

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of  
Appointing Independent Counsel  
Division No. 86-6

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FINAL REPORT OF THE  
INDEPENDENT COUNSEL FOR  
IRAN/CONTRA MATTERS

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**Volume III:**  
**Comments and Materials Submitted by Individuals and Their Attorneys  
Responding to Volume I of the Final Report**

LAWRENCE E. WALSH  
*Independent Counsel*

December 3, 1993  
Washington, D.C.

United States Court of Appeals  
For the District of Columbia Circuit

FILED SEP 28 1993

RON GARVIN  
CLERK

September 22, 1993

Mr. Ron Garvin  
Clerk, United States Court of Appeals  
for the District of Columbia Circuit  
Washington, D.C. 20001-2866

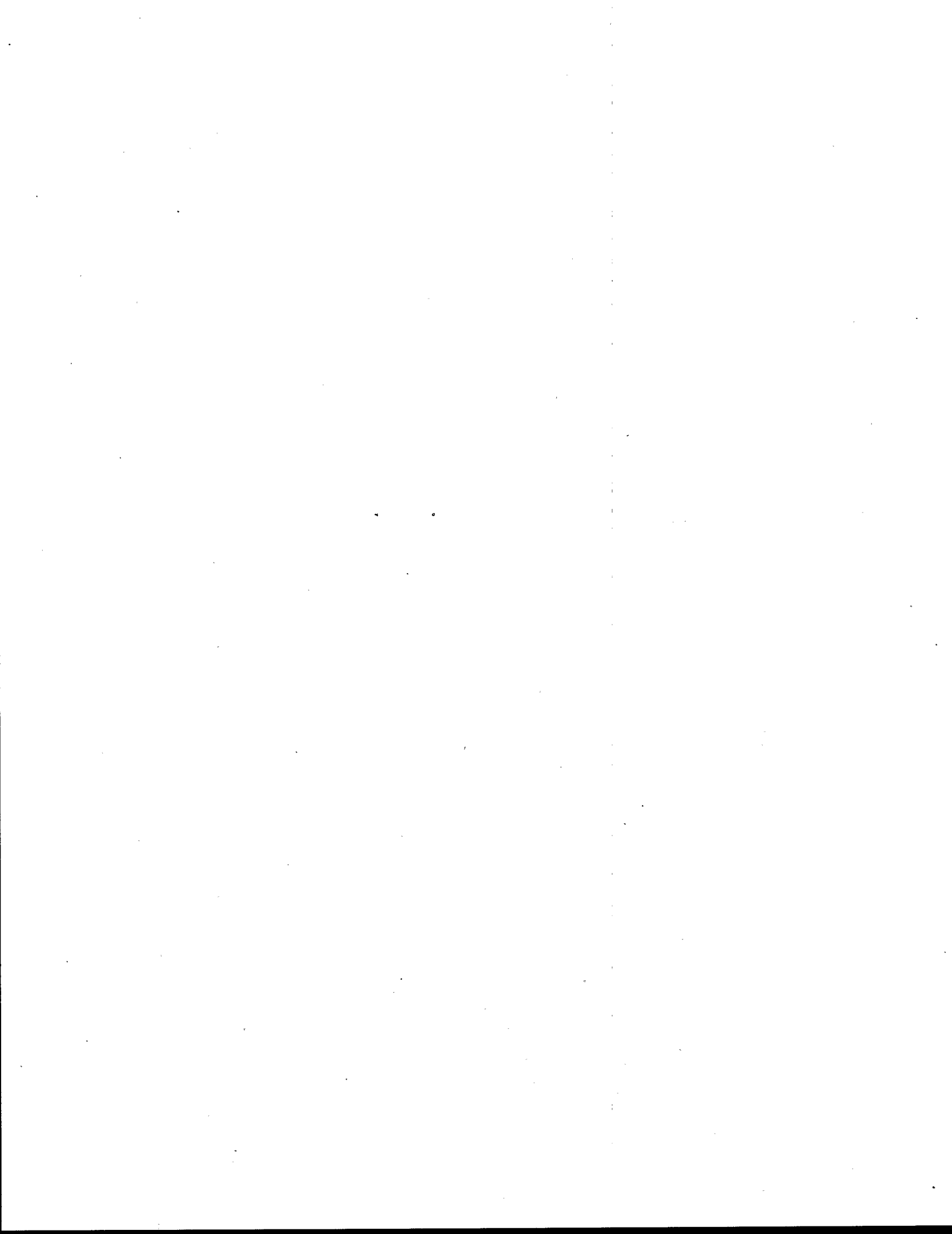
Re: Order Under Seal, United States Court of Appeals  
for the District of Columbia Circuit, Division for  
Appointing Independent Counsels, No. 86-6

