STATUTORY REGULATION OF LOBBYING IN THE UNITED STATES, WITH SPECIAL REFERENCE TO THE FEDERAL REGULATION OF LOBBYING ACT OF 1946

by

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PREFACE

It will hardly be denied that lobbying has frequently been an unwholesome influence in American politics. At the same time, it will hardly be seriously maintained that lobbying should be abolished. The political parties of today also developed informally and extralegally, and their actions have often taxed the faith of believers in representative government; but we have not abolished them. Similarly, we cannot abolish lobbying but must accept it and find the means of making it into a recognized and controllable unit in a democratic system of government.

This study is concerned with the efforts which the state legislatures and Congress have made to achieve this end through regulation of lobbying laws. The primary purposes of this study are to examine the merits and deficiencies of these laws, to suggest ways in which they might be improved, and to offer other alternatives of control.

The writer owes great thanks to the many people who have contributed to the preparation of this study. Messrs. Joseph Dolan and Norman Futor, and Miss Dorothy Perry, all of the Lobby Compliance Section of the United States Department of Justice, have given particularly helpful aid and advice. Dr. W. Brooke Graves of the Legislative Reference Service of the Library of Congress has graciously made available to the author materials on the Federal Regulation

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For all errors of fact and judgment, the author, of course, assumes full responsibility.

E. L.

March, 1949

INTRODUCTION

Most Americans assume, as they must assume if our system is to survive, that "every group in a democracy has the right to present its case both to the public and the legislature."[1] But while we have enshrined the principle of free individual and group expression, we have often shrunk from the consequences of this principle's practical application. One of these consequences has been the development of the practice of lobbying.

The term "lobbying" can no longer be precisely defined. Originally, it had the narrow meaning of private, individual attempts to secure a desired legislative end. The term suggested the use of means which were generally covert and frequently corrupt. The lobbyists of the 1860's and '70's were suspect as perverters of legislative integrity, and all too often they deserved their unwholesome reputation.

Today, both the sources and methods of lobbying have changed. The individual entrepreneur has in large measure given way to the great groups and associations which have arisen to correspond with the manifold and complex interests of a modern society. These groups speak for the diverse interests of millions of citizens. Their resources are great, and their concern in governmental action has become intense

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[1] P. Douglas, "Report from a Freshman Senator," New York Times Magazine, March 20, 1949, p. 74.

and continuous. The lobbyist of today is the representative of these groups.

The methods of lobbying have also fundamentally changed. Bribery is no longer a frequent instrument of persuasion, for the modern lobby has more far-reaching and subtle means of influence at its disposal. The lobbies importune, cajole, and plead. They threaten reprisals at the next election. They show their strength by whipping up nationwide "Wire Your Congressman" campaigns.[1] By their own admission, they spend more than $6,000,000 per year in attempting to influence Congressional legislation. The ends which the modern pressure groups seek are similar to those of the old lobby, but the methods by which these ends are sought do not fit within the narrow meaning of the term "lobbying." Lobbying today includes a vast range of activities which are ultimately directed to the securing or prevention of governmental action. Modern lobbying can be described; it cannot be more accurately defined.

As lobbying has developed, representative government has inevitably suffered. Under-staffed, under-informed, imperfectly organized, and ham-strung by archaic procedures, our legislatures have too often fallen easy, although perhaps unsuspecting, prey to the lobbies. The special interest has prospered; the general interest has too frequently been

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[1] E. Kefauver and J. Levin, A 20th Century Congress (New York, Duell, Sloan and Pearce, 1947), p. 156.

overlooked. Senator Paul Douglas states the case mildly when he says:

> Even a brief experience with the lobbying of special interests makes a Senator wish ... that the members of these groups would practice a greater degree of self-restraint and a lesser degree of group selfishness. Not only do groups ask for more than they expect to get, but even the sum of all their bed-rock demands amounts to far more than the country can afford.[1]

One wonders if this is the true meaning of free group expression. One wonders if Raymond Clapper was describing the proper exercise of the right of petition when he wrote in 1943:

> It is a sickening thing to see happening in wartime, this greedy raid all around. American men are dying all over the world, and Washington is engulfed in an obscene grab for the almighty dollar. These pressure groups are running wild.[2]

Obscene, perhaps, but this pursuit of selfish interest is an all too logical corollary of the rights of a free people. Modern lobbying has found its cause in the Industrial Revolution and its justification in the First Amendment. We may shun the individual lobbyist, at least in theory, and yet hold up wholesale lobbying as something admirable and almost sacred.

Thoughtful observers have become deeply concerned

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[1] Douglas, op. cit., p. 74.

[2] Cited in S. Chase, Government under Pressure (New York, Twentieth Century Fund, 1945), p. 2.

with the effect of lobbying on our representative institutions. Senator Estes Kefauver charges that "Congress cannot function today without lobbyists."[1] Stuart Chase paints an even grimmer picture of the world which the pressure groups are building:

> It looks as if the pressure groups must either face the kind of world they are living in today ... or keep on cutting the community's lifelines until somebody comes riding in on a white horse. At which point Congress becomes a memory and the pressure groups go underground for an indefinite stay. They have been underground for twenty-seven years in Russia and for eleven years in Germany.[2]

We have not dared gamble on the willingness or ability of the pressure groups to recognize their responsibilities to the larger community. The only practical alternative has been for the legislatures to attempt to better their understanding of the interests which have increasingly sought to shape legislative action. This study is concerned with the efforts which state and national legislatures have made to achieve this end through regulation of lobbying.

The American legislature is no longer a deliberative market-place of ideas, nor is it adequately representative of the dominant forces which rule an industrial society. Rather, the legislature has become a harried agent whose prime function is to serve as arbiter between conflicting group needs, to select and act on the most urgent of these

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[1] Kefauver and Levin, op. cit., p. 156.

[2] Chase, op. cit., p. 8.

needs, and to discard those which are less acute.[1] This function can only be exercised wisely if the arbiter has full knowledge of the competitors. The purpose of the great bulk of state and federal regulation of lobbying is to provide the legislature with this knowledge. What group does the lobbyist represent? What are this group's sources of support? How are its funds expended? These are questions for which the legislature must have answers if it is to serve as a catalyst for the needs of a complex society. Our aim in this study is to assess how effectively regulation of lobbying has provided state legislatures and Congress with answers to these questions.

Regulation of lobbying has been beset with many difficulties, not the least of which has been the difficulty of reconciling the practical effects of free expression with the political theory which has exalted this expression as a right. The right of the legislature to inform itself so that it may protect its representative function is generally conceded. But at the same time, it is frequently alleged that lobbying laws abridge the right of individuals and groups freely to petition the legislature. We shall have occasion to inquire how successfully state and federal regulation of lobbying has balanced these opposing strains.

Throughout this study, occasional references will be made to the methods of lobbying. However, this study does

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[1] Douglas, op. cit., p. 74.

not purport to be a study of lobbying proper. Rather, it is primarily concerned with the legal mechanisms which have been evolved to meet the problem of lobbying.

The study is divided into five chapters. Although the larger emphasis will be placed on federal regulation, the first two chapters are devoted to the state regulatory experience. Not only is this experience important in its own right, but it can also serve as a basis on which the more recent federal attempt at control may be evaluated. Earlier Congressional proposals for lobbying legislation were drawn directly from state models, and the Federal Regulation of Lobbying Act embodies a tacit recognition of both the achievements and the omissions of seventy-five years of prior state experience. In view of this close relationship between regulation on the two levels, an understanding of the milieu from which the earlier state efforts at control developed is indispensable to a clear understanding of the background and content of the newer federal enactment. Chapter I sketches briefly the factors which conditioned the states' entrance into this field of regulation.

Chapter II is devoted to an examination of the textual content of state regulation of lobbying laws. An analysis and classification of these laws will be joined with an appraisal of their operating efficiency. This appraisal is based on both secondary sources and on correspondence with the state officials charged with the laws' enforcement.

The third chapter has two aims: first, to present a capsule survey of the growth and evolution of lobbying before the Congress; and, second, to analyze both Congressional investigations of lobbying and Congressional attempts to enact lobbying legislation prior to 1946.

Chapter IV centers around the Federal Regulation of Lobbying Act of 1946. The background and legislative history of the measure will be discussed, and the provisions of the act will be subjected to a detailed section-by-section analysis. An evaluation of the act during the first two and one-half years of its operation will conclude the chapter. In this evaluation, the writer will rely primarily on his own observations and research in the Lobby Compliance Section of the Department of Justice during the summer of 1948.

In a final chapter, the writer offers his conclusions as to the contribution which regulation of lobbying has made to a more enlightened legislative process, and, through this, to the maintenance of representative government as we have known it. For without wishing to assume the role of prophet of disaster, the writer fears for the ability of the American legislature to withstand very long the powerful and unrelenting assaults of special interests. It is perhaps too late for the legislature to regain its position as the primary formulator of governmental action; but it is not too late for the legislature to assert its independence of those

interests which would subordinate the general welfare to their own. As Stuart Chase has wisely written:

> I am clinging to the hope that a democracy can discipline itself. Look at Britain.... Yes, but look at France in 1940.[1]

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[1] Chase, op. cit., p. 8.

CHAPTER I

THE DEVELOPMENT OF STATE REGULATION OF LOBBYING

For over seventy years, the states have variously attempted to regulate the practice of lobbying. Not only have these efforts been important in their own right, but they have also contributed significantly to earlier Congressional proposals for regulation and to the Federal Regulation of Lobbying Act of 1946. As has frequently been the case in other areas of governmental action, a regulatory pattern first developed in the states has been adapted to fit national needs.

In view of this close relationship between regulation of lobbying on the two levels, an understanding of the milieu from which the earlier state efforts emerged is an essential part of a clear understanding of the background and prospects of the newer federal enactment. To this end, it is our purpose in the present chapter to indicate briefly the factors which conditioned the states' entrance into this field of regulation. Their attempts to meet the problem of lobbying will be seen primarily as a response to a general challenge to the integrity of legislative action. It will be pointed out, however, that this response has had a curiously static character, while the challenge which first engendered it has shown a marked capacity for growth and change. The practice of lobbying has matured while the regulatory legislation,

which we have for the past seventy-five years assumed to be its necessary concomitant, has not developed apace.

The Development of Lobbying in the States

Although some observers have, with apparent regret, expressed the view that lobbying of one kind or another always has existed and always will exist,[1] it is likely that the origin of the professional lobby ought not be set at an earlier date than that of the war between Andrew Jackson and the United States Bank over the charter question. "Thereafter," writes Robert Luce, "with the mushroom growth of corporations and their need of special legislation, lobbying as a business grew rapidly."[2]

Although Mr. Luce suggests a point in federal history as signalizing the beginnings of professional lobbying, it was in the states that the first important manifestations of lobbying became visible. As Professor Crawford has pointed out, the lobby in the states is as thoroughly organized as it is in Washington. "In fact," he declares, "the fine art of lobbying was developed in state capitals and was later transplanted to the national capital."[3]

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[1] W. F. Dodd, State Government (New York, Century, 1928), 201.

[2] Robert Luce, Legislative Assemblies (New York, Houghton-Mifflin, 1924), 367.

[3] Finla G. Crawford, State Government (New York, Holt, 1931), 146.

There was abundant reason, indeed necessity, for the relatively early development of extra-official legislative representation in the states. Beginning with the decade preceding the Civil War, the infant American economy burgeoned swiftly. The corporatization of the economy proceeded with a rapidity with which a rudimentary colonial legal system could not cope. As a consequence of the absence of general laws, railroads, banks, bridges, turnpikes, and almost all other types of corporations had to be created by special charter granted by the state legislatures. It has been estimated that the consideration and granting of these charters occupied perhaps three-fourths of the time of the legislatures.[1]

The Civil War served to heighten the pressures for individual and corporate advantage before the state legislatures and to usher in a tense and dramatic era of ruthlessly competitive empire building. Paul S. Reinsch has drawn this perceptive sketch of the emergence of the most successful competitors:

> The opportunities which our political system offered for the rapid extension and solid entrenchment of economic power were soon perceived by the leaders in this struggle. These men noticed that while everyone was anxious to acquire wealth, nobody paid any attention to the institution through which unlimited economic power could be acquired--the state legislatures.[2]

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[1] Luce, op. cit., 368.

[2] Paul S. Reinsch, American Legislatures and Legislative Methods (New York, Century, 1907), 230. The ensuing section places particular reliance on Reinsch's study and on Luce, Legislative Assemblies.

The great railways, owing to their greater resources and to the extent and semi-public character of their business, had relatively the greatest stake in favorable legislative action. Thus they were quite naturally the first of the large new economic interests to perceive the opportunity for securing their own interests through the direct solicitation of such action.[1]

There is an abundance of evidence attesting the high degree of success which the railroads achieved in their quest for privilege. Reinsch declares:

> During the formative period when new grants, privileges and exemptions were sought by the railways, and when their legal status still largely remained to be determined, the influence of this particular interest became so pervading that we may indeed speak of the railway period in our legislative history.[2]

So decisive was this influence that until quite recent times it was the fashion to speak of certain of the states as "belonging" to certain railroads. The New York Legislature allegedly did the bidding of the New York Central, the Pennsylvania Legislature stood in similar relation to the Pennsylvania Railroad, and the California Legislature was said to be the servant of the Southern Pacific System.[3]

New Jersey is another state with a long history of

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[1] Ibid., p. 231.

[2] Ibid., p. 232.

[3] "Lobbies and American Legislation," Current History (January, 1930), 693.

equally singular domination by a railroad interest. The railroad lobby in this state was entrenched soon after the chartering of the Camden and Amboy Railroad, in 1831. The power of this road lasted virtually unimpaired until Woodrow Wilson's term as Governor in 1911.[1] One observer has given us the following angry picture of the breadth of this domination:

> So absolute was its control of all departments of the state government that the state itself came to be known derisively among the people of other states as the State of Camden and Amboy. There was never a more complete master anywhere of the destinies of a state than was this master monopoly of the destinies of New Jersey.[2]

In New Jersey and elsewhere, the methods by which the railroads established their primacy were all too often beyond the pale of honest petition of the legislature. The lobbyist of the post-Civil War era could not, by modern standards, be said to have managed things adroitly. There was "much indiscriminate and broadcast bribery," and to buy legislators for the smallest possible sum was "the acme of ambition to the successful lobbyist."[3]

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[1] See D. D. McKean, Pressures on the Legislatures of New Jersey (New York, Columbia Univ. Press, 1938), p. 189. The road later became the Pennsylvania.

[2] Ibid., p. 189.

[3] Reinsch, op. cit., p. 231. Economy was, as our history attests, not always the governing consideration of the lobbyist. As but one of many cases in point, an investigation into the affairs of the Milwaukee and LaCrosse Railway Co. in Wisconsin in 1858 disclosed that about $900,000 worth of the road's bonds had been distributed among legislators and prominent politicians in the state.

Judged by this criterion alone, there were many successful lobbyists. It was in response to this widespread legislative corruption, merely suggested above, that the states made a first tentative effort at curbing the more patent abuses of the lobby.

Constitutional Provisions

Although a number of the states had enacted, particularly in the decade following the Civil War, constitutional provisions which prohibited the outright bribery of legislators,[1] there were not until 1873 any constitutional or statutory provisions directed specifically to the practice of lobbying. When such provisions were enacted, they too were made a part of the state constitution.

Early constitutions in New Hampshire (1792), Vermont (1793), and Rhode Island (1842) had prohibited legislators from taking fees for the advocacy of or for acting as counsel in any cause pending before the legislature.[2] Alabama, however, was actually the first state to give constitutional notice to what was then understood to be "lobbying."[3] The

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[1] Notably, Maryland in 1867, Virginia in 1872, and Pennsylvania in 1873. Luce, op. cit., p. 432.

[2] Margaret A. Schaffner, Lobbying, Wisconsin Free Library Commission, Comparative Legislative Bulletin No. 2 (Madison, State of Wisconsin, 1906), pp. 17, 20, 21. The penalty in Rhode Island was forfeiture of a seat.

[3] Although it has been said that the Pennsylvania provision of 1873 is essentially similar to that of Alabama, the fact remains that the Pennsylvania provision specifically

Constitution of 1873 declared:

> The offense of corrupt solicitation of members of the General Assembly, or of public officers of this State, or of any municipal subdivision thereof, and any occupation or practice of solicitation of such members or officers to influence their official action shall be defined by law, and shall be punished by fine and imprisonment.[1]

The statute passed in accordance with this provision prescribed punishment for the same "occupation or practice of solicitation" mentioned in the constitutional provision itself. It could be inferred that this solicitation need not necessarily be corrupt to warrant the punishment which the statute provided. However, in the statutory definition of bribery, the limiting term "corruptly" is used, and it can be presumed that a court would imply it in the constitutional provision as well.[2]

A subsequent Alabama statute, currently in force, does not leave this to be presumed in that it specifically prohibits corrupt solicitation or influencing of legislators as regards the casting of votes, speaking for or against measures, or attending legislative sessions or committee meetings.[3] Although the areas of solicitation are more

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classifies corrupt influence as "bribery." Schaffner, op. cit., p. 20. See Francis N. Thorpe, American Charters, Constitutions, and Organic Laws (Washington, Government Printing Office, 1909), vol. 5, p. 3129.

[1] Ibid., vol. 1, p. 153.

[2] Luce, op. cit., p. 432.

[3] Code of Alabama, 1940, Title 14, Chapter 55, Section 352.

sharply defined here than they were in 1874, the prohibition of only corrupt solicitation is common to both statutes.

While there can be little doubt as to the nature of the abuses towards which these Alabama provisions were directed, it should nonetheless be pointed out that they do not at any point employ the term "lobbying." A provision of the Georgia Constitution, enacted in 1877, was the first in which lobbying was denominated as such. In this sense, it constitutes the actual beginning of the development of state regulation in this difficult area.[1]

The Georgia Constitution was made to declare, "succinctly and absurdly,"[2] in the view of Mr. Luce:

> Lobbying is declared to be a crime, and the General Assembly shall enforce this provision by suitable penalties.[3]

This constitutional statement was inadequate, its most notable lack being any attempt at defining the practices which were sought to be regulated. This lack has never been wholly corrected. A statute passed at the ensuing session of the General Assembly defined lobbying merely as:

> ... any personal solicitation of a member of the General Assembly during the session thereof, by private interview,

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[1] Edward B. Logan, "Lobbying," Annals of the American Academy of Political and Social Science, vol. 144 (July, 1929), p. 65.

[2] Luce, op. cit., p. 370.

[3] Code of Georgia Annotated, 1936, Title 2, Chapter 2, Sec. 2-205.

> or letter, or message, or other means not addressed solely to the judgment....[1]

to favor or oppose any proposed or pending legislative matter. The "any" of this definition was both qualified and limited by an ensuing section which provided that professional services, themselves undefined, were to be excluded from the application of the act.[2]

The phrase "other means not addressed solely to the judgment" also adds to the difficulty of interpreting the section in that it is itself somewhat ambiguous. In sum, one can say that this pioneer statutory definition of lobbying posed at least as many problems as it clarified. Nonetheless, it was a beginning.

In 1879 California became the second state to make a constitutional statement specifically addressed to the control of legislative lobbying. Where Georgia had defined lobbying by statute, California attempted to delineate in the Constitution itself the evil sought to be corrected. This provision, which still continues in effect, declared:

> Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, or any other dishonest means, shall be guilty of lobbying, which is hereby declared to be a felony.[3]

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[1] Ibid., Title 47, Chapter 47-10, Section 47-1000.

[2] Ibid., Section 47-1001.

[3] Statutes of California, 1947, Constitution, Art. IV, Sec. 35.

The section further provided for the punishment and disqualification for office of legislators who had been corruptly influenced. Testimony in any process brought under this section was to be compulsory, but with the proviso that such testimony could not be used in subsequent judicial proceedings against the person so testifying.

The definition of lobbying in this provision is hardly less ambiguous than that of the Georgia statute. "Promise of reward" is, in Luce's view, one kind of bribery, and intimidation could best be classed as contempt of the Legislature. But the omnibus phrase, "any other dishonest means," begs the question of what lobbying is dishonest and necessarily leaves with the courts the power "to create crimes after the fashion of the common law."[1]

Beyond its failure to define adequately the range of activities coming within its purview, there is still another important objection which can be levied against the California provision, and against those of other states where condemnations of lobbying have been written into the text of the constitution. It is true that both statutes and constitutional provisions may fail to define adequately the scope of either proper or improper lobbying. But, as competent observers have pointed out, statutes have the advantage of a greater degree of flexibility. Further, it is said that regulation

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[1] Luce, op. cit., p. 371.

of lobbying is better left to statutes in that they more clearly indicate the ability and willingness of the legislature to assert its undoubted competence "to regulate its own processes and to protect itself" against pressures from outside.[1]

It is perhaps indicative of a general recognition of the impropriety of constitutional regulation of lobbying that since the enactment of the California provision of 1879, only a very few states have seen fit to write into their constitutions provisions prohibitive of lobbying. Arizona and Montana added provisions which closely followed the California model, and Wyoming provided, in 1889, for the punishment of "private solicitation" of members of the Legislature.[2] Beyond these few constitutional statements and the almost universal corrupt practices and bribery provisions, state constitutions contain no other provisions immediately

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[1] Idem.

[2] Thorpe, op. cit., vol. 6, p. 4121, Wyoming Constitution of 1889, Article 3, Section 12. Actually, this constitutional statement authorizes the Legislature "to protect its members against violence or offers of bribes or private solicitation." It is the term "private solicitation" which dictates the present inclusion of the Wyoming provision, and the exclusion of articles from other state constitutions where the context indicates that the section is aimed at bribery alone. There are indeed few states which do not have, either as a part of their constitutions or statute law, some prohibition of outright bribery of legislators. See Thorpe, op. cit., vol. 6, p. 4356, in which some thirty-eight states are listed as having had such provision in their constitutions alone as of 1909.

regulative of lobbying before the legislatures.[1] The larger part of the states' effort to meet the challenge of lobbying has taken statutory rather than constitutional form.

Statutory Regulation

The first efforts at constitutional control of improper lobbying had been made in response to the methods by which emerging corporate interests, particularly the railroads, had established their virtual domination of the state legislatures. So too were the first attempts at statutory regulation of lobbying undertaken in response to another generalized challenge to legislative integrity. The new challenge employed methods of persuasion which were perhaps more genteel than those of the railway barons, but its objectives were neither less thorough nor less selfish. The leaders of the new assault were representative of interests which had been hitherto unrecognized as important contenders for the favor of the legislatures. Paul S. Reinsch has admirably sketched their ascent to prominence:

> When in certain commonwealths the railways had secured all the franchises, exemptions, and privileges which the

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[1] The Alabama Constitution of 1901 does prohibit any state or county official from accepting any fee, reward, or other thing of value "to lobby for or against any measure pending before the legislature or to use or withhold his influence to secure the passage or defeat of any such measure." Code of Alabama, 1940, Constitution of 1901, Art. 4, Sec. 101. This provision is simply the current equivalent of the earlier provisions of the New Hampshire, Vermont, and Rhode Island Constitutions mentioned previously. See supra, p. 6.

> legislature could bestow upon them, and when they had given a form to these incidents which could be relied upon as fairly permanent, the railways began to take a somewhat less direct interest in politics, confining their activity to the prevention of unfavorable legislation. Indeed, in some instances they felt able to dispense with the finely wrought and efficient mechanism which they had constructed; this they now hired out to some other 'interest' which had not as yet sufficiently fortified its position. We thus enter upon the public service period of legislative corruption. The 'trolley crowd' and the 'gas combine' became potent factors in legislative life.[1]

The transition from the "railway" period to the "public service" period was gradual and continuous. Equally gradual was the recognition that constitutional provisions were inadequate to cope with the problem of lobbying. The transition to statutory regulation was not occasioned by the greater corruption of the later period; to the contrary, the railroads had earlier compiled an unexampled record in this line of endeavor. Rather it would appear that the states turned to statutory attempts at control out of a willingness to experiment with whatever technique promised to ameliorate the situation, although it had already been somewhat improved. There is little evidence to support the conclusion that statutory regulation developed as an "inevitable reaction" to a generation of bought legislation.[2] The nadir of corruption had passed.

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[1] Reinsch, op. cit., pp. 232-233.

[2] A. F. MacDonald, American State Government and Administration (New York, Crowell, 1940), p. 23.

To Massachusetts must go the credit for the formulation of the first thorough-going statutory attempt to render lobbying subject to a degree of governmental supervision. Its Act of 1890 set what has proven to be the continuing pattern for state regulation up to the present time.

In many respects, Massachusetts was the ideal site for the trial of this new approach to the problem. Its legislature had been neither much more nor much less tainted by corruption than had most others during the latter part of the nineteenth century. There was less venality than there had been in New York, but considerably more than there had been in a state as politically wholesome as Rhode Island. As early as 1853, for example, a Massachusetts Constitutional Convention had heard the charge that "there has been a vast amount of outside influence exercised in getting matters through the Legislature."[1]

Again in 1869, investigation of a projected loan by the State to the Boston, Hartford and Erie Railroad resulted in the disclosure that the railroad had spent substantial sums for corrupt lobbying in connection with the loan.[2]

Another investigation in 1887 revealed that some

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[1] Luce, op. cit., p. 370, citing Debates in Massachusetts Convention of 1853, vol. I, p. 785.

[2] "Corruption in the Massachusetts Legislature," Nation, vol. 9 (July 1, 1869), p. 10; "Existence of the Lobby," Nation, vol. 9 (July 22, 1869), p. 64; see also Luce, op. cit., p. 431.

$20,000 had been spent in order to "secure influence which would be of weight with members of the Legislature." More than mere revelation resulted from this investigation, however. The investigating committee recommended the passage of a bill which would require the registration of legislative counsel and agents. Such a bill was introduced but there was little effort made to pass it.[1]

In 1890, still another scandal and a subsequent investigation by the Legislature finally resulted in the passage of a regulatory act. It was shown that the Boston street railways, in promoting a bill which would have given them the right to construct an elevated line, had maintained a large corps of lobbyists and legislative counsel and had made expenditures through them "beyond any legitimate purpose in securing legislation."[2] The company had employed some thirty-five counsel and lobbyists who had spent approximately $33,000, with perhaps half as much still waiting to be paid where specific contracts had not been made.[3]

Appended to the report of the investigating committee

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[1] Josiah Quincy, "Regulation of the Lobby," Forum, vol. 19 (November, 1891), p. 353. Quincy was the drafter of this bill and of the subsequently successful one as well.

[2] Idem.

[3] The committee report did not wholly blame the company, but rather agreed that it virtually "had to hire lobbyists for protection." E. W. Kirkpatrick, "Bay State Lobbyists Toe Mark," National Municipal Review, vol. 34 (December, 1945), p. 536. See also on this point, Logan, op. cit., p. 86.

was the text of a bill providing for regulation of legislative counsel and agents, identical to the measure which had failed of enactment earlier. This time the bill was passed with but very little discussion, and was signed by the Governor at the same time as the elevated railway bill which, despite the commotion it had caused, had also been passed.[1]

Although the Act will be subjected to closer analysis at a later point in this study, a brief review of its provision would not be out of order here. The Act required the registration of all those who, as counsel or agent, promoted or opposed the passage of any legislation "affecting the pecuniary interests of any individual, association, or private or public corporation as distinct from those of the whole people of the Commonwealth."[2] Information regarding the terms of employment was to be included in the registration, and this registration was prerequisite to the performance of the employment. Employment on a contingency basis was prohibited.

Within thirty days following the end of the legislative session, all registrants were required to submit a detailed statement of all expenses incurred in connection with this employment. Fines and prison terms were provided. In addition, registered counsel and agents could be barred

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[1] Quincy, op. cit., p. 354.

[2] Acts and Resolves of Massachusetts, 1890, chap. 456, Section 1.

from such employment, after a hearing, for a period of three years. The Attorney General of the Commonwealth was charged with the enforcement of the Act.

There was a measure of criticism directed against the new law soon after its passage, but most of this criticism was in the constructive spirit of pointing out its deficiencies rather than damning it in advance as utterly useless. The newly-elected Governor of Massachusetts declared in his inaugural address of 1891, even before the act had become operative:

> It is far easier to state the evil than to suggest the remedy. Clearly it is impossible and improper to prevent a constituent or any other person from having the freest access to the legislator. This constitutional right guaranteed to the people gives the opportunity to the lobby to do its work. Prevention by non-intercourse is therefore impossible; and I would suggest ... making it easier than it now is publicly to investigate the methods used, the money spent on pending legislation; ... by giving power to some proper officer, before a measure finally becomes law, to demand under oath a full and detailed statement as to these matters. The fear of publicity, and through it of defeat, may stop improper practices by making them worse than useless.

Governor Russell said that he felt good would come of the Act of 1890, but that it fell short of being a sufficient remedy. He continued:

> It makes public the names of all persons employed, but not the acts of the lobbyist. It makes public the expenses incurred, but too late to affect the legislation for which they were incurred.[1]

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[1] Address of His Excellency William E. Russell to the Two Branches of the Legislature of Massachusetts (Boston, Wright and Potter, 1891), pp. 22-23.

No one of Governor Russell's suggestions for strengthening the Massachusetts law was ever adopted by the Legislature of that state, although they had definite merit. Up to the present time, only Wisconsin and Nebraska have required periodic (i.e., weekly or monthly) financial reports by lobbyists,[1] and only Maryland has empowered the Governor to require special reports of expenditures made in connection with bills coming to his desk for signature.[2]

There were, however, other important changes made in the Massachusetts law within a year of its enactment. Originally the law had called for the registration of only those counsel or agents employed in connection with the passage of any legislation affecting individual or corporate pecuniary interests as distinct from those of the whole people of the state. In 1891 this distinction was dropped, and the law now covered counsel or agents employed in connection with the passage of any legislation, without any additional qualifications.[3]

This amendment gave the law considerably greater breadth of coverage, although it had been the intention of

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[1] Wisconsin Statutes, 1947, Title XXXII, chap. 346, sec. 346.245; Revised Statutes of Nebraska, 1947 Supplement, chap. 50, sec. 50-305.

[2] Maryland Code Annotated, 1939, Article 40, Sec. 4-13-11.

[3] Quincy, op. cit., p. 349.

the framers of the original act to draw a sharp line between private and public bills, with the act to apply only to employment regarding the former. Josiah Quincy, author of the committee report of 1890 and of the original bill, has described the difficulty inherent in this type of distinction:

> But the attempt to draw any distinction in this respect between private and public acts, or special and general legislation, has now been abandoned; and if any other States ever copy our act, they would do well to follow our example in this respect.... Under any definition there will be room for doubt in particular cases.[1]

The passage of fifty-seven years and of more than a score of generally similar statutes in other states indicates that Mr. Quincy's advice has not always been heeded. Six states whose laws otherwise closely follow the Massachusetts model continue to use the individual pecuniary interest formula which Massachusetts so quickly abandoned.[2] In several other states the variant of "direct interest"[3] or "any interest"[4] in any measure before the legislature, coupled with a failure to disclose such interest, becomes the measure of the law's applicability.

Wisconsin became, in 1899, the second state to undertake regulation of lobbying through registration and reporting,

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[1] Idem.

[2] Kansas, Kentucky, North Carolina, Rhode Island, South Carolina, and South Dakota.

[3] Louisiana and Texas.

[4] Oregon.

and its law was an almost verbatim copy of the Massachusetts act of 1890.[1] The content of the Massachusetts amendment of 1891 was notably absent from the Wisconsin statute, however, and its initial coverage thus extended only to those who lobbied in behalf of private pecuniary interests.

Maryland followed in 1900 with an act which was drawn along the general lines of the Massachusetts and Wisconsin statutes but which, in one respect, was a significant improvement upon them. While requiring registration and the submission of sworn statements of lobbying expenses within thirty days of the adjournment of the Legislature, the Maryland act also empowered the Governor to require sworn statements of expenses incurred with respect to any particular bill whenever he had reason to believe that "improper expenses had been paid or incurred in connection with it."[2] General responsibility for the enforcement of the act, however, was vested in the Attorney-General of the state.

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[1] Laws of Wisconsin, 1899, chap. 243. There was a degree of legislative activity re lobbying between 1891 and 1899. Tennessee declared lobbying to be a felony (Acts of 1897, chap. 117), and West Virginia provided for the exclusion of lobbyists from the floor of the legislature while it was in session (Acts of 1897, chap. 14). But no other state followed Massachusetts in requiring registration and financial reporting until Wisconsin so enacted in 1899.

[2] Maryland Code Annotated, chap. 40, sec. 4-13-11. This Maryland provision, still in force, represents the one state attempt to meet the problem of financial reporting along the lines suggested by Governor Russell in 1890. See supra, p. 17.

With the adoption of the Maryland law, there was a temporary respite in the enactment of lobbying legislation. Then in 1905, the disclosure of another concerted challenge to the impartiality of legislative action gave impetus to the most prolific response which state regulation of lobbying has yet known.[1]

As the investigation of lobbying by the Boston street railways led to the prompt enactment of the Massachusetts law of 1890, so too did the revelations of the Armstrong Insurance Investigation lead to the enactment of a similar statute in New York in 1905. But where the activities of the street railways had been confined to lobbying before a single state legislature, the Armstrong Investigation showed that certain insurance companies were active in several other states as well, and in other matters besides insurance.[2] Professor Zeller has succinctly described their methods of operation:

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[1] It should be noted that virtually every case of state activity vis a vis lobbying has followed upon either legislative investigation or widespread public knowledge of bribery or other untoward pressures on the legislature. This has been the "challenge." The "response" has taken the form of constitutional provisions, adoption of rules for the more effective internal ordering of the state legislature, or regulatory statutes.

On the federal level, however, it will be shown that the three systematic investigations of lobbying (1913, 1929, 1935, see infra, chapter three) had no other immediate effect than the creation of a measure of public and Congressional awareness of the nature and gravity of the problem.

[2] E. P. Herring, Group Representation Before Congress (Baltimore, Johns Hopkins, 1929), p. 261.

> ... the country was divided into three districts, each covered by a large insurance company. Legislation was closely watched by a representative of the insurance companies stationed in each state Capital. Huge sums of money were spent in promoting or opposing legislation that affected the interests of insurance companies and in securing the nomination and election of friendly legislators.[1]

At the next session of the New York Legislature, a lobby law similar in compass to the Massachusetts statute was passed, as the Armstrong Committee had recommended. With the exception of a provision attempting to limit lobbying to "appearances" before legislative committees, the measure bears a marked resemblance to its predecessors.[2]

The New York statute and the conditions which gave rise to it are of basic importance to the subsequent development of state regulation of lobbying. The Armstrong Investigation and its consequences, along with the message of Governor La Follette to the Wisconsin Legislature in 1905, have been singled out as the two factors which contributed most heavily to the enactment of the rash of state lobbying laws which followed.[3]

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[1] B. Zeller, Pressure Politics in New York (New York, Prentice-Hall, 1937), p. 252. At the same time, an extensive though somewhat less sensational investigation in New Jersey did not lead to the passage of lobbying legislation in that state. McKean, op. cit., p. 7.

[2] McKinney's Consolidated Laws of New York, Annotated, Legislative Law, sec. 66.

[3] B. Zeller, "Pressure Groups and Our State Legislators," State Government, vol. 11 (August, 1938), p. 144.

Governor LaFollette urged in his message that the Legislature take more stringent action against lobbying than they had in 1899. He requested the enactment of a statute making it a penal offense to approach a legislator "privately and personally upon any matter which is the subject of legislation."[1]

The Legislature acted accordingly, and in 1905 amended the original act of 1899 so as to define and narrow the range of activities in which registered counsel and agents could participate. Henceforth, personal solicitation was forbidden. The lobbyist was required to limit his activities to appearances before committees, publication of material in the press, public addresses, and circular briefs or arguments directed to all members of the Legislature, twenty-five copies of which were first to be deposited with the Secretary of State.[2]

Governor LaFollette's message had a national audience, for in it he bitterly and memorably excoriated the lobby, both in general terms and more specifically for having evaded the full intent of the Wisconsin Law of 1899. Similarly, the Armstrong Committee's disclosures were of wide significance

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[1] Message of Governor LaFollette to the Wisconsin Legislature, May, 1905, in P.S. Reinsch, Readings on American State Government (Boston, Ginn, 1911), pp. 81-84.

[2] The Wisconsin Act presently requires that three rather than twenty-five copies of the brief argument or statement he delivered to the Secretary of State within five days of their use or dispatch. Wisconsin Statutes, 1947, Title 32, chap. 346, sec. 346.27.

and stirred up a hitherto unknown degree of public and legislative concern regarding the extent of lobbying. The practical results were notable. In the first year following the LaFollette message and the Armstrong Report, regulatory laws patterned on the Massachusetts, Wisconsin, or New York models were written and passed in a total of nine states. Even further, within the "next three or four years" the larger part of the state laws regulating lobbying which now exist were passed.[1]

Much of the contemporary dissatisfaction with state lobbying laws can be traced to the fact that most of the laws currently in force were written before 1912 and have been amended only slightly, if at all. Although seven states have enacted registration and reporting statutes since 1932, their laws, with the possible exception of North Carolina's, demonstrate no great originality of approach.[2] As the states copied the early Massachusetts, Wisconsin, and New York acts between 1905 and 1912, so have they continued to copy them during this more recent flurry of legislation.[3] The

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[1] Logan, op. cit., p. 66. Logan's statement, written in 1929, is still true today.

[2] Connecticut (1937), Michigan (1947), North Carolina (1933, 1947), North Dakota (1941), South Carolina (1935), Vermont (1939), and Virginia (1938).

[3] The factors which most readily account for this recent legislation are the disclosures of the Black Committee of 1935, see infra, chapter three, and the general concern with legislatures which grew out of executive expansion during the war period.

definitions, requirements, prohibitions, and provisions for enforcement of the newer acts are all too familiar and suggest that the legislatures enacting them are lacking in either ingenuity or in recognition of the fact that the locale and techniques of lobbying have fundamentally changed.[1]

When the bulk of the existing state lobbying laws were written, the term "lobbying" generally connoted a covert and somehow sinister effort to secure legislative action. If corruption were not actually present, as it all too often was, it was nonetheless regarded as an ever present danger. Over the past fifty years, however, lobbying has evolved to the point where it is no longer susceptible of being dealt with in terms of this older historical context.

Of the many reasons which could be offered in explanation of this evolution, several stand out as particularly important. Changed, and, in this respect, elevated standards of political morality no longer brook the recourse to overt bribery which in another era was the lobbyist's ultimate instrument of persuasion. The development of new media of communication has also wrought changes in the method of lobbying. Radio, for example, has been very effectively used in

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[1] The only major amendments to Massachusetts-type statutes have been made by states which enacted their laws early, e.g., Wisconsin and Nebraska. Thus the newer statutes are perhaps even less responsive to modern needs than are these older ones which have been amended.

attempting to influence legislative decision. At the same time, older media have been put to new uses. The possibilities of letter and telegram campaigns have been thoroughly explored by interested groups.

From this latter development has arisen a significant corollary, that of decentralized lobbying. State lobbying laws are designed to curb certain types of face to face solicitation of legislators; they cannot be made to accommodate the activities of the modern lobby which are at once diffuse and difficult to trace.

A final factor of basic importance has been the very proliferation of organized groups having a stake in legislative action. The organization of these groups was a function of the expansion of the American economy; their interest in legislation is in large measure a function of the general expansion of government itself. As government services or regulations impress themselves further on the life of the nation, it is inevitable that organized groups will attempt to mold these activities to their own purposes.

It is proper that government should be empowered to inquire into these purposes, but the existing state lobbying laws offer no means by which any such inquiry could be broached. As a subsequent section of this study will demonstrate, these laws are directed at individuals and not at groups. They are concerned with means and not with ends, and the means which

they condemn are no longer those which the modern lobbyist would ordinarily employ.

Summary of the Development of State Regulation

We have attempted to indicate above that the development of state regulation of lobbying proceeded rather quickly from constitutional to statutory efforts at control. This development was essentially in response to the challenge of the corruption of our state legislatures. By 1912, it had been substantially completed, and subsequent enactments have not appreciably changed the pattern of control. But now we have passed our eras of unabashed corruption and have entered the era of influence. Here is the modern challenge, and it is important to ask whether our existing regulatory structure is capable of meeting it. With this question in mind, we may profitably turn to a more detailed examination of this structure so that its assets and liabilities may be more clearly assessed.

CHAPTER II

THE CONTENT OF STATE REGULATION OF LOBBYING

Although it does display a modicum of local particularity, especially as regards definitions, the body of state law pertaining to lobbying is nonetheless rather compact and lends itself reasonably well to classification and analysis. Classification and analysis is further aided by the stability of this body of law. It has not been appreciably expanded by either amendment or administrative or judicial interpretation, and even the enactments of the past decade fall easily into the established pattern of regulation.

It is our purpose in this chapter to examine this pattern and to determine how effectively it has met the problems which the continuing development of lobbying has posed. Under the general heading of statutory provisions, matters of definition, registration and publicity requirements, prohibitions, penalties and enforcement will be dealt with. Finally, an appraisal of the operating effectiveness of state lobbying statutes will be joined with conclusions as to how the state experience can serve as a criterion for the evaluation of the textual content and practical efficiency of the new federal attempt at regulation of lobbying.

Definitions of Lobbying in State Statutory and Constitutional Provisions

Writers in the field are in substantial agreement that effective control of lobbying should proceed from a careful definition of the persons and activities to be controlled.[1] The inadequacy or complete absence of definition is usually decried, but there is little agreement as to how a workable definition might be framed. A number of state laws or constitutional provisions variously attempt to delimit the areas to which their requirements extend. As the states' law of lobbying has developed, however, no one of these definitions has been used with any degree of unanimity. At one extreme, constitutions and statutes define lobbying as including only corrupt solicitation of the legislator; at the other, lobbying is defined as any direct or indirect attempt to influence legislative action.

This diversity of approach prompts the question of whether adequate definition is possible at all. Is it practical to attempt definitive enumeration of the practices which constitute proper and improper lobbying? Seventy years' experience with the present definitions might well prompt a negative reply.

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[1] Cf. Logan, op. cit., p. 74; McKean, op. cit., p. 243; J. K. Pollock, "The Regulation of Lobbying," American Political Science Review, vol. 21, (May, 1927), p. 340; B. Zeller, "Pressure Groups and Our State Legislators," State Government, vol. 11 (August, 1938), p. 147.

Of the five distinguishable groups of definitions, the oldest has attempted to define lobbying in terms of improper or corrupt solicitation of the individual legislator. Illustrative of this type of approach is the California Constitutional provision which declares:

> Any person who seeks to influence the vote of a member of the legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be deemed guilty of lobbying, which is hereby declared a felony.[1]

In similar vein, the Alabama statute makes "Lobbying with [a] legislator a felony," describing the offense as follows:

> Any person who, for or without reward of any kind, gift, gratuity, or other thing of value, or the promise or hope thereof, corruptly solicits, persuades or influences, or attempts to influence any senator or representative of this state to cast his vote ... is guilty of a felony.[2]

Such provisions strike forcefully at lobbying as it was, but not as it is today. Provisions of this kind have only slightly expanded the common-law offense of bribery to include the use of menace, deceit, or any other means which a court might hold to be corrupt.[3] As one well-informed commentator has written:

> It is unrealistic to expect such laws to have any distinctive effect, since they only duplicate the almost

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[1] Statutes of California, 1947, Constitution, Art. IV, sec. 35.

[2] Code of Alabama, 1940, Title 14, Chap. 55, sec. 352.

[3] "Control of Lobbying," Harvard Law Review, vol. 45 (May, 1932), p. 1242.

> universal bribery statutes. It seems clear that these measures ... do not cope with the modern pressure group, for which corruption is not an important tool.[1]

A second group of definitions, closely allied to the first yet distinguishable from it, defines lobbying in terms of the claim of improper influence. Typical of this group is the Utah statute which provides:

> Every person who obtains, or seeks to obtain money or other thing of value from another person upon a pretense, claim, or representation that he can or will improperly influence in any manner the action of any member of any legislative body in regard to any vote or legislative matter is guilty of a felony.[2]

Similar provisions may be found in Arizona,[3] California,[4] and Montana.[5] Similarly, the Washington law makes the solicitation of money on the claim of being able to secure governmental action a gross misdemeanor.[6]

Here again, the emphasis is on practices which are already circumscribed under corrupt practices (i.e., bribery) statutes. Not only are the meanings of "improperly influence," "in any manner," and "legislative matter" somewhat obscure,

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[1] "The Federal Lobbying Act of 1946," Columbia Law Review, vol. 47 (January, 1947), pp. 102-103. See also Luce, op. cit., p. 432 et seq. for an illuminating discussion of the development of anti-bribery provisions.

[2] Utah Code Annotated, 1943, sec. 103-26-26.

[3] Arizona Code, 1939, sec. 43-3405.

[4] Deering's California Political Code, 1944, sec. 9054.

[5] Revised Codes of Montana, 1936, sec. 10846.

[6] Remington's Revised Statutes of Washington, 1932, sec. 2333. The section is interestingly titled, "Grafting."

but these acts also extend only to activities which are no longer of vital significance in modern lobbying. In this sense, they suffer from the same infirmities which attach to definitions of the first group.

A third recognizable group of provisions defines lobbying as personal solicitation of the legislator by means other than an appeal to the legislator's reason. The identical Georgia and Tennessee statutes thus provide:

> Lobbying is any personal solicitation of a member of the General Assembly during the session thereof, by private interview, or letter, or message, or other means not addressed solely to the judgment.[1]

Such language presumes, probably wrongly, that interviews, letters and messages are not addressed solely to the judgment. In the absence of any suggestion that such means may ultimately result in an attempt corruptly to influence the judgment of the legislator, it cannot be argued that such means are, per se, improper.

The Texas statute, on which was patterned the later Louisiana law, deems guilty of lobbying any person having a "direct interest" in a measure pending before the legislature who:

> ... in any manner, except by appealing to his reason, privately attempts to influence the action of any member of such legislature during his term of office, concerning such measure.[2]

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[1] Code of Georgia, Annotated, 1936, sec. 47-1001; Annotated Code of Tennessee, 1934, sec. 11094.

[2] Vernon's Annotated Texas Penal Code, 1925, Title 5, chap. 2, art. 179.

The Louisiana statute further clouds the issue by providing that any paid agent, representative, or attorney who attempts to

> ... privately or secretly solicit the vote, or privately endeavor to exercise any influence, by threat or by promises, or by offering anything of value, or any other inducements whatever ...

concerning pending measures is also guilty of lobbying.[1] "Any other inducements whatever" is no more susceptible of precise definition than is "in any manner," and each phrase places upon the courts the final responsibility for determining their application in particular cases.

Oklahoma and Idaho also forbid attempts to personally and directly, or privately, influence the vote of a legislator except through committee appearances, newspaper publication, public addresses, or written or printed statements, arguments, or briefs.[2] These limiting provisions are somewhat more descriptive than their obverse "means not addressed solely to the judgment"; yet they do not answer the difficult question of what constitutes personal, private, or secret solicitation. Nor do they establish the presumption that because certain means are specified as permissible, these

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[1] Dart's Louisiana General Statutes, 1939, sec. 9279.

[2] Oklahoma Statutes, 1941, Title 21, chap. 7, sec. 313, 314; Idaho Code Annotated, 1932, sec. 17-607. The Idaho statute forbids; the Oklahoma statute merely declares that it is "against public policy and the best interests of the people of the State of Oklahoma" to lobby except as prescribed.

means are either exclusive or necessarily addressed solely to the judgment.

It is equally unprofitable to require, as does the Washington law, that securing money for lobbying is illegal

> ... unless it be clearly understood and agreed in good faith between the parties thereto, on both sides, that no influence shall be employed except explanation and argument upon the merits.[1]

"Argument upon the merits" can hardly qualify as an improvement in clarity over "addressed solely to the judgment."

The crucial fault of these provisions, however, is in their focus more than in their language. As one capable observer has pointed out:

> In essence all these statutes use personal influence upon the legislators as the criterion of lobbying, but personal solicitation is today not the most important technique of the lobbyists.[2]

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[1] Remington's Revised Statutes of Washington, 1932, sec. 2333.

[2] "The Federal Lobbying Act of 1946," p. 103, n. 39. Whether personal solicitation is today the primary technique of lobbying is more problematical than the author suggests. If it is not, it may be assumed that the passage of these acts at least partially served to shift the emphasis in lobbying away from the personal approach. It might also be argued that inadequate enforcement rather than the manifest imperfection of these laws has been responsible for their ineffectiveness.

It is clear, however, that these acts which proscribe certain types of personal solicitation did come as response to an urgent contemporary need. See Samuel Maxwell, "Necessity for the Suppression of Lobbying," American Law Review, vol. 28 (March-April, 1894), p. 211; Samuel Maxwell, "The Evils of Lobbying and Proposed Remedy," American Law Review, vol. 30 (May-June, 1896), p. 398; Samuel Maxwell, "The Evils of Lobbying and Suggestions of a Remedy," American Law Review, vol. 34 (March-April, 1900), p. 224.

These laws, whose provisions indicate that they were intended to preserve honest or useful lobbying, are simply not enforced. Their only remaining value has been in the defense of civil actions for the recovery of compensation under contracts for lobbying services.[1] As descriptions of practically regulable activities they leave much to be desired.

The fourth general type of lobbying definition is based on the pursuit of private pecuniary interests, as opposed to the interests of the whole people of the state. The Kentucky law typically provides:

> ... lobbyist means any person employed as legislative agent or counsel to promote, oppose, or act with reference to any legislation which affects or may affect private pecuniary interests, as distinct from those of the whole people.[2]

This formula, found also in the acts of six other states,[3] furnishes only the most inaccurate gauge of the statute's applicability. It is even more than the corrupt solicitation definition an inadequate basis for control of the modern lobby, for it is only the maladroit lobbyist who would admit that his interests were not in fact identical to those of the whole people.[4] The cogent reasons which impelled

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[1] "Control of Lobbying," p. 1243.

