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B-229069.2, Aug 1, 1988

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Appropriation Availability - Purpose availability - Specific purpose restrictions - Lobbying DIGEST: 1. A National Security Council memorandum indicating that a public interest grass roots lobbying organization is scheduled to lobby Congress to renew funding for the Nicaraguan Contra Forces, does not constitute a violation of 18 U.S.C. Sec. 1913, in as much as there is no evidence to indicate that NSC expended federal funds to assist the public interest group in its lobbying efforts. 2. Information contained in an affidavit by Mr. Edgar Chamorro, former Nicaraguan Contra leader, submitted to the International Court of Justice, alleging that CIA Representatives instructed the Contra leaders to lobby Congress is insufficient to support a conclusion that the antilobbying statute 18 U.S.C. Sec. 1913 has been violated by CIA officials, when these allegations are contradicted by other Contra leaders and when CIA officials refuse to discuss the issue with GAO investigators.

The Honorable John Conyers, Jr. Chairman, Subcommittee on Criminal Justice Committee on the Judiciary House of Representatives:

This is in response to your April 12, 1988, letter requesting this Office to review certain National Security Council (NSC) memoranda recently released by the Iran-Contra Select Committees to determine whether certain activities described in these documents violated antilobbying laws. Your request is an extension of an investigation of memoranda from the files of the Office of Public Diplomacy for Latin America and the Caribbean (S/LPD), Department of State, we conducted last year for Representative Jack Brooks, Chairman, Committee on Government Operations, and Representative Dante B. Fascell, Chairman, Committee on Foreign Affairs, House of Representatives. Our decision in that matter, B-229069, September 30, 1987, concluded that S/LPD had violated an appropriation restriction on the use of funds for propaganda activities. However, there was not sufficient evidence to conclude that S/LPD had violated applicable antilobbying laws.

Subsequent to your original request, Mr. Frank Askin of your staff asked us to review an affidavit that former Contra leader Edgar Chamorro had submitted to the International Court of Justice, to determine whether allegations of Central Intelligence Agency (CIA) lobbying made by Mr. Chamorro constituted violations of applicable lobbying laws.

After reviewing all the relevant documents and interviewing certain key persons, we still do not believe that available evidence will support a conclusion that the applicable antilobbying statute has been violated.

We reviewed the NSC memoranda that you provided to us and determined that two of the documents required further investigation. One document was a sign-in sheet of an NSC meeting concerning support for the contras, which we subsequently learned was held in January 1985. The names of two representatives of Citizens for America (CFA), a grass roots lobbying organization, were on the list as were the names of Lt. Col. Oliver L. North and Walter Raymond, Jr., both of NSC, and certain representatives of other government agencies and government contractors. The other document was a March 20, 1985, memorandum from Lt. Col. North to Robert C. McFarlane, Director, NSC, which had as its subject: "Timing and the Nicaraguan Resistance Vote." Attached to the memorandum was a chronology of events which the memorandum stated were aimed at securing congressional approval for renewed support to the Nicaraguan Resistance Forces. Certain events for the period April 8 14, 1985, were designated as the responsibility of the CFA. Two of these events read as follows:

"25 Central American spokesmen arrive in Miami for briefing before departing to visit Congressional districts. Along with national television commercial campaign in 45 media markets.

Targeted telephone campaign begins in 120 Congressional districts. CITIZENS FOR AMERICA district activists organize phone-tree to targeted Congressional offices encouraging them to vote for aid to the freedom fighters in Nicaragua."

As the names of Mr. Jack Abramoff and Mr. Jeff Bell were listed on the sign-in sheet as representatives of the CFA, we discussed the January meeting and the above events with both of them. In addition, we also discussed this matter with Mr. Raymond and reviewed three depositions he gave to the Iran-Contra Select Committees. We further reviewed the depositions given to the Committees by Ambassador Otto J. Reich and Mr. Johnathan S. Miller, who represented the Department of State at the January meeting. The CFA representatives confirmed that they had attended the NSC meeting in January 1985. They said the purpose of the meeting was for CFA to inform interested government officials of activities it had planned and scheduled that were designed to influence the congressional vote on Contra assistance. They said that Mr. Lee Lehrman, Chairman of CFA, also attended the meeting but did not sign in because he came late.

