



Part III

The Operational Conspiracy: A Legal Analysis

The central and perhaps the most important criminal charge developed by Independent Counsel was the conspiracy charge against Oliver L. North, John M. Poindexter, Richard V. Secord and Albert Hakim. According to that charge -- set forth as Count One of the indictment returned on March 16, 1988 -- these four men conspired to defraud the United States by deceitfully (1) supporting a war in Nicaragua in defiance of congressional controls; (2) using the Iran arms sales to raise funds to be spent at the direction of North and Poindexter, rather than the United States Government; and (3) endangering the effort to rescue Americans held hostage in Lebanon by pursuing ends that were both unauthorized and inconsistent with the goal of releasing the hostages.¹

1 Count One charged a violation of 18 U.S.C. 371. The bill of particulars in North stated that among the co-conspirators not indicted were National Security Adviser Robert C. McFarlane; CIA Station Chief Joseph F. Fernandez; Fawn Hall, North's secretary; and Robert Earl, North's assistant.

The Reagan Administration was unambiguously hostile to this count. In a move that Judge Gerhard A. Gesell described as "unprecedented," the Justice Department in November 1988 filed an amicus brief supporting North's claim that the count was legally insufficient and should be dismissed.² Subsequently, having been informed by Independent Counsel that the conspiracy count could be tried only if a small amount of classified information were declassified, the Administration refused to release that information. Because there was no way to appeal such a refusal to declassify, Independent Counsel was forced in January 1989 to drop Count One in North and a related charge that the diversion of profits from the Iran arms sales was a theft of Government funds.

2 Memorandum of Law of the United States Filed by the Department of Justice as Amicus Curiae with Respect to the Independent Counsel's Opposition to the Defendant's Motions to Dismiss or Limit Count One (filed November 18, 1988).

Although Count One was not tried, it was established as a matter of law that if North, Poindexter, and the others had done what they were charged with doing, they had committed criminal acts. In rejecting the challenges of the Department of Justice and North, Judge Gesell ruled that the count "allege[d] [a] well-established offens[e]" and that the activity set forth in the count was criminal.³ He stated: "The indictment clearly alleges a conspiracy which involved concealing the very existence of the profits of the enterprise from the start and hiding from Congress information relating to the conspirators' assistance for the Contras." ⁴ In addition to holding that the indictment set forth a crime, Judge Gesell also found that his review of the evidence presented to the Grand Jury indicated there was probable cause that that crime had in fact been committed.⁵

3 U.S. v. North, 708 F. Supp. 375, 380 (1988).

4 Ibid., p. 377.

5 698 F. Supp. 300, 315 ("The grand jury transcript and exhibits reflect solid proof and ample probable cause to indict on each and every count.").

At the heart of the Iran/contra affair, then, were criminal acts of Reagan Administration officials that the Reagan Administration, by withholding non-secret classified information, ensured would never be tried. Yet Judge Gesell's decision marked an important, if incomplete, accomplishment of Independent Counsel. Judge Gesell's decision unambiguously established that high national security

officials who engage in a conspiracy to subvert the laws of this country have engaged in criminal acts, even when the laws themselves provide no criminal sanctions.

A successful prosecution would have allowed Independent Counsel to present comprehensively the results of his investigation into the operational conspiracy. Much of the evidence of the conspiracy was presented at the trials of the dismembered individual charges of obstruction and false statements but the questions of intent were different, the diversion of funds from Iran to the contras was peripheral rather than central, and the absence of the conspiracy charge deprived the North case of its cohesiveness and completeness.

The following discussion is an attempt to present in an abbreviated fashion what would have been Independent Counsel's case at a conspiracy trial of North, Secord, Poindexter and Hakim, and an explanation of the criminal nature of their actions.

Overview of Count One

In summary the proof would have shown three separate but intertwined activities, each specified in the indictment as an object of the conspiracy.

First, using Government resources, the conspirators conducted an unauthorized covert program in support of the contras. Because they feared that Congress would stop them if it knew of their activities and because they feared, as well, the political consequences of that exposure, they deceived Congress about the fact that they were providing this support. By so doing, the conspirators obstructed Congress's legitimate functions of regulating governmental expenditures and overseeing foreign covert actions.

Second, North and Poindexter used their Government positions to create a hidden slush fund under the exclusive control of the conspirators. This conflict of interest affected North and Poindexter's actions in numerous ways. On a mundane level, they permitted significant profits to be generated for the benefit of the private members of the conspiracy and less significant benefits to North. On a power-grabbing level, North -- in order to increase the body of funds under his control for covert activities -- used his position to drive down the amount that the U.S. Government received from the Iran arms sales and to inflate the amount that the Iranian purchasers paid the conspirators.

Third, by secretly pursuing their own ends, the conspirators outraged the Iranians they were attempting to persuade and thus jeopardized the success of the Iran initiative. In particular, the initiative's goals of establishing improved relations with Iran and securing the release of American hostages held by groups sympathetic to that country were jeopardized by the conspirators' private objective to overprice the weapons in order to secure additional proceeds for unauthorized purposes.

The following explanation of the charge of conspiracy to defraud brought against North, Poindexter, Secord, and Hakim begins with a brief discussion of what the crime of conspiracy to defraud the United States is. After that general explanation, each object of the conspiracy will be discussed: first, the evidence as to each object, and then why that object was criminal.

Federal Conspiracy Law and Iran/contra

The federal conspiracy statute, 18 U.S.C. 371, states that it is a crime to ``defraud the United States, or any agency thereof in any manner or for any purpose. . . ." The attempt to carry out the three objectives described above -- in other words, the attempt to interfere in a deceitful fashion with lawful governmental processes -- constituted a classic conspiracy to defraud the United States. Almost a century of case law established that 371 makes criminal deceitful schemes to obstruct the lawful functions of Government, either by defeating enforcement of legal restrictions or by using governmental authority to further illegitimate ends. Far from breaking new ground, Judge Gesell's

ruling in North simply followed precedent. Fraud is criminal even when those who engage in the fraud are Government officials pursuing presidential policy.

The authoritative definition of the crime was set out by the Supreme Court almost 70 years ago in *Hammerschmidt v. United States*. In that case, Chief Justice Taft, speaking for a unanimous Court, stated:

To conspire to defraud the United States means primarily to cheat the government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane, or the overreaching of those charged with carrying out the governmental intention.⁶

⁶ 265 U.S. 182, 188 (1924) (emphasis added).

Over the years the Supreme Court has frequently reaffirmed the validity of Chief Justice Taft's definition. For example, shortly before the Grand Jury indicted North and Poindexter, the Supreme Court in *McNally v. United States* ⁷ declared that 371 barred deceitful interference with governmental operations. In that case, the Court declared that Congress specifically designed 371 to protect not merely property rights, but the interests of the Government in fair administration of its functions for the benefit of the entire population.⁸

⁷ 107 S. Ct. 2875 (1987).

⁸ *Ibid.*, at 2881 n.8, quoting *Curley v. United States*, 130 F. 1, 7 (1st Cir.), cert. denied, 195 U.S. 628 (1904). See also *Dennis v. United States*, 384 U.S. 855, 861 (1966) ("It has long been established that this statutory language is not confined to fraud as that term has been defined in the common law. It reaches 'any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government.'" (quoting *Haas v. Henkel*, 216 U.S. 462, 479 (1910)); *United States v. Johnson*, 383 U.S. 169, 172 (1966); *Lutwak v. United States*, 344 U.S. 604 (1953); *Glasser v. United States*, 315 U.S. 60, 66 (1942).

Section 371 extends beyond the traditional concept of a conspiracy as simply an agreement to commit a substantive crime. Early in this century, the Supreme Court held that a conspiracy to defraud the United States need not involve conduct that violates another independent criminal statute.⁹ From the start of this century, the requisite element of fraud has been construed expansively so as to encompass not only a scheme to cheat the Government out of money, but also -- in fact, especially -- deceitful conduct aimed at obstructing the Government's ability to implement its programs, and to administer its affairs honestly and in accordance with the law.¹⁰

⁹ See, for example, *United States v. Keitel*, 211 U.S. 370, 393 (1908).

¹⁰ See, for example, *Curley v. United States*, 130 F. 1, 9-10 (1st Cir.), cert. denied, 195 U.S. 628 (1904).

Similarly, in interpreting the mail and wire fraud statutes, courts repeatedly have found deceitful interference with governmental operations to be criminally fraudulent. For example, in *United States v. Diggs*,¹¹ the Court of Appeals upheld the wire fraud conviction of a congressman who had secretly used monies from his clerk-hire allowance to pay certain of his district office expenses. The Court stated that the Congressman did not have "unfettered power to divert monies intended for one purpose to another, completely unauthorized purpose," and concluded that by carrying out this secret diversion Diggs had "defrauded the public . . . of his faithful and honest services." ¹²

¹¹ 613 F.2d 988 (D.C. Cir. 1979), cert. denied, 446 U.S. 982 (1980).

12 Ibid., at 995, 998 (emphasis in the original). While the Supreme Court in McNally rejected the theory on which cases such as Diggs had been prosecuted, the Court emphatically did not conclude that the conduct in those cases was not fraudulent; rather, its holding was based solely on the history of the mail fraud statute, which the Court determined was "limited in scope to the protection of property rights." 107 S.Ct. 2875, 2882. As pointed out above, the McNally Court was careful to distinguish 371 cases brought on the same theory that was rejected as to 1341 in McNally. Mail fraud cases brought under this theory thus remain persuasive authority in interpreting 371.

