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Supreme Court of the United States

October Term, 1968

Office-Supreme Court, U.S.
FILED

MAR 17 1969

JOHN F. DAVIS, CLERK

In the Matter of:

-----X

JOHN H. BINGLER, DISTRICT DIRECTOR
OF INTERNAL REVENUE,

Petitioner,

vs.

RICHARD E. JOHNSON, et al.,

Respondent.

-----X

Docket No. 473

Pt. 1

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Place Washington, D. C.

Date March 3, 1969

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C O N T E N T S

ORAL ARGUMENT OF:

P A G E

Harris Weinstein, Esq.
on behalf of Petitioner 2

James C. Larrimer, Esq.
on behalf of Respondent 20

1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

3 ----- X
4 John H. Bingler, District Director :
of Internal Revenue, :
5 :
Petitioner, :
6 :
v. : No. 473
7 :
Richard E. Johnson, et al., :
8 :
Respondents. :
9 ----- X

10 Washington, D. C.
11 Monday, March 3, 1969.

12 The above-entitled matter came on for argument at
13 1:55 p.m.

14 BEFORE:

15 EARL WARREN, Chief Justice
16 HUGO L. BLACK, Associate Justice
17 WILLIAM O. DOUGLAS, Associate Justice
18 JOHN M. HARLAN, Associate Justice
19 WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
ABE FORTAS, Associate Justice
THURGOOD MARSHALL, Associate Justice

20 APPEARANCES:

21 HARRIS WEINSTEIN, Esq.
Assistant to the Solicitor General
Department of Justice
22 Washington, D. C. 20530

23 JAMES C. LARRIMER, Esq.
Dougherty, Larrimer, Lee & Hickton
24 901 Grant Building
Pittsburgh, Pennsylvania 15219
25

P R O C E E D I N G S

MR. CHIEF JUSTICE WARREN: No. 473, John H. Bingley,
District Director of Internal Revenue, Petitioner, versus
Richard E. Johnson, et al.

THE CLERK: Counsel are present.

MR. CHIEF JUSTICE WARREN: Mr. Weinstein.

ORAL ARGUMENT OF HARRIS WEINSTEIN, ESQ.

ON BEHALF OF PETITIONER

MR. WEINSTEIN: Mr. Chief Justice, and may it please
the Court.

This Federal income tax case comes to this court on
a writ of certiorari to the United States Court of Appeals for
the Third Circuit.

The issue involves the meaning of the words scholar-
ship and fellowship grant which are used in Section 117 of the
Internal Revenue Code of 1954. That section of the Code allows
the recipient to exclude the amount of scholarships or fellow-
ships from his gross income.

That is, it makes scholarships and fellowships tax
exempt.

This case typifies a tax problem that seems to have
arisen since the 1954 Code was adopted. At least Congress in
writing Section 117 in the legislative history showed no then
awareness of this type of problem.

It is basically this: It goes to the meaning of the

1 word scholarship and fellowship in a commercial setting. Do
2 those words encompass the situation where an employer gives
3 his employee leave from his regular duties and continues the
4 employee's regular salary or the greater part of it while the
5 employee is taking a graduate degree on the subject matter of
6 his employment.

7 And at the same time the employer obligates the
8 employee to return to work for some specified minimum period
9 of time.

10 The issue comes to the court because of a split of
11 authority among the lower Federal Courts. The Fifth and Sixth
12 Circuits and the Court of Claims have each sustained Treasury
13 regulations tending to the view that payments made in this type
14 of commercial setting are not scholarships or fellowships.

15 The Third Circuit in this case has rejected those
16 regulations, has ruled that these payments are a scholarship
17 or fellowship and has reversed a jury verdict in favor of the
18 United States.

19 The precise problem comes out of payments that the
20 Westinghouse Electric Corporation made to three respondents
21 before this court, at a time when those respondents were on
22 leave on doctoral dissertations.

23 These amounts were paid pursuant to a program avail-
24 able to engineers and scientists employed at the Bettis Atomic
25 Power Laboratory at Pittsburgh, Pennsylvania.

1 That is a laboratory owned by the Atomic Energy
2 Commission and most if not all of its activities seem to be
3 in the design of nuclear reactors for producing electric power.

