too often in the past the problem of subversive propaganda has been posed in terms of a false dilemma: either we suppress such propaganda, in which case we violate the first canon of the liberty we seek to defend and put a general damper on the free criticism which is so essential to the effective functioning of our democracy, or we must allow such propaganda to flourish without interference, in which case we invite the destruction of liberty that the propagandists of totalitarianism plan for us. In facing this dilemma, liberals have tended to belittle the menace of subversive propaganda, fearing that recognition of the evil will bring cures worse than the disease. On the other hand, those who appreciate the seriousness of the propaganda threat to our democracy have generally assumed that free speech is an expensive luxury which must be sacrificed in wartime. What both sides in this conflict have tended to overlook is the fact that there are ways of undermining the force of totalitarian propaganda which do not involve suppression. There are democratic ways of defending democracy. One of the methods of destroying
the poison of totalitarian propaganda is to expose it to the sun and air of informed criticism. Thus we may meet one of the ills to which democracy is heir by the cure of more democracy.

Most Americans believe that all, however hateful their opinions may be, have the right to speak their minds. But it is contrary to our spirit of fair play for anyone to pretend to be disinterested, or to speak as an individual, and yet really to represent an ulterior interest. We believe that, to judge the validity of anyone's arguments, we have the right to know for whom he speaks. Thus, when it was discovered that certain college professors and newspapers attacking public ownership of public utilities were in the pay of the utility companies themselves, there swept the country such resentment as led to the dissolution of the half-century old National Electric Light Association. Again, there was the revelation that thousands of telegrams to members of Congress opposing the Public Utility Holding Company Act of 1935 were directly inspired by the holding companies themselves, their employees, and their associates. This exposé discredited the protestants before Congress and before the public and helped to obtain passage of the Act.¹

Newspapers are therefore required by law clearly to distinguish between news or editorial columns and those that are paid for as advertisements. The identity of the editors, managers, and owners of all newspapers using the United States mails under the second-class privilege must be publicly revealed each year.² Many states require that political advertisements be accompanied by the names of the persons who pay for them.³ In addition, the New York law requires the filing of full information about anyone doing business under a name other than his own, whether the assumed name be that of a person or a mere descriptive trade name.⁴ Under the legal rules of evidence, a witness may be impeached—the credibility of his testimony lessened—by a showing that he is interested in the result of the case or that he represents or is related to persons so interested.⁵

¹ 79 Cong. Rec. 10507, 10675 et seq. (1935).
³ For example, see Wis. Stat. (1939) §§ 12.12, 12.14, which require publishers of newspapers and periodicals to label as an "advertisement" all matter which is paid for and which tends to influence voting and to state the amount paid or to be paid, the names of the person authorizing it and of the person on whose behalf it is published. This statute also requires officeholders and candidates, if they own newspaper interests, to file verified statements of their interests with the county clerk before any matter which tends to influence voting is printed by the paper. It penalizes the publisher as well as the candidate or officeholder if any such matter is published prior to such filing.
⁴ N.Y. Penal Law (McKinney, 1940) c. 40, § 440.
⁵ 3 Wigmore, Evidence § 949 and cases cited at 499, n. 2 (3d ed. 1940).
COMBATING TOTALITARIAN PROPAGANDA

The truly American sentiment which justifies such requirements explains why the first weapon chosen by our government to combat the insidious propaganda of the dictators was, not the weapon of suppression, but the typically American way—disclosure of its sources, methods, and purposes.6

The method of disclosure has been applied to three special fields by three recent acts of Congress.

On June 8, 1938, the President approved an act of Congress,7 commonly known as the Foreign Agents Registration Act, requiring the disclosure of foreign connections of propaganda agents subsidized or directed from foreign sources.

On June 28, 1940, the Alien Registration Act8 was approved, and under this legislation all aliens in the United States were required to furnish information concerning their activities.

On October 17, 1940, a third registration act, commonly called the Voorhis Act,9 was approved. This act required the registration of all subversive organizations.

Thus, three groups considered by the American people as including, though not necessarily as constituting, elements dangerous to the continuance of our democracy were to be brought under what Congress once referred to as "the pitiless spotlight of publicity."

In order to determine how well or how badly this sanction of publicity has operated, it is necessary to examine the purposes that lay behind these three statutes, the spirit in which they have been administered, and the results achieved. Upon the basis of such a survey, one may hope to reach a scientific appraisal of the efficacy and the defects of these three statutes and of the common method which they embody.

THE FOREIGN AGENTS REGISTRATION ACT

PROVISIONS OF THE ACT

In general, the Foreign Agents Registration Act of 193810 sought to make known to the American people the sources of foreign propaganda.

6 See, for an illuminating discussion of the philosophy of disclosure legislation, Bruce Lannes Smith, Democratic Control of Propaganda through Registration and Disclosure, Public Opinion Quarterly, No. 1, at 27-40 (Spring, 1942).


In order to do so, it required registration at the State Department of each "agent" of a foreign principal." This provision, standing alone, would probably require registration of many persons engaged merely in bona fide business and social relationships who are not dispensing anti-democratic propaganda. But the Act specifically excludes many such persons. These exemptions cover diplomats, foreign government officials, traders, consular officials, and those engaged only in religious, scholastic, academic, or scientific pursuits. Thus, Congress with one hand required registration of all propagandists, and with the other tried to limit the requirement of disclosure to those who are engaged directly in political propaganda activity. The record shows, however, that this method of definition was not entirely successful.

Of course, the mere names of the propaganda agents would not be very helpful without the details of their activities and their relationships and duties to their principals. A registrant may be merely a publicity agent whose duty it is to convince Americans of the beauty of the Swiss Alps; or he may be a big Gauleiter, supervising hundreds of little sub-Gauleiters. He may be a mere salesman, or he may be charged with direction of the dictators' campaign to prove that we in America would be better off if we gave up our right to speak, to write, to worship, to meet, to vote, to strike, and to run our own businesses, and delivered ourselves body and soul to the control of a demi-god with a comic mustache. So, the Act required that agents file not only their names but also their addresses, the names of their principals, copies or descriptions of their agency contracts, and a statement of the form and amount of pay they receive. They were also required to file supplementary statements every six months to bring the original statement down to date, describing their activities during each such period.

Congress intended to give the Department of State powers and to impose on it the duty, to "fill in the details" of legal requirements within the
broad framework of the Act’s provisions. This appears from the repetition to the point of redundancy of the grant of power to the Secretary of State to prescribe rules, regulations, and forms as may be necessary to carry out this Act.\footnote{52 Stat. 631 § 6 (1938). Further authorization to implement the requirements of the Act appears in §§ 2, 3, and 4.}

\textbf{THE INTENTION OF CONGRESS}

The intentions of the members of Congress who framed and enacted the Foreign Agents Registration Act may be learned both from the Act and from statements made by them at the time it was under discussion. The best source of information is the official Committee Report\footnote{Report No. 1381, of the Committee on the Judiciary of the House of Representatives, 75th Cong. 1st Sess. (1937), on H.R. 1501, to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes.} on the bill, which carefully explains its purposes and provisions.

While the Act describes the general classes of agents to be disclosed by registration, it is clear from the legislative history that Congress was primarily interested in obtaining information about three specific types. They are: promoters of disunity, and particularly those secret propagandists who seek to split our unity by creating discord along racial, religious, or other artificial lines; subverters of democracy, seeking to spread what the Committee Report refers to as “doctrines alien to our democratic form of government” and engaging in “subversive or other similar activities”; foreign policy propagandists, and particularly persons “representing foreign political groups who are supplied by such foreign sources with funds and other material to influence the external . . . policies of this country. . . .”\footnote{Ibid.}

The kinds of information that Congress intended to make available include: identity of registrants, including, if they are corporations, partnerships, or other organizations, the nature of their organizational structure; the nature of their foreign association, i.e., a detailed statement of their relationships to their principals.\footnote{Ibid. The Report said that what was required was “to label the sources of pernicious propaganda.” It said that “our National Food and Drugs Act requires the labelling of various articles and safeguards the American public in the field of health,” and said that “the bill only seeks to do the same thing in a different field. . . .” Apparently, it was intended that this should be “informative labelling,” like that required by the law mentioned, and should include all the important “ingredients” of such relationships. Congress intended to reveal the names not only of foreign governments, but also those of consular officials, political parties, private agencies, and others sponsoring and aiding such activities. The Committee stated in its report that “many of the payments for this propaganda service were made in cash by the consul of a foreign nation.”} That Congress did not intend the
information to remain hidden in the files of a government department is shown by the extreme emphasis that it placed upon the need for publicity. Referring to the necessity for a "spotlight of pitiless publicity" upon such agents, their principals, and their activities, it was said that the propaganda efforts of such a nation are usually conducted in secrecy, which is essential to the success of such activities. Congressmen thought the passage of the bill would force propaganda agents representing foreign agencies to come out "in the open" in their activities or to subject themselves to the penalties provided; they intended, moreover, to make available to the American public the designated information.20

A desirable by-product of full disclosure of the sort that Congress intended would be a degree of protection to those who, because they promote unpopular causes, may be falsely attacked as foreign agents. Such charges are sometimes hurled against persons, who in all good faith, stand for policies that, because of the accidents of diplomacy, the fortunes of war, or the whim of a dictator, happen temporarily to parallel those of foreign rulers. For instance, those who urge opposition to communism for America's sake sometimes find themselves confused with others who oppose American aid to the Soviet Union because such aid will injure the Axis cause. The arguments of such propagandists could be appraised more fairly if their listeners were assured that they either did or did not represent foreign interests.

