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NATIONAL
ENDOWMENT
FOR
THE ARTS

WASHINGTON
D.C. 20506



A Federal agency advised by the
National Council on the Arts

REPORT: A Study of the Panel System at the
National Endowment for the Arts

DATE: March, 1979

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National Endowment for the Arts

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Introduction

The panel system is vital to the work of the National Endowment for the Arts. From the beginning, the Chairman of the Endowment and the National Council on the Arts have relied on panels of experts in the different fields to examine applications and review and revise Program guidelines. In its 1978 Statement on Goals and Basic Policy of the National Endowment for the Arts, the National Council reaffirmed its reliance on "the tested principle of review by peer panels."

In grant-making, peer review is the fairest way of making difficult decisions on artistic quality in a government agency. The Endowment's panels bring to application review the thoughtful judgment of the nation's most respected creative artists, performers, teachers, critics and arts administrators. Their high standards keep support focussed on quality. For policy-making, their informed advice has always been sought and will be more and more in demand as the Endowment develops its long-range planning.

Endowment panels serve the individual Programs of the Endowment much the way the National Council serves the Endowment as a whole. The well-being of the panel system -- its effective use of participants' time and energy, its capacity to take on new tasks, as needed -- is crucial to the agency as a whole.

The overall study of the panel system conducted in 1978 and described in the following pages, examined Endowment panels in relation to present and foreseeable needs. It made recommendations, now being implemented, intended to strengthen the panel system and enable it to serve the agency as well in the future as it has in the past.

Background

The panel system, which began with the Endowment* itself, has grown and changed with the agency's own growth. Responding to their particular fields, the panels in different Programs have always been diverse in structure and operations.

Architecture, Planning and Design, for example, a Program which comprises many activities and schools of thought, has relied, in the past, on ad hoc panels, to provide different points of view for each round of applications. Programs like Theatre, on the other hand, which stressed institutional overview and a gradual evolution of Program policy had standing panels.

Visual Arts, which must review applications from many separate fields (photography, sculpture, print-making, crafts, conceptual/performance art, etc.) has always convened small panels of specialists to review each category. In contrast, the Dance Program, with a less fragmented field, prefers to bring all applications before a broad spectrum of professional opinion, and has therefore held fewer, but larger and longer meetings.

The need for diversity has always been acknowledged at the Endowment; the problems and priorities in each field are different and continually evolving.

In the past, there was relatively little awareness, between Programs, of one another's methods; the perspective to be gained from comparative study was not available to individual Programs or the Endowment's administration.

* Endowment panels are provided for under Sec. 10 of the National Foundation on the Arts and the Humanities Act of 1965, as amended.

At the same time, it was becoming apparent that panels in the different Programs were facing some serious common problems.

Problems

1. The increase in the Endowment's application workload (coupled with restricted administrative funds) had tended to overburden the individual panelist, threatening the quality of decision-making.
2. The need to broaden representation, while providing specific kinds of expertise has made several panels unwieldy.
3. Information had not kept pace with increasing applications in several fields. More on-site visits were needed in several Programs (Dance, Expansion Arts, Orchestra, Theatre) to provide reliable firsthand information for new applicants who had never been seen and grantees who had not been seen in some time.

But not every panelist whose counsel was needed for policy discussion could make all the on-site visits needed for application review. Even a panel too large for good discussion seemed to be too small to provide all the firsthand information needed for grant-making.

4. Demands on panelists' time increased yearly. Panel books were getting heavier, panel meetings growing longer and more exhausting. More on-site visits were needed. The active arts professionals on whose advice the Endowment has always depended were finding it more and more difficult to meet all their many panel responsibilities, which brought them to Washington several times a year.
5. The pressure of their application workload left many panels without enough time to discuss important policy issues.

The need for more policy discussion by panels was already becoming obvious throughout the Endowment.

Programs which had once used only ad hoc panels had recognized the need to have standing policy panels. Visual Arts had already appointed a policy panel by 1978; both Architecture, Planning and Design and Media Arts: Film/Radio/Television were planning to appoint policy panels in the future.

Standing panels, which considered applications and policy matters (the revision of guidelines, the allocation of funds within the Program, the analysis of current and future needs of the field, the development of pilot programs or new funding categories, etc.) found that they kept having to postpone urgently needed policy discussions because of their heavy application workloads.