Dear Mr. Garvin:

This responds to your letter of August 9, 1993, in which you advised me of an Order Under Seal issued by the United States Court of Appeals for the District of Columbia Circuit, Division for the Purpose of Appointing Independent Counsels. Pursuant to that Order, I have reviewed those portions of the Final Report of Independent Counsel Lawrence W. Walsh (the "Report") that you identified and made available as relevant to me.

The Independent Counsel has concluded, however grudgingly, that the evidence developed over a nearly six year investigation did not warrant any legal action against me. For that, I am pleased. Indeed, the Report offers no information, documents, or testimony regarding my actions during the events under review that have not been fully aired and judged on several prior occasions, including most recently by the United States Senate during the process of my confirmation as Director of Central Intelligence in 1991.

At the same time, I am disappointed that the Report does not draw upon sworn testimony of a number of individuals before the Senate Select Committee on Intelligence ("SSCI") that was both exculpatory and placed my actions in some context. Instead, the Report engages in what can only be described as a worst-case analysis, often drawn out of context, and supported by innuendo and leaps of logic that are not supported by the record as a whole. For example, the Report asserts that I made two



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"demonstrably incorrect" statements in my six years of testifying on this matter. This assertion as to each of these two statements does not stand up to analysis.

The Kerr Information. First, the Report alleges that I made an incorrect statement when I testified that the first I recall hearing of a possible diversion of funds was on October 1, 1986. It was on that date that Mr. Charles Allen advised me of his suspicions of such a diversion. The Report states that Mr. Richard Kerr testified that he had conveyed Allen's concerns to me some time earlier and suggests that my failure to recall that conversation is incriminating.

While the Report accurately notes my testimony that I did not remember the conversation, it inexplicably neglects to mention that I never denied that the conversation with Mr. Kerr had taken place. Indeed, I consistently stated simply that I did not remember the conversation.

The Report also states that I told Mr. Kerr to keep me informed, yet it neglects to mention that Kerr himself has testified to the SSCI that he never came back to me with further information. Furthermore, in September 1991, Kerr testified publicly and under oath as to the circumstances under which he had raised the matter with me -- testimony the Independent Counsel's Report never mentions. Specifically, Kerr told the SSCI:

.....[I] think it is quite easy to understand from my perspective, quite easy to understand why Bob Gates might not remember. First of all, I did not do this as an element of high drama as something that was terribly exciting and a breaking piece of intelligence.

I did it as a piece of information that I considered to be very speculative and without having any context or anything to put it in, merely information to make sure that someone, my boss, knew a piece of information. I would have done that about a lot of other kinds of information outside this in terms of rumors, intelligence, things that were happening that I had no certainty about, but nevertheless would make sure that you give somebody a heads up. I did it in that context.



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.....[I]t is quite easy for me to understand from my own perspective, someone coming in and giving me information like this that I couldn't put in context, getting a lot of different inputs from people, that it is quite possible to forget that and to not recall that.

