

# Evil, Greed, Treachery, Deception, and Fraud: The World of Lobbying According to Senator Hugo Black

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In “Federalist Paper No. 10,” written in 1787, James Madison argued “that the causes of faction cannot be removed, and that relief is only to be sought in the means of controlling its effects.”<sup>1</sup> Madison recognized that any attempt to simply prohibit factions—his term for competing political parties, groups with specific agendas, or special interests—would be a restriction on free speech. Instead, Madison encouraged equal access to government by all, controlling the effects of factions by allowing opposing factions to also have access to government. Reinforcing this principle, the First Amendment protects the ability of citizens to have their voices heard by their government: “Congress shall make no law . . . abridging the freedom . . . to petition the Government for a redress of grievances.”<sup>2</sup>



Alabama Senator Hugo Black

Throughout the nation’s history, Americans have been proud of their system of open government and direct access to elected representatives. Thanks to the rights provided in the First Amendment, U.S. citizens can interact directly with their representatives to promote useful legislation and protect local interests. Such rights apply to individuals as well as

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Jamie C. Euken is a park guide with the National Park Service at National Capital Parks-East in Washington, DC. The title of this article comes from Senator Hugo Black’s national radio broadcast on August 8, 1935. Full Quote: “Contrary to tradition, against the public morals and hostile to good government, the lobby has reached such a position of power that it threatens government itself. Its size, its power, its capacity for evil, its greed, treachery, deception and fraud condemn it to the death it deserves. You, the people of the United States, will not permit it to destroy you. You will destroy it.” “5 Million Lobby Laid to Utilities In Fight on Bill,” *Washington Post*, Aug 9, 1935

<sup>1</sup> “The Federalist No. 10,” <http://www.constitution.org/fed/federa10.htm> (accessed Aug. 22, 2013).

<sup>2</sup> “The Bill of Rights,” National Archives, [http://www.archives.gov/exhibits/charters/bill\\_of\\_rights.html](http://www.archives.gov/exhibits/charters/bill_of_rights.html) (accessed Aug. 22, 2013).

groups with special interests—represented by advocates who have become known as “lobbyists.” However, despite this foundation in open government, the American public and some members of Congress have also viewed lobbyists and special interests negatively, as having a corrupting influence on government.

The following analysis will explore efforts to investigate and regulate lobbying in the 1930s by then-Alabama Senator Hugo Black. Senator Black’s campaign was not the first and would not be the last attempt to control the role lobbyists play in drafting and urging passage of legislation. But given the dynamics and the players involved, it may be the most instructive in understanding not just the role of lobbying, but also our reaction to, and sometimes demonization of, the professional lobbyist.

Senator Hugo Black used his investigation of lobbyists to successfully support and defend New Deal legislation, specifically the regulation of electric utilities. Due to questionable tactics, such as overly broad search warrants and verbal threats, entangling legal battles by the special committee Black chaired, as well as political difficulties at home in Alabama, however, Black was unable to pass his comprehensive bill to regulate all lobbyists before he was appointed to the Supreme Court in 1937. While a provision specifically targeting lobbyists for electric utilities became law in 1935, Congress would not approve a law covering all lobbyists until 1946.

This study of the failure of Senator Black’s lobbyist reform legislation provides a rare historical moment from which to think about the place and function of lobbyists in the American legislative process. In the same type of political dynamic that Madison envisioned, Black’s successes came when he used his investigation to counter the misinformation spread by a few deceptive utility lobbyists, giving a voice to those who were harmed by previous electric utility company practices. Conversely, Black’s missteps all resulted from his efforts to stifle free speech and restrict the rights of lobbyists. Many lobbyists at the time believed that the Black Committee’s actions were not only an attack on their First Amendment right to “petition the Government for a redress of grievances,” but also on their Fourth Amendment protection against unreasonable search and seizure.

Black’s campaign was also, at its core, a significant aspect of the struggle between the New Deal reform agenda and the long-standing corporate domination of the lawmaking process. Especially in the more conservative U.S. House of Representatives, several members were more concerned about the Roosevelt administration’s reform efforts than the utility lobbyists’ tactics for blocking them. To these members, Madison’s original constitutional question: that of political access for

factions, or in this case special interests, would remain vital to the democratic process, despite the potentially corrupting relationship between lobbyists and corporate influence. They believed that it was critical to preserve access—by groups, businesses, and individuals—to legislators, despite their message or their tactics. It was more important to protect that basic foundation of the democratic system.

Today, lobbyists, special interest groups, and lawmakers all continue their work to influence public opinion to achieve their legislative goals. This study helps us understand a debate that continues today: What role does lobbying play in the drafting of the nation's laws? Studying Senator Black's efforts enables us to better understand the complex and often contradictory nature of lobbying and legislative activities. Senator Black failed to separate those few corrupt, self-interested lobbyists who used lies and deceptive tactics from the majority of lobbyists who had built relationships with members of Congress and often provided a useful role in crafting legislation. We should not do the same. While the conduct of lobbying (with various new legal checks) has changed somewhat today, its place in the legislative process remains central and guaranteed. We understand that while it can and has been abused, it also reflects, as Madison urged, our guarantee of free speech and the right to petition.

### **A Long History of Private Interests**

The role of interest groups and their ability to sway lawmakers against the public good was far from settled with the adoption of the Constitution. In the First Congress, Senator William Maclay from Pennsylvania wrote in his diary that New York merchants used “treats, dinners, attentions” to lobby members of the Senate on a tariff bill being considered.<sup>3</sup>

In the late 1700s and the early 1800s, the Bank of the United States, a private bank chartered by the federal government, had several Senators on its board of directors. On December 21, 1833, Senator Daniel Webster of Massachusetts wrote the bank's president, Nicolas Biddle, reminding him:

Since I arrived here, I have had an application to be concerned, professionally, against the Bank, which I have declined, of course, although I believe my retainer has not been renewed, or refreshed, as usual. If it be wished that my relation to the bank should be continued, it may be well to send me the usual retainer.<sup>4</sup>

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<sup>3</sup> During the 1980s, Senator Robert Byrd from West Virginia gave more than one hundred speeches documenting the history of the Senate. On September 28, 1987, Senator Byrd gave a speech on the history of lobbyists. The text of this speech can be found at [http://www.senate.gov/legislative/common/briefing/Byrd\\_History\\_Lobbying.htm](http://www.senate.gov/legislative/common/briefing/Byrd_History_Lobbying.htm) (accessed Aug, 22, 2013).

<sup>4</sup> Ibid.