To those agents of foreign countries who wished to deal with us on a fair and open basis, the Foreign Agents Registration Act offered an opportunity to prove their good faith by full and honest disclosure of their foreign relationships. The Act covers much propaganda that is in no sense anti-democratic and that, if openly conducted, should be given a full and fair hearing by the American people. With certain exceptions, all foreign agents were required to register, whether or not their activities were deemed pernicious and whatever nation they might represent, be it a dictatorship or a democracy.

If Congress passed the Act to achieve the purposes outlined, then we have the right to ask whether the Act has been effectively administered to accomplish these purposes. We can hardly appraise this Act fairly without answering three questions:

20 Ibid. Congressman McCormack of Massachusetts, the author of the bill, when questioned whether publicity would have a deterring effect upon foreign propaganda, replied: "Yes. .... It would be brought out in the open so that everybody would know what it was being used for. ...." Hearings on H.R. 1591, before a Subcommittee of the Committee on the Judiciary of the House of Representatives, 75th Cong. 1st Sess (1937) (unpublished).
COMBATING TOTALITARIAN PROPAGANDA

1. Does the Act, as administered, actually disclose the foreign agents intended to be disclosed, namely, the promoters of disunity, the subverters of democracy, and the foreign policy propagandists?

2. Does it obtain the kind of information that Congress wanted, including the identity of the agents; the principals backing such agents, including not only foreign governments but also private and political groups acting in their behalf, i.e., not only the nominal or pretended principals but also the real ones; the duties and relations of the agents to their employers; and the details of their propaganda activities?

3. Is this information subjected to intense publicity, calculated to render the activities of such agents less effective?

THE ADMINISTRATION OF THE ACT BY THE STATE DEPARTMENT

On June 13, 1941, when the State Department had been administering the Foreign Agents Registration Act for three years, the Institute of Living Law released a factual study which revealed serious defects in the Act itself. More important, it revealed an amazingly inept administration of the Act. In order to appraise the effectiveness of the technique of exposure, it is necessary to ascertain the nature of these defects.

It was discovered that the Act itself had three important loopholes. First, although Congress declared that the term "person" means "an individual, partnership, association, or corporation," our criminal law does not provide any procedure by which an unincorporated association (or, for that matter, a partnership) can be prosecuted or imprisoned; nor does it recognize any way in which an impecunious corporation can be punished effectively. If the statute had required the officers of such an organization to file statements on its behalf, then they, at least, could have been imprisoned or fined for its failure to register.

Second, Congress exempted from the requirement of registration consuls, employees of consuls, and various similar classes of individuals who would otherwise be foreign agents in the strictest sense. Although the diplomatic representatives of a foreign government are, by customary rules of international law, exempt in their official capacity from civil and criminal jurisdiction in the country wherein they serve, consular agents and their staffs are not immune from such jurisdiction. Therefore, it would have been no infraction of the rules of customary international law for the United States to require that consuls engaging in propaganda activities register as agents of foreign principals.

Third, Congress exempted from registration requirements persons active in furtherance of the "bona fide trade or commerce" of foreign prin-

21 A summary of this report was published in 87 Cong. Rec. App. A4417-29 (1941).
cipals, or of "bona fide . . . . scholastic, academic, or scientific pursuits, or of the fine arts," and thereby laid down standards which are inapplicable to totalitarian states. It is of the essence of totalitarianism that commerce, education, science, and art, as well as business, must be subordinated to the interests of the state.

These defects in the statute might have been rendered comparatively innocuous, however, if the Act had been vigorously enforced. The old adage that an act is as good as its enforcement was never more adequately supported than in this case. The Institute found that the Act had been rendered a dead letter and that the chief responsibility for this could be laid at the door of the State Department. Chief sins of omission and commission included the granting of wholly unnecessary exemptions from the registration requirements, the failure to secure relevant information from those who did register, and the failure to publish the information that was collected. For example, in a list of three hundred names registered under the Act, there appears not one of a Communist leader in the United States. With a few rare exceptions, the same is true of Nazi and Fascist leaders. Of these, moreover, the information obtained was woefully meagre and was never published. The State Department, resorting to a legal nicety, uncalled for either by the Act or by its legislative history, construed the word "agent" as excluding subagents, subsidiaries, and branch offices, thereby effectively removing from the application of the Act hundreds of persons in the employ of registered and unregistered agents.

Although Congress intended that the Act should require the filing, not only of the agent's name, but also of full and complete information about him with regard to his identity, his relationship with his foreign principal, and the nature of his activities, the regulations issued by the State Department fell far short of achieving the Congressional intent. Documents defining the organizational set-up of corporations, associations, and partnerships are referred to in the prescribed forms, but not in terms specifically requiring them to be filed. No questions were asked which would show whether the actual management of an organization was in the hands of persons not officers thereof or bearing no formal relationship to the organization. The State Department had ample administrative power to require full information about the sponsors of foreign propagandists as such. But it saw fit to ask only the most elementary questions concerning the formal principals for which such agents might act, without requiring

any disclosure regarding specific persons who are the propaganda agents' more immediate superiors.\textsuperscript{24}

Naturally, the most important information required by the Act, both from the point of view of public information and from that of law enforcement, concerns the details of the activities of such agents. It is because of this very fact that Congress provided for the filing of a semiannual supplemental registration statement that is required to contain "such details required under this Act as the Secretary shall fix, of the activities of such persons as agent of a foreign principal during the 6-month period."\textsuperscript{24} Under this broad authority what details have been required? It is almost incredible, but the fact is that none at all has been required. There is not a single question in either of the registration statements required by the State Department that would require a description of any of the foreign agent's activities during the period between statements.

It was not the filing of information but rather the turning upon it of "the pitiless spotlight of publicity" that was considered a deterrent to foreign propagandists. The first action that might be expected would be the preparation of a list of the registrants, giving all the basic facts about them, properly classified and indexed, with, perhaps, a summary or abstract of all the important parts. No such thing was done. The State Department's list of registered agents appears without indexes or classifications and (\textit{mirabile dictu!}) not in alphabetical order. No word of description of the agents registered or of information about them except their addresses appears on this list. Apparently no efforts were made by the Department to use the press, radio, and other channels in accordance with the intent of the framers of the Act. No press releases on the Act were issued during the three years that the Act was administered by the State Department except one which merely assured the general public that registration affords no grounds for assuming that a registrant is engaged in unpatriotic activity.

\textbf{THE MCKELLAR-SUMNERS AMENDMENTS}

The State Department, the Department of Justice, and the Post Office Department conferred and then agreed upon joint recommendations for the amendment of the Foreign Agents Registration Act. These recom-
mendations included all the major recommendations of the Institute of Living Law (except the recommendation for the elimination of exemptions in favor of commercial, educational, and other favored classes of foreign agents), and a number of other proposals based upon the experience of the Department of Justice in the handling of prosecutions under this Act. Most important of the changes included in the amendatory legislation was the provision imposing responsibility for the administration of the Act upon the Department of Justice. No substantial opposition to the new amendments was expressed except in totalitarian circles.

The new Act eliminates the loophole accorded "subagents" by defining the term "foreign principal" in such a way as to include individuals financed or subsidized by foreign governments or foreign political parties and, further, by establishing a very broad criterion of agency. Under these two definitions any person who engages in propaganda or publicity work for any foreign government, any foreign political party, or any individual, partnership, association, corporation, or organization that is subsidized or directed by a foreign government or foreign political party is required to register, unless he comes within one of the explicit exemptions of the Act. The loophole which the 1938 Act offered to unincorporated associations has been eliminated by the inclusion in the McKellar-Sumners Act of a specific provision requiring officers of an unincorporated association to execute registration statements on behalf of the association.