Such basic principles of the law of conspiracy and the law of fraud were applied in an important case growing out of Watergate, *United States v. Haldeman*.¹³ Three of President Nixon's closest advisers -- Robert Haldeman, John Ehrlichman, and John Mitchell -- were charged with conspiring to defraud the United States by, among other things, "attempting to get the CIA to interfere with the Watergate investigation being conducted by the FBI." ¹⁴ There was no hint in the case that they had been motivated by a desire to enrich themselves, and there was no criminal statute punishing Executive Branch officials for manipulating the Central Intelligence Agency for political reasons. Nonetheless, the Court of Appeals accepted that the Watergate conspirators' "misuse of the CIA" defrauded the United States because it denied the Government of its "right to have the officials of its departments and agencies transact their official business honestly and impartially, free from corruption, fraud, improper and undue influence, dishonesty and obstruction." ¹⁵

¹³ 559 F.2d 31 (D.C. Cir. 1976), cert. denied, 431 U.S. 933 (1977).

¹⁴ Ibid. (quoting jury instructions).

¹⁵ Ibid., at 122 & n.255 (quoting jury instruction).

In short, long before Iran/contra, it had been established beyond question that deceptive schemes to prevent the enforcement of civil statutes or other Government policies reflected in law -- whatever form such schemes may take -- fall squarely within the ambit of the crime of conspiracy to defraud the United States. The teaching of *Hammerschmidt* and its progeny can be reduced to the following: It constitutes fraud within the meaning of 18 U.S.C. 371 to breach the public trust by agreeing, through deceitful or dishonest means, to prevent the Government from conducting its operations and implementing its policies honestly and faithfully, and in accordance with applicable legal constraints and guidelines.

Under *Hammerschmidt* and the cases that followed it, a conspiracy must have two elements. First, it must involve "interfere[nce] with or obstruct[ion of a] lawful governmental function[. . .]." ¹⁶ The ways in which Poindexter, North, Secord and Hakim interfered with governmental functions are spelled out in more detail below. The secret contra war activity obstructed Congress's control of the appropriations process and its oversight of covert operations. North and Poindexter's self-dealing defeated the public's right to have Government officers pursue officially sanctioned ends, rather than inconsistent private ends.

¹⁶ 265 U.S. 182, 188.

The second element of a criminal conspiracy is that the interference with governmental operations must be accomplished by deceit. In the absence of deceit, an agreement to interfere with governmental operations is not a conspiracy to defraud the United States, although it may constitute some other crime. The conspiracy charged by Independent Counsel involved activities that were shielded by a campaign of lies and deceptions from Government officials who could have disagreed with those activities and might have sought to stop them. It was that deceit which, in Independent Counsel's opinion, made the conspiracy criminal. Over the objections of North and the Reagan Justice Department, Judge Gesell, in the only definitive judicial statement on Iran/contra and the conspiracy law, found that Independent Counsel's view was right.

There follows an abbreviated presentation of the evidence that would have supported the conspiracy charge. First, the secret support of the contras; second, the self dealing diversion; and third, the corruption of President Reagan's Iranian initiative.

First Object of the Conspiracy: The Secret War Activities

The crux of the first charged object of the conspiracy was an agreement to provide military assistance to the Nicaraguan contras and to deceive Congress about the fact that support was being provided.¹⁷ Poindexter, North, and their co-conspirators carried out their "secret war" in a way calculated to defeat legal restrictions governing the conduct of military and covert operations and congressional control of appropriations, and they concealed their activities from legitimate congressional oversight.

17 Paragraph 13(a)(1) of Count One stated that the conspirators sought to defraud the United States:

by impeding, impairing, defeating and obstructing the lawful governmental functions of the United States, including compliance with legal restrictions governing the conduct of military and covert action activities and congressional control of appropriations and exercise of oversight for such activities, by deceitfully and without legal authorization organizing, directing and concealing a program to continue the funding of and logistical and other support for military and paramilitary operations in Nicaragua by the Contras, at a time when the prohibitions of the Boland Amendment and other legal restrictions on the execution of covert actions were in effect.

Had the case been tried as indicted, the Government's proof of U.S. secret war activities would have fallen into three broad categories: (1) the organization and direction of a resupply operation to provide the contras with logistical and other support; (2) funding of the resupply operation, including exploitation of the Iran initiative; and (3) attempts to conceal from Congress the conspirators' involvement in these activities.

The Evidence

Organization and Direction of the Resupply Network

During the last half of 1984 and the first half of 1985, North had developed a loose structure for contra support. Secord, responding to contra requests through North, was selling arms. Thomas G. Clines, a Secord associate, arranged for their purchase; Hakim, assisted by Swiss money manager Willard I. Zucker, set up the structure to finance the activities with funds provided to the contras through North and raised primarily by President Reagan and National Security Adviser Robert C. McFarlane.

The creation of the conspirators' more tightly organized secret resupply network dated from a June 28, 1985, meeting in Miami, Florida. This meeting was attended by, among others, North, Adolfo Calero (political leader of one contra faction known as the FDN), Enrique Bermudez (commander of the FDN's military forces), Secord, Clines and Rafael Quintero, an associate of Secord. At the Miami meeting, North informed Calero and Bermudez that the contras would no longer be left to decide what arms they would purchase or from whom they would buy them. In the future, North would provide the contras with materiel, and Secord would deliver it to the contras in the field. In addition, North directed that actions be taken to develop and resupply a "southern front" along the border of Costa Rica and Nicaragua.

Following the Miami meeting, North assumed a central role in the contra war effort. Using Robert W. Owen as a courier, North provided the contras with significant military advice and guidance. At the same time, with the assistance of Secord, North in the following fashion secretly brought into being the resupply operation that he had described on June 28.

First, North directed Owen and William Haskell, another North courier, to travel to Costa Rica and help activate a southern military front. Owen and Haskell, aided by CIA Costa Rican Station Chief Joseph F. Fernandez, undertook to build a clandestine airstrip to be used to resupply it. Haskell eventually negotiated the acquisition of property for the strip, which was funded using Swiss accounts controlled directly by Secord and Hakim, and indirectly by North. Within the United States, North attended planning sessions and personally commissioned private individuals to do preliminary site work and engineering tasks necessary for the construction of a usable airstrip.

North arranged for Haskell and Owen to be introduced to Fernandez. Fernandez minimized and concealed from his superiors at the CIA the true nature of his contacts with North and North's private representatives. Fernandez and North eventually developed a secret communications network using National Security Agency (NSA)-supplied KL-43 encryption devices, outside normal CIA communications channels. In addition, telephone records show over 100 calls from Fernandez to North during the period August 1985 until November 1986. Under the direction of North, Fernandez and U.S. Ambassador to Costa Rica Lewis A. Tambs used their influence as representatives of the United States to obtain the support of senior Costa Rican officials for the airstrip project.

Second, North directed Secord to purchase aircraft capable of resupplying contra forces. From January to August 1986, private parties working on behalf of North and Secord purchased four military aircraft costing approximately \$1.8 million, as well as additional equipment for operation of these aircraft. The funds for these purchases came from Hakim and Secord's secret Swiss bank accounts.

North took an active part in the purchase of the aircraft. He reviewed and approved a technical proposal for the resupply organization solicited by Secord from Richard B. Gadd, a Secord associate. North and Secord then directed Gadd in November 1985 to approach the Government of Venezuela in an unsuccessful attempt to purchase military aircraft. North used his influence as a Government official to vouch for Gadd's bona fides with the government of Venezuela. Similarly, North exercised final approval on major expenditures for equipment. In January 1986, North personally directed Secord to provide Gadd with over \$100,000 for anticipated costs. Later in 1986, North directed Secord to purchase a package of spare parts required by the resupply operation that cost in excess of \$200,000. North personally approved the purchase of a fourth military aircraft in August 1986 at a cost of \$250,000. When there was a dispute between Gadd and Secord as to the ownership of the aircraft, North resolved it in favor of Secord's Enterprise.

Third, North secretly undertook to obtain the use of Ilopango air base in El Salvador for his resupply operation. In a letter dated September 20, 1985, North requested that Felix Rodriguez, an American citizen with close ties to the commander of the Salvadoran Air Force, solicit permission to use the base for his resupply operation. North gave Rodriguez a code name for a representative of Secord who would be assigned there.¹⁸ In December 1985, Secord's assistant in charge of Central American operations, Quintero, using that code name, obtained through Rodriguez the consent of the commanding officer.

¹⁸ In that letter, North explicitly directed Rodriguez not to advise a particular CIA official of the proposed resupply project. North advised Rodriguez, "AFTER READING THIS LETTER PLEASE DESTROY IT." (Letter from North to Rodriguez, 9/20/85, AKW 022740.)

Fourth, at North's instruction, Secord through Clines purchased in Europe and delivered to Central America thousands of pounds of arms from December 1985 to September 1986. The cost of purchase and transport of these arms was paid from the secret Swiss accounts.

Fifth, North, with the assistance of Secord, secretly directed the actual administration of the resupply project during 1986. Secord hired first Gadd and then Robert Dutton as project managers. Gadd and Dutton, through the corporation Amalgamated Commercial Enterprises (ACE), in turn hired

numerous other employees. By the summer of 1986, the resupply operation had over 20 full-time employees whose combined salaries totalled over \$60,000 per month. The cost of equipment and salaries for the operation was paid from the Enterprise's secret Swiss accounts.

The activities at the Ilopango air base were supervised by Quintero for Secord. Rodriguez served as liaison with the base commander, General Juan Rafael Bustillo. Additional assistance and supervision was provided by the military group detailed to the U.S. Embassy in El Salvador.

Gadd and Dutton reported directly to Secord. At the same time, they had frequent -- often daily -- contact with North, from whom they accepted guidance and direction. North frequently gave them orders regarding specific operations, usually in order to accelerate resupply drops to the contras.

