



Chapter 23

Conduct of CIA Officials in November 1986

Independent Counsel investigated the concerted conduct of senior CIA officials in response to early congressional inquiries into the Iran/contra affair in November 1986. This investigation was substantially complete as of November 17, 1991, by the end of the statutory limitations period for the conduct under investigation. Upon completion of this investigation, Independent Counsel decided not to seek additional indictments.¹ The chief reason was the unavailability of three key witnesses -- former CIA Deputy Director for Operations Clair E. George, his former special assistant, Norman H. Gardner, Jr., and most importantly, former CIA Director William J. Casey.²

¹ At the time Independent Counsel reached this decision, one former CIA official, Clair E. George, was under indictment for perjury committed in December 1986. George's December 1986 statements were consistent with false statements he made during November 1986. For reasons that will be described below, Independent Counsel declined to bring charges for George's November 1986 statements.

² By all accounts, despite showing some signs of the illness that eventually took his life, Casey was a commanding figure at the Agency during most of November 1986. He also knew, or was in a position to know, about aspects of the Iran initiative that others in the CIA professed to have never learned. In short, Casey was a man whose potential knowledge of the Iran initiative and control of the CIA was such that putative defendant could have cast doubt on a Government case concerning CIA conduct in November 1986 by attributing responsibility to the deceased Casey.

Congressional Inquiries Into the Iran Initiative

After the secret U.S. arms sales to Iran became exposed in the first week of November 1986, they quickly caught the attention of the Congress. They contained at least three troublesome aspects: (1) The sale of arms to a "terrorist state" was contrary to express policy, and in violation of export restrictions; (2) The link between the arms sales and the release of American hostages also contradicted the stated Reagan Administration position of not dealing with kidnappers; (3) The Administration had failed to inform Congress of the initiative.³

³ 50 U.S.C. 501 (1982). On congressional reaction to news of the Iran initiative, see Hamilton, Poindexter Trial Testimony, 3/19/90, pp. 2177-78; "Hill Probes of NSC Planned," The Washington Post, 11/10/86, A1; "Congress Members Predict Move to Curb President's Secret Diplomacy," Los Angeles Times, 11/15/86, Pt. I, 9.

The Reagan Administration first responded to these reports with a series of public denials. When this strategy failed, President Reagan decided to address the nation on November 13, 1986. In anticipation of this address, four congressional leaders received a briefing on November 12, 1986, about the arms sales.⁴ President Reagan opened the briefing by assuring the leaders that the sales were legal and that arms had not been exchanged for hostages. National Security Adviser John M. Poindexter described the Iran initiative without disclosing -- and sometimes affirmatively disclaiming -- activities in support of the arms sales prior to a Presidential covert-action Finding dated January 17, 1986. Casey was among those present.⁵

⁴ By this time, the House Permanent Select Committee on Intelligence (HPSCI) had called for briefings on the Iran initiative by Poindexter, Shultz, Secretary of Defense Weinberger, and Casey. (Letter from Hamilton to Poindexter, 11/10/86, North Trial, GX 119.)

5 For a more complete discussion of this briefing, see Reagan and Meese chapters.

CIA Briefing

On November 13, shortly before the President's speech, Poindexter and Casey briefed five senators and three congressmen on the speech and the January 17 Finding. Once again Poindexter denied any U.S. Government activity before the January 17 Finding "except talk," while Casey remained largely silent. By the next day, however, it was clear to Casey that the Administration's briefings and the President's speech had not satisfied the intelligence oversight committees.⁶ Casey contacted Deputy National Security Adviser Alton G. Keel for guidance on what to tell the House and Senate intelligence committees in scheduled appearances the following week. Keel passed along Casey's request to Poindexter, who in turn directed the National Security Council's operating officer on the Iran project, Lt. Col. Oliver L. North, to respond to the director's queries.⁷

6 November 14 was also the day that the CIA formally notified the intelligence committees of the January 17 Finding.

7 PROFs Note from Pearson to Poindexter, 11/14/86, AKW 021641; North Notebook, AMX 001684; DCI Phone Log, 11/14/86, ER 320.

On Saturday, November 15, 1986, Casey spoke with Senators Durenberger and Leahy of the Senate Select Committee on Intelligence (SSCI). Casey and Durenberger agreed that committee staffers would meet with CIA personnel on Tuesday, November 18, 1986, to receive a preliminary briefing on the initiative and to advise the CIA of SSCI's concerns. This briefing would be the first expansive CIA presentation to Congress by persons closely associated with the Iran operation.⁸

8 George, Select Committees Deposition, 4/24/87, pp. 126-27. By November 18, the briefing had been expanded to include staff from HPSCI.

The CIA briefed committee staffers on the morning of November 18 at CIA headquarters. CIA Deputy Director for Operations Clair E. George was the principal speaker, supported by the deputy chief of the CIA's Near East Division; ⁹ the Director of the Office of Congressional Affairs, David Gries; CIA comptroller, Daniel Childs; an executive assistant to Casey (EA/DCI); ¹⁰ two special assistants to George, Norman H. Gardner, Jr., and CIA Subject #2; ¹¹ counsel to the Operations Directorate (DO), W. George Jameson; and the head of a DO congressional liaison unit, George W. Gerner. The NSC's director of legislative affairs, Ronald K. Sable, also attended.

⁹ The deputy's identity is classified.

¹⁰ The identity of Casey's assistant is classified. In *United States v. George*, the assistant was called CIA Officer #8.

¹¹ The identity of this officer is classified. It is disclosed in the Classified Appendix to this chapter.

While the briefing was not transcribed, Gerner took notes. These notes indicate that from the outset of the briefing, Clair George attempted to limit himself to describing his directorate's support to what he called "the White House initiative to Tehran," and tried to avoid discussing the legal or political wisdom of the project. George nevertheless stated this about the CIA's involvement:

-- In prepared remarks, George implied that Iranians deposited funds for American arms directly into a CIA account. In fact, Iranian payments passed through several hands (including those of retired Maj. Gen. Richard V. Secord) before reaching CIA accounts.

-- In response to a staffer's question, George stated that, "to the best of his knowledge," a CIA proprietary was used on only one occasion in the course of the initiative. Later George stated that

there was no CIA support to the initiative prior to 1986. In fact, a CIA proprietary was also used to ship Israeli HAWK missiles to Iran in November 1985.

-- In response to press reports of arms shipments before the January 17 Finding, George responded that this ``could be true, but it wasn't us." CIA Director of Congressional Affairs David Gries echoed George's remarks. Again, these statements ignored the November 1985 HAWK shipment carried by a CIA proprietary.¹²

¹² Gerner, Memorandum for the Record, 11/18/86, ER 29688-95. Notes taken by two SSCI staffers, Edward Levine and Daniel Finn, corroborate Gerner's account of the briefing. (Finn, Memorandum for the Record, Subject: Iranian Arms Deal, 11/19/86, SSCI 86-3964; Levine, Memorandum for the Record, Subject: CIA Briefing on support to the Iran Arms Program, 11/18/86, SSCI 86-3958.)

The Director Testifies

The next congressional briefings by the CIA came on Friday, November 21, 1986, in Casey's appearances before HPSCI and SSCI.¹³ Casey came before each committee with a prepared statement and a retinue of advisers, along with representatives from the State and Defense departments.¹⁴ In both appearances, Casey was the primary spokesman. In his opening remarks to HPSCI, Casey volunteered that ``[t]he CIA's involvement [with the Iran initiative] began in late November of 1985" when the CIA was asked to recommend an airline to transport ``bulky cargo to an unspecified location in the Middle East." Casey suggested that the CIA's associate deputy director for operations, Edward Juchniewicz, and the deputy director of central intelligence at the time, John McMahon, had approved the flight, although McMahon ``directed that we would not provide any future flights into Iran in the absence of a Finding." ¹⁵

¹³ Both of these appearances came on the heels of two separate briefings of the members of the intelligence committees by Poindexter. Gardner attended these briefings and remained silent as Poindexter lied about prior presidential approval for the November 1985 HAWK shipment. Gardner later denied that he went to these briefings to insure that Casey and Poindexter were saying the same thing. (Gardner, Poindexter Trial Testimony, 3/23/90, pp. 2676-79, 2689-91.)

