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Comptroller General
of the United States
Washington, D.C. 20548

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September 30, 1987

The Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives

Dear Mr. Chairman:

This responds to your letter of March 31, 1987, in which you and Representative Dante B. Fascell, Chairman, House Committee on Foreign Affairs, requested this Office to conduct an investigation and render a legal opinion on the legality and propriety of certain activities of the Office for Public Diplomacy for Latin America and the Caribbean (S/LPD) of the Department of State. Subsequent discussion with your staff limited the scope of the legal opinion to the issues of alleged lobbying and the development and dissemination of propaganda from 1984 to the present.

We conducted a review to develop the facts regarding the lobbying and propaganda issues, which consisted of interviews of knowledgeable individuals and a search of the S/LPD files. As a result of our review, we conclude that S/LPD's activities involving the preparation and dissemination of certain types of information violated a restriction on the use of appropriated funds for publicity or propaganda purposes not authorized by the Congress. We do not believe, however, that available evidence will support a conclusion that the applicable antilobbying statute has been violated. We are presently continuing a review of certain other S/LPD activities, and will keep you informed of our progress on a periodic basis.

THE PROPAGANDA ISSUE

According to Ambassador Otto J. Reich, who directed S/LPD from 1983 until 1986, the Office of Public Diplomacy for Latin America and the Caribbean was established within the Office of the Secretary of State in 1983 to engage in a campaign to influence the public and the Congress to support increased funding for the Administration's Central American policy. In pursuit of its public diplomacy mission, S/LPD used its own staff, and let a number of contracts with

outside writers, for articles, editorials and op-ed pieces in support of the Administration's position. Generally, S/LPD employed direct and overt methods in using the media to favorably influence the public to support the Administration's Central American Policy. However, information developed during the course of our investigation demonstrates that, on occasion, S/LPD also arranged for the publication of articles which purportedly had been prepared by, and reflected the views of, persons not associated with the government but which, in fact, had been prepared at the request of government officials and partially or wholly paid for with government funds.

For example, S/LPD arranged for a university professor, who was also paid as a consultant to S/LPD, to write a newspaper article in support of the Administration's Central America policy without alerting readers or, apparently, the newspaper that the government was involved. S/LPD described this technique in a March 12, 1985, internal memorandum to another Department of State office. Attached to that memorandum was an op-ed article entitled "Nicaragua is Armed for Trouble," which was ostensibly written exclusively by Professor John Guilmartin of Rice University, and published in the March 11, 1985 issue of the Wall Street Journal. The memorandum states that "Professor Guilmartin, who is a consultant to our office, and the Public Diplomacy staff worked extensively on this piece." However, the published article lists the author solely as John F. Guilmartin, Jr. and describes him as follows:

"Mr. Guilmartin is adjunct professor of history at Rice University in Houston. He was formerly a lieutenant colonel in the U.S. Air Force and editor of the Air University Review."

The Guilmartin article was one of five "white propaganda" operations described in a March 13, 1985, memorandum from S/LPD to the Assistant to the President and Director of Communications. The memorandum stated the following about the article:

"Attached is a copy of an op-ed piece that ran two days ago in The Wall Street Journal. Professor Guilmartin has been a consultant to our office and collaborated with our staff in the writing of this piece. It is devastating in its analysis of the Nicaraguan arms build-up. Officially, this office had no role in its preparation."

The memorandum also described as follows the use of consultants to write op-ed pieces for Nicaraguan opposition leaders:

"Two op-ed pieces, one for The Washington Post and one for The New York Times, are being prepared for the signatures of opposition leaders Alphonso Rubello, Adolpho Callero and Arturo Cruz. These two op-ed pieces are being prepared by one of our consultants and will serve as a reply to the outrageous op-ed piece by Daniel Ortega in today's New York Times."

A third item in the memorandum describes the use of a "cut-out" to arrange visits to various news media by a Nicaraguan opposition leader. Although the term is not defined, it appears to reflect an intention to hide the fact that the opposition leader's visits were being arranged by the government. The closing paragraph of the memorandum explains that S/LPD will not communicate its activities on a regular basis to the Director of Communications in part because "the work of our operation is ensured by our office's keeping a low profile."

