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THE WHITE HOUSE
WASHINGTON

May 12, 1987

MEMORANDUM FOR WILLIAM LYTTON

FROM: JOY YANAGIDA
SUBJECT: BOLAND AMENDMENT

Attached please find the final edition of the Boland memorandum, reflecting suggestions made by my colleagues. We have not pressed the CIA for any material it may have on the issue, in particular classified floor debate or understandings between the intelligence committees and the CIA.

I retrieved from Tower Commission files some CIA documents relating to the FY 1986 Boland Amendment (the "communications" and "advice" provisions promulgated in December 1985), but the Tower Board did not have anything for FY 1983-1985. Such documents could well reveal, for example, that the "absolute" prohibition in place in 1984 was in fact substantially less than absolute. Mike Smith notes the possibility that in 1984, the CIA, notwithstanding its "cease and desist" order, with the acquiescence of the Congress, provided assistance that did not involve "direct or indirect" "paramilitary" support to the Contras. The CIA may have had any number of understandings with the Congress that further qualified application of the Boland Amendments.

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THE WHITE HOUSE

WASHINGTON

BOLAND AMENDMENT PROVISIONS

Summary. This memorandum sets out chronologically the texts and salient limitations of the so-called Boland Amendments, the term commonly used to describe:

1. December 21, 1982 1/ - December 7, 1983 A prohibition against CIA and DOD expenditures toward overthrowing the Nicaraguan Government or provoking a Nicaragua-Honduras war
2. December 8, 1983 - October 3, 1984 \$24 million in assistance
3. October 3, 1984 - December 19, 1985 A prohibition against expenditures toward direct or indirect Contra support by CIA, DOD or "any other agency or entity involved in intelligence activity"
August 15, 1985 - March 31, 1986 \$27 million in humanitarian assistance administered by the State Department
4. December 19, 1985 - October 16, 1986 \$13 million for "communication" and "advice"
5. October 18, 1986 - September 30, 1987 \$100 million in humanitarian and military assistance

The Pre-Boland Backdrop. First Finding. In December 1981, President Reagan signed a National Intelligence Finding establishing U.S. support for the Nicaraguan resistance forces, the so-called Contras. 2/ This policy of covert action was controversial from the start. That month, Representative Edward P. Boland (D-Mass), then Chairman of the House Permanent Select Committee on Intelligence ("HPSCI"), wrote to Director of Central Intelligence William Casey expressing concerns about

the number and tactics of the insurgents to be supported, whether these insurgents would be under U.S. control and the possibility of military clashes between Nicaragua and Honduras. 3/

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1. Dates reflect approval of appropriations acts, not authorization acts.
 2. Report of the President's Special Review Board at C-1, Feb. 26, 1987 ("Tower Rept.").
 3. Cited in the Congressional Quarterly Almanac at 125 (1983) ("CQ").

Congress had recently promulgated § 501 of the National Security Act, 4/ requiring the Executive Branch to keep the intelligence activities "fully and currently informed of all intelligence activities which . . . carried out for or on behalf of, any department, agency or entity of the United States." To some, this afforded inadequate oversight over U.S. covert activities in Nicaragua. Congress moved to limit the activity the Administration could undertake in Nicaragua.

1. December 21, 1982 - December 7, 1983: narrow prohibition

On December 21, 1982, Congress adopted the first Boland Amendment. It provided:

None of the funds provided by this Act may be used by the Central Intelligence Agency or the Department of Defense to furnish military equipment, military training or advice, or other support for military activities, to any group or individual, not part of a country's armed forces, for the purpose of overthrowing the Government of Nicaragua or provoking a military exchange between Nicaragua and Honduras. 5/

The 1982 provision established only narrow limitations on the expenditure of funds. Applicable to only certain of the funds of the Central Intelligence Agency ("CIA") and the Department of Defense ("DOD"), it prohibited expenditures by those agencies only insofar as they were conducted "for the purpose of overthrowing" Nicaragua or "provoking a military exchange" between Nicaragua and Honduras.

This Boland Amendment, adopted unanimously by the House, had the support of the Administration. Boland had first introduced it as a classified amendment to the FY 1983 Intelligence Authorization Act, into which it was ultimately incorporated. 6/ On December 8, 1987, he introduced it publicly as an unclassified amendment to the Defense Appropriations Bill (HR 7355), in lieu of a more restrictive version introduced earlier that day by Rep. Tom Harkin (D-Iowa). Harkin's proposal had stated:

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4. P.L. 96-450, 50 U.S.C. § 413 Oct. 14, 1980.
 5. Section 793 of the FY 1983 DOD Appropriations Act ("DODAA"), contained in the FY 1983 Further Continuing Appropriations Act ("CR") (P.L. 97-377, 96 Stat. 1865 Dec. 21, 1982) (emphasis added throughout unless otherwise stated).

This provision was extended by CR through Nov. 10, 1983 (§ 101(3)(c) of P.L. 98-107, 97 Stat. 735, Oct. 1, 1983); and through Dec. 7, 1983 (§ 101(a) of P.L. 98-151, 97 Stat. 965, Nov. 14, 1983).

6. P.L. 97-269, 96 Stat. 1142, Sept. 27, 1982.

Section 793. None of the funds provided in this Act may be used by the Central Intelligence Agency or the Department of Defense to furnish military equipment, military training or advice, or other support for military activities, to any group or individual, not part of a country's armed forces, for the purpose of assisting that group or individual in carrying out military activities in or against Nicaragua. 7/

Boland's proposal retained the precatory provisions of Harkins proposal, but only barred such expenditures "for the purpose of overthrowing the government of Nicaragua or provoking a military exchange between Nicaragua and Honduras." 8/

Boland's proposal immediately was perceived as a means to provide the Administration substantial operating leeway. Senator Chris Dodd (D-Conn) described it in floor debate:

[The Boland Amendment] is limited to the overthrow of the Nicaraguan Government and to support a conflict between Honduras and Nicaragua. . . . I suggest that there are any number of ways of circumventing that prohibition. In effect, it is going to provide a green light for the continued activity that we have seen reported, over and over again, in the last several weeks and months, suggesting that we are already deeply involved in a broadening conflict in Nicaragua. 9/

On December 21, 1982, the day the bill became law, Dodd reiterated his concerns calling the bill "the legislative equivalent of 'blue smoke and mirrors' and we should not have any illusions about it." 10/

2. December 8, 1983 - September 30, 1984: \$24 million in assistance

New disclosures. In spring, 1983, evidence surfaced that the United States was supporting covert operations in Nicaraguan territory. In its April 4 edition, Time reported that the United States and the rebels had established a three-part command structure to disguise U.S. participation in the fighting, the key component of which was an all American "general staff" that comprised "the brains of the insurgency." On April 3, the New York Times reported that the United States had supplied extensive intelligence information, training and plane loads of weapons to

7. 129 Cong. Rec. H 9148, Dec. 8, 1982.

