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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-202116

MAY 1 1981

The Honorable F. James Sensenbrenner, Jr.
House of Representatives

Dear Mr. Sensenbrenner:

This is in response to your request that this Office investigate the possible misuse of appropriated funds by the Legal Services Corporation (LSC) for lobbying and political activities. In support of your allegations, you provided us with copies of a number of LSC memoranda covering the period from March 1980 until March 1981. After reviewing this material we have concluded that LSC has itself engaged and allowed its grant recipients to engage in lobbying activities prohibited by Federal law. However, we did not find that LSC had engaged in prohibited political activities.

The LSC memoranda indicate that LSC developed a detailed plan designed to urge members of the public interested in its legal assistance programs to contact Members of Congress and communicate their support for LSC reauthorization legislation and LSC appropriations measures being considered by the Congress. Over the years, LSC has encouraged groups interested in legal assistance at the local, regional, and state levels to support its legislative program. The organizations include such groups as LSC fund recipients; clients' councils; the National Legal Aid and Defense Association (NLADA), an organization of poverty lawyers; the National Organization of Legal Services Workers, an employee organization of legal assistance workers; migrant farm worker groups; bar associations; and similar groups. The effectiveness of the organization depends heavily on a State Coordinator to serve as link between LSC headquarters and the State organization. Normally, the State Coordinator is an employee or official of a recipient organization, as opposed to being an employee of the LSC itself. Officials of LSC's Office of Government Relations communicate frequently with State Coordinators and develop strategy about how local members of the State's Congressional delegation can best be approached, how the local support base can be increased, and how certain methods have proven successful in other states. In addition to serving as a communications link and coordinating the activities of local groups, State Coordinators are also responsible for reporting information back to LSC headquarters.

Early in 1980, LSC formed a coalition with the Project Advisory Group (PAG), a national organization of legal services programs, to direct a lobbying campaign in support of LSC reauthorization and appropriation legislation being considered by the Congress. In April 1980, Dan J. Bradley, President, LSC, and Charles H. Dorsey, Chairperson, PAG, sent a joint letter to Legal Services Project Directors, the heads of recipient organizations, initiating the lobbying efforts as follows:

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"The Legal Services Corporation and the Project Advisory Group are engaged in a joint effort to protect the interests of legal services programs and clients in current Congressional consideration of the Legal Services Corporation Act and appropriations for fiscal year 1981. We are sending this letter to bring you up to date on this pending legislation and to inform you particularly of the serious efforts in Congress to impose further restrictions on legal services work and to limit our appropriation.

"On the issue of funding, a major threat is posed by the general budget-cutting pressures on Congress and the Administration. Even strong supporters of legal services have agreed to a balanced budget in 1981. This means that both the House and Senate Budget Committees are looking more critically at funding for legal services than ever before, and could restrict the Appropriations Committees' ability to adequately fund the program for next year. You will recall that the Corporation requested \$353 million for 1981. PAG is urging \$403 million. The White House is supporting \$321 million. Some members of the House Budget Committee proposed termination of legal services. That was not seriously debated, but a subsequent effort to reduce funds to \$278 million lost narrowly by a vote of 11 to 14.

"At the time of this writing, resolutions from both the House and Senate Budget Committees would permit appropriations of as much as \$321 million. It is certain, however, that further efforts to cut the budget will be made on the floor of both the House and the Senate. Such proposed cuts could be specific to legal services or could be across-the-board reductions for all spending. The budget resolutions will be debated on the floor in late April or early May.

"The House and Senate Appropriations Committees will set the actual 1981 appropriations figure for legal services once Congress has adopted the budget resolution setting the outer limits. Markup on appropriations bills will probably occur in mid to late May.

"The House Judiciary Committee and the Senate Labor and Human Resources Committee are considering bills to extend the Legal Services Corporation Act. The leaders of both Committees want a simple extension of the law, with no amendments — a position supported by both the Corporation and PAG. The House Bill, H.R. 6386, is a three-year authorization. The Senate bill, S. 2337, is a two-year bill. Both have been reported from the appropriate subcommittee and will be considered by the respective full committees hopefully before the end of April.

