124011

REPORT BY THE U.S.

# General Accounting Office

## Justice Department Enforcement Of The Neutrality Statutes In The South Florida Area

The Nation's neutrality statutes govern the involvement of persons within the United States in activities conducted in concert with foreign governments or against foreign governments. GAO focused on Justice's enforcement of these statutes against the paramilitary training camps in the south Florida area which were allegedly used to train persons for hostile actions against foreign countries.

GAO reviewed Justice's efforts to enforce the neutrality statutes from 1981 to 1983 and found that Justice had

--completed eight neutrality-related cases;

--declined to prosecute two neutrality-related cases; and

--closed 20 investigations of alleged neutrality violations without U.S. attorney involvement.

Of these efforts, four of the completed cases, the two declined cases, and two of the closed investigations involved activities in the south Florida area. However, only one of the closed investigations related specifically to the paramilitary training camps.

124077



RELEASED

GAO/GGD-84-58
APRIL 16, 1984

528579

Request for copies of GAO reports should be sent to:

U.S. General Accounting Office
Document Handling and Information
Services Facility
P.O. Box 6015
Gaithersburg, Md. 20760

Telephone (202) 275-6241

The first five copies of individual reports are free of charge. Additional copies of bound audit reports are $3.25 each. Additional copies of unbound report (i.e., letter reports) and most other publications are $1.00 each. There will be a 25% discount on all orders for 100 or more copies mailed to a single address. Sales orders must be prepaid on a cash, check, or money order basis. Check should be made out to the "Superintendent of Documents".

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-206099

The Honorable Michael D. Barnes
Chairman, Subcommittee on Western
Hemisphere Affairs
Committee on Foreign Affairs
House of Representatives

The Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Civil Liberties, and the Administration of Justice
Committee on the Judiciary
House of Representatives

Your February 1, 1983, letter requested information on the Department of Justice's enforcement activities related to the various neutrality laws of the United States. As requested, we focused our efforts on the publicized paramilitary camps in the south Florida area. These camps were supposedly used for training persons for possible military purposes--potentially in violation of 18 U.S.C. 960. This section, sometimes referred to as the Neutrality Act, prohibits persons in the United States from knowingly financing, organizing, or carrying out hostile expeditions against foreign powers with which the United States is at peace. In our review of neutrality-related cases, we found that statutes other than the Neutrality Act have been used as prosecutive bases and that several agencies are responsible for the various statutes' enforcement.

The Internal Security Section of Justice's Criminal Division exercises central control over the prosecution of all neutrality-type cases. Two agencies are primarily responsible for investigating neutrality violations. The Federal Bureau of Investigation is responsible for investigating potential violations of a specific group of laws (18 U.S.C. 951-970). These laws govern the involvement of persons in the United States in activities being conducted in concert with foreign governments

or in activities against foreign countries. The U.S. Customs Service is responsible for enforcing potential violations of section 38 of the Arms Export Control Act (22 U.S.C. 2778). This statute, which prohibits the unlicensed exportation of certain defense articles and services, was often used as a prosecutive basis in the neutrality-related cases we reviewed.

To assess Justice's efforts to enforce the neutrality statutes, we asked the Internal Security Section to identify for us the completed neutrality-related prosecutions and the closed investigative matters. According to Justice's Internal Security Section, eight neutrality-related cases--seven criminal and one civil--were prosecuted during February 1981 to June 1983. Four of the eight occurred in the south Florida area. However, none of the four prosecutions were initiated as a direct result of the paramilitary training camp activities. Three of the prosecutions were against Haitian exile groups and one was against a Cuban exile group. We were also provided correspondence regarding neutrality-related investigative matters that were closed administratively (i.e. those where insufficient information existed to present to a U.S. attorney for prosecution). There were 20 neutrality-related matters closed between June 1981 and February 1984. Two of the 20 matters occurred in the south Florida area; however, only 1 related to the paramilitary camps. In addition, we gathered information in the south Florida area on two cases that had been presented to U.S. attorney personnel by investigative agents, but which had been declined for prosecution. Appendix II contains a summary of the completed cases, the closed investigative matters, and the declined prosecutions.

