



Chapter 27

President Reagan

The President is the only individual granted power and responsibility by the Constitution. In other delegations of power and authority, the Constitution deals with entities -- the Congress, the courts, the states. In cases of conduct involving political objectives rather than venal objectives, the procedure of impeachment, which brings into play the political judgment of both houses of Congress, would ordinarily be preferred over criminal charges and a trial by jury.

Further, the President's awesome responsibility for policy decisions necessary to our national safety was not intended to be belittled by requiring him to deal personally with the thicket of statutes, regulations, and orders that regulate Government activity. He ordinarily would be entitled to rely on his staff and Cabinet to see that his decisions are carried out in a legal manner.

But because a President, and certainly a past President, is subject to prosecution in appropriate cases, the conduct of President Reagan in the Iran/contra matter was reviewed by Independent Counsel against the applicable statutes. It was concluded that President Reagan's conduct fell well short of criminality which could be successfully prosecuted. Fundamentally, it could not be proved beyond a reasonable doubt that President Reagan knew of the underlying facts of Iran/contra that were criminal or that he made criminal misrepresentations regarding them.

President Reagan created the conditions which made possible the crimes committed by others by his secret deviations from announced national policy as to Iran and hostages and by his open determination to keep the contras together ``body and soul" despite a statutory ban on contra aid.¹

¹ McFarlane, North Trial Testimony, 3/10/89, p. 3946.

In the Iran initiative, President Reagan chose to proceed in the utmost secrecy, disregarding the Administration's public policy prohibiting arms sales to nations supporting terrorism. He also chose to forgo congressional notification under the National Security Act and the Arms Export Control Act.² Having bypassed accountability to Congress, the President failed either to establish an effective system of accountability within the Administration or to monitor the series of activities he authorized.³ Working in a climate of extreme secrecy and operating without accountability, National Security Adviser John M. Poindexter, Lt. Col. Oliver L. North of the National Security Council staff and others associated with the initiative invited criminal acts including profiteering on the Iranian arms sales, the diversion of some of those proceeds to aid the contras, destroying documents, and lying to Congress to cover up their criminal activities.

² See discussion on ``The Iran Hostage Initiative, 1985-1986" later in this chapter.

³ In his written answers to interrogatories requested by Independent Counsel and the Grand Jury, Reagan stated that he did not monitor the details of the Iran arms sales and had no specific knowledge of such key matters as North's role or Secord's role. The President said he did not authorize any profits from the sale of arms to Iran and that he was unaware that there were excess proceeds and that some of them were diverted to aid the contras.

When the Iran initiative was exposed on November 3, 1986, the President convened a series of meetings with his top national security advisers and permitted the creation of a false account of the Iran arms sales to be disseminated to members of Congress and the American people.⁴ These false accounts denied the President's knowledge and authorization of the initial sales from Israeli stocks of U.S.-made TOW and HAWK missiles to Iran in August, September and November of 1985.

Attorney General Edwin Meese III and others were concerned that those sales violated the Arms Export Control Act and the National Security Act of 1947.⁵ Previously withheld notes by participants in the November 12 and November 24, 1986, meetings constituted evidence of an effort to cover up the true facts of the President's authorization of the 1985 Iran arms sales. But the discovery of the notes by Independent Counsel came too late to investigate effectively and to prosecute the false statements involved.⁶ The passage of time, claims of dimmed recollections and the running of the statute of limitations protected the underlying acts.

4 Two of the key meetings were on November 10 and November 12, where the principal account of the Iran initiative, given by Poindexter, left out the 1985 arms sales from Israeli stocks. At a meeting on November 24, Attorney General Meese said that the November 1985 HAWK shipment was possibly illegal but, he said, the President "didn't know."

5 Later, the Department of Justice Office of Legal Counsel developed a purported defense for these sales. The participants in the November 24, 1986, meeting were concerned, however, with the question of legality, rightly or wrongly.

6 Former Defense Secretary Caspar W. Weinberger was indicted by a federal Grand Jury on June 16, 1992, on five counts of obstruction, perjury and false statements. He was to be tried on January 5, 1993. Weinberger was pardoned by President Bush on December 24, 1992.

No direct evidence was developed that the President authorized or was informed of the profiteering on the Iran arms sales or of the diversion of proceeds to aid the contras.⁷ Yet, it was doubtful that President Reagan would tolerate the successive Iranian affronts during 1986 unless he knew that the arms sales continued to supply funds to the contras to bridge the gap before the anticipated congressional appropriations became effective. Only Poindexter could supply direct evidence, and he denied passing on this information. The wide destruction of records by North eliminated any possible documentary proof.

7 Two of the key persons involved in the operations said they believed the President either had approved of their actions or would have approved of them had he been asked. Poindexter, who testified that he did not inform the President of the diversion, said he nevertheless believed the President would have approved it had it been presented to him. (Poindexter, Select Committees Deposition, 5/2/87, pp. 70-72.) North testified that he believed that the President had authorized the diversion. (North, Select Committees Testimony, 7/7/87, pp. 23-25.)

As with the Iran initiative, President Reagan was apparently unconcerned as to the details of how his policy objectives for contra support were being carried out by subordinates who were operating virtually free from oversight or accountability. President Reagan made it clear to his national security advisers Robert C. McFarlane and Poindexter that he wanted to keep the contra resistance alive "body and soul." He said he told them to stay within the law, including the Boland Amendment restrictions on U.S. aid to the contras. In doing so, he confronted his staff with two virtually incompatible objectives.

This determination to surmount Boland was seized on by North and others as a justification for violating Boland and later lying to Congress about such violations. Independent Counsel found no prosecutable evidence that the President expressly authorized or was informed of the illegal features of North's operational participation in the covert contra-resupply operation and his financing of the operation. President Reagan was aware of and even encouraged some aspects of external funding for the contras, such as solicitation of aid from third countries and contributions from private benefactors. He also was aware that North was the NSC's action officer on the contras, and he was regularly briefed on the growth of the contra movement during the period when funds to assist the contras were cut off by Boland.⁸

8 Answers of the President of the United States to Interrogatories, Answer to Question 10, In Re Grand Jury Investigation (hereafter, ``Reagan, Grand Jury Interrogatories").

President Reagan supplied information regarding his knowledge of these activities in sworn answers to written interrogatories posed by Independent Counsel and the Grand Jury, his testimony during the Poindexter trial, and a deposition by Independent Counsel in July 1992. In addition, North, Poindexter and other central figures testified during the investigation and in various trials. Documents were also produced after the Select Iran/contra Committees had completed their investigation in 1987.

President Reagan's activities were analyzed in four broad aspects: (1) the military and paramilitary support of the contras from 1984 to 1986; (2) the Iran arms sales in 1985 and 1986; (3) the October-November 1986 cover-up of these activities from mounting congressional inquiries; and (4) the President's responses and testimony to the Tower Commission and to Independent Counsel.

Military and Paramilitary Support to the Contras, October 1984 to October 1986

Financial Support

From the congressional cut off of contra military aid until October 1986, when Congress again appropriated funds for contra assistance, there were three sources of funding developed by NSC officials to carry out President Reagan's generalized admonition to keep the contras together ``body and soul": third-country grants; donations from so-called ``private benefactors"; and proceeds diverted from the Iran arms sales. Of the three, third-country funding, particularly from the Saudis, was by far the biggest source, amounting to \$32 million. The Taiwanese government contributed \$2 million. Other governments, at the request of the Administration, made available weapons, documentation to disguise the origin of weapon shipments, and facilities to accommodate contra camps and provide logistical support. Some \$1.7 million in private contributions flowed through the tax-exempt National Endowment for the Preservation of Liberty (NEPL) to accounts controlled by North, and approximately \$4 million from the Iran arms proceeds diversion, also controlled by North.⁹

9 See Flow of Funds chapter.

The Administration was advised by the attorney general that, absent a quid-pro-quo arrangement, soliciting third-country contributions which would be paid directly to the contras would not violate Boland restrictions.¹⁰ It would obviously be difficult to proceed criminally against a President who operated on the basis of what he considered sound legal advice. The President held a similar view that he and his subordinates could publicly encourage private citizens to contribute directly to the contras without running afoul of Boland.¹¹

10 See Minutes from National Security Planning Group Meeting, 6/25/84, ALU 007863-76. Although Vice President Bush and CIA Director William J. Casey felt third-country assistance would be legal absent any quid-pro-quo arrangement, Secretary of State George P. Shultz felt that a legal opinion should be obtained; and Casey agreed. The day after the NSPG meeting, Casey and CIA General Counsel Stanley Sporkin met with Attorney General William French Smith and two of his assistants and were told by the attorney general that

he saw no legal concern if the United States Government discussed this matter with other nations so long as it was made clear that they would be using their own funds to support the contras and no U.S. appropriated funds would be used for this purpose. The Attorney General also said that any nation agreeing to supply aid could not look to the United States to repay that commitment in the future.

An assistant to the attorney general, Mary Lawton, suggested that

a specific written statement might be developed to make clear to cooperating nations that any decision to provide further assistance to the resistance in Nicaragua would be made without any monetary promises or inducements from the United States Government which would expect them to take steps to assure that no U.S. appropriated funds would be involved in the program.

(Memorandum from Sporkin to the Record, 6/26/84, ER 21615.)

11 Reagan, Grand Jury Interrogatories, Answers to Questions 1-4.

The President denied unequivocally that he was aware of the diversion of funds from the proceeds of the Iran arms sales, or that he authorized it.¹² Independent Counsel could not prove the contrary. Poindexter testified that he did not inform the President of the diversion, and Meese and White House Chief of Staff Donald T. Regan testified that the President was "shocked" when he learned about it on November 24, 1986.¹³

¹² The President denied knowledge of the diversion to the Tower Commission, in his sworn answers to Grand Jury Interrogatories, in his testimony in Poindexter, and in numerous public statements following the disclosure of the diversion by Attorney General Meese on November 25, 1986. (See, e.g. Reagan, Remarks at a Meeting with the President's Special Review Board, 12/1/86, Public Papers of the Presidents, 1986 Vol. II, 1986, p. 1591; Reagan, Address to Nation on Iran Arms and Contra Aid Controversy, 3/4/87, Ibid., p. 208-11; Reagan, Interview with White House Newspaper Correspondents, 4/28/87, Ibid., pp. 424-29; Reagan, Address to Nation, 8/12/87, Ibid., p. 942-45.)

¹³ Meese, Grand Jury, 2/17/88, pp. 51-56; Regan, Grand Jury, 2/3/88, pp. 43-47.

Domestic fundraising for the contras presented a more complicated picture. There is no doubt that, at least beginning with his appearance at a dinner for the Nicaraguan Refugee Fund in April 1985 and continuing through mid-1986, President Reagan, like North, was a frequent and enthusiastic fundraiser for contra-related causes. The President's appeals seem to have been confined to non-lethal, "humanitarian" aid. North, in contrast, participated in direct appeals, mainly through the tax-exempt NEPL, for funds to buy weapons, a fact that Poindexter did not recall telling the President.¹⁴ President Reagan was unquestionably aware of NEPL. He held meetings and exchanged commendatory correspondence with its officials and big contributors, often at North's request. President Reagan stated that he did not know that North wound up with actual control of the funds raised through NEPL and passed them through to the secret Swiss accounts managed by retired Air Force Maj. Gen. Richard V. Secord and Albert Hakim.¹⁵ Independent Counsel could not prove that the President was aware of the misused tax-exempt status of NEPL, or that he was aware that contributions to it were used to purchase lethal materials for the contras.

¹⁴ Poindexter, Grand Jury, 11/28/90, p. 115.

¹⁵ Reagan, Grand Jury Interrogatories, Answer to Question 18. Alan D. Fiers, Jr., former head of the CIA's Central American Task Force, had a vivid memory of the NSPG meeting on May 16, 1986. According to Fiers, during a discussion of the need for funds to keep contras in the field until an expected congressional appropriation became available, President Reagan said: "Can't some of Ollie's people help out?" Regan quickly changed the subject. (Fiers, Grand Jury, 8/14/91, p. 39.) The official NSPG minutes record Reagan's remarks as: "What about the private groups who pay for ads for the contras. Have they been contacted? Could they do more than ads?" (Minutes of the May 16, 1986, NSPG Meeting, 6/4/86, AKW 018802-13.)

