

Storage

1020
89/11
1768
4x68

FOREIGN AGENTS REGISTRATION ACT AMENDMENTS

Y4
.J589/1
89/11

HEARINGS

BEFORE

SUBCOMMITTEE NO. 3

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

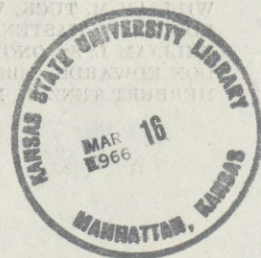
S. 693 and H.R. 290

BILLS TO AMEND THE FOREIGN AGENTS REGISTRATION
ACT OF 1938, AS AMENDED

JULY 28 AND AUGUST 2, 1965

Serial No. 11

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1966

58-225

FOREIGN AGENTS REGISTRATION
ACT AMENDMENTS

AY
1/28/87
11/88

COMMITTEE ON THE JUDICIARY

EMANUEL CELLER, New York, *Chairman*

MICHAEL A. FEIGHAN, Ohio	WILLIAM M. McCULLOCH, Ohio
FRANK CHELF, Kentucky	RICHARD H. POFF, Virginia
EDWIN E. WILLIS, Louisiana	WILLIAM C. CRAMER, Florida
PETER W. RODINO, JR., New Jersey	ARCH A. MOORE, JR., West Virginia
BYRON G. ROGERS, Colorado	JOHN V. LINDSAY, New York
HAROLD D. DONOHUE, Massachusetts	WILLIAM T. CAHILL, New Jersey
JACK B. BROOKS, Texas	CLARK MacGREGOR, Minnesota
WILLIAM M. TUCK, Virginia	CHARLES McC. MATHIAS, JR., Maryland
ROBERT T. ASHMORE, South Carolina	CARLETON J. KING, New York
JOHN DOWDY, Texas	EDWARD HUTCHINSON, Michigan
BASIL L. WHITENER, North Carolina	ROBERT McCLODY, Illinois
HERMAN TOLL, Pennsylvania	
ROBERT W. KASTENMEIER, Wisconsin	
JACOB H. GILBERT, New York	
JAMES C. CORMAN, California	
WILLIAM L. St. ONGE, Connecticut	
GEORGE F. SENNER, JR., Arizona	
DON EDWARDS, California	
WILLIAM L. HUNGATE, Missouri	
HERBERT TENZER, New York	
JOHN CONYERS, JR., Michigan	
GEORGE W. GRIDER, Tennessee	
ANDREW JACOBS, JR., Indiana	

BESS E. DICK, *Staff Director*

WILLIAM R. FOLEY, *General Counsel*

GARNER J. CLINE, *Counsel*

MURRAY DRABKIN, *Counsel*

HERBERT FUCHS, *Counsel*

WILLIAM L. SHATTUCK, *Counsel*

BENJAMIN L. ZELENKO, *Counsel*

CHARLES J. ZINN, *Law Revision Counsel*

MARTIN R. HOFFMANN, *Associate Counsel*

ALLAN CORS, *Associate Counsel*

SUBCOMMITTEE No. 3

EDWIN E. WILLIS, Louisiana, *Chairman*

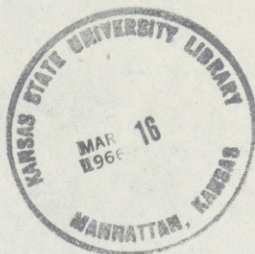
WILLIAM M. TUCK, Virginia	RICHARD H. POFF, Virginia
ROBERT W. KASTENMEIER, Wisconsin	JOHN V. LINDSAY, New York
WILLIAM L. St. ONGE, Connecticut	EDWARD HUTCHINSON, Michigan
DON EDWARDS, California	
HERBERT TENZER, New York	

HERBERT FUCHS, *Counsel*

ALLAN CORS, *Associate Counsel*

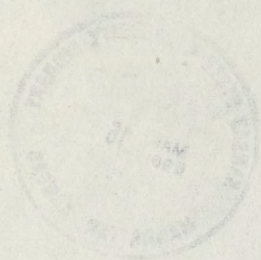
CONTENTS

WEDNESDAY, JULY 28, 1965, AND MONDAY, AUGUST 2, 1965	
Text of—	Page
S. 693.....	1
H.R. 290.....	6
Testimony by—	
Dean, Arthur H., senior partner, Sullivan & Cromwell, New York City.....	11
Dechert, Robert, Dechert, Price & Rhodes, Philadelphia, Pa., on behalf of American Bar Association.....	103
Frawley, James Joseph, special counsel for the government of the Province of Alberta, Canada.....	32
Harvell, Quentin, executive director, Public Relations Society of America, New York City.....	47
Maw, Carlyle E., representing the Association of the Bar of the City of New York.....	72
Mooney, Franklin E. R., industrial commissioner, government of Ontario, Canada.....	31
Sonnett, John F., partner, Cahill, Gordon, Reindel & Ohl, New York City; accompanied by John C. L. Donaldson, assistant manager, International Department, Chamber of Commerce of the United States.....	49
Yeagley, Hon. J. Walter, Assistant Attorney General, Internal Security Division, Department of Justice; accompanied by Nathan B. Levin, Chief, Registration Section, Department of Justice.....	115
Letters from—	
Yeagley, Hon. J. Walter, to Chairman Willis.....	135
Sonnett, John F., to Chairman Willis.....	138
Report by the Committee on International Law and the Committee on Federal Legislation of the Association of the Bar of the City of New York on proposed amendments to the Foreign Agents Registration Act of 1938 and the <i>Rabinowitz</i> case.....	74
Opinion of the Supreme Court of the United States in <i>Rabinowitz v. Kennedy</i> , 376 U.S. 605 (March 30, 1964).....	86



CONTENTS

1	1907-1908
2	1908-1909
3	1909-1910
4	1910-1911
5	1911-1912
6	1912-1913
7	1913-1914
8	1914-1915
9	1915-1916
10	1916-1917
11	1917-1918
12	1918-1919
13	1919-1920
14	1920-1921
15	1921-1922
16	1922-1923
17	1923-1924
18	1924-1925
19	1925-1926
20	1926-1927
21	1927-1928
22	1928-1929
23	1929-1930
24	1930-1931
25	1931-1932
26	1932-1933
27	1933-1934
28	1934-1935
29	1935-1936
30	1936-1937
31	1937-1938
32	1938-1939
33	1939-1940
34	1940-1941
35	1941-1942
36	1942-1943
37	1943-1944
38	1944-1945
39	1945-1946
40	1946-1947
41	1947-1948
42	1948-1949
43	1949-1950
44	1950-1951
45	1951-1952
46	1952-1953
47	1953-1954
48	1954-1955
49	1955-1956
50	1956-1957
51	1957-1958
52	1958-1959
53	1959-1960
54	1960-1961
55	1961-1962
56	1962-1963
57	1963-1964
58	1964-1965
59	1965-1966
60	1966-1967
61	1967-1968
62	1968-1969
63	1969-1970
64	1970-1971
65	1971-1972
66	1972-1973
67	1973-1974
68	1974-1975
69	1975-1976
70	1976-1977
71	1977-1978
72	1978-1979
73	1979-1980
74	1980-1981
75	1981-1982
76	1982-1983
77	1983-1984
78	1984-1985
79	1985-1986
80	1986-1987
81	1987-1988
82	1988-1989
83	1989-1990
84	1990-1991
85	1991-1992
86	1992-1993
87	1993-1994
88	1994-1995
89	1995-1996
90	1996-1997
91	1997-1998
92	1998-1999
93	1999-2000
94	2000-2001
95	2001-2002
96	2002-2003
97	2003-2004
98	2004-2005
99	2005-2006
100	2006-2007



FOREIGN AGENTS REGISTRATION ACT AMENDMENTS

WEDNESDAY, JULY 28, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE No. 3
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., in room 2226, Rayburn House Office Building, Hon. Edwin E. Willis (chairman of the subcommittee) presiding. Present: Messrs. Willis, Tuck, Kastenmeier, St. Onge, Edwards of California, Tenzer, Poff, Lindsay, and Hutchinson. Also present, Herbert Fuchs, counsel, and Allan Cors, associate counsel.

Mr. WILLIS. The subcommittee will please come to order.

Subcommittee No. 3 has met this morning to hear testimony on legislation sponsored by Judiciary Committee, Chairman Celler in the House and by Senators Fulbright and Hickenlooper in the Senate, designed to amend the Foreign Agents Registration Act of 1938, as amended.

The bills are H.R. 290 and S. 693. A copy of each bill will be inserted in the record at this point.

(S. 693 and H.R. 290 referred to follow:)

[S. 693, 89th Cong., 1st sess.]

AN ACT To amend the Foreign Agents Registration Act of 1938, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Foreign Agents Registration Act of 1938, as amended, is amended as follows:

(1) Subsection (b) is amended to read as follows:

“(b) The term ‘foreign principal’ includes—

“(1) a government of a foreign country and a foreign political party;

“(2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

“(3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”

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

“(c) Except as provided in subsection (d) hereof, the term ‘agent of a foreign principal’ means—

“(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled,

financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

“(i) engages within the United States in political activities for or in the interests of such foreign principal;

“(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

“(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

“(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and

“(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.”

(3) Subsection (d) is amended by striking out “clause (1), (2), or (4) of”.

(4) Subsection (g) is amended by inserting before the words “matter pertaining to” the words “public relations” and before the semicolon at the end thereof the words “of such principal”.

(5) Such section is further amended by substituting a semicolon for the period at the end of subsection (n) and adding the following new subsections:

“(o) The term ‘political activities’ means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party;

“(p) The term ‘political consultant’ means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.”

Sec. 2. Section 2 of such Act is amended as follows:

(1) Subsection (a) is amended by striking out the second, third, and fourth sentences and inserting in lieu thereof the following: “Except as hereinafter provided, every person who becomes an agent of a foreign principal shall, within ten days thereafter, file with the Attorney General, in duplicate, a registration statement, under oath on a form prescribed by the Attorney General. The obligation of an agent of a foreign principal to file a registration statement shall, after the tenth day of his becoming such agent, continue from day to day, and termination of such status shall not relieve such agent from his obligation to file a registration statement for the period during which he was an agent of a foreign principal.”

(2) Subsection (a) (3) is amended by striking out the comma following the word “each” where it first appears, and the following: “unless, and to the extent, this requirement is waived in writing by the Attorney General”; and by inserting before the semicolon at the end of the subsection a comma and the following: “or by any other foreign principal”.

(3) Subsection (a) (4) is amended by inserting before the semicolon at the end thereof a comma and the following: “including a detailed statement of any such activity which is a political activity”.

(4) Subsection (a) (6) is amended by inserting before the semicolon at the end thereof a comma and the following: “including a detailed statement of any such activity which is a political activity”.

(5) Subsection (a) (7) is amended to read as follows:

“(7) The name, business, and residence addresses, and if an individual, the nationality, of any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act under such circumstances as require his registration hereunder; the extent to which each such person is supervised, directed, owned, controlled, financed,

or subsidized, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign principal; and the nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received during the preceding sixty days from each such person in connection with any of the activities referred to in clause (6) of this subsection, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;".

(6) Subsection (a) (8) is amended to read as follows:

"(8) A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in connection with activities which require his registration hereunder and which have been undertaken by him either as an agent of a foreign principal or for himself or any other person or in connection with any activities relating to his becoming an agent of such principal, and a detailed statement of any contributions of money or other things of value made by him during the preceding sixty days (other than contributions the making of which is prohibited under the terms of section 613 of title 18, United States Code) in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office;".

(7) Such section is further amended by adding at the end thereof a new subsection as follows:

"(f) The Attorney General may, by regulation, provide for the exemption—

"(1) from registration, or from the requirement of furnishing any of the information required by this section, of any person who is listed as a partner, officer, director, or employee in the registration statement filed by an agent of a foreign principal under this Act, and

"(2) from the requirement of furnishing any of the information required by this section of any agent of a foreign principal,

where by reason of the nature of the functions or activities of such person the Attorney General, having due regard for the national security and the public interest, determines that such registration, or the furnishing of such information, as the case may be, is not necessary to carry out the purposes of this Act."

SEC. 3. (a) Section 3(d) of such Act is amended to read as follows:

"(d) Any person engaging or agreeing to engage only (1) in private and non-political activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest; or (3) in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of the Act of November 4, 1939, as amended (54 Stat. 4), and such rules and regulations as may be prescribed thereunder;".

(b) Section 3 of such Act is further amended by substituting a semicolon for the period at the end of subsection (f) and adding a new subsection as follows:

"(g) Any attorney whose activities are confined to openly representing, as an attorney of record, the interests of a disclosed foreign principal before any court or administrative agency of the United States, or of any State or political subdivision thereof."

SEC. 4. Section 4 of such Act is amended as follows:

(1) Subsection (a) is amended by inserting after the words "political propaganda" the words "for or in the interests of such foreign principal"; and by striking out the words "sent to the Librarian of Congress two copies thereof and file with the Attorney General one copy thereof" and inserting in lieu thereof the words "file with the Attorney General two copies thereof".

(2) Subsection (b) is amended by inserting after the words "political propaganda" where they first appear the words "for or in the interests of such foreign principal"; by inserting after the words "setting forth" the words "the relationship or connection between the person transmitting the political propaganda or causing it to be transmitted and such propaganda;"; and by striking out the words "each of his foreign principals" and inserting in lieu thereof "such foreign principal".

(3) Subsection (c) is amended by striking out the words "sent to the Librarian of Congress" and inserting in lieu thereof the words "filed with the Attorney General".

(4) Such section is further amended by adding at the end thereof the following new subsections:

"(e) It shall be unlawful for any person within the United States who is an agent of a foreign principal required to register under the provisions of this Act to transmit, convey, or otherwise furnish to any agency or official of the Government (including a Member or committee of either House of Congress) for or in the interests of such foreign principal any political propaganda or to request from any such agency or official for or in the interests of such foreign principal any information or advice with respect to any matter pertaining to the political or public interests, policies or relations of a foreign country or of a political party or pertaining to the foreign or domestic policies of the United States unless the propaganda or the request is prefaced or accompanied by a true and accurate statement to the effect that such person is registered as an agent of such foreign principal under this Act.

"(f) Whenever any agent of a foreign principal required to register under this Act appears before any committee of Congress to testify for or in the interests of such foreign principal, he shall, at the time of such appearance, furnish the committee with a copy of his most recent registration statement filed with the Department of Justice as an agent of such foreign principal for inclusion in the records of the committee as part of his testimony."

SEC. 5. Section 5 of such Act is amended by inserting after "the provisions of this Act," where they first appear the words "in accordance with such business and accounting practices,".

SEC. 6. Section 6 of such Act is amended by inserting the letter "(a)" after the section number and by adding at the end thereof the following new subsections:

"(b) The Attorney General shall, promptly upon receipt, transmit one copy of every registration statement filed hereunder and one copy of every amendment or supplement thereto, and one copy of every item of political propaganda filed hereunder, to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General so to transmit such copy shall not be a bar to prosecution under this Act.

"(c) The Attorney General is authorized to furnish to departments and agencies in the executive branch and committees of the Congress such information obtained by him in the administration of this Act, including the names of registrants under this Act, copies of registration statements, or parts thereof, copies of political propaganda, or other documents or information filed under this Act, as may be appropriate in the light of the purposes of this Act."

SEC. 7. Section 8 of such Act is amended as follows:

(1) Subsection (a) is amended by adding before the period at the end of paragraph (2) a comma and the following: "except that in the case of a violation of subsection (b), (e), or (f) of section 4 or of subsection (g) or (h) of this section the punishment shall be a fine of not more than \$5,000 or imprisonment for not more than six months, or both".

(2) Such section is further amended by adding at the end thereof the following new subsections:

"(f) Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this Act, or regulations issued thereunder, or whenever any agent of a foreign principal fails to comply with any of the provisions of this Act or the regulations issued thereunder, or otherwise is in violation of the Act, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the Act or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper. The proceedings shall be made a preferred cause and shall be expedited in every way.

"(g) If the Attorney General determines that a registration statement does not comply with the requirements of this Act or the regulations issued thereunder, he shall so notify the registrant in writing, specifying in what respects

the statement is deficient. It shall be unlawful for any person to act as an agent of a foreign principal at any time ten days or more after receipt of such notification without filing an amended registration statement in full compliance with the requirements of this Act and the regulations issued thereunder.

"(h) It shall be unlawful for any agent of a foreign principal required to register under this Act to be a party to any contract, agreement, or understanding, either express or implied, with such foreign principal pursuant to which the amount or payment of the compensation, fee, or other remuneration of such agent is contingent in whole or in part upon the success of any political activities carried on by such agent."

SEC. 8. (a) Chapter 29 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 613. Contributions by agents of foreign principals

"Whoever, being an agent of a foreign principal, directly or through any other person, either for or on behalf of such foreign principal or otherwise in his capacity as agent of such foreign principal, knowingly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or

"Whoever knowingly solicits, accepts, or receives any such contribution from any such agent of a foreign principal or from such foreign principal—

"Shall be fined not more than \$5,000 or imprisoned not more than five years or both.

"As used in this section—

"(1) The term 'foreign principal' has the same meaning as when used in the Foreign Agents Registration Act of 1938, as amended, except that such term does not include any person who is a citizen of the United States.

"(2) The term 'agent of a foreign principal' means any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any substantial portion of whose activities are directly or indirectly supervised, directed, or controlled by a foreign principal."

(b) Chapter 11 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 219. Officers and employees acting as agents of foreign principals

"Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended."

(c) (1) The sectional analysis at the beginning of chapter 29 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"613. Contributions by agents of foreign principals."

(2) The sectional analysis at the beginning of chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"219. Officers and employees acting as agents of foreign principals."

SEC. 9. This Act shall take effect ninety days after the date of its enactment.
Passed the Senate April 5, 1965.

Attest:

FELTON M. JOHNSTON,
Secretary.

[H.R. 290, 89th Cong., 1st sess.]

A BILL To amend the Foreign Agents Registration Act of 1938, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Foreign Agents Registration Act of 1938, as amended, is amended as follows:

(1) Subsection (b) is amended to read as follows:

"(b) The term 'foreign principal' includes—

"(1) a government of a foreign country and a foreign political party;

"(2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

"(3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."

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

"(c) Except as provided in subsection (d) hereof, the term 'agent of a foreign principal' means—

"(1) any person who acts as an agent, representative, employee, servant or in any other capacity at the order, request, or under the direction or control of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

"(i) engages within the United States in political activities for or in the interests of such foreign principal;

"(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

"(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

"(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and

"(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection."

(3) Subsection (d) is amended by striking out "clause (1), (2) or (4) of".

(4) Subsection (g) is amended by inserting before the words, "matter pertaining to", the words "public relations" and before the semicolon at the end thereof the words "of such principal".

(5) Such section is further amended by adding at the end thereof the following new subsections:

"(o) The term 'political activities' includes the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any other person or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country, or a foreign political party or with reference to the domestic or foreign policies of the United States.

"(p) The term 'political consultant' means any person, including, without limitation, any economic, legal or other consultant, who engages in informing or advising any person with reference to the political or public interests, policies or relations of a foreign country or of a foreign political party or with reference to the domestic or foreign policies of the United States."

SEC. 2. Section 2 of such Act is amended as follows:

(1) Subsection (a) is amended by striking out the second, third, and fourth sentences and inserting in lieu thereof the following: "Except as hereinafter

provided, every person who becomes an agent of a foreign principal shall, within ten days thereafter, file with the Attorney General, in duplicate, a registration statement, under oath on a form prescribed by the Attorney General. The obligation of an agent of a foreign principal to file a registration statement shall, after the tenth day of his becoming such agent, continue from day to day, and termination of such status shall not relieve such agent from his obligation to file a registration statement for the period during which he was an agent of a foreign principal."

(2) Subsection (a) (3) is amended by inserting before the semicolon at the end thereof a comma and the following: "or by any other foreign principal".

(3) Subsection (a) (4) is amended by inserting before the semicolon at the end thereof a comma and the following: "including a detailed statement of any such activity which is a political activity".

(4) Subsection (a) (6) is amended by inserting before the semicolon at the end thereof a comma and the following: "including a detailed statement of any such activity which is a political activity".

(5) Subsection (a) (7) is amended to read as follows:

"(7) The name, business, and residence addresses, and if an individual, the nationality, of any person other than a foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act under such circumstances as require his registration hereunder; the extent to which each such person is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign principal; and the nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received during the preceding sixty days from each such person in connection with any of the activities referred to in clause (6) of this subsection, either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;"

(6) Subsection (a) (8) is amended to read as follows:

"(8) A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in connection with activities which require his registration hereunder and which have been undertaken by him either as an agent of a foreign principal or for himself or any other person or in connection with any activities relating to his becoming an agent of such principal, and a detailed statement of any contributions of money or other things of value made by him during the preceding sixty days (other than contributions the making of which is prohibited under the terms of section 613 of title 18, United States Code) in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office;"

(7) Such section is further amended by adding at the end thereof a new subsection as follows:

"(f) The Attorney General may, by regulation, provide for the exemption from registration, or from the requirement of furnishing any of the information required by this section, of any person who is listed as a partner, officer, director, or employee in the registration statement filed by an agent of a foreign principal under this Act, where by reason of the nature of the functions or activities of such person the Attorney General having due regard for the national security and the public interest determines that such registration, or the furnishing of such information, is not necessary to carry out the purposes of this Act."

SEC. 3. Section 3(d) of such Act is amended by striking out the words "financial or mercantile" and by inserting after the words "foreign principal" the words "or other activities not serving predominantly a foreign interest".

SEC. 4. Section 4 of such Act is amended as follows:

(1) Subsection (a) is amended by inserting after the words "political propaganda" the words "for or in the interests of such foreign principal"; and by striking out the words "sent to the Librarian of Congress two copies thereof and file with the Attorney General one copy thereof" and inserting in lieu thereof the words "file with the Attorney General two copies thereof".

(7) Such section is further amended by adding at the end thereof a new subsection as follows:

"(f) The Attorney General may, by regulation, provide for the exemption from registration, or from the requirement of furnishing any of the information required by this section, of any person who is listed as a partner, officer, director, or employee in the registration statement filed by an agent of a foreign principal under this Act, where by reason of the nature of the functions or activities of such person the Attorney General having due regard for the national security and the public interest determines that such registration, or the furnishing of such information, is not necessary to carry out the purposes of this Act."

SEC. 3. Section 3(d) of such Act is amended by striking out the words "financial or mercantile" and by inserting after the words "foreign principal" the words "or other activities not serving predominantly a foreign interest".

SEC. 4. Section 4 of such Act is amended as follows:

(1) Subsection (a) is amended by inserting after the words "political propaganda" the words "for or in the interests of such foreign principal"; and by striking out the words "send to the Librarian of Congress two copies thereof and file with the Attorney General one copy thereof" and inserting in lieu thereof the words "file with the Attorney General two copies thereof".

(2) Subsection (b) is amended by inserting after the words "political propaganda" where they first appear the words "for or in the interests of such foreign principal"; by inserting after the words "setting forth" the words "the relationship or connection between the person transmitting the political propaganda or causing it to be transmitted and such propaganda"; and by striking out the words "each of his foreign principals" and inserting in lieu thereof "such foreign principal".

(3) Subsection (c) is amended by striking out the words "sent to the Librarian of Congress" and inserting in lieu thereof the words "filed with the Attorney General".

(4) Such section is further amended by adding at the end thereof the following new subsections:

"(e) It shall be unlawful for any person within the United States who is an agent of a foreign principal required to register under the provisions of this Act to transmit, convey, or otherwise furnish to any agency or official of the Government (including a Member or committee of either House of Congress) for or in the interests of such foreign principal any political propaganda or to request from any such agency or official for or in the interests of such foreign principal any information or advice with respect to any matter pertaining to the political or public interests, policies or relations of a foreign country or of a political party or pertaining to the foreign or domestic policies of the United States unless the propaganda or the request is prefaced or accompanied by a true and accurate statement to the effect that such person is registered as an agent of such foreign principal under this Act.

"(f) Whenever any agent of a foreign principal required to register under this Act appears before any committee of Congress to testify for or in the interests of such foreign principal, he shall, at the time of such appearance, furnish the committee with a copy of his most recent registration statement filed with the Department of Justice as an agent of such foreign principal for inclusion in the records of the committee as part of his testimony."

SEC. 5. Section 5 of such Act is amended by inserting after "the provisions of this Act," where they first appear the words "in accordance with such business and accounting practices,".

SEC. 6. Section 6 of such Act is amended by inserting the letter "(a)" after the section number and by adding at the end thereof the following new subsections:

"(b) The Attorney General shall, promptly upon receipt, transmit one copy of every registration statement filed hereunder and one copy of every amendment or supplement thereto, and one copy of every item of political propaganda pertaining to the foreign or domestic policies of the United States unless the propaganda or the request is prefaced or accompanied by a true and accurate statement to the effect that such person is registered as an agent of such foreign principal under this Act.

"(f) Whenever any agent of a foreign principal required to register under this Act appears before any committee of Congress to testify for or in the interests of such foreign principal, he shall, at the time of such appearance, furnish the committee with a copy of his most recent registration statement filed with the

Department of Justice as an agent of such foreign principal for inclusion in the records of the committee as part of his testimony."

SEC. 5. Section 5 of such Act is amended by inserting after "the provisions of this Act," where they first appear the words "in accordance with such business and accounting practices,".

SEC. 6. Section 6 of such Act is amended by inserting the letter "(a)" after the section number and by adding at the end thereof the following new subsection:

"(b) The Attorney General shall, promptly upon receipt, transmit one copy of every registration statement filed hereunder and one copy of every amendment or supplement thereto, and one copy of every item of political propaganda filed hereunder, to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General so to transmit such copy shall not be a bar to prosecution under this Act.

"(c) The Attorney General is authorized to furnish to departments and agencies in the executive branch and committees of the Congress such information obtained by him in the administration of this Act, including the names of registrants under this Act, copies of registration statements, or parts thereof, copies of political propaganda, or other documents or information filed under this Act, as may be appropriate in the light of the purposes of this Act."

SEC. 7. Section 8 of such Act is amended as follows:

(1) Subsection (a) is amended by adding before the period at the end of paragraph (2) a comma and the following: "except that in the case of a violation of subsection (b), (e), or (f) of section 4 or of subsection (g) or (h) of this section the punishment shall be a fine of not more than \$5,000 or imprisonment for not more than six months, or both".

(2) Such section is further amended by adding at the end thereof the following new subsections:

"(f) Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this Act, or regulations issued thereunder, or whenever any agent of a foreign principal fails to comply with any of the provisions of this Act or the regulations issued thereunder, or otherwise is in violation of the Act, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the Act or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper. The proceedings shall be made a preferred cause and shall be expedited in every way.

"(g) If the Attorney General determines that a registration statement does not comply with the requirements of this Act or the regulations issued thereunder, he shall so notify the registrant in writing, specifying in what respects the statement is deficient. It shall be unlawful for any person to act as an agent of a foreign principal at any time ten days or more after receipt of such notification without filing an amended registration statement in full compliance with the requirements of this Act and the regulations issued thereunder.

"(h) It shall be unlawful for any agent of a foreign principal required to register under this Act to be a party to any contract, agreement, or understanding, either express or implied, with such foreign principal pursuant to which the amount or payment of the compensation, fee, or other remuneration of such agent is contingent in whole or in part upon the success of any political activities carried on by such agent."

SEC. 8. (a) Chapter 29 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 613. Contributions by agents of foreign principals

"Whoever, being an agent of a foreign principal, directly or through any other person, either for or on behalf of such foreign principal or otherwise in his capacity as agent of such foreign principal, knowingly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, in connection with an election to any political office or

in connection with any primary election, convention, or caucus held to select candidates for any political office; or

"Whoever knowingly solicits, accepts, or receives any such contribution from any such agent of a foreign principal or from such foreign principal—

"Shall be fined not more than \$5,000 or imprisoned not more than five years or both.

"As used in this section—

"(1) The term 'foreign principal' has the same meaning as when used in the Foreign Agents Registration Act of 1938, as amended, except that such term does not include any person who is a citizen of the United States.

"(2) The term 'agent of a foreign principal' means any person who acts as an agent, representative, employee, servant, or in any other capacity at the order, request, or under the direction or control of a foreign principal or of a person any substantial portion of whose activities are directly or indirectly supervised, directed, or controlled by a foreign principal."

(b) Chapter 11 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 219. Officers and employees acting as agents of foreign principals

"Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended."

(c) (1) The sectional analysis at the beginning of chapter 29 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"613. Contributions by agents of foreign principals."

(2) The sectional analysis at the beginning of chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"219. Officers and employees acting as agents of foreign principals."

SEC. 9. This Act shall take effect ninety days after the date of its enactment.

Mr. WILLIS. The purpose of these measures is to strengthen the original Foreign Agents Registration Act which in turn has the object of protecting the interest of the United States by requiring complete public disclosure by persons acting for, or in the interests of, foreign principals where their activities are political or border on the political.

Such disclosure serves the purpose of enabling the Government of the United States and its people better to appraise activities of persons so acting.

The Chair understands that H.R. 290 and S. 693, as introduced, were identical with S. 2136 as it passed the Senate in the 88th Congress. Further, that S. 693 as it passed the Senate in the present Congress differs from H.R. 290 principally in the addition of a new subsection (g), to section 3 of the Foreign Agents Registration Act, exempting from registration attorneys who do no more than appear openly of record for disclosed principals in courts or in administrative agencies.

From the Senate committee's report on S. 693 it appears that focus of the present amendments is not so much on subversion as upon protecting the integrity of the Government decision-making processes.

No inference should arise from the Chair's position on the House Committee on Un-American Activities that the Chair or that committee approves or otherwise evaluates the Foreign Agents Registration Act or the pending amendments as the appropriate method of combating subversion.

The Chair regrets that commitments of the full committee have made it necessary to schedule all the witnesses for the same day, canceling tomorrow's hearing. Under the circumstances witnesses are urged to present their testimony with the greatest possible conciseness so that all who have appeared may be heard today.

Furthermore, the Chair observes that the House will go into session at 11 o'clock this morning, that we may be interrupted by quorum calls and, further, that a number of members of this subcommittee have indicated to me the desire to hear the President's statement on the Vietnam situation, and perhaps other matters, scheduled for 12:30. For these reasons we are in a difficult situation, gentlemen, not to our liking or through our making, but those are the facts.

We shall do the very best we can. We will have to respond to quorum calls if and as they come, and if they come with more rapidity than we now contemplate it may even necessitate our suggesting, or requesting, that witnesses whom otherwise we would want to hear merely submit their statements, if that is their preference, or postponing the hearing to another mutually agreeable date.

The first witness will be Mr. Arthur Dean, of the firm of Sullivan & Cromwell, New York, a most distinguished member of the bar with whom I have had some association in the past elsewhere, and we look forward with great anticipation to his enlightening views.

Mr. Dean, we are glad to have you.

**STATEMENT OF ARTHUR H. DEAN, MEMBER OF THE LAW FIRM OF
SULLIVAN & CROMWELL, NEW YORK, N.Y.**

Mr. DEAN. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Arthur H. Dean, and I am senior partner of the law firm of Sullivan & Cromwell in New York City. I appreciate the committee's invitation to testify on the proposed amendments to the Foreign Agents Registration Act. I have previously testified before the Senate Foreign Relations Committee on S. 693 in February of this year, and on S. 2136, the predecessor to S. 693, in November of 1963.

In the course of successive appearances to testify with respect to the same matters, some repetition becomes unavoidable. I think, however, that some points are worth repeating.

In particular, I should like once more to express my complete support for the objectives of the Senate Committee on Foreign Relations in proposing amendments to the Foreign Agents Registration Act. I wholly endorse the committee's basic purpose of requiring full public disclosure of the type of activities exposed by the committee's hearing in 1963.

I should like especially to express my admiration for the untiring efforts the chairman of the Senate Committee on Foreign Relations, Senator Fulbright, whose appreciation of the need to amend and

sharpen the present act has been primarily responsible for the efforts that have been made in this regard. I had the privilege of working with Senator Fulbright in the course of the nuclear test ban negotiations and disarmament and learned to admire his clarity of thought, energy, and dedication at that time. I also had the privilege of working with your chairman when he gave me excellent advice, at the Law of the Sea Conference, at Geneva in 1958, with regard to shrimp fishing in our negotiations with Mexico.

For purposes of my testimony today, as a matter of convenience, I shall refer to S. 693 as the "bill." The provisions of the bill in its present form embody a number of significant improvements over that originally proposed as S. 2136 in the past session of Congress, and I am assuming that H.R. 290 will incorporate the changes which have already been made in S. 693.

You will probably say I will never be satisfied, but, nevertheless, despite the amendments and improvements that have been made, substantial and troublesome areas of ambiguity remain. These continue to cause concern and have evoked considerable critical comment by businessmen, lawyers, and other professional men.

Last month, for example, the Committees on International Law and on Federal Legislation of the Association of the Bar of the City of New York published a report analyzing in detail some of the important problem areas, and pointing out the serious need for clarification (the record of the Association of the Bar of the City of New York, vol. 20, No. 6, June 1965, p. 383, et seq.).

The bill's principal problem, in my judgment, continues to be the breadth of some of its definitions. The sponsors of the bill have stated that it is designed to be applicable to political activities. Thus, in the Senate report, No. 143, 89th Congress, 1st session, it is stated on page 4 that an—

individual or firm undertaking political activities, public relations, or similar services for a foreign principal [has] placed himself in a most sensitive position between his own governmental institutions and a foreign principal—an area traditionally reserved for the diplomatic corps, with all its formalities and restrictions.

But, with its present broad definitions, the bill might apply not only to those who have placed themselves in this sensitive position (and I agree that its application to such persons is quite proper), but also to persons who are engaged in day-to-day, nonsensitive activities which businessmen and their advisers normally conduct. Put another way, the bill may make activities "political" that have always been regarded in ordinary usage as professional, business, or commercial and therefore not "political."

It is no real solution to the problem to refer to the curative power of the legislative history, which itself raises questions, some of which I shall refer to presently. Nor do I think it appropriate to impose upon businessmen and their advisers, who have not put themselves in this "sensitive position," the burden of negotiating with the Department of Justice to see whether and to what extent the Department of Justice feels that it will make compliance with the act in their case less burdensome than that required of persons who are political agents in the ordinary sense of the term. Finally, I might point out that, to me, it is a term of opprobrium to be designated a foreign agent.

Let me explain, as briefly as possible, how it would be possible for the bill's provisions to produce these consequences. The bill would require a person to register as a foreign agent if he engages in political activities for a foreign principal.

The bill in its present form would define the term "political activities" (S. 693, from line 25 on p. 3 through line 10 on p. 4) so broadly that it might include many activities that have traditionally been regarded as commercial and nonpolitical. As a result, a wide range of bona fide business and professional men, as well as organizations, could be brought within the bill's scope whenever they engaged in performing such commercial, nonpolitical activities for a foreign principal.

The bill would define "foreign principal" (S. 693, from line 9 on p. 1 through line 5 on p. 2) in terms so broad as to include, among other things, any U.S. citizen outside the United States who is not domiciled within the United States, and any corporation, even if organized under the laws of the United States and wholly owned by 100 percent American interests, that has its principal place of business outside the United States.

It is required to have your principal place of business outside the United States under the laws of certain foreign countries.

The report of the committees of the City Bar Association to which I just referred, concludes at one point (op. cit., at p. 397) :

We believe that no public purpose is served by applying the broad requirements of the act to ordinary representation of private foreign principals before Government agencies, in matters which are, in the true sense of the words, commercial and nonpolitical * * *. A criminal statute which is as broad as the act could become a trap for the unwary person unable to pinpoint, for example, the dividing line between seeking "administrative action on a matter where the basic policy is not in question" and seeking "decisions relating to or affecting departmental policy." * * *

The breadth of the bill's definitions and its use of words to mean things they normally do not mean in ordinary, everyday language, create uncertainty. Distinguished businessmen, lawyers, other professional men, and lawmakers have been engaged in discussions and analyses for more than a year now as to the possible meanings of some of the bill's definitions.

That fact alone, in my view, illustrates the need to clarify those definitions before such a bill is enacted.

I recognize that a number of helpful statements have been made in the course of the Senate debates and in the committee reports about what the bill is intended to cover. However, there are also many statements that are not helpful, and, taken all together, the legislative history of this bill with respect to the precise meaning and intent of many provisions has become, in fact, somewhat confused.

As an example, Senate Report 143, 89th Congress, 1st session, at page 12 contains a discussion which is meant to clarify the coverage of the exemption of certain U.S. corporations with foreign subsidiaries and foreign corporations with U.S. subsidiaries. But, then, the report proceeds to incorporate the debate on the floor of the Senate relating to the predecessor bill (S. 2136) in the previous year, referring to specific examples which could raise a number of interpretative questions (Congressional Record July 6, 1964, pp. 15490-15495).

Even if the legislative history were clear, and a court could be persuaded to admit into evidence statements made on the floor of the

House or Senate or committee reports in the legislative history about the intended coverage of the bill, as a lawyer, I cannot overlook the statutory language itself.

And, I submit that, in my opinion, the statutory language now proposed could be read to cover far more than some of those statements say it was intended to cover.

My belief is that many, if not most, courts would deem themselves bound by the broad statutory language itself rather than such explanatory statements, and I can think of no better example than the *Rabinowitz* case (*Rabinowitz v. Kennedy*, 376 U.S. 605 (1964)), involving the present act itself—a case with which I am sure you are all familiar—to illustrate such a judicial approach.

In the *Rabinowitz* case, the words of the act were taken by the Supreme Court at their literal meaning, notwithstanding legislative history and prior Department of Justice interpretations to the contrary.

In that case lawyers were retained to represent the commercial interests of the Cuban Government and were held to be foreign agents and required to register.

Often, a court may decide that the language of a statute is clear, and will refuse to consider the legislative history. In a case involving the Mann Act, where a California student took his girlfriend one afternoon to the Nevada border, he was arrested under the Mann Act. The entire legislative history of the Mann Act said that it applied only to commercialized white slavery. Nevertheless, in *Camionetti v. The United States* the Supreme Court 242 U.S. 470, 485 (1916) said:

Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion.

He went to jail.

Mr. WILLIS. What is wrong with that statement?

Mr. DEAN. I think that is a correct statement of the law, Mr. Chairman. However, in the Senate hearings there are many statements that they do not need to amend the proposed bill because there are many statements on the floor and in the committee's report which give interpretations.

Mr. WILLIS. It is in this context that you are quoting the court?

Mr. DEAN. In the context of what took place in the Senate.

Justice Benjamin Cardozo, speaking for the Supreme Court in the case of *Anderson v. Wilson*, 289 U.S. 20, 27 (1933), stated:

We do not pause to consider whether a statute duly conceived and framed would yield results more consonant with fairness and reason. We take the statute as we find it.

Finally, in the case of *Jay v. Boyd*, 351 U.S. 345, 357 (1956), the Supreme Court stated:

(We) must adopt the plain meaning of a statute, however severe the consequences.

I intend to confine my testimony today to four points.

Mr. WILLIS. I must again say, I don't want to interrupt, I cannot find anything wrong with these pronouncements. I think there would be greater evil in getting away from that rule of statutory construc-

tion and permitting the Court more and more and more to resort to debates and views of one Senator or one Congressman where others who might not have been there disagreed.

I think surely those are salutary rules of construction, when the language is plain, absent constitutional involvements. I must say, I agree with those decisions. I understand you are addressing yourself to the danger of some of the language in the bill as compared to over-stressing of things on the Senate floor.

Mr. DEAN. That is correct.

Mr. POFF. In other words, you are agreeing with this statement of interpretation?

Mr. DEAN. That is correct.

Mr. POFF. And you are fearful that because this statement is likely to be applied again, the language in the bill itself may be too broad?

Mr. DEAN. That is correct.

Mr. WILLIS. All right.

Mr. DEAN. First, I shall comment in some detail on the proposed section 3(d) exemption provision (S. 693, from line 25 on p. 7 through line 11 on p. 8) and the extent to which it might be affected by the definitions of "political activities" and "political consultant" (proposed secs. 1(o) and (p), S. 693 from line 25 on p. 3 through line 15 on p. 4).

Second, I shall offer some suggestions about the possibility of including a short-form registration procedure in the act itself, rather than relying on the Department of Justice to establish such a procedure if the Department determines to do so.

Third, I shall propose a procedure (comparable to that provided in the Public Utility Holding Company Act of 1935 which is administered by the Securities and Exchange Commission) whereby, in cases where uncertainty exists as to a person's status under the act, he can file an application for a determination that he is exempt from the act, and, if the application is made in good faith, he is treated as exempt unless the Department of Justice acts unfavorably upon his application.

Fourth, and finally, I shall comment briefly on proposed section 3(g) (S. 693, lines 15 through 19 on p. 8) the attorneys' exemption.

I. THE SECTION 3(d) EXEMPTION

The bill would amend section 3(d) to exempt:

Any person engaging * * * only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of [a] foreign principal; or (2) in other activities not serving predominantly a foreign interest; * * * (S. 693, from line 25 on p. 7 through line 4 on p. 8).

A. FIRST CLAUSE

With respect to clause (1) of section 3(d), much stress has been laid on the bill's elimination of the term "financial or mercantile" from the clause in the present act—

—in private and nonpolitical financial or mercantile activities in furtherance of the bona fide trade or commerce of a foreign principal (S. Rept. 143, 89th Congress, 1st sess., at p. 24).

There is no question but that this represents a definite improvement in the statutory language. Until 1961, the exemption covered "private

and nonpolitical financial, merchantile, or other activities." The words "or other" were dropped out of the act inadvertently by an amendment in 1961 (S. Rept. 875, 88th Cong., 2d sess., at p. 11). This deletion together with the *Rabinowitz* decision have cast considerable doubt on the present coverage of section 3(d).

The main trouble with the *Rabinowitz* decision is that it narrowed considerably what had been thought to be the meaning of the term "private and nonpolitical financial and mercantile activities" in the present act (S. Rept. 143, 89th Cong., 1st sess., at p. 24).

But the bill before you would not merely revise the term construed in the *Rabinowitz* case. It would at the same time introduce into the act the definitions "political activities" and "political consultant" (proposed secs. 1 (o) and (p), S. 693 from line 25 on p. 3 through line 15 on p. 4). These definitions—particularly "political activities"—could, in my opinion, do just as much as the *Rabinowitz* case to place the value of the section 3(d) exemption in doubt. These definitions are cast in terms so broad that, if read literally, they might deprive the corresponding concepts of "private and nonpolitical activities" and "person engaged in private and nonpolitical activities" of much of their scope. This, in turn, could impair the practical significance of the section 3(d) exemption for anyone acting for a "foreign principal." "Foreign principal," I might repeat, is itself very broadly defined.

In addition, some of the statements made by the Supreme Court in the *Rabinowitz* decision raise the question whether a person who acts for a foreign government can ever be said to be acting in a "private" capacity.

The bill would leave this question unanswered.

J. Walter Yeagley, the very able Assistant Attorney General in charge of the Division of the Department of Justice that administers the act, in a letter dated November 2, 1964, to the Harvard Law Review, himself questioned—

whether *Rabinowitz* eliminates the possibility of our (the Department of Justice) making a determination that in certain instances a foreign government or political party can act in this country in a private capacity for the purposes of the Foreign Agents Registration Act.

Mr. Yeagley's letter then goes on to say:

A complicating practical problem here is that the requirements of registration and disclosure in such instances may not serve any public interest.

However, Senate report No. 143, 89th Congress, 1st session, states, at page 11:

The committee has considered the desirability of eliminating the word "private" from the exemption. Language used by the Supreme Court last year in the decision of *Rabinowitz v. Kennedy* caused some uncertainty as to whether a foreign government could ever act in a private capacity within the meaning of the commercial exemption. The Department of Justice, as it was brought out in the hearings, recognizes that a foreign government can act in a private capacity for purposes of this act. The committee agrees with that view and has decided against eliminating the word because of possible difficulties that it might create in enforcing the act in situations where a commercial activity of a foreign agent promotes the political and public interests of the foreign governmental principal.