It was clear that the problems noted above were not going to disappear. On the contrary, they were likely to increase as the pressure of applications, the demand for broader representation on panels, the need for more information and more time for policy discussion increased. With the development of the Endowment's Five Year Plan, the need for more policy discussion on the part of panels was clearly foreseeable.

In addition to the problems described above, structural and programmatic changes in progress at the Endowment would undoubtedly affect panel structure and operations.

It appeared, moreover, that the panels had reached a stage in their separate evolution in which a comparative study would be useful.

Further, there was some confusion and lack of information, both within the Endowment and in the field, about the way the different panels operated, the specific responsibilities of panelists and consultants, the role of state arts agency (SAA) representatives and others involved in the panel process, and on such specific matters as length of term and rotation policy.

It was felt that a new administration provided an appropriate opportunity to examine the panel system in detail. The panel study described herein was begun in April, 1978.

Panel Study: Purpose

This study was to examine panel structure and functions at the National Endowment for the Arts in relation to present and anticipated needs. The recommendations arising from this study are intended to strengthen the panel system; to make it as effective as possible; to enable each Program to allocate its panel resources according to its specific needs; to lessen the workloads of individual panelists while maintaining high standards of evaluation; and to make it possible for panels to take on the additional policy and planning tasks anticipated.

The study was conducted through observation of panel meetings in the various Programs; extensive consultation with staff and panelists, past and present, with Council members, state arts agencies, and other experts in the field. This study also had the benefit of a 1977 Panel Questionnaire conducted by the Office of Council and Panel Operations; the 1977 Annual Report on Federal Advisory Committees, and a 1974 Endowment report on panel voting procedures.

Findings

Noting the problems listed above, the panel study took the need for diversity in the structure and functioning of the individual panels as a given.

But observation and comparison of panels in the various Programs suggested that Endowment panels, beset by

common problems, were growing more, not less alike with the passage of time. The advantages of ad hoc panels (rapid rotation, infusion of fresh ideas, education of the field) on the one hand, and of standing panels on the other (stability, gradual evolution of policy and direction) no longer seemed to describe the separate priorities of two different kinds of panels. They looked more like common needs.

Beyond the differences that defined them, all Endowment Programs were found to have the following general requirements:

- 1) A standing panel to advise on policy issues, program directions and guidelines; to review and recommend on budget allocations; and to help represent the Program at Council. This group needed to be large enough to represent its field, but not too large for active discussion.
- 2) Panel and consultant participation adequate to review large (and growing) numbers of applications and make the essential on-site visits (or pre-screen compositions, in the case of Music, or read scores of manuscripts, in the case of Literature).
- 3) Linkage, specific and structured, between the application review process and policy discussion, since it is out of the application review process that many policy, program, and guideline issues emerge.
- 4) Flexibility in the allocation of resources, to provide for each Program's specific needs, whether for on-site visits, expert consultants, or visitors to policy discussions.
- 5) The widest possible representation of professional and aesthetic viewpoints, including ethnic and minority cultures, and broad geographic distribution.
- 6) Opportunities to train and test possible future panelists.

Given this range of needs throughout, the question was no longer what were the relative merits of ad hoc and

standing panels, but rather, how could the best features of each be incorporated in the system as a whole?

Recommendations

A better division of labor seemed to be called for, not only to distribute the workload, but to accommodate the conflicting demands made upon the system -- for wider representation on the one hand and specific expertise on the other; greater access for the field, without jeopardy to quality standards or program stability.

- I. Based on the above observations, the study recommended consideration of the following general model, which would be adapted to the specific needs of individual Programs.

- a. a standing policy panel of 12-15, augmented by
- b. grant panels, whose duties would be limited to application review and specific recommendations arising from application review.

- a. policy panel

A Program's standing policy panel would consist of 12-15 panelists, including a state arts agency representative. A panel of 12-15 should make intensive discussion possible; with a compact core group, additional people can be invited to augment discussion of particular issues, as needed.

The policy panel should represent a broad range of professional and aesthetic viewpoints, with as much cultural, ethnic, and regional distribution as is feasible with a limited number of persons.

policy panelists are chosen for

1. their standing in the field.
2. their ability to articulate the issues confronting the field.
3. their expertise in an area which needs representation on the policy panel at a given time.
4. their ability to work with others in a panel situation.
5. their ability to make the necessary commitment of time and energy to panel service.