4 Westinghouse operates the laboratory under a cost-
5 plus contract with the Atomic Energy Commission.

6 In this particular program we are concerned with here,
7 I think it is typical of similar programs, is intended as the
8 testimony here shows to meet the needs that Westinghouse and
9 the AEC have for highly trained technical people to help them
10 recruit these people to keep them over a long period of time and
11 to keep them up to date on technical requirements of their job.

12 The program we are concerned with is broken into two
13 phases: The first one, which is called the work-study phase
14 has not given rise to any tax dispute, at least up to now.

15 It lasts for four years and it begins when the
16 employee is accepted by Westinghouse into this Bettis Program.
17 In the case of two of the respondents that occurred when they
18 agreed to work for Westinghouse; with the third respondent it
19 occurred sometime after he had come to work for Westinghouse.

20 During this four-year work-study phase the employee
21 holds down a regular job at the Bettis Laboratory and he attends
22 classes part time either at the University of Pittsburgh or
23 the Carnegie Institute of Technology, which I think since the
24 events in this case has become the Carnegie-Mellon University.

25 Westinghouse pays the employee for 40 hours a week

1 but allows him 8 hours weekly, up to I think a total of 156
2 hours each year to go to class.

3 Westinghouse pays his tuition and fees during that
4 period. At the end of this four-year period the employee is
5 supposed to have met his preliminary requirements for the
6 doctoral degree in engineering or science.

7 When all of his course work and his language studies
8 are finished and he has passed the qualification examinations
9 for the doctoral degree he applies for a leave of absence to
10 work on his dissertation.

11 He receives a leave of absence if Westinghouse and
12 the AEC each approve the applicant -- not all are approved --
13 and if Westinghouse and the AEC each approve his thesis topic
14 which is in the first instance approved by the University.

15 If he is granted leave, he then agrees to come back
16 to Westinghouse for some ---

17 Q I beg your pardon, is it clearly understood that
18 they will approve his dissertation subject only if it is
19 connected with the work of this particular plant? I think your
20 brief indicates that.

21 A I believe, Mr. Justice Fortas, that testimony
22 that the testimony which is, as I recall, on this topic was a
23 representative of the AEC, was that they wanted the topic to
24 be work connected.

25 Now I think that has a broad scope and it certainly

1 does not mean a topic of current use or of current concern to
2 the laboratory, but I would suppose that it rather means a
3 topic that, by its nature, helps the man learn better how to
4 work on the problems at the laboratory.

5 Q May I take it for granted, take it as not dis-
6 puted that the dissertation topic is a topic that is of com-
7 mercial interest to Westinghouse and official interest to AEC
8 in terms of its governmental assignment?

9 A I think, Mr. Justice Fortas, I would go too far
10 if I said that it was of immediate commercial value at the time
11 that it was performed.

12 It may or may not be. I think that work connected was
13 used in a somewhat more general sense. The topics here were
14 chosen in this case were chosen by the respondents. They were
15 generally related to the area of interest which I think were the
16 areas where the respondents had worked, generally speaking,
17 before taking their leave.

18 The topics were approved by the AEC and Westinghouse.
19 There is apparently precedent for disapproval but it did not
20 happen with any of these three respondents.

21 Now in return for this leave the respondent agrees
22 to return to Westinghouse at Bettis for a minimum period of ---

23 Q Excuse me, but on page 3 of your brief, and this
24 is what caught my eye, you say each applicant must be approved
25 and the topic of his proposed thesis is reviewed to insure that

1 it is relevent to the work program of the laboratory, relevant
2 to the work program of the laboratory.

3 A I think, Mr. Justice Fortas, that if there is
4 a vagueness there it is a vagueness that reflects the record.
5 This record did not involve any topics that had been disapproved
6 and beyond inquiring whether there was approval or whether there
7 had been any instances of disapproval I do not believe there
8 was any inquiry into what might lead the AEC and Westinghouse
9 to disapprove a particular contract.

10 I don't want to suggest that the topics were reviewed
11 for immediate commercial benefit at that point.

12 This minimum period of obligation after the leave was
13 in the case of two respondents here, two years, and in the case
14 of the third who came under an earlier version of the same
15 program. He was committed to return to Westinghouse for one
16 year after his leave.

17 During the leave Westinghouse pays all tuition and
18 fees and those amounts are not in dispute here. They have not
19 been taxed and there is no contention that they should be taxed.

20 The dispute goes to an amount that is paid calculated
21 on the basis of prior salary and family size. It ranges from
22 70 to 90 percent of prior salary depending on, the low end a
23 single man -- at the high end, a man with a wife and two or
24 more children.