During President Ulysses S. Grant's Administration, the Credit Mobilier scandal involved railroad lobbyists using bribery and other means to sway lawmakers regarding construction of the transcontinental railroad. The scandal led to civil service reform in 1883 and strongly influenced the development of the Progressive movement.<sup>5</sup>

During the early 1900s, however, the tactics of lobbyists began to change. Instead of favors, bribery, or corruption, lobbyists placed a greater emphasis on more open and legal attempts to persuade lawmakers and sway public opinion through interest groups and pressure politics. Several factors contributed to this change, including the Progressive movement, the expansion of government during World War I, and the rise of trade associations, as well as the declining influence of political parties and the consumer culture and market segmentation also developing at that time.<sup>6</sup>

It was a subtle transition over several years, and historians do not always agree on an exact date. Lynn Dumenil places the arrival of the "new lobbying" during the 1920s, explaining that, "in contrast to the older, informal, and secretive methods of 19th-century lobbyists . . . the new lobbying was institutionalized, public, and conducted by voluntary associations."<sup>7</sup> Christopher M. Loomis agrees that "by the 1920's, interest groups had matured into a dominant force in American politics."<sup>8</sup>

However, there is evidence that new lobbying was beginning to emerge before 1920. Dumenil cites the Anti-Saloon League and the National American Woman Suffrage Association as "excellent examples of voluntary associations which achieved their political goals through well-organized pressure politics."<sup>9</sup> Edgar Lane argues that "by 1913 both the methods and the practitioners of lobbying had changed, and the investigations of that year represent the first Congressional recognition of lobbying in its newer forms."<sup>10</sup>

What was the reaction in Congress to the "new lobbying"? As Loomis noted, "changes in the practice of lobbying during this period created widespread distress

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<sup>5</sup> William V. Luneburg and Thomas M. Susman, *The Lobbying Manual* (Chicago: ABA Publishing, 2005), p. 6.

<sup>6</sup> Lynn Dumenil, *Modern Temper* (New York: Hill and Wang, 1995), p. 41; Brian Balogh, "Mirrors of Desires: Interest Groups, Elections, and the Targeted Style in Twentieth-Century America," in *The Democratic Experiment*, ed. Meg Jacobs et al. (Princeton, New Jersey: Princeton University Press, 2003), p. 227.

<sup>7</sup> Dumenil, *Modern Temper*, p. 40.

<sup>8</sup> Christopher M. Loomis, "The Politics of Uncertainty: Lobbyists and Propaganda in Early Twentieth-Century America," *Journal of Policy History* 21, No. 2 (2009): 195.

<sup>9</sup> Dumenil, *Modern Temper*, p. 41.

<sup>10</sup> Edgar Lane, "Some Lessons From Past Congressional Investigations of Lobbying," *Public Opinion Quarterly* 14, No. 1 (Spring 1950): 16.

and unease among policymakers.”<sup>11</sup> Many in Congress “suspected that lobbyists influenced public opinion through misinformation and deception, employing propaganda to dupe rather than inform their audience.”<sup>12</sup>

On May 27, 1913, President Woodrow Wilson complained that new lobbying was being used to block efforts to lower tariff rates:

Washington has seldom seen so numerous, so industrious, or so insidious a body. The newspapers are being filled with advertisements calculated to mislead the judgment not only of public men, but also the public opinion of the country itself. There is every evidence that money without limit is being spent to sustain this lobby, and to create an appearance of a pressure of public opinion antagonistic to some of the chief items of the tariff.<sup>13</sup>

President Wilson’s comments prompted the Senate Judiciary Committee to begin an investigation of lobbying. Additionally the press, at President Wilson’s request, wrote several stories on the issue.<sup>14</sup>

Bolstering President Wilson’s comments, on June 29, 1913, the first in a series of articles appeared in the *Chicago Tribune* and the New York *World* written by “Colonel” Martin M. Mulhall, detailing his actions as the former head of lobbying for the National Association of Manufacturers (NAM).<sup>15</sup> While some of Mulhall’s claims were found to be exaggerated, it was determined that Mulhall had his own private office in the Capitol building; had paid the chief House page \$50 a month for information on private conversations in the Democratic and Republican cloakrooms; had regularly obtained inside information from Representative James T. McDermott, a Chicago Democrat, and Representative John Dwight, the Republican House leader; and had influenced the hiring practices of several House committees, supporting candidates who would be friendly to NAM’s interests.<sup>16</sup>

Investigations by both the House of Representatives and the Senate found that NAM had contributed to the political campaigns of pro-NAM members of

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<sup>11</sup> Loomis, “The Politics of Uncertainty,” p. 188.

<sup>12</sup> *Ibid.*, p. 189.

<sup>13</sup> Quoted in Lane, “Some Lessons,” p. 16.

<sup>14</sup> Luneburg and Susman, *The Lobbying Manual*, p. 7.

<sup>15</sup> Lane, “Some Lessons,” pp. 16–17.

<sup>16</sup> James Deakin, *The Lobbyists* (Washington, DC: Public Affairs Press, 1966), pp. 74–75.

Congress while working to oppose pro-labor members of Congress and had carried out propaganda campaigns throughout the country to promote their positions.<sup>17</sup> Senator Lee S. Overman of North Carolina, chair of the Senate investigation committee, identified a “newer form of organized activity to mold public sentiment and to influence Senators by means of public pressure from various sources.”<sup>18</sup>

However, investigators did not find any evidence of bribery or other legal violations. Of the seven members of Congress directly investigated in regard to the NAM activities, six were fully exonerated of any wrongdoing.<sup>19</sup> Representative McDermott was censured for “acts of grave impropriety, unbecoming the dignity of the distinguished position he occupies.”<sup>20</sup> McDermott was not expelled, but he retired from Congress soon after he was censured.

As a result of the Mulhall investigation, 12 bills were introduced that proposed various methods to regulate lobbying. None were approved.<sup>21</sup> However, President Wilson was able to use the lobbyists’ own efforts against them, gaining public support against lobbyists and ultimately winning congressional approval for his proposal to lower tariffs.<sup>22</sup>

Although the Mulhall incident had damaged the reputations of a few individuals, new lobbying intensified during and after World War I. But it was not until the late 1920s that lobbyists’ methods came back into the spotlight of congressional debate.<sup>23</sup> Senator Thaddeus Caraway of Arkansas proposed legislation in 1928 that would have required lobbyists to register with the federal government and to provide information on what legislation they were trying to affect, who hired them, and how much they were being compensated. Lobbying practices in opposition to a proposed estate tax bill, as well as Senator Caraway’s belief that lobbyists had killed a separate bill he had introduced to prohibit the sale of cotton futures, were the main motivations behind his lobbyist registration bill. Senator Caraway’s legislation passed the Senate, but died in the House of Representatives.<sup>24</sup>

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<sup>17</sup> Lane, “Some Lessons,” p. 19.

<sup>18</sup> *Ibid.*, p. 20.

<sup>19</sup> Deakin, *The Lobbyists*, p. 75.

