speaking, the contemporaneous evidence of how the statute was interpreted by Congressional members and staff is consistent with the view that Boland's prohibitions applied to the NSC staff; an interesting counter-indication is a September 5, 1985 press release issued by the Chairman and Vice Chairman of SSCI after their meeting with McFarlane to discuss the allegations about North's assistance to the Contras (GX 111 in United States v. North). That release repeats McFarlane's assurances that there was no intent at NSC to "circumvent restrictions Congress placed on aid to the Nicaraguan Resistance", but goes on to say

> Nevertheless, the Senators stated that they continue to have concern about the potential for the NSC to fill the gap when Congress had prohibited a different Branch of Government from a specific activity. [Emphasis supplied.]

Within the Administration there was apparently quite a range of opinion on Boland's application to NSC, although the only view that was plainly conveyed to Congress was that of McFarlane -- who either believed, or thought it politically expedient to act as though he believed, that the NSC staff was covered (see, e.g., March 10, 1989 McFarlane North Trial Tr. 3975; March 13, 1989 McFarlane North Trial Tr. 4138-40). Knowingly or not, the President contributed to this impression when he responded to an August 8, 1985 press question about the NSC staff's direction of Contra operations by stating that "we are not violating the law" -- a statement

that was followed that same day by White House Press Office guidance that

> No member of the NSC staff has at any time acted in violation of either the spirit or the letter of existing legislation dealing with U.S. assistance to the democratic resistance in Nicaragua. [redacted] (b)(3) GJ

Mr. Sporkin, as noted above, had doubts that the NSC staff was subject to the law (see pages 96-97 above). Poindexter and North claim to have believed right along that they were not covered.

The Department of Justice was never consulted concerning Boland's applicability to the NSC staff (see, e.g., July 29, 1987 Meese Cong. Tr. 307-308).[46/] Between October 1984 and November 1986, the only source from which

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[46/] DoJ has been quite guarded in its after-the-fact expressions about Boland. In his Select Committee testimony, Attorney General Meese stated that he would not give a "definitive legal opinion" whether the NSC was covered by the statute, but expressed the "informal" view that NSC was not an "entity of the United States involved in intelligence activities," although he acknowledged that reasonable minds could differ on the point. (See July 29, 1987 Meese Cong. Tr. 307-311; see also id. at 324-335; June 25, 1987 Cooper Cong. Tr. 271.)

The truly careful reader will recall that in a December 17, 1986 opinion on the Iran arms transfers, the Office of Legal Counsel concluded that the NSC would be embraced by 50 U.S.C. § 415, which applies to "any department, agency or other entity of the United States involved in intelligence or intelligence-related activities" (see page 41n.23 above; emphasis supplied.) It is the absence of the phrase "or intelligence-related" from the Boland laws that permits DoJ to distinguish their reach from that of 50 U.S.C. § 415 (cf. July 29, 1987 Meese Cong. Tr. 308).

the Administration received a formal opinion on this issue was the President's Intelligence Oversight Board. While the 1985 Congressional inquiries were pending, the General Counsel of the PIOB, Bretton Sciaroni, commenced a legal review on the issue of "Allegations Concerning a Boland Amendment Violation by the National Security Council" (see ALY000011-18). In outline, Sciaroni's analysis proceeded along two paths. First, he concluded, on the basis of the history of other intelligence oversight provisions, that the phrase "agency or entity of the United States involved in intelligence activities" is a term of art that does not include the NSC or its staff; in a footnote, he added the comment as to Col. North personally that if North's salary were being paid by the Department of Defense (which unquestionably was a covered entity), then North might nonetheless be snared by the statute. Second, Sciaroni determined, on the basis of a purported review of the facts, that North was in any event performing only a political liaison role and was not engaging in any action that would have violated Boland if it did apply to him.

We have described Sciaroni's memorandum as "discredited". See October 25, 1988 Memorandum of Points and Authorities in Opposition to Defendant's Motions to Dismiss or Limit Count One in United States v. North, Cr. No. 88-0080-02-GAG, at 49n.24. However, it is important to point

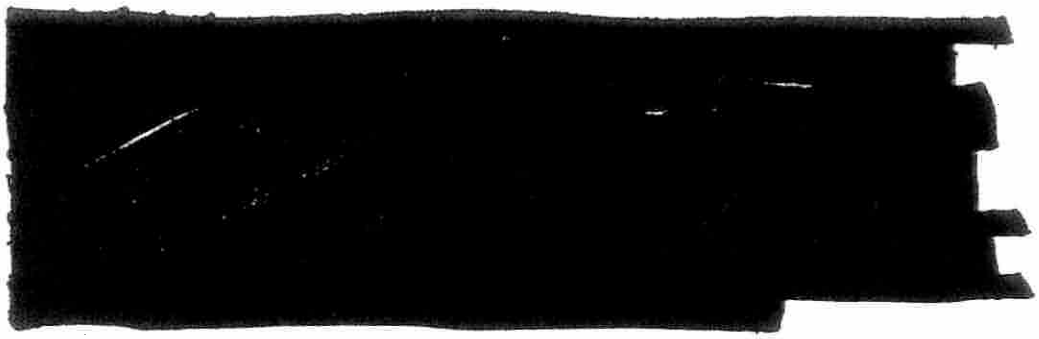
out that the weaknesses in Sciaroni's analysis would only be apparent to someone who (a) knew how Sciaroni came to his conclusions and either (b) understood the legal background surrounding the intelligence oversight laws or (c) knew that Sciaroni's factual conclusions about the scope of North's Contra-support activities were false. Given the form in which the Sciaroni/PIOB opinion was transmitted to the President, and given the provable state of the President's knowledge of North's role in Contra support, none of these conditions is satisfied as to Mr. Reagan. The President did not receive a copy of Sciaroni's underlying memorandum; instead, on September 13, 1985, he saw a PIOB Annual Report which conveyed neither Sciaroni's analysis nor his caveat about North's DoD salary, but simply said

> we have sent to your National Security Advisor a legal opinion that the Boland Amendment does not apply to the National Security Council. [redacted]

While there is no reason to doubt that Mr. Reagan saw this report (it bears the notation "9/13/85, President has seen. JP"), it apparently did not leave much of an impression. [redacted] (b)(3) GJ

[redacted]

(b)(3)
GJ



At his deposition, the President repeated that he does not recall the PIOB opinion itself, but said that he remembers being told that there were "certain levels of government or agencies and so forth that were not prohibited by the Boland Amendment," and receiving legal advice that some things could be done and still be "exempt" from Boland (see February 16, 1990 Reagan Dep. at 69-71, 72).

Taking this record all in all, I believe that one cannot disprove President Reagan's assertion of a good-faith belief that the prohibitory Boland Amendments did not apply to him personally, or to the staff of the NSC. The aspect of the NSC staff's Contra-support program that Mr. Reagan was most clearly aware of (and the activity that he instructed his staff to keep quiet about) was the jawboning of foreign countries to assist the Contras. Convincing foreign countries to support the Contras was also the part of the program that looked the most like traditional (and often-secret) Executive Branch foreign policy activities -- and, conversely, looked the least like a U.S.-directed covert action. Thus, even the facial case for believing that Boland

had been triggered is quite weak from the President's perspective. Jawboning foreign governments also would not appear to require a formal written determination under Executive Order 12,333 or NSDD 159, even assuming that a failure to adhere to those provisions by the President himself could be the basis for criminal liability (see pages 11-14, 16-17, 40-42 above).

