



Part VIII Officers of the Department of Defense (U.S. v. Caspar W. Weinberger and Related Investigations)

Defense Secretary Caspar W. Weinberger lied to investigators to conceal his knowledge of the Iran arms sales. Contrary to Weinberger's assertions, a small group of senior civilian officials and military officers in the Department of Defense (DoD), comprised of Secretary of Defense Caspar W. Weinberger and his closest aides, was consistently informed of the arms shipments to Iran in 1985 and 1986.

The OIC uncovered documents and notes and obtained testimony, which had been withheld from the Tower Commission and the Select Committees. The most important new evidence was Weinberger's own detailed daily diary notes and his notes of significant White House and other meetings regarding arms shipments to Iran. These notes, along with withheld notes of other Administration officials and additional documents that were obtained from DoD, revealed that Weinberger and other high-level Administration officials were much more knowledgeable about details of the Iran arms sales than they had indicated in their early testimony and statements.

This evidence formed the basis for the 1992 indictment of Weinberger. It also provided Independent Counsel with valuable, contemporaneous information concerning high-level participation in Iran/contra activities.

Senior officials outside the DoD, including National Security Advisers Robert C. McFarlane and his successor John M. Poindexter, kept Weinberger informed of proposals and developments. Weinberger also participated in meetings on this topic with President Reagan and other members of the National Security Council. In addition, beginning in September 1985, Weinberger, along with McFarlane and Director of Central Intelligence William J. Casey, regularly received highly classified intelligence reports containing detailed information on the negotiations and activities of Iranian government officials, private Iranian intermediaries, representatives of Israel, and the terrorists who were holding American citizens hostage. Weinberger's aides gave him additional information, which they acquired by reading the intelligence reports, from meetings and primarily from informed counterparts at the CIA, the Department of State and the NSC staff.

Throughout 1986, Weinberger continued to receive intelligence reports regarding arms-for-hostages negotiations and arms deliveries, and he continued to discuss these activities with other senior officials.¹

¹ After the revelation of the Iran initiative, Weinberger stated that he had "seriously contemplated resignation" in January 1986 but decided against it. (Weinberger, *Fighting for Peace: Seven Critical Years in the Pentagon* (Warner Books, 1990), pp. 383-84 (hereafter, "Weinberger, *Fighting for Peace*"). No contemporaneous document corroborates this claim.

Origins of the Arms Shipments

On June 17, 1985, McFarlane sent a draft memorandum -- a proposed National Security Decision Directive (NSDD) by President Reagan titled "U.S. Policy Toward Iran" -- for review and comment to Secretary of State George P. Shultz and to Weinberger.² Among other things, the proposed presidential memorandum stated that the first component of new U.S. policy would be to

² Memorandum from McFarlane to Shultz and Weinberger, "Subject: U.S. Policy Toward Iran," 6/17/85, AKW 001713-20.

[e]ncourage Western allies and friends to help Iran meet its import requirements so as to reduce the attractiveness of Soviet assistance and trade offers, while demonstrating the value of correct relations with the West. This includes [the] provision of selected military equipment as determined on a case-by-case basis.³

3 Ibid., AKW 001719.

After reading the memorandum, Weinberger scrawled a covering note to his senior military assistant, U.S. Army Major General Colin L. Powell:

This is almost too absurd to comment on -- By all means pass it on to Rich[4] -- but the assumption here is 1) that Iran is about to fall; + 2) we can deal with them on a rational basis -- It's like asking Quadhaffi to Washington for a cozy chat ⁵

4 Richard L. Armitage, Assistant Secretary of Defense for International Security Affairs.

5 Weinberger Note, circa 6/18/85, ALZ 0049658. Powell also delivered a copy of the draft NSDD, with a typed version of Weinberger's note, to Deputy Secretary of Defense William Howard Taft IV, who reviewed it on June 20, 1985. (ALZ 004401 ("DEP SEC HAS SEEN").)

Assistant Secretary of Defense for International Security Affairs Richard L. Armitage subsequently drafted a response with input from Fred Ikle, the under secretary of defense for policy.⁶ On July 16, 1985, Weinberger sent McFarlane a memorandum that opposed issuing the draft NSDD and stated that "[u]nder no circumstances . . . should we now ease our restriction on arms sales to Iran." ⁷

6 Memorandum from Armitage to Ikle, 7/13/85, ALZ 0071353-62 (transmitting alternative draft memoranda for Weinberger's consideration in responding to McFarlane); Memorandum from Armitage to Weinberger, 7/16/85, ALZ 004400.

7 Memorandum from Weinberger to McFarlane, 7/16/85, AKW 001710. Shultz had sent McFarlane a similar response to the draft NSDD. (Memorandum from Shultz to McFarlane, 6/29/85, AKW 005357 ("I . . . disagree with the suggestion that our efforts to reduce arms flows to Iran should be ended.").)

During July 1985, Weinberger learned from McFarlane of Israeli intelligence information regarding Iranians who were interested in opening a dialogue with the west. On July 13, 1985 -- the day of President Reagan's surgery at Bethesda Naval Hospital -- he informed Shultz and Weinberger. McFarlane sent an "eyes only" back-channel cable to Shultz that he had met with an Israeli emissary, who had identified the Iranian contacts as Ayatollah Karoubi and an adviser to the Prime Minister named Manucher Ghorbanifar. The Israeli emissary reported that the Iranians were confident that they could achieve quickly the release of seven U.S. citizens held hostage in Lebanon. They wanted delivery of 100 TOW missiles from Israel so that they (the Iranians) could show some gain from their dealings with the west.⁸ McFarlane gave the same report to Weinberger, who was at his home in Washington.⁹

8 Cable from McFarlane to Shultz, 7/13/85, ALV 005092-95 (Shultz file copy).

9 In his 1990 book, Weinberger noted McFarlane's testimony regarding his July 13 briefings of Shultz and Weinberger, but dismissed it sarcastically:

His "recollection" . . . exceeds mine on this, as it did on many other points. I recall no such meeting. July 13 was the Saturday the President was operated on for abdominal cancer; and I was going over office papers in the garden at our home in McLean, Virginia, and not being briefed by McFarlane.

(Weinberger, *Fighting for Peace*, p. 366.) In fact, Weinberger's diary entries for July 13, 1985 -- which are part of the voluminous Weinberger note collection that the OIC first located in 1991 --

memorialize five separate conversations, apparently by telephone, with McFarlane, plus Weinberger's conversation with General Powell, regarding a conversation Powell had had with McFarlane. (Weinberger Diary, 7/13/85, ALZ 0039537H-37J.)

Although none of these diary entries record substantive information regarding hostages, Israel or Iran, that omission could reflect Weinberger's apparent decision to make no detailed notes during July and early August 1985 regarding this activity. (See, e.g., Weinberger Diary, 8/6/85, ALZ 0039585-87 (no notes of a White House meeting on Iran, which Weinberger later testified he attended on this date)). On Monday, July 15, 1985, Weinberger did make a cryptic diary entry -- "Saw Colin Powell -- re proposed Iran" -- that is consistent with McFarlane's testimony about his disclosures to Weinberger two days earlier. (Weinberger Diary, 7/15/85, ALZ 0039539.)

In late July and August 1985, Weinberger attended meetings of senior Reagan Administration officials where this opening to Iran, through Israel, was discussed in detail. General John W. Vessey, Jr., the Chairman of the Joint Chiefs of Staff (JCS), recalled that Weinberger told him incredulously, after attending a White House meeting in the summer of 1985, that someone had proposed contacts with Iran.¹⁰ Weinberger himself testified that he recalled attending a White House meeting in August 1985 regarding the proposed NSDD on a new policy toward Iran.¹¹

¹⁰ Vessey, Select Committees Deposition, 4/17/87, pp. 30-31. In a subsequent interview, Vessey elaborated, explaining that Weinberger had first offered Vessey a ride to the White House meeting and then, after checking, had to tell Vessey that he was not invited. The next day, Weinberger told Vessey that he "wouldn't believe what was being proposed," namely, negotiation with the Iranians." (Vessey, FBI 302, 6/11/92, p. 1.)

¹¹ Weinberger, Select Committees Testimony, 7/31/87, pp. 88-89; cf. Weinberger, Tower Commission Testimony, 1/14/87, p. 5 ("I do not have memory of an August [1985] meeting as such, but I gather that there was an August [1985] meeting, and there was certainly a meeting with the President upstairs in the residence after he got out of the hospital.").

According to McFarlane, President Reagan, after meeting with his senior advisers in July and August 1985 and hearing the objections raised by Weinberger and Shultz, gave McFarlane oral authorization for Israel to transfer U.S.-made arms to Iran, which the United States would replenish, to get the hostages released.¹² McFarlane recalled communicating the President's decisions to Weinberger.¹³

¹² McFarlane, FBI 302, 3/20/92, p. 2. In President Reagan's August 23, 1985, diary entry, which he made available for review to Independent Counsel, in excerpted form, he wrote that he had "received 'secret phone' call from Bud McFarlane -- seems a man high-up in the Iranian govt. believes he can deliver all or part of the 7 kidnap victims -- I had some decisions to make about a few points -- but they were easy to make -- now we must wait."

¹³ McFarlane, FBI 302, 3/20/92, pp. 3, 5, 6, 7, 9.

Israel's Initial TOW Missile Shipments and the September 1985 Release of the Reverend Weir

In late August 1985, after McFarlane learned that Israel and Iran had agreed on a shipment of 100 TOW missiles,¹⁴ he met with Weinberger at the Pentagon.¹⁵ Powell, who attended the meeting,¹⁶ recalled that McFarlane gave Weinberger "a sort of history of how we got where we were on that particular day" ¹⁷ and reported that there "was to be a transfer of some limited amount of materiel." ¹⁸ Weinberger's diary shows that, in a subsequent conversation with McFarlane, Weinberger advocated an agreement with the Iranians that would release all U.S. citizens being held hostage in Lebanon.¹⁹ Weinberger's diary also shows that he and his senior aides devoted significant time during late August and September of 1985 to planning for the release of hostages,²⁰ and that he

approved a plan for a senior military officer 21 to represent the DoD at a meeting with Iranian representatives in Europe during that period.²²

14 Ibid., p. 3.

15 Weinberger Diary, 8/22/85, ALZ 0039605 ("Bud McFarlane fm [from] AF1 [Air Force One] -- wants to meet with me tonight -- "); Powell, Select Committees Deposition, 6/19/87, pp. 5-8, 52.

16 Powell, FBI 302, 12/5/86, p. 1; Powell, Select Committees Interview Memorandum, 4/17/87, p. 2, AMY 000561. Although Powell could not supply a precise date for this meeting (Powell, Select Committees Deposition, 6/19/87, p. 39, placing this meeting "in the summer" of 1985), Weinberger's diary indicates that the meeting occurred in his office on August 22, 1985, and was attended by Weinberger, McFarlane, Powell and General Charles Gabriel, the Acting Chairman of the Joint Chiefs of Staff (Weinberger Diary, 8/22/85, ALZ 0039606-07). Weinberger's typed calendar, which corroborates the attendees and the location, indicates that the meeting lasted from approximately 7:30 until 8:10 p.m. (Weinberger Calendar, 8/22/85, LC-007474.)

17 Powell, Select Committees Deposition, 6/19/87, p. 5.

18 Powell, FBI Interview Transcript, 12/5/86, ALZ 0047719-20; accord Powell, Select Committees Deposition, 6/19/87, p. 5; see also Weinberger Diary, 8/22/85, ALZ 0039606-07 ("Bud McFarlane, Charles Gabriel, CP [Powell] in office. Peres sent Israeli Envoy to tell us 2 Iranians offered to return some of our kidnappees -- want us to have better attitude toward Iran after Khomeini -- I argued that we tell them we wanted all hostages back") (emphasis in original).

19 Ibid., 8/23/85, ALZ 0039608 ("Conference call -- with Bud McFarlane + General Gabriel -- on Iranian proposal to let us have our Kidnappees -- agreed we should deal directly with Iranians + not thru Israelis + that we should get guarantees that we'll get them all -- + take them off w helos fm Tripoli Beach").

20 See, e.g., ibid., 8/24/85, ALZ 0039611A; ibid., 8/26/85, ALZ 0039613; ibid., 8/29/85, ALZ 0039621-22; ibid., 9/3/85, ALZ 0039627, ALZ 0039630; ibid., 9/11/85, ALZ 0039647-48.

21 The DoD determined in 1993 that the senior military officer's name and all details relating to this subject continue to be classified. See Classified Appendix to this chapter.

22 Weinberger Diary, 8/29/85, ALZ 0039621-22. The senior military officer said that he was not aware that he had ever been considered for a meeting with Iranians and, notwithstanding Weinberger's diary notes, he stated emphatically that he had no knowledge of any dealings with Iranians. (Senior Military Officer, FBI 302, 1/28/92, p. 3.) The senior military officer also said that he never dealt with Oliver North and never heard his name mentioned in connection with the hostage Benjamin Weir's release; he described North as "simply a staff officer on the periphery. . . ." (Ibid., pp. 2-3.)

The senior military officer's account conflicts with the contemporaneous evidence. Weinberger's diary relates that the officer embarked on a mission involving travel to Vienna, Austria -- at McFarlane's request and with the approval of Weinberger and General Vessey -- in early September 1985 "to see if Iranians will release our hostages. . . ." (Weinberger Diary, 9/6/85, ALZ 0039637; accord Ibid., 8/29/85, ALZ 0039621-22; ibid., 9/3/85, ALZ 0039627, ALZ 0039630; ibid., 9/4/85, ALZ 0039632.) North's notebook quotes Adm. Moreau, who supervised the officer in the JCS chain of command (Senior Military Officer, FBI 302, 1/28/92, p. 2), as reporting on Wednesday, August 28, 1985, that "[senior military officer]" had been "briefed Monday." (North Note, 8/28/85, AMX 001340.) On September 4, 1985, he applied for and received a ten-year passport in a false name. (Department of State Passport Application, 9/4/85, ALW 015697 (signed by "[alias]" and bearing the Senior Military Officer's photograph); accord ALW 015698 (identification page of passport).)

Contemporaneous notes show that North sought a false passport for himself and a second false passport for the Senior Military Officer; that North invoked Moreau's name while making this request; that North was going to Europe with the military officer; that they would be using the aliases; and that their reservations were in the latter alias. (Quinn Note, 8/30/85, ALV 002319 ("Secure call -- Ollie North -- . . . Asked for false passport for trip to Europe -- "); Ibid., 9/4/85, ALV 002320 ("OLLIE -- One more passport -- DoD -- "); Raphael Note, 9/10/85, ALW 0045285 (North/[Senior Military Officer] -- to Europe); Platt Note, 9/10/85, ALW 0036312 ("Ollie North, [Senior Military Officer] -- Goode, [false name]"); North Note, 9/4/85, AMX 001723 ("TICKETS & HOTEL: [false name]"); see also Platt Note, 9/10/85, ALW 0036317 ("Armacost heard from Pdx [Poindexter] . . . -- That Ollie + friend going nowhere"); see generally Memorandum for the Record from Martel, "Subject: Request for Passport Retrieval," 11/25/86, ALW 015668 (passport believed issued for Senior Military Officer at the request of Ambassador Robert B. Oakley); Memorandum from Coburn to George, 10/16/87, ALW 015667; Coburn, FBI 302, 10/30/87, p. 3.)

After the Reverend Benjamin Weir was released on September 15, 1985, Weinberger's diary refers to "a delivery I have for our prisoners." 23 Weinberger's notes show that on September 17, 1985, at a "Family Group" lunch at the White House with McFarlane, Shultz and Casey, he discussed David Kimche, director general of Israel's Foreign Ministry, who was acting as the "go between" in contacts with Iranians.²⁴

23 Weinberger Diary, 9/15/85, ALZ 0039653F.

24 Ibid., 9/17/85, ALZ 0039659.

Weinberger, along with McFarlane and Casey, began to receive intelligence reports that provided further detailed information about dealings with Iran in exchange for hostages. Before September 17, 1985, the Pentagon copies of the first six intelligence reports on this activity were delivered to Adm. Arthur Moreau, assistant to the chairman of the JCS, rather than to Weinberger; 25 Moreau brought his copies to Weinberger's office, however, where they were read by Weinberger and Powell.²⁶ On September 17, Weinberger, through Powell, complained to the originating intelligence agency about not receiving direct delivery of its intelligence reports on this topic.²⁷ Thereafter, and continuing through the end of 1986, these reports, which were issued frequently and on a current basis, were delivered directly to Weinberger. Later in September 1985, these reports disclosed that arms were the currency of United States dealings with Iran.²⁸ In early October 1985, Weinberger noted that the dealings with Iran involved "arms transfers." 29 Weinberger also knew by early October 1985 that NSC staff member Lt. Col. Oliver L. North was involved in these negotiations with Iranians.³⁰

25 AMW 0001918-40. The apparent reason for delivering the Pentagon copy of these intelligence reports to Adm. Moreau during the first weeks of September 1985 was the fact that the senior military officer who was to meet with Iranian representatives during that period reported to the Joint Staff. (Senior Military Officer, FBI 302, 1/28/92, p. 2.) The intelligence reports, in short, were initially delivered to the senior military officer's commanding officers, Moreau and Gen. Vessey, who in turn reported with him to Weinberger. (Ibid., p. 3.) Independent Counsel was not able to obtain additional information regarding Moreau's handling of the initial intelligence reports because he died shortly before Independent Counsel was appointed in December 1986.

26 Powell, FBI 302, 2/24/92, p. 5.

27 Weinberger Diary, 9/17/85, ALZ 0039659.

28 Ibid., 9/20/85, ALZ 0039671; accord Intelligence Report, AMW 0001937.

29 Weinberger Diary, 10/3/85, ALZ 0039703.

30 Ibid., 10/4/85, ALZ 0039704.

Israel's November 1985 HAWK Missile Shipment

In November 1985, McFarlane informed Weinberger that negotiations involving Israelis, Iranians and Americans for proposed weapons transfers in return for hostage releases had resumed.³¹ Although Weinberger objected, the activity continued. McFarlane specifically informed Weinberger that HAWK missiles were the proposed currency.³²

31 Ibid., 11/9/85, ALZ 0039774.

32 Ibid., 11/10/85, ALZ 0039775; *ibid.*, 11/19/85, ALZ 0039795.

In late November 1985, when McFarlane was in Geneva with President Reagan for a summit meeting with Soviet leader Mikhail Gorbachev, he gave Weinberger reports regarding this proposed transaction. On November 19, McFarlane asked Weinberger to get 500 HAWK missiles for sale from the United States to Israel, which would transfer them to Iran in exchange for the release of five hostages on November 21, 1985.³³ Weinberger passed this request to Powell,³⁴ who discussed it with Noel C. Koch, the acting assistant secretary of defense for International Security Affairs.³⁵ Powell and Koch directed Henry H. Gaffney, the acting director of the DoD's Defense Security Assistance Agency (DSAA),³⁶ to gather information about the availability of HAWK missiles and the legal restrictions that would apply to the proposed transfer from Israel to Iran.³⁷ Gaffney gave Powell a negative oral report on the proposed shipment,³⁸ and Powell passed this information to Weinberger later that same day. Weinberger's diary entry reads:

33 Ibid., 11/19/85, ALZ 0039795.

34 Powell, Grand Jury, 4/22/92, pp. 57-58.

35 Koch, FBI 302, 3/23/92, p. 9. Koch was acting assistant secretary of defense because Armitage was traveling from November 15 to November 23, 1985. After Armitage returned to the United States in late November, Powell informed him of the activity that had occurred during his foreign trip. (*Ibid.*, pp. 10-11.)

36 Gaffney, who was DSAA's director of plans at the time, was acting director of DSAA during the week of November 18, 1985, because the director, Lt. Gen. Philip Gast, was traveling with the Armitage delegation, and the deputy director, Glenn A. Rudd, was out of town. (Gaffney, FBI 302, 4/9/92, p. 2; Gaffney, Select Committees Interview Memorandum, 4/10/87, pp. 3, 5-6, AMY 000542, AMY 000545-46.)

37 Gaffney, Select Committees Deposition, 6/16/87, pp. 62-63, 73.

38 Ibid., p. 81; Gaffney, Select Committees Interview Memorandum, 4/10/87, p. 8.

Colin Powell in office re data on Hawks -- can't be given to Israel or Iran w/o Cong. notification, -- breaking them up into several packages of 28 Hawks to keep each package under \$14 million is a clear violation ³⁹

Weinberger promptly passed this information to McFarlane in Geneva. McFarlane's response was non-committal.⁴⁰

39 Weinberger Diary, 11/19/85, ALZ 0039797.

40 Ibid.

The next day, McFarlane told Weinberger that, notwithstanding the legal problems raised by Weinberger, President Reagan had decided to send HAWK missiles to Iran through Israel.⁴¹ McFarlane later advised Weinberger that only 120 HAWK missiles would be sent, that they would be "older models," and that the hostage release would occur on Friday, November 22, 1985.⁴²

⁴¹ Ibid., 11/20/85, ALZ 0039799. There is no record that Weinberger attempted to contact the President to voice his opposition or to seek reconsideration of this decision.

⁴² Ibid., 11/20/85, ALZ 0039801.

Weinberger continued to discuss this planned HAWK shipment with Powell.⁴³ Powell provided him a succinct "point paper" written by Gaffney concerning the practical, legal and political difficulties with the proposed shipment.⁴⁴ Weinberger's diary shows that he and Powell watched for a hostage release, which did not occur, on November 22, 1985.⁴⁵ Early the next week, Weinberger received an intelligence report confirming that weapons had been shipped to Iran on November 24, 1985.⁴⁶ Subsequent reports made clear that these weapons had been HAWK missiles.⁴⁷

⁴³ Ibid.; ibid., 11/21/85, ALZ 0039802.

⁴⁴ "Point Paper: Hawk Missiles for Iran," ALZ 000353-54. A second copy of Gaffney's point paper, which is labeled "REVISED" in his handwriting but in fact contains only one less word, apparently was located in Weinberger's office complex during an April 1987 search for Iran/contra documents. On April 17, 1987, Col. James F. Lemon, the executive secretary in the Office of the Secretary of Defense, transmitted this version of Gaffney's point paper to the DoD general counsel and the assistant general counsel who were collecting Iran/contra documents, with a cover memorandum explaining that the point paper had been located during a search, conducted at the general counsel's instruction in response to document requests from the Select Committees, of "the Immediate Office of the Secretary of Defense, the Office of the Deputy Secretary of Defense, and the Office of the Executive Secretariat." (Memorandum from Lemon to Garrett and Shapiro, with attached "Point Paper: Hawk Missiles for Iran," 4/17/87, ALZ 0058446-48.)

Although the revised Gaffney point paper and Lemon's cover memorandum were responsive to Independent Counsel's 1987 omnibus requests for DoD documents, they were not made available to the OIC until 1992. There also is no record that the DoD Office of General Counsel ever provided this version of Gaffney's point paper or the information regarding its location in Weinberger's office to the Select Committees. When the Select Committees questioned Weinberger using Gaffney's file copy of the point paper, Weinberger said he did not recall seeing the document contemporaneously. (Weinberger, Select Committees Testimony, 6/17/87, pp. 22, 41.)