It does not seem to me to be appropriate for legislation of this importance, especially since it is a criminal act, to be adopted in a form

that does not specifically answer questions of this character, and that would leave the matter to future administrative determination in the executive branch of the Government.

A hypothetical case may serve to illustrate the uncertainty of the bill. An American engineering firm which contracts to advise a foreign government on public works projects might fall within the definition of "agent of a foreign principal." Such a firm would probably not be exempt under section 3(d).

In the letter to the Harvard Law Review which I mentioned, Mr. Yeagley gave a rather qualified response to a question by one of the editors respecting such a hypothetical engineering firm. Mr. Yeagley stated that an engineering firm advising a foreign government regarding public works within its own country "may often not be required to register," adding:

Frequently only administrative functions of the American firm are carried out within the United States and the research, survey, judgment and advice relate to matters outside the United States and with no reference to the American public or to our Government's policies.

But, if the project is, for example, in the Middle East, or in any underdeveloped country, AID may become interested. Or, in the case of a desalinization project, or a project in Mexico involving rivers in which the United States and Mexico have a joint interest, or taking water out of the Great Lakes where Canada might have an interest, the Department of the Interior, or other Federal or State agencies, may become interested. In such case, it would be natural for the interested agency to invite the American engineering firm to come and talk about the particular project. Under the proposed bill, this might result in the professional engineering firm's being required to register as a "foreign agent."

To give another example, and this happened to me, suppose that a firm were approached by, let us say, the Ambassador of a foreign country, and asked to represent that country in connection with its purchase of a residence for him, obtaining title clearance and insurance and so forth, and resolving any problems involving zoning laws. Could the firm safely do so without first registering as a foreign agent?

B. SECOND CLAUSE

Much stress has also been laid upon the addition of clause (2) to the section 3(d) exemption (S. 693, lines 3 and 4 on p. 8), which covers "other activities not serving predominantly a foreign interest." This clause was added at the suggestion of Senator Javits, and represents a great improvement in the bill. The clause is aimed at eliminating one of the major earlier objections to the bill, namely, the uncertain status under its provisions of U.S. corporations with foreign subsidiaries and foreign corporations with U.S. subsidiaries.

Although helpful this provision may not supply definitive answers in many areas. Normally, activities that benefit the domestic subsidiary would also benefit the foreign parent, or vice versa. Who can be certain whose interest is predominantly served in any particular case?

Take the instance of a U.S. oil company which invests a good deal of money in a foreign subsidiary. All the ownership of the subsid-

iary is American. If the American parent goes to the State Department to request assistance in resisting a proposed confiscatory oil tax in the country in which its foreign subsidiary is located, is it the parent's or the subsidiary's interest that is predominantly served? Remember that the subsidiary is a "foreign principal" as defined in the bill (S. 693, lines 6 through 9 on p. 2), even though it is 100 percent owned by American interests because its head office is outside the United States. As I indicated earlier, the legislative history on this point is not as helpful as one might wish.

In this connection, I understand that the Chamber of Commerce of the United States will propose to the committee a provision (a copy of which is attached hereto) which deals with the problem faced under the bill by bona fide U.S. parent corporations with foreign subsidiaries, or bona fide U.S. corporations that are subsidiaries of foreign parents. The approach taken by the chamber of commerce would be to amend the definition of "foreign principal" (S. 693, line 6 on p. 1 through line 9 on p. 2).

As an absolute minimum, it is my opinion that the legislation should be amended to make it clear that bona fide U.S. corporations, in connection with normal, proper commercial activities, are not required to register as "foreign agents." No public purpose can be served by their so registering. Accordingly, I approve and endorse the provision proposed by the chamber of commerce.

If it is desired to broaden the chamber of commerce provision, I might point out that a larger number of corporations would be included if the clause were omitted at the end of the provision that would require voting stock of the corporation in question to be registered under the Securities Exchange Act of 1934 or regularly traded in the over-the-counter market. This requirement would, of course, deprive smaller or closely held corporations of the benefits of the provision. The requirement was designed to meet an objection raised by Senator Fulbright that foreign principals might, under a general exemptive provision, be able to avoid some of the act's requirements simply by tailoring their corporate structure to fit such a provision's requirements. On this point, it seems to me that the courts could be relied upon to insure substantive compliance with the statute.

I understand that the testimony of my colleague John Sonnett, the witness for the chamber of commerce, will explain the proposal in detail, and accordingly I wish here merely to record my endorsement of it.

Most of the problems that I have been discussing could, I believe, be remedied by a realistic narrowing of the definitions of "political activities" and "political consultants" (S. 693, line 25 on p. 3 through line 15 on p. 4).

To summarize this point, the definition in the bill of "political activities" in its present form might encompass a multitude of bona fide everyday activities by business and professional men, and by corporations and other organizations, that have traditionally been regarded as a routine part of bona fide business and professional endeavor. Accordingly, it tends to raise questions as to the value of the section 3(d) exemption of "private and nonpolitical activities."

The definition in the bill of "political consultants" in its present form might encompass a wide range of business and professional men

engaged in activities that would not normally be considered political. This raises the possibility that a court might conclude that activities which by definition make a person a "political consultant" should not be viewed as "private and nonpolitical."

I have presented, in an appendix to this statement which I shall submit for the record, suggested changes in the definitions of "political activities" and "political consultant." I believe that, with these changes, the act would continue to cover all those "foreign agents" with respect to which it is the act's purpose to obtain detailed information, but without at the same time drawing within its coverage hundreds of business and professional people and organizations engaged in normal, open, legitimate, and useful activities.

II. SHORT-FORM REGISTRATION

The bill would add a section 2(f) of the act (S. 693, lines 7 through 16 on p. 7) to permit the Attorney General, by regulation, not only to exempt from registration certain officials and employees of foreign agents, but also to grant exemptions with respect to the amount of information required of foreign agents.

The registration requirements of the act are at present so burdensome (and some of the information required so irrelevant, except in unusual cases, to the basic purposes of the act), that they have become one of the principal objects of critical comment. The previous practice had been largely not to enforce them. The bill would now increase some registration requirements (S. 693, from line 20 on p. 5 to line 4 on p. 7), without any attempt, except for section 2(f), to lighten any of the others.

I submit that proposed section 2(f) may not be an adequate solution. The Justice Department may feel restrained by the specificity of the bill and the criticism to which the Department has been subject because of its limited past enforcement of the act, and consequently may hesitate to issue broad, clear exemptive regulations—at least for some time following the enactment of any amendment to the act.

In the absence of general regulations, some have expressed the fear that inordinate delays may be incurred waiting for the Justice Department to grant relief on a case-by-case basis.

There is basically no reason why the authorization to establish a limited registration procedure must be delegated to the Attorney General. The act itself is in the process of extensive revision. It can easily be amended at the same time to permit a short-form registration statement, requiring only essential information, in cases involving foreign agents whose principals are not engaged in government or political party activities and whose activities on behalf of such principals are limited to bona fide trade or commerce. The act could further provide that, in any such case, the Attorney General could require such additional information from the registrant as the circumstances warranted.

In the case of those persons with whom the act is primarily concerned—namely, agents of foreign governments and of foreign political parties—the requirement of full registration could be retained.

In the appendix to this statement which I shall submit for the record, I have presented a draft short-form registration provision that would achieve the results I have described.

III. DETERMINATION OF EXEMPT STATUS

Whether or not the bill is amended to provide a short-form registration procedure, I think that it is essential to provide some procedure whereby a person, who in good faith believes that he is exempt from the act's provisions, can obtain a determination of that fact, and be protected against the risk of having committed a criminal offense if his bona fide belief is found to have been incorrect. As stated in the January 1965 issue of the *Harvard Law Review* (vol. 78, No. 3), at pages 631-632:

This problem has been particularly acute because a good-faith belief that one was not required to register would probably not be a defense to a criminal prosecution. Judicial clarification has failed to ameliorate this condition, and the new amendments do not seem wholly successful in this regard, since in eliminating old uncertainties, new ones have been created.

A good solution, it seems to me, would be to adopt a procedure similar to that provided by section 3(c) of the Public Utility Holding Company Act of 1935. That section provides that the filing by certain persons, in good faith, of an application for exemption shall exempt such persons from any further obligation or duty under that act until the Securities and Exchange Commission acts upon such application.

Introducing such a procedure into the bill would provide the flexibility for want of which enforcement of the present act has been so difficult.

The bill, in its present form, would add an injunctive remedy (S. 693, line 18 on p. 12 through line 2 on p. 13). This is designed to eliminate the unwieldy enforcement problem resulting from having criminal indictment as the only method to compel compliance. The injunctive remedy, however, only goes half way toward solving the problem. The initiative is still left to the Department of Justice, and there is no route open to a person who is uncertain, in good faith, as to his status under the act, to obtain a determination as to that status.

Accordingly, I have presented a provision in the appendix to this statement which I shall submit for the record, which is designed to fill this gap in the present statutory scheme.

IV. THE ATTORNEYS' EXEMPTION

The bill would amend the act to add a section (sec. 3(g)) to exempt attorneys (S. 693, lines 15 through 19, on p. 8):

whose activities are confined to openly representing, as an attorney of record, the interests of a disclosed foreign principal before any court or administrative agency of the United States, or of any State or political subdivision thereof.

Senate Report No. 143, 89th Congress, 1st session, at pages 12-13, however, contains language to the effect that this exemption applies only in cases involving appearances before courts or governmental

agencies "where decisions are made on the basis of established formal legal proceedings." This language could conceivably raise a question about such procedures as registrations of securities with the SEC or other work where, although the representation is clear and open, the legal proceedings are not really formal, in the sense that many of the proceedings are *ex parte* or administrative in nature.

To have an exemption in connection with appearances before officials or in connection with an attorney's normal day-to-day activities, he is left subject to the uncertainties of section 3(d).

No purpose seems to be served by requiring an attorney to register as a foreign agent when he merely performs the services that have traditionally been performed by attorneys and the fact of his representation and the identity of his principal are disclosed to the official, agency, or court before which he appears. There appears to be no reasonable basis for the distinction between formal and other appearances if the relationship is made clear and open.

There are lawyers who have become specialists over the years in practice involving various laws administered by Federal agencies. Many lawyers have distinguished themselves, for example, as experts in tax, securities or patent law or immigration law. Frequently, when Federal agencies adopt or revise regulations implementing the laws they administer, they find it advantageous and even essential to call upon the experienced practitioners for assistance and suggestions. Likewise, as you know, congressional committees often, in drafting legislation, seek advice from the leading practitioners.

Of course, such regulations and legislation involve matters of policy, and as a consequence, the practitioners, by giving advice on these matters, might be engaging in political activities within the meaning of the bill. Many practitioners might in the future refuse to give such advice if, in order to do so, they would have to submit to registration as foreign agents. In this way, the bill would deprive the Government of valuable assistance, without in any way serving the purposes sought to be achieved by the act.

Accordingly, I recommend that the exemption be changed along the lines of the draft provision that I have presented in the appendix to this statement which I shall submit for the record. The draft provision would exempt an attorney from registration as a foreign agent under the act provided he reveals his capacity and principal, and limits his activities to those customarily performed by attorneys.

V. GENERAL CONCLUSIONS

To summarize, the defect of the bill, to me, is the breadth of the scope of the definitions. I do not think it necessary for the statutory language to be so broad to accomplish the purposes sought to be achieved. On the other hand, such broad language could result in the imposition of very real hardship on people and organizations who were not even intended to be covered.

The act is a criminal statute. It subjects offenders to penalties which include fines, as well as imprisonment up to 5 years.

One of the very rudiments of our system of law and of the concept of due process is that a criminal statute must be sufficiently precise

to warn a potential offender of the conduct that will constitute an offense. Justice Holmes, in the case of *McBoyle v. United States*, 283 U.S. 25, 27 (1931), stated that the "fair warning" of "what the law intends to do if a certain line is passed" should be given in language "that the common world will understand." In my view, the proposed bill does not meet this test.

It is no answer to this problem that a person may avoid the act's penalties by registering as a foreign agent whenever in doubt. As I have indicated today, and as many commentators have pointed out, the registration requirements of the act are in many cases extremely burdensome.

In addition, it seems quite unfair, for want of clear statutory language, to force a person or organization engaged in normal, open and customary activities to register as a foreign agent with the stigma that label imports.

The bill itself suggests that there is a stigma. For example, section 8(b) of the bill (S. 693, lines 6 through 16, on p. 15) would amend the Federal conflicts of interest law to provide that a foreign agent cannot serve the Government of the United States except in the very limited capacity of special Government employee, and then only if the employing agency certifies that such employment is in the national interest. In short, the bill creates a presumption of conflict of interest by the mere fact of registration as a foreign agent above and beyond the tests applied to anyone else under the Federal conflicts of interest law. In addition, section 4(4) of the bill (S. 693, lines 9 through 16, on p. 10) would add a provision to the act (as sec. 4(f)) to provide that a foreign agent cannot lawfully appear before any committee of Congress to testify in the interests of a foreign principal without furnishing the committee with a copy of his registration statement. The registration statement is to be included in the committee's records as part of his testimony.

I might also, in this connection, quote from the Harvard Law Review article to which I referred earlier. There it is stated, at page 632:

The continued use of the statute as a subversive control act means that the term "foreign agent" will continue to carry pejorative connotations. Registration can only rankle with those lawyers and other professionals who engage in what most would consider wholly respectable activity; they believe, quite properly, that they should not be placed in the same group with political, perhaps subversive, propagandists and be forced to register with the Internal Security Division of the Justice Department.

Senate Report No. 143, 89th Congress, 1st session, page 5, recommends that the administration of the act be shifted from the Internal Security Division of the Justice Department to the Criminal Division.

In conclusion, I suggest to you that it is highly desirable, at a time when the act is being substantially revised, to put the legislation itself in terms that are precise and unambiguous. The present administration of the act has been commendable, under the circumstances, and many of the expressions of legislative intent have been encouraging.

However, administrations and officials do change and no one can predict to what extent a court will feel bound in the future by the literal language of the statute or the extent to which it will consider

explanatory statements contained in the legislative history as admissible in evidence.

I am convinced that the objectives we are all seeking can be achieved by clear and articulate legislation, which would not impose the hardship, confusion, and inequity on bona fide businessmen and professional men that might result if the bill were enacted in its present form.

There are a number of ways, I recognize, in which clarification of the act may be accomplished. As I have stated in some of my earlier testimony relating to the Foreign Agents Registration Act, I believe that a careful study of all suggestions should be made, with a view to obtaining the best possible revision. As I have also stated before, I, and my firm, stand ready to give all the assistance we can in helping to achieve that end.

There is not time to go over my proposed appendix but I would like to submit that for your consideration. I want to thank the committee once again for your invitation to testify.

Thank you, Mr. Chairman.

(The appendix to Mr. Dean's statement follows:)

APPENDIX TO STATEMENT OF ARTHUR H. DEAN, JULY 28, 1965

Suggested Changes in S. 693 and H.R. 290, Bill To Amend the Foreign Agents Registration Act of 1938, as Amended

(It is assumed that H.R. 290 will incorporate the changes already made in S. 693, and, therefore, references are made only to S. 693. Words in S. 693 which would be omitted are enclosed in brackets, and new words are italicized.)

I. Revise the definition of the term "political activities" (sec. 1(5) of S. 693, from line 25 on p. 3 through line 10 on p. 4) to read as follows:

"(o) The term 'political activities' [includes] means:

"(1) the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any [agency or official of the Government of the United States] other person or any section of the public within the United States with reference to [formulating, adopting, or changing the domestic or] the foreign policies or relations of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party;

"(2) any activity for or in the interest of a government of a foreign country or a foreign political party which the person engaging therein believes will, or which he intends to, influence any agency or official of the Government of the United States (including a Member or committee of either House of Congress) in the formulation or change of any policy of the Government of the United States; and

"(3) any activity for or in the interest of any foreign principal which is for the purpose of attempting to influence the passage or defeat of legislation by the Congress of the United States, except the appearance by any person before a committee of the Congress of the United States in support of or opposition to legislation if the person so appearing discloses to such committee the identity of such foreign principal and the fact that he is acting for or in the interest of such foreign principal and such foreign principal is not a government of a foreign country or a foreign political party."

II. Revise the definition of the term "political consultants" (sec. 1(5) of S. 693, from line 11 through line 15 on p. 4) to read as follows:

"(p) The term 'political consultant' means any person who as a substantial part of his business or professional activity engages in informing or advising [any other person] one or more governments of foreign countries or foreign political parties with reference to the [domestic or] foreign policies or relations of the United States [or the political or public interests, policies, or relations of a foreign country or of a foreign political party]."

III. Add the following proviso to section 2(a) of the act by adding the following section 2(7) to S. 693 (beginning at line 5 on p. 7) and renumbering present section 2(7) of S. 693 (at line 5 on p. 7) as section 2(8) :

"(7) Subsection (a) is further amended by substituting a semicolon for the period at the end of subsection (a) (11) and adding the following proviso at the end of subsection 2(a) :

"Provided, That a person acting as an agent of a foreign principal, other than the government of a foreign country or a foreign political party, in furtherance of the bona fide trade or commerce of such foreign principal may file a registration statement including only the following, which shall be regarded as material for the purposes of this subchapter:

"(i) Registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

"(ii) Status of the registrant: if an individual, nationality; if a partnership, name, residence addresses, and nationality of each partner; if an association, corporation, organization, or any other combination of individuals, the name, residence, addresses and nationality of each director and officer and of each person performing the functions of a director or officer; a general statement of its ownership and control; and a general statement of the nature of the registrant's business;

"(iii) The name and address of every foreign principal for whom the registrant is acting or assuming or purporting to act, or has agreed to act, and a general statement of the nature of the business or other activities of such foreign principal, of the extent of such foreign principal's business or other activities in the United States and a general statement of its ownership and control;

"(iv) A general statement of the circumstances by reason of which the registrant is an agent of such foreign principal, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant on behalf of such foreign principal which require his registration hereunder; and

"(v) Such further statements and such documents as are necessary to make the statements made in the registration statement and supplements thereto, and the copies of documents, if any, furnished therewith, not misleading;

and such registration statement shall fully satisfy the registration requirements of this section 2(a) with respect to such person except that if, following the filing of such a registration statement, the Attorney General, having due regard for the national security and public interest, shall mail a request to such person, at the address set forth in such registration statement (or other more recent address, if any, filed by such person for such purpose with the Attorney General), requiring additional statements, information or documents pertinent to the purposes of this subchapter, such person shall be obliged to file such additional statements, information or documents with the Attorney General within ten days following the mailing of such request."

IV. Add a new section 2(g) to the act, by amending section 2(7) of S. 693 (beginning at line 5 on p. 7) as follows:

"(7) Such section is further amended by adding at the end thereof [a new subsection as follows] the following new subsections:

"(f) The Attorney General may, by regulation, provide for the exemption—

"(1) from registration, or from the requirement of furnishing any of the information required by this section, of any person who is listed as a partner, officer, director, or employee in the registration statement filed by an agent of a foreign principal under this Act, and

"(2) from the requirement of furnishing any of the information required by this section of any agent of a foreign principal,

where by reason of the nature of the functions or activities of such person the Attorney General, having due regard for the national security and the public interest, determines that such registration, or the furnishing of such information, as the case may be, is not necessary to carry out the purposes of this Act.["]

"(g) A person who believes in good faith that such person has ceased to be, or is not, an agent of a foreign principal, or that such person is exempt from

the requirements of section 2(a) hereof, may file an application with the Attorney General for a determination by the Attorney General of such person's status under this subchapter. The filing of an application in good faith shall exempt the applicant from the provisions of this subchapter until the Attorney General has acted on such application. Within a reasonable time after the receipt of such an application, the Attorney General shall pass upon the merits of such application, and enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application. The Attorney General may require such additional statements, information, or documents as he may deem necessary for purposes of passing upon the merits of such application. A person shall be liable to prosecution for a willful false statement of a material fact in any such application or the willful omission of a material fact or copy of a material document necessary to make the statements made in such application not misleading to the same extent that such person would be subject to prosecution under this subchapter for such a willful false statement or willful omission in a registration statement filed under Section 2(a) hereof."

V. Revise section 3(g) of S. 693 (lines 12 through 19 on p. 8), which would add a new subsection (g) to section 3 of the act, as follows:

"(b) Section 3 of such act is further amended by substituting a semicolon for the period at the end of subsection (f) and adding a new subsection as follows:

["(g) Any attorney whose activities are confined to openly representing, as an attorney of record, the interests of a disclosed foreign principal before any court or administrative agency of the United States, or of any State or political subdivision thereof.]"

"(g) Any person qualified to practice law engaging or agreeing to engage only in the legal representation of a foreign principal before any court of law or any agency or official of the Government of the United States (other than a Member or committee of either House of Congress), provided that in representing the interests of such foreign principal before any such agency or official the fact of such representation and the identity of such foreign principal shall be disclosed to the agency or official concerned."

Changes Suggested by the Chamber of Commerce of the United States in S. 693, To Amend the Foreign Agents Registration Act of 1938

Amend section 1(1) of S. 693 (which sets forth the definition of the term "foreign principal") by changing the period at the end thereof (line 9, p. 2) to a semicolon, and adding thereafter the following:

"Provided, however, That the term 'foreign principal' does not include any bona fide business corporation or other similar association or organization engaged in bona fide trade or commerce if either

(i) such person is directly or indirectly owned or controlled by one or more corporations organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States, having its or their principal places of business within the United States, and regularly engaged in substantial bona fide commercial, industrial or financial activities within the United States, or

(ii) such person directly or indirectly owns or controls one or more corporations organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States, having its or their principal places of business within the United States, and regularly engaged in substantial bona fide commercial, industrial or financial activities within the United States, and no substantial portion of the activities of such person are directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in major part by a government of a foreign country or a foreign political party, and the voting stock of such person, or of the corporation or corporations owning or controlling such person, is registered under the Securities Exchange Act of 1934 or traded on a national securities exchange registered thereunder, or regularly quoted in an over-the-counter market by two or more members of a national or affiliated securities association registered thereunder.

Mr. WILLIS. Thank you very much Mr. Dean, for your very enlightening statement. May I say that I understand your position com-

pletely and viewing your proposal as it would apply to the Arthur Deans of this country, I am in complete sympathy with it.

I notice throughout your statement—and I compliment you for it—you stress and reiterate such words as “bona fide” and “honest relationship between lawyer and client.” It was for these reasons that I was careful in my opening statement not to confuse my positions as chairman of this subcommittee of the House Committee on the Judiciary and as chairman of the House Committee on Un-American Activities. Subversion is not the primary target of this legislation as I understood from the very beginning and as you have stressed so clearly in your statement.

About the only thing that I can tell you right now is that I am sympathetic with your approach and we will do the best that we can.

Of necessity we have to recognize—by we I mean the members of the Committee on the Judiciary—that it would be awfully difficult to eliminate from this bill general language, if you please, that would be there if needed. Of course, that is what causes the trouble, where do you draw the dividing line?

Let me relate an experience. On the other committee I serve we had some appropriate hearings within the jurisdiction of that committee having to do with unlawful travel to Cuba. These unlawful travelers—and there were many of them—had counsel. I happen to know also—and that is a matter of record—that the advice given went beyond protecting clients in a possible criminal prosecution under another statute but had to do also with the actions of their clients in respect to going to Cuba, coming back, and applauding the Castro regime.

Of course, the Internal Security Act also comes into play. I do not know whether I am making myself clear.

Mr. DEAN. Yes.

Mr. WILLIS. But personally, I have studied this proposal. I have made it a point to do it. I am particularly interested and will be in Mr. Yeagley's appearance. I have not talked to him or anybody else in Justice personally, as to what his ideas would be on whether the Justice Department can find a way to administer the act in such a way as to protect or exempt, treat fairly aboveboard, with complete respect for their integrity, the Arthur Deans and some others.

I am not being critical. I have nobody particularly in mind. I will do the best I can to study this act and to come out with the best we can get.

I am impressed with some of your suggestions, frankly. I have not studied your language but as to short-form registration there may be merit to that approach.

Mr. DEAN. Yes, sir.

Mr. WILLIS. Maybe that is one approach, a short-form registration. Maybe the use of language like that used in the security field would be helpful.

Mr. DEAN. Public Utility Holding Company Act, 1935.

Mr. WILLIS. Maybe we can do something with that. We will do the best we can. I highly appreciate your attendance. Maybe there are some questions.

Mr. TUCK. I have no questions.

Mr. POFF. Mr. Chairman, first may I join the chairman in welcoming such a distinguished witness to our hearing and echo what he has

already said about the value of the contribution he has made to our deliberations.

Specifically, I have a question with reference to your proposal of an application for an exemption patterned after that authorized in the Securities and Exchange Act.

Your proposal proceeds on the premise that the applicant is acting in good faith?

Mr. DEAN. Yes, sir. If he is not acting in good faith he does not get the exemption.

Mr. POFF. That brings me precisely to my question.

The proposal which you make on page 6 of the appendix requires that the Attorney General act upon that application within "a reasonable time after the receipt of such an application." I think lawyers have no difficulty in interpreting the words reasonable time. But at least that clause is subject to discretionary interpretation.

My question, sir, is: How long might a reasonable time be within which the Attorney General might decide, first of all, the question of whether the applicant was acting in good faith?

Mr. DEAN. Well, you have the advantage, Mr. Poff, of a number of cases interpreting this same language that have arisen in connection with the interpretation of the Public Utility Holding Company Act of 1935. That is why I use that precise statutory language. Then I thought that the Department of Justice would have the advantage of the SEC's interpretive regulations and also the cases that have arisen under that statute. It varies with the facts.

In the absence of extenuating circumstances, unless the people do not respond to information that the Attorney General asks from them in supplementing the application, I should think in the normal case the Attorney General ought to respond somewhere within 90 to 120 days after the application is filed. By stipulation between the parties they could extend the time.

Mr. POFF. In that 90- to 120-day period, as I understand your proposal, the applicant would be exempt simply by the sterile, naked act of filing the application?

Mr. DEAN. He is exempt if he files it bona fide and he did not withhold any essential information from the Attorney General. That is, he cannot withhold his essential relationship. If he is actually acting as a foreign agent of a foreign government and ought to be covered by it, I do not see how he could then file a bona fide application. If there is a doubt he would be exempt until the Attorney General acted on it.

If the Attorney General, of course, within a reasonable period of time—whatever the burden was on the Attorney General's Office—decided he wanted more information they could hold up the exemption by simply saying that, "We want more information."

Mr. POFF. I found nothing, sir, in that language which suspends the exemption during the period in which the Attorney General is seeking a firm determination of the question first of good faith.

Mr. DEAN. Under (g) on page 6 of the appendix:

* * * the filing of an application in good faith shall exempt the applicant from the provisions of this subchapter until the Attorney General has acted on such application.

It only suspends it until the Attorney General acts on it:

Within a reasonable time after the receipt of such an application, the Attorney General shall pass upon the merits of such an application, and enter an order granting, or after notice and opportunity for hearing, denying, or otherwise disposing of such application.

Mr. POFF. I understand that. I say again, I understood you to make the point that if the Attorney General doubts good faith he may somehow suspend the operation of the exemption?

Mr. DEAN. He could pass upon it or enter an order granting or after notice and opportunity for hearing deny the application. He could immediately, if he has any doubts about it, immediately set it down for hearing.

Mr. POFF. But assuming that he has no doubts within a reasonable time of 90 days, the applicant would continue to enjoy the exemption?

Mr. DEAN. That is correct. Except that he bona fide would have to set forth what his precise relationships were.

Mr. POFF. Suppose the Attorney General asks for additional information and the applicant withheld information or supplied misleading information. Would that come within any criminal sanction in any criminal statute?

Mr. DEAN. I put on here at the top of page 7, under (g) :

The Attorney General may require such additional statements, information, or documents as he may deem necessary for purposes of passing upon the merits of such application. A person shall be liable to prosecution for a willful false statement of a material fact in any such application or the willful omission of a material fact or copy of a material document necessary to make the statements made in such application not misleading to the same extent that such person would be subject to prosecution under this subchapter for such a willful false statement or willful omission in a registration statement filed under section 2(a) hereof.

Mr. POFF. I ask the witness to pardon me. I had not read the proposal that far. I think it is well that you have included that sentence. I am frankly concerned about what the status of the applicant may be in the so-called reasonable time period preceding the Attorney General's firm determination, and what harm he may do if, in fact, he is an agent of a foreign government bent upon subversive activities.

You must understand that in reaching a decision on this point, this committee must consider the fact that all those who avail themselves of the opportunity your proposal would give them may not be acting in good faith. We must look at the problem from all angles.

Mr. DEAN. Yes, sir; that would be a problem for your committee's decision.

Let me also submit to you this happened in the very beginning of the Securities Act where the registration provisions were so burdensome that the Securities and Exchange Commission just was not able to process them. At the end of a year we had to amend the act making it much simpler. You might also accomplish something on that in the public interest to have the registration statement so burdensome and so full of detail you might have several hundred of them filed with the Department of Justice and the Department of Justice would not be able to discover the omissions or misstatements by reason of the very burdensome nature of the volume of the applications and the tremendous amount of information in these.

If you read the requirements for one of these registration statements, I think you will find it is terribly burdensome.

Mr. POFF. What you are saying is that we must reach a midpoint and I agree.

Mr. DEAN. Yes.

Mr. POFF. I have other questions, Mr. Chairman, but I notice the bells have rung. I wonder what you wanted to do.

Mr. Chairman, in order to accommodate my colleagues, I will be just as brief and concise as possible.

I appreciate your proposal and understand at least partially the problems which prompted it. But I am concerned not to get into that never-never land of interpretation and subjective understanding of statutory terms which sometimes is pretty dangerous, particularly in a criminal statute.

What is political and what is not political?

What is commercial and what is not commercial?

For instance, today is it commercial only or commercial and political for an agent of a foreign government to represent that government before the Department of Commerce in connection with an application for an export license of a particular commodity that may be prohibited under the Battle Act?

Mr. DEAN. If the Department of Commerce, as I assume they have, has rules and regulations and procedures for formal hearings and he complies with those rules and regulations and does what only an attorney normally does in such a hearing, I think he should be exempted. If on the other hand, he tries to engage in lobbying activities by going to Congressmen or other people, by trying to bring pressure to bear upon the Department of Commerce or the agency involved, in my own personal belief he should not have the exemption.

Mr. POFF. Under the act, prior to *Rabinowitz*, would such activity have required registration?

Mr. DEAN. If he is appearing before the Department of Commerce in connection with the hearings, rather than as I say trying to lobby under the present act, he would not be required to register.

Mr. POFF. Would he have been required to register after *Rabinowitz*?

Mr. DEAN. After *Rabinowitz*, after the amendment, you cannot carry on private activities. I should say under *Rabinowitz* he would be required to register.

Mr. POFF. He would be required to register under the bill as it passed the Senate?

Mr. DEAN. No. If he were engaged in formal proceedings before the Department of Commerce, no. There are some questions about it if they are merely ex parte proceedings.

Mr. POFF. This is terribly interesting. I would like to pursue it, but I shall not. I yield to my colleague.

Mr. WILLIS. May I ask two short questions my colleague's question brought to my mind.

Considering the facts, circumstances, and the holding in *Rabinowitz*, would you want it reversed?

Mr. DEAN. On the peculiar facts in that case which always make hard law—

Mr. WILLIS. Maybe I should not have asked the question.

Mr. DEAN. I would say that in most of your cases here, since the people in that case were probably doing something more than repre-

senting even commercial activities, even under the things that I propose they might have to register. If they are only engaged in perfectly open aboveboard formal, legal proceedings or only doing what most attorneys do in everyday work representing the case of foreign clients or a foreign government which comes to them, doing legal work, it seems to me it would be an imposition both on the Government and the lawyers to require them to register as a foreign agent.

This might also, you know, be used against us. When I went to Spain a number of years ago to try to correct the taking over by one of General Franco's benefactors of the Barcelona Traction Co. in which a large amount of American capital was involved, about \$250 million, the Spanish Government brought great pressure to bear against some of the leading Spanish lawyers not to cooperate with me. I had a number of lawyers refuse to cooperate with me because there was pressure brought to bear by the Spanish Government directly or indirectly.

I think that we have got to be a little careful here in drafting these things that you do not also make it more difficult for American corporations abroad to get representation by lawyers in the countries where they have their investments.

Mr. WILLIS. This is an even tougher question but it has to be on the record, I think. I gather from your testimony on the Senate side that your firm has not had to register?

Mr. DEAN. No, sir. I have declined matters many times where we would have to be registered and we have never registered except in one instance.

Mr. WILLIS. I am not implying you ought to have.

Mr. DEAN. No, I have declined.

Mr. WILLIS. This is part of the legislative history we are talking about.

Mr. DEAN. About 2 weeks after the *Rabinowitz* case came down we were engaged as legal counsel by the Philippine Government for filing a registration statement under the Securities Act. In view of the *Rabinowitz* decision we registered but we canceled registration as soon as the public offering was completed. Other than that we have not registered. I have declined many times to represent people because this act was originally passed against advertising agencies who would purport to represent railroads and then carry on Nazi activities, Nazi propaganda. I still think that there is a sort of a connotation of subversive activities because of the history of the act.

Mr. WILLIS. One final question.

Have you ever thought that there might be special registration in doubtful cases on the part of an honorable law firm? I do not know whether it is a pertinent question but that may be subject to consideration in the light of what you just said.

Mr. DEAN. Yes.

Mr. WILLIS. Would you want to think about that?

Mr. DEAN. Yes, I would be very glad to think about that and talk to you about that.

Mr. TENZER. Mr. Chairman, I would waive my questions except that I would like to say to my distinguished colleague of the New York bar that I think he has made a wonderful contribution to the com-

mittee. My other questions will be reserved for other witnesses because they relate to specific suggested instances in which attorneys may be required to register. If there is any doubt I will communicate by letter with the distinguished witness.

Mr. DEAN. Fine.

Mr. TENZER. Following up on Mr. Poff's question, I refer to page 6 of your appendix where the reasonable time question is involved; would you have any objection if the Attorney General were given the authority at any time after the filing of a notice of retainer by an attorney in behalf of a foreign company to raise a question or require additional information?

Mr. DEAN. No.

Mr. TENZER. No objection?

Mr. DEAN. I would have no objection.

Mr. WILLIS. We will stand adjourned until 2 o'clock, gentlemen. (Whereupon, at 11:25 a.m., the subcommittee adjourned to 2 p.m. of the same day.)

AFTERNOON SESSION

Mr. WILLIS. The subcommittee will come to order.

We are glad to have with us Mr. Franklin Mooney, of the Department of Economics and Development of the Province of Ontario, Canada. We are indeed happy to have you with us, sir.

STATEMENT OF FRANKLIN E. R. MOONEY, INDUSTRIAL COMMISSIONER, GOVERNMENT OF ONTARIO, CANADA

Mr. MOONEY. Mr. Chairman and members of the subcommittee, my role today is purely a supporting one to the Province of Alberta who will be presenting the brief. I have a one-page letter, if I may just read it, and then the rest will be taken over by Mr. Frawley.

On behalf of the government of Ontario, Canada, I wish to thank you for the opportunity of presenting our views on bill H.R. 290 to this committee.

The government of Ontario, Canada, wishes to record its support for the sentiments expressed in the statements on bills S. 693 and H.R. 290 submitted this day by the government of Alberta, Canada.

Thank you very much.

Mr. WILLIS. The statement will be inserted in the record at this point.

(Mr. Mooney's statement follows:)

GOVERNMENT OF ONTARIO, CANADA,
DEPARTMENT OF ECONOMICS AND DEVELOPMENT,
TRADE AND INDUSTRY BRANCH,
New York, N.Y., July 29, 1965.

In the matter of S. 693 and H.R. 290, bills to amend the Foreign Agents Registration Act of 1938, as amended.

COMMITTEE OF THE JUDICIARY,
House of Representatives,
Washington, D.C.

GENTLEMEN: On behalf of the government of Ontario, Canada, I wish to thank you for the opportunity of presenting our views on bills S. 693 and H.R. 290 to this committee.

The government of Ontario, Canada, wishes to record its support for the sentiments expressed in the statements on bills S. 693 and H.R. 290 submitted this day by the government of Alberta, Canada.

Yours sincerely,

FRANKLIN E. R. MOONEY,
Industrial Commissioner.

Mr. WILLIS. Thank you ever so much, Mr. Mooney.

Mr. MOONEY. Thank you.

Mr. WILLIS. Mr. Frawley, from the Province of Alberta, Canada. We are glad to have you here, Mr. Frawley.

**STATEMENT OF JAMES JOSEPH FRAWLEY, SPECIAL COUNSEL FOR
THE GOVERNMENT OF THE PROVINCE OF ALBERTA, CANADA**

Mr. FRAWLEY. Mr. Chairman and members of the subcommittee, perhaps I should tell you who I am. My name is James Joseph Frawley, and I live in Ottawa, Ontario, Canada. I am the special counsel for the government of the Province of Alberta. The Province of Alberta has an office in Ottawa. I am here today to present a statement to you with respect to the office that we have established in Los Angeles, Calif., and where we have found that we are subject to the provisions of the Foreign Agents Registration Act.

Mr. WILLIS. Will you describe the office and what it does?

Mr. FRAWLEY. I can best do that, Mr. Chairman, by reading the very first paragraph of my statement because I set out to do just that.

Mr. WILLIS. Very well.

Mr. FRAWLEY. The statement is divided into two parts, sir. The first part is a review of the facts and correspondence between the Los Angeles office and the Department of Justice, Registration Section, and the second part is some observations in support of the amendment we are requesting:

1. On October 23, 1962, the government of the Province of Alberta located at 550 South Grand Avenue, Los Angeles, an office—

(a) To encourage industrial development and tourism in Alberta;

(b) To assist U.S. manufacturers in finding markets for their products in western Canada and in manufacturing in Canada under license. Perhaps I should add "or other arrangements";

(c) Generally to assist U.S. citizens or businesses on matters pertaining to Alberta.

I am conscious, first of all, of the privilege of coming from Canada to appear before this subcommittee of the U.S. House of Representatives. Being conscious of that privilege, I certainly do not intend to take too much of your time, and I am also conscious of the fact other people are waiting to make statements. So I will not read the entire statement because I understand the statement will go into the record in any event.

Mr. WILLIS. And it will be critically read and analyzed.

(Mr. Frawley's statement follows:)

STATEMENT OF THE GOVERNMENT OF THE PROVINCE OF ALBERTA, CANADA,
SUBMITTED BY J. J. FRAWLEY, OF COUNSEL FOR THE PROVINCE OF ALBERTA

PART I. REVIEW OF FACTS AND CORRESPONDENCE

1. On October 23, 1962, the government of the Province of Alberta located at 550 South Grand Avenue, Los Angeles, Calif., an office—

- (a) To encourage industrial development and tourism in Alberta;
- (b) to assist U.S. manufacturers in finding markets for their products in western Canada and in manufacturing in Canada under license;
- (c) generally to assist U.S. citizens or businesses on matters pertaining to Alberta.

2. On March 24, 1964, the Internal Security Division of the U.S. Department of Justice informed the manager of our Los Angeles office that—

"Representing a branch of a foreign government within the United States constitutes your office an agent of a foreign principal within the meaning of the Foreign Agents Registration Act and requires its registration with the Attorney General."

3. A registration statement having been completed and forwarded to the U.S. Department of Justice, Mr. Nathan B. Lenvin, Chief of the Registration Section of the Internal Security Division, wrote to our Los Angeles office on May 19, 1964, calling attention to section 4 of the act and rule 400 thereunder and said:

"In substance this section provides that dissemination through interstate facilities or media of any material containing political propaganda as defined in section 1(j) of the act creates an obligation on the registrant to file a copy of such material with this Department and two copies with the Librarian of Congress, as well as to label such material and to submit dissemination reports thereof to this office."

4. On May 25, 1964, the manager of our Los Angeles office replied to the letter of May 19 pointing out that none of the pamphlets forwarded had reference to political propaganda as outlined in rule 400. Our letter added: "The information in all cases refers only to literature outlining the tourist attractions of the Province of Alberta and/or market and trade information of that Province." Clarification was requested.

5. On September 15, 1964, Mr. Lenvin wrote as follows:

"A review of the material submitted by you indicates that it contains 'political propaganda' as that term is specifically defined by section 1(j) of the act; that is, the material is reasonably adapted to influence a recipient within the United States with reference to the public interests of the government of Alberta."

Our attention was called, accordingly, to the filing and labeling requirements of section 4 of the act. A sample label was enclosed reading as follows:

"A copy of this material is filed with the Department of Justice, where the required registration statement of (your name and address) as an agent of (the name and address of your foreign principal) under the Foreign Agents Registration Act of 1938, as amended, is available for public inspection. Registration does not indicate approval of this material by the U.S. Government."

6. On October 6, 1964, the Registration Section again wrote sending forms for use in filing a supplemental statement and directing attention to the requirement that "all receipts from your foreign principal" must be reflected in the supplemental registration statement.

7. On November 24, 1964, the Los Angeles office wrote forwarding supplemental registration statements. In his covering letter the manager protested the "political propaganda" ruling contained in Mr. Lenvin's letters of September 15, 1964, and said:

"It (the ruling) certainly appears to be at variance with the accepted courtesies that have always been extended between the United States and Canada. The tourist literature that we distribute and the information on our industrial life in the Province of Alberta is either identical or similar to information available through the travel bureau or the trade commissioner offices of the Canadian

consulate. Before opening this office, this same information was available to travel agents, auto clubs or interested business people direct from Alberta and we are at a loss to understand why, having opened an office in Los Angeles to satisfy the interest that had previously been established by the American tourist and/or business executive, we now are required to label our literature and file this information as political propaganda. A review of literature on display racks in local travel bureaus does not indicate that foreign travel literature is subject to similar restrictions imposed on us by your recent ruling.

"While I recognize and respect your ruling, I am referring this matter to my Government and requesting that they either correspond with you direct or through the Canadian Government to resolve these difficulties."

8. On December 21, 1964, our Los Angeles office wrote to Mr. Lenvin saying in part:

"Offices in the United States from the Province of Quebec and the Province of Nova Scotia have been granted registration through the Department of State of the U.S. Government, for example, and I am bringing this to your attention requesting equal consideration to that extended to these other Provincial government branch offices."

9. On January 13, 1965, Mr. Lenvin's office replied to the letters of November 24 and December 21 making no reference to the status of Quebec and Nova Scotia but advising in part as follows:

"The following remarks may serve to clarify the application of these requirements as they pertain to material disseminated by your office. It has been determined by this Department that material which is primarily devoted to the promotion of tourism does not constitute political propaganda. Thus, such publications of yours as 'Banff-Lake Louise Tourist Pamphlet,' 'Sunny Alberta—Accommodation Guide,' and 'Visit Alberta for a Wonderful Vacation' would not come within the purview of the filing and labeling requirements. However, their distribution would be reported in response to item 11 on the supplemental statement form. On the other hand, material which is primarily devoted to promoting investment or attracting industry has been determined to contain political propaganda as that term is defined by section 1(j) of the act in that it is intended to influence its recipients with regard to the public and political interests of the foreign government disseminating such material."

10. Five of the ten Provinces of Canada maintain offices in the United States to encourage tourism and industrial development in their respective Provinces. Attached as appendix A is a list of such offices supplied by the Department of Trade and Commerce in the Government of Canada.

11. We tender herewith to the committee a representative sample of the trade and tourist material distributed by our Los Angeles office.

PART II. OBSERVATIONS IN SUPPORT OF AN AMENDMENT

12. The Government of the Province of Alberta deeply regrets the imputation that the tourist and trade activities of its Los Angeles office constitute the dissemination of political propaganda inimical to the interests of the citizens or of the Government of the United States. We realize that such imputation is not active in the minds of the officers of the Internal Security Division of the Department of Justice which administers the Foreign Agents Registration Act. On the contrary we are aware that the difficulty derives from the very broad definitions of "foreign principal," "agent of a foreign principal" and "political propaganda" contained in the statute.