25 As originally introduced, the bill failed to include a provision limiting the exemption allowed to persons employed by consuls—one of the most serious loopholes of the 1938 Act. When this defect was pointed out by representatives of the Institute, an appropriate amendment was written into the bill by the Senate subcommittee, and this amendment was accepted by both Houses of Congress. It provides that such exemption shall be allowed only where the employment in question is a matter of public record.


27 "Right now patriots are being thrown into jail all over this nation, and if this Bill passes it will hog-tie every Christian project in the land. . . . Chairman Dies could be convicted of treason for his disclosures." Beacon Light (June 8, 1942). Elsewhere this magazine urges all persons, including "the clergy of all denominations who are not pro-New Deal" to fight the McKellar-Sumners amendments. The claim that the McKellar-Sumners bill extends the scope of the crime of treason is typical of Nazi propaganda.


The exemption which the 1938 Act offered, not only to diplomatic and consular officers of foreign governments and to officials of foreign governments, but also to any "person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel or publicity agent, whose name and the character of whose duties as such . . . . employee are of record in the Department of State," has only been partially cured. The McKellar-Sumners Act requires that a State Department record upon which any exemption under Section 3(c) is based must be a public record. While the intent of Congress might have been more clearly expressed if the statute had required a specific register of foreign propagandists employed by diplomatic and consular officers, it may be hoped that the State Department and the Department of Justice will interpret the language actually used by Congress in such a way as to achieve the Congressional intent; viz., that those foreign propagandists who claim exemption from the Act under Section 3(c) must make known their claim in advance. In the course of Senate subcommittee hearings, a representative of the Institute urged the entire elimination of the Section 3(c) exemption, and it remains to be seen whether the compromise solution adopted will achieve the result that Congress intended.

The fourth serious loophole in the coverage of the 1938 Act is found in Sections 3(d) and 3(e) of that Act, which exempt from registration requirements persons "engaging or agreeing to engage only in private, nonpolitical, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal," or persons engaged "in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits, or of the fine arts." The fact is that the most effective agents of foreign totalitarianism are those who operate in commercial, scientific, and educational circles.

Unfortunately, the McKellar-Sumners Act repeats without substantial change the exemption clauses of the 1938 Act. The continuance of these exemptions, which have already done so much harm, is hard to justify. The elimination of Section 3(d) and Section 3(e) from the bill would

31 52 Stat. 631 § 3(a) (1938).
32 52 Stat. 631 § 3(b) (1938).
33 52 Stat. 631 § 3(c) (1938).
34 Apart from other defects of this language, it is inadequate in that it appears to offer an exemption to any person who agrees to engage in nonpolitical activities, even if he actually engages in political activities. This defect could have been corrected by substituting for the phrase "engaging or agreeing to engage only" the phrase "who neither engages nor agrees to engage in any activities other than." Possibly courts will construe the actual language in that sense.
make possible more complete coverage of foreign agents without injuring any bona fide artist, teacher, or other servant of a foreign power. If these individuals are not ashamed of their foreign connections, they should be glad to record them for public scrutiny.\(^3\)

In respect to the character of information to be supplied by registrants, the McKellar-Sumners Act represents a tremendous advance over the 1938 Act as administered by the State Department. Section 2 of the original Act has been entirely rewritten. The amended Section 2 requires each registrant to set forth, among other items of information, all documents and all agreements relating to its organization, a complete list of the registrant's employees, with a statement of the nature of each job, an identification of the foreign principals for whom the registrant is acting, and the extent to which such foreign principals are supervised or subsidized by any foreign government or political party, a complete accounting of all the financial affairs of the registrant, and a detailed statement of its activities.

Furthermore, Section 4 of the McKellar-Sumners Act provides, in effect, for the registration of political propaganda as well as of political propagandists. Every registered agent is required by this section to file with the Attorney General copies of all materials of political propaganda transmitted in the United States mails or in interstate commerce, together with full information as to the places, times, and extent of such transmittal. The term "political propaganda" is given a broad definition to cover material designed to promote racial, religious, and social dissen- sion, as well as material inciting violence either in the United States or in any other American republic.\(^3\)

The McKellar-Sumners Act meets the problem of publicizing information squarely and effectively. In the first place, it requires each foreign agent engaging in propaganda to deposit copies of the propaganda with the Librarian of Congress and with the Attorney General, and further requires that the propaganda as actually distributed is to be prefaced or accompanied by a statement identifying the distributor as a registered foreign agent and naming the agent's principal.\(^3\)

\(^3\)If it could be shown that the outright abolition of these exemption clauses would result in serious and undesirable consequences, it might be possible to avoid some of these disadvantages by providing that all persons claiming exemptions under sections 3(d) and 3(e) should notify the Attorney General and that the Attorney General should maintain for public inspection a list of individuals and organizations claiming such exemption.


The Act further provides for the filing of copies of political propaganda of foreign agents with the Librarian of Congress, who is required to make such materials available for public inspection. Furthermore, the amended Act requires all foreign agents registered under the Act to keep full books, accounts, and records respecting their activities, available for inspection by officials charged with the enforcement of the Act.

Finally, Section 6 of the original Act, providing that registration statements filed under the Act should be open to public inspection, is broadened to cover subsequent statements concerning the distribution of political propaganda, and the Attorney General is required to furnish copies of such registration statements and propaganda materials to all applicants upon the payment of reasonable fees. The McKellar-Sumners Act thus remedies all the defects which have been pointed out in the 1938 Act with respect to the publicizing of information secured under the Act.

Between the drafting of the McKellar-Sumners bill and its first enactment by Congress came the day of December 7. Although the bill had been presented as an administration measure and Congress had deferred in every respect to administration suggestions in its drafting, the bill was vetoed by the President on February 9 on the ground that it might embarrass efforts at joint cooperation with our allies in the prosecution of the war. The President recommended that the bill "be adjusted to meet these changed conditions resulting from our entry into the war." This was done, and the bill was repassed with a carefully worded amendment which provides a new exemption where four conditions are met:

1. The agent is employed by a country the defense of which the President deems vital to the defense of the United States;
2. The activities of the agent are in furtherance of the policies of the United States;
3. All of the agent's public statements are both accurate and publicly identified as the statements of a foreign agent; and
4. Information requested by the Attorney General concerning the agent is supplied by his principal.

41 88 Cong. Rec. 1174 (1942).
So amended, the bill was approved by the President and became a law on April 29, 1942. Its substantive requirements become effective June 28, 1942.

It is not enough to conclude that the McKellar-Sumners Act remedies all or nearly all of the defects that existed in the Foreign Agents Registration Act of 1938. A question may still be raised whether in obviating these defects the new legislation creates any new evils. So far as an examination of the language of a statute can reveal the lines of its administration, it would seem that the McKellar-Sumners Act does not introduce any new elements of public inconvenience or any infringement upon our civil liberties.

To this general statement a minor qualification may be suggested. It may well be that the definition of foreign agent by Section 1(c) of the new Act is too broad. The second numbered paragraph under Section 1(c) includes in this definition any person “who within the United States solicits or accepts compensation, contributions, or loans directly or indirectly from a foreign principal.” If the term “foreign principal” in this clause had its usual meaning, the clause would be unobjectionable. But Section 1(b) of the new Act extends the meaning of “foreign principal” to include all individuals subsidized by foreign countries or foreign political parties and even all individual foreigners and foreign organizations not so subsidized if they are domiciled abroad. In view of the interrelation of Sections 1(b) and 1(c), it would appear that any individual who borrows money from a relative living abroad or who accepts compensation for the sale of groceries to a person who is a foreign agent would come under the obligation of registering as a foreign agent himself. This seems unreasonable and is the kind of unreasonable extension of a valid principle that might serve to discredit the entire Act. It may be hoped that a narrower reading will be given to this paragraph, administratively and judicially, than may be spelled from its terms, and that this paragraph will be construed to cover only persons receiving compensation, contributions, or loans from a foreign country or from a foreign government or political party.

THE FUTURE ADMINISTRATION OF THE FOREIGN AGENTS REGISTRATION ACT

At the present time it is undoubtedly true that most of the propaganda at which the Act is directed is Axis-inspired. Since exposure of the sources would either deprive such propaganda of its effectiveness or force it underground, there is little likelihood that those who disseminate it will
register under the Act, or that, if they do register, they will give correct and full accounts of their activities. Accordingly, the Act to be effective will require a vigorous enforcement, which if achieved will not only expose much of what is now being bruited under an ostensibly respectable aegis, but will also provide an effective prosecuting device, as was demonstrated in the *Viereck* case.\(^4\)

In this connection it is only fair to note a serious problem in enforcement which the Department of Justice has already encountered. Although the War Policies Unit of that Department has amassed considerable propaganda material, it generally cannot determine whether the authors are foreign-inspired, and therefore subject to the Act, without further investigation. Normally such investigation as might be required would be undertaken by the FBI. The various demands which war makes upon investigative agencies have been so great, however, that it has been impossible for the FBI to supply personnel adequate to meet the demands of a vigorous enforcement of the Act.