⁴⁵ Weinberger Diary, 11/23/85, ALZ 0039806A ("Colin Powell -- . . . no hostage release last night").

⁴⁶ Intelligence report, 11/25/85, AMW 0002001-03 ("Subj: Lebanese Kidnappings: . . . Delivery Made on 24 November 1985").

⁴⁷ Intelligence reports, AMW 0002010-12 (12/11/85), AMW 002016-17 (12/12/85).

December 1985 Meetings Regarding Proposals to Transfer Additional Weapons to Iran

During the first week of December 1985, senior DoD officials addressed a proposal to ship additional missiles to Iran in exchange for hostages. On December 2, Assistant Secretary Richard L. Armitage discussed this topic with Menachem Meron, the director general of Israel's Ministry of Defense, who was visiting the United States.⁴⁸ The next day, Armitage discussed these proposals with North.⁴⁹ On December 5, Armitage met with retired U.S. Air Force Major General Richard V. Secord, who had just returned from Israel and had been deeply involved in the HAWK missile

shipment of late November 1985.⁵⁰ North prepared a detailed paper for Poindexter that same day which discussed Israel's September 1985 TOW missile shipment to Iran and urged additional Israeli arms shipments to Iran with replenishment by the United States.⁵¹

48 Armitage, Meeting Log, 12/2/85, ALZ 016436. Two days after Meron's meeting with Armitage, the Director of DSAA's Israel desk, Diana Blundell, sent an information paper on Israel's HAWK missile systems through DSAA Deputy Director Rudd to Lt. Gen. Gast, the director of DSAA. (Information Paper SUBJECT: Israel -- HAWK Missile System, circa 12/4/85, ALZ 0044276.) Blundell's paper contains detailed information on the status and schedule for improving Israel's HAWK missile batteries, the anticipated schedule for delivering modified missiles to Israel that would be compatible with the improved batteries, and the numbers of basic and improved HAWK missiles that Israel had received from the U.S. in the past. Blundell's cover note transmitting the information paper to Rudd and Gast says that they had requested a paper "on I-HAWK deliveries to Israel." (Memorandum from Blundell through Rudd to Gast, 12/4/85, ALZ 0044275.) Rudd's schedule indicates that, after he, Gast and Blundell had received a farewell "courtesy call" from Gen. Meron on December 2, 1985; Rudd, Gast, Blundell and others met the next afternoon "re: I-HAWK. . . ." (Rudd Schedule, 12/2/85, ALZ 0044110; *ibid.*, 12/3/85, ALZ 0044110.) This meeting preceded Blundell's paper on I-HAWK deliveries to Israel.

Blundell's information paper and the related Rudd schedule documents are consistent with a response to an Israeli request during the first week of December 1985 for prompt replenishment of the 18 HAWK missiles that Israel had transferred to Iran the previous week. Armitage, one possible source of such a request, did not recall possessing knowledge in early December 1985 of Israel's HAWK shipment. Because the Blundell and Rudd documents were not produced by DoD to the OIC until 1992 (and apparently never were produced to the Select Committees), the OIC did not pursue the matter after Blundell stated in 1992 that she had no recollection whatsoever of the events that prompted her 1985 information paper. (Blundell, FBI 302, 5/29/92, pp. 4-5.)

49 Armitage Meeting Log, 12/3/85, ALZ 016437 ("1230-1345 Ollie North -- Lunch in office").

50 *Ibid.*, 12/5/85, ALZ 016439 ("1300 -- Gen Secord").

51 See Armitage section below.

On or about December 5-6, Armitage obtained an information paper from DSAA regarding the proposed shipment outlined in North's paper. This paper, a one-page analysis titled "Prospects for Immediate Shipment of I-HAWK and I-TOW Missiles," was drafted by DSAA Deputy Director Glenn A. Rudd and Gaffney.⁵² The paper reported that up to 75 I-HAWK missiles were available in the United States for foreign shipment and quoted a "total package price" of \$22.5 million "for [shipping] 50. . . ." It reported that "3,300 I-TOWs" could be shipped from U.S. Army stocks "immediately. . . ." ⁵³ Armitage, in collaboration with State Department official Arnold L. Raphel, ⁵⁴ also created a second information paper, using a draft by Rudd and Gaffney, titled "Possibility for Leaks." The "Leaks" paper addresses the legal implications of transferring "I-HAWKs in the quantity contemplated" and "the I-TOW quantities" and says that "[t]here is no good way to keep this project from ultimately being made public." ⁵⁵

52 Gaffney, Select Committees Deposition, 6/22/87, p. 24 (joint deposition with Rudd).

53 Prospects for Immediate Shipment of I-HAWK and I-TOW Missiles, ALZ 0058747.

54 Raphel served as the principal deputy assistant secretary of state in the Bureau of Near Eastern and Asian Affairs (NEA) during 1985 and 1986.

55 Possibility for Leaks, ALZ 004343.

By Thursday, December 5, 1985, Weinberger had learned that President Reagan would be meeting with his senior advisers on Saturday, December 7 to discuss this proposal.⁵⁶ Weinberger and Powell, who had been out of the country from December 2 to 6, 1985,⁵⁷ met with Armitage early that Saturday morning to discuss the information papers Armitage had assembled in preparation for Weinberger's meeting with the President.⁵⁸

⁵⁶ Weinberger Diary, 12/5/85, ALZ 0039827 ("Colin Powell in room -- re meeting Saturday with President on Iran hostages + TOW's").

⁵⁷ Ibid., 12/2/85, ALZ 0039818 (departure for Europe); ibid., 12/6/85, ALZ 0039829 (return to U.S.).

⁵⁸ Ibid., 12/7/85, ALZ 0039830 ("Met with Colin Powell + Rich Armitage -- re NSC Plan to let Israelis give Iranians 50 Hawks + 3300 TOWs in return for 5 hostages -- NSC will present it as a means of helping group that wants to overthrow gov't -- But no g722assu assurance that any of this g722goes -- weapons will go to Iranian Army.").

At the White House meeting, Weinberger -- supported by Shultz and White House Chief of Staff Donald T. Regan -- argued against any more arms shipments to Iran.⁵⁹ Weinberger specifically told President Reagan that he could not violate the United States embargo on arms shipments to Iran, and that "washing" an arms transfer through Israel would not make it legal.⁶⁰ The President rejected these legal arguments,⁶¹ but he announced no decision by the end of the meeting. Later that day, McFarlane advised Weinberger that the President had decided not to trade more arms for hostages, but instead was sending McFarlane to London to meet with the Iranians and to discuss the possibility of Great Britain selling arms to them.⁶²

⁵⁹ Ibid., 12/7/85, ALZ 0039831.

⁶⁰ Ibid. ("I argued strongly that we have an embargo that makes arms sales to Iran illegal + President couldn't violate it -- + that 'washing' transaction thru Israel wouldn't make it legal. Shultz, Don Regan agreed.").

⁶¹ Ibid. ("President sd. he could answer charges of illegality but he couldn't answer charge that 'big strong President Reagan passed up a chance to free hostages'.").

⁶² Ibid., ALZ 0039832, ALZ 0039838 ("Called McFarlane in Washington -- he is going to London to advise President's decision that we will g008not ransom our hostages -- he will discuss with UK Possibility of their selling some arms to negotiators.") (emphasis in original).

Early the next week, after McFarlane had returned from London, Weinberger attended another White House meeting with the President and senior officials to discuss proposed arms shipments to Iran. Weinberger took detailed notes during this December 10, 1985, meeting. McFarlane told the group that the United States had an outstanding commitment to supply 500 replacement TOW missiles to Israel.⁶³ The meeting ended with an apparent decision by President Reagan not to send additional arms to Iran at that time but to pursue diplomatic contacts in an attempt to free the hostages.⁶⁴

⁶³ Weinberger Meeting Notes, 12/10/85, ALZ 0040645 ("We still must replace 500 TOWs to Israel").

⁶⁴ Weinberger Diary, 12/10/85, ALZ 0039840 ("President still wants to try to get hostage released - - But forcible storming would mean many deaths -- decided to send Dick Walters to Damascus [with classified message].").

January 1986 Meetings and President Reagan's Decision To Proceed With Direct Weapons Transfers From the United States to Iran

In January 1986, Israel proposed additional weapons shipments to Iran. On January 6, Poindexter briefed Weinberger regarding Israel's proposal to transfer 4,000 TOW missiles from Israel to Iran, with a commitment from the United States to replenish Israel's TOW-missile stocks.⁶⁵ The next day, Weinberger attended a White House meeting with President Reagan and other senior officials. Weinberger voiced his continuing objections to this proposal.⁶⁶ The next week, Weinberger received a briefing from Koch, the principal deputy assistant secretary of defense for International Security Affairs, who had been negotiating details relating to these shipments with an Israeli arms procurement official.⁶⁷ After hearing Koch's progress report, Weinberger commented that somebody was going to go to jail.⁶⁸

65 Weinberger Meeting Note, 1/6/86, ALZ 0042650-51 ("Nir proposed selling 4000 TOWs (unimp. [unimproved]) -- No launchers -- + Israelis would deliver 500 via Israeli plane -- if all 5 US hostages released -- then Israelis want 4000 TOW replacements, + If they are g722cauget caught they would want us to acknowledge that we kneg008w of it + did not object.") (emphasis in original). Weinberger Diary, 1/6/86, ALZ 0039880 ("John Poindexter in office. Another Israeli-Iranian scheme offering freedom to hostages in return for TOW missiles -- Told him I opposed it.").

66 Weinberger Meeting Note, 1/7/86, ALZ 0042655; Weinberger Diary, 1/7/86, ALZ 0039883 ("Met with President, Shultz, Poindexter, Bill Casey, Ed Meese, in Oval Office -- President decided to go with Israeli-Iranian offer to release our 5 hostages in return for sale of 4000 TOWs to Iran by Israel -- George Shultz + I opposed -- Bill Casey, Ed Meese + VP favored -- as did Poindexter.").

67 Ibid., 1/14/86, ALZ 0039901 ("Colin Powell + Noel Cook [sic -- Koch] in office -- re changes in Iran offer on hostages -- ").

68 Koch, Select Committees Testimony, 6/23/87, pp. 76, 187-88 ("I said to him -- and I did not say it in a very serious way -- it may not sound in context as an opportunity for levity, but I said, do we have a legal problem with this, is somebody going to go to jail, and his response was in the affirmative. But I didn't take that seriously. . . . I hadn't intended it seriously when I asked the question. We had the shared background of Watergate to bounce some of these perceptions off of, so there was that. Chiefly I assumed if there was any prospect of it being illegal, that he would have stopped it. . . . [S]ince he didn't leave, I assumed it was legal.").

President Reagan ultimately decided that the United States would deal with Iran directly, rather than through Israel. On January 16, 1986, Weinberger attended a White House meeting with Casey, Attorney General Edwin Meese III and CIA General Counsel Stanley Sporkin regarding a proposed presidential Finding that would authorize covert arms shipments from the CIA to Iran.⁶⁹ Although Weinberger continued to offer legal objections,⁷⁰ President Reagan signed the Finding the next day. Weinberger, through General Powell, then directed the DoD bureaucracy to make missiles available to the CIA.⁷¹ Weinberger explicitly directed subordinates that DoD was not to be involved in shipping arms to Iran beyond selling the missiles to CIA.⁷²

69 Weinberger Diary, 1/16/86, ALZ 0039906A ("Met with John Poindexter, McLaughlin -- re ways to increase aid + financing for Lebanon -- Bill Casey -- Ed Meese -- Stanley Sorkin [sic -- Sporkin]"); Sporkin, Select Committees Testimony, 6/24/87, pp. 126-28.

70 Weinberger Diary, 1/17/86, ALZ 0039906D ("Saw Colin Powell -- re acts prohibiting sales to Iran[;] Colin Powell (2) to Car -- citation to statute above[;] Lunch with Shultz, Bill Casey, John Poindexter in W.H. [White House] Family Dining Room, re attempts to get hostages back from Hizballah -- Told him of Statutes forbidding sales to Iran.").

71 Powell, FBI 302, 7/6/87 & 7/9/87, p. 1.

72 Weinberger Diary, 1/24/86, ALZ 0039919 ("Noel Koch -- in office -- with Colin Powell -- re Iranian-Hizbollah hostage release -- we are not to be involved in this beyond selling to CIA").

DoD Knowledge of Weapons Transfers to Iran During 1986

Throughout 1986, Weinberger received periodic but detailed reports, which he recorded in his handwritten notes, concerning arms shipments to Iran to recover the hostages. In February 1986, at a "Family Group" lunch with Casey, Shultz and Poindexter, Weinberger was briefed on the schedule for sequential TOW missile shipments and hostage releases.⁷³ In March 1986, Weinberger learned of a proposal to send McFarlane to meet with the Iranians.⁷⁴ In April 1986, Weinberger learned that, in addition to the TOW missiles that had already been sent, HAWK missile parts would now be transferred to Iran, and that McFarlane and North would be traveling to Iran.⁷⁵ In May 1986, Weinberger discussed with Shultz intelligence reports demonstrating that McFarlane would be bringing military equipment to Iran without a commitment that all U.S. hostages would be released.⁷⁶ Near the end of May 1986, Weinberger learned that McFarlane's trip to Iran had ended in failure.⁷⁷ In July 1986, Weinberger received a briefing from Michael Ledeen, the former NSC and DoD consultant who had participated in the 1985 negotiations with Israelis and Iranians before his dismissal by Poindexter.⁷⁸ In late July 1986, Weinberger was informed that hostage Father Lawrence Martin Jenco had been released in Lebanon due to Iran's intervention and in an effort to obtain "more US weapons."⁷⁹ In October 1986, Poindexter informed Weinberger of a new channel to Iran through Rafsanjani's nephew.⁸⁰

⁷³ Weinberger Meeting Note, 2/11/86, ALZ 0040652D-52E.

⁷⁴ Weinberger Diary, 3/4/86, ALZ 0040006B ("Attended lunch with John Poindexter -- in his WH [White House] office -- re Iran hostages. (About delays and demands -- McFarlane will go as rep. to meeting if they agree.)").

⁷⁵ Ibid., 4/10/86, ALZ 0040065 ("Saw Don Jones -- re cables fm [from] Will Taft -- on addl [additional] attempts to buy our kidnappees' release -- with g722sp Hawk equipment -- "); Weinberger Diary, 4/13/86, ALZ 0040072 ("[Saw] Will Taft -- . . . also re g722sam Iran hostages -- McFarlane, North going to Iran -- idiocy -- ").

⁷⁶ Ibid., 5/13/86, ALZ 0040147-48.

⁷⁷ Ibid., 5/29/86, ALZ 0040165.

⁷⁸ Ibid., 7/24/86, ALZ 0040303.

⁷⁹ Ibid., 7/30/86, ALZ 0040312.

⁸⁰ Ibid., 10/3/86, ALZ 0040458.

Weinberger complied with President Reagan's decision by selling weapons and weapons parts from DoD to CIA for onward shipment to Iran on three occasions. In February 1986, TOW missiles were sold to CIA and ultimately transferred to Iran. In May 1986, HAWK missile parts were sold by DoD to CIA and ultimately, in a partial shipment with McFarlane that month and in a second shipment in early August, transferred to Iran. In October 1986, additional TOW missiles were sold by DoD to CIA and ultimately transferred to Israel, which retained some as replenishment for earlier shipments and transferred others to Iran, producing the release of hostage David Jacobsen. Weinberger's senior military assistant informed him at the time each of these transfers to the CIA took place.⁸¹ Weinberger also continued to receive intelligence reports on this activity throughout 1986, which provided detailed information on dealings with Iran and arms shipments in exchange for hostages.⁸²

⁸¹ Jones, FBI 302, 3/24/92, pp. 2, 6.

⁸² Weinberger Diary, 5/13/86, ALZ 0040146-48; *ibid.*, 10/30/86, ALZ 0040506.

Investigation of the DoD, 1986-1990

Before the discovery of Weinberger's notes in 1991, Independent Counsel's investigation had focused primarily on DoD's sale of missiles and missile parts to the CIA in 1986, and on the involvement of military officials in contra resupply activity. The inquiry into the 1986 Iran arms sales was intended primarily to obtain a thorough understanding of the mechanics of the transactions, the pricing of the TOW missiles, and whether DoD officials involved in the pricing or transfer had knowledge of the diversion of profits from the arms sales. No prosecutions resulted from this aspect of the investigation.

Weinberger was interviewed twice as a witness.⁸³

⁸³ Weinberger, FBI 302, 12/1/86; Weinberger, FBI 302, 4/7/88.

Discovery of Weinberger's Notes

Beginning in 1987, congressional investigators and the OIC repeatedly requested notes, calendars, telephone logs, diaries and other materials relevant to the Iran/contra matter from Weinberger and other high Administration officials. Weinberger produced a typewritten memorandum of one meeting, a few documents containing his handwritten marginalia, and official calendars and activity logs that were maintained by his staff. It was not until the late summer of 1990 that OIC obtained a document suggesting that he had withheld relevant handwritten notes.

An August 7, 1987, note by Secretary of State Shultz's executive assistant, M. Charles Hill, led investigators to reexamine earlier Weinberger statements regarding notes.⁸⁴ In one OIC interview, Weinberger had referred to "a habit of making notes on any piece of paper he could get his hands on." ⁸⁵

⁸⁴ Shultz told Hill that "Cap takes notes but never referred to them so never had to cough them up." (Hill Note, 8/7/87, ALW 0056370.)

⁸⁵ Weinberger, FBI 302, 4/7/88, p. 2.

In late August 1990, Weinberger was subpoenaed to produce relevant documents, including any handwritten notes, to the Grand Jury. On September 13, 1990, his attorney assured the OIC that Weinberger had previously turned over his notes to the congressional committees investigating the Iran/contra matter or to the Library of Congress. Subsequently, Weinberger agreed to be interviewed. On September 28, 1990, in arranging the interview, Weinberger's attorney was told that two sources of information -- Weinberger's previous interview with the OIC and a newly discovered document ⁸⁶ -- indicated that Weinberger had not turned over relevant notes to Congress.

⁸⁶ The August 7, 1987, Charles Hill note.

On October 10, 1990, Weinberger, accompanied by his counsel, was interviewed by OIC attorneys in the presence of an FBI Special Agent.⁸⁷ At that time, his counsel asked to see a record of the April 7, 1988, interview. After reviewing it, Weinberger said that he disagreed with that portion of the report that stated: "he had a habit of making notes on any piece of paper he could get his hands on." Weinberger characterized the statement as "misleading" because it implied that it was his habit to make notes throughout his seven years as secretary of defense, which he said was not the case. Weinberger stated that during his first year as secretary of defense he had taken notes on the backs of pages in his briefing books. He said his personal secretaries initially had saved these notes for him so that he could dictate memoranda. He said he discontinued that practice after about a year, when it became apparent that he would not have time to dictate memoranda.⁸⁸ Weinberger stated that, after his first year in office, he did not regularly take notes at meetings or make a record of meetings when he returned to his office; he did not take notes of his phone calls; and he had not

deliberately withheld anything from Iran/contra investigators. During the interview, Weinberger was told that a document, contemporaneously written by someone Weinberger would consider credible, said that Weinberger had withheld some of his relevant Iran/contra notes.⁸⁹ Weinberger denied the allegation and stated he was distrustful of the author and his motivations.

⁸⁷ The following account of the OIC's October 10, 1990, interview of Weinberger is based upon the FBI Record of Interview, also referred to as a ``302."

⁸⁸ At the beginning of the October 10, 1990, interview, Weinberger produced an October 1, 1990, memorandum by Kay D. Leisz, his executive assistant at that time and throughout his tenure at the DoD, regarding the OIC's request for Weinberger's notes. Leisz's memo echoed Weinberger's assertion that, other than notes he took in his briefing books during his first year as Secretary of Defense, no notes were retained. (Memorandum for the Record by Leisz, 10/1/90, ALZ 0051360.)

⁸⁹ The August 7, 1987, Hill note.

Weinberger and his counsel were permitted to review the FBI agent's October 10, 1990, interview report when they returned to the Office of Independent Counsel for another interview on December 3, 1990.⁹⁰ Both Weinberger and his counsel complimented the report's accuracy and thoroughness and contrasted it favorably with the report of the 1988 interview, which had suggested he was an avid notetaker.

⁹⁰ Weinberger's counsel had asked to review the FBI report of the October 10, 1990, interview because of Weinberger's criticisms of the earlier FBI report.

Between the October and December 1990 interviews, the OIC obtained Weinberger's permission to review his papers at the Library of Congress. Assuming that any documents relating to Iran/contra were classified ⁹¹ and relying on Weinberger's statements that the few notes he took were scribbled on the backs and margins of documents in his briefing books, OIC investigators asked both DoD and Library of Congress personnel where such materials would be located. The investigators were directed to the classified subject list in the Library's index to the Weinberger collection.⁹² Investigators found no collection of notes among the materials they examined.

⁹¹ Almost all high-level documents regarding the Iran arms sales and the Reagan Administration's efforts to obtain foreign support for the contras are highly classified.

⁹² In what may have been a misunderstanding, the OIC investigators did not believe they were at liberty to examine other parts of the index and therefore did not see the references to diary and meeting notes in the description of unclassified material.

When OIC investigators returned to the Library of Congress in November 1991, they reviewed the entire index and found thousands of pages of diary and meeting notes that Weinberger had created as secretary of defense. These notes, which contained highly classified information, had been stored in the unclassified section of the Weinberger collection.⁹³

⁹³ The OIC immediately informed the Library of Congress and the Department of Defense of the security breach. After reviewing Weinberger's notes, the DoD determined that ``classified information [had] inadvertently been included in the unclassified portion of the Weinberger collection at the Library of Congress" and recalled Weinberger's diary notes and activity logs to the Pentagon pending a formal security review. (Letter from Sterlacci to Stansbury, 6/12/92, 019316.)

Weinberger's notes proved to be an invaluable contemporaneous record of the views and activities of the highest officials regarding those sales.⁹⁴ They revealed, among other things, that contrary to his sworn testimony, Weinberger knew in advance that U.S. arms were to be shipped to Iran through Israel in November 1985 without congressional notification, in an effort to obtain the release of U.S.

hostages, and that Israel expected the United States to replenish the weapons Israel shipped to Iran. Weinberger's notes also disclosed that, contrary to his sworn testimony, he knew that Saudi Arabia was secretly providing \$25 million in assistance to the contras during a ban on U.S. aid.

94 During his interview with the Tower Commission, Weinberger lamented the fact that there were not "accurate minutes taken of all [NSC and NSPG] meetings." (Weinberger, Tower Commission Interview, 1/14/87, pp. 43-44.) He conceded that someone might have taken notes of the relevant meetings but said, "I don't know of any." (Ibid., p. 46.) Weinberger recommended strongly that accurate records be kept of such meetings in the future to show "who said what to whom and when." (Ibid., pp. 44, 46.)