13. We request that an appropriate amendment be introduced into bills S. 693 and H.R. 290 to exclude from their provisions the offices established in the United States by any of the governments of the Canadian Provinces.

14. In support of our request for this statutory exemption we cite—

(a) The long-standing friendly relationship between Canada and its Provinces and the United States and the several States of the Union;

(b) The trade between the two countries, the balance of which at the present time is substantially in favor of the United States;

(c) The close and unique economic links between our two countries;

(d) The integration of Canada and the United States in continental defense evidenced by Canadian sharing in the North American Air Defense Command (NORAD).

15. The foregoing are merely illustrative of the considerations which underline the close economic and other relationships existing between Canada and the United States. These considerations emphasize the desirability of providing in whatever manner Congress considers appropriate the exclusion of Canadian provincial offices from the requirements of the Foreign Agents Registration Act.

16. In further support of our petition for exclusion from the requirements of the Foreign Agents Registration Act, we call to the attention of the committee the following respectful submissions:

(a) The activities carried on by offices of the Provinces located in the United States; i.e., the promotion of travel and of industry, are essentially what might be described as Chamber of Commerce activities. It is our understanding that a Chamber of Commerce of a Canadian city could locate an office in the United States promoting travel and industry without registration under the Foreign Agents Registration Act so long as no part of its operating funds was contributed by the government of the Province in which the city was situated.

(b) If the provincial offices are agents of the Province in a technical sense, we submit that such agency was not one contemplated by the Congress of the United States when the Foreign Agents Registration Act was enacted and the requirement of disclosure by foreign agents was imposed.

(c) No useful purpose is served by the registration of the managers of provincial offices as "foreign agents." Nor is the internal security of the United States advanced by such registration. The distribution of tourist literature and of pamphlets, brochures, etc., promoting trade and seeking the attraction of capital investment does not constitute the "dissemination of political propaganda" except in the most highly technical sense and then only because of the broad language used in the act.

17. The various States of the United States of America are subject to no legislation of the kind in question here upon establishing offices in Canada. The State of New York and the Commonwealth of Puerto Rico have industry promotion offices in Montreal and Toronto respectively, which are not hampered by legislation or regulation such as is directed at Canadian provincial offices by the Foreign Agents Registration Act. The activities of the New York and Puerto Rico offices are substantially the same as the activities of the Canadian Provinces' offices in the United States. Attached as appendix B is a newspaper advertisement of the Montreal office of the State of New York.

18. We wish to call to the attention of the committee that the provincial trade representatives are performing substantially the same functions with respect to trade development as the Federal trade commissioners. The Foreign Trade Service of the Canadian Department of Trade and Commerce has offices throughout the world staffed by officers known as trade commissioners. The nature of the duties of these officers is thus described in an information sheet issued by the Trade Commissioner Service:

"In promoting Canadian foreign trade, the trade commissioner's activities fall into three major fields of effort. His main role is to bring buyer and seller together. Generally speaking, this means a Canadian exporter and a foreign importer, but as required Canadian importers are put in touch with foreign suppliers. In most instances, the trade commissioner takes action in response to requests direct from Canadian businessmen or the Department at Ottawa, but the good trade commissioner will also regularly take the initiative and draw trade opportunities to the attention of Canadian firms or the Department.

* * * * *

"Reporting is the second major aspect of the trade commissioner's work. He is expected to provide reports in response to specific inquiries from Government departments in Ottawa or private firms. Additionally, he will initiate reports on trade matters for the use of both government and private industry. These reports may vary in length from a short trade note in one paragraph to a market report running to many pages. They will vary in purpose from those destined for publication to those intended for the use of a particular firm.

"Frequently associated with this basic responsibility for reporting is the need to advise and consult with the resident Canadian Ambassador, Minister, or consul general on trade and economic matters. In the case of many posts, the trade commissioners are an integral part of a Canadian diplomatic mission and the trade commissioner is adviser to the head of mission accordingly.

"The third important field of activity is representation. Every trade commissioner is an official representative of his country and in all that he does at his post is regarded as a Canadian representative: a status which carries both responsibilities and privileges."

19. The Canadian Federal trade commissioners in the United States and the Canadian Provincial trade and tourist representatives in the United States are engaged in substantially the same work in respect of trade promotion and development with the obvious difference that while the provincial officer confines himself to the encouragement of tourism and trade in his Province, the Federal officers concern themselves from the national point of view with the trade of all the Provinces including those which have established offices in the United States.

20. An obvious anomaly suggests itself. The distribution of a piece of industrial promotion literature by the Alberta representative in Los Angeles constitutes the dissemination of political propaganda. The distribution of the very same booklet by the Canadian Federal trade commissioner in Los Angeles is not the dissemination of political propaganda and the Federal officer is not required to register under the Foreign Agents Registration Act.

21. The anomaly just recited comes about because in the United States Canadian Federal trade commissioners—employees of the Department of Trade and Commerce—are designated consuls or vice consuls. By virtue of such designation, the Federal trade commissioners are accorded the exemption provided in section 3(a) of the Foreign Agents Registration Act which reads as follows:

"Sec. 3. The requirements of section 2(a) hereof shall not apply to the following agents of foreign principals:

(a) A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer;"

These Federal officials enjoying exemption from the provisions of the Foreign Agents Registration Act because of their "diplomatic or consular officer" status are—notwithstanding their consular designation—primarily trade commissioners and, as has been pointed out, perform functions not essentially different from the functions of the Provincial trade commissioners.

22. It is submitted that the difference in treatment of two Canadian Government employees, one Provincial and the other Federal, both performing substantially similar functions in the matter of trade development is not justifiable. We are certain it was never intended and in our submission should be removed.

All of which is respectfully submitted.

APPENDIX A

PROVINCIAL OFFICES IN THE UNITED STATES

British Columbia: Mr. Newton P. Stacey, Commissioner of Trade and Tourism, British Columbia House, 599 Market Street, San Francisco, Calif.

Alberta: Mr. Lewis D. Robinson, Administrator, Government of Province of Alberta, Department of Industry and Development, 550 South Grand Avenue, Los Angeles, Calif.

Saskatchewan: Nil.

Manitoba: Nil.

Ontario: Mr. N. Probyn, Suite 1302-3, 680 Fifth Avenue, New York, N.Y., 10019. Mr. H. G. Clouse, 11 East Adams Street, Chicago, Ill., 60603.

Quebec: Mr. Charles Chartier, General Manager, Government of Province of Quebec, Department of Industry and Commerce, 17 West 50th Street, New York, N.Y. (Other departments outstanding.)

New Brunswick: Nil.

Nova Scotia: Miss Jean Marshall, 30 West 54th Street, New York, N.Y. Mr. John Wilson, 607 Boylston Street, Boston, Mass.

Prince Edward Island: Nil.

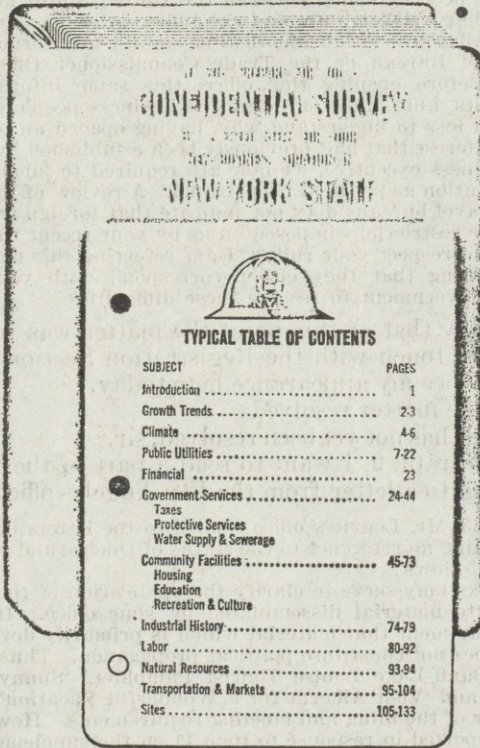
Newfoundland: Nil.

THE MONTREAL GAZETTE

APPENDIX "B"

MONDAY, JUNE 14, 1965

FREE TO CANADIAN COMPANIES LOOKING FOR U.S. PLANT SITES OR OFFICES



STRICTLY BUSINESS. This confidential report will be prepared for you by businessmen (like yourself) who are now on the staff of the N.Y. State Department of Commerce. It will answer *your* questions, consider *your* requirements and *your* product. It is *not* taken off the shelf. To help you look for locations in New York State, we have opened a permanent office in Montreal. Just send your requirements on your business letterhead or call Chester J. Malley, Director, Montreal Office, N.Y. State, Dept. of Commerce, 2 Place Ville Marie, Montreal 2. Telephone 868-1991. Or, if you prefer, write to Commissioner Keith S. McHugh, N.Y. State Dept. of Commerce, Room MG, 112 State St., Albany 7, N.Y.

Keith S. McHugh
COMMISSIONER

Mr. FRAWLEY. Turning, then, to page 3, paragraph 7, there having been correspondence between the Registration Section and the Los Angeles office in which it was demanded we file registration statements and subject ourselves to the provisions of the statute, that having been done—

7. On November 24, 1964, the Los Angeles office wrote forwarding supplemental registration statements. In his covering letter the manager protested the "political propaganda" ruling contained in Mr. Lenvin's—Mr. Lenvin is Chief of the Registration Section of the Internal Security Division of the U.S. Department of Justice—Mr. Lenvin's letters of September 15, 1964, and said:

"It (the ruling) certainly appears to be at variance with the accepted courtesies that have always been extended between the United States and Canada. The tourist literature that we distribute and the information on our industrial life in the Province of Alberta is either identical or similar to information available through the Travel Bureau or the Trade Commissioner Officers of the Canadian consulate. Before opening this office, this same information was available to travel agents, auto clubs or interested business people direct from Alberta and we are at a loss to understand why, having opened an office in Los Angeles to satisfy the interest that had previously been established by the American tourist and/or business executive, we now are required to label our literature and file this information as political propaganda. A review of literature on display racks in local travel bureaus does not indicate that foreign travel literature is subject to similar restrictions imposed on us by your recent ruling.

"While I recognize and respect your ruling, I am referring this matter to my Government and requesting that they either correspond with you direct or through the Canadian Government to resolve these difficulties."

Perhaps I should say that at this point the matter was referred to me and I have been in touch with the Registration Section and with this committee, and hence my appearance here today.

Mr. WILLIS. Was the matter resolved?

Mr. FRAWLEY. No, it has not yet been resolved, sir.

Then going to paragraph 9, I want to read a part of the letter Mr. Lenvin wrote replying to a letter from the Los Angeles office.

9. On January 13, 1965, Mr. Lenvin's office replied to the letters of November 24 and December 21 making no reference to the status of Quebec and Nova Scotia but advising in part as follows:

"The following remarks may serve to clarify the application of these requirements as they pertain to material disseminated by your office. It has been determined by this Department that material which is primarily devoted to the promotion of tourism does not constitute political propaganda. Thus, such publications of yours as 'Banff-Lake Louise Tourist Pamphlet,' 'Sunny Alberta—Accommodation Guide,' and 'Visit Alberta for a Wonderful Vacation' would not come within the purview of the filing and labeling requirements. However, their distribution would be reported in response to item 11 on the supplemental statement form. On the other hand, material which is primarily devoted to promoting investment or attracting industry has been determined to contain political propaganda as that term is defined by section 1(j) of the act in that it is intended to influence its recipients with regard to the public and political interests of the foreign government disseminating such material."

Then I want at this point to offer to the committee, and leave with the staff of the committee, a representative sample of the material which is distributed, or, as the statute says, disseminated by the office in Los Angeles. So much for a review of the correspondence.

Mr. WILLIS. And that is as far as it has gone and the matter is not further resolved except for the excepted materials mentioned in this letter?

Mr. FRAWLEY. It has not been resolved. The letter indicates that the tourist literature is not political propaganda, but it goes on to

require us to report it. I just raise the question, without wishing to be too argumentative, if it is not political propaganda, why should they be bothered about it in any way at all? They say "You do not have to label it." And I presume you are aware of the label that must go on this material. "You don't have to label it, you don't have to file it with the Department of Justice." Presumably that is what this letter means. "But you have to report it in response to item 11," which means, as I read it, sir, you must tell the Department of Justice where you send it, how much you sent to a board of trade or how much you distributed over the counter in your office, and so on.

I read that really to indicate that it leaves even the tourist side of our office operation somewhat unresolved.

Mr. WILLIS. This thought comes to my mind, and I did not know about this transaction or this incident involving our good neighbor Canada. But just offhand, and without passing judgment on it, it seems to me that the same thing I said to Mr. Dean might apply to Canada. Unfortunately, all the lawyers and the people engaged in representing foreign clients are not Arthur Deans, and I might say all counties on earth are not Canadas.

Mr. FRAWLEY. I appreciate that. We think that Canada is in a very unique situation, and I have something to say about that later.

Mr. WILLIS. Let me ask you this, and I do it even though maybe I ought to know it, but I confess my ignorance: Is there language in the Senate bill that would resolve your problem?

Mr. FRAWLEY. No. I have looked at it, Mr. Chairman, and the recurrence of that word "political" and the definition that we have of political is really what is a complete deterrent to resolution.

Mr. POFF. Mr. Chairman, may I ask if the amendment proposed by the previous witness were adopted, would that partially solve the problem?

Mr. FRAWLEY. I perhaps should know more about Mr. Dean's amendment, but I just came in this morning and I am not aware of it. I would like to think about anything that would resolve the predicament we are in.

Perhaps I should say now, it is developed in the latter part of my statement, we are very disturbed in the government of Alberta that these documents [indicating] should be called political propaganda as it is defined in section 1(j).

Mr. WILLIS. I understood the letter of January 13 said that they were not. I thought it clarified at least that point.

Mr. FRAWLEY. It clarified it to this extent: It said our tourist literature, Alberta Highways, just a road map, is not political propaganda and therefore we haven't got to put on this label which disassociates the U.S. Government from the piece of literature—we are not required to put that on and we are not required to file it officially with the Department of Justice. But that is all. We must still tell the Department of Justice who got all of this tourist literature, which, with the greatest of respect, we find very difficult.

Mr. POFF. The last sentence of the letter states they have found something of a political nature in other documents.

Mr. FRAWLEY. Yes, sir. And here is our latest publication, "The Alberta Story," and this is perhaps roughly 50 percent industrial and

50 percent tourist. So you see in this document, all in the same cover, we have to file it, label it, and report the dissemination. Perhaps you misunderstand me when I say we don't even like the word. I will be glad to leave all of this material with the committee.

Mr. WILLIS. Please do. The material referred to consists of magazines and tourist literature, and so on, which will be included in the committee file.

Mr. FRAWLEY. Now, part 2, paragraph 12, I think I should read because it is a statement on behalf of my government:

12. The government of the Province of Alberta deeply regrets the imputation that the tourist and trade activities of its Los Angeles office constitute the dissemination of political propaganda inimical to the interests of the citizens or of the Government of the United States. We realize that such imputation is not active in the minds of the officers of the Internal Security Division of the Department of Justice which administers the Foreign Agents Registration Act.

I think I should stop there and emphasize that. I saw Mr. Lenvin and had a most friendly discussion with Mr. Lenvin. He knows what we are doing in our Los Angeles office. He is very sympathetic to everything I said. I offered to show him some of the pamphlets and he said, "Mr. Frawley, don't show me those pamphlets. I am not concerned with them." But he goes on and says, "There is the statute." That is what brings us here.

He said, "I am very sympathetic to everything you are saying, but here is the statute."

I go on to say, at the bottom of page 5:

on the contrary we are aware that the difficulty derives from the very broad definitions of "foreign principal," "agent of a foreign principal," and "political propaganda" contained in the statute.

Mr. POFF. May I interrupt again? Do I understand Mr. Lenvin said he did not care to read the pamphlets and yet wrote a letter saying that the pamphlets and the material had been determined to contain political propaganda?

Mr. FRAWLEY. I think, in fairness, when I was sitting in his office last March and I had this material—and he, I am sure, knew all about it because we had to file it with him. He or his staff knew all about the documents. Yes; I wouldn't want the slightest misunderstanding about that.

Mr. POFF. I am afraid the record might be a little misleading.

Mr. TENZER. If the gentleman will yield, I am certain he must have had them for examination in order to write the letter, and I might suggest the reason he did not want the additional material was because he already had it available.

Mr. FRAWLEY. He did not want to take up his time and maybe even my own going over and looking at these documents with him. It is as simple as that. [Reading:]

13. We request that an appropriate amendment be introduced into bills S. 693 and H.R. 290 to exclude from their provisions the offices established in the United States by any of the governments of the Canadian Provinces.

14. In support of our request for this statutory exemption we cite:

(a) The longstanding friendly relationship between Canada and its Provinces and the United States and the several States of the Union;

(b) The trade between the two countries, the balance of which at the present time is substantially in favor of the United States;

- (c) The close and unique economic links between our two countries;
- (d) The integration of Canada and the United States in continental defense evidenced by Canadian sharing in the North American Air Defense Command (NORAD).

15. The foregoing are merely illustrative of the considerations which underline the close economic and other relationships existing between Canada and the United States. These considerations emphasize the desirability of providing in whatever manner Congress considers appropriate the exclusion of Canadian Provincial offices from the requirements of the Foreign Agents Registration Act.

16. In further support of our position for exclusion from the requirements of the Foreign Agents Registration Act, we call to the attention of the committee the following respectful submissions:

(a) The activities carried on by offices of the Provinces located in the United States—that is, the promotion of travel and of industry—are essentially what might be described as chamber of commerce activities. It is our understanding that a chamber of commerce of a Canadian city could locate an office in the United States promoting travel and industry without registration under the Foreign Agents Registration Act as long as no part of its operating funds was contributed by the government of the Province in which the city was situated.

And that is not so unreasonable, sir, because, as you may know, there is almost an affinity between the State of Texas and the Province of Alberta due to the fact, of course, of the very extensive oil exploration in Alberta. They say almost everybody in Calgary now talks with a Texas drawl. There is a great affinity between the two, so it is not unreasonable to think that the city of Calgary or the Calgary Chamber of Commerce might establish an office, say, in Houston or Tulsa, Okla. So long as we in Edmonton, so long as the Province of Alberta did not subsidize that operation, they could go down and do precisely what we are doing in Los Angeles and nobody would care about them because of the absence of government, and “foreign government” in the thing. [Reading:]

(b) If the Provincial offices are agents of the Province in a technical sense, we submit that such agency was not one contemplated by the Congress of the United States when the Foreign Agents Registration Act was enacted and the requirement of disclosure by foreign agents was imposed.

Perhaps I should say here that the manager of our Los Angeles office is a salaried employee of the Province of Alberta. He might be an agent in the highly technical sense, but he is a salaried employee and a salaried civil servant of the Province of Alberta sent down there for a tour of duty. Actually, the man there now is going back to Alberta in a few days and is being replaced. I mention this in passing because we are seeking to get away from implications of this “foreign agent.”

Then in (c) I say:

(c) No useful purpose is served by the registration of the managers of Provincial offices as “foreign agents.” Nor is the internal security of the United States advanced by such registration. The distribution of tourist literature and of pamphlets, brochures, et cetera, promoting trade and seeking the attraction of capital investment does not constitute the “dissemination of political propaganda” except in the most highly technical sense and then only because of the broad language used in the act.

Perhaps I should say that this, of course, is my submission to you gentlemen, it is my very respectful submission. I just noticed the language there really should contain a statement that this is, of course, our respectful submission.

Then I want to call attention to something I think will interest you. [Reading.]

17. The various States of the United States of America are subject to no legislation of the kind in question here upon establishing offices in Canada. The State of New York and the Commonwealth of Puerto Rico have industry promotion offices in Montreal and Toronto respectively, which are not hampered by legislation or regulation such as is directed at Canadian Provincial offices by the Foreign Agents Registration Act. The activities of the New York and Puerto Rico offices are substantially the same as the activities of the Canadian Provinces' offices in the United States. Attached as appendix B is a newspaper advertisement of the Montreal office of the State of New York.

Now, that appendix did not come out very well in my statement. The duplicating machine didn't bring it out very well. Here is the original, and I have a large sized reproduction from an Ontario paper of the same advertisement. The smaller advertisement is very dim. It did not come out at all well in appendix B. You can really hardly read that. That is because, of course, the background is black. But you certainly can read this, the larger sized advertisement and the State of New York is saying:

Free to Canadian companies looking for U.S. plant sites or offices. We will prepare for you a confidential survey of selected sites for your new business location in New York State.

Then the State of New York was also kind enough to supply me with another document which they say they use in approaching Canadian businessmen. It is not addressed in terms "To the People of Canada." It is called "Industrial Location Services." I got it through the kindness of the U.S. Embassy in Ottawa, because we have a postal strike in Canada at this moment, and the Montreal office of the State of New York was not able to get one up to me. So the commercial attaché in the U.S. Embassy was kind enough to give me this document. Again, I would be glad to leave that with the committee.

Turning to the Commonwealth of Puerto Rico, though, that is even a little more interesting. This was sent to me by the Commonwealth of Puerto Rico office in Toronto. There on the cover—"Profit opportunities in Puerto Rico for Canadian manufacturers." So this document is directed to Canadian manufacturers and so purports to be. I simply call that to your attention. I suppose a very ready answer is that Canada has no Foreign Agent Registration Act, but nevertheless I thought it would be of interest to the committee to contrast, to look at the State of New York that I think is very happy that they are welcome in Canada—and they very well should be. I am not taking any credit for that. And the Commonwealth of Puerto Rico is also, I am sure, quite pleased they are permitted to endeavor to get Canadian manufacturers to establish branch plants in Puerto Rico. When we do it that is called dissemination of political propaganda.

However, to pass to the last point I am making, which I also think you will find of some interest. Perhaps I should have called the situation surrounding the State of New York with its Montreal office and the Commonwealth of Puerto Rico with its Toronto office an anomaly. I want to give you another one. [Reading:]

18. We wish to call to the attention of the committee that the Provincial trade representatives are performing substantially the same functions with

respect to trade development as the Federal Trade Commissioners, the Canadian Federal Trade Commissioners. The Foreign Trade Service of the Canadian Department of Trade and Commerce has offices throughout the world staffed by officers known as Trade Commissioners. The nature of the duties of these officers is thus described in an information sheet issued by the Trade Commissioner Service.

Now, I have copies of these. I quoted rather extensively from the information sheet and perhaps that is one of the things that I don't need to read into the record at this time, in order to save time. You will see it gives a very good summary of what the Trade Commissioners are doing in various places in the United States. I am coming to the important distinction in a moment. Perhaps I should say that one of the field of activities is representation. [Reading:]

Every Trade Commissioner is an official representative of his country in that in all he does at his post he is regarded as a Canadian representative. His status carries both responsibilities and privileges.

I might say the same for the representative in Los Angeles in a smaller way. He certainly represents the Government of the Province of Alberta in his office in Los Angeles.

I now go to item 19 on page 9:

19. The Canadian Federal Trade Commissioners in the United States and the Canadian Provincial trade and tourist representatives in the United States—such as the two people appearing before you today—

are engaged in substantially the same work in respect of trade promotion and development with the obvious difference that while the Provincial officer confines himself to the encouragement of tourism and trade in his Province, the Federal officers concern themselves from the national point of view with the trade of all the Provinces including those which have established offices in the United States, the Province of Ontario with an office in Chicago and New York, and the Province of Alberta with an office in Los Angeles.

20. An obvious anomaly suggests itself. The distribution of a piece of industrial promotion literature by the Alberta representative in Los Angeles constitutes the dissemination of political propaganda. The distribution of the very same booklet by the Canadian Federal Trade Commissioner in Los Angeles is not the dissemination of political propaganda and the Federal officer is not required to register under the Foreign Agents Registration Act.

Let me state an obvious situation. Canada is simply the totality of the 10 Provinces. There is Yukon, which is not a Province, which will be in time, I assume, and then the great north to the Arctic, which is again purely Federal. There is no Province established up there. But with the exception of the Yukon and what is called the Northwest Territories the industry of Canada is the industry of all of the Provinces added together. So these Federal Trade Commissioners are, in a sense, promoting the trade of all of the Provinces. Our man in Los Angeles is promoting the trade of Alberta, the Ontario representative in Chicago and in New York is promoting the trade of Ontario. That is an obvious thing but perhaps something to keep in mind—that Canada is just the totality of the Provinces.

Perhaps I should not say that it is not political propaganda when distributed by Federal Trade Commissioners. Perhaps it is more correct to say if it is political propaganda nobody cares about it, the Registration Section of the U.S. Department of Justice is not con-

cerned about it. You may ask why, and this is discussed in the very next section.

21. The anomaly just recited comes about because in the United States, Canadian Federal Trade Commissioners—employees of the Department of Trade and Commerce—are designated consuls or vice consuls. By virtue of such designation, the Federal Trade Commissioners are accorded the exemption provided in section 3(a) of the Foreign Agents Registration Act which reads as follows:

"SEC. 3. The requirements of section 2(a)"—the requirements of section 2(a), and section 2(a) is the necessity to register—hereof shall not apply to the following agents of foreign principals:

"(a) A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer."

These Federal officials who enjoy exemption from the provisions of the Foreign Agents Registration Act because of their "diplomatic or consular officer" status are—withstanding their consular designation—primarily trade commissioners and, as has been pointed out, perform functions not essentially different from the functions of the provincial trade commissioners.

Mr. WILLIS. Could not the problem be solved by Canada designating the provincial representatives as consuls?

Mr. FRAWLEY. It could, sir. But then we are in the well-known divided jurisdiction in Canada, and, of course, there is divided jurisdiction in the United States, but under the British North America Act, which is Canada's Constitution, the Provinces have legislative powers, and so has Canada, and anything at all in connection with external affairs, you might call it, consular officers and all of that, those people must be Federal. Alberta has no consuls anywhere. We are just a Province.

Mr. POFF. If I may suggest, some States send employees abroad to promote a particular interest of that State, and if the United States were to name them as consuls it would be pretty much equivalent to Canada naming one of the members of the trade commission of a Province as consul; would it not?

Mr. FRAWLEY. Yes. Of course, I just couldn't comprehend a provincial officer being a consul or vice consul, anything of that sort. You see, it is a very simple distinction. The Federal people come in on an A-1 diplomatic classification, visa classification A-1, and the provincial A-2, and between A-1 and A-2 there is a world of difference.

Mr. WILLIS. Just as a matter of information, and without suggesting it as a possibility, would it be solved if section 3(a) were amended by putting a comma after "diplomatic" and put the word "provincial" in?

Mr. FRAWLEY. Yes. Perhaps even before the "diplomatic," because diplomatic connotes a Federal status, you see. Alberta is not a foreign country. I don't want to get into what you might call strictly legal argument, but when you get looking at it very closely, in section 1(a), the basic section, the term "foreign principal" includes the government of a foreign country. Now, Alberta is not a foreign country to the United States. Canada is, not Alberta.

Mr. WILLIS. I know, but the sentence would read this way, wherever you put the word "provincial"—"A duly accredited provincial diplomatic or consular officer of a foreign government."

Mr. FRAWLEY. Mr. Chairman, I think that would be an ideal solution if something of that sort could be done. I think we would be very happy.

Mr. WILLIS. I don't know how this language would fit any other government in the world except Canada, but it is something that would obviously solve your problem.

Mr. FRAWLEY. Yes, sir.

Mr. WILLIS. I am trying to solve your problem, if I can, without doing away with the statute or impairing the good relations that exist between Canada and the United States. The question is, Would that involve some other countries in the world? I don't know.

Mr. FRAWLEY. What you say, sir, just follows up everything I have been told in my discussions with the administration in Washington, and that is this statute was never intended to apply to provincial offices, but it does. Take us out.

Mr. WILLIS. I would not want to be understood as saying that the thing to do would be simply to exempt Canada because that would raise a lot of questions—what about all of our other good neighbors in the Western Hemisphere? But perhaps the statute could still remain as is and satisfy Canada and, I suppose, other similarly situated by inserting the word "provincial."

Mr. FRAWLEY. But Canada, you see, sir, is virtually exempt now by virtue of the words I read, by virtue of the status of Federal Trade Commissioners.

Mr. WILLIS. That is general language, though. That applies to all countries on earth—"duly accredited diplomatic or consular officers of a foreign government—"

Mr. FRAWLEY. That is right.

Mr. WILLIS (continuing). "which is recognized by the Department of State."

Mr. FRAWLEY. By virtue of the designation of a trade commissioner as a consul or vice consul—I have a list of them, where they are all over the world—by virtue of that designation, even though they are employees of the Federal Department of Trade and Commerce in Ottawa and their job is primarily trade work and industrial development work, nevertheless, because they are also designated consuls—and I am imputing nothing at all to the Government of Canada for doing it. They have good and sufficient reasons. But because they do it, then we have the anomaly that in Los Angeles over in the office of the Federal Trade Commissioner he can disseminate what is called political propaganda and nothing happens, and we disseminate political propaganda and we are subject to all of the requirements of this statute.

I have one final paragraph. I am just about through.

22. It is submitted that the difference in treatment of the Canadian Government employees, one provincial and the other Federal, both performing substantially similar functions in the matter of trade development is not justifiable. We are certain it was never intended and in our submission should be removed.

All of which is respectfully submitted.

And that is the statement of the government of Alberta to the committee. Let me say again I doubly appreciate this.

Mr. POFF. I agree with your last statement that it was never intended and certainly should be removed insofar as the precise situation to the United States and Canada is concerned. I want to reserve judgment on the advisability of accomplishing this desirable goal simply by a one-word amendment. I am not certain what the word "provincial" might mean to someone from Chile or any other nation of the world, though it means something very precise to you and to me in the context of the statement you have made.

Mr. WILLIS. That was my thought. It would fit this situation. I don't know how it would work elsewhere.

Mr. FRAWLEY. I will go away happy if you tell me you are concerned, you will consider it, and whether the chairman's words will suffice, in any event we think a legislative exemption is really what we need.

This statute is very, very broad. Of course, if there could be some interpretation which would accomplish the same thing and exempted us we wouldn't care. It matters not from where the exemption comes, administratively or legislatively. We certainly were very pleased to be invited to testify before you, which is looking toward a legislative exclusion, and I am glad of the manner in which you received what I had to say, and I would like to think you will seriously consider this.

Mr. POFF. Is there anything in the bill as it passed the Senate which you regard as inimical to the interests of Canada if it were adopted and became part of the Foreign Agents Registration Act?

Mr. FRAWLEY. As long as you leave the term "political propaganda"—and I don't know that the bill makes any very great change in that definition, as long as that definition is there, and let me read it in the original text—

The term "political propaganda" includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person which is reasonably adapted to or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of the government of the foreign country or a foreign political party.

If I wanted to argue the thing from a legal point of view I would question the applicability of that because it is to advance the interests of the people of the United States seeking to advance their plans in Alberta. It gives employment, I won't argue that. It is to the mutual advantage of that U.S. manufacturer.

For instance, the well-known Hughes Tool Co. is established, for making drilling bits. They have gone up into Alberta and taken over a small foundry, or some such place, and they turn it into a branch plant of the Hughes Tool Co. We are happy about that. That is how Alberta should expand. How better can she expand by having American plants going there and establishing these branch offices and plants?

I am afraid with leaving that definition of political propaganda, I think that is the crux of it.

This is called dissemination of political propaganda.

Mr. WILLIS. So far as that definition of political propaganda is concerned, it is part of the basic act. You have to have it, in a way. Let us try to solve your situation in a different way.

You have to define political propaganda and the definition has to be broad or you will have no act at all.

Mr. FRAWLEY. That is another avenue.

Mr. WILLIS. Administratively, you perhaps might be exempted. You say "No." You have proven your case with letters.

I am trying legislatively. We will see what can be done. I don't know.

Mr. FRAWLEY. One of the letters did say that. It said "You are aware there can be no exemptions," or something of that sort. That is the administrative point of view.

Mr. TENZER. Do I understand that together with the filing of this literature as you suggest, you are required to file a list of the places to which it is sent, or the persons who receive it?

Mr. FRAWLEY. Broadly, that is so.

Is that right, Mr. Robinson?

Mr. ROBINSON. Broadly, sir; yes.

Mr. TENZER. Would it satisfy you if you were required only to file them without listing the information unless it was specifically requested?

Mr. FRAWLEY. No; because we still have to label it. We have to put the label on it. Even putting the label on it is unacceptable because it is a label which seeks to disassociate the U.S. Department of Justice from our literature.

Without being facetious, sir, who would ever suggest that the Department of Justice had any interest in "The Alberta Story"?

Mr. TENZER. It looks colorful from where I sit.

Mr. FRAWLEY. It is a fine booklet.

Mr. TENZER. It is a beautiful part of the world, too.

Mr. FRAWLEY. We think so. We are a little sorry we have to come down here in any sense complaining, but I am sure we are understood.

Mr. WILLIS. Thank you very much.

Mr. Harvell will be the next witness.

STATEMENT OF QUENTIN HARVELL, EXECUTIVE DIRECTOR OF THE PUBLIC RELATIONS SOCIETY OF AMERICA

Mr. HARVELL. I am Quentin Harvell, executive director of the Public Relations Society of America, located at 845 Third Avenue, New York City.

Mr. Chairman and members of the subcommittee, in order to save as much time as possible for the committee the Public Relations Society of America would like permission to file its statement with the members of the committee rather than take the 10 minutes necessary to read it. This is particularly so in view of the fact that our statement supports the essential parts of Mr. Dean's statement of this morning and further we support the amendments we understand will be proposed by the chamber of commerce this afternoon.

With your permission we would like to file it.

Mr. WILLIS. Your statement will be inserted in full at this point.
(The statement referred to follows:)

STATEMENT SUBMITTED BY THE GOVERNMENT AFFAIRS ADVISORY COMMITTEE IN
BEHALF OF THE PUBLIC RELATIONS SOCIETY OF AMERICA, BY B. C. GOSS,
CHAIRMAN

INTRODUCTION

This statement is submitted in behalf of the Public Relations Society of America which represents public relations officials of industrial corporations and other organizations, and public relations counseling firms. The society's membership presently is 4,940, with headquarters at 845 Third Avenue, New York City. This statement was prepared by the government affairs advisory committee of the society, and has been approved by the appropriate officers as an official statement of our position.

BASIC POSITION

Public relations practitioners, members of PRSA, support the basic purpose of the proposed amendments to the Foreign Agents Registration Act as we understand them. We believe the purpose of the amendments to be to insure that persons or firms representing foreign principals concerned with or seeking to influence legislation before Congress, or our domestic governmental policy, register and report on their activities.

Equally important, the amendments should make clear that (a) representation of foreign private businesses not concerned with legislation or our domestic governmental policy; or (b) representation of foreign governments in such purely commercial areas as the promotion of tourism or economic development, not involving legislation or our domestic governmental policy, should be exempt from registration and reporting under the act.

While we support these objectives of the amendments, public relations practitioners, like other persons affected by the law, believe that the amendments could be further perfected to insure that such objectives are, in fact, carried out with greater precision.

In addition, we and PRSA support proposals of others and some that we ourselves are advancing that would simplify enforcement of the act and reduce some of the burdens imposed upon both the Government and registrants without in any way weakening the effectiveness of the law.

SOME SPECIFIC SUGGESTIONS

In the first place, we would like to associate ourselves with the amendments we understand are to be proposed by the Chamber of Commerce of the United States. Based on past expressions by the chamber, these amendments are intended to simplify coverage of the statute and more clearly exempt activities of those representing U.S. corporations, with foreign affiliates. We do not believe it was ever the intention of Congress that the law should cover such activities and we strongly suggest consideration of the chamber's amendments. It is difficult to understand why anyone would wish to bring such activities under this statute.

Secondly, we would like to suggest that the use of the words "foreign agent" in the statute be eliminated and that use of a term such as "representative" be substituted at all places. In most cases the term "representative" much more clearly represents the kind of activities public relations firms and others carry on in behalf of foreign principals. We feel that such activities should not be mislabeled by use of the term "foreign agent," because of possible unfortunate connotations.

Thirdly, we urge that the definition of "political activities" and the associated phrase "political consultant" be restricted more sharply. The purpose of narrowing this definition would be to make sure that commercial activities and the representation of private foreign principals not involving legislation would be clearly exempt under the law.

We suggest that the law should apply only to those who carry on representational work or who issue publicity or communications intended to influence legislation or governmental policy in this country. It should not apply to public relations firms or anyone else hired as consultants and whose activities are limited to giving of advice and reporting on developments.

The most simple and narrow definition of these phrases is required to achieve clarity and to avoid confusion and unnecessary reporting.

Fourth, we urge that the committee, either by law or by report, call upon the Department of Justice to simplify the reporting required in the statute.

The current regulations call for the filing of reams of material that have not been or will ever be read, used, or be relevant to the purposes of the law. Most of the registrants under the law are carrying forward a straightforward business relationship that is in the interest of their principals and is fully consistent with the foreign policy of our own Government. The regulations and reporting should reflect this situation.

The regulations should require only the filing of truly pertinent information. The reporting of day-by-day routine in endless detail is extremely wasteful, unproductive and should be curtailed. A simple summary of expenses by general categories, and a listing of documents and statements issued during the quarter, should be adequate. In addition to the burden on registrants, which is substantial, why load Government files down with copies of bulky speeches, booklets, and press releases?

Fifth, and also in the interests of simplifying the reporting tasks, those required to register under the foreign agents law should be excused specifically from registering and reporting under the lobbying law. It is wasteful to compile forms of expenses and reports on activities that are filed and gather dust in three separate governmental offices (the House, the Senate, and the Department of Justice).

We believe that these relatively simple suggestions would make for a statute simpler to enforce and, therefore, much more effective in accomplishing the objectives of the Congress. We strongly urge that the committee support amendments and language changes that will make doubly clear to the Department of Justice, to prospective registrants and to the courts that the law is not intended to cover the activities of those representing private business or those engaged in purely commercial activities in behalf of foreign governments. The law should unmistakably apply only to activities likely to affect legislation, the determination of policy by our Government, or the conduct of political activities in this country.

It should clearly exempt activities of purely advisory or consulting nature, activities intended to promote tourism or economic development of foreign countries and activities carried on by or in behalf of foreign subsidiaries of American corporations. No one has seriously contended the law should cover any of these activities so why not eliminate language such as the loosely worded definitions of "political activities" and "political consultants" which may extend coverage to unintended areas? The term "foreign agent" should be eliminated.

Friendly foreign nations are entitled to effective legal and public relations assistance to help them attain recognized objectives. They should not be hampered or harassed by being subjected to uncertain but burdensome regulations of a vaguely defined statute.

The stated objectives of the legislation are relatively simple: to require registration of those who seek to influence legislation or Government policy. Such objectives should be attained by simple and clear statutory language.

Mr. WILLIS. Mr. John Sonnett, of the firm of Cahill, Gordon, Reindel & Ohl, of Washington, D.C.

You appear in behalf of the U.S. Chamber of Commerce?

**STATEMENT OF MR. JOHN F. SONNETT, PARTNER IN THE LAW FIRM
OF CAHILL, GORDON, REINDEL & OHL**

Mr. SONNETT. Yes, Mr. Chairman.

Mr. WILLIS. You may proceed in your own way.

Mr. SONNETT. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is John F. Sonnett. I am a partner in the law firm of Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York, N.Y.

I have with me Mr. John C. L. Donaldson, who is the assistant manager of the international department of the chamber of commerce.

I thought if you had any particular questions about the functioning of the chamber he would be available to you, Mr. Chairman.

Mr. LINDSAY. Perhaps the record should show that Mr. Sonnett, in addition to being a distinguished New Yorker, also is a very distinguished former Attorney General of the United States.

Mr. WILLIS. Thank you. We are glad to have him with us.

Mr. SONNETT. Thank you.

The bill before this committee has serious implications for hundreds of perfectly normal American commercial companies—in fact, any U.S. corporation engaged in international operations—and I am appearing today to discuss these matters and to offer constructive suggestions in behalf of the Chamber of Commerce of the United States.

Although I am an attorney, it is not my purpose to discuss today the potential effects of the pending bill on members of the bar. I understand this subject is being discussed by other witnesses. My remarks will be confined to the potential application of the legislation to U.S. corporations with foreign corporate affiliates actively engaged in international trade. Our firm serves as counsel to a number of such corporations.

If I may briefly digress, I would like to submit to the committee something which came to my attention only today which is a copy of several pages of the introduction to a document, a book called the Directory of American Firms Operating in Foreign Countries.

The purpose for submitting this is to provide the subcommittee, Mr. Chairman, with some idea of the number of American corporations which would be affected here.

This book was published in 1964, based on information, I understand, as of 1962, and it indicates that as of that time there were more than 3,400 American corporations which controlled and operated over 9,000 foreign business enterprises with a book value of more than \$37 billion.

We have attempted to ascertain how many such companies had foreign corporate subsidiaries rather than operating through branches, and the best we can come up with there is that somewhere in the neighborhood of 2,500 American companies have foreign corporate subsidiaries and do not operate through branch operation.

That becomes material, Mr. Chairman, as you will realize because of the definition of "foreign principal" in the bill.

The Foreign Agents Registration Act was originally enacted in 1938 in order to cope with the rapid growth of Nazi and Communist activities in the United States during the 1930's. Its purpose was to compel the public identification of such subversive elements, who most frequently were financially supported by foreign government interests. The chamber, of course, has always supported the unmasking of such subversives.

The investigation conducted by the Senate Foreign Relations Committee in 1962 and 1963 revealed numerous examples of undisclosed and irresponsible representation of foreign interests within the United States—lobbying and propaganda efforts on behalf of the Republic of China, the Union of South Africa, the Trujillo regime in the Dominican Republic, Philippine war damage claimants, and certain private foreign interests affected by U.S. sugar quotas.

The chamber is sympathetic toward forcing full disclosure of such activities. However, S. 693 is not limited to lobbying activities or else we would be here dealing with an amendment to the Federal Regulation of Lobbying Act. Nor is it limited to activities (including lobbying) by foreign governments and political parties.

The Senate investigation demonstrated clearly that the present act has not been fully effective. However, in attempting to rectify this situation, the Foreign Relations Committee has produced, and the Senate has approved, a bill that is so broad and so vague as to threaten unfairly and unnecessarily a broad cross section of normal U.S. commercial organizations whose activities and interests are in no way related to the nefarious illustrations cited during the Senate hearings. This is the reason for the chamber's concern.

This statement will explain the nature of the problems which would be created for businessmen by S. 693 and will propose an amendment which will permit the purposes of the legislation to be accomplished without these undesirable side effects.

The statement has five main sections:

(1) It begins with a brief account of the legislative history of S. 693, indicating the point at which the concern of the chamber first became aroused.

(2) It next sets forth in some detail the respects in which S. 693 would adversely affect legitimate representation by U.S. business firms of their commercial interests both before the U.S. Government and in dealing with any section of the U.S. public.

(3) It explains why the business community believes that the so-called commercial exemption in the bill offers inadequate protection for commercial activities.

(4) It explains why discretionary authority granted to the Justice Department by S. 693 does not resolve in a satisfactory way the question of whether U.S. business firms will be required to register in order to carry out normal commercial activities.

(5) The statement concludes with an explanation of an amendment which would permit legitimate business representation without undermining the bill's basic objectives.

LEGISLATIVE HISTORY

When Senator Fulbright's original bill (S. 2136, 88th Cong.) was introduced, few businessmen recognized that the covert activities of certain individuals cited during the Fulbright investigation might prompt the enactment of legislation which would jeopardize their normal relationship to their Government. The Senate Foreign Relations Committee held relatively brief hearings on S. 2136 in November 1963, and the bill was reported out early in 1964.