To be sure, a good-faith, but uncommunicated belief by Mr. Reagan that Boland did not apply to the NSC's activities would not be dispositive of his liability under a charge similar to that contained in paragraph 13(a)(1) of the March 1988 Indictment if the President had known the full range of the NSC staff's Contra-fundraising and Contra resupply program. After all, both North and Poindexter were permitted to introduce evidence of their views on Boland at their trials, and yet both cases went to the jury, albeit on narrower, obstruction-related charges. The ultimate issue, as noted previously, is whether the President conspired to hide from Congress the fact that Contra-support activities, clearly prohibited to CIA, had been transferred to the NSC staff after the enactment of the "full prohibition" Boland Amendment.

On this issue, I conclude that President Reagan lacked sufficient information about what the NSC staff was doing, and the manner in which Congress was deceived, to

support a criminal charge that he conspired to defraud the United States by deceitfully "organizing, directing, and concealing a program to continue the funding of and logistical and other support for military and paramilitary operations in Nicaragua by the Contras." There is no question that the President knew that through some combination of donations and logistical assistance, the Contras were receiving military assistance during the "full prohibition" Boland period; there is also no question that the President would have appreciated that North was the NSC's "action officer" for Nicaragua. That much, however, was common knowledge both within the Executive and in Congress, and cannot support a concealment charge. What is missing from the provable knowledge of the President (and was falsely denied in the McFarlane-Poindexter-North responses to Congress) is any clear picture of the critical role that the NSC staff played in providing material support to the Contras' military efforts. The sketchy nature of the information that <u>was</u> provided to Mr. Reagan by his subordinates -- particularly when considered alongside those same subordinates' apparent failure to provide the President with key information about how they were raising funds for the Contras, how those funds were channelled, and their absolute control over Contra resupply -- does not permit the

conclusion that Mr. Reagan knew what was being kept from Congress.

Nor can it be proven that the President had any clear idea that Congress was in fact being deceived (as opposed to simply being ignorant) concerning any of the Contra-support activities that the President knew about. McFarlane has stated that he did not understand the President's instructions not to disclose the two Saudi contributions to mean that he should actively lie to Congress about those contributions if he were asked (see pages 57-59 above). The same McFarlane -- who evidently was the President's only source of information about the August/September 1985 letters from Congress -- has testified that he himself did not believe that the Saudi contribution, or information about the Administration's enticement of Honduras to assist the Contras, were material to Congress' inquiries (see March 13, 1989 McFarlane North Trial Tr. 4164-66; March 15, 1989 McFarlane North Trial Tr. 4570). We are therefore unlikely ever to develop evidence that McFarlane and the President discussed these subjects in the context of the Congressional letters. The only specific area of inquiry on which McFarlane says he did brief the President -- military advice and assistance provided to the Contras by North -- would have appeared rather innocuous to the President in view of McFarlane's contemporaneous

representation that occasional advice or assistance was legal (see page 91 above). In any event, since the President apparently did not see McFarlane's answers to the Congressional letters, he cannot be shown to have been aware that McFarlane went ahead and denied that such advice and assistance were given. As previously indicated, there is no conclusive evidence that Mr. Reagan knew about the summer 1986 inquiries at all; in October 1986, the President was misled by Poindexter as to the nature of the U.S. government's relationship with Hasenfus.

Can the President nonetheless be held criminally accountable on the strength of the undisputed facts that, as the Commander-in-Chief, Mr. Reagan told his subordinates to keep the Contras together "body and soul" and not to let out information about third-country contributions; that thereafter, in Poindexter's words, Mr. Reagan "knew the job was getting done"; that the President surely must have known that Congress had attempted, through Boland, to take the United States government out of the Contra-support business and would in all likelihood have been most unhappy to learn that it had failed to do so; and that, nonetheless, after Congress asked questions of the Administration about Contra support and received answers, Congress did not act as though anything were amiss? Reaching back to the twelfth century, others have analogized this sort of Presidential conduct to

that of King Henry II of England who, in the midst of a widely-known dispute with Thomas Becket, Archbishop of Canterbury, is said to have cried out "Who will free me from this turbulent priest?" -- and later to have expressed shock when he learned that a group of his knights, having heard the royal lament, had promptly travelled to Canterbury and hacked Becket to death. See United States v. North, 910 F.2d 843, 883n.12 (D.C. Cir. 1990), citing United States v. Ehrlichman, 546 F.2d 910, 926 & n.68 (D.C. Cir. 1976).[47/]

Both North and Ehrlichman considered the effect of such words on the criminal liability of the subordinates, and do not discuss the liability, if any, of the superior who utters them. From the standpoint of King or President, the closest approximation to the "turbulent priest" paradigm is the maxim that "a person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts". This concept has a somewhat troubled history in the criminal law, even when applied to comparatively uncomplicated crimes such as murder. See, e.g., Francis v. Franklin, 471 U.S. 311 (1985) (conviction overturned where

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[47/] As we know, Henry II continued to rule England for nineteen years after Becket's death, having submitted voluntarily to physical penance at the hands of the Church (and no doubt having sustained a drop in personal popularity, at least among religious folk, that could have been measured by polls if polls had been considered important at the time). The King suffered no secular penalty at the hands of the King's justice.

intent was at issue and "natural and probable consequences" formulation was presented to the jury as a "rebuttable presumption", rather than a mere permissible inference). Considering the multiple layers of deception that were employed by the central actors in Iran/Contra, I believe that such a permissible inference must be used with great care in evaluating our facts, and that it is appropriately applied to the President only if one can conclude that the "Enterprise" would follow ineluctably from Mr. Reagan's Contra pronouncements and the fact of the Contras' survival during the Boland period. To be specific, I am not able to conclude that the alternative explanation of these facts that was available to Mr. Reagan -- namely, that the Contras survived as a result of the efforts of third countries and "private individuals" -- is so weak that the President would have had to posit the NSC program as a matter of pure logic. While North and Poindexter have argued that they construed Presidential actions such as his "hang by our thumbs" remark concerning disclosure of solicitation of third countries (see page 57 above) as Presidential authorization of a broad range of deception, the known evidence as to the President at most suggests an "atmosphere" of nondisclosure relevant to those defendants' states of mind. In considering the criminal liability of the President himself, such "atmospheric" evidence is insufficient in the absence of further proof that

Mr. Reagan specifically approved lying to Congress as a general practice, or knew about and authorized even the concealment of the full range of his subordinates' Contra-support program -- which went well beyond the mere obtaining of third-country support.