In April 1986, for example, North commandeered an aircraft provided to the State Department's Nicaraguan Humanitarian Assistance Office (NHAO) by Southern Air Transport (SAT) for the delivery of U.S.-approved humanitarian supplies to Ilopango. SAT was also an Enterprise subcontractor for the delivery of weapons. Contrary to SAT's contract with NHAO and the legal limits on the U.S. humanitarian activities, North directed the aircraft to drop a load of weapons to the southern front of Nicaragua. North was able to accomplish this because the aircraft was being leased by Gadd, pursuant to Gadd's State Department contract (which North had helped Gadd obtain) for delivery of humanitarian aid. North personally coordinated planning of this operation with Secord and Fernandez and Enterprise representatives at Ilopango using their network of KL-43 communication devices.

Later in April 1986, it was North and Secord who secretly met at Ilopango with Salvadoran and contra military leaders, as well as personnel of the U.S. Embassy, to resolve disputes regarding the resupply operation and its disappointing lack of success. Contra leaders criticized the quality of the aircraft being used and requested funds with which to purchase their own aircraft. North responded that the aircraft had been donated and that funds were unavailable to purchase alternative aircraft.

Under North's and Secord's direction, the resupply operation in 1986 improved and ultimately delivered to the contras in the field in Nicaragua thousands of pounds of arms previously purchased by Secord. North generally received detailed inventories of the lethal supplies provided contra forces. The resupply operation also delivered substantial quantities of nonlethal aid and engaged in projects such as training contra forces in the use of explosives. These operational activities of the Enterprise ended in early October 1986 when an Enterprise aircraft was shot down over Nicaragua, killing three crew members and leading to the capture of Eugene Hasenfus, an American who told his Nicaraguan captors that he was working for the CIA.

Funding of the Resupply Operation

Funds for the secret war came primarily from three sources: (a) the National Endowment for the Preservation of Liberty (NEPL); (b) the Iran arms sales; and (c) foreign governments. As set forth in the "Flow of Funds" chapter of this Report, the total amount of funds deposited in Enterprise accounts in Switzerland was \$47.6 million. By the time the Iran/contra affair became public, the Enterprise had given to the contras or had spent on efforts related to the contras approximately \$17.6 million of these funds.

Foreign Donations

From December 1984 through July 1985, the contras paid into Enterprise accounts approximately \$11.3 million for a variety of services and goods. Most of these funds came from the Saudis, who contributed \$32 million in 1984 and 1985. The Saudi funds were nearly exhausted by mid-1985.

After North held his June meeting in Miami, the contras were no longer the direct recipient of such funds. Thereafter, the conspirators directed to Enterprise bank accounts all funds from third

countries that had been solicited by U.S. officials on behalf of the contras, even though some of them had been restricted for only humanitarian purposes.

In August 1985, North asked Gaston Sigur, an NSC staff officer, to arrange a meeting between North and an official of the Taiwanese government for the purpose of soliciting funds for the contras. Following this meeting, North had Sigur confirm the decision by Taiwan to provide the contras with \$1 million. North then directed Robert Owen to deliver an envelope containing the number of an Enterprise account to the Taiwanese official. On September 20, 1985, \$1 million was received by the Enterprise. In late 1985, North renewed his request, via Sigur, that Taiwan provide additional funds to the contras. In February 1986, a second transfer of \$1 million was received in an Enterprise account.

Similarly, in June 1986, when the State Department planned to raise \$10 million for the contras from the Sultan of Brunei, North undertook to divert the funds to the Enterprise by giving one of its Swiss account numbers to Assistant Secretary of State Elliott Abrams. Fawn Hall, North's secretary, apparently made a transcription error in the account number so the funds were misdirected and never received.

On November 20, 1985, the Enterprise received \$1 million from the government of Israel to pay the Enterprise for transporting a number of shipments of weapons from Israel to Iran. That weapons transfer was abandoned after the first shipment. The Enterprise's expenses for that shipment were less than \$200,000, but the Enterprise kept the balance.

NEPL

Beginning in the spring of 1985, North, working primarily with Carl R. "Spitz" Channell, the president of NEPL, arranged for this tax-exempt organization to sponsor briefings and receptions designed in part to raise funds for the contras. North gave briefings at the White House and the Old Executive Office Building (EOOB) for audiences of prospective contributors concerning the war in Nicaragua and the needs of the contras. To assist Channell in his solicitation of purportedly tax-deductible contributions, North identified specific military and other needs of the contras.

In addition to general briefings for groups of contributors, Channell, his assistant Daniel Conrad, and their business associate Richard R. Miller of International Business Communications (IBC), arranged private briefings by North to individual prospective contributors. The private briefings were given from June 1985 to late September 1986 in a variety of locations, including North's office at the EOOB. Prior to some of these briefings, Channell or Conrad advised North of the amount of money that would be solicited from a particular contributor immediately following the private meeting. North would then include in some of his briefings a discussion of the need for specific pieces of military equipment and their cost, knowing that contributors to whom this information was provided would be immediately solicited to purchase the items he had discussed.

North thanked those who gave contributions to NEPL, either in person, by telephone, or in writing on official NSC stationery. As further inducement to contribute to NEPL, North and Channell told some prospective contributors that, if they donated a specified amount to the contras, they would be given private meetings and photo opportunities with the President. North and Channell arranged several such meetings between contributors and President Reagan.

Between June 1, 1985, and November 25, 1986, North and his NEPL partners raised approximately \$6.3 million for the contras, and transferred \$3.3 million to Calero and to the Enterprise for contra expenses. To conceal both the source of this money and his own participation, North personally directed that approximately \$1.7 million be transferred from NEPL through IBC to corporate bank accounts in the Cayman Islands, and then ultimately to Enterprise bank accounts in Switzerland.

Exploitation of the Iran Arms Sales

The Iran arms sales were the major source of the Enterprise's funds for the secret war activities. In all, the Enterprise received slightly more than \$30 million for the sale of Government arms and returned only \$12.2 million to the United States. At least \$3.6 million was to fund the Enterprise's resupply operation in support of the contras.

Concealment

Soon after the June 1985 meeting in Miami, a series of congressional inquiries sought to determine exactly what the U.S. Government, and North in particular, were doing on behalf of the contras. McFarlane, Poindexter and North responded by actively deceiving committees of Congress with a series of false statements and by other efforts to ensure that Congress would never find out about the secret contra military support.

The first false statements came in McFarlane's September 5, 1985, letter to the House Permanent Select Committee on Intelligence, a letter on which McFarlane, Poindexter, and North all worked. The letter contained false denials of North's fund-raising activities and his provision of tactical advice to the contras, as well as a false assurance that no one on the NSC staff had "violate[d] the letter or spirit" of the Boland prohibition on military aid. September 12, 1985, and October 7, 1985, letters under McFarlane's signature, both jointly drafted by North and McFarlane, contained similar false statements.

McFarlane's replacement by Poindexter as national security adviser on December 4, 1985, did not alter the pattern of deceit. North continued to work to prevent dissemination of information about his activities. On June 16, 1986, North sent Fernandez a KL-43 message that stated in part:

I do not think we ought to contemplate these operations without [Quintero] being on scene. Too many things go wrong that then directly involve you and me in what should be deniable for both of us.¹⁹

19 KL-43 Message from North to Fernandez, 6/16/86, AKW 004389.

On May 15, 1986, Poindexter sent this computer message to North:

I am afraid you are letting your operational role become too public. From now on I don't want you to talk to anybody else, including Casey, except me about any of your operational roles. In fact you need to generate a cover story that I have insisted that you stop.²⁰

20 PROFs Note from Poindexter to North, 5/15/86, AKW 021378.

North responded to Poindexter on the same day with a computer note that said "Done." North subsequently had Robert Dutton inform Enterprise employees in El Salvador that the resupply operation had been taken over by a new entity known as "B.C. Washington." ²¹

²¹ Nevertheless, on June 10, 1986, Poindexter reminded North via computer: "I still want you to reduce you visibility." (PROFs Note from Poindexter to North, 6/11/86, AKW 021426-27.)

In the summer of 1986, Congress renewed its inquiries. On July 21, 1986, responding to a House resolution of inquiry, Poindexter sent letters to two committee chairmen, stating that McFarlane's 1985 letters to Congress accurately described the activities of the NSC staff. When members of the House Intelligence Committee questioned North in person, he falsely denied his contra-support activities.

The deception continued after one of the resupply organization's planes carrying Hasenfus was shot down in October 1986. Congress was about to authorize resumption of contra support by the CIA, with an appropriation of \$100 million. Administration officials denied any connection with the aircraft. In October and November 1986, North altered, destroyed, and removed documents and

official records relating to the resupply operation. On November 23, 1986, he lied to the attorney general to conceal Secord's operation and his own responsibility in directing the secret resupply activities and the control of the funds used to finance them. Between November 22 and 29, 1986, Poindexter unsuccessfully tried to delete from the White House computer system all of his communications with North. Finally, on December 8, 1986, McFarlane told the House Foreign Affairs Committee that he was unaware that the government or citizens of Saudi Arabia had been involved in financing the contras.

The Secret War Activities as a Conspiracy to Defraud the United States

The contra-support activities of the conspirators were charged as criminal because they were designed to deceive Congress and to obstruct and frustrate Congress's constitutional powers. The essence of the crime was not the provision of support for the contras per se, nor were the conspirators charged simply with conspiring to violate the Boland Amendment as such. Rather, the essence of the crime was the deceit of Congress. In the language of the indictment, North violated 371 not simply by agreeing to "organiz[e]" and "direct[]" the program of military support for the contras, but by agreeing to organize and direct the program "deceitfully and without legal authorization," and by "concealing" that program (emphasis added). In other words, what the conspirators did was criminal because United States Government support of the contras was a matter within congressional oversight and a matter that Congress could legitimately legislate about and because the conspirators used fraud to keep Congress from discharging these responsibilities.