During our August 1983 visit to the south Florida area, we were able to ascertain the existence of only one paramilitary training camp. Law enforcement officials in Dade County, Florida told us that this camp was currently used only for training Cuban exiles. It should be noted that two lawsuits have been filed relating to paramilitary camps alleged to be in existence in the south Florida area prior to our visit. These lawsuits are explained in detail in appendix III.

Federal attorneys and investigators told us that prosecutions against paramilitary training camp activities alone would have to be based on a group conspiring to violate a neutrality-related statute and that many factors made this type of case difficult to prosecute and would leave any such prosecution with a low likelihood of success. These officials told us that this

type of prosecution would have a low priority in comparison with the many serious and violent crimes which are prosecuted in the U.S. district court in southern Florida. The concerns about prosecutive success and competing law enforcement priorities are consistent with the Justice Department's prosecutive principles relating to all types of criminal cases and are consistent with prosecutive practices of other U.S. attorney's offices.

- - - -

As requested by your offices, we did not obtain comments from the agencies discussed in this report. However, we did discuss the results of our work with officials of the Justice Department and the U.S. Customs Service. These officials agreed with the facts presented.

We trust the information provided will be useful to your continuing oversight efforts. As agreed with your offices, unless you publicly announce the contents of the report earlier, we plan no further distribution until 15 days from the date of this report. At that time we will send copies to interested parties and make copies available to others upon request.

W. J. Anderson

William J. Anderson
Director

# JUSTICE'S ENFORCEMENT OF NEUTRALITY STATUTES

## OBJECTIVES, SCOPE, AND METHODOLOGY

Your request asked us to (1) look into the facts surrounding the existence of paramilitary training camps in the United States that are used to prepare persons for military action against foreign governments, (2) determine the extent of enforcement activity against such conduct, and (3) determine the reason(s) that investigative matters against these activities have been declined for prosecution. As requested by your office, our audit work focused on enforcement efforts occurring in the south Florida area because of the exile training camps allegedly in existence there.

To accomplish our objectives, we:

--Interviewed agents of the Federal Bureau of Investigation (FBI) and the U.S. Customs Service at both headquarters and in the south Florida area; officials of the Internal Security Section of Justice's Criminal Division; U.S. attorney personnel who have prosecuted neutrality-related cases; members of the Dade County, Florida, police department; and an official of the State Department responsible for the coordination of neutrality-related matters.

--Reviewed federal court records of neutrality-related cases involving countries in the South and Central America regions completed from February 1981 to June 1983 as identified for us by the Justice Department's Internal Security Section.

--Reviewed correspondence on closed neutrality-related investigative matters for the period June 1981 to November 1983 provided to us by the FBI.

--Reviewed court records of two lawsuits that involved paramilitary camps in the south Florida area.

--Conducted computer-assisted information searches and literature searches to identify and obtain court cases and news reports relating to the neutrality area.

APPENDIX I

--Reviewed Justice Department policies and procedures for prosecuting neutrality-type cases.

--Identified and reviewed overall Justice Department prosecutive guidelines and an internal Justice survey of the prosecutive practices of U.S. attorneys' offices.

Our work was conducted in accordance with generally accepted government auditing standards. We performed our audit work from March 1983 to February 1984.

## NEUTRALITY LAWS AND AGENCY RESPONSIBILITIES

Persons in the United States are prohibited by 18 U.S.C. 960, sometimes referred to as the Neutrality Act, from knowingly financing, organizing, or carrying out hostile expeditions against foreign powers with which the United States is at peace. An almost identical prohibition was included among the Nation's first foreign relations statutes enacted in 1794 to prevent private entanglement in foreign affairs. The current act comprises just one specific part of the Nation's neutrality laws that are contained in 18 U.S.C. 951-970. For example, other statutes prohibit the following actions:

--conspiring to injure property of a foreign government (18 U.S.C. 956),

--enlisting in a foreign service (18 U.S.C. 959), and

--arming vessels for use against friendly nations (18 U.S.C. 962).

We found that another statute--section 38 of the Arms Export Control Act (22 U.S.C. 2778)--was often used as a prosecutive basis in the neutrality-related cases we reviewed. This statute prohibits the export, without a license, of certain defense articles and services designated by the President of the United States.

Different federal agencies and components of Justice have enforcement responsibilities over the various neutrality statutes. The Internal Security Section, a component of Justice's Criminal Division, exercises centralized control and supervision over the prosecution of neutrality-type cases. This Section also receives referrals from the State Department in instances

when foreign governments have made formal requests or complaints to the State Department that a neutrality law has been violated.