In describing his understanding of NEPL, the President said in his Grand Jury Interrogatory Answer 19:

I understand that NEPL was engaged in building grass-roots support for legislation to provide military support to the NFF [contras] including the funding of a public awareness campaign.

My understanding came from briefing papers provided to me by my staff and by correspondence I received from NEPL . . . Moreover, NEPL engaged in similar public information programs for other national security issues, e.g., the Strategic Defense Initiative. I thought of their effort on behalf of the NFF as identical to these other information programs.

North stated in a May 1986 computer note to Poindexter that ``the President obviously knows why he has been meeting with several select people to thank them for their `support for Democracy' in CentAm." 16 Independent Counsel could not prove, however, that the President had more than the generalized awareness of private U.S. support for the contras reflected in his Answer to Grand Jury Interrogatories 14-17:

16 PROFs Note from North to Poindexter, 5/16/86, Poindexter GX 66.

I was generally aware that some assistance was flowing from the private sources to the NFF and that some of this assistance would have included military support. This information was public knowledge as early as 1985 and was even mentioned in Congressional debate about a request for funding in August 1985. Until the plane carrying Mr. Hasenfus was shot down in October 1986, I do not recall knowing of specific individuals or groups engaged in this activity and was unaware of any connection with the U.S. Government. I believed such activity to be similar to the efforts by Americans in other conflicts. Even after Mr. Hasenfus was shot down, I was told that he was not participating in a U.S. sponsored operation, and I was not informed of any particulars of that operation beyond what was in the news media. It was not until after November 25, 1986, when the full details of these operations became public, that I learned the nature and extent of the private support network and the role of certain U.S. officials in it.

Although I did not seek or directly encourage private citizens to provide military support, I did encourage William Simon and others to provide humanitarian assistance through the Nicaraguan Freedom Fund (Tab 14A). I also knew, as had been previously reported in the press, that Mrs. Garwood had contributed money to refurbish a Medevac helicopter. I understood her contributions to be of a humanitarian nature, and when I met Mrs. Garwood, this subject was not discussed.

The President's knowledge was much more complete regarding the obtaining of funds for the contras from foreign governments. But Independent Counsel found no evidence that he knew that, after North had set up his secret contra-resupply operation, control over most of those contributions also passed to North. Both McFarlane and CIA Director William J. Casey sought aid from foreign governments for the contras during the first six months of 1984.¹⁷ There is no doubt that the President was informed of the first successful effort to secure third-country funding. In May or June 1984, McFarlane advised the President that the Saudi Arabian ambassador, Prince Bandar, volunteered to deliver \$1 million-per-month to a contra bank account. According to McFarlane, the President responded to this information with the words ``Good news" or ``That's fine." ¹⁸

¹⁷ See McFarlane and Casey chapters; see also Reagan, Grand Jury Interrogatories, Answers to Questions 11-13.

¹⁸ McFarlane, Grand Jury, 4/29/87, pp. 36-37.

On June 25, 1984, third-country solicitation was discussed at a meeting of the National Security Planning Group (NSPG). CIA Director Casey reported that the CIA was down to \$250,000 remaining from the Fiscal 1984 appropriation for the contras, and that the contras had arms and ammunition to last only until August. Casey brought up the subject of third-country funding, prompting a debate between Secretary of State George P. Shultz and Casey over whether or not White House Chief of Staff James Baker, who was not at the meeting, believed that solicitation of third-country funding for the contras would be an ``impeachable offense." It was decided that Attorney General William French Smith would be consulted to resolve that issue. Those who were

aware of the Saudi \$1 million-per-month commitment did not mention it. According to the minutes, the meeting concluded with the following exchange:

Vice President Bush: How can anyone object to the U.S. encouraging third parties to provide help to the anti-Sandinistas under the finding? The only problem that might come up is if the United States were to promise to give these third parties something in return so that some people could interpret this as some kind of exchange.

Mr. Casey: Jim Baker changed his mind as soon as he saw the finding and saw the language.

Mr. McFarlane: I propose that there be no authority for anyone to seek third party support for the anti-Sandinistas until we have the information we need, and I certainly hope none of this discussion will be made public in any way.

President Reagan: If such a story gets out, we'll all be hanging by our thumbs in front of the White House until we find out who did it.¹⁹

19 Minutes from National Security Planning Group Meeting, 6/25/84, ALU 007863-76.

McFarlane interpreted the President's final comment as a command that Congress not be notified of third-country contributions, but not a direction to lie to Congress if asked.²⁰

20 McFarlane, North Trial Testimony, 3/10/89, pp. 3941-30; Ibid., 3/15/89, pp. 4626-29.

The President himself received promise of the next major foreign contribution to the contras, which also came from Saudi Arabia. During a February 1985 visit to Washington by King Fahd, the king volunteered to double the Saudis' contribution to the contras to \$2 million per month. Reagan later informed McFarlane and, according to McFarlane, directed that the information not be shared with others.²¹

21 Ibid., 3/13/89, pp. 4201-6.

The NSC staff aided efforts to obtain both financial and other support for the contras from other third countries as well. The Republic of Korea was solicited through retired Army Maj. Gen. John K. Singlaub; no contribution resulted. Taiwan was solicited through a number of intermediaries; two donations of \$1 million each were eventually received. Poindexter suspected that the President was informed of Taiwan's contribution.²²

22 Poindexter, Select Committees Deposition, 6/17/87, pp. 268-69. For discussion of McFarlane and North involvement in solicitation of third-country funds for the contras, see McFarlane chapter.

Finally, with regard to the contras' never-ending search for anti-aircraft missiles, the President was at least generally familiar with North's efforts to obtain foreign approvals necessary for the contras to obtain British-made Blowpipe missiles.²³ Poindexter recalled, albeit vaguely, discussing with the President efforts to get Blowpipes or Chinese-made SA-7s for the contras.²⁴

23 Ibid., pp. 76-79.

24 Poindexter, Grand Jury, 3/6/91, pp. 52-54.

During 1985 and early 1986, the President and other Administration officials were called upon to send frequent messages to Central American countries to bolster their support for the contras and to remind them of the importance of their security and aid relationships with the United States. The President personally participated in flurries of this type of activity involving Honduras in February 1985, April 1985, May 1985, and March 1986. The most graphic example was an April 25, 1985, call from Reagan to President Roberto Suazo Cordova of Honduras, in which Reagan asked on

Suazo to persuade the Honduran military to release a contra weapons shipment which had been seized by the Honduran army.²⁵ A briefing memo for Reagan's use in a subsequent May meeting with President Suazo states:

25 Recommended Telephone Call, 4/25/85, ALU 0097413-14.

In your meeting it will be important to reiterate to Suazo the importance we attach to his continued cooperation in enabling the FDN [contras] to remain a viable element of pressure on the Sandinistas. Without making the linkage too explicit, it would be useful to remind Suazo that in return for our help -- in the form of security assurances as well as aid -- we do expect cooperation in pursuit of our mutual objectives. In this regard, you could underline the seriousness of security commitment, which the Hondurans seem to regard as the main quid-pro-quo for cooperating with the FDN.²⁶

26 Memorandum from McFarlane Re: ``Meeting with Honduran President Suazo'', 5/21/85, ALU 0086547-60.

When asked to explain this passage in his deposition at the trial of Poindexter, President Reagan said:

A: Well, again, I think it is the same tone. That we don't want to press them to go so far that they challenge the Sandinista government and wind up in open hostilities with them. And the -- it would be useful however to remind them that in return for our help in the form of security assurances as well as aid that we do expect cooperation. That we feel that there is an obligation on their part, too.

Q: Right. So, in other words, if some aid and assistance is given to them, you would expect some aid and assistance back from them -- .

A: Yes.

Q: . . . in combating the spread of the Sandinistas?

A: Yeah.²⁷

27 Reagan, Poindexter Trial Testimony, 2/16/90, p. 109.

There is little doubt from the record that in their dealings with the Central American countries, the Administration, including the President, reminded the military and political leaders of those countries, who were dependent on U.S. aid and support, that support for the contras was a tacit condition for continuation of financial and other support.

The Resupply Organization

The President was regularly briefed by McFarlane and Poindexter on the progress and growth of the contra force and its operations during the 1984-86 period.²⁸ At times the President almost seemed to claim responsibility for their activities.²⁹ But in his answers to the Grand Jury's interrogatories, he denied either authorizing or approving a transfer of contra-support functions from the CIA to the NSC:

28 Poindexter, Grand Jury, 11/28/90, pp. 60-63.

29 Reagan, Remarks and a Question-and-Answer Session With Southeast Regional Editors and Broadcasters, 5/15/87, Public Papers of the Presidents, 1987, Vol. I, p. 514: ``These [the contras] are people who are fighting for democracy and freedom in their country. And here there's no question about my being informed. I've known what's going on there. As a matter of fact, for quite a long time now, a matter of years, I have been publicly speaking of the necessity of the American people to support our program of aid to those freedom fighters down there in order to prevent there being

established a Soviet beachhead here in the Western Hemisphere, in addition to the one we already have in Cuba. And to suggest that I am just finding out or that things are being exposed that I didn't know about -- no. Yes, I was kept briefed on that. As a matter of fact, I was very definitely involved in the decisions on the support to the freedom fighters. It was my idea to begin with."

I did not authorize or approve of the transfer to the NSC or any of its staff any function or operation performed by the CIA with respect to the Nicaraguan Freedom Fighters. I do not recall anyone ever asking me to approve or authorize the transfer of any function or operation from the CIA to the NSC, and I do not recall ever discussing such transfer.³⁰

30 Reagan, Grand Jury Interrogatories, Answer to Question 8.

* * *

Beyond [Presidential Findings, National Security Decision Directives, and advocacy of third-country assistance], my instructions with regard to the support for the Freedom Fighters were usually of a general nature, and I do not now recall any authorization or approvals of specific actions with respect to the Freedom Fighters.

With regard to Richard V. Secord and Albert Hakim, I do not recall approving or authorizing any action concerning them with regard to the Freedom Fighters or of meeting either individual during this time frame.³¹

31 Ibid., Answer to Question 9.

* * *

I knew that Lt. Col. North's responsibilities included work related to Central America and, specifically, Nicaragua. However, prior to my conversations with Attorney General Meese on November 24 and 25, 1986 concerning what has come to be known as the "diversion", I did not know that Lt. Col. North participated in planning, directing or advising NFF military or paramilitary operations or logistical support for such operations. Although I heard about allegations in the press that Lt. Col. North was engaged in such activities, I understood that these allegations were incorrect.³²

32 Ibid., Answer to Question 10.

In his testimony in United States v. Poindexter, the President said he generally recalled North as a "communicator" between the U.S. Government and the contras.³³ The President said he did not have "any inkling" that the NSC staff was guiding the contras' strategy or that North was participating in planning and directing and advising the contras' military activities, including giving logistical support to them.³⁴ Elaborating on his Interrogatory Answers, Reagan testified that he had "heard reports about" Secord and Hakim in connection with contra assistance ³⁵ and he recalled that Secord had "some kind of aero business" or "delivery business" and "might have been involved with delivering some aid to the contras when it was legal to provide such aid." ³⁶ The President also recalled being informed by Poindexter about a Costa Rican airstrip, which Mr. Reagan said he "hoped that it would be used in the delivery of when once again we could supply, keep the contras supplied, that it could be involved in the -- used there, if there was need for a refueling or anything of that kind of plane." ³⁷ The President went on to speculate that the aircraft using the airstrip would have been "some of those that weren't officially planes of ours that had been helping in the past in deliveries to the contras." He added it seemed "logical" that Secord would have been involved in that.³⁸

33 Reagan, Poindexter Trial Testimony, 2/16/90, pp.131-38.

34 Ibid., 2/17/90, p. 170.

35 Ibid., p. 192.

36 Ibid., 2/16/90, p. 21.

37 Ibid., p. 121.

38 Ibid., p. 122.

The President to this extent admitted to a good basic understanding of the logistics of supplying the contras' southern front from Ilopango air base in El Salvador: planes that were not ``officially" U.S. government, using an airstrip in a neutral country to refuel for the long round trip from Ilopango, along the Pacific to Nicaragua near the Costa Rican border to avoid overflying Nicaragua.