In particular, the conspirators' plan to fund the contras and keep Congress from finding out about that funding interfered with governmental functions in two ways specified in the indictment: by contravening specific "legal restrictions governing the conduct of military and covert action activities" and more generally by defeating "congressional control of appropriations and exercise of oversight for such activities."

Legal Restrictions on Covert Action

In recent years, spurred by revelations of controversial covert actions undertaken without sufficient accountability, Congress and the President have erected a complex web of restrictions, rules, and notification requirements to assure that past abuses by our intelligence agencies are not repeated. Congress has also enacted specific restrictions on covert action in particular regions.²² The most pertinent of these restrictions is, of course, the Boland Amendment, which essentially prohibited expenditure of U.S. funds in support of the contras. But the Boland Amendment must be understood in the context of the entire system of restrictions on covert action adopted since 1970.

²² In addition to the various versions of the Boland Amendment, discussed below, see, for example, the congressional cut-off of funding for military actions in Angola (the "Clark Amendment," P.L. 94-329, Title IV, 404, 90 Stat. 757 (1976), 22 U.S.C. 2293 note) and Cambodia (P.L. 93-51, 87 Stat. 134 (1973)).

Responding to "allegations of substantial, even massive wrong-doing within the 'national intelligence' system," the special Senate investigating committee known as the Church Committee found in 1976 that "presidents and administrations have made excessive, and at times self-defeating, use of covert action," and that these uses were in large part attributable to Congress's "fail[ure] to provide the necessary statutory guidelines to carry out their necessary missions in accord with constitutional processes." ²³

²³ U.S. Senate Select Committee to Study Governmental Operations With Respect to Intelligence Activities, Final Report, Book I: Foreign and Military Intelligence, S.Rep. No. 755, 94th Cong., 2d Sess. 1, 425 (1976) (hereafter, "Church Committee Report").

Recognizing that covert action remained necessary in "extraordinary circumstances involving grave threats to U.S. national security," and that the nature of covert action made it impossible to "assur[e] public participation in assessing each covert action," the Church Committee was insistent that "the mechanisms of executive branch review and control and of legislative intelligence oversight must serve" to prevent abuses of covert action.²⁴ The result of the Church Committee's 18-month investigation was a series of interlocking restrictions on covert actions that, in combination, required that significant covert actions be supported by an explicit presidential authorization and reported to the relevant congressional oversight committees.

²⁴ Ibid., pp. 446-47.

At the time of the Iran/contra operational conspiracy, the central pillars of this structure were the Hughes-Ryan Amendment of 1974 and Executive Order 12333, as supplemented by National Security Decision Directive 159. The Hughes-Ryan Amendment, responding to the same revelations of "excessive" and "self-defeating" use of covert action that led to the creation of the Church Committee, prohibited expenditure of funds to support covert action operations by the CIA abroad

unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress. . . .²⁵

²⁵ P.L. 93-559, 32, 88 Stat. 1804.

The remedy of the Amendment was to require (1) formal approval and certification by the President -- thus preserving political and legal accountability by the President for covert action -- and (2) the provision of timely information to the Congress so that it can oversee and, if necessary, take action concerning, such covert activity.

While the Hughes-Ryan Amendment initially applied only to the CIA, in 1980, Congress modified Hughes-Ryan. It left intact the limitation of the Finding requirement to CIA covert activities.²⁶ But it recodified the congressional-notification requirement as part of the newly enacted 50 U.S.C. 413. Between 1984 and 1986, 413 required that appropriate congressional authorities be "informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States," and thus imposes a reporting requirement for both CIA and non-CIA covert operations.²⁷

²⁶ 22 U.S.C. 2422. (Repealed by 8/14/91, P.L. 102-88, Title VI, 601, 105 Stat. 441.)

²⁷ 50 U.S.C. 413(a)(1) (1982).

In addition to these statutes, executive orders -- most recently Executive Order 12333 -- have long forbidden Government agencies other than the CIA from carrying out covert actions unless there is a presidential determination that the use of some agency other than the CIA "is more likely to achieve a particular objective." ²⁸ National Security Decision Directive 159 requires that this determination be in writing. Since the Executive Branch is required to keep the intelligence oversight committees of the Congress "fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States," ²⁹ these executive orders have given Congress an additional means of keeping itself informed of covert activities in the Executive Branch.

²⁸ The version of this prohibition in effect at all times relevant to Count One is found in Part 1.8(e) of Executive Order 12333, 46 Fed. Reg. 59941, 59945 (Dec. 4, 1981). Similar restrictions have applied since President Carter promulgated Executive Order 12036, 43 Fed. Reg. 3674 (1978).

²⁹ 50 U.S.C. 413(a)(1) (1982) (emphasis added).

Taking the Hughes-Ryan Amendment and Executive Order 12333 together, the law governing accountability for covert action is clear: Personal presidential accountability and reporting to Congress are the rule for all covert actions.

In addition to this basic structure of restrictions on covert military actions, Congress placed additional limitations on covert assistance to the contras in Nicaragua, principally through a series of laws known as the "Boland Amendments." They are relevant primarily as the law the conspirators were determined to evade.

There were four different versions of the Boland Amendment in the years 1982-1986. Only the last two applied during the period relevant to Count One. Section 8066(a) of the Department of Defense Appropriations Bill, enacted in the Further Continuing Appropriations Act of 1985,³⁰ was in effect from October 12, 1984, to December 19, 1985. It provided:

30 P.L. 98-473.

During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual.

The second relevant Boland Amendment was enacted on December 4, 1985, as part of the Intelligence Authorization Act for fiscal year 1986.³¹ In effect until October 18, 1986, this statute provided:

31 P.L. 99-169.

Funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal year 1986 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only as authorized in section 101 and as specified in the classified Schedule of Authorizations referred to in section 102, or pursuant to section 502 of the National Security Act of 1947, or to section 106 of the Supplemental Appropriations Act, 1985 (P.L. 99-88).

The "classified schedule" authorized a limited amount of funds for communications equipment and communication training for the contras.³² Neither the classified schedule nor any of the statutes enumerated permitted the provision by the Government of lethal materiel for the contras' military or paramilitary efforts. The Boland Amendments were always provisions in appropriation acts. They did not provide for criminal sanctions.

³² In addition to the communication equipment and training, the 1986 Intelligence Authorization Act permitted United States employees to provide "advice" to the contras, including advice on the "effective delivery and distribution of materiel." (Senator Durenberger, 131 Cong. Rec. S16074 (1985).) However, the agencies could not "engage in activities . . . that actually amount to participation in the planning or execution of military or paramilitary operations in Nicaragua by the Nicaraguan democratic resistance, or to participation in logistics activities integral to such operations." (H.R. Rep. 373, 99th Cong., 1st Sess. at 16 (1985).)

While the two versions of the Boland Amendment differed slightly, they shared a common purpose: Congress clearly intended to oversee U.S. support for contra military operations, to limit the amount spent on such assistance and, indeed, during certain periods relevant to this indictment, to prohibit such assistance entirely. As Representative Boland, the principal sponsor of the Amendment, explained during the final debate for the fiscal year 1985 Boland Amendment, it did not leave open

loopholes for covert U.S. support for the contras. Congressman Boland stated that the Amendment ``clearly ends U.S. support for the war in Nicaragua. . . . There are no exceptions to the prohibitions." 33

33 130 Cong. Rec. H11980 (1984).

While the activities of the conspirators fell within the prohibitions of the Boland Amendment, its precise interpretation was not critical to the criminality of the conspiratorial objective charged in Count One. Rather, the indictment charged that the defendants conspired to defraud the United States ``by . . . obstructing the lawful government functions of the United States, including compliance with legal restrictions governing the conduct of military and covert action activities." The crux of the crime of conspiracy to defraud the United States, as the cases cited earlier make clear, is not a conspiracy to violate some particular provision of law. The essence of the crime, rather, is to ``interfere with or obstruct one of [the Government's] lawful governmental functions by deceit, craft or trickery. . . ." 34

34 Hammerschmidt, 265 U.S. at 188.

Even if the conspirators' actions somehow had fallen within a loophole in the Boland Amendment, the entire operation of the Enterprise to support the contras was deliberately designed to defeat the restrictions on covert action Congress had enacted to prevent its ``excessive" and ``self-defeating" abuse. The Enterprise, under the direction of the NSC staff, provided support for the military and paramilitary activities of the contras outside the CIA, without the presidential Finding required by Executive Order 12333 or the reporting to congressional intelligence committees required by 50 U.S.C. 413. To the extent that CIA resources were coopted by the Enterprise for use in this venture, that too was done without a presidential Finding, as required by the Hughes-Ryan Amendment. And, of course, the entire funding operation was at best a deliberate and deceptive attempt to evade the plain intent of the Boland Amendment.

Against this extensive background of congressional investigation, legislation and Executive action to control and limit covert action in general, and covert military support for the Nicaraguan contras in particular, the system of preserving presidential accountability and congressional oversight over covert action constituted a lawful function of the United States. The Boland Amendment, moreover, shows at the very least that Congress had expressed its interest in strictly supervising covert action in Nicaragua as an exercise of that function. North was one of the NSC team making drafting suggestions to Congress to liberalize Boland. The conspirators were fully aware of Congress's efforts to exercise its oversight function, and the danger of serious retaliation, including the end of all hopes for congressional support for the contras. Accordingly, they deliberately did their utmost to defeat the system by deceitfully concealing their operation from Congress, and acting without a formal presidential Finding.

