

Congress were to deny the funding needed to carry it out. On September 6, 1983, Secretary of State Shultz wrote a memorandum to the President (AKW023016-19) in which he stated

If we can continue to fund the contras (or, if necessary, alternative benefactors are found), negotiations can proceed at a measured pace with the U.S. in the background. But if the contras -- for any reason -- begin to fade as an instrument of effective pressure on the Sandinistas, what prospects there are for meaningful results from negotiations would evaporate (emphasis in original).

In preparation for a September 16, 1983 meeting of the National Security Planning Group called to discuss the new Nicaragua Finding, the NSC staff, through then-National Security Advisor William Clark, provided the President with a series of "Talking Points" that included the question "What plans do we have if Congress cuts off our support to the resistance forces?" While there is no indication that this subject was actually discussed at the September 1983 meeting^{26/} -- the "watershed" meeting instead taking place on June 25, 1984 -- these references, and others like them by lower-ranking officials, illustrate the direction in which the Administration's thinking was flowing through late 1983 and into the spring of 1984.

In October 1983, the division of opinion within Congress over military assistance to the Contras manifested itself in a second "Boland Amendment." This measure, which

^{26/} See [REDACTED]

[REDACTED] Robert McFarlane succeeded Mr. Clark as National Security Advisor on October 17, 1983.

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was attached to the Intelligence Authorization Act for Fiscal Year 1984, Pub. L. No. 98-212, was directed at the size rather than the purpose of the Contra program, and prohibited the CIA, the Department of Defense and any other agency or entity of the United States involved in intelligence activities from obligating or expending more than \$24 million for direct or indirect support of military or paramilitary operations in Nicaragua. This amount was explicitly subject to increase by a supplemental funding request if the President reported by March 15, 1984 that the Sandinistas had thwarted negotiations for a peace treaty.

There are a number of indications that as the funding situation in Congress was becoming more difficult, the intensity of the CIA's military efforts in Nicaragua -- including both the training and equipping of Contra forces and the direction of covert operations, such as the mining of harbors, against Nicaraguan facilities -- was stepped up. (See Iran/Contra Select Comm. Rpt. at 36.) By February 7, 1984, National Security Advisor McFarlane had advised the President that unless some \$12-\$14 million in additional resources were found, the program would have to be curtailed by May or June, 1984 (see AKW-31454-55). Although the Administration renewed its legislative efforts to obtain this supplemental funding from Congress,^{27/} no additional funds

^{27/} Mr. McFarlane has suggested that as the 1984 Presidential election approached, then-Chief of Staff James Baker, who headed the Administration's Legislative Strategy Group, made it known that he did not want Contra assistance to be a major
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were authorized, and the CIA's resources for the program were almost entirely depleted by June 1984.

As the fall of 1984 approached, the outlook for Congressional funding of the Contras went from bad to worse. While Congress was considering what to do about the Administration's requests for a Fiscal 1984 Contra supplemental, U.S. involvement in the mining of Nicaraguan harbors became public. This disclosure helped seal the fate of the CIA's Contra support program in the Congress.^{28/} The omnibus appropriations bill for Fiscal Year 1985, Pub. L. No. 98-473, which took effect on October 12, 1984 with the President's signature, contained what some have referred to as the "full prohibition" Boland Amendment. Section 8066(a) provided that

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

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issue, and at some point said "Just forget about trying to get it from the Congress and go and find some other way to do it if you can". (See [REDACTED] March 10, 1989 McFarlane North Trial Tr. 2934-36.)

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^{28/} In early October the Congressional intelligence committees also learned about the so-called "Tayacan Manual", a CIA-produced handbook distributed to the Contras which, in the eyes of many, called for assassinations of Sandinista officials.

Like its Fiscal 1984 predecessor, the Fiscal 1985 Boland Amendment permitted the President to return to Congress later in the fiscal year to request additional military aid for the Contras. In the event, however, nothing more than peripheral military assistance to the Contras would be approved by the House until June 1986, and none was actually appropriated by Congress until October 1986.

By the spring of 1984, President Reagan had begun making it clear to his subordinates, and particularly his National Security Advisor, that whether or not Congress cooperated, the President wished to see the Contras supported "body and soul" (see, e.g., Iran/Contra Select Comm. Rpt. 501). There is essentially no dispute in the record that the President made this desire known on several occasions over the months between the spring of 1984 and October 1984, and that his stated views on the importance of Contra assistance remained constant throughout the vicissitudes of Congressional funding for the program between October 1984 and October 1986. As will be seen below, in many cases it does not appear that the President knew how far his subordinates went in carrying out his wishes. In other instances the record indicates that those subordinates actively kept information concealed from the President. But there is at least one area -- the obtaining of support for the Contras from foreign governments -- in which the President's knowledge was relatively complete.

Obtaining Third-Country Support for the Contras, 1984-1986

The first six months of 1984 saw activity by both the NSC and the CIA aimed at securing the additional funding for the Contras that was not forthcoming from Congress. The preferred source for this money was foreign governments sympathetic to the United States (see, e.g., [REDACTED] [REDACTED] Preparations were made to approach at least two such countries, one through NSC channels and the other through CIA. The NSC contact was actually pursued through a request and refusal by the subject government. The CIA approach likewise bore no fruit, at least during 1984. There is no evidence that the President was apprised of these unsuccessful maneuvers.

There is no doubt, however, that the President was told of his Administration's first success in obtaining third country funding for the Contras. In May or June 1984, during a meeting with the Ambassador of Saudi Arabia, National Security Advisor McFarlane made a point of the Administration's interest in the Contras;^{29/} by McFarlane's account, this conversation resulted in the Saudis' "volunteering" to deliver \$1 million per month to a Contra

^{29/} McFarlane's account of his actions in this instance corresponds directly to one of the few specific measures that the President admits to endorsing in his "body and soul" directives -- viz., that while the Administration should always operate "within the law", it would not be against the law for Executive officials to mention to U.S. allies that they should have the same interest in the Contras that the United States had. (See February 16, 1990 Reagan Dep. at 53-54; [REDACTED])

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bank account. [REDACTED]

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On June 25, 1984, third-country solicitation was discussed at a meeting of the National Security Planning Group. Director Casey reported that the CIA was down to \$250,000 remaining from the Fiscal 1984 allocation for the Contras, and that the Contras had sufficient arms and ammunition to last until August. He then offered the view that under the September 1983 Nicaragua Finding, CIA could encourage support for the Contras from various countries in the region and, with notification to the oversight Committees, could help the Contras get money from third countries. There ensued a debate between Secretary Shultz and Director Casey concerning whether the absent James Baker did, or did not, believe that solicitation of third-country funding for the Contras would be an "impeachable offense". It was decided that Attorney General Smith would be consulted in an effort to resolve those questions.^{30/} Various Latin American countries were discussed as possible contributors;

^{30/} For the outcome of that consultation, see pages 95-96 below.

not one of the several attendees who were unquestionably aware of the Saudi contribution, including President Reagan, said a word about it. According to the minutes (see GX 84 in United States v. North), the meeting concluded with the following exchange:

Vice President Bush: How can anyone object to the US encouraging third parties to provide help to the anti-Sandinistas under the finding? The only problem that might come up is if the United States were to promise to give these third parties something in return so that some people could interpret this as some kind of an exchange.

Mr. Casey: Jim Baker changed his mind as soon as he saw the finding and saw the language.

Mr. McFarlane: I propose that there be no authority for anyone to seek third party support for the anti-Sandinistas until we have the information we need, and I certainly hope none of this discussion will be made public in any way.