"We have clear indications that a number of crippling amendments will be proposed — either in full Committee or on the floor of the House and Senate. Among those now being discussed are further restrictions on legislative representation, representation in certain abortion cases, representation of aliens, and recovery of attorneys' fees. None of these are easy issues. All of them are important to effective legal services work. We must not underestimate the risk that such amendments present this year.

"Both the Corporation and PAG have added temporary personnel in Washington to better assure that the interests of legal services programs and clients are heard as these issues are debated in the coming weeks and months. * * *"

On April 3, 1980, LSC sent out a packet of materials addressed to: "Persons Coordinating Congressional Relations" that included instructions on effective lobbying of members of Congress at the local level for LSC legislation. The materials provided were as follows:

- "1. A statement of 'what needs to be done' and 'what to send us.'
- "2. A Legislative update of April 3, 1980, from Anh Tu.
- "3. Fact sheets and background information on the LSC reauthorization and appropriation, including membership lists of the appropriate House and Senate Committees.
- "4. One page fact sheet/handouts on possible restrictive amendments.

- "5. Examples of supportive Bar letters and resolutions.
- "6. Examples of favorable editorials.
- "7. Examples of supportive letters from public officials.
- "8. A list of state coordinators for the legislative effort. (State coordinators will also receive materials excerpted from the Congressional Staff Directory, indicating the Washington and local office addresses and phone numbers, and the key staff of each member of their state's Congressional delegation.)

"NOTE: PLEASE be in touch with your state coordinator before initiating Congressional contacts, editorials, or support from other suggested sources so that efforts can be coordinated among the various legal service supporters in your state."

The "what needs to be done" brochure gives specific and detailed guidance to local lobbyists. The brochure reads as follows:

- "1. Visiting Members of Congress. During the Congressional recess, April 4 - 14, many members of Congress will be in their districts and can be approached by constituents supportive of legal services. For example, visits on behalf of legal services might be made by delegations of bar and law school leaders, public officials prominent figures in the party of the member, heads of major contributing organizations (e.g. labor unions), heads of broad-based constituent organizations (e.g. council of churches, League of Women Voters, Common Cause) and individual campaign contributors.

"NOTE: It is important to consider which of the above will be more influential with respect to a given member of Congress. Many members will want to hear from legal services staff themselves, but in most cases, it is better to rely on your supporters in the bar and other constituent groups to make Congressional contacts. (INSTRUCTIONS attached)

- "2. Securing Local and State Bar Support. Supportive resolutions of local and state bar association and contacts by bar leaders with members of Congress are effective means of indicating concern to Congress.

- "3. Obtaining Supportive Editorials. Seek editorial support in local papers.
- "4. Alerting Constituents. Many Congressional constituents will be concerned about legal services if they are alerted to the problems we face. These include: local and state labor organizations; businesses and business organizations; church groups including local council of churches or statewide conferences, such as the statewide Catholic conference which exists in most states; broad-based constituent organizations (such as the League of Women Voters, Common Cause); civil rights organizations; anti-hunger coalitions; social service organizations (most states have some organization involved in the delivery of human resources); and individual campaign contributors.

"Also, client and poor people's organizations, such as the National Clients Council chapters, block-clubs, community economic development corporations, should be informed.

- "5. Alerting Public Officials. State legislators, governors local legislators, and prominent individuals in the political party of the Representative or Senator may be concerned about legal services if they are alerted to the problems our clients will face if LSC's budget is cut or our services are restricted.
- "6. Informing Us of Problems. Finally, it is important to determine if members of Congress or their staff have heard allegations of wrongdoing by a legal services program, and promptly provide a memorandum of fact to us along with as much supporting evidence as possible."

