaware	WSLN
DeGraff	WDEQ
Granville	WDUB
Kent	WKSU
Marietta	WCNO
New Concord	WMCO
Newark	WGSF
Oberlin	WOBC
Oxford	WMUB
	WMUB
Springfield	WUSO
Struthers	WKTL
Toledo	WGTE
Westerville	WOBN
Wilberforce	WCSU
Wooster	WCWS
Yellow Springs	WYSO

OKLAHOMA

Edmond	KCSC
Oklahoma City	KOKH
	KETA
	KOKH
Stillwater	KOSU
Tulsa	KWGS
	KOED

OREGON

Corvallis	KOAC
	KOAC
	KBVR
Eugene	KRYM
	KWAX
	KLCC
Klamath Falls	KTEC
Portland	KBPS
	KOAP
	KOAP
	KRRC

PENNSYLVANIA

Allentown	WMUH
	WLVT
Beaver Falls	WGEY
Easton	WJRH
Erie	WOLN
Grane City	WSAJ
Havertown	WHHS
Hershey	WITF
Indiana	WIUP (CP)
Lewisburg	WYBU
Mansfield	WNIE (CP)
Meadville	WARC
New Wilmington	WKPS
Philadelphia	MPWT
	WHYY
	WRTT
	WUHY
	WXPN
Pittsburgh	WDUO
	WQED
	WXAC
Reading	WUSY
Scranton	WYLA
Selinsgrove	WGSU
Telford	WBMR
University Park	WDFM
	WFSX
Wilkes-Barre	WRRC (CP)

RHODE ISLAND

Kingston	WRIU
Providence	WDOM
	WSBE
Warwick	WBHS

SOUTH CAROLINA

Allendale	WEBA
Charleston	WITY
Clemson	WSBF
Columbia	WRLK
	WUSC
Greenville	WNTV
	WMUU
	WMUU
Florence	WJPM

Source: NAEB 1969 Directory and Yearbook of Educational Broadcasting

c

SOUTH DAKOTA

Brookings *KESD*
 Rapid City *KBHE*
 Sioux Falls *KNWC*

TENNESSEE

Chatanooga *WDYN*
 WVMS
 WTCI
 Collegedale *WSMC*
 Henderson *WFHC*
 Knoxville *WKCS*
 WUOT
 WSJK
 Lebanon *WFMQ*
 Lexington *WLJT*
 Memphis *WKNO*
 Nashville *WDCN*
 WPLN
 WVAZ

TEXAS

Austin *KMFA*
 KLRN
 KUT
 Brownwood *KHPC*
 Dallas *KVTT*
 KERA
 El Paso *KTEP*
 Ft. Worth *KTCU*
 Houston *KUHT*
 KUHT
 Lobbach *KTXT*
 KTXT
 Odessa *KOCV*
 Pearview *KHBL*
 Richardson *KRET*
 San Antonio *KSYM*
 Waco *KWBU*

UTAH

Cedar City *KCDR*
 Logan *KUSU*
 KUSU
 Ogden *KWCR*
 Provo *KBYU*
 Salt Lake City *KUER*
 KUED

VERMONT

Burlington *WETK*
 WRUV
 Middleberry *WRMC*
 Northfield *WNUB*
 Rutland *WVER*
 St. Johnsbury *WVTB*
 Windsor *WVTA*

VIRGINIA

Charlottesville *WTJU*
 Chesapeake *WFOS*
 Hampton *WHOV*
 Harrisonburg *WEMC*
 Lexington *WLUR*
 Norfolk *WMTI*
 WHRO
 WRFK
 Richmond *WCVE*
 WBRA
 Roenoke *WVPT*
 Staunton *WCWM*
 Williamsburg *WYCS*
 Yorktown

WASHINGTON

Cheney *KEWC*
 College Place *KGTS*
 Ellensburg *KCWS*
 Lakewood Center *KPEC*
 Pullman *KWSC*
 KWSC
 Seattle *KUOW*
 KCTS
 Spokane *KSPS*
 Tacoma *KTPS*
 KCPS
 KTOY
 KPLU
 Yakima *KYVE*