Policy panelists would generally be chosen from among the Program's grant panelists, that is, from a group of experts who have already had some experience with the Endowment's grant-making procedures.

Policy panelists, like all Endowment panelists, would be appointed year by year, serving on the policy panel for a maximum of three (3) years. The policy panel would rotate off by thirds, changing completely every three years.

Each policy panel would have a Chairman and a Vice-Chairman, who would each serve not less than two (2) years. The Chairman and Vice-Chairman must have served at least one (1) year on the policy panel before their appointment. (The Chairman and Vice-Chairman are the only exceptions to the 3-year maximum rule; a Chairman or Vice-Chairman may be appointed at the end of the 3-year policy panel service.)

The Chairman would be expected to attend most National Council meetings (replaced by the Vice-Chairman, if necessary), to help represent the Program before Council and communicate Council policies to his or her panel.

Each policy panelist would be expected to attend

1. all policy panel meetings.
2. at least 1 grant panel meeting. Virtually all policy panelists would be actively engaged in the work of at least one of the Program's grant panels. A policy panelist would serve, in most cases, as Chairman of the grant panel, reporting on issues arising out of application review to the policy panel.

The policy panel would advise Endowment staff, the Council and the Program's grant panels on policy matters. It would help develop Program directions and guidelines; review and recommend on budget allocations within the Program; propose and help develop pilot projects. It would resolve policy issues arising out of application review. It would review applications under (or otherwise maintain close contact with) the Program's pilot projects.

All other application review would be done by the Program's grant panels, whose recommendations would, in most cases, be reported directly to Council by the Chairman of the policy panel and/or Program Director, after consultation with the grant panel Chairman.

b. grant panels

A Program's grant panels, appointed yearly, would be composed of grant panelists and one or more members of the policy panel (a policy panelist, in most cases, is Chairman of the grant panel). The proportion of policy to grant panelists on each grant panel would vary with the needs of the Program and the funding category under review.

The size of each grant panel would be determined by the needs of the individual Program, and administrative and budgetary considerations.

A Program's grant panelists would be chosen according to the same general criteria as the policy panelists. Together with the specific expertise needed, grant panels should provide broad representation in all respects: professional, regional, cultural, aesthetic. In addition to the state arts agency (SAA) representative appointed to the policy panel, each Program would appoint at least one additional SAA or Regional Arts Organization representative to a grant panel.

The total list of Endowment panelists would be available as public information to the field and serve to indicate the wide range of viewpoints to bear on applications and issues in a given year.

All panelists at the Arts Endowment are appointed for 1-year terms. While policy panelists could be reappointed for a maximum of 3 years, grant panelists could be reappointed for a maximum of two (2) consecutive years. About half the people on all grant panels would rotate off each year, to give more of the field an opportunity to participate in and learn about the Endowment panel process. Some grant panelists would not be serving two years in a row. However, a grant panelist may be reappointed after a year's interval.

As members of a grant panel, policy panelists would take on their full share of grant panel responsibilities. In most cases, a grant panelist would be preparing for and attending only one grant panel meeting.

The contracts of grant panelists and consultants, would detail their specific responsibilities. (The respective duties of panelists and consultants are discussed in more detail on p. of this report.) Both grant panelists and consultants may be doing similar work for the Program (e.g., making on-site visits); the chief distinction between them is that the grant panelist votes in application review, while the consultant, if he or she attends the grant panel meeting at all, would ordinarily be there only to answer questions. (Both panelists and consultants making on-site visits would submit written reports, in a form specified by the Program. Provided that this function is included in his or her

job description at the outset, a consultant may vote at a panel meeting, if needed to provide a quorum or balance of expertise, with the approval of panel and staff.)

The policy panel member(s) of a grant panel informs the grant panel of policy decisions and directives (e.g., criteria for judging in a particular funding category), and would report back to the policy panel any problems or issues that arise in the course of application review.

Applications that raise policy issues could

- a. be referred to the policy panel, if there is a meeting scheduled prior to the next Council session;
- b. be held out and referred to a later policy meeting (not always possible because of applicant's projected starting date);
- c. be resolved according to present guidelines by the grant panel, with a non-precedent-setting recommendation that refers the issue, not the application, to the policy panel for discussion and resolution.

