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FOR RELEASE ON DELIVERY
Expected at 10:00 a.m.
Wednesday, August 6, 1980

Statement of

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Director, International Division



112952

before the

Subcommittee Investigating the Activities of Individuals

Representing the Interests of Foreign Governments

Senate Committee on the Judiciary

on

[Administration of Foreign Agent Registration]

SEN 20520

Mr. Chairman and Members of the Committee:

We are pleased to be here today to discuss with you the registration of foreign agents. Just last week we issued a report making specific recommendations to the Attorney General and the Secretary of State which we believe are necessary for improving the administration of this function. With your permission, Mr. Chairman, we would like to submit a copy of our report for the record.

We had previously reported on this subject in 1974, and, although improvements have been made since then, (more attention needs to be directed toward registration and reporting requirements.) Otherwise, we believe the public will not be provided with sufficient information on agent activities, as intended by the Foreign Agents Registration Act of 1938, as amended.

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It is apparent to those Justice officials who directly administer registration activities that persons are acting as foreign agents without registering, and we found some examples of this in our review. (Further, we found that registered agents are not fully disclosing their activities and that officials in the executive branch are often unaware of the Act's requirements.

We therefore recommended that the following steps be taken.

The Attorney General should seek legislative authority to (1) give the Justice Department additional enforcement measures, such as administrative subpoena powers, and a schedule of civil fines for minor violations and increases in existing fines and (2) require written notification to the Justice Department of all exemption claims prior to any agent activity. He should also:

- Survey the public users of the foreign agent files to determine their opinions on whether disclosure information is adequate and whether additional information might be useful.
- Provide specific guidance to agents and agency personnel on their responsibilities under the Act and revise the registration and reporting forms to better reflect the requirements of the Act as well as the results of the user survey.

--Establish a more permanent inspection capability with scheduled inspections for and emphasis on the more important type of agents.

The Secretary of State should resolve with the Attorney General who qualifies for diplomatic exemptions and, in the future, provide whatever assistance the Attorney General requests to effectively administer the Act.

LEGISLATIVE BACKGROUND

The Foreign Agents Registration Act of 1938 was enacted to identify agents engaged in political activities, including the spreading of foreign propaganda, on behalf of foreign principals and to publicly report their activities and finances. The concern at that time was with activities designed to subvert or overthrow the United States Government.

In the mid-1960's Congressional attention shifted away from its earlier concern with subversive activities to focus instead on the use of agents to influence governmental policies and programs to a particular foreign principal's satisfaction. The 1966 amendments to the Act were designed to reflect this shift by placing emphasis on protecting the integrity of the Government's decision-making process and assuring the public's right to know the activities of foreign agents, including their contacts with executive branch officials. The Act is not intended to prohibit any activities on behalf of foreign principals, but it requires their agents to register with, and periodically report their activities to, the Justice Department's Registration Unit.

UNREGISTERED FOREIGN AGENTS

Justice's Registration Unit officials believe that, as a result of improperly claimed exemptions, general unawareness of the Act's requirements, and evasion of the Act, there are more active agents than the approximately 650 registered. Although the officials do not have evidence as to the number of unregistered agents, some believe the 650 figure may be only the "tip of the iceberg."

It is difficult to determine the number of unregistered agents. The Unit does not make scheduled reviews of executive agency records or periodic inquiries of agency officials about agent activities since additional staff would be needed for this purpose. Few agencies' personnel are aware of the Act and even fewer have data upon which a review could be performed. The means used by the Unit to identify unregistered agents include a review of media content to determine who might be acting for other countries, inspection of registered agent records, and tips provided from various sources.

We discussed foreign agent registration with officials of various agencies and inquired whether they had any records available concerning agent contacts. The officials were with the Departments of State and Commerce, International Trade Commission (ITC), Securities and Exchange Commission, Office of the U.S. Trade Representative, and the military services. Since the agencies are not required to take any particular action, their awareness of the Act was limited or nonexistent,

and only at ITC did we find any records which could be used for verification. We reviewed the seven completed fair trade practice cases for 1978 and 1979. In four of these cases, we found that, according to the Unit's criteria, 20 of the witnesses apparently should have been registered, but only one was registered. These persons made up about 20 percent of the witnesses in the cases. It is not our purpose to focus on these particular individuals, and we are not accusing them of violating the Act. The point is that the lack of awareness on the part of both the agencies and the agents makes it difficult to identify and deal with such situations.