In summing up the evaluation of whether President Reagan was a participant in a criminal conspiracy such as that described in paragraph 13(a)(1) of the March 1988 Indictment, it is useful to look at the general conspiracy instructions that Judge Greene gave to the jury in United States v. Poindexter (see pages 3359-3366 of Attachment A hereto). Of the three traditional elements of a conspiracy charge -- the existence of the conspiracy, the defendant's participation in it, and the knowing commission of an overt act by one or more of the conspirators, but not necessarily the defendant -- the first and third may, for purposes of this memorandum, be taken as established by virtue of the March 1988 indictment. The second element is the key to President Reagan's liability. As to that element, Judge Greene charged the jury as follows:

> It is not necessary, in order to convict a defendant of the charge of conspiracy, that he have been a member of the conspiracy from its beginning to its end. Different persons may become members of a conspiracy at different times. Furthermore, to be a member of a conspiracy, a defendant need not know the identities of, or the precise number of, all the other members, nor the entire scope of the conspiracy, nor all of the

details of the conspiracy, nor the means by which the objects or purposes of the conspiracy were to be accomplished. Each member of the conspiracy may perform separate and distinct acts.

It is necessary, however, that the Government prove beyond a reasonable doubt that the defendant was aware of the common purpose of the conspiracy and was a willing and knowing participant with the intent to advance the purposes of the conspiracy. A person who has knowledge of the conspiracy itself and just happens unknowingly to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

To act or participate knowingly means to act or participate voluntarily and intentionally, and with a specific intent to either do something which the law forbids, or fail to do something which the law requires to be done.

Intent means that a person had the purpose to do something. It means that he acted with the will to do it; that he acted consciously and voluntarily and not inadvertently or accidentally. Specific intent, which is required for the offenses that we have here before us, requires more than a general intent to do certain acts. A person who knowingly does an act which the law forbids intending with a bad purpose either to disobey or disregard the law, may be found to act with specific intent.

Intent is a state of mind. Intent ordinarily cannot be proved directly, because there is no way of scrutinizing the operations of the human mind. But you may infer a defendant's intent from the surrounding circumstances. You may consider any statement made and act done or omitted by a defendant, and all the other facts and circumstances in evidence with indicate his state of mind. You may infer that a person ordinarily intends

> the natural and probable consequences of acts knowingly done or knowingly omitted.
>
> Thus, if the defendant or any other person with an understanding of the unlawful character of the plan, knowingly encourages, advises or assists for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant and conspirator. One who knowingly joins an existing conspiracy is charged with the same blame or culpability as though he had been one of the originators or instigators of the conspiracy.
>
> In determining whether a conspiracy existed, you, the jury, should consider the actions and declarations of all the alleged participants. However, in determining whether the defendant was a member of the conspiracy, you should consider only his own acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of the members.
>
> The extent of the defendant's participation in the alleged conspiracy is not determinative of his guilt or non-guilt. A defendant may be convicted as a conspirator even though he plays a minor role in the conspiracy, provided that you find beyond a reasonable doubt . . . that the defendant knowingly participated in it with the intent to commit the offense which was the purpose of the conspiracy . . . . (Attachment A at 3362-3365; emphasis supplied.)

It is my conclusion that the provable facts concerning Mr. Reagan's knowledge of the NSC staff's Contra-support activities -- which lack any reflection of the extent of the NSC's control over fundraising and resupply -- do not

demonstrate "an understanding of the unlawful character of the plan" to transfer and hide the Contra military aid program from Congress. Thus, those facts do not satisfy the intent standard set forth in Judge Greene's statement of the law of conspiracy, even with the somewhat dubious aid of the "natural and probable consequences" maxim. There is no probable cause to indict the former President for the type of conspiracy described in paragraph 13(a)(1) of the March 1988 Indictment.[48/]

B. The Diversion

As previously noted, there is no evidence that President Reagan was informed about the diversion of Iran arms sale proceeds for the benefit of the Contras, or even about the existence of any differential between the price paid by Iran for U.S. weapons and the price received by the United States government, until November 24, 1986. Thus, there is no factual basis on which to find the President guilty as a co-conspirator under paragraphs 13(a)(2) or

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[48/] Although it gets us a bit ahead of ourselves, another way to evaluate this conclusion is through the chart entitled "President Reagan's Knowledge of the Means of the Conspiracy Alleged in the March 16, 1988 Indictment", which is Attachment B hereto. Although a co-conspirator need not, as Judge Greene stated, know all the means of the conspiracy to be liable for it, he surely needs to know a "critical mass" of information about the conspiracy sufficient to acquaint him with the nature of the illegal agreement. As shown by Attachment B, I do not believe that Mr. Reagan can be proved to have known that "critical mass" with respect to the Count One conspiracy.

13(a)(3) of Count One of the March 1988 Indictment, or to find that the President either violated or conspired to violate 18 U.S.C. § 641 or 18 U.S.C. § 1343 as alleged in that Indictment (see March 16, 1988 Indictment, Count One, pars. 13(b)(1)-(2); id. Count Two; id., Count Three).

Although it bears only brief mention, the case for applying the "natural and probable consequences" inference is even weaker with respect to the President's "authorization" of the diversion than his "authorization" of the Contra resupply operation. First, as a matter of logic the diversion simply does not strike me as a "natural and probable consequence" of the President's separate commands to "sell arms to Iran" and "keep the Contras together body and soul".[49/] Second, the entire theory of paragraphs 13(a)(2) and 13(a)(3) of the March 1988 Indictment was that the diversion was a significant departure from U.S. government policies, and we therefore described "the Executive Branch" (which I take to include the President) as one of the parties deceived with respect to those paragraphs (see August 10, 1988 letter from Associate Counsel Zornow to Barry S. Simon). The

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[49/] Although the President said during his deposition that he would have considered discussions about the proceeds of the Iran arms sales to be "operational details" that he could understand Poindexter not raising with him (see February 17, 1990 Reagan Dep. 276-282), Mr. Reagan was also emphatic that he did not approve the diversion of those proceeds and would have disapproved it if it had been called to his attention (id. at 289-90).

information that we have learned since that time -- primarily, Poindexter's immunized testimony that he consciously decided not to tell the President about the diversion (see, e.g., May 2, 1987 Poindexter Cong. Dep. 71, 75, 183; July 15, 1989 Poindexter Cong. Tr. 93-94, 98; July 16, 1989 Poindexter Cong. Tr. 94-95) -- only reinforces that conclusion.

C. False Statements and Obstruction of Congressional Inquiries

The facts surrounding the President's knowledge of the Congressional inquiries into the NSC's Contra-support activities through October 1986 are discussed at some length at pages 89-92 and 108-109 above. In outline, the record: (1) contains no evidence that the President saw any of the incoming letters from Congress or the responses by McFarlane and Poindexter; (2) reflects that McFarlane (but not the President) recalls a briefing at which McFarlane told Mr. Reagan about the 1985 inquiries, about McFarlane's meetings with North, and about the fact that those meetings had uncovered instances of advice-giving by North, which McFarlane said he believed to be legal; (3) reflects that Poindexter (but not the President) is "relatively certain" that he told the President about H. Res. 485 in the summer of 1986, and that "we" should try to defeat it (4) reflects no Presidential awareness of North's August 6, 1986 briefing of

HPSCI in connection with H. Res. 485; (5) reflects no Presidential knowledge about Congressional inquiries following the Hasenfus shootdown in October 1986, but only a statement to the press denying any U.S. government involvement with the Hasenfus shootdown after Mr. Reagan had received a false briefing by Poindexter to the same effect.