25 Q Is there any indication why it is less than his

1 full salary?

2 A No, the record doesn't go into that. I suppose,
3 Mr. Justice, there could be a variety of reasons. It might
4 just be an inducement to be done with his work and come back as
5 soon as possible.

6 Q Do you suppose that reflects any anticipated tax
7 he might have?

8 A The record bears on that indirectly in showing
9 that Westinghouse on advice of their tax counsel withheld taxes
10 from this portion of the benefits. No one asked ---

11 Q So as far as their conduct is concerned the
12 answer is the contrary?

13 A Well, certainly the record doesn't show that it
14 was an anticipation of tax consequences.

15 I might add that this program is typical, yet the
16 payments might not be. For example, the Federal Government sends
17 a good number of civilian and military employees to school,
18 many of whom study for degrees. These people receive their
19 full salaries.

20 I think it rather hard to distinguish in defining a
21 scholarship or fellowship between whether a man gets 100 percent
22 of his salary or 90 percent as one of the respondents did here.

23 Q I suppose if some foundation had made these
24 grants to these people in the same amounts you wouldn't be here?

25 A No, because the statute is very specific on

1 that and if they are a degree candidate it would be excluded.
2 If they are not a degree candidate it would be excluded up to
3 \$300 a month for 36 months.

4 Q Well, for a degree candidate the statute isn't
5 any more specific about this than about a grant from a
6 foundation and from a commercial source?

7 A I think the legislative history bears on this
8 subject.

9 Q Not the statute?

10 A No, the statute is completely neutral, I would
11 say, on it.

12 Q But you would draw a distinction as between a
13 grant from a foundation and a grant from a company like this?

14 A Yes, I would. And I would say that that is
15 supported by the expressions of opinion in the committee reports
16 that Congress did not want to exempt or didn't that it was
17 exemptive from tax what it called continuing salary payments
18 to an employee who was on leave from his regular job.

19 I really think that that legislative history is the
20 basic support for the regulations that we are relying on here.

21 The three respondents here were on leave at varying
22 times between 1960 and 1962. Two of them for nine months, they
23 received \$630 a month which is 80 percent of their prior
24 salaries and the third one was on leave for a full year. He
25 received during that period just under \$9700 and that was 90

1 percent of the salary he had been receiving before beginning
2 the leave.

3 Q Did they actually move to the campuses of
4 Carnegie Tech or the University of Pittsburgh? Well, actually,
5 these were local universities so I suppose they continued to
6 live at home?

7 A Again, Mr. Justice, I would suppose so. These
8 questions weren't asked. The laboratory is in Pittsburgh.
9 They are restricted to the choice of these two universities
10 to participate.

11 Q Both of which are local?

12 A They are both local and, of course, they have
13 been going to classes there for four years at least before they
14 take their leave.

15 Q I understood you to say that the employer company
16 paid all the tuition and fees and that you concede that that
17 was not taxable income?

18 A I think that technically, Mr. Justice, that
19 might be includable in gross income but at the same time they
20 would be given a deduction for it.

21 Q Yes.

22 A Under the Educational Expense Provision so it
23 would be a wash and there has been no dispute about that part
24 of the case.

25 Q As I understood your brief you don't make any

1 real distinction between a -- or at least you don't make the
2 distinction made by respondent between a scholarship and a
3 fellowship?

4 A As we say in our reply brief, we understand that
5 distinction to rest on the idea that scholarship means degree
6 candidate and fellowship means nondegree candidate and we have
7 just found no support for that kind of distinction.

8 Q A scholarship might be a candidate of any kind,
9 it might be a man out travelling around because he got a nice
10 stipend from the Ford Foundation.

11 A It might be although ---

12 Q It might be a former candidate.

13 A I would think it would come down to this. In
14 a grant to a undergraduate I think is always called a scholar-
15 ship. A grant to somebody who is not seeking any kind of
16 degree is, I think, generally called a fellowship.

17 When you go to graduate students it could be either.
18 The only definition that we found was in the catalog of MIT
19 which says that a scholarship to a graduate student means
20 something that just covers tuition and the fellowship to a
21 graduate student means something that covers tuition plus other
22 things.