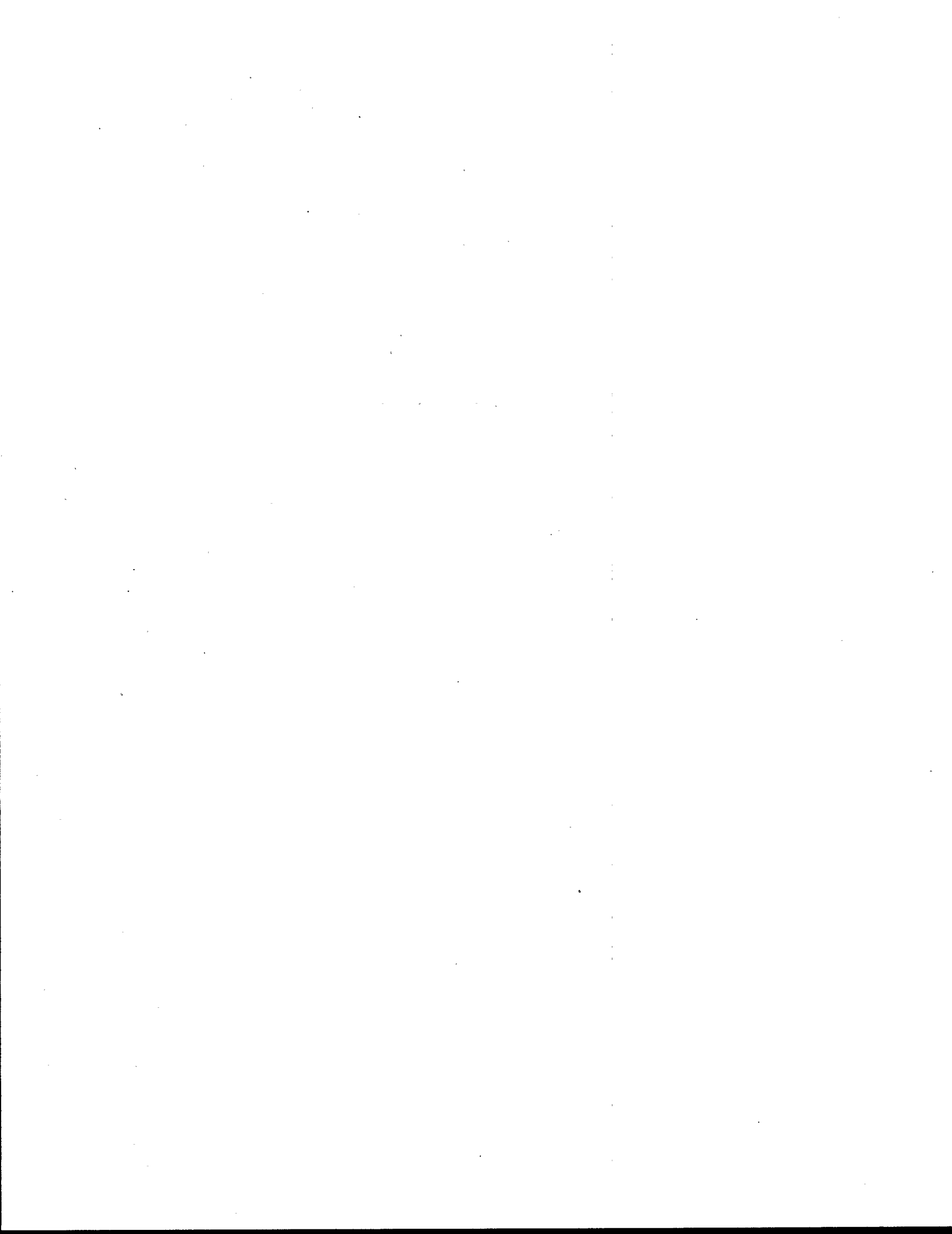
This exchange and its implications were fully reviewed by the SSCI in 1991, well documented in their report, and found to lack basis for concluding that I had misled anyone in my statements about the exchange.

Finally, the Report's statement on page 23 that Mr. Allen told me in the summer of 1986 of his concerns is simply factually incorrect, even according to the Report itself. Neither Mr. Allen nor Mr. Kerr have ever testified that Allen came to me before October 1. Indeed, Allen has testified that I was "surprised" when he reported his suspicions to me on October 1. The evidence assembled in the Report substantiates this point.

In sum, the Report's conclusion that I made a "demonstrably incorrect" statement neglects to explain how a failure to remember a conversation, while not denying that it might have taken place, is demonstrably incorrect. Moreover, the Report unfairly omits sworn testimony from Kerr before the Senate that detailed extenuating circumstances surrounding the brief conversation that makes my inability to remember it far more understandable than suggested in the Report.

Knowledge of Col. North's Role. The second alleged "incorrect statement" is based on the Report's suggestion that I knew of Lt. Col. North's operational role with the Contras. This insinuation rests entirely on two brief exchanges with Admiral Poindexter, in neither of which was the subject of Contra operations even mentioned.

The first such exchange occurred when I told Poindexter that a CIA officer scheduled to take over North's responsibilities for Central America on the NSC staff should have no contact with the private benefactors. It was common knowledge in Washington at that time that North was the contact point for putting the private donors (including Americans) in touch with the Contra leaders.