WEST VIRGINIA

Bethany *WVBC*
 Buckhannon *WVWC*
 Huntington *WMUL*
 WMUL
 Morgantown *WVVU*

WISCONSIN

Appleton *WLFM*
 Ashland *WLBL*
 Beloit *WBCR*
 Brule *WISA*
 Chilton *WIKW*
 Colfax *WHWC*
 Delafield *WHD*
 Highland *WHHI*
 Holman *WHLA*
 Madison *WHA*
 WHA
 WHA
 WHD
 Marinette *WYSS (CP)*
 Menominee *WUMM*
 Milwaukee *WUVM*
 WUVM
 WUVT
 Oshkosh *WRST*

Platteville *WSUP*
 Ripon *WRPN*
 Stevens Point *WSUS*
 Superior *WSSU*
 Wausau *WHRM*
 River Falls *WRFY*
 Whitewater *WSUW*

WYOMING

Laramie *KUWR*

AMERICAN SAMOA

Pago Pago *KVZK*

PUERTO RICO

Hato Rey *WIPR*
 Mayaguez *WIPM*

Source: NAEB 1969 Directory and Yearbook ^d
of Educational Broadcasting

PART B—ADDITIONAL STATEMENTS

STATEMENT OF WILLIAM G. HARLEY, PRESIDENT
NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS
TO THE
COMMITTEE ON FINANCE OF THE UNITED STATES SENATE
H.R. 13270 - September 9, 1969

I am William G. Harley, President of the National Association of Educational Broadcasters. NAEB is the professional association of institutions and individuals engaged in educational radio and television broadcasting in the United States. Its membership consists of organizations which operate 175 educational radio stations, some 180 educational television stations, and over 100 non-broadcast instructional communications systems; and some three thousand individual producers, teachers, writers, directors, students, artists, engineers and others who are involved in various phases of educational radio and television throughout every part of the country.

Educational broadcasting stations are licensed by the Federal Communications Commission only to nonprofit educational organizations upon a showing that the stations "will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service." (FCC Rules and Regulations, section 73.621). The stations now operating are licensed to local school boards or systems, to public and private colleges and universities, to agencies of state government, and to private non-profit corporations organized locally for the purpose of engaging in educational broadcasting. Such licensees, including such private corporations as well as such public agencies, are all exempt from Federal income tax under section 501(c)(3) of the

Internal Revenue Code, and contributions to them are deductible as charitable contributions under section 170 of the Code. In addition, some thirty of the states are planning or already operating statewide educational television networks, and there are cooperative regional networks in the Northeast, the South, the Midwest, the Great Plains states, the Rocky Mountain region, and the Pacific Coast. Most of the stations are affiliated with one or more of the independent program services which make available programs of national scope and interest; these national program services, like the stations, are tax-exempt organizations. By enacting the Public Broadcasting Act of 1967, the Congress created a private nonprofit Corporation for Public Broadcasting to assume responsibility for the nationwide progress of all of the system, finding that "it is in the public interest to encourage the growth and development of noncommercial educational radio and television broadcasting, including the use of such media for instructional purposes." (Communications Act of 1934 as amended, section 396(a)(1).)

Our members produce and broadcast programs to serve a wide range of public needs and interests. The typical educational television station develops and broadcasts programs of formal instruction and enrichment for children in the classrooms, and for children viewing at home before or after school hours, or who have not yet reached school age. Public and parochial school systems throughout the country constitute a major segment of the educational television audience. For the adult audience, stations concentrate on informal

education: vocational training and rehabilitation for the disadvantaged, and continuing education for the professions, for example. For the general public, there are programs for the development of new skills and interests, for the discussion of important local, regional or national issues, for the reflection of America's cultural heritage, and for other kinds of community service of every variety. The typical station broadcasts six to seven days a week, averaging over 56 hours of programming weekly. Slightly more than half of this is general audience or "public" television programming - public affairs programs, such as news programs, documentaries, panel discussions, political debates, and interviews, performing arts programs, children's programs, and others. The remaining time is allocated to "instructional" broadcasts during school hours. The stations themselves produce much of their instructional programming, and general audience programming of primarily local interest; but the majority of their general audience programming comes from one of the national program services, from the state or regional networks, from program exchange arrangements with their sister stations, or from other outside sources.