Applying the law to these facts, I have already concluded that the President lacked sufficient knowledge of the relevant inquiries and responses to be liable for a general conspiracy to deceive Congress about the NSC's Contra funding and Contra resupply operations, along the lines of paragraph 13(a)(1) of the March 1988 Indictment (see pages 106-115 above). That same analysis (and, particularly, the fact that the President did not actually make any of the responses to Congress' inquiries) should also make it essentially an a fortiori proposition that the President could not be charged as a primary violator of 18 U.S.C. § 1001 (the false statement statute) or 18 U.S.C. § 1505 (the statute punishing obstruction of the Congressional power of inquiry) with respect to those responses.

What remains is to consider whether the President could be subjected to liability for either an 18 U.S.C. § 371 conspiracy to violate 18 U.S.C. §§ 1001 and 1505, along the lines of paragraphs 13(b)(3) and 13(b)(4) of the March 1988 Indictment, or as an aider and abettor of §§ 1001 or 1505

violations committed by others. To begin with Section 371, it is well established that to be held liable for conspiracy to violate a statute, a defendant must be proved to have harbored "two different types of intent . . . the basic intent to agree, which is necessary to establish the existence of the conspiracy, and the more traditional intent to effectuate the object of the conspiracy." United States v. United States Gypsum Co., 438 U.S. 422, 444n.20 (1978). One can see this principle at work in Judge Greene's jury instructions in United States v. Poindexter, which went to the jury on the theory that Poindexter conspired to violate 18 U.S.C. §§ 1001, 1505, and 2071(b):

> Intent means that a person had the purpose to do something. It means that he acted with the will to do it; that he acted consciously and voluntarily and not inadvertently or accidentally. Specific intent, which is required for the offenses that we have here before us, requires more than a general intent to do certain acts. A person who knowingly does an act which the law forbids intending with a bad purpose either to disobey or disregard the law, may be found to act with specific intent. (See Attachment A at 3363; emphasis supplied.)

Turning now to the underlying criminal statutes, Section 1001 requires that the false statement in question have been made "knowingly and willfully". See Bryson v. United States, 396 U.S. 64, 69 (1969); see also Attachment A at 3373-74. As explained to the Poindexter jury by Judge Greene, 18 U.S.C. § 1505 has a triple intent requirement:

first, that the defendant "knew or had reason to know that the [relevant] inquiries or investigations were being conducted when he committed or endeavored to commit the alleged acts of obstruction" (Attachment A at 3368); second, that the defendant have "knowingly committed or endeavored to commit one or more of the acts of obstruction" alleged to have taken place (id.); third, that

> the defendant made the false or misleading statements, if any, to corruptly influence, obstruct, or impede the Congressional inquiries. The word "corruptly" means having an improper purpose of obstructing the inquiry, that is, having the specific intent unlawfully to impair, obstruct, or impede the inquiry, with knowledge that the conduct was unlawful. However, the government need not prove that the defendant knew which specific law he was violating. It is not enough that the defendant's conduct obstructed or impeded the inquiry, unless he also had the specific intent to do so. I earlier instructed you on intent as well as specific intent, in the instruction I gave you on conspiracy. These instructions also apply to this crime . . . . (Attachment A at 3368-69.)

Given the President's highly incomplete awareness of the Congressional inquiries themselves, as well as his imperfect knowledge of the NSC staff activities that were the subject of those inquiries, I believe that there is simply no basis for concluding that Mr. Reagan shared the "knowing and willful" or "corrupt" intent of the primary violators, as that intent is defined in Judge Greene's charge. Thus, there

is no probable cause to charge the former President with conspiracy to violate 18 U.S.C. § 1001 or § 1505.

An alternative theoretical basis for liability is 18 U.S.C. § 2, which provides that:

> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 2 exists in part to deal with the situation where a superior stays in the background and induces subordinates to actually do the criminal deed. However, as with conspiracy, aiding and abetting liability requires that the defendant be shown to have shared in the intent needed to prove the primary criminal offense; in the words of Judge Greene's charge, the defendant must "knowingly associate[] himself in some way with the criminal venture with the intent to commit the crime" (Attachment A at 3371). Thus, on our record, application of 18 U.S.C. § 2 to the former President founders for the same reason that prevents the application of 18 U.S.C. § 371.

III. The November 1986 Activities

Summary of the Facts

The Origins of the November 1986 Inquiries

As November 1986 began, HPSCI was still questioning U.S. government involvement in the Hasenfus operation (see February 22, 1989 Hamilton North Trial Tr. 1704-05). The NSC staff's Contra resupply operation, having been rendered superfluous by the resumption of the CIA's Contra military aid program in mid-October, had been shut down; North has testified that at the suggestion of Casey (but not the President), he had already begun destroying records relating to his Contra operation (see, e.g., April 12, 1989 North North Trial Tr. 7584-86).

On the Iran side, discussions with the Iranian Second Channel had been underway for a number of weeks, 500 additional TOW missiles had been shipped to Iran, and the last American hostage to be freed as a result of the Iran Initiative -- David Jacobsen -- was released from his Lebanese captivity on November 2. There is evidence that Admiral Poindexter and Col. North were (as ever) hopeful that a second hostage would be released in addition to Mr. Jacobsen (see [redacted] (Oct. 29, 1986 PROF from Earl to Poindexter)). (b)(3) GJ

On November 3, 1986, a Beirut newspaper published an account of the McFarlane mission to Tehran that had taken

place during the previous May. The Lebanese story set off a wave of Congressional and press inquiries in the United States that was initially driven by the disparity between the Reagan Administration's ferocious public rhetoric toward terrorism in general, and hostage-takers and Iran in particular, and the stark revelation that the Administration had secretly sold U.S. weapons to Iran in an effort to obtain the release of the hostages. For the entire Administration, the first three weeks of November 1986 were spent in combatting the perceived incongruity of the Iran arms sales themselves.

Poindexter and North, of course, faced an additional problem, because they knew that the Iran Initiative contained what North has called the "secret within the secret" (see April 13, 1989 North North Trial Tr. 7669) -- the diversion of funds from the Iranian arms sales to assist the Contras, disclosure of which would in turn expose the entire NSC Contra program of 1984-1986. By November 25, 1986 the discovery of the diversion by the Department of Justice had led to Poindexter's resignation, North's involuntary transfer back to the Department of Defense, and the commencement of broad-ranging investigations into the NSC's Iran and Contra programs. However, in the early going Poindexter succeeded in keeping the diversion under wraps by the simple expedient of instructing North to leave it out of

the NSC's accounts of the Iran matter (see July 2, 1987 Poindexter Cong. Dep. 12; July 20, 1987 Poindexter Cong. Tr. 127) and making no reference to it himself. Poindexter has testified that as late as November 19, 1986, when the President made his second public appearance to answer questions about the Iran Initiative, he was still determined to keep knowledge of the diversion away from the President (see July 20, 1989 Poindexter Cong. Tr. 108, 189) -- despite McFarlane's reminder to Poindexter on that same day that "you have a problem about the use of the Iranian money" (see March 14, 1989 McFarlane North Trial Tr. 4277).

