



G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-303495

January 4, 2005

The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives

The Honorable John W. Olver
Ranking Minority Member
Subcommittee on Transportation,
Treasury and Independent Agencies
Committee on Appropriations
U.S. House of Representatives

Subject: *Office of National Drug Control Policy -- Video News Release*

In a letter dated July 29, 2004, you requested our opinion regarding prepackaged news stories contained in video news releases (VNRs) produced and distributed during fiscal years 2002, 2003, and 2004 by the Office of National Drug Control Policy (ONDCP). You ask whether ONDCP's use of appropriated funds to produce these prepackaged news stories constitutes "covert propaganda" in violation of the publicity or propaganda prohibitions contained in the Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, div. F, title VI, § 624, 118 Stat. 3, 356 (Jan. 23, 2004) (fiscal year 2004); Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, div. J, title VI, § 626, 117 Stat. 11, 470 (Feb. 20, 2003) (fiscal year 2003); and Treasury and General Government Appropriations Act, 2002, Pub. L. No. 107-67, § 626, 115 Stat. 514, 552 (Nov. 12, 2001) (fiscal year 2002).¹ You also ask whether ONDCP's use of the term "Drug Czar" constitutes unlawful self-aggrandizement in violation of these same prohibitions.

¹ The language of these provisions is identical: "No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress."

For the purposes of this opinion, we examined eight VNRs – seven that you provided as part of your request, and one more that ONDCP provided to us. Seven of the eight VNRs include prepackaged news stories. As explained below, we conclude that the prepackaged news stories in these VNRs constitute covert propaganda and violated the publicity or propaganda prohibition because ONDCP did not identify itself to the viewing audience as the producer and distributor of these prepackaged news stories.

We also find that ONDCP's use of the term "Drug Czar" to describe the Director of ONDCP does not constitute unlawful self-aggrandizement. This term was apparently coined in the news media many years ago and is in common usage today. While ONDCP employs the term in its prepackaged news stories and other press materials, it does not use the term to promote some sense of importance, accomplishment, respect, or authority for the Director, whether as an individual or as an officer of the government.

BACKGROUND

According to your request, in September 2002, the House Appropriations Subcommittee on Treasury and General Government obtained from ONDCP a videocassette labeled "2002-2003 ONDCP VNR/B-Roll Tapes." That videocassette contains, among other things, seven video news releases (VNRs) that ONDCP prepared and distributed to private news organizations before September 2002.²

In May 2004, this Office held that several prepackaged news stories included in VNRs produced and distributed by the Centers for Medicare & Medicaid Services (CMS) of the Department of Health and Human Services violated the "publicity or propaganda" prohibitions in the Consolidated Appropriations Resolution of 2003, Pub. L. No. 108-7, div. J, title VI, § 626, 117 Stat. 11, 470 (2003). B-302710, May 19, 2004. Subsequently, you requested our opinion on whether the prepackaged news stories in ONDCP's VNRs might also violate applicable publicity or propaganda appropriations act prohibitions.³

Consistent with our usual practice, we contacted ONDCP's General Counsel to request additional information, including ONDCP's justification for using appropriated funds to produce the prepackaged news stories in its VNRs. Letter from Susan A. Poling, Managing Associate General Counsel, GAO, to Edward H. Jurith,

² For more information about VNRs, their use in the news media industry, the various elements that they typically include, and the legal and ethical issues they pose, see B-302710, May 19, 2004.

³ This is the second time this year that we have been asked to examine ONDCP's compliance with applicable appropriations act publicity or propaganda prohibitions. In B-301022, Mar. 10, 2004, we determined that an ONDCP "open letter" to state prosecutors did not violate the ban on publicity or propaganda.

General Counsel, ONDCP, Sept. 3, 2004 (hereinafter, Poling Letter). Among other things, we asked ONDCP to authenticate the VNRs contained in the original videocassette that your staff provided us, as well as provide copies of any other VNRs produced or distributed by ONDCP during the past three fiscal years.⁴ *Id.* In its reply to us, ONDCP provided its views on whether its prepackaged news stories violated the law. Letter from Edward H. Jurith, General Counsel, ONDCP, to Susan A. Poling, Managing Associate General Counsel, GAO, Sept. 30, 2004 (hereinafter, Jurith Letter) at 2, 3. ONDCP also provided two videocassettes of additional material, including a VNR not contained on the videocassette that you provided with your request.⁵ *Id.*

ONDCP's VNRs were prepared pursuant to the Drug-Free Media Campaign Act of 1998, Pub. L. No. 105-277, div. D, title I, subtitle A, 112 Stat. 2681-752 (Oct. 21, 1998), *codified in* 21 U.S.C. ch. 23. Jurith Letter at 1. That act charges ONDCP to conduct a "National Youth Anti-Drug Media Campaign" for the purpose of "reducing and preventing drug abuse among young people in the United States."⁶ 21 U.S.C. § 1801(a). ONDCP stated in its response, "Congress anticipates that we [ONDCP] will influence the attitudes and behaviors of our target audiences, and Congress authorizes us to use various media to effect these changes." Jurith Letter at 1. To this end, ONDCP retained a contractor (Fleishman-Hillard) and subcontractors (Gourvitz Communications and Harbour Media) to produce and distribute its VNRs. *Id.* at 3, 4.