¹⁴ Casey appeared before HPSCI and SSCI with these CIA officers: George; CIA General Counsel David Doherty; Comptroller Childs; National Intelligence Officer Charles Allen; CIA Subject #2; Gries; and another member of Gries's staff. Gardner joined Casey for his afternoon HPSCI session; George Jameson joined Casey for his SSCI appearance. Also present with Casey before HPSCI and SSCI were Under Secretary of State Michael H. Armacost and his executive assistant; Assistant Secretary of State Richard W. Murphy; State Department Legal Adviser Abraham D. Sofaer (HPSCI morning session only); two deputy assistant secretaries of state; Assistant Secretary of Defense Richard Armitage; and a Department of Defense legislative affairs representative. John Bolton of the Justice Department attended the SSCI session only.

¹⁵ Casey, HPSCI Testimony, 11/21/86, pp. 5-6. In early December 1986, Casey corrected this testimony to say that DDCI McMahon had not approved the flight. (Casey, Defense Appropriations Subcommittee Testimony, 12/8/86, p. 10.)

Casey went on to describe briefly the financial mechanics of the arms sales:

First, the Iranian intermediary would deposit funds in an Israeli account, the funds would then be transferred to a sterile US-controlled account in an overseas bank. Using these funds the CIA would work with the Army Logistics Command to obtain any material and the material would then be transported to Israel for future shipment to Iran.

Casey fielded questions from HPSCI members, House Majority Leader James Wright and House Minority Leader Robert Michel. The questioning of Casey went past the allotted time, forcing

HPSCI to ask Casey to return that afternoon.¹⁶

¹⁶ Casey, HPSCI Testimony, 11/21/86, pp. 11, 51.

Casey's intervening appearance before SSCI was marked by much sharper exchanges than those that had occurred before HPSCI. After Casey repeated his HPSCI opening statement, Senate Minority Leader Robert Byrd raised the possibility of placing all of the witnesses under oath. Chairman Durenberger denied the request and the questioning of Casey began with Sen. Leahy. Leahy had attended a briefing by Poindexter that morning and had learned that there had been activities in 1985 -- prior to the signing of a Presidential Finding authorizing such activity. Leahy quickly inquired about the November 1985 HAWK shipment and the CIA's contemporaneous knowledge of its contents. Casey explained that the CIA did not know of the contents until some time in January 1986, but pleaded that he was uncertain whether the air crew had learned earlier than that. Leahy pressed the issue, because he could not square the CIA's attributing the flight to the NSC with what Poindexter had told him: that the NSC had just learned about the flight.¹⁷

¹⁷ Casey, SSCI Testimony, 11/21/86, pp. 7-26, 31-36.

Casey returned to HPSCI for further questioning at 1:50 p.m. Chairman Hamilton sought a summary of "all the arms transfers that reached Iran pursuant to this initiative, both direct transfers from the United States, which may have gone through Israel, but nonetheless were basically direct, and transfers by the Israeli government to Iran in which the President approved." At Clair George's suggestion, CIA Subject #2 recited a list of shipments. This list included the September 1985 Israeli shipment of TOW missiles to Iran, the February, May, and November 1986 TOW shipments, and the May 1986 U.S. shipment of HAWK spare parts to Iran. CIA Subject #2 did not include, however, the November 1985 U.S.-assisted shipment of 18 HAWK missiles to Iran. CIA Subject #2 also did not disclose the shipment upon closer questioning:

The Chairman. Now, what about the amount of arms sent from Israel to Iran?

Mr. Childs. We don't have that.

Mr. George. We don't have that, Mr. Chairman.

The Chairman. Other than these?

CIA Subject #2. Other than the September 1985 shipment of TOWs we don't know.

The members of HPSCI also questioned the CIA on the extent of presidential approval for Israeli actions in the initiative, including the November 1985 HAWK shipment:

The Chairman. Well, look, there have been reports in the press that I have seen, \$40, \$60 million has been sent in by Israel. Under the law Israel could not ship those without the approval of the President. Am I right about that?

Mr. [Richard] Armitage [Assistant Secretary of Defense]. That is right.

The Chairman. How many times did the President give his approval for Israel to ship arms into Iran?

Mr. Allen. None to our knowledge, sir.

The Chairman. The President did not approve any arms shipments by Israel directly into Iran?

Mr. Allen. We don't know.

Mr. George. We don't know.

Mr. Allen. We don't know that and --

Mr. George [sic]. What do you mean we don't know it?

Mr. Allen. We don't know.

The Chairman. You mean the President hasn't told you?

Mr. Allen. We have no knowledge of that as part of this project whatsoever.

Mr. George. We received the missiles, we transported them to Israel and away they go. We don't know whether or what transpires. We bring them to Kelly Air Force Base I should say.¹⁸

¹⁸ George, HPSCI, 11/21/86, pp. 75-79.

Casey returned to CIA headquarters, angry that his Directorate of Operations had not served him well in preparing his testimony. Gardner reported to Poindexter later that afternoon that ``nothing that we did up there today has done anything to answer their concerns about the whole Iran activity."¹⁹

¹⁹ Doherty, FBI 302, 10/30/91, p. 19; Gardner, Poindexter Trial Testimony, 3/23/90, pp. 2695-96.

The CIA's Incorrect Statements

At least seven of the statements described above were incorrect:

- (1) George's statement to intelligence committee staff on November 18, 1986, that the Iranians deposited funds directly into a CIA account for the purchase of arms;
- (2) George's twin denials that same day of any CIA support for the Iran initiative prior to the January 17 Finding;
- (3) David Gries's denial that there had been CIA support for the Iran arms sales prior to the January 17 finding;
- (4) The prepared remarks of Casey on November 21, 1986, that CIA involvement with the arms sales began in November 1985;
- (5) Additional prepared remarks by Casey, echoing George's statement about the flow of funds;
- (6) CIA Subject #2's failure to include the November 1985 HAWK shipment in the list that he recited to HPSCI on November 21, 1986, of all of the arms shipments by the Israelis and the Americans in support of the initiative; and
- (7) Allen and George's denials before HPSCI of knowing whether the President had approved Israeli arms shipments prior to the January 17 Finding.

As in most other investigations involving illegal false statements, the key questions in assessing the liability of senior CIA officials for these statements were, first, whether each official knew at the time he spoke that his statement was false, and second, whether that official deliberately made that statement. The answers to some of these questions are found upon close examination of what happened at the CIA prior to Casey's appearances before the intelligence committees on November 21, 1986.

Disclosure and Alarm

According to Charles Allen, the National Intelligence Officer for Counter-Terrorism and the CIA analyst who worked most closely with the Iran initiative, the CIA's first response to the public disclosures of the initiative in early November 1986 was no response. Allen departed on a trip to Israel, during which he met with the Israeli representative in the 1986 arms sales, Amiram Nir. Nir quizzed Allen on how the United States would respond to the disclosures, and Allen was chagrined to admit that the United States apparently intended to do nothing.²⁰

²⁰ Allen, FBI 302, 11/6/91, p. 3. On the day before leaving on this trip, Allen met at the Key Bridge Marriott for the third time with Roy Furmark, an associate of arms-sales financier Adnan Khashoggi. Furmark earlier had given Allen evidence that profits from the Iran arms sales may have been diverted to other projects, including the contras. Furmark told Allen that investors in the initiative who had not been paid were threatening to expose it. (Memorandum from Allen to Casey, 11/7/86, ER 46449-52.)