The FBI has primary investigative responsibility for alleged violations of the various neutrality laws (18 U.S.C. 951-970). It does not undertake a full investigation of these types of situations without prior approval from the Internal Security Section. However, the FBI will, on its own, make preliminary inquiries into neutrality matters to identify concerned parties and obtain preliminary information concerning a complaint. The FBI will then present this preliminary information to the Internal Security Section and await instructions on whether to undertake further investigative work.

The U.S. Customs Service is responsible for investigating violations of the Arms Export Control Act. As with other agencies with investigative responsibilities, the U.S. Customs Service turns its investigative material over to a U.S. attorney for prosecution. However, because U.S. attorneys generally prosecute Arms Export Control Act offenses only with the authorization from the Internal Security Section, prosecutions of these cases are also centrally controlled. As such, the Internal Security Section is the federal focal point for the prosecution of neutrality-related cases.

Because both the FBI and the U.S. Customs Service have investigative responsibilities over neutrality-related statutes, a potential for investigative overlap exists. To prevent this, the FBI and the U.S. Customs Service have entered into an interagency agreement setting out each agency's investigative responsibilities. In general, this agreement calls for each agency to turn over investigative leads involving the other agency's responsibility and to maintain liaison with each other regarding ongoing investigations.

## EXISTENCE OF EXILE TRAINING CAMPS IN SOUTH FLORIDA

Reports in the media over the past few years have suggested that there were many paramilitary training camps in existence in the south Florida area. On the basis of our discussions with the U.S. Customs Service and local law enforcement officials in

the south Florida area, we were able to confirm the existence of only one camp at the time of our August 1983 visit.[1]

The camp identified was used by the Brigade 2506--an anti-Castro group made up largely of veterans of the Bay of Pigs invasion. U.S. Customs Service and local law enforcement officials told us that this group usually meets only on weekends. It was characterized as being essentially a "hunting club" or "country club" with most of its participants ranging in age from 40 to 60. These officials told us that they believed a significant reason for the camp's existence was to solicit funds from people in the Miami community sympathetic to its cause.

The camp is situated on private land in the Everglades area of Miami. Its location is not secret as evidenced by a Brigade 2506 sign that is clearly visible from the public road adjacent to the camp. No one was present on the day we visited the camp. The following is a list of the equipment and items we observed at the camp:

--two buses (one of which had a sign on it indicating it was used as a recruitment station),

--two large tents (one enclosed and one open containing benches),

--an observation tower,

--a mobile home, and

--several pieces of wooden equipment appearing to make up an obstacle course.

## PROSECUTIVE EFFORTS DIRECTED AT NEUTRALITY VIOLATIONS

The Internal Security Section gave us a list of eight neutrality-related cases prosecuted during February 1981 to June

---

[1]Appendix III contains a discussion of two recent lawsuits involving, among other things, paramilitary training camps alleged to be in existence in the south Florida area prior to our August 1983 visit.

1983. Seven of the eight were criminal prosecutions and the eighth was a civil case. Appendix II contains a summary of the eight cases, as well as information on 20 investigative matters closed during June 1981 to February 1984, and on information we gathered in the south Florida area on 2 cases that were declined for prosecution.

Four of the eight completed cases occurred in the south Florida area; however, none of them were initiated as a direct result of the paramilitary training camp activities. In all four cases (see app. II, cases 1, 2, 3, and 5), a hostile invasion, expedition, or illegal activity had actually been initiated. In two of the four cases, Haitian exiles actually traveled to Haiti with the intent to commit hostile acts against the government of Haiti. In the other two cases, exiles were arrested aboard boats (one of which was docked) loaded with armaments. In both cases, federal authorities believed that the exiles were beginning to carry out hostile acts against foreign governments.

In addition to the federal prosecutions, Dade County, Florida, law enforcement officials told us there was a prosecution under Florida statutes against a leader of a now-defunct paramilitary camp. In this instance, the leader was charged with unlawful possession of a firearm by a convicted felon. These officials told us that the arrest and conviction of this individual effectively resulted in the closing of the camp. Like the federal prosecutions, this prosecution was not initiated because of neutrality-related violations resulting from training camp activities. Rather, the camp leader, a known convicted felon, was arrested and prosecuted after he was observed firing a rifle at the training camp.