McFarlane testified that he kept the President apprised of what he was doing with respect to the contras, including what was ``close to the line." 39 Poindexter believed that the President would certainly have known that North was the NSC's action officer on Central America, and that the NSC was keeping close track of the situation in that region. Poindexter did not recall any conversation with the President about the breadth of these actions.⁴⁰ In a Grand Jury appearance, Poindexter recalled that he did tell President Reagan that Secord was ``heading up the private operations to actually provide the logistics support to the contras."⁴¹ Poindexter did not recall whether the President was told about the June 1985 Miami meeting in which North with Secord assumed control of the resupply operation.⁴²

39 McFarlane, Select Committees Testimony, 5/13/87, p. 98.

40 Poindexter, Select Committees Deposition, 5/2/87, pp. 221-22; Ibid., 6/17/87, pp. 315-16; Poindexter, Select Committees Testimony, 7/15/87, pp. 138-41; Ibid., 7/20/87 pp. 3, 10.

41 Poindexter, Grand Jury, 11/28/90, p. 72.

42 Ibid., pp. 71-73.

That the documentary record of precisely what was passed along to the President regarding the details of North's secret resupply operation is sparse is not surprising, considering the wholesale destruction of records by North. One surviving North document that reached the President was an October 30, 1985, memorandum requesting presidential approval of U.S. reconnaissance flights over Nicaragua.⁴³ It is initialed ``approve" by Poindexter, and also bears the words ``President Approved." Poindexter said this meant that he briefed the President orally on the content of the document rather than giving him the document to read.⁴⁴ Poindexter did not recall whether he briefed the President on an attached, supplementary note from North which says in part:

43 Memorandum from North to McFarlane, 10/30/85, ALU 0060483-86.

44 Poindexter, Grand Jury, 11/28/90, p. 86-87.

You should also tell the President that we intend to air-drop [the intelligence obtained from the reconnaissance flights] to two Resistance [contra] units deployed along the Rio Escondito, along with two Honduran provided 106 mm recoilless rifles which will be used to sink one or both of the arms carriers which show up in photograph at Tab I.

Accordingly, there is some evidence indicating that the President was exposed to information about North's activities both in briefings from McFarlane and Poindexter and from documents. The President attached great importance during this period to the success of the contra effort. His personal diary is replete with references to the contra-aid struggle with Congress.⁴⁵ It showed he

followed the debate on the various contra-aid proposals on Capitol Hill very closely. There were frequent references to poll results regarding the lack of public support for the contra cause. Both McFarlane and Poindexter reported regularly to Reagan on the state of the contras. The question of how to continue their financial support was discussed at several NSPG sessions.

45 The OIC was permitted to read excerpts from the President's diary entries from 1984-87 deemed relevant to Iran/contra by White House counsel. The OIC reviewers were not permitted to make copies, so the references to President Reagan's Diary quoted here, except where otherwise attributed, reflect OIC attorneys' notes of the excerpts.

There is no question that within the Administration, President Reagan's support for the success of the contras assured high-level guidance for North from Casey, McFarlane and Poindexter.⁴⁶ North's requests for assistance received warm and generous responses from working groups within the national security community.⁴⁷ Ambassadors, assistant secretaries, CIA experts, and high-ranking military and intelligence officers responded to North's requests with alacrity. Only the impression, right or wrong, that North had the tacit authorization of the chief executive can explain this degree of support and cooperation in an area of manifest congressional hostility.

46 Reagan, Grand Jury Interrogatories, Answer to Question 9. When asked whether he authorized Casey, among others, to take action with respect to the contras during the Boland cut-off period, the President said the question was too broad to be answered specifically. He conceded that Administration policy was to support the contras. ``Thus, Administration officials were generally authorized to implement that policy." (Ibid.)

47 See North chapter.

In spite of his insulation from North and his activities by McFarlane and Poindexter, President Reagan had to know the contras were being held together, as he directed. He knew that the funds from the Saudis had run out, but somehow other sources of funding were not only enabling the contras to survive, but to grow. When the press or Congress raised questions about the scope of the NSC and North's involvement, the President relied on McFarlane and Poindexter to respond to these allegations. The President, having issued generalized instructions to his subordinates that they stay within the law, relied upon the generalized assurances from McFarlane and Poindexter that his instructions were being followed.⁴⁸

48 Reagan, Poindexter Trial Testimony, 2/16/90, pp. 53-54.

Proof of President Reagan's authorization or knowledge of North's illegal activities, beyond a reasonable doubt, would have required more than the non-specific testimony that McFarlane and Poindexter were willing to give and that the few surviving documents would establish. The President's own activities on behalf of the contras were not on the face of it activities forbidden by criminal law.

Procuring foreign assistance for the pursuit of objectives approved by Congress, such as the recent war with Iraq, is quite different from procuring foreign assistance for an objective rejected or prohibited by Congress. But diplomatic intercourse with the heads of foreign states is an essential presidential function. Even statutory restrictions in this field may be questionable. The constitutional remedy is impeachment. It is hardly a field for the application of criminal law. No criminal statute attempts to deal with this problem.

The Iran Hostage Initiative, 1985-1986

In an effort to convince elements in Iran to use their influence to obtain the release of U.S. hostages in Lebanon, the President and his advisers in 1985 embarked upon the sale of arms to Iran, first through Israel, and subsequently directly through the CIA, under the operating direction of North,

and using the Secord-Hakim ``Enterprise" as a cut-out to disguise CIA involvement. In both phases, the President directed that Congress not be notified.⁴⁹

⁴⁹ Ibid., 2/17/90, p. 235.

In the first phase, beginning in mid-1985, the President was informed of and approved in advance an Israeli shipment of 504 Israeli-owned U.S.-made TOW antitank missiles to Iran in August and September and a November shipment of Israeli-owned U.S. HAWK anti-aircraft missiles.⁵⁰ The weapons were to be paid for by Iran and the Israeli stocks were to be replenished by the United States, which originally sold the weapons to Israel.

⁵⁰ The President was briefed in advance on each group of weapons sold to Iran. With respect to the November 1985 HAWK shipment, the President was also told what happened to it (see Reagan, Grand Jury, 2/3/88, p. 61-64; see also Poindexter Notes, 11/25/85, 000037-38). On December 5, 1985, President Reagan signed a Finding to validate it retroactively.

The second phase in which the United States itself transferred weapons to Iran through the CIA and the Enterprise included 1,000 TOW missiles sent to Iran in February 1986 and 240 spare parts for HAWK missile systems sent in May and August 1986. In May 1986, the United States also sent 508 TOW missiles to Israel as part of the promised replenishment. In October 1986 a second group of 500 TOW missiles from the United States was delivered through the CIA and the Enterprise to Israel. The older-model TOWs the Israelis had received in May were then shipped to Iran.

The Iranian representatives paid the Enterprise in advance for each 1986 shipment. The Enterprise reimbursed the CIA. During 1986 there was a substantial difference, aggregating roughly \$16 million, after costs of delivery, between amounts collected by the Enterprise from Iran and the amounts transmitted by the Enterprise to the CIA to pay the Department of Defense for the weapons. The President's Finding authorizing the transaction specified the initiative's purposes; they did not include funding the contras or profiteering by Government agents.⁵¹

⁵¹ The January 17, 1986, Iran arms Finding listed three purposes: ``(1) establishing a more moderate government in Iran; (2) obtaining from [elements in Iran] significant intelligence not otherwise obtainable, to determine the current Iranian Government's intentions with respect to its neighbors and with respect to terrorist acts, and (3) furthering the release of the American hostages held in Beirut and preventing additional terrorist acts by these groups." (Presidential Finding, 1/17/86, AKW 001921.)

The facts of the ill-fated Iran arms sales have been widely covered since the secret initiative began unraveling publicly in early November 1986. The question here is whether President Reagan violated any criminal law with respect to approving the arms sales to Iran, by failing to execute an appropriate Finding or a written determination authorizing NSC involvement, or by ordering that the arms sales not be reported to Congress.

In the case of the two 1985 Israeli arms transfers, President Reagan knew from the outset that he was acting in conflict with his own announced policies of not rewarding hostage takers and of not selling arms to nations sponsoring terrorism. He knew this activity was politically and legally questionable.⁵² Two of his principal advisers, Secretary of Defense Casper W. Weinberger and Secretary of State Shultz, both opposed the initiative for those and other reasons. Nonetheless, the President decided to proceed, and he directed that Congress not be notified.⁵³

⁵² Reagan, Poindexter Trial Testimony, 2/16/90, p. 16-19.

⁵³ See the December 5, 1985, retroactive Finding referred to in footnote 50.

There was no way in which President Reagan's action could be squared with the Arms Export Control Act (AECA). The AECA forbade the retransfer of U.S. arms to a third country unless the United States itself could make the transfer directly. It required certifications from the recipient country concerning further transfer. Finally, it required reports to the Speaker of the House and the Senate Foreign Relations Committee concerning retransfer agreements and notice to Congress 30 days after the end of each quarter of a transfer of more than \$1 million of major defense equipment.⁵⁴

54 22 U.S.C. 2753(a).

These requirements were raised forcefully by Weinberger in November 1985 telephone conversations with McFarlane and in the December 7, 1985, meeting of Shultz and Weinberger with the President and others. On December 7, President Reagan was defiant. Poindexter had apparently passed to him North's prediction that the American hostages would likely be killed if the arms transfers did not proceed. President Reagan said he could explain to the American people a violation of the statute, but could not explain letting the hostages be killed for fear of violating a statute.

When interviewed by Independent Counsel on July 24, 1992, President Reagan, although no longer remembering the December 1985 conversation itself, confirmed it in the sense that he believed that it was what he would have said, and that the views expressed were still held by him. President Reagan's defiance, if it had been public, would have presented an outright constitutional confrontation with Congress. The question would have been the validity of a statutory restriction upon President Reagan's view of his constitutional powers as commander-in-chief and as the officer responsible for dealing with foreign nations.

Without any criminal sanction specifically provided for AECA violations, the question was whether this secret non-compliance with the AECA could be said to be a conspiracy to defraud the United States by the President and those assisting him in carrying out the transaction. In Independent Counsel's judgment, prosecution for such non-compliance would not have been appropriate. Right or wrong, the President's determination that secrecy was necessary to protect the hostages from murder was a matter for him to decide. Certainly, it was not a frivolous concern, nor was his view of his constitutional powers and responsibilities.

The second statute relative to the Iranian arms sales was the National Security Act of 1947, as amended.⁵⁵ This Act was considered first in connection with the 1986 arms sales but also, after the November 1986 exposure, as a retroactive validation of the 1985 arms sales. These opinions will be discussed in the chronological order in which they were given.

55 50 U.S.C. 413. The Foreign Assistance Act, 22 U.S.C. 2314, is arguably inapplicable. It concerns government-to-government transfers, not sales to individuals.

In January 1986, the President was informed by Attorney General Meese that he could avoid the Arms Export Control Act. This opinion was based upon an October 5, 1981, opinion of Attorney General William French Smith that if the President determined that neither the Foreign Assistance Act nor the Arms Export Control Act could be used, he could approve a transfer outside the context of these statutes if he determined that the authorities of the Economy Act and the National Security Act should be utilized in order to achieve "a significant intelligence objective." Whereas Attorney General Smith advised that reporting requirements imposed by the Intelligence Oversight Act of 1980 required that the House and Senate Intelligence Committees be informed of the President's determination, Attorney General Meese took a more extreme view that the National Security Act implicitly authorized the President to withhold any prior or contemporaneous notice to Congress, even the limited notice to the leadership of the intelligence committees and the leadership of the two houses of Congress.⁵⁶

56 Meese, Select Committees Testimony, 7/28/87, pp. 6, 26; *ibid.*, 7/29/87, pp. 45-46.

Section 501(a) of the National Security Act of 1947, as amended, provides

To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall --

(1) keep the Select Committee on Intelligence of the Senate and Permanent Committee on Intelligence of the House of Representatives . . . fully and currently informed of all intelligence activities . . . including any significant anticipated intelligence activity, except that . . . (B) if the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States, such notice shall be limited to the chairman and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate[.]