Unbeknownst to Allen, some in the U.S. Government, even in the CIA, were preparing to respond to the growing firestorm. Poindexter asked North on November 5, 1986, to prepare a chronology of involvement in the initiative. The next day, after a morning staff meeting, the chief of the CIA's Iran Branch (C/Iran) 21 -- who was the CIA's day-to-day operational contact with the NSC in the late stages of the initiative -- decided on his own that he would prepare a chronology of CIA involvement. C/Iran's chronology contained generally accurate statements about CIA involvement in the Iran arms sales, including a note that CIA activities began in September 1985. On the advice of his immediate superior, Chief of the CIA's Near East Division Thomas Twetten, C/Iran personally delivered a copy of his chronology to North on November 6. Upon reading the section concerning the CIA's 1985 activities, North expressed amazement that C/Iran wrote about it, since "you were not involved." ²²

²¹ The identity of this officer is classified. He testified as C/Iran Branch #2 in the second George trial.

²² Subject: Background and Chronology of Special Project, 11/6/86, ER 24517-20; Earl Note, 11/5/86 & 11/6/86; Earl, FBI 302, 4/21/87, p. 2; Earl, Select Committees Deposition, 5/30/87, pp. 53-55; Earl, North Trial Testimony, 3/23/89, pp. 5546-47; C/Iran, FBI 302, 10/29/91, pp. 6-7; WAVE Records, ALU 049209-17; 11/6/86, ER 18195-98; AKW 10038-45; North, Poindexter Trial Testimony, 3/13/90, pp. 1443-47; Earl Note, 11/10/86; Earl, Select Committees Deposition, 5/30/87, pp. 76-77.

For their part, Casey and Deputy CIA Director Robert Gates' stated concerns about the arms sales focused on their legality. Casey and Gates met with Poindexter on the morning of November 6, 1986, to discuss what to do about allegations that profits from Iranian arms sales had been diverted to other covert projects. According to Gates, Casey proposed that Poindexter raise these allegations with White House Counsel Peter Wallison. Poindexter said he would take up the matter with NSC Counsel Paul B. Thompson instead. After the meeting, Gates returned to CIA headquarters and ordered CIA General Counsel David Doherty to take his first look at the January 17, 1986 Finding.²³

²³ Gates 1986 Appointment Book; DCI Schedule for 11/6/86; Gates SSCI Testimony, 12/4/86, pp. 23-24, 51, 53-59; Gates, Grand Jury, 6/26/87, pp. 23-25; Gates, SSCI Deposition, 7/31/87, pp. 36-39; Doherty Notes, 11/6/86, ER 46562; Doherty, FBI 302, 10/30/91, pp. 2-3; Doherty, FBI 302, 11/13/87, pp. 3-4; Doherty, SSCI Testimony, 12/8/86, p. 55. Gates asked the NSC for the Finding during the now famous North-Casey-Gates luncheon of October 9, 1986. See Gates chapter. Inexplicably, it took the NSC several weeks to get the Finding to Gates. (Gates, SSCI Testimony, 12/4/86; Gates, Grand Jury, 6/26/87, pp. 9-10; Gates, SSCI Deposition, 7/31/87, p. 26; EA/DCI, FBI 302, 9/12/91, pp. 6-7.)

The day after C/Iran wrote his chronology, he revised and sent it to Associate Deputy Director for Operations Bertram Dunn and Casey.²⁴ What Dunn and Casey did with the chronology is not known. Dunn later denied having seen the chronology or having had any role in preparing CIA responses to inquiries about the Iran initiative. CIA Subject #2, who worked as closely with Dunn as he did with Clair George, stated that he did not recall seeing the chronology -- with its explicit references to CIA activities in 1985 -- at the time he was drafting testimony for George in November 1986.²⁵

24 DO 44631-35 and DO 83915-18. These papers are identical. Independent Counsel obtained the first from a ``DDO Iran Soft File" recovered from Clair George's safe. The second of these papers was found in a working file labeled ``DO Iran/Contra Investigation," along with other papers of Gardner. Both papers bear C/Iran's handwritten note that his November 7 chronology was passed to Dunn and Casey on 11/7/86. C/Iran could not recall who asked him to send his chronology to these men. (C/Iran, FBI 302, 10/29/91 p. 71.)

25 Dunn, FBI 302, 9/25/91, p. 17; CIA Subject #2, FBI 302, 9/17/91, p. 4.

Preparing for Clair George's Briefing

During the week of November 9, 1986, it became clear to Casey that the controversy surrounding the Iran initiative would not abate. Organized efforts thus began to write the story of the Agency's involvement with the arms sales.²⁶ After a senior staff meeting on November 12, Gates asked Doherty to join George, Twetten, and him for a brief meeting. Doherty and Gates listened while George and Twetten summarized the CIA's involvement in the Iran initiative -- activities that Doherty believed were consistent with the Finding he had read the previous week.²⁷

26 Casey also consulted with other senior Administration officials on the text of President Reagan's first public statements on the initiative and sat in on the President's first briefing of congressional leaders on the sales. See Regan chapter for a fuller discussion of the preparation of the President's statement; Letter, Casey to Poindexter, 11/10/86, ER 24035 (transmitting draft of statement); DCI Schedule, 11/10/86, ER 326-27; Letter, Casey to Poindexter, 11/10/86, ER 24032-34 (transmitting revised two-page draft statement); AKW 20674-77 (same, recovered from NSC); DCI Schedule, 11/12/86, ER 323-24; Presidential log, 11/12/86, ALU 027752.

By November 12, Casey and Gates had concluded that they could not respond to Congress unless the President lifted his order in the January 17 Finding that prohibited congressional notification of it. Poindexter agreed to end the ban. (Draft letter from Casey to Poindexter, 11/12/86, ER 27233; Gates, Grand Jury, 6/26/87, p. 25; Gates, SSCI Deposition, 7/31/87, p. 39; Gates, Grand Jury, 5/1/91, pp. 200-01.)

27 Gates 1986 Appointment Book; Doherty, SSCI Testimony, 12/8/86, p. 55-56; Doherty, FBI 302, 11/13/87, p. 3; Doherty, FBI 302, 10/30/91, pp. 3-4. While Doherty could not recall why he was asked to this meeting, he believed that it prompted him to ask others within the CIA's Office of General Counsel (OGC) to begin drafting their own chronologies. It may have been at this point that an OGC lawyer, Bernard Makowka, told Doherty about pre-1986 activities and his involvement in the preparation of a retroactive finding that covered them. (Makowka, FBI 302, 10/11/91, p. 2.)

Charles Allen returned from Israel on November 12 to find that the Agency had gone from nonchalance to panic. His colleague on the Iran initiative, George Cave, had returned from meetings with the Iranians in Geneva, and was now in daily contact with the White House in the preparation of the President's November 13 address. Clair George for his part instructed CIA Subject #2 on November 13 to prepare a chronology and an opening statement of the Directorate of Operations's involvement in the initiative, in anticipation of a request for CIA testimony.²⁸

28 Allen, FBI 302, 11/6/91, pp. 3-4; WAVE records, 9/28/87; Cave, Grand Jury, 1/15/88, pp. 171-172; Cave, Select Committees Deposition, 4/17/87, pp. 170-71; CIA Subject #2, FBI 302s, 3/4/88, p. 2 & 9/17/91, p. 4.

CIA Subject #2 claimed not to have known much about the Iran arms sales at the time George directed him to start drafting. Subject #2 thus sought out Twetten, who had been involved with the initiative since January 1986. Twetten was scheduled to leave the country on November 15, and so he turned over much of the work to C/Iran.²⁹

²⁹ CIA Subject #2, FBI 302, 9/17/91, p. 4; C/Iran, FBI 302, 10/29/91, p. 7; CIA Chronology, 2/27/87.