8. 129 Cong. Rec. H 9158, Dec. 8, 1982.

9. 129 Cong. Rec. S 15351, Dec. 18, 1982.

10. 129 Cong. Rec. S 15899, Dec. 21, 1982.

the rebels. On April 3-5, the Post reported that rebel forces were armed and advised by the United States.

The initial response of Administration officials did not allay congressional concerns. On April 12, then Assistant Secretary of State Thomas Enders indicated to the Foreign Relations Committee that although the rebels were seeking the overthrow of the Nicaraguan government, the U.S. was not. 11/ U.S. aid to the rebels therefore did not violate the Boland prohibitions. Then U.S. Ambassador to Honduras John Negroponte was quoted by a visiting U.S. Congressman to say that the Boland amendment was "a legal triviality" that should not stand in the way of U.S. objectives. 12/

Congress reacted along partisan lines. On April 12, the Senate Select Committee on Intelligence ("SSCI") met with Casey, prompting then Chairman Barry Goldwater (R-Ariz.) to conclude that the Administration "is not violating the letter or the spirit" of the Boland Amendment. Boland, on the other hand, stated his view that "this covert operation is an apparent violation of the amendment." 13/

The President's Response. President Reagan himself responded to press queries on April 14, 1983:

We are not doing anything to try and overthrow the Nicaraguan Government. . . .

Anything that we're doing is aimed at interdicting these supply lines and stopping this effort to overthrow the El Salvador Government. 14/

On April 27, the President addressed a joint session of Congress to outline his program in Central America. The cornerstone was a "verifiable, reciprocal" agreement among Central American countries for the withdrawal of foreign troops, military advisors and foreign support for insurgencies, as well as a ban on the import of offensive weapons. A special envoy with ambassadorial rank would be responsible for bipartisan implementation of these objectives. 15/ Former Senator Richard Stone (R-Fla.) was later named to the post.

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11. Washington Post, April 14, 1983; New York Times, April 14, 1983.
 12. Ibid.
 13. Ibid.
 14. Weekly Comp. of Presidential Papers at 540-541 (1983).
 15. 129 Cong. Rec. H 2414, April 27, 1983.

The Boland-Zablocki Bill. Boland's proposal, not ultimately adopted, was to bar covert aid but provide substantial amounts to be spent for overt aid. On the day of the Presidential address, Boland and Clement Zablocki (D-Wis.) introduced H.R. 2760, which, effective 45 days after adoption, would have prohibited any expenditures by the CIA or any other government agency

for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in or against Nicaragua by any nation, group, organization, movement or individual.

The bill also would have authorized \$30 million in FY 1983 and \$50 million in FY 1984 for "overt" aid to any Central American country.

Congress again was of mixed minds on the legal application of the amendments, past and pending. Boland insisted that the extant covert activities were illegal under then current law, stating "the purpose and the mission of the operation was to overthrow the government in Nicaragua." Rep. Stephen Solarz (D-NY) characterized the proposed Boland Amendment as "the first step" that would "terminate our paramilitary operations in Nicaragua." 16/ On the other side of the aisle, Henry Hyde (R-Ill.) said the Boland Amendment was not being violated because the "few little people" the United States was backing in Nicaragua "in no way can overthrow" the Nicaraguan Government.

HPSCI later classified the effective date of the prohibition and deleted the words "or against" to clarify that the agencies could seek to interdict arms running through Nicaragua. HPSCI approved the bill on May 3, by a partisan vote, approval of the House Foreign Affairs Committee ("HFAC"), followed on June 7. 17/ The bill was debated in secret session on July 19, and in open session on July 28. 18/

Meanwhile, SSCI, contemporaneously considering the Intelligence Authorization bill, voted 13-2 in closed session on May 6, to enable the CIA to continue its activities in Nicaragua for the remaining five months of fiscal 1983, though it required a new plan from the Administration for the following year. 19/

On November 17, the conferees hammered out a compromise, allocating up to \$24 million for Contra support, to be spent by

16. 129 Cong. Rec. H 5823, July 28, 1983.

17. H. Rept. 98-122 (Pt. I).

18. 129 Cong. Rec. H 5818-5882, July 28, 1983.

19. S. Rept. 98-77, 98th Cong. 1st sess. (1983).

DOD or CIA "or any other agency or entity of the United States involved in intelligence activities." Section 775 of the FY 1984 DODAA (P.L. 98-212, 94 Stat. 1452, Dec. 8, 1983) provided:

During fiscal year 1984, not more than \$24,000,000 of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual. 20/

Second Finding. While the congressional debate ensued, the President, in September 1983, signed a second Nicaragua finding, which authorized "the provision of material support and guidance to the Nicaraguan resistance troops." The objective of this finding was two-fold:

-- inducing the Sandinista Government in Nicaragua to enter into negotiations with its neighbors; and

-- putting pressure on the Sandinistas and their allies to cease provision of arms, training, command and control facilities and sanctuary to leftist guerillas in El Salvador. 21/

3. October 3, 1984 - December 19, 1985: Prohibition on Military Assistance

In FY 1985, Congress implemented two provisions:

(a) in October 1984, a prohibition against expenditures for military support that extended until December 1985; and

(b) in August 1985, \$27 million in humanitarian assistance that extended until March 1986.

