

appears to have taken place at a second meeting among Reagan, Regan and Meese later on Monday afternoon.

Apart from a state visit and an "issues briefing lunch" [REDACTED] the major Presidential event that intervened between Meese's two meetings with the President was a two-hour NSPG meeting about the Iran Initiative, attended by the President, the Vice President, Shultz, Weinberger, Casey, Regan, Poindexter, Meese and George Cave. The meeting was primarily devoted to the merits of the Initiative; there appears to have been no mention of the diversion. There was, however, a brief discussion of the November 1985 shipment; as recorded in Meese's notes, that discussion contained an extraordinarily misleading statement by Poindexter who, three days before, had ripped up the 1985 Iran Finding:

DTR

Q re Hawk missile shipment: Who authorized? Who knew? Was RR told?

JMP

Bud handling by self from Jul to Dec 85. No documentation.

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Knew about situation and opposed it. (Cong. Ex. EM-49.)

Following the NSPG meeting, Meese spoke to Poindexter, who stated that he was generally aware of the diversion (see [REDACTED] 1987 Meese Cong. Tr. 193-198). At 4:20 p.m. [REDACTED]

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the President, Regan and Meese met once again. Meese informed the President about the diversion and Poindexter's acknowledgement of it; according to both Meese and Regan, the President appeared "shocked" and "surprised". There was a discussion of whether Poindexter should be relieved of his duties, at the conclusion of which the President said that he wished to think about the matter overnight. (See [REDACTED] [REDACTED] July 28, 1987 Meese Cong. Tr. 147-156; July 29, 1987 Meese Cong. Tr. 199-200; [REDACTED])

Early in the morning of November 25, both Meese and Regan advised Poindexter that he should resign; Regan told Poindexter that he should have the resignation ready by 9:30 that morning. (See [REDACTED] [REDACTED] 30, 1987 Regan Cong. Tr. 85-87, 238-39.) At 9:00 the President, the Vice President, Regan and Meese held a meeting at which Meese went over the diversion in detail, and the four men discussed notifying Congressional leaders about the matter, the appointment of a three-man Commission to look into the facts, and the fact that Regan had advised Poindexter to resign. (See [REDACTED] July 31, 1987 Regan Cong. Tr. 25-27.) At 9:30 Poindexter arrived in the Oval Office, told the President that he was sorry for what had happened and that he "probably should have looked into it

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more", but hadn't, and tendered his resignation. ( [REDACTED]

[REDACTED] July 30, 1987 Regan Cong. Tr. 87; see also July 2, 1987 Poindexter Cong. Dep. 20-21; July 16, 1987 Poindexter Cong. Tr. 91.) According to Poindexter, the President replied that he "had great regret and said that this was in the tradition of a Naval officer accepting responsibility" (July 16, 1987 Poindexter Cong. Tr. 91).

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After briefing Cabinet officials, President Reagan and Attorney General Meese (accompanied by at least Shultz, Casey, and Regan) had a meeting with Congressional officials including Senators Dole, Byrd, Nunn, Warner, and House Majority Leader Wright. According to John Richardson's notes of the meeting, the discussion focused solely upon the diversion, the current status of the Iran Initiative, and future inquiries and investigations into the Iran matter (see Cong. Ex. EM-53).

At noon on November 25, the President and Meese held a press conference (see Public Papers of the Presidents, Ronald Reagan, 1986 Vol. II at 1587-88; DX 92 in U.S. v. North). The President made a brief initial statement in

which he said that Meese's weekend review of the Iran Initiative had turned up information that "I was not fully informed on the nature of one of the activities undertaken", which raised "serious questions of propriety" (Public Papers of the Presidents, Ronald Reagan, 1986 Vol. II at 1587). The President went on to announce the resignation of Poindexter and the firing of North, the forthcoming appointment of a special review board to determine the role of the NSC in the newly-found activity, and the continuation of Justice Department review of the matter (*id.*). The President then exited the briefing room, leaving Meese to announce the diversion (*id.*). Meese's description of the diversion -- complete with the minimal role ascribed to Poindexter -- accorded with what Meese had previously told the President and what the President and Meese had told the Congressional leaders earlier that morning (see DX 92 in U.S. v. North ). With respect to the 1985 Iran arms transactions and the President's knowledge of them, the Attorney General had this to say:

Q        Would you, please, clarify the whole question of the President condoning a third country shipment prior to signing this order -- this intelligence finding in January. Exactly what did the President know, and when did he know it? Who told him the details were, in terms of Israel shipping arms to Iran, apart from this additional question of shipping arms to the Contras?

ATTORNEY GENERAL MEESE: This is still being looked into.

The President did not have full details of all of the aspects of transactions that took place prior to the finding. There were -- there was at least one transaction that we know about in which Israel shipped weapons without any authorization from the United States. There was another transaction of a similar nature, although there was probably knowledge on the part of people in the United States about it, and this -

Q When was that?

ATTORNEY GENERAL MEESE: -- is one of -- there was a transaction, one transaction in late August or September, and there was another transaction in --

Q Of '85?

ATTORNEY GENERAL MEESE: -- of '85 -- in November. And in the November transaction, actually, those weapons were returned to Israel, it's our understanding. That was -- that whole -- both of those transactions took place between Israel and Iran, did not involve, at that time, the United States.

Q Mr. Attorney General, on that transaction in September --

Q Did the President know about it afterwards, or at what point --

ATTORNEY GENERAL MEESE: Wait a minute.

Q -- at what point did the President know? You said he didn't have the full details.

ATTORNEY GENERAL MEESE: Yes.

Q What details did he have about those transactions, and when did he have them?

ATTORNEY GENERAL MEESE: The President --this is one of the things that we're recollecting now. The President was informed generally that there had been an Israeli shipment of weapons to Iran sometime during the late summer, early fall of 1985, and then he later learned in February of 1986 details about another shipment that had taken place in November of '85, which had actually been returned to Israel in February of '86.

Q Mr. Attorney General, Admiral Poindexter --

Q If he didn't really know, why did he call Shimon Peres to thank him right after Benjamin Weir's release? Why did he call the then Israeli Prime Minister to thank him for Israel's help in sending that shipment of arms?

ATTORNEY GENERAL MEESE: Well, he thanked -- he called -- I don't know, because that's something I have not discussed with the President specifically the call to Shamir, but I think there was no question that the Israelis had been helpful in terms of their contacts with other people in regard to Weir.

Q Attorney General, Admiral Poindexter has told reporters that the President verbally authorized that shipment in September 1985 from Israel to Iran. Does your information dispute that?

ATTORNEY GENERAL MEESE: Our information is that the President knew about it probably after the fact and agreed with the general concept of continuing our discussions with the Israelis concerning these matters. That's the information I have.

Q But who had the authorization ability, if not the President? Who can authorize --

Q -- why did he condone --

ATTORNEY GENERAL MEESE: Well, nobody -- to my knowledge --

Q Let me just ask the question.

ATTORNEY GENERAL MEESE: To my knowledge, nobody authorized that particular shipment specifically.

Q The Israelis did it on their own?

ATTORNEY GENERAL MEESE: That's my understanding, yes.

