



Part II

History of the Investigation

The Initial Investigation, 1986-1988

The criminal investigation into the Iran/contra matters was begun on November 26, 1986, by the Federal Bureau of Investigation at the order of the attorney general. Agents assigned to the investigation, which the FBI called "Operation Front Door," secured and began analyzing thousands of documents in National Security Council offices. They conducted preliminary interviews with officials from the White House; Justice, State and Defense departments; Central Intelligence Agency and National Security Agency. The FBI investigation focused on the Iran arms sales and the Iran/contra diversion -- in contrast to the broader probe subsequently undertaken by Independent Counsel, which included the investigation of aid to the Nicaraguan contra rebels.

After Independent Counsel was appointed on December 19, 1986, FBI Director William H. Webster assigned members of the bureau's investigative team to the Office of Independent Counsel (OIC).

Investigations by other bodies into Iran/contra were proceeding rapidly by December 1986. The President had appointed a special review board, known as the "Tower Commission," to study the role and procedures of the National Security Council staff.¹ The House and Senate intelligence and foreign affairs committees were conducting their own inquiries into the matter, and, by the time Independent Counsel was appointed, both houses of Congress had agreed to appoint special committees to investigate.²

¹ The Tower Commission's members were former Senators John Tower and Edmund Muskie and former National Security Adviser Brent Scowcroft. Scowcroft became President Bush's national security adviser in 1989 and held that post throughout Bush's presidency.

² The Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition was formally established by Senate Resolution 23 on January 6, 1987, and the House Select Committee to Investigate Covert Arms Transactions with Iran was established by House Resolution 12 on January 7, 1987.

The initial outlines of Iran/contra emerged through interviews conducted by Attorney General Edwin Meese III in his November 21-25, 1986, investigation. Lt. Col. Oliver L. North, a National Security Council staff member, confirmed to Meese that, in fact, there had been a diversion of Iran arms sales proceeds to the Nicaraguan contras. National Security Adviser John M. Poindexter admitted a general awareness of this fact.

President Reagan, Vice President Bush and Cabinet members had publicly denied any awareness of the Iran/contra diversion. These denials, however, did not address broader questions about the extent of their knowledge and approval of the other Iran and contra operations of North, Poindexter and others.

Additional elements of the secret Iran and contra operations became known through aggressive investigative reporting by the media, including the fact that North and others had destroyed reams of sensitive documents as the Attorney General conducted his initial investigation. Senior Reagan Administration officials made statements to the press and to the early congressional investigations about their own knowledge of or roles in Iran/contra, adding to a growing body of facts and, in some cases, falsehoods.

By the end of December 1986, congressional testimony had been given by McFarlane, Director of Central Intelligence William J. Casey,³ Meese, Secretary of State George P. Shultz, Secretary of Defense Caspar W. Weinberger, White House Chief of Staff Donald T. Regan and others.

³ After the public exposure of the Iran/contra diversion on November 25, 1986, Casey gave testimony to several congressional committees. He was hospitalized with a fatal brain tumor in early December 1986 and died before giving further testimony or being questioned by the Office of Independent Counsel.

Despite the seeming gusher of information from a variety of sources, by early January 1987 the most central Iran/contra operatives had refused to testify, invoking their Fifth Amendment privilege against self-incrimination. This group included Poindexter, North, North's secretary Fawn Hall, retired Air Force Maj. General Richard V. Secord and his business partner Albert Hakim. Others would follow this course as the investigation reached them.

It was clear there would be few, if any, friendly witnesses available to Independent Counsel's investigation. It also was clear that although a general outline of what happened would be quickly known, the development of solid proof, immune to impeachment, would be developed only after the analysis of thousands of documents and by the carefully structured questioning and immunization of subordinate figures.

Independent Counsel viewed his mandate as a charge to determine who had committed crimes, and how high up the true responsibility for those crimes went. In prosecuting the central operatives in the Iran/contra matter -- namely North and Poindexter -- Independent Counsel hoped the question of higher complicity could be resolved.

Office Organization and Investigative Plan

In December 1986, in what proved to be a serious underestimate, Independent Counsel decided to recruit a full-time staff of 10 associate counsel, supplemented by part-time senior lawyers. Because some of the lawyers could not move to Washington, Independent Counsel organized a three-city operation: the central investigation in Washington, a legal research and analytical office in New York City, and a small office in Oklahoma City for Independent Counsel's use of classified information when he was not in Washington.

The Washington office temporarily occupied two vacant chambers of the U.S. Courthouse, with additional space in the basement of the FBI building. By late February 1987, the General Services Administration had leased space at 555 Thirteenth Street, N.W., in downtown Washington, while the building was still under construction and offices could be built to comply with specifications required for the use and storage of highly classified information.

It was decided that the Office of Independent Counsel would investigate broadly. It would resist seeking a quick indictment on some fragment of the facts unless that type of prosecution could produce quickly a witness useful in exposing the criminal activities central to OIC's responsibility. The office had a reasonably optimistic expectation that it could make prosecutorial decisions on major indictments by early fall 1987.

The Justice Department in late December 1986 presented 36 pending investigative matters from around the country that arguably fell within OIC's broad jurisdiction. Independent Counsel accepted only those that held a significant possibility of misconduct by Government officers.

Following the pattern set by the initial FBI probe, OIC divided its investigative work among several teams, including: the White House/National Security Council/Justice Department team, which would question officials and review documents from those entities; the CIA/State Department team; and the flow-of-funds/Defense Department team, which was responsible for negotiating with

Switzerland, Israel and other foreign countries through which the funds passed and for investigating the Pentagon.

As the investigation progressed and the prosecutable cases became more apparent, the make-up and focus of the teams changed. Also, because many Iran/contra matters overlapped across several areas of team work, investigative boundaries were not rigid.

With the expectation that Congress would grant immunity to central figures likely to be prosecuted by this office, Independent Counsel moved quickly to interview witnesses and review hundreds of thousands of documents from key agencies. In addition to the FBI agents already detailed to OIC, agents from the Customs Bureau and Internal Revenue Service were temporarily assigned to Independent Counsel with the goal of building criminal cases as quickly as possible.

On January 28, 1987, the first federal Grand Jury that would hear evidence on Iran-contra matters was convened in the District of Columbia.⁴

⁴ The first Grand Jury sat for 24 months, expiring January 27, 1989. A second Grand Jury was convened in the District of Columbia on May 15, 1990 and sat until May 15, 1992. Chief Judge Aubrey E. Robinson, Jr., granted Independent Counsel's requests for the extension of both grand juries for six months beyond the normal 18-month period because of the complex nature of the evidence being presented. In addition, Iran-contra evidence was heard by grand juries sitting in the Eastern District of Virginia in Alexandria (resulting in the Fernandez indictment) in Baltimore, Md. (resulting in the Clines indictment), and later in the District of Columbia (resulting in the Weinberger indictment).

Liaison With Other Agencies

Because the Iran/contra matter spanned several Executive agencies, and because other investigations were underway, it was necessary for Independent Counsel to establish liaison procedures with the White House; Congress; the departments of Justice, State and Defense; the Central Intelligence Agency; and the National Security Agency. Typically, a team of lawyers in each agency was appointed to work with Independent Counsel. The agency teams oversaw document production and requests for witness interviews and other information from OIC.

Liaison with Congress and the White House was of highest importance during the early phases of the investigation.

Weekly meetings were held with representatives of the Select Iran/contra Committees before central figures gave their immunized testimony. Although OIC's concerns over the immunity issue dominated these discussions, Independent Counsel and committee representatives had mutual fact-gathering concerns. OIC was precluded by grand jury secrecy rules from sharing certain information with the Committees, but it could sometimes provide the Committees with documents and evidence gathered outside the grand jury process.

OIC had nearly daily contact with the White House. Independent Counsel had requested all relevant documents from the offices of the President and Vice President, from the NSC, from White House staff members, and from administrative offices. It was necessary to gain an understanding and conduct searches of White House computer systems. Finally, OIC had to make arrangements with White House officials to review President Reagan's diary and ultimately to obtain his testimony and the testimony of Vice President Bush.⁵

⁵ See Reagan and Bush chapters.

President Reagan in December 1986 appointed former Ambassador David M. Abshire to coordinate responses to the Iran/contra investigations of Independent Counsel, Congress and the Tower

Commission. Abshire served in the post through March 1987, when his duties were assumed by White House Counsel A.B. Culvahouse.

Early Document Production

The Office of Independent Counsel spent January and February 1987 heavily engaged in obtaining and reviewing documents. This work continued through the fall of 1987, when certain Executive agencies were still responding to OIC document requests.⁶

6 CIA response to the February 1987 document request continued into February 1988. Production alternated between withholding and flooding with key documents not produced until after months of delay.

The Department of Justice had issued an initial request for relevant documents to each agency in late November 1986, but its focus was more narrow than the area Independent Counsel was subsequently appointed to investigate. OIC made expanded document requests based on its broad mandate.

The documents requested by the OIC included handwritten and typed notes, computer records and disks, diaries, appointment calendars and schedules, tapes and films, phone logs, correspondence, memos, messages, reports, studies, minutes, transcripts, work papers, agendas, announcements, computer notes and messages, telegrams, teletypes, bank records and other records. Independent Counsel sought all materials relevant to Iran/contra from each Executive agency; its request to the White House, which included the NSC, was the most expansive. From the White House, OIC sought the production of any materials pertaining to (1) the sale or shipment of arms to Iran, and contacts with nine listed Iranians; (2) the sale or shipment of arms to Iran, using but not limited to any of 26 listed intermediaries; (3) the diversion of proceeds from the Iranian arms sales to the Nicaraguan contras or insurgents elsewhere, involving but not limited to 25 listed individuals and business concerns; (4) the provision of support to the Nicaraguan contras, including possible contacts with 71 listed individuals and organizations; (5) meetings of 17 listed Administration working groups; (6) the calendars, schedules, phone logs and travel records of 34 listed White House and other officials; (7) computer messages generated or received by 35 White House staff members; and a variety of more specific items.

It was impossible for Independent Counsel to determine early in the investigation whether the agencies were complying in good faith with the document requests. As in other complex investigations, what was missing often became obvious only after a thorough review of what had been received.

Some early document production problems, however, were apparent. The CIA, for example, held back document production until late February 1987 -- only after Independent Counsel suggested that subpoenas might have to be issued to force compliance.⁷ At the White House, certain documents deemed relevant by FBI agents were subsequently reviewed and deemed irrelevant by White House counsel; the issue took several months for OIC to finally resolve in its favor. Production from the National Security Agency was uneven.⁸ Certain individuals throughout the Administration had relevant personal notes that were produced either late or in incomplete form, or both; in some cases, individuals falsely claimed not to have any notes at all.⁹

7 Independent Counsel decided to avoid initially issuing subpoenas for Executive branch documents for several reasons: (1) subpoenas enforceable by the court may require greater specificity than document requests; (2) subpoena litigation would consume time that the office could not afford as it worked quickly to outpace the congressional grants of immunity to key individuals; and (3) subpoenas could be used as a last resort, when all else failed. In the later phases of OIC's investigation, when greater specificity was possible and when the congressional hearings were concluded, subpoenas were used when necessary.