Investigation, Indictment and Pretrial Proceedings in United States v. Weinberger

By late January 1992, Weinberger's conduct had become a focus of the OIC's investigation.⁹⁵

95 In the course of the Weinberger investigation, the OIC requested and reviewed numerous DoD documents relating to the Iran arms sales and DoD's document-production efforts, and questioned more than 25 witnesses in interviews and in the Grand Jury. The central witnesses included Weinberger's personal secretaries at DoD, Kay D. Leisz and Thelma Stubbs Smith; former DoD General Counsel H. Lawrence Garrett III; former DoD Assistant General Counsel Edward J. Shapiro; former DoD officials Richard L. Armitage and William H. Taft IV; General Colin L. Powell; and Library of Congress personnel.

On March 30, 1992, the OIC notified Weinberger that he was a target of a federal Grand Jury investigation of possible crimes, including obstruction, false statements and perjury. Independent Counsel invited Weinberger's voluntary testimony before the Grand Jury. Although Weinberger ultimately declined to appear before the Grand Jury or make any statements before an FBI Agent, he did, at his request, make his own presentation to Independent Counsel and other OIC attorneys on May 12, 1992. In addition, in extended efforts to resolve the matter, OIC attorneys met frequently and at length over a 10-week period with Weinberger's counsel.⁹⁶

96 Independent Counsel recognized that Weinberger had a distinguished public career and that he had strongly opposed the Iran arms sales. OIC representatives met with Weinberger's attorneys on at least 12 separate occasions between April 1 and May 13, 1992. After Weinberger's counsel requested additional time to work with their client, Independent Counsel agreed not to present a proposed indictment to the special Iran/contra Grand Jury whose two-year term expired on May 15, 1992. Independent Counsel met with Weinberger's attorneys on June 2, 1992, to permit a final presentation by them. Subsequently an indictment was presented to and returned by a different Grand Jury.

In the course of these discussions, Independent Counsel asked Weinberger to provide complete and truthful information on a range of topics, including positions that Reagan Administration officials took before Congress and the public in November 1986. Weinberger and his counsel insisted, however, that Weinberger had no information to provide that went beyond his previous statements. Weinberger and his counsel claimed that Weinberger had never associated his diary notes with Iran/contra document requests because his note-taking was as habitual and unconscious as brushing his teeth. They also claimed that none of Weinberger's aides had asked him to produce his notes. Weinberger denied present knowledge of the information recorded in his handwritten diary and meeting notes and would not acknowledge the inconsistencies between his notes and his testimony. In an effort to demonstrate that Weinberger lacked criminal intent, his attorneys also submitted to the OIC a report of a private polygraph examination of Weinberger and a psychologist's report regarding Weinberger's memory. Both concluded that Weinberger had not intentionally concealed his notes from Congress or the OIC.⁹⁷

97 The polygraph report concluded that no deception was indicated when Weinberger denied having intentionally misled or lied to Iran/contra investigators about his diary notes, denied having

deliberately withheld his diary notes, and denied misleading investigators about his knowledge of arms transfers to Iran from August through November 1985. (Polygraph Examination Report, 5/5/92, ALZ 0046855-56.) The psychologist's report concluded that Weinberger's note-taking was so "routine, compulsive and habitual" that it was not "stored in memory for easy retrieval" and that the questioning of Weinberger "lacked sufficient specificity" to trigger a recollection of his notes. (Letter from Fishburne to Bennett, 6/1/92, pp. 3-4, ALZ 0047613-14.) Although Fishburne apparently reviewed Weinberger's congressional deposition, in which Weinberger was questioned about his note-taking (Ibid., p. 1), he did not review other evidence the Government would have used at trial to show Weinberger's consciousness of his notes.

The district court later ruled that neither the polygraph examination result nor expert testimony on memory could be admitted at trial. (Memorandum Opinion and Pretrial Order No. 15, *United States v. Weinberger*, Crim. No. 92-0235-TFH (D.D.C. Dec. 21, 1992).)

The OIC found Weinberger's presentations unconvincing. Independent Counsel thereafter presented an indictment to the Grand Jury, which was returned on June 16, 1992.

The indictment contained five felony counts charging Weinberger with:

- Count One, obstruction of a congressional investigation by concealing and withholding relevant notes;
- Count Two, making false statements to Congress regarding his knowledge of Saudi Arabia's funding of the contras;
- Count Three, perjury before Congress about his knowledge of the planned shipment of HAWK missiles to Iran in November 1985;
- Count Four, perjury before Congress about his knowledge of the issue of replenishing missiles that Israel had shipped to Iran; and
- Count Five, false statements to the Office of Independent Counsel and the FBI regarding his note-taking.⁹⁸

⁹⁸ Indictment, *United States v. Caspar W. Weinberger*, Criminal No. 92-0235-TFH (D.D.C. June 16, 1992).

Weinberger was arraigned on June 19, 1992, and pleaded not guilty to all charges. The case was ultimately set for trial on January 5, 1993. Hearings to resolve classified information issues under the Classified Information Procedures Act (CIPA) were scheduled for December 7, 1992, with a November 2 deadline for the Government to produce the documents it intended to use in its case-in-chief.

On September 29, 1992, the district court granted Weinberger's motion to dismiss Count One.⁹⁹ The court held that Count One, in effect, charged Weinberger with lying to Congress, which did not constitute obstruction under the decision in *United States v. Poindexter*.¹⁰⁰ Rather than appeal the district court's decision, Independent Counsel sought a new indictment charging Weinberger under 18 U.S.C. 1001 with the same false statements to Congress that had been alleged in the original Count One. The new indictment was returned on October 30, 1992.¹⁰¹ On December 11, 1992, the district court granted Weinberger's motion to dismiss the new indictment on statute-of-limitation grounds.¹⁰² On December 24, 1992, President Bush pardoned Weinberger. At the time of President Bush's pardon, Independent Counsel had not yet decided whether to appeal the district court's ruling.

⁹⁹ Memorandum Opinion and Pretrial Order No. 6, *United States v. Weinberger*, Crim. No. 92-0235-TFH, pp. 4-5 (D.D.C. Sept. 29, 1992).

100 951 F.2d 369 (D.C. Cir. 1991), cert. denied, 113 S. Ct. 656 (1992). The obstruction statute outlaws, among other things, "corruptly" "obstruct[ing]" or "imped[ing]" a congressional inquiry. (18 U.S.C. 1505.) The Court of Appeals held in *Poindexter* that the term "corruptly" implies that a defendant must cause another knowingly to violate a legal duty and found that the term was therefore unconstitutionally vague as applied to a defendant charged with lying to Congress himself rather than causing another to do so. (951 F.2d at 379, 385-86.)

The OIC had argued that *Poindexter* did not preclude the obstruction charge against Weinberger because the indictment alleged that Weinberger had obstructed Congress not merely by lying but also by withholding and concealing his relevant notes. The *Poindexter* decision left open the possibility that concealing or destroying documents could be considered analogous to causing a witness to lie or withhold testimony and therefore would satisfy the court's interpretation of the term "corruptly." (Ibid. at 384, citing *United States v. Walasek*, 527 F.2d 676, 679 & n.11 (3d Cir. 1975); cf. *United States v. Rasheed*, 663 F.2d 843, 852 (9th Cir. 1981), cert. denied, 454 U.S. 1157 (1982)).

101 Indictment, *United States v. Caspar W. Weinberger*, Criminal No. 92-0416-TFH (D.D.C. Oct. 30, 1992). Weinberger had moved on August 3, 1992, to disqualify Deputy Independent Counsel Craig A. Gillen from trying the case on the ground that Gillen was a witness to Weinberger's October 10, 1990, interview. Gillen withdrew voluntarily from the case on October 9, 1992, following the District Court's preliminary ruling on this issue. Substitute trial counsel James J. Brosnahan was appointed on October 15, 1992. Brosnahan would have tried the case with Associate Counsel John Q. Barrett, George C. Harris, and Christina A. Spaulding.

102 Memorandum Opinion and Pretrial Order No. 12, *United States v. Weinberger*, Crim. No. 92-0235-TFH (D.D.C. Dec. 11, 1992). Although the charged statement was beyond the five-year statute of limitations, 18 U.S.C. 3288 provides that when a count is dismissed for "any reason" after the statute of limitations has run, the prosecution may bring a new indictment based upon the same facts within six months of the dismissal. To be proper under section 3288, the new indictment must be based on "essentially the same facts as those alleged in the old indictment" so that the defendant is on notice, within the statute of limitations, of the basis for the new charges. (Pretrial Order No. 12, at 4 quoting *United States v. George*, 1992 U.S. Dist. LEXIS 9618 (D.D.C. July 8, 1992).)

The District Court acknowledged that, under this standard, Weinberger "clearly had notice of the factual basis for the charges" in the new indictment. (Ibid.) The court expressed "concern" that the specific statements alleged to be false had not been underlined in the first indictment but did not find this point dispositive. (Ibid., pp. 4, 6.) Rather, the court went on to hold that even though the new indictment was premised on the same facts as the first indictment, it impermissibly broadened the original charges because the obstruction statute, as construed in *Poindexter*, does not include false statements. (Ibid., pp. 5-6.)

The Government's Case Against Weinberger

The Government's trial evidence would have demonstrated that, contrary to the impression created by his false testimony before Congress, Weinberger was a knowing participant in the initiative to send arms to Iran in return for the release of Americans held hostage in Lebanon. In the summer of 1985, Weinberger knew of President Reagan's decision to authorize Israel to send missiles to Iran and his commitment to replenish Israel's missile stocks. Beginning in late September 1985 and continuing through the end of 1986, Weinberger also received a sizeable quantity of highly classified intelligence reports regarding the Iran initiative.¹⁰³ These intelligence reports provided detailed information regarding the pricing and delivery of missiles sold to Iran and the release of American hostages in Lebanon. In particular, in very late November and early December 1985, the reports revealed that HAWK missiles were shipped to Iran from Israel in connection with hostage-recovery efforts.

103 In his testimony before congressional committees, Weinberger falsely claimed that he had been cut off "to a large extent" from this intelligence until shortly before December 7, 1985, when he first received one of these reports. (Weinberger, SSCI Testimony, 12/17/86, pp. 6-9, 51; Weinberger, HPSCI Testimony, 12/18/86, pp. 39-41; Weinberger, Select Committees Testimony, 7/31/87, pp. 92-94.)

The Government's evidence also would have shown that Weinberger deliberately concealed from Iran/contra investigators his diary and meeting notes, which would have demonstrated the falsity of his testimony.

For simplicity of discussing the evidence supporting the individual counts, this Report begins with the evidence proving the falsity of Weinberger's denial of the existence of his notes, which was charged in the original Count One and Count Five. Because Count One was dismissed, this discussion begins with Count Five.

Count Five: Weinberger's Denial of the Existence of His Notes

Count Five charged Weinberger with making false statements in the October 10, 1990, interview with members of Independent Counsel's staff and a special agent of the FBI. Weinberger's attorney had been advised beforehand that the purpose of the interview was to discuss Weinberger's notes, and Weinberger brought to the interview a memorandum from his personal secretary that addressed this very issue. During the interview, Weinberger was asked repeatedly, in several different ways, about his note-taking practices. He insisted that he rarely took notes; that, as a rule, he did not take any notes when he met with the President or other Cabinet members; and that he specifically did not take any notes during meetings concerning the Iran arms sales. Weinberger also stated that he did not make a record of his meetings when he returned to the Pentagon and did not take notes of telephone conversations. He stated that he had always followed President Reagan's instructions to turn everything over to Iran/contra investigators and said that he was not aware of any relevant notes that had not been turned over. He insisted he had not deliberately withheld anything from Iran/contra investigators.¹⁰⁴

¹⁰⁴ Weinberger, FBI 302, 10/10/90. Weinberger later claimed that he believed the OIC was inquiring only about notes he took during meetings and therefore did not understand the questions to include his diary notes. (Weinberger Interview, ABC "This Week with David Brinkley," 12/27/92, NEXIS Tr. at 12). This explanation is disingenuous, because Weinberger stated in his October 10, 1990, interview that he very rarely took notes during meetings -- which was, in itself, false -- and also denied that he made any other record of meetings when he returned to his office or that he took notes of telephone conversations. In fact, Weinberger's diary notes consist primarily of notes of telephone conversations and of meetings, made after the fact.

To establish the deliberate falsity of Weinberger's statements, the Government would have proved at trial that (1) Weinberger maintained voluminous notes of meetings and phone calls, many of which were relevant to Iran/contra; (2) Weinberger knew in 1987 of congressional requests for his notes and diaries but produced none of them, and went so far as to lie under oath to conceal their existence from congressional investigators; ¹⁰⁵ and (3) on his retirement as secretary of defense, Weinberger privately deposited his notes in the Library of Congress where no one could see them without his permission.

¹⁰⁵ Weinberger filed a motion in limine on December 14, 1992, seeking to prevent the Government from introducing at trial any evidence regarding the Select Committees' requests for Weinberger's notes and diaries. The Government opposed this motion on the ground that evidence that Weinberger had deliberately concealed his notes from Congress was admissible as intrinsic evidence of the falsity of his statements to the OIC and as extrinsic evidence under Federal Rule of Evidence 404(b) to show Weinberger's motive to lie to the OIC. The district court had not yet ruled on the motion at the time of the pardon.

Weinberger's Note-Taking Practices

Throughout his career, Weinberger regularly took detailed notes, primarily in pencil, of his daily activities, including summaries of his meetings and telephone conversations. While secretary of defense, Weinberger took more than 7,000 pages of these daily "diary notes" on 5" x 7" government-issue note pads.¹⁰⁶ He took nearly 1,700 pages of such notes in 1985 and 1986 alone. During the same period, Weinberger compiled hundreds of pages of notes taken during White House and Cabinet meetings. More than 150 pages of these diary and meeting notes contain information relevant to Iran/contra, including information that contradicts Weinberger's sworn testimony concerning his knowledge of the Iran arms sales and of Saudi Arabian contributions to the contras.

¹⁰⁶ The term "diary notes" was adopted by the Library of Congress archivists to describe Weinberger's daily notes. Although Weinberger apparently referred to these documents as his "telephone logs," (Leisz, Grand Jury, 3/6/92, pp. 34-35), this report uses the Library of Congress terminology.

According to General Powell, who served as Weinberger's senior military assistant from July 1983 to March 1986, Weinberger kept the 5" x 7" note pads on his desk and jotted down entries throughout the day. Weinberger stored completed note pads in his desk drawer and transferred them to the bedroom attached to his office when the drawer was full.¹⁰⁷ Powell's successor, Admiral Donald S. Jones, said there were "better than one or two linear feet" of papers, bound together with rubber bands, on the shelf in Weinberger's bedroom at DoD.¹⁰⁸ Several witnesses stated that Weinberger intended to use his diary notes to write his memoirs.¹⁰⁹ In 1988, while working on his book *Fighting for Peace*, Weinberger and his research assistant John C. Duncan reviewed some of the Weinberger diary notes that had been deposited at the Library of Congress.¹¹⁰ Duncan recalled that they joked about the illegibility of Weinberger's handwriting. They decided that Weinberger's handwritten notes would be too difficult to use as a source for *Fighting for Peace* but agreed that the notes would be useful when Weinberger wrote a more comprehensive memoir that tracked his daily experiences.¹¹¹

¹⁰⁷ General Powell described Weinberger's note-taking in detail in an affidavit obtained by Weinberger's attorneys before the indictment. (Powell, Affidavit, 4/21/92,

3-4, ALZ 0045089.) Powell also stated that he regarded these notes as Weinberger's personal diaries and expressed the opinion that "it is entirely possible that it would not have occurred to [Weinberger] to associate or link these private notes on the 5 x 7 pads with a governmental request for 'notes' in the context of the Iran-Contra matter." (Ibid.,

3.) On two separate occasions in 1987, however, Powell told congressional Iran/contra investigators that he had no knowledge of Weinberger maintaining a "diary." (Powell, Select Committees Interview Memorandum, 4/20/87, p. 9, AMY 000568; Powell, Select Committees Deposition, 6/19/87, pp. 54-55.) The inconsistencies in Powell's testimony are discussed below.

¹⁰⁸ Jones, FBI 302, 12/22/92, p. 4. On one occasion, Jones noticed that Weinberger was taking notes of their conversation as they were talking. (Ibid.)

¹⁰⁹ Smith, Affidavit, 4/29/92,

5, ALZ 0045122; Leisz, Grand Jury, 3/6/92, p. 35; Duncan, Grand Jury, 3/6/92, pp. 25-26; Taft, FBI 302, 4/8/92, p. 2; accord Weinberger, *Fighting for Peace*, p. 17 (expressing hope to write later book covering on a "day-to-day basis" his seven years as secretary of defense).

Weinberger's 1981 diary notes contain repeated references to discussions with the British scholar and biographer Janet Morgan regarding his "biography + diaries." (Weinberger Diary, 3/16/81, ALZ 0060966; *ibid.*, 3/17/81, ALZ 0060969; *ibid.*, 3/27/81, ALZ 0060995; *ibid.*, 3/30/81, ALZ 0061001;

ibid., 4/4/81, ALZ 0061022; ibid., 4/9/81, ALZ 0061033; ibid., 10/24/81, ALZ 0061542.) Pentagon spokesperson Henry E. Catto, Jr. publicly identified Morgan in February 1982 as a prospective biographer of Weinberger. (DoD News Briefing, 2/2/82, pp. 1-2, ALZ 0070079-80.) Morgan denied in October 1992 that she had ever seen Weinberger's diary notes or discussed the notes with him as a possible basis for a biography or autobiography. (Morgan, FBI 302, 10/12/92, pp. 11-13; Morgan FBI 302, 10/14/92, pp. 2, 8.)

110 Weinberger signed the Manuscript Reading Room register on July 20, 1988. (AOZ 0000036.) Library call slips show that on the same day Duncan checked out boxes 580-85, which contain Weinberger's diary notes from his tenure as secretary of defense. (ALZ 0042861 (7-20-88, call slip); Memorandum from Teichroew to Wigdor, 12/22/92, AOZ 0000183-84 (explaining that 1980-87 diary notes were located in boxes 579-85 in 1988).)

111 Duncan, Grand Jury, 3/6/92, pp. 25-26, 34-35. Fighting for Peace nevertheless contains some references to Weinberger's notes. (See, for example, Weinberger, Fighting for Peace, pp. 96, 381.)

Weinberger also regularly took notes of meetings on White House note pads, on the backs of documents, and on other stray pieces of paper. In addition to his own meeting notes, many of which are identified by typed or handwritten notations made by Weinberger's secretaries, Weinberger saved notes and doodles passed to him by others, which he labeled and dated himself. Some of Weinberger's meeting notes were kept in a "Handwritten Notes" file maintained by his secretaries.¹¹² The remainder, which include most of Weinberger's meeting notes relevant to Iran/contra, were maintained by Weinberger himself in the same manner as his diary notes.

¹¹² See, for example, Smith, Affidavit, 4/29/92, 7, ALZ 0045122-23.

At trial, the Government would have shown that the sheer volume of Weinberger's notes, and the care he took in maintaining them for posterity, belied his contention that his notetaking was so habitual that he never thought of his notes.¹¹³ The Government also would have demonstrated that Weinberger could not have forgotten his notes, having recorded in his diary the very meetings in which he was asked by Iran/contra investigators about his notes or diaries.

¹¹³ Following the summary of a meeting in his diary notes, Weinberger would sometimes cross-reference his meeting notes by indicating parenthetically "see separate memo." (Weinberger Diary, 9/28/84, ALZ 0063118; ibid., 6/24/85, ALZ 0039500; ibid., 10/27/86, ALZ 0040497; ibid., 11/10/86, ALZ 0040525; ibid., 11/12/86, ALZ 0040531; ibid., 11/25/86, ALZ 0040562; ibid., 9/15/87, ALZ 0046894.) These references further demonstrate Weinberger's consciousness of his notes.

Weinberger's Knowledge of Congressional Requests for His Notes and Diaries

Weinberger's notes and other contemporaneous documents show that he knew of the Select Committees' requests for handwritten notes and diaries. Despite his direction to others to cooperate fully with the congressional investigation, Weinberger deliberately withheld his own notes from Congress and falsely denied to congressional investigators that he had contemporaneous notes of meetings and phone calls.¹¹⁴

¹¹⁴ Both the House and Senate Select Committees considered contemporaneous notes to be particularly important to their investigation of Iran/contra. In a statement appended to the Select Committees' report on the Iran/contra investigation, Senators Inouye and Rudman -- the Chairman and Vice Chairman, respectively, of the Senate Select Committee -- praised President Reagan for making excerpts of his personal diaries available to the Select Committees and for instructing other executive branch officials similarly to make all of their relevant records available. Rudman and Inouye noted that administration officials had been asked to disclose personal documents and

remarked that "[t]hose of us who keep diaries appreciate the intensely personal and private nature of the entries we make in such books, confiding our innermost concerns, aspirations and thoughts." (Majority Report, p. 637.)

During Weinberger's March 11, 1987, interview with the staff of the Senate Select Committee, Chief Counsel Arthur L. Liman told him that President Reagan's diary excerpts had been very useful to the Select Committees' investigation and remarked that he hoped to use these diary excerpts at the hearings.¹¹⁵ Weinberger stated that his own record-keeping habits were poor and said that he regretted he did not keep copious records of meetings as Henry Kissinger had done.¹¹⁶ As staff counsel noted in a memorandum of the interview, Weinberger left the clear impression that he did not keep diaries or dictate his thoughts about a day's events.¹¹⁷ When the interview was over, Weinberger made the following entry in his daily diary notes: "2 Senate staff of Special Iran Committee in office -- with Larry Garrett -- re my recollections of Iran events." ¹¹⁸

¹¹⁵ Weinberger, Select Committees Interview Memorandum, 3/11/87, p. 2, AMY 00205.

¹¹⁶ Ibid., pp. 4-5, AMY 00207-8. Weinberger repeated his Kissinger analogy when asked again about notes during his June 17, 1987, congressional deposition. (Weinberger, Select Committees Deposition, 6/17/87, p. 79.)

¹¹⁷ Weinberger, Select Committees Interview Memorandum, 3/11/87, p. 5, AMY 00208.

¹¹⁸ Weinberger Diary, 3/11/87, ALZ 0042242.

The Senate and House Select Committees made formal written requests on April 4 and April 13, 1987, respectively, for Weinberger's notes and diaries.¹¹⁹ The DoD General Counsel's office relayed these requests to DoD officials in a series of internal memoranda. At least one of these -- an April 14 memorandum regarding the Senate Select Committee's document request -- reached Weinberger's desk and was stamped "SEC DEF HAS SEEN APR 20 1987." ¹²⁰

¹¹⁹ Letter from Belnick to Shapiro, 4/4/87, ALZ 0041455-64; Letter from Naughton to Shapiro, 4/13/87, ALT 0001378-79.

¹²⁰ Memorandum from Garrett to Under Secretary of Defense (Policy) [Ikle], Assistant Secretary of Defense (ISA) [Armitage], Assistant General Counsels (OSD), Assistants to the Secretary of Defense, et al., 4/14/87, p. 1, ALZ 0047336-51. Documents were stamped "SEC DEF HAS SEEN," with the date, after Weinberger's secretary removed them from the out box on his desk. (Leisz, Grand Jury, 3/6/92, p. 8.)