[2] Kentucky Revised Statutes, 1946, Title 2, sec. 6.250.

[3] Kansas, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota.

[4] By such an interpretation, agents of the Anti-Saloon League were accustomed to avoiding registration as lobbyists. In addition, they claimed that the Anti-Saloon League had no pecuniary interest in any legislation, thus absolving themselves from the law's coverage. P. Odegard, Pressure Politics (New York, Columbia U. Press, 1928), p. 105.

Massachusetts to repeal its comparable provision in 1891 have already been outlined.[1] Those reasons are no less cogent today.

The Oregon law presents an interesting variation on the same theme. It provides that if any person or his agent, having "any interest" in a measure before the legislature:

> ... shall converse with, explain to, or in any manner attempt to influence any member of such assembly in relation to such measure without first truly and completely disclosing to such member his interest therein ... such person, upon conviction thereof, shall be punished by imprisonment....[2]

The "any interest" of the Oregon act has no more precise meaning than does the "private pecuniary interest" of the Kentucky law, and could, in the hands of an over-zealous administrator, become an instrument for the complete suppression of the interested citizen's right to petition the legislature. Due to its non-enforcement, however, the provision has not given rise to any controversy.

It need hardly be added that a true and complete disclosure of interest, as required by the statute, could mean different things to different people. It should be remembered, too, that when a criminal statute either forbids or demands

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[1] Supra, p. 19.

[2] Oregon Compiled Laws Annotated, 1940, sec. 23-636. Section 9281 of the Louisiana Statutes also demands that personal interest in pending measures which are the subject of citizen petitions must be "fully disclosed" by the petitioner.

the performance of an act in terms so vague that the ordinary citizen must guess at its meaning or differ as to its application, it may frequently be deemed to violate one of the primary requisites of due process of law.[1] Without implying that the Oregon act, or other analogous acts, are void, it should nonetheless be noted that their ambiguity leaves them somewhat vulnerable to constitutional attack.

The final group of definitions is so expansive and wide-ranging as to be properly labelled the "omnibus" group. Here, lobbying can be virtually anything in which legislators and other parties are involved. Wisconsin's otherwise tightly-drawn act typically declares that lobbying is:

> The practice of promoting or opposing the introduction or enactment of legislation before the legislature, or the legislative committees, or the members thereof.[2]

A lobbyist is simply one who "engages in the practice of lobbying for hire."[3]

While other statutes in this group do not always undertake to define lobbying or lobbyists in the same terms, they leave little doubt that their expected coverage is very much the same. Thus Virginia defines "legislative counsel and agent" as meaning "any person employed to promote or

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[1] Connally v. General Construction Co., 269 U.S. 385 (1926). The rule of invalidation in cases of ambiguity is far from inflexible, however. No state lobbying law has ever been invalidated on these grounds.

[2] Wisconsin Statutes, 1947, Chap. 346, sec. 346.205.

[3] Idem.

oppose in any manner the passage by the General Assembly of any legislation."[1] The distinction between this definition and the Wisconsin description of lobbying is only the distinction between agent and process; the area covered, the promotion of or opposition to legislation, is identical.

The phrase "in any manner" also takes alternative forms in other states. Florida uses "in any wise,"[2] while Maine achieves the same result with "directly or indirectly,"[3] Other states, of which Massachusetts is an example, have reached a similar result by distinguishing between legislative counsel and agents. Counsel are ordinarily defined as attorneys whose lobbying services are restricted to appearances before legislative committees: agents, however, are those performing "any act ... except to appear at a public hearing."[4]

In this fifth group of definitions, then, either lobbying or lobbyists, or both, are defined in terms of promoting or opposing legislation, in any manner, directly or indirectly. This sort of statutory language would appear to utterly beg the question of an act's intended coverage, and

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[1] Virginia Code of 1942, Annotated, Title 9, chap. 20A, sec. 312a.

[2] Florida Statutes Annotated, 1943, Title III, chap. 11, sec. 11.05.

[3] Maine Revised Statutes, 1944, Title 1, chap. 9, sec. 40.

[4] Annotated Laws of Massachusetts, 1944, Title 1, chap. 3, sec. 39. See infra for a discussion of the effectiveness of the distinction.

to leave to the courts the ultimate responsibility for developing a satisfactory series of criteria for the act's applicability in particular cases.

All five groups of definitions are somewhat ambiguous, and their ambiguity has been sharply criticized. Professor Zeller, for example, finds that:

> The existing statutes either make no attempt at definition or ... dispose of the question in such vague and meaningless phrases as to make them difficult, if not impossible to interpret and enforce.[1]

It is difficult, however, for the present writer to accept the proposition that non-enforcement has resulted wholly, or even primarily from the vagueness of these definitions. Wisconsin has a vague definition, but its act is well-enforced, if numbers of registrants are any criterion. Rather it could be said that most laws have not been too vigorously enforced because lobbying in those states has served and continues to serve an important purpose. The lobby can best be regulated not by defining it but by removing the causes of the legislator's dependence on the lobbyist.[2]

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[1] Zeller, "Pressure Groups and Our State Legislators," p. 147. See also, McKean, op. cit., p. 243.

[2] The problem is well-put by one writer: "The failure is not merely in the adequacy of the statutory language but in the more basic fault of which lack of precise definition is a manifestation; the inability of state legislatures to see pressure group regulation in its relation to the whole decision-making process." "Improving the Legislative Process: Federal Regulation of Lobbying," Yale Law Journal, vol. 56 (January, 1947), p. 316.

It has been suggested that lobbying statutes should define lobbying "specifically" and that a proper definition would detail the "practices that are permissible and those that are not."[1] There is no reason to believe, however, that any specific enumeration could be definitive, or that it would much help the problem of enforcement. Those statutes which attempt to limit lobbyists to committee appearances, circular statements, and the like, do not appear to have been demonstrably more effective in operation than those statutes which define lobbying only vaguely.

It might, in fact, be argued that the broad definition of lobbying is the only definition which can keep regulation apace of its subject. In either case, general or specific definitions will avail little in the absence of conscientious official efforts to enforce them. As will be subsequently shown, these efforts have not been forthcoming in most states.

In summation, it can be said that a wide range of statutory definitions of lobbying already exists. Lobbying has been given the narrow meanings of corrupt, private, or unreasonable solicitation of legislative action. Elsewhere, it has been viewed broadly as direct or indirect advocacy of or opposition to measures before the legislature. But however defined, the flexibility and capacity for growth of

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[1] Zeller, "Pressure Groups and Our State Legislators," p. 147.

lobbying has seemed to exceed the legislature's ability to define it. Statutory language, no matter how precise, cannot of itself be expected to counter indifferent enforcement, the inertia of underinformed and underpaid legislators, and the legislative interests of a citizenry organized for the securing of personal benefit.

Provisions Relating to Registration

Whereas definitions of lobbying can be ranged into no fewer than five distinct groups, provisions regarding registration of lobbyists are all essentially similar. Therefore, it is possible to discuss these provisions as a single class having generally common features and only occasional exceptions or refinements.

Beginning with Massachusetts in 1890, a total of twenty-two states have passed legislation setting up registration systems.[1] In addition, Florida and Oklahoma have statutes which require a form of registration with the committee before which a lobbyist appears. California has also provided for a system of registration, but it has acted through the medium of House and Senate rules rather than by the enactment of a law.

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[1] Connecticut, Georgia, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New York, Ohio, Nebraska, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, and Wisconsin.

The Ohio statute is in most respects rather typical of the bulk of these registration laws. It is more typical, for example, than the earlier and better-known Massachusetts or Wisconsin laws; thus it can serve more adequately as a basis for comparative analysis. While discussing its provisions, special or unique provisions from other statutes may be indicated wherever appropriate.

The Ohio Act does not undertake specifically to define lobbying, but its coverage of persons and activities closely parallels the language of the ordinary statutory definition:

> Any person, firm, corporation or association, or any officer of a corporation or association, who or which directly or indirectly employs any person or persons, firm, corporation, or association to promote, advocate, amend or oppose in any manner any matter pending or that might legally come before the General Assembly or either house thereof, or of a committee of the General Assembly or either house thereof, shall within one week from the date of such employment furnish in a signed statement to the Secretary of State [certain information].[1]

The field of regulation marked out by this section is as broad as that marked out by the definitions of lobbying which were earlier classified as "omnibus." With but few exceptions, the twenty-two states having such provisions conform rather closely to the Ohio norm in laying out a broad coverage for their registration requirements. Georgia, however, defines lobbying in such narrow terms as to cast considerable

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[1] Pages Ohio General Code Annotated, 1945, sec. 6256-1.

doubt on the breadth of application of its subsequent registration section.[1] Mississippi seriously delimits its potential registration by a series of detailed exemptions,[2] and seven other states use the personal pecuniary interest in determining whether legislative counsel and agents are required to register.[3]

There are several other important classes of exemptions. A number of states, notably Kansas, Mississippi and Ohio, exempt from their registration provisions:

> ... any person who appears in response to a written invitation from the General Assembly, or either house thereof, or appears in response to a written invitation from any duly appointed committee of such General Assembly, or either house thereof.[4]

Six states have made professional exemptions to the effect that those performing professional services in the preparation of bills or arguments, or in the rendering of opinions as to the construction and effect of pending or proposed legislation are not to be construed as being subject to the registration requirements whenever such professional services are not otherwise connected with legislative

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[1] Georgia Code Annotated, 1936, sections 47-1001, 47-1002.

[2] Mississippi Code Annotated, 1942, sec. 3370.

[3] Kentucky, Kansas, North Carolina, North Dakota, Rhode Island, South Dakota, South Carolina.

[4] Pages Ohio Code Annotated, 1945, sec. 6256-2.

action.[1]

Ohio and Virginia have also declared that their acts are not to apply to or interfere with:

> ... the furnishing of information or news to any bona fide newspaper, journal, or magazine for publication, or to any news bureau or association which in turn furnishes the said information or news only to bona fide newspapers, journals, or magazines.[2]

Finally, some fourteen of the twenty-two states exempt public corporations and/or officials and employees from their acts' requirements, although in varying degrees.[3] South Dakota, for example, exempts "public corporations" but requires that no official or employee of the state or of the United States shall lobby "except in the manner authorized herein in the case of legislative counsel and legislative agents."[4]

However the majority of exemptions are comparable to those of the Kansas Act, which provides:

> This act shall not apply to any municipal or other public corporation or its accredited attorneys, agents, or representatives while acting for such municipal or other public corporation.[5]

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[1] Connecticut, Georgia, Mississippi, Nebraska, New York, Ohio.

[2] Page's Ohio Code Annotated, 1945, sec. 6256-2.

[3] Connecticut, Kansas, Maine, Massachusetts, Michigan, Mississippi, Nebraska, New York, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Virginia.

[4] South Dakota Code of 1939, sec. 55.0705.

[5] Kansas General Statutes Annotated, 1936, sec. 46-209.

Given these exemptions, the rule remains that of a rather wide theoretical application of the registration sections. Actually, the only practical difference among them is adverbial. The problems inherent in this broad approach have already been discussed.

The requirement that registration be made within one week of employment is common, although not universal. Maine and Vermont require that no more than forty-eight hours elapse between commencement of employment and registration.[1] Mississippi allows five days,[2] while Connecticut, Georgia, New York and Nebraska require only that a legislative counsel or agent register before acting as such. Wisconsin requires merely a biennial registration which expires December 31 of every even-numbered year.[3]

There does not appear to be any particularly persuasive reason for the general use of a one-week grace period, nor is there any apparent reason why Maine, Vermont, and Mississippi have chosen to require a prompter registration. The Wisconsin arrangement seems more logical from the administrative standpoint, while the requirement that lobbyists register before acting offers the least difficulty as regards investigation

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[1] Maine Revised Statutes, 1944, Title 1, chap. 9, sec. 40, requires only employers to register within 48 hours; employees are to register before acting.

[2] Mississippi Code Annotated, 1942, sec. 3366.

[3] Wisconsin Statutes, 1947, sec. 346.21.

and enforcement. In either case, there is no evidence that any of these time requirements have been productive of controversy.

The Ohio statute requires that the registration be made with the Secretary of State. Among the twenty comparable statutes, only those of Massachusetts and Kentucky specify that registration is to be with some other officer; in Massachusetts with the Sergeant-at-Arms of the Legislature,[1] and in Kentucky with the Attorney General.[2] As with the time limits, the matter does not appear to have been troublesome in any state.

The information required to be submitted also tends to be similar in the several states. Ohio requires:

1. If an individual, his full name, place of residence and place of business.
2. If a firm, its correct firm name, place of business, and the full name and place of residence of each partner.
3. If a corporation or association, its full name, the location of its principal place of business, whether a corporation or voluntary association, whether a domestic or foreign corporation, and the names and the places of residence of each of its officers.
4. The nature and kind of his, their, or its business, occupation or employment.
5. The full name, place of residence, and occupation of each person, firm, corporation or association so employed, together with the full period of employment.

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[1] Annotated Laws of Massachusetts, 1944, Title 1, chap. 3, sec. 41.

[2] Kentucky Revised Statutes, 1946, Title 2, chap. 6, sec. 6.280.

6. The exact subject-matter pending or that might legally come before the general assembly or either house thereof or before any committee thereof with respect to which such person, firm, corporation or association is so employed.
7. When any change, modification or addition to such employment or the subject-matter of the employment is made, the employer shall within one week of such change, modification or addition furnish in writing full information regarding the same to the secretary of state.[1]

No other states require such detail on registering corporations as does Ohio in subsection (3); otherwise the section is fairly representative of comparable provisions elsewhere. The Connecticut and New York statutes solicit essentially the same information more briefly.[2] The Michigan law requires that the registration disclose the name of the custodian of whatever funds are used for lobbying purposes.[3] No other state deviates notably from the Ohio pattern.

The Ohio law is somewhat unique in that it at no time refers to those subject to its provisions as anything other than "person, firm, corporation, or association," or as "employees." The Wisconsin law is also somewhat notable in that it completely avoids the euphemisms by which most lobbyists prefer to be known, i.e., "legislative counsel" or "legislative agent" or "legislative representative." In line with its generally realistic approach to the problem, the

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[1] Section 6856-1.

[2] General Statutes of Connecticut, 1947 Supplement, Title 1, chap. 1, sec. 19; Consolidated Laws of New York, Annotated, Legislative Law 66.

[3] Michigan Public and Local Acts, 1947, no. 214, sec. 2.604.

Wisconsin act frankly calls them "lobbyists," indicating as it does that no opprobrium is meant to attach to the term.[1]

The terms "legislative counsel" and "legislative agent" have come to have particular meanings in eight of the twenty-two states under consideration.[2] Their statutes diverge from the norm in that they attempt to distinguish between counsel and agent, restricting each to a separate area of activity. The Vermont law of 1939 characteristically defines legislative counsel as follows:

> Any person who for compensation appears at any public hearing before committees of the legislature in regard to proposed legislation.[3]

Having thus defined legislative counsel, legislative agents are defined, by a process of elimination, as any person, firm, association, or corporation:

> that for reward or hire does any act to promote or oppose proposed legislation except to appear at public hearings and shall include all persons who for compensation shall approach individual members of the legislature or members-elect thereof with the intent in any manner, directly or indirectly, to influence their action upon proposed legislation.[4]

This type of distinction first made its appearance in

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[1] Wisconsin Statutes, 1947, section 346.20 et seq. The Wisconsin act speaks of the "profession of lobbying," and of professional ethics among its practitioners. This treatment is unique.

[2] Indiana, Kansas, Maine, Maryland, Massachusetts, Rhode Island, South Dakota, Vermont.

[3] Laws of Vermont, 1939, no. 240, sec. 4.

[4] Idem.

the pioneer Massachusetts statute of 1890, and was defended as the only feasible means of distinguishing between the counsel "who presented his case publicly to a committee and the agent who buttonholed members in private."[1] Presuming the logic of distinguishing between the two, such a distinction could practically be based only on the character of the service performed by each. The drafters of the act felt that it wisely left undefined the services which might properly be rendered by legislative agents.[2]

The wisdom of this lack of definition is, as has been suggested, problematical. It may also be questioned whether the distinction between counsel and agent has been of genuine importance. On the one hand, it is probably true that counsel, restricted to committee appearances and legal work incident to these appearances, are afforded less opportunity for "undesirable conduct" than are agents whose activities are not equally confined.[3] But beyond this difference in permissible acts, the distinction does not appear to be significant since the other sections of these acts apply equally to counsel and agents.[4] It should also be pointed out that the acts which

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[1] Quincy, op. cit., p. 350.

[2] Ibid., p. 351.

[3] "The Federal Lobbying Act of 1946," p. 101.

[4] Logan, op. cit., p. 66.

make this distinction have not been demonstrably more effective in operation than have those which lack it.[1] Finally, the fact that several of the acts provide for the exemption of professional, i.e., legal, services is suggestive to some observers of the inutility of requiring counsel to register at all, to say nothing of registering separately.[2]

In those states where counsel and agents register separately, the responsible officer is charged with the compilation and maintenance of two separate dockets in which the required information is entered. In those states not distinguishing between counsel and agents, a single docket or "book" is maintained. In either case, the information filed is uniformly required to be made available to public inspection.

When reference is made to state acts which regulate lobbying, these acts are frequently alluded to as "publicity" statutes, intended to bring the activities of lobbyists into the open so that both legislators and the public may be apprised of the nature of these activities. The fact that registrations may be examined by any interested legislator or private citizen supposedly fulfills this purpose. It may be questioned, however, whether the mere availability of such records constitutes true publicity, or whether more positive

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[1] See infra, this chapter, for an analysis of the effectiveness of these statutes.

[2] "The Federal Lobbying Act of 1946," p. 101.

action might not be needed.

Only two states have made positive attempts to make certain that notice is taken of lobbyists' registrations. North Dakota provides that if the legislature is in session at the time of any registration, copies of such registration shall be given to the Clerk of the House of Representatives and the Secretary of the Senate.[1] Wisconsin goes one step further by requiring that such reports be delivered to both houses by the Secretary of State on the third Tuesday of every regular or special session, and on every Tuesday thereafter. The law also requires that these reports on registrations be formally read into the journal of each house.[2]

These provisions, although they are minimal, can at least help to combat the probability that most registration lists will be filed in some clerk's office and promptly forgotten, unseen by both legislators and the public. As one close observer of the Nebraska scene has pointed out:

> ... the filings have comparatively little 'news value,' are rarely commented upon, and when they appear [in the newspapers] are relegated to positions which normally escape the public eye.[3]

It is a misnomer to speak of this as publicity.[4]

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[1] North Dakota Revised Code, 1943, sec. 54-0503.

[2] Wisconsin Statutes, 1947, sec. 346.245.

[3] Richard D. Wilson, "Registration of Lobbyists," Nebraska Law Review, Vol. 27 (November, 1947), p. 124.

[4] Occasionally one finds a state legislature taking affirmative action to inform itself, but these occasions are

Several other types of provisions relating to registration need yet to be noted. Only three states[1] have duplicated the Ohio provision requiring the issuance of a certificate upon registration, such certificate to serve as prima facie evidence of both employment and compliance with the law.[2] Ohio also forbids a lobbyist to appear before a committee without having first obtained this certificate.[3]

Finally, ten other states have an interesting provision which is lacking in our typical Ohio statute, namely, that which requires a registered lobbyist to file, usually within ten days of his registration, a written statement signed by his employer which authorizes the lobbyist so to act.[4] The advantages of such a provision are twofold. First, it tends to inhibit so-called "striker" lobbying where the

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rare. See Virginia Acts and Joint Resolutions, 1948, House Joint Resolution no. 3 (January 14, 1948), p. 1332, which provides: "Resolved by the House of Delegates, the Senate concurring, that the Secretary of the Commonwealth be, and he is hereby, authorized and directed to furnish, at least once during each week of the current session of the General Assembly, the Clerk of the House of Delegates and the Clerk of the Senate with the names of those persons who have filed or registered as legislative agents, legislative counsel and lobbyists, pursuant to the provisions of Chapter 85 of the Acts of the General Assembly of 1938, together with the addresses of such persons and the names and addresses of the persons, firms, or organizations whom they represent or by whom they have been employed."

[1] Indiana, Mississippi, Oklahoma.

[2] Page's Ohio Code Annotated, 1945, sec. 6256-1.

[3] Ibid., sec. 6256-2.

[4] Kentucky, Maryland, Massachusetts, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Virginia, Wisconsin.

lobbyist's appeal to a prospective employer is put in the terms, "You can't afford not to hire me." Second, it restricts the lobbyist from using the name of some individual or group, without having been authorized to do so, in a way which would serve the lobbyist's own purposes.[1]

These are, in outline, the provisions of the twenty-two similar state statutes on the subject of registration of lobbyists. As indicated earlier, three other states provide for registration on a somewhat different basis. Florida requires that whenever any person appears before a legislative committee, this committee or any of its members may require this person to declare in writing and under oath whether he appears in his own interest or whether he is paid for so appearing. When such written oath is made, it is required to be "spread upon the journal of each house for the information of the members of the legislature."[2]

In Oklahoma, a paid lobbyist must, before appearing before a committee, apply for a permit to the presiding officer of the house to which the committee belongs. Upon a majority vote of the house concerned, the application will be approved and the applicant will be permitted to go before

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[1] See Commonwealth v. Aetna, 263 Ky. 803, 93 S.W. (2d) 840 (1936) for evidence as to the utility of these provisions.

[2] Florida Statutes Annotated, 1943, Title 3, c. 11, section 11.05. It is to be noted that this "registration" is permissive rather than mandatory.

the committee to deliver testimony, arguments, or briefs. Either house, however, has the power at any time to revoke any permit issued by either itself or the other house. This revocation cancels official recognition of the individual as a legislative counsel or agent.[1]

California also requires registration, but on the basis of internal legislative rules rather than statutory regulation. Since 1925, the Sergeant-at-Arms of the Senate has maintained an "advocate register." In the Assembly, the Sergeant-at-Arms has maintained since 1937 a register of "business representatives and legislative representatives" designed to inform the legislator of the identity and number of the interests which are active before the legislature.[2]

These three provisions bring to twenty-five the number of states requiring some kind of registration of legislative lobbyists. While the effectiveness of these provisions will be assessed at a later point in this study, it can be said here, in brief summary, that these acts demonstrate a fair degree of uniformity as regards persons covered, a good degree of uniformity as regards the disposition of the information solicited, and a high degree of uniformity as regards the

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[1] Oklahoma Statutes, 1941, Title 21, chap. 7, sections 313-315.

[2] W. W. Crouch and D. E. McHenry, California Government, Politics, and Administration (Berkeley, Univ. of Cal. Press, 1945), p. 71.

nature of the information required. Whether or not this coverage is adequate and whether or not the information required is either vital or properly disposed of are questions which will be reserved for a later page.

Prohibitory Provisions

Statutory prohibitions of certain types of lobbying activity are frequent and may be ranged under three rather distinct headings. First, there are provisions prohibiting compensation for lobbying on a contingent basis. Second, there are provisions barring lobbyists from the floor of the legislature or its environs while the legislature is in session. And third, several states prohibit lobbying except as it takes certain forms such as committee appearances, briefs, circulars, arguments, and public addresses and publications.

The prohibition of contracts calling for compensation contingent on legislative success is virtually universal in the states having registration systems. Only Rhode Island and Oklahoma do not specifically forbid the practice. The Ohio statute typically provides:

> No person, firm, or corporation or association shall be employed with respect to any matter pending or that might legally come before the general assembly or either house thereof, or before a committee of the general assembly or either house thereof for a compensation dependent in any manner upon the passage, defeat, or amendment of any such matter, or upon any other contingency whatever in connection therewith.[1]

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[1] Page's Ohio Code Annotated, 1945, sec. 6256-3.

This prohibition first appeared in the Massachusetts Act of 1890 where it represented the first legislative recognition of a principle which had frequently been upheld by both state and federal courts.[1] It should be noted, however, that of these prohibitions of contingent contracts, a substantial minority prohibit specifically only those contracts in which the contingency is action by the legislature itself.[2] This overlooks committee action, which may, of course, be decisive. The committees are probably the most important locus of legislative lobbying today, and to prohibit only compensation contingent on the action of the whole legislature is often to lock the barn door too late.

The second group of prohibitory provisions denies paid lobbyists access to the floor of either house of the legislature while it is in session, usually except "by an invitation of such house extended by a vote thereof."[3] The Ohio statute remains typical in that it is not among the minority of twelve laws which so provide.[4] It should also

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[1] See "Lobbying Contracts," Central Law Journal, vol. 3,(January 21, 1876), pp. 34 et seq., for an analysis of numerous early cases on this point. Trist v. Child, 21 Wall. 441 (1874) is still the leading case on the subject. See also, Luce, op. cit., pp. 374-381, for an illuminating discussion of decisional law on the matter.

[2] Nebraska Revised Statutes, 1947 Supplement, sec. 50.304.

[3] Kansas General Statutes Annotated, 1936, sec. 46-207.

[4] Among the states with docket systems, Georgia, Kansas, Kentucky, North Carolina, North Dakota, South Dakota, Virginia, and Wisconsin bar lobbyists from the floor. Louisiana, Missouri, Texas, and West Virginia also have such provisions.

be added that many states which do not by law bar lobbyists from the floor of their legislatures have legislative rules to the same effect.[1] There can be little doubt of the propriety of such provisions, or of the competence of the legislature to enact them, either by law or by internal rule.[2]

Somewhat more controversial is the final group of prohibitions which undertakes to limit lobbying to a specified range of activities. Wisconsin first enacted this type of provision in 1905 following Governor LaFollette's demand for a law prohibiting personal and direct solicitation of legislators. Since that date, six other states have adopted similar provisions.[3] In addition, four other states which do not have registration systems have also acted to limit lobbying to certain specified activities.[4]

These laws have usually authorized the performance of the same activities permitted under the pioneer Wisconsin

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[1] The importance of this ban is well illustrated by the following comment of a New York Assemblyman in 1927: "I well remember last year when this house was voting on a very important bill that a certain lobbyist stood behind the clerk's desk and checked the vote in order to make sure that the bill was passed." New York Times, January 26, 1927. (Some of the newspaper articles cited in this study are not cited by page. This is because these articles were taken from clipping files in which page data was not always included.)

[2] But see Campbell v. Commonwealth of Kentucky, 229 Ky. 224, 17 SW (2d) 227 (1929) where this provision was held to apply only to registered lobbyists.

[3] Kentucky, Nebraska, New York, North Dakota, Oklahoma, South Dakota.

[4] Idaho, Louisiana, Tennessee, Texas.

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[3] Kentucky, Nebraska, New York, North Dakota, Oklahoma, South Dakota.

[4] Idaho, Louisiana, Tennessee, Texas.

Act; i.e., committee appearances, newspaper publications, public addresses, and written or printed statements, arguments, or briefs addressed to all members of the legislature.[1] Some of the provisions are more narrow, however. The Kentucky provision reads: "No person shall render any service as a lobbyist other than appearing before committees and doing work properly incident thereto."[2] The New York provision which forbids lobbying "except upon appearance" is equally strict.[3]

This type of limitation sacrifices the "few legitimate advantages" peculiar to the private contact between paid counsel or agents and the legislator in an attempt to meet the dangers which were presumed to flow from this contact.[4] Unfortunately, while the alleged dangers of personal influence might be lessened by these provisions, other dangers soon develop. First among these is that restriction of contact begins to border on limitation of the right of petition. While there has been no serious objection on this score, the constitutional problem is as present here as it is in the framing of an adequate definition of lobbying. A second and more practical danger is that such provisions, if interpreted

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[1] Wisconsin Laws, 1905, c. 472.

[2] Kentucky Revised Statutes, 1946, sec. 6.260.

[3] McKinney's Consolidated Laws of New York, 1917, Legislative Law 66 (5).

[4] "Control of Lobbying," p. 1246.

literally, would demand so much investigation and enforcement as to be absolutely unworkable.

Recent developments would seem to support this conclusion. Nebraska has dropped altogether its earlier limitations on lobbying activity.[1] Wisconsin retains its original list of permissible activities but has changed their application. Now it is unlawful for anyone other than a registered lobbyist to attempt personally and directly to influence a legislator except by committee appearances, briefs, and so on. Moreover, any person who limits his lobbying solely to committee appearances need not be registered at all.[2]

The remaining prohibitory provisions are restrictive of lobbying activities of a patently offensive or corrupt character. These have already been discussed in connection with definitions of lobbying and call for no further elaboration here.

Comment as to the effectiveness of these various attempts to restrict permissible lobbying practices to an irreducible minimum will be reserved for a later section. There is little doubt that a legislature can forbid contracts for compensation contingent on legislative action, or can forbid the presence of lobbyists on the legislative floor.

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[1] Revised Statutes of Nebraska, 1947 Supplement, c. 50, art. 3, Act of August 10, 1945 (Repealed sec. 50.301).

[2] Wisconsin Statutes, 1947, sec. 346.27.

But there is a great deal of doubt as to what other activities can be reasonably and effectively circumscribed.

Provisions for Financial Reporting

Of the twenty-two states having registration systems of the Wisconsin or Ohio type, only five do not provide for the reporting of expenditures made by registered lobbyists in connection with legislation.[1] The provisions of our representative Ohio statute are hardly representative on this point, for in two long and prolix paragraphs the act says no more than other more terse acts achieve in one short one.

Briefly, the act requires two reports, each of which must be filed within thirty days of the final adjournment of the legislature's session. First, every employer of legislative counsel or agents is required to file with the Secretary of State a detailed statement showing all expenses "paid, incurred or promised, directly or indirectly," in connection with any matter before the legislature or its committees. Names of payees, the amounts paid to each, the nature of the matter before the legislature, and the interest of the employer therein must be included in the report.[2]

Second, every employee of such an employer who is

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[1] Kansas, Maine, Michigan, North Dakota, Vermont.

[2] Page's Ohio Code Annotated, 1945, sec. 6256-4.

hired and paid for his work in connection with legislation must also file within thirty days of the legislature's adjournment an itemized statement showing "all money or other thing of value so received and expended by him, and all liabilities directly or indirectly incurred by him in connection with such matter." He must also disclose the name of the person paying him, the names of all persons to whom he has paid or promised money, the purpose, place and date of such transactions, "the balance in hand of such accounting person (i.e., lobbyist) and the disposition to be made thereof."[1]

These provisions of the Ohio law are somewhat unusual in that they call for specifically different reports by both employers of lobbyists and by the lobbyists themselves. The majority of the seventeen state statutes which require these reports make them the responsibility of either the lobbyist[2] or the employer,[3] but seldom both. There is, however, a possible virtue in the Ohio approach. Much of the information required of lobbyists on the one hand and their employers on the other is somewhat overlapping. Thus the dual reports can ideally serve as a check on the honesty of the lobbyist in the reporting of his accounts and on the employer in the distribution of his funds. Because of lax enforcement, this

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[1] Idem.

[2] E.g., Connecticut, Indiana, Maryland, Massachusetts.

[3] E.g., Rhode Island, New Hampshire.

cross check is probably very infrequent, and the general rule remains that of single reports, or of closely similar reports by both agent and employer.

There is a real paucity of unique provisions among the various reporting requirements. Thirteen states require that the reports be rendered within thirty days of the final adjournment of the legislature.[1] Three states require reports within two months of final adjournment.[2] Nebraska and Wisconsin are alone in demanding that several reports be filed by registered lobbyists at stated intervals during the session.

In Nebraska, both agents and employers must file reports with the Secretary of State each month during the course of a session, and also upon the adjournment of the session. The information required in each report, however, is substantially the same as that demanded by the more typical statutes.[3]

The Wisconsin law also prescribes monthly financial reports by lobbyists. These reports are forwarded by the Secretary of State to the legislature, as are registrations.

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[1] Indiana, Kentucky, Maryland, Massachusetts, Mississippi, New Hampshire, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, Virginia, and Wisconsin. Wisconsin requires only that employers file within thirty days.

[2] Connecticut, Georgia, New York.

[3] Revised Statutes of Nebraska, 1947 Supplement, sec. 50-305.

Unlike registrations, such reports are entered in the Journal of either house only on the specific order of the house concerned. The law further states that the lobbyist need not list "his own personal or travelling expenses in such statement," although:

> ... any expenditures made or obligations incurred by any lobbyist in behalf of or for the entertainment of any state official or employee concerning pending or proposed legislative matters ...

must be reported.[1]

Employers, or "principals," to use the Wisconsin act's terminology, are required to file but a single report, this to be delivered to the Secretary of State within the usual thirty days of the end of the legislative session. The information required in this report is essentially that required by the Ohio or Nebraska laws.[2]

In only a few states does the requisite information differ in any material way from the Ohio norm. The Wisconsin provisions are, as already indicated, rather novel. Maasachusetts has attempted to reach the combination of lobbyist-general counsel by providing that if the money reported is in the form of a retainer, the percentage of it devoted to legislative expenses must be indicated. If no such apportionment is possible, the entire amount of the

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[1] Wisconsin Statutes, 1947, sec. 346.245.

[2] Ibid., sec. 346.25.

retainer should be stated.[1]

North Carolina and South Carolina achieve a similar result vis a vis a slightly different group of lobbyists by stating that their reporting provisions apply to all executive officers of public service corporations who act as legislative counsel and agents "regardless of whether they receive additional compensation for such services."[2]

Michigan does not require periodic reports but does require that records containing the customary information regarding lobbying expenditures be kept by the agent or his employer for six years following the final adjournment of the legislative session in which such service was rendered. These records must be produced on subpoena issued either by a court of competent jurisdiction or by a legislative committee, authorized so to act by concurrent resolution of the legislature.[3]

The Michigan statute also demands that if any legislative agent has "any financial transaction" with any member of the legislature, he must, within five days, file a sworn statement of the facts surrounding the transaction with the Secretary of State. This officer must then furnish a copy of

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[1] Annotated Laws of Massachusetts, 1944, sec. 48.

[2] General Statutes of North Carolina, 1943, sec. 120-46; Code of Laws of South Carolina, 1942, sec. 2070-6.

[3] Michigan Public and Local Acts, 1947, no. 214, sec. 2.606.

the statement to the legislator involved.[1]

Indiana requires that unincorporated associations engaged in lobbying must appoint treasurers to superintend their legislative expenditures and the reports which are based on them, but the information to be filed is in no wise different from that required by the typical statute.[2]

With these few exceptions, the reporting provisions of state lobbying laws are all strikingly similar. There is undoubtedly a common core of lobbying method in all the states which might serve to justify this sameness of regulatory approach. But certainly the results which this approach has secured are of greater importance than the similarity of statutory language. Later in these pages, an attempt will be made to answer the question of whether this sameness indicates that the approach has been effective, or whether it is the product of coincidental borrowing, and persistent legislative inability to analyze and meet squarely the problem of lobbying.

Penalties and Provisions for Enforcement

The range of penalties provided for violations of state lobbying statutes is as wide as the range of reporting provisions is narrow.

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[1] Ibid., sec. 2.607.

[2] Burns' Indiana Statutes Annotated, 1933, sec. 34-305.

The extreme in severity is reached by the Florida act which provides that any witness who swears falsely to any material fact in the oath, which he may be required to take by the committee before which he appears, shall be deemed guilty of "false swearing" and will be imprisoned in the state prison not to exceed twenty years.[1]

The extreme in leniency, at least as regards prison terms, is provided by the Oklahoma statute whereby a minimum term of ten days is possible.[2] In South Carolina, thirty days is specified as the maximum term of imprisonment.[3]

Between these two extremes fall the fourteen other states which prescribe prison terms for violations of registration and reporting laws.[4] The term of imprisonment most frequently mentioned is one year, and this is ordinarily cited as the maximum.[5]

As regards fines, there is an equally large variation. The minimum provided by any registration statute is $25.[6]

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[1] Florida Statutes Annotated, 1943, title III, c. 11, sec. 11.05.

[2] Oklahoma Statutes, 1941, sec. 319.

[3] Code of Laws of South Carolina, 1942, sec. 2070-1(7).

[4] Connecticut, Georgia, Kansas, Kentucky, Michigan, Mississippi, Nebraska, New York, North Carolina, Ohio, South Carolina, Virginia, Wisconsin. In most cases, prison terms are optional with the court.

[5] As in Connecticut, Kansas, New York, Michigan, Nebraska, Virginia. Punishments for bribery, not included here, tend to be considerably higher.

[6] Code of Laws of South Carolina, 1942, sec. 2070-1(7).

The maximum is $5,000, and this is found in the acts of seven states.[1] The more frequent figure is $1,000, and this is found in the acts of nine states.[2]

Three states add another financial disability to the fines specified by their laws.[3] They require that for each day after the specified period following adjournment, an agent or his employer who fails to comply with the reporting requirements shall forfeit $100 to the state.

A third means of punishment is that of "disbarring" convicted legislative counsel and agents for a period of three years from the date of such conviction. These provisions are found in the acts of six states.[4] The Wisconsin law is analogous, providing for the revocation of a lobbyist's license. This revocation suspends the lobbyist's privileges, as defined in the act, until such time as the license is reinstated.[5]

The imposition of these penalties depends, of course, upon the vigor and thoroughness with which the lobbying laws

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[1] Kansas, Kentucky, Mississippi, North Dakota, Ohio, Rhode Island, South Dakota.

[2] Connecticut, Maryland, Massachusetts, Michigan, Nebraska, New Hampshire, New York, North Carolina, Virginia.

[3] Connecticut, Nebraska, New York.

[4] Kansas, Maryland, Massachusetts, North Dakota, Rhode Island, South Dakota.

[5] Wisconsin Statutes, 1947, sec. 346.21.

are enforced. With several exceptions, these laws vest the responsibility for their enforcement in the Attorney-General of the state, acting upon information or complaint. The first exception consists of those states which do not specifically vest this responsibility in any officer, although it is presumed that it would properly belong to the Attorney-General in any case. The second exception is provided by those four states which make a more positive attempt to enforce their lobbying laws.

The Connecticut law makes it the duty of the Secretary of State to "promptly notify the Attorney-General of any violation ... of which he may have knowledge."[1] This arrangement is practical since registrations and financial reports are almost uniformly required to be rendered to the Secretaries of the several states.

The Maryland act charges the Attorney-General with enforcement, but at the same time gives the Governor power, whenever he has reason to believe that untoward expenses have been paid or incurred in connection with any bill presented to him, to require "any or all legislative counsel or legislative agents and their employers to render him forthwith a full, complete, and detailed statement ... of all expenses paid or incurred by them."[2]

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[1] General Statutes of Connecticut, 1947 Supplement, sec. 191.

[2] Flack's Maryland Code Annotated, 1939, Art. 40, sec. 4-13 (11).

The Virginia act modifies the traditional pattern by making it the duty of the Secretary of the Commonwealth to "take appropriate steps for the prosecution of any person violating such provision." Prosecution may also be had upon complaint of the Attorney-General or of any member of the legislature.[1]

Finally Wisconsin, while making it the general duty of the Attorney-General to bring prosecutions for violations, also vests authority in the District Attorney of Dane County, in which the state capital is located, to initiate actions to revoke lobbyists' licenses.[2]

These few provisions exhaust the novel attempts of the states to provide for the systematic enforcement of their lobbying laws. The dominant pattern is a quiescent one in which responsibility for enforcement rests in the hands of the state Attorney-General. The limitations of this arrangement will be signalized at a later juncture.

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We have now briefly examined various statutory and constitutional definitions of lobbying. Registration provisions, prohibitions, and provisions relating to financial reporting have also been discussed. The penalties provided by these lobbying laws and the methods of enforcement by

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[1] 1948 Cumulative Supplement to the Virginia Code of 1942, Acts of Virginia, 1945, Exec. Sess., c. 39.

[2] Wisconsin Statutes, 1947, sec. 346.21.

which they are supposed to be effectuated have been summarized.

There remains the necessity of ascertaining how effective these laws have proved to be in operation. Do they go far enough? Have they been complied with? Have they been useful? Have they been conscientiously enforced? Out of a critical synthesis of the state experience should emerge certain practical principles of lobby regulation which can serve as guideposts for the evaluation of the newer federal attempt at control.

Effectiveness of State Lobbying Laws

Registration.--Have lobbyists generally registered in the states which require registration? The question is difficult to answer. One can best conclude that there is no wholly accurate test of whether or not full compliance has been secured. Reference to the accompanying chart[1] indicates registrations of individual lobbyists ranging from five in South Carolina to over six hundred in Wisconsin. In the absence of detailed political studies for each state, it is impossible to estimate what percentage of potential registration these figures might indicate.

Correspondence with the state officials charged with the enforcement of these provisions has also produced very lean and inconclusive results. When asked by the writer how fully the law had been complied with in her state, one

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[1] See Appendix A.

Secretary of State declared:

> I believe that practically every person who engages in lobbying registers under this law, but, of course, this office has no way of knowing that to be a fact.[1]

Another official writes, "We believe the law is quite effective, and there is general compliance."[2] A third reports, "Insofar as we know, the law has been fully complied with."[3] Several other officials responded in similar vein; no one of them indicated that there was any problem of non-compliance in their state.

One can, of course, infer that compliance in Wisconsin has been relatively better than in South Carolina or in Georgia, where a $250 tax awaits the registering lobbyist. There is, however, no certain proof for this hardly extravagant inference, for lobbyists are not easily counted.

Where observers other than state officials have commented on the problem, there has been some agreement that there has not been full compliance with the registration provisions of the various laws. Professor Pollock has written of the lack-luster results secured in New York and Ohio where there are supposedly "good" lobbying laws.[4] Professor Zink

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[1] Letter to writer from Helen E. Burbank, Secretary of State of Vermont, October 28, 1948.

[2] Letter to writer from Annamae Riiff, Secretary of State of South Dakota, November 4, 1948.

[3] Letter to writer from Walter C. Herdman, Assistant Attorney-General of Kentucky, October 29, 1948.

[4] Pollock, op. cit., p. 339.

has come to similar conclusions about the operation of the Indiana law, noting as a case in point that at least one hundred organized pressure groups were active before the legislature during the 1937 session, but that only forty-seven registered with the Secretary of State.[1] Other observers have found comparable situations in Nebraska,[2] in California,[3] and in New York.[4]

Several states, on the other hand, have been complimented on the thoroughness with which their registration requirements appear to have been met. In this category, Wisconsin and Massachusetts have most frequently been singled out for praise.[6] One is probably justified in concluding, however, that these states are exceptions to the general rule of incomplete compliance.

Insofar as lobbyists have registered at all, the purpose of the registration provisions has been achieved. The

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[1] H. Zink, "Indiana Lobby Control Found Insufficient," National Municipal Review, vol. 27 (November, 1938), p. 544.

[2] Wilson, op. cit., p. 124.

[3] Crouch and McHenry, op. cit., p. 71.

[4] H. Walker, Lawmaking in the United States (New York, Ronald, 1934), p. 295. See also, Crawford, op. cit., p. 148.

[5] On the Wisconsin act, see W. S. Carpenter and P. T. Stafford, State and Local Government in the United States (New York, Crofts, 1936), p. 47. Logan, op. cit., p. 71, ascribes much of the success of the Wisconsin act to "the generally high plane of the state government." On the Massachusetts act, see E. W. Killpatrick, "Bay State Lobbyists Toe Mark," National Municipal Review, vol. 34 (December, 1945), p. 543.

purpose of requiring lobbyists to register is simply to force them to identify themselves, their employers, and their legislative interests to the public and to the legislature?[1] There is no reason to assume that most registered lobbyists have not honestly supplied this information. As the Secretary of State of Maine has written of compliance with his state's law:

> I have reason to believe and do believe that there is 100% compliance with the law, that such compliance carries out to the full the purpose for which the law was enacted, namely, to identify principal and counsel.[2]

In some states registration is certainly less than "100%," but in few states, to the best of the writer's knowledge, have there been complaints that those registering have not furnished the material information which the law requires. If this information is inadequate, it is at least partially because the law requires too little.[3] The intentions

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[1] It might be maintained that the purpose of the Wisconsin Act is somewhat different. Section 346.20 of Chapter 609, Laws of 1947, declares: "The purpose of sections 346.20 to 346.29 is to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices and to provide for the licensing of lobbyists and the suspension and revocation of such licenses." Despite this preamble and the otherwise wholesome attitude of the statute, in only a few particulars does it deviate from the ordinary statute. Registration is not one of these particulars. Its purpose here, as elsewhere, is publicity.

[2] Letter to writer from Harold I. Goss, October 27, 1948.

[3] Very often a lobbyist lists as his legislative interest, "Any matter of interest to employer." Certainly this answer is imperfect, but does it not spring from the fact that lobbyists are required to register before lobbying, or before the beginning of the session? (in Wisconsin) For

of these registration provisions are generally fulfilled, but most writers and observers agree that these intentions are far too modest to produce very informative results.

The first large area of criticism of state registration provisions has been in connection with what is said to be their incomplete coverage. An examination of the statutes verifies the fact that the important group of unpaid lobbyists does not come within the purview of any of these provisions. Obviously, the unpaid lobbyist, the volunteer, the zealous reformer is as capable of influencing legislation as is the lobbyist who is paid for doing so. Obviously too, these unpaid representatives are fully as capable of concealing the interests whom they represent.[1]

Corollary to this problem is the question of the status of those individuals whose employment might require that they lobby only on a part-time basis, with the rest of their services dedicated to wholly non-legislative activities. For this lobbying, perhaps no special compensation is paid. These individuals often admit to lobbying, but since they are

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a contrary view, see B. Zeller, "State Regulation of Lobbying," in Book of the States, 1948-1949 (Chicago, Council of State Governments, 1948), p. 126.

In Massachusetts, however, these vague entries were in fact the result of a ruling of the Attorney-General that the requirement was satisfied by an entry that a lobbyist was employed "on all matters of interest to the employer." 3 Op. Att'y Gen'l 469, cited in Annotated Laws of Massachusetts, 1944, title I, c. 3, sec. 41.

[1] Wilson, op. cit., p. 124.

not paid for lobbying per se many of them, particularly attorneys for corporations, have taken the position that this activity does not come within the purview of most registration requirements. In the few states where the laws make professional exemptions, this problem does not arise too frequently. But in states without this initial exemption, the problem of coverage is a very real one and has resulted in considerable non-compliance among agents and attorneys who have lobbied as part of a larger employment.[1]

Finally, in those states which require registration only when lobbyists act in furtherance of private pecuniary interests, non-profit organizations have not been subject to the laws. It cannot be maintained that private or personal pecuniary interest was the guiding precept of the Anti-Saloon League, but it cannot be denied that it was a preeminently powerful lobbying organization. Yet, in these states, its representatives and those of other non-profit organizations were not required to register.[2]

The second major criticism which can be directed against state lobbyist registration provisions relates to the inadequate publicity which is accorded registrations after they have been made. That information is merely available to the legislator or the citizen does not sonstitute

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[1] See Zeller, Pressure Politics in New York, p. 258 for a description of the problem in New York.

[2] See supra, p. 35, note 4.

publicity. The situation cannot be expected to improve unless, at the very least, the Wisconsin practice of regularly informing the legislature of the identity of the lobbyists practicing before it is emulated more generally.[1] In addition, the public at large is entitled to more systematic information on lobbyists' registrations than it has received in any state.

The third and most telling objection to the present state registration provisions, however, is levelled at the insufficiency of the information which these provisions solicit from registrants. Beyond requiring that the name, address, and nature of the employers' business be given, no registration law yet devised in the states has attempted to probe into the internal structure, management, representativeness, or membership of organizations which employ lobbyists.[2] How truly can a lobbyist speak for the organization which he represents? Is it a facade organization, lacking the impressive membership which its letterhead claims? What does

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[1] There are indications that the need for greater publicity is being recognized. See Final Report of the New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures, and Expenditures, Legislative Document no. 31 (1946), pp. 27, 173. See also, L. B. Orfield, "Improving State Legislative Procedure and Processes," Minnesota Law Review, vol. 31 (January, 1947), p. 187.

[2] Professor Walker writes, "A small identification card carried in the wallet informs no one." Requiring the names of employers is simply a "repetition of the obvious and well known." H. Walker, The Legislative Process (New York, Ronald, 1948), p. 120.

the membership know of or contribute to the legislative policies of the organization? These are questions which simply cannot be answered by reference to the information filed in accordance with the existing state laws. But they are questions which both the public and the legislator are entitled to ask, and to have answered.

Dayton D. McKean has presented cogently the reasons which warrant a larger effort by the legislatures to inform themselves:

> If the legislature is to take official cognizance of [these organizations] by requiring that they register, it should undertake to ascertain what or whom the groups represent. It is not enough to demand that a lobbyist reveal the name of his employer; the names and addresses of members of the organization and the financial affairs of the group should be included to give legislators any true picture of the sources of the pressures upon them. [As] the groups have now at least as important a place in the legislative process as the parties, and as the state found it necessary to regulate by law the internal affairs of the parties, it may find it necessary to regulate the internal affairs of the pressure groups.[1]

It can be said in summation of the registration provisions of state lobbying laws that they have been moderately well complied with, but that the breadth of their coverage, and the depth of their information requirements leave much to be desired. The publicity given to lobbyist registrations has been completely inadequate.

Reporting.--Turning to the financial reporting provisions of state lobbying laws, one finds an even less

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[1] McKean, op. cit., p. 244.

heartening picture. In the first place, there can be no doubt that full compliance has not been secured in most states. Professor Zeller has reported the failure of as many as one-third of the registered lobbyists in New York to comply with the reporting requirements of that state's law.[1] Professor Pollock refers to the Ohio provision as having been of "very little value."[2] Richard D. Wilson has also indicated a "striking laxity in compliance" in Nebraska, pointing out that in 1947 approximately twenty percent of all registered lobbyists and employers failed to file reports or failed to specify in these reports the compensation paid or received.[3] A Nebraska official has declared:

> The large corporations declined quite generally to state the amount of money paid to their lobbyists on the ground that such persons were not employed by lobbyists but were regular full-time employees of the corporation whose casual duty it was to appear as lobbyists before the Legislature.[4]

This type of evasion can be met only by provisions of the Massachusetts type which require that in such cases the salary of the individual concerned must be apportioned between legislative and non-legislative activity. No other

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[1] B. Zeller, Pressure Politics in New York, p. 256.