Congress's Appropriations and Oversight Functions

The second way in which the secret contra-support efforts interfered with governmental functions is that they denied Congress its legitimate role of regulating Government expenditures and of overseeing covert activities.

Our constitutional order emphatically reserves the powers of taxing and spending to Congress. That ``the power of the purse belongs to Congress" is fundamental to our system of government.<sup>35</sup> The Appropriations Clause of the Constitution <sup>36</sup> provides that ``No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law" -- thus guaranteeing that money may not be spent for purposes that have not been approved by the representatives of the people. The Boland and Hughes-Ryan Amendments are specific exercises of Congress's power to deny funds to programs disapproved by Congress.

35 L. Tribe, American Constitutional Law 256 (1988).

36 Article I, 9, cl. 7.

But Congress also has a broader responsibility in foreign affairs. No less an authority than James Madison argued that Congress had plenary authority over foreign affairs.³⁷ The conspiracy charge was not, however, premised on such an extreme position. It was based instead on the uncontrovertible and non-controversial proposition that Congress has some role to play in foreign affairs.

37 6 J. Madison, Writings, 138, 147-50 (Hunt ed. 1910), cited in L. Henkin, Foreign Affairs and the Constitution, pp. 82-83 (1972). As Professor Henkin summarizes Madison's argument:

Basically, . . . Congress is the principal organ of government and has all its political authority, in foreign affairs as elsewhere, except that specifically granted to the President (alone or with the Senate). The determination of foreign policy and the control of foreign relations lay with Congress under the Articles of Confederation and, with particularized exceptions, the Constitution left them there. The powers of Congress are not limited to domestic "law-making," narrowly conceived: witness, to Congress is expressly given the most important foreign affairs power, the power to declare war. . . .

(Ibid.)

The congressional powers to regulate foreign commerce,³⁸ to define offenses against international law,³⁹ to raise and support armies,⁴⁰ and to tax and spend "for [the] common defense,"⁴¹ make it apparent that Congress has a major role to play in defining foreign policy cooperatively with the President. Although Congress has not prohibited covert foreign operations, it has put in place requirements of reporting and accountability that enable it to exercise substantial control over particular operations when necessary.⁴² The Constitution provides Congress with a key role in determining whether resources should be committed to foreign adventures, such as those engaged in by the Iran/contra conspirators.

38 Art. I, 8, cl.3.

39 Ibid., cl. 10.

40 Ibid., cl. 12.

41 Ibid., cl. 1.

42 22 U.S.C. 2422 (Repealed by 8/14/91, P.L. 102-88, Title VI, 601, 105 Stat. 441); 50 U.S.C. 413 (1982).

Congress thus has a right as part of its oversight function to demand information about covert activities. It also has a right as part of its appropriations function to deny funding to covert activities. Both functions were impaired by the actions of the Iran/contra conspirators. In other words, Congress's powers are impaired not merely when Government officials deceitfully fund foreign military activities that Congress has specifically refused to fund (as was the case with the Boland Amendment); Congress's powers are also impaired when Government officials deceitfully fund and conduct foreign military activities and scheme to prevent their actions from coming to congressional attention by fraud, concealment, deception and disinformation.

Thus, even if it were the case that the conspirators in some way avoided violating both the Boland Amendment and the specific legal controls over covert action, the broader problem with their deceitful activities would have remained: The conspirators, aware of statutory efforts to limit and allow Congress to monitor funding for the military operations of the contras, chose to hide their

activities from Congress -- with the aim of ensuring that Congress would not have the opportunity to consider whether to close such a loophole. The entire point of their pattern of deceit and evasion, Count One charged, was to defraud the United States by acting unilaterally and thereby thwarting the normal processes of constitutional government.

The Boland Amendment was Violated

The applicability of Boland to the actions of North and others was an issue of importance when the Iran/contra affair became public. The majority and minority reports of the Select Committees reached opposing conclusions as to whether Boland had been violated.⁴³

⁴³ Compare Report of the Congressional Committees Investigating the Iran-Contra Affair, pp. 395-410 (majority report; Boland Amendments violated "in letter and spirit") (hereinafter cited as majority report); Ibid., pp. 489-500 (minority report; Boland Amendments not violated) (herein cited as Minority Report).

As previously noted, the conspirators were not charged with having conspired to violate the Boland Amendment. Nonetheless, it is clear that the conspirators did violate that statute. As Independent Counsel argued prior to the North trial,⁴⁴ Independent Counsel could as a matter of law have framed the conspiracy charge in that fashion, and its evidence at trial would have proved that the conspirators violated the Boland Amendment.

⁴⁴ Government's Memorandum of Points and Authorities in Opposition to Defendant's Motions to Dismiss or Limit Count One (filed October 25, 1988), pp. 48-82.

More to the point, the Boland Amendment entered into the conspirators' motivations for lying to Congress: It was certainly the critical part of the statutory framework that they were either violating or evading. It was central to the statements of both McFarlane and Poindexter to Congress that the NSC staff was in compliance with both the "spirit and the letter" of Boland.

While the Boland Amendment went through four versions, the relevant statutory language was clear and never changed. Many of the activities in which the conspirators engaged -- including provision of weapons and funding for weapons, strategic and tactical advice about the conduct of military operations, and supervision of the Enterprise's resupply efforts -- were unambiguously prohibited to those entities covered by the Amendment.⁴⁵ The description of its breadth of application did not change at all in the period covered by Count One. Both versions of the Boland Amendment in effect from October 12, 1984, to October 18, 1986, expressly applied to the Central Intelligence Agency, the Department of Defense, and "any other agency or entity of the United States involved in intelligence activities." ⁴⁶

⁴⁵ There may be doubt about the peripheral coverage of the Amendments -- for example, as to whether the Amendment in effect in fiscal year 1986 barred provision of logistical advice to the contras.

⁴⁶ Section 8066 of Department of Defense Appropriations for fiscal year 1985, as enacted in P.L. 98-473; Section 106 of the Intelligence Authorization Act for Fiscal Year 1986, P.L. 99-569.

The Select Committees' disagreement centered on whether the NSC was covered by the Amendment. In determining, however, whether there was a conspiracy to violate the Boland Amendment, that question need not be reached, for two reasons. First, the Boland Amendment explicitly covered the CIA, and co-conspirator Fernandez, as the station chief in Costa Rica, was a CIA employee. His activities are discussed in greater detail elsewhere in this Report, but in short, by his efforts to facilitate construction of a clandestine airstrip in Costa Rica for contra resupply, his promises to contra leaders of military supplies, and his role in carrying out those promises, Fernandez -- on instructions from North -- did precisely what he was barred from doing by Boland.

Second, North himself was covered, since his salary was paid by the Department of Defense, another entity specified by the Boland Amendment. The legislative history of the Boland Amendment clearly explains that its prohibitions applied to all Defense Department funds -- including those used to pay salaries.⁴⁷

⁴⁷ For example, during the final debate on the Boland Amendment, Representative Boland stated that the Amendment "clearly prohibits any expenditure, including those from accounts for salaries and all support costs." 130 Cong. Rec. H11980 (1984).

More broadly, the NSC itself was covered. The critical question was whether the NSC was covered as an "entity of the United States involved in intelligence activities." The NSC was such an entity. The National Security Act of 1947, the statute that created the NSC,⁴⁸ charges it to "assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power, in the interest of national security. . ." -- virtually a definition of strategic intelligence.⁴⁹ More specifically, the Act then establishes the CIA -- the archetypal "agency involved in intelligence activities" -- "under the National Security Council," and assigns the CIA the responsibility of "coordinating the intelligence activities of the several Government departments and agencies in the interest of national security . . . under the direction of the National Security Council." ⁵⁰

⁴⁸ The same Act also establishes the NSC staff. 50 U.S.C. 402(c).

⁴⁹ 50 U.S.C. 402(b)(1) (1982).

⁵⁰ 50 U.S.C. 403(a), (d) (emphasis added).

The basic operating charter of the NSC during the years in question, Executive Order 12333, is to the same effect. President Reagan's order states that the purpose of the NSC is to

act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.⁵¹

⁵¹ Executive Order 12333, Part 1.2(a), 46 Federal Register 59941, 59942 (December 4, 1981), reprinted in 50 U.S.C.A., pp. 59-67 (1988 Supp.). The Church Committee had noted that the NSC had been an "effective means for exerting broad policy control over at least two major clandestine activities -- covert action and sensitive data collection." (Church Committee Report, p. 427.) The Committee recommended that the NSC should be given broad policy-making responsibility for all of "the intelligence activities of the United States, including intelligence collection, counterintelligence, and the conduct of covert action." (Ibid., p. 429.) It is precisely this recommendation that is taken up by Executive Order 12333.

Accordingly, the NSC was, by its very charter, an "entity involved in intelligence activities." ⁵²

⁵² In a pre-trial motion challenging Count One, North contended that the statutory language "agency or entity involved in the intelligence activity" had a particular technical meaning, one excluding the NSC. The legislative history of the Amendments, however, establishes that Congress intended no such technical meaning of "agency . . . involved in intelligence activities. . . ." Rather, Congress intended the definition of intelligence agencies to be sufficiently broad to accomplish its objectives. It cannot successfully be argued that the Boland Amendment applies only to agencies that "have operational responsibility for conducting intelligence activities." The statutory language -- "involved in intelligence activities" -- is much broader, and plainly is broad enough to cover an agency or entity "involved in" intelligence activities by directing and supervising them.