A singularly incriminating document is an April 17, 1987, "Action Memorandum" from DoD General Counsel H. Lawrence Garrett III to Weinberger that described the Senate and House requests for notes and diaries.¹²¹ Garrett advised Weinberger:

¹²¹ Action Memorandum from Garrett to Weinberger Re: Document Request from Congressional Select Committee on Iran, 4/17/87, ALZ 0064947-48.

I know you understand the nature of the obligations placed upon us by this request. I understand that these materials, if any such exist, are highly personal and sensitive. Accordingly, I would of course insist that any provision of these materials to the Committees be conducted in as discreet and limited a manner as you wish.

The memorandum further advised Weinberger that Garrett would determine what "the arrangements currently are for the review of any similar records of other top-ranking officials." It concluded by stating that Garrett would "await further information/instructions from" Weinberger. Weinberger

underlined the reference to other officials and wrote a note below: "Larry -- let's have a meeting after you hear what others are doing." 122

122 Ibid. The Garrett memorandum was stamped "SEC DEF HAS SEEN" on June 17, 1987, indicating that Weinberger placed the document in his out box on the same day that he stated falsely in his congressional deposition that he rarely took notes.

The Garrett memorandum discredits any claim that Weinberger's subordinates simply failed to ask him for his notes. In fact, Garrett told Weinberger, specifically and in writing, that Congress had requested his handwritten notes and diaries.¹²³ The memorandum also belies Weinberger's claim that he had no reason to believe that the congressional document requests encompassed personal documents such as his diary notes.¹²⁴ Not only did Garrett tell him that the requests included "highly personal and sensitive" papers, but Weinberger focused specifically on that part of the memorandum in asking Garrett to find out what other officials "are doing." 125

123 Garrett's April 17, 1987, memorandum contradicts his 1992 affidavit, which asserted that he did not discuss with Weinberger "the specific details" of any Iran/contra document request and did not ask Weinberger "about the existence of personal notes or diaries." (Garrett, Affidavit, 4/28/92,

7, 11, ALZ 0045034-36.) Similarly, although Weinberger's senior military assistant at that time, Gen. Gordon Fornell, asserted in an affidavit that he was "unaware of anyone ever asking Secretary Weinberger to produce his informal jottings to any body investigating the Iran-contra affair," Fornell later identified his handwritten initial "F" in the margin of Garrett's April 17, 1987, memorandum to Weinberger, next to the paragraph noting that the House Select Committee "has requested all . . . diaries . . . and handwritten notes kept by you" relating to various topics, including Iran. (Compare Fornell, Affidavit, 4/24/92,

6, ALZ 0045025-26, with Fornell, Grand Jury, 10/28/92, p. 31.)

124 Weinberger, CNN Interview, 12/28/92, NEXIS Transcript p. 6; Weinberger, Fox Morning News Interview, 12/29/92, NEXIS Transcript p. 2.

Weinberger's secretary, Kay Leisz, said she had a general recollection that in connection with the Iran/contra document production "someone" told Weinberger that there was a distinction between "personal" and "official" documents, and it was her "feeling" that personal documents did not have to be produced. (Leisz, OIC Interview, 6/15/92, pp. 26-28.) Neither Weinberger nor his attorneys ever claimed that he had been advised that personal documents did not have to be produced to Iran/contra investigators. Garrett's memorandum reached the opposite conclusion, and he testified that he specifically advised Smith, in Leisz's presence, that the document requests included "personal notes." (Garrett, Grand Jury, 4/22/92, pp. 18-19.) Garrett did not recall giving Weinberger advice to the contrary. (Garrett, Grand Jury, 10/28/92, p. 32.)

125 President Reagan's agreement to allow congressional investigators limited access to his personal diaries was also widely publicized. It also was widely known, at least by the time the congressional hearings were underway, that other Administration officials, including Shultz's executive assistant Charles Hill, had produced some of their relevant, personal notes to congressional investigators.

Weinberger's diary notes indicate that Garrett raised this subject with him again in a meeting on April 21, 1987, after which Weinberger wrote: "Larry Garrett in office -- re demands by Sen -- House Committees for briefings on black programs -- + their demand for my diary[.]" 126

126 Weinberger Diary, 4/21/87, ALZ 0042343. Weinberger's attorneys claimed that this note actually reads "demand for my choices" and refers not to Iran/contra but to some unspecified matter regarding "black programs" that may have been pending before the Senate and House intelligence committees in April 1987. They submitted a report from a private handwriting expert who concluded

that it was "highly probable" that the disputed word was "choices." (Document Examination Report, 5/27/92, ALZ 0047624.) The OIC would have established at trial, based on comparisons to other samples of Weinberger's handwriting, that the disputed word is "diary." The "black programs" mentioned in Weinberger's note refers to an April 1, 1987, request from the staff of the Senate Select Committee for briefings on limited access ("black") programs. (Letter from Saxon to Shapiro, 4/1/87, ALZ 0054812.)

There is also circumstantial evidence that Garrett raised the issue with Weinberger a third time, on April 30, 1987, and may have advised him of the arrangements that had been made for Iran/contra investigators to review President Reagan's diaries. On April 29, 1987, Garrett and Assistant General Counsel Edward J. Shapiro attended a White House meeting of the general counsels' group that coordinated Administration responses to the congressional and OIC Iran/contra investigations. The attorneys discussed the terms on which the Select Committees and the OIC were permitted to review excerpts of President Reagan's personal diaries.¹²⁷ The same day, Garrett sent an "Information Memorandum" to Deputy Secretary of Defense William H. Taft IV regarding "Congressional Request for Excerpts of Relevant Portions of the Diaries of the SecDef." The memorandum advised Taft that "[w]e have been asked again by the senior legal staff of the Senate Select Committee on Iran whether the SecDef keeps diaries. . . ." The memorandum then related to Taft that White House counsel had made transcribed excerpts of President Reagan's diaries available to the Select Committees and the OIC, subject to certain restrictions. The memorandum concluded: "I do not know whether the Secretary keeps a diary, but it is obviously necessary to pursue this." ¹²⁸

¹²⁷ General Counsels' Coordinating Group Meeting Minutes, 4/29/87, ALU 140159-64.

¹²⁸ Memorandum from Garrett to Taft Re: Congressional Request for Excerpts of Relevant Portions of the Diaries of the SecDef, 4/29/87, ALZ 0058007.

Taft recalled that he had told Garrett during the Iran/contra investigation that Weinberger had regularly kept notes during the Nixon Administration, and Taft had advised Garrett to go to Leisz and Weinberger to be sure that, if Weinberger still kept such notes, everything was produced to Iran/contra investigators.¹²⁹ Although Taft could not fix the date of this conversation, Garrett's April 29 memorandum to Taft was stamped "DEP SEC HAS SEEN" on April 30, 1987. On the same day, Weinberger made the following entry in his daily diary notes: "Larry Garrett in office re preparation for Senate House staff interview on Iran hgs -- also re papers to be turned over." ¹³⁰

¹²⁹ Taft, FBI 302, 4/8/92, p. 2; Taft, Grand Jury, 10/28/92, pp. 27-29. Taft said he also advised Garrett that Smith and Leisz would know if Weinberger kept notes. (Taft, FBI 302, 4/8/92, p. 2.) Garrett recalled a conversation in which he told Smith and Leisz that the document requests included personal notes and he was told that Weinberger had no notes. (Garrett, Grand Jury, 4/22/92, pp. 18-19.) Garrett purported not to recall such a conversation with Taft, however.

¹³⁰ Weinberger Diary, 4/30/87, ALZ 0042366.

The day after Garrett's conversation with Weinberger, on May 1, 1987, Mark A. Belnick, executive assistant to the chief counsel of the Senate Select Committee, spoke to Shapiro and recorded in a file memorandum that Shapiro "had been informed by Secretary Weinberger's office" that Weinberger had "no entries in his diaries responsive to [the Senate] requests," and that Weinberger had some "but not many" notes responsive to the requests.¹³¹

¹³¹ Memorandum from Belnick to the File, 5/1/87, AMY 000361 (emphasis added). The House Select Committee continued separately to pursue Weinberger's notes and diaries. On May 22, 1987, Joseph H. Saba, staff counsel to the House Select Committee, wrote to Garrett, noting that the House Committee had received few documents from Weinberger and asking for Weinberger's "diaries, appointment books, records of meetings, and handwritten notes. . . ." The letter further advised that the request "is inclusive of [Weinberger's] personal diary entries made from October 1984 through

1987, pertaining to the Boland Amendment, Iran, Nicaragua, and the Contras." (Letter from Saba to Garrett, 5/22/87, ALZ 0054598-600.)

On June 10, 1987, Saba wrote again to Shapiro, reiterating the House Committee's request for access to Weinberger's calendars and diaries, "and all other schedule-type records of the occurrence of meetings, events, and telephone conversations for the period July 1, 1985, through December 31, 1986." (Letter from Saba to Shapiro, 6/10/87, ALZ 0058754.) According to Weinberger's own diary notes, Gen. Fornell consulted him on June 15, 1987, two days before Weinberger's deposition, about "data on my calendar to be turned over to Jt. Iran Committee[.]" (Weinberger Diary, 6/15/87, ALZ 0042472.) The next day, Weinberger's official calendars and activity logs, but none of his diary or meeting notes, were produced to the House Select Committee. (Letter from Shapiro to Saxon, 6/18/87, ALZ 0055135-36 (enclosing documents produced to House Select Committee on 6/16/87 and memorandum describing documents)).

In his June 17, 1987, congressional deposition Weinberger testified falsely that he rarely made notes of meetings -- either contemporaneously or after the fact -- and had no records that could supplement his memory regarding Iran/contra events.¹³² As he made these statements under oath in his office, Weinberger was sitting only four feet from the desk drawer that contained his diary notes. After the deposition, Weinberger made the following entry in his daily diary notes: "Gave deposition to Senate + House staff members on Joint Iran investigation. -- 10:35 AM -- 1:10 PM Larry Garrett & Mr. Shapiro there." ¹³³ That same day, Weinberger also placed Garrett's April 17, 1987, memorandum regarding the congressional document requests into his out box.¹³⁴

¹³² Weinberger, Select Committees Deposition, 6/17/87, pp. 79-80. Ironically, given Weinberger's subsequent contention that he did not understand his "jottings" to be within the scope of congressional requests for "notes," (Weinberger, CNN Interview, 12/28/92, NEXIS Transcript p. 6), the following exchange occurred during Weinberger's congressional deposition:

Q: Do you ever take notes that are not dictated or make jottings when you get back [from meetings]?

A: Yes, occasionally, but comparatively rarely. I don't know that we kept those in any formal way. I don't think they have been filed or labeled. . . .

Q: If there is any chance there are -- --

A: I think we made this examination and whatever there is is in our so-called C&D, correspondence and directives. They have been asked to paw through everything.

Weinberger, Select Committees Deposition, 6/17/87, pp. 79-80. (emphasis added.) As discussed further below, the Government would have shown at trial that Weinberger was well aware that hundreds of pages of his diary notes and scores of pages of his meeting notes were stored in his desk and office bedroom and were not in the C&D files.

¹³³ Weinberger Diary, 6/17/87, ALZ 0042476.

¹³⁴ Memorandum from Garrett to Weinberger Re: Document Request from congressional Select Committee on Iran, 4/17/87, ALZ 0064947 (stamped "SEC DEF HAS SEEN JUN 17, 1987").

Weinberger's Deposit of His Notes at the Library of Congress

Weinberger personally packed his diary notes as he was preparing to leave office in November 1987. On that day, Roger Sandler, a free-lance photographer, was present to take photos for a magazine profile of Weinberger. These photos show Weinberger handling large stacks of his diary notes, neatly bundled together with binder clips and rubber bands. As Weinberger was taping boxes, he commented on his daily diary notes, and he and Sandler briefly discussed the fact that they both kept

diaries.¹³⁵ Weinberger's diary notes subsequently were transferred to the Library of Congress without being submitted for classification review.¹³⁶

¹³⁵ Sandler, FBI 302, 7/28/92, p. 3.

¹³⁶ Receipt for 99 Unclassified Boxes of Secretary Weinberger's Personal Papers, 4/5/88, attaching Index of 14 Miscellaneous Boxes, including "Telephone Logs 1980; 1981-87," (Grand Jury Exhibit No. 326, 5/8/92.)

Weinberger's meeting notes were transferred from the Pentagon to the Library of Congress in two sets. The "set A" notes arrived at the Library in April 1988 along with Weinberger's 1980-87 diary notes. The set A notes consist of original meeting notes by Weinberger and notes and doodles from others that were labeled and dated by Weinberger.¹³⁷ These notes, which include most of Weinberger's meeting notes relevant to Iran/contra, were kept by Weinberger himself and were not submitted for classification review before being transferred to the Library.¹³⁸

¹³⁷ The index of 14 miscellaneous boxes included in the April 1988 accession also listed one box of "Blank Note Pads; Notes from Meetings." (Ibid.)

¹³⁸ The following evidence indicates that Weinberger maintained the set A notes himself, separately from his secretaries' handwritten notes file: (1) none of the notes is stamped "SecDef Has Seen," indicating that they were never placed in his out box; (2) according to the Library of Congress archivist, these notes were bundled together under handwritten cover notes by Weinberger (ALZ 0040718-19) identifying them as miscellaneous notes of Cabinet and NSC meetings (Teichroew, OIC Deposition, 4/21/92, p. 37); and (3) the notes were not labeled or dated by anyone other than Weinberger. (Compare description of set B notes below.) Like the diary notes, the set A meeting notes are all originals and have no classification markings, even though they contain classified information.

The set A notes contain Weinberger's notes of the most significant Iran/contra meetings, including the December 10, 1985, White House meeting at which arms sales to Iran were discussed, the January 6 and 7, 1986, meetings on the Iran arms sales, a February 11, 1986, "Family Group" lunch meeting at which a schedule of arms transfers and hostage releases was outlined and the November 24, 1986, NSPG meeting regarding the Administration's response to public disclosure of the arms sales.

The "set B" notes, which arrived at the Library in August 1988, consist of copies of Weinberger's notes of other meetings.¹³⁹ Many of the set B notes are identified by typed or handwritten notations made by Weinberger's secretaries at the top of the first page. Unlike the set A notes, the set B notes were individually indexed and reviewed for classified information before they left DoD for the Library of Congress. The index is titled "SECRETARY Weinberger's HANDWRITTEN NOTES" and identifies the source of the notes as "VAULT." ¹⁴⁰ Thelma Stubbs Smith, Weinberger's second personal secretary, described how the handwritten notes file maintained by Weinberger's secretaries (set B) was transferred to the vault in his inner office and that she packed these notes at the end of Weinberger's term, leaving the boxes with Defense Department C&D personnel to transfer to the Library of Congress.¹⁴¹ Boxes containing meeting notes were subsequently sent to the Executive Secretariat where they were copied, sorted and indexed for transmittal to the Library.¹⁴² Thus, contrary to Weinberger's suggestion during his congressional deposition, it appears that none of his meeting notes were stored in Defense Department C&D's files.¹⁴³ Rather, both the set A and set B meeting notes were maintained outside DoD's recordkeeping system until Weinberger left office.

¹³⁹ There is no overlap between the set A and set B meeting notes.

¹⁴⁰ ALZ 0040721 (3 pages) (index to 1985 set B meeting notes); ALZ 0040722 (3 pages) (index to 1986 set B meeting notes); ALZ 0040723 (3 pages) (1985 index showing classified items removed);

ALZ 0040766 (1986 index showing classified items removed). The August 1988 Library of Congress accession included the ``SecDef's Personal Library Vaulted Files (1981-87) and Complete Index." (ALZ 0042825 (8/9/88) (receipt for classified material).)

141 Smith, Affidavit, 4/29/92,

7, 8, 10, ALZ 0045122-24. Smith suggested that the meeting notes listed on the index of 14 miscellaneous boxes included in the April 1988 Library of Congress accession (which contained the set A notes) were from the handwritten notes file in the office vault. (Ibid.,

8.) The circumstantial evidence demonstrates, however, that the set B notes, rather than the set A notes, correspond to the handwritten notes file that Smith recalls packing: (1) only the set B notes were labeled by the secretaries; (2) only the set B notes contain documents stamped ``SEC DEF HAS SEEN," indicating that Smith or Leisz had originally retrieved them from Weinberger's out box; and (3) the set B notes include a cover note by Leisz, attaching a set of notes on the TWA hijacking (ALZ 0060091) and a cover note by Powell to Leisz, attaching another set of notes ``for your file" (ALZ 0060174).

142 Lt. Col. Andrew Krepinevich, who worked in the Executive Secretariat in 1987-88, recalled receiving one or more boxes of material from Weinberger's vault, including a significant number of his handwritten meeting notes, to be processed for transfer to the Library. (Krepinevich, FBI 302, 3/16/92, pp. 2-3.) Krepinevich's description of these notes dovetails with Smith's description of the notes she packed, and the indices that accompanied the set B notes are identical to other indices generated by the Executive Secretariat. Although the OIC was not able to confirm the location of the original notes, Krepinevich said they would have been sent to storage at the National Archives and Records Administration's Washington National Records Center in Suitland, Maryland. (Ibid., p. 3.)

143 Weinberger, Select Committees Deposition, 6/17/87, p. 80. The indices prepared by DoD list individual documents with their C&D-assigned number, which has an X prefix; documents that do not have a C&D number have a blank space next to the X prefix. (See, e.g., DoD 1985 Subject Index A-I, ALZ 0043111-233.) None of the 1985 and 1986 set B meeting notes has a C&D number. ALZ 0040721 (3 pages) (index to 1985 set B meeting notes); ALZ 0040722 (3 pages) (index to 1986 set B meeting notes).

All of Weinberger's diary and meeting notes were deposited with the Manuscript Division of the Library of Congress as Weinberger's private property, under an agreement that provided expressly that no one could have access to Weinberger's papers without his permission.¹⁴⁴ Weinberger's repeated public assertions that his notes were deposited in ``the most public depository in the United States" ¹⁴⁵ are therefore grossly misleading. In fact, Weinberger refused in February 1990 to allow even the General Accounting Office access to the papers when it was attempting to monitor former agency heads' compliance with laws governing the removal of Government records.¹⁴⁶

¹⁴⁴ Agreement of Deposit, 8/7/87, ALZ 0040904-6.

¹⁴⁵ Weinberger, Press Conference, 12/24/92, NEXIS Transcript, p. 39.

¹⁴⁶ General Accounting Office, Federal Records -- Document Removal by Agency Heads Needs Independent Oversight, August 1991, pp. 23-25.

In summary regarding Count Five of the Indictment, the Government would have proven at trial that Weinberger had, since 1987, deliberately concealed his notes from Iran/contra investigators and that his false statements to the OIC in October 1990 were simply a continuation of those efforts. The Government also would have shown that Weinberger's motive for concealing his notes was simple: The notes disclosed that, contrary to his sworn testimony, Weinberger had contemporaneous knowledge of the Reagan Administration's involvement in arms sales to Iran in 1985, which

Weinberger himself had argued at the time was illegal, and that he had greater knowledge of the Iran arms sales in 1986 than he had disclosed in his testimony.

Weinberger's notes also reflect frank and potentially embarrassing exchanges between President Reagan and his advisers, including President Reagan's sweeping rejection of concerns about illegality at the December 7, 1985, meeting. They also record the Administration's efforts in November 1986 to insulate President Reagan from knowledge of the 1985 arms sales to Iran.¹⁴⁷

¹⁴⁷ See, e.g. Weinberger NSPG Meeting Notes, 11/24/86, ALZ 0040669 (20 pages).

Count Two: Weinberger's Denial of His Knowledge of Saudi Arabia's Financial Support for the Contras

Count Two of the Indictment charged Weinberger with making false statements to the Select Committees denying his knowledge that Saudi Arabia had contributed to the support of the Nicaraguan contras at a time when Congress had forbidden the use of appropriated funds for this purpose. One of the chief concerns of the congressional Iran/contra investigations was third-country assistance to the Nicaraguan contras.¹⁴⁸ Weinberger's daily diary notes and other contemporaneous documents reveal that he knew in the spring of 1984 that foreign countries including Saudi Arabia were being solicited to provide funds for the contras, and that he knew in the spring of 1985 that Saudi Arabia was providing \$25 million in assistance to the contras. Yet on June 17, 1987, when he appeared as a witness before the staff of the Select Committees, Weinberger made the following statement under oath:

¹⁴⁸ See, e.g., Majority Report, pp. 15-16, 38-39, 44-47, 63, 69-71, 120-21.

Q: Do you recall learning at some point that the Saudis or some people connected with the Saudis provided funds for the contras?

A: No. I don't have any memory of any contra funding or of anything connected with [the Saudis] that I can remember now.¹⁴⁹

¹⁴⁹ Weinberger, Select Committees Deposition, 6/17/87, p. 74.

The Importance to Weinberger of U.S. Relations With Saudi Arabia and the Survival of the Contras

Weinberger's daily diary notes during his nearly seven years as secretary of defense demonstrate that Saudi Arabia and Nicaragua were foreign policy matters of great concern to him.

During the period 1984-1987, Weinberger's daily diary notes record at least 64 separate contacts with Prince Bandar bin Sultan, the Saudi Ambassador to the United States. These include 16 meetings, mostly private, in Weinberger's office; 150 telephone conversations on 18 separate days; 151 and 10 social events at which both men were present.¹⁵² The subjects of Weinberger's dealings with Bandar, as recorded in Weinberger's daily diary, range from the birth of one of Bandar's children ¹⁵³ to political strategy for handling the revelation of the Iran arms sales,¹⁵⁴ and include discussions of helping Saudi Arabia acquire United States weapon systems.¹⁵⁵

¹⁵⁰ Weinberger Diary, 1/6/84, ALZ 0062780; *ibid.*, 5/21/84, ALZ 0062949; *ibid.*, 6/27/84, ALZ 0063000; *ibid.*, 8/17/84, ALZ 0063062; *ibid.*, 10/9/84, ALZ 0063133; *ibid.*, 11/2/84, ALZ 0063161; *ibid.*, 1/10/85, ALZ 0039233; *ibid.*, 5/1/85, ALZ 0039404; *ibid.*, 6/18/85, ALZ 0039488; *ibid.*, 9/11/85, ALZ 0039648; *ibid.*, 6/2/86, ALZ 0040174; *ibid.*, 10/31/86, ALZ 0040508; *ibid.*, 11/23/86, ALZ 0040556; *ibid.*, 2/9/87, ALZ 0042167; *ibid.*, 6/30/87, ALZ 0042496.