⁴ We limited our request to VNRs from the past three years because there is a 3-year statute of limitations on the settlement of appropriation accounts. 31 U.S.C. § 3526(c). As a result of this statute, accounts of the government are settled by operation of law three years after the close of the fiscal year. *See, e.g.*, B-302710, n.30, May 19, 2004.

⁵ The eighth VNR, which ONDCP provided to us, is contained in a videocassette labeled, "Ad Council/ONDCP Video News Report, February 6, 2003." ONDCP states that the Advertising Council prepared this VNR with assistance from ONDCP. Jurith Letter at 5.

⁶ ONDCP was established by the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 1002, 102 Stat. 4181 (Nov. 18, 1988). We note this here because a sunset provision has repealed that law, effective September 30, 2003. 21 U.S.C. § 1712. There were two ONDCP reauthorization bills pending in the 108th Congress (H.R. 2086 and S. 1860) that would have extended ONDCP's termination date to September 30, 2008. Currently, ONDCP continues to operate pursuant to appropriations made in the Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. H, title III, 118 Stat. 2809, ___ (Dec. 8, 2004).

The ONDCP videocassettes and accompanying materials display and describe eight VNRs, which include descriptive “slates,”⁷ print and television media advertisements, public service announcements,⁸ and “B-roll.”⁹ Seven of the VNRs also include prepackaged news stories.¹⁰ The prepackaged news stories are complete, audio-video presentations that ONDCP designed for broadcast by television news organizations as news reports, without the need for any production effort by the news organization. “They are produced in the same manner as if produced by a television news organization. Many television news organizations are willing to use [prepackaged news stories] since they help broadcasters reduce the cost of gathering and producing news.” Jurith Letter at 1.

Each of ONDCP’s news stories includes narration by an unseen person, sometimes identified as Mike Morris or Karen Ryan.¹¹ (The scripts for ONDCP’s prepackaged news stories refer to this person as the “announcer.”) The narrator explains that he or she is “reporting” on press conferences and other activities of ONDCP and other government officials regarding ONDCP’s anti-drug campaign. Each story is accompanied by proposed “lead-in” and “closing” remarks to be spoken by television station news anchors. Many of the suggested anchor remarks include a phrase like, “Mike Morris has the story,” or “Mike Morris has more.” ONDCP told us that the narrators were hired to read the scripts for the prepackaged new stories, as prepared for and approved by ONDCP. Jurith Letter at 4, 6. None of these narrators were affiliated with any news organization at the time the stories were produced or distributed. *Id.* Many of the stories and suggested anchor remarks characterize the director of ONDCP as the nation’s “Drug Czar.”

⁷ The “slate” is a visual textual feed from the VNR’s producer to recipient news organizations. It provides factual information about the VNR, such as a table of contents and the length, in minutes and seconds, of the various segments of the VNR.

⁸ All of the advertisements and public service announcements on the ONDCP videocassettes clearly identify ONDCP as producing or assisting in their production.

⁹ The “B-roll” consists of audio-video segments created by the VNR producer that news organizations can use, either to augment their presentation of the prepackaged news story, or to develop their own news reports in place of the prepackaged story.

¹⁰ One of the VNRs includes B-roll film and other materials for an anti-drug campaign targeted to Hispanic communities, but it does not include a prepackaged news story.

¹¹ ONDCP’s contractors retained three people to narrate these prepackaged news stories. Mike Morris and Karen Ryan are the real names of two of those narrators. The third narrator goes unnamed in ONDCP’s news stories, but ONDCP identified him as Jerry Corsini. ONDCP describes Ms. Ryan as a “former journalist,” and the other two as “independent voice-over specialists.” Jurith Letter at 4, 6.

ONDCP indicates (for five of the seven prepackaged news stories) that it spent a total of \$154,398 to produce and distribute those stories during fiscal years 2002, 2003, and 2004.¹² Jurith Letter app. A. This money came from funds appropriated annually to ONDCP for the purpose of conducting the National Youth Anti-Drug Media Campaign, 21 U.S.C. ch. 23. Jurith Letter at 3. ONDCP's VNRs (including the prepackaged news stories) were distributed to news stations throughout the country. *Id.* at 4-5. ONDCP distributed its VNRs primarily by satellite broadcasts and electronic news services, but it also delivered some VNRs on videocassettes using the U.S. Postal Service and as handouts at ONDCP press conferences. *Id.* An ONDCP subcontractor FAXed or e-mailed "news-alerts" concerning the VNRs and prepackaged news stories to approximately 770 news stations. *Id.* ONDCP's prepackaged news stories reached over 22 million households on nearly 300 television stations over a total of 56 days. *Id.* app. E.