President Reagan: If such a story gets out, we'll all be hanging by our thumbs in front of the White House until we find out who did it.

The President's final words were interpreted, at least by McFarlane, as amounting to a command that Congress not be informed of third-country contributions (see March 10, 1989 McFarlane North Trial Tr. 3941-45; March 15, 1989 McFarlane North Trial Tr. 4625-30). McFarlane does not claim that he understood the President to have been saying that the Administration should actively lie to Congress about such contributions if asked (id.).

Although occasional discussions of third-country funding continued, it does not appear that the President was told of any concrete efforts to solicit additional countries

during the balance of 1984; rather, the million-dollar-a month donation from the Saudi Arabia seems to have been treated as sufficient for the moment. At a July 27, 1984 NSC meeting, Director Casey reported that "Despite lack of funds from us, the resistance carries on surprisingly well They are getting the funds from somewhere. They are asking our advice on where and how to secure weapons" (AKW043522). The last mention of Contra funding at a formal NSC or NSPG meeting during 1984 took place on October 30, when Casey informed the group that

the Contras have increased their strength from a little over 9,000 to a little over 12,000 since the US government ceased funding at the end of May. They made substantial purchases of ammunition and have been able to sustain themselves with food If the private funding they are getting continues they should be able to maintain pressure on the Sandinista Government for an indefinite [sic] period. (AKW043816.)

With this reference, funding for the Contras disappears from the formal NSC/NSPG agenda, and does not reappear until January 10, 1986. The Congressional oversight committees were not informed of the Saudis' largess until early 1987.

The President was the key player in the next major foreign contribution to the Contras, which also came from Saudi Arabia. [REDACTED]

[REDACTED]

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(b)(3) [REDACTED] The President later informed McFarlane and, according to McFarlane, instructed that the news of this renewed contribution not be shared with others. (See March 13, 1989 McFarlane North Trial Tr. 4203-06.) According to McFarlane, this included Congress because of the feeling that revelation of the contribution might damage U.S.-Saudi relations and deter Congress from voting renewed aid to the Contras; again, McFarlane says that he did not construe the President's direction not to inform Congress as being an instruction to lie if asked about the subject. (Id.)

The increased Saudi aid^{31/} permitted the Contras to

^{31/} Beginning late in 1984 and continuing into 1985, the NSC staff led efforts to obtain financial and material contributions for the Contras from several other countries as well. The Republic of Korea was solicited through retired Maj. Gen. John Singlaub; no contribution resulted, and it is not known whether the President was aware of this effort. Taiwan was solicited through a number of intermediaries; two donations of \$1 million each were eventually received, one in August 1985 and another in early 1986. Poindexter has stated that he "suspects" the President knew about the Taiwanese contribution (see June 17, 1987 Poindexter Cong. Dep. 269); McFarlane's account of the 1985 Taiwan solicitation is so skewed in the direction of self-exculpation that one cannot determine what, if anything, he might have told the President on the subject (see, e.g., May 11, 1987 McFarlane Cong. Tr. 59-60; March 13, 1989 McFarlane North Trial Tr. 4096-97, 4217-20). On the material front, in the fall of 1985 talking points were prepared, probably for use by the President, in connection with an attempt to solicit the Prime Minister of another Asian country to contribute communications equipment to the Contras; President Reagan does not recall delivering this pitch (February 16, 1990 Reagan Dep. 75-76 & DX 6). Finally, with regard to the Contras' unending search for anti-aircraft missiles, the President indicated at his deposition at least a general familiarity with efforts to obtain foreign approvals to obtain British-made Blowpipe missiles for the Contras (id. at 76-79);

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[REDACTED]

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purchase sufficient arms and ammunition to last through early 1986. Saudi money, however, could not provide the Contras with another need -- continued access to secure bases in which they could train, receive equipment, house their dependents, and regroup after forays into Nicaragua itself. For this purpose, there was no substitute for Honduras, where Adolfo Calero's FDN Contras had traditionally encamped; to a lesser extent, the cooperation of El Salvador (primarily as a staging area for supplies) and Costa Rica (primarily to serve the role of Honduras for the Contras' sporadically-active Southern Front) was also important.

In both 1985 and early 1986, the level of the Central American countries' support for the Contras wavered in the face of continuing Congressional defeats for the Administration's Contra program, as well as threats and occasional military incursions by the Sandinistas. Broadly speaking, the Administration's response to those fluctuations consisted of frequent messages designed to "buck up" the locals in their enthusiasm for the Contras, along with not-very-subtle reminders to the affected governments of the importance of their security and aid relationships with the United States. The President participated in episodes of this type in February 1985, April 1985, May 1985, and March

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1986^{32/} with respect to Honduras; the most graphic example was a telephone call on April 25, 1985, in which the President called President Suazo of Honduras to pressure a Honduran military officer to release a Contra weapons shipment that had been seized by the Honduran army (see DX 54.08 in United States v. North). More general hortatory communications from the President and other U.S. officials to Central American leaders sprinkle the entire period during which the CIA's Contra-assistance program was suspended.

For the sake of brevity, the President's approach in this area can be summarized by his own testimony at his February 1990 deposition during a discussion of a May 1985 state visit by President Suazo. The briefing memorandum prepared for President Reagan in connection with that visit states:

In your meeting it will be important to reiterate to Suazo the importance we attach to his continued cooperation in enabling the FDN to remain a viable element of pressure on the Sandinistas. Without making the linkage too explicit, it would be useful to remind Suazo that in return for our help -- in the form of security assurances as well as aid -- we do expect cooperation in pursuit of our mutual objectives. In this regard, you could underline the seriousness of our

^{32/} The March 1986 sequence is somewhat different from its 1985 predecessors in that the material aspect of the President's response included the dispatching of \$20 million in emergency military assistance to Honduras, which was duly reported to Congress in accordance with Section 506A of the Foreign Assistance Act. The fact that this aid was provided under a statute that did not require Congressional approval received Congressional criticism at the time. See "Honduras Incursion Aid Arrives After the Fact", Washington Post, April 30, 1986, at A9.

security commitment, which the Hondurans seem to regard as the main quid pro quo for cooperating with the FDN.

(See DX 11 (Reagan) in U.S. v. Poindexter.) Asked to explain this passage at his deposition, Mr. Reagan said:

A. Well, again, I think it is the same tone. That we don't want to press them to go so far that they challenge the Sandinista government and wind up in open hostilities with them. And the -- it would be useful however to remind them that in return for our help in the form of security assurances as well as aid that we do expect cooperation. That we feel that there is an obligation on their part, too.

Q. Right. So, in other words, if some aid and assistance is given to them, you would expect some aid and assistance back from them --

A. Yes.

Q. -- in combating the spread of the Sandinistas?

A. Yeah.

[Discussion of objection by President's counsel]

THE WITNESS: Well, I answered in this case because I have already indicated on other questions that this was a problem in our relationship, about the threat to them as per our ability to lessen the threat in their minds in return for joining with us on this particular subject. So, that is why I answered here on that. It is in keeping with what our whole attitude was.

(February 16, 1990 Reagan Dep. 109-110.)

Although it is not worded precisely, a fair reading of the President's testimony, as well as the other available facts, is that while there was no dollar-for-dollar linkage expressed between U.S. aid to Central American countries and

those countries' assistance to the Contras, the general connection between the two was unmistakable.