In these circumstances and as a further aid in the enforcement of the Act, it might be advisable so to amend the Act as to give the Department of Justice the power to subpoena persons and to hold hearings and thereby to acquire, as nearly as possible, the information it seeks. Such power is not extraordinary, and is, in fact, a common attribute of various administrative agencies.

It should be recognized, finally, that no statute, no matter how carefully drafted, is self-executing. Americans are peculiarly prone to believe that we solve a problem when we pass a law. But the problem of foreign propaganda is a continuing one, and no law that we pass on the subject could do more than initiate a process of dealing with it. That process can be only as effective as the organization, the personnel, and the appropriation allowed for its administration will permit. Legislation of this sort cannot safely be entrusted to individuals who are unaware of the intricacies of foreign movements and countermovements, and unable to distinguish between democratic and anti-democratic forces.

Unfortunately, the struggle for and against democracy in foreign lands is a subject on which few American citizens have any expert knowledge. Until very recently, no government agency had seriously studied this problem; and private individuals and organizations have generally lacked either the interest that would lead to thorough studies or the facilities of investigation that would make such studies effective. This means that the Federal Government will have to utilize such help as it can secure

from refugees and other recent immigrants who have experienced the methods of totalitarian machines. It is important, therefore, if the administration of the amended Foreign Agents Registration Act is to be effective, that it be in the hands of officials who are free, both legally and emotionally, to utilize effective aid, whatever be the race or citizenship status of the individual who offers it. Certainly, the appropriations made for the administration of this Act should not be subject to the limitation currently written into departmental appropriation acts, which prevents the payment of any part of such appropriations for the salary of non-citizens not already employed by the department in question.

Finally, the question of appropriations should be realistically faced. There are today thousands of foreign agents in the United States spending millions of dollars annually to subvert American public opinion.4 It would be utopian to suppose that this tremendous machinery of foreign propaganda can be effectively fought and opposed unless we are willing to be as realistic as are certain foreign powers in determining and providing for the costs of this work. A Congress that passes the McKellar-Sumners Act should be willing to appropriate at least three million dollars a year to secure its effective enforcement.

THE VOORHIS ACT FOR REGISTRATION OF SUBVERSIVE ORGANIZATIONS

Like the Foreign Agents Registration Act, the Voorhis Act45 utilizes the method of disclosure to combat subversive activities. Passed in time of peace, it is obviously unsuitable to deal with activities that have become treasonable since December 8, 1941. It is neither a substitute for the laws governing treason, nor an extension of those laws. Instead, it is a measure designed to throw the light of publicity upon organizations which are anti-American in spirit, but not actually treasonable in their operations. Its wartime importance is primarily restricted to exposing, not organizations directly connected with the enemy, but the native organizations that trade in hate, fear, and persecution.

The thought underlying the Voorhis Act is that there is nothing incon-

44 Thus William Power Maloney, Justice Department attorney in charge of special propaganda-exposure activities of the Criminal Division of that Department, declared on December 1, 1941: "There's better than $30,000,000 on deposit in the United States today dedicated to destroying the American way of life through propaganda for Hitler and his war machine.... Our so-called propaganda squad is the first time any single outfit has had the authority to go over the whole picture. It is more than amazing; it is astounding what we are uncovering. Now that we can deal with the whole picture, instead of just biting off a little hunk here and a bit there, we are getting into one of the most intricate machines I have ever seen." Washington Daily News, p. 12 (Dec. 8, 1942).

sistent with our constitutional guarantee of free speech in requiring groups availing themselves of that right to disclose their identities, affiliations, objectives, and financial ties, under criminal penalties if they fail to do so. A compulsory disclosure of the origins of propaganda, while avoiding the evils of suppression, reduces the effectiveness of the propaganda itself. The Voorhis Act seeks to define organizations of potential danger to the democratic process, to require them to reveal the facts of their origin, purposes, and support, and to subject them and their leaders to fine and imprisonment if they fail to make such revelations. Totalitarian organizations defined in the Act are therefore placed in the difficult dilemma of exposing their true nature and their secret connections, or risking prosecution and possible punishment.

The organizations which the Act was designed to cover have chosen the latter alternative, for, since October 17, 1940, when the Act became effective, not one of them has made the disclosures required by it. It now remains to test the efficacy of the Act by prosecution of these organizations. The unanimous disregard of the Act exhibited by the groups it was intended to reach, and the failure of the Department of Justice, to date, to institute proceedings against them, suggest that the Act may have defects and loopholes that make it an imperfect weapon against totalitarianism. The ineffectiveness of the Act may also be attributed, in part, to the fact that, since the United States entered the war, those organizations which were controlled by foreign Axis powers have been dissolved or gone underground. Domestic subversive organizations, which are also within the purview of the Act, are more difficult to prosecute under its provisions.

PROVISIONS OF THE ACT

The Voorhis Act was intended to compel all groups or associations engaging in subversive activities—the home-grown, truck-garden variety, as well as the fancy, hothouse, imported type—to register all relevant information concerning those activities, and to make it illegal not to register such information. It was introduced in the spring of 1940, at a time when


\[47\] During the two years following enactment of the Voorhis Act, seven organizations registered under its provisions. Five of these—1) Austrian Action, Inc., 2) Slavonic Committee for Democracy, Inc., 3) Associated Leagues for a Declared War, 4) New York City League for a Declared War, 5) Association of Free Germans, Inc.—registered because they advocated the overthrow of the Hitler regime by violence. Two others (the Russian National Revolutionary Party and the Organization for the Rebirth of the Ukraine (O.D.W.U.)) registered because they advocated the violent overthrow of the Communist regime in the Ukraine or in the Soviet Union generally.
Europe was at war; when many of its smaller countries were being overrun by the Nazis and Communists; when the Communist front organizations were being exposed, and liberals were turning against them; when, as a result of the activities of the Dies Committee, public attention was turned toward fifth column activity in the United States, and the Foreign Agents Registration Act had proved to be largely ineffective.

As passed, the Act provides for registration with the Attorney General of four types of organizations:

1. Organizations subject to foreign control engaging in political activity.
2. Organizations engaging in both civilian military activity and in political activity.
3. Organizations subject to foreign control engaging in civilian military activity.
4. Organizations, whose aim and purpose is the control or overthrow of any government or subdivision by the use of force, violence, military maneuvers or threats thereof.

It will be noticed that organizations subject to foreign control engaged either in civilian military activity or in political activity are subject to registration, while indigenous groups must either be engaged in both or intend to overthrow a government by violence.

The inadequacies of the Act itself lie chiefly in the definitions of the groups that must register, and, to a lesser extent, in the exemptions. "Organization" is given a very comprehensive meaning, designed to reach any possible form of group or association, but its exclusions rob it of all effectiveness. Religious, charitable, scientific, literary, and educational organizations are excluded. It is through these organizations that the totalitarian governments have launched some of their most effective propaganda. Imagine, for instance, a German Culture Society for the Teaching of the Anthropological Superiority of the Pure Aryan Race. Before December 8, 1941, it could have claimed exemption on two grounds, educational and scientific. Presumably it would have been left to a jury in a criminal case to decide whether the organization was educational or scientific or pseudo-educational and pseudo-scientific. The German Library of Information, travel bureaus, societies to raise funds for needy communists, all could have claimed exemption. Of course, now that the United States is at war, Nazi organizations would probably have to seek refuge in the guise of native or neutral groups to gain immunity.

The meaning of "political activity," on the other hand, is narrowly restricted, being confined by the terms of the statute to activities the pur-
pose or aim of which is the control by force, or overthrow, of the United States Government, any state government, or a political subdivision of either. Thus, any organization that proposes, or pretends to propose, to gain control of the government by peaceful means is not engaged in political activity! Any group that aims at dictatorship in any manner other than by violent upheaval, any group that spreads vicious propaganda, intended to disrupt the peace and concord of the people, is exempt as an organization not engaged in politics! In this respect, the Act is theoretically far weaker than the Foreign Agents Registration Act. In practice, it will necessarily fall down even further, because no subversive group will admit that it intends to overthrow the government. Actually, the only organizations that registered in the first year-and-a-half of the Act's existence were groups aiming at the overthrow of the Nazi government, an activity subversive only to our enemies. This definition of "political activity" is similar to the fourth ground in the Act for registration of an organization, except that the latter, while extending to the overthrow of any country, limits its effectiveness by even narrower requirements of violence.