{ LSC also instructed local lobbyists in the "what to send us" brochure that they were responsible for providing LSC with after-action reports of their lobbying efforts. } The data desired were as follows:

"Please provide State Coordinators and the LSC Office of Government Relations with all actual products of your efforts, including editorials, communications by individuals and organizations, and other information.

"Specifically, with regard to all House and Senate contacts please provide us with a report of:

- "(1) the member of Congress (and staff) contacted,
- "(2) persons (and their positions) making the contacts,
- "(3) the Member's (and staff's) attitude toward
 - "(a) Legal services in general, and
 - "(b) any specific provisions of the legislation or amendments discussed, and
- "(4) materials or information we should deliver to the member's Washington office."

The packet contained instructions on the preparation which supporters of LSC legislation should make before visiting their Congressmen or Senators. Lobbyists were advised to familiarize themselves with the background of the Member and select highly respected persons from the district to accompany the visiting delegation. The delegation was to familiarize itself with LSC reauthorization and appropriation issues and emphasize the significance of these issues to the Member.

The packet also included background information on the LSC reauthorization and appropriation issues. This material urged support for H.R. 6386 without amendment in the House and S. 2337 as reported out of the Senate Subcommittee on Employment, Poverty and Migratory Labor. The background information also urged opposition to any amendment that would (1) restrict legislative representation, (2) restrict the ability of legal services programs to represent aliens, (3) restrict the right of a legal services program to receive court-awarded fees upon successful completion of litigation, (4) limit the right of employees of legal services programs to join labor unions, (5) limit legal services representation in abortion proceedings, or (6) require legal services attorneys to negotiate prior to the initiation of litigation.

The packet included several examples of support for LSC reauthorization and appropriations in the form of editorials, local and State bar association letters, and letters from public officials. It was pointed out that such items had been helpful in demonstrating to Members of Congress the support for LSC in the local area.

Similar packets were sent out from the LSC Office of Government Relations and PAG to State Coordinators about once each month. These subsequent packets contained specific guidance, depending on the then-current status of LSC legislation, as to the lobbying efforts that were needed at the local level.

There is little question that the communications set forth in detail above constitute "lobbying", as the term is used in the applicable restrictive legislation and construed in our decisions. "Lobbying" activities are prohibited by provisions of the Legal Services Corporation Act of 1974, as amended (42 U.S.C. § 2996 et seq.) and restrictions contained in various appropriation Acts applicable to Federal funds expended by the Corporation. (See later discussions of these statutes.)

Under the provisions of 42 U.S.C. § 2996e(c), the Corporation itself, as distinguished from recipients of funding through the Corporation, is prohibited from attempting to influence the passage or defeat of any legislation before the Congress, except that Corporation personnel

"* * * may testify or make other appropriate communication (A) when formally requested to do so by a legislative body, a committee, or a member thereof or (B) in connection with legislation or appropriations directly affecting the activities of the Corporation." (Emphasis added.)

In construing the exception, we think the phrase "* * * testify or make other appropriate communication * * *" is significant. Clearly, Congress did not intend the statutory prohibition against lobbying to preclude Corporation personnel from testifying before that body nor do we think that the Congress meant to preclude the Corporation from providing to the Congress the kind of data that Executive agencies and Departments normally supply when requested to do so or when they desire to express their views on legislative proposals. In construing other statutory restrictions against lobbying by officials of Executive agencies and departments (for example, § 607 (a) of the Treasury, Postal Service, and General Government Appropriation Act, discussed *infra*), we have consistently recognized that these officials have a legitimate interest in communicating with the public and with legislators regarding their policies and activities. When their policies or activities are

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affected by pending or proposed legislation, discussion by officials of that policy or activity will necessarily, either explicitly or by implication, refer to such legislation and will presumably be either in support of or in opposition to it. Accordingly, we have always construed other anti-lobbying restrictions as permitting officials to express their views on pending or proposed legislation as it affects their policies and activities directly to Congress or to the public. } 56 Comp. Gen. 889 (1977); B-128938 July 12, 1976.

