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STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENTAL RELATIONS  
HOUSE COMMITTEE ON  
THE JUDICIARY

ON

FORMER HIGH-LEVEL FEDERAL OFFICIALS  
REPRESENTING FOREIGN INTERESTS



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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss with you our study to assess the extent to which former high-level federal officials represent foreign interests. Our study was initiated in November 1985 at the request of Representatives Marcy Kaptur and Howard Wolpe and we issued our briefing report to them on July 11, 1986. They have introduced a bill (H.R. 3733) that would amend the U.S. Criminal Code to prohibit any former high-level federal government official for at least 10 years after leaving public service from representing or advising a foreign interest in connection with any transaction with the U.S. government. The bill generally defines high-level officials as Executive Level V or higher, and General and Flag Officers of the uniformed services. The bill does not cover Members of Congress or congressional staff. However, as requested, our study considered Members of Congress and senior congressional staff as high-level federal officials.

In our study, we assessed the current reporting requirements and statutes relevant to the issue and compiled information from publicly available sources to identify high-level officials who left government service during fiscal years 1980-85 and the representational activities they subsequently carried out on behalf of foreign interests.

U.S. statutes relevant to the issue generally fall into two categories: (1) registration or reporting requirements for representational activities and (2) post-employment conflict of interest laws (18 U.S.C. 207) that preclude some forms of employment activities. The first category includes the Foreign Agents Registration Act of 1938 (FARA), as amended; Section 951 of Title 18, U.S. Code, regarding representation of foreign governments; and the Federal Regulation of Lobbying Act. These statutes do not focus on former government officials and do not, per se, preclude their employment on behalf of foreign interests.

The post-employment conflict of interest laws apply to former officers and employees of the executive branch, independent agencies, and the government of the District of Columbia. These laws place restrictions on former officials' representational activities before non-legislative components of the federal government. The restrictions vary in duration from one year to a lifetime depending on the officials' former relationship to the issues in question or to the venue of representation. These laws do not affect former Members or staff of the Congress. Further, they do not mention foreign interests specifically although they may in fact reach such interests in a given case.

In 1974 and in 1980, we issued reports recommending improvements in the administration of the Foreign Agents Registration Act of 1938, as amended. We did not review administration of the Act as part of our current study but did

note that few resources are allocated to identifying unregistered foreign agents.

We have issued a number of reports on administration of conflict of interest laws and regulations. In 1983 we reported that, according to ethics officials at several agencies, agencies had made few referrals of post-employment violations to the Department of Justice and that Justice had prosecuted few violation cases. There was insufficient information to determine whether former employees were adhering to the law or whether the agencies and Justice were unable to identify and deal with violations.

Former Department of Defense employees are required by law to report defense-related employment activities. In 1985 we reported that Defense did not know the degree of compliance with the reporting requirement. Our analysis indicated that only about 30 percent of those individuals who probably should have filed reports in fiscal year 1983 did so. We subsequently recommended certain improvements in the system, which Defense plans to implement.

Our current study covered about 2,500 high-level federal positions, including Members of Congress and senior congressional staff positions. We identified 2,557 former incumbents of these positions during fiscal years 1980-85, and found that 76 of them had subsequently carried out foreign representational activities covered by our study.

We would like to emphasize that the 76 individuals we identified represent the number of former officials engaged in such activity that we were able to identify from the available data sources and that the actual number is likely to be greater. Technical and methodological difficulties associated with the data available to carry out the study would not permit a more complete identification. The difficulties relate to the accuracy and completeness of data bases used to identify both foreign representational activities and former high-level officials. For example, the Foreign Agents Registration Act does not require registrations for persons engaged in some categories of representation, notably commercial and legal. To compile information on these types of activities, we attempted to obtain supplemental information from several government agencies where significant foreign representation takes place. We did obtain information from the Department of Commerce, the International Trade Commission, and the Office of the U.S. Trade Representative. However, some agencies, including the Departments of Agriculture and Defense, did not have records from which we could obtain data on possible foreign representation. We also found that the principal source for identifying former high-level officials--the Office of Personnel Management's Central Personnel Data File--was incomplete and consequently, there are likely to be omissions in our list.

The 76 former federal officials we identified had diverse federal service and included 6 Senators, 9 Members of the House of Representatives, 17 senior congressional staff, 4 general military officers, 18 White House officials and 22 other executive branch officials. They accounted for 242 representational activities, or about 2.0 percent of the total 11,864 representational activities we identified. The former federal officials engaged in various forms of representation and included 45 persons providing lobbying, consulting, or fund raising services, 28 providing a combination of lobbying and legal services, and 11 providing legal counsel. (These numbers include attorneys providing more than one kind of service to clients, resulting in double counting.) In all, they have represented 166 foreign clients from 52 countries and 2 international entities.

The former officials identified in the report were notified by mail of the information we proposed to report on their activities, and we called or attempted to call each one to verify the accuracy of the data, all of which was obtained from publicly available sources. In a number of cases, certain former federal officials informed us that they did not actually participate in representation activities identified on their FARA registration forms. In general, they stated that such registrations were contingencies; that as officers of the firms they might be called on to provide service to any client, so it was desirable to be registered for all foreign clients to avoid a penalty for failing to register. Because of this clarification, we deleted 6 names from our original list, and the number of representations identified for some individuals has also been reduced.

Mr. Chairman, this concludes my statement. I would be happy to try to respond to any questions you may have.