The memorandum, which is enclosed with this opinion, was initially classified by the Department of State as "Confidential." Following our request, it was declassified by the Department on September 10, 1987. Three other documents similarly were declassified following our request.

The use of appropriated funds by the Department of State for certain types of publicity and propaganda is prohibited. Section 501 of the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 1985, Pub. L. No. 98-411, August 30, 1984, 98 Stat. 1545, which provided fiscal year 1985 funding for the Department of State, reads as follows:

"Sec. 501. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress."

The legislative history of section 501 is silent as to the intended effect of the restriction. See H.R. Rep. No. 197, 99th Cong. 1st Sess. 90 (1985). This Office has had numerous occasions in the past to interpret language similar to section 501. We have held that such a provision prohibits the use of federal funds for two distinct types of publicity and propaganda activities.

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First, it prohibits "self-aggrandizement" activities on the part of a federal agency, which have been described by our Office as publicity activities of a nature tending to emphasize the importance of the agency or activity in question. 31 Comp. Gen. 311, 313 (1952), B-212069, October 6, 1983. Self-aggrandizement is not an issue in the present situation.

Second, we have construed the language of section 501 as prohibiting covert propaganda activities of an agency, which is the issue involved in the situations described above. In our decision B-223098, October 10, 1986, we held that editorials in support of a proposed reorganization of the Small Business Administration (SBA) prepared by SBA for publication as the ostensible editorial position of newspapers to which the editorials were submitted, were misleading as to their origin and reasonably constituted "propaganda" within the common understanding of that term.

We conclude that the described activities are beyond the range of acceptable agency public information activities because the articles prepared in whole or part by S/LPD staff as the ostensible position of persons not associated with the government and the media visits arranged by S/LPD were misleading as to their origin and reasonably constituted "propaganda" within the common understanding of that term. Therefore, under the rationale enunciated in B-223098, supra, these activities violated the "publicity and propaganda" prohibition of section 501.

We have been unable to estimate the amount of effort and funds expended on covert propaganda operations. Materials contained in S/LPD files indicate that covert propaganda operations were conducted on several other occasions and were not separated from routine legitimate activities. In view of the difficulty in determining the exact amount expended illegally, as well as the identity of any particular voucher involved, we conclude that it would not be appropriate in these circumstances to attempt recovery of the funds improperly expended. We recommend that the Department of State take action to insure that violations of appropriations restrictions contained in section 501 do not occur in the future.

THE LOBBYING ISSUE

The S/LPD staff carried on many activities designed to influence the public and the Congress to support the Administration's Central American policy, in keeping with the purpose for which S/LPD was established. Ambassador Reich gave a briefing to the Secretary of State

in which he explained that S/LPD's objective in attempting to influence Congress was:

"To gain sufficient bipartisan support in Congress to permit approval of increased assistance, economic and military, to Central America and to preclude crippling restrictions on actions in support of U.S. policy objectives in the region."

Sometime in 1983, S/LPD developed a close working relationship with a public interest group entitled "Citizens for America" (CFA). CFA is a nationwide grass roots organization engaged in lobbying and fund raising activities on behalf of Nicaraguan Contra causes. CFA has its headquarters in Washington, D.C. and is organized into regions and local district committees throughout the country, which are staffed with volunteer workers. Volunteers receive periodic instructions from CFA's Washington headquarters, when legislative action is scheduled in the Congress, to call and write members of Congress, to write letters-to-the-editor and op-ed pieces, and call in and appear on radio talk shows in support of the Administration's policy on Central America.

On March 4, 1984, the Chairman of CFA wrote the Secretary of State informing him of the details of his grass roots lobbying effort in support of the Administration's policy. Ambassador Reich, then head of S/LPD, prepared a draft response letter to the Chairman for the Secretary to sign. In the transmittal memo, Ambassador Reich described the close working relationship between CFA and S/LPD as follows:

"Citizens for America has been carrying out a public education campaign on Central America.

"Our office has a very good working relationship with Citizens for America and has provided CFA with a great deal of information.

"A word of encouragement and appreciation from you would go a long way toward letting CFA know we recognize and value their efforts."