The VNRs which included those prepackaged news stories and suggested anchor remarks were clearly labeled, both externally on the videocassettes and in the included slates, as ONDCP products. As ONDCP observes, "It would be virtually impossible for a reasonable broadcaster to mistake the VNRs for . . . independent news report[s]." Jurith Letter at 3. However, none of the prepackaged news stories and suggested anchor remarks contained in ONDCP's VNRs disclosed the agency's role (as producer and distributor of those materials) to television viewing audiences.¹³

DISCUSSION

As explained below, an annual governmentwide appropriations act prohibition on publicity or propaganda generally precludes agencies from creating or distributing materials in the nature of covert propaganda or self-aggrandizement. This opinion addresses whether ONDCP's use of appropriated funds to produce and distribute the prepackaged news stories constitutes covert propaganda in violation of applicable publicity or propaganda appropriations act prohibitions, and whether ONDCP's use of the term "Drug Czar" to refer to ONDCP's Director violates the prohibitions on self-aggrandizement. We conclude that ONDCP's prepackaged news stories violate the ban on covert propaganda, but its use of the term "Drug Czar" does not violate the ban on self-aggrandizement. We address these issues below in that order.

¹² We asked ONDCP to identify the costs of developing, producing, and distributing the prepackaged news stories. Poling Letter. ONDCP's reply includes a table listing five of the stories. Jurith Letter app. A. For each of the listed stories, under a column labeled "Cost," ONDCP's table includes a simple dollar amount, which, ONDCP told us informally, includes all costs of developing, producing, and distributing the story. ONDCP did not provide cost information for the other two stories.

¹³ This is not a case where news broadcasters removed a disclosure that a government agency had included to identify its role as producer and distributor of the prepackaged news stories.

In its response to us, ONDCP asserts that the VNRs are “a popular means of conducting news media outreach [that is] widespread and widely known.” Jurith Letter at 2. However, our analysis of the proper use of appropriated funds is not based upon the norms in the public relations and media industries. B-302710, May 19, 2004. For this reason, we begin by reviewing the applicable appropriations act provisions and prohibitions. ONDCP reports that, in each of the fiscal years, 2002 through 2004, it produced and distributed VNRs with prepackaged news stories using funds appropriated annually to conduct the National Youth Anti-Drug Media Campaign, 21 U.S.C. ch. 23. Jurith Letter at 3. The appropriations language for each of these years was similar.¹⁴ The relevant portion of the 2004 fiscal year appropriation provided:

“For necessary expenses of the Office of National Drug Control Policy . . . to support a national anti-drug campaign for youth. . . \$229,000,000, to remain available until expended, of which the following amounts are available as follows: \$145,000,000 to support a national media campaign, as authorized by the Drug-Free Media Campaign Act of 1998.”¹⁵

For each of these fiscal years, Congress also enacted this appropriations limitation:

“No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.”¹⁶

Our research indicates that Congress has imposed this same prohibition, using identical language, on the use of all appropriations for publicity or propaganda purposes annually since 1951.¹⁷ So far, Congress has not defined the phrase “publicity or propaganda.” B-302504, Mar. 10, 2004 (HHS materials). Over the years, we have struggled to give meaning to this limitation while simultaneously balancing the right and duty of agencies to inform the public regarding their activities and programs. *Id.*

¹⁴ Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, div. F, title VI, 118 Stat. 3, 325 (Jan. 23, 2004) (fiscal year 2004); Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, div. J, title VI, 117 Stat. 11, 447 (Feb. 20, 2003) (fiscal year 2003); Treasury and General Government Appropriations Act, 2002, Pub. L. No. 107-67, 115 Stat. 514, 531 (Nov. 12, 2001) (fiscal year 2002).

¹⁵ Pub. L. No. 108-199, 118 Stat. at 325 (fiscal year 2004).

¹⁶ This same language appears in the appropriations acts for each of the fiscal years at issue here. See Pub. L. No. 108-199, div. F, title VI, § 624, 118 Stat. at 356 (fiscal year 2004); Pub. L. No. 108-7, div. J, title VI, § 626, 117 Stat. at 470 (fiscal year 2003); Pub. L. No. 107-67, § 626, 115 Stat. at 552 (fiscal year 2002).

¹⁷ For more about the history of this prohibition, see B-302504, Mar. 10, 2004.

We have previously identified a number of activities that are subject to this restriction, including covert propaganda and self-aggrandizement. *Id.*

The Prepackaged News Stories

One of the activities banned under the publicity or propaganda prohibition involves what is referred to as covert propaganda, that is, an agency's production and distribution of materials that do not identify the agency, or indeed the government, as their source, thereby misleading those who refer to these materials. B-302504, Mar. 10, 2004 (HHS materials). For example, in 1987, the State Department violated the prohibition when it paid consultants to prepare and publish newspaper articles and op-ed pieces supporting the administration's Central America policy, and presented these materials "as the ostensible position of persons not associated with the government." 66 Comp. Gen. 707 (1987). These publications violated the restriction because they were "misleading as to their origin." *Id.*

A recent example of covert propaganda involved facts very similar to the present case.¹⁸ In B-302710, May 19, 2004, the Centers for Medicare & Medicaid Services (CMS), an agency of the Department of Health and Human Services, retained a contractor to produce and distribute VNRs containing prepackaged news stories that failed to disclose to the television viewing audience that they had been produced and distributed by a government agency. There, as here, the prepackaged news stories were narrated by a person who purported to be a private news "reporter" but was actually hired by the agency's contractor to read scripts prepared for and approved by the agency. *Id.* CMS justified its actions by pointing to a statutory responsibility to disseminate information to the public about recent statutory changes in the Medicare program. *Id.* However, even though CMS was carrying out a statutory mandate to disseminate information, it remained subject to the publicity or propaganda prohibition in the annual appropriation act. *Id.* In other words, CMS's prepackaged news stories had to comply with both provisions: "While Congress authorized [CMS] to conduct a wide-range of informational activities, CMS was given