8 See Classified Appendix.

9 It was not until 1990 that OIC's continuing investigation began discovering the extent to which personal notes were withheld from Independent Counsel.

Although Independent Counsel was able to recover hundreds of thousands of relevant materials, the disturbing fact remained that some of the most important documents almost certainly were destroyed in October and November 1986, as the Iran and contra operations became publicly exposed.

Witnesses Begin To Tell the Story

The individuals most directly involved in the Iran and contra operations -- North, Poindexter, Secord and Hakim -- by early 1987 had all refused to testify, invoking their Fifth Amendment protection against self-incrimination. Joseph F. Fernandez, the CIA station chief in Costa Rica who assisted North in supplying the contras, refused to talk, as did Thomas G. Clines, a former CIA officer who worked with Secord and Hakim in the "Enterprise" that supported the Iran and contra covert operations.

McFarlane was an exception. He testified before Congress and the Grand Jury voluntarily. But McFarlane was not involved in implementing the Iran/contra diversion or many of the activities in question in 1986, after he resigned as national security adviser. Also, McFarlane was misleading in many of his early interviews with Independent Counsel; it was only after he entered into plea negotiations that he offered more complete testimony.

It was clear from the beginning that Independent Counsel would have to question President Reagan and Vice President Bush at some point. Unlike other witnesses, neither person could be repeatedly called to testify, especially in the absence of incriminating evidence. Additionally, Vice President Bush had answered questions by the FBI in an early interview before Independent Counsel's appointment, and both had been questioned by the Tower Commission. Independent Counsel decided to wait until the investigation had matured before approaching President Reagan and Vice President Bush. Ultimately, the President answered written interrogatories for the Grand Jury in the fall of 1987, gave a deposition for the defense in the Poindexter trial early in 1990, and answered a final round of questions in an interview with Independent Counsel in the summer of 1992. Bush gave a videotaped deposition for the Grand Jury early in 1988 but arrangements for a final interview in 1992 and 1993 were brought to an impasse by his insistence that the questioning be very limited in scope.

Senior Administration officials who continued in Government service typically testified without seeking grants of immunity from Congress or Independent Counsel. Additionally, most support staff who remained in the Government after the Iran/contra affair was exposed answered questions voluntarily.

Cabinet officers and presidential advisers generally professed little knowledge of the Iran and contra activities. Attorney General Meese, White House Chief of Staff Regan, Secretary of State Shultz and others admitted to greater or more specific knowledge only after repeated questioning by Independent Counsel and when confronted with evidence contradicting their earlier statements.

Some of the most significant witnesses were those who came in frequent contact with North and Poindexter, either as associates or subordinates, and who were potentially indictable. Most of these individuals requested immunity from prosecution in exchange for their testimony against others more central to Iran/contra matters.

A witness refusing to testify may be given immunity at the request of the prosecutor. Customarily, the witness first makes a proffer -- or detailed outline -- of the facts he or she will testify to in court

in order to obtain immunity. Independent Counsel almost always conditioned grants of immunity on a witness's willingness to make a proffer.

One of the earliest witnesses to make a proffer was Fawn Hall, who had been North's secretary on the National Security Council staff. Like McFarlane, Hall was a difficult witness who provided information only after a series of interviews. Although Hall testified against North reluctantly, she provided valuable evidence of his destruction and alteration of official documents in November 1986, and about his extensive contacts and activities on behalf of the Nicaraguan contras. Hall testified that, with North's knowledge, she smuggled classified documents out of the White House on November 25, 1986.

Hall also told Independent Counsel that North kept detailed notebooks of his daily activities and that she had seen them in his counsel's office after the Iran-contra affair was exposed. Hall's revelation caused Independent Counsel to launch a lengthy effort to subpoena the notebooks, whose potential evidentiary value was clear.¹⁰

¹⁰ North's notebooks could not be obtained by OIC until North took the witness stand in his trial in April 1989. The trial court ruled that North had waived his right against self-incrimination by deciding to testify in his own defense, and therefore copies of the notebooks would be produced to Independent Counsel.

Robert L. Earl, one of North's closest co-workers at the NSC, was granted immunity in exchange for testimony about North's destruction of documents in November 1986. Earl also described a conversation he had with North and an associate Craig Coy, on November 25, 1986. According to Earl, North told them that President Reagan had called him to express his regret at North's firing and said that the President told North that it was important that Reagan "not know." Earl inferred from this statement that North had been cast in the scapegoat's role with the President's knowledge.¹¹

¹¹ Earl, Grand Jury, 5/1/87, pp. 118-19. See Earl chapter.

Dozens of NSC and White House officials were interviewed and re-interviewed. Some could provide only fragments of information about North and Poindexter's activities. Some potentially more significant witnesses, such as former NSC counsel Paul B. Thompson, made themselves available for questioning on numerous occasions but were never fully forthcoming in their answers.

One of the earliest areas of investigation to bear fruit exposed North's fund-raising activities with Carl R. "Spitz" Channell and Richard R. Miller. Under the auspices of a tax-exempt organization, the National Endowment for the Preservation of Liberty (NEPL), contributions were solicited to buy weapons for the contras. Wealthy contributors, some of whom were given immunity, testified that North had described the weapons needs of the contras in soliciting their donations, providing clear evidence that NEPL was using tax-exempt privileges for illegal purposes. This investigation resulted in Channell and Miller pleading guilty in the spring of 1987 on tax-fraud conspiracy charges, with each naming North as a co-conspirator.¹² As part of their plea agreements, Channell and Miller cooperated with Independent Counsel and provided extensive evidence against North.

¹² See Channell and Miller chapter. North was charged in March 1988 with conspiracy to commit tax fraud but was acquitted of the charge.

Another area of early concern was North's contra-resupply operation in Central America, which was ostensibly financed and carried out by a "private benefactor" organization sympathetic to the contra cause, but which, in fact, was run by Secord under North's control. U.S. Government involvement in this operation defied the ban on military aid to the contras imposed from October 1984 to October 1986 by the Boland Amendment.

Members of the Administration's Restricted Inter-Agency Group (RIG) on Nicaragua were questioned about North's contra-support activities. The testimony of Assistant Secretary of State Elliott Abrams and CIA Central American Task Force Chief Alan D. Fiers, Jr. -- neither of whom received immunity from prosecution -- was proven later to be untruthful.

Robert W. Owen was immunized and gave detailed testimony about his role as North's private liaison to the Nicaraguan contras. He described carrying secret military information and large amounts of cash and traveler's checks to contra leaders on North's behalf.

Richard B. Gadd and Robert C. Dutton -- the men who were employed by Secord to run the contra-resupply operation in Central America -- were granted immunity and testified extensively about the organization's activities and finances.¹³ Rafael Quintero, Secord's Central American representative, also was granted immunity in exchange for testimony about the weapons and other lethal assistance provided to the contras.

¹³ Dutton also provided details of the final Iran arms shipments.

The contra leaders whom North assisted were questioned. Adolfo Calero, who resisted testifying until late March 1987, described North's contra-support activities in highly sympathetic terms. His testimony, however, exposed North's violations of the Boland Amendment. Many other contra figures also were interviewed, providing an increasingly explicit picture of Reagan Administration efforts to provide military support.

U.S. ambassadors to Central America were interviewed about their knowledge of the contra-resupply operation. Some, such as former Ambassador to El Salvador Edwin G. Corr, falsely denied details of their knowledge. Others testified more forthrightly; for example, the former ambassador to Costa Rica, Lewis A. Tambs, testified candidly about his participation in opening a "southern front" of contra fighters.

Testimony about North's contra-aid activities, as well as documentary proof that he reported many of these activities to both Poindexter and McFarlane, showed that they and North had obstructed congressional inquiries about contra assistance in 1985 and 1986.

In investigative terms, much of the information on the Iran arms sale initiative in 1986 was laid out in documents. The record was less clear, however, on the 1985 shipments in which Israel was involved. Independent Counsel was effectively blocked from interviewing Israeli nationals by the government of Israel, although OIC attempted to subpoena them on visits to the United States.¹⁴

¹⁴ In February 1987, the Israeli government made an agreement with the Select Iran/contra Committees to supply written historical and financial chronologies in lieu of live testimony. Independent Counsel, who was not aware of this agreement until after the fact, informed the Israelis that he was not a party to the agreement and reserved the right to issue subpoenas and to take other action as OIC saw fit.

OIC in May 1987 subpoenaed the former director general of the Israeli Foreign Ministry, David Kimche, who had proposed the Iran arms initiative to Administration officials in the summer of 1985. The subpoena was served during a visit by Kimche to the United States. At the request of the State Department and in accordance with lengthy negotiations with the Israelis, Independent Counsel eventually agreed to withdraw the subpoena and accept a commitment by the Israelis to supply OIC with chronologies, historical and financial, and with additional information.

The chronologies, although highly useful in certain respects, were not a true substitute for live witness testimony.

McFarlane provided testimony about the 1985 Iran arms shipments, but it was in doubt because of conflicting testimony given by other senior Administration officials. Michael Ledeen, a former NSC consultant who helped set up the Iran arms sales in the summer of 1985, was questioned. Duane R. "Dewey" Clarridge, the CIA officer whom North enlisted in a November 1985 shipment of U.S. HAWK missiles from Israel to Iran, testified untruthfully about the shipment.

After questioning CIA and State Department officials, it became clear that testimony delivered by Poindexter and Casey in November and December 1986 was false regarding their knowledge of the 1985 arms shipments, particularly the November 1985 HAWK shipment.

Evidence about the Iran/contra diversion was extremely difficult to obtain. Few witnesses admitted to knowledge of it, although some were found later to be lying. Proving that the diversion had occurred, and understanding its mechanics, required access to the secret Swiss financial records of the North-Secord-Hakim covert-operation Enterprise. These records could not be obtained until late in 1987, after lengthy negotiations with the Swiss government and litigation with Hakim and Iranian businessman Manucher Ghorbanifar.

By late April 1987, Secord decided to testify without immunity before Congress. In the same period, he received limited immunity from Independent Counsel, allowing him to be questioned with the agreement that nothing he said to OIC could be used against him as direct evidence in a criminal prosecution, unless he committed perjury. This did not preclude Independent Counsel from prosecuting him with evidence from other sources.