Investigators and prosecutors we spoke with told us that the mere existence of a training camp (military training and the firing of weapons on private property) does not violate the Neutrality Act or any other related neutrality law. In this regard, Dade County, Florida, law enforcement officials told us that their investigative efforts directed at these camps consisted largely of ascertaining if anyone illegally possessed fully-automatic weapons. As an example of the attitude that exists toward these camps, a Deputy Assistant Attorney General in Justice's Criminal Division told us that if a few people want to put on fatigues, play soldier, and state they are going to rid the world of communism, this does not represent a prosecutable offense. He also said that Justice can only prosecute in these kinds of situations if illegal weapons or explosives are

used, or expeditions are launched. He further added that people have a right to freedom of speech, and rhetoric alone is not a solid basis for prosecution.

Federal law enforcement officials told us that it is often difficult to prosecute cases involving training activities even when there is an indication of a plan or conspiracy to violate a neutrality-related statute. These officials cited the following factors:

--assembling an impartial jury in the Miami area would be difficult because the area includes a large Cuban population which is sympathetic to anti-communist causes;

--proving criminal intent to violate a law based on the mere conduct of training activities would be difficult; and

--finding informants or witnesses to testify in these types of cases would be difficult.

Furthermore, an assistant U.S. attorney also told us that, absent evidence of harm being done, such cases have a low priority in comparison to the many serious and violent crimes which can be prosecuted in this district.

The concerns expressed to us about prosecuting these types of cases are consistent with established Justice prosecutive principles governing the prosecution of all types of criminal cases.[2] These principles give a federal attorney guidance as to what factors to consider when deciding to accept or decline a case. A low likelihood of prosecutive success or competing law enforcement priorities are two situations when a case declination is justified.

These concerns about prosecuting neutrality-related cases are also consistent with the practices of other U.S. attorneys' offices as expressed in an internal survey performed by Justice in 1979.[3] As indicated by that survey, 95 percent of the

---

[2]Principles of Federal Prosecution, U.S. Department of Justice, 1980.

[3]Report on Prosecutorial Policies and Practices of United States Attorneys, Office for Improvements in the Administration of Justice, 1979.

offices considered the likelihood of conviction, 100 percent of the offices considered seriousness of offense, and 68 percent of the offices considered availability of prosecutive resources as important preconditions to prosecution.

## JUSTICE'S INVESTIGATIVE AND PROSECUTIVE EFFORTS DIRECTED AT THE NEUTRALITY STATUTES INVOLVING THE SOUTH AND CENTRAL AMERICA REGIONS

### COMPLETED CASES

At our request, the Internal Security Section provided us with a list of neutrality-related cases involving countries in the South and Central America regions prosecuted during February 1981 to June 1983. A summary of each case follows:

1. United States v. Bernard Sansaricq, et al. (southern district of Florida, 82-55-CR-JE)--Prosecution in February 1982 of seven defendants relating to a plot to invade Haiti. A group of exiles actually landed on an island near Haiti, but were unsuccessful in their takeover attempt. Six of the seven pleaded guilty in August 1982 to violating the Neutrality Act, and were given 3 years' probation. The remaining defendant pleaded guilty in August 1982 to violating the Arms Export Control Act and was given 2 years' probation.

2. United States v. Jeorges Barberousse, et al. (southern district of Florida, 82-155-CR-CA)--Prosecution of 20 defendants under the Neutrality Act and Arms Export Control Act in March 1982 for launching an invasion against Haiti. The charges against two defendants were dismissed and two defendants were fugitives as of March 1984. The remaining 16 defendants pleaded guilty between July 1982 and February 1983. Fourteen of the 16 received probation, while two defendants received short prison terms and probation.

3. United States v. Joel Deeb (southern district of Florida, 83-99-CR-SMA)--Prosecution in February 1983 under the Arms Export Control Act and for conspiring to injure property of a foreign government (18 U.S.C. 956). The defendant was charged as a result of an aborted attempt to bomb government buildings in Haiti. This case went to trial in June 1983 and the defendant was acquitted.