During fiscal year 1967, state and local governments and state universities provided about 50% of the funds for educational television stations. Private philanthropy - foundations, businesses, trade unions, and individual viewer contributions - provided about 30%. Ten per cent came from the Federal Government, primarily in grants under the authority of the Educational Television facilities Act of 1962, and 10% came from other sources. Most of the state networks are supported entirely by funds from state government, and

the regional networks are supported by the stations; the production of programs for national distribution, however, a keystone of the entire system, depends almost entirely on private philanthropy for its support. Because of their chronically limited resources, the stations alone would be nowhere near able to sustain the production of national programs of quality and excellence for their common benefit were it not for the assistance of the private foundations.

NAEB and its members are concerned about the effect which H.R. 13270 might have on their ability to continue to provide this service to the public. We are concerned that the bill could have a seriously inhibiting effect on the stations' ability to provide their present program service, and on the ability of private philanthropy to continue to support educational broadcasting activities. We do not believe that educational stations, either those operated by schools or state governments or by nonprofit corporations, have been guilty of any of the abuses which this legislation seeks to cure. Nor do we believe that any new legislation is necessary to prevent abuse by educational stations: they are already subject to an ample body of regulation under the Communications Act, as well as the Internal Revenue Code. But we fear that, because of the breadth of its language directed at real abuses, H.R. 13270 could have unforeseen and unintended consequences deleterious to the future of educational broadcasting.

We submit that such a result would constitute a sharp departure from the consistent public policy in support of the development of educational broadcasting. State and local government have traditionally been the major source of financial support for educational TV and radio

stations. At the Federal level, the Federal Communications Commission has reserved 632 television channels expressly for non-commercial, educational use, and has made similar reservation of FM radio channels. The National Defense Education Act of 1958 provided funds for research into the uses of the broadcast media for educational purposes. The All-Channel Receiver Act of 1962 promoted the development of television tuners capable of receiving the ultra-high-frequency (UHF) channels on which most educational stations now broadcast. The Educational Television Facilities Act of 1962 initiated a program of Federal matching grants for improvement of the facilities of existing stations, and for construction of new stations. The Higher Education Act of 1965 provided funds for the purchase of television equipment by colleges and universities. The Public Broadcasting Act of 1967 extended the provisions of the 1962 Facilities Act, made that program applicable to radio as well as television stations, and established the Corporation for Public Broadcasting to promote the growth and development of public broadcast programming on those stations. The 1968 platforms of the two national political parties reaffirmed their support for the development of educational broadcasting. In the 91st Congress, the Senate has passed and the House of Representatives is soon to consider a bill, the Public Broadcasting Amendments of 1969, to authorize continuation of the facilities grant program, and to authorize a further Federal grant to the Corporation for Public Broadcasting.

Subsections (b)(1) and (b)(2) of the proposed Section 4945 of H.R. 13270 would represent a major impediment to this activity. First, a prudent station manager or program producer would avoid making expenditures for public affairs programs (such as documentaries, panel discussions, news programs, political debates, and interviews) for fear that such expenditures might constitute "taxable expenditures" under either subsection (b)(1) or (b)(2) of the proposed Section 4945. Second, prudent foundation managers would also interpret this section as prohibiting them from making grants that might ultimately be used for such programs. We certainly do not quarrel with the position that expenditures by private exempt organizations for the purpose of influencing public opinion should be taxable expenditures. However, expenditures for public affairs programs carried over noncommercial educational broadcast stations are not, we are sure, intended to come under the language as it appears in proposed Section 4945. Nevertheless, the possible application of this section to public affairs programming, even if it is not intended to apply to such programs, would have a chilling effect on the willingness of educational broadcasters, production centers, and grant-making foundations to risk the penalties provided in Section 4945. The evils that Subsections (b)(1) and (b)(2) of Section 4945 are designed to guard against are already precluded in the case of educational broadcasting by the stringent controls imposed by Congress and enforced by the Federal Communications Commission. A qualifying amendment to the proposed Section 4945, as suggested by Mr. Macy for the Corporation for Public Broadcasting, would solve this potential problem and allow educational broadcasting to carry out one

of its primary duties, which is to present public affairs programs to the public.

We support, therefore, the following amendment to Section 4945:

(g) PUBLIC BROADCASTING -

Subsections (b)(1) and (b)(2) shall not apply to amounts paid or incurred for the production or distribution of public affairs programs which are broadcast over noncommercial educational broadcast stations as defined in Section 397 (7) of the Communications Act of 1934, as amended (81 Stat. 368; 47 U.S.C. 397 (7)).