Q Do you know the Israelis claim that they never did anything without the full knowledge, understanding and consent of the United States government?

Q That's what Rabin says.

ATTORNEY GENERAL MEESE: My understanding is that in the terms of that particular shipment --and this is one of the --

Q Which one? The September '85?

ATTORNEY GENERAL MEESE: The September -- August or September -- it's either August or September -- that on that particular occasion, it was done at their -- on their own motion by the Israelis. It was known to us, and it's uncertain as to whether it was known before or after and --

Q Didn't Bud McFarlane meet with an Israeli official just at that time?

ATTORNEY GENERAL MEESE: Wait a minute. Let me finish my answer -- and that it was, however, after the fact, at

least, was condoned by the United States government.

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Q Andrea's had a few questions already. (Laughter.) What's to prevent an increasingly cynical public from thinking that you went looking for a scapegoat and you came up with this whopper, but it doesn't have a lot to do with the original controversy?

ATTORNEY GENERAL MEESE: Well, the only thing that I can say is that we have been very careful to lay out the facts for you and for the American public just as rapidly as we've gotten them, much different than we would do in a normal inquiry or investigation when we usually wait until the inquiry is complete. But the President felt that in the interests of getting the full story out that he should make the statement that he did today and that I should appear before you and answer questions, which I think you will agree is doing everything we can to be sure that there is no hint that anything is trying to be concealed. (Id. at ALV014374-77.)

That evening, President Reagan telephoned North.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Col.

North, when advised of Earl's recollection, testified that Earl was mistaken and that the President had told North, and North had told Earl, "I just didn't know", and perhaps that it was important that North understand that the President didn't know. (See July 8, 1987 North Cong. Tr. 95-96.) Fawn Hall, North's secretary, corroborates North by saying that North told her the President had said "I just didn't know" (see June 8, 1987 Hall Cong. Tr. 297).

A. False Statements and Obstruction of Congressional Inquiries

As described above, the President made public statements concerning the Iran matter on November 6, 7, 10, 13, and 19, 1986, and assisted in a briefing of the Congressional leadership on November 12. Poindexter and Casey provided false and misleading briefings to the

intelligence committees on November 21. Putting aside the "arms for hostages" quagmire (see page 124n. 50), the Administration or parts of the Administration were attempting during that time to withhold information about: (1) the August/September 1985 TOW shipment, although U.S. condonation of that shipment was disclosed fairly promptly; (2) U.S. participation in the November 1985 Hawk shipment and the existence of the related 1985 Iran Finding, and (3) the diversion. Did the President's conduct with respect to these matters violate any criminal law?

To begin with, there is no basis in the law to charge any false statement by the President in a speech or news conference as a freestanding crime because the relevant statute, 18 U.S.C. § 1001, punishes only false statements made to a "department or agency of the United States". Thus, the President's public statements during this period can, at most, be viewed as evidence of a scheme to deceive Congress or to aid and abet others in doing so. The November 12 briefing of Congressional leaders may stand on a different legal footing, as would any Presidential involvement in Poindexter's and Casey's November 21 statements to the intelligence committees.<sup>60/</sup> However, under the legal

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<sup>60/</sup> The reason for distinguishing legally between the November 12 briefing and the November 21 briefings is that the latter were clearly held pursuant to Congressional intelligence committee inquiries that fit snugly into 18 U.S.C. §§ 1001 and 1505, as established in the North and Poindexter cases.

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standards discussed in Section II(A)-(C) above, the President could only be criminally liable if he knew the facts concerning which Congress was either lied to or obstructed, and also joined in or authorized the lying and obstruction itself. Because of the complete lack of any evidence that the President knew about the diversion until the day before it was announced, the inquiry boils down to the following questions: (1) did President Reagan recall his authorization of the 1985 "Israeli" arms shipments to Iran at any time up to November 21, 1986?; (2) did President Reagan supply Congress, or condone or authorize Poindexter and Casey supplying Congress, with false information about those shipments?

There is little or nothing in the record concerning whether the President did, or did not, remember the August/September 1985 TOW shipment in early November 1986. As will be seen in Section IV below, the President's statements about that shipment wandered all over the lot in

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<sup>60/</sup> (...continued)

The November 12 briefing, on the other hand, took place at the instance of the White House and involved a group of four "Congressional leaders"; in that situation, it is less obvious that any false statements could be characterized as having been made "in [a] matter within the jurisdiction of [a] department or agency of the United States" (Section 1001) or to "influence[], obstruct[], or impede[], or endeavor[] to influence, obstruct or impede . . . the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint Committee of the Congress" (Section 1505).

the months following November 1986, and ultimately settled down to an account that resembles McFarlane's testimony that the President approved the Israelis' action in advance. In any event, because U.S. condonation (if not prior Presidential approval) of that shipment was publicly acknowledged by Mr. Reagan almost immediately after the November 12 Congressional briefing, I do not believe that there was any effective obstruction of Congress on that subject, nor even a creditable endeavor to obstruct.

The Administration's efforts on the 1985 Hawks were much more persistent. At his deposition in United States v. Poindexter, Mr. Reagan stated that he cannot recall today whether he remembered the November 1985 Hawk shipment at the time he met with Congressional leaders on November 12, 1986, or even whether he had heard about it before the Lebanese newspaper article on November 3 (see February 16, 1990 Reagan Dep. at 37-38). In my view, the available facts do not permit a definite conclusion concerning the state of the President's recollection on this issue. On the one hand, at the November 10 meeting and again at the November 12 Congressional briefing, the President was exposed to highly incomplete accounts of the Iran Initiative by Poindexter, who did not mention the November 1985 shipment or the related Finding, and made only veiled references to the

August/September 1985 TOW shipment.<sup>61/</sup> It is equally clear that the President lacked the access to detailed facts that Poindexter possessed, including most notably the 1985 Iran Finding, which Poindexter destroyed without telling the President, as well as the progression of draft Chronologies that, over time, became less and less truthful on the subject of the November shipment. On the other hand, the President was not wholly without access to information; if he had simply consulted his diary, he would have found entries for November 22 and November 23, 1985 that, while silent on the subject of Hawk missiles or indeed any armaments at all, plainly show that the President knew something was up with the hostages in late November of that year. In addition, on November 19-20, 1986, Mr. Reagan received more or less direct information from Secretary Shultz concerning Shultz' contemporaneous knowledge of the November 1985 shipment, to which Mr. Reagan is said to have responded that he "knew of this" (see page 137 above) or "knew about that" (see pages 142-143 above). At the same time -- although Meese's articulation of it carries some of the flavor of counsel's advice in Anatomy of a Murder -- there is evidence that President Reagan suggested to Meese that he did not know

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about the November shipment, and asked Meese to tell him what had happened (see pages 148 above). Meese stuck with that account through November 25, 1986 (see pages 154-158 above). On balance, I do not believe that one can conclude with any certainty that President Reagan recalled his authorization of the November 1985 Hawk shipment at any time before November 25, 1986.