20. Section 108 of the FY 1984 Intelligence Authorization Act (P.L. 98-215, 97 Stat. 1475, Dec. 9, 1983) ("IAA") established substantially identical provisions:

During fiscal year 1984, not more than \$24,000,000 of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or directly, military or paramilitary operations in Nicaragua by any nation, group organization, movement or individual.

21. Tower Rept. at C-1.

A. Boland Prohibition. The Boland prohibition that was passed on October 12, 1984 was more encompassing than its 1982 precursor. Specifically, it applied to all FY 1985 funding for the CIA, DOD and intelligence agencies or entities. Section 8066(a) of the FY 1985 DODAA provided:

During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual. 22/

Boland deemed the language comprehensive:

[T]his prohibition applies to all funds available in fiscal year 1985 regardless of any accounting procedures at any agency. It clearly prohibits any expenditure, including those from accounts for salaries and all support costs. The prohibition is so strictly written that it also prohibits transfers of equipment acquired at no cost. 23/

Section 801 of the FY 1985 IAA 24/ adopted language less restrictive than the DOD AA:

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22. Contained in the FY 85 CR (P.L. 98-473, 98 Stat. 1935, Oct. 12, 1984). The initial limitations were implemented by CR effective from October 3-11, 1984. Section 106(c) of P.L. 98-441, 98 Stat. 1700-1701 provided:

No appropriations or funds made available pursuant to this joint resolution to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual.

The limitations were extended by continuing appropriations resolutions through Nov. 14, 1985 (§ 101(c) of P.L. 99-103; 90 Stat. 472, Sept. 30, 1985); through Dec. 12, 1985 (P.L. 99-154, 99 Stat. 813, Nov. 14, 1985); through Dec. 16, 1985 (P.L. 99-179, 99 Stat. 1135, Dec. 13, 1985); and through Dec. 19, 1985 (P.L. 99-184, 99 Stat. 1176, Dec. 17, 1985).

23. 130 Cong. Rec. H 11980, Oct. 10, 1984.
24. P.L. 98-618, 98 Stat. 3304, Nov. 8, 1984.

No funds authorized to be appropriated by this Act or by the Intelligence Authorization Act for fiscal year 1984- (Public Law 98-215) may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual, except to the extent provided under the terms and conditions specified by House Joint Resolution 648, making continuing appropriations for fiscal year 1985, and for other purposes, as enacted. 25/

Views within the Administration have differed as to whether § 8066(a) applied to the NSC staff. On the one hand, the Office of Legal Counsel of the Justice Department concluded that it does, the NSC and its staff being an entity "involved in intelligence activity," designated by E.O. 12333 as "the highest" Executive Branch agency responsible for foreign intelligence, and within the plain language of the statute. Not surprisingly, at least some Congressmen have shared this view. (See, eg. letter from then Rep. Michael Barnes, cited in Memorandum, Intelligence Oversight Board("IOB") to Poindexter, September 12, 1985).

On the other hand, the September 12 memorandum of the IOB advised Poindexter that the statute did not apply to the NSC staff, citing the absence of a specific reference to that entity; Congressional intent as construed from the more restrictive FY 1985 IAA; and the "coordinating" rather than "operational" role of the NSC. Even if the statute does not apply to the NSC staff per se, there remains the question of whether North's salary, which was paid by DOD throughout his tenure on the NSC staff, provided a sufficient nexus between the NSC and DOD funds so that the restriction on DOD would have applied to North. The IOB said that North's activities might have been. That view, however, bears additional scrutiny. 26/

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25. The HPSCI Report to the FY 1985 IAA, while summary in nature, suggests that the ban that was absolute with respect to funds covered by the Act (H. Rept. 98-473(I), 98th Cong. 2d Sess. at 5). The provision, it noted,

would prohibit any funds authorized by the bill being used to support, directly or indirectly, military or paramilitary operations in Nicaragua. The section also has the effect of denying any funds requested for such a purpose in fiscal year 1985.

Moreover, HPSCI rejected, 4-7, an amendment that would have restored funds requested by the Administration for the support of military and paramilitary operations in Nicaragua. Ibid.

26. IOB Memorandum, supra, at fn. 5.

Likewise, views may differ as to whether the DODAA reference to "funds available" to the CIA, DOD, and subject agencies or entities should be interpreted to apply to all funds available to CIA or DOD by appropriation or other mechanisms through which CIA and DOD receive funding (as the plain language suggests), or to funds available under that Act. The FY 83 DODAA and FY 85 IAA were explicitly limited to funds covered by those Acts; the 1985 DODAA was not. This may indicate that the omission in the 1985 DODAA was intentional, or it may reflect the views held by some that if a restriction is contained in an appropriations act, it should only be deemed to limit such appropriations.

Anti-Lobbying Provision. Congress made explicit that the funds could not be used for lobbying activity, providing in § 8069 of the DODAA:

None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress. 27/

Congress did signal that supplemental appropriations could become available at a later date. Section 8066(b) provided that the ban would cease to apply if, after February 28, 1985: (1) the President submitted a report to Congress that would, inter alia, "justif[y] the amount and type of such support," and (2) "a joint resolution approving assistance for military and paramilitary operations in Nicaragua is enacted."

CIA Cease and Desist Order. The limitations had immediate impact on CIA activity. To implement § 8066(a), CIA headquarters issued a "cease and desist" order to its field officers:

Field stations are to cease and desist with actions which can be construed to be providing any type of support, whether direct or indirect, to the various entities with whom we dealt under the program. All future contact with those entities are, until further notice, to be solely, repeat solely, for the purpose of collecting positive and counterintelligence information of interest to the United States. 28/

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27. This language is similar to the Anti-Lobbying Act, 18 U.S.C. § 1913, which prescribes criminal sanctions on federal officials and employees using appropriated funds "directly or indirectly" "intended or designed to influence" legislation or appropriation by Congress, except through "proper official channels."
28. Tower Rept. at C-1-2.