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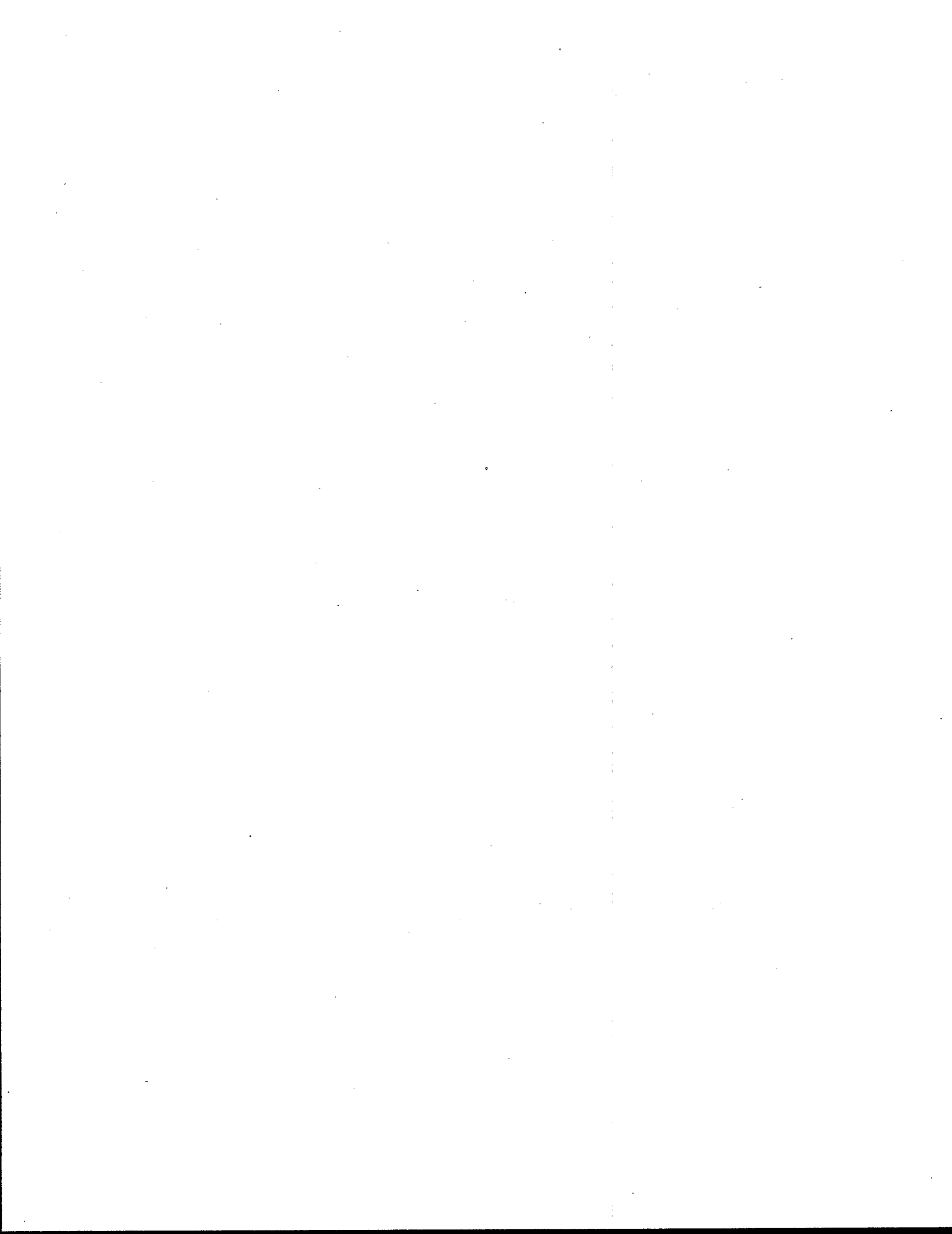
In a remarkably unfair and distorted manner, the Report identifies an action I took to ensure that CIA avoid even the appearance of impropriety, turns it upside down, and asserts that it reflected my knowledge of improper actions by North. In a time of extraordinary suspicion of CIA's role with the Contras, when Congress had prohibited certain direct aid to the Contras, I did not want any CIA officer even remotely involved with the private benefactors. That was my sole reason for raising the matter with Poindexter. I did not know at the time of any impropriety by the NSC staff relating to the Contras.