NEED FOR ADDITIONAL ENFORCEMENT MEASURES

Justice has increasingly used the Act's civil remedies to cause more foreign agents to register and report their activities. However, such actions have been limited by the availability of its Registration Unit's lawyers to pursue violations and the need for better tools to enforce the Act.

At the time of our review, there were two civil actions, two grand jury actions, and four investigative matters in process. This is just a little less than the average caseload the Unit has handled in recent years. According to the Unit Chief, he could immediately double his caseload if more lawyers were available.

Criminal prosecution has been used sparingly. According to Unit officials, successful prosecution is very difficult since

intent to violate the Act is hard to prove. While one of the grand jury actions and one investigative matter may result in criminal prosecution, the Unit generally relies on civil remedies to enforce the Act.

Unit officials stated that some changes that could be made to improve enforcement of the Act are (1) providing the Unit with administrative subpoena power for use in cases of suspected non-registered agents, (2) permitting the Unit to assess administrative fines for minor violations, an enforcement tool stronger than letters and quicker than injunctive actions, and (3) increasing the existing fines to reflect changed economic conditions.

Our recommendations support the changes that Unit officials say would improve their operations.

AGENTS SHOULD NOTIFY JUSTICE
WHEN CLAIMING REGISTRATION EXEMPTION

While the Act states that any person acting as an agent must register, it also provides certain exemptions to registration, such as for diplomatic, humanitarian, commercial, and legal activities. Unit officials stated the latter two exemptions are broadly written and have fostered differing interpretations. The decision on whether or not to claim an exemption rests with the agent, and no approval by the Unit is required. Only if the agents have been identified by the Unit is their use of the exemption questioned. Then if it is determined they should be registered, punitive action is not taken against them--they just register

as they should have done in the first place. This situation hardly motivates voluntary compliance.

That is why we recommended that agents be required to notify Justice in writing that they are claiming exemptions. If agents had to notify Justice, it would provide the Unit with better information on who isn't registered that should be. Further, those agents seeking to evade registration would lose their first line of defense.

INADEQUATE DISCLOSURE BY AGENTS

The public should be able to review an agent's file and know which Government officials an agent has contacted for his principal, when the contact occurred, what was discussed, what position the agent presented, and the finances associated with these contacts. Agents are expected to provide this information semiannually in a 27-question supplemental statement of their activities and finances.

We reviewed the supplemental statements of 163 agents and found that only 83 agents, or 51 percent, were adequately reporting their activities according to this criteria.

Further, while the Unit does record who asks to see an agent's file, we found no information on whether or not the files provided satisfactory disclosure information to the public reviewer. A Unit official stated that no formal survey has been made of this question but that sometimes a reviewer will ask Unit personnel followup questions after seeing the files.

Thus, we recommended that the Unit ascertain the public's evaluation of the service being provided. This would be especially important to know in revising agent reporting criteria and format.

MORE GUIDANCE SHOULD BE PROVIDED

We observed differences in both the style and extensiveness of agent reporting. The questions on the forms are general and, as such, do not specifically address the disclosure criteria. Unit officials agreed in general with our observations but added that the questions related to specific sections of the Act. Forms, general regulations concerning the Act, and advice if requested are provided to the agent. However, no standardized guidance on specifically how and what to report is available to the agent or to Justice's reviewer of the forms. We, therefore, have recommended that the agents, along with the reviewers of the agents' reports, be provided with more specific guidance on what is required.

Furthermore, we found that few executive branch officials are aware of the Act or its requirements. Unit officials agreed with our observation and said that only at the State Department are many people aware of the Act.

Compounding the problem is the lack of determination as to what type of lobbying is exempt from reporting. The lawyers' exemption under the Act allows unregistered lobbying in "the course of established agency proceedings." For most agencies,

no determinations have been made as to what constitute established agency proceedings for this purpose.