Beginning in early 1985, the NSC staff's planning to sustain the Contras took on an increasingly permanent cast with the development of "Nicaragua Options", a number of which assumed a continued drought in Congressional appropriations for Contra military aid. Well before the April 24, 1985 vote in the House that finally closed off any possibility for renewed Contra military support in Fiscal 1985, the NSC staff appears to have settled upon one of those options -- "Option C, Limited Non-Lethal U.S. Support with Third Country Assistance" -- as a "bottom line" (see February 5, 1985 memorandum entitled "Options and Legislative Strategy for Renewing Aid to the Nicaraguan Resistance," AKW019293-301).^{33/} In North's March 16, 1985 memorandum to McFarlane

^{33/} In full text, "Option C" was described as follows:

This alternative calls for us to submit a report justifying a "new" program which would exclude the most controversial aspects of the original program--direct support by U.S. nationals and lethal military equipment and supplies. "Lethal" assistance (munitions, ordnance, etc.) would, in this case, be provided by third countries as in Option A. In its simplest form, U.S. support could be limited to cash grants which would be used only for specified "non-lethal" purposes, such as public affairs/political action, travel and transportation, food, clothing, shelter, etc., with provision for periodic audit. While it would be preferable to have authority for the U.S. to provide advice, training, management assistance, and intelligence, we could indeed leave these to third countries, with the understanding that the USG would coordinate with these countries as under the present Finding. A new Presidential Finding would have to be developed establishing the limits of U.S. assistance. The advantage of this option is that it could be

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outlining a "Fallback Plan for the Nicaraguan Resistance" (GX 90 in United States v. North), North embellished this proposal with the suggestion that humanitarian aid for the Contras be raised from U.S. citizens through appeals by the President himself.

[REDACTED]

[REDACTED]

[REDACTED]

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presented as a "new approach," not requiring opponents of the old program to reverse their previous votes. Cash transfers could be publicly acknowledged but would best be executed covertly. While a legislated mandate to limit us to overt "humanitarian" assistance (e.g., aid to refugees) would not affect the basic legislative approach, any publicly acknowledged program will have an adverse impact on Honduras and Costa Rica. (AKW019295-96.)

I am not aware of any Executive "report" to Congress that spelled out the entire "Option C" plan, although a March 12, 1985 memorandum suggests that McFarlane discussed "Option C", or something much like it, with minority members Stump, Livingston, Hyde, and McCollum of HPSCI on March 4, 1985 (see DX 59.08 in United States v. North; see also AMX000498-99 (North notebook entry)).

The "new Presidential Finding" referred to above did not come into being until January 9, 1986 (see ER, 13130-33); this document, in pertinent part, authorized CIA to "Provide assistance and non-lethal material support to the armed Resistance forces of the Nicaraguan democratic opposition", but withdraws the September 1983 Finding's authorization for lethal assistance.

McFarlane does not recall briefing the President on the "Fallback Plan", but does not take issue with Poindexter's notes (see March 10, 1989 McFarlane North Trial Tr. 4017-4018). Poindexter also claims to have no recollection of the discussion that is described in his notes (see June 17, 1987 Poindexter Cong. Dep. 293-99; [REDACTED])

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[REDACTED] In any event, the plan described in the March 25 note is precisely the one that the Administration followed during 1985, although with relatively minimal direct involvement by the President.

1985 saw two legislative developments that impacted upon third-country solicitation for the Contras. Along with the August 8, 1985 legislation that appropriated \$27 million in "humanitarian" assistance for the Contras through the State Department's Nicaraguan Humanitarian Assistance Office, Congress also passed two measures that are described as follows at page 402 of the Select Committee Report:

-- The "Pell Amendment," a prohibition against the United States "enter[ing] into any arrangement conditioning, expressly or implicitly, the provision of assistance under [the International Security and Development Act] or the purchase of defense articles and services under the Arms Export Control Act upon the provision of assistance by a recipient" to the Contras; and

-- The "Kerry Amendment," which prohibited the use of any funds to support, "directly or indirectly, activities against the government of Nicaragua which have not been authorized by, or pursuant to law, and which would place the United States" in violation of international law. (See International Security and Development Cooperation Act

of 1985, Pub. L. No. 99-83, §§ 722(b)-(e).^{34/}

Other NHAO-related legislation passed in August 1985 clarified the Boland Amendment to provide that it should not be "construed to prohibit the United States Government from exchanging information with the Nicaraguan democratic resistance" (see Pub. L. No. 99-88, § 102(b)).

^{34/} The accompanying Conference Report, No. 99-237, stated at page 143 that

The purpose of the [Pell Amendment] is to prohibit the United States from furnishing economic or military assistance or selling U.S. military equipment on the condition, either expressly or impliedly, that the recipient or purchaser provide assistance to insurgents involved in the struggle in Nicaragua. This section does not prohibit U.S. Government officials from discussing U.S. policy in Central America with recipients of U.S. assistance or purchasers of U.S. military equipment.

The Report added that the legislation does not prohibit

recipients of U.S. assistance from furnishing assistance to any third party on their own volition and from their own resources.

In this connection, it is worth noting that the "secret Honduran quid pro quo" sequence that formed a conspicuous part of North's defense began and ended before these two amendments were passed. While President Reagan's March 20, 1986 letter to President Azcona of Honduras following an Administration defeat in the House (DX 85.5 in U.S. v. North) walks fairly close to the line drawn by the Pell and Kerry amendments, it stops short of conditioning U.S. aid upon Honduran assistance to the Contras, or suggesting a straight "pass through" of U.S. aid to benefit the Contras in violation of international law. The \$20 million in "emergency assistance" provided to Honduras in March 1986 (see page 61 n.32 above), whatever its merits, was done with the knowledge (if not the advance consent) of Congress.

The December 1985 legislation that renewed Boland for another year and continued the August 1985 permission for exchanges of intelligence was even more specific on the subject of third-country solicitation. Section 105(b)(2) of Public Law 99-169, enacted on December 4, 1985, provided that "nothing in this section precludes . . . activities of the Department of State to solicit . . . humanitarian assistance for the Nicaraguan democratic resistance." Public Law 99-190, enacted on December 19, 1985, also appropriated classified amounts of money to provide the Contras with communications equipment and training, and to improve U.S. intelligence-gathering efforts in the region.

On October 30, 1985, in the midst of these legislative changes, Col. North wrote a memorandum to McFarlane requesting Presidential approval of U.S. reconnaissance flights over Nicaragua (see DX 59.17 in United States v. North). The basic memorandum is initialled "Approved" by Poindexter, and also bears the words "President approved";

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[REDACTED]

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[REDACTED] Defense
counsel's questioning at the Reagan deposition, while
sketchy, left a record which suggests that President Reagan
does not recall having seen North's memorandum (see February
16, 1990 Reagan Dep. 116-118).