¹⁵¹ *Ibid.*, 2/6/84, ALZ 0062819; *ibid.*, 2/9/84, ALZ 0062826; *ibid.*, 5/20/84, ALZ 0062948; *ibid.*, 6/5/84, ALZ 0062969; *ibid.*, 10/8/84, ALZ 0063131; *ibid.*, 11/5/84, ALZ 0063166; *ibid.*, 7/29/85, ALZ 0039565; *ibid.*, 10/9/85, ALZ 0039713A; *ibid.*, 1/8/86, ALZ 0039887; *ibid.*, 5/15/86, ALZ

0040157; *ibid.*, 6/23/86, ALZ 0040228; *ibid.*, 6/27/86, ALZ 0040243; *ibid.*, 1/6/87, ALZ 0042084; *ibid.*, 5/20/87, ALZ 0042416; *ibid.*, 6/11/87, ALZ 0042462; *ibid.*, 7/23/87, ALZ 0042551; *ibid.*, 7/24/87, ALZ 0042555; *ibid.*, 8/2/87, ALZ 0042574.

152 *Ibid.*, 1/31/84, ALZ 0062811; *ibid.*, 5/6/84, ALZ 0062935; *ibid.*, 9/24/84, ALZ 0063111; *ibid.*, 1/20/85, ALZ 0039248; *ibid.*, 2/13/85, ALZ 0039276; *ibid.*, 12/10/85, ALZ 0039842; *ibid.*, 2/5/86, ALZ 0039948; *ibid.*, 3/4/86, ALZ 0040006D; *ibid.*, 7/1/86, ALZ 0040254; *ibid.*, 4/3/87, ALZ 0042295; *ibid.*, 7/26/87, ALZ 0042559.

153 *Ibid.*, 7/11/87, ALZ 0042520.

154 For example, as the Iran/contra scandal was breaking publicly, Weinberger's diary contains these notes regarding his private meeting with Prince Bandar on Sunday, November 23, 1986:

Prince Bandar in office -- Nancy Reagan --

in a 11/2 hr. talk Friday with him -- he invited President to dinner at his Embassy -- sd [said] she thinks Shultz should go -- that he has been disloyal to the President -- he sd he recommended to her that I be named Secretary of State; that I could negotiate an agreement with Soviets because no one could say I was soft on them -- She feels that very few are being loyal to President + that Shultz should not have gone to Canada Friday + should support President -- She would like Baker to go in as Secretary of Defense!

(*Ibid.*, 11/23/86, ALZ 0040556.)

155 E.g., 5/25/84, ALZ 0062956-57; *ibid.*, 1/8/86, ALZ 0039887; *ibid.*, 5/15/86, ALZ 0040157; *ibid.*, 6/2/86, ALZ 0040174; *ibid.*, 2/9/87, ALZ 0042167; *ibid.*, 6/30/87, ALZ 0042496; *ibid.*, 9/2/87, ALZ 0046865; *ibid.*, 9/26/87, ALZ 0046921.

Weinberger's daily diary similarly records his concern for the Nicaraguan contras and events in Central America. On hundreds of separate occasions during 1985 and 1986, he made daily diary entries about formal meetings within the Administration, telephone calls or private meetings at the Pentagon concerning such things as the latest military and political developments in the region, the prospects for obtaining funding from Congress for the contras, recent trips to Central America by other officials and his own dealings with contra leaders.¹⁵⁶

156 Weinberger's diary does not indicate, however, that he had any awareness of the contra resupply network in Central America or its connection to Oliver North during 1985 and 1986.

Weinberger's congressional testimony and statements regarding Saudi funding for the contras consistently protected the false position taken by the Saudi Arabian Government: total denial of such support. On October 21, 1986, Prince Bandar issued the following press release from the Royal Embassy of Saudi Arabia in Washington, D.C.:

Saudi Ambassador Denies

Nicaraguan Involvement

The Ambassador of Saudi Arabia to the United States today issued the following statement in response to press inquiries.

``Saudi Arabia is not and has not been involved either directly or indirectly in any military or other support activity of any kind for or in connection with any group or groups concerned with Nicaragua." ¹⁵⁷

157 Press Release from Bandar, 10/21/86, ALW 0063258. In 1987, Prince Bandar refused Independent Counsel's request for a personal interview and declined to provide answers to Independent Counsel's interrogatories regarding financial support for the contras. (Letter from Bandar to Shultz, 5/1/87, ALW 0063255-57.) In his letter to Secretary of State Shultz communicating this refusal to cooperate, Prince Bandar said that Saudi Arabia's "confidences and commitments, like our friendship, are given for not just the moment but the long run." (Ibid.) Prince Bandar also attached a copy of his October 21, 1986, public statement regarding the contras and asserted that "it would not be appropriate or constructive in a diplomatic or other sense to elaborate further on that clear position." (Ibid.) To Independent Counsel's knowledge, no official representative of the Saudi Kingdom ever admitted publicly that it provided money to the contras during 1984 and 1985.

Weinberger's Knowledge of Saudi Arabia's Support for the Contras

Weinberger's notes and other contemporaneous documents reveal his direct knowledge that Saudi Arabia had agreed to give financial support to the Nicaraguan contras during the period when U.S. funds for the contras were virtually exhausted and Congress had refused to appropriate additional funds.¹⁵⁸

¹⁵⁸ For a more complete discussion of third-country funding for the contras, see McFarlane chapter.

In May 1984, Prince Bandar informed National Security Adviser Robert C. McFarlane that Bandar would provide \$1 million per month to the contras.¹⁵⁹ Weinberger's diary notes show that, on Sunday, May 20, 1984, Prince Bandar asked Weinberger for an appointment.¹⁶⁰ Weinberger's very next diary note states that he

¹⁵⁹ E.g. McFarlane, FBI 302, 4/15/87 (morning session), p. 3 (placing Bandar's announcement in "June 1984"); McFarlane, Select Committees Testimony, 5/11/87, pp. 34-36.

¹⁶⁰ Weinberger Diary, 5/20/84, ALZ 0062948.

Called Bud McFarlane -- re g722agreed f above -- he wants to be sure there's no gap. . . .¹⁶¹

¹⁶¹ Ibid.

Although Weinberger's diary entry regarding his meeting with Prince Bandar shows discussion of topics other than the contras, Weinberger's diary the next day shows that he and McFarlane spoke about U.S. officials soliciting foreign countries to aid "Central America:"

Called Bud McFarlane -- rhc [returned his call] -- he doesn't want [Under Secretary of Defense for Policy Fred] Ikle working to get any Israeli, etc. aid for Cent Am

Called Colin Powell -- re above ¹⁶²

¹⁶² Ibid., 5/22/84, ALZ 0062950.

On June 20, 1984, during a "Contra Money" meeting at the Department of State that was attended by senior Reagan Administration officials,¹⁶³ Weinberger stated his views on ensuring the survival of the contras:

¹⁶³ Charles Hill, the executive assistant to Secretary of State Shultz, took detailed notes during this meeting. Hill's notes indicate that the meeting was attended by Shultz, Weinberger, Ikle AE1, Kirkpatrick, Casey, McMahon, McFarlane, Poindexter and North, among others, and that Shultz, Weinberger, Kirkpatrick and McFarlane had a private meeting after the larger meeting had ended. (Hill Notes, 6/20/84, ANS 0000679-81.)

Don't give up on the Congr chance, altho slim. But plan for other sources for \$. Keep US fingerprints off.

* * *

g008even if Congr turns us down, we g008must not let collapse happen 164

164 Ibid., 6/20/84, ANS 0000680 (emphasis in original). Weinberger's corresponding diary entry is the following: ``Attended meeting w/ Shultz, Jeane Kirkpatrick -- Bill Casey, Bud McFarlane[,] Ikle -- at State -- re funding for Nicaragua -- urged that we tell the Senate to stand fast on their vote despite Speaker's refusal to go along with George's requests for less. + then try to get the best we can in conference." (Weinberger Diary, 6/20/84, ALZ 0062989.)

Weinberger's diary notes also show his knowledge of Saudi Arabia's continuing, and expanded, support for the contras during 1985. On March 13, 1985, Weinberger made the following entries in his daily notes after a private meeting with General John W. Vessey, Jr., Chairman of the Joint Chiefs of Staff:

Jack Vessey in office alone -- after meeting [with others] -- Bandar is giving \$25 million to Contras -
- so all we need is non-lethal aid

Called Bud McFarlane -- out; l.w. [left word]

* * *

Called Bud McFarlane -- passed on to him Jack Vessey's report that Bandar is giving \$25 million to Contras -- + suggested that if so -- we go for covert non-lethal aid of \$14 mil.¹⁶⁵

165 Ibid., 3/13/85, ALZ 0039320B-C.

Weinberger's daily notes indicate that he spoke with McFarlane again the following day about Saudi aid to the contras:

Called Bud McFarlane -- No further news on Saudis gifts to Contras 166

166 Ibid., 3/14/85, ALZ 0039323.

The following morning, March 15, 1985, Weinberger and Deputy Secretary of Defense William Howard Taft IV had their regular Friday breakfast with CIA Director Casey and Deputy Director John N. McMahon. McMahon's memorandum for the record, created that same day, documents the following discussion of the contras, including Saudi support:

Question of the support to the Contras came up. The Director [Casey] noted that we should have another meeting on it but following last week's meeting of the LSG [Legislative Strategy Group] we tended to be leaning towards non-lethal aid. I [McMahon] described the assignment given to [Assistant Secretary of State] Motley to develop different options which could be packaged and then played against Senators Lugar and Durenberger to see what combination of options in a single package might be acceptable to Congress. But I noted at the meeting that there was no agreement that we would be limited to non-lethal aid. The Director [Casey] said that McFarlane was to meet with Lugar and Durenberger today. In closing the Secretary [Weinberger] stated that he had heard that Bandar, Ambassador of Saudi Arabia, had earmarked \$25 million for the contras in \$5 million increments.¹⁶⁷

167 Memorandum for the Record from McMahon, 3/15/85, ER 26,187-88 & ER 92-00116-17.

Credible witnesses corroborated Weinberger's knowledge of Saudi Arabia's support for the contras. General Vessey, who served as Chairman of the Joint Chiefs of Staff until he retired in September 1985, recalled that Bandar informed him on two occasions that the Saudis were funding the contras.¹⁶⁸ On each occasion, Vessey immediately reported Bandar's statements to Weinberger, who responded that he did not want this issue to become public.¹⁶⁹ Vessey recalls that he or Weinberger, during a White House conversation they had with McFarlane, urged McFarlane to support a proposed arms sale to Saudi Arabia because the Saudis were funding the contras.¹⁷⁰ McMahon confirmed two meetings in which Weinberger reported to McMahon and Casey that the Saudis were funding the contras.¹⁷¹ McFarlane recalled a number of discussions with Weinberger regarding the Saudi contributions to the contras during 1984 and 1985. McFarlane testified that in May 1984, he told Weinberger and Shultz that an unnamed foreign country had agreed to "provide for" the contras through the end of the year.¹⁷² McFarlane also recalled Weinberger telling him in spring 1985 that Weinberger had received information that Prince Bandar had given \$25 million to the contras.¹⁷³

¹⁶⁸ Vessey, FBI 302, 6/11/92, pp. 6-7; accord Vessey, Select Committees Deposition, 4/17/87, pp. 5-8 (testimony regarding one occasion when Bandar told Vessey, who then reported to Weinberger, of a contribution to the contras).

¹⁶⁹ Vessey, FBI 302, 6/11/92, p. 7; Vessey, FBI 302, 2/11/87, p. 1.

¹⁷⁰ Vessey, FBI 302, 6/11/92, p. 7; cf. Vessey, Select Committees Deposition, 4/17/87, pp. 8-9 ("... I have wracked my mind trying to think of a conversation with McFarlane. And it seems to me that at one time we came out of a National Security Council or National Security Planning Group meeting in the NSC wing of the White House, and that some conversation with McFarlane took place about the Saudis, about them helping the contras. But I don't recall the substance of it or anything other than it being sort of a casual thing as we went out."). Although General Vessey stated in 1992 that this incident at the White House had occurred after Prince Bandar had informed him for the second time that the Saudis were funding the contras, Vessey also recalled that the subject of his and Weinberger's meeting with McFarlane was a specific classified proposal involving arms sales to the Saudis. (Vessey, FBI 302, 6/11/92, p. 7; see also Classified Appendix.) Based upon Vessey's recollection of the subject matter, contemporaneous records indicate that this conversation occurred on the morning of May 25, 1984, when Vessey accompanied Weinberger to a White House meeting on this subject. (Weinberger Diary, 5/25/84, ALZ 0062956 ("Jack Vessey in office -- wants to go to meeting with President -- also re [Classified Arms Sale Proposal] . . . Attended Meeting in Oval Office -- with President, Bud McFarlane, g722Shultz, Vice President, Shultz, Ed Meese, Baker -- [specific classified weapons systems] OK for Saudi -- ").)

¹⁷¹ McMahon, FBI 302, 5/23/88, p. 4.

¹⁷² McFarlane, Select Committees Testimony, 5/11/87, pp. 38-39; accord generally McFarlane, FBI 302, 4/15/87 (morning session), pp. 3-5; McFarlane, Select Committees Testimony, 5/12/87, p. 133. This probably occurred on May 24, 1984. Weinberger's diary notes indicate that he, McFarlane and Shultz discussed a classified arms sale proposal to Saudi Arabia that was pending at that time. (Weinberger Diary, 5/24/84, ALZ 0062955 ("Breakfast with Bud McFarlane, Shultz, Rich Armitage -- etc -- at State -- re [Classified Arms Sale Proposal] for Saudi"); see also Classified Appendix.) Other evidence indicates that Prince Bandar made his decision to support the contras in the second half of May 1984.

¹⁷³ McFarlane, FBI 302, 3/10/87, p. 10; McFarlane, FBI 302, 4/15/87 (morning session), p. 5; accord Weinberger Diary, 3/13/85, ALZ 0039320C.

Throughout the 1987 period when Weinberger was testifying that he had no recollection that the Saudis had supported the contras, specific events continued to give Weinberger vivid reminders on that very subject. On January 14, 1987, for example, a reporter drew an angry response when he publicly confronted Weinberger, who denied knowing about Saudi aid to the contras.¹⁷⁴ Similarly,

Vessey told Weinberger on February 11, 1987, that he had just told an FBI Agent of his conversations with Bandar and Weinberger about Saudi aid to the contras. Weinberger replied that he had forgotten about the conversations but agreed with Vessey's recollection.¹⁷⁵ Weinberger recorded this meeting in his daily diary as follows:

¹⁷⁴ Ibid., 1/14/87, ALZ 0042107.

¹⁷⁵ Vessey, FBI 302, 6/11/92, p. 8.

Jack Vessey in office -- he remembers telling McFarlane about Saudi claim they had sent funds to contras -- also he has been asked to do a mission to Hanoi on POW's by Frank [Carlucci] -- OK

Discussed Secretary of Navy vacancy ¹⁷⁶

¹⁷⁶ Weinberger Diary, 2/11/87, ALZ 0042173. Less than three weeks after this meeting with Vessey and their discussion of the information they had received in 1985 regarding Saudi assistance to the contras, Weinberger made a curious diary entry:

Jack Vessey -- re reference to Tower Report to Saudis helping contras -- neither of us know anything about that

(Ibid., 2/27/87, ALZ 0042210.) Weinberger's note appears to refer to McFarlane's written statement, which is quoted in the Tower Commission Report issued the previous day, that he "was separately informed by the Secretary of Defense and General Vessey that the total amount of the contribution [by a "foreign official" (Prince Bandar) to the contras] during 1985 was 25 million." (Report of the President's Special Review Board, 2/26/87, p. C-5.)

When Vessey was confronted with Weinberger's note in 1992, he said that he had no idea what it referred to and denied that he and Weinberger ever agreed to cover up their knowledge of the Saudi contribution. (Vessey, FBI 302, 6/11/92, p. 9.) Vessey also pointed out that he would not have told Weinberger on February 27, 1987, that he (Vessey) had no knowledge of the Saudi contribution because he had told the FBI, and then Weinberger, exactly the opposite only a few weeks earlier. (Ibid.)

Weinberger's Previous False Testimony Regarding the Saudi Contribution

As early as the summer of 1986 Weinberger concealed from Congress his knowledge of Saudi Arabian support for the contras. On September 4, 1986, in response to a letter of inquiry from Representative Dante B. Fascell, Chairman of the House Committee on Foreign Affairs, Weinberger wrote that he "regarded [a press] allegation of Saudi funding of U.S. assistance to anti-government forces in Nicaragua as so outlandish as to be unworthy of comment from the Department [of Defense]." ¹⁷⁷

¹⁷⁷ Letter from Weinberger to Fascell, 9/4/86, ALZ 012492. The press report that prompted Fascell's letter alleged that a slush fund, built into the Airborne Warning and Control Systems (AWACS) sale to Saudi Arabia, provided funds for the contras. (Ibid.)

Later in 1986, Weinberger continued to conceal his knowledge from Congress. On December 17, 1986, during sworn testimony in closed session before the Senate Select Committee on Intelligence, Weinberger gave the following answers to Sen. Bill Bradley's detailed and persistent questions:

Q: Have you been in any meeting since December -- well, in the last 2 years -- that discussed the funding for the contras outside of a direct congressional act?

A: No. I did spend a lot of time trying to persuade various Members of the Senate and House that the \$100 million was required, and -- --

Q: But outside of -- --

A: Not outside; no, sir. No.

Q: You've had no discussions with any third party about provision of equipment or money to the contras?

A: No, sir.

Q: You've been in no meeting where it was discussed?

A: To get -- from outside assistance?

Q: Uh-huh.

A: No, I don't have any recollection of that. I know that there were a lot of attempts to get aid to the contras, but my efforts were concentrated entirely on trying to get the \$100 million bill passed.

Q: But prior to that, in 1985 or early 1986 you had no discussions with anyone about providing funds or equipment to the contras?

A: I have no recollection of anything of that kind at all, Senator; no. I concentrated, as I said, entirely on the trying to get the Congress to approve the \$100 million appropriation, which I thought then and think now was very necessary.

Q: You were in no meeting in which this was discussed?

A: I don't have any recollection of it, Senator, I really don't; no.¹⁷⁸

¹⁷⁸ Weinberger, SSCI Testimony, 12/17/86, pp. 67-68.

By the time that Independent Counsel had discovered Weinberger's notes and the falsity of his testimony, the five-year statute of limitations had run on this testimony, so it was not, in itself, a basis for prosecution.¹⁷⁹

¹⁷⁹ At Weinberger's trial, evidence of this false testimony would have been admissible under Federal Rule of Evidence 404(b) and on other bases to show the motive and intent for his later lies on the same topic.

In Weinberger's public testimony before the Select Committees on July 31, 1987, his denial of knowledge of Saudi support to the contras was categorical:

Q: . . . Mr. McFarlane testified that in the spring of 1985 there was a large contribution from [Saudi Arabia]. You were asked in your deposition whether you were aware at or about that time of the contribution. Do you recall being aware?

A: No. I was not aware.

Q: Let me just ask you, . . . if you would turn to . . . a memorandum for the record by John McMahon. It is dated March 15, 1985, and on the second page in paragraph 7 it refers to a meeting that you had with Director Casey at or about that time. It indicates, "Question of the support the contras came up." This is reporting on a meeting that had taken place between yourself and Director Casey. The very last line reads, "In closing, the Sec -- " -- meaning the Secretary of Defense -- " -- stated that he had heard that -- " -- I will tell you what is under [the black redaction mark] there is an official [Prince Bandar] -- " -- had earmarked 25 million for the contras in \$5 million increments." Do you have any recollection of seeing -- --

A: Well, I don't really. These were regular breakfast meetings that I had every week with the Director of CIA and they were very free-form discussions and meetings. The Director [Casey] and his Deputy [McMahon] and Mr. Taft and I went to these breakfasts every week and there was a lot of discussion back and forth and reports passed on and this statement that I had heard that, I don't remember saying it, but I did frequently joke with Mr. Casey to the effect that I frequently picked up things from his rival intelligence agency, which was one of the morning radio stations, and I may very well, simply been passing on that kind of report. I don't have any specific memory of it, but John McMahon is a good reporter so he probably heard this statement made.

Q: John McMahon was Deputy Director of the CIA at the time?

A: He was indeed.

Q: But you don't have any recollection of being advised by Mr. McFarlane or -- --

A: No.

Q: -- -- the President or anyone else that there had been such a large contribution from [Saudi Arabia]?

A: No. The reason I am quite sure about it is that we were all making major efforts at that time to get funding for the contras from the Congress and I think probably many of the gentlemen here remember that I made lots of calls in support of various bills and particularly trying to get the \$100 million appropriation which ultimately was voted.¹⁸⁰

¹⁸⁰ Weinberger, Select Committees Testimony, 7/31/87, pp. 133-35. Although Weinberger's attorneys later claimed that this testimony showed that Weinberger did not deny making the statement recorded in McMahon's contemporaneous memorandum, the full transcript demonstrates Weinberger's calculated denial that he knew anything about Saudi assistance to the contras. The core of the testimony was Weinberger's statement that he was "quite sure" that no one had advised him of the Saudi contribution to the contras. The OIC verified the exact phrasing of the questions and Weinberger's answers throughout his testimony from videotape recordings of the Select Committee proceedings.

This testimony in July 1987 simply repeated Weinberger's false testimony from the June 17, 1987, deposition. To avoid unnecessary proliferation it was not included in the indictment as a separate charge.

Count Three: Weinberger's Denial of His Knowledge of the Planned HAWK Missile Shipment in November 1985

Count Three of the Indictment charged Weinberger with perjury for stating falsely under oath that he had no knowledge that the November 1985 HAWK missile shipment to Iran was to take place. Weinberger repeatedly denied to congressional investigators and to the OIC that he had contemporaneous knowledge of the planning for the November 1985 HAWK missile shipment. Yet his daily diary notes demonstrate his detailed and contemporaneous knowledge. Although Weinberger opposed the shipment and warned that it would be illegal under the Arms Export Control Act, his notes indicate that, in furtherance of President Reagan's decision to proceed, Weinberger took steps to identify adequate U.S. HAWK missile inventories to replenish the Israelis.

As the Indictment states, Weinberger was asked directly about the HAWK shipment while testifying under oath before the Select Committees on July 31, 1987:

Mr. Eggleston: The Committee has also received testimony that on that weekend of November 23 and November 24, [1985,] there was a shipment of 18 HAWK missiles from Israel to Iran. This

[exhibit] was a paper that was written immediately prior to that time. Let me just ask you: Did you have any knowledge that that transfer was to take place?

Secretary Weinberger: No, I did not.

But his contemporaneous notes reveal that Weinberger was notified on November 9, 1985, by McFarlane of a new phase in the arms-for-hostages plan. After their conversation, Weinberger made the following note in his diary:

Bud McFarlane . . . wants to start ``negot." exploration with Iranians (+ Israelis) to give Iranians weapons for our hostages -- I objected -- we'll talk later on secure.¹⁸¹

¹⁸¹ Weinberger Diary, 11/9/85, ALZ 0039774.

The next day, after speaking again with McFarlane, Weinberger made this diary note:

Bud McFarlane . . . -- negotiations are with 3 Iranian dissidents who say they want to overthrow government. We'll demand release of all hostages. Then we might give them -- thru Israelis -- Hawks but no Phoenix.¹⁸²

¹⁸² Ibid., 11/10/85, ALZ 0039775.