The record also does not permit a conclusion that the President authorized or condoned false statements or obstruction by Poindexter or Casey on November 21. While there is, as noted at pages 144-146 above, little doubt that the President knew in advance that Casey and probably Poindexter were going to be briefing Congress about the Iran matter, there is no indication that Mr. Reagan knew specifically what they were going to say, or acquiesced in their making intentionally false or misleading statements. Indeed, the only warnings that the President did receive about his briefings on the Iran Initiative and the upcoming testimony -- Shultz' November 19 statements that "we've been deceived and lied to" (see page 137 above) and Shultz' November 20 advice that there were discrepancies between Shultz' knowledge and what Casey was about to tell Congress (see page 143 above) -- led immediately to the President ordering the Meese investigation. Referring once again to Judge Greene's jury charge in Poindexter, these facts are

inconsistent with either a knowing and willful participation by Mr. Reagan in a conspiracy to make false statements or mislead Congress (see Attachment A at 3359) or a specific intent on his part to assist in the commission of false statements or obstruction (see Attachment A at 3371). Thus, I conclude that there is no probable cause to charge former President Reagan with conspiracy or aider/abettor liability with respect to false statements or obstruction in November 1986.

B. Document Destruction/Alteration

As discussed at pages 148-150 above, no witness, and no documentary fact, provides the slightest reason to believe that President Reagan was aware of any destruction or alteration of documents relating to Iran or the Contras in October-November 1986 until after those acts were complete. There is accordingly no basis for even considering Presidential liability for such activities either as an act of obstruction under 18 U.S.C. § 1505, or in their own right as a violation of 18 U.S.C. § 2071.

#### IV. Responses to Investigations

The final section of this memorandum considers whether President Reagan committed any crimes in his responses to the three principal investigations that followed the November 25, 1986 news conference: the Tower Commission investigation, the investigation performed by the Congressional Iran/Contra Select Committees, and the criminal investigation conducted by our Office.

##### Summary of the Facts

##### President Reagan's Statements to the Tower Commission

On December 1, 1986, President Reagan signed Executive Order 12575, which established a Special Review Board "to review activities of the National Security Council", and specifically to

conduct a comprehensive study of the future role and procedures of the National Security Council (NSC) staff in the development, coordination, oversight, and conduct of foreign and national security policy; review the NSC staff's proper role in operational activities, especially extremely sensitive diplomatic, military, and intelligence missions; and provide recommendations to the President based upon its analysis of the manner in which foreign and national security policies established by the President have been implemented by the NSC staff.

The Board was directed to submit its findings and recommendations to the President (id.). President Reagan named former Senator John Tower to be Chairman of the Special



Review Board, which came to be known commonly as the "Tower Commission"; the other members were Edmund Muskie, former Senator from Maine and Secretary of State in the Carter Administration, and Brent Scowcroft, a retired General of the Air Force and National Security Advisor to President Ford.

The Tower Commission conducted a substantial number of interviews over a period of some three months; the Commission's February 26, 1987 letter submitting its Report to President Reagan states that in addition to the evaluative mission described in the Executive Order,

At your direction, we also focused on the Iran/Contra matter and sought to follow your injunction that "all the facts come out." We attempted to do this as fairly as we knew how so that lessons for the future could be learned.

At page I-1 of its Report, the Commission noted that

The Board was not, however, called upon to assess individual culpability or be the final arbiter of the facts. These tasks have been properly left to others. Indeed, the short deadline set by the President for completion of the Board's work and its limited resources precluded a separate and thorough field investigation. Instead, the Board has examined the events surrounding the transfer of arms to Iran as a principal case study in evaluating the operation of the National Security Council in general and the role of the NSC staff in particular.

The Tower Commission conducted two interviews with President Reagan, received a letter from the President correcting one aspect of his accounts at those interviews,

and was provided the opportunity to examine excerpts from the President's diary. The Commission's Report attempted to draw conclusions concerning the President's knowledge and authorization of the Iran Initiative in general, and of four controversial Iran/Contra events in particular: (1) the August/September 1985 Israeli TOW shipment; (2) the November 1985 Hawk shipment; (3) the diversion; (4) NSC staff assistance to the Contras during the Boland period. President Reagan's responses to the Commission in these four areas, as summarized in the Tower Report, were as follows:

The August/September 1985 TOW Shipment

In his meeting with the Board on January 26, 1987, the President said that sometime in August he approved the shipment of arms by Israel to Iran. He was uncertain as to the precise date. The President also said that he approved replenishment of any arms transferred by Israel to Iran. Mr. McFarlane's testimony of January 16, 1987, before the Senate Foreign Relations Committee, which the President embraced, takes the same position. This portion of Mr. McFarlane's testimony was specifically highlighted on the copy of testimony given by the President to the Board.

In his meeting with the Board on February 11, the President said that he and Mr. Regan had gone over the matter a number of times and that Mr. Regan had a firm recollection that the President had not authorized the August shipment in advance. The President said he did not recall authorizing the August shipment in advance. He noted that very possibly, the transfer was brought to him as already completed. He said that subsequently there were arms shipments he authorized that may have had to do with replenishment, and that this approval for

replenishment could have taken place in September. The President stated that he had been "surprised" that the Israelis had shipped arms to Iran, and that this fact caused the President to conclude that he had not approved the transfer in advance.

In a subsequent letter to the Board received on February 20, 1987, the President wrote: "In trying to recall events that happened eighteen months ago I'm afraid that I let myself be influenced by others' recollections, not my own . . ."

". . . I have no personal notes or records to help my recollection on this matter. The only honest answer is to state that try as I might, I cannot recall anything whatsoever about whether I approved an Israeli sale in advance or whether I approved replenishment of Israeli stocks around August of 1985. My answer therefore and the simple truth is, 'I don't remember - period.'"

The Board tried to resolve the question of whether the President gave prior approval to Israel's transfer of arms to Iran. We could not do so conclusively.

We believe that an Israeli request for approval of such a transfer was discussed before the President in early August. We believe that Secretary Shultz and Secretary Weinberger expressed at times vigorous opposition to the proposal. The President agreed to replenish Israeli stocks. We are persuaded that he most likely provided this approval prior to the first shipment by Israel.

In coming to this conclusion, it is of paramount importance that the President never opposed the idea of Israel transferring arms to Iran. Indeed, four months after the August shipment, the President authorized the United States government to undertake

directly the very same operation that Israel had proposed. Even if Mr. McFarlane did not have the President's explicit prior approval, he clearly had his full support. (Tower Commission Report at III-7-8; see also *id.* at B-19-20.)<sup>62/</sup>

#### The November 1985 Hawk Shipment

In his first meeting with the Board on January 16, 1987, the President said he did not remember how the November shipment came about. The President said he objected to the shipment, and that, as a result of that objection, the shipment was returned to Israel.

In his second meeting with the Board on February 11, 1987, the President stated that both he and Mr. Regan agreed that they cannot remember any meeting or conversation in general about a HAWK shipment. The President said he did not remember anything about a call-back of the HAWKS. (Tower Commission Report at III-9; see also *id.* at B-37.)

