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THE WHITE HOUSE

WASHINGTON

November 4, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*
SUBJECT: Special Prosecutor on
Covert Aid Issue

This is the matter I mentioned at breakfast. Since the President will be a subject of the ordered investigation, I think we should get information from Justice as soon as possible.

Attachment

DATE: 11-4-83

PAGE: 10

U.S. Is Ordered To Probe Charge Against Reagan

President, Others Allegedly Violated Neutrality Act By Action Over Nicaragua

By a WALL STREET JOURNAL Staff Reporter

SAN FRANCISCO—A federal judge ordered U.S. Attorney General William French Smith to investigate whether U.S. government support of paramilitary operations against Nicaragua violates the Neutrality Act.

The decision came as the Republican-controlled Senate voted to continue covert aid for the guerrillas, who are trying to overthrow the Nicaraguan government. Sources said the bill contains about \$19 million in aid. The amount is officially secret. The House has twice voted to halt the aid.

Federal Judge Stanley A. Weigel issued the memorandum of judgment here Thursday, but emphasized that he wasn't passing judgment as to whether any federal official had violated the act, only ordering that the attorney general should investigate the charge.

The Neutrality Act makes it a crime to organize, or launch, a paramilitary expedition against a country with which the U.S. isn't at war.

The case was brought by U.S. Rep. Ronald V. Dellums, who requested that Attorney General Smith begin such an inquiry last January. Mr. Smith declined.

The case also involves the Ethics in Government Act, which requires the attorney general to investigate specific information that federal officers have breached federal criminal statutes. Under that same law, the Carter administration investigated allegations that Carter aide Hamilton Jordan had used cocaine.

In several prior cases, courts have side-stepped challenges to the legality of U.S. actions in Latin America—principally because it is impossible for courts to discover exactly what actions are taken in countries such as Nicaragua. In addition, courts have felt that any limits upon the president's power to conduct foreign policy are best decided through political channels.

"This case is different," Judge Weigel wrote. "Plaintiffs don't ask the court to declare illegal any action by the president . . . they ask only that the attorney general be required to make an investigation. . . ."

Under the order, Attorney General Smith has 90 days to make his investigation, or to appoint an independent counsel.

In ordering the investigation, Judge Weigel rejected the attorney general's argument that the case concerned political questions inappropriate for court review, and that such an order would infringe upon the attorney general's discretion as a prosecutor.

The investigation will consider a charge by Rep. Dellums and two co-plaintiffs that President Reagan, then-Secretary of State Alexander Haig Jr., Secretary of Defense Caspar Weinberger and other federal officials breached the Neutrality Act in approving in November 1981 a plan by the Central Intelligence Agency to support a covert war against Nicaragua's leftist government.

Judge Orders U.S. Inquiry on Nicaragua Plans

By KATHERINE BISHOP

Special to The New York Times

SAN FRANCISCO, Nov. 3 — A Federal district judge here has ordered Attorney General William French Smith to conduct a preliminary investigation of charges that President Reagan and other Government officials violated the Neutrality Act by supporting the activities of paramilitary groups seeking to overthrow the Nicaraguan Government.

The ruling today came in a lawsuit filed July 8 by Representative Ronald V. Dellums, a Democrat who represents Berkeley, and two private citizens, under the Federal Ethics in Gov-

ernment Act. The 1978 ethics law, passed in the aftermath of the Watergate scandals, requires the Attorney General to conduct a preliminary investigation upon receiving specific and credible information that a Federal official has violated the law.

In their suit, the plaintiffs argued that they sent a letter to Attorney General Smith Jan. 27 detailing violations of the 1794 Neutrality Act. The rarely used act makes it a criminal offense to furnish money or prepare for a military enterprise against a country at peace with the United States. It provides for a maximum penalty of a \$3,000 fine and three years in jail.

In their letter, the plaintiffs charged President Reagan and members of his Administration, including William J. Casey, Director of Central Intelligence; Assistant Secretary of State Thomas O. Enders, Secretary of Defense Caspar W. Weinberger and others, with approving a covert Central Intelligence Agency plan to finance and participate with Nicaraguan exiles in attacking and attempting to overthrow the Nicaraguan Government.

It Charges Camps in 6 States

The letter charges that the plan involved paramilitary training of invasion forces on United States soil at

camps in six states, including California and Florida and using Honduras as a base for those forces. Previous rulings by lower Federal courts have held that the Neutrality Act applies to preparations in the United States to launch military raids from a second country into a third country.