Secord provided valuable information about both the Iran and contra operations, as well as about the diversion. He was not truthful about the extent of his personal financial interests in the Enterprise.

The flow-of-funds investigative team, while awaiting Swiss financial records, developed extensive information about the money trail in documents from U.S. banks and from bank accounts in countries other than Switzerland. Also, Willard I. Zucker, who managed the Swiss financial accounts of the North-Secord-Hakim Enterprise, proffered testimony in exchange for immunity. Zucker could not provide the Enterprise's Swiss bank records because he was not a signatory on the accounts. Until the records were released, under the Swiss secrecy laws, he could not even be interviewed. But, through his American lawyers, he did inform OIC of Hakim's establishment of a fund for North's family, constituting an illegal gratuity to a Government official.

The Swiss Financial Records of the Enterprise

At the heart of the covert Iran/contra Enterprise run by North, Secord and Hakim were its financial records, protected in Switzerland by strict banking-secrecy laws. Both Independent Counsel and the Select Committees were vitally interested in obtaining these records, as was the Tower Commission.

To bring a criminal indictment incorporating the diversion of Iran arms sales proceeds to the contras, and to expose other financial corruption, the Swiss records were essential.

The Department of Justice in December 1986 requested access to the Swiss records under the Treaty for Mutual Assistance in Criminal Matters between the United States and Switzerland. It would take a full year from the time of that request before Independent Counsel received the banking documents.

The Select Committees sought the assistance of Independent Counsel in acquiring the Swiss records, but they could not wait for the treaty process to play out. Over the objections of Independent Counsel, they granted immunity to Hakim to obtain financial documents.¹⁵ The presidentially appointed Tower Commission also asked for Independent Counsel's help on the Swiss records, but its reporting deadline was too early to obtain them.

15 During the wait for the Swiss records, OIC considered immunizing Hakim, who as a signatory on the bank accounts could have authorized their release. It was decided, however, that a possible Hakim prosecution should be pursued. He was then believed to be the architect of the financial schemes to conceal the Enterprise operations, cheat the contras and bribe North. He also refused to give a proffer of his probable testimony.

It is noteworthy that the financial documents Hakim provided to Congress pursuant to his immunity grant were partially fabricated to conceal the recipients of the profits. This fact was revealed in the 1990 trial of Clines.

The Swiss Office for Police Matters on February 27, 1987, initially authorized the release of the records to Independent Counsel. Hakim and Ghorbanifar appealed the decision in two Swiss courts. By September 1987, both appeals were denied as frivolous.

After Independent Counsel's request worked its way through a system weighted heavily in favor of bank secrecy, the Swiss authorities on November 3, 1987, made available most of the records requested. The records contained the proof essential to a conspiracy indictment against North, Poindexter, Secord and Hakim and to charge the Iran/contra diversion as a crime.

Early Challenge to Independent Counsel's Constitutionality and the Parallel Appointment

On February 24, 1987, North challenged the Independent Counsel in a legal action, *North v. Walsh*, to test the constitutionality of the Ethics in Government Act under which Independent Counsel was appointed. In a parallel action before another judge, former presidential aide Michael Deaver brought action against Whitney North Seymour, Jr., who was the Independent Counsel prosecuting him. The District Court dismissed *North v. Walsh* as premature, but the Deaver motion was not dismissed.

The day after North filed his legal challenge, Walsh sought a back-up appointment as Independent Counsel from the attorney general. The attorney general made the appointment on March 5, 1987, closely paralleling the court appointment.¹⁶ In July 1987, U.S. District Chief Judge Aubrey E. Robinson, Jr., held that the appointment was valid, allowing Independent Counsel to continue the Grand Jury investigation of Iran/contra after the Court of Appeals, in another case, had held the independent counsel statute unconstitutional.¹⁷

¹⁶ In making the back-up appointment, the Attorney General referred to the President's desire to take every possible step that Independent Counsel's investigation continue. This support was intended to obviate any constitutional conflict based on the view that the appointment of Independent Counsel was an unconstitutional intrusion upon the powers of the President.

¹⁷ Legal challenges to the constitutionality of the independent counsel statute continued into 1988, when a federal appeals court panel in January struck down the law as unconstitutional in a case brought against Independent Counsel Alexia Morrison. The Supreme Court on June 29, 1988, reversed the appeals court ruling and upheld the constitutionality of the statute.

Congressional Immunity Grants

Congress's perceived need to quickly and publicly resolve the grave political questions posed by Iran/contra nearly derailed OIC's efforts to bring high officials to justice. No adverse factor shaped or constricted Independent Counsel's criminal investigation more than the congressional immunity grants made to North, Poindexter and Hakim. The trial convictions of North and Poindexter were ultimately reversed on appeal because they prevailed in arguing that the testimony of witnesses in their trials was not proved to be unaffected by their highly publicized immunized congressional testimony.

OIC's most pressing concern from the outset of its work was that the Select Committees would grant immunity to targets of the criminal investigation, compelling them to testify before Congress while guaranteeing that nothing they said could be used against them in a criminal proceeding. The law was clear that Congress controlled the political decision of whether immunity grants were justified by the importance of the hearings even though they could destroy a criminal prosecution. With the exception of the congressional and criminal investigations of the Watergate scandal in the 1970s, the situation confronting Independent Counsel was unprecedented. In the Watergate scandal, two congressionally immunized witnesses -- John Dean and Jeb Stuart Magruder -- were judged guilty of crimes, but both men had pleaded guilty before their cases came to trial. Criminal charges against Gordon Strachan were dismissed because of immunity problems.¹⁸

18 Watergate Special Prosecution Force Report, p. 52 (1977).

President Reagan had first proposed in December 1986 that North and Poindexter be granted immunity after they refused to testify voluntarily before the Senate Select Committee on Intelligence, which was conducting a preliminary investigation into Iran/contra. He said their testimony would exculpate him. The intelligence committee resisted his proposal. Yet that, in the end, was exactly what the Select Committees did.

In early meetings between Independent Counsel and the leaders of the Select Iran/contra Committees, the leaders forthrightly stated that they were likely to grant immunity to central figures. In response, Walsh doubled the size of the OIC staff and took steps to focus the investigation on the gathering of as much evidence as possible before the grant of immunity tainted any of it.

Independent Counsel repeatedly warned the committees that such immunity grants, coupled with the high level of national exposure of the Iran/contra hearings, would pose serious if not insurmountable obstacles to prosecuting central figures. Independent Counsel also argued that key witnesses would have little incentive to testify fully and truthfully before Congress if they received immunity before impeaching or corroborating evidence had been gathered.

Independent Counsel met repeatedly with representatives of the committees to persuade them to seek alternatives to immunity grants to the central figures. But, frustrated by North and Poindexter's continuing refusal to testify voluntarily, the Select Committees decided to immunize North, Poindexter and Hakim.¹⁹

19 Independent Counsel persuaded the committees not to immunize Clines, Secord and Hakim's business partner in the Iran/Contra Enterprise. Clines was later successfully prosecuted and convicted of four crimes.

The Select Committees worked on tight, self-imposed deadlines. Counsel told OIC that they felt that the scandal should not be left hanging over the President. Their public hearings were to begin in early May 1987 and they planned to issue a final report by November 1987.²⁰

20 Some Committee members publicly expressed their frustration with the pace of Independent Counsel's criminal investigation.

Independent Counsel urged the Select Committees to delay granting immunity to North and Poindexter for as long as possible, to give OIC more time to gather criminal evidence that could not be tainted, by any immunized testimony. A compromise was reached between OIC and the Committees in March 1987, setting the timing for immunity grants for North and Poindexter, as well as the methods for insulating the private testimony Poindexter was to give before appearing publicly.²¹

21 Under a Memorandum of Understanding dated March 24, 1987, the Committees agreed not to vote on immunizing North before June 4, not to question him privately before June 15, and not to

call him for public testimony before June 23. In exchange, Independent Counsel agreed not to seek an automatic 20-day deferral of North's immunity grant, as he was entitled to under the federal use immunity statute. For Poindexter, the Committees agreed not to vote on immunity before April 20, not to question him privately before May 2 or three days before the start of public hearings, and not to call him to testify publicly before June 15. To insure against leaks of Poindexter's private testimony, the Committees agreed that only three attorneys and a court reporter would be present and that the notes of the private session would not be transcribed or removed from a Committee vault before June 15. The attorneys who questioned Poindexter privately would not disclose his answers to Committee members or others before June 15 except under "certain extraordinary circumstances" -- that is, if he provided evidence of an impeachable offense. Independent Counsel agreed in return not to seek a 20-day deferral of Poindexter's immunity grant.

OIC issued its First Interim Report to Congress on April 28, 1987, a week before the public Iran/contra hearings began. "The allegations in the investigation concern possible violations of public trust and possible misuse of position by high Government officials and their manipulation by former Government officials," Independent Counsel reported. "In such matters, the public is entitled to a fair and deliberate prosecutive judgment."

The interim report informed Congress and the public that more than 800 witness interviews had been conducted, hundreds of boxes of White House and other agency documents had been reviewed, and that an ongoing Grand Jury investigation was "proving fruitful." This unusual public accounting of the criminal investigation's progress was issued to enable the Select Committees and Congress to make an informed decision in granting immunity that would gravely handicap and, possibly, frustrate these potential prosecutions.²²

²² Independent Counsel's First Interim Report is reprinted in Volume II of this report.

Providing concrete proof of Independent Counsel's progress were the guilty pleas in late April and early May 1987 of Carl R. "Spitz" Channell and Richard R. Miller. Both men pleaded guilty to conspiring to defraud the Government by raising money for contra weapons under the auspices of a tax-exempt organization, and both named North as a co-conspirator. These guilty pleas gave Independent Counsel the option of bringing an early tax-fraud case against North, but it was decided that the charges should be incorporated into a more comprehensive indictment against North and others.

In late May 1987, North's attorney told the Select Committees that his client would not give immunized testimony privately before his public appearance. He claimed the Committees were entitled to the testimony only once. This was a dangerous proposition for the Committees. Not only would they not be prepared for North's public appearance by questioning him privately first, they would have no prior statements with which to impeach any self-serving or exculpatory testimony he might give. Independent Counsel urged the Committees not to strike such a deal with North. Nevertheless, it was clear that they were determined to have North's testimony. They were unwilling to await the outcome of litigation. As Senator Warren Rudman, Vice-chairman of the Senate Select Committee, put it, "I would find it inconceivable . . . that these hearings could ever be complete without the testimony of Col. North." ²³

²³ Los Angeles Times, "The Iran-Contra Hearings . . .", 6/4/87.