For the purposes of this section, the transfer of defense articles exceeding \$1 million value by an intelligence agency to a recipient outside that agency was defined as a ``significant anticipated intelligence activity" by the Fiscal Year 1986 Intelligence Authorization Act.⁵⁷

57 P.L. 99-169, 502(b).

Section 501(b) provides

The President shall fully inform the intelligence committees in a timely fashion of intelligence operations in foreign countries . . . for which prior notice was not given under subsection (a) of this section and shall provide a statement of the reasons for not giving prior notice.

Meese and the general counsel of the CIA advised President Reagan in 1986 that he could direct that notice not be given to any member of Congress. They reasoned that subsection (b) implied that the President, under certain circumstances, could avoid any notice to Congress, even the limited notice provided in 501(a)(1)(B). They supported this conclusion by the introductory language of subsection (a), which is a lengthy expression of deference to the President's other duties and constitutional powers.

Section 501(b) could well be read more straightforwardly as a requirement that, in timely fashion, the eight specified representatives and senators be informed of intelligence operations specified in 501(a)(1)(B) which permitted notice limited to eight persons. Nevertheless, Meese's more extreme view that the President could forbid any notice whatsoever to any member of Congress had been expounded previously within the CIA and could not in a criminal case be treated as legally insupportable or frivolous. Under these circumstances, 501 of the National Security Act, with its deferential concern for the President's status in national security matters, would be poor support for criminal prosecution. In itself, it provided no criminal penalty for violation and, ordinarily, a President relying upon an opinion of the attorney general interpreting its deferential language could hardly be said to be conspiring to defraud the United States.

After Meese learned in 1986 of the November 1985 shipments, he had the problem of legality analyzed by Assistant Attorney General Charles Cooper, the head of the Office of Legal Counsel in the Department of Justice. In a December 17, 1986, memorandum to Meese, Cooper reconfirmed that the AECA did not apply to the 1986 arms sales to Iran. He concluded that the National Security Act implicitly recognizes the President's discretion to authorize weapons transfers outside the AECA as part of an activity conducted by an ``intelligence agency," such as the CIA.⁵⁸

58 Memorandum from Cooper to Meese, 12/17/86, pp. 5-6, ALV 077747-48.

The Hughes-Ryan Amendment to the Foreign Assistance Act required that before the CIA might engage in such operations in a foreign country the President must "find" that the operation is "important to the national security of the United States." 59

59 22 U.S.C. 662.

The Israeli arms shipments in 1985, which the U.S. had approved, presented a problem. If the CIA was involved, there had to be a presidential Finding or the AECA would apply. Since there was no Finding, the AECA appeared to apply. In his memorandum dated more than three weeks after Meese's weekend investigation, Cooper ultimately took the position that the 1985 arms sales were legal under the President's inherent powers as implicitly recognized by the National Security Act.⁶⁰

⁶⁰ Memorandum from Cooper to Meese, 12/17/86, p. 17, ALV 007760.

With respect to the August and September 1985 TOW shipments, Cooper explained that only the NSC, not the CIA, was involved. Therefore, no Finding was necessary. Assuming the NSC is an "intelligence agency" for these purposes, which Cooper found "clear," the shipments would be legal under the National Security Act.⁶¹ This disregards Executive Order 12333. Before an agency other than the CIA could undertake a covert action outside the United States, that order specified that the President make a determination that the agency was more appropriate than the CIA to discharge the covert action. National Security Decision Directive (NSDD) No. 159 provided that the presidential determination under Executive Order 12333 must be made in writing.

⁶¹ Ibid., p. 5, ALV 007748. Ironically, Meese maintained that the Boland Amendment, which restricted actions of "intelligence agencies," did not apply to the NSC because it was not an "intelligence agency." Meese testified that "certainly the NSC is not an intelligence agency" and in his "opinion the NSC staff would not be considered an intelligence agency within the general meaning of the term. (Meese, Select Committees Deposition, 7/8/87, p. 33.)

Because the CIA was involved in the November 1985 HAWK shipment, however, the Hughes-Ryan Amendment required a presidential Finding. Cooper elided that problem with an "oral finding" theory. McFarlane had testified that the President had orally authorized the November 1985 HAWK shipment in advance. According to Cooper, that satisfied the Hughes-Ryan requirement that the President "find" the operation "important to the national security of the United States." There remained the question of congressional notification. The National Security Act required the President to give Congress "timely" notice of "intelligence operations in foreign countries." ⁶² The Administration took the position that because the lives of the hostages were at risk, it was not "timely" to notify Congress until the hostages were safe.⁶³ President Reagan did not comply with Executive Order 12333 and NSDD 159. Whether a president is subject to his own Executive Order that had no criminal penalties was not a question to be settled by criminal prosecution.

⁶² 50 U.S.C. 413(b).

⁶³ Meese, Select Committees Testimony, 7/28/87, pp. 197-98.

The November 1985 HAWK shipment had been significantly aided by the CIA: first, by its effort to use intelligence resources abroad to clear the snarled Israeli transportation effort; and, second, by using its own proprietary -- an airline that it owned -- to carry the HAWKs from Israel to Iran. The National Security Act required a Finding for such CIA involvement. CIA General Counsel Sporkin concluded that this Finding could be signed retroactively. Accordingly, on December 5, 1985, ten days after the HAWK shipment, President Reagan signed a Finding that it was in the national interest to further the sale of weapons to appropriate persons in order to facilitate the release of American hostages, and retroactively authorizing the CIA to aid such an effort.⁶⁴ There was no evidence that the President knew in advance that the CIA was going to participate in the HAWK transaction.

64 President Reagan has said he does not recall signing the December 1985 Finding, but Poindexter testified that the President signed it on December 5. Poindexter testified that it was kept in his office safe until he destroyed it on or about November 21, 1986. North testified in his trial that he and Commander Paul Thompson, the NSC's legal counsel, witnessed the destruction of the Finding.

None of the above statutes, the Executive Order, or the NSDD, provided for a criminal penalty. Thus their violation rises to a level of criminality only in the event of a criminal conspiracy. Independent Counsel has taken the position, and the District Court agreed, that a charge under the conspiracy statute, 18 U.S.C. 371, may be based upon a conspiracy, through deceitful and dishonest means, to violate a federal civil law or to prevent the Government from conducting its operations and implementing its policies honestly and faithfully. While such a charge was applicable under the facts in the North conspiracy count, involving unauthorized arms proceeds hidden in secret Swiss accounts to be used for other unauthorized activities, this hardly applied to the facts surrounding the President's initial decision to proceed with the arms sales to Iran. Congress was ultimately deceived, but the President's professed motive for secrecy -- a desire to protect the lives of the hostages and to effect their release -- had at least a surface plausibility.

The October-November 1986 Cover-up of Iran/Contra

With the downing of one of the Enterprise contra-resupply planes by the Nicaraguans on October 5, 1986, and their capture of the surviving crew member, American Eugene Hasenfus, the unraveling of the NSC's secret contra-resupply operation began.

Despite immediate U.S. denials that either Hasenfus or the aircraft was connected to the U.S. Government or working under the direction of any American official or agency, evidence began piling up that the elaborate resupply network was being directed by North out of his NSC office.

The Hasenfus shutdown did not create much of a stir with the President. On October 7, Poindexter briefed Reagan, telling him that the Hasenfus operation was not connected with the Government.⁶⁵ The President did not even record the Hasenfus shutdown or the press reaction to it in his personal diary. In the President's Grand Jury Interrogatory Answers (45-47) Reagan gives this account:

65 Poindexter, Grand Jury, 3/6/91, pp. 140-41.

Admiral Poindexter assured me that the Hasenfus operation had no connection to the United States Government whatsoever. When I asked whether General John Singlaub might be involved in this operation as had been reported in the press, I was told "no" by Admiral Poindexter. On the following day, October 8, 1986, also at an NSB [National Security Briefing], Admiral Poindexter confirmed there had been no U.S. Government involvement. Consequently, immediately following this NSB, when I departed the South Lawn en route to Raleigh, North Carolina, I answered in the negative when asked by a reporter whether there had been any U.S. involvement in this operation. (Tab 45-47B).

Though the subject was not raised in my November 19, 1986, press conference, I was given talking points in preparation for that conference which stated that the downed aircraft was not a U.S. Government aircraft or involved in any U.S. Government operation (Tab 45-47C).

Independent Counsel could not prove that President Reagan knew there was Government involvement in the Hasenfus operation. He apparently had been told by Poindexter on several occasions that there was none. The press and some members of Congress were skeptical as contrary evidence accumulated. But spokesmen for the State and Defense departments and the CIA continued the denials. Leading them was Assistant Secretary of State Elliott Abrams, who steadfastly denied before Congress and the public that the United States was involved in the resupply effort.⁶⁶ As far as is known, no one on the inside sought to protect the President's credibility by telling him the truth or warning him against falsely denying a U.S. connection.

66 Abrams pleaded guilty October 7, 1991, to two misdemeanor counts of withholding information from Congress about secret Government efforts to support the contras during the Boland period. He was pardoned by President Bush on December 24, 1992.

The Unraveling of the Iran Initiative

Hostage David Jacobsen was released November 2, 1986. Poindexter and North were hopeful that a second hostage would also be released and discussions with Iranian contacts were still going on. When the story broke on November 3, 1986, that McFarlane had led a U.S. mission to Tehran and that the U.S. Government had sold weapons to Iran in exchange for hostages, a shocked Congress and national press corps began questioning the stark disparity between the reported secret arms sales and the Administration's public policies calling for a boycott of arms sales to Iran and the refusal to reward terrorism. The angry public reaction stunned the Administration, which spent the next three weeks trying to stem the protest, first by stonewalling and attempting to deny the story, then by making highly selective admissions aimed at stanching the flow of politically damaging information as much as possible.

The initial reaction to stonewall is reflected in the notes of Rodney McDaniel, executive secretary of the NSC, taken during the President's daily national security briefings for November 6 and November 7, 1986. The notes reflect that a "no comment" posture was adopted.⁶⁷ The President's initial public statements embodied the stonewall. On November 6, the President answered a press question as follows:

67 McDaniel Notes, 11/6/86, ALU 0128263-64.

Q: Mr. President, do we have a deal going with Iran of some sort?

The President: No comment, but could I suggest an appeal to all of you with regard to this: that the speculation, the commenting and all, on a story that came out of the Middle East, and that to us has no foundation, that all of that is making it more difficult for us in our effort to get the other hostages free.⁶⁸

68 "Remarks on Signing the Immigration Reform and Control Act of 1986," 11/6/86, Public Papers of the Presidents, Ronald Reagan, 1986, Vol. II, pp. 1521-22.

On the next day, the President tried again to silence the controversy, as he was questioned by the press on his meeting with Jacobsen, who was at a White House ceremony celebrating his release:

Q: Mr. President, the Iranians are saying that if you'll release some of those weapons, they'll intercede to free the rest of the hostages. Will you?

The President: Bill, I think in view of this statement, this is exactly what I tried to tell you last night. There's no way that we can answer questions having anything to do with this without endangering the people we're trying to rescue.⁶⁹

69 "Remarks and an Informal Exchange with Reporters Prior to a Meeting with David Jacobsen," 11/7/86, Public Papers of the Presidents, Ronald Reagan, 1986, Vol. II, pp. 1533-34.