Over the next few days (approximately November 13 through November 15) Twetten had C/Iran draft and revise several documents concerning CIA involvement in the arms sales. For some reason, all of these documents focused solely on CIA activities following the January 17, 1986 Finding.³⁰ This decision or understanding was in effect at least through Clair George's briefing of intelligence committee staff on November 18. These documents also were the source for George and Casey's later misstatements that the Iranians had deposited payments for arms directly into a CIA bank account -- omitting Secord. This omission caused George Cave, who read the statements prior to November 18, to note in the margins of his copies of these documents: "Not True." ³¹

³⁰ In his October 1991 interview with Independent Counsel, C/Iran vaguely recalled instructions from Twetten that he should limit his chronology to those events occurring after the CIA's Near East Division, the Division for which both C/Iran and Twetten worked, began supporting the Iran initiative. (C/Iran, FBI 302, 10/29/91, p. 8.) CIA Subject #2 alleged that the congressional committees had limited their request for information to 1986 activities. (CIA Subject #2, FBI 302, 9/17/91, p. 15.) Independent Counsel found no evidence to support CIA Subject #2's claim. At the 1990 trial of Poindexter, Gardner claimed that the omission of 1985 references in these documents was not part of an effort to sell a "cover story" to the Congress. (Gardner, Poindexter Trial Testimony, 3/23/90, pp. 2647-51.)

³¹ Draft chronologies DO 44631, ER 29709, ER 18203, ER 18200, ER 18199 & ER 18202; Cave, Grand Jury, 11/22/91, pp. 13-14.

Clair George reviewed C/Iran's papers prior to his briefing of intelligence committee staff on November 18.³² George's handwritten notes on these documents are telling. George was familiar enough with the flow of funds from the Iranians to write "Gorba -> Secord -> CIA Account -> DOD" next to one of C/Iran's descriptions of the flow, and he replaced the words "Iranians deposit" in two other descriptions with the words "Channel deposit" and "System deposit." George knew or was informed of the minutiae of the initiative well enough to insert, for example, the number of communications officers and false passports provided to McFarlane's mission to Tehran in May 1986.³³

³² The evidence includes C/Iran's comments on the draft statement ER 18203, which indicate that a draft had been passed to the DDO's office sometime during the weekend of November 15-16; statements made on documents prepared on November 17 that reflect George's comments on C/Iran's drafts; and George's near-verbatim recitation of the contents of one C/Iran document during the staff briefing. See DO 44620-17, which were retrieved from a "DDO Iran Soft File" and bear George's handwriting. In his second trial, George admitted that he used the C/Iran documents.

³³ DO 44620-17.

Did George Know the Truth?

Clair George knew during his briefing of intelligence staffers on November 18, 1986, and in his reviews that week of Casey's testimony, that there was something more to the CIA's obtaining money from the Iranians than having the Iranians make a deposit into a CIA bank account.³⁴ According to Cave, he informed one of George's special assistants, Gardner -- most likely before George's briefing -- that the description of the money flow found in George's briefing papers was inaccurate.³⁵

34 For a fuller discussion of the evidence that supports this conclusion, see George chapter.

35 Cave, George Trial Testimony, 8/11/92, pp. 2849-51; Cave, Grand Jury, 11/22/91, pp. 27-28. It appears that George was prepared largely by his special assistants, Gardner and CIA Subject #2. Independent Counsel found no evidence that CIA Subject #2 was aware of the financial aspects of what all witnesses said was a closely held program. Two CIA officers apart from Cave who knew about the finances of the initiative, C/Iran and his predecessor, claimed that they did not speak with George about this subject close to the time of the briefing. Twetten was in the Mideast in the days leading up to the briefing, and there is no record of communications between him and George during this time.

George knew that his statement was false. George had been absent from CIA headquarters over the weekend of the November 1985 HAWK missile shipment, but he was involved in numerous events that followed in its wake. According to Juchniewicz and McMahon, George knew the "full story" about the flight within three days. McMahon also recalled repeatedly telling George to find out from the NSC -- particularly Poindexter -- whether the President had signed the retroactive Finding covering the shipment.³⁶ Further, Gardner had been at CIA headquarters when the NSC made its request for assistance for the HAWK shipment. Both he and CIA Subject #2 later conceded that they would have reviewed closely held CIA cable traffic that discussed the flight.³⁷ Both men denied that they remembered the flight in November 1986 until some time after George's erroneous briefing of committee staff on November 18.³⁸

36 Juchniewicz, FBI 302, 10/8/91, p. 4; McMahon, SSCI Deposition, 6/1/87, pp. 95-101, 108; McMahon, Grand Jury, 10/15/91, pp. 9-10; McMahon, Grand Jury, 9/18/91, pp. 9-20. North's notebooks for November 25 and 26, 1985, support the view that George was upset about the shipment on November 25, that he spoke with Poindexter about it, and that he was aware of General Counsel Stanley Sporkin's advice to get a Finding. Independent Counsel also discovered that shortly after the shipment, George visited a European location that was involved in the November 1985 shipment. Officers who met with George during the trip, however, deny that they discussed anything with George about the shipment, other than commenting about the flurry of cable traffic. ([Classified Identity Withheld], FBI 302, 11/5/91, p. 8; [Classified Identity Withheld], FBI 302, 11/7/91, p. 5.) George testified to trying to gather facts in November 1985, but he denied that he was aware of a 1985 hostages finding. (George, Select Committees Testimony, pp. 200-01, 290-93; George, Select Committees Testimony, 8/6/87, p. 5; George, Select Committees Deposition, 4/24/87, pp. 85-86.)

37 Gardner, Grand Jury, 4/19/91, pp. 97-100; CIA Subject #2, SSCI Testimony, 12/9/86, pp. 4-5. CIA Subject #2 testified that he did not connect the November 1985 incident to the Iran initiative until November 1986. (Ibid., p. 4.)

38 Their stories are not consistent. Gardner claimed to have recalled the flight "vaguely" during a conversation that he and CIA Subject #2 had with North in North's office during the afternoon following George's briefing. (See text and citations at notes below.) Subject #2 recalled some aspects of Gardner's story, but linked his and Gardner's recognition of the flight to a phone call from someone in the CIA's Air Branch, after Gardner and Subject #2 returned from North's office. (CIA Subject #2, FBI 302, 9/17/91, pp. 3-4.)

In order to charge George's misstatements concerning the November 1985 HAWK shipment, Independent Counsel would have had to prove either that George recalled the flight independently of

Gardner and CIA Subject #2, or else that Gardner and CIA Subject #2 had lied themselves.³⁹ Independent Counsel found no direct evidence that George independently recalled the November 1985 flight in November 1986.

39 Proving that CIA Subject #2 or Gardner remembered the flight prior to George's briefing could have been enough to place knowledge in George's mind, as Subject #2 said he brought the flight to George's attention immediately after learning about it in November 1986. (CIA Subject #2, FBI 302s, 3/4/88, p. 2 & 9/17/91, pp. 3-4.)

There was evidence that information about the flight was developed for Gardner and CIA Subject #2 prior to George's briefing, but this evidence was not sufficient to prove beyond a reasonable doubt that Gardner and CIA Subject #2 were lying. On the evening of Wednesday, November 12, 1986, a lawyer who was assigned to the CIA's Air Branch, Cynthia Erskine, had dinner with a pilot for the CIA proprietary that had ferried the HAWK missiles to Iran in November 1985. During their dinner, the pilot boasted to Erskine about flying Israeli "Gabriel" anti-aircraft missiles to Iran in November 1985, an effort that the pilot linked to the arms-for-hostages deals. Erskine repeated the pilot's story to CIA General Counsel Doherty the next morning. Later that day or the following Monday, Erskine spoke to the CIA's contact with the pilot's proprietary. That officer gave Erskine the flight records of the November 1985 shipment, which the officer was carrying.⁴⁰ Erskine used the flight records in editing a chronology prepared by the Air Branch of its involvement with the Iran arms sales, which she finished by the end of November 17. Erskine had to correct the Air Branch's chronology to reflect that missiles had been shipped in November 1985, instead of oil-drilling equipment. She attached the flight records to the chronology, which she understood was intended for George.⁴¹

40 Independent Counsel was unable to ask this CIA officer why he had these records. By the time Independent Counsel had interviewed Erskine, the officer was dead.

41 Erskine, Memorandum for the Record, Subject: [Proprietary] Flight to Tehran, 11/13/86, ER 91-00487-88; Erskine, FBI 302s, 9/27/91, pp. 3-4 & 11/21/91, p. 3. Erskine became firmer in her recollection of these dates in her second interview. She was initially unable to date her completion of the Air Branch's chronology. Further, at some point after she spoke with Doherty but before she saw the CIA's contact with the proprietary, Erskine says she met an Air Branch supervisor who denied that the proprietary's flight records existed. Neither the Air Branch supervisor nor another CIA officer who was involved in the Air Branch chronology could say when he received his first instructions about it.