In May and June 1987, when it was highly unlikely that either Poindexter or North would incriminate the President, immunity was granted, and, in July, their testimony was taken and publicly exposed. The President's December 1986 proposal was thereby carried out.

Early Indictments Weighed

To minimize the problems caused by the expected grants of congressional immunity, Independent Counsel beginning in mid-February 1987 considered indicting North and others on obstruction-of-justice charges, based chiefly on evidence of document destruction.

In March, Independent Counsel considered a list of potential targets for prosecution, subjects for further investigation and candidates for immunity. This included a tentative outline for the prosecution of North and others and included document destruction and illegal fundraising for the contras. It was decided not to try to obtain an indictment before the Select Committees granted immunity. There was no possibility that a case could be tried before North and Poindexter were called as witnesses. The confrontation with Congress and the ensuing litigation to compel the testimony could be expected not only to expand the danger of tainting the projected trial, but also to hamper and even threaten the continuation of the investigation.

While cautioning against a fragmentary indictment, Independent Counsel in March 1987 required the investigative teams to produce a summary of their possible cases, witnesses, trial documents and outlines of the applicable laws. Then, "canning" procedures were established so that each team could begin filing under seal with the U.S. District Court for the District of Columbia their case summaries, draft indictments, witness leads and trial exhibits. This was done to provide proof when needed that the criminal evidence OIC gathered early in its investigation could not have been "tainted," or influenced, by the subsequent congressional testimony of immunized witnesses.

In early June 1987, Walsh prepared a lengthy analysis of a possible indictment based upon information available before North and Poindexter testified before the Committees. Secord, who was also likely to be indicted, had already testified before the Committees but had done so without immunity.²⁴

²⁴ Independent Counsel invited each of the potential defendants to make a proffer -- or outline -- of testimony he could give if he agreed to cooperate with the criminal investigation, to begin possible plea negotiations. Attorneys for North, Poindexter and Hakim rejected OIC's proposal.

On June 29 and 30, 1987, there was a further consideration of an immediate indictment, a week before North's scheduled public appearance on Capitol Hill. The proposed indictment of North, Poindexter, Secord and Hakim included a conspiracy to violate the Boland Amendment's prohibition on military aid to the Nicaraguan contras, acts of obstruction and false statements to Congress. It could not include charges related to the diversion.²⁵ Although proof of obstruction by North and Poindexter was in hand, and although substantial evidence of Boland violations had been collected, the investigation was not complete. After lengthy discussion, Independent Counsel and a large majority of the staff favored waiting for the Swiss bank records so that charges on the Iran/contra diversion and the effort by Hakim and Secord to corrupt North could be included.

²⁵ These charges required the Swiss bank records and Zucker's testimony because OIC was unwilling to rely upon Zucker's proffers through his counsel.

Other factors weighed heavily against an early indictment, including the legal and political confrontation that would have resulted from indicting North just before his scheduled congressional testimony. Had North been under indictment when called by Congress to testify, his probable refusal to do so would have resulted in a firestorm that OIC might not have been able to withstand. A simultaneous attack by the defendants and Congress on Independent Counsel could have resulted in a premature effort by the courts to deal with the immunity problem in the abstract and the possible destruction of the prosecution of North and Poindexter and also the ongoing investigation.²⁶

²⁶ It was always the effort of Independent Counsel to proceed to indictment and trial with immunity safeguards of his own design and to have court litigation develop as a review of the conduct trial, rather than to obtain some kind of pre-trial or pre-indictment prescription. Quite apart from the dangers of litigation, if Poindexter or North did testify, the indictment would have been subjected to

a free-swinging, highly publicized attack by North, Poindexter and their congressional supporters, to which OIC could not have listened, let alone respond.

The decision was made not to indict but to take all steps necessary to keep the probable prosecution of North, Poindexter and others free of taint from their immunized congressional testimony.

North Delivers His Immunized Testimony

Independent Counsel was fully aware of the potential problems posed by North's immunized testimony, which was finally delivered to intense public interest in early July 1987. But the Select Committees, by not insisting on privately questioning North in advance of his public appearance and by agreeing that his testimony would be limited in time, expanded the problem. Without the advantage of prior private testimony, the Committees were not able to restrict North's testimony to narrowly responsive answers. The Committees publicly and blindly examined a hostile, articulate, immunized witness without the protection and guidance of a significant prior statement.

Although OIC shielded itself from North's testimony, it quickly became clear that North had turned the tables on the Select Committees. Ollie North T-shirts and other North memorabilia were being sold on the streets of Washington. It looked as though North's charismatic qualities had enabled him to exploit his underdog role. North had bested the Congress of the United States in what was perceived to be its most ostentatious display of investigatory power since Watergate.

OIC in the spring of 1987 had doubled its staff to speed the investigation and to preserve a core of trial attorneys and paralegals who would remain unexposed to the testimony. A smaller team of attorneys and support staff became exposed, or "tainted," to serve as a buffer between the outside world and the "untainted" staff, and to investigate potential defendants not immunized by Congress. The untainted staff members could not read about or in any way monitor the immunized testimony. Inadvertent exposures -- such as overheard conversations or glimpses of banner headlines -- occurred and were recorded in a special file, which would later be reviewed by the court to determine whether the incidents impermissibly tainted the prosecutions. Independent Counsel asked the Iran/contra grand jurors to avoid the immunized testimony, and Grand Jury witnesses were told not to refer to it or base their testimony on it.²⁷

²⁷ Teams of OIC attorneys later became exposed to those portions of the immunized testimony that did not affect the individual trials they worked on. Independent Counsel Walsh and others who were involved in the broadest aspects of the investigation and trials remained unexposed to all the immunized congressional testimony until the completion of the Poindexter trial in April 1990.

In the two weeks following North's public testimony, Independent Counsel considered whether the investigation and prosecution could continue. Could the staff avoid becoming exposed to his testimony? What should be done with Grand Jury and potential trial witnesses who saw all or part of the immunized performance? Should OIC accept what might be inevitable -- an inability to prosecute North -- and try to use him as a witness?

By early August 1987, after a full review of the legal questions, OIC decided that it would continue to pursue a prosecution of North. Discussions with North's counsel left no illusion of possible cooperation. The popularity of one of the subjects of the investigation could not be permitted to deter Independent Counsel from applying the rule of law where, under less extraordinary circumstances, it would be applied. Prior court holdings on the effects of limited immunity kept OIC from simply surrendering the prosecution. The outcome would have to be resolved by the courts after OIC rigidly avoided any use of the immunized testimony.

On August 9, 1987, Independent Counsel delivered an address at the American Bar Association meeting on "Truth and the Rule of Law." He announced his decision to continue to pursue the prosecution of immunized figures. Every reasonable precaution would be taken to respect

constitutional protections, but the issue of the adequacy of these precautions would be left to the courts, he said. Finally, the popularity or unpopularity of possible defendants could not affect prosecutorial decisions.

The Swiss Records Are Obtained and an Indictment Is Written

The elements of a comprehensive indictment against North, Poindexter, Secord and Hakim fell into place as the questioning of witnesses and review of documents continued into the fall of 1987.

The ability to charge the Iran/contra diversion as a crime remained a pivotal concern, as OIC awaited the release of the Swiss financial records. It was the disclosure of the diversion, after all, which shocked the public and caused the appointment of Independent Counsel. In addition, it was expected that the Swiss records would show not only profiteering by Secord and Hakim, but also the possible financial corruption of North.

By October 1987, OIC was ready to evaluate the assistance to the Nicaraguan contras by North and other Government officers during the 1984-1986 period in which the Boland Amendment prohibited such aid. Although the Boland Amendment itself carried no criminal sanctions, these activities and the deceit with which they were concealed could be used as elements in a conspiracy charge. Such a charge of conspiracy would provide the necessary unity for the other counts likely to be included in an indictment.

After the Swiss records became available in November 1987,²⁸ a comprehensive indictment could be written. Evidence would now support the charges that would reflect the over-pricing of the missiles sold to Iran, and the subsequent diversion of the profits; the personal enrichment of Secord and Hakim; and the gratuities paid to North.

²⁸ Before they could be used effectively, there were weeks of translation, computerization, analysis, and lengthy interviews of Zucker and his assistants.

Cases were also under consideration against McFarlane and former CIA Costa Rican station chief Joseph F. Fernandez, as well as a narrower case against another CIA officer working in Central America, James L. Adkins, who had been illegally involved in resupplying the Nicaraguan contras.

It was decided that Fernandez and Adkins would not be included in the broader indictment, because the possible charges against them were limited to contra operational support. This distinguished them from the other potential defendants whose activities extended to both the Iran arms sales and the Iran/contra diversion.²⁹

²⁹ A separate indictment was brought later against Fernandez.

Unlike Fernandez, McFarlane was linked to both the Iran and contra matters. Unlike North, Poindexter, Secord and Hakim, however, McFarlane apparently played no role in approving or implementing the Iran/contra diversion.

In January and February 1988, evidence was collected and presented to support an indictment charging a corrupt conspiracy among North, Poindexter, Secord, and Hakim, and possibly McFarlane.³⁰ Its elements included: (1) an unauthorized covert action to support military activities in Nicaragua in violation of the Boland Amendment ban on military aid to the contras; ³¹ (2) using the Iran arms sale to create a slush fund to be spent at the direction of North and Poindexter, and for self-enrichment; and (3) endangering the hostage-rescue effort by pursuing unauthorized activities. Other charges would include false statements to Congress, obstruction of official inquiries, the payment and receipt of illegal gratuities, and the destruction and alteration of official documents.

³⁰ It is not necessary, in a conspiracy, that all defendants be party to all activities.

31 Under the National Security Act and related Executive Orders, covert action ("special activities") by the CIA required authorization of a Finding by the President with notice to Congress either through the intelligence committees or the congressional leadership. Such activities undertaken by Government officials outside the CIA required the written authorization of the President. See *The Operational Conspiracy: A Legal Analysis*.

In February 1988, McFarlane entered into plea negotiations. On March 11, 1988, McFarlane pleaded guilty to four misdemeanor counts of withholding information from Congress and agreed to cooperate with Independent Counsel, allowing him to testify in a future trial of North, Poindexter, Secord and Hakim.³²

32 McFarlane was later identified in a bill of particulars as a co-conspirator of North, Poindexter, Secord and Hakim.

Independent Counsel met for a final time with counsel for those who would be named in the indictment to discuss the possibility of plea negotiations. His effort was rejected. On March 16, 1988, a 23-count indictment was returned against Poindexter, North, Secord and Hakim.