On November 7, there was the first reference in a national security briefing to the need to discuss Iran with congressional leaders.⁷⁰ At about the same time, Poindexter directed North to develop a chronology of the Iran initiative.⁷¹

70 McDaniel Note, 11/7/86, ALU 0128264.

71 North, North Trial Testimony, 4/7/89, pp. 7032, 7036-37.

The Presidential diary entry for November 7, 1986, contains the following passage: ``Discussion of how [to] handle press who are off on wild story originating in Beirut -- I've proposed message be we can't and won't answer Q's [questions] because would endanger those we are trying to help." In his 1990 book *An American Life*, Reagan published that entry in this form:

Usual meetings. Discussion of how to handle press who are off on a wild story built on unfounded story originating in Beirut that we bought hostage Jacobsen's freedom with weapons to Iran. We've tried `no comment.' I've proposed and our message will be: `We can't and won't answer any questions on this subject because to do so will endanger the lives of those we are trying to help.' 72

72 Reagan, *An American Life*, p. 527 (Simon & Schuster 1990).

Over the next few days, there were a number of White House discussions about whether to reveal more about the Iran matter, with the White House staff arguing for greater disclosure and Poindexter and Casey advising a continued ``no comment." 73

73 Regan, Grand Jury, 2/26/88, pp. 32-34.

On November 10, 1986, President Reagan, Vice President Bush, Poindexter, White House Chief of Staff Donald T. Regan, Shultz, Weinberger, Casey, Meese, and Deputy National Security Adviser Alton Keel held a 90-minute meeting about both the Iran initiative and its disclosure.⁷⁴ OIC obtained copies of notes taken by Regan, Weinberger, Meese, and Keel concerning what was said at this meeting.⁷⁵ In Shultz's case, the OIC has a transcription of his notes by his aide M. Charles Hill, as well as Hill's notes of Shultz's after-the-fact ``read-out" or recounting of the meeting.⁷⁶ The various notes differ in some ways, but they share one attribute that is striking: All of them reflect a purported description of the Iran initiative by Poindexter which began with the January 17, 1986, Finding; they refer to a 1985 Israeli shipment of 500 TOWs that the United States had found out about ``after the fact" and agreed to replenish; they make no mention of the November 1985 HAWK transaction or the December 1985 Finding.

74 DCI (Casey) schedule, 11/10/86, ER 326-27.

75 Regan Notes, 11/10/86, ALU 024673-87; Memorandum from Weinberger to the Record, 11/10/86, ALZ 0041725-27; Meese Notes, 11/10/86, ALV 065209-12; Keel Note, 11/10/86, AKW 047247-55.

76 Hill Notes, 11/10/86, ANS 0001766-67, 0001762-64.

Neither the President nor any of the others corrected Poindexter's false account. Much of the meeting was spent debating whether to issue any sort of public statement about the Iran matter; a part of that discussion, as captured in Regan's notes, is as follows:

Pres We must say something but not much.

John [Poindexter] If we go with this [a proposed brief statement drafted by Casey] we end our Iranian contacts.

DTR [Regan] Must get a statement out now, we are being attacked, and we are being hurt. Losing credibility.

Pres Must say something because I'm being held out to dry. Have not dealt with terrorists, don't know who they are. This is long range Iranian policy. No further speculation or answers so as not to endanger hostages. We won't pay any money, or give anything to terrorists.

JP [Poindexter] Say less about what we are doing, more about what we are not doing.⁷⁷

77 Regan Note, 11/10/86, ALU 024673-87.

After the meeting, work continued on a statement; according to Regan's notes, that afternoon ``A lot of info [was] cut out by Ollie [North] and others at NSC due to their conversations with Iranians in Geneva over weekend." Weinberger, Meese, Casey, and the President signed off on a statement for release that evening.⁷⁸ The statement said:

78 Ibid., ALU 024687.

The President today met with his senior national security advisers regarding the status of the American hostages in Lebanon. The meeting was prompted by the President's concern for the safety of the remaining hostages and his fear that the spate of speculative stories which have arisen since the release of David Jacobsen may put them and others at risk.

During the meeting, the President reviewed ongoing efforts to achieve the release of all the hostages, as well as our other broad policy concerns in the Middle East and Persian Gulf. As has been the case in similar meetings with the President and his senior advisors on this matter, there was unanimous support for the President. While specific decisions discussed at the meeting cannot be divulged, the President did ask that it be reemphasized that no U.S. laws have been or will be violated and that our policy of not making concessions to terrorists remains intact.

At the conclusion of the meeting, the President made it clear to all that he appreciated their support and efforts to gain the safe release of all the hostages. Stressing the fact that hostage lives are at stake, the President asked his advisers to ensure that their departments refrain from making comments or speculating about these matters.⁷⁹

79 Statement by Principal Deputy Press Secretary Speakes on the American Hostages in Lebanon, 11/10/86, Public Papers of the Presidents, Ronald Reagan, 1986, Vol. II, p. 1539.

The Initial Briefings of Congress

On November 12, 1986, the Administration held a briefing for Senate Majority Leader Robert Dole, Senate Minority Leader Robert Byrd, House Majority Leader Jim Wright, and House Minority Whip Richard Cheney. According to NSC counsel Paul Thompson's notes⁸⁰ and Meese's notes,⁸¹ the Administration was represented at this meeting by the President, the Vice President, Shultz, Weinberger, Meese, Casey, Regan, Poindexter, Keel, Will Ball, Larry Speakes, and Thompson. The meeting began with a preliminary statement by the President, which Thompson recorded as follows:

80 Thompson Notes, 11/12/86, 11/13/86, 11/21/86, AKW 001390-463.

81 Meese Note, 11/12/86, ALV 065197-99.

- 1) principally a cov[ert] intell[igence] op[eration]
- 2) not a rogue op
- 3) no nego[tiation]s terrorists
- 4) enhance position in ME [Middle East]

The President's description ignored the two 1985 Israeli shipments.

Then, according to both sets of notes, Poindexter took over with a lengthy narrative. Poindexter again began with the January 17, 1986, Finding, and then described the McFarlane trip to Tehran, listed the 1986 weapons shipments to Iran (omitting the October 1986 shipment), and concluded with the statement ``Mr. [President], those are all the facts." ⁸² The only references to the 1985

phase of the initiative are oblique; Thompson's notes show Poindexter stating that ``Israelis are [probably] still shipping to Iran," 83 which Meese's notes expand into a statement that ``Israelis may be continuing to ship arms to Iran (w/o [without] our authorization) as they did before our contacts began." 84

82 Thompson Note, 11/12/86, AKW 001402.

83 Ibid.

84 Meese Note, 11/12/86, ALU 065197-99.

According to Regan's notes, later in the meeting Sen. Byrd asked when the initial contact was made, and Poindexter replied: ``in 1985 but no transfer of material -- took time to assess contact & issue finding[.]" 85

85 Regan Note, 11/12/86, ALU 0139141.

The President and the other Administration principals in attendance, said nothing to correct the false report to the congressional leaders -- that the Finding preceded all arms shipments.

In his diary entry for November 12, 1986, President Reagan did not mention the meeting with congressional leaders:

This whole irresponsible press bilge about hostages and Iran has gotten totally out of hand. The media looks like it's trying to create another Watergate. I laid down the law in the morning meetings. I want to go public personally and tell the people the truth. We're trying to arrange it for tomorrow. 86

86 Reagan, *An American Life*, p. 528.

The President's televised speech to the nation on November 13, 1986, did not ``tell the people the truth" about the Iran initiative.⁸⁷ Instead, it reflected the new version of the facts that the Administration had settled on for public-relations purposes. It stressed four main points:

87 Reagan, *Address By the President to the Nation*, 11/13/86, ALU 018811-14.

- the weapons shipments were not ransom for the hostages,
- the quantities of weapons involved in the initiative were small,
- the weapons were ``defensive" in nature, and
- the goals of the initiative went beyond arms for hostages and included renewing the United States' relationship with Iran, bringing an honorable end to the Iran/Iraq war, eliminating state-sponsored terrorism, and obtaining the safe return of the hostages.

The President was silent about the 1985 Israeli shipments of U.S. arms to Iran.

It was against this background that Poindexter and Casey prepared for their testimony before the congressional intelligence committees, which were embarking upon an inquiry into the Iran initiative. There is no suggestion that the President told them what to say -- but if they told the truth about the 1985 shipments their testimony would be inconsistent with what congressional leaders were told in their briefing by the President and Poindexter. And it was to provide the essential facts for this crucial testimony that McFarlane, North and other officials were assembling a chronology of the Iran initiative. McFarlane, Poindexter, North and others sought to falsify an original CIA

chronology -- which was reasonably accurate except that it failed to mention the diversion -- by distancing the Administration from the two 1985 Israeli shipments.

As facts about the arms sales were dribbling out from a variety of sources, Administration officials continued to resist divulging additional information. In a briefing of reporters before the President's November 13 televised address, Poindexter fielded a series of questions about a possible connection between the September 1985 release of American hostage Benjamin Weir and a shipment of arms to Israel:

Q: Could you say then what prompted the release of Benjamin Weir then in September of '85? What event do you think was related to his release?

SENIOR ADMINISTRATION OFFICIAL [Poindexter]: Well, I think that it was a matter of our talking to the contacts through our channel, making the case as to what our long-range objectives were, demonstrating our good faith --

Q: How did you do that?

Q: How was that done?

SENIOR ADMINISTRATION OFFICIAL: Well, that was one of the motivations behind the small amount of stuff that we transferred to them.

Q: But that was done later?

Q: But where -- before this January document was signed?

SENIOR ADMINISTRATION OFFICIAL: The problem is -- and don't draw any inferences from this -- but there are other countries involved, but I don't want to confirm what countries those are and -- because I think that it is still important that that be protected. And going back to the question you asked me earlier, there was one shipment that was made not by us, but by a third country prior to the signing of that document.

Q: This shipment to Israel?

SENIOR ADMINISTRATION OFFICIAL: I'm not confirming that, George.

Q: Was that on our behalf?

SENIOR ADMINISTRATION OFFICIAL: It was done in our interests.

Q: Sir, what --

Q: Was that before Weir was released?

SENIOR ADMINISTRATION OFFICIAL: I honestly don't know. And if I knew, I don't think I would tell you precisely.

Q: You just said previously that you did not condone any shipments.

SENIOR ADMINISTRATION OFFICIAL: I went back and corrected -- there was one exception and that was the one I just described.

Q: And that was --

SENIOR ADMINISTRATION OFFICIAL: That was it.

Q: And that was around the time of Weir's release. When you said demonstrating our good faith we have to assume -- infer from what you've said that there was some kind of quid pro quo.

SENIOR ADMINISTRATION OFFICIAL: It was in the general time frame.⁸⁸

88 Background Briefing by Senior Administration Official, 11/13/86, AKW 028978-79.

Regan subsequently admitted to reporters that "we had condoned a shipment of arms by Israel to Iran and had replenished it."⁸⁹ The admissions by Poindexter and Regan concerning U.S. approval of the 1985 Israeli TOW shipment left the November 1985 HAWK shipment, the related December 1985 Finding, and the diversion as the major remaining undisclosed facts concerning the Iran initiative. The week of November 17, 1986, saw drastic changes in the NSC Iran chronology -- which omitted the diversion throughout, but which up to then contained a relatively truthful, if incomplete, account of the November 1985 HAWK shipment similar to that contain in the early versions of the CIA chronology. ⁹⁰ First, Administration officials moved toward omission of the November shipment entirely and, later in the week, toward the affirmatively false statement that the United States had believed that the shipment contained oil-drilling parts.⁹¹

89 Regan, Grand Jury, 2/26/88, p. 41.

90 Subject: Background and Chronology of Special Project, AKW 010038-40; Index of Logs Used By Poindexter, Poindexter GX 124.

91 U.S./Iranian contacts and the American Hostages, 11/20/86, AKW 000151-73.

On the afternoon of November 19, the President received a personally delivered warning from Secretary Shultz that "[w]e've been deceived and lied to and you have to watch out about saying no arms for hostages." ⁹² Despite this cautionary warning, the President that night made yet one more effort to quell public criticism in a nationally televised press conference. During the questioning the President flatly denied the 1985 phase of the Iran initiative or any involvement by third countries. In follow-up questioning, the President was asked:

92 Shultz, Select Committees Testimony, 7/23/87, p. 110.

Q: Mr. President, going back over your answers tonight about the arms shipments and the numbers of them, are you telling us tonight that the only shipments with which we were involved were the one or two that followed your January 17th finding and that, whatever your aides have said on background or on the record, there are no other shipments with which the U.S. condoned?

THE PRESIDENT: That's right. I'm saying nothing but the missiles that we sold -- and remember, there are too many people that are saying "gave." They bought them.

Andrea?

Q: Mr. President, to follow up on that, we've been told by the Chief of Staff Donald Regan that we condoned, this government condoned an Israeli shipment in September of 1985, shortly before the release of hostage Benjamin Weir. That was four months before your intelligence finding on January 17th that you say gave you the legal authority not to notify Congress. Can you clear that up why we were not -- why this government was not in violation of its arms embargo and of the notification to Congress for having condoned American-made weapons shipped to Iran in September 1985?