The finished chronologies are dated November 25, 1986, although there are undated draft chronologies that point to earlier Air Branch contacts with George's office. For his part, CIA Subject #2 recalled that the first information that reached George's office on November 18 about the November 1985 flight came from the Air Branch, and not the other way around. (CIA Subject #2, FBI 302s, 3/4/88, p. 2 & 9/17/91, pp. 3-4.)

Erskine's story of November 13 had puzzled Doherty, as it did not square with the briefing that he had received from George and Twetten the previous day. Doherty asked the legal adviser to the Operations Directorate, attorney W. George Jameson, to question directorate personnel about the flight. Jameson initially reported on November 13 or 14 that Gardner and CIA Subject #2 were unaware of November 1985 activity. By early the next week, sometime prior to November 19, 1986, Jameson called back and said that the Operations Directorate now was acknowledging a November 1985 flight involving HAWK missiles.⁴²

42 Doherty, FBI 302, 10/30/91, pp. 4-7. Doherty also may have received confirmation of the November 1985 flight on November 17, 1986, during a meeting with former CIA general counsel Stanley Sporkin. See text accompanying notes below. Jameson and Erskine's efforts could have prompted CIA Subject #2 or Gardner to contact Air Branch personnel earlier than CIA Subject #2 or Gardner has claimed. Air Branch officers could not recall when they first spoke to the DDO's office

about the November 1985 flight. (See Air Branch Supervisor, Grand Jury, 11/8/91, p. 32; [Classified Identity Withheld], Grand Jury, 11/8/91, pp. 27-33.)

Charles Allen also believed that CIA Subject #2 and Gardner had been confronted prior to George's November 18 briefing of congressional staffers with memories of the November 1985 HAWK shipment. Allen testified that Gates called a meeting on November 17, 1986, to assign responsibilities for Casey's upcoming testimony. Allen recalled that many senior CIA officials attended. Allen claimed further that, after Gates had concluded his business and left the room, Allen presented details of the HAWK shipment and witnessed a debate between former Associate Deputy Director for Operations Juchniewicz and Duane R. Clarridge, the CIA officer who had coordinated the CIA's activities in support of the shipment. Allen recalled that George listened passively, while CIA Subject #2 took notes.⁴³

⁴³ Allen, FBI 302, 11/6/91, pp. 3-4.

Allen's description of this meeting could not be corroborated. Gates's calendar shows a brief meeting late in the afternoon of November 17. No one placed Allen at this meeting. Juchniewicz claimed that, while he recalled a large gathering of senior CIA officials and vaguely remembered discussions about the flight, he and Casey's calendars date this meeting as December 1, 1986. Juchniewicz did not recall speaking with anyone at the CIA prior to Casey's November 21 testimony.⁴⁴

⁴⁴ Gates 1986 Appointment Book; CIA Subject #2, FBI 302, 9/17/91, p. 10; EA/DCI, FBI 302, 9/12/91, p. 11; Gates, Grand Jury, 6/26/87, pp. 27-28; Gates, Select Committees Deposition, 7/31/87, p. 47; Gates, Grand Jury, 2/19/88, p. 58; Gates, Grand Jury, 5/1/91, pp. 202-03; Juchniewicz, Phone Interview, 11/8/91; DCI Calendar, 12/1/86, ER 290; Jameson, Meeting With DCI, 12/1/86, AKY 006443-48. Allen insisted that this meeting occurred on a Monday before "Casey's testimony" because he had to postpone a meeting of a public committee that met Monday evenings. (Allen, FBI 302, 11/6/91, p. 4.) December 1 was also a Monday evening, however, and it came before a series of congressional appearances by Casey in December 1986 on the Iran/contra matter. Allen also wanted to place Doherty at the meeting. (Ibid.) Doherty's conduct on November 19, see text accompanying notes 63-65 below, suggests that he was not present for any discussion with Juchniewicz about the flight prior to that date.

Questions remain unexplained about two documents generated during this period, documents which indicate recognition of the November 1985 flight at some point earlier than CIA Subject #2 and Gardner admitted:

-- Gardner's handwritten notes appear on a copy of a statement drafted by C/Iran prior to George's briefing. Gardner listed on the front of the statement the dates of release of hostages Benjamin Weir, Lawrence Jenco, and David Jacobsen. On the back of the last page of the statement is a handwritten list of items that parallels the topics of concern raised by intelligence committee staffers during George's briefing, which Gardner attended. On the same page, however, are the words "85 Trip" -- an indication that, at least during George's briefing, an additional 1985 event struck Gardner as important.⁴⁵

⁴⁵ Draft Statement, DO 84292-86. For corroboration of the timing of the draft, see draft DO 83905-11; draft DO 84074-80; Gardner, FBI 302, 6/17/87 302; draft ER 18359-65; C/Iran, FBI 302, 10/29/91; DIRECTOR 161904, 11/18/86, DO 83899-904; CIA Subject #2, FBI 302, 9/17/91. The notes of Gerner and the SSCI staffers who attended George's November 18 briefing make no mention of any 1985 trips. They do refer, however, to NSC "contacts" with Iranian representatives in Western Europe in 1985. (See sources cited in n. 12 above.)

-- CIA Subject #2 testified that, on the afternoon of November 18, he wrote a one-page paper that presents the first detailed description of the November 1985 shipment. Gardner and Subject #2 visited North around 2:00 p.m., to report on George's briefing.⁴⁶ Subject #2 and Gardner then

returned to Langley, where Subject #2 claimed they received a report from the Air Branch indicating that there had been a November 1985 flight in support of the initiative. Subject #2 and Gardner immediately reported the flight to George, who instructed the men to get all of the facts together. According to Subject #2, the facts of the flight were sketchy, and not easily gathered. Nevertheless, Subject #2 claimed to have written the document -- a rather detailed account of the November 1985 shipment -- that same afternoon, in time for Gardner to take a copy of it to Casey in Central America early the next morning.⁴⁷

46 Interestingly, North's crumpled notes of his debriefing from Gardner and Subject #2, recovered from a "burn bag" at NSC, contain the point: "Not reveal Dick Secord." (11/18/86, AKW 32705.) North did not recall these notes or the debriefing. (North, Grand Jury, 11/15/91, pp. 31-33.)

47 Subject: CIA Airline Involvement, ER 24219; North Calendar, 11/18/86, AMX 5517-21; WAVE Records, 9/28/87; AKW 32705; CIA Subject #2, FBI 302, 9/17/91, pp. 3-4. CIA Subject #2 claimed that November 18 was further complicated with a return visit to North's office that evening to compare chronologies. (Ibid; CIA Subject #2, FBI 302, 3/4/88, pp. 3-4.) No one corroborated this visit, nor does Subject #2's name appear on White House gate logs on November 18 after his afternoon talk with North.

Subject #2's recollection of the timing of these events and his writing the first CIA chronology acknowledging the November 1985 flight is unconvincing. The completeness of the chronology and Gardner's briefing notes indicate that Clair George's assistants knew that George was falsely denying to congressional staffers CIA activities prior to 1986.

Preparing Casey's Testimony

Casey's preparations for his intelligence committee testimony were handicapped by his taking a twice-postponed trip to Central America between November 16 and November 20. Before leaving, Casey instructed George to gather facts for his testimony. Casey also met with Allen on the afternoon of Saturday, November 15, to discuss the extent to which the CIA should protect in its briefings the identities of sensitive Iranian contacts. Casey and Allen agreed that the Agency would withhold six names at all costs.⁴⁸ The next day Casey spoke with Poindexter, White House Chief of Staff Donald T. Regan, and North. Casey then prepared a list of items he wished to have done before he returned, and departed for Central America.⁴⁹

48 DCI Schedule, 11/15/86, ER 317; Allen, FBI 302, 11/6/91, p. 5. Allen recalled that because of these instructions, he withheld the names of the Iranian contacts from Justice Department officials the following weekend, during Attorney General Meese's investigation into the Iran matter.