23 Q I thought that perhaps Congress meant the two
24 generically to be different. That a scholarship was something
25 that was given to somebody who was in school at any level,

1 undergraduate or graduate level or even high school, and that
2 a fellowship grant, a fellowship grant was and could be given
3 to somebody not -- he might or might not be an academic person
4 but it didn't have anything to do with school, as such.

5 That is the respondent's submission, as I understand.

6 A I think our answer to it is two things.

7 First, we don't understand that that has ever been
8 the accepted understanding of those words in any place, which
9 would lead us to think that if Congress had meant that rather
10 unusual distinction it would have been more direct in saying so.

11 And, I think the other answer really comes down to
12 why these regulations exist and perhaps I ought to turn to
13 those because this case, I think, focuses on the validity of
14 these regulations.

15 The statute really has no definition. You are left
16 on this statute, I think, to infer from why the statute was
17 adopted and what Congress said about it, how this sort of case
18 ought to be resolved.

19 The Treasury, which has general rule-making power,
20 has sought to use that power to fill what is really an inter-
21 stice in the statute.

22 These regulations that the Treasury has adopted were
23 accepted as the controlling legal theory by the District Judge.
24 They form the basis for instructions for rulings on evidence
25 and for that reason I think that the basis for the regulations

1 is the heart really of this case.

2 If those regulations are reasonable, if they are
3 rational interpretations of the statute, then we would suggest
4 that the Treasury has properly exercised its power in drawing
5 a rather hard line on what we would agree is a rather hard
6 case of statutory interpretation.

7 These regulations, if I can turn to their language,
8 start out with a general definition that says generally speaking
9 that a scholarship is an amount paid to allow a student to
10 pursue studies. A fellowship to allow a student to pursue
11 studies or research.

12 If the regulations stop there this case would not
13 have arisen because these payments would have qualified. But
14 the dispute focuses on two exceptions that are in these regu-
15 lations.

16 Q As I look at these regulations they do seem to
17 me superficially at least to make close to this distinction
18 by the respondent, forwhatever it is worth, 117-3 says a
19 scholarship is something which is given to a student whether
20 an undergraduate or a graduate and fellowship grant generally
21 means an amount paid or allowed to an individual to aid him
22 in the pursuit.

23 A Of study or research.

24 Q And one is a student and the other is an
25 individual. There must be some reason for the difference in

1 language.

2 A I think the reason is that an individual could
3 be either. It could be a student or a nonstudent. I don't
4 believe that these regulations were intended in that sub-
5 paragraph (c) to not to apply to a student but rather the
6 word individual was used to encompass a student as well as
7 somebody who was not.

8 I think that that would agree with the general under-
9 standing of a fellowship which might be to a graduate student
10 or might not be.

11 The exceptions which are also set out in our Appendix
12 to these general definitions are twofold.

13 One says that a scholarship or fellowship does not
14 include amounts that represent compensation for past, present
15 or future employment services.

16 The second says that a scholarship or fellowship does
17 not encompass amounts that are paid to finance study or re-
18 search undertaken and the words are primarily for the benefit
19 of the grantor.

20 Both of these exceptions represent generalizations
21 of concerns Congress evidenced for things that Congress did
22 when it was drafting this part of the Revenue Code. This part
23 of the Code was a direct response to some very specific
24 problems that the Treasury had in years preceding 1954.

25 These were how to treat amounts paid research and

1 teaching assistants and how to treat foundation grants to the
2 nonstudent, often an established research or a professional
3 who wanted to continue his area of activity.

4 The only way of doing this before 1954 was to apply
5 concepts of gift. And 39 Code is now, a gift was intended the
6 amount was not taxable.

7 Now the difficulty with this was that it was a rather
8 anomalous approach. As things worked out the foundation grant
9 to an established professional which is a reasonably substantial
10 amount, proceeds from what could be called the disinterested
11 generosities, so it is a gift, the small amounts paid graduate
12 students who were required to teach or do research are paid to
13 an employee so those are taxed.

14 This is a sensible interpretation of gift. But in
15 terms of tax policy and in terms of what one might want to
16 exempt or not exempt it is questionable whether this makes
17 sense.

18 It was against this background that Section 117 was
19 adopted. It has in its first section, 117-A, a general ex-
20 clusion of amounts paid as scholarships or fellowships. Then
21 117-B expressly deals with these two problems; 117-B-1 deals
22 with the research assistant or teaching assistant and it
23 expressly provides that amounts paid to that type of person
24 are to be taxed unless that person is performing duties, for
25 example, practice teaching, that are required of all candidates

1 for the degree including those, of course, who would not have
2 fellowships or scholarships.