One week later -- when McFarlane was in Geneva with President Reagan for a summit meeting with Gorbachev, and Weinberger was in Washington -- McFarlane again telephoned Weinberger. Weinberger made a diary note of McFarlane's specific request for 500 HAWK missiles from DoD stocks:

Bud McFarlane fm [from] Geneva -- update on [summit] meetings -- all OK so far -- Also wants us to try to get 500 Hawks for sale to Israel to pass on to Iran for release of 5 hostages Thurs.¹⁸³

¹⁸³ Ibid., 11/19/85, ALZ 0039795.

Weinberger informed Powell of McFarlane's request.¹⁸⁴ Powell promptly obtained the requested information and reported back to Weinberger, who made the following diary note:

¹⁸⁴ Powell, FBI 302, 2/24/92, pp. 7-8.

Colin Powell in office re data on Hawks -- can't be given to Israel or Iran w/o Cong. notification, -- breaking them up into several packages of 28 Hawks to keep each package under \$14 million is a clear violation ¹⁸⁵

¹⁸⁵ Weinberger Diary, 11/19/85, ALZ 0039797.

Weinberger, in turn, relayed Powell's information to McFarlane in Geneva. Weinberger made the following diary entry regarding McFarlane's non-committal response:

Called McFarlane in Geneva -- re above -- he ``thanks me for call" -- ¹⁸⁶

¹⁸⁶ Ibid. Powell later explained, after reviewing this note by Weinberger, that

[t]his is Mr. Weinberger's way of expressing his frustration in dealing with Mr. McFarlane. Mr. McFarlane had a habit of concluding conversations with the statement, ``Thanks for the call." It was also a way of dismissing any concerns that might have been expressed in the call.

So whereas Mr. Weinberger was calling back to Mr. McFarlane to tell him this is illegal, it's a bad idea, you shouldn't be doing this, he was getting back from Mr. McFarlane something along the

lines, ``Thanks for the call," rather than ``I agree" or ``I don't agree." It was just ``Thanks for the call."

So Mr. Weinberger is expressing his anxiety and frustration here that he has given information that should kill this idea right in its crib and instead of getting agreement, he's getting once again a ``Thanks for the call" answer.

I am confident that this way of entering it in his personal notes was a way of expressing his annoyance and frustration that he did not succeed in killing this or he didn't know if he succeeded in killing this.

(Powell, Grand Jury, 4/22/92, p. 62.)

The next day, McFarlane informed Weinberger that, notwithstanding the legal restrictions that Weinberger had identified, President Reagan had decided to approve the proposed HAWK missile shipment to Iran. Weinberger recorded the President's decision in his diary as follows:

Bud McFarlane rmc. [returned my call] fm [from] Geneva (2) -- he hasn't heard of request for logistical support for hostages -- return -- Told him we shouldn't pay Iranians anything -- he sd [said] President has decided to do it thru Israelis.¹⁸⁷

¹⁸⁷ Weinberger Diary, 11/20/85, ALZ 0039799.

Later that day, McFarlane called to give Weinberger the latest details on the planned HAWK missile shipment, which Weinberger again recorded in his diary:

Bud McFarlane fm [from] Geneva -- working on broad agreement language -- Israelis will sell 120 Hawks, older models to Iranians -- Friday [hostage] release

Called Colin Powell -- re above ¹⁸⁸

¹⁸⁸ Ibid., 11/20/85, ALZ 0039801.

On Thursday, November 21, 1985, Weinberger made additional diary entries regarding this arms-for-hostages initiative:

g008In office 720 Am -- 105 Pm

Saw Colin Powell -- full statements of Geneva meetings, agreements, -- etc -- OK -- also re Hawks for Israel-Iran

* * *

Admiral Crowe in office -- re President's decisions at Geneva -- hostage rescue attempts -- ¹⁸⁹

¹⁸⁹ Ibid., 11/21/85, ALZ 0039802-03.

On Saturday, November 23, Weinberger made a diary note of his call from his home to General Powell:

Colin Powell -- . . . no hostage release last night ¹⁹⁰

¹⁹⁰ Ibid., 11/23/85, ALZ 0039806A. This diary note and the subsequent November 25, 1985, diary note showing that Weinberger was watching for a hostage release at the time contradict his assertion, offered for the first time after he was pardoned, that he did not believe McFarlane's statements to him and thus did not ``know" that a shipment of HAWK missiles was to take place.

On Monday, November 25, 1985, Weinberger's diary contains a final note regarding this phase of the Iran arms sales:

Admiral Crowe in office -- . . . also re Iranian g722host held hostages 191

191 Ibid., 11/25/85, ALZ 0039808.

Because Count Three focused on Weinberger's denial of knowledge that the November 1985 HAWK missile shipment to Iran "was to take place," it was not essential to prove his knowledge of the actual shipment. Nevertheless, Weinberger did receive intelligence reports shortly after the shipment confirming that weapons had been shipped to Iran on November 24, 1985. Subsequent intelligence reports, which also were delivered to Weinberger, specified that these weapons had been HAWK missiles.¹⁹²

¹⁹² In his statements to various Iran/contra investigators, Weinberger adamantly denied receiving actual copies of these intelligence reports regarding arms-for-hostages transactions with Iran during 1985-86. (E.g. Weinberger, FBI 302, 12/3/90, p. 3.) Weinberger's statements were contradicted by numerous witnesses, including Powell and Armitage. Independent Counsel was unable to prosecute Weinberger for these false statements because the Executive Branch would not have declassified even Weinberger's statements for inclusion in a proposed indictment, much less the underlying documentary evidence and testimony that would have been necessary to prove the case.

Count Four: Weinberger's Denial of Knowledge of the Replenishment Issue

Count Four charged Weinberger with perjury for stating falsely under oath that he had no knowledge of the "replenishment issue" that was created by Israel's arms shipments to Iran in 1985. The crux of that issue was that Israel wanted the United States to replenish its weapons stocks for missiles it had sent to Iran. On July 31, 1987, in sworn testimony before the Select Committees, Weinberger gave the following false answer:

Q. And in addition there are various documents which are in evidence before the Committee which refer to the Israeli desire and need for replenishment of weapons that the Israelis were sending. Did you know that replenishment was an issue?

A. No, I have no memory of that.¹⁹³

¹⁹³ Weinberger, Select Committees Testimony, 7/31/87, p. 99. As published by the Select Committees, the transcript of Weinberger's testimony erroneously reports the question quoted in the text above as, "Do you know that replenishment was an issue?"

This testimony conformed to Weinberger's previous false statements to Iran/contra investigators regarding Israel's role in arms shipments to Iran.¹⁹⁴

¹⁹⁴ For example, during his December 17, 1986, testimony in closed session before the Senate Select Committee on Intelligence, Weinberger gave the following answer to a question from Senator Cohen:

Q: So to the best of your recollection there was no discussion about the Israelis transferring arms and us possibly resupplying them?

A: Not in my presence; no. I heard about that only much later after these things started to come out and as I say I heard -- only heard that statements were being made, not that that had actually happened.

(Weinberger, SSCI Testimony, 12/17/86, p. 58.) This answer was not the subject of prosecution because the statute of limitations had run before the OIC obtained Weinberger's notes.

Weinberger knew of the replenishment issue throughout 1985 and into 1986. According to McFarlane, he informed Weinberger in July and August 1985 first of Israel's proposal to send arms to Iran to achieve the release of Americans held hostage in Lebanon,¹⁹⁵ and then of President Reagan's decision to approve that proposal, including his agreement to replenish Israel's weapons stocks after shipments to Iran.¹⁹⁶ McFarlane also reminded Weinberger in December 1985 that Israel had shipped TOW missiles to Iran in August and September 1985, and that the United States had to replenish Israel's stocks.¹⁹⁷ From September 1985 through the end of 1986, Weinberger received intelligence reports concerning past and proposed arms shipments to Iran in return for the release of American hostages, including the initial TOW missile shipments and a delivery of HAWKs on November 24, 1985. As discussed above, Weinberger's own notes show that, in November 1985, McFarlane advised Weinberger of President Reagan's decision to provide HAWK missiles to Iran through Israel, and that McFarlane asked Weinberger "to try to get 500 Hawks for sale to Israel to pass on to Iran for release of 5 hostages" ¹⁹⁸

¹⁹⁵ McFarlane, FBI 302, 3/20/92, pp. 5-7; *ibid.*, 12/3/86, pp. 2-3.

¹⁹⁶ *Ibid.*, 3/20/92, pp. 3, 5-6, 9; *ibid.*, 3/13/87, p. 4; *ibid.*, 12/3/86, pp. 2-3.

¹⁹⁷ *Ibid.*, 3/20/92, pp. 19-22; *ibid.*, 3/31/92, pp. 2-3, 5.

¹⁹⁸ Weinberger Diary, 11/19/85, ALZ 0039795.

On Saturday, December 7, 1985, Weinberger attended a meeting at the White House of President Reagan and his senior national security advisers. According to McFarlane, he reviewed the development of the Iran arms sales to that point, including Israel's August-September 1985 TOW missile shipments and the November 1985 HAWK missile shipment.¹⁹⁹

¹⁹⁹ E.g. McFarlane, FBI 302, 3/20/92, pp. 19-22; McFarlane, FBI 302, 3/31/92, p. 3. Shultz, who also attended, told his aides after the meeting that McFarlane and Poindexter had reported that "Israel sent 60 I-hawks for [the] release of Weir" in September 1985. (Hill Note, 12/7/85, ANS 0001242.)

On Tuesday, December 10, 1985, Weinberger attended another meeting at the White House with the President and senior advisers. On the back of his DoD daily press clippings, Weinberger took two full pages of handwritten notes during the meeting, including the following statements by McFarlane:

Bud

Sales of arms only in connection with establishment of better gov't --

Hostages only g722infren indirectly linked

Separate hostage issue --

We tried that + they rejected it

We may lose a hostage this weekend

* * *

g008Options

I accept original plan might lead to disclosure + more hostages

II -- US Raid to release hostages [] in Beirut -- some casualties inevitable

III -- Continue to stand away fm it -- Israeli's will go on delivering weapons + they might get hostages back

IV -- Do nothing

(V -- US deal with Iranians + give up Israeli cover)

covert operation to get arms to overthrow elements

* * *

Bud

[Classified proposed message for Syria]

We still must replace 500 TOWs to Israel

President -- worried about hostages -- let Israelis go ahead with arms sales -- we'll get hostages back --

----- 200

200 Weinberger Meeting Notes, 12/10/85, ALZ 0040644B-45B.

Weinberger's note -- ``We still must replace 500 TOWs to Israel" -- shows that he knew of the replenishment issue that had been created by Israel's 1985 TOW missile shipments to Iran.²⁰¹

201 Other phrases -- the prediction that, if the United States stood away from Iran, the Israelis would ``go on" delivering weapons, and the statement that dealing with Iran directly would require the United States to ``give up" Israeli cover -- also show Weinberger was informed of past missile shipments from Israel to Iran.

In January 1986, after President Reagan had decided to cut out Israel by shipping arms directly from United States stocks to Iran, Weinberger received additional information about the replenishment issue. Koch reported to Weinberger on January 14, 1986, that an Israeli arms procurement official had agreed to postpone, until the hostages had been released, the needed replenishment of the TOW missiles Israel had sent to Iran in 1985.²⁰² At a later point, the CIA asked Powell to increase its order for the purchase of TOWs from DoD stocks by an increment of approximately 500 missiles.²⁰³ Powell understood that the added increment was to replenish an earlier Israeli shipment of TOW missiles to Iran, and he discussed replenishment with Weinberger at that time.²⁰⁴

202 Koch, FBI 302, 4/2/92, pp. 9-10.

203 E.g. Powell, Select Committees Deposition, 6/19/87, pp. 80-81.

204 Powell, Grand Jury, 4/22/92, pp. 93-97; accord generally Powell, FBI Interview Transcript, 12/5/86, ALZ 0047715 (``every step along the way I kept the Secretary [Weinberger] informed as to the progress of this activity"); Powell, OIC Interview Transcript, 11/5/92, pp. 13, 24-25, ALZ 0075329-30 (``I'm sure I discussed it [replenishment] with him [Weinberger]. . . . The only thing I have a recollection of is at some point the issue of replenishment came up and I'm quite confident I

had [a] fairly good memory of having made him aware of it. . . . I'm sure that we discussed the fact at that time that there was a replenishment issue or replenishment problem associated with this deal and it had to be dealt with.").

Independent Counsel's Investigations of DoD Personnel Not Prosecuted

General Colin L. Powell

As Weinberger's senior military assistant from 1983 until March 1986, General Powell was one of the handful of senior DoD officials who were privy to detailed information regarding arms shipments to Iran during 1985 and 1986. When the arms shipments were publicly revealed in late 1986, investigators quickly learned that Powell was a knowledgeable party and interviewed him repeatedly regarding these events.

In 1992, after the OIC discovered Weinberger's voluminous notes and other withheld information, Powell was reinterviewed and gave additional testimony as part of Independent Counsel's investigation of Weinberger. During his February 1992 interview with the OIC, Powell read Weinberger's relevant diary and meeting notes for the first time.²⁰⁵ Powell agreed that Weinberger's notes were accurate and found that they assisted his own recollection and understanding of events.²⁰⁶

²⁰⁵ Powell, FBI 302, 2/24/92, p. 2.

²⁰⁶ E.g. Ibid., pp. 11-12.

Although Independent Counsel conducted no formal investigation at any time of General Powell's conduct or his testimony and regarded him as merely a prospective witness,²⁰⁷ the OIC did thoroughly reevaluate the conduct and prior statements of Powell and other senior DoD officials as part of its investigation of Weinberger and its preparation for his trial. On the basis of this evaluation, Independent Counsel determined that most of Powell's early statements regarding the Iran initiative were forthright and consistent. But some were questionable and seem generally designed to protect Weinberger.²⁰⁸ Because Independent Counsel had no direct evidence that Powell intentionally made false statements, however, these matters were not pursued.

²⁰⁷ On December 9, 1986, prior to Independent Counsel's appointment, the FBI advised the White House, in response to its request for information, that Powell had been interviewed as a witness and was not considered a subject of investigation. (Letter from Clarke to Wallison, 12/9/86 ALU 010963; cf. Weinberger Diary, 12/10/86, ALZ 0040584 ("Saw Frank Carlucci -- . . . Also Frank wants me to call Peter Wallison WH Counsel -- to tell them Colin had no connection with Iran arms sales -- except to carry out President's order. . . . Called Peter Wallison -- Told him Colin Powell had only minimum involvement on Iran").)

²⁰⁸ Powell's statements to congressional investigators in 1987 regarding Weinberger's notes and diary are addressed below in a separate section.

Richard L. Armitage

Armitage served as assistant secretary of defense for International Security Affairs (ISA) from May 1983 until January 1989. As the head of ISA, which frequently is described as the "little Department of State" within DoD, Armitage had responsibility for all DoD programs and political and military relationships outside of NATO Europe.²⁰⁹ During his tenure at the DoD, Armitage became a "major player" within the Pentagon and one of Weinberger's most trusted assistants.²¹⁰ Armitage also was an active figure throughout the executive branch who maintained extensive, daily contacts with key officials at the Department of State, the CIA and the NSC staff.²¹¹

209 Armitage, Grand Jury, 4/29/92, p. 7. In May 1986, Armitage also assumed responsibility for counterterrorism policy, including security assistance, counterintelligence and special forces operations. (Ibid., p. 7.)

210 Armitage typically would see Weinberger every day, and sometimes as often as three to four times a day. (Ibid., p. 9.)

211 Armitage readily admitted that he was "a terrible gossip" and trader of information throughout the Government regarding political, bureaucratic and policy developments. (Ibid., p. 22; accord Armitage, Select Committees Deposition, 7/22/87, p. 145).

From his extensive sources and contacts throughout the Government, Armitage acquired information regarding Israeli and U.S. arms sales to Iran during 1985 and 1986. During the ensuing Iran/contra investigations, Armitage was questioned in detail on numerous occasions.²¹²

212 This section of the report focuses only on Armitage's knowledge and testimony regarding the Iran arms sales. Armitage also acquired direct knowledge of North's contra-support activities. See Abrams chapter.

Armitage's Statements Regarding Israel's 1985 Missile Shipments

In his early testimony, Armitage claimed ignorance of Israel's shipments of TOW missiles to Iran in August and September 1985, and its shipment of HAWK missiles to Iran in November 1985. He testified that he first knew that Israel had transferred missiles to Iran in 1985 when he heard CIA Director Casey testify on November 21, 1986, that the United States had replenished Israel's TOW missile stocks.²¹³ Regarding the November 1985 Israeli HAWK shipment, Armitage testified that although there were rumors and possibly intelligence reports "of some HAWK missiles to Israel [sic]," ²¹⁴ the testimony of Casey on November 21, 1986, "was the first that I really knew of a shipment to Iran." ²¹⁵

213 Armitage, SSCI Testimony, 12/11/86, pp. 58, 70; Armitage, Tower Commission Interview, 12/18/86, pp. 14-15, 33; Armitage, DAIG Interview, 12/24/86, p. 8.

214 Armitage, SSCI Testimony, 12/11/86, p. 43. Armitage subsequently recalled hearing the rumor that the HAWK missiles that went from Israel to Iran were rejected "because they had the Star of David on them." (Armitage, Tower Commission Interview, 12/18/86, p. 32.) He also stated that this information may have been contained in an intelligence report. (Armitage, FBI 302, 1/31/91, pp. 1, 6.)

215 Armitage, SSCI Testimony, 12/11/86, p. 43.

The Tower Commission and Congress asked Armitage about meetings that he had with various principals in the Iran arms shipments. During the first week in December 1985, Armitage met separately with Israeli General Menachem (Mendi) Meron, the director general of Israel's Ministry of Defense, with Lt. Col. Oliver L. North of the NSC staff, and with retired U.S. Air Force Major General Richard V. Secord.

Armitage's records show three separate contacts with Meron in the first week of December 1985.²¹⁶ Armitage's account of these contacts was that they imparted no hard information to him regarding the 1985 Israeli shipments or any information on a pending proposal for Israel to sell additional missiles to Iran. When the Tower Commission asked Armitage about his conversations with Israelis, he stated that

216 On Monday, December 2, they met at 3 p.m. in Armitage's office. (Armitage Meeting Log, 12/2/85, ALZ 016436.) The next day, after Armitage had lunch with North to discuss his activities

relating to Iran, Meron returned to Armitage's office for a late afternoon meeting. (Armitage Meeting Log, 12/3/85, ALZ 016437.) On December 5, Meron called Armitage on the phone. (Armitage Telephone Log, 12/5/85, ALZ 015341.)

[w]hen Mandy Marone [sic -- Mendi Meron] was around as the Director General of the Defense Ministry, I once said to him, I don't know what's going on, but I know you guys are involved, and I hear Iranians are real sleazebags and you shouldn't be involved in this kind of thing, Mandy [sic]. And he, well, other people make decisions. That was it. That's the only discussion I remember having, until after this broke.²¹⁷

²¹⁷ Armitage, Tower Commission Interview, 12/18/86, p. 29.

In deposition testimony to staff members of the Select Committees in 1987, Armitage denied discussing U.S. replenishment of Israeli TOW missiles with Meron.²¹⁸

²¹⁸ Armitage, Select Committees Deposition, 5/26/87, pp. 32-33, 118-19. Armitage agreed that he thought he would remember if he had discussed the replenishment issue with Meron. (Ibid., p. 33.)

North and Armitage met in Armitage's office for lunch on December 3, 1985.²¹⁹ Armitage volunteered in his earliest statement to the FBI that his meeting with North was triggered by his review of intelligence reports in late November 1985 that Iranians were speaking with someone in the White House.²²⁰ Armitage said that based upon the intelligence reports and after discussing his suspicions with Weinberger, Powell and Arnold Raphel of the State Department, he confronted North and asked whether he was part of discussions with Iranians.²²¹ According to Armitage, North responded that he had met with Iranians in Europe and, although North did not mention it, Armitage said he supposed that the meetings dealt with the hostages.²²² Armitage said he also told North that because Weinberger knew nothing about this, "[y]our ass is way out," and Armitage said he urged North to inform all of the principal national security officials.²²³ Armitage said that his reaction seemed to shock North, and that President Reagan called a White House meeting on this topic and invited Weinberger to attend shortly after Armitage's lunch with North.²²⁴

²¹⁹ Armitage Meeting Log, 12/3/85, ALZ 016437 ("1230-1345 Ollie North -- Lunch in office"). North's meeting immediately prior to the Armitage lunch was a meeting with Secord at 11:30 a.m. in North's office. (North Appointment Calendar, 12/3/85, AKW 003914.)

²²⁰ Armitage, FBI 302, 12/10/86, p. 4.

²²¹ Ibid., p. 4. In his congressional testimony the next day, Armitage stated that Weinberger, after reading intelligence reports suggesting that Iranians were contacting U.S. officials through the White House switchboard, had assigned him to find out which officials were talking to the Iranians. (Armitage, SSCI Testimony, 12/11/86, pp. 5, 40.) The next week in his Tower Commission interview, Armitage gave a more active description of Weinberger's role: "the Secretary [Weinberger] had shown me [intelligence] that indicated somebody in the White House, quote, unquote, was meeting with Iranians." (Armitage, Tower Commission Interview, 12/18/86, p. 4.)

²²² Armitage, FBI 302, 12/10/86, p. 4; accord Armitage, SSCI Testimony, 12/11/86, pp. 5, 12-13, 41; Armitage, Tower Commission Interview, 12/18/86, pp. 4-5.

²²³ Armitage, FBI 302, 12/10/86, p. 4; accord Armitage, SSCI Testimony, 12/11/86, pp. 5-7; Armitage, Tower Commission Interview, 12/18/86, pp. 4-5 ("I said to him [North], I don't think my boss knows anything about this. I doubt that Secretary of State Shultz knows anything about [this]. I think your ass is way out on a limb and you best get all the elephants together to discuss this issue.")

²²⁴ Ibid., p. 5.

Armitage's meeting logs indicate that he met with Secord on December 5 and again on December 27, 1985,²²⁵ but Armitage professed in a variety of inconsistent ways to recall nothing about these meetings. During his first FBI interview in December 1986, Armitage said he had last seen Secord "over one year ago" and did not know of any role Secord had played in the Iranian arms initiative.²²⁶ Just eight days after the FBI interview, Armitage told a different story to the Tower Commission: "I found out midway, I would say roughly midway in '86 that Secord in some fashion was working with Ollie [North] on the Iranian side of this." ²²⁷ During his May 1987 congressional deposition, Armitage testified that, although he did not actually recall, "it had to be after -- sometime after February of 1986" when he learned, perhaps from North or from some unidentified "Israelis," that Secord was involved in arms shipments to Iran.²²⁸

²²⁵ Armitage Meeting Log, 12/5/85, ALZ 016439 ("1300 -- Gen Secord"); *ibid.*, 12/27/85, ALZ 016457 (2:50 p.m.).