#### The Diversion

The President said he had no knowledge of the diversion prior to his conversation with Attorney General Meese on November 25, 1986. No evidence has come to light to suggest otherwise. Contemporaneous Justice Department staff notes of Lt. Col. North's interview with Attorney General Meese on November 23, 1986, show North telling the Attorney

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<sup>62/</sup> At pages 283-284 of his recent book, Consequences, Chairman Tower characterizes this series of statements by the President as "a major contradiction" which "bore all the earmarks of a deliberate effort to conceal" the role of Donald Regan in the Iran Initiative. Tower goes on to say that he does not know whether the President knowingly went along with false accounts in order to deceive the Commission, or was the victim of his aides -- a possibility which Tower believes is buttressed by the fact that at his second interview, Mr. Reagan made it obvious that he was relying on a statement prepared by others.

General that only he, Mr. McFarlane, and VADM Poindexter were aware of the diversion.  
(Tower Commission Report at III-21.)

NSC Staff Assistance to the Contras

The President told the Board on January 26, 1987, that he did not know that the NSC staff was engaged in helping the Contras. The Board is aware of no evidence to suggest that the President was aware of Lt. Col. North's activities. (Tower Commission Report at III-24; see also id. at C-14.)<sup>63/</sup>

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<sup>63/</sup> A July 29, 1987 memorandum to the file by Associate Counsel Roth, which summarizes his review of the actual Tower Commission memoranda of its two interviews of the President, suggests that Mr. Reagan made a series of discrete statements about North's and the NSC staff's Contra-related activities: (a) that the President didn't know of private funding for non-lethal aid for humanitarian purposes to the Contras (Roth memo at 4); (b) that the President did not know of NSC help to the Contras, but knew of State Department efforts to persuade other countries to help, and speculates that North may have thought this "opened the door" (id.); (c) that the President never directed individual NSC staff members, and did not know of North's involvement with the Contras (id. at 5); and (d) that the President did not know about the NSC staff supplying lethal aid to the Contras (id. at 7).

Both the Commission's sweeping conclusion of Presidential ignorance set forth in text above, and the President's actual statements to the Commission regarding aid to the Contras, are difficult to reconcile with documents that plainly were in the possession of the Commission, such as North's March 16, 1985 "Fallback Plan for the Nicaraguan Resistance" memo (see Tower Commission Report at C-4), or even with the President's pre-November 1986 public statements such as the October 8, 1986 South Lawn remarks (see page 88 above). The Commission's failure to resolve these contradictions may have stemmed from the fact that it was much more focused on Iran than on the Contras; as the Commission itself noted, it

"had neither the time nor the resources to conduct a full inquiry into the role of the NSC staff in the support of the

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President Reagan's Responses to the  
Iran/Contra Select Committees

The investigative methodology and resources of the Congressional Iran/Contra Select Committees were very different from those employed by the Tower Commission. As regards the President's role in Iran/Contra, the principal differences were these: first, unlike the Tower Commission, the Select Committees received no interviews or testimony from Mr. Reagan himself; second, the Select Committees possessed a critical investigative tool that the Tower Commission lacked -- the ability to compel testimony from reluctant witnesses, most notably Poindexter and North, under grants of statutory use immunity; third, the Select Committees had comparatively a much greater time in which to conduct their investigation<sup>64/</sup>, and a vastly larger staff with which to carry it out, so that the Committees received and processed a far larger number of White House and NSC documents. Indeed, the only relevant similarity between the two investigations lay in the fact that both groups received

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Contras that was commensurate with its work on the Iran arms sales. As a consequence, the evidence assembled by the Board was somewhat anecdotal and disconnected." (Tower Commission Report at III-22.)

<sup>64/</sup> There are those, to be sure, who suggest that the Select Committees set themselves too short a time within which to complete their work. See "Investigator criticizes Iran-contra probe," USA Today, May 8, 1989, at 4A.

access to excerpts from the President's diaries, although it seems likely that the Select Committees (like our Office) saw more such excerpts than were made available to the Tower Commission.

Given these investigative differences (not to mention the distinct political influences driving each body), it is not surprising that the Select Committees drew somewhat different conclusions concerning Presidential knowledge and authorization of each of the controversial Iran/Contra events except the diversion and, in large measure, the August/September 1985 TOW shipment. The Select Committee Majority's conclusions in those four areas were as follows:

The August/September TOW Shipment

The President, in his Tower Board interview, originally confirmed that he had authorized the sale, but later stated that he had no actual recollection one way or another. No documents record the decision.

The Tower Board concluded that the President most likely approved the Israeli sales before they occurred. The evidence supports that conclusion. The Israelis expressly sought the President's approval of the Israeli sales and confirmation that the Secretary of State had been consulted. By McFarlane's own admission, he told the Israelis that they were authorized to sell the TOWs. McFarlane had no motive to approve a sale of missiles to Iran if the President had not authorized it. Moreover, Ledeen testified that McFarlane told him of the President's decision. McFarlane also contemporaneously reported the President's approval to Kimche.

(Iran/Contra Select Committee Report at 167-168 [footnotes omitted], see also id. at 501)

The November 1985 Hawk Shipment

McFarlane told the President about the developing plans for the HAWK transaction shortly before they left on November 17 for a summit meeting with Soviet leaders in Geneva. Regan, who was present, said it was:

[J]ust a momentary conversation, which was not a detailed briefing to the President, that there [is] something up between Israel and Iran. [McFarlane said] [i]t might lead to our getting some of our hostages out, and we were hopeful

.....  
 McFarlane did not stress that what he and Rabin saw as Ghorbanifar's unreliability was adding to the risks of the operation. Instead, McFarlane merely made "a passing reference here or there" about these concerns, and did not discuss them at length with the President at the time. The President's reaction was "cross your fingers or hope for the best, and keep me informed." (Iran/Contra Select Committee Report at 176 [footnotes omitted].)

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While they were still in Geneva, McFarlane updated the President and Chief of Staff Donald Regan on the status of the HAWK shipment and the anticipated hostage release. McFarlane informed them that the Israelis were about to ship the weapons, and expressed hope that the hostages would come out by the end of the week. McFarlane specifically told the President that Israel was about to deliver 80 HAWK missiles to Iran via a warehouse in Country 15, and that Israel wanted the United States to replace those missiles.

McFarlane testified that he simply told the President that the Israelis were



about to act, but did not ask for specific approval:

[T]he President provided the authority in early August for Israel to undertake, to sell arms to Iran, and to then come to the United States for replenishment, to buy new ones. That didn't require then the Israelis to come back to us on each occasion and get new approval.

The President asked McFarlane to arrange a meeting at which the President and his top advisers would review the initiative after the summit. (Id. at 178 [footnotes omitted].)

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On the day the CIA sent the proposed Finding to the White House, November 26, the President authorized continuing the arms-for-hostages transaction. North's notes indicate that he was so informed by Poindexter at an hour-long meeting:

0940-1050. Mtg w/JMP. RR directed op[eration] to proceed. If Israelis want to provide diff model, then we will replenish. We will exercise mgt over movmt if yr side cannot do. Must have one of our people in on all activities.

Later that day, North related to an Israeli official that the Americans wanted to carry on even if the supply of additional arms was needed and even if the weapons had to come from the United States. But events not within the control of the American side prevented immediate progress in accord with the renewed authorization of the President. (Id. at 186-187 [footnotes omitted].)