¹⁸ So far this year, not counting the present matter, we have had four occasions to consider whether certain agency activities amounted to covert propaganda. On three of these occasions, we found no violation of the publicity or propaganda prohibition. *See* B-302992, Sept. 10, 2004 (brochure and video materials, including a video presentation shown only at a press conference, identified Forest Service as source); B-302504, Mar. 10, 2004 (fliers and advertisements identified HHS as source); B-301022, Mar. 10, 2004 ("open letter" to state prosecutors and its attachments identified ONDCP as source). (Hereinafter, because the last two of these cases were issued on the same date, for ease of reference we will parenthetically identify these as "HHS materials" and "ONDCP open letter," respectively.) The fourth case, which found the agency activities did amount to covert propaganda, is B-302710, May 19, 2004, discussed in the text above.

no authority to produce and disseminate unattributed news stories.” *Id.* CMS had failed to disclose to the television viewing audience that the stories were produced and distributed at the behest of CMS. *Id.*

CMS contended that its VNRs and all the materials in them, including the prepackaged news stories, were intended for the use of the news media, which knew that CMS had created them. *Id.* For this reason, CMS claimed that the VNRs and the prepackaged news stories in them could not constitute covert propaganda. *Id.* Findings of covert propaganda, however, are predicated upon a factual finding that the target audience cannot ascertain the correct source of agency-prepared information. B-302504, Mar. 10, 2004 (HHS materials), *citing* B-223098, Oct. 10, 1986. CMS failed to distinguish among the separate parts of its VNRs and the intended audiences for each part. B-302710, May 19, 2004. CMS targeted some of its materials – the B-rolls, for example – at news organizations, and produced and labeled them so they might be incorporated into stories made by news organizations. *Id.* However, CMS wanted news organizations to broadcast its prepackaged news stories and anchor remarks, and facilitated this by providing news organizations with ready-to-use, off the shelf news stories CMS targeted at television viewing audiences. *Id.* CMS did not indicate that its stories *about the government* were, in fact, prepared *by the government*.¹⁹ *Id.* The critical element of covert propaganda is the concealment of the agency’s role in sponsoring the materials. *Id.* (citing B-229257, June 10, 1988).

Like CMS, ONDCP used a contractor and subcontractors to produce and distribute its VNRs, including the prepackaged news stories, and ONDCP used announcers to narrate agency-approved scripted presentations that were fashioned to simulate a news reporter’s work product. Jurith Letter at 3, 4, and 6. ONDCP also approved the final VNRs, including the prepackaged news stories, prior to distribution. *Id.* at 4. It is not enough to assert, as ONDCP does, that it adequately notified news media organizations of its role in creating its VNRs, *see Id.* at 3, ONDCP, just as CMS had done, targeted only some parts of its VNRs at news media organizations.

By their very nature, prepackaged news stories primarily target television-viewing audiences, not news broadcasters, B-302710, and this is true of ONDCP’s prepackaged news stories. The proof of this is that, like CMS, ONDCP designed and executed its story packages to be indistinguishable from news stories produced by private sector television news organizations. Jurith Letter at 1. ONDCP did this so that they could be seamlessly incorporated into private sector television news

¹⁹ “Importantly, CMS included no statement or other reference in either the story package or the proposed anchor lead-in [remarks] to ensure that the viewing audience would be aware that CMS was the source of the purported news story. The story packages . . . could be reproduced with no alteration thereby allowing the targeted audience to believe that the information came from a nongovernment source or neutral party.” B-302710.

broadcasts without alteration by or significant production cost to the broadcasters. *Id.* ONDCP could rely on the suggested anchor remarks to facilitate the unaltered use of the VNR story packages – introducing the packages as news stories. ONDCP admitted that the news broadcasters were not its target audience, explaining that Congress “anticipates that we [ONDCP] will influence the attitudes and behaviors of our target audiences, and . . . authorizes us to use various media to effect these changes.” *Id.* at 1.

By its own records, ONDCP’s prepackaged news stories reached more than 22 million households, without disclosing to any of those viewers – the real audience – that the products they were watching, which “reported” on the activities of a government agency, were actually prepared by that government agency, not by a seemingly independent third party. Jurith Letter app. E. This is the essence of the “covert propaganda” violation – agency-created materials that are “misleading as to their origin.” B-302504, Mar. 10, 2004 (HHS materials) (quoting B-223098, Oct. 10, 1986). In failing to incorporate into its prepackaged news stories or anchor remarks some disclosure to the effect that they had been prepared by or with the assistance of the agency, ONDCP made it impossible for the targeted viewing audience to ascertain that these stories were produced by the government, and not by the news organization broadcasting them.