The general plan described above was recommended as a rational solution to problems perceived throughout the system. It separated functions that got in one another's way, provided the necessary linkage between them, and shared the growing workload among a greater number of participants, who, in aggregate, would also provide broader representation from the field.

It was felt that a basic structure that provides for common needs would make communication between Programs easier for both panels and staff. At the same time, the structure was flexible enough to be adapted to the specific requirements of individual Programs, allowing each to allocate its panel resources as needed.

A range of variations on the model described above was anticipated when the panel study recommendations were approved for implementation by the Chairman of the Endowment on August 30, 1978.

After extensive consultation with staff and panels in the different Programs in the following months, the recommended changes in panel structure are currently in progress throughout the Endowment.

While all Endowment Programs now have (or plan) standing policy panels of 12-15, grant panels vary in size from 3 to 15, depending on the needs of the individual Program. Media Arts, for example, continues to review applications in each funding category with a separate panel of 3-5 specialists, one of whom is now also a member of the policy panel, which meets at least once a year, to review guidelines and discuss future Program directions.

Dance and Theatre, which have fewer and larger grant panels, include several policy panelists on each grant panel. Under the new system, policy panelists in these Programs will generally be attending and preparing for only one (in some cases two) grant panel meetings a year, sharing the burden of on-site visits and other preparation with grant panelists and consultants.

- II. The study also recommended better orientation of all new panelists, so as to make the best possible use of their time and talents. It suggested that
- a. each Program, in coordination with the Office of Council and Panel Operations and the Program Coordination Office should plan an orientation session for new policy panelists, which might be scheduled the day or evening before their first meeting (some Programs already conducted such sessions; others relied more on mailed material). For grant panelists, much information could be provided by mail and in the hour or two before the application review session.
 - b. To facilitate understanding of roles and rules, the study also recommended that all panelists (policy and grant) be sent a handbook upon appointment, which should discuss the following matters, on which the study obtained clarification. The handbook for panelists is in preparation at

this time.

Contents of Handbook

1. the Endowment (including the Council); policies, role and structure;
2. the function of Endowment panels; to whom they are responsible, whom they advise;
3. the duties, roles, and obligations of panelists, consultants, and others involved in the panel process;
4. the role of state arts agency representatives;
5. the rules governing confidentiality and conflict of interest for Endowment panelists;
6. length of term, rotation policy;
7. reasons for which resignation from the panel may be requested;
8. compensation for panelists and consultants;
9. route of an application through the Endowment; and
10. useful background information, e.g., a glossary of technical terms (Chairman's Action, Treasury Fund, etc.).

With adequate panelist orientation, thorough staff preparations of issues and alternatives, clear policy directives from policy panels and disciplined application review on the part of grant panels, the quality of decision-making at the Endowment should be maintained, perhaps even enhanced, under the new system.

Roles and Responsibilities

a. responsibilities of panels

The responsibilities of Endowment panels are

- 1) to review grant applications and make recommendations on applications to the National Council on the Arts.
- 2) to advise Program Directors, Endowment staff, and Council on
 - a. current and future needs in each Program area.
 - b. the division of funds within the Program.
 - c. policy issues.
 - d. the revision of Program guidelines.
 - e. the development of new Program directions, funding categories, pilot programs and other initiatives.

That is, panels advise the Council directly (usually through the Chairman of the Program's policy panel) of their recommendations on grant applications. Panels advise both staff and Council on matters of policy, budgetary allocation, and the development and revision of Program directions and guidelines. Panels also advise the Program Director on matters within his or her area of responsibility.

In general, responsibility for application review is assumed by a Program's grant panels (however, policy panels review applications in pilot programs and other special cases); responsibility for

recommendations on policy matters (as listed under 2 above) are assumed by the Program's policy panel.

Because grant-and policy-making are ongoing, cyclical processes that depend on one another, it is clearly an oversimplification to state that policy panels review policy and grant panels review grants. Since policy changes often begin with problems that arise in the grant-making process, communications about policy issues must travel both ways--and do--between policy and grant panels throughout the Endowment.