Litigation, 1988-1990

Following the March 1988 indictment of North, Poindexter, Secord and Hakim, OIC became heavily engaged in pre-trial work, responding to more than 100 defense motions and to discovery requests for hundreds of thousands of documents. Much time was devoted to trying to resolve complications caused by the congressional grants of immunity to three of the defendants. Also, there were problems arising from the fact that the Iran/contra criminal cases were intertwined with issues of national security, requiring lengthy negotiations with the intelligence agencies to review and declassify thousands of pages of documents for possible use at trial.

Significant pre-trial and trial issues are described in detail in the individual case sections of this report. For the purposes of understanding the progression of Independent Counsel's work, however, the most important are noted briefly here.

On June 8, 1988, U.S. District Judge Gerhard A. Gesell ordered the severance of the North, Poindexter, Secord and Hakim cases, based on the fact that each of the defendants except Secord had received immunity to testify before Congress. Nothing they said in their widely publicized congressional testimony could be used against them in a criminal proceeding. Although Independent Counsel took extensive measures to shield its cases from the testimony, the defendants successfully argued that their constitutional rights would be violated if they could not use at trial possibly exculpatory immunized testimony given by their co-defendants. The severance doubled the length of time needed to try these cases. Independent Counsel decided to try North first.

A further substantial delay occurred after severance. The court was moving firmly toward a September 1988 trial of North, but North's counsel convinced the court in an ex parte presentation that extensive further classified information was necessary for the defense. The production could not be accomplished by the intelligence agencies in time for a September trial. To avoid the need for this additional discovery, the court proposed a trial without the conspiracy and diversion counts. Independent Counsel moved to sever but not dismiss those counts. North, however, claimed he needed a postponement to assimilate material already produced to him. Under those circumstances, the court vacated the trial date and denied Independent Counsel's motion to sever the counts as moot. The discovery schedule was extended into the fall. Hearings on the use of classified information at trial did not start until November 30.

On January 13, 1989, Judge Gesell dismissed the central conspiracy and theft charges against North because the Reagan Administration refused to declassify certain information deemed relevant to these charges. The Reagan and Bush Administrations, while yielding on some issues, continued to

resist the declassification of others, requiring extensive negotiations between Independent Counsel and the intelligence agencies throughout the North trial.

The trial of North on 12 charges began in February 1989. On May 4, the jury convicted North on three felony counts.

Because the central conspiracy and theft charges were dropped against North, it was likely that the same charges would be dismissed in the cases of Poindexter, Secord and Hakim. As a result, Independent Counsel subsequently dismissed or narrowed the charges on his own motion. In Secord, Independent Counsel presented additional evidence to the Grand Jury, resulting in a second indictment of Secord on April 7, 1989, on nine additional charges of obstruction, false statements and perjury.

In April 1989, former CIA Costa Rica station chief, Fernandez, was indicted in Alexandria, Virginia, for false statements to the CIA inspector general and the Tower Commission. This indictment was similar to an earlier indictment of Fernandez -- brought in 1988 in the District of Columbia and dismissed on venue grounds -- but was stripped of a conspiracy charge to minimize classified information problems.

In late July 1989, as jury selection was beginning in Fernandez, the Department of Justice -- over the objections of Independent Counsel -- obtained a stay of the trial to appeal trial Judge Claude M. Hilton's rulings allowing Fernandez to introduce certain classified information in his defense. On September 29, 1989, the U.S. Court of Appeals for the Fourth Circuit ruled that the attorney general had no standing to appeal Judge Hilton's rulings in a case prosecuted by Independent Counsel. As a result of this ruling, the trial was rescheduled for November, and Independent Counsel resumed negotiations with the intelligence agencies over the classified information at issue.

Throughout the late summer and early fall of 1989, Independent Counsel attempted to persuade the intelligence agencies that the critical part of the classified information at issue in Fernandez was, in fact, well known to the public. In this time, Independent Counsel briefed the intelligence committees on the problems presented by the dispute. It was Independent Counsel's position that the importance of the prosecution outweighed the intelligence agencies' insistence that the information remain officially deniable.

In an effort to resolve the matter, Independent Counsel in October 1989 sought a meeting with President Bush to discuss the need to declassify the information needed to prosecute Fernandez. The President declined to meet with Independent Counsel, stating that the Attorney General was his representative in the matter. The Administration remained steadfast in its refusal to allow the information to be disclosed, causing the dismissal of all charges against Fernandez on November 24, 1989.

Despite the dismissal of Fernandez, the attorney general had indicated that he might reconsider the declassification of the information if Independent Counsel appealed Judge Hilton's rulings in the Fourth Circuit. Independent Counsel accordingly became involved in an appeals process that would take another 11 months before it was ultimately resolved, affirming Judge Hilton's rulings. In October 1990, after the appeals ruling was issued, the attorney general notified the trial court that it was his final determination that the classified information could not be disclosed, and the case was finally dismissed.

In November 1989, Secord and Hakim entered guilty pleas. Just a few days before his trial was scheduled to begin, Secord pleaded guilty to the felony charge of false statements to Congress. Hakim pleaded guilty to the misdemeanor charge of illegally supplementing the salary of a Government official (North). As part of the Hakim guilty plea, Hakim's company, Lake Resources Inc., pleaded guilty to a corporate felony of defrauding the Government in the Iran/contra diversion.

Hakim entered into an agreement, which he subsequently breached, to assist the United States in recovering Iran arms sales proceeds still on deposit in Switzerland.

In late 1989 and early 1990, Poindexter pre-trial issues were resolved. In February 1990, U.S. District Judge Harold H. Greene ruled that former President Reagan could be called to testify in Poindexter's defense. In order to accommodate the former President, a two-day videotaped deposition was taken in Los Angeles, California, on February 16 and 17, 1990. This was shown in full as part of the defense case in Poindexter's trial.

Also in preparation for the Poindexter trial, Independent Counsel prevailed in obtaining North as a witness, after Judge Greene rejected North's assertion that he could not separate his testimony from Poindexter's immunized testimony before Congress.

On February 22, 1990, a Grand Jury hearing Iran/contra evidence in Baltimore, Maryland, returned an indictment of Thomas G. Clines, who had worked with Secord and Hakim in both the Iran and contra operations. The Clines indictment centered on his filing false tax returns in 1985 and 1986.

The Poindexter trial began March 5, 1990. Unlike North, Poindexter did not take the witness stand. On April 7, 1990, the jury convicted him of the five felony counts on which he was tried.

In July 1990, North's convictions were vacated because it had not been shown to the extent required by the Court of Appeals that his widely publicized immunized testimony did not affect the testimony of witnesses against him. In November 1991, Poindexter's conviction was reversed for the same reason. The Supreme Court denied certiorari in both cases.

Following the convictions of North and Poindexter, and the guilty pleas of Secord and Hakim, a second, final phase of investigative work was begun by the Office of Independent Counsel, described in detail in the following section. In addition to this final phase of investigative work and the resulting trials, the Office of Independent Counsel was engaged in 1990 and 1991 in appeals and other areas of litigation, described more fully in the individual case sections.

The Continuing Investigation: 1990-1993

The completion of the trials of North and Poindexter in 1989 and 1990, respectively, marked the beginning of an important phase of Independent Counsel's criminal investigation: For the first time both men became available to OIC for questioning. Having convicted the individuals most operationally involved in Iran/contra, Independent Counsel focused on the supporting roles played by officials in the CIA, Defense and State departments, and the supervisory role of the principal members of the President's National Security Council.

The reactivated investigation, known as the "continuing investigation," was directed by Deputy Independent Counsel Craig A. Gillen. It focused initially on fewer than a dozen individuals who were suspected of having assisted or having falsely denied knowledge of Iran/contra activities. At the same time, the OIC reviewed whether the Executive agencies, in response to the initial phase of the criminal investigation in 1987 and 1988, had cooperated fully with Independent Counsel's document requests. There was evidence that this had not been the case.

It was Independent Counsel's hope that the continuing investigation could be completed and final prosecutorial decisions made within six months following the completion of the Poindexter trial in April 1990. Instead, it took three years, prolonged by the discovery of previously withheld notes and other documents by high-ranking Reagan Administration officials, and the need to re-question key figures based on new information gleaned from these documents and obtained from cooperating witnesses.

The development of the continuing investigation can be viewed in three segments:

-- The first, from January 1990 to July 1991, focused on the possibly false testimony of 10 former Reagan Administration officials in the Office of the Vice President, State Department, Central Intelligence Agency and on the National Security Council staff. The testimony in question related primarily to support of the contras during the Boland prohibition on U.S. military aid from 1984 to 1986. Limited attention was given to U.S. knowledge and involvement in the November 1985 HAWK missile shipment to Iran. This phase involved the questioning of North, Poindexter and Fernandez, following the disposition of their criminal cases.

-- The second, from July 1991 to November 1991, began with Independent Counsel's decision to prosecute Fiers, who had worked closely with North as the CIA's Central American task force chief. This phase was fueled by Fiers' subsequent decision to plead guilty and the investigative leads generated by his cooperation. It led to the indictments of former CIA Deputy Director for Operations Clair E. George, and former CIA official Duane R. Clarridge, and to the guilty plea of former Assistant Secretary of State Elliott Abrams.

-- The third, from October 1991 to the spring of 1993, dealt with the discovery and analysis of previously withheld notes and documents that directly contradicted the testimony of some of the most senior Reagan Administration officials. This phase focused on efforts by senior officials to respond to the November 1986 public exposure of Iran/contra, their concerns over the possible impeachment of President Reagan and an attempt by some to falsely minimize his knowledge of a November 1985 shipment of U.S. HAWK missiles from Israel to Iran. This investigative phase led to the indictment of former Defense Secretary Caspar W. Weinberger.

Phase I: Focus on Contra Support

Questioning North and Poindexter

As of January 1990, North had not been questioned by OIC for investigative purposes, although he had been cross-examined at his trial in 1989. Most of Independent Counsel's staff had not even been exposed to his 1987 testimony before the Select Iran/contra Committees. North had testified before the committees in general terms about what Reagan Administration officials knew concerning his activities but he had not been questioned in detail about specific possible violations of law by those officials.

The Committees questioned North about a limited number of entries he had made in notebooks but he had never been systematically examined about the hundreds of pages of notes of his meetings, telephone conversations and agreements with various Administration officials reflecting Iran/contra activities. North's notebooks, from January 1984 to November 1986, contained highly detailed but sometimes cryptic information that only he could fully explain.

OIC obtained copies of North's notebooks when he took the witness stand at his trial in April 1989. After the trial, it was necessary to question him about his notebooks and to follow up, from an investigative standpoint, on his congressional testimony. Most provocative were North's generalized assertions during his 1987 congressional testimony that there was widespread knowledge among Administration officials of his activities. Many of his notebook entries seemed to corroborate those claims.