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On December 5, in one of his first acts as National Security Adviser, Poindexter presented the Finding to the President at his daily national security briefing. The President signed it. Poindexter's notes of his daily briefing of the President refer to the Finding.

Chief of Staff Donald Regan was present at this briefing, but testified that he has no recollection of the Finding or the President's signing it:

I have racked my brains since I've read about it in the press, that you have had testimony to that effect.

I've checked with my members of the staff, the White House staff who were working with me at the time, as to whether they remember it. No one can remember seeing that document.

(Id. at 195 [footnotes omitted].)

### The Diversion

The central remaining question is the role of the president in the Iran-Contra Affair. On this critical point, the shredding of documents by Poindexter, North, and others, and the death of Casey, leave the record incomplete.

As it stands, the President has publicly stated that he did not know of the diversion. Poindexter testified that he shielded the President from knowledge of the diversion. North said that he never told the President, but assumed that the President knew. Poindexter told North on November 21, 1986 that he had not informed the President about the diversion, but North testified that he had fabricated this story to bolster Secord's morale.

Nevertheless, the ultimate responsibility for the events in the Iran-Contra Affair must rest with the President. If the President did not know what his National Security Advisers were doing, he should have. It is his responsibility to communicate unambiguously to his subordinates that they must keep him advised of important actions they take for the Administration. The Constitution requires the President to "take care that the laws be faithfully executed." This charge encompasses a responsibility to leave the members of his Administration in no doubt that the

rule of law governs. (Iran/Contra Select Committee Report at 21.)

#### NSC Staff Assistance to the Contras

The President told the Tower Review Board that he did not know that the NSC staff was assisting the Contras. After the Tower Report was issued, the President stated that private support for the Contras was "my idea." In fact, the President knew of the contributions from Country 2. According to Poindexter, the President's policy was "to get what support we could from third countries."

In general, Poindexter understood that the President wanted the NSC staff to support the Contras, including encouraging private contributions. The President also knew, according to Poindexter, that North was the chief staff officer on Central America who was responsible for carrying out the President's general charger to keep the Contras alive. Poindexter regularly reported to the President on the status of the Contras, the fact that they were surviving, and "in general terms" North's role in facilitating their survival. As a result of these briefings, Poindexter thought that the President understood that both he and North were coordinating the effort to support the Contras. Poindexter also believed the President understood that "Col. North was instrumental in keeping the Contras supported without maybe understanding the details of exactly what he was doing."

As to the level of detail provided to the President on the Contra support operation, Poindexter testified that he would not get into details with the President as to who was doing what. The President knew that there was a Boland Amendment, he knew there were restrictions on the government. As he has said, I think, since November of 1986, that he did not feel that the Boland Amendment applied to his

personal staff and that that was his feeling all along. I knew that.

He knew the Contras were being supported, and we simply didn't get into the details of exactly who was doing what.

Poindexter testified that on one occasion, he briefed the President with some specificity about the Contra support program, but understood that the President did not recall the briefing:

Now, you know, the President doesn't recall apparently a specific briefing in which I laid out in great detail all of the ways that we were going about implementing the President's policy, and I frankly don't find that surprising. It would not, frankly, at the time have been a matter of great interest as to exactly how we were implementing the President's policy.

Without getting to the "extraneous detail[s]" of how the President's policy was being implemented, however, Poindexter briefed the President on the Sant Elena airstrip in Costa Rica. Poindexter testified that in December 1985, after he returned from Central America, he specifically briefed the President about the local assistance provided in establishing the airstrip. In addition, Poindexter informed the President that the "private individuals" were also involved in establishing the airstrip. At the same time, Poindexter excluded the "extraneous detail" that North, through Tambs and Castillo, had facilitated the construction of the airstrip. Similarly, while Poindexter thought that the President was aware of North's role in supporting the Contras, "it did not include something as specific as directing Col. North to conduct air supply operations." North testified that he believed that the President approved his efforts to resupply the war. In fact, his actions support that belief.

(Iran/Contra Select Committee Report 77  
[footnotes omitted]; see also id. at 501)

\* \* \*

In a May 19, 1986, PROF note to Poindexter, North wrote "the President obviously knows why he has been meeting with several select people to thank them for their 'support for Democracy' in Cent[ral] Am[erica]. In fact, what the President knew is a matter of some doubt.

The President, in his March 19, 1987, press conference said that he believed that contributors he met had donated money for political advertising for the Contras. The minutes of the May 16, 1986, National Security Planning Group (NSPG) meeting reveal the same understanding on the part of the President. He stated, "What about the private groups who pay for ads for the Contras? Have they been contacted? Could they do more than ads?" Similarly, in preparation for the January 30 briefing, Linda Chavez wrote a memorandum to the President, stating that "ACT and NEPL spent in excess of \$3 million supporting the President's programs through public awareness using television and newspaper messages." In fact, much of the \$3 million was directed toward Contra support activities, including arms.

Poindexter, however, testified at his deposition that "[t]here wasn't any question in my mind" that the President was aware that the contributors he was thanking were giving to the Contras. He added that "in the White House during this period of time that we were encouraging private support, we really didn't distinguish between how the money was going to be spent." North testified that in writing his May 19 PROF note, he assumed that the President was aware that the contributions were for munitions, as well as other things, although he denied ever discussing this with the President.

The President met with and thanked several large contributors for their

support of his policies. David Fischer, former Special Assistant to the President, arranged Presidential photo opportunities or meetings with at least seven major Channell-Miller contributors in 1986. Fischer and Martin Artiano, a Washington lawyer, were paid steep fees by IBC (which charged these fees to NEPL) for arranging these meetings (among other services). Channell's statement to O'Boyle that these meetings carried a \$300,000 price tag is substantiated by Edie Fraser's cryptic note to North (mentioned above); at least five of the six contributors who donated more than \$300,000 to NEPL were invited to meet with the President. (Id. at 96 [footnotes omitted].)

As noted previously, the President gave no interviews or testimony to the Congressional Select Committees. In fact, the only investigative source over which Mr. Reagan had any obvious possibility of control was the production to Congress of White House and NSC documents, an area that we are not in a position to evaluate generally because we made no effort to monitor either the Committees' requests or the Administration's compliance. We do know, however, of one notable claim of incomplete production by the White House and NSC, which is described briefly below.

In April 1989, the Senate Select Committee on Intelligence, joined by HPSCI, undertook a review to determine why several documents, introduced into evidence during the North trial, either had not been produced to the Iran/Contra Select Committees or had been produced in incomplete form. HPSCI conducted a similar, but less fully

documented, review at the same time. The "new" documents were:

- Certain memoranda relating to the February 1985 "Honduran Quid Pro Quo" sequence (see page 58-61 above), some of which (February 19, 1985, February 20, 1985, and February 22, 1985) were not produced at all, and one of which (February 11, 1985) was produced without routing information, handwritten notes, and a signed version of one attachment.
- The version of the April 25, 1985 Presidential call memorandum to Honduran President Suazo (see page 59 above) that bears President Reagan's handwritten notes of the substance of the call
- The version of the October 30, 1985 "Reconnaissance Overflights" memorandum that bears Poindexter's notation that he had briefed the President on it, and appends the final sheet suggesting that the President be briefed about the provision of recoilless rifles to the Contras (see pages 66-67 above).