Only then, after the Senate Foreign Relations Committee had issued its report (No. 875, 88th Cong., 2d sess.) on the bill, February 21, 1964, was the sweeping nature of the proposal generally recognized. It then became clear that, under the provisions of this legislation, representatives of any U.S. corporation having a foreign affiliate might have to register as a foreign agent in order to discuss matters affecting the firm's foreign interests with officials of the U.S. Government and

to present the company's position on such matters to its shareholders, employees, or any other section of the U.S. public.

Soon thereafter, in March 1964, the chamber sponsored a meeting of American companies engaged in foreign trade—U.S. companies having foreign subsidiaries, and U.S. companies having foreign parents. The 34 participants at that meeting, having carefully examined the bill and the report, unanimously agreed that a large segment of the U.S. business community might be directly affected by the legislation, and they urged the chamber to seek corrective action.

The chamber decided to sponsor a clarifying amendment which would specifically exempt normal commercial representation by bona fide business organizations engaged in international commerce and having substantial operations in the United States, while, at the same time, continuing the registration requirements for the kinds of operations which had been the subject of criticism at the Senate hearings. Unfortunately, this amendment was not adopted by the Senate.

Instead, while the Senate adopted some changes in the language of the bill, it relied primarily on floor discussions and statements in its 1965 report to clarify its legislative intent. Despite these efforts, however, the bill before you is seriously deficient and the legislative history is confused.

If I may digress briefly, Mr. Chairman, without attempting to go into detail, into the congressional history during debate on the Senate floor, in 1964 the colloquy between Senator Javits and Senator Fulbright appearing on page 15493 I think is particularly illuminating. I would urge it be reviewed most carefully in terms of the confusion we find in the legislative history.

Mr. WILLIS. May I say this with reference to the confusion: I think it stems probably from this: As you properly point out in the first page of your statement, the Foreign Agents Registration Act was originally enacted in 1938.

The effort of Senator Fulbright was in the direction of trying to give some relief concerning the matters you are now talking about. However, as I understand your statement thus far, you are regarding the Fulbright hearing and the Fulbright bill as being an initial bill. That is not so. I think your criticism is forthrightly with the Foreign Agents Registration Act and not the Senate proposal. That is not an initial bill—that is an amendment to an existing law.

Now, I suppose what happened from what you are saying is that the Senate hearings revealed to you some of the provisions of what the law has been all these years. I don't know that the idea of these hearings is to have a whole rewrite of the Foreign Agents Registration Act.

I mentioned that this morning, as chairman of the House Committee on Un-American Activities, that perhaps it ought to be tightened in some areas, and I will reserve judgment on that because I do not want to confuse subversion, subversive activities, with the matters which Mr. Dean and you have been discussing.

What I am trying to say is that the quarrel apparently is with the Foreign Agents Registration Act itself which, as I understand, and you yourself say, the Chamber has been vociferously supporting all these years.

Mr. SONNETT. Mr. Chairman, if I have given you that impression I apologize. I did not intend to convey that impression. There is not a thing you have said with which the Chamber disagrees, sir.

My observations have to do only with the ambiguity, and there are many of them in the legislative history, relating to the amendments which were proposed to the Foreign Agents Registration Act, and it was in that particular context that I find, and I think you will find, Mr. Chairman, that it is for a lawyer a most impossible task, looking at that legislative history, to be able to advise his client where his client is or is not covered.

Reverting to the prepared statement:

There is a strong possibility that American businessmen by the hundreds will be required to register as "foreign agents" in order to—

Mr. WILLIS. Not will be required. Have been required since 1938.

Mr. POFF. No.

Mr. WILLIS. Is it by virtue of the Senate bill broadening the existing law?

Mr. SONNETT. Yes, Mr. Chairman.

Mr. WILLIS. All right.

Mr. SONNETT. As I will develop in more detail.

Mr. WILLIS. All right. I want to follow you.

Mr. SONNETT. There is a strong possibility that American businessmen by the hundreds will be required to register as "foreign agents" in order to conduct normal discussions with Government officials on matters of commercial importance to their companies—unless the bill is further clarified in the House. Later in this statement, specific language will be suggested which would accomplish this purpose without, in any way, detracting from the primary purpose of the legislation.

U.S. representatives of legitimate business corporations should not be stigmatized by being labeled "foreign agents" in order to discuss with officials of the U.S. Government normal commercial matters involving their foreign interests. The stigma of registration is made clear by the legislative history of the bill before you. It is illustrated by the following language from the Senate committee reports:

Not only does he (the agent of a foreign principal) no longer have the same protection of the Constitution, but he has also placed himself in a most sensitive position between his own governmental institutions and a foreign principal—an area traditionally reserved for the diplomatic corps, with all its formalities and restraints.

Mr. WILLIS. What was he talking about? Was he criticizing the Foreign Agents Registration Act as it then existed?

Mr. SONNETT. I think the report was intended in this connection to suggest, and I think wrongfully, Mr. Chairman, that whereas you may have an agent of a foreign principal in the true sense, the sense with which this statute was rightfully concerned in the beginning, that a businessman in the course of normal business problems involving contact with his government, which has some foreign connotation, may put himself in this hazardous position and therefore perhaps he should not be entitled to the same rights as any other American businessman would have. The American businessman who happens to be interested in foreign commerce, who happens to have a foreign prin-

cial or foreign subsidiary for some reason becomes a second-class citizen. I think that is what that really suggests, as I hope to demonstrate more fully.

Mr. WILLIS. All right.

Mr. SONNETT. It is ironic that a proposal which could have the effect of stigmatizing legitimate international business organizations would be under serious consideration by the Congress at the very time the Government is enlisting the support of the U.S. business community in its efforts to solve the balance-of-payments problem, expand exports, reduce tariff barriers, and increase private investment in less developed countries. Obviously, the corporations which can be of greatest assistance to the national interest in these efforts are those which are most heavily involved in overseas trade—the same companies whose representatives could be subject to branding as “foreign agents” under the pending bill.

SWEEPING COVERAGE OF S. 693

To understand why the pending bill might require representatives of these corporations to register as foreign agents, it is necessary to examine several sections of the legislation which are closely interrelated, and which contain elaborate and somewhat artificial definitions.

First, the term “foreign principal,” which is defined in section 1(b), includes not only foreign governments and foreign political parties—as it clearly should—but also includes any U.S. corporation which has its principal place of business outside the United States and all foreign corporations whether or not they have their principal place of business in the United States. The definition treats as entirely immaterial the fact that these corporations may be wholly or substantially owned by U.S. citizens.

Thus, under the proposed language, the definition of “foreign principal” would cover every foreign subsidiary of a U.S. parent corporation and every foreign parent of a U.S. subsidiary corporation, as well as every U.S. corporation having its principal place of business outside the United States.

The term “agent of a foreign principal” (as defined in sec. 1(c)) is equally sweeping in scope and includes, among other things, any person who represents the interests of a foreign principal before any agency or official of the United States. In terms of the business community, this means that whenever an executive or other representative of a U.S. parent corporation comes to Washington to discuss matters of concern to one of its overseas subsidiaries, the subsidiary would fall within the definition of “foreign principal” and the spokesman for the U.S. parent could be regarded as an “agent of a foreign principal.”

Similarly, when an executive or other representative of a U.S. subsidiary corporation—which may have extensive operations in this country, with thousands of U.S. employees and stockholders—comes to Washington to discuss matters which may be of importance to its foreign parent corporation as well as to the U.S. subsidiary, the parent would fall within the definition of “foreign principal” and the spokesman for the U.S. subsidiary could be regarded as an “agent of a foreign principal.” The requirement to register could occur despite the

fact that there was substantial (even controlling) U.S. ownership of the foreign corporation which is the purported "foreign principal."

Mr. POFF. I believe you said, and others have said before you, that apparently an effort was made by legislative history to correct this unfortunate possibility of interpretation.

As a matter of fact, the legislative history, to which you made reference a while ago, is likely to contribute to the confusion, is it not?

Mr. SONNETT. I am afraid that is right, Mr. Poff, unfortunately—and that is our problem. I hope we will have your committee's help to resolve it, because it is a very real problem, believe me.

The question whether registration would be required hinges primarily on whether the alleged "foreign agent" is engaged in what the bill refers to as "political activities," a term whose definition would be added to the statute for the first time by section 1(o) of the pending legislation. "Political activities" would include any action which a person believes will, or which he intends to, in any way influence any agency or official of the executive or legislative branches of the Government or any section of the U.S. public with regard to "formulating, adopting, or changing the domestic or foreign policies of the United States" or with reference to the "political or public interests, policies, or relations of a government of a foreign country or a foreign political party." The Senate committee interprets this definition to include not only changes in existing policy, but also maintenance of the status quo.

In other words, again looking at the legislation from the standpoint of the business community, registration might be required whenever an executive or other representative of a U.S. company with international affiliations comes to Washington to see an official of an executive department or a Member of Congress with regard to U.S. Government policies which affect the operations of the company's foreign affiliate. This happens scores of times every day.

As a normal part of business operations, all organizations with international operations must confer regularly with the U.S. Government with regard to matters such as foreign aid regulations, tariffs, threats of expropriation, or other discriminatory acts against their foreign operations, investment guarantees, foreign tax questions, and similar commercial problems. Indeed, it is hard to conceive of any substantial international firm which does not, in the course of its normal commercial operations, come to Washington periodically for such consultations. Frequently, these discussions include the question of maintaining or altering U.S. Government policies, and might be construed as falling within the sweeping definition of "political activities" contained in S. 693. Accordingly, under this legislation, the corporate representative might have to register as an "agent of a foreign principal" before meeting with Government officials.

Mr. TENZER. As you read the proposed legislation, do you suggest that an attorney for a domestic corporation with a European subsidiary engaged in food manufacturing who comes to consult the Food and Drug Administration in Washington would be required to register as a foreign agent?

Mr. SONNETT. It might very well, depending on the answer to something which I am unable to answer, and that is whether he was attempt-

ing to alter or to maintain domestic or foreign policy or whether he was asking for a routine administration of existing law.

I find the dividing line very hard to draw.

Mr. TENZER. How would he be affecting foreign policy if he came to speak in behalf of the approval, for example, of a label on a package?

Mr. SONNETT. It might be so regarded. This is the never-never land. We don't know the answers. This is where we have the crying need for clarification by the House. We just do not know. We would act at our peril, all of these American businesses and their representatives, executives as well as lawyers.

Without further guidance I think the bill in its present form would strike a very real blow at our foreign commerce.

Mr. TENZER. Do you believe that the amendment which you propose at the conclusion of your statement will clarify the situation?

Mr. SONNETT. We think it will and it is the best we have been able to come up with to solve the problem as we now see it.

It is not perfect and we are certainly willing and eager to work with the committee in any way to try and solve the problem. I hope we will persuade you that the problem is very real.

Mr. TENZER. I thank you.

Mr. SONNETT. In fact, under the bill's new definition of a "political consultant" (sec. 1(p)(1)), it is not even necessary to contact a Government official about policy matters or to act to influence U.S. public opinion in order to be required to register. Even the private giving of advice—on matters clearly affecting business interests—by corporate executives to their international affiliates, or by lawyers, public relations, or other usual corporate advisers, may be covered by the broad definition of "political consultant." "Political consultant" is defined to include any person who gives information or advice with reference to the domestic or foreign policies of the United States or the political or public interests, policies, or relations of a foreign country or foreign political party.

If the advice rendered by the "political consultant" could be said to be aimed at influencing policy decisions of the U.S. Government or U.S. public opinion with regard to policy matters—even though indirectly through the possible effects of the advice on the activities of those who receive his advice—the "political consultant" might be deemed to be engaging in "political activities" and thus be subject to the registration requirements. Under a literal interpretation of the proposed legislation, an executive of a U.S. corporation could be required to register as a foreign agent if he merely gives advice to a wholly owned foreign subsidiary with regard to maintaining or altering any foreign or domestic policy of the United States.

Mr. POFF. Or more important, even though he acts innocently, if he fails to register he would be subject to this criminal sanction?

Mr. SONNETT. Yes, sir; a felony with a maximum punishment which is most substantial.

INADEQUACY OF COMMERCIAL EXEMPTION

Mr. SONNETT. Senator Fulbright, the sponsor and chief proponent of the bill in the Senate, has stated that the business community has little to fear from these sweeping and unrealistic definitions because the act also contains a so-called commercial exemption (sec. 3(d)), and this exemption has been somewhat broadened in the pending bill. Accordingly, the Senator has claimed on numerous occasions that companies which have not been required to register in the past would have nothing to worry about in the future.

However, an objective reading of the statute and the legislative history leads to the conclusion that reliance on the Senator's statements might be very hazardous and could subject the businessman to substantial penalties.

I noted with interest you both referred to the need for statutory clarity and precision in what is a criminal statute, Mr. Chairman and Mr. Poff. We share that conviction with you most strongly.

Legislative history has not been a judicially acceptable substitute for statutory clarity in criminal statutes. Members of this committee are familiar with the "vice of vagueness" in constructions of criminal statutes by U.S. courts. If S. 693 were enacted in its present form, the business community would be confronted with vague terminology which defies analysis. Business representatives contacting the Government would never know, without continual visits to the Justice Department, whether or not they were required to register and furnish other information required by the proposed statute. Certainly, a statute which contains criminal penalties, such as this one does, should be sufficiently clear on its face that those subject to its terms are fairly apprised of the acts which constitute wrongful and illegal conduct.

Mr. TENZER. I ask permission of the Chair to leave at this time. My attendance is required on the floor.

I would assure the witnesses present who have not yet testified, that I will read their statements thoroughly and also the transcript, and I shall give my careful attention to the legislation when it gets to our committee.

Mr. WILLIS. I thank the gentleman.

Mr. SONNETT. As Senator Fulbright indicates, the commercial exemption would be broadened somewhat under the pending bill, but when this provision is read in conjunction with other features of the legislation—such as the definition of "political activities"—the net effect is a widening of the scope of coverage. In any event, there can be absolutely no question that passage of S. 693 without further amendment would create vast uncertainty concerning precisely what the Foreign Agents Registration Act is intended to cover.

Under S. 693, the commercial exemption (sec. 3(d)) would apply to businessmen under two circumstances, but as a practical matter both circumstances are clouded with uncertainty:

(1) The first exemption under section 3(d) covers private and non-political activities in furtherance of the bona fide trade or commerce of a foreign principal. Since the activities must be "nonpolitical," it is necessary to revert back to the new and extremely broad definition of "political activities," discussed above. When that is done, it seems clear that any time a discussion between a business representative and a Government official touches on foreign or domestic policy matters of importance to a foreign affiliate, it could be deemed to be a political activity and thus not subject to the exemption.

There is no comparable definition of "political activities" in the present statute. While the Justice Department has adopted a definition of "political activities" in its regulations under the 1938 act, this definition does not include activities with respect to the "domestic" policies of the United States unless such activities are related to the interest of a foreign government or foreign political party. The reference to "domestic" policies in the pending bill therefore represents a substantial expansion in the coverage of the registration requirements, and a corresponding limitation on the commercial exemption.

Furthermore, the suggested definition of "political activities" includes for the first time the concept of differentiation between conversations which involve "policy" matters and those of a routine nature. The report of the Senate Foreign Relations Committee (pp. 8-9) reflects the inherent difficulty in interpreting the term "policy":

The committee recognizes that the word "policies," as it is applied to operation of and contacts with the multilevel governmental decisionmaking process is susceptible to a number of interpretations. The committee's use of the word is intended to refer to matters within the purview of the legislative and executive branches of Government and not the judiciary, since the courts do not make "policy" as the term is used here but only interpret and apply existing policy as embodied in laws and regulations. "Policies" as used in this definition relates to existing and proposed legislation, or legislative action generally; treaties; executive agreements, proclamations, and orders; decisions relating to or affecting departmental policy, and the like. Measures of this nature all require decisionmaking at the level of government above those levels charged with the day-to-day administration of existing policies, consequently the use of the word "policies" would not include routine contacts by an agent of a foreign principal with a Government employee or official for the purpose of inquiring about current policies, or to seek administrative action on a matter where the basic policy is not in question.

Obviously, despite this attempt to formulate distinctions, it is impossible to draw a clear dividing line between routine discussions about "current policy" and other conversations involving "basic policy." But there can be no question that prudent businessmen would have to conclude on numerous occasions that they were seeking more than routine information, that Government policy decisions were involved, and that the "private and nonpolitical" exemptions might not apply.

(2) The pending bill would also provide in section 3(d) an exemption for "other activities" (that is, political activities) "not serving predominantly a foreign interest." This provision was inserted at the suggestion of Senator Javits when S. 2136, the 1964 predecessor to the present bill, was on the Senate floor and it was retained in S. 693. While the Javits proposal was a step in the right direction, it is far from satisfactory because the "predominant interest" concept is extremely vague and will be difficult to administer.

Frequently, the interests of a U.S. corporation and its foreign affiliate are so closely interwoven that it is senseless to try to differentiate between them. When a foreign subsidiary of a U.S. company is threatened with expropriation and the parent company approaches the State Department for assistance, is the "predominant interest" with the parent, which has made the investment, or with the subsidiary which is about to be seized?

Or take the case of a U.S. manufacturing firm which obtains its raw materials, in part, from its foreign parent; if this company testifies in favor of lower duties on its raw materials so as to reduce its costs and expand its U.S. sales, is the predominant interest with the U.S. corporation or its foreign parent?

The only extensive discussion of the phrase "predominant interest" was contained in the 1964 Senate committee report on S. 2136 (p. 12), and was intended to assist in resolving what the Senate committee characterized as "thorny questions of interpretation" presented by various references to the "interest" of a foreign principal. From the standpoint of the business community this discussion of "predominant interest" virtually undermined the value of the Javits amendment. Without taking the time of this subcommittee to read the entire quotation, I believe it will suffice to say that the 1964 Senate report indicates that whenever a U.S. corporation contacts the Government on matters which would have the effect of increasing the production or U.S. sales of its foreign affiliate or of facilitating investments in its foreign affiliate, the predominant interest should generally be considered to be foreign.

Mr. POFF. Even though the sales were in the United States?

Mr. SONNETT. Yes, sir.

Such a guideline in the legislative history of this bill tends to make the "predominant interest" exemption most unreliable. Like the exemption for "nonpolitical" activities, which requires a judgment on the dividing line between routine and policy matters, the "predominant interest" exemption is full of uncertainty. In a criminal statute of this type, the business community should not be asked to speculate on what it means.

THE NEED FOR STATUTORY CLARIFICATION

This brings us to the question whether the Justice Department should be requested or depended upon to administer the statute in such a way that only foreign propagandists and others attempting to undermine U.S. policies through undisclosed activities will be required to register, and bona fide businessmen will be exempted. Senator Fulbright has pointed out that the present act is even more vague than S. 693, that S. 693 has not broadened the coverage of the act, and that any company which would have to comply with S. 693 could also be forced to register under the current statute. He has also indicated that the Justice Department has generally not required international corporations to register in the past, and will not require them to register in the future, so that there is no reason for most international companies to be concerned. This line of reasoning is highly questionable, for the following reasons:

(1) The original Foreign Agents Registration Act was aimed at bringing into the open certain Nazi and Communist propagandists in this country. While the statutory language was broad, the intent of Congress was quite clear, and as a practical matter the Justice Department has consistently interpreted the act to apply essentially to representatives of foreign governments and governmental agencies, rather than to spokesmen for private commercial interests.

(2) The entire thrust of the current effort to amend the act has been to broaden its enforcement and to include activities of nongovernmental foreign principals. As a result of his 1962 and 1963 investigations, Senator Fulbright expressed the conviction that unethical activities by representatives of foreign commercial enterprises should be brought into the open and controlled by making them subject to the Foreign Agents Registration Act. The Senator has been sharply critical of the Justice Department's "failure of enforcement" and has placed great emphasis on more rigid interpretation of the statute.

(3) The Senate committee's 1965 report makes it clear that the purpose of S. 693 is to make the language of the current statute more specific so that it will be capable of more vigorous enforcement by the Justice Department. Since Senator Fulbright's clear intent was to cover private, as well as governmental activities, and since there is great pressure on the Justice Department to enforce the new bill to the full extent, legitimate American firms engaged in international operations can take little comfort from the fact that they have not been required to register in the past.

Under these circumstances, the business community should not be asked to rely on the Justice Department's willingness to use its discretion in granting exemptions. If the intent of Congress is not to require bona fide American companies engaged in international business to register as foreign agents in order to consult with their government, this should be clarified in the statute. As has been indicated in this statement, the legislative history of this bill over the past 2 years is most confused. The Senate committee's report in 1965 in many ways is inconsistent with its 1964 report. Statements of congressional intent on the Senate floor can be read in many different ways. And the pending bill itself simply adds to the confusion concerning its intended scope of coverage.

It would serve no public purpose to require thousands of business spokesmen to register as "agents of a foreign principal" in order to conduct activities which are in no way related to the antisubversive purposes toward which the Foreign Agents Registration Act is—or should be—directed. Such indiscriminate coverage would tend to undermine the basic purposes of the act by swamping the Justice Department with registrants, thus seriously weakening the ability of the Department to keep a close scrutiny over those who should be watched.

If a foreign corporation is substantially and materially associated with a foreign government, the activities of the corporation within the United States should quite properly be the subject of an appropriate disclosure. But if a foreign principal is truly a "private" enterprise which is affiliated with a bona fide American company engaged in

ordinary commercial activities in the United States, there is no reason for imposing the burden of registration as a foreign agent.

I use the word "burden" advisedly. It results from the detailed provisions of the act with respect to the contents of registration statements to be filed with the Attorney General, including the requirements that such registration statements be supplemented every 6 months and, under certain circumstances, even more frequently.

For many companies, supplying the required information will create large financial and administrative problems. The existing registration forms prescribed by the Department of Justice call for such detailed information as:

All visits to or residence in foreign countries during the past 5 years;

All clubs, societies, committees, and nonbusiness organizations in which the registrant or its officers have been members during the past 5 years;

The nature and purpose of the registrant's representation of the foreign principal and a full description of all activities of the registrant for or on behalf of such principal;

A description of other businesses, occupations, and public activities in which the registrant is engaged;

A list of employees and others who have rendered services or assistance to the registrant for or on behalf of the foreign principal;

Payments, received directly or indirectly from the foreign principal, whether in the form of compensation, loans, fees, et cetera, and the purpose for which they were received, together with all expenditures made for or on behalf of the foreign principal;

All speeches, lectures, talks, and radio programs arranged, sponsored, or delivered by the registrant during the previous 3 months, whether related to activities on behalf of the foreign principal or not;

Publications prepared and distributed by the registrant during the past 3 months and disclosure of the distribution of such publications;

A description of other connections of the registrant with foreign governments, foreign political parties or officials or agencies thereof, and copies or descriptions of all agreements, arrangements, or authorizations under which the registrant acts on behalf of or receives funds from each foreign principal.

Despite the expense and inconvenience placed upon many commercial enterprises in attempting to comply with the registration requirement, the Government will really gain very little from this plethora of information. Normal commercial companies of this type have no desire to hide their identity from the public or the governmental agencies before which they appear. But revealing much of the information required will not, as a practical matter, serve the public interest. On the other hand, at least some of the information thus made public can be of great value to a company's competitors.

In addition to the burdens imposed under the 1938 act, S. 693 would require considerable further information. In fact, one of the prime purposes of S. 693 is to insure full disclosure of detailed activities by foreign agents.

For example, persons registered as foreign agents in behalf of business enterprises would have to report to the Justice Department all of their political contributions. These contributions would be

purely personal, of course, since the bill specifically prohibits political contributions on behalf of the foreign principal.

A further new burden is the requirement that whenever a corporate spokesman, covered by the act, meets with a Government official on matters affecting foreign affiliates, he must protect himself against possible criminal liability by stating that he is a registered foreign agent. Obviously, this places the corporate representative under a cloud of distrust.

Along these same lines, the pending bill would require a registered corporate representative to furnish a copy of his registration statement when he testifies before a congressional committee on matters affecting foreign affiliates. U.S. representatives of international business organizations could thus frequently find themselves branded as foreign agents in the eyes of Congressmen before whom they are asked to appear.

Normally, of course, any representative of an international business organization who meets with a Government official or testifies before a congressional committee immediately identifies himself and his employer. The requirement for identification as a foreign agent will add nothing to the disclosure process; it will serve merely to discredit these persons.

While section 2(f) of the pending bill authorizes the Attorney General to provide, under certain circumstances, for an exemption from registration or from the requirement of furnishing certain of the information, the extent to which the Attorney General will make the findings required to authorize such exemptions is most doubtful. The amendments contain no procedural provisions for such rulings and no reasonable substantive standards against which they may be measured. Furthermore, since Congress apparently is unable to "establish strict criteria," it seems likely that the Department of Justice will face equal difficulties.

In fact, the entire approach of the Senate bill, utilizing loose language and depending on the Justice Department for interpretation and administration, would give enormous discretionary authority to the Attorney General. The Foreign Agents Registration Act can be used effectively to help keep track of subversive propaganda activities in this country—or, under the proposed amendments, it could be used to embarrass and punish any international business organization whose policies were somehow displeasing to the administration in power.

No criminal statute should present such obvious difficulty in interpretation and such a vast possibility for misuse of executive power. (Incidentally, the criminal nature of this statute is underscored by the fact that the 1965 Senate report on S. 693 (p. 5) suggests that the Justice Department should shift administration of the act from the Internal Security Division to the Criminal Division.)

THE CHAMBER'S SUGGESTED AMENDMENT

There is no need for leaving the business community in an uncertain position concerning coverage, and every logic for clarifying the statute to provide an exemption which is clearly required as a matter of public policy. As I mentioned earlier, the chamber has developed

an amendment which would exempt bona fide, privately owned international business organizations regularly engaged in substantial commercial, industrial or financial activities in the United States, but would not exempt from registration any of the persons whose covert activities on behalf of foreign principals were revealed by the Senate Foreign Relations Committee investigation. In other words—and this is the point I wish to emphasize—if the suggested amendment is approved, the pending bill would continue to cover all situations which should be covered by this act, but would avoid the possibility of placing an unnecessary and unwarranted stigma and burden on business enterprises engaged in entirely bona fide activities.

The chamber suggests the addition of a proviso to the definition of “foreign principal” contained in section 1(1) of the bill. Under this proviso, which is set forth as an appendix to this statement, the term “foreign principal” would not include a bona fide business corporation or other similar association or organization engaged in bona fide trade or commerce if (a) such person is controlled by one or more domestic corporations regularly engaged in substantial commercial, industrial or financial activities within the United States, or (b) such person controls a domestic corporation which has its principal place of business within the United States and which is regularly engaged in substantial bona fide commercial, industrial, or financial activities within the United States. The proviso is not applicable to a foreign corporation whose activities are directly or indirectly controlled in major part by a foreign government or a foreign political party.

A further qualification, added to make doubly certain that “front organizations” would not escape coverage, adds a further requirement to the effect that the stock of the corporation or corporations involved be registered under the Securities Exchange Act of 1934 or traded on a national securities exchange or regularly quoted in the over-the-counter market. This limits the application of the proposed exemption to corporations which already are subject to the public disclosure requirements of the Government and the stock exchanges. Furthermore, such listing and trading are ready indications of widespread and substantial American ownership and interest.

We realize, Mr. Chairman, that there are other possible amendments which would accomplish this same purpose, and we would be pleased to work with the members of the committee and its staff to develop alternative approaches, should this be deemed desirable. The important thing, from the standpoint of the business community, is to have an effective statute in the areas where it is required, but to provide a clear exemption for those whose registration would not further the purposes of the act, who should not be subject to the offensive characteristics of “foreign agents,” and who should not be forced to comply with the other burdensome requirements imposed by the legislation.

Thank you.

I would be happy to have any questions.

Mr. WILLIS. Thank you, Mr. Sonnett.

Frankly, I am not clear in my mind how many of the very enlightening and very important observation, made by our distinguished guest here are directed at the present law and how many to the Senate bill. I am not so sure whether the Justice Department is prepared

to give us the benefit of its views, segregating the part of the statement that applies to the law as it is today and the part that applies to the law as proposed by the Senate.

I have not read the proposed amendments. For instance, throughout the statement reference is made to the possibility of the interpretation of the statute. For example, on page 6 where it is stressed that, referring to conversations between the representatives of a bona fide enterprise engaged in domestic and foreign trade, " * * * spokesman for the U.S. parent could be regarded as an agent of a foreign principal."

On page 7:

Accordingly, under this legislation the corporate representative might have to register as an agent of a foreign principal.

There are many other such references as to what could happen or might happen.

Again on page 8, referring to a political consultant which I acknowledge is new language, there is the statement that the political consultant might be deemed to be engaged in political activities. That is a clear reference to the new language.

Mr. SONNETT. Yes, Mr. Chairman.

Mr. WILLIS. I certainly want to study the amendments most carefully. I will defer most of my questions and direct them to Mr. Yeagley as to whether the witness and the Justice Department are in agreement as to the unquestionably serious implications discussed by the witness.

One way to get at it would be this: I realize that probably the representative of the Justice Department could answer it. It is this: You have referred to the number of corporations that might be involved, and I think you said they run up to some 2,500; was that your opening statement?

Mr. SONNETT. 2,500, Mr. Chairman, is our estimate of the number of U.S. corporations having foreign corporate subsidiaries or affiliates as of 1962.

Mr. WILLIS. I would not expect you to know unless you have studied it but do you know how many such corporations have in fact registered under the present law?

Mr. SONNETT. I cannot answer that, Mr. Chairman, but I am confident of one thing. That is, that if the new language which is proposed to be added by this bill becomes law, I think it is going to be highly unlikely that any U.S. corporation—and we are talking only about American corporations whether they be parent or subsidiary, engaged in substantial business in the United States, normal commercial business—any time that corporation takes up a question with its government concerning its foreign business it is going to be acting at its peril unless it is registered.

If I may—you have been very kind, Mr. Chairman—I would like to give you two examples of the kind of thing I am talking about.

Mr. WILLIS. All right.

Mr. SONNETT. Take the situation of an important manufacturer of automobiles in the United States with a French subsidiary.

That automobile manufacturer would like the French subsidiary to sell more American-made cars in France but France has a tax on the horsepower of the cars and as a result American-made cars cannot be competitive in France. So the American manufacturer comes down to see its government and says, "We would like to enlist your aid to get the French Government to reduce its taxes so that we can sell more American-made cars in France."

The way this bill reads that company would have to register as a foreign agent. That is the risk in terms of the American parent.

To reverse it, assume if you will, that a foreign corporation which may incidentally be owned in large part or even controlled by American citizens, has an American subsidiary which is engaged in selling its products here and manufacturing them. That company, let us assume it is a cosmetics company, has a French parent which makes perfume. It wants to sell the perfume here. Let us suppose that an American company having substantial American stockholders comes down to see its Government and says, "We would like to have you lend your best efforts to reduce the excise taxes on perfume." That company would have to register as the agent of a foreign principal.

It is hard, Mr. Chairman, for us to envision in all seriousness any situation to which the bill will not apply where a bona fide American corporation, whether parent or subsidiary, is asked to cooperate with the Government in connection with developing our foreign commerce and needs guidance or assistance or a definition of U.S. policy as to what our Government is prepared to do, let us say, to protect the interests of American nationals in a foreign company which may have an oil concession in Venezuela threatened with expropriation. As we read literally the language of the bill, that American corporation will have to register as an agent of a foreign principal.

In basic analysis I think where we come out of this is, inadvertently to be sure but nevertheless inevitably, the net effect of the proposed amendments will do substantial harm to the foreign commerce of American corporations. That is what is going to happen. Instead of encouraging these corporations as various other agencies of the Government and the Congress have sought to do, to expand our foreign trade and help in our balance of payments problem and all the rest of it, it is going to have a repressive effect. It is going to put burdens on those corporations making them into a separate class affecting every American corporation having substantial foreign business interests which has to come to its Government for guidance or help or policy or legislation.

It is put into a class apart simply because having foreign business interests and having to come to its Government it suddenly becomes a second-grade citizen. It becomes an agent of a foreign principal. That is our basic problem.

Mr. WILLIS. You raise matters of great concern to me. I would like to find a way to separate the good from the bad or to exempt those bonafide transactions to which you have referred and at the same time retain the essence of the Foreign Agents Registration Act.

I am not quarreling with you at all but you raised many questions that concern me very greatly. For instance, on page 11 you say, referring to Senator Fulbright:

He has also indicated that the Justice Department has generally not required international corporations to register in the past and will not require them to register in the future. So that there is no reason for most international companies to be concerned.

Then you question his judgment. Well, that is the sort of thing I want to question Mr. Yeagley about, in the light of the language of the Fulbright bill as compared to the present law.

I might say also that on page 17, your proposed amendments seem to have merit although I certainly want to study them. For instance, you say that your amendment would—

* * * limit the application of the proposed exemption to corporations which already are subject to the public disclosure requirements of the Government and the stock exchanges.

That seems to the good. They are already required to make certain disclosures and if your amendment is along that line and that is the idea behind it and the effect, there may be merit to what you say.

As I say, I would want to examine with the Justice Department on those matters.

Mr. SONNETT. Mr. Chairman, on behalf of the chamber and the business of America which it represents, I can assure you that we are very grateful to have this matter now under very deliberate and careful analysis because we are convinced—the chamber is and it has had very careful consideration by the chamber and a variety of leading American corporations for some time—we are convinced that we do in fact have a major problem.

When you come to examine the representative of the Department of Justice in terms of the power which this new legislation would purport to give the Attorney General, you will find that the power to exempt from registration is very narrow indeed. The bill would not exempt any of the corporations I have been talking about. The Department of Justice would not have the power to do it under the act.

In terms of waiving some of the disclosure requirements following upon registration where there would be some grant of discretionary authority, I think you will find that the Attorney General—and I hope they share my view—would have a very difficult decision to make because the language of the proposed amendment is that when the Attorney General finds in the interests of national security or the public interest that he can waive some of the disclosure requirements, he can do it. How is the Attorney General to decide what is the public interest as Congress has defined it in a variety of statutes?

There is a public interest in promoting our foreign trade. There is a public interest in reducing our problem with our balance of payments. There is a public interest in aid to undeveloped countries and the expansion of American business. There are all those public interests.

On the other hand, there is the public interest, and perfectly right, that covert or clandestine foreign agents should not be permitted to operate in the United States. So I think the problems of the Attorney General would be manifold, particularly when Senator Fulbright says

he should have been enforcing this act much more vigorously in the past.

Mr. WILLIS. I understand that. I will make this observation and I will yield to other Members.

I said this morning that I certainly do not want to dilute the act of 1938 as it applies to subversive activities. I do not want to inject into these hearings my capacity as chairman of another committee. I sympathize with much of what you have to say with regard to the advisability of exempting bona fide foreign corporations in America owning foreign subsidiaries, or what not, but the question now in my mind is your own description occurring at page 17. You say that—

The chamber suggests the addition of a proviso to the definition of "foreign principal" contained in section 1(1) of the bill.

By the way, are you now referring to the Senate language or the present language, present law?

Mr. SONNETT. The Senate language of the proposed bill.

Mr. WILLIS. Then you continue:

Under this proviso, which is set forth as an appendix to this statement, the term "foreign principal" would not include a bona fide business corporation or other similar association or organization engaged in bona fide trade or commerce if (a) such person is controlled by one or more domestic corporations regularly engaged in substantial commercial, industrial, or financial activities within the United States, or (b) such person controls a domestic corporation which has its principal place of business within the United States and which is regularly engaged in substantial bona fide commercial, industrial, or financial activities within the United States.

That is the end of the quotation.

Well and good, if we know for sure that we are talking only about bona fide business corporations or similar associations engaged in bona fide trade or commerce. But would that open the door to those who are not bona fide using the cloak of corporations to escape the provisions of the act as written by Congress way back in 1938?

Mr. SONNETT. I would not think so, Mr. Chairman. After all, we must recognize that as a practical matter the 1938 act was enforced by the Department of Justice up until now only in subversive cases. That has been the way it has been run. The business community therefore, substantial, bona fide American business community, has not had any major problems with it.

Mr. WILLIS. That was my understanding.

Mr. SONNETT. Problems arise only now because of these proposed amendments which really broaden the act and this declaration by Senator Fulbright that Justice better get busy and enforce this thing. Of course, I think he is thinking of the kinds of cases that he had before his committee which are quite different. Mind you, we hold no brief for those situations. I am afraid he may be in a situation where he is throwing the baby out with the bath water.

Mr. WILLIS. Would the language of your proposed amendment draw that distinction with such clarity that it could be very well understood?

Mr. SONNETT. I think that our proposed language, Mr. Chairman, is a definite improvement over the language in the proposed bill. I am not saying to you, it is perfect, and we are completely at the

disposal of you and your staff to work on any other language that may accomplish the result.

Mr. WILLIS. We are at the disposal of the American public to try to pass a good bill. I reserve judgment on these questions. I am asking about what comes to my mind as questions occur to me.

Mr. SONNETT. I just want to say to you, sir, we are very grateful that you are because we need your help.

Mr. POFF. Thank you, Mr. Chairman.

I join the chairman in his statement that we do not want to do anything to dilute the act. I add that we don't want accidentally to broaden the act in such a manner that it might lend itself in some unforeseeable future as an instrument of harassment.

Having said that, I will ask the questions that are on my mind.

You may not have an opinion on the first question. If not, just say so.

Do you have an opinion about the advisability of transferring the administration of the program from internal security to criminal?

Mr. SONNETT. Well, assuming that our proposals or something even better were adopted to make this statute really specific, so that one who read it could understand plainly whether he was acting at his peril or not, assuming that it had the requisite clearness and specificity and did not drag in and condemn legitimate activities of American business in dealing with their own Government, I personally having spent some years with the Department of Justice would be inclined to favor putting this in the Criminal Division. It would then have the specificity that a criminal statute should have and you would have presumably a declaration by both the Senate and the House that the statute as amended in its refined and clarified form should be vigorously enforced. I am sure—

Mr. WILLIS. Would you yield for an observation? I did not talk about that provision, of course, that is not in the bill.

Mr. POFF. It is in the report.

Mr. WILLIS. It is in the report. I have in my mind that it would not be too wise to transfer it to the Criminal Division.

Mr. SONNETT. It is fundamentally, Mr. Chairman, a regulatory statute. You will recall, I am sure, that in the first major prosecution under the 1938 act of Viereck, that conviction was reversed in the Supreme Court because the Government prosecutor was guilty of an excess of zeal. In that case, as I recall it, the Supreme Court reversed the conviction because the special prosecutor for the Government said to the jury, "It is your patriotic duty to convict this man".

The Supreme Court said, "You cannot do that, Mr. Prosecutor."

The conviction was reversed. Now, what I am saying most respectfully, Mr. Chairman and Mr. Poff, to you is, if Congress is going to make this a criminal statute and say to the executive branch enforce it as such, then I think the burden clearly is on Congress to make the statute so clear, so unmistakable that business knows what the rules of the game are. Because American business, obviously, will comply if they know the rules.

This is so ridden with ambiguity that at the moment I would say that no greater disservice can be done to foreign commerce than to pass the bill in its present form.

Mr. POFF. It is not necessary, in order to give precision and specificity to the statute, to transfer its enforcement from one agency of Justice to another?

Mr. SONNETT. I would not think so.

Mr. POFF. The opinion you expressed was your own and not that of the chamber of commerce?

Mr. SONNETT. Yes, sir. I am afraid I may have been a little influenced by my own years of experience in Justice and the unspoken recognition that the Criminal Division has a lot more personnel than Internal Security has.

If this amendment is passed, the work of the Department of Justice in this area is going to rise very, very substantially.

Mr. WILLIS. Conversely, pardon me, my idea is that I do not want to do away with or dilute the Internal Security Division of the Department of Justice.

Mr. SONNETT. I would not have thought so, Mr. Chairman, but I would think they have got enough to do dealing with real security problems, which is a concern we all share, but the problem of American business talking to its Congressman or executive branch about getting their help or guidance on matters of foreign commerce is far, I think, from being an internal security problem.

Mr. POFF. By way of preface to the question I am going to ask, I think it is important to say for the record that the amendment you propose is in the nature of a proviso and is supplemental to, rather than in substitution of, language that has already passed the Senate.

Mr. SONNETT. Yes, sir.

Mr. POFF. I am a little troubled by a definition of some of your words. In subsection (i), second line, I find the words "controlled by" and I do not know what that means.

Mr. SONNETT. Well, I think certainly there is a body of judicial language in terms of the concept of control to which recourse could be had. I suppose it really means the power to compel compliance in a practical way.

Mr. POFF. Does this mean 51 percent of the voting stock?

Mr. SONNETT. I would not say so. Certainly there can be control at times in a given situation with far less than 51, depending on how widely held the balance may be.

Mr. POFF. As a layman, and I am certainly that in this field, "controlled by" remains a pretty vague expression. Now let me ask you if you are satisfied with the meaning of that phrase. What does "indirectly controlled by" mean?

Mr. SONNETT. I would suppose exercising the actual power of control through some intermediate or dummy arrangement—I don't mean dummy in any invidious sense—or intermediate instrumentality. Mind you, Mr. Poff, we do not have any great pride of authorship.

We have studied the history of this and the chamber has been active on the matter for some time. We have tried to come up with what we thought might be a feasible suggestion for you to consider.

We do not insist on the last proviso about the stock being publicly distributed in the United States. Theoretically, I do not think it matters if you have a bona fide American business, whether a parent or subsidiary. We say that American business should be free to go to its Congressmen, its Senators, its representatives in the executive branch and say, "I have a problem in connection with my overseas business. Here it is and what is your policy on this? Are you going to have a new policy on that?" without having to register as a foreign agent.

Mr. POFF. I agree with that, and I am sure you agree with me that the words "controlled by" are key words.

Mr. SONNETT. Yes.

Mr. POFF. I want to know what they mean. I want to be satisfied with the explanation that I get.

Mr. SONNETT. I would certainly be happy to submit to counsel a brief for discussion of the law on the subject of control. I do think there is a very substantial judicial history that you can turn to.

Mr. WILLIS. Do you think the same of "indirectly controlled by"?

Mr. SONNETT. Yes.

Mr. POFF. You would not quarrel with us if we changed those words a little?

Mr. SONNETT. We want all the help that we can get and particularly from you.

Mr. POFF. We want to help you.

Mr. SONNETT. Particularly from you.

Mr. POFF. I found a little difficulty in the word "substantial." Do you have some explanation of that word as it is used in both of those clauses?

Mr. SONNETT. I suppose what really we are trying to do in terms of substantiality, we are trying to say that under no circumstances would we want Congress to put its blessing on any statutory scheme where the mere form of something was a complete defense. Clandestine operations should be forbidden or at least there should be required disclosure under this statute. "Substantial," I suppose it is a question of fact. If I can recall espionage cases early in the war where the spy in question purported to be running a little camera shop or something, this would not be a substantial business. It is a cover. But take the American subsidiary of a large worldwide company which has plants here and thousands of employees and pays taxes and so on. That is obviously substantial.

I suppose it is a question of fact in every case.

Mr. POFF. I do not want to be facetious, but would it mean a mail-order house located in one city in the United States?

Mr. SONNETT. I wouldn't think so. I think as a question of fact it would not be substantial.

Mr. POFF. These questions are not designed to embarrass you.

Mr. SONNETT. No, sir; they are very penetrating.

Mr. POFF. They are designed to illustrate the fact that your criticism of a lack of preciseness and clarity comes with a little of a surprise when your own language should be subject to the same criticism.

Mr. SONNETT. I am sure that we can always improve it if you give us some time and give us some reason to think we might be doing something worthwhile if we tried to. We would be happy to.

Mr. POFF. I am in sympathy with the purpose you are trying to achieve. I recognize the danger that you have very delicately defined. I want to be helpful. I do not want, to use one of your phrases again, to "throw the baby out with the bath water." If we can get some agreement about this language, and what it means, or if we can get some language that might accomplish the purpose with more clarity and precision, I think we will have benefited each other.