B. August 15, 1985 - March 31, 1986:
Humanitarian Assistance.

In August 1985, while the § 8066(a) provisions continued in force, Congress passed a new authorization bill and a supplemental appropriation for \$27 million in humanitarian assistance. The impetus for the interim funding was described in the legislation itself as "disturbing trends in Nicaraguan's foreign and domestic policies," including:

President Daniel Ortega's April 1985 trip to the Soviet Union at a time when the Congress signaled its strong disapproval of increasing Nicaraguan-Soviet ties. 29/

Section 722(g)(1) of the ISDCA, 99 Stat. 254, provided:

Effective upon the date of enactment of this Act, there are authorized to be appropriated \$27,000,000 for humanitarian assistance to the Nicaraguan democratic resistance. Such assistance shall be provided to such department or agency of the United States as the President shall designate, except the Central Intelligence Agency or the Department of Defense.

Section 722(g)(5) defined "humanitarian assistance":

As used in this subsection, the term 'humanitarian assistance' means the provision of food, clothing, medicine, and other humanitarian assistance, and it does not include the provision of weapons, weapons systems, ammunition, or other equipment, vehicles, or material which can be used to inflict serious bodily harm or death.

Pell Amendment. Key among the additional constraints on executive branch activity were the terms of § 722(d) of the ISDCA (the "Pell amendment"), which provided in part:

The United States shall not enter into any arrangement conditioning, expressly or impliedly, the provision of assistance under this Act or the purchase of defense articles and services under the Arms Export Control Act upon the provision of assistance by a recipient to persons or groups engaging in an insurgency or other act of rebellion against the Government of Nicaragua.

29. § 722(b)(1)(A) of the International Security and Development Assistance Act, P.L. 99-83, 99 Stat. 250, Aug. 8, 1985 ("ISDCA").

The appropriation that followed a week later conformed with the authorization, but contained the proviso that the appropriation would expire on March 31, 1986. The FY 1985 DOD Supp. AA 30/ provided in part:

For an additional amount for humanitarian assistance provided to such department or agency of the United States as the President shall designate, except the Central Intelligence Agency or the Department of Defense, to the Nicaraguan democratic resistance, \$27,000,000 to remain for obligation until March 31, 1986. . . . As used in this paragraph, the term 'Humanitarian assistance' means the provision of food, clothing, medicine, and other humanitarian assistance, and it does not include the provision of weapons, weapons systems, ammunition, or other equipment, vehicles or material which can be used to inflict serious bodily harm or death.

Exchange of Information. Section 102(b) the DOD Supp. AA also stated that the CIA could "exchange information," not only under this provision but also under the broader ban of § 8066(a):

Nothing in this Act, section 8066(a) of the Department of Defense Appropriations Act, 1985 (as contained in section 101 of Public Law 98-473), or section 801 of the Intelligence Authorization Act for Fiscal Year 1985 (Public Law 98-618) shall be construed to prohibit the United States Government from exchanging information with the Nicaraguan democratic resistance, or the obligation and expenditure, but only for purposes for which they are expressly made available, of the funds appropriated by this chapter under the headings "HUMANITARIAN ASSISTANCE FOR NICARAGUAN DEMOCRATIC RESISTANCE" and "ASSISTANCE FOR IMPLEMENTATION OF A CONTADORA AGREEMENT."

Arguably, this permitted the CIA, through the "exchange of information," to directly or indirectly support the Contras. But the CIA "cease and desist" order of October 1984 suggests that some elements within the CIA had been reluctant to adopt that interpretation of § 8066(a) prior to passage of the DOD Supp. AA.

Conformity with § 8066(a). Section 102(a) of the FY 85 DOD Supp. AA (99 Stat. 325) made the provisions of 8066(a) expressly applicable to the humanitarian assistance:

The prohibitions contained in section 8066(a) of the Department of Defense Appropriations Act, 1985 (as contained in section 101 of Public Law 98-473) and section 801 of the Intelligence Authorization Act for Fiscal Year 1985 (Public Law 98-618) shall, without limitation as to fiscal year, apply with respect to funds appropriated under

30. P.L. 99-88, 99 Stat. 324-25, Aug. 15, 1985.

this chapter under the headings "HUMANITARIAN ASSISTANCE FOR NICARAGUAN DEMOCRATIC RESISTANCE" and "ASSISTANCE FOR IMPLEMENTATION OF A CONTADORA AGREEMENT."

Legislative History. The texts of the statutes and their legislative history suggest that three key points of compromise were made in order to obtain the funds: (1) that all the funds would be deemed humanitarian assistance; (2) that DOD and CIA would not administer the aid; and (3) that no further expenditures would be made to support the Contras. 31/

Though some in Congress acknowledged the appeal of characterizing the assistance as "humanitarian," there was considerable skepticism as to whether the designation would have real impact. Boland told the House:

[T]here is a new twist to the debate on Contra aid this time around. Now we are being asked in the Michel amendment to approve humanitarian aid.

I gather the attraction of this loosely defined phrase is that it purports to be a policy that supports peace, not war.

But. . .the amounts to be appropriated are by no means insignificant, \$27 million. . . That's more than we spent at that rate when we supplied all of the Contra's needs, military or otherwise.

[A]s we all know, the private groups will continue to provide money for arms and ammunition.

The effect of the Michel amendment, and that private aid, is going to be money for the Contras thatn they have ever received in the past [sic] . . .

To me, Mr. Chairman, this whole concept of humanitarian aid is a fig leaf. 32/

Rep. Durbin (D-Ill.) offered a similar characterization:

The \$27 million sought by the Michel amendment is not humanitarian assistance. It is military assistance which will only serve to prolong the conflict, pain, and suffering of the people of Nicaragua. 33/

31. See CQ Almanac at 61 (1985).

32. 131 Cong. Rec. H 4118, June 12, 1985. See also 131 Cong. Rec. H 4142, June 12, 1985.

33. 131 Cong. Rec. H 4122, June 12, 1985.

Correspondingly, there was extensive debate, but no meeting of minds on whether the humanitarian aid would supersede the prevailing Boland prohibitions. Durbin termed it a repeal:

The Michel amendment specifically repeals the Boland amendment which prohibits the United States from direct or indirect military involvement in Nicaragua. 34/

Rep. McDade (R-Pa.) took the opposite view:

The amendment we are offering does not repeal outright the Boland amendment. That is clear to anybody who reads it. It restates it. 35/

Boland sought successfully to extend the so-called Boland provisions "until the Congress enacts a joint resolution repealing the prohibition." The effect of the Boland provision on humanitarian assistance, he said, would be two-fold:

First of all, it means that none of the funds which are appropriated by the Michel amendment may be provided through any intelligence agency.