²²⁶ Armitage, FBI 302, 12/10/86, p. 4; accord Armitage, Tower Commission Interview, 12/18/86, p. 27.

²²⁷ Armitage, Tower Commission Interview, 12/18/86, p. 26.

²²⁸ Armitage, Select Committees Deposition, 5/26/87, pp. 65-67; accord *ibid.*, pp. 83-84.

Armitage's statements regarding his lack of knowledge about the Israeli 1985 TOW and HAWK missile shipments to Iran and the issue of U.S. replenishment of those Israeli missile stocks -- and his claimed failure to recall discussing these topics during his conversations with Meron, North and Secord during the first week of December 1985 -- were significant in two respects. First, they removed Armitage from a list of people who could have provided investigators with important information on the origins of the Iran arms sales and who, among the President's top national security advisers, was witting and involved. Second, by asserting personal ignorance and failure to recall the 1985 shipments, Armitage's testimony neatly dovetailed with and made more credible Weinberger's false statements regarding his own purported ignorance of the Israeli arms shipments.

Armitage's Knowledge of Israel's 1985 Missile Shipments

Armitage claimed that he first learned that Israel had shipped missiles to Iran in 1985 when he heard Casey testify on November 21, 1986, that the United States had replenished Israel's TOW missile stocks. Significant evidence from a variety of sources shows that Armitage's knowledge predated Casey's testimony. For instance, a North notebook entry of November 18, 1986, documents a discussion with Armitage about Israel's 1985 arms shipments to Iran -- three days before Armitage supposedly learned for the first time that such shipments had occurred:

1800

[] Call from Armitage -- g008Lawyers

Israeli shipments in 1985

-- Did we know about it?

-- g722D When did we promise to

replenish the Israelis? 229

229 North Note, 11/18/86, AMX 001696.

Armitage's knowledge about the 1985 Israeli missile shipments went back a year earlier, to his contacts with North, Meron and Secord in the first week of December 1985. During that week, the

Reagan Administration and the Israelis were trying to decide whether to proceed with the Iran arms sales in the wake of the botched shipment of 18 HAWK missiles in late November 1985. The Israelis were concerned about obtaining replenishment for the HAWK missiles and 504 TOW missiles sent to Iran in August and September 1985. Another arms transfer was being contemplated.²³⁰ Among other things, Armitage's task was to prepare briefing materials for Weinberger in advance of a December 7, 1985, White House meeting where the future of the Iran initiative was to be debated.

230 Memorandum by North, "Special Project Re Iran," 12/5/85, ALZ 0041745-52.

The December 2, 1985, Armitage-Meron Meeting

Classified evidence obtained from the Government of Israel, which is set forth in the Classified Appendix to this chapter, and evidence from North and Secord show that during the period Meron met with Armitage, Meron was discussing arms shipments to Iran and Israel's need for replenishment. Secord and North, on separate occasions, directed Meron to discuss these issues with Armitage. According to Secord, when Meron told him during their meeting in Israel in late November 1985 about the previous TOW missile shipments to Iran and the need for replenishment, Secord told him to talk to Armitage and to Lt. Gen. Philip Gast, director of the Defense Security Assistance Agency (DSAA), about getting the missiles replenished.²³¹ Secord's recollection is consistent with North's contemporaneous note of a telephone call he received from Secord on November 26, 1985:

231 Secord, FBI 302, 3/11/92, p. 8.

1230 -- Call from Dick [Secord]

-- Can we supply later serial #s for Hawks?

-- How difficult is it to procure these items.

-- Met w/ D.K. [Kimche] & Mindy [sic] [Meron]

-- Mindy coming to meet w/ Rich [Armitage] & Phil [Gast] 232

232 North Note, 11/26/85, AMX 001911. Secord recalled reporting this information to North. (Secord, FBI 302, 3/11/92, p. 8.)

North, Secord and Meron met on the evening of December 2.²³³ The next night (December 3), North sent Poindexter a lengthy PROFs computer note outlining a program for sending arms to Iran. It mentioned "discussions with Mendy Meron here in Washington which are continuing" and the problem of "replenishing Israeli stocks. . . ." ²³⁴

233 North Note, 12/2/85, AMX 001920 ("Mtg [Meeting] w/ Moron [sic]") (final entry of the day).

234 PROFs Note from North to Poindexter, 12/4/85, AKW 002070-73.

The December 3, 1985, Armitage-North Lunch

On December 3, 1985, North had lunch with Armitage at Armitage's Pentagon office. Armitage's claim that the meeting was triggered by Weinberger's request to check an intelligence report that someone at the White House was meeting with Iranians is simply not true. The one report containing a White House telephone number -- was delivered to Weinberger on October 2 or 3, 1985.²³⁵ By December 3, 1985, North's involvement in dealings with Iran was no mystery to Weinberger. His diary demonstrates that by October 4, 1985, he knew that North was involved in negotiations with Iranians.²³⁶

235 Intelligence Report, 10/2/85, AMW 0001955-57; accord Weinberger Diary, 10/3/85, ALZ 0039703.

236 Weinberger Diary, 10/4/85, ALZ 0039704 ("Breakfast with Bill Casey + John McMahon + Will Taft -- re Israeli bombing of Tunis -- + UN resolution; Ollie North's negot. with Iranians -- Told them g008no US arms to be sold or given to Iran.").

There is strong circumstantial evidence that the discussion topics at the luncheon were past Israeli arms shipments to Iran, proposals for future shipments and the issue of replenishing Israeli missile stocks. Secord had just completed meetings in Israel with Meron and Kimche regarding replenishment and had mentioned Armitage as the DoD contact on that issue. Meron had discussed the Israeli missile shipments and the need for replenishment with Armitage the previous day. At their meeting the night before, North, Meron and Secord had also discussed replenishment.²³⁷

237 State of Israel, The Iranian Transactions -- A Historical Chronology, Part One, 7/29/87, p. 54, AOW 0000067, as released in Majority Report, pp. 194, 210 n. 11.

Independent Counsel was unable to obtain a dispositive account of the Armitage-North luncheon. Arnold Raphel, the deputy assistant secretary of state with whom Armitage regularly discussed the Iran initiative, took notes of a telephone call he received from Armitage immediately following the lunch with North.²³⁸ But Raphel died in 1988. Powell, who spoke to Armitage by telephone from Brussels, Belgium, during or immediately following Armitage's lunch with North,²³⁹ recalled nothing more than Armitage's account of the lunch.²⁴⁰

238 Armitage Telephone Log, 12/3/85, ALZ 015337 (Armitage called and spoke to Raphel at 2:05 p.m.). Raphel's handwritten notes contain the following:

- g008Ollie
- Scapegoat if it goes wrong
- Iranians are sleazeballs
- Ollie -- we've lost little
- Bud should get them all together + brief --

(Raphel Note, 12/3/85, ALW 0062382.) Raphel's 1987 typed narration of his notes identified Armitage as the source of Raphel's information:

December 3 -- Assistant Secretary Armitage told me that Col. North had said that he would be made the scapegoat if the operation goes wrong, but that we have lost little by trying. Reportedly, Col. North added that the Iranians involved are disreputable. Mr. Armitage said he suggested to Col. North that Mr. McFarlane should get all the principals together to brief on the operation.

(Raphel Chronology, 1987, p. 2, ALW 0056727.)

239 Armitage Telephone Log, 12/3/85, ALZ 015337 (Armitage takes incoming call from Powell at 12:45 p.m.).

240 Powell, Grand Jury, 4/22/92, pp. 84-85.

The December 5, 1985, Armitage-Secord Meeting

Armitage said he had no recollection of a meeting with Secord in December 1985 although his own meeting log indicated they met twice in that month. Raphel's notes, which do not identify the source

of the information, contain a contemporaneous report on Armitage's meeting with Secord:

-- Secord involved

Mtg. w/ Pres. -- 1000 Sat -- w/ Pres. + arms if: --

1 -- no more terrorism

2 -- moderate govt in Tehan Tehran

3 -- Iran wins war

4 -- hostages released 241

241 Raphael Note, 12/5/85, ALW 0062388. Although Raphael spoke to Armitage on a daily basis, he was not questioned about this note because Independent Counsel did not acquire it until after Raphael's death in 1988.

In the preceding weeks, Secord had been operationally involved in the shipment of 18 HAWK missiles from Israel to Iran. He had returned to the United States shortly before his meeting with Armitage.²⁴² Secord called Armitage at 11:15 a.m. on December 5.²⁴³

²⁴² North Appointment Calendars, 12/2/85 & 12/3/85, AKW 003914; Memorandum for the Record by Secord, ``Meeting with O. North in OEB, 4 Dec 1985," AQT 0000050.

²⁴³ Armitage Telephone Log, 12/5/85, ALZ 015341.

In contrast to Armitage's failure to recall the December 5 meeting, Secord never equivocated regarding its substance.²⁴⁴ Secord consistently stated that he went to see Armitage with North's permission ²⁴⁵ after hearing North's report that Weinberger was opposing the arms shipments to Iran.²⁴⁶ Secord thought that he might be able to convince Armitage, with whom he had worked closely in the past, of the need for such an initiative,²⁴⁷ and that Armitage in turn might be able to convince Weinberger.²⁴⁸ Secord recalled that he was unsuccessful: Armitage remained opposed to the Iran arms sales.²⁴⁹

²⁴⁴ See, for example, Secord, OIC Deposition, 3/9/88, p. 99 (``I didn't have any contact with the Defense Department save one meeting with Rich Armitage early on and then another one quite by accident with Noel Koch").

²⁴⁵ Secord, FBI 302, 3/11/92, p. 14.

²⁴⁶ Secord, Grand Jury, 1/25/91, p. 94.

²⁴⁷ Ibid.

²⁴⁸ Secord, FBI 302, 3/11/92, pp. 10, 13.

²⁴⁹ Secord, Grand Jury, 1/25/91, pp. 94-95.

Secord was uncertain about the date of his discussion with Armitage. After reviewing Armitage's meeting log, Secord said that while it was ``quite possible" that he talked to Armitage in December 1985, his logic still suggested the meeting occurred ``later, such as in January or February, 1986. . . ." ²⁵⁰

²⁵⁰ Secord, FBI 302, 3/11/92, p. 11.

It is reasonably clear that North, having heard Armitage's account of Weinberger's opposition to the Iran arms sales during his December 3, 1985, luncheon with Armitage, produced Secord, who was trusted by Armitage, as a means of vouching for the operation.²⁵¹

²⁵¹ Armitage recalled that North invoked Secord's name as part of North's defense for the Iran operation. (Armitage, Tower Commission Interview, 12/18/86, pp. 26-27: "And Ollie told me[,] roughly, when I said ['] this is a bad deal ['] -- it was my usual talking point with Ollie when we were alone -- and he said ['] and Secord's in it[']. . . . His response to me was ['] Dick Secord is really doing the Lord's work and that he's going to get the Medal of Freedom from the President, and he deserves it.[']".)

Armitage's Receipt of North's December 5, 1985, "Special Project re Iran" Paper

There is strong circumstantial evidence that Armitage on December 5 or 6, 1985, received a paper prepared by North containing significant information regarding the 1985 Iran arms sales and proposals for future sales.²⁵² The paper states explicitly that Israel, after receiving a U.S. commitment to sell replacement missiles, shipped 500 [sic] TOW missiles to Iran on September 14, 1985, two days before Reverend Benjamin Weir was released by terrorists in Lebanon. The paper describes a proposal to deliver 3,300 TOW missiles and 50 Improved HAWK missiles from Israel to Iran in exchange for the release of five remaining U.S. citizen hostages plus one French citizen hostage and a cessation of terrorism against U.S. property or personnel. The paper declares, without using Secord's name, that "a U.S. businessman acting privately on behalf of the USG [U.S. Government]" has been negotiating this deal with the Iranians and Israelis. It states that such shipments would "significantly degrade Israeli stockpiles and require very prompt replenishment" by the United States. In an emotional summation, North's paper declares that the U.S. "must make one last try or we will risk condemning some or all of the hostages to death and undergoing a renewed wave of Islamic Jihad terrorism." For this reason alone, North's paper immediately became widely known throughout the Executive Branch.²⁵³

²⁵² Special Project Re Iran, 12/5/85, ALZ 0041745-52. This paper refines a PROFs message that North sent Poindexter on December 4, 1986. (PROFs Note from North to Poindexter, 12/4/85, AKW002070-73.

²⁵³ E.g. Platt Note, 12/5/85, ALW 0036859 ("Message from North to Iran via Israelis[:] Our arms deliveries predicated on following: 1. no more terrorism[:] 2. moderate gov[:] 3. Iran must not lose the war w Iraq[:] 4. Release of hostages."); Ross Note, 12/5/85, ALW 0047062 (noting Raphael's report on "ON [Oliver North] message to Iran;" same four points as Platt note); Hill Note, 12/6/85, ANS 0001236 ("how they will argue [--] NP [Platt]: Ollie [North]: we shd [should] go ahead for long term stratg [strategic] int. [interest] w Iran + if we renege [sic], there will be 4 dead hostg [hostages] + we may have to mount rescue"); Platt Note, 12/6/85, ALW 0036863 ("Arms for Hostages -- Israel has been trading arms for Jews for years. Ship arms. Get 40 Iranian Jews. . . . Meron runs it[.] This specific deal -- Israeli sends Hawks -- Phoenix -- replaced by 3300 I TOWs. Ollie has done memo to Pres [President Reagan] for 10 o clock. -- should go ahead because of longer term strategic benefit -- if we renege will have 4 dead hostages in 10 days -- will have to move"); Hill Note, 12/6/85, ANS 0001238 ("Arma [Armacost] -- Ollie told Iranians that as part of g008Night Owl deal -- They shd give up t'ism [terrorism] [:] -- install moderate govt[:] -- win war w IQ [Iraq] } (!) g008ha ha Ollie is laughable.").

North's paper apparently was the basis of a detailed briefing that Poindexter gave Shultz over secure telephone the afternoon of December 5, 1985. (Hill Note, 12/5/85, ANS 0001228-29 ("3300 TOW. 60 Hawks Emph [Emphasis] is on rel [relations] w post-Kh. [Khomeini] Iran more than on hostages. . . .").) Independent Counsel was not able to determine whether a copy was provided to President Reagan, as Platt's note reports.

If Armitage reviewed North's paper on or about December 5-6, 1985, this would establish the falsity of Armitage's statements that he was unaware until November 1986 of Israel's 1985 arms shipments to Iran and the U.S. commitment to replenish Israel's stocks. If the North paper was used by Armitage as a basis of briefing Weinberger for the December 7, 1985, White House meeting this would have been powerful evidence that Weinberger's professed lack of early knowledge of the 1985 Israeli shipments was false.

There is no question that Armitage and Weinberger received North's December 5, 1985, paper at some point. Armitage placed a copy of the paper in Weinberger's briefing book before the November 10, 1986, meeting of President Reagan and his senior advisers to discuss the Iran arms sales.²⁵⁴ OIC obtained no testimonial evidence as to who delivered the North paper to Armitage or when it was delivered, but circumstantial evidence indicates that Armitage received North's paper on December 5 or 6, 1985: 255

²⁵⁴ During the November 10, 1986, meeting, Weinberger made extensive notes on the backs of the pages of North's December 1985 paper. After the meeting, the briefing book apparently was returned to ISA, "broken down" and refiled. Although Armitage obviously returned this document to the files, it was not produced to Congress or Independent Counsel in 1987. The OIC first located the copy of North's paper with Weinberger's notes when it reviewed a segregated collection of Iran/contra material at ISA in 1992.

²⁵⁵ Armitage's logs show that North placed a telephone call to Armitage's office at 6:50 p.m. on December 5, 1985, but they apparently did not speak. The next morning, North called again and spoke to Armitage at 8:30 a.m. North arrived at Armitage's office at 9:00 a.m., and he called and spoke to Armitage by telephone at 10:05 a.m. (Armitage Telephone Log, 12/5/85, ALZ 015341; *ibid.*, 12/6/85, ALZ 015342; Armitage Meeting Log, 12/6/85, ALZ 016441.) Although no witness explained this series of contacts, the sequence of events suggests that North called Armitage to tell him of the paper, then dropped off a copy at Armitage's office, and then called back an hour later to get Armitage's views after he had read the document.

-- the North paper was closely related to the series of meetings and conversations regarding arms shipments that Armitage had during that week with Meron, North and Secord;

-- because Weinberger and Powell were in Europe until the night of December 6, 1985, Armitage was the senior DoD official at the Pentagon who was familiar with the Iran arms sales; he was the logical person to be informed of the North paper. By his own description, Armitage was the person who was gathering information as part of the effort to prepare Weinberger for the December 7, 1985, White House meeting; 256

²⁵⁶ Armitage, FBI 302, 1/30/92, p. 5.

-- Poindexter briefed Shultz by secure telephone on the substance of North's paper before their December 7, 1985, White House meeting.²⁵⁷ It is unlikely that the NSC staff would brief the Department of State of the proposal but not brief the DoD, which had the missiles.

²⁵⁷ Hill Notes, 12/5/85, ANS 0001228-29.

-- Raphael took these notes during a telephone call from Armitage at 10:05 on December 6, 1985,²⁵⁸ shortly after North's visit to Armitage's office, regarding the substance of North's paper:

²⁵⁸ Armitage, Telephone Log, 12/6/85, ALZ 015342.

-- arms for Jews

-- David Kimche

-- Mendy [Meron]/Ben Josef -- procurement

-- replace g722300 3300 I-TOWs in IDF [Israeli Defense Forces] 259

259 Raphael Note, 12/6/85, ALW 0062391; Raphael Chronology, 1987, p. 2, ALW 0056727.

-- an information paper that Armitage commissioned from DSAA officials Rudd and Gaffney prior to the December 7 meeting refers to a proposal to transfer 50 Improved HAWKs and 3,300 TOWs to Iran 260 -- the exact numbers specified in North's paper; and

260 Prospects for Immediate Shipment of I-HAWK and I-TOW Missiles, ALZ 0058747.

-- North brought a copy of his paper when he met with Israelis in New York City on December 6, 1985, just before North travelled to London to meet with the Iranians and Israelis in connection with the initiative.²⁶¹ It is implausible that North shared the paper with the Israelis but withheld it from Armitage.²⁶²

²⁶¹ State of Israel, The Iranian Transactions -- A Historical Chronology, Part One, 7/29/87, p. 55, AOW 0000068, as released in Majority Report, p. 197.

²⁶² See Classified Appendix.

Armitage made misleading statements regarding his preparation of Weinberger for the December 7, 1985, White House meeting. Armitage told the Tower Commission that he prepared Weinberger for the meeting "orally without any paper trail." ²⁶³ In June 1987, however, the DoD belatedly produced to the Select Committees and to Independent Counsel two December 1985 briefing papers prepared by Rudd and Gaffney regarding missile shipments to Iran. Armitage ultimately stated that he probably provided these papers to Weinberger, or at least gave him an oral briefing from the papers, in preparation for the December 7 White House meeting.²⁶⁴

²⁶³ Armitage, Tower Commission Interview, 12/18/86, p. 5.

²⁶⁴ Armitage, FBI 302, 3/3/92, p. 1; Armitage, Grand Jury, 4/29/92, p. 86.

These papers clearly related to the North proposal. The first of the Rudd-Gaffney papers, a two-page analysis titled "Possibility for Leaks," was created in response to Armitage's request for information on "the legal ramifications of the possible sale of Hawk and TOW missiles, either directly to Iran or as replacement for an Israeli shipment to Iran." ²⁶⁵ Although the "Leaks" paper mentions neither Israel nor Iran by name and does not itemize quantities of missiles or say that missile shipments are planned, it transparently refers to Israel as "the country involved," refers to another "country we do not sell to ourselves" (Iran), speaks of "I-HAWKS in the quantity contemplated" and "the I-TOW quantities," and reports, in its very first line, that "[t]here is no good way to keep this project from ultimately being made public." ²⁶⁶ Rudd specifically recalled providing this paper to Armitage on December 6, 1985.²⁶⁷ Rudd also recalled that Armitage instructed him to retain no copies of the paper, and that he (Rudd) complied.²⁶⁸

²⁶⁵ Rudd, Select Committees Deposition, 6/22/87, p. 3 (joint deposition with Gaffney).

²⁶⁶ Possibility for Leaks, ALZ 004343-44.

²⁶⁷ Rudd, Select Committees Deposition, 6/22/87, pp. 3, 18 (joint deposition with Gaffney).

²⁶⁸ Ibid., pp. 18-19.

The second paper, a one-page analysis titled "Prospects for Immediate Shipment of I-HAWK and I-TOW Missiles," also was created by Rudd, with Gaffney providing some of the information as a

follow-on to his November 1985 point paper regarding HAWK missiles.²⁶⁹ The "Prospects for Immediate Shipment" paper reported that up to 75 I-HAWK missiles, although intended for shipment to the United Arab Emirates, were still being tested in the U.S. and could be shipped elsewhere without impact and quotes a "total package price" of \$22.5 million "for [shipping] 50. . . ." ²⁷⁰ This paper also reported that "the impact on Army of shipping 3,300 I-TOWs immediately would be serious but not intolerable." ²⁷¹ 50 HAWKs and 3,300 TOWs were the quantities and types of missiles in the proposed shipment outlined in North's December 5, 1985, "Special Project Re Iran" paper.

²⁶⁹ Gaffney, Select Committees Deposition, 6/22/87, p. 24 (joint deposition with Rudd). Rudd accepted the logic of Gaffney's account but could not specifically recall the "Prospects for Immediate Shipment" paper. (Ibid., pp. 24-25.)

²⁷⁰ Prospects for Immediate Shipment of I-HAWK and I-TOW Missiles, ALZ 0058747.

²⁷¹ Ibid.

Armitage's false statement to the Tower Commission that he prepared Weinberger for the December 7, 1985, meeting "orally without any paper trail," suggests that the DoD's initial failure to produce the Rudd-Gaffney papers was no accident. Notwithstanding numerous requests from investigators in late 1986 and early 1987, these two papers were not produced to the Select Committees until the weekend of June 20-21, 1987 -- after the Tower Commission had completed its work and after the Select Committees had obtained initial testimony from numerous DoD witnesses, including Weinberger and Armitage.

On June 16, 1987, Gaffney reminded Rudd that they had created a paper for Armitage regarding TOW missiles in early December 1985,²⁷² and that Rudd had promptly delivered this paper to Armitage, who instructed Gaffney to destroy all copies and drafts.²⁷³ During a deposition on the afternoon of June 16, 1987, Select Committee staff members informed Rudd that a 1986 handwritten note by Koch indicated that this "TOW paper [was] locked in RLA [Armitage's] safe, wouldn't let Rudd keep copy." ²⁷⁴ The next day, Rudd discussed the matter with Armitage.²⁷⁵ In Rudd's presence, Armitage pulled a copy of the "Leaks" paper out of his office safe.²⁷⁶ Then DoD provided both the "Leaks" paper and the "Prospects for Immediate Shipment" paper to the Select Committees.²⁷⁷

²⁷² Rudd, Select Committees Deposition, 6/16/87, pp. 25, 36, 40, 45, 48-49.