"Civilian military activity" covers a rather wide range, including instruction in the use of firearms or other weapons, or any substitute for them, military and naval science, military style drills or parades, maneuvers, or any organized activity which, in the opinion of the Attorney General, constitutes preparation for military activity. With the provision allowing substantial leeway to the Attorney General, the field of civilian military activity is sufficiently covered. It is strange, however, that the Nazis' Camp Nordland was never required to register under this section, unless, perchance, it was operated exclusively for educational purposes.

An organization is "subject to foreign control" if 1) it solicits or accepts financial contributions, loans, or support of any kind, directly or indirectly, from, or is affiliated in any manner with, a foreign government, or a political subdivision thereof, or any agent or instrumentality of such, or a political party in a foreign country, or an international political organization; or 2) its policies, or any of them, are determined by, at the suggestion of, or in collaboration with any such foreign influence.

This definition was intended, and is broad enough, to cover all foreign influence, good or bad.

51 54 Stat. 1201 § 1(c) (1940), 18 U.S.C.A. § 14(c) (Supp. 1942).
Specific exceptions accorded to diplomatic representatives, consular officers, and various other groups leave huge gaps in the administration of the Act. Each organization unable to wriggle out of this mass of loopholes, and managing, somehow or other, to come within the purview of the Act, must register with the Attorney General. Each six months after registration, a registered organization must file a supplementary statement to keep the record straight. All statements must be subscribed, under oath, by all the officers of the organization. Here again, as pointed out in connection with the Foreign Agents Registration Act, there exists a loophole in the 30-day period allowed for filing statements. During this time, any activities might be engaged in, or any sums of money expended, without any record appearing in the report.

The required registration statements are exhaustive, and in this respect at least the Voorhis Act represents a considerable advance over the Foreign Agents Registration Act. Each Voorhis Act registrant is required to disclose:

1. The name and post office address of the organization and all its branches.
2. The name, address, and nationality of each officer of the organization and all its branches.
3. The membership qualifications of the organization.
4. The aims and purposes of the organization, and the measures by which they are to be accomplished.
5. The addresses of the meeting places of the organization and its branches, and the times of meeting.
6. The name and address of each person who has contributed in any manner to the organization or its branches.
7. A detailed statement of the assets, liabilities, and income of the organization and its branches. (There is no requirement for a statement concerning expenditures, seemingly a most important omission.)
8. A detailed description of the activities of the organization and its branches.
9. A description of the uniforms, badges, or other means of identification prescribed by the organization, and worn or carried by any of its officers or members.
10. A copy of each publication or item issued or distributed directly or indirectly by the organization, its branches, or by any member of the organization under its authority or with its knowledge, together with the name of the author, and the name and address of the publisher.
11. A description of all weapons owned by the organization or its branches, identified by the manufacturer's number thereon.

54 One other exemption, added to the bill shortly before passage, applies to nationally recognized organizations of veterans of the United States armies, although it seems clear that they would not have had to register in any event under the definitions, 54 Stat. 1201 § 2(b)(5) (1940), 18 U.S.C.A. § 15(b)(5) (Supp. 1942).


The manner in which the organization is subject to foreign control, if it is.

A copy of the charter, articles of association, constitution, by-laws, rules, regulations, agreements, resolutions, and all other instruments relating to the organization, powers, and purposes of the organization or of its branches.

Such other information and documents pertinent to the purpose of the Act as the Attorney General may require.

It will readily be seen that information secured through such registration statements might be extremely useful, whether or not the Attorney General exercises his right to require further information. This section is, in fact, by far the most satisfactory part of the Act. The statements filed are of public record, open to such public inspection and examination as the Attorney General may prescribe under his power to issue rules and regulations concerning the administration of the Act.

The criminal provisions of the Act are far from adequate. The only possible violations of the Act are failure to register and false registration. There is no express provision making the officers guilty if a corporation or association fails to register; hence, in the case of an unincorporated association or a corporation without funds available for the payment of fines there is no appropriate means of compelling registration. Although every organization within the four prescribed categories is supposed to register, it is not made unlawful to act without registering. Nor does the second criminal provision mean anything in the present state of enforcement of the Act. Unless statements are made, obviously there can be no prosecution for making false or misleading statements.

The legislative bills, which eventually resulted in the Voorhis Act were primarily designed to supplement the disclosure requirements of the Foreign Agents Registration Act. In particular, it was contemplated that certain types of propagandists not under foreign control should be subjected to registration requirements. In view of this extension beyond the field of foreign relations, Under Secretary of State Sumner Welles recommended that the administration of the Act be lodged with the Depart-

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Footnotes:

57 Ibid.


59 The Institute Report of June 13, 1941, pointed to a similar defect in the original Foreign Agents Registration Act, which has since been cured by amendatory legislation.

60 H.R. 9275, introduced on April 8, 1940; H.R. 9849, introduced on May 21, 1940; H.R. 10078, introduced on June 13, 1940; H.R. 10094, introduced on June 14, 1940; H.R. 10147, introduced on June 22, 1940. The bill finally enacted was H.R. 10094. The successive bills were all introduced during the third session of the 76th Congress.
ment of Justice rather than with the Department of State, and this recommendation received Congressional acceptance. A special attempt was made to avoid some of the defects that experience had revealed in the Foreign Agents Registration Act, such as the elimination of "sub-agents" from the registration requirements.

The purpose of the legislation was clearly set forth in the Report of the House Committee on the Judiciary, which declared:

"Freedom of political expression is a fundamental principle of democracy. A serious problem arises, however, where political organizations exist in a democracy which are substantially controlled or directed by a foreign power and seek to pursue a policy in a democracy like the United States for the benefit of that foreign power.

In like manner democratic government is threatened by the presence of private organizations engaging in military activities or preparing their members for an attempt at a forcible seizure of power and overthrow of constitutional government.

The principle upon which this bill is based is that there is no place in a democracy for under-cover political organizations. Without in any way interfering with freedom of political activity, the passage of this legislation would mean that it would be unlawful for any political activities, inimical to the constitutional government, to be carried on, unless the full facts concerning such activities are made known.

Actually, the statement that the legislation would make it unlawful for such activities to be carried on without registration is inaccurate, since the illegality consists not in carrying on the acts, but in failing to register. Thus, even where there is a failure to register, the activities are neither made illegal nor prevented.

The sponsors of the bill contemplated that under it the Communist Party and the German-American Bund would have to register. On the other hand, they gave repeated assurance that the legislation would not cover labor organizations or fraternal organizations. The legislative his-

61 See letter of June 8, 1940, addressed to Congressman Hatton W. Sumners, Chairman of the House Committee on the Judiciary, printed in H.Rep. 2582, 76th Cong. 3d Sess. (June 17, 1940). This letter referred to H.R. 9849, 76th Cong. 3d Sess. (May 21, 1940), which contained most of the elements of the present Act.

62 See comments of Congressman Stefan, 86 Cong. Rec. 12146 (1940). The legislative history of the Act also indicates that Section 2(a) (4) dealing with organizations seeking the "overthrow of a government" was designed to protect not only governments in the United States but also those of our sister republics to the south. See 86 Cong. Rec. 12828 (1940).

63 H. Rep. 2582, 76th Cong. 3d Sess. 182 (1940).

64 Ibid. at 2.

65 "It is said this bill will include labor organizations. .... but my answer to that is that labor organizations do not engage, under any circumstances, in political activities such as political activity is defined in this bill, because they are not trying to establish, control, seize, conduct, or overthrow the Government. This bill cannot cover a labor organization by any stretch of the imagination. I have consulted with labor attorneys and other prominent people, and they tell me they are certain that is true." Statement of Congressman Voorhis, 86 Cong. Rec. 12146 (Sept. 13, 1940).
COMBATING TOTALITARIAN PROPAGANDA

The history of the bill shows a persistent concern to eliminate from the scope of the bill organizations which Congress did not consider dangerous. Thus, the definition of “political activity” which at first included activity aimed at “the establishment, control, conduct, seizure, or overthrow of a government,” was first amended by adding the phrase “by force,” and later rewritten to its present form: “control by force or overthrow of the Government of the United States.” Thus, in its concern for civil liberties, Congress narrowed the scope of the legislation to a point where neither of the organizations specifically mentioned in the Committee Report could be persuaded or compelled to register under the Act.