The Report also points to Admiral Poindexter's asking me if CIA was interested in buying some of the private benefactors' equipment as they discontinued their activities -- and my response that I would check on it -- as evidence that I knew about North's operational control of the private benefactor effort. I testified repeatedly that it made sense to me that the White House would want to see the private benefactor effort discontinued once Congress again approved U.S. Government support for the Contras. Because the White House had encouraged the private benefactors to support the Contras, Poindexter's suggestion that CIA consider purchasing some of their equipment did not seem improper -- foolish perhaps, but not improper. It certainly did not evidence to me operational control by the NSC. When I did as I said I would, and passed the question along to the Directorate of Operations, I was told it was a bad idea and dropped it.

Indeed, the Report as well as sworn testimony and depositions before the Senate Select Committee on Intelligence made abundantly clear that not one person could be found who had talked to me about North's operational role. And why would they? By the time I became DDCI in April 1986, the Reagan Administration was well on the way to securing Congressional approval for CIA to resume military aid to the Contras -- and CIA's efforts were focused on readying the new program and sorting out the bureaucratic problems associated with it.

In order to fulfill my new responsibilities, I began meeting regularly with Alan Fiers, the Chief of the CIA's Central American Task Force, in order to follow the progress of the new program. These were the matters Fiers discussed with me. Whatever Fiers' unspoken assumptions were about my prior knowledge, this is why -- as the Report so tellingly declares -- Fiers "would not testify that he had spoken of North's operational role to Mr. Gates." Fiers "would not testify" in this manner because he could not so testify.





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Further, the Report fails to mention that all of the other key CIA operational officers having some role in Central America and questioned by the SSCI testified under oath that they had not discussed any such NSC or North role with me.

In short, the assertion that I made an "incorrect statement" pertaining to my knowledge of North's operational role is supported by no evidence or testimony, only suspicion and innuendo so extreme as to turn actions intended to ensure compliance with the rules into supposition that they bespoke knowledge of violations of the rules. Again, the Report's conclusions are unfair and without basis.

Casey/Poindexter Meeting. A last factual correction is necessary. The Report states that Casey and I met with Poindexter on November 6, 1986, to discuss what to do about allegations that profits from the arms sales had been diverted to other projects. This is not accurate. There was no mention at that meeting of a possible diversion. Casey and I raised again the need to go public with the entire Iran arms sales story, and Casey again urged Poindexter to have the White House Counsel review the entire matter. Poindexter said he did not trust the Counsel and still hoped to get more hostages out. I testified to this exchange repeatedly; a memorandum of conversation I wrote promptly after the meeting confirms this. Nothing in the Report contradicts this.

\* \* \* \*

I acknowledged to the Senate in 1991 that I had not been as aggressive as I should have been in pursuing Mr. Allen's concerns after October 1, 1986. But the record is clear that those actions I took throughout this period were consistently aimed at ensuring CIA's compliance with the law, full disclosure of CIA's role, and making the only part of this matter about which I was aware -- the Iran arms sales -- public. I insisted on getting a copy of the January 1986 finding; I insisted on bringing in the CIA General Counsel and then insisted on following his advice; in November 1986, I insisted that we hold nothing back and that where we lacked information we should go to retirees to get it. In connection with my confirmation hearings in 1991, the SSCI took numerous sworn statements that evidence my constant directions in November 1986 to lay out all the facts in testimony. None of these facts about my role are in the Report. The Independent Counsel has not been judicious and fair in his approach.

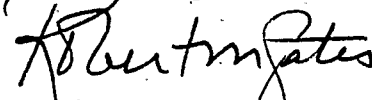


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I have always cooperated fully with the multiple Iran-Contra investigations -- the SSCI, the HPSCI, the CIA's Inspector General, the Tower Board, the Congressional Iran-Contra Committee, the DCI's Special Counsel, and the Independent Counsel. As Acting Director of Central Intelligence from December 1986 to May 1987, I began the flow of countless CIA documents and witnesses to investigators. When problems or obstacles arose, I cleared them away until the arrival of DCI William Webster, at which time I recused myself from any further participation in Executive Branch decision-making relating to Iran-Contra -- a situation that continued until my retirement last January.

Despite my total cooperation, and the absence of any new evidence in documents or testimony beyond that weighed by the Senate in 1991, the Independent Counsel's Report is unjustifiably disparaging, unbalanced, filled with innuendo and insinuation, and draws conclusions not supported by the evidence. The fact is that, as the Report puts it, "the evidence did not warrant indictment" because there was no wrongdoing on my part. I did not engage in obstruction or willful misleading. The Report should have so stated.

Sincerely,



Robert M. Gates