<sup>20</sup> Lane, “Some Lessons,” p. 19.

<sup>21</sup> *Ibid.*, p. 20.

<sup>22</sup> Byrd, [http://www.senate.gov/legislative/common/briefing/Byrd\\_History\\_Lobbying.htm](http://www.senate.gov/legislative/common/briefing/Byrd_History_Lobbying.htm)

<sup>23</sup> Lane, “Some Lessons,” p. 21.

<sup>24</sup> Calvin R. Ledbetter, Jr., “The Other Caraway: Senator Thaddeus H. Caraway,” *Arkansas Historical Quarterly* 64, No. 2 (Summer 2005): 138.

In September 1929 it was revealed that Senator Hiram Bingham of Connecticut had temporarily hired Charles L. Eyanson, the assistant to the president of the Manufacturers Association of Connecticut, to sit in on meetings of the Senate Finance Committee and assist in drafting provisions included in the tariff bill under Senate consideration. Six days after this revelation, Senator Caraway convinced his colleagues to approve a resolution allowing him to chair a Judiciary subcommittee created to investigate “lobbying associations and lobbyists.”<sup>25</sup>



A cartoon accompanying a May 5, 1935, *Washington Post* story about Senator Black’s lobbyist regulation bill. The caption read: “Lobbying in Washington takes a multitude of forms, but one of the most subtle methods—and certainly the most insidious—is the ‘social lobby.’ Many a new Congressman, eager for social prestige, has accepted an invitation to some gay affair only to discover that his host seems more interested in his vote than in his company.”

From late 1929 through 1931, the Caraway committee conducted a broad investigation of lobbying. In its investigation of the tariff bill, the committee found that Senator Bingham had used bad judgment in hiring Eyanson. Mr. Eyanson returned his salary to the Senator, who then paid the previous clerk who had been removed to make room for Eyanson. However, no illegal activity was found, and no disciplinary action was taken. In other investigations over the next two years, the committee issued several specific reports that focused on individuals or select interest groups, but Caraway’s committee never issued a final report, and never used its findings to endorse any legislative corrections.<sup>26</sup>

### Senator Hugo Black’s Investigation and Campaign for Reform

Senator Caraway was not the only Senator strongly advocating for the regulation of lobbyists. Since being sworn in as a Senator in December 1927, Hugo Black, a Democrat from Alabama, had built a reputation as a foe of lobbyists and a tough investigator. He first supported investigating and regulating lobbyists in 1929, after a lobbyist had accused members (Black included) who voted against a bill to authorize construction of new naval cruisers as being affiliated with the Communist Party.<sup>27</sup> In 1930 Senator Black worked to block efforts by the Alabama Power Company to

<sup>25</sup> Lane, “Some Lessons,” p. 22.

<sup>26</sup> *Ibid.*, pp. 22–24.

<sup>27</sup> Virginia Van Der Veer Hamilton, “The Senate Career of Hugo L. Black” (Ph.D. diss., University of Alabama, 1968), p. 109.

take over the dam at Muscle Shoals in Alabama. Black sat in during a hearing of the Caraway committee on the practices of the lobbyists involved in the Muscle Shoals debate.<sup>28</sup> While he originally did not agree with government operation of the dam, he was skeptical of private utility proposals. But because of the efforts of Black and other members of Congress, the dam was not turned over to private development but later became a major part of the Tennessee Valley Authority.<sup>29</sup> When Senator Caraway passed away in November 1931, Senator Black continued his assault on lobbyists, taking Caraway's place as the Senate's leading crusader.

In 1933 and 1934 Senator Black chaired a special committee to investigate contracts with shippers and airlines for transporting mail. Known as the Ocean Mail and Air Mail investigations, Black found that companies received payments from the government well over the amount they should have for the services provided.<sup>30</sup> Black also found that these companies paid large salaries to lobbyists to secure and maintain those contracts.<sup>31</sup>

As a result of these investigations, Senator Black believed that lobbyists were costing the taxpayers "hundreds of millions of dollars" by promoting bad legislation and pushing inflated contracts.<sup>32</sup> On March 13, 1935, Senator Black introduced legislation that would require all lobbyists to register with the Secretary of the Senate, the Clerk of the House of Representatives, and the Federal Trade Commission. Lobbyists would also be required to file monthly reports. Failure to follow the reporting requirements would be a misdemeanor punishable with a fine of up to \$5,000 and a year in prison. Falsifying reports would be considered perjury and subject to up to two years in prison.<sup>33</sup> The Black bill defined a lobbyist as "one who shall engage for pay, or for any consideration, to attempt to influence legislation, or to prevent legislation by the National Congress, or to influence any Federal bureau, agency, Government official or Government employee."<sup>34</sup>

Many members of Congress and the administration saw the Black bill as a solution to the "propaganda deluge" they were experiencing. This propaganda included literature

<sup>28</sup> Hamilton, "The Senate Career of Hugo L. Black," pp. 90–91.

<sup>29</sup> Byrd, [http://www.senate.gov/legislative/common/briefing/Byrd\\_History\\_Lobbying.htm](http://www.senate.gov/legislative/common/briefing/Byrd_History_Lobbying.htm)

<sup>30</sup> Hamilton, "The Senate Career of Hugo L. Black," pp. 191–210.

<sup>31</sup> Robert Talley, "Anti-Lobby War Turns Spotlight on Capital's 'Invisible Government,'" *Washington Post*, May 5, 1935.

<sup>32</sup> *Ibid.*

<sup>33</sup> "Senate Turns On Lobbyists With New Bill," *Washington Post*, Apr. 11, 1935.

<sup>34</sup> Text of S 2512; found in the file for HR 11663 in the 74th Congress; Box 202; National Archives Building, Washington, DC (hereinafter NAB).



from Father Charles Coughlin to members of Congress urging opposition to the proposed World Court. And Secretary of State Cordell Hull complained of being “flooded with letters from potato growers, protesting a threatened reduction in the potato duty.”<sup>35</sup>

Members of Congress also began to receive large numbers of telegrams and letters from their home states in opposition to the Wheeler-Rayburn public utilities holding company bill. While utility companies opposed several provisions in the bill, which would tighten regulation of utility companies, the provision that drew the most opposition and as a result the most activity from utility company lobbyists was known as the “death sentence.” At the time, a small group of large holding companies owned most of the utilities in the United States, monopolizing the production and distribution of electricity. The death sentence was designed to protect consumers by breaking up these large holding companies so that the electric rates customers paid were more reflective of the actual costs of producing and delivering electricity.<sup>36</sup> As the telegrams and other efforts by the utility company lobbyists intensified, Senator Black began to focus more of his rhetoric and his efforts on the lobbyists attempting to kill the Wheeler-Rayburn bill.