The Administration's Initial Press Strategy

Even without the diversion as a public issue, there was plenty to occupy the Administration during the first weeks of November, 1986 as the Iran disclosures mounted and Administration officials -- notably Shultz and Regan -- began trying to distance themselves from the growing perception that the Administration had engaged in a "strict arms for hostages deal" (see DX 62.01 in U.S. v. North).[50/]

[50/] In my opinion, the many statements by the President and others concerning whether the Iran Initiative did, or did not, amount to "arms for hostages" pose no criminal-law issue because any such characterization is simply too subjective to be false beyond a reasonable doubt, and thus cannot be adjudicated in a criminal proceeding. This "eye of the beholder" problem would not, of course, apply to an effort to obstruct investigations into the Iran matter by altering the record on "arms for hostages", as exemplified by Poindexter's destruction of the 1985 Iran Finding.

After a preliminary effort at sleight-of-hand by Poindexter in the form of a November 4 press statement that "as long as Iran advocates the use of terrorism, the United States arms embargo will continue" (Cong. Ex. GPS-37), the Administration opted to stonewall with respect to the details of the Iran Initiative. McDaniel's notes of the National Security briefings for November 6 and November 7, 1986, reflect a decision to adopt a "no comment" posture with respect to Iran (see ALU0128263-64).

The President's initial public statements on Iran embodied the stonewall. On November 6, Mr. Reagan answered a press question as follows:

> Q: Mr. President do we have a deal going with Iran of some sort?
>
> THE PRESIDENT: No comment, but could I suggest an appeal to all of you with regard to this, that the speculation, the story that came out of the Middle East, and that . . one that to us has no foundation, that all of that is making it more difficult for us in our effort to get the other hostages free. (DX 87 in U.S. v. North.)

On the next day the President tried again, this time with an assist from former hostage Jacobsen, who was at the White House for a ceremony celebrating his release:

> Q. Mr. President, the Iranians are saying that if you'll release some of those weapons, they'll intercede to free the rest of the hostages. Will you?
>
> THE PRESIDENT: Bill, I think in view of this statement, this is just exactly what I tried to say last night. There's no

way that we can answer questions having anything to do with this without endangering the people we're trying to rescue.

Q. Could you just tell us whether Secretary of State Shultz agrees with your policy or disagrees, and has protested as has been reported.

THE PRESIDENT: We have all been working together.

Q. And Secretary Shultz supports the policy and so does Cap Weinberger?

THE PRESIDENT: Yes.

Q. Why not dispel the speculation by telling us exactly what happened, sir?

THE PRESIDENT: Because it has to happen again and again and again until we have them all back. And anything that we tell about the things that have been going on in trying to effect his rescue, endangers the possibility of further rescue.

Q. Your own party's Majority Leader says you're rewarding terrorists.

MR. JACOBSEN: Please. You didn't hear what I said at the beginning. Unreasonable speculation on your part can endanger their lives. I would like to take some time now and talk. But this is a day of joy for me. I have my children inside. I want to share it with them. And I want Terry Anderson to share the same joy with his family and I want Tom Sutherland to share the joy with his family. And in the name of God, would you please just be responsible and back off. Thank you.

Q. Mr. Jacobsen, how are we to know what is responsible and what is not?

Q. How about your TV address? [redacted] (b)(3) GJ

[redacted] On November 7, we also see the first reference in a national security briefing to the need to discuss Iran with Congressional leaders (see ALU0128264). At about the same time, Poindexter assigned North to develop a Chronology of the Iran matter (see April 7, 1989 North North Trial Tr. 7032, 7036-37). (b)(3) GJ

On November 10, 1986, President Reagan, Vice President Bush, Poindexter, Regan, Shultz, Weinberger, Casey, Meese, and Deputy National Security Advisor Keel held a ninety-minute meeting to discuss what to do about both the Iran Initiative itself and its disclosure. We have copies of notes taken by Regan, Weinberger, Meese, and Keel concerning what was said at this meeting (see [redacted] Cong. Ex. CWW-28; [redacted] Cong. Ex. EM-19); in Shultz's case, we have a transcription of his notes by Charlie Hill (ANS0001766-67), as well as Hill's notes of Shultz's after-the-fact "readout" of the meeting (ANS0001762-64). The various notes differ in ways that are immaterial to this memorandum, but they share one attribute that is striking: all of them reflect a purported description of the Iran Initiative by Poindexter which focused on the January 17, 1986 Finding, referred to an

Israeli shipment of 500 TOWs that the U.S. had found out about "after the fact" but agreed to replenish, and made no mention at all of the November 1985 Hawk transaction or the 1985 Iran Finding. Much of the meeting was spent debating whether to issue any sort of public statement about the Iran matter; a part of that discussion, as captured in Regan's notes, is as follows:

Pres	We must say something but not much.
John	If we go with this [a proposed brief statement drafted by Casey] we end our Iranian contacts.
DTR	Must get a statement out now, we are being attacked, and we are being hurt. Losing credibility.
JP	No statement needed, news has peaked, no hearings until Jan., so should not say anything.
Pres	Must say something because I'm being held out to dry. Have not dealt with terrorists, don't know who they are. This is long range Iranian policy. No further speculation or answers so as not to endanger hostages. We won't pay any money, or give anything to terrorists.
JP	Say less about what we are doing, more about what we are not doing. [redacted]

After the meeting, work continued on a statement; [redacted] (b)(3) GJ

[redacted]

[redacted] (b)(3) GJ

[redacted] The statement [redacted] said:

> The President today met with his senior national security advisors regarding the status of the American hostages in Lebanon. The meeting was prompted by the President's concern for the safety of the remaining hostages and his fear that the spate of speculative stories which have arisen since the release of David Jacobsen may put them and others at risk.
>
> During the meeting, the President reviewed on-going efforts to achieve the release of all the hostages, as well as our other broad policy concerns in the Middle East and Persian Gulf. As has been the case in similar meetings with the President and his senior advisors on this matter, there was unanimous support for the President. While specific decisions discussed at the meeting cannot be divulged, the President did ask that it be re-emphasized that no U.S. laws have been or will be violated and that our policy of not making concessions to terrorists remains intact.
>
> At the conclusion of the meeting, the President made it clear to all that he appreciated their support and efforts to gain the safe release of all the hostages. Stressing the fact that hostage lives are at stake, the President asked his advisors to ensure that their departments refrain from making comments or speculating about these matters.

The Initial Briefings of Congress

On November 12, 1986, the Administration held a briefing for Senate Majority Leader Dole, Senate Minority Leader Byrd, House Majority Leader Wright, and House Minority

Whip Cheney.[51/] According to Thompson's notes [redacted] and Meese's notes [redacted], the Administration was represented at this meeting by the President, the Vice President, Shultz, Weinberger, Meese, Casey, Regan, Poindexter, Keel, Will Ball, Larry Speakes, and Thompson. The meeting began with a preliminary statement by the President, which Thompson has rendered as follows:

> The Iran initiative was principally a covert intelligence operation, it was not a rogue operation. There were no negotiations directly with terrorists and the purpose of the initiative was to enhance our position in the Middle East.