[REDACTED]

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Expanding upon these notes, Poindexter has testified that he told the President about an airstrip that was being built for "private individuals" in Costa Rica with the assistance of Costa Rican Security Minister Piza^{35/}; the numbers of Contras who were in Honduras with Honduran permission; the provision of logistics support for arms coming to the Contras from Guatemala; and the fact that the newly-elected President of Guatemala would be willing to continue helping the Contras (see May 2, 1987 Poindexter Cong. Dep. 65-66; [REDACTED])

[REDACTED] A very brief Poindexter note of December 20, 1985 (AKW044151) states that the 0930 briefing for that day included a discussion of "arms into Honduras". [REDACTED]

In late 1985 and early 1986, the Administration began gearing up to renew its campaign for Contra lethal aid

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^{35/} On March 19, 1986, President Reagan held a three-minute photo session with Mr. Piza, Mrs. Piza, CIA Station Chief Fernandez, Regan, Poindexter, and North (see ALU028356). North supplied a rather revealing portrait of Piza's assistance to the Contra effort in a proposed briefing memorandum from Poindexter to the President (see AKW0051204-05). [REDACTED]

[REDACTED] Admiral Poindexter recalls that on March 19 the President thanked Piza for his help (May 2, 1987 Poindexter Cong. Dep. 202-203); the President has testified that he has no specific recollection of the meeting at all (February 16, 1990 Reagan Dep. 111-112), but agreed with defense counsel's suggestion that Piza "had participated in the development of a logistics support base for the United Nicaraguan Opposition", and had intervened with President Monet [sic: Monge] *id.* at 113).

in the Congress. [REDACTED]

[REDACTED]

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All segments of the Administration, including the President himself, engaged in intense lobbying efforts. After being dealt an initial setback in the House in March, 1986, the Administration won House authorization for \$100 million in military assistance in June. However, because no money was actually appropriated until October, the Contras faced a serious shortage of funds for military needs in early 1986, which later spread to the non-lethal side when the \$27 million in humanitarian aid appropriated by Congress in August 1985 began to run out.

The NSC staff pursued several avenues in search of a solution to the Contras' financial needs. The most famous and the most fruitful was Poindexter's and North's decision to divert "profits" from arms sales to Iran through the Enterprise and to the Contras, resulting in the Contras' receiving approximately \$4 million in lethal aid alone. There is no evidence that President Reagan received any information about this misuse of his Iran Initiative until November 24, 1986, when Attorney General Meese reported it to him as the leading result of Meese's November 21-25 investigation.^{36/} Admiral Poindexter has testified that he

^{36/} In reaching this conclusion, I have considered three of the more enigmatic bits of information to emerge from the investigation: the phantom conversation between Admiral Poindexter and Bernard McMahon, onetime Staff Director of SSCI; the testimony of James Radzinski; and the "Citibank tape". In a transcribed January 20, 1987 "Business Meeting", SSCI looked into claims by some of its staff that Mr. McMahon had boasted of a conversation with Poindexter, after his

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affirmatively decided not to tell the President about the diversion of funds from the 1986 Iran arms sales (see, e.g., July 15, 1987 Poindexter Cong. Tr. 93-94); [REDACTED]

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[REDACTED]

The spring of 1986 unquestionably saw renewed attention by the President to the idea of soliciting funds for the Contras from foreign governments. The catalyst for this discussion appears to have been the President's own

^{36/} (...continued)

resignation, in which Poindexter said that he had told the President that funds were being raised for the Contras via the Iran Initiative. McMahon denied both the conversation with Poindexter and having told the staff about such a conversation. Poindexter has denied both the McMahon story and reports that Poindexter made similar statements to others (see, e.g., July 17, 1987 Poindexter Cong. Tr. 134-138).

Radzinski, the NSC's System IV Control Officer through October 1986, claimed to recall an April 1986 memorandum from North to Poindexter discussing the diversion and attaching a proposed memorandum from Poindexter to the President. No such memorandum was found in the files, and Radzinski later admitted the "distinct possibility" that his recollection was "not completely accurate". (See Iran/Contra Select Comm. Rpt. at 272.) More important for present purposes, Radzinski's initial recollection would only go to corroborate North's testimony that he sent diversion-related memoranda to Poindexter; it would not impeach Poindexter's testimony that he never informed the President about the diversion.

The "Citibank tape" (see Bulkies 1-600-757 and 1-600-794) consists of several minutes of inadvertently-recorded telephone "cross-talk", in which two unidentified male voices appear to discuss an unspecified "smoking gun", known to President Reagan and Oliver North, that at least at that point had not been disclosed to the Congressional Select Committees. As stated in the Government's Memorandum in Response to Defendant North's Motion for Production of Information Concerning June 17, 1987 Tape Recording, filed in U.S. v. North on March 20, 1989, our investigation to determine the identity of the two voices was unsuccessful.

frustration with the legislative process, as captured in a May 2, 1986 PROF from Poindexter to his Deputy, Don Fortier:

. . . yesterday in a meeting that I had with the President, he started the conversation with "I am really serious." "If we can't move the Contra package before June 9, I want to figure out a way to take action uni-laterally to provide assistance." In other words he does not buy the concept of taking actions or talking about pulling out as described in the package. He has been reading Natanyahu's (sp?) book on terrorism and he was taken with the examples of Presidential actions in the past without Congressional approval. He also read an op-ed piece on the same subject. I believe that was the one by Dick Pipes' son. The President is recalling the 506A action we took on Honduras. I told him that I didn't think that it would apply here, since we are not dealing with a government. But the fact remains that the President is ready to confront the Congress on the Copnstitutional [sic] question of who controls foreign policy. We need to get Abe Sofaer and other stalwart lawyers thinking in these terms to see if there is some way we could do this, if all else fails.

With your answers to the first question, we will discuss the package on the return trip and be ready to proceed on return. I have George's proxy on the package. George agrees with the President that we have to win some way and we will not pull out. (AKW031829.)

On May 15, in preparation for an NSPG meeting scheduled for the next day, Poindexter sent the President a memorandum that discussed the Contras' overall financial plight and noted that "By mid-June the outside support the resistance has received will have been consumed and no further significant support appears readily available" [REDACTED]

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[REDACTED] The memorandum proposed three options: reprogramming

\$15 million in DoD funds for humanitarian assistance to the Contras; a Presidential appeal for private donations by U.S. citizens (the memo observes that "Such a step would undoubtedly result in considerable domestic criticism and perhaps a Congressional move to make such activity unlawful")^{37/}; and, finally, "A direct and very private Presidential overture to certain Heads of State who are financially and politically capable of 'bridging' the resistance until a more favorable Congressional environment obtains" (AKW000737-43).

The May 16 NSPG meeting [REDACTED] began with a presentation by Director Casey on the Contras' situation, followed by a rundown of the status of the Contadora regional peace negotiations and of the Contra legislation. The minutes then reflect the following discussion of the three "options".

SECRETARY SHULTZ: The suggestion is to go to the committees and persuade them to reprogram some money from Defense for non-military aid to the contras. Personally, I think it's breathtaking in improbability. It would be better to go to other countries.

SECRETARY WEINBERGER: Try everything. We should try every country we can find, the committees, and the people of the United States. If the contras are out of business in July, we will have to fight there ourselves some day.

^{37/} The President's awareness of and involvement in domestic fundraising for the Contras is treated below under "Other Aspects of U.S. Military Assistance to the Contras, 1984-1986."

SECRETARY BAKER: George says we now are in a different position with respect to approaching other countries.

OLLIE NORTH: The FY-86 intelligence authorization bill permits the State Department to approach other governments for non-military aid.

SECRETARY SHULTZ: However, if we approach the intelligence committees in Congress and are turned down, we then are in an equivocal position if we go to other countries.

DIRECTOR CASEY: Haven't we approached other countries?

SECRETARY SHULTZ: We have, but not with much success.

ADMIRAL POINDEXTER: But until now, we have not involved the President.

SECRETARY SHULTZ: I'm talking about going to [the Prime Minister of an Asian country], saying we need some communications equipment. He figures out the cost and tells us the money is not a problem, but he has to think about how to deal with our Congress, what their reaction might be. He still hasn't thought it through yet.

DIRECTOR CASEY: The Saudis, Israelis, South Koreans, Taiwanese all have some interest.

PRESIDENT REAGAN: What about the private groups who pay for ads for the Contras. Have they been contacted? Could they do more than ads?