On the other hand, } we have construed these other statutory anti-lobbying restrictions as prohibiting agency and department officials from engaging in "grass roots" lobbying, involving appeals addressed to the public at large or to selected individuals suggesting that they contact their elected representatives and indicate their support of or opposition to legislation being considered by the Congress. } 59 Comp. Gen. 115 (1979). In other words, } direct communication of its views by Corporation personnel to Members or Committees of the Congress is permissible; drumming up support for the same purpose outside the Corporation is not. }

Accordingly, we do not think that the efforts by Corporation officials or employees to appeal to members of the public or the legal assistance community to contact their elected representatives in the Congress on behalf of legislative positions of the Corporation constitute "other appropriate communication."

LSC has broadly construed the exception } in 42 U.S.C. § 2996e(c)(2), which reads "* * * except that personnel of the Corporation may testify or make other appropriate communication * * * in connection with legislation or appropriations directly affecting the activities of the Corporation", contending that this exception authorizes Corporation personnel to engage in all activities necessary to influence legislation and appropriation measures that directly affect the Corporation, including grass roots lobbying activities. } We are unaware of any support for such a broad construction in the legislative history of this provision or elsewhere. }

Indeed, the Conference Report to accompany H.R. 7824, the Legal Services Corporation Act of 1974 (S. Rep. No. 93-845, 92d Cong., 2d Sess. 22), supports our construction of the exception. The report states:

"Both the House bill and the Senate amendment prohibit the Corporation from undertaking to influence the passage or defeat of any legislation by the Congress or by any State or local legislative body. The Senate amendment allowed the Corporation to testify and make appropriate comment in connection with legislation or appropriations directly affecting the activity of the Corporation. The House bill contained no comparable provision. The House recedes." (Emphasis added.)

As can be seen from the Conference Report, the exception was understood to allow only testimony and appropriate comment on legislation affecting the Corporation, which is consistent with our construction.

With regard to the use of funds by recipients of LSC assistance, under the provisions of 42 U.S.C. § 2996f(a)(5), the Corporation is charged with the responsibility of insuring that recipients do not use appropriated funds to influence the passage or defeat of legislation pending before the Congress except when representing a client or when:

"(B) a governmental agency, legislative body, a committee, or a member thereof

"(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or
"(ii) is considering a measure directly affecting the activities under this title of the recipient or the Corporation."

The exception in 42 U.S.C. § 2996f(a)(5)(B)(ii), quoted above, should be given the same construction as the similar provision applicable to LSC personnel in 42 U.S.C. § 2996e(c)(2)(B), discussed above. That is, it should be construed so as to preclude expenditures of appropriated funds by recipients for grass roots lobbying. Here again, the Corporation has erroneously construed this exception broadly to permit recipients to expend appropriated funds to solicit others to contact their congressmen in connection with legislation affecting the recipient or the Corporation. For the reasons outlined above, we believe the Corporation's construction is improper. LSC has, however, promulgated regulations in 45 CFR § 1612.4 that implement its erroneous interpretation of this statutory provision as follows:

"(a) No funds made available to a recipient by the Corporation shall be used, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive or administrative order or regulation of a Federal, State or local agency, or to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body or State proposals by initiative petition."

* * * * *

"(3) An employee may engage in such activities if a government agency, legislative body, committee, or member thereof is considering a measure directly affecting the activities under the Act of the recipient or the Corporation."

As currently worded, these regulations authorize LSC fund recipients to expend appropriated funds for grass roots lobbying campaigns in support of legislation or appropriation measures that directly affect the activities of the recipient or the Corporation. In our opinion, to Representative Gilman, B-163762, November 24, 1980, (copy enclosed), we noted certain deficiencies in these regulations and wrote to the President of the Corporation recommending that he take appropriate action to amend the regulations to implement adequately the statutory restrictions on lobbying. The Corporation has not, however, acted on our recommendations.)