[2] Pollock, op. cit., p. 339.

[3] Wilson, op. cit., p. 125.

[4] Letter to writer, William T. Gleeson, Deputy Secretary of State, October 28, 1948.

state has enacted such a requirement, however. Lacking such a provision, lacking thoroughgoing enforcement, one can only conclude that these reporting requirements are, in the words of one observer, "broken with impunity."[1]

But even were we to assume that there was full compliance, could it be said that these reporting provisions achieve their apparent purpose? Again, one must reach a negative conclusion. The purpose of the report is to give the legislator and the citizen an idea of who spent what on which legislation. When one commentator can find that every report submitted in Ohio in 1927 stated "received nothing and spent nothing," there is ample room for doubt that this purpose is being fulfilled.[2]

Currently the situation is somewhat improved. Reference to the chart included in the appendix indicates that lobbyists have reached the point of apparently being willing to disclose rather substantial expenditures on legislative matters. Yet one must agree with W. Brooke Graves that "Much more is spent than ever finds its way into the published reports."[3]

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[1] "Improving the Legislative Process: Federal Regulation of Lobbying," p. 315.

[2] Pollock, op. cit., p. 339.

[3] W. B. Graves, American State Government (3rd ed.; Boston, Heath, 1946), p. 333. Professor Walker declares, "If any money were used illegally, it certainly wouldn't be reported." H. Walker, The Legislative Process, p. 120.

As with registrations, it is difficult to maintain that the availability and occasional newspaper publication of these reports constitute the publicity which is needed. The criticism which Governor Russell made in 1891 remains impressively true today; these reports are rendered too late to affect the passage of the legislation on which the reported expenditures were made.[1]

Do these reporting provisions meet the problems posed by the modern lobby? They do not, and for reasons which are by now familiar.[2] First, the information required is inadequate. No attempt is made to demand disclosure of the internal financial affairs of groups which employ lobbyists. What are their sources? Their resources? No existing state law can provide the inquiring legislator or citizen with an answer.

Second, retrospective disclosure is largely useless disclosure. More general adoption of the Nebraska and Wisconsin requirements of periodic reporting throughout the legislative session would be an important first step towards improving the provisions which presently prevail.

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[1] There is no evidence to indicate that the Maryland provision, enabling the Governor to require special statements of expenditures regarding bills before him for signature, has been utilized effectively.

[2] See Walker, Lawmaking in the United States, p. 297, for a good analysis of the inadequacy of these provisions.

Finally, whatever merits these reporting provisions might have are lost because of their almost total non-enforcement. Certainly there are areas of ambiguity in most state lobbying laws, particularly as regard the coverage of registration and reporting provisions. Subtract these cases of vague statutory coverage and there would still be a large residue of violations in which the law was being palpably ignored, both by those subject to its demands and those ostensibly charged with its effectuation. The strict enforcement of the laws would produce not only greater initial compliance but a more honest rendering of accounts as well.

What the reporting provisions most lack, then, can be expressed in these few words: detail, frequency, publicity, and enforcement. Of these, the lack of adequate enforcement has been the most crucial factor in the decay of the machinery of state regulation of lobbying. Registration and reporting requirements alike have suffered from this official neglect.

Enforcement.--A number of states, even those whose lobby laws date back over fifty years (Massachusetts, for example) have not had a single prosecution or conviction under these laws.[1] It has been suggested that there are so few prosecutions and convictions because the penalties are unsuitable to the offense, for today the offense is not regarded as "sufficiently heinous" to warrant a term in

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[1] "The Federal Lobbying Act of 1946," p. 102.

prison.[1] This explanation does not fully account for the rarity of prosecutions, however, particularly where the penalties provided by the law are only minimal.[2]

Certain of the provisions of state laws would probably be difficult to enforce under any circumstances. To enforce the requirement that only written or printed appeals could be made to the legislator, for example, would "require that a detective be stationed at every member's elbow all the time."[3] Nor would it be wise or conducive to well-considered legislation to attempt to enforce literally such requirements, the result of which would inevitably be to insulate the legislator in a pressureless and intellectually sterile vacuum.

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[1] "Control of Lobbying," p. 1247; see also "The Federal Lobbying Act of 1946," p. 102, note 30, citing Ops. Att'y Gen'l Ohio, no. 1148 (1927), 2037, in which the Attorney General advised that no prosecution be brought against one obviously guilty of violating the state lobbying act since "he thought that a jury would not convict for an act involving no moral turpitude."

[2] The writer has found only three cases under state lobbying laws which have ever reached courts of appeal and been reported. These are: Campbell v. Commonwealth of Kentucky, 229 Ky. 264, 17 SW (2d) 227 (1929); State of Missouri v. Crites, 277 Mo. 194, 209 SW 863 (1919); and Commonwealth of Kentucky v. Aetna, 263 Ky. 803, 93 SW (2d) 840 (1936). The Crites case resulted in the invalidation of the Missouri registration law on the grounds that it violated the constitutional requirement that a lwa have no more than one subject, given in its title.

Logan records the stir created in 1928 when eight lobbyists who had violated the Kentucky provision forbidding uninvited appearances by lobbyists on the legislative floor were fined $250 and costs. Logan, op. cit., p. 71. At the same time, cases against none other lobbyists charged with the same offense were dismissed for lack of evidence. See New York Times, September 4 and 5, 1928.

[3] McKean, op. cit., p. 242.

To a certain extent the vagueness of state lobbying laws has served as a bar to proper enforcement, but it cannot be conceded that this is the whole explanation. After lobbyists have registered, for example, it is hardly expecting too much of the responsible authorities to suppose that they will take steps to see that all registrants file financial reports. This has not been the case. Not only have financial reports frequently not been filed, but those that were filed did not, in many cases, disclose expenditures which had undoubtedly been made. To the best of the writer's knowledge, only one official action has been taken in any state against such patent violations of the law.[1] Nor has he found evidence that any registered lobbyist or his employer has ever forfeited the $100 per day which a few states exact as a penalty for delinquent reports.[2]

The evidence which one sees and the collective opinion of careful observers leads one to the inescapable conclusion that prosecutors are reluctant to prosecute and courts are

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[1] In Commonwealth of Kentucky v. Aetna, 263 Ky. 803, 93 SW (2d) 840 (1936).

[2] Tentative steps were taken in New York in 1920 to bring the Anti-Saloon League before an Albany County Grand Jury for failing to comply with the New York law, but this action never materialized. Assemblyman Cuvillier said that the League at that time would probably have owed the state some $70,000 in forfeits, although since their lobbyists had not registered it was problematical whether the forfeit provision would have applied to them. Zeller, Pressure Politics in New York, p. 257.

reluctant to convict those who might be charged with violations, except where there have been "flagrant violations accompanied by wide publicity."[1]

There are substantial, if seldom recognized, reasons for the general non-enforcement of state lobbying laws. The feeling persists that the lobby fulfills a necessary, or at least useful function. The lobby does provide information, and in most states it has not been supplanted by adequate official agencies which could provide the same service more impartially. Also, as Professor Walker has pointed out:

> ... public opinion in most of the states has been satisfied by the enactment of the anti-lobbying statute and there is little demand for its strict enforcement.[2]

And as non-enforcement has partially sprung from statutory vagueness, it must be remembered that this vagueness is itself very largely the product of the extreme difficulty of writing a satisfactory lobbying statute.

But there are at least equally immediate reasons which should dictate a more concerted official attempt to make these laws operate more efficiently. The delicacy with which most of the laws are enforced arises from a misunderstanding of their purposes. They universally permit as much or more than they forbid. Their demands are relatively small. The lobbyist is simply asked to divulge the name of his employer, the conditions of his employment, and the amount of money

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[1] "Improving the Legislative Process: Federal Regulation of Lobbying," p. 315.

[2] Walker, Lawmaking in the United States, p. 295.

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[1] "Improving the Legislative Process: Federal Regulation of Lobbying," p. 315.

[2] Walker, Lawmaking in the United States, p. 295.

spent in pursuing it. Occasionally, certain types of lobbying which have led to excesses in the past are prohibited. There are no statutory limits to the number of lobbyists or to their expense accounts. These laws require descriptions more often than they impose limitations.

Serious enforcement of these laws could make an important contribution to the institutionalization and public acceptance of this type of control. Many lobbyists might merely be frightened into initial compliance, as Professor Zeller found to be the case in New York.[1] But if the enforcing agency presses investigations and prosecutions vigorously, there is no reason why this initial compliance should not become a permanent one.

Numerous suggestions have been made as to how the enforcement provisions of the present laws might be improved. It has been said that some person must be made responsible for the enforcement of the law, for "what is everybody's business is nobody's business."[2] Most of the laws do, of course, vest responsibility in someone, usually the Attorney-General. The problem is less that no single individual has been empowered to act than it is that the officers empowered to act have not been disposed to do so. Distinctive results cannot be expected of any responsible officer if he is

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[1] Zeller, Pressure Politics in New York, p. 257.

[2] Pollock, op. cit., p. 340.

reluctant to use the authority with which the law provides him.

Other observers have suggested that a regular legislative committee[1] or a well-paid administrative board[2] be charged with the regular examination of lobbyists' registrations and reports. Professor Walker recommends a special grand jury which would sit concurrently with the legislature and carry on a running investigation of lobbying.[3]

The adoption of any of these suggestions would quite possibly result in a marked improvement of the present desultory state of enforcement. Nevertheless, it is the writer's conviction that much could be done under the existing arrangements, if the responsible officials were disposed to discharge the functions with which they have been charged. A change in the agents of enforcement is less necessary than a change in the public and legislative attitude on which intelligent

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[1] "Control of Lobbying," p. 1247.

[2] Walker, Lawmaking in the United States, p. 297.

[3] Ibid. There have been a number of facetious suggestions, usually made in a spirit of waggery which overlooks the essential seriousness of the problem. Senator Reed of Missouri suggested that all lobbyists be put into uniform, "or livery of as striking a pattern as possible." See Zeller, Pressure Politics in New York, p. 260. In Alabama, a legislator introduced a resolution to the effect that "... railroad lobbyists should wear overalls, carry an oil-can and a switch-lantern. Similarly appropriate attire was specified for public utility, insurance, educational, and bank lobbyists ... with a view to distinguishing them from each other and from members of the Legislature." New York Times, February 28, 1937.

enforcement must ultimately be based. This change of attitude can be effected only slowly, but it can be effected. Systematic and well-publicized official explanation of the essentially non-repressive character of these registration statutes would be a worthwhile first step in this direction. Adequate enforcement is impossible where substantial segments of the community are unaware of the purposes of this legislation, or where they are suspicious that it may be more dangerous than the conditions which it seeks to cure.

Registration and reporting become perfunctory if not accompanied by positive official action which both metes out to the violator the punishment provided by law and gives impetus to the development of an attitude of compliance on the part of those subject to the law's requirements. If there is any important lesson to be derived from the state experience with lobbying statutes, it is this. The present state lobbying laws are admittedly imperfect, but they can be made to do a serviceable job of revealing the sources of pressures on the legislatures if they are honestly enforced. They were not intended to do more.

Summary of the State Regulatory Experience

The states' law of lobbying has atrophied while lobbying itself has undergone a continuous development. Several state laws still define lobbying as corrupt or secret solicitation. Others define lobbying in terms of personal pecuniary

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interest. Still others define lobbying as appeals other than those addressed to the legislator's reason. These definitions, which establish the coverage of regulatory statutes, indicate the over-concentration of many of the state laws on problems of venality which modern lobbying no longer poses. The lobbyist of today will not bribe where he can persuade.

Most state lobbying laws require that lobbyists register, but the coverage of these requirements varies markedly from state to state. The lobbyist is asked to identify himself and his employer and to disclose rudimentary information as to his employment and legislative interests. If the lobbyist does comply, the law requires that he disclose very little. If he does not comply and is normally reticent about it, there is little likelihood that any official action will be taken to punish his violation.

The laws of several states bar certain types of activity on the lobbyist's part. Some of these activities are no longer vital avenues of approach. Others, such as prohibitions of personal contact with legislators, are largely unenforceable.

Most of the state laws further require that financial reports be rendered periodically. Many lobbyists register but fail to file such reports. Many more will file evasive returns. Here again, the likelihood of official action in case of violation is slight.

All of the state laws make the information received

in registrations or financial reports public, but usually only by specifying that these returns shall be available to whoever might care to examine them. Positive provision for informing either the legislature or the public of the content of these returns is almost uniformly lacking.

All of the state laws provide for fines and prison terms for violations, with the added possibility in seven states that the offender may be prohibited from lobbying for three years. Only rarely are these penalties invoked because only rarely do those responsible for the acts' enforcement undertake to enforce them affirmatively.

Here the state acts stop. They do not attempt to inquire into group organization and structure, or into the methods of group activity. They do not inquire into groups at all, but approach lobbying on the level of individual actions and individual prohibitions. They do not integrate the essentially negative idea of lobby regulation with the essentially positive ideas of simplifying the legislative process and improving the legislator's sources of objective information so that the lobby need not play so influential a role in the shaping of governmental action.

There is ample room, indeed necessity, for the continued existence of pressure groups as a corrective for some of the manifest inequalities of our system of political representation. Only the sanguine purist insists on their utter elimination. But we have for too long perpetuated the

myth of their indispensability as fountains of information at which the amateur legislator can drink. It is properly the responsibility of the state to inform the legislator as to the facts of any given issue; it is the high privilege of the organized group to inform him as to its point of view.

These errors of omission would be of less importance if the present state lobbying laws did well what they were intended to do, but they do not. They are called "publicity" laws, but they achieve publicity only if that term is passively defined. Their failure to inform and their continued non-enforcement can be scored as the two factors which have contributed most tellingly to the general failure of state regulation of lobbying.

How can this state experience be related to the newer federal attempt at regulation? In the very first place, it demonstrates the extreme difficulty of drafting a regulatory statute which will cover broadly but will, at the same time, be specific enough to be enforced.

The state experience further points to the inutility of regulation which is based on individual rather than group action. The membership, organization, and resources of the pressure group are of greater importance to the legislator than are the efforts of these groups' representatives.

If publicity is the aim of regulation, then this publicity must be affirmatively provided for by law. It is not enough to rely on the occasional disposition of legislator

or citizen to examine the lobbyists' registrations and reports which are available; rather this information must be clearly and regularly brought to their attention.

The necessity of systematic enforcement of lobbying laws can not be over-stressed. Without this enforcement, neither public understanding nor an attitude of compliance on the part of those subject to the law can be expected to develop.

And finally, the state experience shows clearly that regulation of lobbying must be seen as but one component of the larger problem of legislative reorganization. Simplification of legislative processes and the provision of adequate legislative reference facilities aid in the creation of an environment where the lobbyist plays a less secret, a less certain, and a less vital role.

CHAPTER III

CONGRESSIONAL LOBBYING AND ATTEMPTS TO REGULATE IT PRIOR TO 1946

Having briefly examined the origins, method, and operating effectiveness of state regulation of lobbying, we may direct our attention to a parallel analysis of the federal experience. First, landmark evidences of lobbying before Congress will be indicated. The evolution of the techniques by which this lobbying was carried on will also be described. Second, Congressional investigations of lobbying and proposals for its regulation prior to 1946 will be examined and compared with their counterparts in the states. Though none of these proposals were adopted, they nonetheless constitute an important part of the setting in which the Regulation of Lobbying Act of 1946 was ultimately drafted and enacted into law.

The Development of Lobbying before Congress

It is not our present purpose to undertake to write the still-unwritten history of lobbying in the United States, although such a work could easily recommend itself to the interested scholar. Here we can only briefly suggest the development of a practice which has existed since the very beginnings of our national life.

Senator Thaddeus Caraway of Arkansas, who was during his lifetime one of our more assiduous students of lobbying, once wrote:

> Groups, some of them actuated by the most patriotic motives, and others purely selfish, have maintained what are commonly called lobbyists in Washington, I presume since the foundation of the government.[1]

Evidence as to the soundness of Senator Caraway's presumption is readily available. The Journal of William Maclay provides an acid commentary on the techniques used by interested groups before the First Congress to secure the assumption and funding of the states' debts.[2]

It was also during this first Congress that a southern location for the nation's capitol was decided upon, and most writers have found an intimate connection between this decision and the issue of assumption. The southern location was a quid pro quo given by Hamilton in return for Jefferson's support of assumption and funding. While the entire affair might be regarded as "log-rolling" rather than what we today know as lobbying, it remains an interesting commentary on the tractability of a young Congress.[3] As one commentator has said of the incident:

It is not surprising that a system [i.e., lobbying] begun

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[1] Letter to E. P. Herring, cited in his Group Representation Before Congress, p. 31. In this section, particular reliance is placed on Herring, Luce, Legislative Assemblies, and Logan, Lobbying.

[2] See Luce, op. cit., p. 409. On March 9, 1790, Maclay wrote: "I do not know that pecuniary influence has actually been used, but I am certain that every other kind of management has been practiced and every tool at work that could be thought of."

[3] Herring calls it "social lobbying." Herring, op. cit., p. 39.

> by party leaders so distinguished should have been continued in a body, nearly every member of which goes to Washington in the double capacity of national representative and local claim-agent.[1]

The definition of lobbying as pressure on a legislature, however applied, is broad enough to encompass a score of incidents in which questionable influences were brought to bear on Congress during the first forty years under the Constitution.

Many of these pressures were self-imposed. It is needless to recite here the monumental findings of Charles A. Beard as to the personal financial holdings of the Members of the First Congress.[2] Thomas Jefferson had, in surprisingly similar terms, scored the "shameless corruption of a portion of the Representatives of the 1st and 2nd Congresses, and their implicit devotion to the treasury," one hundred twenty years earlier.[3]

But this devotion was the product of self-interest rather than of successful special pleading. Overall, one can agree with Luce that despite the unethical financial involvements of members of both Congress and the administration, there were relatively few charges of direct bribery

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[1] J. M. Bulkley, "The Third House," Overland (n.s.), vol. 39 (May, 1902), p. 905; see also Herring, op. cit., p. 39.

[2] C. A. Beard, An Economic Interpretation of the Constitution (New York, Macmillan, 1913).

[3] Luce, op. cit., p. 410, citing Writings of Thomas Jefferson, P. L. Ford Editior, vol. VI, p. 498. See also speech of Representative George F. Hoar, Congressional Record, vol. 4 (August 9, 1876), p. 5375.

made. There were, in fact, cases in which attempts at bribery were reported to the House by the Members solicited, whereupon the solicitor was reprimanded and detained.[1]

This was before the beginnings of professional lobbying which, as indicated on an earlier page, had its origins not much farther back than the date of Andrew Jackson's war with the United States Bank. Thereafter, the profession of lobbying grew rapidly, so rapidly that it would be difficult to catalogue the Congressional events in which it was said to be a factor. The term "lobbying," however, did not come into general use until somewhat after the middle of the century.[2] By then, lobbying had begun to acquire both system and importance.

A. R. Spofford, whose long service as Librarian of Congress enabled him to know intimately that body's history and processes, has written of some of the notable evidences of lobbying activity in mid-century.[3] He records that in Buchanan's administration, two lobbies joined in an attempt to put two vastly unpopular measures through Congress. Both measures, the Lecompton Constitution and the Chaffee india rubber patent extension, failed of enactment, although the

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[1] Luce, op. cit., p. 411-412.

[2] E. P. Herring, "Lobbying," in Encyclopedia of the Social Sciences (New York, Macmillan, 1935), vol. 9, p. 565.

[3] A. R. Spofford, "Lobby," Lalor's Cyclopedia of Political Science (New York, Merrill, 1893), pp. 779-781.

subsequent Covode investigation revealed that over $100,000 had been spent in promoting them. The investigation did not disclose any evidence of Congressional corruption, but the implications of such large expenditures in behalf of proposed bills were unmistakably clear.[1]

In 1857, an investigation by a House committee indicated corrupt lobbying on a large scale. Congressmen O. B. Matteson and W. A. Gilbert were proved to have cast their votes on land bills for corrupt considerations. A House vote on resolutions to expel both Members was forestalled by their resignation.[2]

During the American-Russian conversations of 1867, which led to the purchase of Alaska, a well-financed "Russian Lobby" was said to be operating before Congress. Contemporary whimsy had it that of the $7,200,000 paid for Alaska, only $5,000,000 ever reached Russia. Spofford discredits the story, declaring that $27,000 was invested in skillful attorneys and $3,000 paid to one Washington newspaper. The remaining $2,170,000 was expended by the Russian minister, under instructions, for munitions and machinery.[3]

From this period forward, allegations of lobbying,

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[1] Ibid., p. 780. See also Bulkley, op. cit., p. 906.

[2] Spofford, op. cit., p. 781.

[3] Ibid. It would appear, however, that the $27,000 for attorneys was in payment for what was then and now called "lobbying."

corrupt or otherwise, began to multiply. During the Johnson impeachment proceedings, there was supposedly an extensive lobby operating between New York and Washington. In 1868, there was talk of a "Danish lobby" working for the purchase of Denmark's West Indies. Throughout the entire period there were frequent references to a "British Lobby" whose function was to guard British shipping and importing interests from adverse Congressional action.[1]

Mid-century and beyond, the years of the Civil War and its aftermath--these are what Herring has called the "halcyon days of the lobby."[2] It was the era of the Credit Mobilier, The Central Pacific Land-grants, and the Pacific mail steamship subsidy.

The Credit Mobilier of 1867-1868 provides a still unexampled case of corrupt Congressional lobbying. The details are familiar. The majority stockholders of the Union Pacific Railroad created the Credit Mobilier and, in their capacity as stockholders, awarded it contracts to build and equip a substantial part of the road "on terms which insured to the persons concerned practically all the proceeds of the stock and bonds created by the railroad company."[3] Representative

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[1] Ibid.

[2] Herring, Group Representation Before Congress, p. 34.

[3] W. A. Dunning, Reconstruction, Political and Economic, The American Nation, vol. 22 (New York, Harper, 1907), p. 232.

Oakes Ames, active leader of the stockholders, undertook to guard against Congressional interference with the scheme by distributing shares of Credit Mobilier stock "where they [would] do the most good" in the Congress.[1]

Some Members to whom the stock was offered declined it; others accepted it, and to them accrued dividends totalling 340 percent by the end of 1868. Newspaper charges regarding this purchase of legislative integrity culminated in two Congressional investigations following the Presidential election of 1872. The report of the Poland investigating committee seriously tainted both Colfax, the outgoing Vice-President, and Wilson, his successor.[2] This committee recommended that Ames and Representative Brooks of New York be expelled from their seats, but they were merely censured by the House.[3] Senator Patterson of New Hampshire was recommended for expulsion by the Senate committee, but no action was taken by the Senate before Patterson's term expired in March, 1873.[4]

The many other Congressmen involved in the affair

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[1] Ibid.

[2] 42nd Cong., 3d Sess., House Report 77. The Poland Committee concerned itself primarily with aspects of Congressional corruption; the Wilson committee dealt generally with Union Pacific finances. See 42nd Cong., 3rd Sess., House Report 78.

[3] 42nd Cong., 3rd Sess., House Report 77, p. XIX.

[4] Dunning, op. cit., p. 233.

were declared "guiltless of corrupt acts or motives," but, as Professor Dunning points out:

> ... this judgment saved their virtue at the sacrifice of their intelligence, for it was based on the view that they had taken the Credit Mobilier stock without perceiving its relation to their official capacity.[1]

The Pacific mail steamship subsidy affair, also of 1872, furnishes an extreme example of lobbying of a less patently corrupt stripe. It was charged that more than $800,000 was expended in the successful effort to secure the subsidy. Three hundred thousand dollars was given to one ex-Congressman and remained "entirely unaccounted for." The remaining $500,000 was divided among "lobbyists, journalists, and obscure employees for supposed influence in House or Senate." Ironically, the $500,000 annual subsidy was repealed within two years of its original enactment. Investigation by the House Ways and Means Committee did not unearth proof, however, that any of the money had ever found its way into the hands of Members of Congress.[2]

These two cases, the Credit Mobilier and the Pacific mail steamship subsidy lobby, are classics of an era of questionable pressures on Congress. They represent the old mid-century lobby at its zenith. Thereafter, a period of purification of legislative conduct wrought fundamental

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[1] Ibid.

[2] Spofford, op. cit., p. 780. See also Luce, op. cit., p. 368.

changes in the lobbyist's methods.

How might this "old" lobby be characterized? In the first place, it operated through a relatively few "barons" who had:

> ... the entree to committee rooms, contacts with public men of influence, and a well-lined purse with which to entertain and distribute money.[1]

The story of Sam Ward, the acknowledged leader of a craft which had few purveyors, is a revealing commentary on the methods of the lobby baron of the sixties and seventies. He was a gentleman of culture who looked upon lobbying as a profession which he practiced "openly and zestfully." As much as he was "king of the lobby," he was even more the "prince of entertainers," around whose laden table political antagonisms were eased and the proper legislative arrangements made.[2]

Prior to the Civil War, these activities had centered around "Pendleton's Palace of Fortune," or "Hall of the Bleeding Heart" on Pennsylvania Avenue. There, legislators dined, drank, and won at cards with untoward regularity. This trick of chance could hardly be expected to embitter them towards their benefactors, who not infrequently were interested in

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[1] Herring, Group Representation Before Congress, p. 34.

[2] Ibid., p. 33-34, citing Julia Ward Howe, Reminiscences, p. 68 et seq., and Ben. Perley Poore, Perley's Reminiscences, pp. 246-247.

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the passage of private bills through Congress.[1] What Pendleton's had been to a previous generation of lawmakers, Sam Ward's was to the post-bellum Member of Congress.

Occasionally one finds evidence suggesting the frequent employment of women as lobbyists during this period. Lord Bryce comments wryly on:

> ... the persuasive assiduity which had long been recognized by poets as characteristic of the female sex, [and which] has made them widely employed and efficient in this work.[2]

Whether operating through male or female exponents, social lobbying was one of the two important resources on which the lobbyist could draw. In this era of the "old" lobby, the lobbyist had only the practical alternatives of "persuading and cajoling through social tactics, or corrupting by bribery."[3] Today, the lobbyist has both more subtle and more honest techniques at his disposal.

Why, it might be asked, did this "old" lobby emerge when it did and why were its methods what they were? While a complete answer would be more involved than the scope of this work permits, some of the more important factors may be

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1 Ibid., p. 32.

2 James Bryce, The American Commonwealth (3rd ed., New York, Macmillan, 1895), vol. II, p. 732. For a sensational account of the lobby during this period, with special references to its practitioners of the gentler sex, see E. W. McCabe, Behind the Scenes in Washington (Washington, Continental, 1873), pp. 215-247.

3 Herring, Group Representation Before Congress, p. 32.

briefly signalized. The heightened pace of industrial development at mid-century and beyond, the building of the railroads, and the rapid corporatization of the nation's economy created a class of interests having a real concern in legislation. To guard against restrictive Congressional action and to secure favorable Congressional action, these interests hired lobbyists or lobbied themselves.[1] Lobbying thus found an ally in the industrial revolution.

As to the methods of lobbying during these "halcyon days" of the craft, it can be said that they were appropriate to their milieu. If bribes were offered it was because the prevailing standards of political morality indicated the possibility of their being accepted. And bribery was a practical alternative because, in the words of the Poland report, the country was:

> ... fast becoming filled with gigantic corporations wielding and controlling immense aggregations of money and thereby commanding great influence and power.[2]

There were, too, more technical reasons why lobbying took the specific forms that it did. Lord Bryce was particularly impressed with the opportunities which the Congressional committee system afforded the lobbyist. He found that where both public and private bills were discussed privately before committees lacking the "semi-judicial procedure" which had

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[1] Luce, op. cit., p. 367.

[2] 42nd Cong., 3rd Sess., House Report no. 77, p. X.

been adopted by the English Parliament, there was apt to be applied "every possible engine of influence" by "those who have skill and a tact matured by experience."[1] Woodrow Wilson came to a similar conclusion, but he was particularly impressed with the reaction this situation had upon the voter. "He distrusts Congress," wrote Wilson, "because he feels that he can not control it."[2]

With these instruments of committee entree and influential contact, through social persuasion and occasional bribery, the few barons of the old lobby were able to practice their profession. Changes did not, of course, come overnight; the entire development of lobbying has been unnoticeably gradual. But methods of influence, or attempted influence, were altered to meet new situations.

Following the panic of 1873, there was a discernible "purification" of Congressional conduct which has been ascribed to the "chastening" given the country by the hard times which set in.[3] Such explanations are problematical, but there are other contemporary comments which confirm these symptoms of an elevation of rectitude. James A. Garfield, a veteran of the Credit Mobilier, wrote in 1877 that the average moral tone

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[1] Bryce, op. cit., vol. I, p. 678.

[2] W. Wilson, Congressional Government (Boston, Houghton Mifflin, 1885), pp. 189-190.

[3] Luce, op. cit., p. 420.

of Congress was higher than at any previous time in that body's history.[1] Lord Bryce, writing several years later, found that bribery existed in Congress but was "confined to a few members, say five percent of the whole number."[2]

One of the distinguishing features of the transition from old to new lobby was a substantial diminution of bribery and other forms of corruption in Congress. That bribery did not altogether disappear is attested to by the findings of the Pacific Railway Commission in 1887. Regarding the expenditure of some $4,818,355.67 by the Central Pacific Railway on "insufficient vouchers," the Commission concluded:

> If this vast amount of money had been applied to a legitimate purpose, no motive for concealment would exist. It must, therefore, be assumed that the object was an illegitimate one. And on Mr. Huntington's own statement and his letters establish conclusively that the moneys were used with reference to the company's business with the Departments at Washington and in Congress, the conclusion is inevitable that it was used for improper purposes.[3]

Overall, however, there was undoubtedly a material improvement in the level of Congressional probity.

As the possibilities of overt corruption waned, several other factors made for a new alignment among the interests

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[1] Idem, citing "A Century of Progress," Atlantic Monthly, July, 1877.

[2] Bryce, op. cit., vol. 2, p. 166.

[3] U. S. Congress, Senate, Report of the Pacific Railway Commission, 50th Cong., 1st Sess. (Washington, Government Printing Office, 1887), vol. 2, p. 84.

seeking Congressional recognition. The area of Congressional action broadened and became more complex, and as it did ever-increasing numbers of individuals and groups found that they had a concern in legislative matters.

Close analysis of the factors which prompted the development of these groups is, unfortunately, not within the province of this study. It can be briefly pointed out, however, that these factors can be found in the structure and principles of political parties, in the limitations of Congressional representation, in the historical conditions of economic competition, and in the necessities of waging war. As Reinsch has so perceptively suggested, the age of competition began to give way to the age of solidarity.[1]

The emergence of these groups had an important effect on the type of lobbyist who practiced his profession before Congress. The lobby baron, the broker of influence, the jack-of-all-interests gave way to a "rather motley army of adventure, in which all conditions of men could be found."[2] Within a few more years, these successors to the barons of the 60's and the 70's were quietly supplanted by a more specialized type of representative: the spokesman for the organized groups which were formed to correspond to the new

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[1] Reinsch, op. cit., p. 233.

[2] "The Week," Nation, vol. 96 (June 12, 1913), p. 585.

alignments within the economy.[1]

As group interests solidified and the hold of the lobby barons weakened, a concomitant evolution occurred in the techniques by which lobbying was carried on. This evolution can be ascribed to changes both in Congress and among the general public. One of its most immediate causes was the reform in the Rules of the House of Representatives which resulted from the "Revolution of 1910-1911." The new rules struck at the tight control over procedure which had served both lobbyists and the controlling clique in the House to such advantage in the past. Now, with greater control over procedure in the hands of the entire membership, "It was patently impossible to attempt to cajole or bribe an entire Congress."[2]

Of at least equal importance in changing the techniques of lobbying was Congress's adoption in the early years of this century of the policy of holding open committee hearings for all important public bills. The frankness of legitimate lobbyists testifying openly at public committee hearings forced the questionable lobbyist to do his work similarly.[3] The

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[1] Herring, Group Representation Before Congress, pp. 1-12, 46-52, remains the most stimulating account of this particular aspect of the disintegration of individualism.

[2] Ibid., p. 41. See also, E. C. Lowry, "The Special Interests--New Style," Saturday Evening Post, vol. 192 (January 31, 1920), p. 5.

[3] Herring, Group Representation Before Congress, p. 42.

advantages of the open hearing extended in two directions. The lobbyist was able to reach a larger audience, while at the same time both Congress and the public were given the means of knowing the identity of those who sought to influence legislation.

The adoption of the Seventeenth Amendment in 1913 also struck a blow at the older pattern of lobbying. Previously, the great financial interests had been able to achieve the effects of bribery without the accompanying dangers of this approach. With their control of certain of the state legislatures, these interests were able to procure the election of "elected lobbyists" to the senate. Herring notes that the Amendment "definitely did away with these conditions."[1]

These changes in House procedure, in committee hearings, and in the election of Senators, foreclosed several of the lobbyist's most effective avenues of approach. Concentrated pressure on the key points of Congressional procedure was largely obviated by the loosening of control over that procedure. Private persuasion was minimized through the establishment of open hearings. The popular election of Senators made less easy the influencing of Senators through the simple expedient of owning them.[2]

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[1] Ibid., p. 43.

[2] Not only the direct election of Senators, but also the rise of the direct primary for both Senators and Representatives made for greater Congressional responsibility.

Finally, Herring points outside of Congress to a "keener and more intelligent public scrutiny of affairs" as having contributed measurably to the decline and fall of the old lobby. The activities of the "muckrakers" produced a demand for more honest Congressional representation, and the social politics of the turn of the century would not brook another Credit Mobilier.[1]

As a result, then, of Congressional and popular changes, little of the old lobby was carried into the operations of the modern pressure group. The social lobby undoubtedly remained a potent means of currying legislative favor. Informal conference and persuasion with individual Congressmen was also still a usable technique. But major reliance on the old under-handed methods of outright corruption was no longer possible. There developed, rather, techniques of disseminating information, of cultivating and directing public opinion to legislative ends, and of using the latent political power of organized groups as a lever to secure the legislation desired.

There has been a fundamental change of lobbying technique, and this change largely coincides with the beginning of serious Congressional concern with the problem of lobbying. An examination of Congressional proposals for regulation, however, will serve to indicate that until relatively recently

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[1] Herring, Group Representation Before Congress, p. 43.

Congress has not been fully aware that these changes have occurred. Not until 1935 does there appear to be any general Congressional recognition of the necessity of extending a measure of control to the pressure group as well as to the individual lobbyist who represents it.

Congressional Attempts to Regulate Lobbying Before 1946

Despite the fact that some commentators cite the year 1907 as the beginning date of Congressional consideration of proposals to regulate lobbying,[1] a complete chronology would include Congressional attempts which were made a full generation earlier. Herring mentions that regulatory proposals have been "advocated since the 1870's."[2] More specifically, a bill which would have created a regular body of attorneys to act as agents before Congressional committees was introduced in the Senate in 1875.[3] The bill never reached the floor for discussion and occasioned no comment which has come to the writer's attention.[4]

It is worth noting that this measure was proposed in the years immediately following the Credit Mobilier and Pacific

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[1] E.g., Logan, op. cit., p. 68.

[2] Herring, "Lobbying," p. 567.

[3] Bryce, op. cit., vol. I, p. 695.

[4] Note however the modern view taken by the bill. Its aim compares to the present Wisconsin statute which professionalizes more than it regulates.

steamship lobby scandals. As in the states, evidences of corrupt lobbying served as a spur to legislative self-examination. In Congress, a response in the form of regulatory action was delayed for seventy years, however, while it had been immediately forthcoming in the states.[1]

It is also worth noting that every intimation of undue influence upon Congress has not been accompanied by proposals for regulatory legislation. Despite the revelations of the Pacific Railway Commission in 1887, it was not until 1894 that another lobbying bill was introduced in Congress. On August 8th, Senator Alden introduced a bill "to prevent professional lobbying, and for other purposes."[2] The bill was read twice by title and referred to the Committee on Education and Labor, from which it never did subsequently emerge.[3]

In 1897, another approach to the problem was attempted. Senator Hale sought to amend the Senate rules so as to limit the privileges of the floor, always previously extended to all ex-Senators, to those who were not interested in any claim or in any bill pending before the Congress. After

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[1] We do not here consider anti-bribery statutes as lobbying laws. Such acts were passed by Congress in 1853. See Sections 5450 and 5500, United States Compiled Statutes, 1902.

[2] 53d Cong., 2d Sess., S. 2291.

[3] Congressional Record, 53d Cong., 3d Sess., vol. 26 (August 8, 1894), p. 8293. Hereafter, the Congressional Record will be cited as Cong. Rec.

desultory debate, the motion to amend was referred to the Committee on Rules, where it followed precedent and expired.[1]

These are the only reported proposals for regulation of lobbying which were made before 1907. In that year, however, three regulatory measures were introduced in the House. The circumstances surrounding the passage of the Pure Food Act of 1906 were largely responsible for this renewal of interest in regulation, for the lobbying on the bill had been particularly intense. Due largely to the activities of the American Medical Association in stirring up public and Congressional support for the measure, the Pure Food Act was passed.[2]

The merits of the act are less material here than are the facts that it was the product of well-organized lobbying and that Congress attempted to respond to the situation. The three bills introduced in the House in 1907 took two rather different tacks. Mr. Tyndall's bill was designed to "prevent the unlawful employment of Senators and Representatives as lobbyists and to suppress lobbying in the National Congress." This bill was referred to the Judiciary Committee and never reported by it.[3]

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[1] Cong. Rec., 55th Cong., 1st Sess., vol. 30 (June 24, 1897), p. 1963. See also "The Week," p. 585.

[2] See Logan, op. cit., pp. 6-7, for discussion of the incident.

[3] 59th Cong., 2d Sess., H.R. 25369, see Cong. Rec., 59th Cong., 2d Sess., vol. 41 (February 4, 1907), p. 2256.

Eight days later, Mr. Lamar introduced a bill to "prohibit lobbying at the National Capital," and it too was referred to the Judiciary Committee.[1] On February 21st, however, Mr. Lamar asked for unanimous consent to withdraw his bill from the files of the House, declaring:

> I think the terms of the bill are more comprehensive than I intended. The bill was almost literally from the Georgia statute aimed at railway lobbying.... It was my intent that the bill should effect that object here.[2]

To the question "Why not forbid lobbying in regard to other things?" posed by Mr. Garrett, Mr. Lamar replied, "I am withdrawing my own bill. I haven't the slightest objection to the gentleman introducing one." With that the House granted unanimous consent and the bill was withdrawn.[3]

The third bill of 1907 was simply Mr. Lamar's earlier bill amended to read, "A bill to prohibit lobbying at the National Capital in behalf of railroad or railway companies engaged in interstate commerce." The original error having been rectified and Mr. Lamar's mind having been put at rest, the bill was again referred to the Judiciary Committee and was pigeonholed there for the remainder of the session.[4]

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[1] 59th Cong., 2d. Sess., H.R. 25617, see ibid. (February 12, 1907), p. 2801.

[2] Ibid.,(February 21, 1907), p. 3552.

[3] Ibid.

[4] 59th Cong., 2d Sess., H.R. 25767, Cong. Rec., vol. 41 (February 21, 1907), p. 3591. Hereafter, succeeding references to the Congressional Record for the same session of Congress will be cited by volume, page, and date, omitting the number of the Congress and the session.

All of the 1907 bills take the view that lobbying should be prohibited rather than legitimized. In this connection, it should be remembered that the Massachusetts statute had already been in operation for seventeen years, had attracted considerable attention, and had been emulated in a number of other states. Yet no recognition of the Massachusetts approach to the problem of regulation is manifested by these Congressional proposals.

At the next session of Congress, two more bills to regulate lobbying were introduced.[1] In conformity with precedent, neither bill was reported out of committee.

Four years elapsed before another lobbying bill was introduced. On March 13, 1912, Representative Smith of New York submitted a measure calling for the "regulation of duly accredited representatives of persons, firms, corporations, and associations interested in legislation before Congress."[2] This bill died in committee, but a bill introduced by Mr. Prouty three weeks later fared better. This measure, "regulating lobbying and preventing employees of the United States and the District of Columbia from raising funds for lobbying purposes" became the first lobbying measure to be reported from committee, and it was reported favorably with but minor amendments.[3] The regulation provided by the bill was minimal

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[1] 60th Cong., 1st Sess., H.R. 6213, H.R. 22153.

[2] 62nd Cong., 2d Sess., H.R. 21825.

[3] 62nd Cong., 2d Sess., H.R. 22912.

compared to the then-existing regulatory systems of numerous states. As the committee reported:

> It prevents anyone from lobbying for hire without disclosing that fact, and, upon request, disclosing by whom hired. It does not prevent anyone from appealing to the committees or members of Congress, as attorney or otherwise, if that fact is disclosed.[1]

There was a gulf of difference between the disclosure upon request envisaged by this bill and the registration requirements of the extant state lobbying laws. Its relative mildness notwithstanding, the bill died on the calendar without having been discussed on the floor.

One other Congressional reference in 1912 was symptomatic of growing concern with the problem of lobbying. On April 9th, a resolution was introduced in the House to authorize the appointment of a select committee to determine whether money had been used to influence legislation.[2] The proposal was not reported from committee, but it was nonetheless a harbinger of what was to come.

The Investigations of 1913.--In the following year two such committees were appointed to undertake broad investigations of lobbying. The circumstances which produced them and the facts which they revealed have caused these investigations to be called the governmental actions that had "the most direct effect upon the reform of lobbies at the National

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[1] 62d Cong., 2d Sess., House Report 543, p. 1.

[2] 62d Cong., 2d Sess., H. Res. 485.

capital."[1]

The impetus to the inquiries came from President Wilson's statement to the press on May 27, 1913. Referring to the tariff lobby, which had been particularly active in opposing the presidentially sponsored Underwood tariff, the President declared:

> Washington has seldom seen so numerous, so industrious, or so insidious a body. The newspapers are being filled with paid advertisements calculated to mislead the judgment of public men not only, but also the public opinion of the country itself. There is every evidence that money without limit is being spent to sustain this lobby and to create an appearance of a pressure of public opinion antagonistic to some of the chief items of the tariff.... It is thoroughly worth the while of the people of this country to take knowledge of the matter. Only public opinion can check and destroy it.[2]

Congressional reaction was prompt. Within two days after the issuance of the statement, the Senate authorized its Committee on the Judiciary to "investigate the charge that a lobby is being maintained at Washington, or elsewhere, to influence proposed legislation now pending before the Senate."[3]

In the House, approval of a resolution to authorize a parallel investigation lagged. It was not until the appearances of a series of articles in the Chicago Tribune and the

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[1] Herring, Group Representation Before Congress, p. 43.

[2] Reprinted in Herring, Group Representation Before Congress, p. 44. See also D. S. Alexander, History and Procedure of the House of Representatives (Boston, Houghton-Mifflin, 1916), p. 149.

[3] 63d Cong., 1st Sess., S. Res. 92.

New York World, beginning on June 29, 1913, that the House was provoked to action. These articles, which have since become known as the "Mulhall Revelations," threw into various shades of disrepute the integrity of a number of past and present Members of the Congress as regards their relations with the National Association of Manufacturers through Mulhall, a former representative of the Association. The House, perhaps fearful of another Credit Mobilier, then promptly authorized its own select investigating committee to:

> ... inquire into and report upon all the matters so alleged concerning said representatives [i.e., Congressman] ... [and determine whether the NAM or its representatives] did, in fact, reach or influence ... any officer or employee in this or any former House of Representatives in or about the discharge of their official duties.[1]

Thus there were two broad investigations of lobbying running consecutively during the summer and fall of 1913. Both the Senate and House Committees took four volumes of testimony and heard dozens of witnesses.[2] The entire episode was the subject of considerable newspaper and periodical comment.[3]

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[1] 63d Cong., 1st Sess., H. Res. 198.

[2] U. S. Congress, House, Select Committee on Lobby Investigation, Hearings, September-December, 1913, 63d Cong., 1st Sess., 4 vols. (Washington, Government Printing Office, 1914); U. S. Congress, Senate, Committee on the Judiciary, Maintenance of a Lobby to Influence Legislation, Hearings, June 2-August 14, 1913, 63d Cong., 1st Sess., 4 vols. (Washington, Government Printing Office, 1913).

[3] See, for example, "Natural History of the Lobby," Nation, vol. 97 (July 10, 1913), p. 26; "Hunting the Insidious Lobbyist," Literary Digest, vol. 47 (July 5, 1913), pp. 3-5; "Lobby Exposed," Current Opinion, vol. 55 (August, 1913), p. 75; and "Invisible Government under Searchlight," Review of Reviews, vol. 48 (September, 1913), pp. 334-338.

Only the House committee ever submitted a formal report of its findings, but this report was of genuine significance. While its investigation was ostensibly restricted only to the legislative activities of the NAM, the committee's report had implications which went beyond these rather narrow confines. What it said of the NAM could have been said of many of its lesser counterparts. The report stated that the NAM was:

> ... an organization having purposes and aspirations along industrial, commercial, political, educational, and other lines, so vast and far-reaching as to excite at once admiration and fear--admiration for the genius which conceived them and fear for the effects which the successful accomplishment of all these ambitions might have in a government such as ours.[1]

This was moody rhetoric but sharp insight. The most tangible contribution of the report, however, was probably in the light which it threw on the methods by which the NAM sought to achieve its objectives. The Committee found occasional instances in which the NAM lobby was:

> ... guilty of improperly preventing and seeking to prevent [legislation] by striving to induce [Members] to remain away from the chamber when a vote was being taken.[2]

The Committee also found that the chief page of the House had been in the employ of the NAM and had rendered it untoward services.[3] It found, too, that of the several

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[1] 63d Cong., 2d Sess., H. Report 113, printed in Cong. Rec., vol. 51, pp. 565-584.

[2] Ibid., p. 571.

[3] Ibid., p. 575.

Congressmen mentioned in the Mulhall papers, only one, James T. McDermott of Illinois, was "guilty of acts of grave impropriety, unbecoming the dignity of the distinguished position he occupies."[1] No action of censure was recommended by the Committee majority, however, nor was any such action subsequently taken by the House.[2]

As to the other methods employed, the Committee found that the Association contributed, through its agents, to the election campaigns of congressional candidates; that it carried on a "disguised propaganda campaign" through newspapers, publicists, speakers, and literature addressed to schools, colleges, and civic organizations throughout the country; and that it had promoted employee alliances for use in opposing pro-labor congressional candidates.[3]

These activities may have been less than forthright; they were certainly concealed as carefully as possible. But, withal, there is a notable absence of the widespread and systematic bribery which had disgraced Congresses in the past. If the report proved only that outright bribery was no longer a principal instrument of the lobby, it had served a valuable purpose.[4]

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[1] Ibid., p. 582.

[2] This lack caused Representative McDonald to submit a separate minority report. Ibid., p. 584.

[3] H. Report 113, op. cit., p. 574.

[4] Herring, Group Representation Before Congress, p. 46.

Beyond demonstrating the modus operandi of the new lobby and proving that the overt purchase of votes had become its last resort, the report made a more positive contribution to the development of lobby regulation. The report was actually "the first ... official expression on the part of Congress concerning the status of the lobby." It clarified that status and suggested a "new code of practice" for subsequent legislative activities by organized groups.[1]

Equally, the report gave unmistakable notice that Congress would not tolerate indefinitely a continuation of the devious means of special pleading which it had found were employed by the NAM. The Committee agreed that:

> To place the Congressman in a cloister to legislate, rendering him immune to extraneous influences, would be impossible, and, if possible, it would be exceedingly ridiculous.[2]

But at the same time, the use of "secret or insidious means or methods" which became a menace to the legislator's judgment was "improper and merit[ed] the severest condemnation."[3]

Or again:

> We would not place one of these [Congressmen] upon an unapproachable pedestal and bid the world regard him with awe and silence ... [but] we think [these organizations] went beyond the limits of legitimate effort and that they deserve the severest censure as well as a pointed invitation and suggestion that they completely reform their

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[1] Ibid., p. 45.

[2] H. Report 113, op. cit., p. 571.

[3] Ibid.

methods or else remain away in the future.[1]

In sum, the report recognized the changed approach of the new lobby, but still warned of the necessity for further reforms. It recognized that the deliberate creation of public opinion and a consequent "coercion through propaganda" were the new means by which the lobby operated. The direct approach of bribery had become distinctly outmoded. One must agree with Herring that, in this sense, the investigation of 1913 marked "the close of an era in the history of the lobby."[2]

Following the submission of the Committee's report, a determined House effort to pass resolutions citing the NAM for contempt and expelling Representative McDermott came close to succeeding. Both resolutions were reported favorably from committee and were placed on the calendar. They did not, however, reach the floor before the session's end.[3]

A second consequence of the investigations was the drafting and introduction of a handful of bills calling for regulation of lobbying by Congress. During the first and second sessions of the 63rd Congress, a total of twelve such bills were dropped into the hoppers.[4]

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[1] Ibid.

[2] Herring, Group Representation Before Congress, p. 46.

[3] 63d Cong., 2d Sess., H. Res. 341, 342. See Cong. Rec., vol. 51 (April 24, 1914), p. 7233.

[4] 63d Cong., 1st Sess.; S. 957, 2391, 2500, 2583, 2674, H.R. 2907, 4835, 6586, H. Res. 165; 63d Cong., 2d Sess. H.R. 12659, 15466, S. 3936.