DON REGAN: We have contacts. Anyway, the President can get friends on an emergency basis to get funds there. But there is another idea which the President has discussed with me, which I can bring up because he is reluctant to do so. If a group in Nicaragua calls itself a government or if there is a group which creates a government in exile, that could also create a way to help them.

SECRETARY WEINBERGER: We could then use the emergency provisions, just as we did for the Saudis.

OLLIE NORTH: Or for the Hondurans.

PRESIDENT REAGAN: Can't I recognize a government like that without action by Congress?

SECRETARY SHULTZ: Yes, you can.

AMBASSADOR HABIB: But the Nicaraguan resistance themselves have some strong reservations about doing that now without support from the other countries in the area. We would need to think it through.

SECRETARY BAKER: There was a bill two years ago which had that proposal. The contras could approach the other four countries.

ADMIRAL POINDEXTER: We will work on an NSDD on the negotiating process. We will prepare it quickly and lay out where there are disagreements so we can put them before the President. George will prepare for the President a list of countries which could be approached. We also will look hard at the issue of a new Nicaraguan government. And Will Ball will discuss with Chaney and Michel the possibility of reprogramming, looking at what the damage would be if we tried and failed. (AKW08812-13.)

After May 16, 1986, the record on Presidential awareness of third-country support trails off. At Presidential national security briefings stretching into the summer, there was intermittent discussion of candidate countries for solicitation (see McDaniel notes for May 19 (ALU0128245), June 9 (ALU0128250)). At the August 14, 1986 briefing, the President reportedly asked whether the Hondurans could lend supplies to Contras (ALU0128256).

[REDACTED]

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[REDACTED]

The only concrete result of the Secretary of State's consideration of possible donor governments -- the misdirected Brunei contribution solicited by Abrams -- may never have been briefed to the President at all (see June 17, 1987 Poindexter Cong. Dep. 313).

Other Aspects of U.S. Military Assistance to the Contras, 1985-1986

As we know, the NSC staff's support of the Contras during the Boland period was not limited to obtaining third-country funding for the Contras and ensuring their continued sanctuary in the Central American countries adjacent to Nicaragua. Beginning shortly before the "full prohibition" Boland Amendment became law, the NSC staff also attempted to rebuild, as best it could, the logistical and advisory functions that the CIA had performed for the Contras between 1981 and mid-1984.

Starting from modest beginnings -- essentially, the substitution of Col. North for the Chief of the CIA's Latin American Division as the case officer for the Contra military program over the summer of 1984 -- the NSC staff's Contra program took on more and more of the CIA's former functions as the need and opportunity arose. By mid-1986, Col. North supervised a fully-integrated covert program that had its own

sources of funding (principally, the diverted Iranian arms sale proceeds and monies that North raised from wealthy U.S. citizens). As the result of a key meeting held in Miami in June 1985, the NSC staff also had virtually total control over the flow of arms, ammunition, and other military supplies to the Contras. A network of shell corporations run from the program's financial center in Geneva accomplished the needed transfers of funds and held title to the program's assets, including the military materiel itself, warehouses and a small fleet of aircraft based at Ilopango Air Base in El Salvador, and a subsidiary airfield at Santa Elena, Costa Rica. The most important non-governmental figures in this operation were General Secord and Albert Hakim, who in turn supervised more specialized actors such as Thomas Clines, Rafael Quintero, Richard Gadd, Robert Dutton, and Willard Zucker, as well as over a dozen contract employees such as the pilots and loadmasters at Ilopango.

A coherent portrait of President Reagan's knowledge of these elements of the NSC staff's Contra support program is quite difficult to assemble, and the image is further clouded by several important instances in which information was apparently concealed from the President by his subordinates, particularly Admiral Poindexter. To begin with the fundraising aspect of the operation, the available evidence, as previously noted, does not support any inference that the President was aware of the diversion of funds from the Iran arms sales to the Contras. Nor, despite his general

blessing of foreign contributions, is there any indication that Mr. Reagan knew that some of the third-country money raised during 1985 and 1986 either went (as in the case of the two Taiwanese donations) or was intended to go (as in the case of Brunei) into the coffers of the Secord/Hakim Enterprise rather than directly to the Contras. [REDACTED]

[REDACTED]

Domestic fundraising for the Contras presents a more complex picture. There is no doubt that, beginning at least with the Nicaraguan Refugee Dinner in April 1985 and continuing through mid-1986, the President, like North, was a frequent and enthusiastic pitchman for Contra-related causes. There were, however, some important differences between the two. First, while both men's oratory shaded over from efforts to sell the Administration's political position on the Contras to actual fundraising appeals, the President's activities seem to have been confined to non-lethal, "humanitarian" aid. North, in contrast, made directed appeals, mainly through the National Endowment for the Preservation of Liberty ("NEPL"), for funds to buy weapons, [REDACTED]

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[REDACTED]

Second, while the President was unquestionably aware of NEPL and even held meetings and exchanged correspondence with its officials and contributors, [REDACTED]

[REDACTED]

Indeed, early in North's involvement with NEPL the President's counsel were actively misled by North concerning the nature of that organization's activities. When North sought to obtain the first two Presidential letters to Carl Channell and Barbara Newington, North saw to it that the mandatory White House review was based on false information. Thus, on October 10, 1985, White House Counsel Fred Fielding wrote:

Oliver North has advised my office that the recipients [of the proposed Presidential letters to Channell and Newington] are not involved in raising private funds for the Contras, and that the recipients understand they may not use the letters in fundraising or other promotional activities.

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[REDACTED]

[REDACTED]

[REDACTED]

^{38/} North has testified that while he "assumed" the knowledge that he ascribed to be President in his PROF note, he has no firsthand information to back it up (see July 7, 1987 North Cong. Tr. 241). Like North, Poindexter has said that he has "no doubt" that the President understood that the purpose of his meetings with supporters was to thank them for contributing to the Contras, but has no support for this surmise except for the general sense that "we" did not distinguish between fundraising for public support and fundraising for direct support (see May 2, 1987 Poindexter Cong. Dep. 202-203).

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^{39/} [REDACTED]

[REDACTED]

(continued...)

[REDACTED]

[REDACTED]

* * *

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[REDACTED]

* * *

[REDACTED]

38/ (...continued)
of a humanitarian nature, and, when I met with Mrs. Garwood, this subject was not discussed.

[REDACTED]

[REDACTED]

* * *

[REDACTED]

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[REDACTED]

* * *

[REDACTED]

^{39/} (...continued)

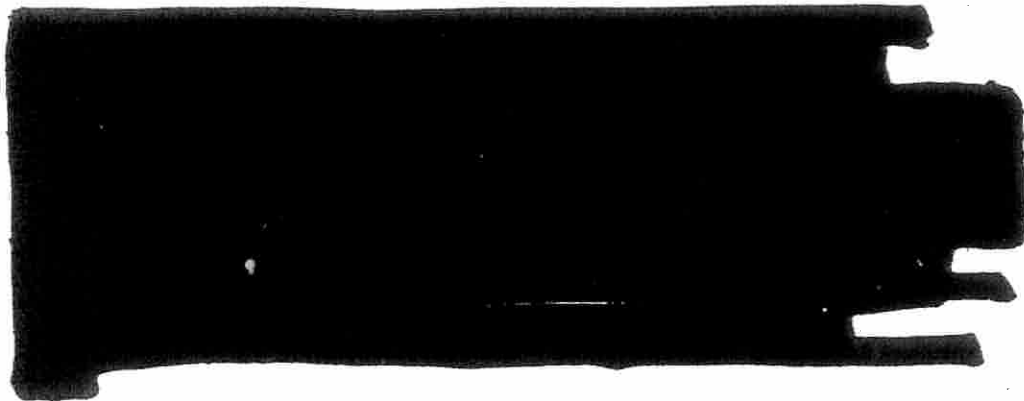
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Although I did not seek or directly encourage private citizens to provide military support, I did encourage William Simon and others to provide humanitarian assistance through the Nicaraguan Freedom Fund (Tab 14A). I also knew, as had been previously reported in the press, that Mrs. Garwood had contributed money to refurbish a Medevac helicopter. I understood her contributions to be of a humanitarian nature, and, when I met with Mrs. Garwood, this subject was not discussed.