THE PRESIDENT: No, that -- I've never heard Mr. Regan say that and I'll ask him about that, because . . . we waived it for a specific purpose, in fact, with four goals in mind.⁹³

93 News Conference by the President, 11/19/86, ALU 016823.

Immediately after the press conference, the President's aides tried to bring the President's comments into conformance with the earlier Poindexter/Regan remarks by issuing the following correction in the President's name:

There may be some misunderstanding of one of my answers tonight. There was a third country involved in our secret project with Iran. But taking this into account, all of the shipments of the token amounts of defensive arms and parts that I have authorized or condoned taken in total could be placed aboard a single cargo aircraft. This includes all shipments by the United States or any third country. Any other shipments by third countries were not authorized by the U.S. government.⁹⁴

⁹⁴ Statement by the President, 11/19/86, ALU 016815.

Secretary Shultz called the President following the press conference and warned him that he had made many wrong or misleading statements. Shultz asked for a meeting with the President the next day to discuss the matter further. The evening of November 20, 1986, Shultz and Regan met with the President in the family quarters. Shultz told the President that he was being briefed with information that was not correct.⁹⁵ Regan recalled that Shultz told the President that Abraham Sofaer, the State Department legal adviser, was worried about what Casey was going to say in his testimony the next day. Sofaer was specifically concerned about the likelihood of a public discrepancy between Casey's testimony about the 1985 HAWK shipment and Shultz's recollection that he was briefed about the planned HAWK shipment by McFarlane during the Geneva summit meeting with Soviet leader Mikhail Gorbachev.⁹⁶

⁹⁵ Shultz, Select Committees Testimony, 7/23/87, pp. 111-14.

⁹⁶ Regan, Select Committees Testimony, 7/15/87, pp. 39-42.

The President's recollection of the meeting, according to his Grand Jury Interrogatory Answers, was that: "On Thursday evening, November 20, 1986, Secretary Shultz informed me of discrepancies between his recollection and what he understood would be the testimony of Director Casey the following morning on arms shipments to Iran." ⁹⁷ But the most detailed account of what Shultz told the President is contained in Charles Hill's notes of Shultz's statement to Meese during Meese's "fact finding," on November 22. According to Hill's notes, Shultz told Meese:

⁹⁷ Reagan, Grand Jury Interrogatories, Answer to Question 49.

You should know I went to [President] on Thurs. night. Asked to go see him. Went w/DR [Regan] to family qtrs. I had called after press conf. to tell him he did fine job but a lot of yr stmts. won't stand up to scrutiny & I'll come tell you what you sd [said] was wrong. How you have those ideas I don't know but it's wrong -- and I described Bud [McFarlane] talk to me in Geneva [in which McFarlane briefed Shultz on the upcoming Israeli HAWK shipment]. [President] sd oh I kn[ew] about that -- but that wasn't arms for hostages! I sd no one looking at the record will believe that.⁹⁸

⁹⁸ Hill Note, 11/22/86, ANS 0001883.

The next day the President directed Meese to conduct an inquiry to gather the facts about the Iran initiative. President Reagan, in response to Grand Jury Interrogatory 49, gave this account of his decision:

The next morning, Friday, November 21, at 11:32 a.m., according to my records, the Attorney General met with me and reported his concerns about the need for an accurate account, particularly in view of upcoming testimony to Congressional Committees. It was at this meeting that I directed Attorney General Meese to gather the facts over the weekend and report his findings to me by Monday, November 24.

By the time the President was directing Meese to conduct the inquiry, both Casey and Poindexter had begun giving their false accounts of the Iran initiative to congressional committees, the very thing Shultz had sought to head off.⁹⁹ President Reagan, in the Poindexter trial, testified that he did not authorize Poindexter to make any false statement to Congress.¹⁰⁰ The President made a similar statement regarding Casey's testimony in answer to Grand Jury Interrogatory 49.

⁹⁹ See Poindexter and Casey chapters.

¹⁰⁰ Reagan, Poindexter Trial Testimony, 2/17/90, pp. 250-51.

When Meese began the weekend inquiry on November 21, the big problem was to resolve discrepancies between various accounts of the 1985 Israeli shipments and the legal problems those shipments posed, particularly the HAWK missile shipment in November. In his interview with Shultz on Saturday, November 22, Meese told Shultz:

Certain things cd [could] be violation of a law. [President] didn't know about HAWK in Nov. If it happened & [President] didn't report to Congress, it's a violation. He [the President] sd to me if it happened I want to tell Congress not have them tell me.¹⁰¹

¹⁰¹ Hill Note, 11/22/86, ANS 0001888.

After Meese's aides found a copy of the North diversion memo in North's files on November 22, the 1985 Israeli arms shipments receded in importance, according to Meese.¹⁰² In his testimony in the North trial, Meese conceded that upon learning of the Iran/contra diversion he feared that the merger of two controversial Administration activities -- support of the contras and the sale of arms to Iran which the President had ordered be kept secret from Congress -- could lead to impeachment. Meese made the admission in cross examination by North's attorney:

¹⁰² Meese, OIC Interview, 5/11/92, pp. 55-56.

Q: And you sense immediately, when you heard that [the diversion], that could create an enormous political problem because it merged or married together two separate problems that the Administration had; One, support of the Freedom Fighters which was hotly contested, and two, the sale of arms to Iran which had been by order of the Finding kept from Congress. Correct?

A: Yes. I was concerned that the two major policy issues within the Administration at the time would be merged together and this would -- could complicate the ability of the President in both of the issues.

Q: In fact, your assessment at the time was that unless something was done, a strong response, that the merging of those two factors could very well cause the possible toppling of the President himself. Correct?

A: Yes.

Q: And there was discussion, in fact, that on the days November 23 and 24th that unless the Administration, unless you and the President himself, put out to the public the facts of the use of residuals for the Freedom Fighters, unless you got it out the door first, it could possibly lead to impeachment by the Congress, correct?

A: Yes. That was a concern, that political opponents might try that kind of tactic.

The Court: And you discussed that with the President? He [North attorney Brendan Sullivan] is asking you.

A: I believe I discussed it with the President. I certainly discussed it with others in high-ranking positions such as the Chief of Staff.¹⁰³

¹⁰³ Meese, North Trial Testimony, 3/28/89, p. 5750.

Poindexter and North recognized the problems that would flow from the disclosure of the diversion, which North called the "secret within the secret."¹⁰⁴ Discovery of the diversion would have in turn exposed the entire, apparently unauthorized and illegal NSC contra-resupply program that North directed from late 1984 to October 1986. Poindexter had succeeded in keeping the diversion under wraps by the simple expedient of instructing North to leave it out of the NSC's accounts of the Iran matter and making no reference to it himself in response to the Congressional and press demands for an explanation of the Iran initiative.¹⁰⁵ Poindexter testified that as late as November 19, 1986, when the President made his second public appearance to answer questions about the Iran initiative, he was still determined to keep knowledge of the diversion away from the President ¹⁰⁶ -- despite McFarlane's reminder to Poindexter on that same day that "you have a problem about the use of the Iranian money."¹⁰⁷

¹⁰⁴ North, North Trial Testimony, 4/13/89, p. 7669.

¹⁰⁵ Poindexter, Select Committees Deposition, 7/2/87, pp. 12-13; Poindexter, Select Committees Testimony, 7/20/87, p. 127.

¹⁰⁶ Ibid., pp. 188-89.

¹⁰⁷ McFarlane, North Trial Testimony, 3/14/89, p. 4277.

In addition, Poindexter testified that he neither sought nor received the President's authorization to destroy the December 1985 Iran Finding.¹⁰⁸ In his Grand Jury testimony, Poindexter stated he recalls no discussion with President Reagan of the destruction of any Iran or contra-related document during October or November 1986.¹⁰⁹ President Reagan testified at his deposition that he did not authorize Poindexter to destroy any document related to Iran/contra.¹¹⁰ Regarding the destruction of documents by North or others at the NSC, the President's Grand Jury Interrogatory Answer states:

¹⁰⁸ Poindexter, Select Committees Testimony, 7/15/87, pp. 50, 53.

¹⁰⁹ Poindexter, Grand Jury, 11/14/90, pp. 88-91.

¹¹⁰ Reagan, Poindexter Trial Testimony, 2/16/90, p. 160; Ibid., 2/17/90, p. 267.

At no time did I authorize or approve of the destruction or alteration of documents, relating to Iranian arms transactions or relating to the NFF [contras], by LtCol North or any other officer or employee of the United States or by anyone else. I did not learn of any such destruction or alteration prior to November 26, 1986. I do not possess any independent knowledge of these activities.¹¹¹

¹¹¹ Reagan, Grand Jury Interrogatories, Answer to Question 50.

After ascertaining from Poindexter that he was aware of the diversion and had not told the President about it, Meese informed the President along with Regan about North's account of the diversion and Poindexter's acknowledgement of it on November 24. Both Meese and Regan testified that the President appeared "shocked" and "surprised."¹¹²

¹¹² Meese, Grand Jury, 2/17/88, pp. 51-56; Regan, Grand Jury, 2/3/88, pp. 43-47.

Later on November 24, when Meese briefed the other top national security officials at a senior advisers' meeting about the results of his inquiry, he did not mention the diversion. Instead, the

meeting developed into a dispute between Poindexter and Shultz as to the continuation of the initiative and a response by Poindexter and Meese to Regan's question about President Reagan's knowledge of the 1985 HAWK shipment. Meese reported that there was a legal problem with the November 1985 HAWK shipment, but he stated that the President "did not know."¹¹³ This was at odds with Shultz's account to Meese just two days before that the President did recall having contemporaneous knowledge of the HAWK shipment. Additionally, Poindexter asserted that McFarlane conducted the 1985 transactions all alone, without documentation.¹¹⁴ No one spoke up to correct these misstatements, although most of those at the meeting knew they were wrong.

¹¹³ Regan Note, 11/24/86, ALU 0139379.

¹¹⁴ Weinberger Meeting Note, 11/24/86, ALZ 0040669LL.

The morning of the next day, November 25, Meese and the President briefed Cabinet members about the diversion. Then the President and Meese, accompanied by Shultz, Casey and Regan, briefed congressional leaders at a White House meeting. The discussion focused upon the diversion, the current status of the Iran initiative, and future inquiries and investigations into the Iran matter. The subject of the 1985 Israeli shipments did not come up.¹¹⁵

¹¹⁵ Richardson Note, 11/25/86, Cong. Ex. EM-53.

At noon, the President and Meese held a press conference. In a brief initial statement, the President said that Meese's weekend review of the Iran initiative had turned up information that "I was not fully informed on the nature of one of the activities undertaken," which raised "serious questions of propriety."¹¹⁶ The President announced the resignation of Poindexter, the firing of North, the appointment of a special review board to determine the role of the NSC in the matter, and a continuation of the Justice Department review. The President turned the podium over to Meese to announce the diversion and then left the briefing room, declining to answer questions.¹¹⁷

¹¹⁶ "Remarks Announcing the Review of the National Security Council's Role in the Iran Arms and Contra Aid Controversy," 11/25/86, Public Papers of the Presidents, 1986, Vol. II, p. 1587.

¹¹⁷ Ibid.

Meese laid out a somewhat garbled account of the diversion, which, partly as a result of North's description of it, seemed to put the Israelis, not the Secord-Hakim "Enterprise," at the center of the profiteering and secret Swiss accounts. Then Meese faced a barrage of questions, including questions about the 1985 Israeli shipments, to which he gave erroneous and misleading answers.¹¹⁸

¹¹⁸ Transcript of Meese's News Conference, 11/25/86.

That evening, President Reagan telephoned North. In his Grand Jury Interrogatory Answer, the President described the call as follows:

On November 25, 1986, I telephoned LtCol North. Our records reflect that my phone call lasted 2 minutes, from 6:43 p.m. to 6:45 p.m., and was placed to the Sheraton Hotel in Tyson's Corner, Virginia.