After an investigation that lasted for several weeks and which included the cooperation of this Office, SSCI issued a report on these documents. See Senate Select Comm. on Intelligence, Were Relevant Documents Withheld from the Congressional Committees Investigating the Iran-Contra Affair?, S. Prt. 101-44, 101st Cong., 1st Sess. (1989) ("SSCI Report"). In substance, SSCI concluded that there was no evidence that the Honduras-related documents were deliberately withheld by the White House, and that their non-production most likely resulted from a mistaken but good-faith belief by the reviewing FBI agents that the documents

were not relevant; with regard to the "Reconnaissance Overflights" memorandum, which this Office had received during 1987, the Committee could not explain Congress' failure to receive it. (SSCI Report at 7-14.) HPSCI announced that it had reached the same conclusions.

#### Office of Independent Counsel

Like the Tower Commission and the Congressional Select Committees, our Office has been provided with considerable quantities of White House and NSC documents (both for investigative purposes and as a result of court-ordered discovery in the indicted cases), and with access to excerpts from President Reagan's diary. Unlike either of the other investigations, we have obtained sworn disclosures from President Reagan on two occasions: first, in the President's answers to this Office's Interrogatories; second, in the deposition of Mr. Reagan that was conducted on February 16-17, 1990 pursuant to order of Judge Greene in United States v. Poindexter.

In his Interrogatory Answers and at his deposition, the President again provided information regarding the four key areas of his knowledge and authorization that have been identified above:

#### The August/September 1985 TOW Shipment

Mr. McFarlane briefed me about an approach by individuals in Iran while I was in the hospital in July 1985, but I do not specifically recall any discussion of the sale of arms by Israel as being



part of that initiative at that time. I do recall that later in the summer or fall of 1985 I was advised that Israel sought to ship TOWs to individuals in Iran who would influence the Hazballah to free our hostages. It was part of Israel's plan that it would abort the sale if it became apparent that the hostages would not be released. My best recollection is that, at that time, I agreed that Israel should be permitted to purchase replacement TOWs from the United States. I am aware that Robert McFarlane has testified that I was briefed on all of these matters while I was in the hospital. I do not recall, however, the precise date on which I was told of the delivery of TOW missiles by Israel to Iran, nor the precise date on which I authorized the replenishment of the TOWs by the United States to Israel. I do not recall any discussion of price whatsoever. (Pres. Int. Ans. 23; see also February 16, 1990 Reagan Dep. 16-19; February 17, 1990 Reagan Dep. 226-228.)

#### The November 1985 Hawk Shipment

At the time of the shipment of HAWKS by Israel to Iran, I was in Geneva meeting Secretary General Gorbachev and discussing with him United States-Soviet relations.

I was told at that time that there was a possibility that the hostages might be released, but I do not recall that the shipment of HAWK missiles was involved. I have no recollection today whether I authorized or approved the shipment of HAWKS by Israel to Iran in November 1985, nor do I recall undertaking at that time a commitment to replenish those HAWKS from United States inventory. While I initially told the Tower Board that I disapproved the transfer, I later advised the Board that I simply had no recollection on this issue. I am aware that Don Regan has stated that in November 1985 in Geneva we were told to expect a shipment of HAWKS by Israel to Iran and that I approved such a transfer

but made no commitment on replenishment. I am also aware that Robert McFarlane has stated that he advised me of the shipment but said that the shipment was comprised of oil drilling equipment. I have no current recollection whatsoever of approving or disapproving this shipment or replenishment. I do not recall any discussion of prices at all, but I recall that any weapons involved in the initiative generally were to be paid for by the recipient country. (Pres. Int. Ans. 24; see also February 16, 1990 Reagan Dep. 10, 35-37, 41; February 17, 1990 Reagan Dep. 229.)

\* \* \*

I do not recall signing a Finding relating to Iranian arms transactions in November or December 1985. I am aware that an unsigned version of such a Finding exists (see Tab 27A), although I am told that a signed version has not been found. I have been advised that the CIA was told contemporaneously that on December 5, 1985, I signed a Finding relating to this initiative. While I do not deny having signed such a Finding, I have no current recollection of doing so.

In November and December 1985, I was briefed on an initiative involving Israel's attempts to secure the return of our hostages and an initiative to facilitate a dialogue between our Government and moderate leaders in Iran. I approved of such a initiative and directed my National Security Adviser Robert McFarlane to take part in such a dialogue. My review of the unsigned Finding at Tab 27A leads me to believe that I would have understood it to relate to such an initiative. (Pres. Int. Ans. 27; see also February 17, 1990 Reagan Dep. 231-232.)

### The Diversion

The first time I learned that the proceeds of any Iranian arms transactions might have been paid to any account used to provide weapons and military aid to the Nicaraguan Freedom Fighters -- what has been termed the "diversion" -- was on November 24, 1986, when Attorney General Edwin Meese reported to me that a memorandum had been found referring to such a use. I immediately instructed that the NSC, the leadership in Congress and the general public be told of this development.

I never authorized nor approved the "diversion", nor was I ever asked to authorize or approve it. I can recall no conversation or discussion whatsoever of any such idea prior to my conversation with the Attorney General. As noted above, I was unaware that any profits or "residual funds" were to be generated by such sales.

It was only as the investigation by the Tower Board got underway that I learned of the operational roles of North, Secord or Hakim. I do not recall authorizing or approving, nor do I believe I was ever asked to authorize or to approve, operational details, such as what accounts were to receive payments.

It was only in my discussions with Attorney General Meese on November 24, 1986, and after that I learned any details of any bank accounts into which the proceeds of arms shipments were paid, or the retention of these proceeds by anyone other than the United States Government. I do not recall any discussion prior to that time concerning the proceeds of such sales, nor do I recall being asked for authority by anyone to use, control or retain these funds. (Pres. Int. Ans. 36-38; see also February 16, 1990 Reagan Dep. 29, 155, 157; February 17, 1990 Reagan Dep. 236-237, 243-244, 276-282, 289-290.)

NSC Staff Assistance to the Contras

See pages 76-82, 87-88 above.

Subsequent Disclosures Concerning the President's Diaries

As noted above, both our Office and the Select Committees were provided through White House Counsel with access to typed excerpts from President Reagan's diary. Our only "windows" into the completeness of that production have been provided by the former President's publication of certain diary excerpts in his 1990 book An American Life, and by Judge Greene's January 30, 1990 preliminary ruling that certain Presidential diary entries, which counsel for former President Reagan had provided to the court for in camera review in connection with defendant's subpoena in the Poindexter case, were material to Poindexter's defense. See United States v. Poindexter, 732 F. Supp. 134 (D.D.C. 1990); see also United States v. Poindexter, No. 88-0080-01 (HHG), slip. op. (D.D.C. March 21, 1990) (subsequent order upholding formal claims of privilege as to those diary entries and granting motions to quash subpoena on ground that production of the diaries was not essential to achievement of justice).