Often grant panels are confronted with policy questions that must be resolved before decisions on applications can be made. Procedures vary somewhat from Program to Program in dealing with this situation. Grant panels with a large core of policy panelists may make such decisions on the spot. Typically, however, applications raising policy issues are handled by the grant panel under current guidelines. The grant panel flags the issues encountered for further discussion and resolution by the Program's policy panel, often with definite recommendations from the grant panel.

In general, the policy panelist (usually the grant panel's Chairman) informs his or her grant panel of decisions made by the policy panel, and reports the grant panel's recommendations on guideline changes back to the policy panel. Members of the Program staff, who are present at all panel meetings, assist in this communications process.

b. panelists and consultants

Endowment Programs use both panelists and consultants to gather information, make evaluations and recommendations; their respective roles in the decision-making process, however, are different.

Panelists are voting members of a policy or grant panel which makes recommendations to the Council.

At panel meetings, panelists participate in discussion and vote. Consultants assist the decision-making process, whether by pre-screening submitted manuscripts, slides, tapes, etc. or providing information in written reports on organizations visited.

Consultants may be asked to attend a panel meeting to answer panelists' questions (but not otherwise participate in discussion). However, if it is written into a consultant's contract at the outset, a consultant may vote at a panel meeting, with the approval of panel and staff, where his or her participation is needed to provide balance of expertise.

The duties of consultants are specific and limited; the responsibilities of panelists are broader. Panelists often function as consultants as well. That is, in addition to their broader responsibilities as panelists, they may undertake specific tasks for the Program or panel between panel meetings, making on-site visits with written reports to staff, or pre-screening the work of applicants in preparation for the full panel meeting.

The specific duties of panelists vary with the nature of the program. Generally speaking,

policy panelists :

1. review and consider Program goals, plans, and strategies.
2. review and consider the development or revision of specific programs, or guidelines.
3. consider recommendations on budgetary matters and procedures.
4. identify needs for research or evaluation.
5. assess research or evaluation findings.

6. review applications under pilot programs.
7. participate as active member (often as Chairman) of at least one grant panel of the Program. Make on-site visits, provide reports.
8. participate in subcommittees or task forces of the policy panel.
9. consult with Program staff.
10. participate in leadership/advocacy efforts of the Program, attend conferences, joint meetings with other groups, etc.

The Chairman of the policy panel (or the Vice-Chairman in his or her absence) attends meetings of the National Council. He or she represents the policy panel before Council.

grant panelists :

1. study applications in their panel book.
2. make inquiries, as needed, regarding applicants.
3. assume responsibility for a specified number of on-site visits (in Programs where these are relevant).

Note: In making these visits, panelists act in the capacity of consultants.
To supplement panelist-consultant visits, where there are more visits to be made than members of the panel can handle, the Program may hire additional consultants (who are not panelists) to make a few visits or, in some cases, to cover an entire region.

4. participate in pre-screening of applications, slides, photographs, tapes, manuscripts, etc.

in Programs where pre-screening is required.

Note: In pre-screening material in preparation for the full panel meeting, the panelist acts in the capacity of consultant. To assist panelist-consultants, the Program may engage additional consultants for pre-screening only.

5. attend meeting(s) of the grant panel and make recommendations on applications.
6. identify issues emerging out of application review for the policy panel to consider.

The Chairman of the grant panel (a member of the policy panel) reports to the Chairman of the policy panel on the recommendations of his or her panel, and represents the grant panel at policy panel meetings.

c. role of state arts agency (SAA) representatives on Endowment panels

State arts agency (SAA) representatives who serve on Endowment panels bring an important perspective to panel discussions. Serving the same constituency (on the state level), SAA representatives can provide other Endowment panelists with insight into the ways their policy recommendations or grants might affect the arts at the regional, state, and local levels. Their presence on Endowment panels should help strengthen the partnership between federal, regional, state, and local support for the arts.

It has been agreed that each Program's policy panel will include one (1) SAA representative, who may be a director, chairman, Council member or staff member of a state arts agency. In addition, each Program will appoint at least one additional SAA or Regional Arts Organization representative to a grant panel.

SAA representatives, who also provide professional expertise, play an important role in maintaining close communication between the Endowment and the state arts agencies.