These dozen bills can be most easily classified with reference to the two types of state statutes from which they seem to be directly derived.[1] Five of the bills were intended to "define and punish" lobbying, or to prohibit "improper and corrupt lobbying."[2] This language compares to the earlier state attempts to regulate lobbying through constitutional prohibitions. The difficulties of this narrow and inflexible approach have been discussed in an earlier chapter.

The second group of bills provided for registration of legislative counsel and agents and the periodic rendering of financial statements.[3] This is, of course, the traditional state approach, patterned after the Massachusetts act of 1890. Several of the bills followed the Massachusetts example in distinguishing between counsel and agents, presumably in the same terms.[4]

Only one of the bills provided for the prohibition of specific lobbying activities. That bill follows the Wisconsin law of 1905 in restricting the lobbyist's approach to "oral and written arguments and briefs submitted to regularly

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[1] The word "seem" is used because of the impossibility of ascertaining more about these bills than is indicated in their titles. No one of them was ever read into the Record; hence, this classification is only extremely general.

[2] S. 957, S. 2674, S. 3936, H.R. 2907, H.R. 12659.

[3] S. 2391, 2500, 2538; H.R. 4835, 6586, 15466.

[4] S. 2391, 2500, 2538; H.R. 6586.

constituted committees."[1] The difficulty of policing such a requirement is, as the states have found, insuperable.

No one of these bills was ever reported from the committee to which it was consigned. They are of interest for two reasons: first, they demonstrate the considerable reliance which Congress placed on state lobbying laws as a source of their own efforts at regulation; and, second, these proposals mark the commencement of a steady flow of lobbying bills into Congress, which flow did not subside until the passage of the Regulation of Lobbying Act of 1946.[2]

In summing up the results of the anti-lobbying activity of 1913-14, one cannot escape the conclusion that they were largely intangible. There were investigations, but from them no definite Congressional action materialized. The fact of the greatest long-run importance is probably that Congress had taken official cognizance of lobbying activities and had tacitly given the lobbyists two alternatives. First, they could change their methods of persuasion, restricting themselves to the proper exercise of their right of petition. The term "proper" was, of course, subject to Congressional definition. That alternative failing, Congress could and would exercise its certain competence to regulate both its

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[1] S. 2500.

[2] In each Congress between 1913 and 1946, at least one and as many as nine lobbying bills were introduced.

own processes and the methods of solicitation of those who sought Congressional action.

Lobbying After 1913.--There is little evidence that, in the years following 1913, either of these alternatives was fully accepted by either the lobbyists or by Congress. The disclosures of 1913 had injured several reputations and forced a number of notorious lobbyists to leave town.[1] There is, however, no substantial evidence to support the conclusion that the methods of lobbying changed unnaturally subsequent to 1913.[2]

Conversely, there is evidence of extensive lobbying before Congress soon after the 1913 episode had run its course. In 1916, Representative Smith of Minnesota drew the attention of Congress to the "Water Power Lobby" which was especially concerned with the defeat of the Shields-Myers bill to authorize the Secretary of War to grant permits for the building of dams and public power plants on navigable streams.[3] Congressman Smith charged that:

> One of the methods adopted by this association to deceive the public was to send free plate matter to country publishers and have them run in the daily papers as an expression of their own opinion, subsequently collecting these editorials and mailing them regularly to Members

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1 Herring, Group Representation Before Congress, p. 45.

2 By "unnaturally" the writer means that the changes which did occur were appropriate to the development of media of communication and the tightening concentration of economic power.

3 See Logan, op. cit., pp. 13-14.

> of Congress without any explanation, thus conveying the impression that the article presented the local opinion of the community in which the matter circulated.[1]

This practice illustrates the adaptability of the lobby to changing economic, technical, and social conditions. Lobbying has ever developed its resources in response to these conditions, and as its own needs have dictated.

Other examples of the development of lobbying during the war and post-war periods are equally available. The war itself induced a greater degree of co-operative effort than had previously existed. The vertical mobilization of industry had as one of its immediate results an increase in economic groups and associations, with a concomitant increase in lobbying.[2] As regards lobbying techniques, the war amply demonstrated the utility of propaganda. One reported commented:

> The Germans started it, as everybody knows. They worked on the simple principle that if you say a thing three times, it is so. It seemed to work.... The idea took hold, and many of these present propaganda shops to influence Congress and the newspapers are a natural evolution growing out of war days.[3]

With more organizations equipped with newer techniques, there is reason for the apparent proliferation of lobbying in the period following the first World War. E. B. Logan has

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[1] Cong. Rec., 64th Cong., 1st Sess., vol. 53 (August 15, 1916), p. 12646.

[2] Herring, Group Representation Before Congress, p. 51.

[3] Lowry, op. cit., p. 61.

marshalled impressive evidence of extensive lobbying activity in behalf of or in opposition to much of the important legislation of the era.[1] Peter Odegard's admirable study of the Anti-Saloon League gives insight into the powerful and diverse influence which this incredible organization wielded at its zenith.[2]

If it be asked, "Did this lobbying in the 20's conform to the standards of conduct suggested by Congress in 1913?" one could justifiably reply in the negative. The growing use of techniques of propaganda would hardly have come within the confines of the 1913 Committee's conception of a proper exercise of the right of petition. Propaganda was furtive, it was deceptive, and it was difficult for the legislator or the citizen either to detect or analyze. In this sense, the alternative of moderation and self-reform by the lobbyists had failed to win acceptance.

Did the Congress accept the second alternative of which it had warned in 1913, that is, positive regulation? Again the reply is necessarily negative. Despite the growth of lobbies and lobbying during and after the war, Congressional action was limited to the occasional introduction of bills which were, in turn, usually relegated to committee pigeonholes.

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[1] Logan, op. cit., pp. 13-33.

[2] Odegard, Pressure Politics, passim.

On one occasion in 1921, there seemed to be an excellent chance that lobby legislation would be favorably received by the Senate. Debates on the proposed Muscle Shoals project were accompanied by unusually extensive lobbying. Senators Kenyon and Overman took advantage of what seemed to be a propitious moment and introduced bills based on the Massachusetts law.[1] However, despite a favorable press and numerous expressions of Senatorial sympathy with the measures, both bills failed to be reported.[2]

During the Sixty-seventh Congress, three more bills were introduced but never emerged from committee.[3] The Sixty-eighth Congress saw two bills for the registration of lobbyists introduced but never reported.[4] The familiar pattern was repeated in the first session of the Sixty-ninth Congress with the unsuccessful introduction of still two more measures.[5]

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[1] 66th Cong., 3d Sess., S. 4867, 4868. See "To Curb the Pestiferous Lobbyist," Literary Digest, vol. 68 (January 29, 1921), p. 13.

[2] Senator Walsh declared that "If some action is not taken we are going to be very much handicapped and embarrassed in doing our work here during the next session of Congress." Cong. Rec., 66th Cong., 3d Sess., vol. 60 (January 11, 1921), p. 1244.

[3] 67th Cong., 1st Sess., S. 215, 410; H.R. 6312.

[4] 68th Cong., 1st Sess., S. 2936; H.R. 492.

[5] 69th Cong., 1st Sess., S. 2172; H.R. 3847; see also Cong. Rec., 69th Cong., 2d Sess., vol. 68 (January 10, 1927), pp. 1320 and 5915 (March 4, 1927) for two abortive Senate attempts to investigate certain allegations of lobbying activity.

With the seating of the Seventieth Congress, however, lobbying was brought to the forefront of Congressional and public attention in a manner reminiscent of 1913. Herring states that the subject was brought to general attention by:

> ... the activities of those opposing the federal estate tax before the Committee on Ways and Means [during the 2d session of the 69th Congress]. The dubious character of many of the witnesses, the questionable organizations that appeared, and the reluctance of some of the lobbyists to answer all the questions put to them, aroused the suspicions of the committeemen. It was charged that a powerful lobby was busy, and that large sums of money were being spent.[1]

Regulatory Activity, 1927-29.--When the Seventieth Congress assembled for the first time on December 5th, 1927, a number of regulatory bills, resolutions of inquiry, and proposed rules amendments were immediately introduced in the two chambers. The bills were largely derived from state lobbying statutes, usually those of Massachusetts or Wisconsin. Representative Brown's bill was drawn closely along the lines of the Massachusetts law, and envisaged no types of control not found in either the Massachusetts or Wisconsin laws as they then stood.[2] Representative Griffin re-introduced his bill calling for registration,[3] and Representative Schafer submitted a bill requiring the disclosure of interest by

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[1] Herring, Group Representation Before Congress, pp. 253-254.

[2] 70th Cong., 1st Sess., H.R. 7202.

[3] 70th Cong., 1st Sess., H.R. 423.

lobbyists attempting to procure the passage or defeat of legislation by Congress.[1] The Schafer bill prohibited contingent fees and limited the lobbyist's methods of approach to those authorized by the Wisconsin statute.[2] These provisions indicate how large was the reliance on earlier state enactments.

A final House proposal during this session was in the form of a joint resolution which would have prohibited ex-Members of the Senate and House from lobbying before Congress within two years of the expiration of their Congressional terms.[3] Although this proposal was an attack on a particularly abused privilege, it died in committee along with the other House bills.

In the Senate, two resolutions and one bill dealing with lobbying were introduced during the first session. One resolution, introduced by Senator Walsh of Massachusetts, proposed to amend Senate Rule XLI to provide for the registration of legislative counsel and agents with the Secretary of the Senate before they might prosecute their employment. The usual information was required on registration, but financial reports were to be rendered only upon motion of a

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[1] 70th Cong., 1st Sess., H.R. 6098.

[2] That is, petitions, circulars, publications, and addresses.

[3] 70th Cong., 1st Sess., H. J. Res. 227.

member of a committee before which the lobbyist had appeared.[1] This resolution was lost in committee.

A second resolution, introduced by Senator Caraway of Arkansas somewhat later in the session, would have authorized a special committee of three members to launch an inquiry of the broadest scope into lobbyists and lobbying organizations, into their sources of funds, into their expenditures, and into the efforts they put forth to affect legislation.[2] This resolution failed of adoption, but another proposal of Senator Caraway's achieved a greater measure of success.

During the first week of the session, the Senator had introduced a lobby regulation bill identical to the one which he had unsuccessfully sponsored in the 69th Congress.[3] The bill was referred to the Senate Committee on the Judiciary, but this time it was favorably reported back to the Senate with but minor amendments.[4]

The bill presented no radical departures from the Massachusetts system of regulation. A lobbyist was defined

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[1] 70th Cong., 1st Sess., S. Res. 145.

[2] 70th Cong., 1st Sess., S. Res. 227. The preamble of the resolution is perhaps revealing of Senator Caraway's thinking re lobbying: "Whereas, The lobbyists seek by all means to capitalize for themselves every interest and every sentiment of the American public which can be made to yield an unclean dollar for their greedy pockets; Now, therefore, be it Resolved ..."

[3] 70th Cong., 1st Sess., S. 1095.

[4] 70th Cong., 1st Sess., Senate Report 341.

as "one who shall engage, for pay, to attempt to influence legislation, or to prevent legislation by the National Congress."[1] Lobbying was defined as:

> ... any effort to influence the action of Congress upon any matter coming before it, whether it be by distributing literature, appearing before Committees of Congresses, or interviewing or seeking to interview individual Members of either the House of Representatives or the Senate.[2]

This section of the bill compares to those state definitions which were earlier labelled "omnibus." Note, however, the problem posed by the enumeration inserted after "any effort to influence." Did these methods exemplify or did they limit "any effort"? Were they to be construed as the sole means of influence? If so, the bill could not reach the dissemination of propaganda, the inciting of mail or telegram campaigns, or the like. Discussion of the bill on the floor did not appreciably clarify this point.

Another objection to the bill, and one which was variously voiced during Senate debate on the measure, was concerned with its definition of a lobbyist as one who, "for pay," attempted to influence the passage or defeat of legislation by Congress. Did "for pay" mean that any paid employee who lobbied was subject to the bill? Or did "for pay" indicate that only employees or agents who lobbied and were paid

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[1] S. 1095, sec. 1; in Cong. Rec., 70th Cong., 1st Sess., vol. 69 (March 2, 1928), p. 3931.

[2] S. 1095, sec. 1.

specifically for such lobbying would be subject? This distinction had long been a trouble-spot in the administration of state lobbying laws, and no one of the states had as yet found a formula by which the general term "for pay" or "for compensation" might be made to cover a more specific range of situations.

Senator Caraway took the position that "for pay" would include persons who lobbied "only where lobbying is their sole occupation. That is what they are doing it for," he said, "not because they have an interest as citizens but because they are paid to do it." The Senator saw clearly the ambiguity of the term when he admitted that:

> ... like any other law, this law will have to be enforced with common sense.... It only applies to that class of people who make a profession of influencing, or who have for the time being the occupation for hire of influencing legislation.[1]

On another related point there was further Senatorial objection. When the bill was introduced, it used the phrase "for pay or otherwise" in defining lobbyists. In the committee report, however, the "or otherwise" was dropped.[2] Senator Robinson opposed the deletion on the grounds that it would exempt from registration those

> ... hundreds of paid representatives [who] are not specifically employed for lobbying, but [who] while in

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[1] Cong. Rec., 70th Cong., 1st Sess., vol. 69 (March 2, 1928), pp. 3932-3933.

[2] 70th Cong., 1st Sess., Senate Report 341, p. 1.

> the employ of the corporation or the individual represented ... are permitted or directed to come to Washington to oppose or to favor legislation.[1]

With the exception of these colloquies on the meaning of "for pay," there was little discussion of the bill's provisions, which were, as noted, largely derived from the prevailing practice in the states. Registration was required as a prerequisite to lobbying as defined in the bill. The information to be disclosed included: name, employer's name, terms of employment, and legislative interests. Financial reports were required monthly, in contrast to the end-of-session reports then required by all the states. Penalties of fines up to $1,000 and imprisonment up to one year were provided.

The bill was somewhat unique in that it attempted to secure publicity by stipulating that every original registration and monthly financial report be recorded in the Congressional Record.[2] Excepting this provision, there were no

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[1] Cong. Rec., vol. 69 (March 2, 1928), p. 3933. This was despite the objection of Senator Walsh to the apparent exemption of part-time lobbyists on general annual retainers.
During the course of the Senate debate, no reference was made to the tacit exemption of those who lobbied without pay of any kind. Certainly the unpaid agent, fortified by belief in a cause, can be as effective a lobbyist as the well-paid representative of a great corporation. This is a problem very difficult of solution; as indicated previously, the states have not met it satisfactorily.

[2] The Record is a medium which has no exact counterpart in the states; hence, their general failure to formalize the publication of this information is somewhat understandable.

other major deviations from the established pattern of state regulation.

After brief discussion as an "unobjected bill," the Caraway bill was passed by the Senate on March 2, 1928. It was the first anti-lobbying measure to have ever passed either House of Congress. Although there were no dissenting votes in the Senate, many of the questions asked during the brief debate on the measure reflected a number of Senatorial reservations to it. That these reservations were shared by many outside observers is indicated by the sharp division of editorial reaction to the bill's passage through the upper house.

Much of the comment was favorable, particularly that emanating from Democratic or Independent editors. One was quoted as writing, "It marks gratifying progress toward some sane action against a serious and rapidly increasing evil."[1] Although suggesting proper safeguards so as not to hamper the legitimate lobbyist, the Baltimore Sun, the New York World, the Chicago Daily News, and the Washington Post similarly declared their approval of the measure.[2]

On the other side, there was sharp criticism of the

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[1] Cong. Rec., vol. 69 (March 2, 1928), p. 3935.

[2] Cited, along with other editorial comments, in "To Tame the Lobbyists," Liberary Digest, vol. 96 (March 17, 1928), p. 11.

bill. The Cleveland Plain-Dealer was particularly concerned with the bill's definition of lobbying, which it felt "does not distinguish between the sheep and the wolves." Essentially the same view was taken by the New York Times and the Springfield Union.[1] The Helena Independent was far more vitriolic, declaring:

> As proposed, the bill to regulate lobbying is an impudent insult to the people of the United States. Such a proposal could only be indulged in by conceited members of the Senate who believe their actions need no guidance; their information is complete without the advice of the men and women who pay the taxes.[2]

These complaints all relate to the form in which the Caraway bill was passed. Representative F. H. LaGuardia had more fundamental objections to the bill in particular and to lobbying laws in general. He felt that the lobbyist who worked by corrupt means would hardly be deterred by a "little thing like a law." As for the "fake lobbyist" who actually possessed no influence, he would certainly welcome the law since "He lives on the credulity of people whom he impresses with his importance and makes believe that he is serving." This type of lobbyist would be the first to register. He would:

> ... adorn his letterhead with the proud legend: 'Legally Registered Legislative Representative'--a high-sounding title and strictly in keeping with the law. In fact,

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[1] Ibid.

[2] Ibid.

> the proposed law will add to the importance of these nonentities. It will not hurt the faker and it will not deter the rogue.[1]

Whether this dim view of the possibility of statutory regulation of lobbying was justified or not, it was apparently shared by sufficient of Mr. LaGuardia's colleagues to allow the bill to be pigeonholed in the House Judiciary Committee following its reference there on March 6th. The session ended without further attempts to legislate on the matter.

The second session of the Seventieth Congress was quiescent concerning lobbying, but with the assembling of the Seventy-first Congress there was once again a flurry of regulatory activity. Representatives Shafer and Browne re-introduced their earlier proposals, but they were not reported.[2] Senator Caraway re-submitted his bill, and it too failed to clear the initial barrier of committee approval.[3]

The important anti-lobbying action of the Seventy-first Congress did not lie in the bills which it failed to pass; rather, this Congress took significant action in authorizing the first broad inquiry into lobbying since 1913.

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1 F. H. LaGuardia, "Lobbying in Washington," Nation, vol. 126 (May 23, 1928), p. 586. Senator Caraway believed that the "fake" lobbyists comprised ninety percent of the total. Herring, Group Representation Before Congress, p. 259. See also, Michael Williams, "Aspects of Publicity," Commonweal, vol. 11 (November 13, 1929), p. 43.

2 71st Cong., 1st Sess., H.R. 1922, 5052.

3 71st Cong., 1st Sess., S. 323.

Again, Senator Caraway played a dominant role. On April 22, 1929, the Senator re-introduced the resolution of inquiry which he had unsuccessfully sponsored in the Seventieth Congress.[1] The resolution was referred, and during the long summer nothing was heard of it.

While this resolution was tabled in the Committee on the Judiciary, the Senate Finance Committee was conducting hearings on the Smoot-Hawley tariff bill. These two seemingly disparate matters were dramatically joined in the Senate on September 25th when Senator Harrison of Mississippi, following extended debate on tariff raises proposed by the Finance Committee, charged that:

> ... the rates upon which such increases may be based are determined by such methods as should cause the American people to revolt against them.[2]

Senator Harrison proceeded to read into the record the following newspaper statement:

> An executive of one of the country's most important lobbying organizations sat in the secret sessions of the Senate Finance Committee's tariff meetings, investigation by the Hearst newspapers disclosed today....
>
> Charles L. Eyanson, assistant to the President of the Manufacturers Association of Connecticut is that man.
>
> He admits he helped draft some of the provisions of the Smoot-Hawley tariff bill.
>
> He acted as tariff "expert" for Senator Hiram Bingham

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[1] 71st Cong., 1st Sess., S. Res. 20.

[2] Cong. Rec., 71st Cong., 1st Sess., vol. 71 (September 25, 1929), p. 3948. See E. E. Schattschneider, Politics, Pressures, and the Tariff (New York, Prentice-Hall, 1935) for an incisive analysis of the factors involved in this tariff.

(Republican) of Connecticut during June, July, and August when the Senate Committee was revising the bill's various schedules.[1]

"Here is what this paper said," declared Senator Harrison: "It calls for a reply." Senator Bingham attempted to justify his action on the grounds that he needed expert information so that he could properly serve his constituents' best interests. The Senate does not appear to have been satisfied with the explanation; six days later the Caraway resolution was passed and an investigation of the entire matter was begun.[2]

One important amendment was made to the resolution during the course of its passage. Originally it had called for the investigating committee to be appointed by the President of the Senate. In its final form, however, the resolution provided that the investigation be undertaken by the Committee on the Judiciary, or by a subcommittee thereof to be appointed by the Chairman of the Committee. This meant that Senator George Norris rather than Vice-President Curtis would name the investigators, and, as one observer put it, "the investigation gains in importance from this fact."[3] To the surprise of no one, Senator Norris selected Senator Caraway to head the inquiry.

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[1] Cong. Rec., vol. 71 (September 25, 1929), p. 3949.

[2] Cong. Rec., vol. 71 (October 1, 1929), p. 4115.

[3] "A Showdown on Lobbying," Christian Century, vol. 46 (October 16, 1929), p. 1269.

The resolution empowered the committee to look into the "activities of these lobbying associations and lobbyists," into their revenues and expenditures, and into the "effort they put forth to affect legislation." How far would the committee be able to range? Senator Caraway had very decided ideas on the subject. When asked if the resolution were broad enough to allow investigation of the social lobby, he replied, "Yes sir, it is broad enough to investigate anything in which one might feel interested."[1] With this wide view of its jurisdiction, the Caraway committee began its work.[2]

During the course of its investigation, the committee heard from some ninety-two witnesses whose testimony filled 5088 pages. The hearings, begun on October 15, 1929, were not finally terminated until November 24, 1931.[3]

What did this lengthy and detailed investigation accomplish? In the first instance, it uncovered incontrovertible proof of the charges which had been made against Senator Bingham.[4]

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[1] Cong. Rec., vol. 71 (October 1, 1929), p. 4115.

[2] Samples of published comment indicate that this broad view was acceptable to most of the important newspapers of the country. See "Lobbies on the Grill," Literary Digest, vol. 103 (October 19, 1929), pp. 10-11.

[3] U. S. Congress, Senate Committee on the Judiciary, Lobby Investigation, Hearings before a Subcommittee, 71st Cong., 1st, 2d and 3d Sessions, 72d Cong., 1st Sess. (Washington, Government Printing Office, 1930, 1931, 1932).

[4] 71st Cong., 1st Sess., S. Report 43, part 5, in Cong. Rec., vol. 71 (October 26, 1929), p. 4922. See also, Lobby Investigation, part 1, pp. 149-296.

The Senator had sought expert aid on tariff matters, and the President of the Connecticut Manufacturers Association had been glad to supply Mr. Eyanson in that capacity. Eyanson continued to draw his private salary, but at the same time accepted employment as a clerk to Senator Bingham. He returned his government salary to Senator Bingham who, in turn, forwarded the money to the permanent clerk who had been dismissed to make room for Eyanson's appointment. The employment of Eyanson was, at very least covert, at very most illegal.[1]

If nothing else, the Caraway committee offered substantial proof that Senator Bingham had used bad judgment and that Eyanson had pursued his employment as a clerk with conspicuous success.[2] These disclosures alone were hardly enough to warrant an investigation which extended for almost two years, but it is the writer's view that they were the only disclosures made by the committee which made any significant contribution to either the bettering of Congressional or public understanding of the lobby, or to the mobilizing of Congressional and public opinion behind a program of regulation.

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[1] One observer wrote: "Bingham is by no means the worst of the lot; he is merely the most inept." "Backstage in Washington," Outlook, vol. 153 (October 30, 1929), p. 342.

[2] Senator Walsh of Montana alleged that Eyanson's advice had resulted in tariff increases in 44 of 52 cases in which Connecticut industries were interested. Cong. Reg., vol. 71 (October 16, 1929), p. 4925.

The Committee did make further reports to Congress.[1] Each of these reports, however, dealt only with a single individual or with a single organization engaged in lobbying. There was, for example, a separate report on Joseph R. Grundy by reason of the "extraordinary and commanding place he holds among the lobbyists in the National Capital."[2] There was no suggestion that Mr. Grundy had acted illegally, but merely that "the consumer does not figure at all in Mr. Grundy's views in respect to tariff legislation."[3] This was not novel information, nor was there anything untoward in the Committee's conclusion that:

> The inference is irresistible that it was believed by him and by those associated with him that by reason of the very substantial aid he had rendered as revenue raiser for political campaigns he would be able to influence the actions of his party associates in the Congress.[4]

There were other reports in a similar vein, each of which was submitted to the Senate and then apparently forgotten. Each of these reports drew attention to a particularly notorious or free-spending lobbying organization or

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1 71st Cong., 1st Sess., S. Report 43, part 2, Cong. Rec., vol. 71, p. 5393; 71st Cong., 2d Sess., S. Report 43, parts 3, 4, 5, 6, 7, 9, 10, in Cong. Rec., vol. 72, pp. 352, 993, 1568, 3069, 3071, 9268, 9330, and 11151 respectively.

2 S. Report 43, part 3, Cong. Rec., vol. 72 (December 10, 1929), p. 352.

3 Ibid., p. 354.

4 Ibid.

lobbyist.[1] The reports detailed the money spent and received, and the legislation in which the organization or individual was interested. They did not, however, suggest means by which the situation could be improved. There was never attached to any of these reports a proposal for regulatory legislation, a lack which is surprising in view of Senator Caraway's demonstrated interest in such legislation. And, what is equally surprising, at the conclusion of its extended investigation the Committee did not submit a final report of any kind. It neither summarized its activities nor proposed any correctives for the evils which it had found.[2]

Another factor which sapped the initial promise of the inquiry was the development of political antagonisms among the members of the Committee. The first six reports were submitted unanimously, but with the seventh, Senator Robinson of Indiana, the only "administration Republican" in the group, felt obliged to leave his colleagues and submit a minority statement. The majority report was, in the words of Senator Robinson:

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[1] For example, the American Taxpayers' League (part 4), the "Million Dollar Sugar Lobby" (part 5), the "Muscle Shoals Lobby" (part 7).

[2] It will be remembered that the Senate Committee of 1913 also failed to submit a report. The report of the 1913 House Committee, while essentially a synopsis of its hearings, did come to important conclusions. The scope of the 1929 inquiry was, in addition, far broader than that of 1913.

> ... a condemnation of C. H. Huston, who happens to be chairman of the Republican National Commiteee ... I could not join in that report for the reason that I believed it to be entirely political, brought into the Senate for political purposes, to achieve only political results on the eve of a political campaign.[1]

Senator Robinson again withheld his approval from the eighth report submitted by the Committee and presented his own views.[2] Thereafter, there was considerable discord within the Committee as regards its purposes and jurisdiction.[3] Given these circumstances, the protracted yet inconclusive nature of the Committee's work becomes more understandable.

The time for which the investigation extended was a factor which also limited its utility. When the investigation began in 1929, there was good reason to believe that it could serve as the motive force behind Congressional adoption of a system of lobby regulation. Particularly after the Eyanson disclosures, a substantial body of editorial opinion demanded the adoption of a regulatory law,[4] or a "code of practice,"[5]

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[1] Cong. Rec., 72d Cong., 1st Sess., vol. 72 (May 21, 1930), p. 9269.

[2] Senator Robinson's views were printed as the ninth report in the series. Cong. Rec., vol. 72 (May 22, 1930), p. 9331.

[3] See, for example, S. Report 43, part 10, Cong. Rec., vol. 72, p. 11151 et seq. regarding the competence of the Committee to examine Bishop Cannon of the Federal Council of Churches in Christ regarding his lobbying activities. See also, Lobby Investigation, pp. 4917-4932.

[4] See "A Showdown on Lobbying," p. 1269; "Lobbyists and Power Politics," New Republic, vol. 60 (October 30, 1929), pp. 284-285; "Backstage in Washington," p. 342.

[5] "Fifth Estate," World Work, vol. 58 (December, 1929), pp. 34-35.

or a "code of ethics."[1] But the Caraway Committee proposed nothing; it merely reported. The iron very rapidly cooled after October, 1929, and the Caraway Committee never succeeded in reheating it.

A final factor which may have contributed to the essential failure of the investigation might be found in the attitude of Senator Caraway toward lobbying. He was not a man who was attracted to the proposition that the lobbyist had become a necessary evil. He saw only the evil, not the necessity. Of his bill which passed the Senate in 1928, the Senator believed that it would result in driving out the "fake organizations," which he thought constituted ninety percent of the associations in Washington.[2] This estimate is certainly extravagant, but using it as a premise one arrives at rather narrow conclusions. Thus the Committee's incessant badgering of witnesses, noticeable in even a cursory examination of the Hearings, may well have sprung from Senator Caraway's determination to buttress what he already thought about the dishonesty of lobbyists as a group. Whatever the cause, the results were frequently more tasteless than enlightening.

These factors, then, combined to make the investigation

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[1] W. P. Hard, "Consider the Ethics of Lobbying," Nation's Business, vol. 17 (October, 1929), pp. 50-52.

[2] Herring, Group Representation Before Congress, p. 259.

a rather sharp disappointment. Given the broad scope of the enabling resolution and the initial receptiveness of both Congressional and public opinion to regulatory proposals, the drawn-out and uncoordinated reports submitted by the Committee were less than might reasonably have been expected. Political cleavages among the Committee members and the uncompromising attitude of the group's chairman killed whatever prospects there had been for a thoroughgoing and constructive analysis of Congressional lobbying.

Although the Caraway Committee contributed nothing to it, the flow of regulatory proposals into the Congress recommenced even before the Committee had concluded its hearings. During the second session of the Seventy-first Congress, three proposals were introduced but were lost in committee.[1] During the third session, another bill to prohibit the maintenance of quarters near the Capital by organizations engaged in lobbying was introduced, referred, but never reported.[2]

The proposals introduced were not limited to regulatory measures. Despite the fact that the Caraway Committee had just completed its investigation, two resolutions calling for new lobbying inquiries were introduced in the first

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[1] 71st Cong., 2d Sess., H.R. 1922, 5718; H. Res. 69.

[2] 71st Cong., 3d Sess., H.R. 17242. The failure of these bills introduced during the later stages of the Caraway inquiry suggests that Committee proposals might have very well met the same fate.

session of the Seventy-second Congress.[1] Neither received favorable committee attention, but their introduction was symptomatic of the failure of the Caraway Committee to cover adequately the wide area which, at its own request, had been assigned to it.

Again during the short second session of the Seventy-second Congress, Representative Patman offered a joint resolution providing for an investigation of "certain charges of lobbying ... to obtain information to be used as a basis of legislation," but no House action was taken on the measure.[2]

During the first session of the Seventy-third Congress the Patman resolution was again submitted, and it was joined by two others calling for lobbying investigations.[3] All three proposals died in committee, as did a registration bill sponsored by Representative Tinkham.[4]

For slightly less than two years following the unsuccessful introduction of these several measures, the steady stream of Congressional proposals to regulate or investigate lobbying dried up. But with the seating of the Seventy-fourth Congress in 1935, the lull ended and Congress entered upon a period of "lobby-busting" which was more significant in its

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[1] 72d Cong., 1st Sess., S. Res. 215, H. Res. 65.

[2] 72d Cong., 2d Sess., H. J. Res. 590.

[3] 73d Cong., 1st Sess., H. Res. 3, 60, 114.

[4] 73d Cong., 1st Sess., H.R. 2874.

ultimate results than either of its forerunners of 1913 or 1927-29.

Congressional Action, 1935-36.--As in 1929, the impetus to Congressional action came from alleged lobbying in connection with a single piece of legislation. In 1929 the pressures exerted on the Smoot-Hawley tariff led to the Caraway investigation; in 1935, the legislation at issue was the Wheeler-Rayburn bill to regulate public utility holding companies.[1]

Even prior to 1935 there had been amassed considerable evidence of lobbying activities by these companies. The series of monthly Federal Trade Commission reports on public utility corporations, submitted over the period from March, 1928, to December, 1935,[2] had cast occasional light on the methods by which these corporations pursued their legislative objectives.[3] The methods by which they opposed the Wheeler-Rayburn bill were not different but simply more concentrated than usual. Not only because they were concentrated but also because they were excessive, these efforts attracted

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[1] 74th Cong., 1st Sess., S. 2796.

[2] U. S. Congress, Senate, Utility Corporations, 70th Cong., 1st Sess., Senate Document 92, in 84 parts with exhibits (Washington, Government Printing Office, 1928-1937).

[3] See ibid., especially parts 71a, Efforts by Associations and Agencies of Electric and Gas Utilities to Influence Public Opinion (1934); and 81a, Publicity and Propaganda Activities by Utility Groups and Companies (1935).

nation-wide attention.[1]

Congress, too, was aware of the extent of the utilities' attempts to escape regulation. As the House Rules Committee reported subsequent to the passage of the Holding Company Act:

> ... the campaign to influence utility holding company legislation was probably as comprehensive, as well managed, as persistent, and as well-financed as any in the history of the country.[2]

An examination of the debates on the Wheeler-Rayburn bill provides ample evidence that Congress recognized lobbying as it occurred, as well as retrospectively. Representative Schneider, speaking in behalf of the bill, called it:

> ... the most misrepresented and misunderstood legislation which has come before this session of Congress. The army of lobbyists, which has not only infested the corridors of the Capital but has been active throughout the country by personal solicitation and by letter, has attempted to lead investors to believe ... that all of their securities will be adversely affected by this proposed legislation.[3]

Representative Sauthoff used these words in describing the utility lobby:

> For the past six months every member of Congress has been receiving letters, telegrams, telephone calls, and in some instances personal visits protesting against destruction of all utilities. Newspapers articles have appeared daily

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[1] G. B. Galloway, Congress at the Crossroads (New York, Crowell, 1946), p. 302.

[2] Ibid., citing 74th Congress, 2d Sess., H. Report 2081, p. 3.

[3] Cong. Rec., 74th Cong., 1st Sess., vol. 79 (July 2, 1935), p. 10649.

> referring to the so-called 'death sentence'. One would think from this mass of propaganda that the Congress was engaged in absolutely destroying and wiping out all public utilities.[1]

Representative Maverick complained in similar vein:

> But there has never been a time when a lobby has made it harder for Congressmen to do an honest job for the people than the utility lobby is making it now.[2]

These statements are but a few examples suggestive of Congressional awareness of the nature and sources of the pressures which were being applied.

Congress did something about it. Before the Wheeler-Rayburn bill ever came to a vote, the Senate had acted favorably on a lobbyist registration measure sponsored by Senator Black.[3] The bill, one of several introduced when the utility lobby was most active, was originally titled a till "to define lobbyists, to require registration of lobbyists, and provide regulation therefor." As reported from committee, however, the bill made no attempt to define lobbying, nor did it actually use the term "lobbyist."[4] Its coverage extended to "any person who shall engage himself for pay" to influence

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[1] Ibid., p. 10653.

[2] Ibid. (June 26, 1935), p. 10222, reprint of radio speech of June 25, 1935.

[3] 74th Cong., 1st Sess., S. 2512.

[4] 74th Cong., 1st Sess., S. Report 602. As Senator Black pointed out on the floor, definition was next to impossible, and "lobbyist" was a term of opprobrium. Cong. Rec., vol. 79 (May 20, 1935), p. 7811.

Congressional legislation, requiring such person to register with the Clerk of the House and the Secretary of the Senate.[1]

Thus far, the Black bill bore a close resemblance to the Caraway bill of 1927, and to the state laws from which this measure had been drawn. The second section was a major deviation from each of these models. It required that:

> Any person, before he shall enter into and engage in such practices as heretofore set forth, in connection with Federal bureaus, agencies, governmental officials or employees shall register with the Federal Trade Commission, giving to the Federal Trade Commission the same information required to be given to the Clerk of the House and the Secretary of the Senate, in section 1 of this bill.[2]

Neither before nor since has any comparable general provision been enacted by either the states or by Congress; yet lobbying before administrative bodies is becoming as important and as widespread as lobbying before legislatures. As the locus of the decision-making process has shifted, so too has the attention of those groups who would mold this process to their own purposes.

The rest of the Black bill conformed more closely to the established pattern of state regulation. As reported, it required monthly financial reports and yearly registrations. Suitable penalties were provided.

In passing through the Senate, only the monthly reporting provisions of the bill were disturbed. At the

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[1] S. 2512, sec. 1.

[2] S. 2512, sec. 2.

insistence of Senator O'Mahoney, quarterly reports supplanted monthly ones. No other changes were made in the bill, and it was sped on its way to the House with the particular approbation of Senators King, Borah, and McKellar.[1] There were no such objections to the principle of registration as had marked the debate on the Caraway bill in 1928.

Despite the Senate's passage of the Black bill and the introduction of comparable bills in the House, Congress was seemingly determined that utility lobbyists would not escape regulation, regardless of the final disposition of the general lobbying bills pending in both houses.[2] Accordingly, one of the sections of the Public Utility Holding Act provided that it was:

> ... unlawful for any person employed or retained by any registered holding company, or any subsidiary company thereof, to present, advocate, or oppose any matter affecting any registered holding company, or any subsidiary thereof, before the Congress or any member or committee thereof, or before the [Securities and Exchange] Commission or Federal Trade Commission ... unless such person shall file with the Commission ... a statement of the subject matter in respect of which such person is retained or employed, the nature and character of such retainer and employment, and the amount of compensation received or to be received by such person, directly or indirectly, in connection therewith.[3]

In addition, every person so employed was required to

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[1] Cong. Rec., vol. 79 (May 28, 1935), pp. 8304-8306.

[2] Galloway, op. cit., p. 303.

[3] United States Code, 1934, Supplement 1, Title 15, c. 2c, sec. 791 (i).

submit to the Securities and Exchange Commission a monthly statement of the "expenses incurred and the compensation received" by such person in connection with his employment.[1] This legislation thus extended the two most common principles of state regulation of lobbying, that is, registration and financial reporting, to at least a limited part of the lobbyists operating in the Nation's capital.

In the meanwhile, the House took no action on the Black bill during the remainder of the first session of the Seventy-fourth Congress. Instead, shortly after the passage of the Public Utility Holding Company Act, both House and Senate took steps to investigate the lobbying done for and against the measure. The first action was taken in the Senate where, on July 2, 1935, Senator Black introduced a resolution providing, in part:

> Resolved, that a special committee of five Senators, to be appointed by the President of the Senate, is authorized and directed to make a full and complete investigation of the lobbying activities in connection with the so-called "holding company bill". The committee shall report to the Senate, as soon as practicable, the results of its investigation, together with its recommendations.[2]

As the resolution was reported and ultimately passed, it was broadened by the qualification of "lobbying activities" to include:

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[1] Ibid.

[2] 74th Cong., 1st Sess., S. Res. 165.

> ... all efforts to influence, encourage, promote or retard legislation, directly or indirectly, in connection with the so-called "holding company bill ... or any other matter or proposal affecting legislation.[1]

The resolution passed the Senate in this form, and Senator Black was appointed as chairman of the investigating committee.[2]

In the House, investigation was authorized into:

> ... any and all charges of attempts to intimidate or influence Members of the House with respect to the bill S. 2796, or any other bills affecting utility holding companies during the 74th Congress.[3]

The Senate enabling resolution was, as passed, the broader of the two. The Senate investigation was made the responsibility of a special committee, whereas in the House it was to be undertaken by the Rules Committee. Finally, there was a hard core of opposition to the House investigation, primarily on the grounds that the Congress already knew that:

> ... every big utility company in the United States had lobbyists here to keep the bill from the passing.... No new facts will be developed that will be worth 5 cents to the people.[4]

This prophecy at least partially matured, for although they developed "new facts," neither of the investigations resulted in the enactment of general lobbying legislation.

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[1] Cong. Rec., vol. 79 (July 10, 1935), p. 10943.

[2] Ibid. (July 11, 1935), p. 11005.

[3] 74th Cong., 1st Sess., H. Res. 288.

[4] Cong. Rec., vol. 79 (July 5, 1935), p. 10717, Statement of Representative Blanton.

The House investigation particularly was too short-lived to be of any great service. Its hearings, begun in July, were concluded well before Congress adjourned in August.[1]

One six-page preliminary report on these hearings was submitted to the House in February, 1936.[2] This report, although labelled preliminary, was the only one submitted by the Rules Committee. It reported a widespread and well-organized campaign in opposition to the Holding Company Act. The report did not condemn this campaign per se, but decried it because it appeared to have been excessive. For example, the candid admission of Mr. H. C. Hopson, that his Associated Gas and Electric Company had spent $900,000 in an effort to defeat the "death sentence" was scored by the Committee as "arrogant."[3]

The Committee nevertheless seemed to question its own claim to existence by declaring:

> The truth is that coming as they [investigations] frequently do, after the legislation in question has been disposed of, they are too much like closing the stable door after the horse has departed, usually leaving a very dim and uncertain trail.[4]

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[1] U. S. Congress, House, Committee on Rules, Investigation of Lobbying on Utility Holding Company Bills, Hearings, July 9-July 17, 1935, 74th Cong., 1st Sess. (Washington, Government Printing Office, 1935).

[2] 74th Cong., 1st Sess., H. Report 2081.

[3] Ibid., pp. 4-5.

[4] Ibid., p. 3. E. P. Herring took the view that investigations could serve a significant purpose in revealing the importance of economic factors in government, rather than

Moreover, the House Committee became embroiled with the Black Committee over the custody of a particular witness, the aforementioned Mr. Hopson. It is perhaps significant that the only response of the House to its Rules Committee's request for authority to arrest Mr. Hopson was the introduction of a resolution to return the Committee's unexpended funds to the General Treasury.[1]

The results of the Senate inquiry were somewhat more imposing. Its hearings were more extensive, as had been its original authorization to act. Although these hearings were largely completed by April 17, 1936, the Committee took testimony on scattered occasions as late as May 6, 1938.[2] The facts which the Committee was able to uncover by dint of a superior staff, adequate appropriations, and continuing interest on the part of the Committee members, were of greater value than the more limited information which the Rules Committee reported to the House.

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in revealing skullduggery. Most investigations have, however, concentrated on the latter to the exclusion of the former. E. P. Herring, "Why We Need Lobbies," Outlook and Independent, vol. 153 (November 27, 1929), p. 493.

[1] Cong. Rec., vol. 79 (August 15, 1935), p. 13292. See also, M. N. McGeary, The Development of Congressional Investigative Power (New York, Columbia U. Press, 1940), p. 39.

[2] U. S. Congress, Senate, Special Committee to Investigate Lobbying Activities, Hearings, July 12, 1935-May 6, 1938, 74th Cong., 1st Sess., pts. 1-8 (Washington, Government Printing Office, 1938).

The Senate investigation also had its limitations. It was embroiled with the House Committee on Rules over the custody of Mr. Hopson. It later became embroiled with Mr. William Randolph Hearst over the seizure of certain telegrams which Hearst had transmitted to his employees concerning the holding company bill.[1] This dispute was finally decided in the Court of Appeals for the District of Columbia in a manner which cast the Committee's procedures in a rather unfavorable light.[2] Both the Hopson and Hearst episodes did considerable damage to the good public relations which the Black Committee needed to bring its work to a fully successful conclusion.[3]

The Black Committee further failed to submit an interim report, a final report, or the recommendations which it had been charged with submitting "as soon as practicable." In this respect, the less extensive House investigation rendered better service.

On the positive side, the Black investigation did have certain useful consequences. The detailed testimony

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[1] McGeary, op. cit., pp. 108-109. See also, "Black Booty," Time, vol. 27 (March 16, 1936), pp. 17-18 and (March 23, 1936), pp. 19-20; New York Times, March 15, 1936, sec. IV, p. 10.

[2] Justice Groner held that the seizure was unlawful, but that the charge was made too late to affect the Committee's use of the information gained thereby. Hearst v. Black, 87 Fed. (2d) 68 (1936).

[3] The Black Committee largely restricted itself to an examination of utility lobbying, thereby leaving untapped a great part of the broad investigatory power which had been granted it. The job done on utility lobbying, however, was an impressive one.

which the Committee took regarding the holding companies' attempts to defeat the Wheeler-Rayburn bill was certainly an important factor in the approval by the House on August 22, 1935, of the "death sentence" clause in only slightly modified form.[1]

The investigation also gave new insight into the ways in which the modern lobby worked. The Committee staff developed documented proof on the management of the telegram campaign, on the use of newspapers, radio, and public speakers, on the dissemination of textbook propaganda, on the threat of political reprisal--all of which had become an important part of the modern pressure group's approach.[2] If the lobby was to be regulated, the Black investigation revealed in fulsome detail the practices which regulatory legislation would have to encompass. The Committee did not, however, specifically propose any such legislation, as it had full competence to do.

It will be remembered that the Senate had passed in 1935 a lobbyist registration and reporting bill, but that the House had taken no action at that time. In March of 1936, the House finally did act on a bill drafted by Representative

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[1] McGeary, op. cit., p. 40.

[2] To give but one example, albeit an extreme one: sworn statements from telegraph office managers in twenty towns indicated that of 31,580 telegrams sent to Washington regarding the Holding Company Act, all but 13 were filed and paid for by utility company agents, usually without the consent of the person whose name was used. See Hearings, (August 16, 1935), pp. 1014-1015.

Smith of Virginia, who had served on the Rules Committee during its brief lobbying investigation in 1935.[1] The measure was a departure from the usual state lobbying law, and it also differed rather sharply from the Black bill which had been passed by the Senate at the previous session.

During the course of a bitter House debate on the measure, several amendments were added to it; but the substantive provisions of the bill, with one exception, withstood a determined and bi-partisan opposition, and the measure was passed by the House on March 27, 1936.[2]

As amended and passed, the Smith bill provided a series of definitions of terms frequently employed in the bill, such as "contribution," "person," and "expenditure."[3] Second, the bill made it the responsibility of those soliciting or receiving contributions for the "purposes hereinafter designated," i.e., lobbying, to keep detailed accounts of the sources and disposition of these funds.[4]

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[1] 74th Cong., 2d Sess., H.R. 11663.

[2] Cong. Rec., 74th Cong., 2d Sess., vol. 80 (March 27, 1936), pp. 4520-4541.

[3] H.R. 11663, sec. 1. Since most of the features of the Smith bill were incorporated virtually verbatim into the Federal Regulation of Lobbying Act of 1946, a discussion of these features will be mainly reserved for the ensuing chapter on this act. Note, however, that by "person," the bill meant: "an individual, partnership, committee, association, corporation, and any other organization or group of persons."

[4] Ibid., sec. 2.

Persons receiving or soliciting such funds were required to submit an account thereof to the person or organization for which the funds were solicited within five days of their receipt or solicitation.[1] Every person receiving such funds was to file with the Clerk of the House a monthly statement containing the names of all contributors, the total of contributions, totals of expenditures, and a detailed account of each expenditure larger than $10.[2]

The bill, although exempting political committees, applied to all others who attempted to influence Congressional legislation, Constitutional amendments, or Federal elections.[3] Any person employed for these purposes was required to register, providing the customary data to the Clerk of the House and the Secretary of the Senate. Persons whose efforts were confined to committee appearances were not required to register, and all public officials were exempted. Individual reports of receipts and expenditures for lobbying were required.[4] Penalties, less stringent than those of the Black bill, were provided.[5]

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[1] Ibid., sec. 3.

[2] Ibid., sec. 4.

[3] Ibid., sec. 6.

[4] Ibid., sec. 7.

[5] Ibid., sec. 8. Fines of not more than $1,000 and imprisonment of not more than one year were specified.

These were the essentials of the first lobbying bill ever to be passed by the House of Representatives. The registration and individual reporting provisions of the bill were not extraordinary and bore a close generic resemblance to the comparable sections of the Black bill. But the detailed provisions prescribing accounting procedures for the soliciting and expending of funds for lobbying were wholly novel in a lobbying law. It was to these provisions that the greatest objection was made during House debate on the measure.[1]

The disparities between the Smith and the Black bills became apparent as soon as the Smith bill was sent to the Senate for consideration. Within a very few minutes, this consideration had been completed. It consisted solely of a statement by Senator Couzens in which he said, among other things:

> I wish to say that I think it would be better to defeat any anti-lobbying legislation than to attempt to accept as a compromise the House bill in preference to the Senate bill.[2]

Whereupon Senator Robinson moved:

> ... to strike out all after the enacting clause of the bill, and to insert in lieu thereof the provisions of Senate bill 2512 [the Black bill].[3]

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[1] See especially statements of Mr. Marcontonio, Cong. Rec., vol. 80 (March 27, 1936), p. 4531, and Mr. Boileau, p. 4533.

[2] Ibid. (April 4, 1936), p. 4970. The basis of the objection appears, on the record, to have been solely that the Smith bill did not cover lobbying before administrative agencies, as did the Black bill.

[3] Ibid.

The amendment was agreed to without further discussion, and the Smith bill passed the Senate in this form.[1] A conference was immediately moved and voted, and conferees were appointed by the Vice-President. The House as promptly rejected the Senate's version of the Smith bill, and four days later House conferees were appointed to meet with the Senate group.[2]

While there was a gap between the House and Senate bills, this gap was not unbridgeable. The major differences were only two: first, the Senate bill had no provisions respecting the soliciting of contributions by organizations engaged in lobbying activities; second, the House bill did not require registration with the Federal Trade Commission by all persons who attempted to influence federal agencies. Apart from these two points of difference, the essential principles of registration and periodic financial reporting by Congressional lobbyists were present in each bill.

Almost two months elapsed before a conference report was submitted.[3] Although it would appear that the House managers had carried the day, a closer examination of the conference version of H.R. 11663 indicates that both the

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[1] Ibid.

[2] Ibid. (April 8, 1936), p. 5212.

[3] 74th Cong., 2d Sess., H. Report 2925. This report was finally submitted on June 2, 1936.

House and Senate views had been rather facilely accommodated. With the exception of three minor changes of wording, the first seven sections of the new bill were taken *in toto* from the House bill. These sections provided for the accounting and reporting of the receipt and expenditure of funds for lobbying purposes. These sections also adopted the House provisions for individual registration and periodic reporting, with the exemptions which had originally attached thereto. The punitive and separability clauses also followed the House bill.