In addition to the limitations on lobbying activities in the above cited statutory provisions, annual appropriation act restrictions have, throughout the existence of the legal assistance program, also curtailed such activities. Section 607(a) of the Treasury, Postal Service, and General Government Appropriation Act, the language of which has been included in the Act every year since 1972, provides as follows:

"No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."
(Emphasis added)

We have construed section 607(a) as prohibiting the expenditure of Federal funds by Executive agencies and Government corporations for activities involving appeals addressed to members of the public suggesting that

they contact Members of Congress and indicate support of or opposition to legislation pending before Congress, or that they urge their congressional representatives to vote in a particular manner.) 56 Comp. Gen. 889, supra.

We understand from discussions with the LSC General Counsel that LSC does not consider the restriction against lobbying activities contained in § 607(a) to be applicable to its appropriations because, when § 607(a) was first enacted in 1972, the Legal Services Corporation Act of 1974 (42 U.S.C. § 2996 et seq.) had not been enacted into law. The fallacy in LSC's argument is that appropriation Acts are enacted annually and restrictions in them apply to the use of funds for the fiscal year for which the appropriation was made. An appropriation restriction may forbid the use of funds by an agency even for some activity authorized in its organic legislation. In such a case, the restriction takes precedence over the organic legislation; that is, the agency would have substantive authority to carry on a certain activity but would have no funds available to spend on it. Section 607(a) has been enacted in the same form each year since 1972 and is, by its terms, applicable to appropriations contained in all appropriation acts. The § 607(a) restriction against the use of Federal funds for lobbying has thus been applicable to each annual appropriation the LSC has received.

Apparently LSC's interpretation that § 607(a) was not applicable to its appropriations and aggressive legislative representation by program personnel at the State level led the Congress to enact a provision similar to § 607(a), but expanded to cover State legislatures as well as the Congress, as a proviso to fiscal year 1979 appropriations provided for LSC in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1979 (Pub. L. 95-431, October 10, 1978, 92 Stat. 1021). This proviso, known as the Moorhead Amendment, reads as follows:

"* * * provided, No part of this appropriation shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress or any State legislature."

The Moorhead amendment has been applicable to the Corporation's appropriations each year since it was first introduced and enacted in 1973. Under this restriction, appropriated funds may not be used by recipients to appeal to members of the public to urge their elected representatives to support or defeat legislation pending in the Congress or in any State legislature. LSC has also failed to implement this restriction.

In summary, through the use of recipient organizations and their contacts at the State and local level, LSC has developed an extensive lobbying campaign to support reauthorization legislation for the corporation and related appropriation measures being considered by the Congress. This activity violates the anti-lobbying statutory and appropriation restrictions described above.

Because LSC's regulations and current policies appear to authorize recipients to expend appropriated funds for prohibited lobbying activities in derogation of the above-cited restrictions, we do not think, as a practical matter, that the Government would be successful in attempting to recover the illegally expended sums from the recipients. Also, because we are not authorized to settle the accounts of the Corporation, we are unable to take exception to these illegal payments. We have however, written the President of the Corporation informing him that we are advising both the Senate and House Appropriations and Judiciary Committees that the Corporation is expending Federal funds in violation of the above cited statutory and appropriations restrictions. In that same letter, we reiterate the recommendations in our opinion, B-163762, November 24, 1980.

We also reviewed the memoranda that you gave us for possible violations of restrictions on political activities contained in 42 U.S.C. § 2996e(e) and 42 U.S.C. § 2996f(a) by employees of either the Corporation or recipients. These restrictions are primarily designed to prohibit the Corporation or its recipients from assisting a political party or a candidate for public office. Our review did not uncover any evidence of such violations.

We trust this opinion is responsive to your request. If we can be of further assistance, please call on us.

Sincerely yours,

MILTON J. SOCOLAR

Acting Comptroller General
of the United States

Enclosure