ONDCP distinguishes its actions from CMS by stating that Congress authorizes its VNRs and prepackaged news stories. Jurith Letter at 1, 2. ONDCP bases this argument on a provision of the Drug-Free Media Campaign Act of 1998, which, as noted above, charges ONDCP to conduct the National Youth Anti-Drug Media Campaign. 21 U.S.C. § 1801(a). The act authorizes ONDCP to use funds appropriated for the media campaign for, among other things:

“entertainment industry collaborations to fashion antidrug messages in motion pictures, television programming, popular music, interactive (Internet and new) media projects and activities, public information, *news media outreach*, and corporate sponsorship and participation.”

21 U.S.C. § 1802(a)(1)(H) (emphasis added).

ONDCP notes that the appropriations act prohibitions at issue here apply only to publicity or propaganda “not heretofore authorized by Congress.”²⁰ Jurith Letter at 1, 2, 3. ONDCP believes that the authorization of “news media outreach” in section 1802(a)(1)(H) constitutes congressional authorization to exempt ONDCP from the publicity or propaganda prohibitions. *Id.* ONDCP argues that, in order for ONDCP to “influence the attitudes and behaviors of our target audiences, [section 1802(a)(1)(H)] specifically authorizes the Director to influence news reports by

²⁰ See note 16 and the accompanying text, *supra*.

conducting ‘news media outreach.’”²¹ *Id.* at 1. We agree with ONDCP that news media outreach is an authorized activity under the National Youth Anti-Drug Media Campaign, and we agree that section 1802(a)(1)(H) evinces congressional intent that ONDCP influence the attitudes of the public and the news media with respect to drug abuse. Section 1802(a)(1)(H), however, does not relieve ONDCP of the need to comply with the publicity or propaganda prohibitions.

The Drug-Free Media Campaign Act of 1998 does not define news media outreach,²² neither does its legislative history,²³ and our research has not found any other statute

²¹ONDCP also argues that Congress is aware of and supports its practices in this regard because ONDCP has “expressly informed [its] oversight committees on numerous occasions of [its] plans to produce and disseminate [VNRs].” Jurith Letter at 2. ONDCP provided us with samples of letters it sent to the Senate and House Appropriations Committees, and their respective subcommittees on Treasury and General Government, and Transportation, Treasury and Related Agencies. *Id.* app. B. None of those letters warned the committees that ONDCP did not intend to identify itself to the viewing audience as the producer or distributor of the news stories in disregard of the publicity or propaganda prohibitions. Rather, they merely satisfied a statutory requirement that ONDCP notify Congress before funding any media campaign efforts that feature certain highly placed government officials. *See* 21 U.S.C. § 1802(b)(4).

²² *See* 21 U.S.C. ch. 23.

²³ The phrase “news media outreach,” as used in section 1802(a)(1)(H), apparently originated during the congressional conference on the fiscal year 1999 omnibus appropriations act. In 1998, at ONDCP’s request, members included authorization for ONDCP to conduct the National Youth Anti-Drug Media Campaign in a pair of bills that proposed to enact “The Drug Demand Reduction Act.” *See* H.R. 4550, 105th Cong. (1998), and S. 2647, 105th Cong. (1998). *See also* 144 Cong. Rec. S12722-23 (Oct. 20, 1998) (Remarks of Sen. Hatch introducing S. 2647). While these bills would have directed ONDCP to conduct the National Youth Anti-Drug Media Campaign, neither of these bills, as introduced on behalf of ONDCP, used the phrase “news media outreach.” In fact, neither of these two bills included any of the language which was eventually enacted and codified in 21 U.S.C. § 1802(a)(1)(H), as quoted above. A few days later, during the conference on the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, the conferees incorporated into the omnibus a new version of the National Youth Anti-Drug Media Campaign provision. It was in this version that the language in section 1802(a)(1)(H) – including the phrase “news media outreach” – first appeared. *See* Public Law No. 105-277, div. D, title I, subtitle A, 112 Stat. 2681 (Oct. 21, 1998). The conference report did not elaborate on the meaning of this language. *See* H.R. Conf. Rep. No. 105-825, at 1496-97 (1998). Consequently, there is no legislative history to guide our understanding of what Congress intended in this regard.

or case law that uses or defines this term. We have only the plain words, “news media outreach,” and the context in which Congress used them, to guide us.²⁴

In addressing the act’s use of the phrase “news media outreach,” we note that agencies, generally, have the right to disseminate information about themselves and their policies (for example, issuing press releases and holding press conferences), and the more explicit the agency’s statutory authority to do so, the greater the agency’s latitude in doing so. *E.g.*, B-302992, Sept. 10, 2004; B-302504, Mar. 10, 2004 (HHS materials). Consequently, the authority to engage in “news media outreach” must represent more than just the traditional authority to disseminate information about the agency. Clearly, “news media” refers both to the process used to broadcast news to the public, and to the private sector organizations that broadcast the news. The operative term here is “outreach.”²⁵

In the absence of some indication to the contrary, Congress is usually deemed to use words in their common, ordinary sense. *E.g.*, *Mallard v. U.S. Dist. Court for Southern Dist. of Iowa*, 490 U.S. 296, 300-01 (1989). One measure of the common, ordinary meaning of words is a standard dictionary. *See id.* The Merriam-Webster Dictionary defines outreach as “the act of reaching out . . . [or] the extending of services or assistance beyond current or usual limits.”²⁶ The Compact Oxford English Dictionary defines it as “an organization’s involvement with the community.”²⁷ The American

²⁴ *See, e.g.*, B-302973, Oct. 6, 2004 (plain meaning rule); B-290125.2, B-290125.3, Dec. 18, 2002 (“[i]n ascertaining the plain meaning of the statute, we necessarily look to the particular statutory language at issue, as well as the language and design of the statute as a whole”).