On Endowment panels, SAA representatives

- 1) act as two-way sources of information:
 - a. SAA representatives inform their Endowment panels about
 1. the attitudes, concerns, and needs of state arts agencies relative to the Endowment Program generally.
 2. the position(s) of state arts agencies (when one or more exist) on specific issues confronting the panel.
 - b. SAA representatives inform other state arts agencies about
 1. trends in the discipline, seen from a national perspective.
 2. the way the Endowment program functions and the problems it addresses.
 3. the policies of their Endowment panel.
 4. trends in their panel's thinking and/or general funding patterns observed (not, of course, information on specific grant recommendations).
- 2) function as Endowment panelists, concerned in an impartial way with the well-being of their discipline field, seen from a national perspective.
 - a. in policy discussion, it is important that SAA representatives inform their panels

about state arts agency concerns and positions so that Endowment and SAA policies work together in support of the field.

- b. in application review, it is of course, crucial to their role as Endowment panelists that SAA representatives do not regard themselves as advocates, whether of organizations in their own states or regions, or other state arts agencies applying for funds to their panel.

To summarize:

State arts agency representatives can provide the following kinds of information to their Endowment panels:

- a. Information about the concerns of state arts agencies in relation to the discipline field.
- b. Information about the situation of that discipline in his or her state or region.
- c. Information about the workings of a state arts agency.
- d. His or her own expertise as a professional arts administrator or prior experience on the boards of arts organizations.
- e. In addition to the above, individual SAA representatives may have educational background, training, or other professional expertise helpful to his or her panel. In an effort to ensure the best possible match between discipline panels and the background or interests of SAA representatives, procedures have been established to gather the necessary information from state arts agencies and Endowment Program Directors on an ongoing basis.

The appointment and rotation of SAA representatives on Endowment panels should be the same as that of other panelists. That is, they are appointed for 1-year terms, whether as policy or grant panelists, serving as policy panelists for a maximum of three years, as grant panelists for a maximum of two consecutive years. But because SAA representatives on Endowment panels must be closely in touch with state arts agency issues, they must be replaced as representatives on Endowment panels if they resign their positions on state or regional arts organizations.

d. length of term and rotation policy

All panelists are appointed for 1-year terms.

Policy panelists may be reappointed twice, to serve for a maximum of 3 years (with the possible exception of the Chairman and Vice-Chairman, who should serve in those capacities for 2 consecutive years, even if the 3-year maximum is thereby exceeded. A Chairman or Vice-Chairman, who must previously have served at least one year on the policy panel, may be appointed after his or her 3 years of policy panel service.) The policy panel rotates off one-third of its members each year.

The three years of panel service constitute a maximum, not a term of office. The chief consideration at all times in the composition of a panel in a given year is its balance of expertise, of professional, artistic, geographic, and minority viewpoints. Some times a policy panelist must be rotated before his or her three year maximum is up, because of the requirements of panel balance or the needs of the panel or Program.

Grant panelists serve either one or two years before being rotated off; in either case, they may be reappointed after the interval of a year.

Policy panelists are usually chosen from among the grant panelists of a Program (current or very recent); in general, policy panelists should have served previously as grant panelists.

e. rules regarding confidentiality, conflict of interest

confidentiality

The greater part of all policy panel meetings at the National Endowment for the Arts are conducted as open sessions, so that interested persons from the field may attend and observe.

Endowment application review sessions are closed, in order to allow for frank and candid discussion, and to protect the privacy of groups and individuals disclosing confidential information, particularly those recommended for rejection.

Also, recommendations of panels on applications constitute advice and are not binding on the agency. Final grant awarding authority rests with the Chairman, after review by the National Council, under our enabling legislation.

For the above reasons, all recommendations and deliberations of Endowment panels in closed session, and all comments and remarks by panel members at such sessions, are to be treated as strictly confidential.

conflict of interest

Because the participation of arts professionals active in their fields is crucial to Endowment grant- and policy-making, the agency and the National Council on the Arts have always been particularly concerned to identify and avoid all possible conflict of interest situations.

The National Council on the Arts' resolution on this subject, reprinted below, stresses that "Council members and consultant experts should be alert to avoid any action which could possibly be interpreted as a use of Council membership or consultant-expert employment to further their own interests or those of an organization with which they are affiliated."