We are further concerned that H.R. 13270 would, in other ways, create considerable uncertainty for some of our stations. In particular, the definition of 'private foundation' as stated in the proposed Section 509 gives us concern.

Most of the 185 stations on the air are financed and operated by, and are integral parts of, public instrumentalities. These stations clearly meet one or more of the tests contained in Section 509 and, therefore, are not private foundations within the meaning of H.R. 13270. There are 38 other public television stations, however, operating as nonprofit community stations. The status of these 38 stations cannot reliably be determined under the language of Section 509. The ambiguity of the various "support" tests of this section admit to several ways of determining if the station qualifies, either under Section 509(a)(1) or Section 509(a)(2). One of the key problems is whether, for purposes of both these paragraphs, revenue received by the station from services rendered to school systems is to be counted as support revenue and as contributing to the one-third of revenue from exempt sources, whether it is to be counted in neither category,

or whether it is to be counted in one category but not the other. We think under Section 509(a)(1), and more particularly Section 170(b)(1)(B)(vi), that revenues from school systems should not be excluded from the definition of "support from a governmental unit" and, hence, that stations deriving more than one-third of their support from such sources should be treated as "public foundations" under these provisions. See Regulations Section 1.170-2(b)(5)(ii)(c)(1). Furthermore, we believe it clear, in proposed Section 509(a)(2), that an exempt organization which provides services for a fee in furtherance of its exempt purpose (which is not an unrelated trade or business) to any organization described in Section 170(b)(1)(B) will be deemed not to be a private foundation if the gross receipts from such services are normally more than one third of its support. This determination is based on our belief that receipts from such exempt organizations which are in excess of 1% of the servicing organization's support are not excluded from the numerator of this fraction. However, we think these readings of the statute are not entirely free from doubt and we would hope that your Committee Report, at least, will make it clear that, for purposes of Section 509(a)(1), revenues from school systems are not excluded from the category of "support from a governmental unit" and that, for purposes of Section 509(a)(2), receipts from any person in any taxable year that are to be excluded from the numerator of the fraction because they are more than 1% of the support of such organization for one year, do not include receipts from organizations described in Section 170(b)(1)(B).

If a public television station were found not to qualify as a public foundation under the definitions in proposed Section 509, serious problems would be presented. Particularly, if the foregoing recommended amendment to Section 4945 is not adopted, those of our stations which are treated as private foundations would, as we have indicated, be inhibited from presenting public affairs programs. In any event, those stations which must depend on the "public support" test to qualify as "public foundations" will be faced with great uncertainties from year to year and, in addition, uncertainties as to whether they constitute private "operating foundations" as distinct from private "non-operating foundations." Some of our stations are currently seeking endowment funds to be used to support their educational program. The growth of such funds may well cause these stations to be treated as "non-operating foundations." As such, they would possibly be presented with a serious impediment to carrying out their educational program, due to inability to receive private foundation grants.

These uncertainties seem unwarranted. All our stations perform identical educational functions, all are subject to the same federal controls with respect to programming and, we submit, should be treated alike for federal income tax purposes.

We suggest, therefore, that the exclusions from the definition of "private foundation" found in Section 509 contain, as an additional category, "a noncommercial educational broadcast station as defined in Section 397 (7) of the Communications Act of 1934, as amended (81 Stat. 368; 47 U.S.C. 397 (7))."

In the event the Congress does not rectify this problem by defining all educational broadcasting stations as "public foundations," the possible categorization of some of our stations as "private foundations" would result in certain particular problems that ought to be resolved on their own merits.

First, the proposed Section 4941 of the Bill would prohibit "self dealing" between private foundations and contributors thereto, such as private foundations making grants to our educational broadcasting stations. This prohibition is, we believe, reasonably designed to make sure that sums donated for charitable purposes are not diverted for the private interests of private parties. However, no such diversion can occur where the "self dealing" is between two organizations each of which is exempt under Section 501(c)(3).

Let me give you an example. A foundation such as National Educational Television and Radio Center, (NET) renders substantial services for a small fee to our stations by producing educational programs for national distribution. In addition, NET may make grants to our stations to produce such educational programs and, indeed, it is not inconceivable that some of our institutions may make grants to NET. In such cases our respective exempt organizations might technically be liable for the sanctions against "self dealing". Accordingly, we believe that, for purposes of the "self dealing" provisions of proposed Section 4941, the term "substantial contributor" in proposed Section 507(b)(2) should be amended to exclude an organization which is itself exempt from tax under Section 501(c)(3) of the Code, regardless of whether it is a "public" or "private" foundation.

