Communists

Department of Justice

STATEMENT

OF

MARK RICHARD
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON SECURITY AND TERRORISM
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

S. 1959 - REGISTRATION OF COMMUNIST NATIONALS

ON

MAY 12, 1982

Testimony of Mark Richard

Good Morning. My name is Mark Richard, Deputy Assistant Attorney General for the Criminal Division, United States Department of Justice. It is my pleasure this morning to appear before the Subcommittee on Security and Terrorism to testify on two bills, S. 1959 and S. 1963. After I have read my prepared statement I will be happy to entertain any questions from the panel regarding these bills.

The Department of Justice cannot support passage of the Bills. While we appreciate congressional concerns regarding the handling of sensitive information, S. 1959 is too vague and overbroad to serve as a viable solution to the perceived problem. On the other hand, while in our view Congress should define the crucial term "agent of a foreign government," in S. 1963, we agree in principle with increasing the penalty for failure to notify, and transferring responsibility for receiving the notifications from the Secretary of State to the Attorney General. Accordingly, we believe that S. 1963 represents an acceptable starting point for reexamination of these activities of agents of foreign governments.

S. 1959 as drafted would prohibit any national of a Communist country from attending any session of the Congress, or any committee, subcommittee or conference committee hearing, or from making any other contact with a member of Congress

or employee of such member unless the national first files with the Attorney General under oath a statement of purpose (elsewhere called a registration statement). Persons who violate the Act are to be ordered deported by the Attorney General, without benefit of any administrative hearing. The deportation orders are not subject to judicial review, and persons deported are to be permanently excluded from the country. However, the Attorney General is granted the power to waive the application of the Act to any person if he determines such action not in the best interests of the United States.

S. 1959 is in our judgment vague, overbroad, too summary, and provides little or no connection between its stated purpose and the disclosures which would result. Because of its overbreadth, the Department does not think it is saved by the extraordinary delegation of discretion to the Attorney General to substitute his judgement for that of the Congress regarding application of the Bill, an approach we believe undesirable. Finally, the Bill fails to take into account the inherent authority of Congress to take administrative steps short of legislation to alleviate the perceived problem.

S. 1959 is vague and overbroad with respect to persons covered. For example, since the term "national" of a Communist country is not defined, the Bill would apply to both communist and anti-communists, such as Alexander Solzhenitsyn. The

Bill would apply to intelligence operatives, as well as to political refugees, tourists and even children. The Department is particularly concerned that the Bill would also apply to diplomats, foreign government officials, and print and broadcast media representatives. Specifically, the Department is concerned that imposition of these restrictions would lead to restrictions on our own diplomats and journalists, and would contravene multilateral treaty obligations of the United States and customary international law.

S. 1959 is also vague and overbroad with respect to places and communications covered. Since the Bill is not limited to the Congress it presumably applies to conversations occurring anywhere, including private homes, embassies, and even overseas. S. 1959 does not discriminate between public information like press releases or public reports and properly classified data, nor does it make any distinctions based on the person initiating the contact. The Bill would therefore subject to deportation any covered national who accepted telephone calls from members or staff aides.

S. 1959 would subject to permanent and unreviewable deportation orders a new class of people, who uniquely, would be deprived of any administrative hearing. The constitutionality of such a provision is open to serious question. See The Japanese Immigrant Case, 189 U.S. 86 (1902), and Sung v. McGrath, 339 U.S. 33 (1950). The Department cannot support

the summary, mandatory, nature of this provision, its permanency or its unreviewability. Nor can the Department support a provision which strips the Attorney General of discretion to dispose of these matters in any manner other than by deportation.

Passage of S. 1959 would result in a mass of registrations, a host of requests for waivers, and considerable litigation. As a consequence of its overbreadth, and its requirement for a separate registration for each communication or attendance, compliance, and thus enforcement and administration are virtually impossible. The Bill would also duplicate in part the present alien registration system (see 8 U.S.C. 1301 et seq.) for many covered people, and perhaps most importantly, it would generate little or no useful information. Notably, there are no penalties for incomplete, false or fraudulent statements under the Bill although we assume that the general false statement statute, 18 U.S.C. 1001 would be applicable. Accordingly, in view of the substantial difficulties inherent in the Bill's approach, it is suggested that the Committee might desire to consider a more narrowly focused mechanism utilizing the ample authority of the Congress to regulate activities affecting foreign relations. The Department stands ready to work with your subcommittee to attempt to agree on language which would address the problem of foreign agents improperly obtaining sensitive documents from the Congress.

With respect to S. 1963 and as I noted previously, the Department supports transferring of responsibility for receiving the notifications from the Secretary of State to the Attorney General, a proposal which also appears in section 1126 of S. 1630 as reported by the Judiciary Committee. The Department also supports in principle increasing the penalty for failure to notify from $5,000 to $50,000, if adjustments to related penalty provisions are also made. Specifically, violations of this notification provision are not intrinsically more serious than certain espionage or even Foreign Agents Registration Act violations. Consequently, the Department suggests that the committee consider related statutes in the foreign area to ensure that the relationship of present crimes and penalties is not inadvertently altered.

Finally, the Department does believe that the Congress should define the term "agent of a foreign government" in S. 1963 narrowly to avoid the problems presented in the recent IRA gun smuggling case in Philadelphia, in which the judge indicated that in the absence of clarifying regulations Section 951 was too vague to adequately warn defendants that their conduct was proscribed. The Committee may also wish to take appropriate consideration of State Department concerns. We look forward to working with you and the Department in this effort. Thank you.