[REDACTED] July 15, 1987 Regan Cong. Dep. 24-25).

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The other evidence in the record does not materially contradict these statements. At his deposition in United States v. Poindexter, the President generally recalled North as a "communicator" between the United States Government and the Contras (February 16, 1990 Reagan Dep. 131-138). Mr. Reagan reaffirmed that he does not recall authorizing or approving the acceptance by the NSC staff of CIA's former responsibilities with respect to the Contras (February 16, 1990 Reagan Dep. 161-62, 164), and went on to say that at no time did he have "any inkling" that the NSC was guiding the Contras' strategy in any way or that North was participating in planning and directing and advising the Contras' military activities, including giving logistical support to them (id. at 170). 

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 the President testified that he had "heard reports about" Secord and Hakim in connection with Contra assistance (id. at 192), and recalled that Secord had "some kind of an aero business" or "delivery business" and "might have been involved with delivering some aid to the Contras when it was legal to provide such aid" (id. at 21), but again stated that he had no recollection of authorizing

North or the NSC generally to use Secord and Hakim to supply financial or military support to the Contras (id. at 192).

The President also recalled being informed by Poindexter about the Costa Rican airstrip, which Mr. Reagan says he

hoped that it would be used in the delivery of when [sic] once again we could supply, keep the Contras supplied, that it could be involved in the -- used there, if there was need for a refueling or anything of that kind of a plane. (Id. at 121.)

Mr. Reagan went on to speculate that the aircraft using the strip would have been "some of those that weren't officially planes of ours that had been helping in the past in deliveries to the Contras", and that it seems "logical" that Secord would have been involved in that (id. at 122).

The President's principal advisors also add comparatively little to this picture. James Baker, the President's Chief of Staff until February 1985, has told our Office that when he left the White House, he had vague knowledge that the NSC was involved in "some operation" regarding Central America, but had no detailed knowledge about Contra funding or Contra resupply (see February 16, 1988 Baker 302 at 7). Donald Regan, who succeeded Baker, has testified that while both he and the President received information at national security briefings concerning how the Contras were getting by, neither he nor the President asked how this was happening, and Mr. Regan himself did not know that the NSC had an operational role with respect to the Contras. (See July 30, 1987 Regan Cong. Tr. 12-14, 17-19,

22-25.) Former National Security Advisor McFarlane claims that he kept the President apprised of whatever McFarlane was doing with respect to the Contras (see, e.g., May 13, 1987 McFarlane Cong. Tr. 98); however, McFarlane's definition of his own knowledge of the NSC staff's activities is always bounded by his position that he was not aware of any Boland violations during his tenure.

As in other areas, Poindexter will say that McFarlane "no doubt" told the President in 1984 or 1985 that the NSC staff had picked up some of the CIA's responsibilities with regard to the Contras, but once again cannot specifically recall such a discussion (see June 17, 1987 Poindexter Cong. Dep. 317). Poindexter probably came closest to describing the true state of affairs when he gave the following testimony to Congress:

Q. But did [the President] know, as far as you can say, that North was filling this vacuum that had been left by the CIA dropping out?

A. Well, I don't think -- you see, in the President's mind he wouldn't know the details of what CIA was doing, what Defense was doing, what State was doing, and what we were doing. He knew the job was getting done. The exact way we were getting it done was something that would not have been particularly relevant to him. (June 17, 1987 Poindexter Cong. Dep. 316.)

Poindexter believes that the President would certainly have known that North was the NSC's action officer on Central America, and that the NSC was keeping close track of the situation in that region and "knew a lot of things"; however, Poindexter does not recall having a conversation with the President about the breadth of what the NSC was doing with

respect to the Contras (see May 2, 1987 Poindexter Cong. Dep. 221-222; June 17, 1987 Poindexter Cong. Dep. 315-316; July 15, 1987 Poindexter Cong. Tr. 138, 191; July 20, 1987 Poindexter Cong. Tr. 3, 10). In Poindexter's opinion, while the President knew that the Contras were receiving arms from private parties and third countries (see July 20, 1987 Poindexter Cong. Tr. 3), the President's understanding did not extend to something as specific as instructing North to conduct air resupply operations (see id. at 17).

As previously discussed (see pages 68-69 above), Poindexter affirms and amplifies upon his notes of the December 13, 1985 National Security briefing at which he told the President about the Santa Elena airstrip being constructed for "private individuals" with the help of Costa Rican Security Minister Piza (see May 2, 1987 Poindexter Cong. Dep. 65-66); however, Poindexter says that he did not inform the President about U.S. Ambassador Tambs' role in connection with the airstrip, or that North had instructed Secord to build it (see May 2, 1987 Poindexter Cong. Dep. 65-66; see also June 17, 1987 Poindexter Cong. Dep. 265; July 15, 1987 Poindexter Cong. Tr. 191; July 20, 1987 Poindexter Cong. Tr. 6). Poindexter does not believe that he told the President about Poindexter's roughly-contemporaneous instruction to North to "continue on course" with respect to Contra support (see July 20, 1987 Poindexter Cong. Tr. 3); Poindexter thinks that at some point he "very likely" would have mentioned to the President that the Contras would not

have survived without North, but he does not recall specifically having said that to Mr. Reagan (June 17, 1987 Poindexter Cong. Dep. 332). Finally, and confusing matters somewhat, in his Congressional testimony Poindexter even expressed "doubts" that the President would have known about Secord in connection with the Contras (see May 2, 1987 Poindexter Cong. Tr. 66; June 17, 1987 Poindexter Cong. Tr. 320);

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As in the case of the NSC's fundraising activities, the record on Contra resupply also contains episodes in which the President's subordinates actively denied him information that would have indicated the full scope of the resupply operation. For example, in mid-July 1986, North sent Poindexter a memorandum requesting that Poindexter speak with the Attorney General and the President about Jack Terrell, who North identified as a possible assassination threat to the President. North's memorandum says that Terrell has been "working closely with various Congressional staffs in preparing for hearings and inquiries regarding the role of the U.S. Government officials in illegally supporting the

Nicaraguan resistance," and proclaims grandly that "Project Democracy officials decided to use its security apparatus to attempt to determine how much Terrell knows about their operations." (See AKW039081-82.) Poindexter responded with a request that North give him "another memo for the President this time" and that North specify what he wanted Poindexter to say to the Attorney General (*id.*). Eight days later, North sent Poindexter a second package on the subject of Terrell. North's covering memo to Poindexter again refers to the "Project Democracy security officer" and also mentions the Avirgan/Honey lawsuit against Secord and others; in sharp contrast, the memorandum prepared for, and sent to, the President omits any reference to Project Democracy, its "security officer", or Secord (see AKW039094-1064).^{40/}

[REDACTED]

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^{40/} [REDACTED]

[REDACTED]

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In the South Lawn remarks [REDACTED]
[REDACTED] the President denied that there was "any government connection . . . at all" with Hasenfus, adding that "We've been aware that there are private groups and private citizens that have been trying to help the contras -- to that extent -- but we did not know the exact particulars of what they're doing." [REDACTED]

[REDACTED]

^{41/} This is not to say that Mr. Reagan bears Poindexter any ill will for having provided less than the full story about Mr. Hasenfus. At his deposition, the former President -- while sticking by the description of events contained in Interrogatory Answers 45-47 (see February 17, 1990 Reagan Dep. 194-197) -- was eager to agree with defense counsel's suggestion that if Hasenfus were employed by the "private benefactors", Mr. Reagan would not consider him to be connected with the U.S. government (see id. at 283).