The Council resolution of 1970, amended in 1978, cites five illustrative applications of these two basic principles (see below).

The 1978 version contains an important modification: Whereas the Council had noted, in its original version of this resolution, adopted in 1970, that "it is not inappropriate for Council members or consultants to remain in the conference room for the purpose of answering questions during preliminary discussion regarding a particular grantee organization with which they are affiliated," the Council amended its position in the 1978 version of the resolution, which simply states that "Council members and consultant experts should leave the room during the discussion and determination of an application from an organization with which they are affiliated."

"must"?

That is, the Council member, panelist or consultant must leave the room even during the preliminary discussion of such an application.

NATIONAL
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THE ARTS

WASHINGTON
D.C. 20506



A Federal agency advised by the
National Council on the Arts

February, 1978

MEMORANDUM

TO: NATIONAL COUNCIL ON THE ARTS
PANEL MEMBERS,
NATIONAL ENDOWMENT FOR THE ARTS

FROM: ROBERT WADE, GENERAL COUNSEL *RW*

SUBJECT: CONFLICT OF INTEREST

The following statement on conflict of interest, especially the numbered paragraphs at the end of the statement, reflects the letter, spirit, and intent of Federal conflict of interest laws enacted by the Congress over the past years, as well as Civil Service and National Endowment regulations promulgated thereunder. It should be read carefully by all Council and Panel members.

STATEMENT ON CONFLICT OF INTEREST

The National Council on the Arts and the National Endowment for the Arts are well aware that one of their most important duties is to review constantly the disbursement of public monies in support of the arts. Both the National Council on the Arts and the National Endowment for the Arts believe that successful administration of the National Foundation on the Arts and the Humanities Act of 1965, as amended, requires the participation of persons who are recognized for their expertise in the arts and others professionally engaged in the arts. Congress also recognized this need and requires that members of the National Council on the Arts be selected:

- "(1) from among private citizens of the United States who are widely recognized for their broad knowledge of, or expertise in, or for their profound interest in, the arts;
- (2) so as to include practicing artists, civic cultural leaders, members of the museum profession, and others who are professionally engaged in the arts; and
- (3) so as collectively to provide an appropriate distribution of membership among the major arts fields."

Section 6(b), National Foundation on the Arts and the Humanities Act of 1965, as amended.

The National Council on the Arts and the National Endowment for the Arts have used consultant-experts (either as members of panels or as individuals) to make recommendations on applications, make policy recommendations and generally advise the National Council on the Arts and the National Endowment for the Arts on matters relating to a particular field. As the funding for the National Endowment for the Arts grows, the use of consultant-experts becomes more and more important. The National Council on the Arts believes that consultant-experts should meet the same high standards of excellence as is required for membership on the National Council on the Arts.

Because members of the National Council on the Arts and consultant-experts are very much interested in the arts and often professionally involved in the arts, it is important that such persons constantly be mindful of possible conflicts of interest. In May 1966, the National Council on the Arts approved a resolution setting out its policy on conflicts of interest on the part of National Council on the Arts members. In 1967, the National Endowment for the Arts adopted formal regulations for "Standards of Conduct of Employees," which regulations apply in part to consultant-experts.

Just as the National Foundation on the Arts and the Humanities Act of 1965, as amended, requires rotation of Council members, the Council believes it is important that consultant-experts be utilized on a rotating basis. Consultant-experts should be chosen from various parts of our country and should represent various points of view within a particular art field. The Council does not believe that the length of time a consultant-expert will be used should be fixed, but that this should be dictated by the particular use for which the consultant-expert is employed and the availability of other qualified individuals.

As recognized in the National Foundation on the Arts and the Humanities Act of 1965, as amended, the interests of the arts require a maximum contribution from the leaders in each field. Therefore, Council members and consultant-experts should not disqualify themselves from participation in the arts, arts organizations or in projects supported by the National Endowment for the Arts merely because of Council membership or employment as a consultant-expert.

However, Council members and consultant-experts should be alert to avoid any action which could possibly be interpreted as a use of Council membership or consultant-experts employment to further their own interests or those of an organization with which they are affiliated.

The application of these two basic principles may be illustrated by the following examples:

1. Council members and consultant-experts should not submit an application for Endowment funds or a report required by the Endowment on behalf of themselves or an organization which employs them or with which they are affiliated, nor should they participate in any way in support of such an application. All negotiations in support of such applications should be carried on by personnel who are not Council members or consultant-experts.

