



DEC 23 1988

Office of the Assistant Attorney General

Washington, D.C. 20530

December 22, 1988

Mr. Michael Davidson
Senate Legal Counsel
624 Hart Senate Building
Washington, D.C. 20510

Dear Mike:

The constitutionality of Section 501 of the United States Information and Educational Exchange Act of 1948 (the "Smith-Mundt Act"), Pub. L. 80-402, 22 U.S.C. § 1461, has been challenged in Gartner v. United States Information Agency, No. 88-337-E (S.D. Iowa). This letter is intended to advise you of the position we expect to take in this action.

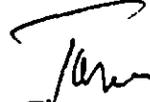
Section 501 precludes the domestic dissemination of certain information that the United States Information Agency ("USIA") disseminates abroad. The statute also provides that this information shall be made available for examination only at the Agency. Plaintiffs, including the publisher of The Ames Daily Tribune, claim that the statute unconstitutionally prevents them from receiving and disseminating this information in the United States.

We are filing a dispositive motion arguing that the First Amendment does not guarantee public access to transcripts of information disseminated abroad by the Agency. Thus, we are defending the Agency's refusal to provide members of the public with copies or transcripts of program materials disseminated abroad.

We are also asserting jurisdictional defenses to plaintiffs' claim that section 501 bars them from disseminating USIA information within the United States. In the event, however, that the court reaches the merits of this aspect of plaintiffs' claim, we are arguing that section 501 effectively precludes only the Agency from disseminating this information domestically. Although the legislative history suggests a broader purpose, we do not believe that it would be constitutionally permissible to take any action to prohibit the public, including the media, from domestically disseminating information already in its hands. The USIA does not permit members of the public to photocopy information that they examine at the Agency, but the American public can gain access to Agency information disseminated abroad through a

variety of means, such as short wave radios, contacts abroad, or simply by recalling or taking notes of information examined at the Agency. Once the public has such information, we do not believe Congress can constitutionally prohibit its dissemination.

Sincerely yours,



Thomas M. Boyd
Assistant Attorney General