4. United States v. Rojas-Berrios and Muller-Schroeder (western district of Texas, SA 81-CR-13-1)--Prosecution of two officials of the Nicaraguan government for attempting to illegally export two helicopters out of the United States in violation of the Arms Export Control Act. Both defendants pleaded "no contest" to these charges in February 1981. One defendant received a 1 year suspended sentence, 5 years' probation, and a $50,000

fine. The other defendant was given a 2 year suspended sentence, 5 years' probation and a $100,000 fine. Additionally, the helicopters were forfeited to the United States.

5. United States v. Maximo Fernandez, et al (southern district of Florida, 81-31-CR-SMA)--Prosecution of seven defendants who were members of a well-known, anti-Castro organization. The defendants, who were allegedly heading for Cuba, were arrested aboard a docked boat and were charged with possession of illegal explosives and possession of weapons by illegal aliens. Six of the defendants pleaded guilty to possession of weapons by illegal aliens in May 1981, and received 18 month prison terms. The remaining defendant is to be retried in April 1984 as a result of an appeal won in August 1983 by the Justice Department regarding the admissibility of evidence.

6. United States v. United Aviation Industries, Inc., et al. (eastern district of Virginia, CR-83-87-N)--Prosecution of two individuals and one company in May 1983 for conspiring to export military munitions to Chile without a license. In June 1983, as a result of a plea agreement, the indictment against the two individuals was dismissed. In September 1983, the company pleaded guilty and was fined $40,000.

7. United States v. Michael Purdue, et al. (eastern district of Louisiana, 81-212F)--Prosecution of 10 individuals in May 1981 for attempting to launch an expedition to overthrow the government of Dominica. Seven of the defendants pleaded guilty to violating the Neutrality Act and were sentenced in July 1981. Four of the seven were sentenced to 3 year prison terms, one defendant received a 6-month term and 5 years' probation, and the remaining two defendants were sentenced under the Federal Youth Corrections Act. Three defendants pleaded not guilty, and their case went to trial in July 1981. One was acquitted of all charges, and two defendants were found guilty of violating the Neutrality Act and conspiracy. These two defendants received 3-year terms and 5 years' probation.

8. United States v. Twenty Boxes of Satellite Monitoring Equipment (middle district of Florida)--This civil case involved a seizure in July 1982 of certain equipment that was intended

to be illegally shipped to Cuba in violation of the Export Administration Act.[1] Officials of the Internal Security Section of Justice's Criminal Division told us that the two defendants were not prosecuted because they had diplomatic immunity. They were, however, expelled from the United States by the State Department.

CLOSED NEUTRALITY MATTERS

To assess the amount of resources expended on neutrality-related investigations, we asked the Internal Security Section to provide us with information on investigations that were closed without U.S. attorney involvement. These investigative "matters," which were closed between June 1981 and February 17, 1984, were identified by the Internal Security Section and provided to us by the FBI. According to the FBI, all of these matters were administratively closed; that is, the FBI found insufficient information to recommend going forth with a prosecution. The 20 matters closed during this time period are summarized below by (1) the FBI field office involved, (2) the date of the correspondence, and (3) a brief description of the investigation. It should also be noted that 32 matters initiated during this period were still ongoing as of February 1984.

1. Alexandria field office, July 1983--Allegation that the subject was gathering financial support for various anti-communist organizations in Central America.

2. Atlanta field office, June 1982--Allegation that the subject was planning a paramilitary mission in Southeast Asia relative to United States servicemen missing-in-action.

3. Buffalo field office, November 1982--Allegation that the subject was trying to recruit a 20-man team to travel to Central America to participate in insurgency activities.

4. Dallas field office, June 1982--Allegation that the subject had been contacted about performing explosives work in Lebanon.

---

[1]The Export Administration Act (50 U.S.C. App. 2401, et seq.) is similar to the Arms Export Control Act in that it prohibits the export, without a license, of certain items and technology that have a potential for military application.

5. Dallas field office, July 1982--Allegation that the subject group was training mercenaries.

6. Denver field office, November 1982--Allegation that the subject was trying to recruit Vietnam veterans for mercenary duty.

7. Denver field office, January 1983--Allegation that the subject was trying to smuggle an airplane for possible use in the Middle East.