Section 8 of the conference bill, however, was that provision from the Senate bill which had called for the registration of persons attempting to influence administrative agencies. The original provision was amended so that registration would be with the agency concerned rather than with the Federal Trade Commission.

Overall the conference committee had done its job of compromise effectively. The resulting bill was neither perfect nor complete. No specific means of enforcement were provided. As the state experience had abundantly shown, the absence of systematic enforcement can render a lobbying law of little more than academic value. Nor did the bill provide that regularized publicity be given to either registrations or financial reports. Such a provision, it will be remembered, had been included in the Caraway bill of 1928. In addition,

no specific statement of the bill's intended coverage was provided.

Despite these omissions the bill represented, more than any other Federal bill before it, a conscientious effort to probe deeper into the pressure group's sources, resources, and membership than did the ordinary registration and reporting statute in use in the states.

There was reason to believe that the bill as reported from conference would be acceptable to both houses. The Congressional Digest observed:

> After a long-drawnout controversy the Senate and House conferees agreed on the lobby registration bill, H.R. 11663, which is due to pass both houses before adjournment.[1]

In a word, this prophecy went badly awry. Representative Sweeney of Ohio, the first speaker in the House debate on the conference report, set the tone for what ensued with the following observation:

> Mr. Speaker, we are about to consider the famous, or infamous, Smith bill. The Administration, not content with gagging the Members of Congress, putting every Member on the spot, now reaches out to gag their constituents.[2]

Democratic Representative Sweeney saw the Black-Smith bill as a Presidential plot, and Republican Representative Michener suspected that the bill would "virtually deny to many citizens the right of petition," and incidentally close

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1 Congressional Digest, vol. 15 (June, 1936), p. 164.

2 Cong. Rec., vol. 80 (June 17, 1936), p. 9743.

the legislator's channels of information.[1] Mr. McCormack joined the chorus of damnation, declaring that "the machinery used is too broad,"[2] while Mr. Marcantonio found that:

> The joker in this bill is now obvious to all. This bill punishes mass organizations and exempts the utility holding companies, whose activities should be curbed.[3]

Representatives Boileau, Citron, Connery, Moritz and O'Malley also voiced their objections to the bill, although in language understandably different from Mr. Marcantonio's.[4]

In the face of this numerous opposition, only two Members spoke in the bill's behalf. Representative Clark of North Carolina expressed his "astonishment at the amount of confusion that has been injected into the debate." He pointed out to the House that the bill, with the exception of the provisions regarding lobbyists before administrative agencies, was "just what the House passed but a few weeks ago."[5]

Then Representative Smith took the floor to defend the "infamous" measure which bore his name. The following excerpts from his defense are of particular interest:

> When you come right down to the crux of the situation, there is only one question which confronts us, and we

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[1] Ibid., p. 9746.

[2] Ibid., p. 9748.

[3] Ibid., p. 9750.

[4] Ibid., pp. 9749-51.

[5] Ibid., p. 9748.

> might as well meet it squarely. Are you going to do something about this antilobbying proposition that you have been alternately condemning and condoning for the past twenty years, or are you going to do nothing about it? ... This is the same bill that this House voted for overwhelmingly 2 months ago, after full debate and before some interested organizations opposed it.
>
> If the Members had studied this bill, they would know what was in it, and they would not be dependent upon statements made by other Members on the floor who do not know what they are talking about.

As to whether or not certain organizations would be subject to the bill, which question seemed to trouble several of the measure's opponents, Representative Smith added:

> We could not write a bill here and say that it shall apply to the utility companies, but that the bill shall not apply to the Townsend plan, or the Coughlin plan, or some other plan. Why should it not apply to everybody equally? Are you gentlemen prepared to say that we want a bill that will apply to the utilities and yet will not apply to somebody else who is doing the same thing? ...
>
> How anyone could object to any such thoroughly democratic and American policy of open and fair dealing [as the bill provides] it is beyond me to understand.
>
> No honest person or organization ought to object to the bill, and the dishonest ones should be exposed to the public gaze.[1]

Viewed in retrospect, Representative Smith's views were sound, and more calm than might reasonably have been expected under the circumstances. The Members opposing the bill, however, would not join the issue on these grounds. At no stage of the House debate can one find the opponents of the measure recognizing that the bill was essentially what they had voted for earlier. There was no discussion

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[1] Ibid., pp. 9750-9752.

whatever of the provision for registration of administrative lobbyists which had been taken from the Senate bill.[1] Actually, there was far less discussion of the bill's provisions than there was of its putative effects. When the question of accepting the conference report was finally put to the House, it was solidly defeated by a 77-265 vote.[2]

This vote marked the end of any attempt to pass general lobbying legislation in the 74th Congress. More broadly, the rejection by the House of the Black-Smith bill marked the end of the most promising anti-lobbying proposal which the Congress had ever had before it. The conference report of 1936 was the high-water mark of Congressional regulation of lobbying. It represented both houses' approval of the principles of registration and reporting by lobbyists. No other measure had ever been so close to success.

Regulatory Efforts between 1936 and 1946.--Although with the failure of the Black-Smith bill there was a diminution of Congressional activity regarding lobbying, Congressional interest in the problem did not altogether recede. Less than two weeks after the rejection of the Black-Smith

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[1] George Galloway suggests that perhaps the conference committee "attempted too much" in this provision. Galloway, op. cit., p. 306. It was probably too much from the point of view of enforcement, but the House did not raise this or any other objection.

[2] Cong. Rec., vol. 80 (June 17, 1936), p. 9752.

bill, Congress enacted legislation requiring the representatives of ship builders or operators, or their affiliates, associates or holding companies to register with the United States Maritime Commission whenever they advocated or opposed any matters before Congress or the Commission. In addition, such representatives were required to submit to the Commission monthly statements of their receipts and expenditures.[1]

As it had granted the necessity of registering utility lobbyists a year earlier, so the Congress now granted the necessity of registering shipping lobbyists.[2] But a general lobbying statute it apparently could not support.

There were occasional regulatory proposals introduced in Congress following the near-success of 1936, but no one of them was given any serious attention. In 1937, Representatives Smith and Tinkham re-submitted their registration and reporting bills, but they were never reported from committee.[3] A resolution by Representative Dies to establish a standing committee on lobbying was treated similarly.[4]

In 1938, there even appeared to be a possibility that the Senate Committee on Investigation of Lobbying Activities, never formally dissolved, might commence a large-scale probe

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[1] United States Code, 1940, Title 46, sec. 1225.

[2] The language of the two registration sections was, in fact, identical.

[3] 75th Cong., 1st Sess., H.R. 262, 2011.

[4] 75th Cong., 1st Sess., H. Res. 240.

of propaganda in the press. The resolution which would have appropriated the necessary funds was not passed, however, and no further investigations of any kind were undertaken by the Committee.[1]

The year 1938 also witnessed another step in the piecemeal Congressional approach to the regulation of lobbying and propaganda, which had already been demonstrated in the Public Utility Holding Company Act of 1935 and the Maritime Commission Act of 1936. With war imminent in Europe, there was an intensification in the "activity of foreign agents on the propaganda front."[2] Congress responded to the situation by enacting the Foreign Agents Registration Act of 1938, which required that every person employed by a foreign principle must file with the Secretary of State a detailed statement of his activities. Political propaganda disseminated by such persons was required to be so labelled, and copies thereof were to be promptly filed with the Librarian of Congress and the Attorney-General.[3]

Such legislation naturally reaches only a very few of the many sources of continuous pressure on Congress. General regulatory legislation was needed, but Congress did

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[1] See Cong. Rec., 75th Cong., 2d Sess., vol. 83 (June 16, 1938), pp. 9610-9611.

[2] Galloway, op. cit., p. 303.

[3] United States Code, 1940, Title 22, sec. 611-616.

not see fit to enact it. Bills to provide this legislation were occasionally dropped in the hoppers after 1938,[1] but with the outbreak of war in Europe and the entrance of the United States into that war two years later, there was little Congressional interest in regulating lobbying. The propitious moment for action had been allowed to pass in 1936; it was a full ten years before another such moment could be again contrived.

A Summary of Congressional Action Prior to 1946

In summary, it can be said that Congressional efforts to regulate lobbying prior to 1946 yielded little in the way of tangible results. On three occasions between 1913 and 1936, Congress reacted to charges of undue pressure by authorizing investigations of lobbying. These three investigations, in 1913, 1929, and 1935, disclosed lobbying practices ranging from the honest, through the cynical, to the reprehensible. Nationwide attention was given to these disclosures, and on each occasion editorial opinion generally favored the enactment of some kind of regulatory legislation.

Earlier, the state legislatures had responded to charges of undue pressure, even in the absence of its disclosure by systematic investigation, by the enactment of laws requiring the registration of lobbyists and the periodic

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[1] For example, 76th Cong., 1st Sess., H.R. 276. This was a re-introduction by Representative Smith of his 1936 bill.

submission of financial reports. Congress took no such action. During and immediately after each of the three investigations, and intermittently between them, literally dozens of bills patterned on the state models were introduced in the Congress. The usual fate of these bills was to be left in committee.

In 1928, the Senate passed one such bill, but the measure failed in the House. Again in 1935, both House and Senate passed separate regulatory measures, but a conference committee compromise was unacceptable to the House and no legislation resulted. Congress did provide, in 1935, 1936, and 1938, for the establishment of registration and reporting systems for utility and shipping lobbyists and for certain paid agents of foreign powers. It did not provide the general legislation for which three investigations had so pointedly shown the need.

Why, it might be asked, did Congress fail to pass a general lobbying law over so long a period of time? Several reasons might be noted. First, the debates over several of the regulatory proposals suggest the existence of a very real Congressional skepticism as to the effectiveness of any law which it might have passed. How could the "good" lobby be distinguished from the "bad"? How could lobbying be defined? Who would be subject to the law? The difficulty of answering these questions, buttressed by the apparent ineffectiveness of the state laws on which most of the federal proposals were based, certainly contributed to the unwillingness of Congress to act.

Second, although many reputable lobbyists and lobbying organizations would not have objected strenuously to a lobbying law, there was certainly no widespread lobbying for such a law. There was, on the other hand, active lobbying against one.

Third, many ex-Congressmen become lobbyists upon their retirement or defeat at the polls. It is the opinion of some observers that the fear of restricting their possible future calling was an important factor in the prolonged hesitation of Congress to regulate lobbying.[1]

Fourth, there can be little doubt that many Congressmen felt and continue to feel a sense of obligation to the lobbyist, or to the organization which employs him. Perhaps this obligation is for campaign support, perhaps for information pertaining to legislation, or perhaps for the social advantages which frequently accrue to the Member from his contacts with lobbyists. Whatever the source of obligation, this relationship is one which many Congressmen would prefer not to foreclose. Hence, their attitude towards regulation of lobbying is liable to be distinctly negative.

And finally, despite the impressive work which some of the lobbying investigations have done in compiling evidences of lobbying and in providing a view of the way in which particular lobbies operate at particular times, the

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[1] Logan, op. cit., p. 69.

overall contribution of these investigations has not been orderly, well-integrated, or complete. Too often these inquiries bogged down in a welter of detail and failed both to inquire broadly and to bring their work to a proper conclusion. They revealed much and at the same time created a climate of Congressional opinion which might have been receptive to regulation. But too seldom did the investigating committees attempt to take any advantage of the situation by presenting regulatory proposals to the Congress. This factor is, in the writer's view, of major significance in explaining the failure of Congress to regulate lobbying prior to 1946.

These investigations did serve a positive purpose, however, in revealing an ever-enlarging area of lobbying activity. The findings of 1935, for example, indicate a vastly broader range of lobbying than was disclosed in 1913. And, despite the failure of Congress to pass a general lobbying law, the regulatory proposals which were introduced in Congress after 1935 were also significantly broader in scope. Thus while the Caraway bill of 1928 and the Smith bill of 1936 were alike in requiring registration and reporting, the Smith bill attempted to probe far more perceptively into the internal affairs of the lobbying group. This evolution, largely dictated by the changes in the method of lobbying discussed earlier in this chapter, was indicative of a growing Congressional recognition that the older type of lobbying statute no longer met modern needs.

CHAPTER IV

THE FEDERAL REGULATION OF LOBBYING ACT OF 1946

We have briefly examined the spasmodic efforts of Congress to regulate lobbying prior to 1946. These efforts tended to take an almost cyclical form, and they were repeated, with certain variations, three times over. Charges of excessive lobbying or of Congressional subservience to "the interests" were followed by Congressional investigations. These investigations were accompanied by proposals for regulation, and these in turn would fail to be adopted in one or both houses of Congress. Public and Congressional interest would then flag, and the issue would be shelved until the next time. To the proponents of Congressional regulation of lobbying, it was a dismal repetition.

The reasons which militated against the adoption of any general lobbying legislation were also discussed in the preceding chapter. Acquiescence, selfish interest, pressure, and honest doubt combined to form a formidable barrier to the enactment of such legislation.

The Legislative Reorganization Act of 1946 includes, as one of its components, the Federal Regulation of Lobbying Act. It is very doubtful, however, that this Lobbying Act could have been independently successful in the Congress. Thirty years of intermittently intense effort culminated in

a law which was largely obliged to ride through Congress on the merits of a more popular measure.

It is our purpose in this chapter to indicate first the climate of opinion out of which the Reorganization Act in general and the Lobbying Act in particular emerged. In following sections, the legislative history of the Lobbying Act and its reception by the public will be discussed. The provisions of the Act will be subjected to a textual and comparative analysis. An evaluation of the effectiveness of the Act over its first two and one-half years will be offered. Recommendations for statutory and administrative changes will conclude the chapter.

Background and Legislative History of the Act

Although there was no single beginning in either time or event to the demands for Congressional reform which eventuated in the Legislative Reorganization Act of 1946, the great programs for national defense, and later for war, showed graphically the strains under which Congress was working. After 1940, a proliferation of executive agencies and power seriously upset what many observers felt was the proper balance between Congress and the President. Despite the ready admission that the waging of war must largely be an executive responsibility, defenders of Congress were disturbed at the breach being driven between citizen and Congress by war-spawned administrative agencies, manned by

executive appointees, and subject only to the "casual oversight" of Congress.[1]

The sources of the demand for the modernization of Congress were as diffuse as the events which clearly indicated the necessity for this modernization. Members of Congress became concerned lest their role be reduced to that of appropriation and investigation. Outside of Congress, public interest in Congressional reorganization developed apace. Books devoted either wholly or in part to the problem began to appear frequently after 1940.[2] Popular and scholarly articles directed attention to the problem, and the more responsible segments of the press, notably the New York Times, the Washington Post, the Chicago Sun, and the Christian Science Monitor, also began to devote considerable editorial and column space to the subject.[3]

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[1] U. S. Congress, Joint Committee on the Organization of Congress, Report, 79th Cong., 2d Sess., S. Report 1011 (Washington, Government Printing Office, 1946), p. 1.

[2] The Reorganization of Congress, Report of the Committee on Congress of the American Political Science Association (Washington, Public Affairs Press, 1945), p. 11. See J. W. Lederle, "Spotlight on Congress," Michigan Law Review, vol. 44 (1946), pp. 615-630, for an analysis of six of these books.

[3] Ibid. See also 79th Cong., 1st Sess., Joint Committee on the Organization of Congress, The Organization of Congress, Symposium on Congress (Washington, Government Printing Office, 1945) for an excellent selection of 55 recent lay and scholarly articles on Congress.

In addition, such groups as the National Policy Committee, the National Planning Association, and the American Political Science Association threw their weight behind the drive for Congressional self-improvement. A Commission on the Organization of Congress was organized to distribute authoritative information on Congress and to enlist public interest and support for proposals designed to increase its efficiency.[1]

The movement for Congressional reform thus enjoyed widespread and influential backing. It is germane to inquire, however, what part of this movement's energy was devoted to securing Congressional regulation of lobbying. An examination of the books, periodical literature, editorials, and Congressional opinion on reorganization indicates that proposals for regulation of lobbying were distinctly subordinate to the main approaches of simplifying Congressional structure and procedure. While there was continuous attention given to proposals for the reduction of standing committees, increases in Congressional staff, restrictions on private bills, and the like, there was relatively little attention given to the related necessity of making public the identity and activities of those groups which lived on these and other imperfections in Congressional organization.

This disparity in emphasis is witnessed by the content

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[1] Ibid., p. 12.

of Congressional proposals for reorganization since 1941. A reliable tabulation made in 1945 shows that during the 77th Congress (1941-1942) twenty-three bills and resolutions proposing changes in legislative organization and procedure were introduced. No one of these bills or resolutions were concerned with lobbying.[1] During the 78th Congress (1943-1944) forty-three bills and resolutions were introduced. These ranged from proposals for a question period to proposals for the creation of a Congressional Bureau of efficiency, but again no one of them had reference to lobbying.[2]

The lobbying facet of Congressional reorganization was relatively neglected, but it was not entirely forgotten. In 1941, Donald C. Blaisdell's monograph, written for the Temporary National Economic Committee, had stressed the importance of enacting legislation which would bring lobbies into the open.[3] Also in 1941, President F. A. Ogg of the American Political Science Association appointed a Committee on Congress. The final report of this Committee recommended

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[1] U. S. Congress, Senate, First Progress Report of the Joint Committee on the Organization of Congress, 79th Cong., 1st Sess., Senate Document 36 (Washington, Government Printing Office, 1945), pp. 8-9.

[2] Ibid., pp. 10-11. See also J. A. Perkins, "Congressional Self-Improvement," American Political Science Review, vol. 38 (June, 1944), pp. 499-511 for an analysis of these proposals.

[3] D. C. Blaisdell and J. Greverus, Economic Power and Political Pressures, TNEC Monograph No. 26 (Washington, Government Printing Office, 1941), pp. 194-196.

the adoption of legislation by which all groups which send representatives before Congressional committees should be required to register and make full disclosure of their membership and finances.[1] Mr. George Galloway, chairman of the Committee on Congress, urged on other occasions that Congress pass such regulatory legislation.[2] In 1945, Mr. Stuart Chase contributed his angry analysis of lobbying to the literature in the field.[3]

There was, then, a ground swell of concern with the problem throughout this period of developing general interest in Congressional reorganization. The larger concern, however, was with the internal rationalization of Congress rather than with the systematizing of its external relationships.

The reform movement first began to achieve tangible results in 1944 with the introduction by Senator Maloney of Connecticut of a resolution providing for the establishment of a Joint Committee on the Organization of Congress.[4] This Committee was to be composed of six members from each house and would be charged with making:

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[1] "The Reorganization of Congress," p. 80.

[2] G. Galloway, "On Reforming Congress," Free World, vol. 7 (June, 1944), pp. 518-523; G. Galloway, Congress at the Crossroads, p. 305.

[3] S. Chase, Democracy Under Pressure (New York, Twentieth Century Fund, 1945).

[4] 78th Cong., 2d Sess., S. Con. Res. 23, in Cong. Rec., 78th Cong., 2d Sess., vol. 90 (August 23, 1944), p. 7220.

> ... a full and complete study of the organization and operation of the Congress of the United States and [it] shall recommend improvements in such operation and organization with a view towards strengthening the Congress, simplifying its operations, improving its relationships with other branches of the United States Government, and enabling it to meet its responsibilities under the Constitution.[1]

The resolution was favorably reported and passed the Senate without recorded objection on August 23, 1944. Action in the House was delayed, however, and the resolution was not passed until December 15th, only two weeks before the expiration of the Congress.[2] Despite the lateness of the date, six members of the Joint Committee were appointed from each house. The Committee met for the first time on December 20th and elected Senator Maloney as chairman and Representative Monroney as vice-chairman. A few days later, both the Committee and the Congress passed out of existence.

When the Seventy-ninth Congress assembled in January, 1945, the resolution creating the Joint Committee was reintroduced by Representative Monroney and was passed by the House within a week of its submission.[3] As sent to the Senate, the resolution was identical to that which had been approved by the preceding Congress. The upper House, ever solicitous of its prerogatives of debate, added to the proposal

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[1] Ibid.

[2] Cong. Rec., vol. 90 (December 15, 1944), p. 9546.

[3] 79th Cong., 1st Sess., H. Con. Res. 18. Cong. Rec., 79th Cong., 1st Sess., vol. 91 (January 18, 1945), p. 350.

a proviso that the Committee should not make any recommendations respecting "the consideration of any matter on the floor of either House."[1] The House concurred in the Senate amendment and on February 18, 1945, gave its approval to the creation of a new Joint Committee on the Organization of Congress.[2]

Throughout both the House and Senate consideration of the resolution, no reference was made to the competence of the Joint Committee to recommend lobbying legislation. The question had been similarly neglected in the discussion of the resolution which had created the first Committee in 1944. But in its "First Progress Report," issued a month after its organization, the new Joint Committee declared that it felt its authorization was broad enough to permit it to study several important and interdependent problems. Among these it listed Congressional "relations with special-interest groups."[3]

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[1] Cong. Rec., vol. 91 (February 12, 1945), p. 1010.

[2] Ibid.,(February 19, 1945), p. 1274. The concurrence was with reluctance, particularly on the part of Mr. Kefauver since it forbade recommendation of his proposed question period. But, as Mr. Michener said, "half a loaf is better than no authority at all."

[3] First Progress Report of the Joint Committee on the Organization of Congress, p. 4. The Committee organized on March 3rd, selecting Senator LaFollette as chairman, Senator Maloney having died suddenly during the Christmas recess. Representative Monroney was again selected as vice-chairman, and Mr. George Galloway was appointed staff director.

The Committee's first month of work suggested that there was no great Congressional concern with this particular problem. In response to a circular letter soliciting their suggestions for Congressional changes and improvements, the Committee received replies from fifteen Senators and twenty-five Representatives. None of the respondents proposed the enactment of lobbying legislation; only Senator Murray of Montana indicated that one of the great values of the expansion of committee staffs would be in rendering the committees and Congress less dependent upon "special pleading and interest groups."[1]

At the Committee's hearings, which were conducted regularly from March 13th to June 29th, there were also very few witnesses, Members of Congress or otherwise, who proposed federal regulation of lobbying. One particularly interesting proposal was made by Mr. George H. E. Smith, research assistant to the Senate minority leader. Mr. Smith endorsed the enactment of a law requiring the registration of lobbies and pressure groups of a national or regional character. In addition, he proposed that:

> ... the representatives of such organizations be definitely informed that no representation made by special interest groups would be acceptable to committees or to Congress unless those interest groups certified that a majority or

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[1] U. S. Congress, Joint Committee on the Organization of Congress, The Organization of Congress; Suggestions for Strengthening Congress, 79th Cong., 2d Sess. (Washington, Government Printing Office, 1946), p. 7.

> two-thirds vote of the membership authorized the representative who appears before the committee to state things that he does to the committee.[1]

The suggestion poses immediate problems of administration and enforcement, yet it is a logical corollary to the line of thinking developed in the Smith bill of 1936. If Congress is free to inquire into the resources and membership of private groups, there is little reason why it should not be equally free to inquire into the representative character of that group's position on legislative matters.

Only two other endorsements of statutory regulation of lobbying were presented to the Committee. Benjamin Marsh, long-time representative of The People's Lobby, recommended that all lobbyists before Congressional committees and government departments be required to register annually, submitting statements of their own income and of "the budget of the organization or individual represented."[2]

Mr. Donald C. Blaisdell, who had proposed registration of lobbyists in 1941,[3] again endorsed the idea in a statement to the Joint Committee. He saw registration and reporting as part of a twofold program for "giving these [pressure] groups a formal status." He felt that previous Congressional proposals

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[1] U. S. Congress, Joint Committee on the Organization of Congress, Hearings, 79th Cong., 1st Sess., March 13-June 29, 1945 (Washington, Government Printing Office, 1945), p. 411.

[2] Ibid., p. 1024.

[3] Blaisdell and Greverus, op. cit., pp. 194-196.

for regulation had failed partly because such proposals implied an improper role for all organized interest groups. The modern pressure group should be "recognized as a legitimate part of the legislative process" through some sort of functional representation as well as by regulation through registration and publicity.[1]

During the course of its hearings, the Committee received no other proposals for regulation of lobbying, although on several occasions it heard complaints from Congressmen and other witnesses relative to the strength and persistence of organized pressure groups.[2]

Following the conclusion of its hearings in June, 1945, the Committee took no formal action until March 4, 1946, when it submitted to Congress the series of recommendations which its enabling resolution had authorized it to prepare.[3] In thirty-five tight-knit pages the Committee made thirty-seven specific proposals, ranging from the reduction of standing committees to the improvement of Congressional restaurant facilities. Of particular interest here is that

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[1] Hearings, p. 1084, letter of July 31, 1945.

[2] See, for example, statements of Representative Jensen, Hearings, p. 213, and Robert K. Lamb, Hearings, p. 1017. Professor Belle Zeller did submit an excellent memorandum on regulation of lobbying later in 1945. See Suggestions for Strengthening Congress, pp. 65-69.

[3] U. S. Congress, Joint Committee on the Organization of Congress, Report, 79th Cong., 2d Sess., S. Report 1011 (Washington, Government Printing Office, 1946).

the Committee recommended:

> That Congress enact legislation providing for the registration of organized groups and their agents and that such registration include quarterly statements of expenditures made for this purpose.[1]

The Committee declared that it hesitated to make any recommendation concerning control of lobbying. It felt, however, that a registration and publicity law "would improve the situation ... without impairing the rights of any individual or group freely to express its opinions to the Congress." What the Committee called "a pure and representative expression of public sentiment" was beneficial in considering legislation, but "professionally inspired efforts to put pressure upon Congress cannot be conducive to well-considered legislation."[2] The Committee would not forbid the professionally inspired effort, but would make public its existence and backing.

There the matter rested until May 13th, on which date Senator LaFollette introduced a bill titled "The Legislative Reorganization Act of 1946."[3] The bill was referred to the Special Committee on the Organization of Congress from which it was reported back favorably on May 31st with only minor amendments.[4]

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[1] Ibid., p. 27.

[2] Ibid., p. 26.

[3] 79th Cong., 2d Sess., S. 2177.

[4] 79th Cong., 2d Sess., S. Report 1400 (May 31, 1946). An irregular procedure was followed in the consideration of

Title III of the bill was labelled "The Federal Regulation of Lobbying Act." At a later point in this chapter, the act will be subjected to a section-by-section analysis; for the present, it need only be said that the bill was closely similar to the Black-Smith bill of 1936. Individual registration was required, as were quarterly reports of expenditures and receipts for lobbying purposes. These reports were to be submitted by both groups and individuals. In addition to fines and imprisonment, violators of the act were liable to the penalty of being barred from lobbying for three years after the date of conviction.

Not only was the bill itself drawn from the Black-Smith bill, but the report of the Senate committee based its recommendation of the measure on Representative Smith's defense of his bill before the House in 1936.[1] The report, following Mr. Smith point for point, specified a number of things which the bill did not purport to do. It did not curtail freedom of speech, press, or petition; it had no application to newspapers or other publications "acting in

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the bill. In each House, the six members of the Joint Committee were appointed to "Special Committees on the Organization of Congress." The bill was referred to these latter Committees. Thus authorship and committee consideration of the bill fell to the same Members serving in slightly different capacities. This is hardly an arrangement calculated to serve the end of careful, critical committee analysis and revision.

[1] Cong. Rec., 74th Cong., 2d Sess., vol. 80 (June 17, 1936), p. 9751.

the regular course of business"; it had no application to those who lobby only by committee appearances; it had no application to people who appeared voluntarily or without compensation; and it had no application to groups whose efforts to influence legislation were only incidental to the purposes for which they were formed.[1]

The committee, still under obligation to Representative Smith, maintained that the bill applied chiefly to three classes of lobbyists: first, those who do not visit Washington but initiate propaganda elsewhere; second, the lobbyist employed to come to Washington "under the false impression that they exert some powerful influence over Members of Congress"; and third, the "honest and respectable representatives" of organized groups who express their views on proposed legislation frankly and openly.[2]

In view of the Congress's long-standing hesitation to adopt lobbying legislation, the passage of the lobbying title of the Reorganization Act through House and Senate was remarkably smooth. There was, in fact, disproportionately little debate on this title in either House. During the early stages of the Senate discussion, Senator LaFollette merely reiterated the defense of the title contained in Senate Report 1400, and there was neither challenge nor

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[1] 79th Cong., 2d Sess., S. Report 1400, pp. 26-27.

[2] Ibid., p. 27.

question to his analysis of the bill's contents or coverage.[1] In the later stages of Senate consideration, only Senators McClellan and Thomas (Oklahoma) appeared to have reservations about the title. Senator Thomas's objections were particularly puzzling:

> I am not saying that lobbying should not be regulated, but the Congress has been trying for 20 years--in fact, I should say for 24 years--to pass an anti-lobbying law. However, thus far no such law has been passed. I am not saying that the Congress should not pass an anti-lobbying act. However, none has been passed.[2]

Senator McClellan averred that he had no objection to the registration of professional lobbyists, but he was concerned as to what other individuals and organizations might be affected. He said that he would like to see:

> ... some of these questionable provisions of [the bill] modified or amended in such a way as to safeguard the rights of a citizen, whether he represents an organization or whether he comes to Washington in his capacity as an individual, to contact his representatives in Washington at his pleasure and at their convenience.[3]

Subsequent Senate discussion should have answered Senator McClellan's apprehensions. On the day of the bill's Senate passage, Senator Cordon asked Senator LaFollette if it was true that:

> ... there is nothing in that provision that can in any

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[1] Cong. Rec., 79th Cong., 2d Sess., vol. 92 (June 6, 1946), pp. 6367-6368.

[2] Ibid. (June 7, 1946), p. 6456.

[3] Ibid. (June 10, 1946), p. 6553.

> way abrogate the right of petition on the part of the American people, or the presentation to Congress of any fact on any subject, anywhere and at any time?

To this, Senator LaFollette replied:

> Of course not, and there is no stigma attached to anyone who engages in this type of activity. The bill simply prescribes certain requirements which have to be fulfilled.[1]

Senator Hawkes added this final word on the bill's intended coverage:

> I think the Senator will agree that the bill in its present form does not inhibit in any way, or restrict, a person coming to see his Senator or Representative on a matter incident to his business.[2]

The House discussion of the lobbying title was no more extensive than that in the Senate, and it, too, tended to center around alleged deprivations of the right of petition. One such charge was raised by Congresswoman Sumner of Illinois:

> Mr. Chairman, in my opinion we are violating the Constitution. It is directly implied in the Constitution that we have no right to intimidate people or to make any effort to intimidate them so that they cannot petition the Congress.[3]

But the charge had already been answered by Representative Dirksen of Illinois who, in summing up for the bill, had said:

> I believe I can say for members of the committee that we

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[1] Ibid. (July 26, 1946), p. 10152.

[2] Ibid.

[3] Ibid. (July 25, 1946), p. 10091.

> have no desire to restrict in the slightest way the right of a citizen to petition his Government for a redress of grievances by urging the passage or defeat of legislation that might be prejudicial or harmful or adverse to his interests. It is not the intention of the committee to place upon any citizen a brand that is sometimes regarded as sinister. Nor is it the intent of the committee to cause undue inconvenience or hardship for organizations who must necessarily keep in close touch with all varieties of legislation because of the impact of such legislation upon their legitimate activities. After all, government having moved so deeply into the whole business, economic, and social field that the many fine organizations which represent various economic interests would be almost remiss in their obligations if they failed to keep abreast of developments in the legislative field.
>
> But where men are engaged and paid for the primary and principal purpose of encompassing the defeat or enactment of legislation it is not asking too much that such persons register and file a statement. Many states have such acts upon the statute books today and these do not appear to have imposed undue hardships on any person, group, or organization.[1]

These words of Representative Dirksen's underscore notably the purposes underlying lobbying laws in every jurisdiction.

The Reorganization Act, of which Title III was The Federal Regulation of Lobbying Act, was passed when the Senate, which had earlier approved the measure, concurred in several House amendments on July 26, 1946.[2] Indicative of the minimal attention given to the lobbying title is the fact that in neither House nor Senate were any amendments even proposed to the title as reported from committee, although the other titles of the Reorganization Act had been freely

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[1] Ibid. (July 25, 1946), p. 10090.

[2] Ibid. (July 26, 1946), p. 10152. The Act, when signed, became Public Law 601, 79th Cong., 2d Sess.

amended in each House. President Truman signed the Reorganization Act on August 2d, 1946, and the first large federal attempt at regulation of lobbying began.

Reaction to the Lobbying Act.--The immediate editorial and public reaction to the Reorganization Act was abundant and generally favorable, but there was relatively little comment directed specifically at the lobbying title of the act. The New York Times was one of the few newspapers to mention this title at all, and it declared editorially:

> Registry of lobbyists in the corridors of Capital Hill, with a listing of employers and expenses, seems a sensible stipulation.[1]

The United States News pointed out that while the lobbying provisions had attracted little attention, they were nevertheless of great importance. What Congress had finally done, according to the report, was to recognize:

> ... that lobbies are an essential and respectable part of the democratic system, while insisting that their activities be brought into the open. If the Act is enforced, it should go a long way toward ending many lobbying abuses of the past.[2]

The Cleveland Plain-Dealer, the Journal of Atlanta, and the Washington Post also commented favorably on the lobbying title.[3]

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[1] New York Times, July 28, 1946. For other editorials in which no mention of the Lobbying Act is made, see Cong. Rec., vol. 92, pp. A4335, A4548, A4746, A4747.

[2] "Ending Secrecy of Lobbies," United States News, vol. 21 (August 9, 1946), p. 16.

[3] B. Zeller, "The Federal Regulation of Lobbying Act," American Political Science Review, vol. 42 (April, 1948), p. 255.

As against these favorable comments, there were more which were critical in tone. On August 10th, the New York Times qualified its approval of two weeks earlier by calling the lobbying title a "loosely written law" which "has been pronounced by its official students [unnamed] as being so vague, so conflicting and far-reaching" that no official has dared to answer affirmatively the questions about it which had poured into the Capital.[1]

A dispatch of the following day indicated that no official interpretation of the "loosely worded and apparently conflicting clauses of the law" would be hazarded until the courts had decided specific cases which might arise.[2]

The United States News also changed its tack somewhat during the first week of the new law's operation. On August 16th it reported that:

> ... both inside and outside the government it is agreed that the law is vague in many respects, and leaves possible loopholes for escaping registration and reporting provisions.[3]

Again in its issue of September 6th, this same journal found occasion to score the act's "deliberate vagueness," and its lack of a definition of a lobbyist. According to the report, Senator LaFollette and Representative Monroney

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[1] New York Times, August 10, 1946, p. 1.

[2] New York Times, August 11, 1946, p. 5.

[3] "About Rules for Lobbyists," United States News, vol. 21 (August 16, 1946), p. 48.

were "so eager to get the legislation passed that, to keep dispute to a minimum, the term was left purposely vague."[1]

Other newspapers joined the burden and featured the act's vagueness in articles titled "Lobbying Law Stirs Confusion in Washington--Many Puzzled Groups Ask Lawyers If They Must Register under New Act," "Lobbying Law Goes into Effect, but Exact Meaning Is Not Clear," and "What's a Lobbyist?" to cite but a few examples.[2]

Complaints were also forthcoming from individuals, particularly those presumably subject to the new law's requirements. Colonel John Thomas Taylor, "Legislative Representative" for the American Legion, declared that he would register but that the financial sections of the act were a "farce which enterprising lobbyists must praise as they gleefully behold the many loopholes."[3] Nathan Cowan, Legislative Director of the CIO, also declared that he would register but that he had serious doubts as to the adequacy of the new law.[4]

Not only was the adequacy of the Lobbying Act challenged, but it was attacked on constitutional grounds as well.

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[1] "What Registrars Tell Lobbyists," United States News, vol. 21 (September 6, 1946), p. 70.

[2] Zeller, "The Federal Regulation of Lobbying Act," p. 255, citing New York Herald-Tribune, August 4, 1946, St. Louis Post-Dispatch, September 22, 1946, and Chicago Times, September 13, 1946, respectively.

[3] New York Times, September 13, 1946, p. 4.

[4] New York Times, September 27, 1946, p. 3.

The registration provisions were alleged to be abridgments of the right of petition, and the reporting provisions were said to conflict with the protection against unreasonable searches and seizures guaranteed by the Fourth Amendment.[1] After two and one-half years under the act, these protestations have not altogether subsided.[2]

A Section by Section Analysis of the Regulation of the Lobbying Act

Many of the criticisms directed at the act are the apprehensive imaginings of legal scholars trained in the swift detection of literal incongruities. Others are the product of personal interest and must, as such, be partially discounted. Some of the criticisms, however, are amply warranted. In view of the vigor and diversity of these criticisms, it would be well to proceed to a closer examination of the act's provisions.[3] In this examination, the writer frankly takes the view that many of the seeming contradictions and ambiguities of the law can be resolved by a reasonable interpretation of its origins and purposes. The writer further submits

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[1] Zeller, "The Federal Regulation of Lobbying Act," p. 252. This objection was particularly vigorously urged by the Committee on Constitutional Government.

[2] See, for examples, columns by David Lawrence in the Ann Arbor News, December 1st and 3rd, 1948.

[3] The complete text of the act is included in the appendix of this study.

that the realization of these purposes is so important as to justify what may seem at first glance to be an overly lenient approach.

Section 301 of the act provides simply that Title III of the Legislative Reorganization Act of 1946 may be cited as the Federal Regulation of Lobbying Act. It can be safely stated that this section has not been contentious, nor is it likely to become so.

Section 302 has also escaped serious criticism; it defines "contribution," "expenditure," "person," and "legislation" in terms identical to those of the Federal Corrupt Practices Act.[1] The definitions are rather broad; "person," for example, includes "an individual, partnership, committee, association, corporation, and any other organization or group of persons." This definition is involved in the operation of the other provisions of the act, but it has not itself been a source of any great controversy.

Section 303, the accounting section of the act, provides:

> SEC. 303. (a) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated to keep a detailed and exact account of--
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> (1) all contributions of any amount or of any value whatsoever;
>
> (2) the name and address of every person making any such contribution of $500 or more and the date thereof;

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[1] United States Code, 1940, Title 2, Chap. 8, secs. 241-256.

(3) all expenditures made by or on behalf of such organization or fund; and
(4) the name and address of every person to whom any such expenditure is made and the date thereof.

(b) It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding $10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items.

This section of the act was apparently designed to establish a common basis for the accounting of contributions and expenditures by organizations and individuals subject to the act's subsequent registration and reporting provisions. Two problems arise in connection with this section; reference to the legislative history of the act does not clarify either of these problems. They do not seem to have been noticed by the scholars who have written on the act.

First, although contributions for the purposes "hereinafter designated" (i.e., lobbying) are to be recorded, the section does not specify whether the expenditures to be recorded need only be those made for lobbying purposes. It is probable that a court would so hold, but it is regrettable that the section does not specifically state that only expenditures for lobbying need be included in the accounting required by the section. Since section 303 does not require reports, this objection is relatively minor.

Another omission in the language of section 303 which has escaped general attention is that the section does not

specifically require that the individual or organization who solicits funds must keep a record of the name of the organization or fund for which the contribution is received. Although greater clarity would have been desirable, it is probable that this requirement would be implied by a court.

Section 304 has been the subject of frequent if somewhat niggling criticism. In the first place, a typographical error slipped into the section while the bill was being engrossed. As signed by President Truman, section 304 reads:

> SEC. 304. Every individual who receives a contribution of $500 or more for any of the purposes hereinafter designated shall within five days after receipt thereof rendered [sic] to the person or organization for which such contribution was received a detailed account thereof, including the name and address of the person making such contribution and the date on which received.

Reference to the bill as originally reported and to the Smith bill of 1936, on which the section was modelled, leaves no doubt that it should properly read, "shall within five days after receipt thereof render" instead of "rendered."[1] The error is unfortunate, but hardly critical.

Secondly, the aim of section 304 is not altogether clear. Its apparent intention is to protect the organization or fund from fraud on the part of its agents, but it seems unlikely that a statute of this kind would be so solicitous

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[1] It is reported that the Buffalo News quipped apropos of section 304, "You can never tell when a tense situation will be rendered past, present, or future on Capital Hill." Cited in Zeller, "The Federal Regulation of Lobbying Act," p. 251.

of those subject to its requirements. It is also doubtful that this section was intended to facilitate compliance with the reporting provisions of section 305, since this would duplicate part of section 303.[1] The legislative history of the act, or of the Smith bill on which the section is based, offers no key to the proper interpretation of the section. In any event, the section can be regarded as one of the relatively unimportant parts of the act.

Section 305 is important, however, and it has been subjected to frequent and often justified criticism. It provides:

> SEC. 305. (a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing--
>
> (1) the name and address of each person who has made a contribution of $500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of $500 or more to such person since the effective date of this title;
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> (2) the total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1);

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[1] One fairly plausible suggestion is that it was intended to "prevent a person or group which wished to remain anonymous from using an inconspicuous agent to make contributions, in view of the fact that the lists filed (i.e., under section 305) are open to public inspection." "The Federal Lobbying Act of 1946," Columbia Law Review, vol. 47 (January, 1947), p. 104, note 55. This can only be presumed, however, if the superfluity of the corresponding part of section 303 is granted.

(3) the total sum of all contributions made to or for such person during the calendar year;
(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of $10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;
(5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);
(6) the total sum of expenditures made by or on behalf of such person during the calendar year.

(b) The statements required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

A literal interpretation can wreak havoc with this section. It can be pointed out, for example, that section 303 requires that accounts be kept only by those who "solicit or receive a contribution to any organization or fund for the purposes hereinafter designated," whereas section 305 applies to every person "receiving any contributions or expending any money for the purposes designated in subparagraphs (a) or (b) of section 307."[1] Why, if section 303 is supposed to support compliance with section 305, does section 305 include both solicitation and expenditure while section 303 extends only to solicitation?

This disparity is less serious than it has been made to seem by some writers.[2] Section 303 was clearly intended

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[1] Underlining ours.

[2] See, for example, "The Federal Lobbying Act of 1946," p. 105.

to establish a common system of accounting on which all organizations submitting reports pursuant to section 305 might base these reports. The two sections are complementary; one relates to accounting, the other to the reports based on this accounting. Unless it can be shown that the organizations which solicit money for lobbying are somehow not the same organizations which expend this money, it must be granted that both sections 303 and 305 apply to the same categories of organizations.[1] It is reasonable to assume that no such organization could file an adequate report of its expenditures unless it had kept a record of them. Therefore, the result is substantially the same as if section 303 had been written to include those making expenditures as well as those soliciting or receiving contributions.

State lobbying laws escape this difficulty by making the persons covered rather than the acts performed the measure of the applicability of reporting requirements. The difficulty between section 303 and 305 could have been obviated in much the same fashion had both sections been made applicable to employers of lobbyists, without reference to the solicitation or expenditure of funds by the employer. This was not done, however, and the best remaining alternative is to read

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[1] The only case to which this analysis would not apply would be that of an organization which collects funds for lobbying through one instrumentality and expends them through another. There are probably only a very few organizations who transact their business on such a basis, however.

section 303 so as to give it the coverage which it was obviously intended to have.

A more serious objection is made to the distinction between the "purposes" specified in sections 303 and 305. Section 303 refers to "the purposes hereinafter designated," while section 305 refers to "the purposes designated in subparagraph (a) or (b) of section 307." Section 307 in turn provides that the provisions of the entire title shall apply to any person who solicits money:

> to be used principally to aid, or the principle purpose of which is to aid, in the accomplishment of any one of the following purposes:
>
> (a) The passage or defeat of any legislation by the Congress of the United States.
>
> (b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

Does this distinction in purposes indicate that section 305 is to have a more limited application than section 303? A literal interpretation would assume that if Congress had not intended sections 303 and 305 to have different applications, it would not have distinguished between the different purposes in the two sections. Therefore, it would be possible to assume further that since section 305 applies only to the purposes mentioned in section 307, section 303 applies to the rest of the title.

Such fine-spun analyses are in reality gossamer thin. It is submitted that there is no distinguishable difference between the purposes of section 303 and the purposes of

section 305, and that Congress had no intention to create such a distinction. The end result of both purposes is lobbying. The language of section 307 simply specifies conditions which must be present if any of the title's provisions are to apply in any given case. It is unfortunate that Congress did not specify that the purposes indicated in section 307 are the only purposes with which the act is concerned, for this clearly was the intention of the act's sponsors.[1]

A final criticism directed at section 305 is that a literal reading of subsections 2, 3, 5 and 6 would require that quarterly reports contain an account of all contributions and expenditures, regardless of whether such contributions and expenditures related to lobbying or not.[2] It must be admitted that certain organizations have seized upon the possibilities offered by this section to include in their quarterly reports an account of all of their financial transactions, whether related to lobbying or not. The problem of

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[1] In the Senate report on the act, it was said that section 307 "defines the application of the title." 79th Cong., 2d Sess., S. Report 1400, p. 28. Also, in describing section 303 the report said, "This section makes it the duty of every person soliciting or receiving contributions to any organization or fund for the purposes defined in section 307 ... to keep a detailed and exact account...." p. 27. This was the sponsors' view, even though sec. 303 reads "purposes hereinafter designated."

[2] "The Federal Lobbying Act of 1946," pp. 105-106. "The meager legislative history of the act does not indicate any intent to limit the accounts to transactions directed towards influencing legislation."

what might be called evasion by overdisclosure has developed to a certain extent, and to this extent section 305 merits criticism.

But again, section 305 applies to those who receive or expend money for the purposes specified in subparagraphs (a) or (b) of section 307; namely, lobbying. The entire act is directed only at lobbying, and the only contributions or expenditures which need be reported are those made for the purpose of lobbying. It is unfortunate that this limitation was not spelled out in the act as it is in most of the state laws. However, the great bulk of the organizations filing under section 305 have taken a limited view of its application and have not included in their quarterly reports voluminous accounts of all their dealings. In most cases there has been too little disclosed rather than too much.

Section 306 of the act provides as follows:

> SEC. 306. A statement required by this title to be filed with the Clerk--
>
> (a) shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Clerk of its nonreceipt;
>
> (b) shall be preserved by the Clerk for a period of two years from the date of filing, shall constitute part of the public records of his office, and shall be open to public inspection.

This section has not been controversial in any respect and requires no comment here.

Section 307 cannot be dismissed so lightly. Of all the sections of the act, it will probably be the most productive of litigation; it has already been the most productive of problems of interpretation. The section provides:

> SEC. 307. The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:
>
> (a) The passage or defeat of any legislation by the Congress of the United States.
>
> (b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

The language of the section poses two particular problems: first, what is the relation of section 307 to the remainder of the act?; and second, what is the textual meaning of section 307 itself?

As to the first of these problems, the polar alternatives of interpretation are either that section 307 controls the other sections of the act, or that it is merely descriptive of certain conditions of the act's application and is, therefore, no more controlling than any of the other key sections. It was clearly the view of the act's sponsors that section 307 was of paramount importance. The Senate report declared that section 307 "defines the application of the title."[1]

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[1] 79th Cong., 2d Sess., Senate Report 1400, p. 28.

Representative Dirksen said even more emphatically that "the gist of the anti-lobbying provision is contained in section 307."[1] But if it be admitted that section 307 is completely controlling, section 305 is necessarily emasculated.

It has already been pointed out that section 305 applies to those receiving and expending money and that section 307 applies only to those receiving money for lobbying purposes. If the language of section 307 is controlling, then the phrase "expending any money" in section 305 is superfluous. One annotator has pictured the consequences of such an interpretation:

> Thus, holding that section 307 controls section 305 exempts from the most stringent provisions of the act all organizations whose legislative activities are merely incidental to their main purposes and which are farsighted enough to refrain from accepting or soliciting money ear-marked for lobbying.[2]

There is nothing in the debates on the title to suggest that Congress contemplated any such sweeping exemption.

Representative Dirksen had, however, insisted that section 307 was the "gist of the anti-lobbying provision." He went on to say:

> What this is designed to do is to bring about registration and a statement of receipts and expenditures on the part of a person who is employed for the purpose of [influencing legislation].[3]

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[1] Cong. Rec., vol. 92 (July 26, 1946), p. 10088.

[2] "The Federal Lobbying Act of 1946," pp. 106-107.

[3] Cong. Rec., vol. 92 (July 26, 1946), p. 10088. Underlining ours.

It must be noted that section 307 says nothing of "expenditures," Representative Dirksen's statement notwithstanding. If section 307 specifically applied to those receiving or expending money for lobbying, then there could be little doubt as to its relation to section 305. This, however, section 307 does not do. It would, then, appear on the surface that section 307 could be held to be more than supplementary to section 305.

But what are the results of freeing section 305 from the "principal purpose" limitations of section 307? Section 305 then becomes so broad as to lead to the untoward and unwanted consequence of requiring quarterly reports by all persons who solicit or spend money to influence legislation, regardless of how incidental this activity may be.[1]

It is submitted that the most reasonable interpretation of the scope of section 307 would make it neither wholly supplementary to nor wholly controlling over section 305. It is supplementary insofar as it does not itself require anything of anybody. Despite its unfortunate omission of the obviously intended "expenditures," section 307 should be regarded as fixing the coverage of the reporting provisions

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[1] "If this limitation is not applied, section 305 would become so comprehensive as to lead to absurd results. Any person ... would include, for example, not only a pressure group but every individual contributor as well as any person mailing a letter or sending a telegram to his Congressman." "Improving the Legislative Process," Yale Law Journal, vol. 55 (January, 1947), p. 322. It may be questioned whether courts or administration would ever permit so grandiose an interpretation.

as regards both those who receive and spend money for lobbying. It sets the conditions which govern the application of the reporting provisions. "Control" is too rigorous a term. It creates in the critic's mind unreasonable demands as to a statute's internal balance. The subject of the entire act is the whole process of lobbying, and not a series of unrelated phenomena.

It is the writer's firm belief that this interpretation of section 307 will be acceptable to the courts. It is certainly the view best calculated to give expression to the clear intention of the act's sponsors.