THE PLACE OF THE ACT TODAY

Since the passage of the Voorhis Act, two conditions affecting the purpose and scope of that Act have changed. In the first place, we are no longer at peace. The activities of organizations openly connected with any of the Axis governments or countries have largely disappeared from public view. Their political or civilian military activities, as defined in the Act, are probably treasonable. They still exist, but they have taken cover, and from behind that cover are engaging in an organized campaign of sabotage and fifth column activity. The problem in this direction has accordingly become one of suppression rather than of disclosure. In the second place, the Foreign Agents Registration Act, which was a weak reed when the Voorhis Act was passed, has now undergone a series of strengthening amendments, and its administration has been transferred to the department which is administering the Voorhis Act. Therefore, the provisions of the Voorhis Act dealing with foreign-controlled organizations have become excess baggage in administration.

Henceforth, the administration of the Voorhis Act must be turned inward—upon subversive activities which cannot be traced to the Axis countries but which are apparently of native origin—and not outward, upon the countries which we know to be our enemies. Subversive propaganda today will be even more subtle and far more difficult to trace than in the past. It will scrupulously avoid any manifestation of disloyalty; it will wear a guise of patriotism. It is more than ever necessary, then, to throw light upon native organizations engaged in propaganda.

But it may be doubted whether the Act, in its present form, will be of any material value against such native organizations. In its present form, the Act applies only to those native organizations which attempt to con-

67 86 Cong. Rec. 12828 (1940) and H. Rep. 3024, 76th Cong. 3d Sess. (1940).
trol or overthrow the government by force, or which combine such attempts with civilian military activity. Probably few of our native groups, such as the Silver Shirts, or the Ku Klux Klan, could be proved to fall within these two categories. Quasi-military activities, which used to be so popular among these groups some years ago, have now been publicly abandoned, and utterances about seizing the government and marching on Washington are no longer very common. The real vice of such organizations today is that they sow racial and religious hatred, create distrust of democracy, and stir up fear and disloyalty. But this is all slyly and subtly done; only in rare cases, therefore, will such organizations run afoul of the Act. If the propaganda of such organizations follows the Axis line too closely, they may incur the charge of foreign control, under the Act, and there is a possibility of prosecuting them as foreign-controlled organizations if one of the other elements is present. However, the possibility is none too good.

SUGGESTED REMEDIES

There are perhaps two ways in which this basic defect in the present Act could be eliminated. One way would be to require the registration of desirable as well as undesirable organizations, thus eliminating the element of self-incrimination from the mere fact of registration. This is probably what the Department of Justice tried to do when it persuaded a few anti-Nazi organizations to register. But the defects of the Act itself in this direction were too vast to be bridged by such administrative measures. Nothing less than thorough revision of the statute can make registration under it as normal and undamaging a process as incorporation, and thus eliminate the chief obstacle to the securing of registration statements under the present Act. A second way of curing the defects of the present Act would be to publicize not merely what various organizations are willing to reveal about themselves but also what qualified investigators are able to discover and reveal about them. That is to say, the principle of publicity ought not to be limited to autobiographical publicity, particularly when the organizations whose activities are legitimately of greatest public interest are likely to be most diffident about self-exposure.

These two cures for the defects of the present Act are by no means inconsistent with each other, and it should be possible to draft an amended act which will remove the chief obstacle to organizational autobiography, and at the same time facilitate the gathering and publicizing of additional information from other sources concerning those organizations that fail
to produce accurate and revealing autobiographies. Such a law might well require registration of all organizations engaged in political activities. A definition of such activities generally following that contained in the McKellar-Sumners Act\(^6\) would probably prove workable.

There are, however, several potential objections to a broad registration statute which should be considered. First, there is the objection that registering always involves an expenditure of time and energy, and the risk of error and prosecution. In the second place, it may be objected that such registration involves a duplication of effort where organizations are already required to file public information under state or federal laws dealing with political parties, publications, corporations, or other organizations. These objections are not only reasonable in themselves but likely to evoke strong representation before Congress. It would therefore seem the part of reason, as well as good horse-sense, to allow a more or less flexible power to the administrator of the Act to exempt from the registration requirement organizations which are required to register under other laws (e.g., governing political parties or second-class mailing privileges), or which, as in the case of churches, may have some valid social reason for not registering.

As for the objection that registration takes time and effort and involves risks of error and punishment, this is likely to have less and less appeal as war conditions make registration more and more of a normal activity. There should, however, be a reasoned attempt in the law and in the regulations and forms issued under the law, to keep to a minimum the data which all organizations required to register are asked to furnish. Filling out a forty-page questionnaire may be viewed as a mild sort of punishment when the duty is limited to avowedly subversive organizations, but if a duty to register is to be laid upon all organizations participating in the political life of our nation, the duty should be narrow, brief, and simple. Clearly, holding to a minimum the information which registrants are required to furnish would not diminish the efficacy of the Act if its administrator were empowered to require the furnishing of additional information where special circumstances so warrant.

A further objection to an all-inclusive registration act is that the disclosure required by the Act or by the administrator through his power to probe beyond the registration statement may injure organizations valuable to the functioning of democratic society. Many organizations engaged in struggles with other organizations might thus be exposed to the attacks of their enemies, to possible discrimination against their mem-

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\(^6\) See p. 116 supra.
bers and leaders, or to financial loss. One way to meet, at least partially, this objection is to restrict the initial disclosure required by the registration to impersonal information, such as the address, charter, and purposes of the organization, omitting personal information such as membership and contributors' lists, and to permit further administrative probing only in accordance with certain standards. Such standards might permit further disclosure where the original statement is incomplete, inaccurate, or misleading, or where independent sources of information indicate public interest in additional information. These limitations would, of course, still leave room for misuse of administrative power and abuse of information revealed. The only ultimate remedy for such abuses is public reaction based upon knowledge of the use of the registration act by administrative or private agencies for illegitimate purposes.

While objections to registration could be largely eliminated by use of the foregoing safeguards, the efficacy of the Act would be greatly increased by the use of hearings at which qualified private witnesses or government investigators might give public testimony, subject to all the safeguards of notice, cross-examination, and rebuttal, concerning the failure of registrants to register or to disclose their real purposes and activities in their registration statements. The experience of the Dies Committee has shown how powerful a demand such hearings make upon the attention of the public, and presumably an administrative agency bound by the normal canons of due process could avoid the charges of unfairness that have been leveled against the Dies Committee even by its own members. A further safeguard against partisanship would be a provision allowing the initiation of hearings by private persons willing to assume the burden of showing inaccuracies and omissions in registration statements. In order to make such hearings fair and effective instruments in a campaign of public enlightenment, legislation such as is here proposed, should sanction the use of subpoenas to compel the attendance of witnesses and the production of papers.

Violation of the requirements of the law should subject the offender not only to the usual penalties of fine and imprisonment, which generally affect individuals more than organizations, but also to special requirements as to the labeling of future propaganda such as those now included in Section 4 of the McKellar-Sumners Act. This would not only serve as an effective deterrent but would further the purpose of disclosure in cases where disclosure is most important.

69 This is particularly the case now, when the great demand and inadequate supply of government investigators available for secret investigations constitutes a special argument for public hearings as a means of securing information. See p. 121 supra.
Of course, the loophole in the present Voorhis Act by which unincorporated associations may refuse to register with impunity should be eliminated. This can be easily accomplished by making the failure of officers to register a punishable offense.

Legislation along the foregoing lines would accomplish with respect to native organizations the same ends that the amended Foreign Agents Registration Act seeks to bring about with respect to foreign-controlled agencies. Such legislation should appropriately be administered by the same agency that is charged with the administration of the amended Foreign Agents Registration Act. There is, however, one distinction which must be considered in the administration of the two Acts. Most Americans consider foreign-controlled propaganda agencies to be something that we could do without very well, and there is not likely to be any objection to a rigorous set of requirements with respect to registration, disclosure, and labeling of their propaganda. Domestic political organizations, on the other hand, are essential to our democracy, and therefore greater care must be taken not to impose onerous burdens upon such organizations. Some of the basic implications of this distinction have already been traced.

Legislation along the foregoing lines should go a long way toward giving the American public a fair and comprehensive view of subversive and anti-subversive organizations within the United States. Whether or not such legislation deserves a permanent place in our political structure, however, must be regarded as still an open question. It seems desirable, therefore, to recognize the experimental character of such legislation by making the proposed law a statute of fixed duration, expiring after, say, three years. Such a provision would provide an extra safeguard against the perversion of the statute into a weapon for harassing critics of the government.

THE ALIEN REGISTRATION ACT

A survey of registration statutes utilizing the method of exposure in combating totalitarian propaganda must take account of the Alien Registration Act of June 28, 1940.70 Apart from provisions of this Act dealing with the counseling of insubordination within the armed forces, sedition, and deportable offenses, the Act includes a comprehensive scheme for the registration and fingerprinting of aliens within the United States or seeking admission to the United States.