3 Now in drafting these provisions Congress said two
4 things. The parts of the regulations that we are concerned
5 with here represent generalizations of what Congress said.

6 In dealing with the nondegree candidates in estab-
7 lishing this \$300 per month exclusion, both Houses of Congress
8 in their committee reports, said that they did not intend to
9 grant exclusions for amounts that could fairly be called
10 continuing payments of salary during a period when the recipient
11 is on leave from his regular job.

12 That is the language of the House report. It is
13 essentially repeated in the Senate report. The House did this
14 in the context of an objective formula which would have ex-
15 cluded fellowships only if the fellowship grant and the em-
16 ployee's compensation from a prior employer were less than 75
17 percent of this prior salary.

18 The Senate changed the formula but expressed the
19 same general idea. The reason the Senate changed the formula
20 does not bear on this case. It is because it was called to the
21 Senate's attention that certain people, for example, people who
22 just got a medical degree and were being given a fellowship
23 would, under the House formula, have been taxed because they
24 had no real income before they started on their research or
25 post doctoral fellowship.

1 Now the part of the regulation that excludes from a
2 fellowship or a scholarship compensation from past, present or
3 future services, we suggest has its direct antecedent in this
4 aspect of the legislative history.

5 Congress was quite clear that it did not want to
6 exempt payments of salary while the recipient is on leave from
7 his regular job. We suggest in this part of the regulation the
8 Treasury has quite directly implemented that expression of
9 Congressional concern.

10 The second part of the regulation which speaks of the
11 primary purpose of the grant comes out of the legislative
12 history of Section 117(b)(1) which taxes amounts paid to
13 teaching and research assistants.

14 That exemption does not apply if the teaching or
15 research is required of everybody who is a candidate for the
16 degree even if he doesn't have a scholarship. Congress in
17 explaining that dichotomy said it was drafting the statute so
18 that it would not tax a grant which involves research or
19 teaching services performed primarily for the training and
20 education of the recipient.

21 So the second exclusion of the regulation finds its
22 direct antecedent in that portion of the legislative history.
23 So what we have is a Treasury attempt to synthesize and give
24 expression to the general concerns that Congress showed in
25 drafting this statute.

1 There are several arguments made against us, both
2 by respondent and by the court below which I would like to deal
3 with very briefly.

4 Congress said that it was trying to avoid a case by
5 case inquiry into the existence of gift. From this it has been
6 suggested, and argued, that Congress was trying to avoid a
7 case by case inquiry into anything, even compensation.

8 We find no support for that in the legislative
9 history, none has ever been cited. Congress rather made clear
10 that it did not want to let compensatory or bargain for
11 arrangements escape tax.

12 And this is the effect of the Treasury regulations
13 is to support that purpose.

14 The second point which I think is really at the basis
15 of the Third Circuit opinion here, is the view that Congress
16 in Section 117 wanted to do everything it could to encourage
17 education and that the interpretation rendered below encourages
18 education.

19 That is true that Congress wanted to encourage edu-
20 cation through certain tax exempt incentives but that is not
21 the function of Section 117.

22 Congress' attempts to encourage education are in other
23 parts of the code in Section 501 which allows tax free founda-
24 tionstand educational institutions and in Section 170 which
25 allows deductions for donations to that sort of organization.

1 Neither of these bear on this case which is a com-
2 mercial enterprise, arises in a commercial setting and a
3 bargained-for arrangement.

4 Q May I ask you this question? Suppose an
5 employee of Westinghouse went to his superiors and he said,
6 "I want to take a year off to work on my doctoral thesis," and
7 they said, "Well, that is fine, Westinghouse likes to encourage
8 its young people and we will give you a scholarship of say
9 \$10,000."

10 So they just give him the \$10,000. Nothing more.
11 Those are the total facts. How would that be treated?

12 A With no quid pro quo.

13 Q No quid pro quo.

14 A He was not promised that when he first came to
15 work?

16 Q No.

17 A He was not obligated to come back?

18 Q No, Westinghouse says, "We encourage this sort
19 of thing. We will give you a scholarship of \$10,000."

20 A I don't think we would assert that that is
21 compensation.

22 Q Really what you are settled down to here is the
23 intimate tie between the terms and conditions of employment of
24 Westinghouse business interests and the payments made on the
25 one hand and the tie between the payments made here and the

1 usual ordinary compensation of the person on the other?