²⁵ It has been said that this word is “the leading jargon expression of modern times for practically any social endeavor.” *Mid-Hudson Legal Services v. G & U, Inc.*, 465 F. Supp. 261, 265 n.4 (D. N.Y., 1978). Noted author, journalist, and expert on writing, William Zinsser once characterized this word as “typical of an institution sounding important and saying nothing. The jargon noun ‘outreach’ . . . could mean any kind of reaching out . . . that a reader might want it to mean. It [makes] good text to start the day.” William Zinsser, *Why Johnny’s Teachers Can’t Write*, *New York Times Magazine*, at 30 (Nov. 12, 1978).

²⁶ www.m-w.com/cgi-bin/dictionary (last visited, Oct. 13, 2004).

²⁷ www.askoxford.com/concise_oed/outreach?view=uk (last visited Oct. 13, 2004).

Heritage Dictionary of the English Language effectively ties the two preceding definitions together by defining outreach as “a systematic attempt to provide services beyond conventional limits, as to particular segments of a community.”²⁸

These common dictionaries, certainly, can be said to capture the plain and ordinary usage of this word, and their definitions are consistent with the context in which Congress used it. Section 1802(a)(1)(H) makes funds available for collaborations with the entertainment industry to “fashion” anti-drug messages (in such things as motion pictures, television programs, popular music), and for news media outreach. Using the plain ordinary meaning of “outreach,” as illustrated by the dictionary definitions noted above, it is reasonable to interpret section 1802(a)(1)(H) to mean that Congress intended to allow ONDCP to work closely with news media organizations to help them understand the issues of drug abuse and assist them in the production of appropriate anti-drug news coverage. This interpretation allows ONDCP to undertake much more than what we recognized above as the traditional authority to disseminate information about the agency by such means as press releases and press conferences.

Regardless, nothing in the ordinary meaning of these three words conveys either the authority to act covertly or the authority to act in disregard of a long established and otherwise applicable appropriations act provision like the publicity or propaganda prohibition. Of course, Congress is free to amend or repeal prior legislation, but the rules of statutory construction presume that Congress amends or repeals statutes directly and explicitly. *Morton v. Mancari*, 417 U.S. 535, 550 (1974); *see also Tennessee Valley Authority v. Hill*, 437 U.S. 153, 189-190 (1978). While one statute may implicitly amend or repeal a prior statute, repeals by implication are disfavored, and we must construe statutes to avoid this result whenever reasonably possible. *See, e.g., Tennessee Valley Authority*, 437 U.S. at 189-90; 58 Comp. Gen. 687, 691-92 (1979). Indeed, the presumption is against repeal unless the intention of the legislature to repeal is clear and manifest, *Posadas v. National City Bank*, 296 U.S. 497, 503 (1936), and no reasonable basis exists to give effect to both statutes. B-277905, Mar. 17, 1998.

This presumption is particularly strong where Congress considered and enacted the two provisions in the same Act. Their location in the same act is forceful evidence that Congress intended both of the two provisions to stand separately. B-277905, Mar. 17, 1998. In this regard, we note that the Drug-Free Media Campaign Act of 1998 was enacted as part of the Omnibus Consolidated Emergency and Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, 112 Stat. 2681 (Oct. 21, 1998). That omnibus appropriations act also contained a publicity or propaganda prohibition identical to those at issue in this case. Pub. L. No. 105-277, div. A, title VII, § 642, 112 Stat. 2681 (Oct. 2, 1998). For these reasons, had Congress intended to allow

²⁸ www.bartleby.com/61/65/O0166500.html (last visited Oct. 13, 2004).

ONDCP to pursue news media outreach without regard to these appropriations act provisions on publicity or propaganda, it presumably would have explicitly provided for that. It did not. *Cf.* B-277905, Mar. 17, 1998 (statute providing for water conservation projects did not authorize water conservation projects on military golf courses where Congress also separately banned the use of funds to “equip, operate, or maintain” military golf courses).