. . .

[Second,] we will ensure that the humanitarian assistance provided by the Michel amendment will be the only kind of assistance provided to the Contras until the Congress approves otherwise. . . 36/

4. December 19, 1985 - October 16, 1986: "Communications" and "advice"

On December 4, 1985, Congress authorized expenditures, ultimately totalling \$13 million, to be spent toward purposes specified in a classified annex. 37/ Generally, it authorized provision of:

34. Ibid.

35. Ibid.

36. 131 Cong. Rec H 4142-43, June 12, 1985.

37. §§ 102 and 105 of the FY 1986 IAA (P.L.99-169, 99 Stat. 1002-1003, Dec. 4, 1986). The unclassified provisions are singularly opaque. Section 105(a) of the 1986 IAA provided:

Funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal

(Footnote continued)

(a) "communications equipment" and training for the use of such equipment; and

(footnote 37 continued)

37. year 1986 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only as authorized in section 101 and as specified in the classified Schedule of Authorizations referred to in section 102 . . ."

Section 101 listed the agencies for which funds were authorized for the conduct of intelligence and intelligence activities, a list which included DOD and CIA but not the NSC staff.

Section 102 provided in part:

The amounts to be authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 1986, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Committee of Conference to accompany H.R. 2419 of the Ninety-ninth Congress. . . .

Section 105 (b) affirmed that the new provisions posed no bar to continued State Department administration of the humanitarian assistance program and "activities of the Department of State to solicit such humanitarian assistance for the Nicaraguan democratic resistance."

Section 8050 of the FY 1986 DOD AA, incorporated into the final CR for FY 1986 (P.L. 99-190; 99 Stat. 1211, Dec. 19, 1985) incorporated by reference the IAA, including § 105:

"None of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended during fiscal year 1986 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance unless in accordance with the terms and conditions specified by section 105 of the Intelligence Authorization Act (Public Law 99-169) for fiscal year 1986."

These provisions were extended by CR through Oct. 8, 1986 (§ 101(b)(1) of P.L. 99-434, 100 Stat. 1077, Oct. 1, 1986); through Oct. 10, 1986 (§ 101(a)(1) of P.L. 99-464, 100 Stat. 1185, Oct. 9, 1986); through Oct. 15, 1986 (P.L. 99-465, 100 Stat. 1189, Oct. 11, 1986); and through Oct. 16, 1986 (P.L. 99-491, 100 Stat. 1239, Oct. 16, 1986).

(b) intelligence and counter-intelligence "advice and information" to assist Contra military and paramilitary operations.

The provisions are illuminated only slightly by the classified section of the Joint Explanatory Statement accompanying H. Rep. 99-377, the Conf. Rept. on H.R. 2419: (Cited in unclassified correspondence from Lee Hamilton to Wm. Casey, dated December 4, 1985):

Section 105 does not permit intelligence agencies to engage in activities, including training other than the communications training provided for [sic] pursuant to Section 105, that amount to participation in the planning or execution of military or paramilitary operations in Nicaragua by the Nicaraguan democratic resistance, or to participation in logistics activities integral to such operations.

Conflicting interpretations immediately developed as to whether and, if so, what kind of logistical support or training had been authorized. The differences were illustrated in an exchange of letters between Lee Hamilton, Chairman of the HPSCI, and David Durenberger, his Senate counterpart, which in turn gave rise to differences within the CIA over defining legitimate conduct.

Hamilton apparently took the view that all logistics advice was integral to military and paramilitary operations, and therefore, barred. On December 4, 1986, the date the statute was enacted, he wrote then Director of Central Intelligence William Casey that, based on the aforementioned legislative history,

intelligence personnel are not to act as military advisors to the contras. This certainly includes advising them on logistical operations upon which military or paramilitary operations depend for their effectiveness.

Durenberger disagreed, writing Hamilton the next day to suggest that "general logistical advice" was permissible, especially when related to humanitarian or communications assistance."

Hamilton's response on December 9 took exception, stating that: (1) the CIA had been barred from participating in the distribution of humanitarian assistance; and (2) logistical advice, even for food distribution, "can well be seen as military advice to the contras."

The Intelligence Oversight Board took a position perhaps more expansive than Durenberger's, advising Poindexter by memorandum of April 8, 1986 that expenditures had been authorized not only for advice, but:

basic military training for the Nicaraguan democratic resistance so long as such training does not amount to the participation in the planning and execution of military or paramilitary operations in Nicaragua.

During this period, North appears to have been actively engaged in providing logistical support to Contra resupply efforts, with the assistance of a secure communications network, the CIA, and a private network he described as including Mssrs. Hakim ("who runs the European operation for our Nicaraguan resistance activity") and Secord, who in November 1985 delayed a Nicaraguan arms shipment when the Israelis could not obtain flight clearance for their shipment of Hawk missiles to Iran. (Tower Rept. at C 8-9; SSCI Rept. at 38-39).

CIA involvement is not comprehensively detailed in either report, but internal memoranda prepared by the CIA General Counsel's office describe CIA support for Contras (the provision of flight vectors and Sandinista anti-aircraft positions) and for "private benefactors" supporting the Contras (resupply drop information supplied on ten occasions from April to September 1986). There is some question within the Agency as to whether the activities are consistent with the statute. The General Counsel's Office has relied on the Durenberger interpretation to conclude that it is. The Inspector General has cited the narrower analysis proffered by Hamilton in questioning the propriety of the support. 38/

5. October 15, 1986 - September 30, 1987: \$100 million for humanitarian and military assistance

On October 18, 1986, Congress authorized the provision of \$100 million in military assistance to the Contras. Section 206 of Title II of the FY 1987 Military Construction Appropriations Act, incorporated in the final CR for FY 1987 (P.L. 99-500, 100 Stat. 1783-299 - 1783-300), provided in part:

(a) (1) The Congress hereby approves the provision of assistance for the Nicaraguan democratic resistance in accordance with the provisions of this title.