The Senate Judiciary Committee held hearings on the Black bill in April 1935. No outspoken opposition was reported.<sup>37</sup> There were several national organizations that officially declared their support for the bill, including the National Board of the Y.W.C.A., the American Association of University Women, and the American Federation of Teachers.<sup>38</sup>

On May 28, 1935, the full Senate approved the Black bill by unanimous consent. While several Senators inquired during floor consideration of the bill as to who was and was not included in the jurisdiction of the bill, often providing hypothetical scenarios to try to clarify the extent of the legislation, there was no outspoken objection or opposition.<sup>39</sup> It is likely that most Senators preferred to let the bill pass without objecting, rather than be seen as a supporter of special interests.

The day after the Senate had passed the bill, however, Senator Bennett Clark, a Democrat from Missouri, attempted to make a motion to reconsider the legislation, to try to return the bill back to the Senate for further debate. Clark gave no explanation on the Senate floor of why he was trying to overturn the bill’s passage.

<sup>35</sup> “Senators Push A Law to Curb Lobby Menace,” *Washington Post*, Apr. 20, 1935.

<sup>36</sup> Hamilton, “The Senate Career of Hugo L. Black,” p. 210.

<sup>37</sup> “Senate Turns On Lobbyists With New Bill,” *Washington Post*, Apr. 11, 1935.

<sup>38</sup> Congressional Record, May 21, 1935, pp. 7911-7912.

<sup>39</sup> Congressional Record, May 28, 1935, pp. 8304-8306.

After later learning of Senator Clark's action, Senator Black blocked the effort.<sup>40</sup> The bill was sent to the House of Representatives, and was referred to the House Judiciary Committee on June 5, 1935.<sup>41</sup>

Although few Senators stood up in opposition to the Black lobbyist registration bill, it was not without its critics. *New York Times* columnist Arthur Krock, who would write several editorials opposing Senator Black's efforts to regulate lobbyists, criticized the bill in an article titled "Black Anti-Lobbying Bill Only a Tin Sword at Best." Krock argued that registration would have little effect "on the really powerful Washington lobbies: those who advocate veterans' legislation, and those who especially plead the cause of labor." He complained that the bill would do little more than "produce headlines and personal publicity" for Senator Black and the bill's supporters.<sup>42</sup>

Krock had a valid point. Who was this bill targeting? Black had admitted that while groups like the American Federation of Labor would be included and would be required to register under the legislation, it was not the labor, farm, or veterans' groups he was after. Instead, his bill was intended for the lobbyists of special interests working toward preferential legislation or lucrative government contracts.<sup>43</sup> Black never explained how to tell the difference between the good lobbyists and the bad lobbyists, or how to regulate the most nefarious lobbyists without placing onerous regulation on the business or labor representative who only came to Washington, DC, one day out of the year. The broad language of his bill reflected the difficulty in drawing this line.

Black continued to push his legislation. It appeared, however, that the House of Representatives was in no hurry to act on the bill. But Senator Black had support from the White House. On June 28, 1935, President Roosevelt sent a note to Representative Hatton W. Sumners of Texas, a Democrat and Chair of the House Judiciary Committee. President Roosevelt's message was short and direct:

MEMORANDUM FOR JUDGE SUMNERS

Senator Black is most anxious that you get the Lobby Bill out and passed. He says it is pretty weak but much better than nothing. Can you do this?

E. D. R.<sup>44</sup>

<sup>40</sup> Congressional Record, May 29, 1935, p. 8363.

<sup>41</sup> Hamilton, "The Senate Career of Hugo L. Black," p. 210.

<sup>42</sup> Arthur Krock, "Black Anti-Lobbying Bill Only a Tin Sword at Best," *New York Times*, May 10, 1935.

<sup>43</sup> Talley, "Anti-Lobby War," *Washington Post*, May 5, 1935.

<sup>44</sup> Note from President Roosevelt to Chairman Sumners; found in the file for HR 11663 in the 74th Congress; Box 202; NAB.

It is difficult to know for sure exactly why President Franklin Roosevelt became involved. The battle over the Wheeler-Rayburn bill, a significant New Deal initiative, had intensified, and Senator Black had called for an investigation into the utility lobbyists.<sup>45</sup> It is likely that Roosevelt viewed the Black bill as a way to fight back against the utility lobbyists. But the President's support may just have been the result of an existing relationship between Roosevelt and Black that had developed during the Air Mail and Ocean Mail investigations.<sup>46</sup> It is possible that Roosevelt was doing a favor for a political ally without knowing the later effect Black's efforts would have on the Wheeler-Rayburn bill.

THE WHITE HOUSE  
WASHINGTON

June 28, 1935.

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President Franklin Roosevelt's June 28, 1935, note to Representative Hatton W. Summers of Texas, Chair of the House Judiciary Committee, asked him to act on Senator Black's lobbyist regulation bill.

In response to President Roosevelt's request, the House Judiciary Committee held hearings on the Black bill on July 16 and 26. Chair Summers was willing to give the Black bill its day in committee. The structure of the proceedings and Chair Summers's comments during the hearings, however, paint a picture of a chair who was less than enthusiastic about the legislation. None of the witnesses called by the House Judiciary Committee testified in support of the Black bill. The witnesses who did testify expressed concern that the legislation was too broadly defined and argued that it violated the First Amendment right to petition Congress. Most requested amendments to the bill, often in the form of blanket exemptions for their particular industry or cause.<sup>47</sup>

<sup>45</sup> Robert C. Albright, "Lobbyists Facing Call By House as Utility Bill Nears Test in Senate," *Washington Post*, July 4, 1935.

<sup>46</sup> Hamilton, "The Senate Career of Hugo L. Black," pp. 196–97.

<sup>47</sup> All accounts, including facts and quotes, referring to the July 16 House Judiciary Committee hearings are taken from the official House Judiciary Committee transcript, which can be found in the file for HR 11663 in the 74th Congress; Box 194; NAB.