²⁷³ Gaffney, Select Committees Deposition, 6/16/87, pp. 125, 128-32.

²⁷⁴ Rudd, Select Committees Deposition, 6/16/87, p. 26; Koch Note, AOX 000812.

²⁷⁵ Rudd, Select Committees Deposition, 6/16/87, p. 45 ("I have no idea where it [the TOW paper] is" and have not made any inquiry to Armitage about its existence).

²⁷⁶ Rudd, Select Committee Deposition, 6/22/87, pp. 19-20, 26-28 (joint deposition with Gaffney).

²⁷⁷ Gaffney & Rudd, Select Committees Deposition, 6/22/87, Exhibits 1-2.

Armitage claimed that he had at the outset of the Iran/contra investigations directed his aide, Lincoln P. Bloomfield, Jr., to review Armitage's files and produce all requested, relevant documents.²⁷⁸ Bloomfield corroborated Armitage's account.²⁷⁹ There was no evidence that Armitage and Bloomfield collaborated with anyone else to withhold documents. Independent Counsel could not prove beyond a reasonable doubt that the initial non-production and Armitage's false testimony were deliberate.

²⁷⁸ Armitage, FBI 302, 1/30/92, p. 3.

Individuals Knowledgeable of or Involved in the Production of Weinberger's Notes

Of the chief witnesses interviewed by the OIC about the withholding of Weinberger's notes, four merit separate discussion: (1) H. Lawrence Garrett, III, DoD general counsel during the congressional Iran/contra investigation, (2) General Colin L. Powell, Weinberger's former senior military assistant, (3) Kay D. Leisz, Weinberger's confidential assistant at DoD and in his subsequent legal practice, and (4) Thelma Stubbs Smith, secretary to Weinberger at the DoD.

H. Lawrence Garrett III

Garrett testified in the Grand Jury that he told Weinberger's secretaries, Thelma Stubbs Smith and Kay Leisz, that the Iran/contra document requests included personal notes and that Smith told him Weinberger had no notes.²⁸⁰ Garrett had not personally observed Weinberger taking notes, other than scribbling marginalia on documents during meetings,²⁸¹ and had not seen Weinberger's diary notes until he was shown them by OIC investigators in March 1992.²⁸² When specific Weinberger notes were described to Garrett, he stated that he would have considered them relevant to Iran/contra and said, "[h]ad I known of them at the time, I would have so advised the Secretary." ²⁸³

²⁸⁰ Garrett, Grand Jury, 4/22/92, p. 19 (Garrett indicated to Thelma Stubbs Smith, in the presence of Kay Leisz, "that [the requests] would include personal notes and her [Smith's] response to me was 'I don't believe there are any notes.'"); accord Garrett, Affidavit, 4/28/92,

11, ALZ 00400536.

²⁸¹ Garrett, Affidavit, 4/28/92,

11, ALZ 0045036; Garrett, Grand Jury, 4/22/92, p. 59 (Weinberger's deposition responses "would have been consistent with [Garrett's] belief from the outset, and, as I said, I did not observe the Secretary to be a copious notetaker at all of the meetings that I attended with him so it didn't trouble me. . . .")

²⁸² Garrett, FBI 302, 4/8/92, p. 6; Garrett, Grand Jury, 4/22/92, p. 17; accord *ibid.*, pp. 67-68 (Garrett was not aware that at the time of Weinberger's congressional deposition, Weinberger had "several hundred pages possibly" of notes in his desk).

²⁸³ *Ibid.*, pp. 74-75.

Garrett also implied that the failure to produce Weinberger's notes had been because of Garrett's own lack of vigilance. He asserted on several occasions that he had never asked Weinberger directly whether he had notes or diaries ²⁸⁴ and stated in his affidavit that he was "confident that if [he] or members of [his] staff had asked [Weinberger] specifically whether he kept diary notes, [Weinberger] would have provided them so that any relevant portions" could be produced.²⁸⁵

²⁸⁴ Garrett, Affidavit, 4/28/92,

11, ALZ 0045036 (Garrett "did not personally question Secretary Weinberger about the existence of personal notes or diaries."); accord Garrett, Grand Jury, 4/22/92, pp. 58, 66, 77 (Garrett did not follow up on the inquiries about notes and records raised in Weinberger's congressional deposition.).

²⁸⁵ Garrett, Affidavit, 4/28/92,

11-13, ALZ 0045036-37.

Garrett's April 17, 1987, memorandum to Weinberger and his April 29, 1987, memorandum to Taft - both of which DoD produced after the indictment, despite having been asked for such documents much earlier -- indicate that, contrary to the impression conveyed by his affidavit, Garrett was diligent in attempting to obtain Weinberger's notes and diaries. When Garrett was questioned about these documents, he nevertheless insisted he had no recollection of discussing the production of notes and diaries with either Weinberger or Taft.²⁸⁶

²⁸⁶ Garrett, Grand Jury, 10/28/92, pp. 20-21, 22, 24, 35 (Weinberger); *ibid.*, pp. 10-11 (Taft).

Although Garrett's purported inability to recall anything about his efforts to obtain Weinberger's notes was sufficiently implausible to undermine Garrett's credibility, it would have been difficult to prove beyond a reasonable doubt that Garrett had intentionally perjured himself five years after writing his April 1987 memorandum. The evidence indicated that Garrett was not a witting accomplice in withholding Weinberger's notes from Congress.

Colin L. Powell

Although Powell generally was a cooperative witness, his 1992 statements describing Weinberger's notes in detail and characterizing them as a "personal diary" ²⁸⁷ necessarily raise questions about Powell's 1987 statements to congressional investigators. Powell told the staff of the Senate Select Committee on April 17, 1987, that he did not know whether Weinberger kept a diary.²⁸⁸ During Powell's June 19, 1987 deposition, the following exchange took place:

²⁸⁷ In an affidavit submitted by Weinberger's attorneys, Powell stated that he regarded Weinberger's daily notes as a "personal diary" and thought it "entirely possible" that Weinberger would not have understood these personal notes to be within the scope of congressional or OIC document requests. (Powell, Affidavit, 4/21/92,

3, ALZ 0045089.) Powell's detailed 1992 account of Weinberger's note-taking, while quite helpful to the OIC, was also consistent with a defense strategy to demonstrate that Weinberger was not secretive about his notes. Indeed, Powell, who cooperated extensively with Weinberger's counsel, provided increasingly vivid descriptions of Weinberger's notes as the investigation progressed. (Compare Powell, FBI 302, 2/24/92, p. 2 with Powell, Affidavit, 4/21/92,

3-4, ALZ 0045089 and Powell, Grand Jury, 4/22/92, pp. 19-20, 23.)

²⁸⁸ Powell, Select Committees Interview Memorandum, 4/20/87, p. 9, AMY 000568.

Q: Maybe I should know this, but did the Secretary keep a diary?

A: The Secretary, to my knowledge, did not keep a diary. Whatever notes he kept, I don't know how he uses them or what he does with them.

Q: Did he --

A: He does not have a diary of this ilk, no.

Q: -- did he dictate memos, as some people do, so that if they ever get around to writing their -- a book on the era, they have some aids; they have memoirs?

A: No, the Secretary did not dictate his daily activities, to the best of my knowledge. I've never seen it. He didn't do it and I was with him every day.

Whatever notes he took in the course of a day, I don't know what he did with them.²⁸⁹

289 Powell, Select Committees Deposition, 6/19/87, p. 54-55. Powell's reference to ``a diary of this ilk" may refer to the notebook that Powell began to maintain when he became deputy national security adviser in January 1987. (Powell, Grand Jury, 4/22/92, pp. 14-15.)

In light of his statements in 1992, Powell's 1987 deposition testimony was at least misleading. Although Powell qualified his denial that Weinberger kept a ``diary" by distinguishing that kind of record from ``whatever notes [Weinberger] kept," this oblique reference to Weinberger's notes hardly constituted full disclosure.²⁹⁰ Powell apparently understood that congressional investigators wanted to know whether Weinberger kept contemporaneous records of his daily activities but failed to disclose that Weinberger's notes were a running, daily log of telephone calls and meetings. He also claimed that he did not know what Weinberger did with his notes.²⁹¹

²⁹⁰ As one example of Powell's contemporaneous familiarity with Weinberger's diary notes, Powell actually helped to create Weinberger's daily diary entries for October 10, 1985, the day that U.S. military forces captured the hijackers of the Achille Lauro cruise ship in the Mediterranean. Weinberger, who had been flying from Canada to Maine and made an unscheduled return to Washington as the military action unfolded, apparently was too busy to create his typical log of calls and activities and asked Powell to create a chronology of the day's events for him. Later that day, Powell gave Weinberger a cover note (``Sec Def, Chronologies. Does not include all your calls. VR [very respectfully], CP") and two handwritten pages on which Powell had noted Weinberger's afternoon and evening activities. Weinberger subsequently annotated Powell's entries and filed all three pages with his daily diary notes. Weinberger's accompanying diary entry says ``See attached slips for calls from + to plane." (Weinberger Diary, 10/10/85, ALZ 0039713c-13g.)

²⁹¹ In a trial preparation interview with the OIC in late 1992, by contrast, Powell stated that Weinberger, ``[m]ore often than not," made notes on his 5" x 7" pad while working at his ``stand up desk," and that Weinberger ``put them in his desk on the right side. . . ." (Powell, OIC Interview Transcript, 11/5/92, p. 3, ALZ 0075308.)

Nevertheless, it would have been difficult to prove that his deposition testimony was intentionally false.²⁹² Similarly, there was no direct evidence that Powell and Weinberger colluded to conceal Weinberger's notes from congressional investigators. Thus, while Powell's prior inconsistent statements could have been used to impeach his credibility, they did not warrant prosecution.

²⁹² Powell's vague references to Weinberger's ``notes," as opposed to his ``diary," may have been calculated to avoid giving overtly false testimony while providing as little information as possible.

Kay D. Leisz

Leisz was interviewed by the OIC on February 3, 1992, and appeared before the Grand Jury on March 6 and April 24, 1992. On the latter occasion, Leisz, who had been advised that she was a subject of the Grand Jury's investigation and had retained counsel, invoked the Fifth Amendment. On June 15, 1992, in return for an immunity agreement, Leisz gave a deposition in lieu of a Grand Jury appearance but added little to her prior testimony.

Leisz asserted in an October 1, 1990, memorandum that she had stopped maintaining Weinberger's handwritten meeting notes after his first year as secretary of defense.²⁹³ Leisz later elaborated that she simply left Weinberger's loose meeting notes in his briefing books, which were forwarded to the Correspondence & Directives (C&D) section to be broken down and filed.²⁹⁴

²⁹³ Memorandum from Leisz for the Record, 10/1/90, ALZ 0051360.

²⁹⁴ Leisz, Grand Jury, 3/6/92, p. 16.

Leisz adhered to this story, which Weinberger had echoed in his October 10, 1990, interview, despite overwhelming evidence that it was false.²⁹⁵ For example, Weinberger's other secretary, Thelma Stubbs Smith, stated that she and Leisz had maintained a handwritten-notes file throughout Weinberger's tenure at DoD and that these notes were later transferred from Leisz's safe to the vault in Weinberger's office.²⁹⁶ In addition, Leisz identified her handwritten notations on some of Weinberger's meeting notes from 1985-86.²⁹⁷ Leisz had also referred to "your hand-written notes file" in a 1987 note to Weinberger; ²⁹⁸ another cover note by Leisz identified a collection of Weinberger's notes taken during the TWA hijacking in June 1985; ²⁹⁹ and a 1985 cover note from Powell to Leisz attached a set of Weinberger's meeting notes "For your File." ³⁰⁰ Even when confronted with this evidence, Leisz insisted that she could not recall having maintained a file of Weinberger's handwritten notes after his first year at DoD.³⁰¹

²⁹⁵ Leisz, FBI 302, 2/3/92, p. 2; Leisz, Grand Jury, 3/6/92, pp. 17-18; Leisz, OIC Interview, 6/15/92, p. 14.

²⁹⁶ Smith, Affidavit, 4/29/92,

7, ALZ 0045122-23. Also, as discussed above, none of Weinberger's meeting notes has a C&D file number.

²⁹⁷ Leisz, OIC Interview, 6/15/92, p. 22.

²⁹⁸ Leisz's typed, undated note was attached to Weinberger's notes of the November 10, 1986, White House meeting. Although the context for Leisz's note remains a mystery, she typed "I looked through your hand-written notes file and the only file I keep on dictated notes from meetings. Attached is all we have." (ALZ 0058999.) Leisz's handwritten note at the bottom says "P.S. There are no copies." (Ibid.)

²⁹⁹ Leisz Note, ALZ 0060091 (covering Weinberger notes of 6/15/85, 6/16/85 and 6/24/85).

³⁰⁰ Note from Powell to Leisz, 9/24/85, ALZ 0060174.

³⁰¹ Leisz, Grand Jury, 3/6/92, pp. 42-43, 44 (note to Weinberger); *ibid.*, pp. 47-48, 49 (notes on TWA hijacking); Leisz, OIC Interview, 6/15/92, pp. 20-21 (note from Powell); *ibid.*, p. 22 (Leisz handwriting on meeting notes).

Leisz also insisted that she was unaware of Weinberger's diary notes while at DoD and that she had not heard Weinberger refer to them as his "telephone logs" until she went with him to review the notes at the Library of Congress in December 1991.³⁰² Most other Weinberger aides who had similar daily contact with Weinberger eventually said they had been aware of his diary notes.³⁰³

Leisz's testimony, particularly about the meeting notes, was flagrantly incredible. Although the immunity agreement did not preclude prosecuting Leisz for giving subsequent false testimony in her June 15, 1992, deposition, the OIC determined that pursuing such collateral charges was not an effective use of resources.

³⁰² Leisz, Grand Jury, 3/6/92, pp. 25-26. Weinberger's former senior military assistant, Admiral Donald S. Jones, recalled, however, that one of Weinberger's secretaries (he could not remember if it was Smith or Leisz) had identified papers on the shelf in the bedroom adjacent to Weinberger's office as "Weinberger's notes." (Jones, FBI 302, 12/22/92, p. 4.)

³⁰³ The latter admissions were consistent with the apparent defense strategy to emphasize that Weinberger had made no effort to hide his notes from those around him.

Leisz also testified that when she and Weinberger went to the Library in December 1991 to review the notes the OIC had found there, both she and Weinberger were surprised to find that his diary and

meeting notes were at the Library. (Leisz, Grand Jury, 3/6/92, pp. 31, 34-35.) Leisz said Weinberger had remarked about his diary notes, "these are my telephone logs; I didn't know where they were." (Ibid., p. 35.)

Weinberger's comments are odd given that he and Duncan had looked at the diary notes in the Library in July 1988 and that Weinberger had packed his diary notes and at least some of his meeting notes himself for transfer to the Library. Weinberger's attorneys, who claimed that Weinberger was well aware his diary notes were at the Library when he gave the OIC permission to review his papers there, tried to minimize this episode in a pre-indictment meeting with the OIC, explaining that Weinberger was simply surprised at the way his notes had been neatly archived in individual plastic sleeves.

Thelma Stubbs Smith

In her first interview on March 5, 1992, Smith was shown examples of Weinberger's diary notes and stated that she had never seen them before. Smith also stated that she had seen Weinberger's meeting notes only when Weinberger used them to dictate memoranda, which he did infrequently, and she had thrown the corresponding notes away when a memorandum was completed. Smith further stated that she had no knowledge where any notes Weinberger may have made would have been kept. Smith said she had talked to Leisz before the interview, and Leisz had told her of the OIC's interest in the notes discovered at the Library of Congress.³⁰⁴

³⁰⁴ Smith, FBI 302, 3/5/92, pp. 2, 3.

In Smith's second interview, on April 28, 1992, she was again shown examples of Weinberger's diary notes. This time, she said she had occasionally seen such notes on Weinberger's desk and assumed he intended to use them to write a book. Smith also disclosed, in contradiction to her earlier statement, that she and Leisz maintained a file of Weinberger's handwritten notes in a safe by Leisz's desk.³⁰⁵

³⁰⁵ Smith, FBI 302, 3/23/92, p. 3.

In an affidavit executed the next day for Weinberger's counsel, Smith provided even more detailed information about Weinberger's notes. Smith stated that she had been "aware that Secretary Weinberger kept a pad on his desk on which he scribbled notes reflecting the date, time and other references to telephone calls and meetings." Smith also expanded her description of the handwritten notes file but said she did not believe Weinberger was aware that she and Leisz kept such a file. Smith said she did not recall being asked by anyone to gather "documents" relevant to Iran/contras and said that, even if she had been asked, she "would not have thought of the handwritten notes" because she did not consider them to be "documents." ³⁰⁶

³⁰⁶ Smith Affidavit, 4/29/92,

5, 7, 11, ALZ 0045122-24.

When questioned later before the Grand Jury about the inconsistency in her statements about the diary notes, Smith insisted that she simply had not remembered them when they were shown to her in the first interview.³⁰⁷

³⁰⁷ Smith, Grand Jury, 5/8/92, p. 31. Following Smith's Grand Jury appearance, her attorney wrote an indignant letter to the OIC objecting to the suggestion that his client had shaded her initial statements to the OIC after talking to Leisz. (Letter from Banoun to Baker, 5/8/92, 018977.) Later, Weinberger's counsel attached to a court pleading an affidavit from Smith's husband, alleging that the OIC had deliberately falsified the record of the first interview. (Affidavit of Edwin E. Smith, 12/14/92,

5, attached to Defendant's Memorandum in Opposition to OIC's Motion In Limine to Exclude Extraneous Evidence Concerning the OIC, 12/16/92, 024526.) The FBI agents who conducted the interview each unequivocally denied Mr. Smith's allegations. (Government's Motion to Strike Affidavit of Edwin E. Smith from Defendant's Pleadings, 12/17/92, 024558.)

Smith's statements conflict with Garrett's Grand Jury testimony. Garrett said he told Smith and Leisz specifically that the document requests included "personal notes." 308 If Smith told Garrett in 1987 that Weinberger had no notes, her statement was deliberately false. Because of Garrett's own credibility problems, and the lack of direct proof that Smith had colluded with Weinberger and/or Leisz, the OIC did not charge Smith with complicity in withholding Weinberger's notes.

308 Garrett, Grand Jury, 4/22/92, p. 19. In the affidavit that Weinberger's counsel procured and submitted to the OIC after Garrett's Grand Jury testimony, his account of his conversation with Smith and Leisz is phrased more narrowly: "I do recall that early on in the process I told [Weinberger's] secretaries that a document request had been received and asked them whether Secretary Weinberger had any notes regarding the Iran-Contra affair. They said he did not have any such notes." (Garrett, Affidavit, 4/28/92,

11, ALZ 0045036, emphasis added.) In a subsequent interview, however, Garrett again characterized Smith's statement to him as a categorical assertion that "there weren't any notes." (Garrett, OIC Interview, 5/13/92, pp. 10-11, 24-25.)

The DoD's Lack of Cooperation With the OIC's Investigation of Weinberger

The OIC's experience with the DoD during the Weinberger investigation illustrates the unique problems Independent Counsel encountered investigating possible wrongdoing by high-level officials. DoD withheld documents even in 1992. DoD employees gave defense counsel confidential communications between DoD and OIC -- the Government's counsel. DoD employees improperly allowed defense counsel to review evidence being held for the OIC.

In April and May of 1992, the OIC asked the DoD to produce documents from the Office of General Counsel (OGC) and Office of the Secretary of Defense (OSD) regarding DoD's responses to Iran/contra document requests. The OGC files containing most of the information relating to DoD's Iran/contra document production, including Garrett's 1987 memoranda to Weinberger and Taft, were not produced to the OIC until after the indictment.³⁰⁹ In response to additional, specific requests and subpoenas, DoD produced from OSD files another copy, and the original, of Garrett's memorandum to Weinberger, bearing the "SEC DEF HAS SEEN" stamp and a handwritten note by Weinberger -- neither of which had been produced in response to previous document requests.³¹⁰

³⁰⁹ The OIC had determined that there was sufficient evidence from Weinberger's own diary notes, his false statements to congressional investigators and the few documents produced by DoD to prove beyond a reasonable doubt that Weinberger had intentionally withheld his notes from Congress. The new documents, however, strengthened the evidence of Weinberger's intent.

³¹⁰ Garrett's chronological files and a number of relevant subject files from his tenure as DoD general counsel similarly were not produced until October 1992, in response to a Grand Jury subpoena, despite a specific request for such files in May 1992. These files contained additional copies of Garrett's memoranda to Weinberger and Taft. Garrett had previously told the OIC that he had no chronological files. (Garrett, FBI 302, 4/8/92, p. 10.) DoD Deputy General Counsel Michael A. Sterlacci testified, however, that the files had been obtained from Garrett's former office (Garrett had recently resigned as Secretary of the Navy). (Sterlacci, Grand Jury, 10/28/92, p. 7.) Sterlacci also conceded that, although the OGC had forwarded the earlier OIC document request to Garrett, the OGC had made no effort to follow up on the matter when Garrett failed to respond. (Ibid., pp. 11-13.)

Although the OIC found no conclusive proof that a DoD official had deliberately withheld these documents, the OIC received an anonymous telephone call on May 21, 1992, suggesting that investigators look in the office of Deputy General Counsel Michael A. Sterlacci for information regarding Weinberger. Several of the files produced belatedly by DoD had been stored in Sterlacci's office.³¹¹

³¹¹ According to one OGC attorney, the files had been scattered among three different offices, including Sterlacci's, before mid-1992. The attorney said that the missing files had been located when old files were being reviewed to be sent to storage, not in response to the OIC's document requests. (White, FBI 302, 9/4/92, p. 1.)

During the investigation, the OIC discovered that DoD officials had faxed to Weinberger's counsel copies of at least one OIC document request to DoD, which the OIC regarded as confidential. DoD's Acting General Counsel later conceded that it was not consistent with DoD policy to disclose such documents relating to an ongoing criminal investigation without at least consulting the prosecutor beforehand.³¹²

³¹² Letter from Chester Paul Beach, Jr., DoD Acting General Counsel, to Gillen, 8/8/92 (020209).

OIC discovered after Weinberger's indictment that DoD personnel had given Weinberger's defense counsel apparently unsupervised access to documents the OIC had identified as evidence and left, by agreement with DoD, temporarily in DoD custody.³¹³ This jeopardized the integrity of original evidence in a pending criminal case and also allowed Weinberger's counsel to circumvent ordinary discovery procedures. DoD's general counsel later conceded that this conduct was not consistent with DoD policy, which provides that the Department of Justice, (in this case, the OIC) should be consulted before DoD discloses official information to a criminal defendant or other litigant.³¹⁴

³¹³ This discovery was accidental. An OIC attorney arrived at the Pentagon to take custody of the documents and found that one of Weinberger's attorneys was photocopying the documents in the OGC's offices without any visible supervision by DoD personnel.

³¹⁴ DoD Directive 5405.2, 7/23/85.

Independent Counsel decided in 1992 not to commit resources to an investigation into ongoing obstruction by the Department of Defense.