49 DCI Schedule and Phone Logs, 11/16/86, ER 316; Memorandum, Casey to Gates, 11/16/86, ER 24305, DO 84041, ER 24256-57.

Documents that C/Iran had drafted as informational papers for George's briefing were transformed into formal, more elaborate statements about the Iran initiative. The persons principally responsible for this transformation appear to have been Jameson, C/Iran and Subject #2, although documents indicate that George exercised considerable editorial responsibilities as well.⁵⁰

50 Draft Statement, DO 44642-36; Draft Statement, 11/17/86, ER 7834-37; Jameson Notes, 11/17/86, ER 13980; Jameson, FBI 302, 9/20/91, pp. 7-8; Draft Statement, DO 83919-26; Draft Statement, 11/17/86, ER 7838-46; CIA Subject #2, FBI 302, 3/4/88; CIA Subject #2, FBI 302, 9/17/91.

Casey instructed Gates: "It is understood that this Finding existed. Someone ought to get Stan Sporkin's recollection of the advice he gave the NSC with respect to the Finding." ⁵¹ On November 17, 1986, Doherty met with Sporkin, who had been CIA general counsel at the time of the HAWK

shipment and had drafted the retroactive Finding that sought to authorize CIA involvement in it. Doherty took with him three CIA lawyers, Bernard Makowka, Edward Dietel and George Clarke, who had worked with Sporkin on this Finding. Sporkin discussed the period between the HAWK shipment and the ultimate January 17, 1986, Finding:

51 Memorandum, Casey to Gates, 11/16/86, ER 24256-57.

-- Sporkin and Makowka both recalled that Sporkin talked about the November 1985 flight and his learning that there were weapons on the plane. Sporkin also mentioned "prior documents" and the drafting of a retroactive Finding. Sporkin directed Makowka to look for these drafts.⁵²

52 Sporkin, North Trial Testimony, 4/3/89, pp. 6369-75; Makowka, FBI 302, 10/11/91, pp. 2-3; Makowka, Gates Interrog., 7/12/91, p. 3.

-- Doherty's recollection of the meeting was not that crisp. Doherty recalled Sporkin, perhaps at this meeting, saying that "there was something else" drafted prior to the January 17 Finding. Three days later, Doherty sent Makowka back to Sporkin to confirm Doherty's "vague recollection" that Sporkin knew shortly after the shipment that arms were involved.⁵³

53 Doherty, FBI 302, 10/30/91, pp. 8, 13. In view of what Doherty called his "concerns" about the November 1985 flight -- concerns he had once he had heard Erskine's story the previous week -- it is puzzling that any mention by Sporkin of a November 1985 arms shipment, or even a November 1985 flight, did not prompt Doherty to react immediately. Doherty was unable to account for his lack of response to Sporkin's statements, except to suggest that perhaps he had spoken with Sporkin sometime prior to the November 17 meeting -- a suggestion that, if true, would call Doherty's recollection of Jameson's first report about the November 1985 flight into question. (Ibid.)

-- Dietel and Clark could not remember the meeting.⁵⁴

54 Dietel, FBI 302, 10/28/91, p. 5; Clarke, FBI 302, 9/24/91, pp. 2-3.

Makowka put together soon thereafter a rough chronology of the office's involvement with the initiative, a chronology that referred to the November 1985 flight and the drafting of the retroactive Finding. Makowka also told Doherty that he remembered North saying on Christmas Eve of 1985 that the President had signed "the document" concerning the initiative and that it was in North's safe.⁵⁵

55 Memorandum from Doherty to DCI, Subject: Discussion with Stanley Sporkin about the Iranian Finding, 11/18/86, ER 32384-85; Makowka, FBI 302, 10/11/91, pp. 2-3; Doherty, FBI 302, 10/30/91, p. 8; ER 32377-78 (rudimentary OGC chronology dated 11/20/86). Doherty's November 18 memorandum of the Sporkin meeting does not discuss missiles, but it does refer to a "shipment of equipment" to Iran that had prompted calls for a finding. (ER 32384-85.)

Doherty's Concerns

The day after the Sporkin interview, November 18, 1986, White House Counsel Wallison convened a meeting of general counsel from the State and Defense departments, NSC and CIA. Those who attended left with sharply contrasting impressions.⁵⁶ Doherty was struck most by the tone of the NSC's presentation. NSC Counsel Paul Thompson seemed to imply by what little information he provided to the group that the arms sales were a CIA operation, and that the CIA had more facts about it than the NSC. Doherty left the meeting concerned that the NSC would shift the blame for the initiative's failures onto the CIA.⁵⁷

56 See Meese and Regan chapters for a fuller account of the Wallison general counsels' meeting.

57 Doherty Notes, 11/18/86, ER 46616; Doherty, FBI 302, 10/30/91, p. 9; Doherty Notes, prepared after 11/18/86 meeting, ER 46524; see also ER 46603; Doherty, FBI 302, 11/13/87, p. 4.

Doherty learned from Jameson that the Directorate of Operations was acknowledging a November 1985 flight. This news, coupled with Thompson's remarks, caused Doherty to fear that the CIA would find itself unfairly attacked for its role in the arms sales and lacking the facts with which to fight back. Doherty requested that DDCI Gates gather the testimony team for a meeting on Wednesday, November 19. Doherty intended to use the meeting to point out the weaknesses in the Operations Directorate's facts, and to have Gates get the directorate to do better work.⁵⁸

58 Doherty, FBI 302, 10/30/91, p. 11.

Gates testified that the task of preparing a statement for Casey overwhelmed him, and others have criticized Gates for not providing sufficient leadership to the project.⁵⁹ Casey cabled that he was dissatisfied with an early draft of a proposed statement, and on the morning of November 19 Gardner was dispatched to Casey in Central America. Gardner took with him many of the papers Casey had requested, but he did not take a draft of testimony that addressed Casey's criticisms.⁶⁰ Gates agreed readily to Doherty's request for a meeting of the Casey testimony team.

59 Gates was taking many of his directions from Casey. (Casey-Gates PRT-250 Conversation, 11/17/86.) Nevertheless, early in the evening of November 18, the growing problems with Congress's calls for briefings prompted Poindexter to call Casey directly in Central America. (Poindexter Phone log, 11/18/86, AKW 45588; Casey-Poindexter PRT-250 Conversation, 11/18/86, ER 50206-08.)

60 CIA Chronology, 2/27/87; Gardner, North Trial Testimony, 4/4/89, pp. 6613-16; CIA Subject #2, FBI 302, 9/17/91. Subject #2 finished a draft of testimony that reflected Casey's comments some time on the morning of November 19, after Gardner had departed for Central America. (Draft Testimony, DO 44589-97.) This was the first full statement on the arms sales that included the November 1985 shipment. The statement implies that the NSC told the CIA about the cargo at the time the NSC requested the name of the proprietary. Jameson's comments on this draft suggest adding the phrase "to assist the Israelis in shipping HAWK missiles to Iran." (Draft Statement, ER 7764-72.) In his September 1991 interview with Independent Counsel, Jameson professed that he could not recall where or when he got his information. (Jameson, FBI 302, 9/20/91, p. 9.)

Prior to the meeting, Doherty spoke with two congressional staff members, State and Defense department counsel, and Assistant Attorney General Charles Cooper. What he heard only heightened his anxiety. Abraham Sofaer of the State Department complained to Doherty that he was unable to get facts from the NSC, which Sofaer perceived to be in chaos. Sofaer's concerns, as well as his appeal for a draft of Casey's testimony, made Doherty fear that Under Secretary of State Michael H. Armacost, who was scheduled to accompany Casey, would make a "bad wit[ness] for Admin[istration]." ⁶¹

61 Doherty, FBI 302, 10/30/91, p. 10; Doherty Notes, telephone conversations with Daniel Finn (SSCI) and Michael O'Neill (HPSCI), 11/19/86, ER 46620-21; Doherty Notes, telephone conversations with Abraham Sofaer (State) and Larry Garrett (Defense), 11/19/86, ER 46523.