Only a slightly less perplexing problem is posed by the meaning of section 307 vis a vis section 308, the individual registration section of the act. Section 308 provides for certain exemptions from its requirements. It is said that if section 307 were controlling, there would be no need for the express exemptions made in section 308. Consequently, to give full effect to the language of section 307 would make it impossible to give full effect to the language of section 308.[1]

Again, it is submitted that while there is a definite conflict in the language of the two sections, this conflict has very probably been exaggerated. It could be minimized by interpreting the exemptions in section 308 as being secondary

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[1] "The Federal Lobbying Act of 1946," p. 107.

qualifications of the application of the entire title as generally outlined by section 307.

Each of the three classes of exemptions made by section 308 are rooted in the state experience, and there is ample reason why they should have been included in the federal act. Persons lobbying only by committee appearance are exempted to avoid charges of abridgement of the right of petition; newspapers are exempted to avoid charges of tampering with freedom of the press; and government officials are exempted to avoid charges of encroachment on other branches or levels of government. The problem of interpretation can be eased by assuming that for these reasons, Congress was determined to exempt these particular groups whether or not they otherwise qualified under the principal purpose definition of section 307.

It was perhaps unnecessary to include these exemptions in section 308, for presumably most persons in these groups would not have been required to register under the principal purpose definition. The exemptions are there, however, and the act does not suffer vitally from their presence.[1] It

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[1] The practical reason for the conflict between sec. 307 and sec. 308 is that 308 was taken from the Black bill of 1935 while section 307 and the other key sections of the act are derived from the Smith bill of 1936. The act was drafted hurriedly; in this case, its plural origins cause particular trouble. The disparity still must be reconciled, however, since courts do not usually interpret statutes leniently simply because they were drawn from too many sources too quickly.

could indeed be maintained that their presence is symptomatic of a wholesome Congressional concern for the protection of individual rights. Apart from the matter of interpretation, the exemptions can best be appreciated rather than condemned.

The second major problem posed by section 307 relates to the meaning of its terms, particularly to the terms "principally" and "principal purpose." Other words used in section 307 can be found in many state statutes. Thus, "in any manner," "directly," or "indirectly" are components of numerous state definitions of lobbying. But no state law uses language comparable to the "principal purpose" clause of section 307. Assuming, as we do here, that section 307 fixes the coverage of the other sections of the act, it is apparent that the breadth of the registration and reporting provisions hinges largely on the meaning assigned to these qualifying terms in section 307.

At the outset, two narrow conceptions of the terms "principally" and "principal purpose" should be disposed of. Either of these conceptions would seriously limit the operation of the entire lobbying title, and the writer posits his analysis on the desirability of avoiding this result.

First, if "principal purpose" is construed within a narrow time reference, the coverage of the act will be sharply restricted. For example, if an individual spends one month per year attempting to influence legislation, can he avoid registration on the grounds that lobbying occupies only one-

twelfth of his time? If this be the case, then two important classes of lobbyists escape the purview of the act. Attorneys and agents hired on general retainers, or attorneys and agents employed for concentrated service in connection with particular measures would be freed of any responsibility to comply with the registration and reporting sections of the act. This is an eventuality which the framers of the act did not anticipate.[1]

Second, if one places too great reliance on the maxim that a penal statute will be "construed strictly and must define prohibited acts with certainty," one arrives at equally confining conclusions.[2] Working from this premise, one either challenges the validity of the act on the basis of the ambiguity of its terms, particularly "principal purpose"; or, one construes and applies these terms only narrowly.

This attack on the act overlooks the fact that although it prescribes criminal penalties, it is nevertheless not wholly a penal statute. It is penal in part and remedial in part, for statutes which are directed to the corrections

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[1] The LaFollette report included such lobbyists in the group of "honest and respectable representatives" who come to Washington to express their views with respect to legislation. "They will likewise be required to register and state their compensation and the sources of their employment." 79th Cong., 2d Sess., Senate Report 1400, p. 27.

[2] Zeller, "The Federal Regulation of Lobbying Act," p. 245. Professor Zeller declares that the act is "technically defective" for failing to meet these tests. Professor Zeller seems to be genuinely interested in the success of the act, but she allows herself to attack it precipitously.

of defects, mistakes, and omissions in civil institutions and in the administration of the state have generally been considered to be remedial.[1] If the purposes of the statute are examined, one must agree that they are less to punish people for offenses than they are to remove the mantle of secrecy from those who undertake to affect the Congressional process. Certainly these purposes are in the nature of a corrective to a defect of government. Certainly too the successive lobby investigations of 1913, 1929, and 1935 had given abundant evidence of the defect's existence. Thus it is inappropriate to apply to the terms of section 307 the usual rules of construction for criminal statutes. The remedial aspects of the lobbying act are so manifest as to require that its terms be construed on a more liberal basis.

Furthermore, even if the act were not at all remedial, one might question the correctness of the assumption that the ambiguity of its language need necessarily result in a narrow application of the act, or in its invalidation. The authorities are not that well settled. As Justice Frankfurter has written:

> To say "we agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean," is worth more than most of the dreary writing on how to construe penal legislation. Again, when he [Justice Holmes] said that "the meaning of a sentence is to be felt rather than to

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[1] J. G. Sutherland, Statutory Construction (3rd Ed. (Horack), Chicago, Callaghan, 1943), vol. 2, sec. 3302.

> be proved," he expressed the wholesome truth that the final rendering of the meaning of a statute is an act of judgment.[1]

Legislative intent should be given credence in construing a statute, and this intent must often be "felt" rather than "proved." Although penal statutes are generally construed strictly, the modern practice is to avoid strict construction when it would result in a finding inconsistent with the expressed aims of the legislature.[2]

If the particularly troublesome terms of section 307, i.e., "principally" and "principal purpose" are interpreted on this basis, there need be less apprehension about their alleged ambiguity. The aims of Congress in enacting the Lobbying Act were essentially two: first, to provide publicity concerning lobbyists, their employers, and their sources of funds; and second, to enable Congress and the public to know the sources of the pressure group's funds, and manner in which they were expended. These aims are at least implicit in the reports of the Joint Committee and in the meager discussion of the lobbying title on the floor of both Houses. The reports particularly establish that the sponsors of the act anticipated that it would have a broad

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[1] F. Frankfurter, "Reflections on the Reading of Statutes," Columbia Law Review, vol. 47 (May, 1947), p. 531, citing Justice Holmes in Roschen v. Ward, 279 U.S. 337, 339 (1929), and U.S. v. Johnson, 221 U.S. 488, 496 (1911).

[2] Sutherland, op. cit., sections 3304, 3305 and cases cited in note 4 to section 3305.

coverage.[1]

Viewed in this perspective, it is the writer's belief that an honest attempt to weigh Congressional intent would exclude a narrow interpretation of the terms at issue to mean only primary activity, or chief activity, or most important activity.[2] It would also exclude the possibility that the entire act is void because of the lack of precision of its terms. How, then, are the terms "principally" and "principal purpose" to be construed?

It is submitted that the most reasonable construction, in view of the expressed attitudes of the Seventy-ninth Congress towards lobbying, is that offered by one commentator on the act, as follows:

> An interpretation of "principal" to mean "substantial," or any activity not purely "incidental," would overcome most of the objections to which the narrower construction is subject and has already proved workable in tax cases.[3]

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[1] See especially 79th Cong., 2d Sess., Senate Report 1400, op. cit., p. 27, specifying the three distinct classes of lobbyists to whom the act was to apply. These three classes do, in fact, rather thoroughly exhaust the possibilities of types of lobbyists.

[2] This construction of "principal" would have the support of not only the legal maxim, but also Rep. Smith's statement in 1936 that the provision would exclude many large organizations which spent only a minor part of their funds on lobbying. Cong. Rec., 74th cong., 2d Sess., vol. 88 (March 27, 1936), p. 4535.

Despite this statement, and the unfortunate identity of language between the act of 1946 and the Smith bill of 1936, it is apparent that the Congress in 1946 took a "significantly broader" view of the legislation it was enacting. "Improving the Legislative Process," p. 317.

[3] "Improving the Legislative Process," p. 324 and cases cited in notes 74-80, pp. 323-324.

This position would accommodate the cases of both individuals and organizations performing several activities, of which lobbying is only one. It is supported by the statement made by Representative Dirksen during the House debate on the measure:

> What we are trying to do here is to reach those organizations whose principal purpose, not incidental purpose ... is to come here and endeavor to influence the passage of legislation either by bringing about its defeat or enactment.[1]

This interpretation admittedly poses the problem of attaching some stable meaning to the term "incidental." The courts have had frequent occasion to interpret the term, and it has been given a considerable range of meanings. But from the welter of synonyms which could be compiled, there are several which constantly recur. Thus "incidental" has been held to mean something subordinate or collateral, happening by chance, occasional, beside the main design, "casual or accidental."[2] As one leading case has put the matter:

> We doubt whether there is much to be gained by attempting to define the word 'incidental', especially when under the definitions we come back to the original word. For example, one of the dictionary definitions of 'incidental' is 'casual,' and one of the dictionary definitions of 'casual' is 'incidental.' Nevertheless, we

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[1] Cong. Rec., vol. 92 (July 26, 1946), p. 10088. Mr. Dirksen does not describe how one can influence the passage of legislation by bringing about its defeat.

[2] See Words and Phrases (St. Paul, West, 1940), vol. 20, pp. 418-433, and 1948 Supplement, pp. 104-105, for supporting case citations.

> think the meaning of the word 'incidental' as used in the regulations is well understood and not difficult to apply.[1]

In sum, "principal" can be defined as that which is not incidental, insignificant, immaterial to a purpose, trivial, accidental, or occasional. Obviously there will be cases in which it will be difficult to draw a sharp line, but it is submitted that this interpretation of "principal purpose" is both fairly explicit and expressive of the coverage which Congress meant the act to have. It gives to section 307 a broad but not over-broad application. It is, in fact, the only tenable alternative of interpretation which will not seriously restrict the application of the entire lobbying act.

Section 308, although less troublesome than section 307, does pose certain problems of interpretation. It provides:

> SEC. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first

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[1] Union League Club of Chicago v. U. S., 4 Fed. Supp. 929 (Court of Claims, 1933).

and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

The exemptions of section 308, and their alleged superfluity in the event that section 307 is controlling, have already been discussed. The inclusion of these exemptions in section 308 and not in section 305 has suggested to some observers that section 305 might be made to apply to those individuals exempted by sections 308.[1] This criticism overlooks the fact that the exemptions of section 308 are individual and extend to both the registration and reporting

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[1] "The Federal Lobbying Act of 1946," p. 108.

provisions of the section. The reporting requirement of section 305 is aimed only at organization or groups. Individuals filing under section 308 do not file under 305; those exempted by section 308 thus incur no liability under section 305.

This criticism can also be met by again superimposing the "principal purpose" limitation of section 307 on the requirements of section 305. As has been indicated earlier, the individuals exempted by section 308 would ordinarily not fulfill the "principal purpose" qualification which is a necessary incident to the application of section 305.

The language of the exemptions of section 308 might be criticized more justifiably. It might be asked, for example, whether the newspaper's exemption depends on whether its representative is acting as an individual or as a representative. When does an individual represent a newspaper in lobbying?[1] These questions are admittedly implicit in the language of the section, but they have not yet arisen in the actual administration of the lobbying law.

The failure to exempt radio commentators has also been criticized.[2] Again, however, this problem has not arisen in practice, and no such commentator has yet undertaken to register or file reports.

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[1] Ibid.

[2] Zeller, "The Federal Regulation of Lobbying Act," p. 271.

A more serious question arises regarding the description of those who are subject to the registration and reporting requirements of sections 308. The only qualifications are 1) employment for consideration, 2) for the purposes of attempting to influence the passage or defeat of legislation. If these qualifications stand alone, the application of the section is extremely broad, far broader than expressed Congressional intent would appear to warrant. Once more, however, it is only reasonable to assume that the limitations of the "principal purpose" clause of section 307 must be read along with the literal terms of section 308. The result is that a third qualification is added to the conditions specified in section 308; thus, registration and reporting are required when an individual is employed for consideration to influence the passage or defeat of legislation when such employment is his principal activity.[1]

The omission of a definition of lobbying in section 308 has also been a cause of censure. It is said that such a definition would have clarified many of the ambiguities of the act.[2] On this point, the state experience is instructive. It has been shown that all the definitions as yet

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1 "Improving the Legislative Process," p. 319. Representative Dirksen stressed the application of sec. 308 to professional lobbyists. This interpretation would accommodate the great bulk of these within section 308. Cong. Rec., vol. 92 (July 25, 1946), p. 10140.

2 "The Federal Lobbying Act of 1946," p. 107.

enacted in the states have themselves been productive of interpretative problems. It is unlikely that Congress would have had any greater success in writing a definition which would be at once unambiguous and inclusive of all the manifold components of modern lobbying. Criticism of the lack of definition is very seldom accompanied by any concrete suggestion as to just how such a definition should be framed.

Section 309 has not been a source of contention. It provides simply:

> SEC. 309. All reports and statements under this title shall be made under oath, before an officer authorized by law to administer oaths.

Section 310 is the punitive section of the act, and it provides:

> SEC. 310. (a) Any person who violates any of the provisions of this title, shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than $5,000 or imprisonment for not more than twelve months, or by both such fine and imprisonment.
>
> (b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than $10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

The three-year prohibition is borrowed directly from the comparable state provisions. Note, however, that the prohibition is from "attempting to influence, directly or

indirectly," any proposed legislation. This language is also borrowed from state laws, but from their definitions or registration provisions rather than from their enumerations of penalties. The vagueness of this language when used in a definition has already been scored, and it is no less vague when used in connection with an absolute prohibition, as it is here.

A question might be raised as to the applicability of this three-year prohibition to organizations, groups, or associations, particularly those whose lobbying is not done through contacts with individual Congressmen. It would be well if the act were to distinguish between penalties for individuals and penalties for groups. It does not do so, however, and the courts have not yet had occasion to apply the penalties which are provided.

Section 311 states:

> SEC. 311. The provisions of this title shall not apply to practices regulated by the Federal Corrupt Practices Act nor be construed as repealing any portion of said Federal Corrupt Practices Act.

There is a distinction between this exemption and that included in section 307. Section 307 exempts "political committees as defined in the Federal Corrupt Practices Act," while section 311 exempts "practices regulated" by this act. The language of section 307 probably states better the end sought to be achieved, since the exemption is evidently meant to be measured by the status of the group rather than by the

character of the activities performed. It would, of course, be desirable for the exemptions to be reconciled by statutory amendment. Up to the present, however, no actual cases have arisen in which the nature of the exemptions was at issue. As with the other sections of the act, section 311 has not yet been before the courts for determination.

Summary of the Textual Content of the Act.--The Federal Regulation of Lobbying Act is a far from impressive piece of legislative draftsmanship. It contains terms which are manifestly lacking in precision. The apparent relation of one section to another is, in many cases, either vague or contradictory. But despite the abundance of criticism which has been directed against the act, it is the writer's conviction that a reasonable and legally satisfactory interpretation of the measure can be evolved. It has been our purpose in the preceding section to contribute to the development of such an interpretation.

Much of the ambiguity of the act can be ascribed to the haste in which it was drafted by the Office of Legislative Counsel. The Joint Committee was intent on securing Congressional action on the Reorganization Act before adjournment, but that Committee's initial recommendation gave only the broadest outlines of the kind of lobbying legislation which it desired.[1] The Black and Smith bills of 1935

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[1] 79th Cong., 2d Sess., Senate Report 1011, pp. 26-27.

and 1936 offered convenient models and were, consequently, utilized by the Office of Legislative Counsel in the drafting of the lobbying title.[1] Despite the identity in terms between these bills and the act of 1946, it is certain that the Joint Committee planned a far more broad-gauged system of regulation than would have been acceptable to the Congress in 1936.

It is probable that had Congress been more attentive to it, the lobbying title might have been measurably clarified by amendment. As it was, not a word of the lobbying provisions were altered by Congress, although other titles of the Reorganization Act were frequently amended during House and Senate consideration. The haste in which the lobbying act was drafted and considered, the lack of public hearings, and the irregular committee procedures which were used are in themselves a dour commentary on the Congressional process.

Finally, much of the undoubted ambiguity of the act's language and structure may be ascribed to the very difficulty of writing a statute of this kind. The states' experience,

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1 "Improving the Legislative Process," p. 317, n. 58. This statement is based on a letter to the Yale Law Journal from Charles F. Boots, Office of Legislative Counsel, October 18, 1946.

With but one exception the bill drafted by the Legislative Counsel included all the details suggested by the Joint Committee. This exception was that "Registration of organizations should include a statement of their bona fide total membership." Senate Report 1011, p. 27.

on which the federal act was at least partially drawn, offers little guidance as to how vagueness of definition and coverage can be avoided. Insofar as the federal act represents a unique effort to probe into the internal resources of the pressure group, it does not have any precedents on which it can rely. It is a first effort, and as such falls into the errors and omissions which may reasonably be expected to develop in any first effort.

Many critics of the act have allowed their predilection for the literal to dull their recognition of the experimental character of the measure, and of the pressing necessity for its enactment. They would do well to remember the words of Justice Clifford who once said:

> Words and phrases are often found in different provisions of the same statute which, if taken literally, without any qualification, would be inconsistent, and sometimes repugnant, when by reasonable interpretation, as by qualifying both, or by qualifying one and giving to the other a liberal construction,--all becomes harmonious, and the whole difficulty disappears; and in such a case, the rule is that repugnancy should, if practicable, be avoided, and that, if the natural import of the words contained in the respective provisions tends to establish such a result, the case is one where a resort may be had to construction for the purpose of reconciling the inconsistency, unless it appears that the difficulty cannot be overcome without doing violence to the language of the law-maker.[1]

Amendment of the act is in order, and in a concluding section the writer will offer his suggestions as to how this

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[1] Lamp Chimney Co. v. Brass and Copper Co., 91 U.S. 656, 663 (1875).

clarification might be achieved. Even without such amendment, however, the lobbying act can be read so as not to vitiate its purpose of making known the identity and resources of the manifold and powerful pressures on Congress.

The Act in Operation

Over two and one-half years have passed since the enactment of the Federal Regulation of Lobbying Act of 1946. It is not premature to inquire how the act has operated during this period. How well have the registration and reporting provisions been complied with by individuals and by groups? How has the act been administered? What particular problems of interpretation have been raised, and how have they been settled? How well have the purposes of the act been effectuated, and what are the prospects for its future? Utilizing both a general and a case approach, the following sections will undertake to answer these questions.

No sooner had the Reorganization Act been signed by President Truman than an eminently practical problem arose. When did the lobbying title take effect? Other titles of the Reorganization Act had indicated specific dates on which they went into force, but no such date was included in the lobbying provisions. The question was answered by the Clerk of the House who, after having received a number of inquiries on the matter, announced that he assumed the title became effective immediately, although he was appealing to the

Attorney-General for "guidance" in the matter.[1]

A corollary problem posed itself immediately. It was necessary to provide forms on which registrations and reports could be rendered, but the act itself gave no guidance as to how these forms should be prepared. Almost three weeks elapsed before House Clerk Trimble and Senate Secretary Biffle worked out a series of three forms on which individuals and organizations could comply with the law.[2] These forms were made available on August 20th, and over 500 of them were distributed on the first day.

Although they prepared the requisite forms on which registrations and reports could be made, the Clerk and Secretary refused to render any interpretation as to who was required to register or report. They referred all questioners to the law itself, insisting that the responsibility for "determining the right answer" rested squarely on the individual or group concerned.[3]

The Attorney-General, to whom belonged the ultimate responsibility for the enforcement of the act, also refused

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[1] New York Times, August 10, 1946, p. 1. The Attorney-General never did supply this "guidance," and the Clerk's presumption was not challenged.

[2] The forms closely follow the language of the act. Form A was designed for organizational compliance with section 305; form B was for individual registration under section 308; and Form C for individual reports under section 308. Facsimiles of these forms are included in the Appendix.

[3] Ann Arbor News, August 22, 1946.

to hazard any official interpretation of the new law's coverage, taking the view that it was a Congressional rather than an executive problem.[1] As a consequence of all this official silence, only three registrations were made during the first two weeks of the law's operation despite the fact that several hundred requests for forms were received.[2]

After this slow start, registrations and reports began to be returned more rapidly, and by January 1st, 1947, 222 individual registrations had been received by the Clerk of the House and the Secretary of the Senate. Congress, it will be noted, was not in session during any of this period.

Individual Registration.--The general pattern of individual registration under section 308 is best illustrated by the following quarterly break-down of compliance.

Table 1

Individual Compliance with Section 308

Quarter	Number of Registrants	Cumulative Total
3d, 1946	26	26
4th, 1946	196	222
1st, 1947	436	658
2d, 1947	184	842
3d, 1947	56	898

[1] Detroit News, October 9, 1946.

[2] "What Registrars Tell Lobbyists," p. 70.

Table 1 (Continued)

Quarter	Number of Registrants	Cumulative Total
4th, 1947	55	953
1st, 1948	191	1144
2d, 1948	163	1307
3d, 1948	44	1351*

*Later figures have not yet been made available (March, 1949).

(Source: Personal examination of photostats of registrations in Lobby Compliance Section, Department of Justice, Washington, D. C.)

This number is not completely exact, and for several reasons. A number of these registrations have been subsequently withdrawn.[1] In a few cases, organizations and associations have registered on Form B. These registrations have been allowed to stand, although the Clerk of the House usually informs the registrant that the B form is meant only for individual registration. Occasional duplicate registrations by the same individuals for different clients or because of changes of salary also contribute to the inexactness of the figure.

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[1] Dr. W. Brooke Graves has found 82 registrations which have been specifically withdrawn. W. B. Graves, Administration of the Lobby Registration Provisions of the Legislative Reorganization Act of 1946 (Unpublished report, Legislative Reference Service, Washington, D. C., 1949), p. 413. Dr. Graves' study, comprising 5 short chapters, totals approximately 60 pages. The chapters begin with pages numbered 100, 200, 300, 400, and 500, however, and each runs for from 5 to 22 pages.

The figure is, however, a general indication of the numbers of individuals who have complied under section 308. It is more difficult to state what percentage this figure represents of those who should register. This matter can best be discussed with reference to the groups represented, and it is our intention to return to it when group compliance is examined.

In scanning the registrations which have been received since 1946, one is struck with what W. Brooke Graves has called "the almost universal regularity with which each registrant protests that he is not engaged, at least to any appreciable extent, in lobbying activities."[1] These protestations of innocence have taken several forms. Some registrations, of which the following are examples, might be called precautionary. Mr. Herman Falker, representing the Miller's National Federation, declared:

> I am not employed for the specific purpose of influencing legislation, and therefore I don't believe that I am required by law to register. However, I am filing this registration voluntarily to remove any possible doubt.[2]

In similar vein, Wendell Berge of the National Council of Business Schools averred:

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[1] Graves, Administration of the Lobby Registration Provisions, p. 205. Subsequent citations to Dr. Graves' work are all to this study, rather than to his State Government, which was cited earlier.

[2] Cong. Rec., 80th Cong., 2d Sess., vol. 94 (May 5, 1948), p. 5473. Daily Edition.

> I do not believe that I am required to file this statement under the Lobbying Act, but do so to avoid any question concerning the application of the Act.[1]

In some cases, doubt becomes conviction. This emphatic statement was filed by Robert F. Klepinger, attorney:

> Registrant's employment as counsel in litigation and prosecution in matters thereunder is usually on a contingent basis. He does not construe the Lobbying Act as applicable to such employment and files this registration merely as a matter of public record and in view of the uncertain language of the law.[2]

The vagueness of the "principal purpose" clause of section 307, joined with the early refusal of the Clerk of the House, Secretary of the Senate, and the Attorney-General to interpret the applicability of the law, could certainly leave many individuals with a reasonable doubt as to whether the law applied to them. But if one were to accept their registrations at face value, one would perforce conclude that the law did not apply to any of them, although their registration would tend to establish a contrary presumption. W. Brooke Graves has put the matter neatly:

> According to their own professed beliefs, as set forth in the statements made on the registration forms, practically none of these [individuals] are engaged in lobbying work. It would appear that all of them sit in their offices or in their hotel rooms and meditate, thinking pure thoughts, but never for a moment descending to anything so common and ordinary as lobbying. They might, it is true, call up a Member of Congress now and then, but this would only be incidental to their performance of other duties.[3]

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[1] Ibid., p. 5470.

[2] Ibid., p. 5476.

[3] Graves, op. cit., p. 222.

The problem of applicability is particularly troublesome as regards the status of attorneys, especially those employed on a general retainer. Almost invariably these members of the bar insist that whatever lobbying they might do in behalf of a client--and few admit to doing any--is only incidental to their main legal duties and is not compensated specifically. Jacob Reck, counsel for the National Beauty and Barber Manufacturers Association, responds typically:

> Registrant is paid an annual retainer as Consel for the National Beauty and Barber Manufacturers Association. No determinable amount of compensation is paid or received on account of legislation. Normally the total time used by him in activities covered by this law are infinitesimal.[1]

Similar reservations are made on many other registrations. Why, then, do these individuals register at all? As already indicated, some register merely as a precautionary measure. Others assume the lofty attitude of J. Carter Fort, General Counsel for the Association of American Railroads, who, although he felt that the law:

> ... is not applicable to him ... nevertheless registers in order that Congress may be fully apprised of his duties respecting Federal legislation, and also the character of the organization and activities of the Association of American Railroads.[2]

It should be noted that most attorneys who register with reservations base their claims of exemption on an

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[1] Cong. Rec., vol. 94 (May 5, 1948), p. 5516. Daily edition.

[2] Form R-204, filed December 17, 1946.

interpretation of "principal purpose" in which proportion of time spent on legislation is made the measure of the law's application to them. As suggested earlier, this interpretation of the act is one well calculated to restrict sharply its scope and effectiveness.

Attorneys are not the only groups whose registrations have been accompanied by statements alleging that the act does not apply to them. A number of corporation and association officers have registered under the act, but averred that their compensation was received as officers of the company, and that any lobbying which they might do was "purely incidental, perhaps even accidental."[1] Thus Mr. C. J. Putt, an official of the Atcheson, Topeka and Santa Fe Railroad, declared in his registration:

> Receives nothing for legislative service. My salary as an officer of the company is $12,000 per year.... Legislative activity on my part is not my principal purpose but is only occasional and incidental. Registration is made as a matter of precaution because of the vagueness and indefiniteness of the act.[2]

The compliance of these officials is rather similar to that of the attorneys. Again a time reference is usually relied on in denying the application of the act. Here too this interpretation can have serious limiting effects on the operation of the act. Neither the status of the registrant

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[1] Graves, op. cit., p. 214a.

[2] Cong. Rec., vol. 94, (July 26, 1948), p. 9547. Daily edition.

nor the proportion of time spent by him on legislation should, in the writer's view, be the gauge of the act's application. Rather the character of the services performed with reference to legislation should be the determining factor in deciding whether any individual is required to register.

Several other groups of registrants pose largely similar problems of interpretation. Dr. Graves is concerned with the status of the so-called "public-relations counsel" whose services rendered to clients in the field of legislation allegedly comprise only a small part of their employment.[1] The problem of application is particularly perplexing with this group, for it is here that one encounters the publicist, the institutional advertiser whose attempts to influence legislation are tangential and operate more on the public than they do on Congress. For example, N. W. Ayers and Son, representing the National Association of Electric Companies, registered under section 308 but declared:

> The arrangement does not contemplate that registrant shall engage in lobbying as that term is commonly understood.... Under the arrangement registrant may, however, engage in publicity work which may aid or influence the passage or defeat of legislation pending from time to time before the Congress of the United States and affecting the electric industry.[2]

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[1] Graves, op. cit., p. 219.

[2] Form B-1231, filed April 22, 1948. See also form B-1324, filed July 12, 1948, by Frank Gavitt of Carl Byoir and Associates, representing Schenley Distillers Corp. for another important case in this difficult area.

One is hard-put to decide when publicity ceases and lobbying, within the terms of the act, begins. To advertise that electricity saves steps for the housewife or that milk is good for babies is probably advertising. But when the electric companies suggest that public power is a long first step to socialism, or the dairy industry complains that milk prices have not risen proportionately to those of other staples, then one might well decide that the bounds of institutional publicity had been crossed.

An essentially similar problem has been encountered in the administration of the reporting provisions of the Federal Corrupt Practices Act of 1925.[1] The Special Senate Committee which investigated campaign expenditures in the 1944 election found that:

> ... numerous organizations whose activities clearly were designed to influence the election claimed they were "educational" and not covered by the present law requiring reports of contributions and expenditures.... By "educational committee" is meant any committee engaged in propaganda activities ... which may influence the nomination or election of such candidates.[2]

If the words and phrases underlined above were replaced by the phrase "passage or defeat of legislation," one would have a rather accurate description of the difficulty of applying

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[1] United States Code, 1940, Title 2, Chap. 8, secs. 241-256.

[2] U. S. Congress, Senate, Special Committee to Investigate Presidential, Vice-Presidential, and Senatorial Campaign Expenditures in 1944, Report, 79th Cong., 1st Sess., S. Report 101 (Washington, Government Printing Office, 1945), p. 81. Underlining ours.

the Lobbying Act to institutional advertising, propaganda, and publicity.[1]

It is true that publicity is not "lobbying as that term is commonly understood." It is equally true, however, that general understanding of the term "lobbying" has lagged behind the development of modern techniques for influencing the legislative process. In any case, the Lobbying Act is silent on the circuitous approach to possible Congressional action through the medium of influencing public opinion. As a consequence, the application of that act to the public opinion "industry" has been a source of considerable confusion and conflict.

Other groups of lobbyists, real or alleged, have posed additional problems concerning the coverage of section 308. In numbers and importance, however, the attorneys, officials, and publicists have been the most troublesome.

The format of the individual registration Form B has itself been productive of considerable difficulty. After responding to two questions relating to his employer's name and address and to the persons in whose behalf "he appears or works," the registrant must specify "The duration of such employment." Replies to this question have ranged from the

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[1] The problem of expenditures for advertising and propaganda has been most marked in connection with group compliance under section 305. Therefore, further comment on this problem will be reserved until this compliance is discussed later in this chapter.

facetious to the inconclusive. As illustrative of the first possibility, one Thomas E. McGrath responded, "Decades past and hope for decades to come."[1] Many more registrants, however, reply, "indefinite," "not limited," "irregular," "no fixed term," or "until terminated."[2] Only a very few compliants reply specifically, usually with reference to either the contractual basis of their employment, or to the duration of a particular session of Congress.

The question itself is an apparently intentional borrowing from the state practice of requiring registrants to state the duration of their employment. On neither level has this type of question secured discriminating results.

The fourth question on Form B has also posed a number of problems: in it the registrant is asked to specify "How much he is paid and is to receive." Section 308 requires registration in advance of lobbying; as a consequence, many of the salary or expense figures cited on Form B are only approximate. In addition, a considerable number of registrants have indicated that their employment is on a contingent

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[1] On Form B-57, October 9, 1946, McGrath wrote: "Incidentally I want to go on record as violently protesting such cowardly vicious legislation as Public Law 601 ... which through legal chicanery cracks down on the small-fry lobbyist, so-called, but lets the big-shot lobbyist a la New York Times ... go scot-free. That's crooked politics, the curse of U. S. A." Mr. McGrath represents, "The Taxpayers of U. S. A."

[2] See Cong. Rec., vol. 94 (December 31, 1948), pp. 10447-49. Daily edition, for recent samples of this type of response.

basis and/or that their salaries would be determined later. Others serve on a per diem basis and their days of employment cannot, of course, be ascertained accurately in advance. A final difficulty is that many registrants, particularly lawyers, are paid general retainers, not all of which can be allocated as payment for lobbying. With these qualifications in mind, the following chart of lobbyists' salaries, as estimated by them, is instructive.

Table 2

Lobbyists' Salaries

Quarter	Number Registered	Estimated Annual Salaries
3rd, 4th, 1946	222	1,900,000
1st, 1947	436	2,864,000
2nd, 1947	184	688,000
3rd, 1947	56	136,000
4th, 1947	55	288,000
1st, 1948	191	1,072,000
2nd, 1948	157	1,080,000*

*No later tabulations are available.

(Source: Adapted from materials made available to author by Lobby Compliance Section, Department of Justice, Washington, D. C.)

On the basis of these salary estimates one can judge that lobbying is a relatively well-paid profession. The average estimated salary is slightly over $6,000 per year for

the 1,301 registrations included above. As already noted, some of these estimates include payment for services other than lobbying.

An analysis of the range of individual registrant's salaries is also instructive. The following chart includes salaries, whole retainers for all services, and approximate annual income based on stated per diem figures. This latter group has been converted to an annual figure by the use of a "reasonable days of activity" formula used by the Lobby Compliance Section of the Department of Justice.

Table 3

Range of Lobbyists Salaries
(As of August, 1948)

Salary Range	Number of Registrants in Range
$65,000 or over	1
50,000-64,000	3
40,000-49,000	6
35,000-39,000	9
30,000-34,000	2
25,000-29,000	17
20,000-24,000	15
15,000-19,000	50
10,000-14,000	131

(Source: Personal examination of photostats of registrations, Lobby Compliance Section, Department of Justice, Washington, D. C.)

The remainder of registered lobbyists earn less than $10,000, or are on a contingent or commission basis, or have simply not stated their salary on their registration. The majority of these, however, earn from $5,000 to $10,000 annually. Surprisingly few registered lobbyists have indicated that they are working voluntarily, or for relatively small remuneration.

Reservations are frequently attached to these salary statements by registrants, usually to the effect that the salary was not to be earned solely on the basis of the legislative services rendered. For example, Purcell L. Smith of the National Association of Electric Companies, whose stated salary of $65,000 is the highest yet recorded, insists that no more than twenty-five percent of his time can properly be allocated to "legislative matters."[1] In similar vein, J. Carter Fort, Vice-President and General Counsel in charge of the Law Department of the Association of American Railroads, lists his salary as $40,000 for all his work, including:

> ... appearances before the courts, the ICC, and other administrative tribunals, the preparation of legal opinions, and as a relatively small part, the presentation of views to Congress on matters affecting transportation.[2]

Occasionally an individual will only report that part of his total salary which he estimates can be ascribed to

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[1] On Form B-127, filed October 21, 1946.

[2] Form B-204, filed December 17, 1946.

activities covered by the Lobbying Act.[1] Occasionally, the question goes completely unanswered.[2]

Allocation of salaries has been one of the most perplexing problems to arise under the registration provisions of section 308. The states have attempted to meet it by making professional exemptions, but these exemptions extend to all registration requirements and not only to the reporting of salaries. It is, thus, only a partial solution and one which is not applicable to the federal problem.

The problem may, indeed, be insoluble. One can agree that time spent on lobbying is an inadequate gauge for the allocation of salary to compensation for lobbying services. Other than time reference, however, there does not seem to be any objective standard by which the value of the services performed can be judged.

The remaining items on Form B relate to amount and type of expenses for which the lobbyist expects to be reimbursed. The usual response is "actual expenses," or "out of pocket expenses," or "all legitimate expenses." These terms in themselves reveal nothing until they are compared

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[1] Mr. A. Yeaman for Brown and Williamson Tobacco Co., "not over $2,000 per annum allocable to legislative affairs." Cong. Rec., vol. 94 (July 26, 1948), p. 9547 Daily edition.

[2] John F. Rudy, National Federation of American Shipping, Inc., did not state his salary because "it is not believed that the duties performed ... come within the scope of the Lobbying Act." Ibid.

with the actual expenses reported in the lobbyist's quarterly statement filed on Form C.

Individual Quarterly Reports.--The quarterly report offers a means for cross-checking the entries made on the original registration. These quarterly reports have been received as indicated in the following table.

Table 4

Individual Quarterly Reports
(Form C)

Quarter	Cumulative Number of Individual Registrations (B)	Quarterly Reports Received (C)
3rd, 1946	26	147
4th, 1946	222	250
1st, 1947	658	568
2nd, 1947	842	617
3rd, 1947	898	557
4th, 1947	953	610
1st, 1948	1144	753
2nd, 1948	1307	594
3rd, 1948	1351	698

(Source: Personal examination of photostats of Forms B and C, Lobby Compliance Section, Department of Justice, Washington, D. C.)

If every registered lobbyist were active during every calendar quarter, the number of quarterly reports submitted would closely approximate the cumulative number of registered lobbyists, minus withdrawals. This has clearly not been the case.

There are two factors which account for this apparent non-compliance. Section 308 requires that a registrant submit a report for the preceding calendar quarter only "so long as his activity continues." Since Congress is not continuously in session, there are quarters in which some registrants do no lobbying. They would, therefore, not be required to render reports covering these quarters. The number of registrants also furnishes an imperfect measure of the number of lobbyists who are active at any given time. Many lobbyists are employed with reference only to particular measures, and for particular periods of time. When this employment terminates, they frequently neglect formally to withdraw their registrations. Consequently, while the registration lists probably do not include all permanent Washington representatives who should register, they do include a substantial number of individuals whose employment as lobbyists has ended.

These factors account for most of the seeming disparity between numbers of registrations and numbers of quarterly reports. There has been better compliance with the reporting requirements than there has been with those relating to registration. Many lobbyists certainly do not register, but those who do register have generally submitted quarterly reports for the quarters in which they have been active.

The quarterly report (Form C) requires "(1) A detailed report under oath of all money received and expended by him during the preceding calendar quarter." Unfortunately, this

question does not require the respondent to distinguish his salary from other receipts.[1] As a result, the quarterly salary is frequently omitted from the report, or when it is stated, the respondent frequently denies that the whole sum is in payment for lobbying services. A general idea of the financial data disclosed, however, can be culled from the following table. Salaries, where not included on Form C, are computed from the estimate or report included on Form B.

Table 5

Content of Individual Quarterly Reports*

Quarter	Number of Reports	Reported Quarterly Salary	Receipts Other than Salary	Quarterly Expenditures
3rd, 1946	147	180,000	165,000	135,000
4th, 1946	250	350,000	105,000	120,000
1946 Total	397	530,000	270,000	255,000
1st, 1947	568	900,000	360,000	260,000
2nd, 1947	617	1,000,000	425,000	275,000
3rd, 1947	557	490,000	320,000	300,000
4th, 1947	610	975,000	185,000	185,000
1947 Total	2,352	3,365,000	1,290,000	1,020,000
1st, 1948	753	1,085,000	650,000	355,000
2nd, 1948	594	1,080,000	370,000	355,000
2 Quarters 1948	1,347	2,165,000	1,020,000	710,000
Totals	4,096	6,060,000	2,580,000	1,985,000

*Figures are given to nearest $5,000.

(Source: Adapted from data supplied author by Lobby Compliance Section, Department of Justice, Washington, D. C.)

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[1] The form is defective in that it gives the respondent three lines on which to present this "detailed report." As a consequence, addenda, annexes, appendices, and supplements to the form are frequently received, thereby further complicating the problem of administration.

The relation of these figures to the salary estimates on the original registrations is quite close. The average annual salary computed on the basis of these 4,096 reports is approximately $6,000, only slightly below the figure reached on the basis of the salaries given on the B Forms.

While there is a close overall correlation between the salaries reported on Forms B and C, in individual cases there is frequently a sharp variation. Many quarterly reports do not include any salary figure, but will refer to the salary as stated on Form B. Then when one refers to the From B in question, he finds that no salary figure is included in it either.[1] By this interesting device, some individuals have avoided making any statement of their salaries for up to a year, although they registered and reported regularly.

The question of apportioning a part of the salary to legislative services arises on Form C as it does on Form B; the same groups pose the same problems. Lawyers on general retainers protest the difficulty of allocating their quarterly income, or claim that their legislative activities are so small as to constitute only a very minor part of their total employment. A typical report in this respect was filed by Mr. Howard O. Colgan, Jr., representing the Chase National Bank:

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[1] See, for example, quarterly report filed by E. A. Rumely, in Cong. Rec., 80th Cong., 1st Sess., vol. 93 (January 3, 1947), p. 68.

> As stated in his registration statement on Form B, registrant does not believe he is subject to the Federal Regulation of Lobbying Act.... If any of the registrant's activities are subject to the provisions of the Federal Regulation of Lobbying Act, the portion of the annual retained from the Chase National Bank ... based on an allocation of time was $250 during the second quarter of 1948, and disbursements pertaining to such activity were $11.32.[1]

Not only is the difficulty of allocating salary protested, but many quarterly reports allege, as does Mr. Colgan's, that their authors are not subject to the act at all. In sum, the problem is identical to that encountered in connection with the financial statements on Form B.

The other information required by Form C is somewhat less difficult to deal with. The individual is asked to submit a report of "all money received or expended by him" during the preceding quarter. In addition to salary, respondents generally state in varying detail the actual expenses incurred, and indicate under receipts that they have been reimbursed therefor. Occasionally a report will include truly monumental detail. Raymond E. Steele, representative of the National Fisheries Institute, faithfully records that he:

> ... spent 90 cents taxicab to Capital to secure copy of tidelands water bill in Judiciary Committee; $3.20 taxicabs to see committee clerks and discuss Marshall plan.[2]

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[1] Cong. Rec., vol. 94 (July 26, 1948), p. 8553.

[2] Cong. Rec., vol. 94 (May 5, 1948), p. 5521. Daily edition.

More frequently, however, the recitation of expenses is less specific. The usual report gives an overall figure as expenses, and under the heading "To whom paid," lists "Hotels, railroads, restaurants, and cab drivers," or meals, hotels, taxis, transportation, and tips," or some other combination of prosaic but necessary expenditures.[1]

The third question on Form C, "For what purposes," has also yielded little of significance. The usual response is "For personal expenses," or simply "subsistence," to use the rather stark terms of one report.[2]

The quarterly report form requires the reporting individual to give "The names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials." In a majority of reports, the reply is "None," although this is far from invariable. Some compliants list publication in union or association bulletins of a specialized nature, such as the CIO News, or the Townsend Weekly. Usually, however, only representatives of the larger groups and associations are able to list such publications.

Occasionally an individual reports as follows:

> News releases are sent to the Associated Press, INS, UP, and other national newspaper wire services by the

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[1] Form filed by Clyde T. Ellis, in Cong. Rec., vol. 93 (January 3, 1947), p. 64.

[2] Form filed by Joseph M. Lawrence, MD, ibid.

> association for publication in subscriber papers and magazines, some of which releases may contain material deemed to affect legislation directly or indirectly. Neither the association nor I have any means of ascertaining a complete list of the publications utilizing such releases.[1]

This statement highlights rather graphically the inutility of soliciting superficial information in lobbyists' reports. Certainly the name of the publication is of less importance than the content of the article or editorial involved, yet the Lobbying Act in its present form will not permit this kind of inquiry.

Similarly little purpose has been served by requiring the reporting individual to state "The proposed legislation he is employed to support or oppose." As with publications, only the representatives of the larger organizations tend to list specific items of legislation. Representatives of the smaller groups usually indicate only a general area of interest, such as "General tax-relief or reform,"[2] or "Any legislation affecting the real-estate industry."[3]

Even representatives of the larger groups have often responded only in a very general way. Many labor lobbyists,

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[1] Report of Lawrence V. Hanson, Cong. Rec., vol. 93 (January 3, 1947), p. 65. In more or less similar vein, Benjamin Marsh of the People's Lobby replied: "Have sent and distributed material to hundreds of papers, magazines, etc., but have not caused any to be published; it was intelligence on their part. Ibid., p. 67.

[2] Form C of National Tax Relief Coalition, ibid., p. 65.

[3] Form C of Albert A. Payne, ibid., p. 68.

for example, use an identical formula:

> Support all legislation favorable to the national peace, prosperity, security, democracy, and general welfare; oppose legislation detrimental to these objectives.[1]

Mr. Wilford King, of the Committee for Constitutional Government, reported similarly:

> Not employed for this purpose, but, incidentally, I occasionally oppose legislation which I believe to be anti-social and favor that which I believe to be socially beneficial.[2]

The lobbyists who list specific bills in which they are interested are in a distinct minority. The responses received have usually been so general as to be of little value in ascertaining what organizations are advocating or opposing particular measures. The information contained in individual registrations and quarterly reports is revealing in some respects, but for an understanding of the alignment of forces on any given piece of legislation one could reach more practical, and probably accurate conclusions by reading the Washington newspapers.

Group Compliance with Section 305.--The individual registrations and reports are, in fact, of less significance than the returns filed by the groups, organizations, associations, leagues, committees, and corporations which employ

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1 This formula, or a close variation of it, is used, to name but a few cases, by Nathan Cowan, ibid., p. 64, Diana Farnham, ibid., p. 66, William Hanscom, ibid., p. 66, T. R. Owens, ibid., p. 68.

2 Ibid., p. 66.

these individuals. For modern lobbying, despite a necessary utilization of individual agents for certain purposes, is pre-eminently a group activity.

Two questions arise regarding the response of these groups to the Regulation of Lobbying Act of 1946. It is first essential to know how generally they have complied with the requirements of the act. In determining the extent of group compliance, an effective cross-check on individual compliance can be had. Second, it is equally important to analyze the reports by which these groups have complied with the act. How much have they spent, and to what effect? From whom do they get their funds? How well do their reported expenditures tally with those reported by their agents? The answers to these questions are the keys to the success or to the failure of this first federal effort at regulation of lobbying.

Several different methods of determining the extent of organizational compliance are available. First, one can ascertain from individual lobbyists' registrations the number of organizations which are listed as employers. For the last two quarters of 1946 and all of 1947, one source has found a total of 951 individual registrations. These 951 individuals represented, according to their own sworn statements, a total of 662 organizations, groups, or associations.[1] Extending

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[1] "C Q Lobbyist Roundup," Congressional Quarterly, vol. 3 (4th quarter, 1947), p. 759. The present writer's total is 953 individual registrations, a difference of only two.

this analysis through the first quarter of 1948, an additional 179 individuals registered, professedly representing 157 organizations.[1] According to these figures, during the first year and three-quarters of the Lobbying Act's operation a total of 1,130 individuals representing 839 employers had registered.

This number of employers may seem impressive when one recalls that in 1941 Dr. Blaisdell listed only 381 organizations with permanent representatives at Washington.[2] However, there is convincing evidence that the number of lobbyists and pressure groups in Washington has increased appreciably since 1941. It has been estimated that the figure doubled during the course of the war and increased by half again during the first year of reconversion.[3]

But this is only an estimate, an informed guess. There is no certain knowledge as to exactly how many organizations currently maintain representation in Washington, to say nothing of pressure groups which operate from other locations without permanent agents in Washington. Without an approximate

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[1] "Lobbyist Registrations," Congressional Quarterly, vol. 4 (1st quarter, 1948), p. s40. The present writer lists 191 registrations, again a relatively slight disparity.

[2] Blaisdell and Greverus, op. cit., pp. 197-201. It was not implied that the list was complete or exhaustive, however.

[3] F. M. Brewer, "Congressional Lobbying," Editorial Research Reports, vol. 1 (May 8, 1946), no. 18.

idea of the number of organizations at least potentially subject to the Lobbying Act, any discussion of organizational compliance with the act is largely a matter of hearsay.

Working on this premise, W. Brooke Graves of the Legislative Reference Service of the Library of Congress has painstakingly prepared an extensive list of interest and pressure group organizations operating on a national scale. The list was derived from careful analysis of registrations under the Lobbying Act and of individual appearances before selected committees of the Senate and House, and from examination of the Washington phone book under such key headings as "American," "Association," "Federal," "National," and so on.[1] Dr. Graves does not maintain that his list is all-inclusive or comprehensive, but it clearly includes a great majority of the more important groups operating in Washington at the present time.

The complete list of 1,807 organizations, broken down into 27 different categories of interests, furnishes a fairly well-developed instrument for the analysis of organizational compliance with the Lobbying Act. Of the 1,807 organizations listed, 667 "registered" in 1947 and 725 "registered" in 1948. A total of 835 groups were not registered during either

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1 Graves, op. cit., p. 104. Although the phone book method might be questioned, less than one-third of the groups listed were found there exclusively. The check of registrations and appearances, certainly more reliable, yielded larger results.

year. Representatives of these 1,807 organizations made a total of 392 committee appearances before the selected committees on which the analysis is based, but 298 of these appearances were made by representatives of organizations which had not registered in either 1947 or 1948.[1]

Dr. Graves uses the term "registered" without indicating whether he intends it to mean that the organization has itself submitted quarterly reports under section 305, or whether he intends it to mean that its representatives have registered individually under section 308. The number of registrations he reports is so large as to suggest that his figures are based on the number of employers listed by individual registrants rather than on reports rendered by the organizations which these individuals represent.[2] Actually, this somewhat misleading reference makes his analysis all the stronger since far fewer organizations have filed quarterly reports than have been named as employers by individual lobbyists.

The following table indicates the number of quarterly reports filed by organizations under section 305. It illustrates the gross disparity between individual and organizational compliance.

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[1] Ibid., pp. 107-108, and Appendix C.

[2] Notice the close correspondence between his total of 667 registrations in 1947 and Congressional Quarterly's figure of 662, based on employers listed by individuals.

Table 6

Quarterly Organizational Reports
(Section 305)

Quarter	Number Received	Cumulative Total
3rd, 1946	46	46
4th, 1946	92	138
1st, 1947	157	295
2nd, 1947	157	452
3rd, 1947	142	594
4th, 1947	185	779
1st, 1948	237	1,016
2nd, 1948	36	1,052
3rd, 1948	194	1,246

(Figures for 3rd quarter, 1948, are as of August 12, 1948. Approximately 100 reports have since been received.)

(Source: Personal examination of photostats, Lobby Compliance Section, Department of Justice, Washington, D. C.)

The sum of 1,246 organizational reports does not compare favorably with the corresponding total of 4,096 submitted by individuals.

