TESTIMONY OF U.S. SENATOR BOB DOLE
BEFORE THE HOUSE COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT

<63

THURSDAY, OCTOBER 8, 1970

Mr. Chairman, I am pleased to have this opportunity to appear before your committee and share my views with you. I feel your hearings are extremely important, both to the general public and to Members of Congress, because over the years "lobbying", "influence peddling", "public relations", "interest groups" and associated phenomena surrounding the legislative process have come in for a great deal of publicity. This publicity has generated considerable confusion, uncertainty and misunderstanding over the activity which is broadly described as lobbying and the role which it plays in the legislative process.

THE TRADITIONAL CONCEPT

In the most general sense lobbying is any activity which is intended to influence the passage or defeat of any legislation before Congress. Perhaps, when the practice of lobbying is mentioned, the picture which first comes to mind is that of an individual, who acts as a salesman for a particular point of view, making appeals to a legislator on behalf of his viewpoint. These appeals may be by such individual in his own behalf, on the part of his employer or for a client.

This type of activity has been present since the gavel sounded for the First Congress and it has been recognized as both a useful and a proper endeavor. Indeed the Constitutional guarantees of free speech and right of petition are fundamentally intertwined with the lobbying function.

There is another type of lobbying which differs from the sort just described. It is not carried on directly, lobbyist-to-legislator, but indirectly, lobbyist-to public-to legislator. Numerous causes and positions are promoted through this method.

It usually takes the form of a print and broadcast media campaign to stimulate public interest and channel that interest into a letter-writing or visitation campaign directed at Members of Congress.

Those who generate lobbying efforts of either the direct or indirect type have historically been almost anyone and everyone who would be affected by the passage or defeat of legislation. Conservation groups, labor unions, business interests, education organizations, even the Executive branch of government, and countless others have sought to persuade the Congress of the United States to enact or defeat an almost infinite variety and number of legislative proposals.

Those who are elected to the House of Representatives and the Senate expect, or at least they soon learn to expect, to be focal points for both direct and indirect lobbying efforts. Sometimes the volume of mail urging defeat or passage of bills and the list of people wishing appointments to discuss upcoming legislation is nearly overwhelming. But most Congressmen and Senators realize that exposure to the efforts of contending and competing interests to convince, persuade and promote is part of the job -- and an extremely important part. It is a legislator's function to analyze and weigh these differing viewpoints and exercise his best judgment on the merits of each issue in casting his vote. It is necessary to realize that these expressions are part of the American system and are exercises of the fundamental rights to petition the government and free speech. It is equally important that, to the greatest extent possible, consonent with these fundamental rights, a Member of Congress should be aware of the real partisan interest behind lobbying efforts.

PRECAUTIONS AGAINST ABUSE

It is unfortunate, but true, that any system for the exercise of liberties is subject to the abuse of those liberties, and the matter of lobbying is no exception.

There have been from the beginning those who would subvert the system and pursue mean, narrow personal ends at the expense and in the guise of the public interest. As the legislative process has grown more complex and more far-reaching, the consequences of lobbying abuse have become increasingly serious. In recognition of past abuses and potential for harm, the Congress has from time to time enacted legislation to regulate the lobbying process. The current statutory provisions are found in the Federal Regulation of Lobbying Act, 2 USC 261-270. The primary thrust of this legislation is to require identification of both those who lobby and of those who raise funds to support lobbying activities.

In the major court decision interpreting this act, the U.S. Supreme Court said in the 1953 case United States v. Harriss:

> "Present day legislative complexities are such that individual Members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends in no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal."

No attempt was intended in enacting the Federal Lobbying Act to limit, restrict or chill the free exercise of fundamental rights. But, as the Court, through then Chief Justice Warren, said in Harriss:

> "Congress is not Constitutionally forbidden to require the disclosure of lobbying activities. To do so would be to deny Congress in large measure the power of self-protection."

I have no desire to see lobbying activities of any interest group or individual inhibited, but I believe the Supreme Court spoke to a very important issue when it identified the necessity for identification of the lobbying pressures to which Congress is subjected.

The present Lobbying Act, while deficient in several respects, has made a start at requiring identification. But one especially wide loophole exists and recent developments give cogent testimony to the need to have it closed.

CONGRESSIONAL CUSTOM

Mr. Chairman, as Members of Congress, we have come to expect mail and visits from just about anyone on almost every subject, but as sort of a fraternity we have circled our wagons and weathered the onslaughts, evaluated the competing advocacies, and cast our votes in the Senate and House as best we saw fit.

Each of us has on occasion enlisted the cooperation of our colleagues in opposing or promoting various legislative proposals. Sometimes cosponsorship of bills is sought by letter or formal announcement; sometimes cooperation is urged in private conversations; and not infrequently vigorous attempts to change our colleagues' minds are made in floor debate and committee deliberations. But throughout all these endeavors are seen the threads of respect for our colleagues' independence of judgment, recognition of their integrity and cognizance of their burdens and the weight of their responsibilities. In sum perhaps it could be said that Congressional practice has been that, while Members often seek to persuade their colleagues, they have not endeavored to create or stimulate additional, outside pressures which will be specifically turned on them.