(b)(3) GJ

Then, according to both sets of notes, Poindexter took over with a lengthy narrative on the Initiative. Just like his similar performance on November 10, Poindexter began with the January 17, 1986 Finding, and then described the McFarlane trip to Tehran, listed the 1986 weapons shipments to Iran (omitting the October 1986 shipment), and concluded with the statement "Mr. President, these are all of the facts." The only references to the 1985 phase of the Initiative are oblique; Thompson's notes show Poindexter stating that "the Israelis are probably still shipping to Iran" [redacted] which Meese's notes expand into a statement that "Israelis may be continuing to ship arms (w/o our authorization) as

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[51/] On November 10 HPSCI had called for hearings into the Iran matter, which were to begin on November 21, 1986 and to involve briefings of the Committee by Poindexter, Shultz, Weinberger, and Casey (see GX 119 in U.S. v. Poindexter).

they did before our contacts began" [redacted]. According to Thompson, later in the meeting,

> Byrd asked, initial contact was made when?
>
> Poindexter said, first in 1985 but no transfer of material. We needed to assess the situation in Iran. About one year until the Finding. [redacted] 52/

A more skeletal version of this exchange appears in Meese's notes ("Contacts w/ Iranians began in 1985 (about 1 yr before finding)"). [redacted]

The Public Stonewall Begins to Crumble

At the national security briefing on November 12, there was discussion both of the briefing of Congressional leadership referred to above and of a public statement by the President that was to take place within the next two days. McDaniel's notes for that day contain the phrase "Deny facts where possible" (ALU0128265), which suggests the emergence of a more flexible Administration press strategy, in which the stonewall would be replaced by a rolling defense that

(b)(3) GJ

52/ Although the point is tangential to this memorandum because the President was not involved, it is interesting to note that Poindexter took exactly the same line the next day in his briefing of Senators Byrd, Leahy, Thurmond, and Stevens, and Congressmen Hyde, Broomfield and Aspin. According to Thompson's notes of that session,

> Aspin said, you did nothing before January?
>
> [Poindexter said,] that's right, except talk. [redacted]

involved admitting (and trying to blunt the political impact of) the publicly-known facts concerning the Iran Initiative, while holding the line on further disclosures. By this time, however, the Iran story had acquired so much momentum that this shift to a damage-control strategy came too late to do much good politically, as the President seems to have realized on November 13 when he told his national security staff: "Should have gone public sooner" (ALU128266).

Too late or not, the President's televised address to the Nation on November 13 was consistent with the new public relations approach. In the main, it was an effort to blunt the political impact of the Iran arms sales by stressing four principal points: (1) that the weapons shipments were not ransom for the hostages; (2) that the quantities of weapons shipped by the United States were small; and (3) that the weapons themselves were "defensive" in nature; and (4) that the goals of the Iran Initiative were broader than simply arms-for-hostages, and included renewing the United States' relationship with Iran, bringing an honorable end to the Iran/Iraq war, eliminating state-sponsored terrorism, and obtaining the safe return of the hostages (see GX 223 in U.S. v. North).

The President's November 13 speech was completely silent about the 1985 "Israeli" arms shipments to Iran, and was generally quite short on specific facts; one of the few

factual assertions in it was the statement that in the aggregate, the weapons shipped to Iran could be fit into a single cargo plane (GX 223 at 2).[53/] Consistent with the "deny where possible" approach (see ALU0128266), the President also attempted to squelch some aspects of the Iran story as it was being reported at the time:

> Other reports have surfaced alleging U.S. involvement. Reports of a sealift to Iran using Danish ships to carry American arms. Of vessels in Spanish ports being employed in secret U.S. arms shipments. Of Italian ports being used. Of the U.S. sending spare parts and weapons for combat aircraft. All of these reports are quite exciting, but as far as we are concerned, not one of them is true. (GX 223 at 1.)

Most of these specifics were, in fact, easy to deny because they stemmed from confusion between the facts of the Evans case in New York and the NSC's Iran Initiative; the allegation that was closest to the truth -- the reference to the Danish ship, which turned out to be the Enterprise's

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53/ According to Regan, this idea was first broached to the President by Poindexter on the morning of the speech; when Regan asked Poindexter to check it, Poindexter returned to say "Well, make it a C-5" -- a reference to the largest transport in the United States inventory. (See July 30, 1987 Regan Cong. Tr. 64-66; see also ALU0128266 (McDaniel note stating "DTR - how big? (tons))-less than one 747 or C-5 (cargo plane?)".) Poindexter still claims that this estimate is "reasonably accurate" if one subtracts the 17 Hawk missiles that were returned to Israel (see July 20, 1987 Poindexter Cong. Tr. 37-39; but see July 17, 1987 Poindexter Cong. Tr. 184 (Rep. Hyde claiming that even without the Hawks, he had been informed that if one could even find a plane that [the Iran arms] could fit in, it would never fly")).

Erria -- was narrowly deniable by the Administration because the Erria never delivered U.S. arms to Iran, as opposed to patrolling the Mediterranean in hopes of recovering hostages, transporting weapons to Central America, and vainly awaiting receipt from Iran of three captured T-72 tanks. From the President's perspective, the Erria appears to have been more broadly deniable because Poindexter says that he never told Mr. Reagan about the vessel in the first place (see July 15, 1987 Poindexter Cong. Tr. 153).

The President's November 13 speech failed to stem the tide of questions about the Iran Initiative. In particular, the following week saw the breakdown of the policy of silence concerning the 1985 Israeli arms shipments to Iran. That policy was already crumbling by November 13, because Admiral Poindexter, in his background briefing to the press before the President's speech, had been forced to admit U.S. knowledge of the August/September 1985 Israeli TOW shipment. Although he initially tried to deny that the United States had condoned any pre-January 17-Finding shipments of weapons to Iran (see AKW028975-76), Poindexter's denials foundered on the obvious point that something beyond just "talk" must have led to the release of hostage Weir in September 1985:

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

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

Q How did you do that?

Q How was that done?

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

Q But that was done later?

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

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

Q This shipment to Israel?

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

Q Was that on our behalf?

SENIOR ADMINISTRATION OFFICIAL: It was done in our interests.

Q Sir, what --

Q Was that before Weir was release?

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

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

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

Q And that was --

SENIOR ADMINISTRATION OFFICIAL: That was it.

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

SENIOR ADMINISTRATION OFFICIAL: It was in the general time frame. (AKW0288978-79.)

[redacted]

(b)(3) GJ

"Confusion" Concerning the November 1985 Hawks and the Birth of the Meese Investigation

The forced admissions by Poindexter and Regan concerning U.S. condonation of the 1985 "Israeli" TOW transfer left the November 1985 Hawk shipment, the related 1985 Iran Finding, and the diversion as the major remaining undisclosed facts surrounding the Iran Initiative. During the week of November 17 the NSC Iran Chronology -- which omitted the diversion throughout, but which had up to then

contained a relatively truthful, if incomplete, account of the November 1985 shipment similar to that contained in the early versions of the CIA Chronology (see, e.g., GXs 116, 124 in U.S. v. Poindexter) -- began to change, first toward the omission of the November shipment and, later in the week, toward the affirmatively false statement that the United States had believed the shipment to be oil well drilling parts (compare GX 134 in U.S. v. Poindexter).