The Act requires that "every alien now or hereafter in the United States" shall register and be fingerprinted, unless his presence within the United States is for a period of less than thirty days. In the case of aliens under the age of fourteen, the duty of registration devolves upon parents or guardians.7

The Commissioner of Immigration and Naturalization is authorized to designate postoffices or other places for registration, and is further authorized to prescribe forms for registration.7 The statute itself prescribes the matters to be covered by such forms in these words:7

Such forms shall contain inquiries with respect to (1) the date and place of entry of the alien into the United States; (2) activities in which he has been and intends to be engaged; (3) the length of time he expects to remain in the United States; (4) the criminal record, if any, of such alien; and (5) such additional matters as may be prescribed by the Commissioner, with the approval of the Attorney General.

It provides also that records made thereunder shall be confidential and "available only to such persons or agencies as may be designated by the Commissioner with the approval of the Attorney General."74 Once registered, aliens are required to give prompt notice of each change of residence.75 The Act is buttressed by appropriate criminal sanctions,76 and contains various special provisions affecting foreign government officials and other limited classes of aliens not regularly resident in the United States.77

THE INTENTION OF CONGRESS

Analysis of the legislative history of the Alien Registration Act is peculiarly difficult because the Act deals with a number of other subjects, and the registration provisions of the Act appear, disappear, and reappear in curious fashion as the bill wends its way through committees and the two Houses of Congress.78 Yet the general objectives of those who spon-

73 54 Stat. 670 § 34(a) (1940), 8 U.S.C.A. § 455(a) (1940).
74 54 Stat. 670 § 34(b) (1940), 8 U.S.C.A. § 455(b) (1940).
77 54 Stat. 670 § 32(a) (b) (1940), 8 U.S.C.A. § 453(a) (b) (1940).
78 A general registration requirement in the original draft of the legislation, sponsored by Congressman Howard Smith, was cut down by the House Committee on the Judiciary to cover only the registration of future immigrants; the Senate at first agreed to this limitation, but, upon reconsidering the matter in the fateful spring of 1940, restored the broad requirement
sored the legislation, reluctantly agreed to by those who at first opposed it, emerge with reasonable clarity from the committee reports and floor debate.

The situations to be remedied by the Alien Registration Act, were:

1. Lack of knowledge about aliens illegally in this country.
2. Lack of check on criminal activities by aliens in this country through use of fingerprints.
3. Lack of knowledge of the number of aliens in this country.
4. Lack of knowledge concerning the subversive activities of aliens.

In spite of denials of prejudice and assertions that no stigma attached to alien registration, it is manifest that some, at least, of the sponsors of the bill thought that aliens as a group are suspicious characters. The coupling of the provisions for fingerprinting and registration of aliens with provisions aimed at anti-democratic agencies and alien criminals may be viewed as reflecting the attitude that the alien is dangerous to our democratic institutions. Little attention was paid to evidence, adduced by a number of Congressmen, that our aliens are not less law abiding

of total registration, and the House promptly accepted this change. 86 Cong. Rec. 9032 (1940).

79 Congressman Celler, who originally drew the minority report against the bill, later declared: "I repeat, we should register aliens and citizens alike. There should be no discrimination. I drew the minority report against this bill originally, because it provided some very harsh provisions against aliens. Some of the harshness and some of the severity of the original bill have been eliminated. . . . In fear of a worse bill, we must accept this bill." 86 Cong. Rec. 9035 (1940).

80 "It is not definitely known how many aliens we have in this country who have entered unlawfully, and the only way to determine that fact is by rigid registration of all aliens in the United States." Congressman Blackney, 84 Cong. Rec. 10365 (1939). See also statement of Congressman Taylor, 84 Cong. Rec. 9533 (1939).


82 See statement of Congressman Taylor, 84 Cong. Rec. 9534 (1939).

83 "The committee was of the opinion that it would be necessary to set up machinery for registration and fingerprinting of all aliens now in the country in order to maintain any kind of check on possible unlawful and subversive activities among aliens already here." S. Rep. 1721, 76th Cong. 3d Sess. at 2 (1940); see also statements of Congressman Keefe, 84 Cong. Rec. 9540 (1939); and Blackney, 84 Cong. Rec. 10365 (1939).

84 "At first, I confess, Mr. Speaker, I was somewhat skeptical . . . . because in the past this operation [fingerprinting] smacked somewhat of criminal implications, but after a careful consideration of the matter I have come to a different conclusion." Congressman Taylor, 84 Cong. Rec. 9533 (1939).

85 "There is no stigma connected with it." Congressman Hobbs, 84 Cong. Rec. 10338 (1939).

86 See statements of Congressman Keefe, 84 Cong. Rec. 9540 (1939); Blackney, 84 Cong. Rec. 10365 (1939); and Smith, Hearing before a Subcommittee of the Committee on the Judiciary, United States Senate, on H.R. 5138, 76th Cong., 3d Sess. at 71 (1940).

87 84 Cong. Rec. 10362 et seq. (1939).
than our citizens. Undoubtedly the driving force behind alien registration was the force of fear, born of ignorance, on the part of native-born Americans with respect to aliens. This ignorance and fear are particularly powerful in sections of the country where few if any aliens live, and representatives of these sections played a leading part in the enactment of the measure. It is, however, one of the redeeming features of disclosure legislation that it establishes a reasonable technique for alleviating such ignorance and fear, which otherwise might find cruel and dangerous outlets. Since the passage of the Alien Registration Act of 1940, none of the many pending punitive measures directed against aliens as a class has made any headway in Congress.

THE ADMINISTRATION OF THE ALIEN REGISTRATION ACT

The administration of the registration provisions of the Alien Registration Act dispelled the fears of many that it would be a blow to the civil liberties of a large part of our population and that it would tend to turn most of the registrants against the United States. The administration of the Act has been fair, unprejudiced, and unbiased. There was little of the suspicious attitude on the part of the people generally that might have developed. This may have been owing in part to the simultaneous registration of males from twenty-one to thirty-five for selective service. Certainly there was nothing of the sort of thing predicted by Senator Connally: 87

We... thought... informers and others would see to it that the postmasters registered all the aliens. I can imagine such a man calling up the postmaster and saying, "Has Old Man Bohunk over here ever registered as an alien? If not, we want to know, and we will see that he comes in...."

The favorable reaction on the part of the aliens may be explained by the fact that, while this law was strange and unusual in the annals of the United States, Europeans were quite familiar with the requirement of constant police registration, with the necessity of showing their passports on any and all occasions, and of notifying and registering with the police any permanent, and often any temporary, change of residence. Therefore, in many cases they felt reassured by the knowledge that they had registered with the constituted authority in the fashion to which they had been accustomed abroad.

Reports from various sources indicate that the task of registering more than five million aliens was carried out with courtesy and consideration. Special problems received special attention. Every effort was made to

87 86 Cong. Rec. 8344 (1940).
assure the aliens that the fingerprinting did not imply discrimination. Many of those who registered did so cheerfully and with a sense of satisfaction that they were proving their loyalty and real affection for this country.

Credit for handling the delicate job so skillfully goes to the administrative wisdom of then Solicitor General (now Attorney General) Francis Biddle in appointing Earl G. Harrison as Director of Alien Registration, and backing him in his conduct of the work. Mr. Harrison recognized the Alien Registration Act as an opportunity to gain the confidence of the large alien population, and to draw them closer into the main streams of American life.

On December 8, the value and usefulness of the Alien Registration Act was proved. The United States Government had available the detailed records of practically every alien in the United States. These records proved invaluable in rounding up the suspect alien enemies, in determining what actions were necessary against concentrations of alien enemies, in studying the possible effects of military orders on alien enemies, and in effecting a more sympathetic attitude toward the loyal, trustworthy alien "enemies." Since the government was able to proceed so effectively against dangerous alien enemies in the country, vigilantism and hysterical cries for mass action against the Germans, Italians, and Japanese among us were probably less serious than they otherwise would have been.

In pursuance of the President's proclamations of December 7 and 8, provision was made and regulations adopted for a registration of enemy aliens within our borders. This registration showed in its scope and questions the understanding attitude of the Department of Justice in that it permitted the so-called "friendly alien enemy" an opportunity to explain in detail the reasons for his residence in the United States and for his leaving his native land, and possibly removed some of the stigma and fear attaching to the term "alien enemy," since it offered him an official opportunity to explain his loyalties.

At the time of this registration a type of booklet or, as regarded by many of the aliens, passport, showing that he had registered and was duly recognized as being legally entitled to proceed with his business, was issued to each registrant.