I realize that Senators and Congressmen undertake to promote causes which eventually may result in some general stirring up of public or private interest and consequently have some impact on the Congress. But in general these activities have not had the primary design or intention of increasing the lobbying pressures with which other Members must contend. At least, after serving eight years in the House of Representatives and some seventeen months in the Senate, such was my understanding of the customs and practice within the Congress.

A RADICAL DEPARTURE

But in May of this year an effort was undertaken which if not in violation of accepted standards of Congressional conduct was at the very least a radical departure from prior practice.

I am referring specifically to activities of several Senators and Congressmen in behalf of a many-versioned proposal which was given the popular caption "The Amendment to End the War." Since primary public attention was given to the Senators involved in these activities, I shall limit my remarks chiefly to the Senatorial aspects of this matter, but these remarks could likely be applied with equal force to the House.

On May 12, 1970, five United States Senators purchased one half hour of prime time on a major television network to promote the passage of this so-called "Amendment to End the War." I shall not go into the details of their presentation other than to say that it was an emotional and unrealistic appeal to the frustrations and anxieties of a war-weary American people. Such an appeal on an issue of public interest was not unknown to American history and countless distortions and misrepresentations are unleashed on the public every year -- whether in advertising mouthwash, political candidates or washday detergents. The truly remarkable and revolutionary aspects of this broadcast were to be found in its closing minutes when the following statements were made:

> Senator #1: "If you want to cast your vote to end the war in Indochina, there is something you must do in the next few days. WRITE YOUR CONGRESSMAN OR YOUR SENATOR, just the simple words, 'I vote for the Amendment to End the War in Southeast Asia.'"
>
> Senator #2: "And there's something else you can do. Take a sheet of paper and write at the top: 'We, the undersigned, favor the Amendment to End the War.' Leave room for names and addresses; and then go out to work, to the church, to the supermarket, wherever you can collect signatures, and get people to sign who agree with you. SEND THOSE PETITIONS TO YOUR CONGRESSMAN AND TO YOUR SENATORS."

With these words, these Senators undertook directly and explicitly to generate public pressure --lobbying-- on their colleagues to secure passage of a legislative proposal in which they, as cosponsors, had a primary and vested interest. Never before, so far as I have been able to determine, had any such frontal attack on Members of Congress been launched by other Members.

But this appeal was followed by another which was even more astounding than the first:

> Senator #3: "The President of the United States rightfully can command all media to bring a message to the people of the United States any time he deems he has a message of importance. For those of us who have differing viewpoints, and wish to express those to you, the American people, IT REQUIRES THAT WE SEEK YOUR ASSISTANCE."
>
> Senator #4: "Remember that 66 cents out of every tax dollar goes for war. A dollar for peace could go a long way. SO SEND YOUR CONTRIBUTION, WHATEVER IT MAY BE, IN ORDER THAT WE CAN CONTINUE TO SPEAK OUT. Make your checks out to "Amendment to End the War," Post Office Box 1A, Ben Franklin Station, Washington, D.C. 20024."

So with two swift strokes, these Senators wrote a new chapter in the book of Congressional comity and conduct. Not only did they actively solicit and seek to stimulate public pressure on their colleagues, but they sought funds with which to further increase and generate such pressure.

That their efforts were spectacularly successful is a matter of vivid recollection to every Senator and Congressman. Millions of pieces of mail on their amendment flooded Washington in the following weeks, and thousands of people came to discuss it with their elected representatives. But these five Senators were spectacularly successful in another way, for their efforts produced something in the neighborhood of one-half million dollars in contributions. And they used this money to launch a massive, nationwide advertising campaign -- along with nineteen other Senators and an interlocking and somewhat nebulous coalition of "citizen" groups -- to further pressure Members of the House and Senate on this spurious, illusory and misleading amendment. Their adversiting campaign compared with any ever devised to push a new model automobile, tout a more powerful headache remedy or publicize the latest household cleanser. Their campaign was run in approximately sixty market areas, chiefly in the form of television spot commercials and newspaper advertisements.

MANY QUESTIONS RAISED

This whole range of activities raises serious and far-reaching questions. Is Congressional participation and collaboration in an organized lobbying campaign proper? Is it proper for Members of Congress to form a committee, such as the Amendment to End the War Committee, to solicit money from the public for the purpose of persuading citizens and organizations, to lobby other Members of Congress to vote for certain legislative proposals?

Over the years lobbying has been a matter of recurrent concern to Congress. While in most instances lobbying is an exercise of the rights of free speech and petition, its demonstrated potential for abuse has at times threatened the integrity of the legislative process.

In 1929 the Senate adopted a resolution censuring Senator Bingham of Connecticut for his direct personal involvement in lobbying activities. He had hired a lobbyist for manufacturing interests as one of his clerks and then brought the man into committee deliverations on pending tariff legislation. The Senate's action condemning the Senator's use of his official position to assist in lobbying certainly stands as a strong precedent, and it strongly suggests that participation by Senators in any lobbying activities is questionable.