An American Life refers to a number of diary entries that we saw in 1987. It also contains a handful of quotations from the diary for 1985-1986 that are not reflected as broadly in the not-quite-verbatim notes of this

Office's review of the diary excerpts for the same period.

The differences are shown below:

Rendition in OIC Notes

July 3, 1985. Frustrating NSPG meeting re the 7 kidnap victims and the matter of Lebanon generally.

December 7, 1985. Meeting with Regan, Weinberger, McFarlane, Poindexter, Shultz and Mahann [sic: McMahon] of CIA - complex plan which would return our 5 hostages and help some officials in Iran who want better relationship with us - Israel would sell weapons to Iran, hostages released as soon as delivered in installments by air - weapons to go to moderate leaders in army who are essential if to be changed to more stable govt - we then sell Israel replacements - none of this is a gift.

Rendition in An American Life

At pages 497-98, Reagan publishes the following additional material for this diary entry: "Some feel we must retaliate. I feel to do so would definitely risk the lives of the 7. We are going to proceed to enlist other nations in closing down the Beirut airport . . . we know the identity of the two hijackers who murdered Robbie Stethem. The problem is how do we get them for trial in U.S. All in all, it's frustrating even though we are overjoyed at our success in getting the hostages back."

At page 510, Reagan renders this diary entry as follows: "Saturday, Dec. 7, Pearl Harbor Day: I . . . had a meeting with Don R, Cap W, Bud M, John P, George S and McMahon of CIA. This has to do with the complex plan which could return our five hostages and help some officials in Iran who want to turn that country from its present course and onto a better relationship with us. It calls for Israel selling some weapons to Iran. As they are delivered in installments by air, our hostages will be released. The weapons will go to the moderate leaders in the army who are essential if there is to be a change to a more stable government. We then sell Israel weapons replacements for the delivered weapons. None of this is a gift. The Iranians pay cash

for the weapons - so does Israel.

George Shultz, Cap and Don are opposed. Congress has imposed a law on us that we can't sell Iran weapons or sell any other country weapons for resale to Iran. George also thinks this violates our policy of not paying off terrorists. I claim the weapons are for those who want to change the government of Iran and no ransom is being paid for the hostages. No direct sale would be made by us to Iran but we would be replacing the weapons sold by Israel.

We're at a stalemate. Bud is flying to London where the Israelis and Iranian agents are. Britain has no embargo on selling to Iran . . . . The plan is set for Wednesday."

December 9, 1985. Bud back from London but not in office yet - his meeting with Iranians did not achieve its purpose to persuade them to free our hostages first their top man said he believed if he took that proposal to the terrorists they would kill our people.

Same, except that after the word "first", Reagan interpolates "and then we'd supply the weapons". See page 510 of book.

May 28, 1986. McFarlane Mission to Tehran.

It is possibly on this day that according to page 521 of his book, Reagan wrote in his diary that the McFarlane mission was "a heart breaking disappointment for all of us."

July 26-27, 1986. Release of Father Jenco.

At page 522, Reagan publishes the following as the diary entry for July 26:  
"[Jenco's] in West Germany on his way home. The Hizballah sent a video tape out with him on which one of the remaining hostages - [David] Jacobsen

dressed me and our govt. down for not lifting a finger to try and get their freedom. This release of Jenco is a delayed step in a plan we've been working on for months. It gives us hope the rest of the plan will take place. We'd about given up on this."

November 7, 1986. Discussion of how [to] handle press who are off on wild story originating in Beirut - I've proposed message be we can't & won't answer Q's because would endanger those we are trying to help.

At page 527, Reagan publishes this entry in the following form:

"Usual meetings. Discussion of how to handle press who are off on a wild story built on unfounded story originated in Beirut that we bought hostage Jacobsen's freedom with weapons to Iran. We've tried 'no comment.' I've proposed and our message will be: 'We can't and won't answer any questions on this subject because to do so will endanger the lives of those we are trying to help.'"

November 10, 1986. I ordered statement we were NOT dealing in ransom etc. but we would not respond to charges or Qs.

At page 528, Reagan publishes this entry as follows:

". . . . At 11:30 a meeting in Oval Office - Don R., George Shultz, George Bush, Cap W., Bill Casey, Ed Meese, John P. and two of his staff. Subject the press storm charging that we are negotiating with terrorist kidnapers for the release of hostages using sale of arms as ransom. Also that we are violating our own law about arms sales to Iran. They quote as gospel every unnamed source plus such authorities as a Danish sailor who claims to have served on a ship carrying arms from Israel to Iran etc. . . . etc. . . . etc. I ordered a statement to effect we were not dealing in ransom, etc., but that we would not respond to charges or questions that

could endanger hostage lives or lives of people we are using to make contact with the terrorists". [Emphasis in original.]

November 12, 1986. A meeting with Shultz - he'll be a team player but he was never happy about our Iran policy.

At page 528, Reagan says that his diary for this date states "This whole irresponsible press bilge about hostages and Iran has gotten totally out of hand. The media looks like it's trying to create another Watergate. I laid down the law in the morning meetings. I want to go public personally and tell the people the truth. We're trying to arrange it for tomorrow."

November 24, 1986. Big thing of day was 2 hr. meeting in Situation Room on Iran affair - after meeting Meese & Regan told me of smoking gun - Israelis put difference in secret bank account - then our Col. North (NSC) gave the money to the contras - this was a violation of the law against us giving the contras money without an authorization by Congress - North didn't tell me about this - worst of all Poindexter found out about it & didn't tell me - this may call for resignations.

At page 530 Reagan interpolates "On one of the arms shipments the Iranians had paid Israel a higher purchase price than we were getting" after the word "gun". Also at page 530, Reagan publishes a diary entry, apparently relating to the "2 hr meeting" in the Situation Room, which says "George Shultz is still stubborn that we shouldn't have sold the arms to Iran. I gave him an argument. All in all, we got everything out on the table."

Similarly, if one compares the diary entries that are described in Judge Greene's January 30, 1990 opinion with the OIC notes, one can identify several items that were produced to Judge Greene and found to be relevant, but which apparently were not produced to us:



- "A diary entry furnished to the Court by the former President [which] reports on a 'successful' trip Poindexter took in December 1985 to Central America", see 732 F. Supp. at 138-139, and which "includes a somewhat ambiguous comment arguably indicating that the former President knew of defendant's activities on behalf of the Contras" (id. at 139 n.9).
- An entry which "addresses briefly the issue of the proceeds from [the Iran arms] sales" (no date indicated by Judge Greene), see 732 F. Supp. at 139;<sup>65/</sup>
- An entry dated December 2, 1986 that relates in some manner to "the former President's knowledge of the arms sales to Iran", see id.;
- [D]iary entries [which] address United States military-type assistance to a Central American nation arguably in support of the military activities of the Contras or in opposition to their opponents" (no dates indicated by Judge Greene), see 732 F. Supp. at 140.<sup>66/</sup>

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<sup>65/</sup> The true materiality of this entry is rather doubtful in light of Judge Greene's subsequent finding that "Where President Reagan testified to a lack of memory about some aspects of the arms sales to Iran and the diversion of the proceeds to the Contras, the diary entries themselves offer no new insights about these events" [footnote omitted]. United States v. Poindexter, No. 88-0080-01 (HHG), slip. op. at 11 (D.D.C. March 21, 1990).