Before going to the meeting, Doherty prepared a list of imperative points to discuss with George and CIA Subject #2, in front of Gates:

- What was the extent of Casey's knowledge?
- What about Sporkin and Makowka's memories of a second finding?
- What was Charles Allen's involvement in the initiative?

-- How did the CIA use proprietaries and private companies in the initiative, and who were they? 62

62 Doherty Notes, ER 46518; Doherty, FBI 302, 10/30/91, pp. 9-10. Doherty also prepared a report on what he had learned from Sofaer and the intelligence committees that morning. (Doherty Notes, 11/19/86, ER 46519.)

Doherty testified that he raised all of these concerns in the Gates meeting, which took place at 2:30 p.m. on November 19. Just as Doherty was leaving for the meeting, Makowka handed him physical proof that Sporkin had prepared a Finding other than the January 17, 1986, Finding. Makowka had recovered from Sporkin's secretary a draft of a retroactive Finding, a "mini-Finding," that had been stored on a magnetic computer card. The draft contained an explicit arms-for-hostages equation not found in the later Finding and was intended to provide, retroactively, legal protection for the CIA's support of the November 1985 shipment. Doherty took the draft Finding to Gates's office, although he could not recall showing it to anyone other than Gates.⁶³

63 Draft Finding, DO 44568-69; Makowka, FBI 302, 10/11/91, p. 4; Makowka, Gates Interrog., 7/12/91, pp. 3-4; Doherty, FBI 302, 11/13/87, p. 4; Doherty, FBI 302, 10/30/91, p. 11. The only copy produced to Independent Counsel of the draft finding that was uncovered by Makowka, and marked by Doherty, came from Clair George's files.

Attending the November 19th meeting in Gates's office were Gates, George, CIA Subject #2, two persons from the CIA's Office of Congressional Affairs, and Casey's executive assistant. Doherty took notes of the meeting. According to Doherty, his concerns forced George and his staff to "volunteer" to:

-- Talk to Allen about his recollection of the mini-Finding and his activities in the initiative;

-- Get all of the facts of the November 1985 flight, including interview Juchniewicz and former DDCI John McMahon about whether they had authorized it; and

-- Obtain a signed copy of the mini-Finding from North.⁶⁴

64 Doherty Notes, 11/19/86, ER 46520; Gates 1986 Appointment Book; Doherty, FBI 302, 10/30/91, p. 11; EA/DCI, FBI 302, 9/12-9/16/91, pp. 13-14; CIA Subject #2, FBI 302, 9/17/91, p. 10; Doherty Notes, 11/19/86, ER 46519. The only thing that Gates remembered about this meeting were Doherty's concerns that the facts in the proposed testimony were "shaky." (Gates, Select Committees Deposition, 7/31/87, pp. 48-49; Gates, Grand Jury, 5/1/91 pp. 206-07.) According to Doherty's notes, Gates approved Doherty's plan to brief Cooper and the State and Defense departments on Casey's upcoming testimony. (Doherty Notes, 11/19/86, ER 46521, 46600.)

Three observations must be made about the Gates meeting. First, it should have been clear to everyone that at least Doherty was upset with the state of the Directorate of Operations' story, with less than two days to go before Casey was to brief Congress.⁶⁵ Second, as of November 19, 1986, no one in the Directorate of Operations had spoken to McMahon or Juchniewicz about the November 1985 flight -- or at least no one was willing to admit he had.⁶⁶ The drafts of testimony that Subject #2 prepared both before and after the meeting avoided specifying whether Juchniewicz or McMahon had authorized the November 1985 flight.⁶⁷

65 Doherty told Independent Counsel that in the car on the way back from Casey's November 21 briefings, Casey complained that the Operations Directorate had done a "lousy job" of gathering the facts. (Doherty, FBI 302, 10/30/91, p. 19.)

66 Subject #2 claimed later that he had spoken with Juchniewicz before Casey's testimony. Juchniewicz recalled only that someone attempted to reach him that week, but he did not return the call. (CIA Subject #2, FBI 302, 9/17/91, p. 11; Juchniewicz, FBI 302, 11/8/91, p. 6.)

67 Express references in Casey's final testimony to Juchniewicz and McMahon crept into the text beginning with a draft that Casey himself (perhaps with Gardner's help) composed during Casey's return flight from Central America. (Compare Draft Testimony, 11/19/86, DO 44653-62 (Subject #2 draft); Draft Testimony, 11/19/86, DO 84277-85 (Subject #2 draft); and Draft Testimony, 11/20/86, DO 84042-52 (Subject #2 draft) with Draft Testimony, 11/20/86, DO 44671-80 (Casey/Gardner draft). See also EA/DCI, FBI 302, 9/16/91; CIA Subject #2, FBI 302, 9/17/91; Gardner, North Trial Testimony, 4/4/89, pp. 6620-28; Gardner, Poindexter Trial Testimony, 3/23/90, pp. 2654-60.) Independent Counsel found no evidence that Casey or Gardner was aware of Doherty's concern that nothing be said about authorization until someone had spoken with Juchniewicz and McMahon.

The third and most striking consequence of the November 19 meeting was that afterwards the team had to know that a mini-Finding had been drafted, and that the answer to whether it had been signed by President Reagan lay with the NSC. The meeting also makes the testimonies of North, Gardner and CIA Subject #2 inconsistent about the state of the CIA's knowledge of the mini-Finding prior to Casey's briefing on November 21.

-- Both North and Gardner claimed that, at a meeting on November 18 among North, Gardner, and Subject #2, North told Gardner that if the CIA insisted on talking about the November 1985 HAWK shipment, then "they ought to know" that the President signed a Finding authorizing it.⁶⁸

68 North, North Trial Testimony, 4/7/89, pp. 7044-45; North, Grand Jury, 11/15/91, p. 36. At North's trial, Gardner explained further that he told North that the CIA was only a "mechanic" in the November 1985 shipment, referring to the CIA's limited role in providing the name of a proprietary to the NSC. (Gardner, North Trial Testimony, 4/4/89, pp. 6610-11; see also Gardner, Poindexter Trial Testimony, 3/23/90, pp. 2649-50.)

-- In a March 1988 interview with Independent Counsel, Subject #2 recalled portions of his and Gardner's discussion with North, but he did not remember any discussion of a prior Finding.⁶⁹ If North had mentioned a prior Finding, however, it is strange that Subject #2 did not tell this to the Casey testimony team on November 19.

69 CIA Subject #2, FBI 302, 3/4/88, p. 4.

"Shut Up, There is No Mini-Finding"

Allen believed that he raised questions about the existence of a prior Finding early in the week of November 17-21, 1986, or perhaps late the previous week, with Makowka, as both Allen and Makowka had been in North's office on Christmas Eve 1985 when North spoke about the "signed document." Allen believed he then called North and asked him if there had been a prior Finding. North denied it.⁷⁰ Later, Makowka called North back, asked again about the Finding, and received another denial. Allen said that around midday on November 20, Allen raised the topic at a meeting with Casey, George, George Cave, and perhaps Gates. Allen claims that George sharply told him that he was "causing trouble" about the mini-Finding, that "it didn't exist" and that Allen should "shut up" about it.⁷¹

70 Makowka corroborated Allen's story of his inquiry to North and North's denial. (Makowka, Gates Interrog., 7/12/91, p. 2.)

71 DCI Schedule, 11/20/86, ER 310; Allen, Grand Jury, 8/9/91, pp. 160-61; Allen, FBI 302, 11/6/91, p. 6. Gates and Cave did not recall George and Allen's exchange on November 20. North did not recall denying the mini-Finding's existence to Allen. (North, Grand Jury, 11/15/91, p. 36.) Indeed, at his trial North said he told Allen the opposite. (North, North Trial Testimony, 4/7/89, p. 7045.)