Second, we suggest that the opportunity for an exempt organization to provide services in furtherance of its exempt purpose to other exempt organizations, without being subject to the 1% limitation, should include not only organizations described in Section 170(b)(1)(B) but also "operating foundations" as described in Section 4942(j)(3).

In our case, NET and other foundations provide services to our broadcasting stations. As I have noted, many of these, such as stations maintained by states, municipalities, or public school systems, are "public foundations" described in Section 170(b)(1)(B). Others, performing identical educational and community functions, are "private foundations", albeit possibly "operating foundations, if, in one year or another, as private nonprofit community organizations, they are not able to meet the "public support" tests contained in Sections 509(a)(1) or (2). It would be unfair to inhibit the capacity of an educational organization to provide educational services to operating foundations by imposing the 1% limitation on the services provided to those organizations. Therefore, we suggest that the last two lines of proposed Section 509(a)(2)(A) (lines 1 and 2 of page 16 of the Bill) might be amended to read "any organization described in Section 170(b)(1)(B) or an 'operating foundation' described in Section 4942(j)(3)."

A further ambiguity is contained in Section 4942 of the Bill, imposing a tax on failure by a private foundation to distribute income. It is found in the proposed definitions of "qualifying distributions" and "operating foundations". In substance, this section would impose a tax on certain undistributed income of private foundations as determined after the foundation has made "qualifying distributions".

"Qualifying distributions" are, of course, amounts paid out for charitable purposes during the foundation's taxable year or succeeding taxable year and include payments made to "operating foundations". The definition of an "operating foundation", as contained in proposed Section 4942(j)(3)(A) and (B)(1), includes those foundations which spend substantially all of their income and devote substantially more than half their assets directly to charitable activities. A grant making foundation is included in this definition of "operating foundation" under Section 4942(j)(3)(B)(ii), where it derives substantially all of its support from five or more unrelated exempt foundations. Such grants when received by an "operating foundation" not only constitute a "qualifying distribution" to the payor foundation but also become a part of the corpus of the recipient, without being subject to further pay out requirements.

In some instances, as the Ways and Means Committee noted in its Committee Report, a grant making foundation possesses expertise in certain areas which permits it to make the most effective use of a grant. In such a case, a foundation such as NET and similar foundations may typically receive grants for immediate expenditure within areas such as educational broadcasting from a more general grant making private foundation. However, the former specialized grant making foundation will qualify as an "operating foundation" only if, under Section 4942(j)(3)(A) and (B)(1), in addition to expending substantially all its income for charitable purposes, it is also deemed to devote "substantially more than half" of its assets directly for charitable purposes.

We do not believe that Congress intended that the cash assets (possibly invested in short term securities) to be expended during the

year--and which are in fact expended during the year or succeeding year-- should be deemed to be assets not "devoted directly" to charitable purposes. If read in this fashion, an anomalous situation is created whereby a grant making foundation is entitled to make "qualifying distributions" directly for charitable purposes during the course of two years, but may not utilize a specialized grant making foundation to make the same payment within the same period of time.

Accordingly, we suggest that language be inserted in the Committee Report to make it clear that where contributions are made by a private foundation to a second private foundation to be expended directly for charitable purposes by the latter within the taxable year, or succeeding taxable year, of the payee foundation, the expenditure by the latter will satisfy the "assets" test under Section 4942(j)(3)(B)(i).

Statement by Bernard Berelson, President of
the Population Council, submitted to the
Senate Finance Committee in connection with
hearings on H.R. 13270, September 9, 1969

Anyone who gives even cursory attention to public affairs these days cannot fail to know that the population problem is high on the world's agenda. In recent years, there has been a remarkable increase of awareness that undue population growth is threatening the quality of human life throughout the world, and particularly in the developing countries that are struggling to emerge into the modern era. In the last few years, this awareness has been signaled by the development of population efforts in the United Nations, the expansion of USAID programs into this field, the issuance of the World Leaders' Statements signed by thirty heads of state from all parts of the world, and, most recently, the first Presidential message on population ever submitted to the United States Congress. In short, the problem is great and consequential, and efforts are now being made to do something about it.