2. Council members and consultant-experts may take part in activities undertaken with support from the Endowment, but should not personally receive any remuneration out of Endowment funds for their services in connection with any such activity, unless the National Council on the Arts and the National Endowment for the Arts know the approximate amount of remuneration prior to acting on such application. The propriety of receiving remuneration will depend on the nature of the organization, the amount of Endowment funding in relation to the total budget of the organization and other relevant factors.

3. If Council members or consultant-experts participate in any way in an Endowment-supported activity, the request to the Endowment for support should clearly indicate the nature of this participation.

4. Council members and consultant-experts should leave the room during the discussion and determination of an application from an organization with which they are affiliated.

5. Each Council member and consultant-expert shall file a statement outlining his/her employment and interests (financial or otherwise) in organizations eligible for Endowment support not later than 90 days after taking office or beginning employment. Such statements shall be kept current to reflect any substantial changes. Statements shall be filled with the Deputy Chairman and shall be considered confidential.

The considerations and procedure set forth above also govern, where applicable, relations between the Endowment and former Council members and former consultant-experts for one year following termination of their appointment or employment, respectively.

Adopted by the National Council on the Arts at its October/November, 1970 meeting, and revised in November, 1977.

f. grounds for which resignation may be requested

1. Absence

Panelists who are absent from two or more panel meetings may be asked to resign.

2. Non-Fulfillment of Duties

Panelists who are not able to meet their obligations to the panel (preparing for application review, taking on a share of the on-site visits or pre-screening) may be asked to resign.

3. Misleading Information

Panelists who spread misleading information to the field concerning the Endowment, whether intentionally or not, may be asked to resign.

4. Breach of Confidentiality

It will be our policy that panelists who violate Endowment rules regarding confidentiality, whether by revealing the comments of a fellow panelist at a closed session of the panel or the status of an application before it is officially announced by the Chairman be asked to resign, the General Counsel concurring.

5. Conflict of Interest

It will be our policy that panelists who violate Endowment rules governing conflict of interest by failing to reveal their association or personal interest in an application, or taking the necessary step of removing their name from the organizational application in question, or absenting themselves from all discussion and voting on such an application be asked to resign, the General Counsel concurring.

NATIONAL
ENDOWMENT
FOR
THE ARTS

WASHINGTON
D.C. 20506



A Federal agency advised by the
National Council on the Arts

February 2, 1979

As panelists for the National Endowment for the Arts, you will be making recommendations and giving counsel that will affect the future of the arts in America.

As advisors to the Endowment, which seeks to promote professional excellence in the arts; to foster creative effort by individual artists; to preserve and disseminate the finest examples of work reflecting the American heritage in its full range of cultural and ethnic diversity; to assist our cultural institutions in providing greater public service, you are charged with making judgments, large and small, that will advance these basic goals.

It is essential to the Endowment's purposes that we support only work of the highest quality. It is only by seeking out, encouraging, and conserving our best work, in all its variety, that we truly serve the American public, present and future.

You are charged, therefore, both in the review of applications and the development of guidelines, with making your judgments first of all on the basis of artistic quality.

Recognized experts in your field, you are members of panels selected from all parts of the country and a wide range of professional, aesthetic, regional, and ethnic viewpoints, so as to reflect our country's rich cultural diversity. Your varied backgrounds and experience will assist us in shaping programs and policies that can respond creatively to the needs of all constituencies. In the review of applications, you are charged with the strictest impartiality, considering each application on the basis of its merits, in accordance with established guidelines.

The Endowment is accountable for its decisions. As panelists, you have a responsibility for delivering well-formed opinions and making recommendations on the basis of reasons we may share with our applicants.

You are asked to observe scrupulously our rules regarding confidentiality and conflict of interest and to remember that you are part of a vital process. The quality and integrity of our decision-making depends so much on the individual contributions in time, thought, and energy of the men and women who assume the responsibility of serving on our panels.

On behalf of the National Council, the Endowment, and all those we serve, I want to express to you my own deep appreciation for the many hours you are devoting to this effort.

Livingston Biddle

Livingston L. Biddle, Jr.
Chairman