Many of these quarterly reports were, of course, rendered by the same organizations for different quarters. Thus, only 641 reports were received during all of 1,947, and even this figure must be substantially reduced if one is to arrive at a fairly accurate idea of the number of

organizations which filed reports at any time during 1947.[1] And so while Dr. Graves presents evidence suggesting that almost half the organizations on his conservative list have not registered, specific organizational compliance with section 305 has been even less than his figures indicate.[2]

The reasons for this poor compliance with section 305 compare to those offered in explanation of the incomplete individual compliance with section 308. Many organizations feel that it is possible to employ registered lobbyists without themselves becoming subject to the reporting provisions of section 305, as qualified by the "principal purpose" clause of section 307. Beyond honest doubt as to the applicability of section 305, however, one must also conclude that there has been frequent and deliberate evasion of the terms of the section by organizations which, by any reasonably broad interpretation, should comply with its requirements. One is further justified in concluding, as the writer does, that organizational evasion has carried individual evasion in its train. The 1,351 individual registrations received to date do not nearly represent the full number of individuals who

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[1] Indicative of how the figure must be reduced is the fact that the 647 reports of 1947 were rendered by only 321 organizations. This data was supplied the author by the Lobby Compliance Section of the Department of Justice.

[2] The list is conservative in that it does not contain state organizations, and many "minor" federal organizations which undoubtedly employ lobbyists. The new Department of Commerce list of trade associations alone will include over 3,000 entries. See Graves, op. cit., p. 105, note 4.

are employed to influence the passage or defeat of legislation before Congress.

Turning from the somewhat problematical mathematics of determining the extent of compliance to an analysis of what this compliance has revealed, one can find proof for any one of a number of theses. There are striking indications of the breadth of activity, of the resourcefulness, and of the wealth of the modern pressure group. There are also indications of the adroitness with which many of these organizations have avoided the clear requirements of the Lobbying Act. It is with these facets of compliance with the act that the next few pages are concerned.

The most impelling impression which one carries away from an examination of the financial reports of these groups is that modern lobbying is big, very big business. The following table is based on the reports which compliant groups have themselves made pursuant to section 305.

Table 7

Analysis of Quarterly Reports by Organizations*

Quarter	Contributions (regular and retroactive filings)	Expenditures (regular and retroactive filings)
3rd, 1946	445,000	730,000
4th, 1946	1,165,000	1,565,000
1946	1,610,000	2,295,000

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Table 7 (Continued)

Quarter	Contributions (regular and retro-active filings)	Expenditures (regular and retro-active filings)
1st, 1947	3,725,000	1,370,000
2nd, 1947	4,560,000	2,520,000
3rd, 1947	3,065,000	1,400,000
4th, 1947	3,470,000	1,680,000
1947	14,820,000	6,970,000
1st, 1948	3,290,000	1,990,000
2nd, 1948	2,155,000	1,755,000
1948 (2 quarters)	5,445,000	3,745,000
2 year totals	21,875,000	13,010,000

*Figures are given to nearest $5,000.

(Source: Adapted from data supplied author by Lobby Compliance Section, Department of Justice, Washington, D. C.

Several necessary reservations must be made to these figures. Some organizations have not only submitted statements of contributions and expenditures for lobbying purposes, but have included in their reports their entire organizational budgets, many parts of which could not reasonably be allocated to lobbying. Other organizations submitted reports in which no contributions or lobbying expenditures whatever were reported, although many doubtless should have been.[1]

[1] Data in the Lobby Compliance Section indicates that only 216 of the 321 organizations to file in 1947 included statements of expenditures for lobbying purposes.

Both these types of reports are included in the compilation above. It is impossible to determine how far one type balances the other.

The impact of these enormous sums is maximized when one remembers that they are based only on the reports of the relatively few organizations which have complied with section 305. One can safely hazard the guess that unreported contributions and expenditures for purposes properly within the purview of the Lobbying Act would swell these figures to twice their present size.

Indicative of the large sums reported is the fact that in regular and retroactive filings for the year 1947, a total of fourteen organizations admitted to expenditures of over $100,000 during the year. These organizations and their expenditures are set forth below.

Table 8

Organizations Spending Over $100,000 in 1947

Organization	Amount Reported
American Federation of Labor	$834,565.38
Committee for Constitutional Government	460,908,11
Citizens Committee on Displaced Persons	385,041.89
Townsend National Recovery Plan	343,292.05
National Rural Electric Cooperative Association	302,181.75
National Association of Electric Companies	256,742.14
National Economic Council	190,815.49
Citizens National Committee	160,992.70
National Association of Manufacturers	146,186.12
National Small Business Men's Association	126,881.18
United World Federalists	121,975.66
National Home and Property Owners Foundation	119,506.90
National Association of Real Estate Boards, Washington Committee	115,330.01
Civil Rights Congress	103,603.25

(Source: Adapted from tabulation supplied to author by Lobby Compliance Section, Department of Justice, Washington, D. C.)

In addition to these fourteen groups, forty-six others reported expenditures of between $20,000 and $100,000 in 1947, while 158 others reported that they had spent less than $20,000 during the year.[1] A fair average expenditure is difficult to arrive at because of the concentration in the lower brackets.

Because of the ambiguities of the act and the manifest imperfections of the Form A devised by the Clerk of the House and the Secretary of the Senate, it is not easy to evaluate the results secured under section 305. These difficulties might be called "official" in origin. But beyond these, there have been other problems posed by those groups which, while complying with section 305, have complied in such a way as to leave unanswered the questions of how much they had received and spent for the purposes of influencing legislation. A few illustrations drawn from the reports which have been filed should serve to indicate several of the particular problems which have arisen, and to show in concrete form some of the questions of applicability which have hitherto been discussed only in the abstract.[2]

Case Studies in Group Compliance: The Committee for Constitutional Government.--Numerous compliant organizations

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[1] Data supplied to writer by Lobby Compliance Section.

[2] The following case studies are drawn from the writer's personal examination of the reports filed by these various groups.

have reacted peculiarly to the requirements of section 305, but none more peculiarly than the Committee for Constitutional Government. This organization was among the first to comply with section 305, filing its first quarterly report on October 7, 1946.[1] The first question on Form A asks the respondent to list the names and addresses of all persons who have made contributions of $500 or more during the preceding quarter, or since the effective date of the act. The Committee's response was "None." The second entry on Form A should include the total of all other contributions of less than $500. The Committee's reply was "None." Item three asks for the total of all contributions, including those reported in previous statements. Again, the response was "None."

On the expenditure side, this procedure was reversed. Question (4) requires the name and address of every person to whom more than $10 has been disbursed, along with the "amount, date, and purpose of such expenditure." Here the return carefully itemized expenses, largely for books and printing, to the total of $97,744.55. Under the fifth entry, which requires only the aggregate sum of all expenditures under $10, the return details individual disbursements totalling $64.57.

In the next five quarterly reports the same pattern was followed.[2] No contributions of any kind were reported,

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[1] Form A-7 (October 7, 1946).

[2] Forms A-95 (January 9, 1947); A-223 (April 9, 1947); A-401 (July 8, 1947); A-503 (October 8, 1947); A-691 (January 9, 1948).

but all expenditures, whether smaller or larger than $10, were carefully itemized. From their reports, it would appear that the Committee had spent $460,908.11 in 1947, but that it had not received any contributions at all!

Finally, on April 6, 1948, the Committee filed a report in which it indicated that it had received $197,675.17 from 10,396 individual contributors during 1947.[1] The total was broken down into numbers of contributors in each of several categories: under $10, $11-25, $26-50, $51-100, and $101-490. The number of contributors and the aggregate of their contributions were computed for each category. No contributions larger than $500 were reported, however. As a consequence, the Committee was not obliged to disclose the identity of any of its contributors. Subsequent reports have been filed by the Committee, and they have included statements of contributions. But none of these contributions exceeded $490, and only aggregate figures were reported.[2]

For the first year and one-half of the Lobbying Act's operation, the Committee for Constitutional Government failed to render fully and completely the information required under section 305. The key to the Committee's more recent disclosure of contributions can be found in the following

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[1] Form A-868 (April 6, 1948).

[2] Forms A-940 (April 10, 1948) and A-1169 (July 8, 1948). The writer is informed that the Committee's constitution has been amended to forbid the receipt of contributions larger than $490, thereby avoiding disclosure of the donor. Interview with Mr. Norman Futor, Department of Justice, August 12, 1948.

remarkable letter addressed to the Clerk of the House by Mr. Sumner Gerard, Treasurer of the Committee:

> Recently, at the request of T. Vincent Quinn, acting Attorney General, representatives of the F.B.I. called upon us to ask for further information with reference to Form A which we file under the Lobbying Act.
>
> On Form A, we misunderstood the second question as referring to amounts received and reported upon as $500 or more. However, from the information given us, we now understand that in the second question information is to be supplied as to all contributions of $490 and less, and other income....
>
> We are glad to supply this, as we publish the data on income. It was a misunderstanding of what was desired under the question.[1]

Legally, the Committee has every right to refuse contributions larger than $490. It is hardly extravagant, however, to suggest that the motives behind this policy are not above reproach. The fact remains that for one and one-half years the Committee was not in full compliance with the act. Today, although complying with the literal terms of the act, the Committee has still not disclosed the names of any of its contributors. The language of section 305 and the resourcefulness of the Committee have in this case combined to defeat one of the paramount purposes for which the Lobbying Act was enacted.

Again, reference to the work of the Special Senate Campaign Expenditures Committee of 1944-45 is instructive. The Committee for Constitutional Government refused to disclose a list of contributors as requested by the Senate

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[1] Attached to Form A-868.

Committee, maintaining that it "spent no money, nor used nor allowed to be used any of its facilities in support of or against any candidate or party."[1] More generally, the Senate Committee found that in the reports filed under the Corrupt Practices Act, individual contributors were frequently listed as "anonymous," despite the act's clear requirement that the identity of all contributors of over $100 be disclosed.[2]

Reports under section 305 of the Lobbying Act have posed much the same problem. Numerous organizations, of which the Committee for Constitutional Government is but an arch example, have failed to disclose the identity of contributors of over $500, or have adopted the policy of refusing to accept contributions of $500 or more. The first type of evasion can be met only by vigorous enforcement; the second, by amending the $500 figure downward to such a level that it would not be economically feasible for the group concerned to refuse contributions above that level.

The Transport Association of America.--The case discussed above is illustrative of the fairly large group of reports which leave several of the questions on Form A unanswered. The report of the Transport Association of America

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[1] U. S. Congress, Senate, Special Committee to Investigate Presidential, Vice-Presidential, and Senatorial Campaign Expenditures in 1944, Report, 79th Cong., 1st Sess., S. Report 101 (Washington, Government Printing Office, 1945), p. 10.

[2] Ibid., p. 78.

("Dedicated to Private Ownership of all forms of Transportation") exemplifies a diametrically opposed practice, one which has aptly been called "evasion by over-disclosure."

This group first reported under section 305 in July, 1948.[1] Its report, unsigned and un-notarized, had no entries on it except "see attached exhibits." Two sheets labelled "Exhibit I" listed total receipts of $90,166.13 for the quarter and specified the names of ten organizations which had made contributions larger than $500. "Exhibit II" was a photostatic copy of the daily journal of the Association from the effective date of the act through June 30, 1948. This exhibit comprised a pile of large ledger-sized photostats approximately six inches high. Every disbursement, no matter how small, was listed.

There is nothing legally wrong with submitting quarterly reports of several hundred pages. This information may be uncalled for and completely superfluous, but the respondent has the right to submit it if he so desires. Nevertheless, one can question the spirit in which such reports are rendered. It is not too much to ask that the information reported fall within the confines of the form supplied. Certainly the submission of a volume per quarter is not calculated to simplify the already difficult task of administering the Lobbying Act.[2]

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[1] Form A-1222 (July 15, 1948).

[2] Again, the experience under the Corrupt Practices Act is informative. The Senate Campaign Expenditures Committee reported in 1945 that one of its major investigatory

The National Association of Electric Companies.--Over-disclosure was only slightly less present in the first report filed by the National Association of Electric Companies in October, 1946.[1] After noting one contribution of over $500 and other contributions totalling $87,725.49, the Association reported expenditures totalling $192,025.22. The disparity is marked, to say the least.

The report declared that the Association was filing "very willingly," but that it:

> ... seriously questions whether and to what extent the act applies to this Association. The scope of that title is not clearly stated, and the forms have been prepared without the benefit of official interpretation.

Attached to the report were thirty-six pages on which the Association listed every expenditure which it had made since January 1, 1946. No item was too small. On September 30th, for example, the interested observer can find that the Association spent 97 cents for red envelopes. Not all the items were that small, however. On the same day, $2,200,11

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problems was: "1. Frequently the statements listed every single contributor, not merely those giving $100 or more as required by law. This caused needless effort and consumed much time in thumbing through statements in order to select the names and addresses of those contributing the amount sought to be publicized by the statute, leaving the very definite impression in some cases that the deluge of detailed small contributions was designed to discourage scrutiny to discover the large contributors." 79th Cong., 1st Sess., S. Report 101, pp. 77-78.

[1] Form A-15 (October 9, 1946).

was paid to N. W. Ayer and Sons, Inc., for what were listed as "consulting services."

In an organization as large as the National Association of Electric Companies, there will naturally be expenditures whose legislative or non-legislative character will be hard to determine. Nevertheless, the ambiguity of the act does not warrant this complete absence of effort to make the information reported conform to the questions on the report form.

The Association of American Railroads.--The largest problems which have arisen under section 305 have been concerned less with the form in which reports were filed than with the content of the information reported. Several of these problems are present in the compliance of the American Association of Railroads.[1]

This organization's report listed twenty-three class A railroads which contributed over $500 to it during the preceding quarter. Total receipts were given as $39,803.27.

Expenditures are also properly itemized and total, without any indication of special funds or reserves, exactly $39,803.27. Passing over this remarkable piece of balanced budgeting without comment, one notes that none of the specific expenditures are devoted to advertising.

Any casual periodical reader will have noticed the

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[1] Form A-845 (April 8, 1948).

frequent half and full page advertisements sponsored by the Association. Is the publication of these advertisements within the purview of the Federal Regulation of Lobbying Act, and should their cost be included in a statement submitted under section 305? There is, of course, no simple answer. Does an advertisement which declares that the railroads are earning only six cents per dollar invested "influence, directly or indirectly," the passage or defeat of legislation before Congress? It might. If Congress were considering legislation affecting the financial status of the railroads, if this advertisement led to an avalanche of mail to Congressmen, and if a court were to give a broad interpretation to the word "indirectly," then this advertisement might well be considered as an attempt to influence legislation. Franklin D. Roosevelt might have called such speculation "iffy," but the situation presented is far from hypothetical.

This knotty issue of institutional advertising is unresolved as it relates to reports under section 305 of the Lobbying Act. Many organizations have chosen to avoid any controversy by simply reporting their expenditures for advertising of all kinds. The American Federation of Labor, for example, reported expenditures of $423,821.58 for newspaper advertising and $322,839.26 for radio advertising in its unsuccessful attempt to defeat the Taft-Hartley Act in

1947.[1] On a somewhat more modest scale, the National Economic Council reported the payment of $40,201.19 in advertising agency fees in 1947.[2]

There is nothing in the reports of the Joint Committee on the Organization of Congress or in the Congressional debates on the lobbying bill which would indicate whether or not such expenditures were intended to be included in the reports made under section 305. Neither the Congress nor the Lobby Compliance Section of the Department of Justice has as yet found a satisfactory solution to the problem. Until some formula is devised, many organizations will undoubtedly continue to exclude all of their advertising expenditures from their quarterly reports.

One must agree, however, with the Report of the Special Senate Campaign Expenditures Committee of 1946 which declared:

> Many committees which influence Federal elections have claimed that their activities are "educational" or "non-political" and in consequence have denied any obligation to file required statements of contributions and expenditures. Such ex parte allegations are subject to suspicion, and where doubt exists as to their truth, sound public policy calls for disclosure of the facts.[3]

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[1] Forms A-407 (July 11, 1957) and A-571 (October 15, 1947). In this case, of course, the advertising was directly intended to influence legislation.

[2] Form A-742 (December, 1947). The report is not specifically dated.

[3] U. S. Congress, Senate, Special Committee to Investigate Senatorial Campaign Expenditures, 1946, Report, 80th Cong., 1st Sess., Report no. 1, part 2 (Washington, Government Printing Office, 1947), p. 36. Underlining ours.

Replace "elections" with "legislation," and the statement is well applicable to the reporting of public relations expenditures under section 305 of the Lobbying Act. This publicity is "the least that a democracy should demand."[1]

The National Association of Manufacturers.--The case of the National Association of Manufacturers (NAM) is both interesting in its own right and important to an understanding of the Regulation of Lobbying Act. It demonstrates how official action can stimulate compliance with the law. It illustrates the problems of coverage arising under section 305. It lends insight into the manifold activities of what might well be the quintessential pressure group of our time.

The NAM filed a report in April, 1948, but not until it had registered sharp protests as to the applicability of the Lobbying Act to its activities. Informal conferences between NAM counsel and representatives of the Lobby Compliance Section of the Department of Justice during December, 1947, had no tangible results. The NAM refused to submit a report under section 305 on the grounds that the influencing of legislation had not been, nor was it then, either the principal or the most important purpose of the Association.[2]

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[1] 79th Cong., 1st Sess., S. Report 101, p. 7, citing Professor Louise Overacker (source unstated).

[2] Individual employees of the NAM had nevertheless registered under section 308 during 1947.

At a later conference on January 21, 1948, NAM counsel were informed by representatives of the Lobby Compliance Section that the Association had not been in full compliance with the Lobbying Act as interpreted by the Department of Justice, and they were again requested to submit reports under section 305.

On January 28th, the Association agreed to file such a report, but at the same time served notice that it had filed an action in the District Court for the District of Columbia "seeking clarification of the law."[1]

This report was finally submitted to the Clerk of the House on April 29, 1948.[2] Attached was a letter signed by Raymond S. Smethurst, counsel for the Association, in which he again declared that according to advice received by the NAM, the law applied only to persons and groups whose principal purpose was the influencing of legislation. "Such," he insisted, "was not the principal purpose or activity of the NAM." He continued:

> In filing the statement attached, the Association does not admit any statutory obligation to file such report. Nor does the Association represent that the information supplied is as complete, or in such form or detail, as would seem to be required if it should later be determined by the Courts that the Association is required by law to register and/or file reports pursuant to Section 305 of the Act.

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[1] Letter of Raymond S. Smethurst to Clerk of the House, April 29, 1948. This court action is still pending (March, 1949).

[2] Form A-1000, and accompanying documents. (April 29, 1948).

The statement filed by the Association in conjunction with its report described the Association and explained its purposes. It was:

> ... a mutual and co-operative organization of American manufacturers ... for the fostering of their trade, business, and financial interests, to reform abuses relative thereto [and] to secure freedom from unlawful and unjust exactions.

More generally, its purposes were:

> ... the promotion of the industrial interests of the United States, the fostering of the domestic and foreign commerce of the United States, the betterment of the relations between employer and employee, the dissemination of information among the public with respect to the principles of individual liberty and ownership of property, the support of legislation in furtherance of these principles and opposition to legislation in derogation thereof....

Part II of the carefully phrased statement was entitled "Legislative Activities." At the outset, the statement declared that the Association assumed that section 305, qualified by section 307, was not intended to be construed broadly. If it were, "important Constitutional questions of involving freedom of speech, assembly, and the press" would be raised. It seemed reasonable to assume that Congress had not intended such a broad application of section 305 but had, on the contrary:

> ... intended to reach and include activities which seek more directly and specifically to secure the support or opposition of individual members of Congress toward legislation actually pending in either House. Such an interpretation, in addition to avoiding constitutional questions, is more nearly in accord with the general concept of 'lobbying.'

The definition of lobbying suggested by the NAM simply does not square with the realities of modern pressure group techniques. These techniques are directed to the securing of public support as much as they are directed to securing the support of the individual legislator. The presumption that Congress did not intend to reach the former activities rests on a strained and narrow interpretation of Congressional intent.[1] If there is such a thing as a "general concept of lobbying" along the lines proposed by the NAM, there is little evidence that Congress used this concept in writing the Regulation of Lobbying Act.

In undertaking to define "legislative activity" for purposes of compliance with the act, the Association sketched its general pattern of operations. First, Association policy respecting legislation was formulated. Second, "understanding and acceptance" of this policy was developed among members of the Association. Third, the Association then undertook to inform the general public of the import and possible effects of proposed legislation or of general questions of public policy. This was done with the "definite object of gaining public acceptance of the principles or viewpoint of the

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[1] See 79th Cong., 2d Sess., S. Report 1011, p. 26, for an expression of the views of Congress. Note the reference to "professionally inspired efforts to put pressure upon Congress," and to "mass means of communication and the art of public relations" as distorting the pure expression of public expression. These references certainly indicate a far different Congressional definition of lobbying and a broader intent for section 305 than the NAM was willing to admit.

manufacturers." Fourth, the Association gathered and reported information on the scope, effect, and prospects of legislation of particular interest to manufacturers. And finally, the Association conceded that it undertook:

> 5. Direct efforts to influence legislation, on which the Association formally, officially, and publicly has taken a definite position or attitude by communication of that position to members of Congress in the form of letters from officers of the Association, by appearances of witnesses representing the Association before Committees of Congress in public hearings, by personal visits to members of Congress by members of the Washington office staff of the Association (registered as individuals under Title III), and by direct communication to members of the Association from time to time suggesting that if they have a viewpoint with respect to particular legislation pending in Congress, they communicate their viewpoint to their representatives.

The Association took the view that only a part of the activities listed under point 5 were necessarily covered by the Lobbying Act. But at the same time it conceded that whenever any legislation became the subject of the fifth group of activities, then "some or all of the preceding activities" in the other groups might be considered subject to the Lobbying Act as well.

In conclusion, however, the Association maintained that apart from the fifth group of activities, it was:

> ... the sum total of activity of all members of the Association, individually and independently exercising their right of petition, which constitutes by far the greater proportion of time and effort expended on legislative matters.

On this general basis, the Association attempted to describe which of its specific activities were "legislative,"

and to apportion its receipts and expenditures accordingly. The apportionments reported in the first report filed under section 305 can be quickly summarized. As regards receipts, the Association declared that no income was received or earmarked for the specific purpose of influencing legislation. Designation of any part of income as intended for legislative purposes would be "arbitrary and entirely theoretical." Therefore, only the total receipts for the year were indicated.

Concerning expenditures, the report was more explicit. After examining the activities of its several main departments on the basis of the five types of activities outlined above, the Association arrived at a percentage of expenditure which it ascribed to "legislative activity expense."[1] "We have," noted the report, "sought to err on the side of liberality by including doubtful items" in the legislative category.

To cite a few examples of the resulting figures, 9.1 percent of the expenditures of the Government Finance Division were reported as legislative expenditures. The Governmental Relations Division's budget similarly allocated 26.58 percent. For the several operating divisions, with the notable exception of the Public Relations Division, the report conceded

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[1] An enumeration of the principal departments of the NAM gives some indication of the breadth of the organization: Government Finance, Industrial Relations, Governmental Relations, Law, International Economic Relations, Industrial Capital, Patents and Research, Public Relations, and Social Security. This enumeration is included in the NAM report.

total direct legislative expenditures of $85,231.52 out of a total budget of $670,921.96 for these divisions. To these "direct legislative expenditures," the Association gratuitously added $60,954.60 of its administrative and overhead costs, giving an overall total of $146,186.12 which it reported under section 305.

More impressive than these figures, however, was the fact that NAM's 1947 program was budgeted at $2,364,105.27, of which the $85,231.52 expended for direct legislative purposes constituted only 3.6 percent. The "Public Relations Program" was considered separately, and no part of its $1,947,365.34 budget was described as legislative. As a consequence, only 1.97 percent of the total 1947 NAM expenditures of $4,311,470.61 was reported as having been for direct legislative expenditures. If such percentages determined the meaning of "principal purpose," then the NAM with 1.97 percent of its budget devoted to legislative expenditures might not come within the terms of the Lobbying Act. But surely the fact that the Association by its own admission spent at least $85,231.52 on legislative matters is of greater importance than the fact that this figure represents only a relatively small part of the Association's total expenditures.

The perplexing problem of institutional advertising is raised particularly graphically in the case of the NAM because of the large outlays made by the Association for this purpose. The Association has admitted upon occasion that its

advertising is directed to the passage or defeat of legislation before Congress. On April 23, 1946, for example, Robert R. Wason, then President of the Association, testified before the Senate Banking and Currency Committee that his organization had spent $395,850, "largely on advertising," during the course of its campaign to curb the OPA.[1] In the report which it filed under the Lobbying Act, the Association refused to admit that its public relations program might have a legislative effect, although it did at least indicate in round figures how extensive the program was. This stand begs the question of whether or not programs of this type are within the reach of the Lobbying Act, but it is certainly more reasonable and honest than the complete non-disclosure of public relations expenditures which has marred the reports of several other compliants.

The Administration of the Lobbying Act

The preceding case studies give some indication of the wide range of problems which have arisen during the first two and one-half years of the act's existence. How have these problems been met officially? How thoroughly and vigorously has the act been enforced?

At the outset it was noted that no specific agency of enforcement was provided for in the act. The Clerk of the House and the Secretary of the Senate were charged with

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[1] Brewer, op. cit., p. 319.

the responsibility of receiving registrations and reports, but their function in this regard is largely clerical.[1] Although the state experience had amply demonstrated the necessity of systematic enforcement by a responsible official, the Regulation of Lobbying Act was silent in this respect. It was presumed that enforcement would ultimately fall to the Department of Justice and the Attorney-General, but even this minimal statement was not included in the act.

The Department of Justice made no early effort to contribute to the administration of the act. It will be remembered that the Attorney-General refused the initial requests of the Clerk of the House and the Secretary of the Senate for an interpretation of the act on the grounds that the whole matter was Congressional rather than executive. He continued these refusals throughout 1946 and most of 1947. As a result, the Clerk and the Secretary were unable to advise any individuals or groups whether the act applied to them or not.

This failure to make an official interpretation of the act undoubtedly had a deleterious effect on compliance. Many organizations, uncertain as to the meaning of the act,

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[1] Indicative of the hurried drafting of the act is the fact that reports under section 308 must be addressed to both the Clerk of the House and the Secretary of the Senate, whereas reports under section 305 go only to the Clerk. The composite origins of the act explain this disparity, which does not appear to have any other justification.

hesitated to submit quarterly reports for fear that such compliance would imperil their tax-free status.[1] Many other organizations simply did not file reports on the grounds that their principal purpose was not the influencing of legislation.

Was compliance poor because the passage of the Lobbying Act had frightened many pressure groups out of existence? To the contrary, there is evidence that after 1946 lobbying gained rather than waned. Arthur Krock reported in mid-1947:

> Observers at the Capitol confirm the statement that lobbying with the Eightieth Congress was the largest and most active in years.[2]

One can summarize the first year of the Lobbying Act's existence as a year of non-enforcement and consequent non-compliance, despite the fact that there was a particular abundance of lobbying before Congress.

On October 7, 1947, Attorney-General Tom Clark announced the appointment of Irving R. Kaufman as his Special Assistant. Mr. Kaufman had served from 1935 to 1940 as Assistant United States District Attorney for the Southern District of New York, during which time he had prosecuted the McKesson-Robbins and insurance fraud ring cases. According

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[1] Detroit News, October 9, 1946.

[2] New York Times, July 29, 1947, p. 20. Brewer, op. cit., p. 318, makes the same statement for the first session of the Eightieth Congress.

to the Attorney-General's unobtrusive announcement, Mr. Kaufman had been appointed to handle "special legal matters" for him.[1]

Two and one-half months later, the nature of these "special legal matters" was made public. Mr. Kaufman had been appointed to head an intensive inquiry into compliance with the Regulation of Lobbying Act. Spurred by President Truman's denunciation of the "brazen" activities of the real estate lobby in connection with the Rent Control bill of 1947, the Attorney General had established a Lobby Compliance Section in the Department of Justice to conduct the inquiry. It was disclosed that F.B.I. agents were already engaged in obtaining evidence of violations of the Lobbying Act.[2]

Viewed in the brief retrospect of slightly more than one year, the appointment of Mr. Kaufman and the establishment of the Lobby Compliance Section had four principal effects: first, it provided a specific agency which had no other responsibility than the enforcement of the act. In comparison to the system prevailing in the states, where general authority is usually vested in the state attorney general, this was a unique development. It provided a single agency which could give undivided attention to a lobbying law, inquiring into the law's operation rather than merely prosecuting violations

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[1] New York Times, October 8, 1947, p. 27.

[2] New York Times, December 26, 1947, p. 1.

as they might arise. It provided positive rather than passive administration. The staff of the Lobby Compliance Section remained small, comprising only Mr. Kaufman, a maximum of eight attorneys, and the usual secretarial help. Nevertheless, the volume and caliber of the work performed by this staff was impressive.

The establishment of the Lobby Compliance Section had a second important effect; it provided a means by which an official interpretation of the act could be formulated. Not only did the Section give its opinion of the applicability of the act upon request in particular cases, but it also developed a general formula on the basis of which the act was to be enforced. This formula was primarily concerned with the meaning of the "principal purpose" clause of section 307. It was expressed by Mr. Kaufman as follows:

> It is our position that the phrase "principal purpose" means any purpose which is not merely incidental to the activities of the person or the organization in question. Any other interpretation would make the act meaningless and ineffective and would clearly defeat the expressed intention of Congress....
>
> Many organizations and individuals have not filed statements as required because they claim that "principal" means "primary" or "major." Our interpretation is amply substantiated by the legislative history of the act and by decisional law. This view, in our opinion, removes any doubt as to those who are covered by the act. We think that a judicial interpretation will support our view.[1]

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[1] U. S. Congress, Senate, Committee on Expenditures in the Executive Departments, Hearings on Evaluation of Legislative Reorganization Act of 1946, 80th Cong., 2d Sess. (Washington, Government Printing Office, 1948), p. 89 (February 17, 1948).

On the question of advertising campaigns, of which the purpose was to get people to "exert pressures or make their desires known to the Members of Congress," Mr. Kaufman declared:

> I would say that it certainly comes under the heading of lobbying, and I would say that if an association engages in such activity, and their lobbying purposes are not merely incidental to their major activities, they would be required to file and register under the act.[1]

Mr. Kaufman does not answer the question posed by groups such as the NAM, whose advertising is usually directed more to the creation of a general state of opinion than it is to the stimulation of specific letter-writing campaigns. As indicated heretofore, this problem remains substantially unresolved.

The Lobby Compliance Section did, nevertheless, render a valuable service by finally announcing a general interpretation of the "principal purpose" clause so that interested groups and individuals might better know whether the act applied to them or not.

A third result of the establishment of the Section was a prompt and appreciable increase in compliance, particularly in organizational compliance with section 305. The Lobby Compliance Section was concerned with the fact that through 1947 approximately 1,000 individuals had registered under section 308, but that only about 200 organizations had filed

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[1] Ibid., p. 90.

reports under section 305.[1] As a consequence, most of the Section's effort was directed toward securing better group compliance. That these efforts were immediately successful is attested to by the fact that in the two quarters preceding the start of the inquiry a total of 299 reports were received, while during the first two quarters of the Section's work a total of 422 reports were received.[2] This represented an increase in filings of approximately forty percent. Mr. Kaufman has described the modus operandi of the Section in effecting this improvement:

> I will say that their spirit in most cases is one of co-operation. When you ask them to come in and you advise them of the fact that the Department intends to enforce this act; that it is an act of Congress, and under the act the Department of Justice has the duty to enforce the act, in most cases there seems to be agreement of the fact that---well, they were not sure what they ought to do, but in view of the fact that the Department of Justice feels that there should be compliance, they will comply.[3]

While the bulk of the Section's work has been done on this basis, the fourth result of the Section's establishment has been the enforcement of the act by means other than the non-coercive informal conference method suggested by Mr. Kaufman. In three cases, Section attorneys have gone before Grand Juries and secured indictments of persons and groups for violations of the Lobbying Act.

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[1] Ibid., p. 92.

[2] See supra, p. 250, Table 6.

[3] Hearings, op. cit., p. 93.

On March 30, 1948, a Federal Grand Jury in Washington returned a three count indictment against the Federal Savings and Loan League. The indictment charged that the League, a non-profit organization of 3,600 savings and loan associations with assets of 9 billion dollars, had as its principal purpose the influencing of federal legislation; and that the League had collected and expended "substantial sums of money, the exact total being to the Grand Jurors unknown," for such purposes. The League, having "willfully and knowingly" failed to file a statement with the Clerk of the House, was accordingly deemed to be in violation of section 305 of the Lobbying Act.[1]

The second count charged that the League had also failed to register under section 308, the premise being that the League had "engaged itself for pay and other consideration for the purpose of attempting to influence the passage of legislation by the Congress of the United States."[2] The third count followed from the second and charged the League with willful failure to comply with the quarterly reporting provisions of section 308.

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[1] United States v. The United States Savings and Loan League, District Court, District of Columbia, January term, 1948, Grand Jury Original, p. 2.

[2] Ibid., p. 3. See also New York Times, March 31, 1948. Although section 308 applies primarily to individuals, the definition of "person" given in section 302 and applying to the whole title is amply broad to warrant the indictment of an association under section 308.

The trial of the League on these charges is still pending at this writing.[1] But despite the fact that the courts have not yet passed on the Lobbying Act in this or in any other case, the Lobby Compliance Section has continued to press prosecutions. On June 16, 1948, the Attorney General announced that two more organizations and four individuals had been indicted by the Grand Jury. Those named as defendants were The National Farm Committee, the Farm Commissioners' Council, Robert M. Harriss, Ralph W. Moore, J. E. McDonald, and Tom Linder.

The National Farm Committee was a Texas corporation of which Mr. Linder was President and Mr. Moore was Secretary and Washington representative. The Farm Commissioners' Council was an unincorporated association with offices in Washington. Its principal officers were Messrs. McDonald and Linder. Among the individual defendants, Harriss was a cotton broker, and Moore was variously described as a public relations man, a commodity speculator, a legislative representative, and "the farmer's friend." Mr. McDonald was Commissioner of Agriculture of the State of Texas, while Mr. Linder held the same position in the State of Georgia.[2]

Prior to the presentation of the case to the Grand Jury, the F.B.I. had conducted extensive inquiries into the

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[1] March, 1949.

[2] Department of Justice Press Release, June 16, 1948.

activities of all of the parties involved. The overt evasions of the Lobbying Act which were uncovered during this inquiry became the factual basis on which the ten count indictment was based. The Grand Jury charged that each of the individuals and organizations indicted had knowingly failed to register and to file statements in accordance with the explicit provisions of the law.

The four individual defendants were also indicted on a conspiracy count. The factual evidence presented in support of this count was particularly damning. The indictment charged that on ten separate occasions these individuals had performed various acts pursuant to this conspiracy which made them subject to the Lobbying Act. These occasions ranged from the sponsorship of two banquets at which several hundred Members of Congress were present to committee appearances by McDonald and Linder in behalf of legislation in which they were interested.

The Jury charged that all four defendants had maintained commodity accounts, and that McDonald and Linder, while appearing to act in behalf of the people of their respective states, were in fact lobbying largely for their own personal interests. The Jury also set forth that part of the conspiracy was that Moore would not register, since such registration would reveal the financial interests of all four defendants and would lessen the weight of their testimony

before Congressional committees.[1]

This trial is also still pending, although counsel for the defendants have taken steps to have the indictment quashed. Ex-Senator Burton K. Wheeler, who is himself a registered lobbyist, has moved that the indictment be quashed on the grounds that it is "vague, indefinite, and faulty," and that the Lobbying Act on which it is based is unconstitutional.[2] The careful documentation of the indictment would seem to refute the first of these claims; only a court can finally pass on the second, although it seems hardly likely to the writer that a court will invalidate the act in this particular case.

Mr. Kaufman resigned as Special Assistant to the Attorney General on August 8, 1948.[3] However, speculation that his resignation would mean the end of active enforcement of the act was somewhat put to rest by the transfer of the Lobby Compliance Section to the Criminal Division of the Department of Justice, where it was to be given permanent status.[4]

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[1] United States v. Robert M. Harriss, Ralph W. Moore, James E. McDonald, Tom Linder, Farm Commissioners Council, and National Farm Committee, District Court, District of Columbia, Grand Jury Original, April Term, 1948, pp. 1-17.

[2] New York Times, November 23, 1948, p. 33.

[3] New York Times, August 9, 1948, p. 5.

[4] Washington Post, August 24, 1948.

Even more onclusive evidence that active enforcement of the act had not ended was given on November 23, 1948, when a Washington Grand Jury returned an indictment charging ex-Congressman Roger L. Slaughter with violation of section 308 of the Lobbying Act. According to the indictment, Slaughter had been paid $33,599 between December 4, 1947, and September 14, 1948, to lobby in behalf of the Chicago, Kansas City, and Minneapolis grain exchanges. He was also said to have represented the North American Export Grain Association of New York for a fee ranging from $7,500 to $15,000. Slaughter denied that he was required to register. He admitted to having served the grain interests specified in the indictment, but he declared that he had served as their "counsel and not as a lobbyist."[1]

The trials of the groups and persons named in these three indictments have not yet begun.[2] The bringing of these indictments, however, indicates that a determined effort has been made to enforce the Lobbying Act. This effort has prompted compliance; it has resulted in official interpretation of the act; it has caused greater publicity to be given the information received under the act; and it has resulted in the commencement of criminal prosecutions of individuals

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[1] New York Times, November 24, 1948, p. 9.

[2] March, 1949. In addition, the suit filed by the NAM in January, 1948, is still pending.

and organizations for violations of the act. In sum, the work of the Lobby Compliance Section during the past eighteen months has reaffirmed the conclusion made earlier in connection with state lobbying laws. These laws may be imperfect in scope and in language, but if they are vigorously and continuously enforced they can contribute much to public and legislative understanding of the interests which seek governmental recognition. We know that compliance with the Regulation of Lobbying Act has been far from complete; but insofar as there has been compliance, both public and Congress have been relatively enlightened thereby. That this compliance has improved as a direct result of its efforts is an obvious tribute to the service rendered by the Lobby Compliance Section.

Conclusions on the Act: Prospects and Recommendations

The preceding analysis has, it is hoped, suggested the strong and the weak points of the lobbying Act as they have been demonstrated by two and one-half years' experience with the measure. Let us attempt to summarize briefly this experience.

First, as regards individuals there has been a fair degree of compliance with the registration and reporting provisions of section 308. As regards the compliance of the organizations employing these individuals, the results have been less heartening. Up to the present time, only about twenty-five percent of those organizations named as employers

by individual lobbyists have filed quarterly reports under section 305. Some organizations have not filed for fear of losing their tax-exempt status under the Internal Revenue Code. Many more have failed to file because they do not believe that their "principal purpose," construed strictly by them, is the influencing of legislation before the Congress.

Many problems have been raised by the reports filed under sections 305 and 308. Individuals protest their inability to allocate part of their salaries or retainers to legislative activities. Registered lobbyists seldom indicate the specific measures in which they are interested. Organizations also protest their inability to divide their activities into legislative and non-legislative categories. They frequently refuse to disclose the sums which they have spent on public relations programs which may be only indirectly related to the influencing of legislation.

Despite these and other perplexities, part of which arise from the act itself, the act has nevertheless achieved important results. On the basis of admittedly incomplete compliance, it is obvious from the reports filed that very large sums of money are being spent in efforts to influence legislation. These reports have certainly given Congress and the public a more precise idea of how much is being spent on behalf of what legislation, and by whom. As one observer has pointed out, "Lobbying is getting to be a pretty frank and open business under the Federal Regulation of Lobbying

Act. Needless to say, it's big business."[1]

It was suggested earlier in this study that the absence of adequate publicity and conscientious enforcement were the two factors most responsible for the lack-luster results secured by most state lobbying laws. Conversely, whatever success the Federal Regulation of Lobbying Act has had are the direct consequences of adequate publicity and more-than-adequate enforcement. The latter factor particularly has had a salutary effect on the extent of compliance, while the former has helped condition acceptance of the principles of the act by the public and by the more responsible members of the lobbying community.

There continue to be sharp dissents directed at these principles. Mr. David Lawrence, for example, has written:

> By subtle attacks on so-called "lobbying," the effort now has begun to be made to squelch the legitimate expression of opinion. Congress is prohibited by the First Amendment to the Constitution from making any law abridging the right of petition and yet there is a law on the statute books today which interferes with the right of petition.... It is a very simple matter to abridge any constitutional right by making the requirements of registration so cumbersome as to discourage altogether the use of that right.[2]

Mr. Lawrence implies that the act is unconstitutional. The present writer believes, however, that the courts will

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[1] Robert C. Albright, in The Washington Post, May 16, 1948.

[2] Ann Arbor News, December 1, 1948. See also a second column by Mr. Lawrence in Ann Arbor News, December 3, 1948.

take a contrary view. It would be difficult to defend the proposition that lobbying has diminished because of the act. It would be equally difficult to show that the imposition of inconvenience constitutes the abridgement of a right. Whatever inconvenience has been caused by the Lobbying Act is secondary to the right of Congress to understand the conditions under which it legislates. The conclusions of the Senate Campaign Expenditures Committee relative to the publicity requirements of the Corrupt Practices Act apply persuasively to the closely similar publicity requirements of the Regulation of Lobbying Act:

> The right of any individual, or of any group of individuals, to associate and express publicly opinions and beliefs on any political subject ... is guaranteed by the Federal Constitution. It cannot be regarded, however, as an abridgement of any freedom to require publicity as to the source of their finances and the nature of their expenditures.[1]

Proceeding from the premises that the act is necessary and that it is valid, one can better conclude that the most practical course is to strengthen the act, to remedy its deficiencies, to clarify its several ambiguities. The writer would suggest several changes which might aid in the realization of these improvements. It will be noted that these revisions are proposed on the basis of maintaining the general outlines of the present act, for it is the writer's firm conviction that this act, carefully amended, can be

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1 79th Cong., 1st Sess., S. Report 101, p. 7.

made to render good service. These recommendations are set forth briefly below.

1. Section 303 should be amended so that the records kept of contributions would indicate the name of the fund for which this contribution had been received. This specification can be implied from the present language, but it is desirable that it be spelled out specifically so as to require more careful accounting under section 303 and more specific reporting under section 305.

2. The conflict in language between sections 303 and 305 should be resolved. Section 303 refers only to persons soliciting or receiving contributions for the "purposes herein designated." Section 305 applies to persons "receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307." The application of the two sections was obviously intended to be identical. The disparity can be avoided by amending section 303 to include the expenditure as well as the receipt or solicitation of money. In addition, the purposes specified in section 303 should also be made to read "the purposes designated in subparagraph (a) or (b) of section 307."

These recommendations are based on the presumption that the intent of section 303 is to provide a uniform basis on which the reports required by section 305 can be rendered.

This intent can best be fulfilled by clearly making the two sections apply to the same people, doing the same things, for the same purposes.

3. The obvious typographical error in section 304 which made "render" into "rendered" should be corrected. This amendment should excite little controversy.

4. Section 305 could be made to yield more discriminating results if several amendments were made. First, by specifying that every person receiving any contribution for the purposes specified in section 307, whether or not such contributions were earmarked for these purposes, should report these contributions, a source of considerable noncompliance with the present section 305 might be avoided. The organization which spends money for lobbying, but which is circumspect enough not to accept funds earmarked for this purpose, could thus be brought within the terms of section 305.

5. The total bona fide membership of the organization should be included in its quarterly report.[1] This suggestion

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[1] Once again reference to the experience under the Corrupt Practices Act is instructive. Many political committees and lobbying organizations are "racket" groups, or are "one-man agencies set up and operated for private profit or for personal aggrandizement." As the Senate Campaign Expenditures Committee concluded, "Practically the only protection the public can have against such groups is full and effective publicity designed to spotlight, if present, their lack of good faith and of efficient business operation." 79th Cong., 1st Sess., S. Report 101, p. 7.

To require a statement of the bona fide membership

was made to the Joint Committee on the Organization of Congress, but was not incorporated in the Lobbying Act, probably because it was not included in the Black and Smith bills on which the Lobbying Act was patterned.

Professor Zeller has also suggested that an organization should be required to state "how its legislative policy is determined and to indicate the responsibility of the lobbyist in conveying these views on behalf of the membership of the organization."[1] The writer endorses this suggestion.

6. The reports submitted under section 305 should be addressed to the Secretary of the Senate as well as to the Clerk of the House. In addition, the information reported under section 305 should be published in the Congressional Record along with the individual data received under section 308. Again, the composite origins of the statute are the only reasonable explanations for the fact that such provisions are not presently included in the act.

7. It would be advisable to demand more information on contributors than is presently required by section 305. Some groups now refuse to accept contributions of more than $499 since only contributions of over $500 need be reported

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of such groups is take a first step towards determining whether these groups speak for any substantial segment of the public, or whether they are "facade" organizations whose membership is purely imaginary and whose operations are based solely on the personal interests of their directors.

[1] Zeller, "The Federal Regulation of Lobbying Act," p. 269.

in detail under section 305. This figure might well be reduced to $100. Compliant organizations might see their income diminish if they refused contributions of larger than $100. As a consequence, it seems likely that the lower figure would yield more informative results than are presently secured with the $500 figure. The writer has no particular attachment to the proposed $100 limitation. He is offering it only as a tentative figure which might lead to the reporting of more information on pressure group support than is presently reported.[1]

8. The "principal purpose" language of section 307 should be revised. In administering the act, the Department of Justice has taken the view that "principal" means "not incidental," and the act should be amended so to read. The writer does not believe that any stricter delineation of coverage should be undertaken. It does no harm to have more

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[1] All contributions larger than $100 are required to be reported under the Corrupt Practices Act. In some reports, all contributions either smaller or larger than $100 are reported, from which the Senate Campaign Expenditures Committee got the "very definite impression in some cases that the deluge of small contributions was designed to discourage scrutiny to discover the large contributors." 79th Cong., 1st Sess., S. Report 101, pp. 77-78. Despite this possibility of evasion by over-disclosure if the present $500 requirement of the Lobbying Act were lowered, the writer would maintain that it is more useful to solicit too much information than it is to solicit too little. Judged from the quarterly reports received in the past two years, one can only conclude that the Lobbying Act has required too little, for very few contributions of more than $500 have been reported.

rather than fewer individuals and organizations subject to the act.

Professor Zeller has suggested that the applicability of the act should hinge on the expenditure of a given sum, perhaps $1,000, for lobbying during the preceding quarter.[1] It is the writer's view that such a sharp distinction is very liable to become inflexible in operation. It certainly would further complicate the problem of apportioning receipts and expenditures to legislative and non-legislative categories. There is no reason to delimit thus the scope of the Lobbying Act, or further to complicate compliance with it.

9. The terms of section 307 should be brought into harmony with those of section 305 by indicating that the title applies to those expending money as well as to those receiving it. This, too, can be implied from the present act, but it would be well to have the statute say what it obviously means.

10. The exemption in section 307 as regards political parties should be placed in section 311 with the other exemptions of the act.

11. Similarly, the exemptions of section 308 should be placed in section 311. It should be made clear that whatever exemptions are made are from the entire title, and not only from any given section of it.

12. Section 308 should be amended to require individuals filing quarterly reports to allocate their salaries to legislative

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[1] Zeller, "The Federal Regulation of Lobbying Act," p. 269.

and non-legislative activities. At present, too many individuals make no attempt at such an allocation, reporting only their total quarterly income and leaving the administration to draw its own conclusions.

13. Section 311 should be made the sole exempting section of the entire title. The present exemption in this section should be supplanted by the similar but more precise statement of section 307. In addition, the exemptions of section 308 should be incorporated into section 311. The exemptions should be extended to include radio commentators, and the meaning of the newspaper exemption should be clarified to indicate when the status of an individual as a newspaperman is affected by his lobbying activities.

These foregoing suggestions are all based on retaining the general structure of the present act without major changes or additions. They are primarily changes in detail which would make of the act a more integrated whole. The Lobby Compliance Section has indicated that it considers the act sufficiently strong to be a "really effective lobbying law" if it is reasonably integrated by the courts.[1]

There are, nevertheless, several major additions which might profitably be made to the act as it currently stands. Primary among these would be an extension of the

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[1] U. S. Congress, Senate, Committee on Expenditures in the Executive Departments, Hearings on Evaluation of Legislative Reorganization Act of 1946, 80th Cong., 1st Sess. (Washington, Government Printing Office, 1948), p. 92.

principles of registration and periodic reporting to lobbyists operating before administrative agencies. Such a provision was included in the Black bill of 1935 but did not find its way into the present Lobbying Act. With the continuing development of the administrative process, publicity regarding administrative lobbying is even more urgent today than it was in 1935.

In addition, the Congress might seriously consider the adoption of a provision forbidding lobbying contracts in which compensation is wholly contingent on legislative action. These contracts are usually prohibited by state regulation of lobbying laws. The Federal Lobbying Act might equally recognize that under certain circumstances these contracts have undesirable tendencies.

And finally, Congress might both clarify and strengthen the entire Lobbying Act by going beyond the mere rephrasing of the "principal purpose" clause of section 307. This clause has been a constant source of contention and noncompliance, much of which could undoubtedly be obviated by striking out altogether the phrase "principally to aid, or the principal purpose of which person to aid." With this deletion, section 307 would apply to:

> any person ... who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used in the accomplishment of any of the following purposes:
> (a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

This deletion would admittedly expand the scope of the Lobbying Act, largely subject to the discretion of the Department of Justice. The writer sees no other means by which the publicity sought can adequately be secured.

Even without these substantive additions or deletions, the Federal Regulation of Lobbying Act can be made to do an effective job of disclosing the forces at work behind Congressional legislation. It is, however, desirable that the Lobbying Act be strengthened so that it can make a maximum contribution to a more enlightened legislative process.