On the afternoon of November 19, the President received a warning from Secretary Shultz that "We've been deceived and lied to and you have to watch out about saying no arms for hostages" (see July 23, 1987 Shultz Cong. Tr. 110). Mr. Shultz has testified that he cannot recall whether it was at this session or a subsequent meeting that he first told Mr. Reagan that McFarlane had given Shultz contemporaneous information about the November 1985 Hawk shipment (id. at 111-112). Charlie Hill's notes of Shultz's "readout" of the November 19 meeting with the President suggest that Shultz alluded to this subject, but not in a way that would necessarily have identified the shipment as the November 1985 Hawks (see ANS0001852 ("Bud once told me about a plane of arms that would go if hostages released -- not if not", with an adjoining notation that says "President knew of this - but it didn't come off")).

Despite these cautionary signals, at Regan's urging the President was sent out in a second effort to stem the tide of public criticism about Iran (see [redacted]. The President's prepared remarks at his November 19 news conference were essentially a rehash of the themes stressed in his November 13 speech (see DX 91 in U.S. v. North at ALU016817-18). Judging by his responses to the press' questions, it does not appear that anyone did an adequate job of bringing the President up to speed on the nuances of partial disclosure concerning the 1985 shipments, because Mr. Reagan flatly denied the 1985 phase of the Iran Initiative altogether.[54/] The key questions and answers were as follows:

> Q Mr. President, I don't think it's still clear just what Israel's role was in this -- the questions that have been asked about a condoned shipment. We do understand that the Israelis sent a shipment in 1985 and there were also reports that it was the

(b)(3) GJ

54/ [redacted]. Regan has stated that he did not remind the President about the November 1985 Hawks during the press conference "pre-briefs" that Regan attended (see July 30, 1987 Regan Cong. Tr. 62-64), although Regan missed the relevant pre-brief on the day of the press conference (id. at 226). Although Israel is mentioned in McDaniel's notes of national security briefings on November 14 and November 17 (see ALU0128267 ("VP: Rabin/Israeli angle? JMP - No winking or nodding), ALU0128268 ("Jack Anderson: Arms & Israel (VP-Chronology?) (Do it in Congress)"), neither of these entries distinguishes between the two 1985 Israeli shipments.

Israelis that contacted your administration and suggested that you make contact with Iran. Could you explain what the Israeli role was here?

THE PRESIDENT: No, because we, as I say, have had nothing to do with other countries or their shipment of arms or doing what they're doing. And, no -- as a matter of fact, the first ideas about the need to restore relations between Iran and the United States or the Western world, for that matter, actually began before our administration was here. But from the very first, if you look down the road at what could happen and perhaps a change of government there -- that it was absolutely vital for the Western world and to the hope for peace in the Middle East and all, for us to be trying to establish this relationship. And we worked to -- it started about 18 months ago, really, as we began to find out -- some individuals that it might be possible for us to deal with, and who also were looking at the probability of a further accident. (DX 91 in U.S. v. North at ALU016821.)

* * *

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

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

Andrea?

> Q Mr. President, to follow up on that, we've been told by the Chief of Staff Donald Regan that we condoned, this government condoned an Israeli shipment in September of 1985, shortly before the release of hostage Benjamin Weir. That was four months before your intelligence finding on January 17th that you say gave you the legal authority not to notify Congress. Can you clear that up why we were not -- why this government was not in violation of its arms embargo and of the notification to Congress for having condoned American-made weapons shipped to Iran in September of 1985?
>
> THE PRESIDENT: No, that -- I've never heard Mr. Regan say that and I'll ask him about that, because we believe in the embargo and, as I say, we waived it for a specific purpose, in fact, with four goals in mind. (Id. at ALU016823.)

Immediately after the press conference, the President's aides attempted to rectify the inconsistency between the Reagan and Regan/Poindexter versions of events by issuing the following written statement:

> There may be some misunderstanding of one of my answers tonight. There was a third country involved in our secret project with Iran. But taking this into account, all of the shipments of the token amounts of defensive arms and parts that I have authorized or condoned taken in total could be placed aboard a single cargo aircraft. This includes all shipments by the United States or any third country. Any other shipments by third countries were not authorized by the U.S. government. (DX91 at ALU016815.)

Late on November 19, Secretary Shultz also called the President to say that his performance had included many

statements that were wrong or misleading and that Shultz wished to meet with him (July 23, 1987 Shultz Cong. Tr. 112-113). The President agreed to see Shultz on the following day (id.). Charlie Hill's notes for the morning of November 20, 1986 recount a conversation (apparently face to face in Regan's office, see March 6, 1991 Regan 302 at 6) between Secretary Shultz and Donald Regan. The pertinent part of the notes is as follows:

> P w VP told Pdx of my [i.e., Shultz's] telling him [i.e., President Reagan] things were wrong -- shd convene a meeting to go over what everybody knows & get it together. On Monday P will think it over at ranch.

(ANS0001866.) The phrase "my telling him things were wrong" appears to refer to either or both of the Shultz-Reagan conversation that preceded the President's November 19 press conference or Shultz's telephone conversation with the President following the press conference, in which Shultz told Mr. Reagan that he had made many statements that were wrong or misleading. Although none of the apparent participants has pinpointed a Reagan-Bush-Poindexter conversation, witnessed by Regan, concerning Shultz's protestations, the November 20 0930 National Security Briefing featured precisely that cast of characters, and also lacked a note-taker such as McDaniel who might have recorded what was said (see ALU028705; see also AKW044199 (Poindexter Appointment Schedule stating that at 9:30 a.m. on November 20

there was a Presidential NSB -- "JMP alone w/Regan and VP"). However, Regan believes that he did not hear about Shultz's concerns until later in the day on November 20, and therefore has no recollection that they came up at this 0930, where he thinks that the President's press conference and the associated problems were discussed (see March 6, 1991 Regan 302 at 3-5). [redacted] (b)(3) GJ

On the evening of November 20, Shultz and Regan met with the President at the family quarters. According to Shultz, the gist of his presentation was that the President was being briefed with information that was not correct (see July 23, 1987 Shultz Cong. Tr. 113-114). Shultz says that he left the meeting thinking that he "had not made a dent in the President" (id. at 114; see also ANS0001871 (Hill notes)). Charlie Hill's notes of Shultz' November 22 interview with Attorney General Meese supply some additional detail concerning the November 19-20 meetings between Shultz and the President. According to the notes, Shultz told Meese:

> You should know I went to President on Thurs. night. Asked to go see him. Went w/DR to family qtrs. I had called after press conf. to tell him he did fine job but a lot of yr statements won't stand up

> to scrutiny and I'll come tell you what you said was wrong. How you have those ideas I don't know but it's wrong -- and I described Bud talk to me in Geneva. President said oh I knew about that -- but that wasn't arms for hostages! I said no one looking at the record will believe that. (ANS0001883.)