On July 16, the Committee heard testimony from the heads of several divisions of the American Federation of Labor (AFL). John P. Frey, President of the Metal-Trades Department of the AFL, argued that if the bill was enacted as written, “hundreds and perhaps thousands of trade unionists who had no idea that they were violating the law could have charges preferred against them.” AFL representatives proposed an amendment to the bill that would exempt “members or representatives of associations or organizations not organized for profit.” C. L. Rosemund, the president of the International Federation of Technical Engineers, expressed his outrage that the bill would allow the “possibility of making a crime out of what I consider the constitutional right of the people to petition their members of Congress.”<sup>48</sup>

There was little support for the Black bill among most members of the committee, either. Representative Percy Gassaway, a Democrat from Oklahoma, called the bill a “fool measure” and repeatedly stated his opposition to the legislation. Representative John Miller, a Democrat from Arkansas, attempted to defend the Black bill, but most of his arguments were ignored.<sup>49</sup>

Chair Sumners himself, despite President Roosevelt’s message to him, made no effort to promote or even defend the Black bill. Asserting his independence, Sumners made it known that “This committee is not compelled to report out this bill. Of course, we do not have to report out any bills.”<sup>50</sup>

On July 26, an additional hearing was scheduled to allow representatives from the American Bar Association (ABA), who could not attend the July 16 hearing, to testify against the bill. The executive committee of the ABA had adopted a resolution in May 1935 opposing the Black bill. As Louis G. Caldwell, representing the executive committee of the ABA testified, “I am unable to do more than urge that if this bill is to be passed it contain a proviso exempting all lawyers in good standing.” Caldwell went on to argue that “lawyers are already, theoretically, at least, under a system of discipline far more rigorous and effective than this bill provides or could be made to provide.” Further arguing that lawyers are not the source of the lobbying problem, Caldwell explained that “it is my own experience down here that a large number of the evils that exist are directly

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<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> All accounts, including facts and quotes, referring to the July 26 House Judiciary Committee hearings are taken from the official House Judiciary Committee transcript, which can be found in the file for HR 11663 in the 74th Congress; Box 194; NAB.

traceable to the laymen who are doing the work of lawyers and are under none of the rules applicable to lawyers.”<sup>51</sup>

Chairman Sumners repeated his reluctance to pass the Black bill as written, but warned the hearing attendees that “I think you may expect, if I may take the liberty of saying this personally, that there is going to be some legislation on this subject matter, if not at this session, perhaps quite soon.” Sumners admitted, with more than a hint of skepticism, that “the whole country apparently is concerned about this [lobbying].” Reluctantly acknowledging the impetus for legislation, Sumners admitted “you do not have to be told that there have been disclosures from time to time that are creating a pressure that is going to result in legislation.”<sup>52</sup> Many of those disclosures were being brought to light by Senator Black himself.

Black had used the growing concern about utility lobbyists’ activities against the Wheeler-Rayburn bill to convince his colleagues in the Senate to approve a five-member special committee, authorized to investigate a broad range of lobbying activity.<sup>53</sup> The same week, the Wheeler-Rayburn bill was sent to a conference committee to reconcile differences between the bills passed in the House and the Senate.<sup>54</sup>

Black acted quickly, his special committee held its first hearing on July 12, 1935, the day after it had been created. The main witness of the hearing was Philip Gadsden, chair of the Committee of Public Utility Executives. Adding to the theatrics, Gadsden was given no notice of his appearance. He was served a subpoena in his hotel, and Committee staff escorted Gadsden directly to the hearing. Gadsden testified that his group had spent \$301,865 trying to defeat the Wheeler-Rayburn bill.<sup>55</sup> While Gadsden was in front of the Black Committee, Black’s staff ransacked his office in search of evidence. Some of what Black’s staff found was brought back to Black to be used during the hearing. Gadsden told reporters that the Committee investigators “went over every paper in my desk and in the files, read all of them, and dashed over to the committee room with others. . . . To make it worse, he actually went through my personal checkbook.” Gadsden called the search “an outrage” and complained that “this isn’t Russia.”<sup>56</sup> It would not be the last

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> “House Seeks Lobby Costs of Death Sentence Foes; Senate Organizes Inquiry,” *New York Times*, July 12, 1935.

<sup>54</sup> “A Look at Lobbies,” *New York Times*, July 14, 1935.

<sup>55</sup> Ibid.

<sup>56</sup> “Utility Probe Delving Into Lobby Costs,” *Washington Post*, July 14, 1935.

time Black would be criticized for exceeding his authority.

Beyond Gadsden's admission that his group spent more than \$300,000 to defeat the Wheeler-Rayburn bill, there was very little useful information that came out of the hearing. In search of more damning evidence, the Committee sent questionnaires to all utility holding companies, requesting information on money spent on telegrams and advertising against the Wheeler-Rayburn bill.<sup>57</sup>

The Black Committee held a second hearing on July 16, 1935, that produced a much more revealing story of the tactics of utility lobbyists. Representative Denis Driscoll from Pennsylvania testified that in two days he had received 800 telegrams from Warren, Pennsylvania, opposing the Wheeler-Rayburn bill. Suspiciously, almost all of them were from people whose names began with B. A second witness, the manager of the Western Union telegram office in Warren, Pennsylvania, testified that the telegrams had been sent by a utility lobbyist who had taken the names from a phone book. Several of the fake telegrams had allegedly been sent by individuals who were dead or had moved away.<sup>58</sup>

Black pounced on the disclosure, using the fake telegrams as evidence that the utility lobby was deceitful and detrimental to the public good. Further adding to the Black committee's case, it was soon after discovered that lobbyists had burned records of more fake telegrams.<sup>59</sup> The Federal Communications Commission (FCC) joined the investigation, ordering telegraph companies to submit informa-



In a March 7, 1936, editorial cartoon from the *Chicago Tribune* criticizing his committee's tactics, Senator Black is portrayed as a member of the Ku Klux Klan. In the lower right, a sign reads, "Intimidation of all who oppose Roosevelt." A piece of paper saying "Seizure of Private Telegrams" seems to fall from Black's cloak.

<sup>57</sup> Ibid.

<sup>58</sup> Transcript of July 16, 1935, hearing; Records of the Special Committee of the United States Senate to Investigate Lobbying Activities 1935–1940; Box 278; Chapter 18; Record Group (RG) 46; NAB.

<sup>59</sup> James D. Secret, "Utilities Aid Admits Files Were Burned," *Washington Post*, July 20, 1935.

tion to the FCC on any other fake telegrams against the Wheeler-Rayburn bill.<sup>60</sup> The Black committee, with the help of the FCC, would find that in 20 towns, utility lobbyists had sent at least 31,567 fake telegrams to members of Congress in opposition to the Wheeler-Rayburn bill.<sup>61</sup>

At the same time that the Black investigation started, the House Rules Committee had begun its own inquiry. The House Rules Committee leadership, however, was less enthusiastic to investigate lobbyists than Senator Black, to say the least. The House of Representatives had passed a weaker version of the “death sentence” than the Senate, and the Rules Committee investigation reflected the House’s position. But politically, the House Rules Committee couldn’t afford not to join the investigation. As *New York Times* columnist Arthur Krock put it, if the House did not act, they would “instantly be attacked as a tool of the power trust.”<sup>62</sup> But very few members of the House supported the investigation. Representative Blanton put it bluntly: “No new facts will be developed that will be worth five cents to the people.”<sup>63</sup>

To prove it was not a rubber stamp for President Roosevelt’s agenda, the House Rules Committee began its investigation by focusing on allegations made by Representative Ralph Brewster, a Republican from Maine, that Thomas Corcoran, a leading Roosevelt administration official, had threatened to stop construction of a dam project in Maine if Brewster voted against the Wheeler-Rayburn bill.<sup>64</sup>

Opponents of President Roosevelt and the Wheeler-Rayburn bill seized the opportunity to flip the debate by painting the President’s staff as the reprehensible lobbyists. Representative Hamilton Fish, a Republican from New York, accused the Roosevelt administration of “bullying and coercing” members. He demanded that “Congress put an end to the dictation by the White House and its agents over legislation.”<sup>65</sup>

Eventually, it was discovered that Corcoran did not threaten to remove administration support for the Maine dam, but instead had expressed doubts that

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<sup>60</sup> Raymond Clapper, “Black Steals the Lobby Probe Show,” *Washington Post*, July 24, 1935.