CHAPTER V

SUMMARY AND CONCLUSIONS

One is hard put to locate the tangible accomplishments of seventy-five years of state and federal regulation of lobbying. Lobbying has certainly not diminished as a consequence of this regulation but, on the contrary, has enjoyed a phenomenal growth. With the gradual abandonment of a passive conception of government and the increase in governmental regulation of industry and commerce, many more groups of individuals have come to have an important stake in legislative action. The complexities of a twentieth century world demand cooperative organization, and this organization provides a means for the effective presentation of group claims to the legislature. Lobbying has grown because our society has become infinitely more complicated. Lobbying has grown because government has come of age. What we have called "regulation of lobbying" has not stood in the way of this growth. It was not intended to do so.

The underlying purpose of most regulation of lobbying laws is not to repress but to inform. They respect the right of the citizen and the group to present their demands to the legislature, but at the same time they affirm the right of the legislature to inform itself as to the sources and nature of these demands. How well has regulation of lobbying fulfilled these complementary aims?

In the states, the first attempts at regulation were directed to the absolute prohibition of certain lobbying practices which had led to corruption in the past. Insofar as these abuses have largely disappeared, these early prohibitions have been successful. But in those states where these prohibitions have been the only efforts which have been made to bring lobbying subject to a degree of governmental supervision, they do not meet the problem of the modern pressure group, for which outright corruption is only an extreme and infrequent resort.

After 1890, the pattern of state regulation changed from one of prohibition to one of grudging toleration. Beginning with Massachusetts, a total of twenty-five states adopted laws or legislative rules requiring lobbyists to register and disclose certain information about themselves, their employers, and the conditions of their employment. Seventeen of these states enacted the additional requirement of periodic reports by lobbyists of their receipts and expenditures. These two principles of registration and periodic financial reporting remain the keystones of the state regulatory system.

These laws have not completely abandoned regulation by prohibition, however. Most of them bar contracts where compensation is contingent on the action of the legislature. Some of them attempt to restrict lobbyists to certain methods of approach, usually committee appearances, public addresses

or publications, and the distribution of circular briefs, arguments, or statements.

Most of these state lobbying statutes have posed serious problems of interpretation. In those laws which attempt to define lobbying, the terms used are themselves generally in need of clarification. The application of these laws has also been productive of considerable difficulty. The general rule of theoretically broad application is often flouted by sweeping exemptions, either stated specifically in the law, or granted in practice by the responsible administrative officials. Fewer textual objections can be raised to the prohibitory provisions of these laws, although they are often far from explicit. Rather, one can question the wisdom of prohibition beyond the practical possibilities of enforcement.

The results secured by these statutes should not give rise to any great optimism about their utility as regulatory instruments. Compliance with the registration provisions has ranged from the surprisingly good to the suspiciously bad. In most states, however, compliance has not been at all adequate, if one is to trust the evidence compiled by careful observers in these states. Compliance with the financial reporting provisions has also fallen far short of any reasonable standard. And, where reports are filed, there is reason to believe that the sums reported in many cases do not nearly represent the expenditures which have actually been made

for lobbying purposes.

This non-compliance or incomplete compliance cannot be ascribed solely to the vagueness of the laws' requirements. It would appear, rather, that official non-enforcement is the one factor most responsible for the general failure of state lobbying statutes to gain their objective of publicity. This non-enforcement springs partially from the fact that most laws merely vest the general duty of prosecuting violations in the state attorney-general, an official already charged with many other duties. Few laws make any provisions for investigation of non-compliance; none make enforcement of the lobbying law the sole duty of any single official or agency.

But beyond the inadequate statutory grants of authority, there are further reasons for this non-enforcement. It has also sprung from official inertia, or from honest doubt as to the propriety of punishing an offense which is said to involve no moral turpitude, or from the sincere conviction that lobbying fulfills a vital representative and informational need in the legislative process. Whatever the cause, this practical effect remains: the legislator loses much of the insight into lobbying which these laws were designed to give him. The legislator knows more than he would if there were no law at all, but he knows far less than he might know if the law were conscientiously enforced.

Largely because they are not enforced, state lobbying

laws do not do well that which they were intended to do. But even if they were enforced and, consequently, served perfectly the purposes for which they were enacted, would these laws materially enlighten the legislator or help to free him from his dependence on the lobbyist? We must conclude that they would not.

State lobbying laws are often called "publicity laws," but they provide publicity only if that term is passively defined. In a great majority of these statutes, the end of publicity is deemed to have been served when lobbyist registrations and reports are merely made available to legislators or interested citizens. Only a very few laws make any provision for the systematic presentation of this information to the legislature; none take steps to secure a more general dissemination.

Beyond the fact that these laws provide no means by which effective publicity can be had, there are still more fundamental criticisms which must be urged against them. If full compliance were achieved, if legislators and the public were more generally apprised of the information which these statutes can ideally provide, we would still have only an imperfect knowledge of the resources and activities of the modern pressure group. The state legislator usually knows all too well who the lobbyists are. It is not particularly productive merely to formalize this knowledge.

State regulation of lobbying, largely because of its

nineteenth century origins, proceeds from the premise that lobbying is basically an individual rather than a collective effort. But modern lobbying is pre-eminently a group activity, and from this fact follows the practical necessity of basing regulatory laws on the group for which the lobbyist speaks rather than on the lobbyist himself. Existing state laws afford no means by which group membership, structure, or resources can be ascertained. These laws will not permit inquiry into the representative character of group decisions, or into the extent to which the group membership has authorized the lobbyist to speak for it.

In short, state regulation of lobbying laws have failed to achieve their present limited purpose. They do not in any way undertake to meet the larger challenge which the modern pressure group provides.

The picture on the federal level is in some respects more heartening. The Federal Regulation of Lobbying Act of 1946 was not a snap response to an immediate evil, as were most of the state lobbying laws. Congressional awareness of the problem of lobbying dates from the same period in which the state laws were being written; but where state action followed closely on the disclosure or widespread knowledge of lobbying abuses, Congressional action was indefinitely delayed.

There was certainly no dearth of lobbying before Congress. To the contrary, charges of excessive or corrupt

lobbying were frequently made and proved during the nineteenth century. More recently, extensive Congressional investigations in 1913, 1929, and 1935 gave evidence of the great breadth, variety, and expense of modern pressure group operations. But despite these disclosures, despite the introduction of dozens of regulatory bills in Congress, no lobbying law was passed by both Houses until 1946. The law which was finally enacted at this time was only one component title of the larger and more popular Legislative Reorganization Act.

Congress as a whole gave only scanty and unperceptive attention to the lobbying provisions of the Reorganization Act, and thus it is unwise to presume too much as regards Congressional intent. Still, there are definite evidences that the sponsors of the Lobbying Act envisaged a significantly broader system of regulation than had been attempted in the states. Derived largely from two unsuccessful bills of a decade earlier, the act provided for the customary registration and reporting by individual lobbyists. But in addition, organizations receiving and expending funds for lobbying were also required to submit quarterly reports. Contributions of over $500 were to be listed and the name of the contributor disclosed. Expenditures of over $10 were to be reported in similar detail. Smaller contributions or disbursements were to be reported only in the aggregate. Here, then, was the first legislative recognition of the group character of modern lobbying.

Serious textual flaws in the act have become apparent during the first two and one-half years of its operation, however, and these flaws have stripped the act of some of its effectiveness. The act was hurriedly drafted and was not given thorough Congressional consideration. As a consequence there are several inconsistencies and contradictions between its several sections. Furthermore, the section which was designed to define the application of the entire act declares that the act applies only to those persons or groups whose "principal purpose" is the influencing of Congressional legislation. If "principal purpose" is given a narrow time reference, or if it is interpreted to mean "chief" or "primary" purpose, then the act can have only a sharply restricted application.

This unfortunate choice of language has had a deleterious effect on both individual and group compliance. Although over 1,300 individual registrations have been received, it is common knowledge that this figure does not represent the full number of Congressional lobbyists. Even fewer organizations have submitted quarterly reports, usually refusing to do so on the grounds that their chief purpose is not the influencing of Congressional action.

Where compliance has been had, further problems arise. Individual lobbyists protest their inability to allocate their receipts to legislative and non-legislative categories. Groups frequently go to the one extreme of refusing to disclose any

receipts or expenditures for lobbying, or to the other extreme of simply submitting their entire organizational budget for the period covered. Reporting groups often neglect to identify contributors of over $500, or refuse to accept such contributions so as to avoid reporting them.

But despite these and other equally perplexing problems which have developed, the Federal Regulation of Lobbying Act has achieved rather substantial results. Lobbying groups have admitted to the receipt of over $21,000,000 and the expenditure of over $13,000,000 since the passage of the act. Although much more has undoubtedly been received and spent than has been actually reported, it is nevertheless true that Congress now has much more information on the finances of lobbying than was previously available. To this extent, the Lobbying Act has contributed to a more enlightened Congressional process.

The publicity sought by the act has not been achieved solely on the basis of the mere availability of information. The essential data from the individual registrations and reports has been printed quarterly in the Congressional Record. The data from group reports, although not printed in the Record, has been the subject of frequent newspaper comment.

The non-enforcement which has sapped the vigor of state lobbying laws has also been rather successfully avoided. The establishment in 1947 of a Lobby Compliance Section in the Department of Justice provided an agency whose sole

functions were to investigate and stimulate compliance with the act, and to bring prosecutions against violators. This Section, now a permanent unit in the Criminal Division of the Department, has already commenced three such prosecutions. Of even greater importance is the fact that the establishment of the Section was accompanied by an appreciable increase in group compliance. The work of the Section has been hampered, however, by the contradictory language of the act and by the ambiguity of the "principal purpose" clause. It would be desirable for the act to be amended so that these discords might be minimized.

Given its multiple origins, its inadequate consideration by Congress, and its careless draftsmanship, one can still conclude that the Regulation of Lobbying Act has been more successful in securing and publicizing information about lobbying than have its counterparts in the states. But at the same time, one must conclude that it falls short of exploiting its purpose of publicity to the fullest advantage. It attempts to probe into pressure group resources, but it does so only generally, without perception, and in terms which can all too easily be evaded. Perhaps the most notable omission of the act is that it does not attempt to inquire into the size or cohesiveness of pressure group membership. It is essential that such inquiry be made because, in the words of E. E. Schnattschneider:

The first rule of successful pressure politics therefore

> is to make a noise like the clamor of millions but never permit an investigation of the claims. Exaggeration is the life of pressure politics. The more realistically it can be done the more apt it is to worry timid congressmen, and that is enough.[1]

But again, let us assume that state and federal lobbying laws were to seek this information about the size and structure of pressure groups. Let us further assume that these laws were enforced to the fullest, that compliance were to reach a hypothetical maximum, and that the information received were effectively publicized. What would be the result? It is not likely that the influence of the pressure groups would be appreciably diminished. Extension of the idea of publicity would give the legislator more information about pressure groups, but it would not immunize him from pressure, nor would it necessarily free him from his all too frequent dependence on the lobbyist.

In a word, publicity alone is not enough, and the dilemma in which both state and federal lobbying laws are ensnared is that publicity is the only tenable alternative of direct regulation. To regulate lobbying by restricting the areas of group activity would be to mitigate the occasional evil of lobbying with the greater and more constant evil of suppressing the rights on which our system of government rests. In a democracy we cannot admit that this would be a

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[1] E. E. Schattschneider, Party Government (New York, Farrar and Rinehart, 1942), p. 192.

tolerable, or even a practical approach. In the final analysis, we may discover that the problem of lobbying can only be met tangentially and by indirect means. Several of these approaches might be briefly mentioned.

First, the problem of lobbying cannot be properly considered apart from the necessity of revamping legislative organization and procedures. Pressure groups have long thrived on the prolix and planless basis on which our legislatures operate. What Senator Estes Kefauver has written of Congress applies in full measure to the state legislatures as well:

> [The pressure groups] use every modern means to exploit the opportunities afforded them by the present inefficient organization of Congress. The most effective way that the national legislature can curb the pressure boys is to do its business more effectively than they do theirs.[1]

Some recognition of this essential is evidenced by the inclusion of the Regulation of Lobbying Act in the Legislative Reorganization Act. But reorganization is clearly not the complete answer, for lobbying has far deeper causes than inefficient legislative organization. In its broader aspect, the pressure group is an economic or social or ideological alignment whose interests cannot be formally accommodated in a representative system which, like ours, is based only on undifferentiated people, or on equally undifferentiated areas.

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[1] E. Kefauver and J. Levin, A 20th Century Congress (New York, Duell, Sloan, and Pearce, 1947), p. 169.

Pressure groups speak for the dominant interests of a complex society, yet they are not accorded formal recognition in the legislative process.[1]

As a palliative for the manifest inadequacies of our representative system, the adoption of some sort of functional representation or group representation has frequently been advocated. These proposals pose as many problems as they solve, however. On what basis, for example, could a functional assembly be constituted? The size of a group's membership has no necessary bearing on its importance, as witness the enormous aggregate resources of the relatively few members of the National Association of Manufacturers. Economic resources are an equally unreliable gauge, for the 14,000,000 organized trade unionists in the country theoretically possess only the intangible worth of their own labor power.

The question of the internal representativeness of functional groups would arise far more urgently than it has in connection with the present regulation of lobbying laws. Now we are concerned with this representativeness largely from the point of view of information; but if a system of functional representation were adopted, group democracy would become a matter of even more vital importance. The formulation and application of standards, and the validation of conflicting group claims would provide government with a

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[1] See V. O. Key, Jr., Politics, Parties, and Pressure Groups (2d Ed., New York, Crowell, 1948), pp. 178 et seq.

truly formidable task.

The most telling objection to functional representation, however, is that its adoption would probably further exaggerate the already swollen power of the pressure groups out of all relation to their importance. If we are concerned with restoring the vigor of representative government as we know it, it is not logical to create a functional body which could easily come to rival the legislature. If we believe in the broad meaning of majority rule, then it is not logical to give official status to what might well be the most vocal and best-organized minority. Group pressures cannot best be met by yielding to them. A Trojan horse is no answer to the problems of representative government.

There is a final possible approach to the problem of lobbying, one which is designed to protect the legislature without dispersing its competence to act. This approach is posited on the necessity of freeing the individual legislator from his dependence on the pressure group, for the strength of the lobby can largely be found in the individual legislator's weakness. Harried, overworked, and under-informed, the legislator must all too often turn to the lobby for information on the complex issues which confront the modern representative assembly. It is too much to expect that information thus acquired can be wholly objective. As a minimum first step, government could more fully assume this informational function. The expansion of legislative reference

and bill-drafting facilities and the development of expert legislative staffs would tend to deprive the pressure groups of one of their most productive avenues of approach.

These steps alone would probably be insufficient to render the legislator completely independent from group pressures, however. We may yet discover that the only way in which the legislator can be freed from these pressures is by diminishing his freedom in another direction. E. E. Schattschneider has brilliantly presented this eventuality:

> The fundamental condition necessary for the prosperity of an enormously overgrown system of pressure politics is a party system in which the parties are unable to use their great powers....
>
> More specifically, a member of Comgress is not required to adhere to a party line on controversial questions coming before Congress for decision. Some naive persons have supposed that the member of Congress thus freed from party discipline is able to sit in a political vacuum while making his decision on purely philosophical and moral grounds. In real life, however, the congressman must often long for the security of strong party discipline, for he escapes from the authority of the party only to fall prey to the organized special interests.... The real choice is between a strong party system on the one hand and a system of politics in which congressmen are subjected to minority pressures. The assumption made here is that party government is better than government by irresponsible organized minorities and special interests.[1]

This remedy for lobbying is not itself without pitfalls, for too much party discipline can be as quickly destructive of representative government as can too little. By enforcing party discipline, and by consequently restricting

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[1] Schattschneider, Party Government, pp. 192-193.

the utility of pressure politics on the legislative level, a great responsibility for the selection of issues is placed in the hands of the party leadership. The focus of group pressures will inevitably gravitate towards this leadership, and to it will fall the difficult task of selecting those group demands for which the party will assume legislative responsibility.

This is a function for which party leadership is not altogether ill-equipped, as witness the major party platforms of the past half-century. At the present time, however, it is only during presidential election years that the parties actively exercise this function. If they are to exercise it continuously, then mechanisms would have to be evolved by which the parties would be able to evaluate more effectively the substance of group demands. The information now sought by regulation of lobbying laws would have to be sought by the parties in their own way.

And finally, although stronger party discipline would spell greater party responsibility in the legislature, it would at the same time spell the end of much of the individual legislator's responsibility to his immediate constituents. The legislator might be relatively free from group pressures, but this freedom will have been dearly bought.

Thus, revitalization of party discipline is not the perfect solution to the problem of lobbying. In the final analysis, there is perhaps no single solution. We have found

that information illuminates the problem without solving it. Other approaches have their virtues, but they also have their severe disadvantages. Yet we dare not shrink from the problem because of its complexity, or because the remedies which have been proposed are either too incomplete or too far-reaching. The pressure groups are not quiescent while a puzzled democracy seeks the means to contain their influence. This means must be found, and it must balance the right of free group expression with the legislature's right of self-protection. It must weigh the value of strong party government against the opposite value of a free legislature, even where this freedom may result in occasional subservience to group pressures. It must give due recognition to the great unrepresented segments of a highly organized society.

We dare not expect that the pressure groups will temper their demands with regard for the interests of the whole community. At the same time, we cannot restrict their right to make these demands without endangering our democracy. The only alternative is to perfect an agency, governmental or political, which can reconcile and modify these demands without crumbling before them. A free people owes itself this much self-discipline.

APPENDIX A

COMPLIANCE WITH STATE LOBBYING LAWS

State	Year of Session	Individuals Registered	Employers Represented	Approximate Reported Expenditures
Connecticut	1947	-	298	$100,806.68
Georgia	1947	-	-	-
Indiana	1945	96	66	-
Indiana	1947	128	70	52,600.50
Michigan	1947	268	-	Not required
Kentucky	1948	83	79	48,000.00
Maine	1947	100 (approx.)	-	Not required
Nebraska	1947	76	74	70,000.00
Ohio	1939	118	90	-
Ohio	1941	138	100	-
Ohio	1943	120	85	-
Ohio	1945	113	81	-
Ohio	1947	212	173	-
Rhode Island	1948	74	-	-
S. Dakota	1947	125 (approx.)	-	39,000.00
Vermont	1939	52	75	-
Vermont	1941	95	97	-
Vermont	1943	41	49	-
Vermont	1945	59	71	-
Vermont	1947	83	83	-
Virginia	1948	-	-	19,082.13
Wisconsin	1947	600 (approx.)	-	-

These figures are taken from letters to the writer from the responsible officials in those states having registration statutes. The writer inquired of each such official the number of registrants, the number of employers represented, and the expenditures reported. The figures here shown represent the total response to these inquiries.

APPENDIX B

FEDERAL REGULATION OF LOBBYING ACT

(Public Law 601, 79th Congress)

SHORT TITLE

SEC. 301. This title may be cited as the "Federal Regulation of Lobbying Act".

DEFINITIONS

SEC. 302. When used in this title--

(a) The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

(b) The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(c) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

(d) The term "Clerk" means the Clerk of the House of Representatives of the United States.

(e) The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House.

DETAILED ACCOUNTS OF CONTRIBUTIONS

SEC. 303. (a) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated to keep a detailed and exact account of--

(1) all contributions of any amount or of any value whatsoever;

(2) the name and address of every person making any such contribution of $500 or more and the date thereof;

(3) all expenditures made by or on behalf of such organization or fund; and

(4) the name and address of every person to whom any such expenditure is made and the date thereof.

(b) It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding $10 in amount, and to preserve

all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items.

RECEIPTS FOR CONTRIBUTIONS

SEC. 304. Every individual who receives a contribution of $500 or more for any of the purposes hereinafter designated shall within five days after receipt thereof rendered to the person or organization for which such contribution was received a detailed account thereof, including the name and address of the person making such contribution and the date on which received.

STATEMENTS TO BE FILED WITH CLERK OF HOUSE

SEC. 305. (a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing--

(1) the name and address of each person who has made a contribution of $500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of $500 or more to such person since the effective date of this title;

(2) the total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1);

(3) the total sum of all contributions made to or for such person during the calendar year;

(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of $10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

(5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);

(6) the total sum of expenditures made by or on behalf of such person during the calendar year.

(b) The statements required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

STATEMENT PRESERVED FOR TWO YEARS

SEC. 306. A statement required by this title to be filed with the Clerk--

(a) shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Clerk of its nonreceipt;

(b) shall be preserved by the Clerk for a period of two years from the date of filing, shall constitute part of the public records of his office, and shall be open to public inspection.

PERSONS TO WHOM APPLICABLE

SEC. 307. The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes;

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

REGISTRATION WITH SECRETARY OF THE SENATE AND CLERK OF THE HOUSE

SEC. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom

paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

REPORTS AND STATEMENTS TO BE MADE UNDER OATH

SEC. 309. All reports and statements required under this title shall be made under oath, before an officer authorized by law to administer oaths.

PENALTIES

SEC. 310. (a) Any person who violates any of the provisions of this title, shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than $5,000 or imprisonment for not more than twelve months, or by both such fine and imprisonment.

(b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than $10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

EXEMPTION

SEC. 311. The provisions of this title shall not apply to practices or activities regulated by the Federal Corrupt Practices Act nor be construed as repealing any portion of said Federal Corrupt Practices Act.

APPENDIX C

FACSIMILES OF FORMS USED FOR COMPLIANCE WITH FEDERAL REGULATION OF LOBBYING ACT

FORM A
(To be filed quarterly with the Clerk of the House of Representatives only)

DETAILED STATEMENT TO BE FILED, IN DUPLICATE, WITH THE CLERK OF THE HOUSE OF REPRESENTATIVES UNDER THE LOBBYING ACT (Public Law 601, 79th Congress)

Name_____

Business address_____

STATEMENTS TO BE FILED WITH CLERK OF HOUSE
(If additional space is required, the information may be attached)

(a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing--

CONTRIBUTIONS

(1) The name and address of each person who has made a contribution of $500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of $500 or more to such person since the effective date of this title:
(1)_____

(2) The total sum of the contribution made to or for such person during the calendar year and not stated under paragraph (1): Amount
(2)_____

Total sum of contributions reported under (2)_____

	Amount
(3) The total sum of all contributions made to or for such person during the calendar year: (3)	
Total sum of contributions reported under (3)	
Total sum of contributions reported in previous statement	
Grand total of all contributions to date of filing for calendar year	
EXPENDITURES	
(4) The name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of $10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure: (4)	
Total sum of expenditures reported under (4)	
(5) The total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4): (5)	
Total sum of expenditures reported under (5)	
(6) The total sum of expenditures made by or on behalf of such person during the calendar year: (6)	
Total sum of expenditures reported under (6)	
Total sum of expenditures reported in previous statement	
Grand total of all expenditures to date of filing for calendar year	

(b) The statements required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

OATH OF PERSON FILING

_____)
_____) SS:
_____)

I, _____, being duly sworn, depose
(Name of person filing)
(affirm) and say that the foregoing has been examined by me and to the best of my knowledge and belief is a true, correct, and complete declaration.

_____
(Name of person filing)

Subscribed and sworn to (affirmed) before me this _____ day of _____, A. D. 19__

_____
(Official authorized to administer oath)

FORM B

REGISTRATION (IN DUPLICATE) WITH THE CLERK OF THE HOUSE OF REPRESENTATIVES UNDER THE LOBBYING ACT

(Public Law 601, 79th Congress)

Name_____

Business address_____

INFORMATION REQUIRED FROM PERSON REGISTERING
(See reverse side of sheet for extract of Act)

(1) The name and address of the person by whom employed:
(1)_____

(2) In whose interest he appears or works:
(2)_____

(3) The duration of such employment:
(3)_____

(4) How much he is paid and is to receive:
(4)_____

(5) By whom he is paid or is to be paid:
(5)_____

(6) How much he is to be paid for expenses:
(6)_____

(7) What expenses are to be included:
(7)_____

See Form C for quarterly report to be filed.

OATH OF REGISTRANT

_____)
_____) SS:
_____)

I, _____, being duly sworn, depose (affirm)
(Name of registrant)
and say that the foregoing has been examined by me and to the best of my knowledge and belief is a true, correct, and complete declaration.

_____
(Signature of registrant)

Subscribed and sworn to (affirmed) before me this _____ day of _____, A. D. 19__

_____
(Official authorized to administer oath)

FORM C

QUARTERLY REPORT OF PERSONS REGISTERING UNDER LOBBYING ACT
TO BE FILED, IN DUPLICATE, WITH THE CLERK OF THE
HOUSE OF REPRESENTATIVES
(Public Law 601, 79th Congress)

Name _____

Business address _____

Employed by _____

Address _____

INFORMATION REQUIRED IN QUARTERLY REPORT
(See reverse side of sheet for extract of Act)

Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk of the House of Representatives--

(1) A detailed report under oath of all money received and expended by him during the preceding calendar quarter:
(1) _____

(2) To whom paid:
(2) _____

(3) For what purposes:
(3) _____

(4) The names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials:
(4) _____

(5) The proposed legislation he is employed to support or oppose:
(5) _____

OATH OF REGISTRANT FILING QUARTERLY REPORT

_____)
) SS:
_____)

I, _____, being duly sworn, depose (affirm)
(Name of registrant)
and say that the foregoing has been examined by me and to the best of my knowledge and belief is a true, correct, and complete declaration.

_____
(Signature of registrant)

Subscribed and sworn to (affirmed) before me this ____ day of _____, A. D. 19__

_____
(Official authorized to administer oath)

BIBLIOGRAPHY

Bibliographies

Lobbying, The University of Texas Bulletin, No. 3136 (Austin, University of Texas, September 22, 1931).

Lobbying in the States, Bureau of Government Library, University of Michigan (Ann Arbor, typed, November 25, 1945).

Logan, E. B. (ed.), Lobbying in State Legislatures, The Reference Shelf, vol. XI, no. 1 (New York, Wilson, 1936), pp. 139-142.

Martin, A. B., Lobbying, a Bibliography, Kansas League of Municipalities (Topeka, Mimeographed, 1946).

Muller, H. M. (ed.), Lobbying in Congress, The Reference Shelf, vol. VII, No. 3 (New York, Wilson, 1931).

Select List of References on Lobbying, Library of Congress, Division of Bibliography (Washington, Mimeographed, May 4, 1912).

Encyclopedias, Yearbooks, and General Reference Works

Herring, E. P., "Lobbying," in Encyclopedia of the Social Sciences (New York, Macmillan, 1935), vol. 9, pp. 565-567.

Spofford, A. R., "Lobby," in Lalor's Cyclopedia of Political Science (New York, Merrill, 1893), pp. 779-781.

Thorpe, F. N. (ed.), American Charters, Constitutions, and Organic Laws (Washington, Government Printing Office, 1909), 7 vols.

Words and Phrases (St. Paul, West, 1940), vol. 20.

Zeller, B., "State Regulation of Legislative Lobbying," in Book of the States, 1943-44 (Chicago, Council of State Governments, 1943), pp. 161-166.

_____ "State Regulation of Lobbying," in Book of the States, 1948-49 (Chicago, Callaghan, 1948), pp. 124-130.

Books, Monographs, and Pamphlets

Alexander, D. S., History and Procedure of the House of Representatives (Boston, Houghton Mifflin, 1916).

Beard, C. A., An Economic Interpretation of the Constitution (New York, Macmillan, 1913).

Blaisdell, D. C., and Greverus, J., Economic Power and Political Pressures, TNEC Monograph No. 26 (Washington, Government Printing Office, 1941).

Bryce, J., The American Commonwealth (3rd ed., New York, Macmillan, 1895), 2 vols.

Carpenter, W. S., and Stafford, P. T., State and Local Government in the United States (New York, Crofts, 1936).

Chase, S., Democracy Under Pressure (New York, Twentieth Century Fund, 1945).

Committee on Congress, American Political Science Association, The Reorganization of Congress (Washington, Public Affairs Press, 1945).

Crawford, F. G., State Government (New York, Holt, 1931).

Crawford, K. C., The Pressure Boys (New York, Messner, 1939).

Crouch, W. W., and McHenry, D. E., California Government, Politics and Administration (Berkeley, University of California Press, 1945).

Dodd, W. F., State Government (New York, Century, 1928).

Dunning, W. A., Reconstruction, Political and Economic, The American Nation Series, vol. 22 (New York, Harper, 1907).

Galloway, G. B., Congress at the Crossroads (New York, Crowell, 1947).

Graves, W. B., American State Government (3rd ed., Boston, Heath, 1946).

Heller, R., Strengthening the Congress, National Planning Association Pamphlet No. 39 (Washington, National Planning Association, 1945).

Herring, E. P., Group Representation Before Congress (Baltimore, Johns Hopkins, 1929).

Herring, E. P., The Politics of Democracy (New York, Norton, 1940).

Kefauver, E., and Levin, J., A 20th Century Congress (New York, Duell, Sloan, and Pearce, 1947).

Key, V. O.,Jr., Politics, Parties, and Pressure Groups (2d ed., New York, Crowell, 1948).

Luce, R., Legislative Assemblies (New York, Houghton Mifflin, 1924).

MacDonald, A. F., American State Government and Administration (New York, Crowell, 1940).

McCabe, E. W., Behind the Scenes in Washington (Washington, Continental, 1873).

McGeary, M. N., The Development of Congressional Investigative Power (New York, Columbia University Press, 1940).

McKean, D. D., Pressures on the Legislature of New Jersey (New York, Columbia University Press, 1938).

Munro, W. H., The Invisible Government (New York, Macmillan, 1928).

Odegard, P., Pressure Politics (New York, Columbia University Press, 1928).

Ostrogorski, M., Democracy and the Organization of Political Parties (New York, Macmillan, 1902), 2 vols.

Pollock, I. L., Some Abuses Connected with Statute Law-Making, Iowa Applied History Series, vol. III (Iowa City, State Historical Society, 1916).

Reed, T. H. (ed.), Legislatures and Legislative Problems (Chicago, University of Chicago Press, 1933).

Reinsch, P. S., American Legislatures and Legislative Methods (New York, Century, 1907).

_____ Readings on American State Government (Boston, Ginn, 1911).

Schaffner, M. A., Lobbying, Wisconsin Free Library Commission, Comparative Legislation Bulletin No. 2 (Madison, State of Wisconsin, 1902).

Schattschneider, E. E., Party Government (New York, Farrar and Rinehart, 1942).

Schattschneider, E. E., Politics, Pressures, and the Tariff (New York, Prentice-Hall, 1935).

Sutherland, J. G., Statutory Construction (3rd ed. (Horack), Chicago, Callaghan, 1943), 3 vols., vol. 2.

Walker, H., Lawmaking in the United States (New York, Ronald, 1934).

Walker, H., The Legislative Process (New York, Ronald, 1948).

Wilson, W., Congressional Government (Boston, Houghton Mifflin, 1885).

Zeller, B., Pressure Politics in New York (New York, Prentice-Hall, 1937).

Public Documents

Federal

Legal Decisions

Connally v. General Construction Co., 269 U.S. 385 (1926).

Hearst v. Black, 87 Fed. (2d) 68 (1936).

Lamp Chimney Co. v. Brass and Copper Co., 91 U.S. 656 (1875).

Trist v. Child, 21 Wall. 441 (1874).

Union League Club of Chicago v. U. S., 4 Fed. Supp. 929 (Court of Claims, 1933).

Federal Laws

United States Code, 1934, Supplement 1.

United States Code, 1940.

United States Compiled Statutes, 1902.

79th Cong., Second Session, Public Law 601.

Congressional Hearings, Reports of Investigating Committees, and Other Documents (Where not otherwise noted, all of the following entries were published in Washington by the United States Government Printing Office. The year of publication is given in parentheses.)

U. S. Congress, House, Committee on Rules, Investigation of Lobbying on Utility Holding Company Bills, Hearings, July 9-17, 1935, 74th Cong., 1st Sess. (1935).

U. S. Congress, House, Committee on Rules, Investigation of Lobbying on Utility Holding Company Bills, Report, 74th Cong., 2d Sess., H. Report 2081 (1936).

U. S. Congress, House, Select Committee to Investigate the Credit Mobilier, Credit Mobilier Investigation, 42nd Cong., 3rd Sess., H. Report 77 (1873).

U. S. Congress, House, Select Committee (No. 2) to Investigate the Credit Mobilier, Affairs of the Union Pacific Railway Company, 42nd Cong., 3d Sess., H. Report 78 (1873).

U. S. Congress, House, Select Committee on Lobby Investigation, Hearings, September-December, 1913, 63rd Cong., 1st Sess. (1914).

U. S. Congress, House, Select Committee on Lobbying Investigation, Report, 63d Cong., 2d Sess., H. Report 113 (1913).

U. S. Congress, Joint Committee on the Organization of Congress, First Progress Report, 79th Cong., 1st Sess., Senate Document 36 (1945).

U. S. Congress, Joint Committee on the Organization of Congress, Hearings, 79th Cong., 1st Sess., March 13-June 29, 1945 (1945).

U. S. Congress, Joint Committee on the Organization of Congress, The Organization of Congress; Suggestions for Strengthening Congress, 79th Cong., 2d Sess. (1946).

U. S. Congress, Joint Committee on the Organization of Congress, The Organization of Congress, Symposium on Congress, 79th Cong., 1st Sess. (1945).

U. S. Congress, Joint Committee on the Organization of Congress, Report, 79th Cong., 2d Sess., S. Report 1011 (1946).

U. S. Congress, Senate, Committee on Expenditures in the Executive Department, Hearings on Evaluation of Legislative Reorganization Act of 1946, February 2-25, 1948, 80th Cong., 2d Sess. (1948)

U. S. Congress, Senate, Committee on the Judiciary, Lobbying and Lobbyists; Preliminary Reports of the Subcommittee on Lobby Investigation, 71st Cong., 1st and 2d Sess., S. Report 43 (in 10 parts) (1929-1930).

U. S. Congress, Senate, Committee on the Judiciary, Lobby Investigation, Hearings Before a Subcommittee, 71st Cong., 1st, 2d, and 3d Sess., 72nd Cong., 1st Sess. (1930-1932).

U. S. Congress, Senate, Committee on the Judiciary, Maintenance of a Lobby to Influence Legislation, Hearings, June-August, 1913, 63rd Cong., 1st Sess. (1913).

U. S. Congress, Senate, Report of the Pacific Railway Commission, 50th Cong., 1st Sess. (1887), vol. 2.

U. S. Congress, Senate, Special Committee to Investigate Lobbying Activities, Hearings, July 12, 1935-May 6, 1938, 74th Cong., 1st Sess. (1938).

U. S. Congress, Senate, Special Committee to Investigate Presidential, Vice-Presidential, and Senatorial Campaign Expenditures, 1944, Report, 79th Cong., 1st Sess., S. Report 101 (1945).

U. S. Congress, Senate, Special Committee to Investigate Senatorial Campaign Expenditures, 1946, Report, 80th Cong., 1st Sess., S. Report 1, part 2 (1947).

U. S. Congress, Senate, Utility Corporations, 70th Cong., 1st Sess., Senate Document 92, in 84 parts with exhibits (1928-1937).

Congressional Bills, Resolutions, and Reports on Bills and Resolutions (Bills, resolutions, and reports whose texts have not been examined are not included here but are cited in footnote references in the body of this study.)

62nd Cong., 2d Sess., House Report 543.

63rd Cong., 1st Sess., Senate Resolution 92.

63rd Cong., 1st Sess., House Resolution 198.

70th Cong., 1st Sess., House Joint Resolution 227.

70th Cong., 1st Sess., Senate Resolution 227.

70th Cong., 1st Sess., S. 1095.

70th Cong., 1st Sess., Senate Report 341.

71st Cong., 1st Sess., Senate Resolution 20.

74th Cong., 1st Sess., S. 2796.

74th Cong., 1st Sess., S. 2512.

74th Cong., 1st Sess., Senate Report 602.

74th Cong., 1st Sess., Senate Resolution 165.

74th Cong., 1st Sess., House Resolution 288.

74th Cong., 2d Sess., House Resolution 11663.

74th Cong., 2d Sess., House Report 2925.

79th Cong., 2d Sess., Senate Report 1400.

79th Cong., 2d Sess., S. 2177.

Congressional Debates

The Congressional Record, 1875-1949.

State

Legal Decisions

Campbell v. Commonwealth of Kentucky, 229 Ky. 224, 17 S.W. (2d) 227 (1929).

Commonwealth of Kentucky v. Aetna, 263 Ky. 803, 93 S.W. (2d) 840 (1936).

State of Missouri v. Crites, 277 Mo. 194, 209 S.W. 863 (1919).

State Laws

(These references are arranged alphabetically by states. The date given is the date of the original publication of the compilation. Later supplements are referred to, where necessary, in the text of this study.)

Code of Alabama (1940).

Arizona Code (1939).

Deering's California Codes (1944).

Statutes of California (1947).

General Statutes of Connecticut (1930).

Code of Georgia, Annotated (1936).

Florida Statutes, Annotated (1943).

Idaho Code Annotated (1932).

Indiana Statutes, Annotated (1933).

Kansas General Statutes, Annotated (1935).

Kentucky Revised Statutes (1946).

Louisiana General Statutes (Dart, 1939).

Maine Revised Statutes (1944).

Flack's Maryland Code Annotated (1939).

Annotated Laws of Massachusetts (1944).

Michigan Public and Local Acts (1947 Session).

Mississippi Code, Annotated (1942).

Missouri Revised Statutes, Annotated (1939).

Revised Codes of Montana (1935).

Revised Statutes of Nebraska (1943).

Revised Laws of New Hampshire (1942).

McKinney's Consolidated Laws of New York, Annotated (1917).

General Statutes of North Carolina (1943).

North Dakota Revised Code (1943).

Page's Ohio General Code, Annotated (1945).

Oklahoma Statutes (1941).

Oregon Compiled Laws, Annotated (1940).

Purdon's Pennsylvania Statutes, Annotated (1941).

General Laws of Rhode Island (1938).

Code of Laws of South Carolina (1942).

South Dakota Code (1939).

Annotated Code of Tennessee (1934).

Vernon's Annotated Penal Code of the State of Texas (1925).

Utah Code, Annotated (1943).

Laws of Vermont (1939 Session).

Virginia Code, Annotated (1942).

Remington's Revised Statutes of Washington, Annotated (1932).

West Virginia Code of 1943, Annotated.

Wisconsin Statutes (1947).

Wyoming Compiled Statutes, Annotated (1945).

Miscellaneous State Documents

Final Report of the New York State Joint Legislative Committee on Legislative Methods, Practices, Procedures, and Expenditures, Legislative Document No. 31, 1946 (Albany, Williams Press, 1946).

Address of His Excellency William E. Russell to the Two Branches of the Legislature of Massachusetts (Boston, Wright and Potter, 1891).

Periodical Articles

"About Rules for Lobbyists," United States News, vol. 21 (August 16, 1946), p. 48.

"Backstage in Washington," Independent, vol. 118 (May 7, 1927), pp. 491-492.

"Backstage in Washington," Outlook and Independent, vol. 153 (October 30, 1929), p. 342.

Beard, C. A., "Whom Does Congress Represent?" Harpers, vol. 160 (January, 1930), pp. 144-152.

"Black Booty," Time, vol. 27 (March 16, 1936), pp. 17-18, and (March 23, 1936), pp. 19-20.

Black, R. A., "Lobbies for Loot," Nation, vol. 129 (October 30, 1929), pp. 486-487.

Brewer, F. M., "Congressional Lobbying," Editorial Research Reports, vol. 1 (May 8, 1946), pp. 317-333.

Bulkley, J. M., "The Third House," Overland (n.s.), vol. 39 (May, 1902), pp. 903-907.

Bridgeman, R. L., "The Lobby," New England Magazine (n.s.), vol. 16 (April, 1897), pp. 151-160.

"CQ Lobbyist Roundup," Congressional Quarterly, vol. 3 (4th Quarter, 1947), pp. 759-774.

"Control of Lobbying," Harvard Law Review, vol. 45 (May, 1932), pp. 1241-1248.

"Corruption in the Massachusetts Legislature," Nation, vol. 9 (July 1, 1869), p. 10.

Davenport, W., "The Lobby Shop," Colliers, vol. 81 (May 26, 1928), pp. 8-9, 40, 42.

Douglas, P., "Report from a Freshman Senator," New York Times Magazine (March 20, 1949), pp. 10, 72-76.

"Ending Secrecy of Lobbies," United States News, vol. 21 (August 9, 1946), p. 16.

"Existence of the Lobby," Nation, vol. 9 (July 22, 1869), pp. 64-65.

"The Federal Lobbying Act of 1946," Columbia Law Review, vol. 47 (January, 1947), pp. 98-109.

"Fifth Estate," World's Work, vol. 58 (December, 1929), pp. 34-35.

Frankfurter, F., "Reflections on the Reading of Statutes," Columbia Law Review, vol. 47 (May, 1947), pp. 527-546.

Galloway, G., "On Reforming Congress," Free World, vol. 7 (June, 1944), pp. 518-523.

Graves, W. B. (ed.), "Our State Legislatures," Annals of the American Academy of Social and Political Science, vol. 195 (January, 1938), pp. 72-109.

Hard, W. P., "Consider the Ethics of Lobbying," Nation's Business, vol. 17 (October, 1929), pp. 50-52.

Hard, W. P., "Lobbyless Lawmaking," Nation's Business, vol. 18 (February, 1930), pp. 78-83.

Harte, G. H., "Lobbying in the State Capitols," Women Lawyers Journal, vol. 31 (Fall, 1945), pp. 9, 29-30.

Herring, E. P., "Great Britain Has Lobbies Too," Virginia Quarterly Review, vol. 6 (July, 1930), pp. 342-355.

Herring, E. P., "Why We Need Lobbies," Outlook and Independent, vol. 153 (November 27, 1929), pp. 492-493.

"Hunting the Insidious Lobbyist," Literary Digest, vol. 47 (July 5, 1913), pp. 3-5.

"Improving the Legislative Process: Federal Regulation of Lobbying," Yale Law Journal, vol. 56 (January, 1947), pp. 304-332.

"Intolerable Evil," Law Notes, vol. 25 (March, 1922), p. 223.

"Invisible Government Under Searchlight," Review of Reviews, vol. 48 (September, 1913), pp. 334-338.

"Is Lobbying Offensive?" Congressional Digest, vol. 8 (December, 1929), pp. 289-301.

"Is There Anything in It?" Continental Monthly, vol. 3 (June, 1863), pp. 688-693.

"Is This Government of the People?" Christian Century, vol. 46 (October 30, 1929), pp. 1331-1332.

Jaffe, L. L., "Law Making by Private Groups," Harvard Law Review, vol. 51 (December, 1937), pp. 201-253.

Kirkpatrick, E. W., "Bay State Lobbyists Toe Mark," National Municipal Review, vol. 34 (December, 1945), pp. 536-539.

LaGuardia, F. H., "Lobbying in Washington," Nation, vol. 126 (May 23, 1928), p. 586.

"Law Making by Means of Dinners," Literary Digest, vol. 94 (July 16, 1927), pp. 46-48.

Lederle, J. W., "Spotlight on Congress," Michigan Law Review, vol. 44 (February, 1946), pp. 615-630.

Leupp, F., "Regulation of the Lobby," Nation, vol. 71 (September 13, 1900), pp. 206-207.

"Lobbies and American Legislation," Current History, vol. 31 (January, 1930), pp. 690-697.

"Lobbies on the Grill," Literary Digest, vol. 103 (October 19, 1929), pp. 10-11.

"The Lobby," Chambers Journal, vol. 45 (August 15, 1868), pp. 513-516.

"The Lobby and the Bar," Nation, vol. 35 (October 19, 1882), p. 325.

"Lobby Exposed," Current Opinion, vol. 55 (August, 1913), p. 75.

"Lobbying," Law Notes, vol. 23 (April, 1919), pp. 3-4.

"Lobbying," Outlook and Independent, vol. 153 (October 9, 1929), p. 215.

"Lobbying at Washington," American Law Review, vol. 9 (July, 1875), pp. 684-701.

"Lobbying Contracts," Albany Law Journal, vol. 11 (May 8, 1875), p. 296.

"Lobbying Contracts," Central Law Journal, vol. 3 (January 21, 1876), p. 34.

"Lobbying Good and Bad," Nation, vol. 129 (October 30, 1929), p. 481.

"Lobbyist Registrations," Congressional Quarterly, vol. 4 (1st Quarter, 1948), pp. s40-s44.

"Lobbyists," Congressional Digest, vol. 15 (June, 1936), p. 164.

"Lobbyists and Power Politics," New Republic, vol. 60 (October 30, 1929), pp. 284-285.

"Lobbyists by Wholesale," Nation, vol. 95 (July 25, 1912), p. 72.

Logan, E. B., "Lobbying," Annals of the American Academy of Social and Political Science, vol. 144, Supplement (July, 1929), pp. 1-91.

Lowry, E. G., "The Special Interests--New Style," Saturday Evening Post, vol. 192 (January 31, 1920), pp. 5, 58, 61.

Maxwell, S., "The Evils of Lobbying and Proposed Remedy," American Law Review, vol. 30 (May-June, 1896), pp. 398-403.

Maxwell, S., "The Evils of Lobbying and Suggestions of a Remedy," American Law Review, vol. 34 (March-April, 1900), pp. 224-228.

Maxwell, S., "Necessity for the Suppression of Lobbying," American Law Review, vol. 28 (March-April, 1894), pp. 211-217.

McKee, O., Jr., "Lobbying for Good or Evil," North American Review, vol. 227 (March, 1929), pp. 343-352.

McKee, O., Jr., "Lobbyists Extraordinary," North American Review, vol. 229 (January, 1930), pp. 82-88.

Mott, L. S., "The Lobbyist in the Niche," Lippincott's Monthly Magazine, vol. 78 (December, 1906), pp. 766-776.

Musser, W. W., "Legal Ethics of Lobbying," Oklahoma Bar Association Journal, vol. 12 (April 26, 1941), pp. 597-600.

"Natural History of the Lobby," Nation, vol. 97 (July 10, 1913), p. 26.

Nesbitt, C. R., "Application of Legal Ethics in the Practice of Lobbying," Oklahoma State Bar Journal, vol. 6 (September, 1935), pp. 110-112.

"A New Way of Treating Lobbyists," Chatauquan, vol. 41 (March, 1905), pp. 12-13.

One of the Craft (pseud.), "A Lobbyist Tells," North American Review, vol. 230 (October, 1930), pp. 462-469.

Orfield, L. B., "Improving State Legislative Procedures and Processes," Minnesota Law Review, vol. 31 (January, 1947), pp. 161-189.

"Organized Lobbying," Law Notes, vol. 26 (March, 1923), p. 222.

Perkins, J. A., "Congressional Self-Improvement," American Political Science Review, vol. 38 (June, 1944), pp. 499-511.

Pollock, J. K., Jr., "The Regulation of Lobbying," American Political Science Review, vol. 21 (May, 1927), pp. 335-341.

"Publicity and the Lobby," Nation, vol. 53 (August 20, 1891), p. 136.

Quincy, J., "Regulation of the Lobby," Forum, vol. 19 (November, 1891), pp. 346-357.

Roberts, R. M., "Federal Regulation of Lobbyists," George Washington Law Review, vol. 15 (June, 1947), pp. 455-463.

"A Showdown on Lobbying," Christian Century, vol. 46 (October 16, 1929), p. 1269.

Sollberg, E. J., "Lobbying from a Legal Standpoint," National University Law Review, vol. 8 (No. 1, 1928), pp. 76-84.

"To Curb the Pestiferous Lobbyist," Literary Digest, vol. 68 (January 29, 1921), p. 13.

"To Tame the Lobbyists," Literary Digest, vol. 96 (March 17, 1928), p. 11.

"Unofficial Representation at Washington," Independent, vol. 116 (January 2, 1926), pp. 17-18, 26.

"The Week," Nation, vol. 96 (June 12, 1913), p. 585.

Tucker, R., "Again the Lobby Exerts Its Pressure," New York Times Magazine (March 10, 1935), p. 22.

"What Registrars Tell Lobbyists," United States News, vol. 21 (September 6, 1946), pp. 70-71.

"Why Lobby?" Outlook and Independent, vol. 153 (November 6, 1929), p. 374.

Williams, M., "Aspects of Publicity," Commonweal, vol. 11 (November 13, 1929), pp. 42-44.

Wilson, R. D., "Registration of Lobbyists," Nebraska Law Review, vol. 27 (November, 1947), pp. 123-126.

Zeller, B., "The Federal Regulation of Lobbying Act," American Political Science Review, vol. 42 (April, 1948), pp. 239-271.

Zeller, B., "Lawmaker--Legislator or Lobbyist," National Municipal Review, vol. 29 (August, 1940), pp. 523-532, 544.

Zeller, B., "Pressure Groups and Our State Legislators," State Government, vol. 11 (August, 1938), pp. 144-147, 155.

Zink, H., "Indiana Lobby Control Found Insufficient," National Municipal Review, vol. 27 (November, 1938), pp. 543-544, 560.

Newspapers

Ann Arbor News

Christian Science Monitor

Detroit Free Press

Detroit News

New York Herald-Tribune

New York Times

Washington Post

Unpublished Materials

Graves, W. B., Administration of the Lobby Registration Provisions of the Legislative Reorganization Act of 1946 (Unpublished Report, Legislative Reference Service, Library of Congress, Washington, 1949).

Photostats of Forms A, B, and C rendered under the Federal Regulation of Lobbying Act for the period August, 1946, to August, 1948, were examined in the Lobby Compliance Section of the United States Department of Justice.

In addition, the author examined memoranda, compilations, and other unclassified data. Reference to these is made in the text of this study.