Regan recalls that Shultz told the President that Abraham Sofaer, State's Legal Advisor, was worried about what Casey was going to say in his testimony the next day, and was specifically concerned about the likelihood of a public discrepancy between Casey's testimony and that of Assistant Secretary of State Michael Armacost; the November 1985 Hawks were only one of the troublesome issues raised with the President by Shultz, who also said that he had made his views known to Meese (see July 15, 1987 Regan Cong. Dep. 40-42; see also March 3, 1987 Regan Cong. Dep. 47). Regan also says that the November 20 meeting was the "genesis" for his suggesting to the President that an NSPG meeting be scheduled for Monday, November 24, 1986 to discuss the Iran Initiative, and that in the meantime Attorney General Meese, who was already working on Director Casey's Congressional testimony, be asked to gather the facts about the Initiative to date (see [redacted] July 30, 1987 Regan Cong. Tr. 71). [redacted]

[redacted]

(b)(3)
GJ

[redacted]

[redacted]

The President's recollection of the November 20 meeting had vanished by the time of his deposition (see February 16, 1990 Reagan Dep. 39), although it reappears at page 529 of his 1990 book An American Life.

Early the next morning, Poindexter provided briefings to HPSCI and SSCI which, while purporting to be complete narratives of the Iran Initiative, made no reference to either the diversion or the 1985 Iran Finding, and contained affirmatively false statements about the November 1985 Hawk shipment. Later in the morning, Director Casey gave testimony to these committees that paralleled Poindexter's false denials about the November Hawks.

(b)(3) GJ

At his deposition, the President claimed not to recall even knowing that Admiral Poindexter was going to brief Congress on the Iran matter on November 21 (see February 16, 1990 Reagan Dep. 44-45). However, it is not likely that in November 1986 Mr. Reagan was quite that oblivious to his surroundings. The President was generally aware that more Congressional briefings were to follow the November 12 meeting with the leadership at which Poindexter was the principal briefer (see [redacted] GX 223 in U.S. v. North at 3); [redacted]

[redacted]

[redacted] At the very least, Mr. Reagan was no doubt told why Poindexter failed to turn up at the November 21, 1986 National Security briefing, which was handled by Keel (see ALU0128270) because Poindexter was speaking to the Committees. But even though there is little doubt that the President would have known generally that Poindexter would be meeting with Congress on Iran, [redacted]. The President has testified affirmatively that he did not and would not authorize any false statement to Congress by Poindexter in connection with the Iran Initiative (see February 17, 1990 Reagan Dep. 250-251). (b)(3) GJ

The pattern with respect to the President's knowledge of Casey's November 21, 1986 testimony is similar. [redacted]

[redacted]

What is undisputed is that immediately after Poindexter's briefings of the Intelligence Committees, and contemporaneously with Casey's testimony to those Committees, the President ordered Meese to find out the relevant facts and to report them by the following Monday. [redacted]

[redacted]

(b)(3)
GJ

55/ Regan adds that before Poindexter came to the Oval Office on November 21, he told the President about Poindexter's unsuccessful effort to take back the copy of the NSC Chronology that Regan had obtained on the previous day, advised Mr. Reagan that "something sure as hell was screwy," and suggested that he make the NSC come up with a correct chronology (see July 30, 1987 Regan Cong. Tr. 70-71).

[redacted]

Mr. Meese has testified that on Friday morning, after reviewing the Iran matter with his colleagues at Justice, he called Poindexter and Regan and told them that he wanted to meet with the President, and then suggested to the President that someone should look into the facts (see [redacted] July 28, 1987 Meese Cong. Tr. 75-77; see also [redacted] March 29, 1989 Cooper North Trial Tr. 5958, 5960-63, 5965-67). The only person present at the 11:32 a.m. meeting who does not claim to have thought up the Meese inquiry is Poindexter, who nonetheless is credited by Meese with agreeing "that something like that had to be done" (July 28, 1987 Meese Cong. Tr. 77).[56/]

Everyone seems to agree that Meese's first move was not to ask the President or Regan what either of them recalled about the November 1985 Hawk shipment or any of the other known "disputed facts" about the Iran matter (see July 30, 1987 Regan Cong. Tr. 72-73; July 28, 1987 Meese Cong. Tr.

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GJ

56/ [redacted]

80; July 16, 1987 Poindexter Cong. Tr. 121[57]), although it is interesting to note that according to Charlie Hill's notes of Meese's November 22 interview of Shultz, Meese told Shultz that

> Certain things could be violation of a law. President didn't know about Hawk in Nov. If it happened & President didn't report to Congress, it's a violation. He said to me if it happened I want to tell Congress not have them tell me. (ANS00018888; emphasis supplied.)[58]

By all accounts, the President was not informed of any of the results of the Meese investigation until Monday, November 24, by which time the question of who knew what about the November 1985 Hawk shipment had been largely eclipsed by the diversion.

Destruction and Alteration of Documents

In addition to DoJ's interviews and document reviews, the three days beginning on Friday, November 21 saw a renewed spasm of document destruction and alteration at NSC. North redoubled his efforts to dispose of troubling records, and on November 21 Poindexter joined in the process

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[57] Poindexter also says that he never asked the President whether he had approved the November shipment because he didn't think Mr. Reagan would remember that level of detail. (Id.)

[58] This statement by Meese echoes Poindexter's testimony that two days earlier, Meese told Casey and Poindexter that the November 1985 shipment was the only one with a legal problem and that it would make a difference whether the President approved it before or after the fact (see June 19, 1987 Poindexter Cong. Dep. 349).

by ripping up the original 1985 Iran Finding signed by the President, along with some ancillary documents. North and Poindexter also deleted their inventories of stored PROF notes.

Poindexter has testified that he neither sought nor received the President's authorization to destroy the 1985 Iran Finding, and that it never even crossed his mind whether Mr. Reagan would have wanted him to do so. (See July 16, 1987 Poindexter Cong. Tr. 50, 53; July 16, 1987 Poindexter Cong. Tr. 127.) [redacted]. President Reagan testified at his deposition that he did not authorize Poindexter to destroy any document related to Iran/Contra (see February 16, 1990 Reagan Dep. 160; February 17, 1990 Reagan Dep. 267). [redacted] (b)(3) GJ

[redacted]

[redacted]

Meese Reports the Results of His Investigation

By Monday, November 24, Attorney General Meese had turned up North's involvement in the diversion of Iranian arms sale profits to the Contras. At 11:15 a.m. [redacted] (b)(3) GJ Meese and Regan met briefly with the President, [redacted] The principal briefing of the President about the diversion

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59/ At one point Mr. Reagan testified as follows:

> Q. . . .
> Did you ever authorize or approve any member of the National Security Council in November of 1986 to destroy or alter any records or documents relating to the Iran or Contra affair?
>
> A. And this, I cannot answer. I cannot recall because it is the possibility that there were such papers that would violate the secrecy that was protecting those individuals' lives. (February 17, 1990 Reagan Dep. 255.)