2 A Yes, we rely on that bundle of facts and I think
3 that bundle is typical of the cases we have been litigating.

4 Thank you.

5 MR. CHIEF JUSTICE WARREN: Mr. Larrimer.

6 ORAL ARGUMENT OF JAMES C. LARRIMER, ESQ.

7 ON BEHALF OF RESPONDENT

8 MR. LARRIMER: May it please the Court.

9 If I may I would like to direct my initial comments
10 to the question proposed by Mr. Justice Fortas on the selection
11 of the thesis topic.

12 The section of the topic itself is confined to the
13 area in which this scholarship was granted and this is the
14 requirement of Westinghouse that it be in engineering field.
15 That is the broad limit of the topic itself. The selection of
16 the thesis ---

17 Q Well, the Government says something more
18 specific than that. The Government says something much more
19 specific than that.

20 A They say it, your Honor, yes.

21 Q I haven't had a chance to check into the record
22 but the Government says it has got to be connected with the --
23 it has to be relevant to the work program of the laboratory,
24 and you say the record does not support that?

25 A The record does not support that. The record,

1 the testimony of the witness was that it must be of general
2 interest and very general in nature I think are the exact
3 terms that were used by the witness.

4 The thesis topic is essentially a learning process
5 or a teaching process. The university has a condition of
6 granting the degree of the doctor of philosophy must be satis-
7 fied that these men have the ability to undertake what they
8 call original research.

9 They must first select a topic and in selecting the
10 topic they must make a search of the records in order to
11 ascertain that this particular topic has not been researched
12 before. This selection must be made and submitted to the
13 faculty and the university for approval and after the selection
14 is approved, as constituting original research, then the
15 individual student is permitted to pursue his research in order
16 to secure an answer to the problem he has selected.

17 Q Well then the company does have the right to
18 determine whether or not the proposal of the employee for a
19 thesis is to be permitted?

20 A The program, yes, your Honor. The program under
21 which the scholarship is granted states that the topic should
22 be of interest to Bettis, the Atomic Energy and it should be
23 submitted to them for approval.

24 Q In other words he is not aentirely a free agent
25 to acquire a doctorate without regard to his work? Supposing

1 Atomic Energy he wanted to write a thesis on English.

2 A It would not be approved.

3 Q It would not be approved.

4 A Because ---

5 Q Because there is no specific interest of the
6 company in that?

7 A Well, not for that reason, but for a different
8 reason and that is this: That when these individuals, when
9 these students are accepted under this scholarship program
10 they are accepted as a candidate for a degree in the Department
11 of Engineering and Science and necessarily their thesis topic
12 must be involved with a topic which is in that department.

13 Q Is that interest only as general as science,
14 anything in science whether it affected their work or not
15 would be approved?

16 A Yes.

17 Q Of necessity they would have to approve it?

18 A No, the program does not say that. The program
19 can be terminated at any time by Westinghouse for any reason.
20 There is no vested interest in this student in continuation of
21 the program. Westinghouse has a right to continue or to dis-
22 continue it at any time for whatever reason they choose.

23 But the testimony in the court below was that it had
24 to be in engineering and it could be of very general nature,
25 related to the Westinghouse or Bettis Atomic Laboratory, which,

1 of course, was involved with engineering principles and
2 scientific principles.

3 Now the Government's premise, which is stated through-
4 out its brief, and is stated unequivocally, is that Congress
5 plainly intended that the view that the exclusion would not
6 apply to grants that are in effect merely payments of a salary
7 during a period while the recipient is on leave from his
8 regular job.

9 This statement is repeated again and again. It is
10 repeated again on page 9 of their brief, it is repeated again
11 on page 12, repeated again on page 18, and on page 21, page 30,
12 page 4 and 8 of the reply brief.

13 Now, I suggest to this court that this statement is
14 not supported by a legislative history. Directing my argument
15 to that aspect of it, in the backdrop of this case ---

16 MR. CHIEF JUSTICE WARREN: We will let you start that
17 in the morning. We will recess now, Mr. Larrimer.

18 (Whereupon, at 2:30 p.m. the Court recessed, to
19 reconvene at 10 a.m. Tuesday, March 4, 1969.)
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25