Mr. SONNETT. I am sure that is so, Mr. Poff. We are at the disposal of counsel at any time.

(The appendix to Mr. Sonnett's statement follows:)

APPENDIX

SUGGESTED CHANGES IN S. 693, TO AMEND THE FOREIGN AGENTS REGISTRATION ACT OF 1938

Amend section 1(1) of S. 693 (which sets forth the definition of the term "foreign principal") by changing the period at the end thereof (line 9, p. 2) to a semicolon, and adding thereafter the following:

"Provided, however, That the term "foreign principal" does not include any bona fide business corporation or other similar association or organization engaged in bona fide trade or commerce if either

"(i) such person is directly or indirectly owned or controlled by one or more corporations organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States, having its or their principal places of business within the United States, and regularly engaged in substantial bona fide commercial, industrial or financial activities within the United States, or

"(ii) such person directly or indirectly owns or controls one or more corporations organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States, having its or their principal places of business within the United States, and regularly engaged in substantial bona fide commercial, industrial or financial activities within the United States, and no substantial portion of the activities of such person are directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in major part by a government of a foreign country or a foreign political party,

and the voting stock of such person, or of the corporation or corporations owning or controlling such person, is registered under the Securities Exchange Act of 1934 or traded on a national securities exchange registered thereunder, or regularly quoted in an over-the-counter market by two or more members of a national or affiliated securities association registered thereunder."

Mr. POFF. I think, Mr. Chairman, that is all I have right now.

Mr. WILLIS. Thank you.

Mr. SONNETT. Thank you very much, Mr. Chairman.

Mr. WILLIS. Mr. Maw, we are glad to have you. Please identify yourself and the capacity in which you appear.

STATEMENT OF CARLYLE E. MAW, REPRESENTING THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Mr. MAW. Mr. Chairman and members of the subcommittee, my name is Carlyle E. Maw. I am a partner in the law firm of Cravath, Swaine & Moore, 1 Chase Manhattan Plaza, New York City, and I am chairman of the Committee on International Law of the Association of the Bar of the City of New York. I am here today on behalf of that association to present a joint report of its committees on international law and Federal legislation regarding the proposed amendments to the Foreign Agents Registration Act of 1938.

Mr. WILLIS. Off the record.

(Discussion off the record.)

Mr. WILLIS. The subcommittee will stand in recess until Monday at 10 o'clock.

(Whereupon, at 4:25 p.m., the subcommittee recessed, to reconvene at 10 a.m., Monday, August 2, 1965.)

FOREIGN AGENTS REGISTRATION ACT AMENDMENTS

MONDAY, AUGUST 2, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE No. 3 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 2226, Rayburn House Office Building. Present: Hon. Edwin E. Willis (chairman of the subcommittee) presiding, and Messrs. St. Onge, Edwards of California, Tenzer, and Poff. Also present, Herbert Fuchs, counsel and Allan Cors, associate counsel.

Mr. WILLIS. The committee will come to order.

We will resume the hearings on the Foreign Agents Registration Act, as amended, the bills involved being S. 693 and H.R. 290.

Mr. Maw, you were interrupted last Wednesday. We shall be pleased to have you resume.

STATEMENT OF CARLYLE E. MAW, REPRESENTING THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK—Resumed

Mr. MAW. Thank you, Mr. Chairman.

Members of the committee, pursuant to the permission which you so kindly gave me last week, I have revised slightly my prepared statement, and I would like, therefore, to submit the revised version and withdraw the prior statement.

Mr. WILLIS. The revised statement will be the basis of your testimony. Do you wish to insert it in full at this time?

Mr. MAW. I would like to proceed from it.

Mr. WILLIS. You may proceed.

Mr. MAW. I am here, gentlemen, on behalf of the Association of the Bar of the City of New York to present a unanimous report of their Committees on International Law and Federal Legislation regarding the proposed amendments to the Foreign Agents Registration Act of 1938.

The report of our committees is set forth in the association's legislative Bulletin for June, copies of which you have before you. It begins at page 75. The report is also set forth in the June issue of the record of the association, to which reference has been made by other witnesses. As the report contains a fairly complete statement of the background of the amendments and of the act, I would like to suggest that it be included in the record at the hearing.

(The report referred to and the decision of the Supreme Court of the United States in *Rabinowitz v. Kennedy* are as follows:)

PROPOSED AMENDMENTS TO THE FOREIGN AGENTS REGISTRATION ACT OF 1938 AND
THE RABINOWITZ CASE*

By the Committee on International Law and the Committee on Federal
Legislation

The Foreign Agents Registration Act of 1938, 22 U.S.C. §§ 611-21, has for many years compelled registration of those who act in the United States on behalf of foreign principals in "political" matters. The Act until 1964 had traditionally been interpreted as not requiring lawyers rendering legal services for foreign clients to register, except in certain cases, such as representation of foreign governments in negotiations with United States Government agencies. However, investigations undertaken by the Senate Committee on Foreign Relations disclosing extensive political and publicity activities within the United States by representatives of foreign governments and other foreign principals have given rise to proposals for broadening the scope and tightening the disclosure and enforcement provisions of the Foreign Agents Registration Act. These proposals were embodied in a bill introduced by Senators Fulbright and Hickenlooper in the last Congress. S. 2136, 88th Cong., 2d Sess. (1964). The bill was reported favorably with amendments by the Senate Committee on Foreign Relations and was passed by the Senate on July 6, 1964 with a further amendment suggested by Senator Javits.** It was referred to the House Committee on the Judiciary which took no action on it before the end of the session. The bill was reintroduced in the current session of Congress, S. 693 and H.R. 290, 89th Cong., 1st Sess. (1965), in the form passed by the Senate in 1964 and a hearing was held by the Senate Committee on Foreign Relations on February 16, 1965. The bill was favorably reported by that Committee with further amendments and was passed by the Senate in the form reported.† It is expected that hearings will be held by the House Committee on the Judiciary shortly.

In addition, the recent decision of the Supreme Court in *Rabinowitz v. Kennedy*, 376 U.S. 605 (1964), which gives an extremely narrow interpretation to the exemption provisions of the existing Act, particularly insofar as they apply to lawyers, focuses renewed attention on the Foreign Agents Registration Act and its applicability to members of the Bar. This Report, which considers some of the problems presented by the proposed amendments and the *Rabinowitz* decision, was first issued in July 1964 and is now being reissued in revised form to reflect events since that time. It discusses the present Act and its interpretation prior to *Rabinowitz*, the *Rabinowitz* case itself, and the amendments to the Act as passed by the Senate and as pending before the House.

A. *The Present Act and Its Interpretation Prior to Rabinowitz*

The statutory purpose of the Act is "to protect the national defense, internal security and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities." 56 Stat. 249 (1942); comment following 22 U.S.C. § 611 (1958). The Act was originally adopted in 1938 and administered by the State Department until 1942, when the President transferred administration of the Act to the Department of Justice.

The Act requires that any person who serves as an agent of a foreign principal register with the Attorney General and file certain information with respect

*This Report makes current the prior Report of the Committees on this subject. 3 Reports of Committees of N.Y.C.B.A. Concerned with Federal Legislation 70 (1964).

**S. Rep. No. 875, 88th Cong., 2d Sess. (1964); Cong. Rec., July 6, 1964, pp. 15485-95, 15498-99; see *Hearings on S. 2136 Before the Senate Committee on Foreign Relations*, 88th Cong., 1st Sess. (1963). H.R. 9212, 88th Cong., 1st Sess. (1963) (Representative Celler) was the companion bill to S. 2136 as originally introduced.

†S. Rep. No. 143, 89th Cong., 1st Sess. (1965); Cong. Rec., April 5, 1965, pp. 6747, 6749-59; see *Hearing on S. 693 Before the Senate Committee on Foreign Relations*, 89th Cong., 1st Sess. (1965).

to his activities. The information to be furnished, as prescribed by existing forms issued by the Department of Justice, includes: all visits to or residence in foreign countries during the past five years; all clubs, societies, committees and non-business organizations in which the registrant has been a member during the past five years; the nature and purpose of the registrant's representation of the foreign principal for whom he is registering and a full description of all activities of the registrant for or on behalf of said principal; a description of other businesses, occupations and public activities in which the registrant is engaged; a list of employees and others who have rendered services or assistance to the registrant for or on behalf of the foreign principal; payments received directly or indirectly from the foreign principal, whether in the form of compensation, loans, fees, etc., and the purpose for which received, together with all expenditures made for or on behalf of the foreign principal; all speeches, lectures, talks and radio programs arranged, sponsored or delivered by the registrant during the previous three months, whether related to activities on behalf of the foreign principal or not; publications prepared and distributed by the registrant during the past three months and disclosure of the distribution of such publications; a description of other connections of the registrant with foreign governments, foreign political parties or officers or agents and copies of all agreements, arrangements or authorizations (or descriptions thereof if not written) under which the registrant acts on behalf of or receives funds from each foreign principal.

In general, these requirements apply to corporations and partnerships as well as individuals. In addition, officers and directors of a corporation registering as a foreign agent, partners of a partnership so registering and all employees of partnerships or corporations so registering who render services or give assistance to the foreign principal other than in a clerical or secretarial capacity must file individual short-form registration statements. The information to be furnished by such individuals includes information as to all foreign countries visited during the past five years; all clubs, societies, committees and other non-business organizations of which the individual has been a member during the past five years; a full description of his activities for or in the interest of the foreign principal; a brief description of other businesses, occupations and public activities in which he is engaged; all speeches, lectures and talks delivered during the preceding three months, whether or not they relate to his activities as a foreign agent; all articles, pamphlets, press releases and publications prepared or distributed by or for him in the preceding six months, again whether or not relating to his activities as a foreign agent; and a list of all connections with foreign governments, political parties or officers or agents thereof.

Registration statements must be filed when a person becomes or begins to act as agent of a foreign principal and must be kept up to date by amendment and in any event by filings every six months.

The Act also includes provisions which require the filing and labeling of political propaganda by persons required to register under the Act and the preservation of correspondence, memoranda, financial data and other written communications relating to activities on behalf of foreign principals for a period of three years after termination of services for the foreign principal, which documents must be made available for inspection by enforcement officers. Criminal penalties, including imprisonment of up to five years and fines of up to \$10,000, are imposed for failing to file a registration statement or for filing a false or incomplete registration statement.

It can immediately be seen from this description of the information to be furnished that the registration requirements are very burdensome, in particular where a registration statement relates to a lawyer's professional activities on behalf of a foreign client. Moreover, if the Act covers a lawyer acting in a purely professional capacity in matters unrelated to political propaganda or persuasion—for example, when a lawyer represents a foreign principal in litigation or in ordinary commercial transactions—the information to be disclosed relating to his activities is totally unnecessary to effectuate the purposes of the Act, in particular since information unrelated to his activities for the foreign client must also be disclosed. Hence the scope of the Act, determined primarily by the definitions of "foreign principal" and "agent of a foreign principal" and the provisions exempting certain types of activities from the requirements of the Act must be carefully examined.

The term "foreign principal" includes

- "(1) a government of a foreign country and a foreign political party;
- (2) an individual affiliated or associated with, or supervised, directed, controlled, financed, or subsidized, in whole or in part, by any foreign principal defined in clause (1) of this subsection;
- (3) a person outside of the United States, unless it is established that such person is an individual and is a citizen of and domiciled within the United States or that such person is not an individual, is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States, and has its principal place of business within the United States. Nothing in this clause shall limit the operation of clause (5) of this subsection;
- (4) a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country;
- (5) a domestic partnership, association, corporation, organization, or other combination of individuals, subsidized directly or indirectly, in whole or in part, by any foreign principal defined in clause (1), (3), or (4) of this subsection;
- (6) a domestic partnership, association, corporation, organization, or other combination of individuals, supervised, directed, controlled, or financed, in whole or in substantial part, by any foreign government or foreign political party; . . ." 22 U.S.C. § 611(b) (1958; Supp. IV, 1963).

It is clear that the definition of a "foreign principal" is very broad. Section 611(b)(4) of the Act covers all foreign corporations including foreign subsidiaries of American corporations. Section 611(b)(3) includes any person outside of the United States if such person is not domiciled in the United States even though such person is a citizen of the United States.

The definition of "agent of a foreign principal" is similarly broad. It includes

- "(1) any person who acts or agrees to act, within the United States, as, or who is or holds himself out to be whether or not pursuant to contractual relationship, a public-relations counsel, publicity agent, information-service employee, servant, agent, representative, or attorney for a foreign principal;
- (2) any person who within the United States collects information for or reports information to a foreign principal; who within the United States solicits or accepts compensation, contributions, or loans, directly or indirectly, from a foreign principal; who within the United States solicits, disburses, dispenses, or collects compensation, contributions, loans, money, or anything of value, directly or indirectly, for a foreign principal; who within the United States acts at the order, request, or under the direction, of a foreign principal;
- (3) any person who assumes or purports to act within the United States as an agent of a foreign principal in any of the respects set forth in clauses (1) and (2) of this subsection;
- (4) any person who is an officer or member of the active or reserve military, naval, or other armed forces of any foreign principal defined in clause (1) of subsection (b) of this section, or who is an officer of or employed by any such foreign principal; and proof of any affiliation or employment, specified in this clause, of any person within a period of five years previous to the effective date of this subchapter shall create a rebuttable presumption that such person is an agent of a foreign principal; . . ." 22 U.S.C. § 611(c) (1958).

Section 613 of the Act excludes certain agents of foreign principals from the coverage of the Act. Sections 613 (a) through (c), (e) and (f) generally exclude diplomatic officials of foreign governments, members of their staff and persons engaging in activities in furtherance of charitable, educational or artistic matters.

Section 613(d) provides for the exemption relevant to attorneys. It excludes:

- "(d) Any person engaging or agreeing to engage only in private and non-political financial or mercantile activities in furtherance of the bona fide trade or commerce of such foreign principal or in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of sections 441, 444, 445 and 447-457 of this title, and such rules and regulations as may be prescribed thereunder;" 22 U.S.C. § 613(d) (Supp. IV, 1963).

The regulations issued by the Department of Justice limit and define this exemption. They provide that the exemption is not available to any person "if he engages in any political activity . . . on behalf of a foreign principal, on his own behalf, or on behalf of any other person." 28 C.F.R. § 5.303(a) (1964). Political activity includes "furnishing information or advice to, or in any way representing, a foreign principal with respect to any matter pertaining to political or public interests, policies, or relations of any foreign government or foreign political party, or the political interests of such foreign principal, or engaging in other activities in furtherance of such political or public interests, policies, or relations"; . . . "engaging in any activity to influence the enactment or repeal of any legislation affecting the political or public interests, policies, or relations of a foreign government, a foreign political party, or a foreign principal, or affecting the foreign policies or relations of the United States"; "engaging in any activity devoted, in whole or in part, to . . . the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof." 28 C.F.R. § 5.100(a) (11) (ii), (vi), (vii) (1964).

The Department of Justice regulations do not further define the exempting phrase "private and nonpolitical financial or mercantile activities in furtherance of the bona fide trade or commerce of . . . [the] foreign principal." However, until the *Rabinowitz* case, it had been the general policy of the Department of Justice (and of the Bar) to interpret the exemption to exclude from the requirements of registration lawyers engaging in litigation activities for foreign clients and lawyers engaged in rendering general legal advice to foreign principals, to the extent that such general legal advice related to non-political matters normally within the scope of a lawyer's activities. Some examples of cases where lawyers have generally been thought to come within the exemption are: representation of a foreign government in connection with a public financing where registration under the Securities Act of 1933 is involved; representation of a foreign corporation involved in negotiations with an American corporation for the licensing of a product or for the acquisition of the domestic corporation; and the advising of foreign clients as to corporate, tax, commercial or other similar legal questions arising under United States laws. On the other hand, the exemption, as a matter of practice, has ordinarily been interpreted not to apply to lawyers engaged on behalf of foreign clients to obtain or negotiate government loans or engaged in other negotiations with governmental agencies; lawyers engaged in nonlegal activities such as attempting to influence Congress or public opinion with respect to legislation or other similar political matters; and lawyers retained by foreign governments or governmental agencies to advise them generally, including with respect to political questions.*

Indeed, the definition of political activities in the existing regulations is limited to matters pertaining to the "political or public interests, policies or relations" of a foreign government or a foreign political party and to the "political interests" of a foreign principal, and to activities intended to influence the enactment or repeal of any legislation among other things "affecting the foreign policies or relations of the United States." There is no reference to the domestic policies of the United States and no reference to representation of foreign non-governmental principals before administrative agencies in matters that are not political. Hence it would appear that under present law a lawyer may represent a foreign private client and a businessman his foreign principal before administrative agencies in matters that are basically commercial or financial without registration, even though the matter may concern the domestic policies of the United States and even though the lawyer or businessman may be urging a change in such policies.

B. Rabinowitz v. Kennedy and the Present Posture of the Act

On March 30, 1964 Mr. Justice Goldberg delivered the opinion of a unanimous Supreme Court in *Rabinowitz v. Kennedy*. The plaintiffs, who are lawyers, had brought a declaratory judgment action against the Attorney General alleging that they had been retained by the Cuban Government to represent it and its governmental agencies in the United States "in legal matters, including litigation, involving the mercantile and financial interests

*See Note, *Attorneys Under the Foreign Agents Registration Act*, 78 Harv. L. Rev. 619 (1965).

of the Republic of Cuba." 376 U.S. at 606. The complaint alleged that the retainer did not cover "advice or representation involving public relations, propaganda, lobbying, or political or other non-legal matters." *Ibid.* In face of a demand to register under the Act, a declaratory judgment was requested to the effect that plaintiffs' activities did not subject them to the requirements of registering under the Act.

After the District Court had certified procedural questions to the Court of Appeals for the District of Columbia, the Court of Appeals dismissed the complaint on the grounds of sovereign immunity. The Supreme Court granted certiorari and held on the merits that the Foreign Agents Registration Act plainly and unquestionably required plaintiffs to register and hence affirmed the dismissal of the complaint.

Mr. Justice Goldberg's opinion first reviews the provisions of the Act and its history, in particular the provision exempting a person engaging "in private and nonpolitical financial or mercantile activities." The Court concludes that in order to come within the exemption, an agent's activities must be either private and non-political and financial, or private and non-political and mercantile. The opinion then continues as follows:

"Although the work of a lawyer in litigating for a foreign government might be regarded as 'private and nonpolitical' activity, it cannot properly be characterized as only 'financial or mercantile' activity. It is clear from the statute and its history that 'financial or mercantile' activity was intended to describe conduct of the ordinary private commercial character usually associated with those terms. See, e.g., S. Rep. No. 1783, 75th Cong., 3d Sess. Furthermore, although the interest of a government in litigation might be labeled 'financial or mercantile,' it cannot be deemed only 'private and non-political.' Since an attorney may not qualify for exemption '[i]f any one of these characteristics is lacking,' it would be impossible to conclude, under any construction of the statute, that petitioners are engaging 'only in private and nonpolitical financial or mercantile activities.'" 376 U.S. at 609-10.*

As can immediately be seen, this language raises serious difficulties with the interpretation of the exemption which had previously prevailed. In the first place, the opinion apparently holds that any litigation activities on behalf of a foreign government or a foreign governmental agency are by their nature political and not financial or mercantile and hence require registration. The opinion can also be read to mean that any representation of a foreign government, whether in litigation or otherwise, cannot be deemed "private and nonpolitical." If the Department of Justice seeks an extremely broad interpretation of the decision, it might even be contended that litigation activities for any foreign client, whether governmental or private, cannot properly be characterized as "financial or mercantile" and are hence outside the exemption. These interpretations would considerably narrow the scope of the commercial exemption as it has been interpreted in the past with respect to lawyers. Unless a statutory amendment program is successful, the burdensome requirements of the Act might be applied (perhaps by new Department of Justice regulation) to many activities of lawyers which have traditionally been felt to be private, non-political and purely professional and hence outside the scope of the Act.

We believe that the extension of the applicability of the Act which might result from *Rabinowitz* would be damaging to the enforcement of the Act in areas where it should be effectively enforced and would be unnecessarily burdensome on members of the Bar performing legal services for foreign clients. We believe that lawyers acting in a professional legal capacity for foreign principals in non-political matters should be outside the scope of the Act because information with respect to their activities are unnecessary to the effectuation of the policies of the Act. Thus in litigation, whether for a domestic or foreign client, private or governmental, the identity of a lawyer's principal and his interests in the litigation are in any event disclosed and matters of public record. In addition, when a lawyer acts for a foreign government which, for example, is registering its securities under the Securities Act of 1933, full disclosure of the relationship is required by the nature of the activity itself.

*It appears that the Court determined the characterization of the agent's activities from the nature of the principal, although the statute appears to focus on the nature of the agent's activities themselves.

Moreover, compliance with the registration provisions of the Act would burden not only the lawyers involved but the Department of Justice personnel charged with enforcement, who would have to process a vast quantity of registrations involving activities clearly outside the basic purposes of the Act and to attempt to police registration requirements deemed applicable to such activities. This would be so even though Mr. Justice Goldberg in *Rabinowitz* recognized the possibility that the detailed registration provisions might be waived in part for lawyers (376 U.S. at 610); determining what should be reported in such instances might well produce no less difficulty.

In light of the foregoing, we urge that Congress consider and act upon the proposed amendments to the Foreign Agents Registration Act, taking into account the comments set forth below, in order to eliminate from the coverage of the Act activities undertaken by lawyers, other professionals and businessmen on behalf of foreign principals which cannot under any normal definition be considered political and which should not subject the persons involved to the burdensome registration requirements of the Act.

C. *The Amendments to the Act*

The amendments to the Act in the form adopted by the Senate have the purpose of requiring complete public disclosure by persons acting for foreign interests where their activities are political or close to political in nature. The amendments contain the following provisions: (a) revision of the definitions of the terms "foreign principal," "agent of a foreign principal" and "political activities" and the addition of the term "political consultants"; (b) revision of the "commercial" exemption and the addition of a specific exemption for lawyers in certain cases; (c) specific authority in the Justice Department to waive when appropriate the filing of information not necessary to carry out the purposes of the Act; (d) authorization of an injunctive remedy for use by the Attorney General; (e) stricter requirements for disclosing political activities and plans; (f) prohibition of contingent fee contracts between agents and foreign principals based on success in political activities undertaken by the agent; (g) full identification of foreign principals by agents appearing before congressional committees; (h) prohibition of campaign contributions on behalf of foreign principals; and (i) prohibition, with certain qualifications, of officers and employees of the United States from acting as agents of foreign principals (the last two provisions to constitute an amendment and addition to Title 18 of the United States Code).

The proposed amendments would include in the definition of "agent of a foreign principal":

"any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

(i) engages within the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; . . ."

This language was not intended to change significantly the category of activities which might constitute a person the "agent of a foreign principal."* In fact, by specifying the four categories of activities which would create the

*See S. Rep. No. 143, *supra* at 7. The Act as presently in effect includes in the definition of the term "agent of a foreign principal" any person who acts as, among other things, attorney for a foreign principal. The proposed amendments exclude specific reference to the word "attorney"; the 1965 Senate Report on the amendments indicates, however, that the word was excluded "as saying more about a particular agent's field of endeavor than about his relationship to his principal." S. Rep. No. 143, *supra* at 6. Hence we do not believe that any significance can be attached to the exclusion of the word.

agency relation, it might be argued that the amendments narrow to some degree the categories of persons who constitute agents of a foreign principal under the existing Act. See S. Rep. No. 143, *supra* at 6. However, for the first time the definition would specifically cover persons who deal with government officers on behalf of foreign principals on the day-to-day administrative level.[†] More significantly, however, since the definition of an agent of a foreign principal incorporates the terms "political activities" and "political consultant," it is in the new definitions of these terms that important changes have been introduced into the Act.

The term "political activities" means "the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party."

The term "political consultant" means "any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interests, policies, or relations of a foreign country or of a foreign political party."

The proposed bill would also change the exemption provisions contained in the present Act. The words "financial or mercantile," so heavily relied on by Mr. Justice Goldberg in the *Rabinowitz* case, would be struck from the exemption section and, under an amendment originally proposed by Senator Javits, a new exempting phrase would be added, so that a person engaging "only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of [a] foreign principal; or (2) in other activities not serving predominantly a foreign interest" would be excluded from the requirements of registration. Furthermore, a new exemption would be added to cover any "attorney whose activities are confined to openly representing, as an attorney of record, the interests of a disclosed foreign principal before any court or administrative agency of the United States, or of any State or political subdivision thereof."

The changes set forth above contain a number of substantial improvements in the present Act as interpreted by the *Rabinowitz* case. In the first place, the amendments would eliminate the words "financial or mercantile" in the exemption section, upon which the *Rabinowitz* decision in large measure turned. Secondly, while the definition of a "political consultant" (and therefore an agent of a foreign principal) includes a person who renders advice or information to a foreign principal with reference to United States domestic or foreign policies, it is now clear that the commercial exemption is available to political consultants, so long as they do not engage in "political activities," that is, activities intended to influence Government officials or the United States public with respect to Government policies, S. Rept. No. 143, *supra* at 7, 9. In other words, persons who merely advise their foreign principals on American laws, policies and trends would be exempt from registration under the amendments. Thirdly, the specific exemption for attorneys would overrule the holding in the *Rabinowitz* case and would make clear that an attorney of record in a formal proceeding is not subject to registration. However, as discussed below, the attorneys' exemption does not cover other categories of persons who make formal appearances on behalf of foreign principals and does not cover a wide variety of informal activities before Government agencies. Finally, the amendments would codify the past practice of the Department of Justice in permitting registrants not to furnish such part of the information included in the registration form under the statute as the Attorney General may find is not necessary to carry out the purposes of the Act.

[†]The 1964 Senate Report stated that subparagraph (iv) in the definition of an agent of a foreign principal was specifically intended to cover persons who deal with government officers "on matters which do not constitute questions of policy but rather affect the administration of the law." S. Rep. No. 875, *supra* at 7. The 1965 Senate Report does not repeat this conclusion.

While the changes set forth above do represent an important step forward, there are areas in the Act as proposed to be amended which are too broad or which require clarification. The first, and certainly the most important, of the problems raised by the amendments is that for the first time the Act would define "political activities" to include any activity intended to "persuade, or * * * influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the *domestic or foreign* policies of the United States * * *" (emphasis supplied). The 1965 Senate Report comments as follows with respect to this language:

The committee recognizes that the word "policies" as it is applied to operation of and contacts with the multilevel governmental decision-making process is susceptible to a number of interpretations. The committee's use of the word is intended to refer to matters within the purview of the legislative and executive branches of Government and not the judiciary, since the courts do not make "policy" as the term is used here but only interpret and apply existing policy as embodied in laws and regulations. "Policies" as used in this definition relates to existing and proposed legislation, or legislative action generally; treaties; executive agreements, proclamations, and orders; decisions relating to or affecting departmental policy, and the like. Measures of this nature all require decisionmaking at a level of government above those levels charged with the day-to-day administration of existing policies, consequently the use of the word "policies" would not include routine contacts by an agent of a foreign principal with a Government employee or official for the purpose of inquiring about current policies, or to seek administrative action on a matter where the basic policy is not in question * * *. S. Rept. No. 143, *supra* at 8-9.

It is clear that even with this attempted clarification, the new definition of political activities creates a number of serious questions as to whether certain types of relatively routine activities require registration or not. These might include negotiations over some Government contracts; informal contacts with Government officials to recommend changes in Government practices or programs which do not constitute or are preliminary to formal Government proceedings; and other activities on behalf of foreign principals in appearing before or working with Government officials or agencies in matters which may verge on the area of "policy making" and which may be interpreted as attempts to formulate, adopt or change United States policies. These would also include appearances by non-lawyers before Government agencies even in rule-making or other types of formal proceedings where the new attorney's exemption would apply.

Senator Fulbright has stated that the amendments to the Act would not broaden its scope. However, the amendments do not leave the situation sufficiently clear. In the first place, as stated above, there is a strong argument under the present Act that where the foreign principal is not a foreign government or a foreign political party and where the activity is not intended to influence the enactment or repeal of any legislation, a person can represent a foreign private principal before administrative agencies in financial or mercantile matters without registration, even though such appearance may be for the purpose of urging a change in the domestic policy of the United States. In such cases there is no reference to the "political or public interests, policies, or relations of any foreign government or foreign political party," or the "political interests of [any other] foreign principal," as required by the regulations under the present Act. Secondly, the lack of precision in the existing legislation has had the advantage of making it possible for the Department of Justice to excuse persons from registering where it was believed that there was insufficient nexus with the political or public interests of a foreign government or that the activities were not such as to affect high level decision-making in the United States Government.

On the other hand, the amendments make it clear that unless the attorneys' exemption applies, the agent of a foreign principal urging a change in United States domestic policies before Government officials or agencies on behalf of a foreign principal will be subject to registration. The specificity of the amend-

ments, in addition, may well tend to limit the discretionary authority of the Department of Justice. The legislative history of the amendments may also encourage a more rigid interpretation of the Act: for example, Senator Fulbright's comment to the effect that the purpose of the Act now is more directed toward professional lobbyists than towards subversive agents (Cong. Rec., April 5, 1965, p. 6749) and indications that the Department of Justice should enforce the Act more rigorously than in the past (S. Rept. No. 143, *supra* at 3-5).

We believe that the interests of our Government would be adequately served by obtaining information about agents representing foreign political interests in the form of foreign governments, foreign political parties or foreign commercial enterprises which are substantially associated with the political or public interests of a foreign country. We do not believe that it is necessary to place on foreign business firms doing substantial business in this country a burden not placed on their domestic competitors, or to extend the Act to lawyers and others who are appearing on behalf of foreign principals before governmental agencies in respect of "policy" matters, where the foreign principal is private and where the activity is not related directly or indirectly to the political interests of a foreign government, a foreign political party or other foreign entities substantially associated with the political or public interests of a foreign country. It seems to us unreasonable to require a person appearing before a federal administrative agency on behalf of a private principal in a purely commercial and non-political matter to register, when his domestic counterparts do not have to register.

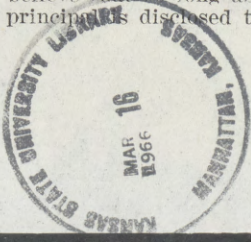
We do not argue that an exemption should be granted where a private foreign commercial interest is substantially and materially associated with the political interests of a foreign country. Where, however, the foreign principal is truly a "private" enterprise engaged in ordinary commercial activities in this country, the distinction between foreign and domestic entities does not appear to have real validity. To say that an agent of such a person has "placed himself in a most sensitive position between his own governmental institutions and a foreign principal—an area traditionally reserved for the diplomatic corps, with all its formalities and restraints" (S. Rep. No. 143, *supra* at 4) is, we believe, to give a highly unrealistic description of a lawyer, other professional or businessman engaged in ordinary commercial representation of foreign principals before Government agencies.

While the attorneys' exemption gives the lawyer representing a foreign principal certain advantages, it does not fully answer the problem of the profession in representing foreign principals before Government agencies. The 1965 Senate Report contains the following description of the exemption:

"Section 3(g) would exempt from registration attorneys of record representing foreign clients, including foreign governments, in appearances before Federal and State courts and administrative agencies. The amendment is meant to include all normal and necessary activities by attorneys involved in processing a case in the courts or obtaining a decision by an administrative agency where there is a formal procedure requiring full disclosure of the agent's status and the identity of his client. It is the committee's view that the degree of disclosure required by the act serves no useful purpose in these legal proceedings. Sufficient disclosure is required automatically by virtue of the nature of the agent's representation activities in such situations.

This exemption is not intended to be applicable to appearances before Government agencies generally but only to appearances before agencies where decisions are made on the basis of established formal legal proceedings, such as the Federal Trade Commission, or where disclosure is required as a matter of course in the representation, such as the processing of a registration statement with the Securities and Exchange Commission. It is not intended to cover matters coming before the regular departments involving a policy decision as, for example, in the case of sugar import quotas in the Department of Agriculture." S. Rept. No. 143, *supra* at 12-13.

Thus, it is quite clear that a lawyer appearing for a foreign principal in matters asserted to affect the domestic policies of the United States in informal governmental proceedings would not enjoy the benefit of the exemption. We believe that so long as the fact of an attorney's representation of the foreign principal is disclosed to the agency or government personnel before which the



attorney is appearing, this strict line between formal and informal proceedings is unwarranted. If the matter involves sugar import quotas, and the foreign principal is a foreign government or a private entity in a country for which sugar exports and therefore United States actions with respect to sugar quotas are of major political concern, it may be desirable to require registration since the activity is clearly political. However, where the matter is clearly non-political in the usual sense of the term (for example, a lawyer appearing before the Food and Drug Administration on behalf of, say, a foreign drug company doing business in the United States in order to propose changes in regulations governing the approval of drugs), it does not seem necessary to draw a distinction between formal and informal appearances.

One of the most serious questions raised by the proposed amendments relates to the domestic subsidiaries of foreign corporations and the foreign subsidiaries of American corporations. It was as an intended solution to this problem that, at Senator Javits' suggestion, "activities not serving predominantly a foreign interest" would be excluded from the requirements of registration under the amendments. This new exempting phrase was added in an effort to make clear that even political activities would be exempt if carried on, for example, by an American parent corporation or the American subsidiary of a foreign corporation, so long as the predominant interest does not lie with the foreign entity. Otherwise, the domestic subsidiary of a foreign corporation might be deemed the agent of a foreign principal and required to register if it pursues its normal commercial activities in the United States, including the usual contacts and dealings with Government agencies such as the Internal Revenue Service or the Department of Commerce. Such activities might be interpreted as an attempt to influence an agency or official of the Government with reference to formulating, adopting or changing the domestic policies of the United States, and the domestic subsidiary might be deemed to represent the interests of its foreign parent. This interpretation might be asserted even though there was substantial United States ownership of the foreign parent corporation and even though the domestic subsidiary was doing no more than what American corporations do in the normal course of their business within the United States.

In the case of a foreign subsidiary of an American corporation a similar problem exists, since such a foreign subsidiary is a "foreign principal" both under present law and the proposed amendments. Counsel for the foreign subsidiary and personnel of the domestic parent corporation who act for the subsidiary might be required to register if they advise or act with respect to United States "policies."

There seems to be no justification for such burdensome regulation in situations of this type. While the amendment exempting activities "not serving predominantly a foreign interest" may be helpful in this regard, its scope is somewhat unclear. There could be a problem of interpretation as to the meaning of "predominantly." If representations are made with respect to a foreign subsidiary's problems, for example, they might arguably be regarded as "predominantly" serving a foreign interest despite the indirect over-all American ownership. The more substantial the foreign corporation and the less substantial the domestic parent's domestic activities, presumably the greater the risk that such an interpretation might be asserted. In any event, we believe that in a criminal statute the exemption should be established in more specific terms.

To summarize, we believe that the exemption from registration should be broadened by a narrower definition of the term "political activities." We believe that no public purpose is served by applying the broad requirements of the Act to ordinary representation of private foreign principals before Government agencies, in matters which are, in the true sense of the words, commercial and non-political, whether the person representing the foreign principal is a lawyer or not and whether the proceeding is formal or informal. A criminal statute which is as broad as the Act could become a trap for the unwary person unable to pinpoint, for example, the dividing line between seeking "administrative action on a matter where the basic policy is not in question" and seeking "decisions relating to or affecting departmental policy." S. Rep. No. 143, *supra* at 8-9.

The requirement of registration would, of course, be considerably less onerous if the information to be supplied as required by the Act were less voluminous and registration hence made less burdensome. The extent of the information

required, much of it irrelevant to the purposes of the Act, is in one sense the factor which makes the Act the subject of such serious criticism by business, the Bar and others. It is true that under the amendments the Attorney General will have the right to waive in certain instances some or all of the requirements of the registration form. However, unless the Attorney General promptly prescribes general regulations under this authority, it will still be up to the registrant to comply in full or to secure such an exemption on an *ad hoc* basis. For large concerns with frequent contacts with the Government, such *ad hoc* arrangements would be extremely burdensome. Particularly if the definition of "political activities" is not narrowed and hence a large group of persons remains subject to the requirement of registration, it would be desirable to permit registration initially on a simple short-form for persons engaging in activities which are only marginally if at all within the purview of the Act, such as persons appearing openly on behalf of private commercial principals before administrative agencies. The Attorney General could be given the right to require further information if it is felt that such information is necessary.

The burdens imposed by reason of the broad definitions contained in the amendments to the Act would, of course, be imposed on the agency responsible for administration of the Act as well as on members of the Bar and others covered by the Act. The broadened requirements may result in the filing of registration statements by many persons engaged in representation of foreign principals which are carrying on what traditionally have been considered commercial and private activities not related to influencing legislation or engaging in political propaganda or other similar activities. The enforcement of these broad registration requirements, the processing of the registration statements and the policing of the Act in areas completely removed from its legislative purpose would as a practical matter result either in vastly expanded personnel and financial requirements for administration of the Act or greatly weakened results in enforcement of the Act in the areas where vigorous and effective enforcement is most necessary, that is, in the areas of propaganda and lobbying. We believe it would be in the interests not only of the persons representing foreign principals but of effective regulation of the activities at which the Act is really aimed to exempt from the scope of the Act in clear terms those activities which constitute ordinary representation of foreign private principals in commercial non-political activities or at least to provide a short-form registration statement requiring, in the first instance, only the basic information necessary to disclose the fact of representation and the activity engaged in.

D. Recommendations

In the amendments to the Act adopted by the Senate, we approve the deletion of "foreign or mercantile" from the exemption provisions, the addition of the phrase exempting activities "not serving predominantly a foreign interest," the specific exemption for attorneys of record, the exclusion of "political consultants" who only advise their commercial principals and the inclusion of an injunctive remedy. However, we are disturbed at the possible contracting effect upon the exemption provisions of the proposed new definition of "political activities." We also approve the codification of the Attorney General's right to exempt persons from strict compliance with the registration requirements, but believe that it would be highly desirable to provide in the Act a provision for short-form registration statements. We hence urge that the following changes be made in the amendments to the Act adopted by the Senate:

1. We urge that the definition of "political activities" be restricted so as not to apply to the representation of private foreign principals before Government agencies, so long as the matter involved is private and not substantially associated with the political or public interests of a foreign country and so long as it is not intended to affect or change United States legislation, even though the activity does involve United States domestic policies. With such a change, registration would still be required for agents who have the proper connection with foreign political interests or who influence high level decision-making in this country.

2. If the first suggestion set forth above is not adopted, we would urge that the attorneys' exemption be broadened to cover any situation where the fact of representation must be disclosed, even though the proceeding is not a formal one, and to cover other persons as well as attorneys engaged in activities on behalf of foreign principals. We would also urge the adoption of amendments which would exempt from the scope of the Act, with greater specificity than in the amendments adopted by the Senate, (i) the normal activities before Government agencies of domestic corporations (and their personnel) owned or controlled by foreign entities, so long as such activities are undertaken by the domestic corporations or their personnel in connection with their usual domestic business or commercial affairs, and (ii) activities on behalf of foreign subsidiaries of a domestic corporation not itself foreign-controlled.

3. In any event, whether or not either of the two suggestions set forth above is adopted, we strongly urge that the amendments be revised to permit persons required to register (because their activities may be deemed "political" under the broad definitions contained in the amendments) to file "short-form" registration statements if they represent private foreign principals in connection with bona fide trade or commerce, with provision for supplemental information to be supplied if required by the Department of Justice. Such short-form registration statements should require disclosure only of the name, address, status and nationality of the agent and foreign principal, a brief description of the nature of the agent's and foreign principal's business or other activities and a general statement of the activity to be engaged in by the agent on behalf of the foreign principal which requires his registration. Such a registration statement would not impose an undue burden on registrants and would in most cases appear to disclose the most essential facts with respect to the activity to be engaged in. If it is deemed that further information must be supplied, the Attorney General would have the right to require compliance with the broad disclosure provisions of the present Act.

May 17, 1965

Respectfully submitted.

COMMITTEE ON INTERNATIONAL LAW

CARLYLE E. MAW, *Chairman*

MANUEL R. ANGULO
PETER A. BATOR
MITCHELL BROCK
DONALD J. COHN
FRANK G. DAWSON
WILLIAM EVERDELL, III
ALBERT H. GARRETSON
ELIOT D. HAWKINS
LOUIS HENKIN

JACK P. JEFFERIES
ALAN RICHARD KASDAN
WILLIAM T. KETCHAM, JR.
WILLIAM A. PERLMUTH
LEONARD V. QUIGLEY
JOHN C. SCHLUER
ISAAC SHAPIRO
LYMAN M. TONDEL, JR.
LOWELL C. WADMOND

COMMITTEE ON FEDERAL LEGISLATION

FRED N. FISHMAN, *Chairman*

SIDNEY H. ASCH
CHARLES R. BERGOFFEN
EASTMAN BIRKETT
BENJAMIN F. CRANE
NANETTE DEMBITZ
ARTHUR J. DILLON
SHELDON H. ELSER
LEONARD EPSTEIN
ELLIOT H. GOODWIN
ANDREW N. GRASS, JR.
JEROME E. HYMAN
ROBERT M. KAUFMAN

IDA KLAUS
JOHN E. MASSENGALE
ROBERT B. MCKAY
JOHN E. MEROW
GEORGE MINKIN
GERALD E. PALEY
MAHLON F. PERKINS, JR.
H. DAVID POTTER
ARTHUR I. ROSETT
ALBERT J. ROSENTHAL
PETER G. SCHMIDT
HENRY I. STIMSON

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 287

VICTOR RABINOWITZ ET AL., PETITIONERS

v.

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT

[March 30, 1964]

Mr. JUSTICE GOLDBERG delivered the opinion of the Court.

Petitioners, attorneys engaged in the general practice of law, instituted this declaratory judgment action, 28 U.S.C. § 2201, against respondent, the Attorney General of the United States, in the United States District Court for the District of Columbia. The complaint alleged that petitioners had been:

"retained by the Government of the Republic of Cuba to represent in the United States the Republic of Cuba and its governmental agencies in legal matters, including litigation, involving the mercantile and financial interests of the Republic of Cuba * * *. The retainer does not cover advice or representation involving public relations, propaganda, lobbying, or political or other non-legal matters, nor have the plaintiffs advised, represented, or acted on behalf of the Republic of Cuba in any such matters."

The complaint alleged further that respondent had "demanded that [petitioners] * * * register with the Attorney General under the provisions of the Foreign Agents Registration Act of 1938, as amended." The relief sought by petitioners included a "judgment declaring that their activities as legal representatives for the Republic of Cuba do not subject them to the requirements of registration under the Foreign Agents Registration Act of 1938, as amended * * *." 52 Stat. 631, as amended, 22 U.S.C. § 611.

That Act requires the registration of "any person who acts or agrees to act * * * as * * * a public-relations counsel, publicity agent, information-service employee, servant, agent, representative, or attorney for a foreign principal * * *." Foreign principal includes "a government of a foreign country and a foreign political party," as well as "a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country * * *." The Act exempts from registration any "person engaging or agreeing to engage only in private and nonpolitical financial or mercantile activities in furtherance of the bona fide trade or commerce of such foreign principal * * *."

Respondent moved for judgment on the pleadings. The District Court denied the motion, but at the request of respondent and with the consent of petitioner, the court certified to the Court of Appeals the "controlling question of law, as to whether individuals requested to register under the Foreign Agents Registration Act of 1938, as amended, may have their rights adjudicated by a declaratory judgment suit * * *."

The Court of Appeals for the District of Columbia, noting that petitioners did not challenge the constitutionality of the Foreign Agents Registration Act, held, with one judge dissenting, that the doctrine of sovereign immunity required that the case be dismissed "as an unconsented suit against the United States." 115 U.S. App. D. C. 210, 212, 318 F. 2d 181, 183. We granted certiorari, 375 U.S. 811.