North's appearance before the Grand Jury was delayed to avoid disrupting his appearance in Poindexter's trial in the spring of 1990. In late April and early May 1990, OIC sought North's voluntary cooperation in the investigation, which would have permitted him to answer questions outside the Grand Jury in a more informal setting. Independent Counsel took the extraordinary step of submitting to North's attorneys four sets of questions describing the general parameters of a major portion of the continuing investigation. Ultimately, no agreement could be reached.

Independent Counsel then obtained a court order granting him immunity and compelling his testimony before the Grand Jury. On May 15, 1990, North moved to quash his Grand Jury subpoena, claiming that OIC was improperly using the Grand Jury to prepare its final report, that he was being harassed, and that Independent Counsel was setting up a "perjury trap". On May 24, 1990, the District Court denied North's motion.

North's Grand Jury testimony began on June 1, 1990. Independent Counsel obtained North's testimony in several areas:

- His contacts from 1984 to 1986 with the Office of the Vice President, and specifically with Donald P. Gregg, the national security adviser to Vice President Bush, focusing on the knowledge that OVP personnel had about North's contra-related activities and about the contra support activities of former CIA operative Felix Rodriguez.
- The extent to which North discussed his contra-related activities with members of the RIG, in which representatives of several Executive Branch agencies shared information on Central American issues.
- His relationship with RIG member Alan D. Fiers, Jr., the CIA's Central American task force chief, and the extent to which Fiers participated in or was knowledgeable of North's contra-related activities during 1985 and 1986.
- His relationship with former CIA official Duane "Dewey" Clarridge in two areas: their involvement in the November 1985 HAWK missiles shipment to Iran, and in the 1984 CIA "hand off" of contra-support responsibilities to North and the NSC.
- His knowledge of whether Paul Thompson, general counsel to the NSC in 1985 and 1986, had any role in false representations to Congress made by national security advisers McFarlane and Poindexter in 1985 and 1986, respectively, about North's contra-support activities. Additionally, North was asked about Thompson's knowledge of and access to the December 5, 1985, covert-action Finding signed by President Reagan, which sought to retroactively approve the November 1985 HAWK missile shipment to Iran, and Thompson's witnessing of the destruction of the Finding by Poindexter.

In some instances, North had specific recollections of events detailed in his notes and was able to confirm their apparent meaning. In other instances, he could not recall or clarify the substance of notebook entries. North affirmed before the Grand Jury the accuracy of his prior testimony in other forums. This pattern of varying degrees of usefulness was true throughout the range of topics covered in his questioning.

North's series of appearances before the Grand Jury were halted for six months, after the U.S. Court of Appeals for the District of Columbia Circuit on July 20, 1990, issued its opinion in his case. The appeals court vacated North's convictions on the grounds that his immunized congressional testimony had possibly tainted his trial, and it ordered further hearings in the trial court. North filed an additional motion to quash his Grand Jury subpoena, alleging that because of the possibility of a re-trial, his constitutional rights would be violated by his continued compelled appearance before the Grand Jury. North also asserted that he was entitled to transcripts of his prior Grand Jury testimony.

North's motion to quash the subpoena was denied on October 26, 1990; his motion for reconsideration was denied on November 16, 1990. On November 17, 1990, North's attorneys informed Independent Counsel that North would not comply with the court's order to compel his testimony and would be held in contempt. From November 1990 through January 1991, North litigated the Grand Jury issue. On January 29, 1991, North was held in contempt by the District Court and was denied bail, and the Court of Appeals declined to stay these judgments. Before being incarcerated, North purged himself of contempt by continuing his testimony before the Grand Jury.

Most of North's testimony was completed by March 15, 1991. He was called back for limited questioning in November 1991.

Following Poindexter's sentencing in early June 1990, Poindexter testified, under a court order granting him use immunity, five times before the Grand Jury between June 27, 1990 and March 6, 1991.

Poindexter was questioned about Thompson's involvement in responding to the 1986 congressional inquiry into North's contra-support activities. He was asked about Thompson's knowledge of the Iran arms sales Findings and about his witnessing Poindexter's destruction of the 1985 Finding. He was asked also about Thompson's role in gathering documents for Attorney General Meese's investigation of the Iran arms sales in November 1986.

Poindexter's later Grand Jury appearances in November 1991, and March 1992 focused on a broader scope of inquiry, including the knowledge and involvement of President Reagan, Vice President Bush, the Cabinet and NSC staff members regarding Iran/contra matters.

Focus on Ilopango

During the spring and summer of 1990, the investigation focused on the contra-resupply operation runs from Ilopango airbase in El Salvador. OIC undertook to establish the extent of U.S. Government knowledge of and participation in the Ilopango operation during the Boland prohibition on U.S. military aid. It was also important to determine U.S. Government knowledge of the contra-support activities of Felix Rodriguez, a former CIA officer who used the alias ``Max Gomez" and who was in Central America ostensibly to assist the Salvadoran government's fight against communist guerrilla forces.

Following the October 5, 1986, shootdown of a contra-resupply aircraft which originated at Ilopango, Reagan Administration officials denied any U.S. Government connection to the flight. They also denied knowledge of ``Max Gomez," whom American Eugene Hasenfus, upon his capture by Nicaraguan soldiers, had publicly identified as a CIA agent involved in the contra-resupply operation.

The continuing investigation sought to learn what Elliott Abrams, Clair George and Alan Fiers knew about the Ilopango operation and Rodriguez prior to their October 1986 appearances before congressional committees investigating the Hasenfus shootdown. Abrams, George and Fiers had denied that they were aware of who was behind the contra-resupply flights.

It was also important to determine what information was conveyed, and at how early a date, to the Vice President's national security adviser, Gregg, about Rodriguez's activities at Ilopango on behalf of the contras.

Steele and Corr

The initial phase of the Ilopango inquiry began with Army Col. James J. Steele, who was the military group commander at the U.S. Embassy in El Salvador during 1985 and 1986. Colonel Steele in December 1986, appearing before the Senate Select Committee on Intelligence (SSCI), testified that he tried not to actively assist the contra-resupply operation, that he had not provided such assistance, and that he did not think anyone at the U.S. Embassy had. He said that humanitarian supplies for the contras were kept in a separate place from the lethal material, which he had not seen at Ilopango.³³

³³ Steele, SSCI Testimony, 12/18/86, pp. 10-14, 18-22, 36-37, 46-49.

During 1990 and 1991 Steele was interviewed by OIC six times and appeared before the Grand Jury once. In the course of this questioning and after failing a lie-detector test, Steele recanted critical aspects of his earlier testimony. His truthful admissions provided the continuing investigation with a valuable basis by which to gauge the truthfulness of others testifying about the same events.

In his initial interviews with the continuing investigation, Steele denied that Gregg was aware of Rodriguez's contra-related activities before August 1986. He confirmed Gregg's own testimony.

He agreed to submit to a polygraph examination by the FBI. In the opinion of the polygraph examiner, his answers were indicative of deception on this question of Gregg's knowledge of Rodriguez's contra-related activities before July and August 1986. Following the examination, Steele remembered a meeting in approximately January 1986, when he visited Gregg's office and mentioned to Gregg Rodriguez's activities on behalf of the contras.

During his interviews, Steele was confronted with certain documents and North notebook entries indicating that he was an active participant in the resupply operation at Ilopango. Steele then admitted being involved in discussions concerning certain resupply flights and other aspects of the operation.³⁴ Steele admitted going on board a cargo plane at Ilopango in April 1986 prior to its dropping lethal supplies to the contras' southern fighting front. Steele believed that he told Corr about the lethal cargo on the flight.³⁵ Steele acknowledged informing Corr of his activities and of the lethal contra-resupply operation. He said he informed Corr of everything that wasn't "below his noise level." ³⁶ Steele stated that both he and Corr knew that North was working very closely with the contra-resupply operation.

³⁴ Steele, FBI 302, 9/18/90, p. 5.

³⁵ Ibid., 2/4/91, p. 7.

³⁶ Ibid., 9/17/90, p. 5.

Following the Hasenfus shootdown, Corr and Steele discussed the Salvadoran officials' denial of a connection between the Salvadoran government and the Hasenfus flight, which originated at Ilopango airbase in El Salvador. It was clear to Steele that Corr was in a "damage control mode." ³⁷

³⁷ Steele, FBI 302, 2/5/91, p. 6.

Because of Steele's candor during his 1990 and 1991 interviews, he was not subjected to charges based upon his earlier misstatements. Steele acknowledged active participation by U.S. Government personnel in the contra-resupply operation at Ilopango. His information provided a much clearer picture of the activities at Ilopango.

Corr, the U.S. ambassador to El Salvador during the 1985-1986 period, was interviewed in January 1991 to follow up on Steele's statements.

Corr was questioned about an April 20, 1986, meeting at the U.S. Embassy in San Salvador, with Steele, North and Secord.³⁸ Corr denied meeting with both North and Secord, although he acknowledged a perfunctory meeting with Secord, which he said was not related to the resupply operation.

³⁸ Secord became a cooperating witness following his plea agreement with OIC in November 1989.

In April 1991, Corr was compelled to testify before the Grant Jury pursuant to a grant of use immunity. He was subpoenaed also to produce relevant documents. As the result, Corr produced in April and May 1991 notes of conversations which not previously produced to Iran/contra investigators. They reflected conversations with Abrams and others during 1986.

Many of Corr's newly produced notes were highly relevant to his knowledge and that of others within the State Department following the Hasenfus shootdown. One note reflected an October 14, 1986, telephone conversation with Abrams just a few hours before Abrams appeared before the House Permanent Select Committee on Intelligence to testify about the shootdown. The note reflects that Corr and Abrams discussed Rodriguez and his role in El Salvador.³⁹

39 Corr Note, 10/14/86, ALW 0032906.

By the date of the call, Corr was fully aware of Rodriguez's role with the contra-resupply operation at Ilopango. During Abrams' testimony, a few hours after his telephone conversation with Corr, Abrams did not reveal Rodriguez's role with the resupply operation at Ilopango.

Tambs and Fernandez

questioned former U.S. Ambassador to Costa Rica Lewis Tambs. Tambs had previously testified candidly about his activities in Costa Rica to help open a southern fighting front for the contras. In March 1990, Tambs gave testimony about his conversations with Abrams and other officials regarding the opening of a southern front, as well as U.S. Embassy involvement in facilitating the building of a secret contra-resupply airstrip in Costa Rica. He also testified about the extent of Reagan Administration knowledge of the activities of Fernandez, the CIA chief of station in Costa Rica. He supplied information about the knowledge that Fiers and Abrams had of Fernandez's contra-support activities.

Fernandez was ordered to testify under a grant of use immunity in October 1990, after the case against him was dismissed. He appeared six times before the Grand Jury between November 1990 and January 1991. Fernandez was asked to explain CIA cable traffic, encoded messages that were relayed on special communications devices known as KL-43s between the contras and the resupply operation, and excerpts from North's notebooks.