<sup>61</sup> Lane, “Some Lessons,” pp. 28–29.

<sup>62</sup> Arthur Krock, “Activities of Congress Likened to a Broadway Burlesque,” *New York Times*, July 17, 1935.

<sup>63</sup> Lane, “Some Lessons,” p. 27.

<sup>64</sup> Albright, “Lobbyists Facing Call,” *Washington Post*, July 4, 1935.

<sup>65</sup> “Fight Impends In Both Houses on Utility Bill,” *Washington Post*, July 8, 1935.

Brewster could be counted on to fulfill his responsibilities for the project. Upon hearing this defense corroborated by a third party to the conversation, the House Rules Committee ended its inquiry of the Brewster-Corcoran affair. The only real result of the inquiry was that the Speaker of the House ordered the House doorkeeper to only allow members and accredited press into the Speaker's lobby just outside the House chamber. According to House Rules Committee testimony, Corcoran had previously been seen in the Speaker's lobby talking to members.<sup>66</sup>

Moving past the Brewster-Corcoran affair, the House Rules Committee subpoenaed the records of the Mayflower Hotel, where several of the utility lobbyists stayed. It also sent letters to members of Congress asking for information, including names, addresses, and any other documentary proof of lobbying on the Wheeler-Rayburn bill.<sup>67</sup>

The House Rules Committee received 250 responses (out of 435 members). According to committee Chair John O'Connor, most Representatives' replies were to the effect that "no damn person said a damn thing to me about any damn bill." When asked, O'Connor said that the Black committee "hasn't touched on much yet." He added, "Everybody has known for months about the faking of telegrams and letters in connection with the bill."<sup>68</sup>

While these investigations proceeded, conferees on the Wheeler-Rayburn bill were attempting to resolve the death sentence issue. They had a difficult task; the House had passed a weaker version, and most House members did not support the stronger Senate text. The Black investigation became a major part of the strategy to win approval of the death sentence. By painting the utility companies and their lobbyists as dishonest and deceitful, it was hoped that supporters of the death sentence could win more votes for a stronger bill. Raymond Clapper from the *Washington Post* put it this way:

If the death sentence finally goes into the utilities bill it will be another notch in the gun of Senator Hugo Black. Mr. Roosevelt and his fleet-footed agents stirred up every vote they could find, but fell far short. Now Senator Black is trying the job through his lobby inquiry.<sup>69</sup>

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<sup>66</sup> "House Seeks Lobby Costs," *New York Times*, July 12, 1935.

<sup>67</sup> Ibid.

<sup>68</sup> Secret, "Utilities Aid," *Washington Post*, July 20, 1935.

<sup>69</sup> Raymond Clapper, "Black Steals the Lobby Probe Show," *Washington Post*, July 24, 1935.



Less enthusiastically, columnist Arthur Krock accused the Black investigation of having “developed into an administration effort to frighten members who stand against the abolition clause for holding companies.”<sup>70</sup>

Opponents of the death sentence, continuing the tactic of the House Rules Committee, objected to the presence during the conference committee proceedings of two Roosevelt administration staff who had helped draft the bill. Representative George Huddleston, a fellow Democrat from Black’s home state of Alabama, argued that allowing administration lobbyists in the room “was as manifestly improper as it would be to have utility lobbyists present.” When asked about the Black committee’s findings, Huddleston replied that “no intelligent man will be the least affected by the disclosures.”<sup>71</sup>

On August 1, 1935, the House of Representatives voted on a bill drafted by the Wheeler-Rayburn conference committee. The legislation included the stronger death sentence as passed by the Senate. The House rejected the bill.<sup>72</sup>

A week later, Senator Black took his appeal directly to the people. In a nationwide radio address on August 8, 1935, Black laid out the details of his committee investigation. Black asserted that in addition to the fake telegrams and the destruction of evidence, it had been discovered that the utilities industry had spent at least \$1.5 million against the Wheeler-Rayburn bill. He predicted that once his investigation was complete, it “will be known as the \$5 million lobby.” Black argued that the money to pay for these lobbyists would ultimately come from the consumer.<sup>73</sup> To drive that point home, Black invited listeners to “just contemplate what a good time people are having on your money in Washington.”<sup>74</sup>

In addition to aid already provided by the FCC, President Roosevelt also ordered the Treasury Department to provide the Black committee with financial records of the utilities in order to help determine how much was spent on lobbying.<sup>75</sup> Senator Black held additional hearings during the month of August leading up to the next House of Representatives vote on the Wheeler-Rayburn bill.

<sup>70</sup> Krock, “Activities of Congress,” *New York Times*, July 17, 1935.

<sup>71</sup> “Conferees Rebuff New Deal Experts on Utilities Bill,” *New York Times*, July 25, 1935.

<sup>72</sup> Hamilton, “The Senate Career of Hugo L. Black,” p. 217.

<sup>73</sup> “5 Million Lobby,” *Washington Post*, Aug. 9, 1935.

<sup>74</sup> Hamilton, “The Senate Career of Hugo L. Black,” p. 214.

<sup>75</sup> “The News of the Week Passes in Review,” *Washington Post*, Aug. 4, 1935.

On August 22, 1935, the House of Representatives approved a new Wheeler-Rayburn bill. The legislation included a compromise on the death sentence provision. The bill would break up some, but not all, of the large utility holding companies. Roosevelt signed the bill into law on August 26, 1935.<sup>76</sup> While it was not as strong as the original Senate bill, the provision was still a victory for the Roosevelt administration and Senator Black.

The Wheeler-Rayburn bill also included a provision that required all utility lobbyists to register with the Securities and Exchange Commission, and file yearly reports on their activity, including whom they were working for, how much they were being paid, and what they were lobbying on. While limited to utility lobbyists, and not as comprehensive as the Black bill, this provision was a major victory in Senator Black's fight to regulate lobbying.<sup>77</sup> After passage of a modified death sentence and a provision regulating utility lobbyists, the Black committee did not hold any additional hearings in 1935, but it would be ready to continue the fight against lobbyists in the next year.