The exchange recounted by Allen explains why he told HPSCI on November 21, 1986, that he did not know whether the President had authorized Israeli shipments to Iran prior to the January 17,

1986, Finding. Despite his suspicion that there was a document reflecting approval, a superior officer, George, had told him that no such thing existed.⁷² For George, the exchange with Allen raises the likelihood that George (1) spoke with North (note his "causing trouble" comment to Allen), (2) received confirmation that a Finding existed but that it could not be disclosed, (3) tried to silence Allen, and (4) lied about Presidential approval for 1985 activities when asked on November 21, 1986.

⁷² Allen, FBI 302, 11/6/91, p. 6.

On November 19, George and CIA Subject #2 told Gates that the Directorate of Operations would find out whether the Finding had been signed. George admitted phoning North at least once during the week. George, Subject #2, and Gates also went to the White House shortly after the Casey testimony team meeting of November 19 to see Poindexter, North, Thompson, and Cave. Subject #2 stayed after the White House meeting to work with North on coordinating the NSC and CIA chronologies.⁷³ Despite these opportunities, however, no witness (including North) recalled that George and North talked with each other about the mini-Finding.⁷⁴

⁷³ North Note, 11/19/86, AMX 5522-26; Thompson, FBI 302, 4/22/87, p. 5; Gates 1986 Appointment Book; Cave, Select Committees Deposition, 4/17/87, p. 172. Those attending the meeting recall different aspects of the meeting. A CIA 2/27/87 Chronology states that the purpose of the meeting was to describe George's briefing of 11/18/86. George recalled conflict over the November 1985 flight (George, Select Committees Deposition, 4/24/87, pp. 123-26), while Subject #2 stated in his 9/17/91 FBI 302, p. 13, that the meeting was a relaxed affair. Gates had no specific recollection of the meeting.

⁷⁴ North affirmed in the Grand Jury, however, that after November 12, 1986, it was his belief that the Administration had decided that Congress was not to be told of the mini-Finding or the November 1985 HAWK shipment -- a position that culminated in Poindexter's destruction of the mini-Finding on November 21, 1986. (North, Grand Jury, 11/15/91, pp. 33-35.)

Finishing Touches

By November 19, 1986, CIA Subject #2 was aware of the November 1985 HAWK shipment. Subject #2 had composed chronologies and drafted testimony that referred to the flight and its contents. Although parts of the story may have been in dispute -- the extent of the CIA's contemporaneous knowledge of the flight's contents, or the level of authorization for the NSC's use of the proprietary airline -- it was clear to Subject #2 by November 19 that a flight had taken place and that it had carried arms.⁷⁵

⁷⁵ See also Earl Notebook, 11/20/86, AMT 733 (entry: "[CIA Subject #2]/proprietary flight-bad problems/OLN himself ask for/McMann [sic]-Casey argument-help OK this one time but thereafter need a Finding./Seacord [sic]-hired CIA proprietary for flt from T.A. [Tel Aviv] to Europe to T. [Tabriz, Iran]").

The November 1985 flight was a major source of friction between the NSC and the CIA by the time Casey testified. Subject #2 admitted that he was aware of a conflict by the time he sat down with North on November 19 to coordinate chronologies. Casey and Gates, for their part, went to the White House on the afternoon of November 20 to try to settle the dispute over the flight. This dispute contributed to the ultimate decision -- made around the time of a large meeting at the CIA on the evening of November 20, which Subject #2 attended -- to present an extremely unspecific and thin description of the flight in Casey's prepared remarks.⁷⁶

⁷⁶ DCI Schedule, 11/20/86, ER 310; Gates 1986 Appointment Book; Gates, Grand Jury, 2/19/88, pp. 62-63; Gardner, North Trial Testimony, 4/4/89, pp. 6629-33; Gardner, Poindexter Trial Testimony, 3/23/90, pp. 2660-63; Jameson, FBI 302, 9/18/91, pp. 6-7; Doherty, FBI 302, 11/13/87,

pp. 4-5; Doherty 8/5/91 Gates Interrog. at 3-4. The description of the November 1985 flight in Casey's prepared statement was at its fullest on November 19. It steadily waned thereafter, particularly between noon and 8:00 p.m. on November 20. Part of the reason for this appears to have been the conflict with the NSC; another reason appears to have been disputes within the CIA over how the flight was authorized and when the CIA learned that missiles were being or had been shipped. (See drafts discussed in note 67 above; see also Doherty, FBI 302, 11/13/87, p. 15; Makowka, FBI 302, 10/11/91, pp. 6-7; Draft Testimony, 11/20/86, DO 83967-76; CIA Subject #2, FBI 302, 3/4/88, pp. 8-9; EA/DCI, FBI 302, 9/16/91, p. 6; Draft Testimony, 11/20/86, DO 83977-87; Draft Testimony, 11/20/86 [unnumbered Doherty 4:15 p.m. version]; Gries, FBI 302, 9/9/91 Interview.) Doherty found the situation so disturbing that he called Casey sometime on November 20 and implored him to postpone his congressional appearances. (DCI Phone Log, 11/20/86, ER 311; Doherty, FBI 302, 11/13/87.)

Subject #2 went home immediately after the large CIA gathering on November 20. Casey's executive assistant and his secretary, Deborah Geer, stayed to produce a draft of testimony that incorporated the changes discussed at the meeting. The assistant dated this draft "November 20, 2000." Doherty later reported to Casey that Sporkin was certain that he knew that weapons were on the November 1985 flight "within days" of its occurrence. Doherty thus sought and obtained Casey's permission to delete a reference from Casey's "1200" version of testimony -- the version which Doherty then assumed was everyone's working copy -- that stated that no one in the CIA knew about the contents of the flight until mid-January 1986. Doherty phoned Casey's assistant. On the 2000 draft, Casey's assistant deleted a single sentence that read: "Neither the airline nor the CIA knew the cargo consisted of 18 HAWK missiles." This was the only reference in the 2000 text to HAWK missiles.⁷⁷

⁷⁷ Draft Testimony, 11/20/86, DO 83988-98; CIA Subject #2, FBI 302s, 3/4/88, pp. 5-6 & 9/17/91, p. 15; EA/DCI, FBI 302, 9/16/91, p. 6; Doherty, SSCI Testimony, 12/8/86, p. 10. The final Casey draft is DO 83999-84009, which Casey had typed on the morning of November 21.

The next morning, Subject #2 got a copy of the 2000 version of Casey's testimony and took it with him to Casey's appearances on the Hill. Subject #2 made notes on the draft while Casey spoke, for he was surprised that his draft was not what Casey was reading to the committees. Subject #2 jotted in the upper right hand corner of the first page a list of the 1986 TOW missile shipments, which corresponds with the list that Subject #2 recited of all of the arms shipments to Iran.⁷⁸

⁷⁸ CIA Subject #2, FBI 302, 9/17/91, p. 16.

Independent Counsel's Decision Not to Prosecute

The evidence suggests a concerted effort by CIA officials to withhold information from or lie to Congress about the November 1985 shipment of HAWK missiles to Iran. The available evidence could not, however, prove beyond a reasonable doubt that concerted action by CIA officials violated federal laws in responding to congressional inquiries about the November 1985 shipment. The primary reason was that crucial witnesses to the events surrounding the Agency's responses in November 1986 were unavailable in 1991: Clair George was under indictment for false statements and perjury; Gardner had invoked his Fifth Amendment privilege against self-incrimination and had refused to give Independent Counsel a proffer; and Casey was dead.

There was evidence of individual crimes. Independent Counsel had proof beyond a reasonable doubt that Clair George knew on November 18, 1986, more about the flow of funds from the Iranians to the CIA than he told to intelligence committee staffers. By the time this proof was fully developed, however, Independent Counsel had charged essentially the same category of false statement -- in a more formal setting, before SSCI -- in the George case. As for George's denial in the November 18 briefing of CIA activity prior to 1986, the evidence did not establish beyond a reasonable doubt that George at that time remembered that a CIA proprietary had shipped weapons in 1985. George would

have had two witnesses, Gardner and CIA Subject #2, who could have testified that as they helped George prepare for his briefing, they themselves had been unaware of the flight.