Mr. Abramoff explained the details of the two events mentioned above. April 1985, CFA brought 19 Central American leaders and businessmen to Washington, D.C. There were supposed to be 25, as indicated in the chronology, but only 19 came. CFA conceived of the idea to use these individuals to influence congressional action by having a Washington, D.C. conference and arranging meetings with various Congressmen. CFA sponsored this event and paid all expenses with its own funds. CFA also conceived of the telephone campaign in which a CFA representative called the office of every member of the House of Representatives to determine if the member had decided how to vote on the Contra funding issue. They found that 120 members were undecided. CFA representatives from the districts of these members were supposed to attempt to persuade the undecided members to vote for Contra assistance. The CFA representatives stated that no guidance on these projects was provided by NSC or other federal government officials. The depositions we reviewed generally support Mr. Abramoff's comments.

The annual Treasury, Postal Services and General Government Appropriations Act,/1/ under which the NSC 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. Sec. 1913, which reads as follows:

"No part of the money appropriated by an 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 services.

Because 18 U.S.C. Sec. 1913 provides for criminal penalties, its interpretation and enforcement is the responsibility of the Department of Justice. GAO may, however, refer appropriate cases of apparent violations of 18 U.S.C. Sec. 1913 to the Justice Department for prosecution. See, e.g., B-212235(1), Nov. 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 and generally relevant court decisions 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, Oct. 24, 1984.

The Department of Justice interprets 18 U.S.C. Sec. 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, Jan. 22, 1985; 63 Comp.Gen. 624, 625-626 (1984).)

None of the information we developed concerning the January 1985 meeting between NSC and other government officials and CFA representatives indicates that the NSC officials expended any federal funds to assist CFA in its attempt to influence Congress to support Contra funding legislation. The CFA apparently funded the grass roots campaign with private donations and used the January meeting to inform federal government officials of its schedules lobbying activities. We assume that Lt. Col. North included the CFA lobbying activities in his March 20, 1985, memorandum to Mr. McFarlane, then Director, NSC, as events that were scheduled to attempt to increase congressional support for Contra funding legislation. As we have no evidence indicating that federal funds were expended for the CFA activities, we have no basis to conclude that NSC officials violated 18 U.S.C. Sec. 1913 in their relationship with CFA.

We previously have had occasion to look into former Contra leader Edgar Chamorro's allegations of CIA lobbying in 1985 at the request of Senator Proxmire, which resulted in our report, GAO/NSIAD-86-13, December 5, 1985. We provided a copy of this report to your office several weeks ago. We interviewed Mr. Chamorro at the GAO headquarters building in Washington, D.C. on September 5, 1985, where he made statements similar to those in the September 5, 1985,

affidavit submitted to the International Court of Justice. Mr. Chamorro stated that during the time he was a member of the Nicaraguan Democratic Force (FDN) Directorate, representatives of the CIA advised members of the Directorate to lobby individual Members of Congress to continue funding the counter revolution. We asked Mr. Chamorro to provide us with specific information concerning this allegation. We asked for the names of the CIA personnel, the date and place instructions were given, the Members of Congress who were the targets and whether the instructions were carried out. Mr. Chamorro provided us only limited information and no documents. provided us some specific dates when meetings were held with CIA representatives and names of some CIA personnel, although he believed most were assumed names. He stated that lobbying efforts were discussed at these meetings, but since he was in Honduras most of the time, he did not participate in any actual lobbying efforts in the United States.

We met with other members of the FDN Directorate who denied the allegations. They stated that no federal government officials had advised them to lobby Members of Congress. While members of the FDN Directorate had met with Members of Congress on numerous occasions, they noted that the meetings were generally requested by the Members of Congress who wanted to learn more about the FDN and Nicaragua. Moreover, it was stated that travel and related expenses incurred in meeting Members of Congress came from private funds.

The CIA would not meet with us to discuss the alleged lobbying activities. They stated that they had briefed the Senate Select Committee on Intelligence about Mr. Chamorro's allegations. We were unable to obtain corroborating evidence to support Mr. Chamorro's allegation that CIA employees instructed FDN officials to lobby Members of Congress. The FDN Directorate officials denied Mr. Chamorro's allegations, and CIA officials refused to discuss the issue with us. Accordingly, available evidence will not support a conclusion that CIA officials engaged in lobbying activities in violation of 18 U.S.C. Sec. 1913 which, as explained above, prohibits federal officials from expending appropriated funds on lobbying activities.

In summary, our investigation of the issues raised by you failed to uncover evidence to indicate that NSC or CIA officials had violated the antilobbying provisions of 18 U.S.C. Sec. 1913.

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.

/1/ See, e.g., Pub.L. No. 98-473, October 12, 1984, 98 Stat. 1963.