(2) There are hereby transferred to the President for the purposes of this section \$100,000,000 of unobligated funds from such accounts for which appropriations were made by the Department of Defense Appropriations Act, 1986 (as contained in Public Law 99-190), as the President shall designate.

. . .

38. Memoranda, W. George Jameson, Associate General Counsel to Deputy Director for Operations, Dec. 5, 1986; Carroll L. Hauver, Inspector General to General Counsel, Jan. 22, 1987.

(c) Funds transferred under subsection (a) shall remain available for the same period of time, but not to exceed September 30, 1987, as such funds would be available under DOD Appropriations Act, 1986 (as contained in P.L. 99-190, but for the enactment of this title).

The funds were to be available in three tranches: (1) not more than 40% upon enactment; (2) not more than 20% after October 15, 1986 and 15 days after a prescribed Presidential report to Congress; and (3) not more than 40% after February 15, 1987 and 15 days after a prescribed Presidential report.

Some of the funds were specifically earmarked:

-- \$30 million may be used only for humanitarian assistance, \$3 million of which is for the Contra human rights program (§ 208, 100 Stat. 1783-3000;

-- \$5 million is for the Southern Opposition Bloc (BOS) and \$5 million may be used only for the Misurasata Indian resistance force (§ 204(d); 100 Stat 1783-298).

Sections 209 and 211 specify the basic purposes to which funds may be spent, subject to limitations set out principally in sections 203, 204 and 216. Section 209(a), 100 Stat. 1783-30, incorporates by reference the terms (and attendant ambiguities) of the predecessor provisions on "communications" and "advice":

Except as otherwise provided in this title, funds transferred under section 6(a) shall be available for the purposes described in section 105(a) of the Intelligence Authorization Act for Fiscal Year 1986, and all the requirements, terms, and conditions of such section and sections 101 and 102 of such Act, section 502 of the National Security Act of 1947, and section 106 of the Supplemental Appropriations Act, 1985 (Public Law 99-88), shall be deemed to have been met for such use of such funds. 39/

Section 211(b)(1), 100 Stat. 1783-302, further provides:

[Until February 15, 1987], assistance to the Nicaraguan democratic resistance under this title shall be limited to the following:

(A) humanitarian assistance (as defined in section 722(g)(5) of the International Security and Development Cooperation Act of 1985);

39. § 209(a); 100 Stat. 1783-300.

(B) logistics advice and assistance;

(C) support for democratic political and diplomatic activities;

(D) training, services, equipment and supplies for radio communications, collection, and utilization of intelligence, logistics, and small-unit skills, tactics and operations; and

(E) equipment and supplies necessary for defense against air attacks.

The key prohibitions imposed on the use of the funds are:

(1) § 203(e); 100 Stat. 1783-297 - 1783-298:

"Notwithstanding any other provision of this title, no member of the United States Armed Forces or employee of any department, agency, or other component of the United States Government may enter Nicaragua to provide military advice, training, or logistical support to paramilitary groups operating inside that country. Nothing in this title shall be construed as authorizing any member or unit of the Armed Forces of the United States to engage in combat against the Government of Nicaragua."

(2) § 204(b); 100 Stat. 1783-298:

No assistance under this title may be provided to any group that retains in its ranks any individual who has been found to engage in --

(1) gross violations of internationally agreed human rights (as defined in section 502B(d)(1) of the Foreign Assistance Act of 1961); or

(2) drug smuggling or significant misuse of public or private funds."

(3) § 216(a), 100 Stat. 1783-307, provides:

United States Government personnel may not provide any training or other service, or otherwise participate directly or indirectly in the provision of any assistance, to the Nicaraguan democratic resistance pursuant to this title within those land areas of Honduras and Costa Rica which are within 20 miles of the border with Nicaragua."

The statute ascribes coordinating and supervisory authority to the Secretary of State:

The Secretary of State (or his designee) shall be responsible for policy guidance, coordination, and supervision of United States Government activities under this title. 40/

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40. §207(a); 100 Stat. 1783-300.

C L O S E H O L D

THE WHITE HOUSE

WASHINGTON

May 13, 1987

MEMORANDUM FOR HOWARD H. BAKER, JR.
WILLIAM L. BALL, III
RHETT B. DAWSON
KENNETH M. DUBERSTEIN
THOMAS C. GRISCOM
M. MARLIN FITZWATER

FROM: ARTHUR B. CULVAHOUSE, JR. 

SUBJECT: Revised Boland Amendment Matrix

Attached is a new and improved matrix of the various Boland Amendments. The attached matrix corrects the previous matrix in terms of the coverage of the "Pell Amendment".

Attachment

C L O S E H O L D

"BOLAND AMENDMENTS"

I	II	III	IV	V	VI
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THE WHITE HOUSE

WASHINGTON

May 22, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: WILLIAM B. LYTTON III 

SUBJECT: THE VALUE OF LEGISLATIVE HISTORY

In International Union et al. v. Donovan, 746 F. 2d 855 (D.C. Cir. 1984) Judge Scalia, writing for the U.S. Court of Appeals for the District of Columbia, discussed the legislative history of an appropriations law:

The legislative history is relevant to our inquiry--but not directly relevant. As the Supreme Court has said (in a case involving precisely the issue of Executive compliance with appropriation laws, although the principle is one of general applicability): 'legislative intention, without more, is not legislation.' Train v. City of New York, 420 U.S. 35, 45 (1975). The issue here is not how Congress expected or intended the Secretary to behave, but how it required him to behave, through the only means by which it can (as far as the courts are concerned, at least) require anything--the enactment of legislation. Our focus, in other words, must be upon the text of the appropriation.

746 F. 2d at 860.

This may be relevant to the Boland Amendment analysis.

cc: Alan Raul
Dean McGrath
Mike Smith
Joy Yanagida

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*Boland
Amendment*

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May 13, 1987

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May 13, 1987

GENERAL THEMES

I. Iran Arms Sales.

What was approved as a strategic initiative to improve relations with certain Iranian factions deteriorated into an arms-for-hostages exchange. The President has stated that he would not repeat that policy mistake and has accepted responsibility.