The nature of the legislation which is the subject of lobbying activities is not relevant to the context in which the propriety of Congressional conduct should be weighed. The crucial context is the proper functioning of our Constitutional system and particularly the roles of Members of Congress in relation to the Senate and House on the one hand and private persons on the other.

The basic problem is the preservation of the Congress as a deliberative branch of government. To preserve the Congress' deliberative character, no Member can permit his involvement with outside groups to override his obligations as a Member of Congress.

The problem is a complex one requiring careful study and inquiry, because there are many ways in which Members can and should relate to outside groups interested in pending legislation.

But, on the other hand, is it satisfactory to say that a Senator or Congressman is a citizen and thus has the rights of all citizens to engage in lobbying? Judges are citizens, military men are citizens, civil servants are citizens, yet all must recognize various legal or ethical restraints against activities open to the ordinary citizen. It is generally recognized that there are inhibitions that must be respected if our system is to function properly, and it would seem that Members of Congress as bearers of a particular public trust might be held to more stringent standards than an ordinary private citizen.

WHAT HAT TO WEAR?

It is is ethically permissible, for instance, for Senators to join in collecting and spending money on TV and newspaper advertising aimed at pressuring other Senators, what limits are there?

Might not a Senator decide that, in addition to spending money on advertising to get other people to lobby his fellow Senators, the best lobbyist would be the Senator himself, or a Senator with similar views who should be retained with the collected funds to urge the position in question upon other Senators?

And regardless whether a Senator may receive remuneration from privately contributed funds, does not the fact that he may be approaching his colleagues as the agent for an outside group undermine the mutual confidence that should exist between them? Is it proper for a Senator to seek to influence other Senators by drumming up outside pressure on them, or by seeking to influence them himself while acting in the dual capacities of Senator and lobbyist? Does such a dual role depreciate his functioning as a Senator? And does it give him, as a lobbyist, an unfair advantage not enjoyed by spokesmen for opposing views who are not Senators?

No criticism of any Member of Congress is intended by these questions, Mr. Chairman, but they are questions deserving of answers -- for the important thing is to protect our system and the role of the Congress in our system of government.

MEMBERS OF CONGRESS AS LOBBYISTS

The Supreme Court's criteria for applying the Federal Lobbying Act are these: First, the lobbyist must have solicited, collected, or received contributions. Second, one of the main purposes of such contributions must be to influence the passage or defeat of legislation by Congress. And third, the intended method of accomplishing this purpose must have been through direct communication with Members of Congress.

It is a fact that Senators involved in promoting the Amendment to End the War did solicit and collect contributions. It is a fact that the main purpose of the contributions was to influence the vote on the amendment.

One questions stands out in this analysis: Was the method direct communication with Members of the Congress? Certainly the Amendment to End the War Committee used indirect communications, and members of the committee used direct communications to lobby for the End the War Amendment.

The TV and newspaper ads asked the American people to pressure Senators, and members of the committee, when they discussed the issue, were in effect, lobbyists.

The question then is, should members of this committee or any other, who undertake similar endeavors and who are also Members of Congress, be required to register as lobbyists?

Mr. Chairman, regardless of the merits, if any, of the End the War Amendment, there is no doubt that its sponsors broke new ground in the field of lobbying. I believe, however, that it is more quicksand than solid ground, and that they have inaugurated a practice which is fraught with danger to the Congress.

I believe that in their eagerness to promote their cause they did a disservice to the Congress by fomenting pressures on their colleagues and by soliciting money to bring additional pressures against their colleagues.

A LEGISLATIVE SOLUTION

These activities occurred in a relatively untested and murky legal realm, and one cannot say with any firm authority that statutory provisions or ethical standards have been violated. However, I have proposed legislation to clarify this area, because the public interest demands that firm lines of demarcation be drawn and currently existing loopholes be closed.

Our Democracy affords a free and unobstructed opportunity for citizens to petition the government for redress of their grievances as well as the right to express their views to their elected Representatives in the Congress. At the same time, however, if the integrity of the legislative function is to be maintained and preserved, identification should be required of parties seeking to influence the passage or defeat of legislation by direct appeals to the Congress or by stimulation of the public intended to produce direct communication with the Congress.

The legislation I proposed specifically imposes the full requirements of lobbying disclosure on Members of Congress who engage in this activities.

There is more at stake here than merely the passage or defeat of individual pieces of legislation. At stake is whether the House of Representatives and the Senate are to remain deliberative bodies or become the bases of operations for 535 elected lobbyists.

The text of the bill I introduced (S. 4274) provides as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 307 of the Federal Regulation of Lobbying Act (2 U.S.C. 266) is amended by adding at the end thereof the following new paragraph:

"The provisions of this title also shall apply to any Member of Congress who directly or indirectly solicits, collects or receives money or any other thing of value to be used principally to solicit or aid in the solicitation of communications to be made by members of the public to one or more other Members of Congress for any of such purposes."

Mr. Chairman, again I wish to express my appreciation for your invitation to appear before your distinguished committee.