We believe the role of the agencies should be clarified and explained to them if the Act is to be effectively administered. The present vagueness concerning the agencies' role and the agents' reporting responsibilities allows agents to operate with a degree of immunity not intended by the Act. Agency officials should be aware of the Act and liaisons should be improved so that Justice can be apprised as necessary about agent activities.

NEED FOR PERMANENT INSPECTION CAPABILITY

The Registration Unit's inspection program has been dormant; agents' books and records had not been inspected for over a year until just the last few weeks. As a result, the Unit lost its primary means of assuring that registered agents were reporting all their activities and finances.

In our 1974 report, we recommended that Justice conduct more inspections. At most, 15 inspections had been made in the 2 years prior to that time. Subsequently, 93 were made in 1974. Since then, the number steadily declined--9 inspections were conducted in 1978 and 8 in 1979.

Unit officials said the reduction in inspections resulted from changes in who was being inspected, how they were inspected, and the Unit personnel conducting the inspection. Experience gained from inspections convinced Unit officials that the

lawyer-lobbyist agents warranted more attention. Subsequently, inspections were more detailed and lengthy and fewer were made. Unit officials believe the inspection process was thus improved, since the more important agents were being covered.

However, the low priority given the work by the FBI and courtroom demands on the Registration Unit's lawyers caused the Unit to assign inspections to its paralegals in 1978, under the supervision of its Investigator. In mid-1978, the program was stopped when the Investigator was temporarily reassigned to another program for 6 months. The program resumed in 1979, but the Investigator was again reassigned and the program was halted. Since mid-1979, there were no inspections until just a few weeks ago.

We believe the Unit should have a permanent inspection capability, using either the paralegals or other staff, for making regular inspections of the lawyer-lobbyist agents and other agents as necessary.

STATE SHOULD PROVIDE MORE ASSISTANCE

In contrast to the situation during our 1974 review, coordination between State and Justice could be better.

In response to an inquiry in 1977, State advised the Senate Foreign Relations Committee of discussions between State and Justice to agree on what agent activities qualified for exemption from the Act. These discussions emanated from foreign lobbying

of U.S. Government officials to lift the arms embargo of an Eastern Mediterranean country. The Unit attempted to have the agents register and requested that State provide the agents' names. State did not respond to the request. Unit officials objected to this tactic and the discussions followed.

The discussions failed to produce an agreement. State officials wanted the broadest possible definition used in determining diplomatic exemptions and exemptions for short-term visits of foreign government officials, including lobbying visits. Unit officials refused to agree to these proposals and the definition of who should register remains unresolved.

We have recommended that the Secretary of State resolve with the Attorney General who qualifies for diplomatic exemptions and that he provide whatever assistance the Attorney General requests to effectively administer the Act.

Mr. Chairman, this completes my statement. We would be pleased to answer any questions you may have.

Wednesday, August 6, 1980

NOTICE OF HEARING:

COMMITTEE : Subcommittee to Investigate Individuals Representing
the Interests of Foreign Government; Senate Judiciary Comm.

SUBJECT ; Foreign Agents Registration Act

TIME & DATE : 10:00 a.m. - August 6, 1980

ROOM : 1202 Dirksen Senate Office Building

Membership : Birch Bayh (D. Indiana), Chairman
Strom Thurmond (R. S.C.), Co-Chairman

Majority : Senators Baucus (Mont.), Leahy (Vt.), DeConcini (Ariz.)
and Pell (R.I.)

Minority : Senators Mathias (Md.), Dole (Kansas), and Lugar (Ind.)

PRINCIPAL STAFF : Michael Davidson and Michael Klipper, Staff Counsel

GAO WITNESS : J. Kenneth Fasick, Director, International Division

ACCOMPANIED BY : Stewart Tomlinson, Group Director, ID
Alan Bennett, Team Leader
Henry Wray, Assistant General Counsel, Office of the
General Counsel

CAR WILL LEAVE G ST., 1ST BASEMENT AT 9:40 a.m.

T. Vincent Griffith *TS*
Legislative Attorney
Office of Congressional Relations