I told LtCol North generally that I regretted the circumstances surrounding his departure from the NSC staff and that I had no personal animus against him. I may have referred to LtCol North as a national hero (referring to his military service). I do not recall discussing the substance of any of the events that had given rise to his departure. I do not recall specifically LtCol North's replies.

No one suggested that I make this call. I do not recall anyone being present with me when I spoke to LtCol North and, to my knowledge, the two of us were the only parties to the conversation. I did it solely out of personal compassion for LtCol North.¹¹⁹

119 Reagan, Grand Jury Interrogatories, Answer to Question 51.

Robert Earl, North's assistant, said that North told him that the President had said it was important that the President not know.¹²⁰ North testified that Earl was mistaken. North said he told Earl that the President had said, "I just didn't know."¹²¹

¹²⁰ Earl, Grand Jury, 5/1/87, pp. 117-19. ("Colonel North turned and confided, 'And you know what' -- again I don't have the exact wording so I'm just going to relay the thrust of what he said -- that the President had told him that it was important that he not know; that he was told that it was important that he not know.")

¹²¹ North, Select Committees Deposition, 7/1/87, pp. 17-18.

The President's Culpability for November 1986 Crimes

The question of whether the President, in the discharge of his constitutional office, is criminally liable for false statements and obstruction of congressional inquiries regarding his activities is not a ready field for criminal prosecution. The President is quite different from any subordinate in his relationship with Congress. But the fundamental reason for lack of prosecutorial effort was the absence of proof beyond a reasonable doubt that the President knew that the statements being made to Congress were false, or that acts of obstruction were being committed by Poindexter, North and others.

President Reagan has testified that he did not and would not authorize any false statement to Congress by Poindexter in connection with the Iran initiative.¹²² Similarly, he denied knowledge of Casey's incomplete and inaccurate testimony on November 21, 1986. Reagan's answer to Grand Jury Interrogatory 49 acknowledges that the President was aware that Casey was scheduled to testify and that Shultz was concerned with his testimony the next morning. But the President went on to state:

¹²² Reagan, Poindexter Trial Testimony, 2/17/90, p. 152.

I did not know of, authorize, or approve any statements made to Congress by Director Casey concerning any Iranian arms transaction or concerning aid to the NFF [contras]. It is not my practice to review the Congressional testimony of my senior officials. Director Casey did write me a letter, dated November 23, 1986, and attached with it a copy of his written remarks before the House and Senate Intelligence Committees on November 21, 1986. In his letter he described his testimony in general terms.¹²³

¹²³ Reagan, Grand Jury Interrogatories, Answer to Question 49.

The state of the President's knowledge of the 1985 Israeli shipments as of November 1986 is a difficult matter to ascertain. The President's early statements regarding that shipment wandered from an outright denial of knowledge to an account which ultimately resembled McFarlane's testimony that the President had approved that Israeli action in advance and agreed to replenishment of Israeli weapons stocks.¹²⁴ At his deposition in Poindexter, President Reagan stated that he could not recall whether he remembered the November 1985 HAWK shipment at the time he met with congressional leaders on November 12, 1986, or even whether he had heard about it before the Lebanese newspaper article revealed secret U.S. arms sales to Iran on November 3, 1986.¹²⁵

¹²⁴ Tower Commission Report at III-7.

¹²⁵ Reagan, Poindexter Trial Testimony, 2/16/90, pp. 37-38.

On the other hand, his diary contained a number of entries regarding the early days of the initiative, starting July 17, 1985, when, while in the hospital, he noted "strange sounds coming from some Iranians -- Bud M. [McFarlane] will be here tomorrow to talk about it -- could be a breakthrough on

7 kidnap victims -- evidently Iranian economy disintegrating fast under strains of war." The next day, the President's diary records his meeting with McFarlane: "Bud came by -- seems 2 members of the Iranian govt. want to establish talks with us -- I'm sending Bud to meet with them in a neutral country." On August 6, he simply noted "Rumors of 5 to 7 hostages to be released no confirmation." On August 23, although cryptically written, the President's diary notation suggests his approval for the Israeli TOW shipment: "Received 'secret phone' call from Bud McFarlane -- seems a man high up in the Iranian govt. believes he can deliver all or part of the 7 kidnap victims -- I had a few decisions to make about a few points -- but they were easy to make -- now we must wait." On September 15, President Reagan noted in his diary: "Release of Rev. Weir; told by mystery man in Beirut others will follow."

The President's entries in November 1985 do not refer specifically to HAWKs, but clearly he was following the course of the initiative. The pertinent entries are as follows:

11/22/85 brief NSC on hostages in Beirut -- we have an undercover thing going by way of an Iranian which could get them sprung momentarily

11/23/85 still sweating out our undercover effort to get hostages out of Beirut

12/5/85 NSC Briefing -- probably Buds last -- subject our undercover effort to free our 5 hostages -- complex undertaking with only a few in on it-won't even write in this diary what we're up to

12/7/85 meeting with Regan, Weinberger, McFarlane, Poindexter, Shultz & Mahan [sic, CIA Deputy Director John McMahon] of CIA-complex plan which could return our 5 hostages & help some officials in Iran who want better relationship with us -- Israel would sell weapons to Iran, hostages released as soon as delivered in installments by air -- weapons go to moderate leaders in army who are essential if to be change[d] to more stable govt -- we then sell Israel replacements -- none of this is a gift. 126

126 OIC Review of Reagan Diary, 1987.

In his autobiography, Reagan rendered this same diary entry as follows:

Saturday, Dec. 7 -- Pearl Harbor Day: I . . . had a meeting with Don R, Cap W, Bud M, John P, George S and McMahon of CIA. This has to do with the complex plan which could return our five hostages and help some officials in Iran who want to turn that country from its present course and onto a better relationship with us. It calls for Israel selling some weapons to Iran. As they are delivered in installments by air, our hostages will be released. The weapons will go to the moderate leaders in the army who are essential if there is to be a change to a more stable government. We then sell Israel replacements for the delivered weapons. None of this is a gift. The Iranians pay cash for the weapons -- so does Israel.

George Shultz, Cap and Don are opposed. Congress has imposed a law on us that we can't sell Iran weapons or sell any other country weapons for resale to Iran. George also thinks this violates our policy of not paying off terrorists. I claim the weapons are for those who want to change the government of Iran and no ransom is being paid for the hostages. No direct sale would be made by us to Iran but we would be replacing the weapons sold by Israel.

We're at a stalemate. Bud is flying to London where the Israelis and Iranian agents are. Britain has no embargo on selling to Iran. . . . The plan is set for Wednesday.¹²⁷

¹²⁷ An American Life, p. 510.

The President's subsequent diary entries reflect his disappointment with the London meeting, but his decision to go ahead with direct U.S. sales under the January 17, 1986, Finding:

12/9/85 Bud back from London but not in office yet -- his meeting with Iranians did not achieve its purpose to persuade them to free our hostages first -- their top man said he believed if he took that proposal to the terrorists they would kill our people

12/10/85 Iranian ``go between" turns out to [sic] a devious character -- our plan regarding the hostages is a ``no go"

1/17/86 only thing waiting was N.S.C. wanting decisions on our effort to get our 5 hostages out of Lebanon -- involves selling TOW anti-tank missiles to Iran -- I gave a go ahead.¹²⁸

128 OIC Review of Reagan Diary, 1987.

In addition to having his diary entries of the previous year to help his staff refresh his recollection, the President on November 19 and November 20, 1986, received direct information from Shultz regarding Shultz's contemporaneous knowledge of the November 1985 HAWK shipment. Shultz said he told the President that McFarlane reported on the HAWK shipment during the summit meeting with Gorbachev in Geneva. According to Shultz, President Reagan responded that ``oh I kn[ew] about that." ¹²⁹

129 Hill Note, 11/22/86, ANS 0001883.

The foregoing facts would suggest that the President, during the first three weeks in November 1986, knowingly participated or at least acquiesced in the efforts of Casey, Poindexter and North to minimize or hide his advance approval of and participation in the 1985 Israeli arms shipments to Iran without notice to Congress.

Yet, such a conclusion runs against President Reagan's seeming blindness to reality when it came to the rationalization of some of his Iran and hostage policies. The portrayal of President Reagan in the notes of Regan and Weinberger, and Shultz's read outs to Hill, not only the November 24, 1986, meeting but beginning at least on December 7, 1985, show a consistent reiteration of the President's position. The simple fact is that President Reagan seems not to have been ashamed of what he had done. He had convinced himself that he was not trading arms for hostages, that he was selling arms to develop a new opening with Iran, and that the recovery of the hostages was incidental to a broader purpose. He disdained the restrictions of the Arms Export Control Act. He made that clear as he brushed off Weinberger's concerns about illegality on December 7, 1985. At the November 24, 1986, meeting he was ``v[ery] hot under the collar & determined he is totally right." ¹³⁰

130 Hill Note, 11/24/86, ANS 0001894-909.

In his deposition given to Independent Counsel in July 1992, his responses were still consistent with that position. His memory had obviously failed. He had little recollection of the meetings and the details of the transactions. When his diary notes or other documents were presented to him which expressed his 1985 and 1986 position, he was again firm in his statements that they sounded like something he would have said and that he still believed them to be true.

The President's Responses to Formal Inquiries

This final section considers whether the President committed any crimes in his responses to two principal investigations that followed the November 25, 1986, disclosure of the Iran/contra diversion. He provided statements or testimony to both the Tower Commission inquiry and the criminal investigation conducted by OIC.¹³¹ President Reagan was not asked to testify before the hearings conducted by the congressional Iran/contra Select Committees or to provide the Committees with a deposition or statement.

131 Reagan was interviewed by the Tower Commission on January 26, 1987 and on February 11, 1987, and by OIC on July 24, 1992, and he provided interrogatory answers to the Grand Jury in late 1987.

President Reagan's Statements to the Tower Commission

President Reagan signed Executive Order 12575 on December 1, 1986, which established a Special Review Board "to review activities of the National Security Council" in the wake of the Iran/contra disclosures. President Reagan named former Sen. John Tower as chairman and appointed former Sen. Edmund Muskie and retired Gen. Brent Scowcroft as members of the board which became known as the Tower Commission. The President directed the board to submit its findings and recommendations to him at the conclusion of its inquiry. The Tower Commission conducted numerous interviews and reviewed hundreds of documents in its three-month inquiry. In its letter submitting its report to President Reagan on February 26, 1987, the Commission stated that in addition to the evaluative mission described in the Executive Order, "[a]t your direction, we also focused on the Iran/Contra matter and sought to follow your injunction that 'all the facts come out.'"

The Tower Commission conducted two interviews with President Reagan and was provided excerpts from his diary. The Commission also received a letter from the President correcting one aspect of his accounts at those interviews. The Commission's Report sought to draw conclusions concerning the President's knowledge and authorization of the Iran initiative in general, and of four controversial Iran/contra events in particular: (1) the August-September 1985 Israeli TOW shipment; (2) the November 1985 Israeli HAWK shipment; (3) the diversion; and (4) NSC staff assistance to the contras during the Boland period. President Reagan's responses to the Commission in these four areas are summarized in the Tower report as follows:

The August/September 1985 TOW Shipment

In his meeting with the Board on January 26, 1987, the President said that sometime in August he approved the shipment of arms by Israel to Iran. He was uncertain as to the precise date. The President also said that he approved replenishment of any arms transferred by Israel to Iran. Mr. McFarlane's testimony of January 16, 1986, before the Senate Foreign Relations Committee, which the President embraced, takes the same position. This portion of Mr. McFarlane's testimony was specifically highlighted on the copy of testimony given by the President to the Board.

In his meeting with the Board on February 11, the President said that he and Mr. Reagan had gone over the matter a number of times and that Mr. Reagan had a firm recollection that the President had not authorized the August shipment in advance. The President said he did not recall authorizing the August shipment in advance. He noted that very possibly, the transfer was brought to him as already completed. He said that subsequently there were arms shipments he authorized that may have had to do with replenishment, and that this approval for replenishment could have taken place in September. The President stated that he had been "surprised" that the Israelis had shipped arms to Iran, and that this fact caused the President to conclude that he had not approved the transfer in advance.