8. Houston field office, January 1983--Allegation that the subject was planning an invasion of Grenada.

9. Jackson field office, September 1982--Allegation that the subject was trying to recruit mercenaries.

10. Jackson field office, May 1983--Allegation that the subject was gathering financial and material support for a takeover of Jamaica, and possible violent actions against Cuba and Haiti.

11. Jackson field office, June 1983--Allegation that the subject was attempting to recruit veterans with airborne or special forces qualifications, who were fluent in Spanish, for mercenary duty.

12. Jacksonville field office, November 1983--Allegation that the subject was smuggling guns to Belize.

13. Los Angeles field office, March 1982--Allegation that the subject was attempting to obtain guns and ammunition with the intention of committing violent acts in Mexico.

14. Louisville field office, October 1982--Allegation that the subject was attempting to recruit police officers to work as agents of foreign nationals or governments in various paramilitary operations.

15. Miami field office, April 1983--Allegation that the subject was recruiting mercenaries to travel to a South or Central American country for the purpose of "removing members of the government."

16. Miami field office, May 1983--Investigation into a now-defunct paramilitary camp.

17. New York field office, December 1982--Investigation into a magazine article that appeared to be recruiting people for the Israeli army.

18. New York field office, October 1983--Allegation that the subjects were planning a coup in Grenada.

19. Sacramento field office, January 1983--Allegation that the subject had distributed a pamphlet seeking veterans or policemen for "dangerous, profitable work under military conditions."

20. Washington field office, March 1982--Allegation of a plot to assassinate the prime minister of Grenada.

DECLINED CASES

As a result of our discussions with federal investigators and prosecutors in the south Florida area, we identified two neutrality-related cases that had been declined for prosecution. In both cases, the illegal exportation of weapons was alleged.

In one case, five defendants were indicted in May 1979 (U.S. v. Pujol 79-174-CR-JWK), resulting from the alleged unlicensed transport of firearms (30-caliber, M-1 rifles) in foreign commerce from Miami to Panama. All five defendants were charged with conspiring to violate firearms statutes and one defendant was also charged with three other counts of specific firearms violations. According to the former assistant U.S. attorney who was handling the case at the time, the indictment against four defendants was dismissed in January 1980 because of a procedural defect in the grand jury proceeding relating to the selection of a jury foreman. The indictment against the fifth defendant was dismissed at the request of the government so that all five defendants could be retried as a group.

Subsequent to these dismissals, the Customs Service provided information to the assistant U.S. attorney alleging that the defendants were also guilty of Arms Export Control Act violations because the 30-caliber, M-1 rifles had illegally ended up in Nicaragua. The assistant U.S. attorney wrote a letter to Justice headquarters asking for prosecutive guidance. However, in February 1980, he left the U.S. attorney's office before any response was received.

A final decision on whether the case would be pursued was not made until December 1982. According to the U.S. attorney's

office, no further action was taken because two of the individuals had returned to their native country, one was incarcerated for another crime, and it was subsequently determined that the remaining two were probably not guilty.

The second case involved the alleged sale of upgraded T28D airplanes to the Nicaraguan government in mid-1979. The statutes allegedly violated in this instance were the Arms Export Control Act, conspiring to commit an offense or to defraud the United States (18 U.S.C. 371), and agents of foreign governments (18 U.S.C. 951). In November 1983, the assistant U.S. attorney handling this matter told us that, after consulting with Customs Service officials, he decided not to prosecute. The reason given was that a successful prosecution would be difficult because the illegally exported planes were intended to go to factions within Nicaragua with whom the potential jurors in the Miami community would be sympathetic.

APPENDIX III

## TWO LAWSUITS INVOLVING PARAMILITARY TRAINING CAMPS IN THE SOUTH FLORIDA AREA

We were able to identify two lawsuits that have been filed since November 1982 against United States officials which focus on government foreign policy involving Nicaragua. Each lawsuit alleges various violations of neutrality-related statutes resulting from, among other things, the existence of paramilitary training camps in the south Florida area prior to our August 1983 visit. Each lawsuit also discusses United States involvement with these camps and possible violations by federal officials of the Neutrality Act. Both cases were on appeal as of March 1984.