<sup>66/</sup> This could possibly be a reference to diary entries for September 11, 1984 or March 24, 1986, which are captured in the OIC notes.

A. The Tower Commission

In Counts Three and Four of its April 24, 1989 Indictment of Joseph Fernandez, this Office concluded that an interviewee's false statements to the Tower Commission were punishable under both 18 U.S.C. § 1505 (penalizing obstruction of the due and proper administration of the law under which a pending proceeding is being had by a department or agency of the United States) and 18 U.S.C. § 1001 (penalizing material false statements to a department or agency of the United States in a matter within its jurisdiction). The discussion that follows will assume that the same legal theories would apply to the President himself.<sup>67/</sup>

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<sup>67/</sup> Although useful for purposes of this memorandum, this assumption is not as free from doubt as one might wish it to be. The President set up the Tower Commission as a unilateral act pursuant to Executive Order, and the Commission's "jurisdiction", as well as the definition of the "due and proper administration of the law" under which it operated, were wholly a creature of the President. Thus, if the President himself (as opposed to a subordinate official like Fernandez) were indicted for making unsworn false statements to the Commission, or obstructing its investigation, I suspect that he would have available a non-frivolous (although distasteful) defense that he had rolled back the jurisdiction of the Commission to the extent of any subjects on which he gave the Commission less than full information, and that Sections 1001 and 1505 therefore would not apply to his statements on those subjects. Such a defense would probably have less force in a perjury prosecution if the President made false statements under oath, but the Tower Commission did not administer an oath to the President.

Of President Reagan's statements to the Tower Commission on the four key subjects mentioned above, only the President's claimed lack of knowledge of the diversion remains totally unimpeached. His statements in two areas -- knowledge and authorization of the 1985 TOW shipment and the November 1985 Hawk shipment -- are internally contradictory. The remaining significant assertion -- Mr. Reagan's supposed ignorance of any NSC staff actions in support of the Contras -- has not stood the test of time at all well. Nonetheless, for the reasons set forth below, I do not believe that any of these statements amounted to criminal conduct.

1. Statements Regarding The August/September 1985 TOW Shipment (see pages 168-170 above). The fundamental barrier to concluding that any of the President's various statements to the Tower Commission on this subject was criminally false is that no one can document just what the President remembered about this shipment in January-February 1987. While one could attempt to make a case in this area by placing all of the President's statements on the table and asserting that because they are self-contradictory, one or more of them must be false, such a tactic would be legally insufficient with respect to the issue of intent -- i.e., it could not withstand a defense contention that the President, under the influence of his various advisors, truly believed each statement to be true at the time that it was made. In

addition, the effect of any prosecution on this matter would almost inevitably be to punish Mr. Reagan's earlier statements in light of his most recent and most forthcoming description of his knowledge in his Answers to his Office's Interrogatories -- a prospect that would send a rather unfortunate message about the wisdom of Presidential cooperation with Independent Counsel investigations. Chairman Tower's speculations notwithstanding (see footnote page 170 n.62 above), I do not believe that this area merits prosecutorial attention.

2. Statements Regarding the November 1985 Hawk Shipment (see page 170 above). Similar considerations argue against prosecution in this area. Again, the President's later statement to Tower and his Interrogatory Answer 24 sound a good deal more plausible than his January 26, 1987 story that he objected to the Hawk shipment when he learned about it after the fact, and that as a result of his objection, the shipment was returned to Israel -- even though the later statements simply amount to a claimed lack of recollection, coupled with an apparent willingness to accept the word of others as to what happened. As concluded in Section III above with respect to the November 1986 events, the lack of concrete evidence of the President's state of mind at the time he made his various statements about the Hawk shipment, particularly in light of the success (through

July 1987) of Poindexter's effort to change history on this subject by destroying the 1985 Iran Finding, preclude a conclusion that any of the President's statements in this category was made with criminal intent.

3. Statements Regarding NSC Staff Assistance to the Contras (see page 171 above). The Tower Commission's flat conclusion that Mr. Reagan knew nothing of the NSC staff's Contra-support activities, and the individual statements by the President that support that conclusion, verge on the bizarre. These assertions are arguably inconsistent with the President's prior public statements (see page 88 above), and certainly with his later admissions that "with regard to whether private individuals were giving money to the Contras, yes, I was aware that there were people doing that . . . . just as people have done that for causes in other countries" (Presidential Pub. Papers, Vol. I at 451-52 (May 3, 1987)), that McFarlane had kept him briefed on Contra aid (Presidential Pub. Papers, Vol. I at 512-516 (May 15, 1987)), and that "I was very definitely involved in the decisions about support to the freedom fighters. It was my idea to begin with" (id.). They also do not square with either the President's Answers to this Office's Interrogatories or his deposition testimony in Poindexter (see pages 76-82, 87-88 above).

For purposes of criminal analysis, I believe that the Tower account is most appropriately viewed as an exaggerated version, hastily arrived at, of the facts as we know them -- namely, that President Reagan did not know the fundamental nature of the NSC's fundraising and Contra-resupply activities, as concluded in Part II above. The provable facts about the President's Contra-side knowledge -- that Mr. Reagan was aware of North's role as the NSC's "action officer" for Nicaragua and knew that through a combination of donations and logistical assistance from figures such as Secord, the Contras were "getting by" during the Boland period, but cannot be shown to have understood the extent of the NSC's control over funding and resupply -- probably would not have materially advanced the Tower Commission's inquiry. I would, accordingly, decline to prosecute the former President for this group of statements.

B. The Iran/Contra Select Committees

Apart from the SSCI/HPSCI inquiry into White House document production -- which Congress resolved to its own satisfaction in 1989, as described at pages 180-182 above -- we have no indication that the President obstructed the Congressional Select Committee investigations. There is no possibility of an 18 U.S.C. § 1001 or 18 U.S.C. § 1621 violation in this area because Mr. Reagan made no statements to the Congressional Select Committees.

C. The Office of Independent Counsel

I am not aware of any substantial evidence to suggest that President Reagan intentionally made any material false statement, or committed any perjury, in his Answers to this Office's Interrogatories, or in his deposition in the Poindexter case.

The apparent discrepancies that have come to light concerning the 1987 production of Presidential diary entries were set out at considerable length at pages 186-191 above because any deliberate effort by Mr. Reagan, or those acting for him, to obstruct this Office's investigation by concealing material diary entries would (to put it mildly) be a serious matter for the Office, and because it therefore seemed appropriate to be very explicit about them in this memorandum. That said, I do not view any of the additional verbiage published in An American Life, or any of the additional entries alluded to in Judge Greene's January 30, 1990 Opinion, as disclosing new or otherwise-material information, let alone material information that was withheld from our Office in a deliberate manner. I am not aware of any other irregularities in the White House's and NSC's production of documents to this Office that amount to more than the usual bumps and grinds inherent in complicated, large-scale document productions.

In conclusion, I see no basis for a criminal prosecution of President Reagan in connection with his responses to any of the post-November 1986 investigations into Iran/Contra.