[REDACTED]

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In conclusion, the available evidence does not clearly support -- and to some extent refutes -- the proposition that President Reagan had detailed familiarity with the role of the NSC staff in providing the Contras with military supplies during 1985 and 1986.

Congressional Inquiries Into the NSC Staff's Support for the Contras, 1985-October 1986

There were three major waves of Congressional inquiries which, if answered truthfully, would have revealed the existence of the NSC staff's Contra support operation. The first took place in August/September 1985 and included letter inquiries from HPSCI, the Subcommittee on Western Hemisphere Affairs of the House Foreign Affairs Committee, and SSCI. The second revolved around a proposed Resolution of Inquiry (H. Res. 485) introduced in the House on June 24, 1986, which both the Foreign Affairs Committee and HPSCI forwarded to the President for comment. The third followed the news of the Hasenfus shootdown and merged into the Iran inquiries that began in early November, 1986.

The record on President Reagan's awareness of these Congressional inquiries is somewhat muddy. As noted above, Mr. Reagan has acknowledged that he heard of the press stories about North and the Contras that preceded the inquiries, [REDACTED]

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[REDACTED];^{41/} the President, however, cannot recall who told him that the allegations were incorrect (see February 17, 1990 Reagan Dep. 187). With respect to the Congressional inquiries themselves and his subordinates' false responses, [REDACTED]

[REDACTED]

Although McFarlane agrees that the President was not shown his proposed responses to the 1985 Congressional letters, [REDACTED]

[REDACTED]

[REDACTED]. McFarlane adds that he discussed the 1985 Congressional letters with the President, described what he was doing in response, and told the President that a search of the files had produced evidence of occasional advice and assistance to the Contras -- which McFarlane did

^{41/} [REDACTED]

President Reagan did not respond directly to any of those inquiries. The 1985 round was handled by then-National Security Advisor McFarlane; the 1986 letters to the President regarding H. Res. 485 were answered by Admiral Poindexter, who also arranged a briefing of HPSCI by Col. North that took place on August 6, 1986; and the Hasenfus inquiries were not sufficiently focused on NSC to require more than staff-level response during October 1986, although they metastasized in November with the addition of the Iran disclosures, as discussed in Section III below.

The record on President Reagan's awareness of these Congressional inquiries is somewhat muddy. As noted above, Mr. Reagan has acknowledged that he heard of the press stories about North and the Contras that preceded the inquiries, [REDACTED]

[REDACTED] the President, however, cannot recall who told him that the allegations were incorrect (see February 17, 1990 Reagan Dep. 187). With respect to the Congressional inquiries themselves and his subordinates' false responses, [REDACTED]

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[REDACTED]

42/ [REDACTED]

Although McFarlane agrees that the President was not shown his proposed responses to the 1985 Congressional letters, [REDACTED]

[REDACTED]

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[REDACTED] McFarlane adds that he discussed the 1985 Congressional letters with the President, described what he was doing in response, and told the President that a search of the files had produced evidence of occasional advice and assistance to the Contras -- which McFarlane did not think was illegal. McFarlane recalls that he stated, and the President agreed, that there would be public debate and press criticism over this matter; however, the President gave him no guidance, let alone an order, concerning how to answer the letters, and there was no discussion about misrepresenting the facts to Congress. (See March 13, 1989 McFarlane North Trial Tr. 4131-33; March 16, 1989 McFarlane North Trial Tr. 4809-12.) In McFarlane's view, the judgment on how to answer the letters was his (March 16, 1989 McFarlane North Trial Tr. 4809).

There is no clear evidence that President Reagan was even aware of H. Res. 485 or Admiral Poindexter's letter responses of July 21, 1986, although the former President cheerfully endorsed Poindexter's letters when he was shown them at his deposition (see February 16, 1990 Reagan Dep.

141-52; February 17, 1990 Reagan Dep. 222).^{43/} The most that Admiral Poindexter will say is that while he doesn't recall a specific conversation, he is "relatively certain", based on his "general policy", that he told the President about H. Res. 485 and that "we" should try to defeat it ([REDACTED] [REDACTED] see also July 16, 1987 Poindexter Cong. Tr. 42). Poindexter has testified unambiguously that the decision to send North before HPSCI for the August 6, 1986 briefing was Poindexter's personally, and that the President did not enter into it (see July 17, 1987 Poindexter Cong. Tr. 64).

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Except for the President's October 8, 1986 responses to reporters' questions concerning Hasenfus, [REDACTED] [REDACTED] there is no indication that Mr. Reagan was aware of, or played any conscious role in, the Administration's efforts to deflect Congressional inquiries into the shutdown during October, 1986 (see [REDACTED])

^{43/} On cross-examination, Mr. Reagan added that he would not have approved of Poindexter's letters if he had known that they adopted false information previously provided by McFarlane (see February 16, 1990 Reagan Dep. 151-52).

A. The Legality of the Contra-Support
Activities Known to the President

Our Office has concluded that the NSC staff's Contra support activities -- which amounted, in essence, to transferring and then hiding from Congress the Contra military support program that was prohibited to CIA by the October 1984 Boland Amendment -- was a violation of 18 U.S.C. § 371. Paragraph 13(a)(1) of the March 16, 1988 Indictment charged Poindexter, North, Secord, and Hakim with having conspired to defraud the United States

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

In addition to the four named defendants, our Office identified McFarlane, Robert Earl, Joseph Fernandez, and Fawn Hall as additional co-conspirators for all (or any part) of the conspiracy charged in Count One of the Indictment (see April 26, 1988 letter from Associate Counsel Bromwich to defense counsel). The major question with respect to the criminal liability of the President on this charge, or one like it, is whether he knew enough of the NSC staff's Contra-

support activities to have been a witting co-conspirator in an effort to deceive Congress about them.^{44/} Before tackling that question, it is worth discussing briefly the legal environment in which those activities took place.

The overarching issue of legal interpretation is the scope and effect of the prohibitory Boland Amendments, and to some degree the provisions on authorization and reporting of covert actions that have already been discussed in Section I above. The legality of soliciting foreign governments to provide Contra assistance was first reviewed during the late spring and the summer of 1984, when CIA had almost, but not quite, run through the \$24 million that Congress had allotted for Contra support on Fiscal 1984. In May 1984 an attorney in CIA's Office of General Counsel concluded that so long as the National Security Planning Group approved, and so long as the Congressional oversight committees were informed, CIA could legally solicit third countries to support the Contras, and that any funds so raised would be separate and apart from any Congressionally-

^{44/} In response to North's request for particulars concerning the March 1988 Indictment, the Office listed only the Congress as the party deceived for purposes of paragraph 13(a)(1) of the Indictment; in contrast, for paragraphs 13(a)(2) (the diversion) and 13(a)(3) (corruption of the Iran Initiative), we listed both the Congress and the "Executive Branch" (see August 10, 1988 letter from Associate Counsel Zornow to Barry S. Simon). I have always taken these references to the "Executive Branch" to include the President as having been deceived.

imposed budget ceiling or restriction with respect to appropriated funds (ER 2961). On June 22, 1984, CIA General Counsel Sporkin passed this conclusion to Director Casey; Sporkin stated that he agreed with his staff attorney's analysis, but recommended that the Attorney General's concurrence be obtained. As described above (see pages 55-56), the June 25, 1984 NSPG meeting also concluded with the suggestion that the Attorney General be consulted about third-county solicitation.