Thus, at every stage of the debates on the fiscal year 1985 version of the Boland Amendment, both sponsors and opponents of the legislation described it as involving a total and complete cut-off of all U.S. support for the contras. This understanding of the Boland Amendment as ending all support for the war in Nicaragua would be incomprehensible if the amendment in fact were intended to eliminate only support by certain agencies. Indeed, such an intent would make little sense in any case.

Plainly, Congress did not intend to prohibit aid to the contras by only a few agencies, and permit the same type of covert assistance from others. The restriction was placed on the budgets of the CIA and the Defense Department, and made generally applicable to other "agenc[ies] . . . involved in intelligence activities" not other "intelligence agencies." In other words, the restriction was not limited to agencies with traditional intelligence functions. If any Government entity undertook an intelligence activity its appropriation became unavailable for support of the contras. Only with this view could Congress believe that it had "end(ed) support for the war in Nicaragua" by passing the Boland Amendment. Otherwise, the Amendment would have become to a large extent an empty gesture, merely transferring the military assistance program for the contras from the presumably competent hands of the military and intelligence community to some branch of the Government with less relevant experience and skills. Such was obviously not the congressional intent.

There is only one specific reference to the NSC in the legislative history of the relevant Boland Amendments. By the summer of 1985, press reports of North's activities had come to the attention of Congress.⁵³ The classified legislative history of the fiscal year 1986 version of the Boland Amendment demonstrates that the framers of the legislation -- supporters and opponents of American support for the contras -- specifically understood and intended the Amendment to apply to the NSC and its staff. For example:

53 In the 1984 debates concerning the fiscal year 1985 appropriations act, there was, of course, no special reason for Congress to focus specifically on the NSC. Congress dealt with the problem generically, and, as indicated above, intended by their broad proscription of the use of funds for military- or intelligence-related agencies in support of the contras to cut off all United States funding for their activities.

-- On May 9, 1985, during the House Permanent Select Committee on Intelligence mark-up of the Intelligence Authorization Act for fiscal year 1986, Representative Hyde, a supporter of aid for the contras, stated: "As I read (the Boland Amendment), no funds available to the CIA, the Department of Defense or any other agency or entity involved in intelligence activities -- and I presume the President is (covered), because he has a National Security Council -- may be obligated or expended to support directly or indirectly military or paramilitary in Nicaragua. . . ." 54

54 Transcript at 7.

-- On November 7, 1985, during the House and Senate conference on the Intelligence Authorization Act for fiscal year 1986, the following colloquy occurred:

Senator Leahy: It is also your understanding that [the Boland Amendment] would preclude the National Security Council -- I am thinking about a long discussion you and I had with Bud McFarlane about Colonel North. This precludes the National Security Council from going out soliciting, I mean, I think that would be pretty well an agency involved in intelligence matters. Am I correct in that?

Representative Hamilton: Yes.⁵⁵

55 Transcript at 38 (emphasis added). In connection with the Fiscal Year 1986 renewal of Boland, the Senate Intelligence Committee chairman also received a staff memorandum stating that the NSC was covered by the Boland Amendment. (See September 23, 1985 Memo from Gary Chase and

Bernard McMahon to Senator Durenberger at 9: ``In the absence of clear legislative history indicating that the phrase 'involved in' was meant to be read narrowly as `conducting' it is difficult to quarrel with the proposition that the NSC is `involved in' intelligence activities".)

Second Object of the Conspiracy: Self-Dealing

The second charged object of the conspiracy to defraud was to ``depriv[e] the Government of the United States of the honest and faithful services of employees free from conflicts of interest, corruption and self-dealing. . . ." 56 More specifically, Count One charged that the defendants conspired to ``deceitfully us[e] the influence and position of [North and Poindexter] to generate funds" -- including the proceeds of the Iran arms sales -- which were then held by Secord and Hakim at the disposal of Poindexter and North for the support of projects of their choice, including aid to the contras. In effect, Count One concerned the creation of a secret slush fund, in which Secord and Hakim agreed to hold funds generated by North and to apply them to purposes selected by North outside the normal channels of governmental accountability.

56 Count One,

13(a)(2).

At its core, the self-dealing aspect of the conspiracy consisted of four elements: (1) North and Poindexter's use of their official positions to make funds available to Secord and Hakim; (2) Secord and Hakim's use of some of these funds to support projects designated by Poindexter and North; (3) Secord and Hakim's retention of some of these funds for their personal use; and (4) all of the conspirators' efforts to conceal their corrupt arrangement, which each found beneficial.

The Evidence

In 1986, elements in Iran paid \$30 million for weapons from U.S. arsenals, a price negotiated by North, the nominal representative of the U.S. Government. Of that \$30 million, the United States received \$12 million. The remainder went to the Enterprise, and its expenses totalled about \$2 million. Its compensation, although never specifically set, would have been expected to have some reasonable relationship to its services. It was not an entity that bought for its own account with a risk as to resale. It was a service agency. About \$16 million, money that should have been deposited in the U.S. Treasury, was secretly kept by the conspirators, after they had secretly generated those funds.

The Israeli Initiative

The early history of the Iran arms sales is related in Part I of this Report. This discussion is concerned with the evidence against those charged with conspiracy.

By September 1985, after McFarlane had assured Israel of U.S. authorization to transfer U.S.-origin weapons to elements in Iran, North took an active interest. His participation in the initiative arose from his official duties regarding terrorism and hostages. On September 15, 1985, an American, Reverend Benjamin Weir, was released in Beirut by his captors. Shortly before Weir's release, on September 9, 1985, North had directed the intelligence community to take certain measures in anticipation of the possible release of an American hostage. This was the first of many directions that North was to give to the intelligence community in connection with efforts to secure the release of American hostages by means of the developing channel to Iran.

The second Israeli shipment of arms to Iran took place on November 24, 1985. At that time, Israel sent 18 HAWK missiles to Iran in what was to be the first of several deliveries, but problems with the missiles led to the cancellation of the subsequent shipments. Moreover, Israel encountered

difficulties in the shipment of the HAWKs. Israeli Defense Minister Yitzhak Rabin called McFarlane, and McFarlane directed North and Poindexter to help with the shipment.

North's assistance consisted of coordinating logistical arrangements for the shipment: He confirmed the availability of CIA proprietary aircraft for use in executing the transfers, enlisted Secord to supervise and participate in the actual delivery, worked to obtain necessary flight clearances, and ensured that adequate preparations were made for the reception of any hostages whose release might ensue. The Israelis paid Secord \$1 million for his assistance. When the HAWK shipments were cancelled, Secord was left with a surplus of \$800,000.

This November 1985 transaction was the subject of the indictment in three respects: (1) North's direction that Israeli funds, intended to cover the transportation costs for delivery of materials to Iran, be deposited into an Enterprise bank account, (2) the Enterprise's retention and use of excess Israeli funds, and (3) Poindexter and North's attempted concealment in November 1986 of NSC participation in the November 1985 transaction. In the course of the initial Israeli arms sales, McFarlane, Poindexter, North and Secord became involved in the initiative, and the pattern of using arms sales to Iran to generate funds was established.

The United States Initiative

In December 1985 and January 1986, despite serious disagreements within the Reagan Administration about the advisability of pursuing arms shipments to Iran, North helped move the initiative forward. He was now principally responsible for the initiative; Poindexter had replaced McFarlane as national security adviser, and NSC consultant Michael Ledeen had been told that he was no longer part of the initiative. In a December 9, 1985, memorandum to Poindexter and McFarlane, North suggested, as an alternative to the prior Israeli activities, that the Government itself commence deliveries. North suggested Secord as a conduit.

Thus, in a January 15, 1986, computer note to Poindexter, North recounted conversations with CIA Director Casey and U.S. Army Gen. Colin Powell in which he had identified Secord as ``a purchasing agent" and ``an agent for the CIA." At the same time, North advised Poindexter of a critical piece of information that they did not share with non-conspirators: ``the Iranians have offered \$10K per TOW." 57

57 PROFs Note from North to Poindexter, 1/15/86.

The effective Finding signed by President Reagan on January 17, 1986, limited the provision of arms, equipment and related material to elements in Iran to three specific purposes: ``(1) establishing a more moderate government in Iran, (2) obtaining from [elements in Iran] significant intelligence not otherwise obtainable, to determine the current Iranian Government's intentions with respect to its neighbors and with respect to terrorist acts, and (3) furthering the release of the American hostages held in Beirut and preventing additional terrorist acts by these groups." While working on the Finding, North had been advised by Stanley Sporkin, the general counsel of the CIA, that a Finding must specifically enumerate each purpose to be accomplished by a particular covert action. Nonetheless, the Finding signed by the President did not authorize the generation of surplus funds to be used for the contras, or for any other unspecified covert action.

At three different points in North's memorandum for presentation to the President by Poindexter explaining the Finding, North described the intermediary who would transfer the arms to Iranians as an ``agent" of the CIA, without any suggestion that Secord would operate independently of Government control and retain (subject to direction by North and Poindexter) more than 60 percent of the funds received from the Iranians. North recommended that rather than using the Israelis to deliver weapons, ``the CIA, using an authorized agent as necessary, purchase[d] arms from the Department of Defense under the Economy Act and then transfer[red] them to Iran. . . ." He further stated: ``Therefore it is proposed that Israel make the necessary arrangements for the sale of the

4,000 TOW weapons to Iran. Sufficient funds to cover the sale would be transferred to an agent of the CIA. The CIA would then purchase the weapons from the Department of Defense and deliver the weapons to Iran through the agent." 58 By portraying the intermediary as a U.S. Government agent, North failed to reveal that the Enterprise would treat the proceeds of the arms sales as its own and did not present this aspect to President Reagan for authorization.⁵⁹

58 Memorandum from Poindexter (prepared by North) to the President, 1/17/86, AKW 001919.

59 In an ex parte statement to Judge Harold H. Greene, filed September 20, 1988, Poindexter claimed he told President Reagan that Secord was a "middleman" acting in a private capacity. This was inconsistent with contemporaneous note that he briefed the President from North's memorandum, which described Secord as an agent of the CIA.