II. Diversion.

The President had no knowledge of the diversion of excess funds from the Iranian arms sales to provide support for the Contras. The President first learned of this possibility in November of last year as a result of the Attorney General's investigation. On December 4 he sought the appointment of an Independent Counsel to investigate this matter.

III. Foreign Country Funding.

The President knew that foreign countries were providing support to the Contras, and he welcomed that support. The President did not directly solicit such

remains an important element of the President's Central American policy. The President expected that his advisers and staff would support that policy, but, as stated by Colonel McFarlane, also had every reason to expect that his subordinates would comply with U.S. law.

May 14, 1987

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COMMENTS:*

* Statute does not, by its terms, limit the President's conduct; such an attempt would force strong constitutional challenge.

May 13, 1987

PRESS GUIDANCE

1. Q. Wasn't the President's call to the President of Honduras a direct violation of the Boland Amendment?

A. No. Congress has never passed any law, including any of the various Boland Amendments, which purported to limit or preclude the absolute Constitutional authority of the President of the United States to meet with or talk on the telephone with a leader of a foreign government about that country assisting the Contras. No one could seriously dispute the legal or constitutional authority of the President to make such a telephone call.

The particular munitions which were the subject of the telephone call in question were, to the best of our knowledge, not being shipped in contravention of any U.S. law. The munitions, which apparently were already the property of the Contras, were mistakenly detained by some soldiers in another country. The situation was resolved, and President Reagan was then and is now grateful for that help.

[NOTE: Do not confirm that it was Honduras or confirm such a "head of state" conversation.]

2. Q. Was the President aware that the NSC staff had solicited funds from Saudi Arabia for Contra Arms? If not, why did he think that the Saudi's were giving them money?

A. The President was aware that certain foreign countries were providing support for the Contras and that appropriate members of the Administration were in communication with those foreign governments. Although the President did not personally solicit such funds, he was thankful then and he is thankful now for the assistance which was provided.

The question of solicitation seems to assume that it was somehow wrong for the President or his advisors to talk with or ask foreign leaders to assist the Contras. That assumption is absolutely wrong. Any restrictions imposed by Congress were solely on the expenditure or obligation of certain U.S. funds. The President has always had the right to encourage others to support the Contras. He has done this both publicly and privately for many years and he will continue to do so. Any attempt to limit or prohibit the right of the President to consult with foreign officials would, of course, have raised the most serious Constitutional questions.

The President believes it is entirely appropriate and laudable that another country would support people who seek only the right to have free and open elections.

3. Q. Isn't it true that the payoff for the Saudi's support of the Contras was the expedited sale of AWACS?

A. No, that is not true. The sale of the AWACS to the Saudis was negotiated in 1981. At no time was the provision of any weapons to the Saudis linked in any way to the Saudis contributing money to anyone. The President is not aware of any evidence to the contrary.

4. Q. Did the President direct the NSC staff to keep support going to the Contras no matter what?

A. No. The President expected the Administration to follow the law and conduct itself accordingly with regard to the Contras. He also requested that all lawful assistance and advice be provided to the Contras during the one period when Congress precluded financial assistance to the Contras. During this time, the President's efforts were devoted to speaking publicly on the issue of support for the Contras. Congress itself anticipated that the President would request additional military aid for the Contras and that Congress might approve it--as it in fact did.

The President was not aware of and did not authorize any assistance to the Contras which Congress had prohibited.

5. Q. Did any White House staff member solicit funds for the Contras after passage of the Boland Amendment?

A. The President was aware of communications between Administration officials and foreign governments concerning support for the Contras. To the President's knowledge, all such communications were entirely lawful and appropriate.

The most restrictive version of the Boland Amendment did not purport to limit what the President and his assistants could do with regard to soliciting funds for the Contras--it merely prohibited expenditures of CIA, DOD and intelligence agency funds.

[In fact, Congress had pending before it H.R. 1569 which was introduced on March 19, 1985. That bill would have made it a crime for any person in the United States or any U.S. citizen anywhere in the world to furnish any money, goods or services, to the Contras, or to attempt to do so. The House of Representatives never even brought this proposed legislation to the House floor for a vote.]

6. Q. Was the President aware that the third country funds were being used for military purposes?

A. The President generally knew that funds made available by third countries were used to satisfy the urgent needs of the Contras including military needs. Such contributions by other countries, and any use of such contributions by the Contras for military activities, contravened absolutely no law.

Finally, on October 18, 1986, Congress authorized \$100 million in military and humanitarian assistance to the Contras. This authorization will be in effect until the end of the current fiscal year, 9/30/87.

While Congress, from time to time, limited certain intelligence agencies from spending money to assist the Contras in various ways, Congress never passed any law which purported to restrict the Constitutional powers of the President in conducting this country's foreign policy or in conducting this country's international relations. To have done so would, of course, have raised the most serious Constitutional issues.

Likewise, Congress never sought to prohibit or limit the ability of private citizens, private groups or foreign nations to aid the Contras. In fact, Congress was very much aware of the fact that private individuals and groups, both from the United States and from elsewhere had been and would keep contributing aid to the Contras.

As Congressman Boland himself stated on June 12, 1985 on the floor of the U.S. House of Representatives,

[The Contras] continue their military operations in Nicaragua and, they have increased their numbers.

They have done this with funds provided by private groups, mostly from the United States.

Those funds have helped purchase weapons, ammunition, food, clothing, medicine--everything the Contras have needed to maintain themselves as an army in the field.

But, is [humanitarian assistance] a policy of restraint by the U.S. Government? Does this really hold back anything?

Hardly, in light of the fact that, as we all know, the private groups will continue to provide money for arms and ammunition.

. . .

To me, Mr. Chairman, this whole concept of humanitarian aid is a fig leaf.

[Congressional Record, June 12, 1985, H4118.]