That is where the Population Council comes in. The Population Council was established in November 1952 "to stimulate, encourage, promote, conduct, and support significant activities in the broad field of population." We seek to advance and apply knowledge in this field by fostering research, training, and

technical assistance in the social and bio-medical sciences. The Council enjoys a highly respected and central position for its professional work on this problem around the world. We are a leading clearinghouse of scientific information; we have advisory technical personnel resident in 15 developing countries; we have administered a major fellowship program in this field over the years, with over 600 recipients; our Bio-Medical Division conducts a basic scientific program to advance contraceptives technology, the major effort in the public sector and perhaps otherwise; we have on our staff what is probably the broadest range of scientific and professional experts devoted to population matters in a single organization, across the whole range of relevant disciplines from demography and economics through public health administration and health education, all the way to reproductive physiology and obstetrics/gynecology.

The Council exists through the support of interested donors--foundations, individual contributors, and the Federal government itself. We consider it a double tribute, to the problem and to our own work, that this organization sustains an annual budget recently increased to the \$11-12 million level, almost completely from such outside support.

In view of the seriousness of the problem and the growing recognition that actions must and can be taken to

alleviate its consequences, I sincerely believe that if the Population Council did not exist it would have to be invented. Hence the implications of the Bill for this organization are serious indeed.

If H.R. 13270 were enacted into law in its present form it would have a disastrous effect upon the Population Council--an effect that we believe is entirely inadvertent. The reason is that under the Bill's present language the Council does not qualify as a "private operating foundation". We do receive significant support from five or more independent exempt organizations but not "substantially all" our support since we also receive substantial contributions from two other sources--individual contributors and the Federal government, chiefly AID. If these latter two sources are not subsumed under the term "the general public", as appears to be the case, then the Council is not a "private operating foundation" and hence is excluded from receiving "qualifying distributions" from the major foundations which have generously supported us in the past.

It is hard to understand what useful social purpose is served by this arbitrary exclusion, or indeed to believe it was intended particularly in view of the clear recognition in the House Committee Report of the value of "Special-purpose foundations, such as learned societies, association of libraries,

and organizations which have developed an expertise in certain substantive areas and which provide for the independent granting of funds and direction of research in those specialized substantive areas." (page 42). There is no question of "hoarding", since we promptly expend our funds for our exempt purposes and have even run a deficit last year and this year.

Accordingly, we seek release from this danger to the viability of our organization. I respectfully append two suggestions for such release. One would allow us to include governmental funds and large individual contributions in the "support test" of the definition of "private operating foundation." The other suggestion is to have the term "qualifying distribution" include any amount paid to a private foundation which expends contributions received by it within one year.

We cannot believe that, in view of the expressed policy of this government with respect to the great problems of population growth, it is sound public policy to penalize a scientific, technical, and professional organization such as the Population Council--an organization more needed now than ever to work on this problem--by arbitrarily removing it from sources of funds that have enabled it to make major contributions in the field of population.

H.R. 13270 IN THE SENATE
OF THE UNITED STATES
SEPTEMBER 1969

Ordered to lie on the table
and to be printed

AMENDMENTS

Intended to be proposed by Mr. _____ to
H.R. 13270, an Act to reform the income tax laws, viz:

On Page 34, strike out the words on lines 8 through
16 and insert:

"(11) Substantially all of the support (other than
gross investment income as defined in section 506(b)(2)) of
which is normally received from a governmental unit referred
to in section 170(c)(1), or 5 or more persons except exempt
organizations described in section 4946(a)(1)(H) with respect
to each other or the recipient foundation, and not more than
25 percent of the support of which is normally received from
any one such person."

ADMT. NO. _____

H.R. 13270 IN THE SENATE
OF THE UNITED STATES
SEPTEMBER 1969

Ordered to lie on the table
and to be printed

AMENDMENTS

Intended to be proposed by Mr. _____ to
H.R. 13270, an Act to reform the income tax laws viz:

On page 30, on line 15 strike out the word "or",
and on line 19 strike out the period and insert:

", or

(C) Any amount paid out to a private foundation or
an organization which would be a private foundation if it
were a domestic organization, if such private foundation or
organization pays out such amount to accomplish one or more
purposes described in section 170(c)(2)(B) within one year of
the receipt of such amount."

ADMT. NO. _____