We hold, for the reasons stated below, that the Foreign Agents Registration Act plainly and unquestionably requires petitioners to register. Since we conclude that the Court of Appeals was correct in ordering the case dismissed, but for reasons other than those relied upon in its opinion, we do not pass upon the

reasoning by which that court arrived at its decision, nor do we have occasion to consider the scope of the declaratory judgment remedy or the sovereign immunity doctrine.¹

The Foreign Agents Registration Act was first enacted by Congress on June 8, 1938. It required agents of foreign principals to register with the Secretary of State. "[A]gent of a foreign principal" was defined as "any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for a foreign principal * * *." 52 Stat. 631, 632. [Emphasis added.] Foreign principal was defined as "the government of a foreign country, a political party of a foreign country, a person domiciled abroad, or any foreign business, partnership, association, corporation, or political organization * * *." Exempted from the definition of "agent of a foreign principal" was "a person, other than a public-relations counsel, or publicity agent, performing *only private, non-political, financial, mercantile, or other activities* in furtherance of the bona fide trade or commerce of such foreign principal." [Emphasis added.] 52 Stat. 631, 632. In 1961, the exemption section was amended to apply to persons "engaging or agreeing to engage *only in private and non-political financial or mercantile activities* in furtherance of the bona fide trade or commerce of such foreign principal * * *." [Emphasis added.] 75 Stat. 784. The Senate and House Reports accompanying this amendment state its purpose as follows:

"The so-called commercial exemption has proved to be ambiguous. During hearings held on H.R. 6817 in the 86th Congress, a bill identical to H.R. 470, a representative of the Department of Justice testified that the language contained in the exemption has led to confusion and unnecessarily difficult problems in the administration of the law. Argument has been made that if an agent of a foreign principal meets any one of the above-quoted conditions, as distinguished from meeting several or all of the requirements, it need not register. As rewritten, the section with its proposed changes and sentence structure makes it clear that for an agent to qualify for exemption from the obligation of registering, it must be engaged in activities which meet either of two sets of three requirements. *They must be private and nonpolitical and financial, or private and nonpolitical and mercantile. If any one of these characteristics is lacking, the agent cannot qualify for exemption and therefore must register under the act.*" [Emphasis added.] S. Rep. No. 1061, H.R. Rep. No. 246, 87th Cong., 1st Sess.

Petitioners here are attorneys who have been retained "to represent in the United States the Republic of Cuba and its governmental agencies in legal matters, including litigation * * *." As an example of their "activities" pursuant to this retainer, petitioners cite their appearance before this Court in the recently decided case of *Banco Nacional de Cuba v. Sabbatino*, ante, at 398.

Although the work of a lawyer in litigating for a foreign government might be regarded as "private and nonpolitical" activity, it cannot properly be characterized as only "financial or mercantile" activity. It is clear from the statute and its history that "financial or mercantile" activity was intended to describe conduct of the ordinary private commercial character usually associated with those terms. See, e.g., S. Rep. No. 1783, 75th Cong., 2d Sess. Furthermore, although the interest of a government in litigation might be labeled "financial or mercantile," it cannot be deemed only "private and nonpolitical." Since an attorney may not qualify for exemption "if any one of these characteristics is lacking," it would be impossible to conclude, under any construction of the statute, that petitioners are engaging "only in private and nonpolitical financial or mercantile activities."

We conclude, therefore, that petitioners, attorneys representing a foreign government in legal matters including litigation, are not exempt from registering under the Foreign Agents Registration Act.

¹ See, e.g., Borchard, *Declaratory Judgments* (2d ed., 1941); Borchard, *Challenging "Penal" Statutes by Declaratory Action*, 52 *Yale L. J.* 445 (1943); Davis, *Sovereign Immunity in Suits Against Officers for Relief Other than Damages*, 40 *Cornell L. Q.* 3 (1954); Davis, *Suing the Government by Suing an Officer*, 29 *U. of Chi. L. Rev.* 435 (1962); Jaffe, *Suits Against the Government and Officers: Sovereign Immunity*, 77 *Harv. L. Rev.* 1 (1963).

² This section had previously been amended in 1942 to cover any person "engaging or agreeing to engage only in private, nonpolitical, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal * * *." 56 Stat. 254.

In support of their case, petitioners also claim that if they register they would be required in completing the registration forms to "make public disclosure not only of their relation with their foreign principal, but of numerous private, personal and business affairs unconnected with their representation of the Republic of Cuba." In concluding that petitioners must register, we do not suggest that they may be required to answer all the questions in the registration forms. The Government says that some of the questions are "clearly inapplicable" to petitioners, that others may satisfactorily be answered in conclusory language, and that others, while "framed in general terms" may satisfactorily be answered by disclosing only those facts which "bear a reasonable relationship to the representation of the foreign principal." Under the rules established by the Department of Justice and printed on the forms themselves:

"If compliance with any requirement of the form appears in any particular case to be inappropriate or unduly burdensome, the Registrant may apply for a complete or partial waiver of the requirement." Compare, 28 CFR § 5.201. Since petitioners have made no attempt to determine which questions must be answered and how much information disclosed, this issue is not ripe for adjudication. See, *e.g.*, *Eccles v. Peoples Bank*, 333 U.S. 426. See generally, Davis, *Ripeness of Governmental Action for Judicial Review*, 68 Harv. L. Rev. 1122, 1326 (1955).

For these reasons, petitioners' complaint should be dismissed, and, accordingly, the judgment of the Court of Appeals ordering dismissal of the complaint is affirmed.

It is so ordered.

Mr. MAW. It will be my purpose today briefly to summarize the report and to present specific suggestions to carry out its recommendations.

The Association of the Bar of the City of New York is vitally interested in the Foreign Agents Registration Act and its impact upon members of the bar and their clients, not only in New York City but elsewhere throughout the country. The bar in the city of New York has traditionally been active in international business transactions and represents numerous foreign and domestic firms and individuals engaged in business both here and abroad. The proposed expansion of the coverage of the Foreign Agents Registration Act as contemplated by S. 693 greatly affects persons engaged in international business, including particularly lawyers, accountants, and other professional groups.

At the outset I would like to emphasize that our association is in full agreement with the stated purposes of the Foreign Agents Registration Act. We are in favor of requiring public disclosure of the activities of those who attempt covertly to influence public opinion or makers of basic governmental policy with respect to matters that are clearly political. We also believe that the present act needs amendment to clarify and focus its provisions, both to define the area in which the act was intended to have its primary impact—that is, propaganda and lobbying on behalf of foreign political interests—and to enable the Department of Justice effectively to enforce the act in those cases where there is a genuine public interest to be served. The bill in the form adopted by the Senate in April of this year contains a number of amendments which in our opinion greatly improve the act and with which we wholeheartedly agree. However, we are concerned with some of the proposed amendments which appear to extend the scope of the act beyond the area of genuine need, and we are especially concerned

with the burdens which the amended act would place on lawyers and other persons who undertake to represent legitimate foreign commercial interests in their business affairs in this country.

While my testimony today is aimed in particular toward problems which S. 693 poses for members of the bar, we are, of course, also concerned with the broader aspects; that is, the proposed application of the act to activities generally which we believe are legitimate and essentially nonpolitical and which we believe should not be subject to the burdensome registration requirements of the act.

In particular, we are concerned with the broadened definition of the term "political activities." The proposed principal exemption from registration—that is, section 3(d)(1) covering activities which are private and nonpolitical and in furtherance of the bona fide trade or commerce of a foreign principal—depends in large part on whether or not the activity is "political." That determination turns upon the key phrase in the new definition of political activities which encompasses activities " * * * with reference to formulating, adopting, or changing the domestic or foreign policies of the United States." The bringing of purely "domestic policies" within the purview of the act creates an entirely new concept in our traditional thinking about foreign agents registration. It not only significantly broadens the scope of the act but introduces severe regulation under a criminal statute of many activities which heretofore had been considered private and nonpolitical and therefore exempt from the act.

In our opinion, there are thus presented grave uncertainties for a large number of lawyers, other persons and business concerns in this country who handle in the United States the affairs of foreign private individuals and corporations which have no relation to any government or political party and whose services often involve contact with Government agencies on many levels—such as negotiations with respect to certain Government contracts; participation in industry group discussions and other informal contacts with Government officials (frequently at the invitation of the Government) to consider or recommend changes in Government practices or policies; and numerous other activities in appearing before or working with Government officials or agencies in matters concerning day-to-day business problems which may verge on the area of policymaking and which may be interpreted as attempting to formulate, adopt, or change U.S. "domestic policies."

We believe that the interests of our Government would be adequately served by obtaining information about agents representing foreign political interests in the form of foreign governments, foreign political parties or other foreign entities which have a substantial and material association with the political or public interests of a foreign country. We do not believe that it is necessary to place on foreign business firms doing business in the country a burden not placed on their domestic competitors, or to extend the act to lawyers and others who are appearing on behalf of foreign principals before governmental agencies in respect of policy matters, where the foreign principal is private and where the activity is not related directly or indirectly to the political interests of a foreign government, a foreign political party or other foreign entity substantially associated with

the political or public interests of a foreign country. In short, it seems to us unreasonable to require a person to register as a foreign agent in order to appear before a Federal administrative agency on behalf of a disclosed private foreign principal in a purely commercial and nonpolitical matter. Incidentally, there is nothing to prevent the official or agency concerned in such a situation from requesting and receiving any and all information that may be relevant to the problem at hand.

As has been emphasized by other witnesses, we are dealing here with a criminal statute, a violation of which may result in imprisonment or fines. We believe that a criminal statute which is as broad as S. 693 could too easily become a trap for the unwary person (or, in fact, even for a person fully familiar with the act) unable to pinpoint, for example, the dividing line between seeking "administrative action on a matter where the basic policy is not in question," which according to the Senate committee report would be outside the scope of the act, and seeking "decisions relating to or affecting departmental policy," which by the same authority would be under the act. Similarly, in administrative proceedings, there may be a fine line or no line between a situation where "disclosure is required as a matter of course in the representation" and where it is not so required. Where disclosure in fact is made, it seems to us that the burdensome requirements of registration should be eliminated.

I would like now to turn briefly to the two new exemptions contained in S. 693, namely, the attorneys' exemption (sec. 3(g)) and the exemption for activities not serving predominantly a foreign interest (sec. 3(d)(2)).

While under section 3(g) attorneys of record would be exempt from registration in formal judicial or administrative proceedings even though those proceedings involved attempts to formulate, adopt, or change U.S. policies, they would not be exempt if the proceedings were informal or preliminary to formal Government proceedings; moreover, appearances by nonlawyers before Government agencies even in rulemaking or other types of formal proceedings would not be exempt from the coverage of the act. In fact, section 3(g) may prove to be of little benefit to many lawyers concerned because very few formal proceedings, other than SEC registrations, are commenced without prior informal proceedings. Must attorneys either register or remain silent until the situation reaches the stage of formal proceedings? It seems rather incongruous to require a lawyer to register for an informal approach to a governmental agency when he is seeking to avoid a formal proceeding for which registration would not be required.

We believe that so long as the fact of an attorney's representation of his foreign principal is disclosed to the agency or Government personnel before whom the attorney is appearing, this strict line between formal and informal proceedings is unwarranted. The matter is important, of course, because the definition of what constitutes political activities is so terribly broad. Thus, for example, a lawyer may appear before the Food and Drug Administration on behalf of a foreign drug company doing business in the United States in order to propose changes in regulations governing the approval of drugs. While we

believe that such an appearance cannot be considered political in the normal sense of that word, the definition of political activities in S. 693 may be broad enough to include such an appearance. Therefore, if the appearance is not part of a formal regulatory proceeding, the lawyer may be required to register.

A similar point can be made on behalf of nonlawyers who appear before governmental agencies or personnel in matters that may affect U.S. domestic policies, whether the proceedings are formal or informal. Where the fact of representation is clearly disclosed, we do not believe that a distinction should be drawn between attorneys and other persons.

Turning now to the second exemption of section 3(d) for activities "not serving predominantly a foreign interest," we believe that the exemption is ambiguous and unclear and should be made more specific. As Mr. Sonnett illustrated in his testimony, the interests of an American corporation and its foreign affiliate are often too closely intertwined for meaningful distinction. Furthermore, it seems to us that no legitimate purpose is served by requiring registration under the act of bona fide American corporations with foreign subsidiaries or of ordinary domestic businesses owned or controlled by foreign entities, so long as the activities are undertaken in connection with the usual business or commercial affairs of such firms. But, if the Senate bill, as it now stands, is enacted into law, it would seem to me that, sooner or later, almost all of the 2,500 or more firms referred to by Mr. Sonnett would have to register and comply with the extremely extensive registration requirements of the act. The practical administrative problems created for such companies, as well as for the Justice Department, could be enormous.

As members of the bar, we have basically three reasons for our concern over the Senate's proposed amendments. First, the application of the act, as a result of the new definitions in the Senate bill, will be uncertain and ambiguous. As noted by Mr. Dean in his testimony, there is a serious question whether the proposed bill in fact meets the test of fair warning embodied in the concept of due process. Second, there is a stigma involved in being registered as a foreign agent. Businessmen and lawyers are rather sensitive at being dealt with under an act historically designed to ferret out subversives. And third, there is the fact that registration is an exceedingly burdensome proceeding, as pointed out by Mr. Sonnett in his testimony. Much of the required information in relation to lawyers and businessmen has only marginal, if any, relationship to the purposes of the act. If registration were not so burdensome it might be easier in a close case to go ahead and register so as not to risk violating the statute. But because it is so burdensome, persons in the shadow area of the act are naturally reluctant to comply with the detailed registration requirements.

This brings me to the association's specific recommendations for improvements in the amendments adopted by the Senate. From the large number of proposals already received by your committee, and those presented to the Senate Foreign Relations Committee, both this year and last, it might appear that there is a considerable difference of opinion among those concerned as to the changes needed in the bill so that it will not adversely affect the conduct of normal and usual busi-

ness activities. But the major differences are, I think, really matters of form and phraseology.

Underlying all of the proposals of the representatives of the American business and professional communities are two very simple propositions. First, and most important, is the proposition that representatives of strictly private commercial principals should be relieved from the extremely burdensome registration prescribed by the Foreign Agents Registration Act. Second is the proposition that any agent who is otherwise required to make full disclosure as to the identity of his foreign principal and his representation of that principal in any proceeding before officials of our Government, whether such proceedings are nominally classified as formal or not, should not be required to undergo the administrative and financial burdens attendant upon registration with the Justice Department, at the risk of criminal prosecution for failure to do so.

Our principal recommendation, therefore, the one which really goes to the root of the difficulties with the Senate amendments, is to narrow the definition of "political activities" in such a manner as to exclude representation of private foreign principals before government agencies, so long as the representation is not substantially associated with the political or public interests of a foreign country and so long as it is not intended to influence the passage or defeat of U.S. legislation (except through the proper channel of testimony before a congressional committee). A suggested amendment to accomplish this limitation on the scope of "political activities" is appended to my prepared statement as annex A. The proposed revision of the definition of "political activities" offered by Mr. Dean and the proposal I am making for the bar association are virtually the same. With such a revision, the act would continue to cover all foreign agents with respect to whose activities there is a legitimate public interest in securing information, and yet exempt from the coverage of the act the thousands of lawyers, accountants and other professional and business representatives who are constantly engaged in activities with governmental agencies in matters traditionally regarded as private and nonpolitical.

The chamber of commerce would accomplish the same result for a substantial portion of the persons and corporations in this situation by narrowing the definition of a "foreign principal." A similar recommendation by the New York City Bar Association for such relief for American corporations with foreign affiliates is set forth at page 90 of the association report that is before you, except we do not limit the suggested relief to those foreign and domestic firms who have publicly traded shares in U.S. markets, a qualification which does not seem to us to serve any useful purpose and excludes most foreign corporations and hundreds of smaller or privately owned American business firms—corporate, partnership, and individual.

If the definition of political activities is limited as suggested in annex A, it will of course be less important to focus no other and more specific exemptions. However, we believe that it is most important that the attorneys' exemption, section 3(g) of the act, be enlarged so that it will cover other persons as well as lawyers engaged in ordinary representation and so that it will apply to informal as well as

formal governmental proceedings, provided, of course, that appropriate disclosure is made of the fact of representation and the identity of the foreign principal. A suggested amendment to expand the attorneys' exemption along these lines is attached to my prepared statement as annex B. Mr. Dean's proposal and ours are slightly different on this point, but they reach about the same result.

Finally, for agents of bona fide commercial enterprises that still may have to register, there is, I think, general agreement among businessmen and lawyers alike that the act should specifically permit registration in appropriate cases by means of a short form registration statement. We believe that such a registration statement should require disclosure only of the essential information required to identify and describe the principal and agent and their activities requiring registration. A suggested amendment to provide for a short form registration is attached to my prepared statement as annex C. You will note that this provision would include authority to the Attorney General to require further information if he felt that additional information was necessary in any particular case.

It is true that under the amendments as adopted by the Senate, the Attorney General would have the right to waive in certain instances some or all of the requirements of the registration form. However, unless adequate general regulations under this authority are prescribed, this provision is not really satisfactory. It would be an exceedingly burdensome procedure for persons or concerns with frequent contacts with the Government to secure this exemption on an ad hoc basis. And, as Mr. Sonnett indicated in his testimony, it is difficult to see why the Justice Department is better qualified than the Congress to determine which general exemptions are consistent with "the national security and the public interest"—that being the standard prescribed for the Department of Justice under the proposed section 2(f).

I am grateful for the opportunity to appear before you and to present these remarks. Needless to say, my associates and I from the Association of the Bar of the City of New York would be delighted to cooperate with you and your staff and to assist you in any way you may desire.

Thank you very much.

(Annexes A, B, and C to Mr. Maw's statement follow:)

ANNEX A

Amend section 1(o) of the act (as added by the Senate bill), to read as follows (suggested new matter italicized):

"(o) The term 'political activities' means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party; *Provided, That such term shall not include the open representation of a private foreign principal before any agency or official of the Government of the United States, if such representation does not substantially relate to (1) formulating,*

adopting, or changing the foreign policies of the United States, or (2) influencing the passage or defeat of legislation by the Congress of the United States (except appearances before committees of Congress), or (3) the political or public interests, policies, or relations of a government of a foreign country or a foreign political party."

ANNEX B

Amend section 3(g) of the act (as added by the Senate bill) to read as follows (suggested new matter italicized):

"(g) (1) Any attorney whose activities are confined to openly representing, as an attorney of record, the interests of a disclosed foreign principal before any court or administrative agency of the United States, or of any State or political subdivision thereof, *and (2) any attorney or other person whose activities are confined to openly representing the commercial, or otherwise private, interests of a disclosed foreign principal before any administrative agency or official of the United States, or of any State or political subdivision thereof, provided that (i) such representation does not relate to the political or public interests, policies or relations of a government of a foreign country or of a foreign political party, and (ii) such attorney or other person makes a record with such administrative agency or official of his representation and the identity of such foreign principal.*"

ANNEX C

Amend section 2(a) by adding at the end the following:

"In lieu of the foregoing, any agent of a private foreign principal engaged in bona fide trade or commerce whose activities otherwise requiring registration hereunder are confined to openly representing the bona fide commercial interests of the foreign principal before any court, administrative agency or official of the United States or of any State or political subdivision thereof may file a registration statement containing only the following information, which shall be regarded as material for the purposes of this Act:

"(i) Registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

"(ii) Status of the registrant: if an individual, nationality; if a partnership, name, residence addresses, and nationality of each partner; if an association, corporation, organization, or any other combination of individuals, the name, residence addresses, and nationality of each director and officer and of each person performing the functions of a director or officer; a statement of its ownership and control; and a general statement of the nature of the registrant's business;

"(iii) The name and address of the foreign principal for whom the registrant is acting or assuming or purporting to act, or has agreed to act; and a general statement of the nature of the business or other activities of such foreign principal, and of the extent of the foreign principal's business or other activities in the United States (including the business or activities in the United States of any of its affiliates or subsidiaries);

"(iv) A general statement of the circumstances, by reason of which the registrant is an agent of such foreign principal, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant on behalf of such foreign principal which require his registration hereunder;

"(v) Such other statements, information, or documents pertinent to the purposes of this subchapter as the Attorney General, having due regard for the national security and the public interest, may from time to time require;

"(vi) Such further statements and such further copies of documents as are necessary to make the statements made in the registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading."

Mr. WILLIS. You have made a very clear statement. I personally would want to analyze your suggested amendments, and I would hope that the Justice Department can tell us their views about your proposals, Mr. Dean's proposals, and Mr. Sonnett's proposals.

Any questions?

Mr. POFF. Mr. Chairman. May I inquire in what way, if any, does your proposed amendment embodied in annex C differ from Mr. Dean's proposal?

Mr. MAW. I think principally as a matter of form.

Mr. POFF. There is no essential difference in substance, then?

Mr. MAW. No; I think the differences are mainly questions of form.

Mr. POFF. You heard Mr. Dean's testimony?

Mr. MAW. Yes; I did.

Mr. POFF. How do you feel, if you care to express an opinion, about his suggestion that we might provide an approach whereby an applicant could make application for a waiver of the need of registration?

Mr. MAW. I thought that was a very helpful suggestion, depending, of course, upon the degree to which you exclude business people and lawyers from the registration provisions of the act. Even so, there will always be areas of uncertainty, and therefore when someone in good faith wants to know whether or not his act is going to involve a criminal offense, there should be a procedure whereby he can get that answer. Mr. Dean's proposal would create that kind of procedure.

It only applies where the application is a bona fide application made in good faith.

Mr. POFF. I understand that. This is one of the things which concerns me, frankly. Someone, sometime, must make some decision on the question of good faith. My concern is that there may be a lapse of time during which the person, if he is not acting in good faith, may do substantial damage to the United States.

Mr. MAW. That is true, sir, in which case he would have violated the law.

Mr. POFF. Yes; he has violated the law, but he is subject to punishment only after that act has occurred, and what this law seeks to do, of course, is to prevent the damage to the United States before it happens.

Mr. MAW. As I understood Mr. Dean's suggestion, it would only be applicable where the application was, in fact, made in good faith. If the application was not, in fact, made in good faith, then it would be of no effect and he would be violating the law.

Mr. POFF. My understanding was that as soon as he made the application he was automatically granted a waiver, and that within a reasonable time thereafter the Attorney General must reach a definitive decision on the question of good faith and, if necessary, require the applicant to submit additional information. Did I misunderstand what he said?

Mr. MAW. I understood it a little differently. I understood that if the application was, in fact, made in good faith, then the Attorney General within a reasonable time should decide the question of law as to whether or not the good faith applicant must register, not the

question of good faith. He has no basis for that decision. That will come in the prosecution of the criminal case if the man did not file his application in good faith.

Mr. POFF. He suggested, I believe, a reasonable time under these circumstances might be 90 to 120 days. As you understand his testimony, during the lapse of that period of time, the applicant would not be permitted to act as an agent of a foreign principal? Is that correct?

Mr. MAW. If his application was filed in good faith, then he would be assumed to be exempt from the act until the Department took a decision.

Mr. POFF. During the time that he was assumed to have acted in good faith, would he be lawfully permitted to represent his foreign principal?

Mr. MAW. Yes; he would, under that amendment.

Mr. POFF. This is something, I say again, which gives me concern. This is the way I understood his testimony.

Mr. MAW. That is correct. On the other hand, if the applicant were not in good faith, then he would not have that statutory immunity during the interim period.

Mr. POFF. But we are talking about an assumption that he acted in good faith; are we not?

Mr. MAW. On that assumption, if he acted in good faith, then he does have statutory immunity until the Department of Justice acts; that is correct.

Mr. POFF. Yes, sir. Then do you or do you not endorse Mr. Dean's specific proposal?

Mr. MAW. I think something like Mr. Dean's proposal is essential if we do not get out of the act all of these provisions which would require so many businessmen and lawyers engaged in normal, day-to-day activities, to register.

Mr. POFF. Do I understand that comment to mean that if we adopt the amendment you have suggested and the amendment the Chamber of Commerce has suggested, then this specific suggestion made by Mr. Dean would not be necessary?

Mr. MAW. It certainly loses its importance.

Mr. POFF. I think that is all, Mr. Chairman.

Mr. WILLIS. Let me ask this question. In your own mind, in re-drafting the language to free from the provisions of the bill bona fide transactions and the people we have been talking about, are you sure, in the choice of words to accomplish that, you did not leave a loophole to free others, especially when you say:

At the outset I would like to emphasize that our association is in full agreement with the stated purposes of the Foreign Agents Registration Act.

Did you have that in mind when you drafted that language?

Mr. MAW. We very much had it in mind, Mr. Chairman, and we have worked on this language a good many hours and days, trying to achieve a suggestion which would accomplish the purpose of the act and not leave any loophole. Of course, dealing in general terms, it is always difficult. I think however, that we have accomplished your objective in the suggestions we are making.

Mr. WILLIS. I say that because I read the last paragraph on page 11 of your statement as being rather restrictive. You say there:

Our principal recommendation, therefore, the one which really goes to the root of the difficulties with the Senate amendments, is to narrow the definition of "political activities" in such a manner as to exempt the representation of private foreign principals before Government agencies, so long as the representation is not substantially associated with the political or public interests of a foreign country and so long as it is not intended to influence the passage or defeat of * * * legislation * * *.

If your language means that anything can be done by the people other than those you speak of, that they can do anything except when it has to do with the passage of legislation, to me that is too restrictive.

Mr. MAW. May I refer to annex A and the specific language that is suggested there.

Mr. WILLIS. I was reading your interpretation of it. It seems to me the Foreign Agents Registration Act, where it must and ought to apply, certainly has to reach transactions broader than influencing the passage of legislation. If you are talking about lobbying activities, the Foreign Agents Registration Act goes beyond that.

Mr. MAW. The language as suggested in annex A has a proviso on it:

PROVIDED, That such term shall not include the open representation of a private foreign principal before any agency or official of the Government of the United State, if such representation does not substantially relate to (1) formulating, adopting, or changing the foreign policies of the United States—

Mr. WILLIS. I notice that. I notice you delete the word "domestic."

Mr. MAW (Continuing):

or (2) influencing the passage or defeat of legislation * * *, or (3) the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

Mr. WILLIS. It goes beyond the suggestion in the last part of your statement on page 11.

Mr. MAW. That is a shorthand explanation of the proposal.

Perhaps, Mr. Chairman, I could give you a good illustration of a problem which now exists. There is, as you may know, a series of informal meetings with the Securities and Exchange Commission regarding proposed regulations concerning so-called ADR's, American depositary receipts, for securities of foreign corporations. Any meaningful discussion of this subject should require the presence of people who know about the foreign companies concerned and also people who are acquainted with the practices of the securities markets in dealing in foreign securities. At the present moment these discussions also involve the informal requirements of the Department of Commerce regarding the flow of funds. Foreign issuers have a genuine interest in these proceedings and such a conference should include people who are really representatives of the foreign securities houses or of foreign issuers.

Under the act as prepared by the Senate, I suspect some of the people participating in these discussions would have to register. In normal business activities involving informal proceedings before governmental agencies and when the foreign business firms are represented by bona fide lawyers and businessmen trying to work out a policy that in this case would concern the operation of a securities

market, they should not be required to register. When they go before the SEC, they state to the SEC their identity and what firm or firms they represent. The SEC is well aware of the different, and sometimes conflicting, interests of the participants in their discussions.

Mr. WILLIS. One final question. Did you offer these suggestions on the Senate side? Were they considered and rejected, or are they still open?

Mr. MAW. No; we did not present them to the Senate. Our committee report did not move that fast.

Mr. WILLIS. Do you know whether the suggestions made by Mr. Dean, Mr. Sonnett, and others were made and considered and rejected by the Senate?

Mr. MAW. I cannot answer your question, Mr. Chairman. I know a number of suggestions were made, considered, and rejected. I think they have been modified and changed since then. I cannot really answer your question.

Mr. WILLIS. Are there additional questions?

Mr. TENZER. I would like to welcome the distinguished witness, my colleague of the New York bar, to this committee.

Mr. MAW. Thank you.

Mr. TENZER. I am very much impressed by the testimony which he offers. I want to be certain that this record will disclose that we are talking here about purely commercial transactions and seeking an exemption for such transactions without in any way affecting the best interests of the United States.

As I understand from the testimony, this committee of the bar association is representative of the leading law firms of the city of New York. I am not a member of the bar association, but I am a member of the board of directors of the New York County Lawyers Association, which represents almost 10,000 lawyers in New York.

I am concerned that we get into the record the findings of this committee. If a member of the bar of New York, or of any other State of the Union is retained by a foreign corporation which has made a shipment of goods into the United States, a purely commercial transaction, in line with our encouragement of trade with foreign nations, and that shipment is held up by, let us say, the Customs Department, which might require a ruling from the Customs Department or a ruling from the Food and Drug Administration, if you suggest such an attorney may be required to register as a foreign agent, seems to me incredible. In the example given, the sole purpose of his appearing before the agency is strictly to expedite the release of that shipment from either the Customs Department by reason of a conflict with the customs law, rules and regulations, or with one or another rule or regulation of the Food and Drug Administration.

Now, Mr. Maw, my question is this: Does your committee read H.R. 290—and I would like to refer to H.R. 290 because you did not appear before the Senate committee, in order that your suggestions now being considered as prospective amendments to H.R. 290 which we have before us—

Mr. MAW. And Senate 693 as passed by the Senate.

Mr. TENZER. We are now dealing with H.R. 290, and we will report out H.R. 290 with amendments which will then be submitted to the

full Judiciary Committee and then to the House. The differences between H.R. 290 as finally passed and S. 693 will be left to conference between the Senate and House committees, so we here will deal with H.R. 290.

I want to be certain I understand the findings of your committee of the Bar Association of the City of New York that you read H.R. 290 and S. 693 as requiring an attorney, in an instance such as I described, to register as a foreign agent.

Mr. MAW. They would be required to register as a foreign agent if the relief necessary, in your case, would constitute the change of a policy of the Treasury on levying duty, assessing duty, or any other arrangement which might be within the area of a change of policy rather than a routine administration of a policy. I don't know the difference between these two concepts.

Mr. TENZER. Do you read S. 693 as it presently stands, to require a registration by an attorney who appears in an instance such as I described?

Mr. MAW. It clearly requires registration if the relief requested from the Treasury could be regarded as a change of domestic policy. According to the Senate committee report, if you get to the level of policymakers and you have to ask for a change of domestic policy, then you must register and, failing to register, you are a criminal.

Mr. TENZER. Let us suppose that an attorney represented an American corporation which was the importer and through such representation was retained to represent the foreign corporation which shipped the goods in order to bring about the release of the goods, would he be required to register as a foreign agent?

Mr. MAW. If he stopped and represented only the importer, he could do anything he wanted to without registration, but the moment he took on representation of the foreign exporter, if a policy change were involved, then he would have to register.

Mr. TENZER. If you represented a domestic importer, would there be any restriction in your endeavoring to bring about the lowering of a tariff, if in your opinion there is an inequity?

Mr. MAW. He can do anything he wants to do as long as he represents a domestic person. It is only when you have a foreign interest that you bring in this fine line of distinction.

You have two classes of lawyers: those that have to register because they happen to have a foreign client, and those who don't have to register because they have a domestic client both doing exactly the same thing to accomplish the same business end.

Mr. TENZER. Wouldn't that requirement be inconsistent with the announced policy of the Government to develop trade with foreign countries?

Mr. MAW. I think it is not only inconsistent with our policy to promote international trade; I think it is inconsistent with the spirit of our treaties of friendship, commerce, and navigation where we in diplomatic terms accord foreign business enterprises national treatment and most-favored-nation treatment in doing business with the United States.

It accomplishes nothing toward serving the national interest, except to put people to a lot of work and trouble.

Mr. TENZER. We are all concerned with controlling subversive activities in the United States, but we don't want to pass laws which will automatically bring every lawyer representing clients engaged in foreign trade, to be brought under the Registration Act which would require him to register as a foreign agent; do you agree?

Mr. MAW. The dragnet is quite complete.

Mr. WILLIS. On the other side of the coin, would there be any question whatsoever that representatives of foreign principals, commercial and otherwise, in this country, such as Amtorg, would be included?

Mr. MAW. It clearly would not because that is a government interest.

Mr. WILLIS. It would not be excepted?

Mr. MAW. That is right.

Mr. TENZER. The distinguished chairman is referring to a corporation organized by foreign nations exclusively, but that would not be the same as the example given, or apply to a lawyer who was retained by a corporation domiciled in any nation of the world which is authorized to trade with the United States.

Mr. WILLIS. I was just testing his language to be sure that in the exemption of the kind of people and the kind of transactions he is talking about that the language he employs is not so broad as to exempt outfits of the type I have named.

Mr. TENZER. I think it is well that you brought that out, Mr. Chairman, but we are faced with the task of writing legislation which in my opinion should most certainly exempt the legitimate transactions of lawyers who represent American corporations who are doing business with foreign corporations in the importing and exporting of merchandise. Similarly we should be concerned with lawyers representing foreign corporations who are duly authorized to do business with the United States and with American domestic corporations. Do you not agree that this is our function?

Mr. WILLIS. I understand your problem but we are dealing with more than lawyers. He is talking not only about lawyers, but about—

Mr. TENZER. Well, when the—

Mr. WILLIS (continuing). Representatives of foreign principals because you said that Mr. Dean's proposal—or somebody's proposal you commented on—should go beyond exempting lawyers, but also exempt other persons, and I just want to bring into the record the questions I have asked to be sure that we are not lifting the last strand of barbed wire to such an extent that we are admitting other kinds of people, lawyers and nonlawyers, and representatives into this country which I am sure you don't intend, but I want to be sure that you had these things in mind when you drafted the language of your amendment.

Mr. MAW. That is correct.

If I may comment on your Amtorg question, the exclusion of the amendment in annex A excludes any person who represents a political or public interest, policies or relations of a government of a foreign company. I would think that Amtorg most certainly represents the interests of a foreign country.

Mr. WILLIS. We all are in agreement on that.

Mr. MAW. The exclusion we are proposing may not be broad enough in many cases, but we don't quite know how to make it more satisfac-

tory. There are a good many joint ventures abroad with American participants where the partner in the joint venture, for better or for worse, is the local government. Thus our exclusion may not be broad enough to cover such joint ventures, even though they represent substantial American investment.

If we exclude such joint ventures, we perhaps get so broad as to exclude the people that you are troubled with. So there is an area in these amendments which is still very troublesome where an American—let us suppose in India, for example—ends up with an Indian state as his partner.

Joint ventures may also have problems with currency controls, changing rupees over for dollars, and vice versa. I don't know where that problem falls. We have not tried to go so far as to cover that kind of situation.

That, however, is the unusual case. When we come to it, if a short form registration is available, no doubt the lawyer can register if he has to, or if he feels there is any risk at all.

Mr. WILLIS. One of the requisite qualifications for membership on this committee, the Committee on the Judiciary, is that we must be lawyers. We know your problems. We know you and Mr. Dean and all the others to be tops and to be men of whom we are all very proud. We appreciate your concern.

Mr. MAW. Lawyers don't like to commit crimes.

Mr. WILLIS. Even under the present law—which I have thought the Senate bill softened up a bit as far as the lawyers are concerned—Mr. Dean testified that his firm never—except briefly in one case—had to register, and that is why I want to be extremely careful in the employment of language where we will be talking about lawyers as lawyers ought to be.

Mr. MAW. I can't speak for Mr. Dean, but may I comment we are speaking about three stages in this matter. First, before the *Rabinowitz* case; next the one we now have to face after the *Rabinowitz* case; and third is what should be or is going to be the law in the future.

My remarks are all addressed to the Senate amendments which I hope you gentlemen will modify.

Mr. WILLIS. I am glad you enlightened us on the Senate amendments and the statement is addressed to the Senate bill because I was rather confused with regard to other statements. I didn't know whether the witnesses were testifying on the conditions under the present law or the Senate versions.

I am glad to know you are testifying on the Senate bill.

Mr. TENZER. Mr. Chairman, before the witness leaves the stand, and if I still have the floor, and because we are all lawyers and would like to have business concerns take the necessary precautions in their commercial transactions by engaging lawyers to give them advice, do you not agree that if an exemption is granted to a lawyer to render certain services before certain governmental agencies that that same privilege should be extended to an individual who wants to represent himself?

Mr. MAW. I think it is essential. I think to say just a lawyer can go formally before a Government agency is a little presumptuous,

even for lawyers. Frequently such representatives are doctors or engineers. And accountants are before governmental agencies constantly, particularly in the tax field and other accounting areas.

Mr. TENZER. I thank you for the answer which makes it perfectly clear that we are not trying to prevent individuals or executives of corporations from appearing before Government agencies—not an exclusive area for lawyers.

My colleague from California has asked me to yield to him and I yield to Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Tenzer.

Mr. MAW, the U.S. business community has many billions of dollars invested overseas and we have a satisfyingly large surplus in our exports as opposed to our imports.

I was wondering if you happen to know what restrictions other countries such as the Western European nations put on their businessmen and attorneys in doing business with the U.S. corporations and businessmen?

Mr. MAW. Mr. Edwards, there are various restrictions in France today for getting a permit to buy stock in a French company. There are no restrictions in France for representation before a Government agency; and, at the present time, at least, an American lawyer or an American accountant can go and discuss questions of domestic policy with the French authorities.

I shudder to think what would happen to American business abroad if a companion piece, or companion pieces to S. 693 were adopted by the countries in which Americans have substantial investments.

Quite a few of us who are lawyers who go abroad would find ourselves with impossible problems of registration because we would be representing American interests and in France, for example, we would be agents of a foreign principal. This is something to worry about.

We have had experience with legislation being enacted abroad in retaliation to American legislation and I think in this world of international trade we should always keep in mind the possibility of reciprocity.

Mr. EDWARDS. Thank you, Mr. Maw.

Mr. TENZER. One final question, Mr. Chairman.

Mr. MAW—assuming these exemptions were granted to lawyers—would not a lawyer who failed to make a full disclosure before a Government agency as to the real purposes of his representation be subject to disbarment?

Mr. MAW. He would be before the grievance committee very promptly and if he were convicted of a crime in New York State, it could mean practically automatic disbarment.

Mr. PORR. In order that the record might be made clear, I am afraid some might think from reading the transcript that the point that the witness made about the distinction between formal procedures and purely informal procedures might have its genesis in the amendment itself. The Senate amendment, section 3(g), does not use the word "formal," but I assume the witness' fear arises from the statement in the committee report which does use the word "formal" and which would seem to have the effect of limiting the exemptions to

those cases in which the lawyer was participating in a formal procedure.

Mr. MAW. Section 3(g) speaks of an attorney of record, which connotes a very formal proceeding, usually limited to courts, but the Senate committee, when that was pointed out, noted that if a firm is listed in a registration statement as representing the issuer, that would constitute him an attorney of records.

It is an unfortunate phrase because "attorney of record" is traditionally associated with litigation.

Mr. POFF. Of course, it would be your purpose to expand the exemption to include those who are not attorneys as a matter of fact and those who are not attorneys of record, including a commercial agent.

Mr. MAW. As long as it is a commercial matter and they openly disclose their representation to the agency concerned, so the agency has all the information that it needs. If, however, it wants more information, all it has to do is to ask for it.

Mr. POFF. But if we clarify the definition of "political activities," that would obviate that point, would it not?

Mr. MAW. That would obviate it to a great extent. You can do it either of two ways: You can do it by modifying the definition of "political activities" or do it by enlarging the scope of "attorney" exemption to include people who openly appear before administrative bodies. Perhaps it would be better to do both.

Mr. POFF. I am not sure.

That is all, Mr. Chairman.

Mr. WILLIS. Thank you very much.

STATEMENT OF ROBERT DECHERT, REPRESENTING THE AMERICAN BAR ASSOCIATION

Mr. DECHERT. My name is Robert Dechert, sir. I am a Philadelphia lawyer. I am here by designation of the president of the American Bar Association. I am going to start, if I may, by presenting to the reporter another copy of my written statement in place of the one he has, because this statement was to some extent rewritten in the light of last week's testimony and at the last moment we found six minor typographical errors.

Mr. WILLIS. Is your statement in general along the lines of the preceding witness?

Mr. DECHERT. Yes, sir, and for that reason I am not going to read the statement itself to the committee.

Mr. WILLIS. Without objection, we will insert your prepared statement in the record at this point.

(The statement of Mr. Dechert follows:)

STATEMENT BY ROBERT DECHERT, ESQ., CHAIRMAN OF THE AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE ON RELATIONS WITH LAWYERS OF OTHER NATIONS

Mr. Chairman and members of the committee, my name is Robert Dechert. I am a lawyer in general practice in Philadelphia, Pa., and a partner of the firm of Dechert, Price & Rhoads. From 1957 to 1959 I was General Counsel of the Department of Defense, in 1948-49 I was Assistant General Counsel at the Economic Cooperation Administration, now the Agency for International Development.

I appear here on behalf of the American Bar Association by direction of the president, Lewis F. Powell, Jr. I am chairman of the American Bar Association Special Committee on Relations with Lawyers of Other Nations. On behalf of the American Bar Association, I express the appreciation of the association for allowing us to present our views on H.R. 290 and S. 693, the proposed amendments to the Foreign Agents Registration Act.

GENERAL COMMENTS

First, I want to make clear the fact that the American Bar Association fully supports the stated purpose of the Foreign Agents Registration Act as first passed. We likewise support the basic purposes of the presently proposed amendments. When we appeared before the Committee on Foreign Relations in the Senate, we pointed out that, in our judgment, the important matter in connection with these proposed amendments is to make certain that foreign influences brought to bear on our Government are clearly recognized as such. Public disclosure of the representation of foreign principals in such situations relieves public officials from the risk of being misled.

The Foreign Agents Registration Act as it was originally conceived was designed to bring into the open the activities of subversive political agents of belligerent alien powers. This purpose has been modified over the years and the emphasis today has apparently shifted to requiring disclosure of facts concerning agency relationships between agents and foreign principals when their activities are "political" in nature. The term "political" as used in the statute is subject to so many varied interpretations that it is itself one of the major difficulties that we find in both the present act and the proposed amendments.

The term is used in numerous places throughout the act and is defined in such broad and all-inclusive terms, far beyond the popular conception of the meaning of "political," that it has been interpreted by respectable authorities to encompass a great many activities which we believe cannot possibly be intended by the sponsors of the legislation.

The aim of the drafters of the legislation was undoubtedly to cast the statute in broad terms so as not to leave any loopholes for the truly "political" agent to use to avoid registration. In so doing, they have relied heavily upon moderate discretionary enforcement of the act by the Justice Department to effectuate its purpose. The Department has in general acted reasonably and moderately in enforcing the act.

However, leaving broad executive discretion in enforcement agencies is, in our opinion, not a satisfactory or reliable means of enforcement from either the legal or the policy standpoint. Such a procedure leaves all citizens in doubts as to how, within the broad bounds of discretion given to the Justice Department, the law will be enforced and what persons will be required to register. It is equally unfair to the officials of the Government charged with enforcement responsibilities, in that they must engage in second-guessing the congressional intent, which in many areas is itself conflicting. This method of enforcement is contrary to the Anglo-American system of law which historically has always protected the citizen from criminal laws which are not understandable in terms of ordinary language. It is equally alien to our legal system to justify hardship for many in hopes of catching the few at whom the act is specifically aimed.

In favoring executive discretion, it has been urged that in areas of ambiguity in the statute, the congressional intent, as expressed in reports, debate and committee hearings, will make clear the correct policy to be followed. A reading of the hearings in the Senate, in conjunction with the committee report and the act itself, indicate many differences of opinion as to the meaning of particular language used and the congressional intent.

In many areas the language of the bill on its face appears clear until read in conjunction with the Senate committee report. The report in some places might be interpreted to contradict the plain language of the statute. In case of judicial interpretation, the court may enforce the broad language of the act on the basis that it is clear upon its face; thereby covering many persons needlessly; or the court may look into the legislative history of the act and find ambiguity between the language of the act and expressions of congressional intent and enforce the statute according to the plain meaning of the language rather than according to the special meanings indicated by the legislative history.