On March 18, Assistant Attorney General D. Lowell Jensen responded to the letter by denying the request for an investigation, saying that the information provided did not constitute grounds for an investigation. Both Mr. Jensen and Attorney General Smith are named as defendants in the suit.

In his ruling today, Judge Stanley A. Weigel strongly disagreed, calling Mr. Jensen's assertion "unreasonable and wholly unsupported by the record."

"The information plaintiffs provided

the Attorney General was much more than mere 'generalized allegations of wrongdoing' without factual support," Judge Weigel said.

'Well Served' in Covert Cases

Emphasizing that he was making no ruling whether any Federal official had violated any Federal law, Judge Weigel noted that one of the underlying purposes of the Ethics in Government Act was to assure that Congress and the public had access to the facts whenever a violation of law by a high Federal official was charged. "This underlying purpose would appear to be particularly well served in cases such as this involving claims of unlawful covert action," the judge said.

A spokesman for Representative Dellums called the decision "a milestone."

Ellen Yaroshefsky, a lawyer with the Center for Constitutional Rights in New York, which conducted the suit along with the National Lawyers Guild in San Francisco, said: "This historic opinion affirms that the President cannot stand above the law. We have a peace treaty with Nicaragua and the President cannot overtly or covertly attempt to overthrow the Government. This ruling is especially important in light of the recent invasion of Grenada."

John K. Russell, a spokesman for the Department of Justice in Washington, said the department would have no comment until officials had an opportunity to review the decision.

Smith ordered to probe CIA's covert activities

San Francisco (AP) — A federal judge ordered Attorney General William French Smith yesterday to investigate the CIA's covert activities in war-torn Nicaragua to determine whether the agency has violated the Neutrality Act.

U.S. District Judge Stanley A. Wiegel gave Mr. Smith 90 days to determine the legality of "paramilitary expeditions" in Nicaragua or appoint a special prosecutor for the investigation.

His ruling in a lawsuit filed by Representative Ronald V. Dellums (D, Calif.) and two women came as the Senate approved continued CIA support for rebels battling the leftist Sandinista government in Nicaragua. The voice vote set the stage for a House-Senate conference committee battle over whether the United States should back the estimated 15,000 guerrillas supported by the Reagan administration.

The lawsuit sought an order forcing Mr. Smith to study whether the consent of the president and administration officials to paramilitary operations violated the Neutrality Act. That law makes it a crime to organize or launch a paramilitary expedition against a country with which the United States is not at war.

The judge stressed that his decision made no judgment on "whether or not any federal official has violated any federal law," but he added that "it is the duty of the attorney general to investigate" that possibility.

The Justice Department planned no comment on the ruling until officials in Washington read its text, according to a spokesman.

Mr. Dellums said in the suit, filed July 8, that Mr. Smith's refusal to launch an inquiry deprived him of his right as a congressman to vote on whether the United States should make war on Nicaragua.

In an interview, Mr. Dellums called it a "major, major victory" in the federal courts.

"We think that if they go forward with an objective, detached investigation, they will arrive at the same conclusion we have: that to finance people whose expressed effort is to overthrow the Nicaraguan government is clearly in violation of the law. And for the president to engage in that policy means . . . that the president is engaging in lawless activity," he said.

Mr. Dellums made his comments as he was preparing for a visit to Grenada with the task force investigating the U.S. invasion there.

Joining Mr. Dellums as plaintiffs in the suit were Eleanor Ginsburg and Myrna Cunningham. Ms. Ginsburg claimed that training Nicaraguan exiles near her home in Dade county, Fla., was a nuisance.

Judge Orders Smith to Study Legality of CIA Covert Action

SAN FRANCISCO, Nov. 3 (AP)—A federal judge today ordered U.S. Attorney General William French Smith to investigate the CIA's covert activities in war-torn Nicaragua to determine whether the agency had violated the Neutrality Act.

U.S. District Court Judge Stanley A. Wiegel gave Smith 90 days to determine the legality of "paramilitary expeditions" in that Central American country or else appoint a special prosecutor for the investigation.

His ruling came in a lawsuit filed by Rep. Ronald V. Dellums (D-Calif.).

The lawsuit sought an order forcing Smith to study whether the consent of the president and administration officials to paramilitary operations violated the Neutrality Act. That law makes it a crime to organize or launch a paramilitary expedition against a country with which the United States is not at war.

The Justice Department planned to issue no comment on the ruling until officials in Washington read its text, according to spokesman John Russell.

The lawsuit cited the Ethics in Government Act as a basis for its request, and Wiegel said his decision was based on the law's directives as well.