On the very next day, Director Casey, Mr. Sporkin, Attorney General Smith, Deputy Attorney General Jensen, and Mary Lawton of DoJ -- none of whom had apparently been told about the Saudi contribution, and only one of whom had even attended the June 25 NSPG meeting -- met to acquaint the Attorney General with the idea of soliciting third countries to help the Contras, and to obtain his legal views. According to Sporkin's memorandum of the meeting, which was agreed to by the DoJ participants (see ALV035914, ALV035917),

the Attorney General stated that he saw no legal concern if the United States Government made it clear [to contributing third countries] that they would be using their own funds to support the contras and no U.S. appropriated funds would be used for this purpose. The Attorney General also said that any nation agreeing to supply aid could not look to the United States to repay that commitment in the future. The DCI made it clear that if there is a possibility this option may be used, he would advise the CIA oversight committees.

It is not clear how, if at all, the President was informed of Attorney General Smith's opinion ([REDACTED])

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[REDACTED] we do know that by mid-July, 1984, Casey told the State Department that the Attorney General had "ruled" that seeking non-U.S. Government funding for the Contras would not be an "impeachable offense" (see ER 45,359).

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In any event, the passage of the "full prohibition" Boland Amendment in October 1984 changed CIA's opinion on its ability to solicit financial or military support for the Contras from third parties. On January 8, 1985, Mr. Sporkin advised Director Casey that:

2. It seems clear to me that the CIA is precluded from spending any funds which would have the purpose or the effect of supporting military operation in Nicaragua directly or indirectly. Therefore, other than the activities spelled out in my memorandum of 26 December 1984 [having to do with cooperative intelligence-gathering], there is little the CIA can do with respect to third countries vis-a-vis the contra program.

3. The President is clearly charged with the conduct of foreign relations. While it seems to me that certain members of Congress would take the view that any approach to third nations to assist the contra program would violate the current law, such a view in my opinion would conflict with President prerogatives if it were applied to prevent elements other than CIA, DOD, or intelligence elements from seeking third-party assistance for the contra program. It is obvious, however, that

the specific agency tasked, whether it be the State Department or the NSC, would be the organization to make the appropriate legal call.

4. There are two points which should be kept in mind in pursuing this matter:

a. The prohibition in the continuing resolution is written as a spending prohibition. This is in contrast to the so-called Clark Amendment, originally enacted in 1975, which prohibited any kind of assistance to augment the capacity of any individuals or groups to conduct military or paramilitary operations in Angola.

b. The 26 June 1984 memorandum prepared as a result of our meeting with the Attorney General must be kept in mind. (ER 11,763.)

We know that by January 15, 1985, this new legal view by CIA had been conveyed to North because North repeated it to McFarlane and Poindexter in his early draft of the "Nicaragua Options" paper [REDACTED] In the slightly more evolved "Options and Legislative Strategy for Renewing Aid to the Nicaraguan Resistance" of February 5, 1985, the legal situation surrounding third-country support is discussed at some length: (b)(3) GJ

A. USG Solicitation of Third Country Support

Although the Continuing Resolution addresses only the use of appropriated funds, CIA has interpreted the statutory language against "indirect" support as prohibiting contact with third countries which might be willing to fund/assist resistance activities. The Agency has, therefore, proscribed its employees from soliciting/requesting third country support, since it could be argued that funds appropriated for CIA salaries were

being used in a manner that would have the effect of indirectly supporting paramilitary operations in Nicaragua. The CIA's concern is heightened by two considerations:

- First, the Intelligence Committees were informed, after U.S. funding was exhausted last June, that as a matter of policy the Agency was not soliciting third country funding. State has responded to similar queries from the Foreign Affairs/Relations Committees that the Department has made no such overtures.
- Second, Executive Order 12333 on intelligence activities provides that "no agency of the Intelligence Community shall request any person to undertake activities forbidden by this Order." While it is anomalous to read this prohibition so literally that it prevents the Agency from requesting third countries to undertake activities not addressed in the Executive Order, but otherwise forbidden to the CIA, this constraint nonetheless prevails.

It is very possible that this problem could be overcome by a careful record of consultation with the concerned committees of Congress (Intelligence and Appropriations). No new legislation or formal amendment to the Executive Order would be required. By pursuing this course, we would postpone a definitive "up or down" vote by Congress on whether or not the USG can provide support to the Nicaraguan Freedom Fighters and seek to maintain the viability of the armed resistance by encouraging only third country support. Through consultation, we would assure that we are not subject to charges of circumventing or violating

any statutory prohibition. We would, thereby, leave open the possibility of a new funding request until later in FY 1985 -- perhaps even waiting until the current prohibitions in Section 8066 of the Continuing Resolution expire on October 1, 1985. It should also be noted that the existing Presidential Finding (under which the U.S. program operated until FY 1984 funding was exhausted) specifically provided that our support to resistance groups would be provided both unilaterally "and in cooperation with other governments." Congress never objected to this aspect of the program. (AKW019294.)

There is no indication in the record that President Reagan saw any version of the "Nicaragua Options" paper. As previously noted, there was no notification to Congress concerning third-country assistance to the Contras. At least until the December 1985 amendment that authorized the State Department to solicit humanitarian aid, there also appears to have been no further legal analysis by the Administration concerning the permissibility of soliciting such assistance under Boland. Instead, the focus shifted to the separate question, also identified by Mr. Sporkin in his January 8, 1985 memorandum, whether the National Security Council staff was an agency covered by the statute.

The October 1984 Boland Amendment prohibited expenditures for Contra military support by "the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities". Putting aside the question whether

Congress could constitutionally have limited the ability of the President himself to discuss foreign policy matters with other countries by passing such a statute, it seems to be conceded universally that the Boland Amendment did not apply to the actions of the President (see February 22, 1989 Hamilton North Trial Tr. 1716-18, 1727, 1751-54). [REDACTED]

(b)(3)
GJ

[REDACTED] But what of the NSC staff?

Our Office has taken the legal position that the Boland Amendment covered the activities of the NSC staff, and did so constitutionally. See October 25, 1988 Memorandum of Points and Authorities in Opposition to Defendant's Motion to Dismiss or Limit Count One in United States v. North, Cr. No. 88-0080-02-GAG, at 48-82.^{45/} The 1987 Iran/Contra Select Committee Report came to the same conclusion (see Select Comm. Rpt. 399-401); the Minority section of that Report disagreed (see Select Comm. Rpt. 489-497). Generally

^{45/} At the same time, we also noted that "the gravamen of Count One is not to charge North simply with violating or conspiring to violate the Boland Amendment" (id. at 48n. 23). In denying the defense motion that raised this issue, Judge Gesell concluded that he did not have to decide either the constitutionality or the reach of Boland because the Administration -- including the President -- had apparently acquiesced in the statute. See United States v. North, 708 F. Supp. 375, 377-79 (D.D.C. 1988). The court noted, however, that "any White House uncertainty [concerning the scope of Boland] may bear on North's intent on certain counts." Id. at 378.