### SANCHEZ-ESPINOZA V. REAGAN 568 F. SUPP. 596 (D.D.C. 1983)

The plaintiffs in this case included members of the Congress, residents of Florida, and residents of Nicaragua. The defendants were composed of present or former federal officials and private citizens. The complaint contained eight causes of action which can be summarized into three general categories for relief:

--Congressional plaintiffs sought declaratory and injunctive relief to stop activities they alleged constituted unauthorized acts of war. They claimed violations of the constitutional power granted to the Congress to declare war as well as violations of the so-called "neutrality statutes" (18 U.S.C. 956, et seq.) and of the "Boland Amendment" which prohibited the use of appropriated funds for military activities aimed at overthrowing the government of Nicaragua.

--Nicaraguan plaintiffs sought an injunction prohibiting further U.S. military involvement in Nicaragua. Those plaintiffs sought damages for injuries allegedly caused by U.S.-sponsored terrorist raids against various towns and villages in Nicaragua.

--Florida plaintiffs sought to enjoin the alleged operation of U.S.-sponsored paramilitary training camps located in Florida.

In August 1983, the judge granted the defendants' motion to dismiss the case. The judge concluded that an adjudication of the plaintiffs' claims would interfere with the constitutional powers of the executive and legislative branches of government to conduct foreign affairs and provide for national security. Therefore, the issues presented political questions for which the court did not have jurisdiction.

On the basis of established criteria[1] for determining whether a judicial resolution of the case would violate separation-of-powers principles, the judge concluded that:

--The court lacks judicially discoverable and manageable standards for resolving the dispute because of the secret nature of the United States' alleged involvement in Nicaragua and Honduras.

--A judicial resolution of the dispute would show a lack of respect that is due to coordinate branches of government. It is up to the Congress and the President to try to resolve their differences and jointly set a course for United States involvement in Central America.

--There is a danger of embarrassment from conflicting pronouncements by various departments on one question. A judicial resolution would, undoubtedly, rattle the delicate diplomatic balance that is required in the foreign affairs arena.

As of March 1984, this case was on appeal with the District of Columbia Circuit Court of Appeals.

DELLUMS V. SMITH
NORTHERN DISTRICT OF CALIFORNIA
(Civ 83-3228 SAW)

This lawsuit was brought by Congressman Ronald Dellums and others against the Attorney General and the Assistant Attorney

---

[1]The criteria against which the judge applied the facts before him were those outlined by the Supreme Court in Baker v. Carr, 369 U.S. 186 (1962).

APPENDIX III

General, Criminal Division of the Department of Justice. The plaintiffs requested the court to grant a declaratory judgment that, pursuant to the Ethics in Government Act (28 U.S.C. 591 et seq.), the Attorney General is required to conduct a preliminary investigation into allegations that government officials have violated neutrality-related statutes. The complaint alleged that the United States government was involved with paramilitary camps operating in the United States (including Florida), and with paramilitary activities against Nicaragua operating from other Central American countries. The federal statutes allegedly violated by the United States' involvement with the paramilitary activities were both neutrality-related--the Neutrality Act (18 U.S.C. 960), and conspiracy to injure property of a foreign government (18 U.S.C. 956). The investigation asked for in this lawsuit is not for the Attorney General to determine ultimate culpability. Rather, the relief being sought is a mandate that the Attorney General conduct a preliminary investigation as required by the Ethics in Government Act to determine if sufficient information exists to warrant appointment of an independent counsel.

The Ethics in Government Act establishes a mechanism whereby an independent counsel can be appointed to eliminate the conflict of interest that could arise when the Attorney General receives an allegation that the President--who appoints the Attorney General--or an associate of the President has committed a crime. Under the act, if the Attorney General receives information that a person covered by the act has committed a nonpetty federal offense, he must conduct a preliminary investigation for a period not to exceed 90 days if he determines the information is sufficient to constitute grounds to investigate. In determining sufficiency, he can only consider (1) the specificity of the information and (2) the credibility of the source of the information.

The Attorney General must apply to the court for an appointment of an independent counsel if he concludes after the preliminary investigation that further investigation is warranted, or if 90 days elapse without any determination by the Attorney General. No appointment shall occur if the Attorney General reports back to the court within 90 days that appointment of an independent counsel is not warranted. In this instance, the court has no authority to unilaterally appoint an independent counsel.

In January 1983, pursuant to the Ethics in Government Act, the plaintiffs wrote to the Attorney General alleging that government officials had violated certain criminal statutes. In March 1983, the Justice Department wrote back stating that no preliminary investigation would be conducted because the material provided "does not constitute specific information of a federal offense sufficient to constitute grounds to investigate." As a result, this lawsuit was instituted to force the Attorney General to perform the preliminary investigation required under the act.