Two additional matters which should be kept in mind in considering the proposed legislation are the length of the formal requirements of registration and the stigma attaching to persons registered under the act.

On page 14 of his statement given to this subcommittee, John Sonnett, testifying for the U.S. Chamber of Commerce, gave a sample of the specific information requested under the reporting requirements of the act. If the subcommittee has had occasion to look at the Justice Department forms it will realize that the burden of registration is real, expensive, and time consuming; and is actually harassing if no useful purpose is served by registration.

Senator Fulbright indicated that he felt that no stigma attaches to an individual registering under the act. The opinion of many practicing lawyers is to the contrary and many firms feel that registration would have a clearly adverse effect upon their practice. This is particularly true because of the original history of the act and the normal connotation given to the term "foreign agent." An example of the apparently popular conception of the meaning of registration is illustrated by the comments of the chairman of the Senate Judiciary Committee, when he appeared to use the term "foreign agent" synonymously with the term "Communist sympathizer" to describe an individual in Senate debate (Congressional Record, Mar. 18, 1965, p. 5292).

While the difficulties of defining in advance all of the ingenious and subtle forms of activity employed by foreign "political agents" is apparent, we believe that the language of both the existing law and the proposed bill can be greatly clarified without weakening its enforcement.

Because necessarily a great part of representation of foreign principals in normal proceedings will fall to lawyers and because lawyers may in many instances feel compelled to register under the act rather than endure the publicity and risk of criminal conviction in contesting registration, we hope that your subcommittee will clarify the law so as to remove the burden of unnecessary registrations and leave no uncertainty in the law.

The remainder of my statement will discuss specific areas of the proposed legislation which we believe should be modified. In particular I will discuss the *Rabinowitz* case and the section 3(d) exemption, the terms "political activities" and "political consultant" and the section 3(g) exemption for attorneys added by the Senate.

THE RABINOWITZ CASE

The case of *Rabinowitz v. Kennedy*, 376 U.S. 605 (1964), was persuasive in bringing to the attention of many groups that the existing act was much broader than most realized. That case involved the scope of exemption from registration which exists under section 3(d) of the act as it applies to attorneys. The decision of the Supreme Court in that case placed a very limited interpretation on that exemption, stating in particular that a foreign government could never be considered to engage in only "private and nonpolitical" activities and therefore an attorney representing a foreign government, even in a formal lawsuit, must register under the act. The decision also suggests that any activity which is not strictly "financial or mercantile" will require registration.

One purpose of S. 693 is to clarify the problems which resulted from the *Rabinowitz* case. The legislation would delete the words "financial and mercantile" from section 3(d), thereby intending to give the exemption the meaning it was thought to have prior to *Rabinowitz*. We strongly approve of this change. The apparent effect is to exclude from registration anyone who is simply acting as a "private and nonpolitical" agent of a foreign principal.

While we find the change in section 3(d) helpful, we do not believe that it will accomplish the purpose of giving section 3(d) the meaning it was thought to have prior to *Rabinowitz* because of other related language changes in S. 693.

In applying the exemption under section 3(d) in S. 693 one of the critical words is "nonpolitical." If this word were to be read in its normally accepted fashion, we think the exemption would accomplish the purpose of exempting what we consider the normal practice of law. However, the term "nonpolitical" must now be read in conjunction with the new definitions of the terms "political activities" and "political consultant" contained in S. 693. The scope of the definitions of these terms is contrary to custom and is so broad as to leave the complementary term "nonpolitical" almost meaningless. Therefore, the salutary

effect of the deletion of the words "financial and mercantile" is far more than offset by the opposite broadening effect of the definitions of the terms "political activities" and "political consultant."

"POLITICAL ACTIVITIES" AND "POLITICAL CONSULTANT"

The definitions of "political activities" and "political consultant" in S. 693 could reasonably be interpreted to include the following situations, none of which, in our opinion, fall within the scope of the purpose of the act.

Negotiations between a lawyer representing a foreign supplier to the Defense Department and that Department overmodified certain contract provisions.

A lawyer advising a private foreign client of the U.S. laws and suggesting a course of action to be followed to comply with those laws.

A lawyer advising a foreign client in an inheritance case of his rights under U.S. law to remove the inheritance from this country.

A lawyer negotiating a commodity loan through the Agency for International Development for a foreign client.

A lawyer requesting or obtaining information for a foreign client from a U.S. executive agency.

A lawyer filing a registration statement with the Securities and Exchange Commission for a foreign client.

A lawyer who represents a foreign client before the Foreign Claims Commission.

These illustrations are simply examples of situations which could, in the opinion of respectable authority, be required to register under the present form of S. 693. Many more could certainly be cited. We believe that the language suggested by Arthur Dean, on pages 1 to 3 of the appendix attached to his statement given before this subcommittee, would greatly improve the definition of "political activities" and "political consultant" without weakening the enforcement possibilities of the act. Those amendments would also improve the exemption under section 3(d) for normal "nonpolitical" activities and we favor it over the present language of S. 693.

SECTION 3 (g)

Section 3(g) of S. 693 provides specific exemptions for attorneys in a limited number of circumstances. It is presently unclear whether the application of the section applies only to formal adversary proceedings with a written record as suggested by the language on page 13 of the Senate report or whether it applies to any open representation before administrative agencies or officials. If the latter is the intent of Congress, and we think it should be, then it could be clarified within the statute by adding the following clause after the term "administrative agency" in section 3(g): "or any official thereof".

We also believe that an additional clause should be added to section 3(g) to clarify the status of lawyers giving office advice and engaging in normal day-to-day legal services. We suggest that section 3(g) be further amended by removing the period at the end of the subsection; inserting a semicolon and adding the following language:

"* * * or any attorney whose activities are limited to the following: giving his client legal advice with reference to what the attorney believes the United States law to be; advising a client of what he believes to be the United States policy underlying or related to such law; advising a client whether a proposed course of conduct would comply with such laws and policy; and giving such other advice ancillary thereto as may be necessary and proper to give sound legal counsel to his client."

The language suggested by Arthur Dean on page 8 of the appendix of his statement which would replace section 3(g) of S. 693 has merit also and we believe that either approach is satisfactory. The language that I have suggested is somewhat more specific and possibly subject to less dispute over interpretation. On the other hand, Mr. Dean's language would solve the problem equally well in simple form, and we would be happy to support it. We merely suggest alternative language for the subcommittee's consideration.

OTHER PROVISIONS

We believe that additional changes and suggestions proposed by others merit some comment.

The provision for injunctive proceeding by the Attorney General is very helpful both to the Government and to possible registrants. It permits testing whether registration is in fact required without bringing into play the severe criminal penalties which can be imposed under the act. It is not a complete answer however in that an attorney facing the question of whether to register cannot be certain that if he decides wrongly, the Attorney General will proceed by injunction rather than by criminal prosecution.

The short form registration would also be helpful regardless of the other changes made in the bill. It would be interesting to know to what extent all of the information presently required is used by the various governmental bodies. It would seem that much of it is irrelevant and serves no useful purpose. In any event, there would be some cases in which registration might be required but in which detailed information would clearly not be required. We would favor writing such a provision in the law rather than leaving it to departmental regulation.

The suggestion of Arthur Dean to provide for a good faith filing for exemption would also be helpful, particularly in cases where serious question exists as to whether a person is required to register. This would remove the peril of criminal prosecution while allowing for a full and open determination of whether or not registration is required. We would support the inclusion of such a provision in the law.

In closing, I want to repeat our concern, not with the intent of Congress, but with the specific language used in S. 693. We hope that the subcommittee will amend the bill to clarify those areas of confusion and doubt which have been outlined during these hearings. We are not irrevocably committed to any particular language but hope that the subcommittee will devise some language which will clarify the ambiguities which are now present in the bill. We will be glad to render any assistance we can in aiding your subcommittee.

Thank you for this opportunity to present our views.

MR. TENZER. Mr. Chairman, do we of the committee now have the corrected statement?

MR. DECHERT. No, sir; but the few corrections do not change the meaning of the statement at all. The corrections are in punctuation and things of that kind. I didn't want to have the permanent record incorrect.

I was one of those witnesses who testified in the same capacity before the Senate committee. One witness who testified there was Mr. Arthur Dean, who made a cogent and powerful statement, as he always does, but that statement did not include all the material to which reference has been made in the preceding testimony or in Mr. Dean's own testimony Wednesday, which I have read, though I wasn't able to be here because the hearing was moved from Thursday to Wednesday.

In addition, there was a gentleman from the professional engineering world representing two of the great groups. He spoke along the lines which have just been discussed in the previous colloquy, pointing out that they were greatly interested in this matter. Of course, those of us who were speaking of other interests understood that not only businessmen and lawyers, but also members of other professions and other individuals were greatly interested.

I was the third witness and the final witness was Walter Yeagley, who I believe is going to testify following me today.

I may say I have had experience on the other side of the desk. I was General Counsel to the Department of Defense under three of the Secretaries of Defense: Mr. Wilson, Mr. McElroy, and Mr. Gates. I was also in 1948 Assistant Counsel of what is now AID, but was then at the start the Economic Cooperation Administration.

Mr. WILLIS. Where is Tom Gates now?

Mr. DECHERT. Tom Gates is in New York. He is president of the Morgan Guaranty Co. He went there understanding he was going to have a relatively limited scope as vice chairman of the board, but unfortunately the two senior officers both became ill and he is now carrying much of the load of all three senior officers at once.

I don't want to duplicate what has been said before and, as I said, I shall not read this multigraphed statement of mine which you gentlemen will have.

Mr. WILLIS. You are in general agreement with what the preceding witness has said?

Mr. DECHERT. Yes.

I want to point out, as I am sure you realize, that Mr. Dean made two different proposals, and as between which I think that there has been some confusion.

He made one proposal for a short form of registration, with which I am wholly in accord, of course. I testified before and I now testify again that this is highly desirable. I want to emphasize, the extraordinary difficulty that we lawyers, whether from Washington and New York or from other parts of the country with fewer contacts with such matters, will face in trying to fill out one of these long forms. I brought one along with me. This file which I hold up was my material in connection with the Senate hearing. You gentlemen can see the extraordinary length of the form. Particularly if you have a law firm with 20 or 30 partners and a number of employees, it is almost a life's work to prepare the form.

I am not joking. It would take many, many hours of time to complete the extraordinary amount of detail—all the speeches my partners have made in the last period of several years; any articles they have written. I suppose that includes any briefs they have signed. These makers of paper will fill up the Pentagon, or in this case the Department of Justice Building, largely to no purpose, it seems to me.

It has been pointed out, of course, that the Department of Justice has the authority to make regulations and it was suggested that these regulations will relieve the extraordinary pressures on people who have to register. Having been, as I say, on the side of Government regulation, I know the time involved, the difficulties of paying attention to things quickly. There is going to be a delay before regulations come out. When the matter comes before the court for question as to whether a man goes to jail as a criminal, there will be difficulties, as there now are difficulties, in judging between the exact language of the statute and the discussions in the Congress and the reports of committees as to intentions.

This creates a very difficult problem for one faced with the question of whether or not to register.

I have a reference in my statement to one point where the language in the Senate bill seems perfectly clear, but the language at page 10 of the Senate report, I think it is, produces great unclarity.

Now, if this difference comes before a court, what will it do about the matter of interpretation? Do I, in advance, have to guess as to interpretation of a criminal statute?

We lawyers are going to have to face the issue as to whether we are going to have ourselves marked as a "foreign agent" by registering or are going to run the risk of being prosecuted criminally. We don't want—and, I am sure you gentlemen least of all want—any uncertainty to exist.

The fact, of course, is made more difficult by this having been originally a bill which was designed to catch foreign agents in the James Bond sense. This was a bill with the highly desirable purpose of seeking to pinpoint them.

Now the emphasis of the proposed bill with its amendments has been shifted. We do not object to the shift. The American Bar Association is wholly in accord with the original bill and likewise with the purposes of these amendments, but we must remember that when we adopt this bill as a vehicle for carrying forward these purposes, the matter has a background of whether any one of us would like to register under a bill relating to "foreign agents," lumping as one subject matter the James Bond type and the foreign businessman or his lawyer who might have appeared before me as General Counsel of the Department of Defense to ask whether it really is Government policy to do thus and so, and whether something ought to be done to simplify procedures under that policy.

You will remember that the Supreme Court of the United States, in a decision dealing with minimum wage laws, held in a case dealing with construction of an airfield in Bermuda that our U.S. minimum wage law was effective at all our oversea bases. At that time Morocco had a minimum wage of about 10 cents an hour as compared to our standard of 10 times that amount. If we had to pay \$1 an hour in Morocco, we would have wrecked the economy of Morocco. This was something we had to deal with.

I, myself, helped in dealing with that matter before the Congress, through a subcommittee of which the late President Kennedy was then chairman. This was a matter of grave importance. Where I had help from representatives of oversea business, such representatives shouldn't have been treated as foreign agents in the sense with which we are here dealing. Perhaps the particular defect to which I here refer could be remedied by changing the word of the statute so it would no longer be called the "Foreign Agents Registration Act."

We of the American Bar Association, remembering that we are dealing not only with New York and Washington lawyers who have to do with this subject more frequently, but with lawyers from all parts of the country, are extremely anxious that there should not be left any areas of grave uncertainty, throwing it up to the individual, whether he be an engineer, lawyer, or whatever else, the need of sitting in his own office and deciding, "Shall I register under this act as a 'foreign agent,' or shall I risk not registering?"

The risk of his not registering is that he may be prosecuted criminally. The addition of the injunctive proceedings is very helpful, but he doesn't have any means of knowing what the Department of Justice will determine on that alternative.

Senator Hickenlooper at the Senate hearing asked me whether, if we as lawyers were dealing with the question of whether money from a probate court should be transmitted to the person in Poland for whom it was intended, we weren't getting into an area that might cause us to register. I said that I believed it would.

That concerned a matter of foreign policy of the United States. We were advising people as to such policy. Remember, the original language and to some extent the present language has to do with advising people as to the policy of the United States in foreign matters. This is called a political activity. Therefore when we deal with giving advice on such a subject, we run the risk of being subject to this act.

We thoroughly support the proposition that unnecessary filings should be eliminated, in addition to the fact that it should be made entirely clear—as clear as one can make it—whether there should be filings or not.

Coming back to Mr. Dean's proposals, he has two proposals which in our judgment are well worth while. One of them is the short form proposal to which I have referred. I think that it is far better to provide for that in the statute, perhaps leaving the details to the Attorney General to spell out, but providing for a short form, and giving the Attorney General the right to require a full form if necessary.

This is something at this point that Arthur Dean raised in his appendix.

Mr. WILLIS. We remember that.

Mr. DECHERT. His second proposal was the one on which there was some question when my friend, Carlyle Maw, was speaking. This deals with good faith and appears on page 6 of his appendix.

He says where a person believes in good faith that he honestly isn't under the terms of this act, or having once been under it, is now out of it and is therefore exempt from it, he may file an application for determination by the Attorney General. Within a reasonable time after the receipt of that application, the Attorney General passes on the merits of the exemption application and enters an order granting or denying it. A person shall always be liable to prosecution for a willful false statement of a material fact in any such application.

This perhaps answers somewhat Mr. Tenzer's question, it seems to me. The applicant is liable then and there if he makes a false statement in his application.

That there has been a period when the applicant didn't register with all the language that is called for in this fearsome document that I present seems to me a material risk to the national interest, because there has been at all times a document on file, his good faith exemption application. Mr. Dean, as you will remember, drew this procedure from the Public Utility Holding Act.

Mr. POFF. Mr. Chairman, do you mind if I interrupt?

Will the witness allow me to ask some questions on this final point?

Mr. DECHERT. I hope I can answer them, sir.

Mr. POFF. So we won't have any confusion of thinking, let's see if we can get the chronology in Mr. Dean's fourth amendment.

In order that the record may be clear on that point, it provides that a person who believes in good faith that he is not subject to the act or, having been subject, is no longer subject to the act, may make an application for a waiver.

Now, I quote:

The filing of an application in good faith shall exempt the applicant from the provisions of this subchapter until the Attorney General has acted on such application. Within a reasonable time after the receipt of such an application, the Attorney General shall pass upon the merits of such application and enter an order granting, or after notice and opportunity for hearing denying or otherwise disposing of such application.

Now, based on that, let's get the chronology of events in our mind. Would you care to state them: A, B, C?

Mr. DECHERT. Yes, sir.

The lawyer, or whoever he is, is sitting in his office. He honestly believes that the subject matters about to be dealt with do not make him subject to registration requirements, but the question isn't very clear. He is not from a great commercial center and hasn't been used to it.

He decides that his belief that he isn't subject is of sufficient strength so that he ought not register, but he doesn't want to run the chance of being held wrong, for reasons that I hope I have made clear.

He therefore fills out this material which is called for in section G, on page 6 of Mr. Dean's appendix.

Mr. POFF. That is an application for exemption.

Mr. DECHERT. Yes, sir. He does this to seek a confirmation of his belief that he is exempt. This is referred to beginning on page 20 of Mr. Dean's statement, and he says on page 21:

A good solution, it seems to me, would be to adopt a procedure similar to that provided by section 3(c) of the Public Utility Holding Company Act of 1935. That section provides that the filing by certain persons in good faith of an application for exemption shall exempt such persons from any further obligation or duty under that act until the Securities and Exchange Commission acts upon such application.

Under such procedure a document would have been filed, only, instead of being a filing which says "I am under your act," it is a filing saying, "I am going to do thus and so, but I honestly believe that for the reasons I here state I am not under the act."

This application under the proposal is to be answered promptly by the Attorney General.

Mr. POFF. "Promptly." Now wait just a minute. Where do you find that in this language?

Mr. DECHERT. "Within a reasonable time after the receipt of such an application, the Attorney General shall pass upon the merits."

Mr. POFF. Pass upon the merits of the application or the question of good faith?

Mr. DECHERT. Upon the merits of the application, I believe.

Mr. POFF. That is exactly right.

Now, at what point does the Attorney General pass upon the question of good faith? It seems to me that that is a preliminary, an ab-

solute essential, before he can enjoy his waiver and, as I have understood Mr. Dean's testimony and the testimony of Mr. Maw, during the period following the filing of the application and prior to the time the Attorney General has acted, the applicant enjoys the exemption. Is that your understanding?

Mr. DECHERT. In words, yes; but not in meaning. When you say he enjoys the exemption, this means that the paper he has filed calling attention to his situation is for the time being a substitute for the lengthy document under which he would register.

It seems to me that when the Attorney General passes upon the merits of that application the "merits" must include the good faith as well as the other points involved in the application.

Mr. POFF. But this may be 90 days later.

Mr. DECHERT. But in the meantime what has happened? This agent has proceeded to act—

Mr. POFF. For his foreign principal.

Mr. DECHERT. But on record in the Attorney General's office are the full facts of the case.

Mr. POFF. I understand that, but I also understand that it is sometimes difficult, as an administrative matter, to pursue these things promptly and that during the time he is enjoying the exemption, he has a golden opportunity for mischief, if that is his purpose.

I think we must recognize that everybody who would take advantage of the exemption, were it in the law, would not necessarily be acting in good faith. Indeed, he might be acting in bad faith and availing himself of this temporary period to do the mischief which was his original purpose.

Mr. TENZER. Will the gentleman from Virginia yield?

Mr. POFF. Yes, sir.

Mr. TENZER. If he in fact fails to disclose the true purpose of his assignment, the nature of his engagement and, not being in good faith and in fact was acting in bad faith, wouldn't that attorney be subject to disbarment and would there not be that kind of an effort made?

Mr. POFF. We are not talking about that. We are talking about foreign agents, and that might include a great number of people.

Mr. TENZER. Did we not include them all under that term "foreign agents"?

Mr. POFF. Exactly.

Mr. TENZER. Then let us separate the attorneys first and then we will go to the other group. Certainly an attorney would have a very severe penalty if he failed to disclose the true purpose of his retainer or engagement?

Mr. POFF. I quite agree. I quite agree.

Now, what about the person who is not an attorney and whose sole purpose is to do dirty work in this country?

Mr. TENZER. If the gentleman from Virginia will yield further I would point out that we are dealing with an American citizen who, as you suggest, fails to disclose the true purpose of his mission. Not only in Washington and not only in New York or Philadelphia, but in every State of the Union there are attorneys and companies in every one of the 50 States today engaging in the import-export busi-

ness. Many of them would be subject to criminal prosecution if they failed to register as foreign agents.

Mr. POFF. Yes, I understand, but he would be subject to criminal prosecution only after the fact, after the commission of the act. And it is my understanding that the purpose of the Foreign Agents Registration Act is to minimize as much as possible the likelihood that he will commit the act in the first place.

Mr. TENZER. Of course, I know there are possibilities but I don't see the extreme possibilities that you talk about. Do we really require a law which provides that everyone who represents a foreign principal must register in the full form as a foreign agent even though the agent is only going to the Food and Drug Administration, or to the Customs Bureau, or to the Treasury Department? I believe it would be sufficient to require a filing.

I don't see the great danger.

Mr. POFF. I don't see the danger as long as the man is ultimately proven to have been acting from the outset in complete good faith.

Mr. DECHERT. May I make a suggestion here? There is the risk that you have pointed out, sir. However, I want to balance that against something else. The risk is one of two kinds. The risk may simply be that a man who is advancing a commercial cause, which should require registration, mistakes the meaning of the act and wants to avoid going through the registration if it isn't necessary.

The chances of his doing any serious harm in this interval, while the Attorney General is passing on the document, seem to me relatively slight, but still present, that is true.

On the other side of the coin we have to remember, it seems to me, the hundreds of thousands of lawyers, engineers, accountants, businessmen of all kinds, through the country who are not sophisticated in this subject and who won't have an opportunity to read the Senate reports or the congressional debates or anything else. They just look at the statute and are puzzled as to whether they are going to have to go through with either this tremendously lengthy full form or even the short form. Either one designates them as a "foreign agent."

For these reasons I think well of Mr. Dean's proposals—and I think I said these proposals of his were not presented to the Senate in exactly this language. These proposals which come from him, and also in somewhat different form from the Chamber of Commerce and from us in my statement, are here for the first time. They will clarify the situations we fear.

Mr. WILLIS. Will you yield?

Mr. POFF. Yes, sir.

Mr. WILLIS. I think Mr. Dean pointed out that he was patterning his proposal along the lines of the Security and Exchange Act procedure.

Mr. DECHERT. That is right. Under the Public Utility Holding Act.

Mr. WILLIS. A partial answer that might satisfy both of you, what has been the experience under that statute? Has any great harm come about, do you know?

Mr. DECHERT. I believe no harm at all has come about because of this period of delay. I am not myself a regular practitioner in that field. Perhaps the preceding witness, Mr. Maw, can answer more authoritatively than I can.

Mr. WILLIS. I suppose that the agency administering that statute has a background of experience on how it has worked and has been able to evaluate the possible damage as opposed to the convenience of honest people and it might be well for us to get a statement of experience on that, if that is the basis for this language. I think we ought to know what has been the experience.

Mr. POFF. I think the chairman is exactly right, but I would also like to comment that you must evaluate not only the quantity of harm that might be, but the quality of the harm that might be done. I am not sure that this is an exact parallel or an altogether appropriate precedent for the approach in this act.

Mr. DECHERT. I think it is not a parallel completely, of course, because in this act we are dealing with the national interests in two different aspects, whereas in that act it is much more a regulatory matter. On the other hand, as I have said, this is going to affect the question in the minds of hundreds of thousands of people, "Do I or don't I file this registration?" I hate to think of the piles of paper that will grow up if people, to protect themselves against the risks that they may be prosecuted criminally—a risk that would be very severe to a lawyer—decide, "We have to go through this rigamarole." It is very severe.

Mr. WILLIS. I would be interested in finding out from the Department of Justice whether they could administer this provision in this act, because it would throw a lot of burden on them.

Mr. TENZER. I assume, Mr. Chairman, that the next witness, Mr. Yeagley, might be able to throw some light on that question.

Mr. DECHERT. I am sure he will.

Mr. YEAGLEY. We have been doing this as a matter of practice since the act was in effect. Our rules provide for it.

Mr. WILLIS. The fog will clear a little when we hear from them.

Mr. DECHERT. Informally the Department has been granting exemptions on applications, or at least granting relief on the full form filings. Our position is that it is not much help, if it is subject to a possible change with a change of administration or personnel.

Mr. TENZER. Mr. Chairman, I was just going to add that in order to fully appreciate the thrust of this witness' testimony, I wonder if you would direct counsel to the committee to make available to each member of the subcommittee a copy of the full form required to be filed by the registration?

Mr. WILLIS. Very well. Counsel says that the form is available.

Mr. DECHERT. There are two forms. One is for an individual and the other is for a partnership or corporation. The burden becomes very severe in a partnership or corporation with a number of persons. As I say, I am almost finished. I am relying upon my written statement to supplement what I have to say. Of course, I am supporting fully the several proposals presented by the Chamber of Commerce and by the Association of the Bar of the City of New York. At the hear-

ing before the Senate I asked that there be included in the record a report made by the New York State Bar Association on December 31, 1964, which was on the original form of the Senate bill. It was a committee headed by John R. Stevenson, who is a partner of Mr. Dean. This has been in a sense superseded by the report of the committee headed by Mr. Maw of the Association of the Bar of the City of New York.

The word "political" is the word which causes the most grave difficulty, particularly for us lawyers who are not in the heat of this activity all the time, and who have to resolve the questions in our own office. There is an example in my statement of a situation where the act as passed by the Senate seems relatively clear, but language in the Senate report produces lack of clarity. It has been suggested that this can be dealt with in two ways: By increasing the number of specific exemptions or by attempting to clarify the original language.

The attempt to clarify the original language to define all the possible things political may mean in the sense that this bill wants it to mean is very difficult. We therefore support the proposal that 3(d) be added in order to prevent bringing into the registration process an unnecessarily large number of people. Page 10 of my statement suggests the language which would relate particularly to lawyers. I am testifying, of course, on behalf of the American Bar Association. The proposed language is at the bottom of 10 and 11 of my prepared statement. I follow this by a statement that Mr. Dean's proposals would accomplish substantially the same results. I am particularly interested here in seeing to it that we lawyers will find clear language stating that we are not under the act if it was not intended that we should be.

I want to thank the committee for hearing me and I shall be glad to answer, here or later, any questions that may arise.

Mr. WILLIS. Thank you very much.

Mr. Yeagley, will you come forward, please?

I see from your statement that you propose to give us rather brief testimony.

Mr. YEAGLEY. It depends on the questioning.

Mr. WILLIS. Thank you. We are glad to have you.

**STATEMENT OF J. W. YEAGLEY, ASSISTANT ATTORNEY GENERAL,
INTERNAL SECURITY DIVISION, DEPARTMENT OF JUSTICE; AC-
COMPANIED BY NATHAN B. LENVIN, CHIEF, REGISTRATION
SECTION**

Mr. YEAGLEY. Mr. Chairman, members of the committee, my name is J. Walter Yeagley, and I am in charge of the Internal Security Division of the Department of Justice.

First of all, I would like to thank the committee for this opportunity to express the views of the Department of Justice on S. 693 and H.R. 290, which would amend the Foreign Agents Registration Act. H.R. 290 is the same as S. 2136 as passed by the Senate last year. Certain additions and deletions were made by the Senate this year before passing S. 693.

In testimony before the Senate Foreign Relations Committee, the Attorney General and I each said that the Department of Justice favored the enactment of this legislation. Although we indicated some reservations with certain provisions, the Department endorsed the objectives sought to be accomplished. Thereafter, the bill passed the Senate as revised. We believe the changes made by the Senate in S. 693 are worthwhile. They represent a useful improvement in this legislation and satisfactorily dispose of the reservations we had raised with the Senate Foreign Relations Committee. My comments, therefore, will relate principally to S. 693.

Those sections which provide alternative methods of enforcement are of particular importance to us and should be most beneficial. At the present time, in seeking to compel an unwilling agent to register, or in seeking to obtain greater specificity in the registration statement of a registrant, we can only resort to a threat of criminal prosecution involving a felony.

Your present bill not only provides a reduced penalty for certain lesser violations of 6 months' imprisonment or \$5,000 or both, but also authorizes us under certain circumstances to seek an injunction against the offender, or in the case of a registered agent who is in default, to suspend his activities as an agent until he complies fully with the disclosure provisions of the act. These added means of enforcement are necessary if we are to get the kind of compliance with this law that I believe the Congress wants.

The provisions of the bill aimed at securing greater detail and increased disclosure of political activity on the part of registrants should go far in correcting some of the shortcomings of the past.

On the other hand, in reference to some of the objections that have been made both to the present law and to this legislation, I think it would be worthwhile to observe that considerable flexibility is provided for in section 2(f) of S. 693 at page 7. That paragraph would grant to the Attorney General authority to provide for the exemption from registration of any person who is a partner, officer, director, or employee of the registrant. It also gives the Attorney General authority to provide for the exemption of any such partner, officer, director, or employee, or of the registered agent himself, from the requirement of furnishing any of the information required by section 2.

I do not want to urge upon your committee any further changes in this bill. We are most desirous of definitive action on S. 693 this year.

Improvements can be made in our registration forms and the regulations promulgated under the act, but we have been holding in abeyance decisions on these matters pending congressional action. The promulgation of new regulations should not be delayed beyond this year, and it would be most useful if it could be done in the context of new legislation.

In conclusion, I would like to reiterate our support of S. 693.

I should also, Mr. Chairman, like to add that I recall that at the conclusion of the hearings last Wednesday, I believe, you suggested that I be prepared to answer such questions as might be raised by the previous witnesses. Of course, I will be happy to do my best to state

our position and try to clarify the points raised. However, as further background to such questioning, it might be useful if I were to make some general observations in this regard. I do not believe that any new problems have been raised. Although I can readily appreciate the reasons underlying the objections, I do not see that they will pose any serious problem to a fair and reasonable administration of the act. The definition of political activities was not intended to and does not encompass appearances by lawyers or company officials in behalf of foreign principals before Government departments generally, or for rulings or decisions in individual cases. The definition first of all requires an intent to influence with reference to changing U.S. policies. The Senate committee report stated at the top of page 9:

Measures of this nature all require decisionmaking at a level of Government above those levels charged with the day-to-day administration of existing policies. Consequently, the use of the word "policies" would not include routine contacts by an agent of a foreign principal with a Government employee or official for the purpose of inquiring about current policies or to seek administrative action on a matter where the basic policy is not in question.

We would agree definitely with that statement in the Senate committee report.

Furthermore, I do not see that the use of the words "domestic policies" in the definition adds any new problems not already present under the present definition of political activities. First of all, I believe most lawyers would agree that advocating the cause of a client before an executive department in an effort to obtain a change in Government policy involves of necessity political considerations. You will note that the definition of the term "political activity" in the present rules is not all inclusive. Rule 100(a)(11) states at the outset the term "political activity" includes "but shall not be limited to any of the following," then setting forth, I think, three other paragraphs. Second, omitting certain words from a part of the second paragraph of that definition, that definition or that part would then read: "In any way representing a foreign principal with respect to the political interests of such foreign principal."

It has been my opinion under this definition that an attempt by a foreign principal through an agent in the United States to seek a change in U.S. domestic policies today would constitute political activity under the present law.

The Department would, of course, also promulgate regulations under the section 2(f) providing for short forms so that more widespread use could be made of the short form statements.

In conclusion, I might state that it appears to us that the problems we are currently facing today in the administration of the act, particularly under the present 3(d), in view of the Rabinowitz decision, are much more difficult of resolution than any we foresee under S. 693.

Mr. WILLIS. The gentleman representing or speaking for the Chamber of Commerce of the United States said at page 8 of his statement:

Senator Fulbright is sponsor and chief proponent of the bill in the Senate and has stated that the business community has little to fear from these sweeping and unrealistic definitions because the act also contains the so-called commercial exemption, and this exemption has been somewhat broadened in a pending bill.

Accordingly, the Senator has claimed on numerous occasions that companies which have not been required to register in the past would have nothing to worry about in the future.

The gentleman disagreed with that claim. How do you interpret the present law, as compared to the Senate bill, with respect to the fears expressed that, under the Senate bill we are now considering, there will be thousands and thousands of lawyers, business people, business agents, who would have to register or might have to register, and so on?

Mr. YEAGLEY. I must reiterate that we do not agree with the views of the preceding witnesses in large part and this is a major part of the difference. Even though the relationship of agency and principal may exist, whether it is the parent of a foreign business, or a lawyer, the big part is the exemption in 693. If a person is engaged in private and nonpolitical activities, he is exempt. We would not think of asking him to register. We would not be entitled to. That is my point exactly. The question you raise goes directly to the point I was making in the latter part of my testimony that we believe under the definition of political activities today that influencing or attempting to influence a change in U.S. domestic policies is political activity under the present act as defined in the rules. We believe it is political activity under any definition. So that the specific insertion in the law of these words "domestic policies" as we interpret the bill and the law makes no difference in practical application.

Mr. WILLIS. Let us talk about the proposals made with this background in mind. You heard my questions directed to the last witness, as to whether in drafting the proposed amendments the language employed would do only what they say would be done, which you say is no more than the law as it exists today, whether the employment of that language and inclusion of these amendments might do damage to the act with reference to people that ought to register. That is what concerns me. In other words, apparently you agree that lawyers, as we know them, business people as we know their transactions, need not fear. Would these amendments do damage to the bill, or would you say they would be inappropriate?

Mr. YEAGLEY. The amendments as presently incorporated in S. 693?

Mr. WILLIS. Yes.

Mr. YEAGLEY. No, sir. I can think of no area in which I would say the amendments do damage to the bill.

Mr. WILLIS. Now let us turn to the proposed amendments advocated by the preceding witnesses. Let us take them one at a time. What about the short form proposal?

Mr. YEAGLEY. The short form proposal is exactly—maybe not exact verbiage—what I have indicated in our testimony we propose to utilize. We expect to implement section 2(f) which authorizes the Attorney General not only to promulgate a short form but perhaps several since it is not limited. We can promulgate several short forms in different areas if we conclude it should be used in several areas. We are certainly going to promulgate some short forms. I am not prepared to indicate definitely in what areas right now. It would serve the same purpose and same function as what he is proposing to put in the bill.

I think this is a subject of regulation.

Mr. WILLIS. You would prefer to have the authority, as you construe the law today with the Senate amendment, to promulgate short forms in appropriate cases without language in the bill saying that you will have that authority; is that your position?

Mr. YEAGLEY. Except for this: I don't believe the authority is for individual cases. I think probably the short form would be for areas or for groups or types, if you get the distinction I am trying to make. I do not think we could single out a certain registrant and say you are special, you can use a short form. But we can promulgate certain rules if they meet certain qualifications, or if certain facts are true, the short form would be applicable. We would like to use this. This is beneficial to us.

Mr. WILLIS. You would not favor putting into the Senate bill this particular amendment about the short form?

Mr. YEAGLEY. No; we would not favor that for two reasons I can think of.

Mr. WILLIS. Would you oppose it?

Mr. YEAGLEY. I would oppose it for the reason that I—

Mr. WILLIS. Let me say this first. Considering the problem of the right to file a short form, plus the exemption flowing from the filing, until you have a chance to pass on the merits of the application within a reasonable time—with those two elements before you—what would be your position? Would it be neutrality, in favor of it or opposing?

Mr. YEAGLEY. I misconstrued your question in using the term "short form." I thought by "short form" you meant an abbreviated form to be used by a person who is going to register. I believe now you are referring to the preliminary application of form to be filed by a person who does not want to register; is that right?

Mr. WILLIS. That is right.

Mr. YEAGLEY. I am opposed to that.

Mr. WILLIS. Why?

Mr. YEAGLEY. Because we have been doing that for years long before I came to the Department and as Mr. Lenvin has indicated by rule or regulation. We are required to give an opinion to anyone seeking to determine in advance or at any time whether he has an obligation to register.

Mr. POFF. Within what period of time?

Mr. YEAGLEY. Anytime they want to write us a letter and set out the facts of their relationship with a foreign principal and end up with a question, "Do I have to register?" Obviously we could not get anywhere in a prosecution with that letter in the records. There is no time limit necessarily, but we could not prosecute a person who has come in and asked the Government for a legal opinion. We would not have a chance. We would not only not think of it, but if someone would try it they would not get anywhere with it. The mechanics are that we often go back at them for further details. Then after we write them and give our opinion if we say they should register and if they are not satisfied they often ask for a meeting. Unfortunately, we sometimes have many meetings with prospective registrants to resolve the question whether or not they should. This opera-

tion is largely, I don't know what percentage, 98 or 90-some percent an administrative job handling the Foreign Agents Registration Act. Very little prosecution, very little work in court. They get a letter back from us saying they do not have to register. That is as binding as anything can be on us.

Mr. WILLIS. You mean in that percent of the cases your reply is "You don't have to register."

Mr. YEAGLEY. No; I just say this type of work forms most of our work. This is an administrative law, a disclosure act that requires administration. We do not get into court very often. This is not a matter of prosecution except in a few cases. The types of cases we prosecute are the factual situations which indicate that the national security or at least the general national interests are paramount. There has never been a prosecution to my knowledge in any of these so-called semicommercial affairs.

Mr. WILLIS. So you take the position—

Mr. YEAGLEY. This adds nothing as far as we are concerned.

Mr. WILLIS (continuing). That this is unnecessary or is even undesirable.

Mr. YEAGLEY. It adds nothing that I can see. It adds nothing to the protection of the businessman or the lawyer that he does not already have. There is an existing mechanism already in effect whereby we are available to talk to them, write to them. The only objection I have is that this is probably one of many suggestions that I think would end up in defeating the bill. We feel that operationally we are in somewhat of a mess and we would like to have the legislation clarified. We would like to have it passed this year and be able to issue new forms and regulations and get this program straightened out the way we think the Congress would want it and the way we want it. If the proposal adds nothing or little, we would oppose it because of that. We do not oppose the thought behind it. We do not oppose the objective. We agree with it.

Mr. WILLIS. Do you want to ask a question on that point?

Mr. POFF. Yes; I would, Mr. Chairman. What you are doing now is workable. It is working, it is available. It seems to me that in viewing the essential difference, the present situation is to be favored, for while you are writing back and forth to this person who has inquired about his status, he is not exempt from the obligation to register, whereas if the amendment proposed were added to the law, as soon as he filed the application for an exemption he would be exempt until you people decided whether he was acting in good faith or not.

Mr. YEAGLEY. I believe technically that is right. He would not be exempt. Yet on the other hand, we would be in a position where we could not take any legal action as long as the matter was pending our determination. It would be only after we concluded that he should register that we could take any action, and advised him of it.

Mr. POFF. And this would be within a reasonable time which maybe how many days?

Mr. YEAGLEY. It depends on two factors. I will try to answer specifically. It depends on the current workload and it depends on the nature and complexity of his operation. If it is a clear-cut case, it will be a prompt answer, if it is a borderline case, we would want

some meetings ourselves. We would want to answer within 2 or 3 weeks.

Mr. LENVIN. Usually we answer within 10 days.

Mr. POFF. If this procedure is written into the law, isn't this likely to prompt people, who otherwise would not avail themselves of this opportunity, to make an application for exemption even when they thought they might be rejected?

Mr. YEAGLEY. I do not know. It might be for the man who will be a one-shot agent and perform one function one time. I do not know. That is just speculation.

Mr. POFF. That is all, Mr. Chairman.

Mr. WILLIS. What about the proposal just made redefining, or rather modifying, the present definition of political activities. Did you get a chance to take a look at that?

Mr. YEAGLEY. Which one do you refer to? That is in which statement?

Mr. TENZER. Mr. Chairman, are we going to continue until there is a quorum call?

Mr. WILLIS. The committee will stand in recess until 2 o'clock.

(Whereupon, at 12:02 p.m., the committee was recessed to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

Mr. ST. ONGE. Subcommittee No. 3 will resume its hearings on S. 693 and H.R. 290.

Unfortunately, the chairman of the subcommittee, Mr. Willis, and Mr. Poff, the ranking Republican member, have to remain on the floor because the House will take up this afternoon two bills which originated in the subcommittee, and they are to manage the bills on the floor. So, the subcommittee will limp along as best it may.

Mr. Yeagley, Mr. Poff has asked you two questions, and he said that would complete his questions.

The first was: Should the lawyers' exemption be limited to lawyers, or should it be extended?

Mr. YEAGLEY. I am not sure I understand in what manner he has in mind extending the exemption. I would hesitate to be too quick to give him a negative answer without fully understanding how it would apply.

Mr. ST. ONGE. Could we reserve that and either he will write you or you could write him, because I would hesitate to interpret it.

Mr. YEAGLEY. All I could say now is what is in my mind today, that I do not see it would serve a useful purpose.

Mr. ST. ONGE. The second question was: Should the distinction between formal proceedings and informal proceedings be maintained?

Mr. YEAGLEY. As I recall, that is not in the language of the law. That is in the Senate report. I think that is there to stay. I do not believe the language is in the bill. I am quite sure it is not.

This language "formal" is not in either this bill or in the law. It is in the Senate report. Therefore, for whatever use it may be, it is in that part of the record to stay. It is on page 12 of the Senate report, at the bottom. I think it appears again in the next paragraph.

I would like to call attention in this context, to the paragraph on page 13 after using that language there is an "or" and it reads:

or where disclosure is required as a matter of course in the representation such as the processing of a registration statement with the Securities and Exchange Commission.

It is our thought that a man is "attorney of record" not only in a judicial proceeding in court or in a proceeding before a regulatory agency, but in any matter pending in the Department of Agriculture, for example, where he may have written saying, "I am the attorney for such-and-such an individual or corporation which has a matter pending there." For our purposes, this lawyer is the attorney on the records of that agency.

Mr. ST. ONGE. Thank you, sir.

As I recall your testimony before the luncheon recess, your answer to Mr. Dean's proposal on the short form registration was as a matter of practice you were doing that already, and this was not necessary because it is possible for an applicant to write to you a letter stating the facts and asking whether he should be required to register or not.

Mr. YEAGLEY. This is the proposal, as I understand it, that would formalize the procedure for a person to formally apply to us for a ruling as to whether or not he has an obligation to register. Pending the consideration of this matter, he could maintain the status quo and continue to act until he heard from us. Is this the proposal?

Mr. ST. ONGE. Yes.

Mr. YEAGLEY. From our standpoint and I think from the standpoint of the public, this serves no useful purpose. We have constantly inquiries of this nature—telephonic, in person, by mail. I said this morning we may get the answers out in 2 or 3 weeks. I was reminded at lunch that we often do it the same day when there is a phone call saying, "We would like to hear back before the day is over." If it is a matter that can be resolved, we try to comply.

It so happens I have here copies of some letters we have written. I did not bring them for that purpose, although they suit that purpose. They are in response to inquiries as to whether they should register. I brought them because they show the difficulties under which we are operating today with the confused state of section 3(d) wherein we have to assume the responsibility of not requesting registration when we have no authority to grant an exemption. We have decided we are not going to grant the exemption improperly. We cannot grant an exemption merely because we may think registration serves no useful purpose and is not within the congressional intent. We reply that we are not requesting your registration. We do not think that should be our responsibility in such a wide area as it is today. It may be a responsibility we will have to face up to occasionally under any law. Now it comes up on engineers. It comes up on lawyers handling estate matters and lease matters for an embassy. It comes up on corporations. These letters involve a variety of eight or nine different situations where presently the people would not be entitled to an exemption, and yet we recognize the foolishness of the question of registration in areas where real political activity is not involved. It does not serve the purposes of the act. We just do not request regis-

tration, without indicating an opinion as to whether they have an obligation, because technically, as we see it, they would be obliged to register.

The present bill eliminates these particular problems, I believe.

Mr. ST. ONGE. The amended Senate version?

Mr. YEAGLEY. S. 693 in its present form.

Mr. ST. ONGE. So the answer to my question, then, would be no?

Mr. YEAGLEY. Right.