He was helpful in providing information about the knowledge his CIA superiors had regarding his contacts with the contra-resupply operation, and about Abrams' knowledge of the secret contra-resupply airstrip in Costa Rica.

The Gregg Inquiry

In the summer of 1990, Donald Gregg agreed to submit to a polygraph examination. It concerned, among other things, when he first learned of Felix Rodriguez's contra-support activities and when, if ever, he relayed that information to Vice President Bush. In response to an FBI polygraph examiner's questions, Gregg reasserted his earlier statements that he was not aware of Rodriguez's involvement in contra support before August 1986 and that he had not relayed the information to the Vice President.

In the opinion of the FBI examiner, Gregg's answers to the relevant questions indicated deception. OIC intensified its inquiry as to the when and to what extent the Office of the Vice President was aware of Rodriguez's contra-support activities at Ilopango airbase.

In the late summer and fall of 1990, former members of Vice President Bush's staff were interviewed. The investigation re-analyzed the testimony of Col. Samuel Watson, Gregg's assistant, regarding Rodriguez's contra-support activities and particularly the purpose of Rodriguez's meetings with Vice President Bush in 1986.

Rodriguez testified twice before the Grand Jury in May 1991 about his contacts with the Office of the Vice President and his contra-resupply activities at Ilopango. He denied discussing activities with Gregg prior to August 1986 or ever with Bush.

Previously Withheld Documents

One of the major difficulties confronting the continuing investigation was the passage of time since the Iran/contra events had occurred, and the corresponding lack of witness recollection of specific details. To combat this problem, OIC carefully searched for previously unproduced, contemporaneously created documents such as notes that would reflect on Iran/contra matters.

The search for previously undiscovered documents was fueled also by the fact that most significant Iran/contra witnesses were reluctant to provide truthful information unless they were confronted with difficult-to-refute documentary evidence. Much of the early phase of the continuing investigation focused on contradictions between the prior sworn testimony of Reagan Administration officials and contemporaneously created documents.

Members of the Restricted Interagency Group (RIG) on Central America, for example, generally denied knowledge of North's extensive contra-support activities. North's notebooks indicated that he had in fact exposed the RIG to a full airing of his activities as early as the summer of 1986. As a result, the investigation sought to discover the existence of notes made by other RIG members, which could either corroborate or contradict North's assertions. An extensive search was conducted in late 1990 and early 1991, but no additional relevant notes of RIG members were found at that time.

There was additional concern that some relevant documents had not been produced in 1987, because the early production of documents had been in response to document requests rather than compelled by grand jury subpoena. The investigation in 1990 and 1991 spent a great amount of time reviewing bodies of government records that potentially contained Iran/contra documents.⁴⁰ In some cases, these reviews did result in the discovery of significant evidence.

⁴⁰ In its search for previously undiscovered evidence, the continuing investigation in January 1990 sought access to the millions of documents seized by the United States following the December 1989 arrest of Gen. Manuel Noriega in Panama. OIC sought to review any Panamanian documents that might reflect upon Noriega's contacts with North, Abrams, the CIA or any U.S. Government official regarding contra-support efforts.

FBI Special Agent Michael S. Foster, who had been assigned to OIC since December 1986, along with two paralegals, traveled to Panama to review seized documents of possible relevance. On one occasion, the FBI agent observed index cards referring to document files entitled (1) Bush, (2) Irangate, (3) CIA, and (4) Contras. Because of the logistical chaos that occurred subsequent to Noriega's arrest, however, these files were not available for immediate Independent Counsel review. When these files were ultimately obtained, their contents were not helpful.

Additional witness interviews also led OIC to previously unseen Iran/contra notes. Former White House counsel Peter Wallison, interviewed concerning his dealings with Thompson during November 1986, disclosed that he kept a diary of his work experiences in the White House. Wallison's diary was significant in the investigation of the November 1986 activities of President's Reagan's closest advisers.

During the summer of 1990, the investigation began searching for State Department documents that might reflect Abrams' knowledge of North's contra-resupply activities. OIC discovered that M. Charles Hill, an executive assistant to Secretary of State George P. Shultz, had produced to criminal and congressional investigators in 1987, only those portions of his notebooks that related to the Iran arms sales -- not to contra-related activities.

During the summer of 1990, OIC reviewed approximately 12,000 pages of Hill's handwritten notes, recording, in almost verbatim form, conversations between high-level State Department officials. In

addition, Shultz was in the habit of giving Hill a read-out, or recounting, of important meetings he had with the President and other senior Administration officials.

The 1990 review of Hill's notes prompted the investigation to seek, but not initially find, another significant set of notes -- those of former Defense Secretary Weinberger. In an August 7, 1987 note that Hill took about the Select Committee hearings, Shultz stated ``Cap [Weinberger] takes notes but never referred to them so never had to cough them up." 41 Based upon the Hill note, OIC in October 1990 asked Weinberger about whether he had taken notes that had not been previously produced; he said he had not. It was not until November 1991 that Weinberger's notes at the Library of Congress were discovered, as will be described later.

41 Hill Note, 8/7/87, ANS 0002776.

After the Hill notes had been reviewed, Shultz and Hill were interviewed in December 1990 at the Hoover Institution in Stanford, California. The interviews, coupled with certain Hill notebook entries, raised concerns about prior testimony by Weinberger and other high-ranking Reagan Administration officials regarding the November 1985 HAWK missile shipment to Iran. This ultimately became a central focus of the investigation.

Phase II: The Fiers Plea

In early 1991, the goal of the continuing investigation was to complete the questioning of relevant witnesses to determine whether to prosecute Fiers, Thompson, Clarridge, Gregg, Watson, Abrams and Corr. The Fiers investigation was the first to reach a conclusion. Independent Counsel determined that, based on the evidence, the prosecution of Fiers was necessary.

OIC negotiated with Fiers' attorneys in May and June 1991. In an effort to reach a plea agreement, Fiers proffered information that indicated his extensive knowledge of Iran/contra matters.

In his proffer, Fiers inculpated himself and others regarding their knowledge of North's contra-support activities and of the diversion of the funds from the Iran arms sales to the contras prior to it becoming public in November 1986. Because Fiers worked closely with North and Abrams on the RIG, he was able to provide valuable information on U.S. Government involvement in contra-support activities.

Fiers was reluctant to implicate others unless he had a specific recollection of an event. Fiers' caution enhanced his credibility. On July 9, 1991, Fiers tendered a plea of guilty to two misdemeanor counts of withholding information from Congress and agreed to cooperate with Independent Counsel's office.

From the beginning of the continuing investigation, there was a focus on the testimony of George, Abrams and Fiers before congressional committees in October 1986 following the shootdown of the Hasenfus plane. That testimony was given days before \$100 million was to be appropriated by Congress for United States funding for the contras. Fiers admitted that protection of the \$100 million appropriation was a factor in the concealment of facts from Congress about the contra-resupply operation at Ilopango.

In October 1986, Congress was interested in learning what Abrams, George and Fiers knew about who was behind the contra-resupply flights, who funded them, and whether, as Hasenfus had publicly alleged, a former CIA agent named ``Max Gomez" (Rodriguez's alias) was helping run the resupply operation at Ilopango airbase. Fiers acknowledged that Congress was not told what he, George and Abrams knew about North's connections to the contra-resupply operation and about Felix Rodriguez's activities at Ilopango. Fiers revealed conversations that he had with George prior to the congressional testimony, in which George stated that he ``did not want to put the spotlight on Oliver North or the White House." 42

42 Fiers, Grand Jury, 8/16/91, pp. 11-12.

Fiers also disclosed that North had told him in the spring and summer of 1986 that Iran arms sales proceeds were being diverted to the contras. Fiers admitted that he had conversations with George and other CIA officials about North's assertions of an Iran/contra diversion, long before its public exposure in November 1986.

Fiers supplied convincing proof of North's claim that he had exposed other members of the RIG to his contra-support activities in the summer of 1986 and sought their advice on whether they should be continued. Fiers confirmed North's assertions. He said North did this on more than one occasion, beginning as early as July 1986. Fiers remembered a RIG meeting in Abrams' office in which North went over, item-by-item, activities being conducted on behalf of the contras and asked if they should continue. Fiers said North's recounting of the contra-support activities was followed by an awkward silence, and Fiers finally responded to North about which activities should be continued.

Corroborating North's testimonial assertions and North's notebook entry of a RIG meeting on August 28, 1986, OIC in the fall of 1991 discovered at the Department of Defense a September 2, 1986, handwritten note by Army Col. Stephen Croker, reflecting information he received from Lt. General John Moellering who had attended an August 28 RIG meeting. The Croker note corroborated North and Fiers' testimony. The note reads:

. . . \$1m [million]/month 32 people -- private

ops [operations]

flying planes for resupply in country do we want to keep it going or choke off . . .43

43 Croker Note, 9/2/86, ALZ 0034813-14.

Fiers also described a September 19, 1986, meeting of RIG members in the Pentagon. During that meeting North discussed the possibility of paying Panamanian Gen. Manuel Noriega \$1 million in non-U.S. Government funds to commit acts of sabotage against the Nicaraguan government. Fiers understood that \$1 million in cash would come from "Project Democracy," the contra-resupply operation being run by Secord at North's direction. Fiers' description of this RIG meeting shed new light on a Charles Hill notebook entry of September 20, 1986, in which Abrams described to Hill the Noriega proposal and how it would be funded by money from non-U.S. Government sources.⁴⁴ Fiers' testimony, corroborated by newly-discovered documents, greatly strengthened the possibility of a prosecution of Abrams for false statements to Congress.

44 Hill Note, 9/20/86, ANS 0001617.

Previously unproduced State Department notes were located in 1991 reflecting Abrams' knowledge as early as 1985 about North's role in providing lethal supplies to the contras. The newly discovered notes indicated that Abrams was not truthful when he told the Select Committees in the summer of 1987 that he determined there was nothing legally questionable in North's activities.⁴⁵ Following the discovery of Hill's contra-related notebook entries, OIC discovered that another Shultz assistant, Nicholas Platt, executive secretary for the State Department, had significant notes that had not been produced to congressional and criminal investigators. One Platt note reflected the September 4, 1985, Shultz admonition to Abrams to monitor North's contra activities.

45 See Abrams chapter.

[SHULTZ]: What is happening on other support for contras for lethal aid etc. -- E. ABRAMS doesn't have the answer. Stayed away let Ollie North do it. Fundraising continuing -- weapons stocks are high. We have had nothing to do with private aid. Should we continue?