ONDCP must comply with both provisions. B-302710, May 19, 2004. ONDCP may produce and distribute prepackaged news stories under section 1802(a)(1)(H), so long as ONDCP includes in them some clear disclosure to the viewing audience that this material was prepared by or in cooperation with ONDCP. This interpretation allows ONDCP to easily achieve the intent of section 1802(a)(1)(H), while simultaneously accommodating the intent of the publicity or propaganda prohibition.²⁹ Neither the language nor the history of section 1802(a)(1)(H) make any mention of the publicity or propaganda prohibitions and it does not necessarily follow from the plain meaning of the words Congress used that it intended ONDCP to conduct its news media outreach covertly. Moreover, there is no reason to think that ONDCP cannot provide appropriate disclosures in its suggested anchor remarks and prepackaged news stories, nor that such disclosures would necessarily be inconsistent with the purposes of news media outreach. Thus, there is no reasonable basis upon which to conclude that Congress intended to exempt ONDCP’s VNRs and prepackaged news stories from the publicity or propaganda prohibitions. Accordingly, ONDCP’s prepackaged news stories constitute covert propaganda in violation of the fiscal year 2002, 2003, and 2004 publicity or propaganda prohibitions.

ONDCP’s use of appropriated funds in violation of the publicity or propaganda prohibition also constitutes a violation of the Antideficiency Act, 31 U.S.C. § 1341(a). The Antideficiency Act prohibits making or authorizing an expenditure or obligation that exceeds available budget authority. B-300325, Dec. 13, 2002. Because ONDCP has no appropriation available for the production and distribution of materials that violate the publicity or propaganda prohibition, ONDCP violated the Antideficiency Act, 31 U.S.C. § 1341(a). *Cf.* B-302170, May 19, 2004. Under 31 U.S.C. § 1351, ONDCP must report its Antideficiency Act violations to the President and the Congress.

²⁹ *See also* B-302710, May 19, 2004:

“In a modest but meaningful way, the publicity or propaganda restriction helps to mark the boundary between an agency making information available to the public and agencies creating news reports unbeknownst to the receiving audience. . . . In limiting domestic dissemination of the U.S. government-produced news reports, Congress was reflecting concern that the availability of government news broadcasts may infringe upon the traditional freedom of the press and attempt to control public opinion. *See* B-118654-O.M., Feb. 12, 1979.”

Recent amendments to 31 U.S.C. § 1351 also require ONDCP to submit a copy of that report to this Office. 31 U.S.C. § 1351, *as amended by* Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. G, title II, § 1401, 118 Stat. 2809, ___ (Dec. 8, 2004) (“[a] copy of each report [required by 31 U.S.C. § 1351] shall also be transmitted to the Comptroller General on the same date the report is transmitted to the President and Congress”). Office of Management and Budget Circular No. A-11 provides guidance on what information to include in Antideficiency Act reports.³⁰

Use of the term “Drug Czar”

ONDCP’s VNRs repeatedly characterize the Director of ONDCP as the nation’s “Drug Czar.” The law does not bestow that title on the ONDCP Director. *See* 21 U.S.C. §§ 1701-1703. You ask whether this characterization constitutes “self-aggrandizement” or “puffery” in violation of the applicable publicity or propaganda appropriations act prohibitions. We conclude that it does not.

As noted above, we have identified some agency activities that are subject to the appropriations act restriction on publicity or propaganda. B-302504, Mar. 10, 2004 (HHS materials). We discussed covert propaganda above. Another prohibited activity is “self-aggrandizement” or “puffery.” *See, e.g.*, B-301022, Mar. 10, 2004 (ONDCP open letter); B-302504, Mar. 10, 2004 (HHS materials). Self-aggrandizement is “publicity of a nature tending to emphasize the importance of the agency or activity in question.” *Id.* (quoting B-212069, Oct. 6, 1983). Under this prohibition, an agency, for example, may not use appropriated funds to issue press releases that attempt “to persuade the public as to [its] importance . . . as a Government agency.” B-212069, Oct. 6, 1983 (OPM press releases stating the administration’s position on pending legislation are unobjectionable). *See also* B-302992, Sept. 10, 2004 (Forest Service brochure and video presentation defending controversial agency policies did not attempt to persuade the public of the importance of the agency or its officials); B-302504, Mar. 10, 2004 (HHS materials advising beneficiaries of statutory changes found unobjectionable because they did not attribute the changes to HHS); B-284226.2, Aug. 17, 2000 (brochure on the consequences of reducing HUD funding did not “tend to emphasize the importance of HUD or HUD programs such that they constitute ‘puffery’ or ‘self-aggrandizement’”).

ONDCP maintains that its use of the term “Drug Czar” is not unlawful self-aggrandizement. Jurith Letter at 5. According to ONDCP, this term is commonly used in the media and by members of Congress. *Id.* ONDCP states that it was first

³⁰ Agencies must report violations found by this Office, even if the agency disagrees with the finding. OMB advises agencies, “If the agency does not agree that a violation has occurred, the report to the President and the Congress will explain the agency’s position.” OMB Circ. No. A-11, ¶ 145.8 (July 2004).

published in a 1982 news story by United Press International which reported that “Senators . . . voted 62-34 to establish a ‘drug czar’ who would have overall responsibility for U.S. drug policy.” *Id.* Since then, ONDCP asserts, the term has been used in approximately 25,000 newspaper articles. *Id.*