The previous registration under the Alien Registration Act had familiarized the aliens with the procedure of registration, and the mere fact that the wartime registration was also conducted at the postoffices possibly quelled some of the uneasiness as to his status in the mind of the innocent or friendly alien enemy.
In view of this history, a fair appraisal of the Alien Registration Act must acknowledge that however mistaken the assumption of alien disloyalty which helped to bring about this law may be, the law has not harmed the civil liberties of aliens; has been of considerable use to the government in its handling of the "alien enemy" problem; and has at least helped to eliminate a dangerous sense of fear and uncertainty in the public mind and in Congress with respect to the place of aliens in our country's life.

GAPS IN EXISTING DISCLOSURE LEGISLATION

While it cannot yet be said that disclosure legislation has proved to be a perfect antidote for the poison of anti-democratic propaganda, it may fairly be concluded that such legislation is a useful weapon in the struggle: that unlike other weapons it does not threaten the democracy that wields it; that in practice this legislation has not been administered in a partisan or oppressive manner or in such a way as to interfere with the civil liberties of any one; that the enforcement of these laws has raised the level of political understanding on the part of the general public and, even more, on the part of the federal executive departments; and finally, that the defects which have thus far appeared in statutes of this type are technically remediable. Our analysis of the three principal statutes in this field points to the need for a more complete and effective coverage and exposure of anti-democratic propaganda than has yet been achieved. But our analysis would not be complete without an attempt, based on a bird's-eye-view of the field of anti-democratic propaganda, to determine whether the three statutes examined cover this entire field and whether new legislation is needed to complete the defenses of our democracy.

The three statutes examined apply the method of disclosure to the activities of foreign agents, subversive organizations, and aliens. But any comprehensive view of anti-democratic propaganda activities in the United States indicates that such activities are frequently carried on by citizens, not on the pay roll of any foreign principal, who do not operate through the medium of subversive organizations. The question should therefore be faced: Can disclosure legislation be applied to propaganda activities of this character?

It may be that a broadening of the Voorhis Act for the registration of organizations, such as has been suggested in the preceding pages, would bring nearly the whole domain of anti-democratic propaganda under disclosure requirements. But there would still remain the possibility of individual propagandists, using the favorite Fascist "divide and conquer"
techniques, to undermine our polity by sowing hatred and dissension in our midst. If the Voorhis Act is not broadened in the manner suggested, then activities in this direction by domestic organizations as well as by individual citizens will go unscouted. The hate campaigns which are designed to break apart our society into a maze of conflicting racial and religious groups are probably in the long run a much greater threat to our democracy than the activities of all foreign agents, subversive organizations, and aliens put together. For the fact is that highly respectable men in public life and organizations of patriotic citizens frequently engage in such propaganda activities; these activities, directed particularly against Negroes, Jews, Catholics, aliens, and citizens of foreign birth or parentage, threaten, moreover, to deprive the United States of the loyalty of more than half its present population, and to alter the patriotism of the remainder of our people into an intolerant sectarian group solidarity. Is there no way of subjecting this anti-democratic propaganda to some effective public scrutiny through the use of appropriately framed disclosure legislation?

A minimum objective of such legislation would necessarily be the exposure of the authorship and sponsorship of a growing mass of anonymous propaganda designed to inculcate hatred of racial and religious groups within our nation. Whatever may be the right of an American to calumniate his fellow citizens of other races or religions, there is at least a reciprocal right in his neighbors and in his government to investigate and expose the source and the substance of his calumnies. This right must be exercised if the integrity of our democratic process and the unity of our nation are to be preserved in the face of a carefully organized campaign by the Nazi forces and their allies to instill the poisons of disunity in the American body politic.

A statutory requirement that such propaganda show on its face the source from which it comes would involve neither a violation of civil liberties nor a departure from tested principles which have already been applied in the field of propaganda as well as in the field of foods and drugs, political advertising, trade in securities, and other important fields of civilized life. It may be that within the structure of our Federal Government a part of this problem ought to be left to the states. Yet, there are lines of federal responsibility along which no state action can be as effective as action of national scope. Control of the mails and of imports cannot be exercised by local governments, and if the nation is to be protected against the misuse of national instruments for the distribution of anonymous anti-democratic propaganda, that protection can only be af-
forded by national legislation. So, too, our national elections have come to be field-days for the forces that seek to sow the seeds of internal dis-
sension, and here again the Federal Government must take whatever ac-
tion the situation demands. The Special Senate Committee to Investi-
gate Campaign Expenditures, of which Senator Gillette was chairman, found that in the 1940 national election one-third of all the campaign lit-
erature it was able to collect was wholly anonymous, and that this in-
cluded the most virulent, dishonest, and scurrilous campaign material published. A bill introduced by Senator Gillette to meet this problem proposed to render it a federal offense to circulate "published matter which exposes, or tends or seeks to expose, to public hatred or contempt, any group or class of persons, comprised of or including persons who are citizens of the United States or subject to the jurisdiction thereof, because of race, religion, descent, or nationality, and which is designed to influence any election" to any federal office. It further proposed to bar such anony-
mous propaganda from the mails and from importation into the United States.

The Gillette bill does not stop with a set of prohibitions. Recognizing the simple fact, to which the history of our labor legislation bears ample testimony, that important social reforms cannot be achieved by mere prohibition, the bill proposes to set up special administrative machinery which is to be charged with responsibility for bringing to light the author-
ship and sponsorship of the scurrilous propaganda against which the bill is directed. Of the activities of such an agency, the report to which refer-
ence has already been made has this to say:

An essential part of this bill is the provision establishing an Office of Minority Re-
lations to conduct necessary investigations and to issue factual reports on the sources of those scurrilous attacks with which this bill is concerned. Such an administrative agency should work largely with and through State agencies in those States which at-
tempt to deal with this problem locally. It should make available to organizations, public officials, and other individuals timely and accurate information with respect to these scurrilous attacks. By making available the results of its investigations to the Bureau of American Ethnology of the Smithsonian Institution and other public and private bodies, such an agency would be of inestimable aid in making possible authori-
tative and accurate answers to the falsehoods and fallacies that are the chief ammuni-
tion in the Nazi campaign against American unity. These things the proposed agency could do without engaging in propaganda, and the bill wisely imposes a division of labor, under which the task of exposing the sources of un-American propaganda is ac-

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88 On the constitutional power of the Federal Government in this respect, see Burroughs v. United States, 290 U.S. 534 (1934).
89 Institute of Living Law, The Gillette Bill for Propaganda Exposure 2 (1941).
90 S. 990, 77th Cong. 1st Sess. (1941).
91 Note 89 supra.
cepted as a responsibility of government, while the task of answering such propaganda is left largely to private initiative.

Obviously, the proposed agency is not intended primarily for law enforcement, a function which will necessarily be carried out by the Justice Department, with respect to criminal prosecutions, by the Treasury Department, with respect to importation, and by the Post Office Department, with respect to the mails. Its functions will be the more constructive ones of investigation, research, and the supplying of information. In order that the activities of the proposed agency may be removed from suspicion of partisanship, the bill provides that the Director of the Office of Minority Relations shall be appointed by the President from a list of three nominees presented by the chancellor and regents of the Smithsonian Institution. The office of chancellor is held by Chief Justice Charles Evans Hughes [now by Chief Justice Stone] and the Board of Regents is a nonpartisan body of distinguished scientists and statesmen. The subordinate employees of the proposed agency would be subject to civil-service laws and regulations, and thus barred from partisan political activities.

While the Office of Minority Relations might well be established as an independent agency, reasons of economy and administration suggest that it ought to be placed within some existing executive department. Of various departments which may be considered in this connection, the Department of the Interior appears to be most appropriate, because of the activities of that Department in dealing with misunderstandings, prejudices, and fallacies affecting Indians, the native populations of Puerto Rico, the Hawaiian Islands, and the Philippines, and other minority groups, and in fostering good relations between these groups and their fellow Americans. Finally, the problems with which this bill deals are peculiarly important to Alaska, Puerto Rico, the Hawaiian Islands, and the Philippines, and therefore the conduct of this research function by the Interior Department would be of value to that Department in managing its present responsibilities with respect to these territories and possessions.

The Gillette bill proceeds from a recognition that a poisonous growth on American soil is making use of our democratic processes to destroy democracy. It springs from the belief that the cure for evils inherent in democracy is more democracy, specifically, that exposure to the light is the safest and most effective way of dealing with this poison.

As yet the measure has not had the general scrutiny which legislation in this field needs to have before there can be a sound appraisal of its merits and its social costs. At best it represents the growing point of the law in the field of propaganda exposure.