In a subsequent letter to the Board received on February 20, 1987, the President wrote: "In trying to recall events that happened eighteen months ago I'm afraid that I let myself be influenced by others' recollections, not my own . . ."

"... I have no personal notes or records to help my recollection on this matter. The only honest answer is to state that try as I might, I cannot recall anything whatsoever about whether I approved an Israeli sale in advance or whether I approved replenishment of Israeli stocks around August of 1985. My answer therefore and the simple truth is, 'I don't remember -- period.'"

The Board tried to resolve the question of whether the President gave prior approval to Israel's transfer of arms to Iran. We could not do so conclusively.

We believe that an Israeli request for approval of such a transfer was discussed before the President in early August. We believe that Secretary Shultz and Secretary Weinberger expressed at times vigorous opposition to the proposal. The President agreed to replenish Israeli stocks. We are persuaded that he most likely provided this approval prior to the first shipment by Israel.

In coming to this conclusion, it is of paramount importance that the President never opposed the idea of Israel transferring arms to Iran. Indeed, four months after the August shipment, the President authorized the United States government to undertake directly the very same operation that Israel had proposed. Even if Mr. McFarlane did not have the President's explicit prior approval, he clearly had his full support.¹³²

¹³² Tower Commission Report at III-7-8; see also *ibid.* at B-19-20.

The November 1985 HAWK Shipment

In his first meeting with the Board on January 16, 1987, the President said he did not remember how the November shipment came about. The President said he objected to the shipment, and that, as a result of that objection, the shipment was returned to Israel.

In his second meeting with the Board on February 11, 1987, the President stated that both he and Mr. Regan agreed that they cannot remember any meeting or conversation in general about a HAWK shipment. The President said he did not remember anything about a call-back of the HAWKs.¹³³

¹³³ *Ibid.*, p. III-9; *ibid.*, at B-37.

The Diversion

The President said he had no knowledge of the diversion prior to his conversation with Attorney General Meese on November 25, [sic] 1986. No evidence has come to light to suggest otherwise. Contemporaneous Justice Department staff notes of LtCol North's interview with Attorney General Meese on November 23, 1986, show North telling the Attorney General that only he, Mr. McFarlane, and VADM Poindexter were aware of the diversion.¹³⁴

¹³⁴ *Ibid.*, p. III-21.

The NSC Staff and Support for the Contras

The President told the Board on January 26, 1987, that he did not know that the NSC staff was engaged in helping the contras. The Board is aware of no evidence to suggest that the President was aware of LtCol North's activities.¹³⁵

¹³⁵ *Ibid.*, III-24; *ibid.*, at C-14.

False statements to the Tower Commission could be punishable under 18 U.S.C. 1001 (penalizing material false statements to a department or agency of the United States in a matter within its jurisdiction).

Of the President's statements to the Tower Commission on the four key subjects, only the President's claimed lack of knowledge of the diversion remains totally unimpeached. Nevertheless, the fundamental barrier to concluding that any of the President's various statements to the Tower Commission was criminally false is that it was virtually impossible to prove beyond a reasonable doubt what the President remembered in January and February of 1987.¹³⁶ The Tower Commission interviews were not recorded or transcribed; only notes were taken. Although it seems obvious that

President Reagan made hopelessly conflicting statements to the Commission, it would be impossible to prove beyond a reasonable doubt that any misstatement was intentional or willful.¹³⁷

¹³⁶ In an extensive interview of Reagan conducted in Los Angeles in July 1992, Independent Counsel satisfied himself that President Reagan's memory of the Iran initiative and much of his memory of contra support during the Boland cut-off period is now very faded.

¹³⁷ Additionally, a diary kept by White House Counsel Peter Wallison indicates President Reagan's state of confusion as his staff tried to prepare him for the Tower Commission interview. See Regan chapter.

The President's Sworn Answers to Grand Jury Interrogatories and His Deposition at the Trial of Admiral Poindexter

In his Grand Jury Interrogatory answers and at his deposition, the President again provided information regarding the four key areas of his knowledge and authorization that have been identified above. In response to written interrogatories, the President in November 1987 made these key statements:

The August/September 1985 TOW Shipment

Mr. McFarlane briefed me about an approach by individuals in Iran while I was in the hospital in July 1985, but I do not specifically recall any discussion of the sale of arms by Israel as being part of that initiative at that time. I do recall that later in the summer or fall of 1985 I was advised that Israel sought to ship TOWs to individuals in Iran who would influence the Hazballah to free our hostages. It was part of Israel's plan that it would abort the sale if it became apparent that the hostages would not be released. My best recollection is that, at that time, I agreed that Israel should be permitted to purchase replacement TOWs from the United States. I am aware that Robert McFarlane has testified that I was briefed on all of these matters while I was in the hospital. I do not recall, however, the precise date on which I was told of the delivery of TOW missiles by Israel to Iran, nor the precise date on which I authorized the replenishment of the TOWs by the United States to Israel. I do not recall any discussion of price whatsoever.¹³⁸

¹³⁸ Reagan, Grand Jury Interrogatories, Answer to Question 23; see also Reagan, Poindexter Trial Testimony, 2/16/90, pp. 16-20; *ibid.*, 2/17/90, pp. 226-28.

The November 1985 HAWK Shipment

At the time of the shipment of HAWKs by Israel to Iran, I was in Geneva meeting Secretary General Gorbachev and discussing with him United States-Soviet relations.

I was told at that time that there was a possibility that the hostages might be released, but I do not recall that the shipment of HAWK missiles was involved. I have no recollection today whether I authorized or approved the shipment of HAWKs by Israel to Iran in November 1985, nor do I recall undertaking at that time a commitment to replenish those HAWKs from United States inventory. While I initially told the Tower Board that I disapproved the transfer, I later advised the Board that I simply had no recollection on this issue. I am aware that Don Regan has stated that in November 1985 in Geneva we were told to expect a shipment of HAWKs by Israel to Iran and that I approved such a transfer but made no commitment on replenishment. I am also aware that Robert McFarlane has stated that he advised me of the shipment but said that the shipment was comprised of oil drilling equipment. I have no current recollection whatsoever of approving or disapproving this shipment or replenishment. I do not recall any discussion of prices at all, but I recall that any weapons involved in the initiative generally were to be paid for by the recipient country.¹³⁹

139 Reagan, Grand Jury Interrogatories, Answer to Question 24; see also Reagan, Poindexter Trial Testimony, 2/16/90, pp. 35-37; *ibid.*, 2/17/90, p. 229.

* * *

I do not recall signing a Finding relating to Iranian arms transactions in November or December 1985. I am aware that an unsigned version of such a Finding exists . . . although I am told that a signed version has not been found. I have been advised that the CIA was told contemporaneously that on December 5, 1985, I signed a Finding relating to this initiative. While I do not deny having signed such a Finding, I have no current recollection of doing so.

In November and December 1985, I was briefed on an initiative involving Israel's attempts to secure the return of our hostages and an initiative to facilitate a dialogue between our Government and moderate leaders in Iran. I approved of such a initiative and directed my National Security Adviser Robert McFarlane to take part in such a dialogue. My review of the unsigned Finding . . . leads me to believe that I would have understood it to relate to such an initiative.¹⁴⁰

¹⁴⁰ Reagan, Grand Jury Interrogatories, Answer to Question 27; see also Reagan, Poindexter Trial Testimony, 2/17/90, pp. 231-32.

The Diversion

The first time I learned that the proceeds of any Iranian arms transactions might have been paid to any account used to provide weapons and military aid to the Nicaraguan Freedom Fighters -- what has been termed the ``diversion" -- was on November 24, 1986, when Attorney General Edwin Meese reported to me that a memorandum had been found referring to such a use. I immediately instructed that the NSC, the leadership in Congress and the general public be told of this development.

I never authorized nor approved the ``diversion," nor was I ever asked to authorize or approve it. I can recall no conversation or discussion whatsoever of any such idea prior to my conversation with the Attorney General. As noted above, I was unaware that any profits or ``residual funds" were to be generated by such sales.

It was only as the investigation by the Tower Board got underway that I learned of the operational roles of North, Secord or Hakim. I do not recall authorizing or approving, nor do I believe I was ever asked to authorize or to approve, operational details, such as what accounts were to receive payments.

It was only in my discussions with Attorney General Meese on November 24, 1986, and after that I learned any details of any bank accounts into which the proceeds of arms shipments were paid, or the retention of these proceeds by anyone other than the U.S. Government. I do not recall any discussion prior to that time concerning the proceeds of such sales, nor do I recall being asked for authority by anyone to use, control or retain these funds.¹⁴¹

¹⁴¹ Reagan, Grand Jury Interrogatories, Answer to Questions 36-38; see also Reagan, Poindexter Trial Testimony, 2/16/90, pp. 29, 155-57; *ibid.*, 2/17/90, pp. 236-37, 243-44, 276-82, 289-90.

NSC Staff Assistance to the Contras

I was generally aware that some assistance was flowing from the private sources to the NFF [contras] and that some of this assistance would have included military support. This information was public knowledge as early as 1985 and was even mentioned in Congressional debate about a request for funding in August 1985. Until the plane carrying Mr. Hasenfus was shot down in October 1986, I do not recall knowing of specific individuals or groups engaged in this activity and

was unaware of any connection with the U.S. Government. I believed such activity to be similar to efforts by Americans in other conflicts. Even after Mr. Hasenfus was shot down, I was told that he was not participating in a U.S. sponsored operation, and I was not informed of any particulars of that operation beyond what was in the news media. It was not until after November 25, 1986, when the full details of these operations became public, that I learned the nature and extent of the private support network and the role of certain U.S. officials in it.

* * *

Although I did not seek or directly encourage private citizens to provide military support, I did encourage William Simon and others to provide humanitarian assistance through the Nicaraguan Freedom Fund. . . . I also knew, as had been previously reported in the press, that Mrs. Garwood had contributed money to refurbish a Medevac helicopter. I understood her contributions to be of a humanitarian nature, and, when I met with Mrs. Garwood, this subject was not discussed.¹⁴²

¹⁴² Reagan, Grand Jury Interrogatories, Answer to Questions 14-17.

Regarding his knowledge of the North-run contra-resupply operation, the President said:

I did not authorize or approve of the transfer to the NSC or any of its staff any function or operation performed by the CIA with respect to the Nicaraguan Freedom Fighters. I do not recall anyone ever asking me to approve or authorize the transfer of any function or operation from the CIA to the NSC, and I do not recall ever discussing such transfer.¹⁴³

¹⁴³ Ibid., Answer to Question 8.

* * *

Beyond [Presidential Findings, NSDDs, and advocacy of third-country assistance], my instructions with regard to support for the Freedom Fighters were usually of a general nature, and I do not now recall any authorizations or approvals of specific actions with respect to the Freedom Fighters.

With regard to Richard V. Secord and Albert Hakim, I do not recall approving or authorizing any action concerning them with regard to the Freedom Fighters or of meeting either individual during this timeframe.¹⁴⁴

¹⁴⁴ Ibid., Answer to Question 9.

I knew that LtCol North's responsibilities included work related to Central America and, specifically, Nicaragua. However, prior to my conversations with Attorney General Meese on November 24 and 25, 1986, concerning what has come to be known as the "diversion," I did not know that LtCol North participated in planning, directing or advising NFF military or paramilitary operations or logistical support for such operations. Although I heard about allegations in the press that LtCol North was engaged in such activities, I understood that these allegations were incorrect. . . .¹⁴⁵

¹⁴⁵ Ibid., Answer to Question 10.

This office is not aware of evidence to prove that President Reagan intentionally made material false statements or committed perjury in his answers to this office's Interrogatories, which were submitted as sworn testimony to the Grand Jury, or in his deposition in the Poindexter trial. The President's responses to the Interrogatories were carefully and professionally crafted, unlike his presentation to the Tower Commission. While there is a substantial amount of failure to recall and vagueness in the President's responses, both to the Interrogatories and in his later deposition in the Poindexter Trial, this standing alone does not warrant a criminal charge.¹⁴⁶ By July 1992, when Reagan agreed to a final, extensive interview with Independent Counsel, it was obvious that the former President truly lacked specific recollection of even the major Iran/contra events which took place in 1984-1987.

146 For a full account of the President's testimony in Poindexter, see Poindexter chapter.