Likewise, Congress had the opportunity to speak clearly and unequivocally and make it illegal for any U.S. citizen or any person within the United States to furnish any money, goods or services with the intent of assisting the Contras' military operations. Congressman Levine introduced such a bill, H.R. 1569, on March 19, 1985. Neither that nor any similar legislation was even considered by the House of Representatives, much less enacted into law.

And yet, there is so much confusion about the "Boland Amendment" that it seems that there is a belief that Congress had outlawed all aid for all time by anyone in the world to the Contras. It is about time that someone set the record straight.

8. Q. Did the President ever ask anyone how the Contras were being kept alive? Didn't he want to know?
- A. Anyone who read the papers knew that private groups were raising funds to support the Contras during, before and after the 10 month period (10/84 through 8/85) when CIA and DOD funds were not available. Congressman Boland acknowledged such private group efforts in his June 1985 floor statement. As stated before, the President also was aware that other countries were providing funds.

9. Q. Didn't the President ask why the Saudi's were donating \$1 million a month?

A. The President knew that some of our allies were supporting those in Nicaragua who were willing to sacrifice their lives if necessary to have free and open elections. He did not then nor does he now assume that anyone who gives money to a worthy cause has some ulterior motive.

10. Q. Did the President ever tell the White House staff not to break the law in supporting the Contras?

A. The President did not believe it necessary to remind the staff to observe the law. The President has always expected his staff to work within the law to carry out his policies. The Boland Amendment was no different than any other statute. If there are any allegations that any staff member did not obey any law, those will be examined by the Independent Counsel.

"BOLAND AMENDMENTS"

I	II	III	IV	V	VI
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<p>No funds appropriated under <u>DOD</u> appropriations act used by CIA or DOD to furnish military support to overthrow Nicaraguan Government or to provoke war between Nicaragua and Honduras</p>	<p>Not more than \$24m of funds available to <u>CIA, DOD or any other agency or entity of U.S.</u> involved in intelligence activities may be expended to support, <u>directly or indirectly</u>, military or para-military operations in Nicaragua</p>	<p>No funds available to <u>CIA, DOD or any other agency or entity of U.S.</u> involved in intelligence activities may be expended to support, <u>directly or indirectly</u>, military or para-military operations in Nicaragua</p> <p>No funds available under <u>DOD</u> appropriations act shall be used, directly or indirectly, to influence Congressional action</p>	<p>Part III restriction ends and Part V starts December 19, 1985</p> <p>\$27m in "humanitarian" assistance to Nicaraguan democratic resistance; DOD and CIA barred from administering funds. Prohibition as of 10/1/85 on conditioning foreign aid to third country on assistance by that country to Contras [Pell Amendment]</p> <p>Express recognition that USC was authorized to exchange information with FDN 88066</p>	<p>Funds available to <u>CIA, DOD or any other agency or entity of U.S.</u> involved in intelligence activities may be expended to support military or para-military operations in Nicaragua as authorized--communications equipment and training, and intelligence advice and information</p> <p>Prohibition on conditioning foreign aid to third country on assistance by that country to Contras [Pell Amendment]</p> <p>"Nothing precludes" State Department solicitation of humanitarian assistance for Contras</p>	<p>\$100m in assistance appropriated, \$30m humanitarian assistance and \$70m for other purposes.</p> <p>Prohibition on conditioning foreign aid to third country on assistance by that country to Contras [Pell Amendment]</p>
EVENTS:	EVENTS:	EVENTS:	EVENTS:	EVENTS:	EVENTS:
	<p>May 84 Saudi Arabia Meetings</p>	<p>Feb 85 Saudi Arabia Meetings</p> <p>April 85 Honduras Call</p> <p>Nov 85 Newington Photo Op</p>	<p>Nov 85 Newington Photo Op</p>	<p>Feb, May, Aug 86 U.S. Arms Shipments to Iran/Excess Funds to Lake Resources</p> <p>Jan-Mar 86 Various Private Donor Photo Ops & Briefings</p> <p>Spring 86 Brunei Contribution</p>	
COMMENTS:*	COMMENTS:*	COMMENTS:*	COMMENTS:*	COMMENTS:*	COMMENTS:*
<p>Restriction limited to CIA and DOD funds appropriated in this act</p> <p>Restriction on expenditure of "funds"--not on conduct</p>	<p>Limited to CIA, DOD & "other" intelligence agencies. Strong argument that restriction not applicable to NSC.</p> <p>Restriction on expenditure of "funds"--not on conduct</p>	<p>Limited to CIA, DOD and "other" intelligence agencies. Strong argument that restriction not applicable to NSC.</p> <p>Restriction on expenditure of "funds"--not on conduct</p>	<p>III or V restraints applicable throughout</p>	<p>Limited to CIA, DOD and "other" intelligence agencies. Strong argument that restriction not applicable to NSC.</p> <p>"Direct or indirect" language removed.</p> <p>Solicitation of humanitarian aid by State Department expressly recognized, but statute contains no prohibition on other solicitations by other agencies</p> <p>Restriction on expenditure of "funds"--not on conduct</p>	

* Statute does not, by its terms, limit the President's conduct; such an attempt would force strong constitutional challenge.

May 13, 1987

FROM THE FIRST DAYS OF THIS ADMINISTRATION, SUPPORT FOR THE FREEDOM FIGHTERS IN NICARAGUA HAS BEEN UNWAVERING. WHEN CONGRESS VOTED TO RESTRICT U.S. SUPPORT TO THE FREEDOM FIGHTERS, THE PRESIDENT'S RESOLVE DID NOT WAIVER. HE CONTINUED PUBLICLY TO SPEAK OUT FOR THE CONTRAS AND TO PRESSURE CONGRESS FOR A RESUMPTION OF AID. THE PRESIDENT APPRECIATED THE EFFORTS OF ALL THOSE WHO CONTRIBUTED TO THE EFFORT TO GET CONGRESS TO CHANGE ITS MIND AND HE THANKED MANY OF THESE INDIVIDUALS. ALL OF THE ACTIONS TAKEN BY THE PRESIDENT HAVE BEEN FULLY WITHIN THE LAWS OF THE LAND AND HAVE BEEN DIRECTED AT PREVENTING THE SPREAD OF SOVIET INFLUENCE IN CENTRAL AMERICA.

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