On February 27, 1936, six months after the House Rules Committee held its last hearing regarding lobbyists, it finally issued a report of its findings. The committee acknowledged an extensive campaign by utility company lobbyists to defeat the Wheeler-Rayburn bill, considering it excessive and arrogant.<sup>78</sup> However, it found no evidence that any laws were broken, asserting "that there is no suggestion of corruption or moral turpitude." In its report, the House Rules Committee also recommended that Congress adopt a modified version of the bill introduced by Representative Howard W. Smith, a Democrat from Virginia and a member of the Rules Committee.<sup>79</sup>

Shortly after the report was issued, Representative Smith introduced a new version of his bill, modified to include the House Rules Committee's recommendations. The Smith bill included some of the language and structure of the Black bill, but in an attempt to eliminate some of its vagueness, Smith added definitions and clarifying provisions that limited its scope. The bill moved quickly through the House Judiciary Committee, and was approved by the full House of Representa-

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<sup>76</sup> Hamilton, "The Senate Career of Hugo L. Black," p. 215.

<sup>77</sup> Belle Zeller, "American Government and Politics: The Federal Regulation of Lobbying Act," *American Political Science Review* 42, No. 2 (Apr. 1948): 240.

<sup>78</sup> Lane, "Some Lessons," p. 27.

<sup>79</sup> House Rules Committee Report 2081: Investigation of Lobbying Activities; file for HR 11663 in the 74th Congress; Box 194; NAB.

tives on March 27, 1936. There were some members of the House, however, who were more willing than the Senators were a year before to speak out against the proposed regulation of lobbyists. But most House members who spoke on the floor offered hypothetical scenarios and questions on who would and would not be included in the bill, similar to the Senate. Just like the Black bill, the Smith bill was passed by voice vote, and no recorded vote was held.<sup>80</sup>

A conference committee was formed to reconcile the differences between the Black bill and the Smith bill, and a final bill was written. It was comprised mostly of the Smith bill, but there were efforts to include more of the Black bill in the final text.<sup>81</sup>

On June 17, 1936, the House of Representatives overwhelmingly defeated the lobbyist regulation bill by a vote of 265 to 77. During consideration of the bill, several members of the House spoke against the legislation, raising concerns that it would violate the First Amendment right to petition Congress for respectable lobbying groups while not doing enough to restrict the deceitful groups. They argued that the Roosevelt administration, “not content with gagging the Members of Congress . . . now reaches out to gag their constituents.” Representative Smith made an impassioned speech in favor of the bill, but it was not enough.<sup>82</sup>

Although the American Farm Bureau Federation publicly supported the bill<sup>83</sup> the American Federation of Labor, the Chamber of Commerce, and the National Association of Manufacturers,<sup>84</sup> as well as several state bar associations and groups representing accountants and patent attorneys, all lobbied strongly against the bill in the months leading up to the House vote.<sup>85</sup> When asked later that year, Representative Smith would also blame Father Charles Coughlin and the Townsend organization for the bill’s defeat.<sup>86</sup>

For most members of the House, Senator Black never sufficiently answered the criticisms of these groups, first raised in the House Judiciary Committee almost a year previously. Even with the changes by Representative Smith that attempted to provide focus to the bill, most still saw it as too vague. Black never explained

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<sup>80</sup> Congressional Record, Mar. 27, 1936, pp. 4514–4541.

<sup>81</sup> Luneburg and Susman, *The Lobbying Manual*, p. 9.

<sup>82</sup> Congressional Record, June 17, 1936, pp. 9743–9753.

<sup>83</sup> Congressional Record, Apr., 1936, pp. 6171–6172.

<sup>84</sup> Congressional Record, June 17, 1936, pp. 9746–9747.

<sup>85</sup> Various correspondence; file for S. 2512 in the 74th Congress; Box 202; NAB.

<sup>86</sup> “Lobby-Control Measure Again to be Offered,” *Washington Post*, Dec. 21, 1936.

how the bill would successfully limit the activities of corrupt and immoral lobbyists without stifling the voice of law-abiding and ethical lobbying groups. There was no strong answer for arguments that the bill would infringe upon the First Amendment right to petition Congress. Throughout the year-long debate, Black's best answer was that upstanding lobbyists had nothing to fear from reporting; it was only the unscrupulous who would be stung by reporting their activities.<sup>87</sup>

While it would be easy to assign all the blame on a large-scale opposition campaign by the very lobbyists the bill was trying to regulate, perhaps the most significant factor contributing to the bill's defeat was Senator Black's own actions in 1936. At the same time the proposed lobbyist regulation bill was being considered in the House, Black was wasting the prestige and political capital he had spent the past several years building.

In early 1936 the Black committee, moving beyond its investigation of utility lobbyists, broadened its inquiry to the American Liberty League, the Crusaders, and several other organizations that had been critical of the New Deal.<sup>88</sup> With help from the Federal Communications Commission, the Black committee had secured through a dragnet subpoena copies of thousands of telegrams, most of them correspondence among the representatives of these organizations. Black's tactics spurred a Chicago law firm to seek a court injunction against access to telegrams between the firm and its clients, arguing that it was a violation of the Fourth Amendment protection against overly broad warrants.<sup>89</sup>

In response, Senator Black gave an impassioned speech on the Senate floor, threatening the courts considering the injunctions that any ruling that would limit the Black committee's investigation would be answered with legislation to take away the courts' authority to review such cases.<sup>90</sup> Several newspapers, including the *Washington Post*, *Chicago Tribune*, and *New York Times*, criticized Black for his disregard for the Fourth Amendment and his threat to the courts.<sup>91</sup>

On March 11, 1936, in a major blow to the Black committee, the U.S. District Court for the District of Columbia agreed that the committee had violated protec-

<sup>87</sup> Talley, "Anti-Lobby War," *Washington Post*, May 5, 1935.

<sup>88</sup> "Senate Reveals Liberty League Inquiry Started," *Washington Post*, Jan. 29, 1936.

<sup>89</sup> Hamilton, "The Senate Career of Hugo L. Black," pp. 219–20.

<sup>90</sup> "Black Threatens a Curb on Courts," *New York Times*, Mar. 6, 1936.

<sup>91</sup> "Encroaching Upon Privacy," *Washington Post*, Mar. 9, 1936; "Display Ad: A Newspaper That Can Not Be Intimidated," *New York Times*, Mar. 11, 1936; Hamilton, "The Senate Career of Hugo L. Black," p. 221.

tions against unreasonable search and seizure, and barred Western Union from turning files over to the committee.<sup>92</sup> Senator Black did not follow through with his threat to push legislation to limit the courts' authority.