Hate to be in position, [Shultz] says, of not knowing what's going on. You're supposed to be managing overall Central American picture. Ollie can go on doing his thing, but you, [Abrams], should know what's happening.⁴⁶

46 Platt Note, 9/4/85, ALW 0036261.

Platt's notes indicated that by September 1985, Abrams and Shultz knew North was involved in lethal assistance to the contras. According to Platt's notes, Shultz told Abrams that North could continue "doing his thing," but Abrams needed to be informed.

Throughout the summer and fall of 1991 the investigation focused on the possible indictments of Abrams, George and Clarridge. A case against Abrams appeared likely based on information provided by North and Fiers and newly obtained documentary evidence. As a result of the Fiers plea in July 1991 and his public acknowledgement of cooperation with the investigation, two CIA officials and one former CIA official came forward and volunteered additional information regarding the Clarridge investigation.

During July and August 1991, despite the efforts of Independent Counsel, George was unwilling to admit any criminal misconduct. The Grand Jury on September 6, 1991, returned an indictment charging George with 10 felonies, including obstruction of Congress and the Grand Jury, false statements and perjury.

Similarly, Clarridge declined to enter into plea discussions with Independent Counsel. Clarridge in November 1991 was indicted on multiple felony counts.

Following the September 1991 indictment of George, negotiations began with Abrams' attorneys. Abrams was confronted with a multi-count felony indictment. An agreement was reached, and Abrams pleaded guilty on October 7, 1991, to two counts of withholding information from Congress.

Abrams agreed to cooperate with the continuing investigation. He provided information useful to a potential Gregg prosecution. His pleas expedited the work of the office, although they did not lead to other prosecutions.

The development of Fiers as a witness, and the continuing investigation of other CIA officials, was complicated in the summer of 1991 by President Bush's nomination of Robert Gates as CIA director. As a result of the Fiers plea -- particularly his admission that he had discussed the Iran/contra diversion with other CIA officials before its public disclosure -- the Senate Select Committee on Intelligence called Fiers and other CIA officials to testify about Gates's knowledge of the diversion. Fiers was subsequently immunized to provide testimony to SSCI, but the Committee declined to immunize certain individuals who were potential investigative targets.

Phase III: NSC Principals

As of October 1991, the continuing investigation had resulted in the pleas of Fiers and Abrams and the felony indictments of George and Clarridge. At this point, the investigation began its third significant phase.

Shultz's Congressional Testimony Contradicted by Notes

During October and November 1991, the investigation continued analyzing the notes of State Department officials Hill and Platt relating to the Iran arms sales. OIC discovered that portions of highly relevant notebook entries had not been given to Congress or to the criminal investigation before 1990. Additionally, portions of Hill and Platt's separate notes that had not been produced closely corresponded to one another in terms of their substance and the events they reflected.

The majority of the notes that were not produced dealt with contemporaneously recorded conversations in which Shultz reports his conversations with the President, the Vice President or other Cabinet officials. These notes also contradicted Shultz's congressional testimony about his knowledge of the Iran arms sales.

Consequently, the investigation in early 1992 concentrated on collecting notes from other State Department officials that might reflect further upon the level of department knowledge of the Iran arms sales that existed in 1985 and 1986.

Additional notes of mid-level State Department employees were found. From these notes, OIC was able to reconstruct the level of contemporaneous knowledge that Shultz and other State Department officials had about the Iran arms sales in 1985 and 1986. OIC's findings indicated that Shultz's testimony concerning his knowledge about the arms sales was incorrect. The next step was to determine whether the mistakes were deliberate or inadvertent.

An investigation was conducted into how the State Department collected relevant documents for the congressional and criminal investigations and whether certain individuals in the State Department intentionally withheld relevant notes reflecting a greater level of knowledge about the Iran arms sales by Shultz and others than was acknowledged in 1986 and 1987 congressional testimony. The investigation revealed that some notes that had been produced in 1986 and 1987 to congressional and criminal investigators had been redacted to exclude material that showed greater knowledge by State Department officials about the Iran arms sales.

Shultz gave two lengthy interviews to OIC in 1992. He acknowledged the accuracy of Hill's notes, agreed that they were relevant and should have been produced, and stated that if he had reviewed them prior to his testimony before Congress, his testimony would have been very different. He admitted that portions of his congressional testimony were wrong.

OIC also interviewed Hill and Platt to find out whether there was an intentional effort to withhold relevant portions of notes from Congress.⁴⁷

⁴⁷ See State Department chapter.

The Weinberger Notes

In October 1990, OIC, based on a lead provided by Hill's notes, interviewed former Defense Secretary Weinberger about whether he had failed to produce relevant notes to Iran/contra investigators. Weinberger stated that after his first year in office, it was not his practice to take notes because he could not use them, in light of the many meetings he had to attend, to dictate memoranda. Despite these assertions, Independent Counsel obtained Weinberger's permission to review his papers, which had been deposited at the Library of Congress, for any Iran/contra information.

After mistakenly searching for relevant documents in the classified section of the Weinberger collection at the Library of Congress, OIC in late 1991 discovered in the unclassified section approximately 7,000 pages of handwritten notes by Weinberger, including nearly 1,700 from the 1985-1986 Iran/contra period.⁴⁸ These notes reflect conversations Weinberger had with the President and other Cabinet officials, providing a unique, contemporaneous record of many significant Iran/contra events. Weinberger's notes contradicted his prior testimony regarding the extent and timing of his knowledge and the knowledge of others within the Administration about the Iran/contra matters.

⁴⁸ Many of these notes contain information that is highly classified.

The notes contradicted Weinberger's testimony on his knowledge of and discussions within the Administration about the November 1985 HAWK missile shipment to Iran, the issue of replenishing Israeli stocks after that country in 1985 sent TOW missiles to Iran, and the issue of Saudi support for the contras. After extensive discussions with Weinberger's counsel, Weinberger was indicted on June 16, 1992, on five felony charges, including obstruction, perjury and false statements.

The Regan Notes and the November 1986 Investigation

The discovery of other highly relevant, previously non-produced notes continued through the final phase of the continuing investigation. In 1992, OIC discovered the existence of notes of former White House Chief of Staff Donald T. Regan that had not been previously produced. Independent Counsel obtained access to these notes.

The most significant of the Regan notes recorded a November 24, 1986, meeting among President Reagan and his most senior advisers, including Regan, Vice President Bush, Poindexter, CIA Director William J. Casey, Meese and Weinberger.

The Regan notes of the November 24, 1986, meeting, and Weinberger's notes, reveal that Meese, notwithstanding his contrary knowledge following a weekend investigation into the facts of the arms sales, told the group that President Reagan hadn't known about the November 1985 HAWK missile shipment to Iran. He acknowledged that it was probably illegal. The meeting notes, combined with Hill's notes of Shultz's read-out to him following the meeting, and the Wallison diary which recounted the Reagan Administration's legal concerns surrounding the arms sales, caused the continuing investigation to focus on the Meese investigation and his assertions at the November 24, 1986, meeting to determine whether there was a deliberate effort by senior officials to cover up the President's involvement in the November 1985 HAWK shipment.

Independent Counsel in 1992 attempted to re-question the participants of the November 24, 1986, meeting about it and about the November 1986 period generally. In the spring and summer of 1992, OIC reinterviewed President Reagan, Regan, Shultz and Meese. Weinberger was facing trial and was not available to be questioned. It was decided that questioning of President Bush would be deferred until after the November 1992 election; subsequent efforts to question him about this meeting were rejected by him.⁴⁹

⁴⁹ President Reagan was among those who could not recall details of the key events in question. After several hours of careful interrogation in a deposition in Los Angeles in July 1992, Independent Counsel determined that the lack of recollection was genuine. Those who had worked with President Reagan had said that although the President absorbed the facts necessary to make a decision, once it was made he seemed to have the capacity for, as one witness put it, erasing the facts from his mind, like deleting data from a computer. Once the policy was set, it was said that he held his subordinates to that policy without much further reflection on how the policy developed. Furthermore, his lack of memory was reflected also in subjects not directly relevant to the inquiry.

The Investigation is Closed and Reopened: The Bush Diary

In September 1992, Independent Counsel reported to the special D.C. Court of Appeals panel that appointed him that the investigation was complete, barring unforeseen developments at the upcoming trials of Weinberger and Clarridge. The full resources of the OIC then became trained exclusively on the trial of pending cases and on drafting a final report.

On December 11, 1992, the White House unexpectedly informed Independent Counsel that President Bush had not produced to the investigation previously requested diaries relevant to Iran/contra. The review of Bush's diary notes, and the circumstances surrounding his failure to produce them earlier, required the investigation to re-open.

On December 24, 1992, President Bush pardoned Weinberger, who was to be tried in less than two weeks, and Clarridge, scheduled for trial in March 1993, as well as four others already convicted.

During late December and January 1993 the diaries were produced. They did not justify re-opening the investigation. Independent Counsel's efforts to request President Bush about Iran/contra matters were thwarted by Bush's insistence that the questioning be limited to the subject of his failure to produce his previously requested diaries. This limitation was unacceptable to OIC, which over the course of its continuing investigation had gathered significant new evidence about which it wanted to question Bush.

President Bush was the first President to grant a pardon on the eve of a trial. The question before Independent Counsel was, and remains, whether President Bush exercised his constitutional prerogative to pardon a former close associate to prevent further Iran/contra revelations. In the absence of evidence that the pardon was secured by corruption, Independent Counsel decided against taking the matter before the Grand Jury.

The continuing investigation resulted in the discovery of large caches of previously withheld contemporaneous notes and documents, which provided new insight into the highly secret events of Iran/contra. Had these materials been produced to congressional and criminal investigators when they were requested in 1987, Independent Counsel's work would have proceeded more quickly and probably with additional indictments.

With the passage of time, mounting office expenses and dwindling staff resources, Independent Counsel decided not to prosecute certain individuals. Prosecutorial decisions were based primarily on the seriousness of the crimes, the certainty of the evidence, the likelihood that the targeted individual could provide valuable information to the investigation, and the centrality of the individual to the Iran/contra events.

Independent Counsel's decision to pursue the investigation beyond the Poindexter trial resulted in these major findings:

- that there was extensive knowledge of North's contra-support activities by high-ranking officials in the CIA, State and Defense departments;

- that false testimony was given to and highly relevant documents were withheld from the congressional and criminal Iran/contra investigations, despite representations of cooperation by the Reagan and Bush Administrations;

- that, contrary to their testimony, Bush, Shultz and Weinberger were kept informed of the details of the Iran arms sales; and

- that senior Administration officials in November 1986 were being invited to conceal President Reagan's involvement in the November 1985 HAWK missile shipment to Iran by Attorney General Meese who believed that it was possibly illegal.