Again on July 3, 1984, the CFA Chairman wrote the Secretary of State making the following request:

"We hope you will be able to contribute a one-page letter to our 'action kit' voicing your support for this vital aid and your feeling that Congress must address the issue this summer.

"This request is urgent. Your contribution will mean more op-ed pieces, letters to the editor, calls to Congressmen, and radio and television interviews -- the elements of grass-roots support so vital for effective political action.

"Thanks so much for your help. Anne Barton will be in touch with a member of your staff today to provide any details you might need."

Ambassador Reich prepared a draft response letter for the Secretary of State to sign. The draft letter was not used. Instead, the Office of the Secretary sent Ambassador Reich an extract from a statement by Secretary Shultz before the Subcommittee of Foreign Operations of the House Appropriations Committee on March 16, 1983, and instructed him to reply to the CFA Chairman. We could not locate a copy of Ambassador Reich's reply to CFA.

The annual Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act,^{1/} under which the Department of State receives its appropriations, does not contain a restriction on the use of such funds for lobbying. The only antilobbying legislation relevant to these circumstances is 18 U.S.C. § 1913, which reads in part as follows:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."

Section 1913 further provides for penalties of a fine, imprisonment, and removal from federal service.

^{1/} See, e.g., Pub. L. No. 98-411, August 30, 1984, 98 Stat. 1545.

Because 18 U.S.C. § 1913 provides for criminal penalties, its interpretation and enforcement is the responsibility of the Department of Justice. This Office may, however, refer appropriate cases of apparent violations of 18 U.S.C. § 1913 to the Justice Department for prosecution. See, e.g., B-212235(1), November 17, 1983 (Commerce Department publication favoring revision of Export Administration Act referred to Justice). To our knowledge, there has never been a prosecution under this statute. B-217896, July 25, 1985. In addition, only a few court decisions have cited the statute and generally they have not dealt with the question of a violation, but have been concerned with peripheral issues. See, e.g., National Association for Community Development v. Hodgson, 356 F. Supp. 1399 (D.D.C. 1973); American Public Gas Association v. Federal Energy Administration, 408 F. Supp. 640 (D.D.C. 1976). See B-214455, October 24, 1984.

The Department of Justice interprets 18 U.S.C. § 1913 to apply only when funds are spent in a grass roots lobbying effort, where an attempt is made to induce members of the public to contact their representatives in Congress to persuade them to either support or oppose pending legislation. B-216239, January 22, 1985; 63 Comp. Gen. 624, 625-226 (1984).

We note that 18 U.S.C. § 1913 prohibits the use of appropriated funds for printed or written matter intended or designed to influence legislation pending before the Congress. If S/LPD expended any appropriated funds to develop the information provided to CFA, such expenditure might constitute a violation of 18 U.S.C. § 1913. On the other hand, if the information provided CFA was readily available within the Department of State, the expenditure of funds would not have been necessary, and the statute would not have been violated. See B-129874, September 11, 1978. We have not found any evidence indicating that S/LPD expended appropriated funds for such information. The only document found during our investigation that was given to CFA by S/LPD was a copy of testimony presented by the Secretary of State at a congressional hearing and was readily available. Accordingly, we found no evidence that would lead us to conclude that S/LPD violated 18 U.S.C. § 1913 in its relationship with CFA.

SUMMARY AND CONCLUSIONS

S/LPD engaged in prohibited, covert propaganda activities designed to influence the media and the public to support the Administration's Latin American policies. The use of appropriated funds for these activities constitutes a

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violation of a restriction on the State Department annual appropriations prohibiting the use of federal funds for publicity or propaganda purposes not authorized by the Congress.

S/LPD also developed a close mutually supportive relationship with CFA, a nationwide grass roots organization engaged in lobbying and fund raising activities on behalf of Nicaraguan Contra causes. S/LPD acknowledges giving CFA a great deal of information. However, we have not found any evidence that S/LPD officials violated the applicable antilobbying statute.

Unless you publicly announce its contents earlier, we plan no further distribution until 30 days from the date of this opinion. At that time, we will send copies to interested parties and make copies available to others on request.

Sincerely yours,

for *Harry R. Van Cleave*
Comptroller General
of the United States

Enclosure