Secord never controlled the disposition of the weapons. President Reagan, through Poindexter, retained full control over the weapons after Secord received them and up to the point of actual delivery to Iran.

President Reagan was informed and personally approved both February shipments of TOWs. During his May trip to Tehran, McFarlane, in consultation with the White House, turned back to Israel the second load of HAWK spares, even though Iranian arms dealer Manucher Ghorbanifar had paid Secord for them the full, marked up, purchase price and Secord had paid the CIA the lower price set by the Department of Defense. Only with President Reagan's personal approval was this second plane load of weapons and parts subsequently delivered.

Generating a Surplus

In each of the 1986 Iranian transactions, North, operating with Poindexter's knowledge and approval, exercised control over the money received by Secord from the Iranians.

During its life, the Enterprise had three bank accounts at Credit Suisse in Geneva, Switzerland, through which it received funds totaling \$47.6 million: the Energy Resources account (\$11.3 million); the Lake Resources account (\$31.5 million); and the Hyde Park Square Corporation account (\$4.8 million). North directly or indirectly (through Calero) was responsible for virtually every penny that flowed into those three accounts. Accordingly, he was consulted on major expenditures. Of this \$47.6 million, \$28.6 million was received as a result of the sale of U.S. Government weapons to Iran.

The generation of funds for the Enterprise began almost immediately after the January 17 Finding was signed. With Secord installed as a participant in the initiative, he and North traveled to London on behalf of the United States for a meeting on January 22, 1986, with Ghorbanifar and Amiram Nir, an Israeli official involved in the transaction. At that meeting, North set the price for the Government weapons, as he was to do in all subsequent transactions. According to a tape-recording seized from North's office by the FBI, Ghorbanifar confirmed a willingness to pay \$10,000 per TOW; North accepted that offer and directed Ghorbanifar to pay \$10 million for 1,000 TOWs into the Enterprise's Lake Resources account. They agreed that after the hostages were released, an additional \$30 million would be deposited to an Enterprise account and an additional 3,000 TOWs delivered to Iran. Accordingly, North contemplated that within a short period of time a total of \$40 million would come under the control of the Enterprise.

On January 23, 1986, North met with an official of the Defense Department and two officials of the CIA, including Charles Allen, to provide them with a detailed briefing of events in London. North advised them of anticipated steps, but he advised them that Secord would receive and pass on to the CIA only \$6,000 per TOW, or a total of \$6 million -- knowing well that \$10 million was the negotiated price and that Secord would not pass on to the CIA the full amount received.

North had actually told CIA officials that the quoted price of \$6,000 per TOW was too high. The Defense Department later cut the price to \$3,469 per TOW. The total requirement, including handling costs, was \$3.7 million for 1,000 TOWs. The surplus North contemplated to be received by Secord over the amount to be paid to the Government was, at that time, more than \$25 million out of a total sales price of \$40 million.

On or about February 7, 1986, \$10 million was deposited in an Enterprise account by the Iranians. On or about February 10-11, 1986, \$3.7 million was transferred from the account to a CIA Swiss account. Between February 18 and 27, 1986, 1,000 TOWs, in two installments, were shipped to Iran. Secord's direct expenses in connection were less than \$1 million. The surplus was almost \$6 million.⁶⁰ Subsequently, in March and April 1986, the Enterprise made deliveries of weapons to Central America.

⁶⁰ The transfer of the first 1,000 TOWs did not result in the release of the American hostages as expected and further negotiations with Ghorbanifar ensued.

HAWK Spare Parts

In the spring of 1986, in a meeting in Paris attended by North, Ghorbanifar, George Cave (a CIA annuitant expert in Iranian affairs) and another CIA official, Ghorbanifar raised the possibility of obtaining HAWK spare parts. After further discussions with Ghorbanifar, on April 5 or 6, 1986, North prepared a memorandum for Poindexter setting forth details of a proposed HAWK spare parts deal which referred to the allocation of \$12 million from the arms sales to the contras.⁶¹

⁶¹ Memorandum from North to Poindexter, 4106, AKW 004352-59. The discovery of this memorandum by the Department of Justice in November 1986 led, in part, to the Attorney General's announcement of the Iran/contra diversion on November 25, 1986.

The price that the Iranians paid for the HAWK spare parts was \$15 million. North and his assistant, Robert L. Earl, arrived at this figure by multiplying the prices obtained from the CIA by a factor of 3.7. In bringing Earl in to work on the pricing of the HAWK spare parts, North emphasized both the special secrecy of the inflated prices and of the fact that the extra money was to go to the contras.

On or about May 14-15, 1986, \$15 million was deposited for the Iranians to an Enterprise account. On May 16 and 21, 1986, a total of \$1.685 million was deposited by Israel into an Enterprise account to pay for the replenishment by the United States of the 504 TOWs shipped by Israel to Iran in August and September 1985. On May 15, 1986, \$6.5 million was transferred by the Enterprise to a CIA Swiss account for the HAWK spare parts for Iran and the replenishment TOWs for Israel. On May 16, 1986, North reported to Poindexter in a computer note that "the resistance [contra] support organization now has more than \$6M [million] available for immediated disbursement." ⁶² In May 1986, the Enterprise again shipped weapons to Central America for the contras.

⁶² PROFs Note from North to Poindexter, 5/16/86, AKW 021383.

On May 20-22, 1986, replenishment TOWs were shipped to Israel as well as the HAWK spare parts en route to Iran. Subsequently, one pallet of spare parts was delivered to Tehran aboard the plane carrying an American delegation led by McFarlane. When talks aborted without the release of any hostages, the remaining spare parts were left in storage in Israel. Nevertheless, the Enterprise had received full payment for all of the HAWK spare parts. None of those funds was ever returned.

Through May and June, North sought to persuade Poindexter and, through him, the President to permit the second shipment of spare parts to go forward to extricate Ghorbanifar from his embarrassment. During this period, North had Amiram Nir brief Vice President Bush during a visit to Israel. In particular, Nir undertook to convince Bush that the arms shipments should continue with the hostages being released one or two at a time rather than all at once.

On July 26, 1986, one hostage, Father Lawrence Jenco, was released. On North's recommendations, transmitted through Poindexter, the President approved the shipment to Iran of the remaining spare parts.

During the summer of 1986, fissures began to develop in North's scheme. The Iranians had obtained an accurate microfiche price list for HAWK spare parts. With the list, the Iranians realized that they had been massively overcharged -- by approximately 600 percent.

As the summer of 1986 progressed, pricing complaints continued and intensified. At one point, when confronted with these complaints, North told Allen of the CIA to tell the Iranians that the price they had paid was correct and that it was higher than the microfiche because it was difficult to locate the HAWK spare parts. In another conversation, relayed to North, Ghorbanifar complained to Allen that he was being unfairly blamed for the overcharges. He explained to Allen that he paid \$15 million to Secord and that he had marked up his prices by only 41 percent; not 600 percent. North's reaction to Allen's report of this conversation was to question the trustworthiness of Ghorbanifar. North also requested that the CIA generate a false microfiche price list to provide to the Iranians and extinguish the complaints. North further sought to have Cave fabricate a letter which would appear to explain and justify the spare parts prices.

The Second Channel and the October 1986 TOW Shipment

In the late summer and fall, primarily as a result of Hakim's efforts, the conspirators began working with another Iranian who came to be known as the "second channel." Though the Iranian interlocutor had changed, the conspirators continued to use the Iran initiative to generate excess funds for the Enterprise.

At a meeting with the second channel in October 1986, North learned, as he reported to Poindexter in a computer note dated October 10, 1986, that the Iranians would pay \$3.6 million for 500 TOWs, or \$7,200 each.⁶³ Six days later, he learned from Earl that the CIA would be charging the Enterprise \$2.037 million for the TOWs, approximately the same price it had been charged in the February sale. Subsequently, 500 TOWs were shipped to Iran. Again North had arranged for the shipment to generate a surplus for the Enterprise.

63 PROFs Note from North to Poindexter, 10/10/86.

Concealment of the Diversion

During the summer of 1986, Charles Allen informed his supervisor, Deputy Director of Central Intelligence Robert M. Gates, and then Casey of his concerns that North and Secord had generated funds from the Iran arms sales to divert to the contras; he further warned that Ghorbanifar might go public with allegations concerning the pricing of the weapons. Private businessman, Roy Furmark, who had complained to Casey that Ghorbanifar had not repaid certain Canadian lenders, also disclosed details of the financing of the arms shipments and conveyed Ghorbanifar's suspicion that funds had been diverted to Central America. When Allen told North, North again attempted to deflect the inquiries, responding that Furmark should not be trusted. Casey related these concerns to Poindexter and suggested he consult the counsel to the President. Poindexter said he would prefer to discuss it with the NSC counsel.