The defendants (Justice Department) argued that this case, like the Sanchez-Espinoza case previously discussed, was not capable of being judged. Among the reasons it cited were that:

--The plaintiffs lack standing to sue to enforce the Ethics in Government Act.

--The case involves a "political question" which would require the court to render an opinion on, and thus inject itself into, foreign policy issues.

In November 1983, the judge rejected the defendants' arguments and ordered the Attorney General to conduct the preliminary investigation. In doing so, the judge drew a distinction between this case and the Sanchez-Espinoza case:

"Unlike the complaints in Crockett[2] and Sanchez-Espinoza, the complaint in the case at bar does not directly challenge the legality of any action taken by the President. Plaintiffs seek only to compel good faith performance of a statutory duty. Such relief is unquestionably within judicial competence. The case

---

[2]Crockett v. Reagan, 558 F. Supp. 893 (D.D.C. 1982), affirmed, 720 F. 2d 1355 (D.C. Cir. 1983). Twenty nine members of the Congress unsuccessfully brought an action against the President seeking a declaration that military aid supplied to El Salvador violated the War Powers Resolution and other federal statutes.

> before this Court does not require any assessment by the Court as to the accuracy of the data reported by plaintiffs to the Attorney General. The sole issue is whether [the information provided by the plaintiffs to the Attorney General] is sufficient to trigger the preliminary investigation plaintiffs contend is required by the Ethics in Government Act. The limited task requested of the Court is thus judicially manageable, unlike those requested in Crockett and Sanchez-Espinoza."

The Justice Department responded by filing a motion to alter the judge's previous order. Justice's primary argument was that, even if the plaintiffs' allegations were true, no criminal acts could have been committed because the Neutrality Act does not apply to the official conduct of the executive branch of government and was not intended to restrict or limit the authority and power of the executive branch to carry out foreign policy. Its argument relied on a 1979 opinion of the Justice Department's Office of Legal Counsel. While this opinion was given in specific reference to whether the Central Intelligence Agency (CIA) can place an agent in a foreign military service without violating 18 U.S.C. 959 (a), it also comments on executive conduct and the neutrality statutes in general. Part of the opinion follows:

> "Judicial interpretation of the [neutrality statutes] over nearly two centuries confirms that the purpose of the law was to consolidate and strengthen rather than limit the power of the Government in matters of foreign policy. . . . The neutrality laws have never been construed to apply to private acts done with official knowledge and acquiescence, at least where those acts are otherwise within the government's authority. A fortiori they should not be construed to apply to acts which are in fact the government's own. We therefore conclude that the prohibitions of the neutrality laws do not apply to any agency of the government, including the CIA which is acting to fulfill a sovereign function, and specifically that §959(a) poses no obstacle to the CIA's authorized intelligence activities as regards foreign military service."

In December 1983, the plaintiffs filed a memorandum in opposition to the defendants' motion to alter judgment. The memorandum contained three primary arguments:

--The defendants' motion to alter judgment is procedurally improper in that it argues an issue--whether authorized executive conduct can violate the Neutrality Act--that was raised previously by the plaintiffs and that was not contested by the defendants prior to judgment.

--The Neutrality Act applies to paramilitary operations aided by executive officials.

--The defendants' motion to alter judgment represents bad faith with respect to the government's willingness to conduct the mandated preliminary investigation under the Ethics in Government Act. As such, the court should unilaterally appoint an independent counsel.

On January 10, 1984, the judge issued an order denying the defendants' motion to alter the original judgment. While the judge agreed with the plaintiffs' contention that the defendants' motion was procedurally improper, he thought it necessary to address the merits of the defendants' motion because of the importance of the issues presented by the case. After considering the issues, the judge again agreed with the plaintiffs' arguments. He concluded that executive branch officials may not be immune from the coverage of the Neutrality Act and that, because the specificity or credibility of the allegation has not been questioned, the Attorney General must abide by the Ethics in Government Act. As of March 1984, the Ninth Circuit Court of Appeals had granted the defendants' motion for an emergency stay of the district court's ruling and had agreed to hear the case.

(181760)

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548