While we cannot confirm many of the specifics of ONDCP’s response, our own research and analysis lead us to agree that ONDCP’s use of the title “Drug Czar” in its VNRs and prepackaged news stories is unobjectionable. We found administrative opinions and judicial decisions dating back to 1989 which acknowledge the use of this title in legislative action and related media coverage. *See Gun South, Inc. v. Brady*, 711 F. Supp. 1054, 1056-57 (D. Ala. 1989) (noting “the media immediately began to refer to [the ONDCP Director] as the ‘Drug Czar’”); 13 Op. Att’y Gen. 188, 192 (1989) (noting repeated statements in the legislative history of the Anti-Drug Abuse Act of 1988 regarding the need to create a “drug czar”). On the Internet, we also found speeches and press releases by members of Congress, and a wide variety of other web sites, that routinely use this term.³¹

Clearly, this term has enjoyed common and widespread usage in both the government and the private sector. ONDCP’s usage of the title “Drug Czar” in its VNRs and prepackaged news stories is consistent with this practice. Simply put, ONDCP uses the term as nothing more than a sobriquet – a short hand means of referring to the Director of ONDCP. ONDCP does not use this characterization to persuade the public as to the importance of the director, the agency, or its programs, and this practice does not, in our view, violate the publicity or propaganda provisions contained in the 2002, 2003, or 2004 appropriations. B-301022, Mar. 10, 2004 (ONDCP open letter); B-302504, Mar. 10, 2004 (HHS materials).

CONCLUSION

While ONDCP is authorized by the Drug-Free Media Campaign Act of 1998 to engage in “news media outreach,” ONDCP is also required to comply with applicable appropriations act publicity or propaganda prohibitions. Those prohibitions require ONDCP to disclose to the television viewing audience ONDCP’s role in the production and distribution of its news stories. There is no reasonable basis in the law to find that Congress exempted ONDCP from these prohibitions. Since ONDCP

³¹ *See, e.g.*, <http://biden.senate.gov/press/release/01/10/2001A10B56.html>; http://mccain.senate.gov/index.cfm?fuseaction=Newscenter.ViewPressRelease&Content_id=684 (Sen. McCain press release); <http://thomas.loc.gov/cgi-bin/query/z?r101:H13SE9-19>: (Congressional Record, Sept. 13, 1989); www.keepmedia.com/pubs/USNewsWorldReport/1997/02/10/226758?extID=10032&olID=213 (news magazine); www.november.org/razorwire/rzold/25/page9.html (commentary); <http://cannabisnews.com/news/thread18328.shtml> (commentary); www.mapinc.org/drugnews/v01/n1761/a05.html (news coverage) (last visited, Oct. 22, 2004).

did not provide the required disclosures, ONDCP's prepackaged news stories constituted covert propaganda in violation of publicity or propaganda prohibitions of the fiscal year 2002, 2003, and 2004 appropriations acts. Moreover, because ONDCP had no appropriation available to produce and distribute materials in violation of each of these publicity or propaganda prohibitions, ONDCP also violated the Antideficiency Act, 31 U.S.C. § 1341. ONDCP must report these violations to the Congress and the President, and submit a copy of that report to this Office. 31 U.S.C. § 1351, *as amended by* Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. G, title II, § 1401, 118 Stat. 2809, ___ (Dec. 8, 2004).

On the other hand, ONDCP's use of the term "Drug Czar" in its VNRs and prepackaged news stories does not constitute unlawful self-aggrandizement. This term has long been commonly used as a short-hand means of referring to ONDCP's Director. ONDCP did not use this characterization to persuade the public of the importance of the director, the agency, or its programs. This practice does not violate the publicity or propaganda provisions contained in the 2002, 2003, or 2004 appropriations.

If you have any questions regarding this matter, please contact Susan A. Poling, Managing Associate General Counsel, at 202-512-2667, or Thomas H. Armstrong, Assistant General Counsel, at 202-512-8257.

Sincerely yours,

/signed/

Anthony H. Gamboa
General Counsel

DIGEST

1. The Office of National Drug Control Policy (ONDCP) produced and distributed prepackaged news stories as part of some video news releases it issued under the Drug-Free Media Campaign Act of 1998, Pub. L. No. 105-277, div. D, title I, subtitle A, 112 Stat. 2681-752 (Oct. 21, 1998), *codified in* 21 U.S.C. ch. 23. Because ONDCP did not identify itself to the viewing audience as the producer and distributor of those prepackaged news stories, ONDCP's news stories constituted covert propaganda and violated publicity or propaganda prohibitions contained in its 2002, 2003, and 2004 appropriations acts.
2. The use by the Office of National Drug Control Policy (ONDCP) of the term "Drug Czar" to describe the Director of ONDCP in some video news releases it issued under the Drug-Free Media Campaign Act of 1998, Pub. L. No. 105-277, div. D, title I, subtitle A, 112 Stat. 2681-752 (Oct. 21, 1998), *codified in* 21 U.S.C. ch. 23, does not constitute unlawful self-aggrandizement because ONDCP does not use the term to promote some sense of importance, accomplishment, respect, or authority for the Director, whether as an individual or as an officer of the government.
3. The Office of National Drug Control Policy (ONDCP) must report violations of the Antideficiency Act, 31 U.S.C. § 1341, pursuant to 31 U.S.C. § 1351, because ONDCP had no appropriation available to produce and distribute materials in violation of publicity or propaganda prohibitions contained in its 2002, 2003, and 2004 appropriations acts.