Mr. ST. ONGE. At the request of the chairman of the committee, will you submit a written statement commenting on each of the proposed amendments submitted thus far at the hearing?

Mr. YEAGLEY. Yes, we shall be glad to.

Mr. ST. ONGE. Mr. Edwards.

Mr. EDWARDS. How many registrants do you have a year under the present act?

Mr. YEAGLEY. We have nearly 500 which are currently active. We had 87 new ones a year ago, and 162 the last year.

Mr. EDWARDS. Under the act as revised, if it is enacted into law as the Senate version, would you anticipate more or a lesser number?

Mr. YEAGLEY. This is not easy for me to answer, Congressman Edwards. The trend is up, and has been up for several years. I suppose part of that could be due to increased activity. I think, frankly, some of it must be due to the publicity attendant on the Senate hearings on the legislation. If that is true, maybe there would be a continued increase due to that.

Getting to your point with respect to the amendments and the language of the bill, I think there should be fewer registrations under S. 693 than there will be under the old law if S. 693 is not passed. One reason for that is what I have just said here, that the present 3(d) exemption is not broad enough with the complexity of modern day operations, and we are doing the best we can not to pursue needless registration. Some of them come in voluntarily and we file them. Of course, perhaps out of an abundance of caution, for a few months we stayed closer to the strict language of the *Rabinowitz* opinion, and we found that brought about too many increased registrations.

We had some discussions of our own and with the Attorney General, and we decided to take the thing in hand ourselves and not solicit, even where a hypothetical case would seem to come technically within the language of the law.

Mr. EDWARDS. Do you think the bar association and the chamber of commerce are misinterpreting the effect of the proposed law?

Mr. YEAGLEY. Yes, frankly, I do. I say this with all good faith. These people are friends. As I indicated this morning, I think the law today and the rules we are operating under encompass in "political activity" an attempt to change domestic policy. I think Webster's definition of political activity probably covers it, but I have not looked at it. You cannot talk in terms of a law or a government regulation that involves domestic policy in a void that does not involve some political consideration.

I think any of the lawyers who have testified here will recognize the fact that they cannot even within their own office give advice on

law without considering political aspects of some sort, public interest or public policy. So, the addition of the language "domestic policies," I do not think does any more than to highlight it. That is all.

Mr. EDWARDS. Among the members of the Senate Judiciary Committee, were there some opposed to the bill?

Mr. YEAGLEY. This was the Senate Foreign Relations Committee, and I think it was Senator Javits on the floor who handled most of the discussion. I do not know of anything coming to my attention as to the members of the committee. Senator Javits in the floor discussion raised a good many questions. I think he gave more than a dozen examples of the domestic corporation situations where he thought there would be needless registration.

Senator Fulbright responded in each instance, I believe, that he and his staff had agreed that that would not be the effect; that there would not be registration in those cases. I think there may have been one or two in which he said the law would not have been any different under S. 693 than it is now.

Mr. EDWARDS. That is all. Thank you, Mr. Chairman.

Mr. ST. ONGE. Mr. Tenzer.

Mr. TENZER. Mr. Yeagley, this morning in your testimony, I think in connection with the handling of these requests for exemption, you said, "The department is operationally somewhat in a mess." What did you mean?

Mr. YEAGLEY. The 3(d) exemption, still having the words "financial and mercantile" in the language, which would be stricken by S. 693, technically could bring into the application of the act quite a number of operations that obviously were not within the original or present intent of Congress, and the registration of the people involved would not further the purposes of the act or serve any useful public purpose. So, I think we are in a "mess" because we cannot legally give a 3(d) exemption in such cases. We cannot say, "You are exempt" when they ask us, so we have to kind of duck their inquiry and say "we are not soliciting your registration."

This is true of the lawyer who represents a foreign embassy to buy a new building, or in some commercial matter like that. There are many arguments that this is not a private operation because it is for a government. It is not financial and mercantile under the *Rabinowitz* decision. So, technically they should register, but obviously it is only ground lost if we have people like that file registration forms with us. The same would be true of engineers.

I could leave these letters with the committee if you are interested. I would not want the names of the people involved publicized, but the committee is welcome to have them as is, if you would like to look at them.

Mr. TENZER. Let me pursue that, Mr. Yeagley. If the 3(d) exemption creates a problem in the Department, do you find that the granting of an exemption or a waiver of filing for the purely mercantile or financial transactions creates a problem for you?

Mr. YEAGLEY. This is 3(d)?

Mr. TENZER. That is 3(d).

Mr. YEAGLEY. Yes.

Mr. TENZER. You are not referring exclusively to the attorneys who may be representing a foreign government?

Mr. YEAGLEY. The exemption is in 3(d), and if we are to exempt lawyers, it would be by that exemption in the present law.

Mr. TENZER. Right. You refer to the congressional intent. I assume you are referring to the congressional intent at the time of the passage of the act in 1938, because you do not yet know the intent of Congress until these hearings are over and a report is rendered and our own bill is reported out.

Mr. YEAGLEY. Generally we have been before committees of Congress regarding other prior amendments, and I have also—maybe I should not include this—participated in the Senate hearings before the Foreign Relations Committee the last 2 or 3 years.

Mr. TENZER. If you are having difficulty with the granting of 3(d) exemptions, what objection do you have to the House of Representatives at least, reporting out a bill attempting to clarify the situation for you and avoiding the intradepartmental mess of which you complain?

Mr. YEAGLEY. Oh, I have no objection whatever. My only point is that the new proposals so far would not help us any, as I see it.

Mr. TENZER. Let us see.

Mr. YEAGLEY. Pardon me. I should say would not help us any better than S. 693 would help us. That will help us.

Mr. TENZER. What we are attempting to do here is to create a legislative record with which this subcommittee can go back to the full Judiciary Committee and attempt to evolve perhaps something even better than S. 693. That is our purpose here in dealing with H.R. 290.

My question would be this: So there may be no mistake about it, I share the sentiment certainly of the members of the bar who testified here and that of the Chamber of Commerce and our distinguished chairman and other members of this subcommittee, that we are all concerned with controlling the activities of foreign agents representing foreign governments whose intent and purpose is to engage in subversive activities. There is no question about that. What we are concerned with is whether we are going to create an umbrella and a program under which thousands and tens of thousands of attorneys would be required to register in connection with purely mercantile and financial transactions.

Mr. YEAGLEY. I think under S. 693 it is just the contrary. There would be much fewer registrations instead of more.

Mr. TENZER. Mr. Yeagley, you say you might generously grant exemptions and waive the requirement for filing under S. 693 if it were passed as is, and you reject the proposals which have been made by the American Bar Association, the Association of the Bar of the City of New York, and the Chamber of Commerce of the United States. I am not indicating now my own view with respect to these particular proposals. Certainly, you do not think in terms that any of these three groups would be attempting to make a suggestion which would undermine the security and solidity of the United States of America?

Mr. YEAGLEY. I hope I have not implied that at all. I am saying—

Mr. TENZER. They are intended for the purpose of guiding the Congress in developing a law which, without hurting the best interests of the United States, might properly control the requirement to file a rather extensive Foreign Agents Registration Act form in purely mercantile and financial transactions. Are they not?

Mr. YEAGLEY. I see no question there at all. I am merely saying I think S. 693 does it.

Mr. TENZER. But S. 693, sir, places the authority to grant an exemption or to waive the filing in the hands of an administrative agency of the Government. Since you have already said that you intend to implement the short form, what objection do you have to providing for it in a statute?

Mr. YEAGLEY. Which exact proposal are you referring to now, Mr. Congressman?

Mr. TENZER. Either one. I want to get the principle first. I have no quarrel with you in your attempt to administer the existing law. You said earlier today with respect to some of the suggestions which were made, and some of the amendments, that they do not add anything to the law or to the enforcement of the law.

Mr. YEAGLEY. First of all, if you want me to be a little more specific, with reference to the proposal in Mr. Dean's testimony which dealt with the definition of "foreign principal," particularly of corporations, we believe that the question of who should register or who should be exempt should be based upon the nature of their activities and not be based upon the question of who they are or what they are or who controls them, but what do they do?

I think the thrust of his amendment is the other way. As soon as you get into the question of who they are and who controls them, I am afraid you will have an influx of a lot of groups that would like special attention. I think Mr. Lenvin indicated to the committee before, when the question of attorney first came up, that he would not like to see any group exclusion. I do believe it is better that the nature of the activities largely determine whether they should be exempt or not.

Further, in his bill he uses the word "substantial" about which I think there has been some testimony. It reads:

and no substantial portion of the activities of such person are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a government of a foreign country or a foreign political party * * *

I suppose there could be situations where the activity would not be a substantial portion of the corporation's activities and therefore exempt under his proposal but could be very political from the standpoint of the United States.

Mr. TENZER. Mr. Yeagley, I believe I would agree with you that the test should be what the individual does, rather than who he is. No one will quarrel with that. But if the definition is broadened to exempt by statute, not by administrative action, any transaction which is purely financial or mercantile in character, that would be describing what the agent or the representative is doing. It is not because he is the representative of an outstanding or large law firm that you give him the exemption. So, in effect, if a law firm or a lawyer was engaged in representing a foreign government even to the extent of making a lease, I

might be in favor of requiring him to register if he represents a foreign government; but I would like to pose the question to you: How about a lawyer who represents an American company which has purchased some textile machinery from West Germany, with whom we have cordial trade relations, and the textile machinery is held up at customs because of a dispute of interpretation as to what the customs rate should be for machine parts as distinguished from the total machine? When that attorney comes down to the customs office here in Washington, would he be required to register?

Mr. YEAGLEY. I should not think so.

Mr. TENZER. The fact that you have a doubt is what concerns me. If he even had to apply to you for an opinion as to whether he had to register, it concerns me, also, because this attorney does not represent a foreign government, and he is not engaging in a political activity.

Mr. YEAGLEY. Mr. Congressman, may I say something? In this area you are never going to have a law of any kind that is going to make this operation black and white. It is an impossibility. You are always going to have large gray areas where the human mind must intercede and resolve the matter. This is an area in which you simply cannot make clear definitions that will make this mechanical or automatic. You have to have this determination even with the language that you have suggested.

As I understand it, S. 693 does exactly what you were saying a minute ago. It exempts a person who is engaged in simply private and nonpolitical activity.

Mr. TENZER. But he would have to apply for an exemption, would he not?

Mr. YEAGLEY. No, he does not have to apply to us. If he does apply, we give him an exemption. If he does not have an obligation to register, he does not have to ask us unless he thinks there is a greater doubt than that, and he wants to make certain, and he may ask us.

Mr. TENZER. Will you point to the language in S. 693 which grants that exemption, please?

Mr. YEAGLEY. Page 9 of the bill I have, 3(d) reads:

Any person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal;

Heretofore there was included in that the words "financial and mercantile."

Mr. TENZER. You say the words "financial and mercantile" were taken out?

Mr. YEAGLEY. They are in it today, but S. 693 would eliminate them.

Mr. TENZER. Does that not narrow the definition, then?

Mr. YEAGLEY. It broadens the scope of the exemption, because it can include other things. They can be a lawyer or engineer, for example, and not confined to financial or mercantile activities.

Mr. TENZER. What kind of transaction might you suggest that a lawyer would be engaged in, in behalf of a foreign corporation, which would not be mercantile or financial?

Mr. YEAGLEY. I could have given you your answer 3 years ago, but when the Supreme Court came down with the *Rabinowitz* decision, in which case the attorney had a general retainer, the Court said that the

activities of a lawyer for a foreign principal cannot be purely financial or mercantile and, therefore, not within the exemption.

Mr. TENZER. Except when he is involved in a litigation or action in behalf of a foreign corporation collecting a claim against a domestic corporation.

Mr. YEAGLEY. I am merely pointing out what the Supreme Court said. That has theoretically changed our interpretation of the law.

Mr. TENZER. Do you not think it also should change the congressional intent and also the congressional purpose in writing legislation?

Mr. YEAGLEY. I think it has. That is what has happened here. That is partly the reason for S. 693.

Mr. TENZER. What would be your opinion if I were to suggest a new law called the Mercantile and Financial Representatives Registration Act, in order to take the stigma of the term "foreign agent" from a purely mercantile and financial transaction?

Mr. YEAGLEY. I think I agree with the point you are making. I have previously, I think, recommended that we do not need the words "foreign agent." It can be "foreign representative." In the minds of many, there is a stigma.

Mr. TENZER. I thank you for that answer, but that was not exactly what I had in mind. For example, if we require a short form of registration, abbreviated but which would nevertheless require the representative of a foreign corporation engaged in any transaction, be he a lawyer, an accountant, an engineer, for a foreign corporation, to file a statement in abbreviated form, giving his name, his address, the nature of his profession, the nature of his representation, and the purpose and the agency which he is going to see—without the necessity of filing an 8-foot shelf of speeches of the 50 members of the firm made on foreign affairs or problems over the last 10 years—

Mr. YEAGLEY. Incidentally, I do not think any of the lawyers registered could point to a time when we have forced that on them.

Mr. TENZER. I read the Senate hearings, and there was testimony about an engineering firm, with a large number of men, which testified that they would be required to file an 8-foot shelf of books as exhibits attached to the form if the form were to be answered completely.

Mr. YEAGLEY. That was their interpretation. They did not ask us if that would be required. It is on the form that they should list the speeches, but it never has been required in the context that came out at the hearings at all. This is one of the changes we have in mind making if this bill goes through and we can revise our rules.

To answer your question, I still do not know that I understand the point you are making, Congressman Tenzer, but—

Mr. TENZER. If we were to require under the Foreign Agents Registration Act—and I am all for continuing it—I am thinking in terms of 1938 when the congressional intent was to control the subversive activities of Nazis and Communists—

Mr. YEAGLEY. This proposal as to "financial and mercantile" would serve no useful purpose, if I understand what you are saying. It would be burdensome.

Mr. TENZER. If we were to exempt all private mercantile and financial transactions from being required to register under this act and just for informational purposes have a Mercantile and Financial

Representatives Registration Act under which all American citizens or any person in the United States who engages in any transaction in behalf of a foreign company vis-a-vis the U.S. Government should be required to file a short form registration so that it can be examined to determine whether or not additional information is required.

Mr. YEAGLEY. That would be tremendously burdensome. Those files would be voluminous. They would not serve any purpose, I don't believe.

Mr. TENZER. Then I ask you the question, sir, under the present law, or under S. 693, when you have testimony of distinguished members of the bar and the association of the bar of the City of New York—and let me refer you to page 91 of the association of the bar of the City of New York reports of committees, dealing with the committee on international law, of which Mr. Carlyle E. Maw is the chairman, listing 18 distinguished members of the bar who are members of the committee on international law of that bar association, and the committee on Federal legislation, of which Mr. Fred N. Fishman is the chairman and listing 24 distinguished members of the bar on that committee, and both committees unanimously reported out these recommendations—

Mr. YEAGLEY. I hope you do not think I am trying to impugn them in any way. I am not. I welcome their comments. All I am saying is that we in the Department disagree with them.

Mr. TENZER. Mr. Yeagley, let me assure you that I do not suggest that you are trying to impugn them in any way. Let me assure you that my only purpose is to make certain that this record is going to be as complete as possible so when this subcommittee takes it to the full Judiciary Committee we will have your opinion on these matters.

These two committees and the committee of the American Bar Association which represents a section of the American Bar Association of some 2,500 lawyers from every one of the 50 States engaged in representing foreign corporations or domestic corporations doing business with foreign corporations or engaged in export-import business, believe that S. 693 would require them to do the very thing which I suggest could be covered by a separate law as I propose. If the law is not necessary, then I think it cries out for some modification in the legislation we have under consideration to prevent such an interpretation, because you, Mr. Yeagley, may not be in that Department tomorrow. It may be someone else.

I think, Mr. Chairman, and I suggest to Mr. Yeagley and the Department of Justice, that our task as members of this committee is to make certain that these citizens will not be required to register for purely mercantile private and financial and commercial transactions.

Mr. YEAGLEY. My testimony merely is that we disagree with their view of the bill and the effect of it. I will be glad to answer specific questions as to why or where this disagreement occurs and any examples that the committee may have to suggest, and make my explanations one by one.

Mr. TENZER. Did you read Mr. Maw's statement? Had you had a chance to examine it before today?

Mr. YEAGLEY. I did not examine it before today. Whether I had the chance, I think I probably did have a chance to, but not the revised one.

Mr. TENZER. Would you take Mr. Maw's statement and the three suggestions he made in annexes A, B, and C, and take it back with you—

Mr. YEAGLEY. I would rather do it today, if we may, and dispose of it if you have specific questions on it.

Mr. TENZER. I would like to have your comment on it today, but I do not want to press you for it.

Mr. YEAGLEY. I believe the chairman has asked us to submit written comments on each of these, but I can do it orally.

Mr. TENZER. If the chairman has asked for it, I think that will suffice so we would have the benefit of your comments, since they do vary from Mr. Dean's suggestions. I think Mr. Maw said he did not testify before the Senate committee, so we do not have the benefit of the Department of Justice comments on his proposals.

Mr. YEAGLEY. One of his, I believe, is the same one we commented on before, about the corporate foreign principal and the domestic corporation and the use of the word "substantial."

Mr. TENZER. What is your view, Mr. Yeagley, on the question that I cited about the American manufacturer who imported some machinery from West Germany? Would the attorney representing that manufacturer be exempt, or does he have to apply for an exemption, in your view?

Mr. YEAGLEY. In my view, if he is trying to get a determination as to the application of import duties on his particular product or shipment, it is not an attempt to change domestic policy across the board at all, and he would not have to apply to us. Some lawyers out of an abundance of caution might. This is not what we would consider to be an attempt to influence the U.S. Government to the extent of changing policy.

There will be gray areas where it will not be easy to say whether it is merely a determination as to one product and the application of existing law or whether they are trying in fact to change policy. Our practice would be to try to find a way with them not to require registration if it did not seem to be within the purpose of the bill.

Mr. TENZER. Did I understand you also to say, Mr. Yeagley, that under the congressional intent you have no authority to grant an exemption?

Mr. YEAGLEY. No; section 3 is an exemption section. I am saying that the way it is worded in the law, under the *Rabinowitz* decision it is difficult, awkward, and unsatisfactory to administer, and that we think S. 693 remedies this.

Mr. TENZER. How about an inquiry made in connection with the Treasury Department on tax treatment of foreign-source income? Would that come under the same?

Mr. YEAGLEY. No; this bill requires that there be an attempt to "influence." I do not see any attempt to influence here.

Mr. TENZER. Suppose there was an American concern engaged in a joint venture with a foreign company, not a government, and they were exporting and we were importing into this country certain parts of a

machine, and they appeared before the Customs Service to try to convince them to reduce the tariff from 18 to 14 percent to make it comparable to a tariff of similar nature covering another product?

Mr. YEAGLEY. This is an example, I think, of what I was saying a minute ago where you get into the gray area, where it would not be clear. If it was a one-shot deal and would apply only to one transaction there would be no obligation to register. There must be an attempt to influence policy within the meaning of this law.

I would say if it is an attempt to influence policy it would have broader application than to just one transaction. We would make a determination in consultation with them.

Mr. TENZER. Attempting to create comparability with an 18 percent tariff on one product with 14 percent on a similar product, would that be attempting to change the policy of the United States in the political nature which we are here primarily concerned with?

Mr. YEAGLEY. If they are trying to get a regulatory agency to make a basic change in tariffs, I would have to start with the assumption, without further exploring it, that it would probably necessarily involve an attempt to change basic policy of some sort. I am not saying necessarily they should be required to register, but I do think in answer to your question where we get into a change of Government policy, when it is broader than something applicable to one person or one importer, I think that it is intended to be covered by this law.

I think if a foreign group comes over here to the United States and wants to change basic policy, whether it is useful or not, the Congress wants to require someone to register in behalf of that foreign group and I think that is within the purview of congressional determination.

Mr. TENZER. We do not in our congressional hearings permit one witness to cross-examine another witness, which sometimes might be very helpful to Members of the Congress, enabling them to better understand the differences presented.

I have some questions here which have been presented to me by a previous witness and I welcome them because I want the answers to them for the sole purpose of clarifying the record. I will take before the full Judiciary Committee the source of these questions.

I would ask you this, Mr. Yeagley: I gather your basic position is that the scope of coverage under the new bill is essentially the same as the scope under the present statute and that since businessmen and lawyers haven't been forced to register in the past as a general rule, they have nothing to fear in the future.

I want to examine this a little more closely in the light of the legislative history.

First, let me refer to the present statute which is admittedly quite broad, but its legislative history in 1938 was quite specific that it was intended to ferret out subversive propagandists, particularly Nazi and Communist agents, and that is the way that the Justice Department has enforced the statute, giving a broad exemption to commercial activities.

Second, the legislative history of S. 693 is quite different. It stems from the congressional criticism of certain commercial activities such as those surrounding the enactment of the 1962 Sugar Act. The basic thrust of Senator Fulbright's effort was to broaden enforcement of

the act to cover certain commercial activities and he was critical of the Justice Department for not enforcing the statutes more vigorously.

In the light of the sharp difference between the legislative history in 1938 and that surrounding the current bill, I want to pose these two questions:

1. Isn't the business and legal community properly concerned that even enforcement of the act against commercial activities will be more widespread in the future than in the past?

MR. YEAGLEY. Certainly that is an area with which anyone would have a right to concern themselves. I want to point out, however, if the Congress feels that foreign interests using domestic agents to influence sugar quotas, if they think that is something that should be registered, I think it is properly within their purview to make that determination.

The example you give would be going from subversive activity to a lesser form but still involving political activity.

MR. EDWARDS. Will the gentleman yield at that point?

MR. TENZER. Yes, I will yield to the gentleman from California.

MR. EDWARDS. This is something new to me, that the purpose of this new bill is to broaden the scope of the act to include commercial transactions as opposed to the original intent of the act to control subversive activities.

MR. YEAGLEY. This eludes me. I would like to have an example where this situation is true.

MR. TENZER. In the experience surrounding the enactment of the 1962 Sugar Act, did you have any registrations at that time?

MR. YEAGLEY. Yes, we had had some before that.

MR. TENZER. And were these representatives of foreign governments dealing with attempting to influence our conduct and action in connection with the 1962 Sugar Act?

MR. YEAGLEY. Yes, some of the sugar countries.

MR. TENZER. So it was in that connection that this came about?

MR. YEAGLEY. I couldn't presume to judge that. The Fulbright hearings got into quite a wide variety of things. One of them, however, was attempts of the sugar countries to influence determinations in the United States as to the amount of the sugar quota they were going to get and those agents were dealing both with Congress and the executive branch and people in the executive branch on different levels.

As I understand in this instance, Senator Fulbright's committee was merely saying if these people are going to be talking to their fellow Americans about sugar quotas, they should be forced to identify the real interest behind them as being a foreign government.

MR. TENZER. In other words, to identify whether they were in fact representing a foreign government or a private sugar company?

MR. YEAGLEY. That is right, or perhaps merely their own view.

MR. TENZER. Or the views of a group of users of sugar in the United States such as the bakery trade?

MR. YEAGLEY. That is right. I think this committee's idea was, even though it is not subversive, if they are representing foreign interests in a political manner with U.S. agencies, various employees, or

with the Congress, they should be required some place to put on the record what their real interest is.

Mr. TENZER. Is this not the type of representation that might be covered by a short form registration?

Mr. YEAGER. It could be short form; it could be long form. At the present time it is a long form. There were a number of them registered.

Mr. TENZER. Second, even assuming you had authority in the past to require registration for certain commercial activities and failed to require such companies to register, does that provide any assurance to the business community that such registration will not be required in the future?

Mr. YEAGLEY. I am sorry, I lost you there.

Mr. TENZER. Let me repeat: Even assuming you had authority in the past to require registration for certain commercial activities and failed to require such companies to register, or you had granted exemptions or had waived the filing in certain cases, does this provide any assurance to the business community that registration will not be required in the future?

Mr. YEAGLEY. No, of course not. I merely say I think S. 693 is a better assurance. It is clearer. It gives a broader area in which to make exemptions.

Mr. TENZER. If you have given a company a letter of clearance assuring them that registration would not be required under the present law in order to conduct certain commercial representation, is it your position that the company would continue to be free from any registration requirement in order to conduct similar activities in Washington, D.C., after H.R. 290 becomes a law, assuming that it did become a law?

Mr. YEAGLEY. Probably, but I would have to take each case on its facts.

Mr. TENZER. You would examine the facts again?

Mr. YEAGLEY. I don't mean to say we would go back and reexamine all prior cases because we would not.

Mr. TENZER. The probability is that each person affected after S. 693 becomes a law, as amended, they would have to reexamine their own status and probably refile or make inquiry as to whether filing is required.

Mr. YEAGLEY. Yes, we would reexamine some of our registrations to see if they were no longer needed and could be terminated.

Mr. TENZER. The statute will be on the books for many years, of course. How can we be sure that the future administrators will not look to the Senate hearings for their guidance and require thousands of businessmen engaged in purely financial, private, or mercantile transactions to register?

Mr. YEAGLEY. Because I don't think that is the intent of the Senate hearings. Although I must confess I don't know who the future administrators are going to be and I can't speak for them.

Mr. TENZER. In this record, we want to say it is not your intent now to have or require an individual, attorney, or businessman, engaged in a single one-shot representation of an American company

in connection with an import or export transaction, with a foreign corporation on a purely commercial, mercantile basis, and the foreign government is not involved at all to be required to register?

Mr. YEAGLEY. I don't see that we would have any interest in that unless, as I indicated, they were trying to get a broad policy change that would affect others.

Incidentally, I would like to mention that I am not the only one who has represented the Department. In the earlier stage the then Deputy Attorney General Katzenbach, who is now the Attorney General, testified I think on S. 2136, from which this legislation stems, and though in less detail, he testified similarly as I have—I hope—because we have had a lot of discussions together.

Mr. TENZER. Mr. Yeagley, you apparently reflect no substantive Department objection to amendments which would only clarify the law along the same lines you say you are now administering them.

What then is your objection to this committee of the House adopting language which would give a permanent legal base to your current administrative practices?

Mr. YEAGLEY. First of all, we are not objecting.

Secondly, we don't see where any of the proposals accomplish anything more than S. 693 does and I think any such change to that extent would certainly kill the legislation for this year. That is about the only clear effect I can see it would have.

Mr. TENZER. Have you reviewed in the Department of Justice the proposals made by Mr. Dean?

Mr. YEAGLEY. Yes.

Mr. TENZER. Have you reviewed the proposals made by the U.S. Chamber of Commerce?

Mr. YEAGLEY. Yes.

Mr. TENZER. You have not yet reviewed the proposals made by Mr. Maw on behalf of the bar association in New York?

Mr. YEAGLEY. There is some overlapping there, I believe. One of his is quite similar to the Chamber of Commerce proposal.

Mr. TENZER. Mr. Yeagley, you are going to supplement your testimony—

Mr. YEAGLEY. For example, his suggestion in annex A seems to be made without reference to whether or not political activities may be involved. I would be glad to furnish our views on his proposals—

Mr. TENZER. Wherever there are political activities involved, there ought to be some form of registration and the Attorney General ought to be in a position to ask for such additional information with respect to any filing as he may require for the protection of the best interests of the U.S. Government. But if we should develop in our committee some language which would bring about an exemption or waiver of filing in purely mercantile, commercial, and private transactions not affecting foreign governments, why would you object to such change?

Mr. YEAGLEY. I don't know. I can't object to any change until I have seen it. We would be reluctant to have the legislation killed, but I would certainly want to examine any proposal—

Mr. TENZER. Why do you think it might be killed if we supply some clarifying language?

Mr. YEAGLEY. Because of the time of the year. It is late in the summer and I have already heard a lot of conversation on "When is Congress going to adjourn?" This is why.

We think S. 693 does a good job. We think it would be good for the public and the people that we deal with as well as for us and we would like to revise our rules and forms in accordance with S. 693.

Mr. TENZER. Because the second bell has rung I think we should suspend. I will send the rest of my questions to the witness directly and perhaps the chairman will incorporate them in the record. If we can get the specific answers and the questions placed in the record we can suspend now.

Mr. ST. ONGE. There will be no problem.

Mr. TENZER. I think you have contributed a great deal to the deliberations of this committee.

Mr. YEAGLEY. Thank you, Mr. Tenzer.

I agree with you, I would like to have a good record that the other members of the committee can get something out of.

Mr. TENZER. The legislative intent under this new proposed bill is going to have to be right in this record and not in the back of our minds. It will have to be right in the record.

Mr. ST. ONGE. Mr. Yeagley, on behalf of the chairman and members of the committee, I want to thank you for your testimony. I think you have done an excellent job in answering the questions that were asked of you and I am glad to hear that you will be available to answer further questions if they are submitted in writing.

This terminates the list of witnesses at this hearing and the hearings are adjourned.

Mr. YEAGLEY. Thank you very much, Mr. Chairman.

(Whereupon, at 3:03 p.m., the subcommittee was adjourned.)

(Subsequently, the following letters were received from Mr. Yeagley and from Mr. Sonnett:)

DEPARTMENT OF JUSTICE,
INTERNAL SECURITY DIVISION,
Washington, D.C., August 31, 1965.

HON. EDWIN E. WILLIS,

Chairman, Subcommittee III, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At the conclusion of my testimony before Subcommittee III of the House Committee on the Judiciary on August 2, 1965, concerning H.R. 290 and S. 693, bills to amend the Foreign Agents Registration Act, Acting Chairman St. Onge relayed your request that I submit my views on the various proposals advocated by preceding witnesses.

During his testimony Mr. Arthur H. Dean suggested changes to S. 693 in four major areas. For the reasons set forth below, the Department must object to them in their entirety.

Mr. Dean proposed changes in the definitions of the term "political activities" and "political consultants" because of his fear that the definitions as now contained in S. 693 would unduly narrow the availability of the exemption from registration contained in section 3(d). His proposal would eliminate the words "domestic policies of the United States" from the definition of political activity. His proposal would include within the definition of political activity the influencing of U.S. agencies or officials relative to the formulation or change of U.S. policy only when such activity was conducted by an agent of a foreign government or foreign political party.

As I indicated in my recent testimony, we do not believe that the insertion of the words "domestic policies" in the definition of the term "political activity"

as it appears in S. 693 enlarges the scope of that definition beyond that contained in the rules and regulations promulgated by the Attorney General under the present act, since an attempt to change the domestic policy of the United States for or in the interest of a foreign principal would be "political activity" under the present law.

Under Mr. Dean's suggested change, activity to influence congressional legislation would be considered political activity except where the agent appearing discloses the identity of his foreign principal to the committee and the fact that he is appearing in the interest of such principal and that such foreign principal is not a government or political party of a foreign country. Registration would not then be required.

This latter provision, for example, would allow sugar lobbyists who represent foreign sugar corporations and associations to lobby on sugar legislation before Congress without the necessity of registration under the Foreign Agents Registration Act. Such a lobbyist would be required merely to disclose to the committee the identity of the foreign principal for whom he is acting and that the principal is not a foreign government.

Mr. Dean expressed the belief that the definition of the term "political consultant" in S. 693 was such that any agent falling within its terms would automatically be considered to be engaged in "political activity," thereby becoming ineligible for the exemption under section 3(d). As I advised the Senate Foreign Relations Committee by letter of March 11, 1965, reprinted at pages 64 through 65 of the hearings before the Committee on Foreign Relations, U.S. Senate, 89th Congress, 1st session, on S. 693, dated February 16, 1965, while we recognize that the term "political consultant" is quite broad, it operates only to create the agency status and not to create an obligation to register. A "political consultant" may be exempt from registering if his activities are "private and nonpolitical." Accordingly, if an attorney or any other person, in acting as a "political consultant," is engaged in only "private and nonpolitical" activities on behalf of his foreign principal, registration is not required under S. 693.

Mr. Dean also suggested an amendment which would provide for the filing of a short form registration statement by agents acting in furtherance of the bona fide trade or commerce of private foreign principals. This would permit the use of a short form under such circumstances even though the agent engages in extensive political activity in promoting his principal's trade and commerce. The suggested form doesn't even require a statement regarding the particular activities performed or to be performed by the agent for the principal.

In this connection, as I indicated in my testimony before your subcommittee, we intend to utilize the new section 2(f) of S. 693 to eliminate in appropriate areas burdensome reporting requirements and to provide for the exemption in appropriate circumstances of partners, officers, and employees. Such authority is granted the Department in section 2(f) of S. 693. No further amendments in this regard appear necessary.

Mr. Dean also proposed a formalized procedure to provide for the filing of an application for an exemption determination which, if made in good faith, would permit activity to be carried on as an agent until unfavorable action thereon is taken by the Department. As I testified before your subcommittee, the Department of Justice for years has rendered opinions to persons who have submitted either written or oral requests for rulings regarding an obligation to register as provided in rule 2. It is believed that this well-established practice provides a more sound and expeditious method for obtaining rulings on questions concerning obligations under the act.

Moreover, the Dean proposal would permit an agent to grant himself a temporary exemption which, as indicated by Congressman Poff during the hearings, could raise a problem in the case of an agent desiring to act for a short period on behalf of a foreign principal.

Finally, Mr. Dean proposed to rewrite the new section 3(g), as set forth in S. 693, and would, with the exception of appearances before a congressional committee or its members, give a blanket exemption to attorneys engaged in legal representation of foreign principals before any agency or official of the U.S. Government, provided there is a simple disclosure of the identity of such foreign principal. His proposal would permit an attorney for a foreign client to influence an official of the U.S. Government with reference to adopting or chang-

ing a domestic or foreign policy and thus engage in political activity on behalf of a foreign principal without the necessity of registering, provided that he makes a simple disclosure to the particular official of the identity of his foreign principal. Any person other than an attorney engaged in such political activity would be obliged to register.

It should be noted that normal private legal services, including day-to-day contacts of attorneys with Government officials and agencies would, absent political activity, continue to be exempt from registration under section 3(d) of the bill without Mr. Dean's amendment.

With regard to the testimony of Mr. John F. Sonnett, who represented the U.S. Chamber of Commerce, the Department does not share his fear that "there is a strong possibility that American businessmen by the hundreds will be required to register as 'foreign agents' in order to conduct normal discussions with Government officials on matters of commercial importance to their companies * * *."

We cannot support Mr. Sonnett's suggestion for an exclusion from registration under the act of certain business corporations. His proposal is framed as an exclusion from the definition rather than an exemption from registration. As I indicated to your committee and earlier to the Senate Foreign Relations Committee, the Department is opposed to legislation which results in the absolute elimination of an entire class of persons from the purview of the definition within the act. Our experience in this area has illustrated that unforeseeable contingencies make class exclusion undesirable. It should not be a question of who they are but rather what sort of activity are they engaged in. If their activity is private and nonpolitical they will be exempt.

The testimony presented in behalf of the Public Relations Society of America, while indicating a general support of the basic purposes of the proposed amendments and specifically supporting the amendment proposed by the U.S. Chamber of Commerce relating to foreign corporate affiliates, expresses the belief that the definition of "political activities" and "political consultant" should be restricted and that "the law should apply only to those who carry on representation work or who issue publicity or communications intended to influence legislation or governmental policy in this country."

The Department must oppose the suggestions of the Public Relations Society of America. Of all the various agents of foreign principals, those operating in the field of publicity should be especially subject to the public scrutiny provided by the act. Such representatives, by the very nature of their activity, can introduce either benign or slanted material into the various streams of the mass communications media without revealing either their part in the dissemination or the fact that it is being done on behalf of a foreign principal.

The Association of the Bar of the City of New York, through its spokesman, Mr. Carlyle E. Maw, suggested three amendments discussed below.

The suggestion in annex A of his testimony would eliminate from the definition of "political activity," and therefore from the requirement to register, attempts to influence or change domestic policies of the executive branch in behalf of a foreign principal. Whether or not such activity should be excluded from the disclosure provisions of the law is a matter for the Congress. Apparently, the Senate felt that such activity should be disclosed when carried on in the interests of a foreign principal.

The suggested amendment, as set forth in annex B of Mr. Maw's statement, proposes phraseology that would exclude from registration the open representation of the private interests of a foreign principal before any agency or official of the Government of the United States, provided it does not relate to the political and public interests, policies, or relations of a foreign government or political party, even when it involves an attempt to change the domestic or foreign policies of the United States.

The question here again is whether the Congress desires disclosure of this latter type activity. It would appear that the proposal as contained in annex B would add nothing to the law, as it now stands or as it now reads in S. 693, unless its purpose is to add an exemption for such agents when in furtherance of their representation they seek to induce a change in U.S. policies. Since this probably would involve "political activity," registration could be required under the law today as well as under S. 693.

The proposal in annex C, like one advanced by Mr. Dean, provides for the filing of a shorter registration form by one engaged for a private foreign

principal in bona fide trade or commerce whose activities otherwise require registration. It should be noted that an agent representing a private foreign principal in matters of trade and commerce is now exempt from filing any statement whatever either under existing law or S. 693. Consequently, it would appear that the key language in the proposal is "whose activities otherwise requiring registration." This could only relate to an agent who has resorted to "political activities" in representing his principal. This provision then would authorize a short form when such an agent engages in political activity of some sort. Without knowing the nature of his political activity it seems unwise to conclude in advance that only a short form need be used. We think such situations will be covered much more appropriately under section 2(f) of S. 693 which authorizes the Attorney General to prescribe the use of short forms.

Mr. Robert Dechert testified in behalf of the American Bar Association and voiced some objections but also indicated his support of the purposes of the Foreign Agents Registration Act as well as support for "the basic purposes of the presently proposed amendments." Mr. Dechert, while apparently feeling that the change in the exemption in section 3(d) would be helpful, was quite concerned with the definition of the term "political activity." He felt that it was so broad as to leave the complementary term "nonpolitical" almost meaningless. We disagree with this view. First of all, there is no definition of the words "political activity" in the present law. A definition was promulgated by the Department under the act and is set forth in rule 100(a)11 consisting of eight paragraphs. We believe that anyone comparing that definition with the new definition as presently set forth in S. 693 will find the definition in the bill to be much more concise and explicit.

A lawyer representing a private foreign principal in the seven examples cited by Mr. Dechert at page 8 of his statement would in no instance be required to register since he would not be engaged in political activity. Consequently, the 3(d) exemption from registration would be available to him.

If a foreign government was the principal in examples 4 and 5, a more difficult situation might be posed, but again it would depend on whether the lawyer engaged in "political activities" in the course of his representation. As to the requirement that the agent's activities be "private" in order to be exempt, I believe I testified that the Department recognizes that a foreign government can act in a private capacity.

Mr. Dechert also suggests that 3(g) of the bill exempting certain activities of an attorney be amended by adding after the words "before any court or administrative agency" the words "or any official thereof." We do not see that the additional language adds anything. A lawyer dealing with "any official" of an agency would obviously be dealing with the agency whether such words are added to the bill or not.

I hope that the foregoing serves to answer such questions as your committee may have had regarding the various proposals made by the other witnesses.

Sincerely,

J. WALTER YEAGLEY,
Assistant Attorney General.

CAHILL, GORDON, REINDEL & OHL,
New York, N.Y., October 5, 1965.

Re H.R. 290 and S. 693—Proposed amendments to the Foreign Agents Registration Act.

HON. EDWIN E. WILLIS,
Chairman, Subcommittee III, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is submitted in reply to Assistant Attorney General Yeagley's letter of August 31, 1965, and, specifically, to the comments on my testimony, which appear on page 4 of Mr. Yeagley's letter.

As I indicated in my testimony, the reason for concern on the part of the Chamber of Commerce of the United States with respect to the proposed amendments to the Foreign Agents Registration Act, which have been approved by the Senate, is the strong possibility that hundreds of American businessmen will be required to register as "foreign agents" in order to conduct normal business

discussions with Government officials on matters of commercial importance to their companies. The Department of Justice attempts to dispel our concern by committing itself to be reasonable in applying the statute.

Without wishing in any way to impugn the sincerity of Mr. Yeagley's position, we think it is fair to point out that the statute will be subject to interpretation by successive administrators in the years ahead; and Mr. Yeagley cannot, of course, bind those who follow him. Future administrators could quite readily read the language of the pending legislation and its legislative history quite otherwise than does Mr. Yeagley. In this regard, we believe that highly pertinent testimony appears on page 292 of the transcript, where Mr. Tenzer asked Mr. Yeagley the following question and received the following answer:

"Mr. TENZER. The statute will be on the books for many years, of course. How can we tell the future administrators will not look to the Senate hearings for their guidance and require thousands of businessmen engaged in purely financial, private or mercantile transactions to register?"

"Mr. YEAGLEY. Because I don't think that is the intent of the Senate hearings. Although I must confess I don't know who the future administrators are going to be and I can't speak for them."

We submit that the business community should not be asked to rely on the Justice Department's willingness to use its discretion in granting exemptions under a criminal statute. If the intent of Congress is not to require bona fide American companies engaged in international business to register as foreign agents in order to consult with their government, this should be clarified in the statute itself.

Mr. Yeagley's second comment with respect to my testimony is to the effect that the chamber's proposal is framed as an exclusion from the definition of "foreign principal" rather than an exemption from registration and the Department of Justice opposes the elimination of a "class of persons" from the purview of the definition of "foreign principal." But the definition of "foreign principal" in the pending bill is already limited to a "class of persons," and already makes an arbitrary distinction between those persons who are covered and those who are exempt. So far as corporations are concerned, the "class of persons" covered by the present definition of "foreign principal" includes any company which is incorporated abroad or which has its principal place of business abroad. The "class" aspects of this definition are illustrated by the fact that a foreign subsidiary of a U.S. corporation would be considered a foreign principal, but a branch operation in a foreign country would be exempt. Thus, in the same industry, if one company operates overseas through subsidiaries, it would run the risk of registration, but a competitor which operates through branches would be exempt.

Any definition of foreign principal is certain to include and exclude certain "classes of people." The question is simply where the dividing line should be. We feel that the definition in the pending bill is too all-inclusive since it would have the effect of classifying as "foreign principals" the foreign affiliates of all U.S. corporations. Thus, hundreds of U.S. corporations with international operations would be subjected to the risk of being branded as "foreign agents" when they conduct discussions with Government officials on important matters affecting their foreign affiliates. The chamber's proposal would have the effect of narrowing the class of persons covered by the definition, thereby providing a clear exemption for those whose registration would not further the purposes of the act.

Mr. Yeagley's specific objection to the chamber's proposal appears at page 262 of the transcript of his testimony and is directed to use of the word "substantial" in the following portion of the chamber's proposal, the purpose of which is to deprive an agent of a foreign government of the benefit of the proposed exclusion:

"* * * and no substantial portion of the activities of such person are directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in major part by a government of a foreign country or a foreign political party, * * *."

Mr. Yeagley suggests that an activity might not be a substantial part of a corporation's activities but might be very political from the standpoint of the United States. If the principle of excluding bona fide business corporations

from the definition of "foreign principal" is accepted, we believe that the precise wording of the exclusion can be amended.

As I indicated in my testimony, the chamber recognizes that there are other possible amendments which would accomplish the purpose which would be served by the chamber's proposal. If, for example, the subcommittee prefers the approach embodied in annex B of Mr. Maw's statement, proposing an exclusion from registration for the open representation of the private interests of a foreign principal before any agency or official of the Government of the United States, the chamber's objectives could be met in this alternative manner. Mr. Maw's suggestion would meet the basic and proper objective of the Congress—to make certain that business representatives fully disclose their foreign interests—but would not force such representatives to be labeled as "foreign agents" under an antisubversive statute. In accordance with the undertaking which was included in my prepared statement, we would be pleased to work with the members of the subcommittee and its staff to develop alternative approaches to a solution of the basic problem which concerns the chamber, should this be deemed desirable.

In summary, we believe that it is important to have an effective statute in the areas where registration is required, but also to provide a clear exemption for American business representatives whose registration would not further the purposes of the Foreign Agents Registration Act.

Very truly yours,

JOHN F. SONNETT.

○