Newspaper publisher William Randolph Hearst was the next to file a similar injunction regarding telegrams between Hearst and his reporters, citing violations of both the Fourth Amendment and the First Amendment protections of free press.<sup>93</sup> Four days after Hearst filed the injunction and eight days before the House approved the Smith lobby regulation bill, Representative John McSwain, a Democrat from South Carolina and the chair of the House Military Affairs Committee, read a telegram on the House floor originally sent by Hearst to one of his writers. In the telegram, Hearst suggested that several editorials be written urging that McSwain be impeached, calling him "a Communist in spirit, and a traitor in effect."<sup>94</sup> Representative McSwain later admitted that he was given a copy of the telegram by Senator Black.<sup>95</sup>

By making public the Hearst telegram about Representative McSwain, Senator Black was somewhat successful in deflecting attention away from accusations that his investigation was going too far. The Hearst-McSwain telegram incident also likely helped to smooth the way for the House to approve the Smith lobbyist regulation bill. But Hearst would continue his fight, through repeated injunction requests and appeals, against Black's efforts.

As the Black committee continued to accumulate legal fees from battling Hearst, it was forced to ask Congress for additional funding. The Senate approved the appropriation of additional funding, but the House defeated the resolution. The Senate was forced to pay Black's additional legal fees from its own operations budget.<sup>96</sup>

Many in the House resented Black's appeal for money, viewing it as a tactic by Black to engineer a vote of confidence at a time that Black was facing heavy criticism. House members were concerned that voting for the additional funding would be portrayed as an endorsement of Black.<sup>97</sup> The House rejection of the funding resolution was an early indicator of how the Black-Smith lobby regulation bill would fare two months later.

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<sup>92</sup> Felix Bruner, "Western Union Barred From Giving Files to Committee," *Washington Post*, Mar. 12, 1936.

<sup>93</sup> "New Hearst Move in Lobbying Suit," *New York Times*, Mar. 15, 1936.

<sup>94</sup> "McSwain Reads Hearst Attack on House Floor," *Washington Post*, Mar. 19, 1936.

<sup>95</sup> Hamilton, "The Senate Career of Hugo L. Black," p. 222.

<sup>96</sup> *Ibid.*, p. 225.

<sup>97</sup> "House Threatens the Lobby Inquiry," *New York Times*, Apr. 5, 1936.

Because of Senator Black's overzealous efforts and questionable tactics, the legislation to regulate lobbyists that he had pushed so hard for had failed. Mired in a controversy over dragnet subpoenas and court injunctions, Black overextended himself beyond what his colleagues would allow. In a large part because of his dogged efforts to support the New Deal and defend it against its critics, Senator Black had also overextended himself with his constituents. By 1937 several Alabama newspapers had raised concerns that Black was too liberal and had lost touch with the state's residents.<sup>98</sup>

Rewarding Hugo Black for his support of the New Deal while privately acknowledging his political problems in Alabama, Roosevelt appointed Black to the Supreme Court in August 1937. Senator Sherman Minton of Indiana assumed the chairmanship of the Senate Special Committee to Investigate Lobbying Activities, which continued its investigations through 1940.<sup>99</sup>

There were additional provisions enacted into law in the late 1930s to require lobbyists for specific sectors to register. These included lobbyists for shipbuilders and ship operators, and later foreign agents.<sup>100</sup> A law that covered all lobbyists would not be approved by Congress until 1946. That legislation would be included as part of a larger government reorganization and reform bill. In fact, in strong contrast to Senator Black's efforts, there were no hearings held specifically on the regulation of lobbying. As then-Senator John Kennedy later admitted, the lobbyist registration provision "was in effect carried through on the coattails of the other congressional reforms."<sup>101</sup>

## Conclusion

In the early 20th century, a new lobbying began to take shape. Instead of the behind-the-scenes, occasionally corrupt lobbyist of the past, the new lobbyist was focused on promoting and portraying public sentiment (real or imagined) for or against legislation. While the majority of earlier lobbying was strictly between lobbyists and members, the new lobbying involved the American public. This new dynamic prompted some members to raise concerns that lobbyists were using deceptive and dishonest methods to affect legislation. By taking their causes to the people, lobbyists were threatening the previous relationship between members and their constituents. Instead of learning about government activities through either their Member of Congress or the news media, groups like the Anti-Saloon

<sup>98</sup> Hamilton, "The Senate Career of Hugo L. Black," pp. 258–62.

<sup>99</sup> Records of the Special Committee of the United States Senate to Investigate Lobbying Activities 1935–1940; Chap. 18; RG 46; NAB.

<sup>100</sup> Zeller, "American Government and Politics," pp. 240–41.

<sup>101</sup> Luneburg and Susman, *The Lobbying Manual*, pp. 9–10.

League and the National American Woman Suffrage Association were some of the first new lobbyists providing the public with what was often a different perspective, challenging the members' role in informing and interacting with their constituents.

Lobbyists today use many of the same strategies developed in the early 20th century. While there may not be fake telegrams, lobbyists continue to depend on public opinion campaigns and pressure politics and continue to devote larger and larger sums of money to convince lawmakers that public perception is on their side. Just as in the 1930s, lobbyists are taking their political battles to the public sphere. Members of Congress who are opposed by lobbyists on an issue continue to have to work to convince the American people that they, not the opposition lobbyists, are acting in the best interests of the public good. But as we have seen in debates on women's rights, environmental protection, civil rights, and other issues, public pressure from these types of groups has led to significant positive change and reform in U.S. laws.

Senator Black worked doggedly in support of his proposed legislation to regulate lobbyists and used that legislation and his investigation to support and defend the New Deal. He was able to play public perception against the utility lobbyists, beating them at their own game to win approval of a modified death sentence in the Wheeler-Rayburn Act, a major New Deal accomplishment that helped protect electric consumers for the next 70 years.<sup>102</sup> Just as James Madison had argued 150 years previously in Federalist Paper No. 10, the best way to eliminate the threat of a faction trying to dominate the debate for their own goals is not to try to stifle their free speech, but to answer their claims with evidence and advocacy. Black answered utility lobbyists' claims and discredited their efforts. This approach was likely far more effective than any lobbyist registration bill would have been.

Hugo Black was not the first, and would not be the last, to turn public sentiment against lobbyists. Eventually he went too far and lost the public's support through questionable tactics and debilitating court battles. But before he overreached his authority, Black may have been one of the most successful members of Congress to use lobbyists' efforts against them in the court of public perception.

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*Photo Credits:* Hugo Black, Library of Congress; Lobbying cartoon, *Washington Post*; Note from President Roosevelt, file for HR 11663, 74th Congress; Box 202, Records of the U.S. House of Representatives, Record Group 233, National Archives; Ku Klux Klan cartoon, *Chicago Tribune* cartoon, reprinted in *New York Times*, March 11, 1936.

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<sup>102</sup> Most of the Wheeler-Rayburn Public Utilities Holding Company Act was repealed as part of the Energy Policy Act of 2005.