In November 1986, the conspirators engaged in a cover-up. North began the shredding and destruction of documents and materials, including those relating to the diversion; North's explanation to McFarlane for the later discovery of the diversion memo was "I missed one." On November 23, 1986, in a meeting with the attorney general and other Justice Department officials at which he was confronted with that memo, North confirmed the existence of the diversion but lied about his role in it by claiming that (1) the NSC had no involvement in the diversion; that (2) the Israelis had determined how much of the proceeds from the arms sales were diverted to the contras;

and that (3) he, North, had advised contra leader Adolfo Calero to open bank accounts in Switzerland to receive the proceeds of the diversion. When asked by FBI agents about the diversion, Poindexter misleadingly minimized his knowledge and support of North's activities, saying only that he knew North "was up to something," and that he could have stopped his subordinate but did not. Between November 22 and November 29, 1986, Poindexter tried to delete from his White House computer system all the messages that he had received and sent, including those that revealed the diversion.

Self-Dealing and Conspiracy Law

As discussed above, the self-dealing aspect of the conspiracy involved two Government officials -- North and Poindexter -- using their positions to create a substantial pool of funds under their control; the transmission of these funds to Secord and Hakim and their subsequent disbursement at North's direction (with the general approval of Poindexter) for a variety of purposes, including expenditures for contra arms deliveries, payments to contra leaders, radio transmitters for a foreign country, the purchase and operation of a small cargo vessel, personal payments to Secord and Hakim, and the allocation of a smaller amount to North; and the use of deception to create this pool of funds and to hide its existence and the way it was disbursed.

As a result of this scheme, the United States was deprived of the honest and faithful services of Poindexter and North because these two Government employees had undisclosed conflicts of interests. Specifically, North and Poindexter had an undisclosed interest in using their positions for the private purpose of creating and increasing the pool of funds under their personal control. For instance, when North was negotiating with the Iranians concerning the sale of arms, he had a duty as an employee of the Government to pursue single-mindedly the purposes of the Iran initiative; at the same time he had a secret and conflicting goal of obtaining as much money as possible for the Enterprise.

This was not a technical or minor conflict of interest. North, with Poindexter's permission, in effect negotiated both the price the Iranians would pay and the considerably lower price the Government would receive. He exploited his position to exact from the Iranians a high selling price, while concealing from the Government the nature of the price spread and his control over the excess proceeds. President Reagan authorized the sale of weapons to elements in Iran for carefully specified objectives. Rather than limit their operation to the specified goals of the initiative, North and Poindexter used their control of the initiative to fund the Enterprise. In effect, the Government officials had a hidden interest in maximizing the mark-up of the ostensible middlemen, Secord and Hakim, at the expense of the United States.

The scheme charged in the self-dealing object of the indictment's conspiracy count --

13(a)(2) of Count One -- constituted a classic fraud on the Government. The thrust of the fraud was a breach of the public trust: Poindexter and North's use of their public office for execution of the Iran arms sales was driven by a concealed and wholly improper motive -- a desire to generate a concealed fund for use in financing unauthorized activities designated by them. The implementation of that scheme obstructed the lawful conduct of the Government's business within the meaning of the cases outlined earlier by depriving the Government of the honest and faithful services of its employees.

An impressive series of precedents established that a public official who conspired to deprive the United States of his honest and faithful services by acting on matters in which he had a hidden conflict of interest properly violated 18 U.S.C. 371.64 Schemes to deprive the Government of the honest and faithful services of its employees by creating a conflict of interest were held fraudulent in a long line of cases decided under the mail and wire fraud statutes prior to the decision in *McNally v. United States*.65 One of these cases, which has already been discussed, was directly analogous to the activities of North and Poindexter. In *United States v. Diggs*, the Court of Appeals affirmed the

conviction of a member of Congress who diverted funds authorized for staffing his Washington congressional office and applied them to the payment of, among other things, the expenses of maintaining an office in his home district.⁶⁶ The defendant argued that the use of the funds for that purpose was legitimate.⁶⁷ The Court concluded, however, that Diggs defrauded the public when he allocated public funds in accordance with his private agenda, rather than in compliance with legislative dictates.

64 See, for example, *United States v. Lane*, 765 F.2d 1376 (9th Cir. 1985) (upholding conspiracy to defraud United States charge based on agreement of defendants, state administrators of job training program, to channel federally-funded contracts to each other); *United States v. Burgin*, 621 F.2d 1352, 1356-57 (5th Cir.), cert. denied, 449 U.S. 1015 (1980) (upholding conspiracy to defraud United States charge based on state legislator's agreement to direct federally funded state contracts to entity that, in turn, agreed to funnel part of profits to legislator); *United States v. Johnson*, 337 F.2d 180, 185-86 (4th Cir. 1964), aff'd on another issue, 383 U.S. 169 (1966) (upholding conspiracy to defraud United States charge based on Congressman's agreement to exert influence on Department of Justice to win dismissal of pending indictment in exchange for payments characterized as campaign contributions); *Harney v. United States*, 306 F.2d 523 (1st Cir.), cert. denied, 371 U.S. 911 (1962) (upholding conspiracy to defraud charge based on a scheme pursuant to which state official arranged a federally-funded land condemnation at an inflated cost in exchange for seller's agreement to channel a portion of the proceeds to state official, among others); *United States v. Sweig*, 316 F. Supp. 1148, 1155-56 (S.D.N.Y. 1970) (upholding indictment charging that aide to House Speaker entered into scheme by which co-conspirator took fees from people with matters before federal agencies with the promise that he would use the influence of the office of the Speaker on their behalf).

65 107 S.Ct. 2875 (1987). Justice Stevens collected more than a dozen examples of such cases in his dissent in *McNally*. 107 S.Ct. at 2883 n.1. As previously noted, although *McNally* rejected the theory on which those cases had been prosecuted, it did so as a matter of interpretation of the mail fraud statute. The Court specifically approved 371 cases brought on the same theory.

66 613 F.2d 988 (D.C. Cir. 1979), cert. denied, 446 U.S. 982 (1980). It was also alleged and proved that defendant had diverted some of the money to pay his personal expenses, but because the indictment had charged in the same counts both personal and congressional uses of the funds, the Court was required to consider whether the use of the funds for expenses which, though incurred for legitimate governmental purposes, were not authorized to be paid from the funds in question. (*Ibid.* at 994.)

67 *Ibid.*, p. 994.

Accordingly, a crime was committed when Poindexter and North undertook to channel funds to Secord and Hakim, retaining the concealed right to control a portion of those funds. The establishment of a privately controlled fund for Government officials, their secret arrangement to increase the fund and the diversion of those funds for unauthorized purposes deprived the United States of the honest and faithful services of its employees, in violation of 18 U.S.C. 317.

Third Object of the Conspiracy: The Corruption of the Iran Initiative

The final substantive object of the conspiracy -- set forth in

13(a)(3) of Count One -- was that the conspirators ``deceitfully exploit[ed] for their own purposes and corrupt[ed] a United States Government initiative involving the sale of arms to elements in Iran" by bending their efforts toward the enrichment of the Enterprise and the pursuit of its goals, ``rather than pursuing solely the specified governmental objectives of the initiative, including the release of Americans being held hostage in Lebanon." 68

68 The bill of particulars specified that the deception involved in this aspect of the agreement was directed at both Congress and the Executive branch, and that the conspirators' "own purposes" toward which the Iran initiative was diverted were: (1) "providing support of military or paramilitary operations in Nicaragua by the Contras;" (2) "providing radios to an entity" in a foreign country; (3) "purchasing and operating the [ship] Erria;" and (4) "providing profits to defendants Secord and Hakim."

Much that has been said earlier concerning the self-dealing aspect of the conspiracy applies as well to the objective of corrupting the Iran initiative, because that corruption was in effect a specific instance -- and by far the most important instance -- in which the conspirators manifested the conflict of interest with which the self-dealing charge was concerned. The corruption of the effort to release the hostages by North and Poindexter to finance the Enterprise and the contras epitomized the broader conflict of interest.⁶⁹

69 The conduct constituting the corruption of the Iran initiative also served the conspiratorial goal charged in

13(a)(1) of Count One (the secret war objective), since the money obtained from the diversion of profits from the arms sales to Iran was used to support the conspirators' illegal Enterprise in support of the contras.

Paragraph 13(a)(3) is alleged as a separate objective because it set forth two additional ways in which the conspiracy impaired Government functions:

First, the use of the initiative as a private fund-raising device made it significantly less likely that the purposes for which the initiative was undertaken would be accomplished. As set forth in the Finding, those purposes were "(1) establishing a more moderate government in Iran, (2) obtaining from them significant intelligence . . . and (3) furthering the release of the American hostages held in Beirut and preventing additional terrorist acts. . . ." Poindexter and North promoted their private, unauthorized ends at the cost of putting at hazard the presidential objective they were supposed to be pursuing, including that of saving the lives of the Americans held hostage in Lebanon.

Second, more broadly, the creation and diversion of excess proceeds to the Enterprise for unspecified covert action impaired another Government function, that of presidential control of covert activity. National Security Decision Directive 159 and Executive Order 12333 give the President the power to define the scope of covert activities. The President alone can authorize covert activities; he alone can determine whether to assign such activities to agencies other than the CIA; and, by stating the activity's rationale in the Finding authorizing it, he alone can specify what the covert action is intended to achieve. By diverting the proceeds of the Iran initiative to providing support to the contras without an explicit presidential Finding, the conspirators converted a covert action authorized for particular purposes to the accomplishment of unauthorized goals. Their scheme therefore undermined presidential control of covert activities, as well as impairing the congressional power of oversight over them and its control by appropriation.

The corruption of the Iran arms sales to the private purposes of the conspirators was the logical outcome of the conspiracy's other two objects. First, the creation and diversion of excess proceeds from the Iran arms sales helped impede through concealment and deceit congressional participation in the orderly administration of foreign affairs under the Constitution. Second, the corruption of the hostage-release effort brought to fruition the conflict of interest of Government officers and the deprivation of their honest and faithful services.