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THE WHITE HOUSE

WASHINGTON

October 29, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL *AR*

SUBJECT: Declassification of Report/House Minority --
"Constitutional Principles"

This section of the Report is twenty-five pages long and arrived for declassification from the House Minority on October 26. The salient points are listed below:

- P. 2 - "The Supreme Court precedents discussed below show that many of the central Iran/Contra actions undertaken by President Reagan, his staff, and other executive branch officials, fall into the constitutionally protected category."
- P. 10 - "What are the implications for the Iran/Contra investigation of seeing the President as the 'sole organ' of foreign policy? For one thing, it is beyond question that Congress did not have the constitutional power to prohibit the President from sharing information, asking other governments to contribute to the Contras, or entering into secret negotiations with factions inside Iran."
- P. 11 - "What follows from Chief Justice Marshall's opinion in Marbury is that if Congress cannot prevent the President from exercising discretion over a particular matter, neither may it prevent the President's personal staff on the National Security Council, the Departments of State and Defense, the Intelligence Community, or the President's ad hoc personal representatives, from performing the same tasks on the President's orders and in his own name.

Many, if not all, of the actions by representatives of the U.S. government that have been alleged to run counter to the Boland amendments were essentially forms of information sharing and diplomatic communication. To the extent that such activities by the NSC staff, CIA, State Department or Defense Department were covered by the amendments -- and we shall argue that many were not -- we believe the activities were constitutionally protected against limitation by Congress. The executive was not bound to follow an unconstitutional effort to limit the President's powers."

- P. 15 - "All of these court decisions demonstrate that the President was meant to have a substantial degree of discretionary power to do many of the kinds of things President Reagan did in Iran and Central America."
- P. 16 - "[W]e grant without argument that Congress may use its power over appropriations, and its power to set rules for statutorily created agencies, to place significant limits on the methods a President may use to pursue objectives the Constitution put squarely within the executive's discretionary power. For example -- although we shall show later that the Boland amendments, as actually written, permitted the NSC staff to continue providing certain types of military and operational advice to the Contras -- we have no doubt that Congress has the constitutional power to enact a statute that would cut off all aid to the Contras, except those forms that fall under the rubric of information-sharing and diplomatic communication."
- P. 17 - "One recent court case on this point involved an amendment on a Health, Education and Welfare (HEW) Department appropriation bill prohibiting the department from using any of its appropriations -- which everyone understood to include salaries -- to impose mandatory school busing plans on local communities to promote school desegregation. The U.S. Court of Appeals for the District of Columbia ruled in 1980 that in order to preserve the statute's constitutionality, it would be construed to prohibit HEW from using its ability to cut off federal funds to a school district that refused to implement a busing plan, but that the statute could not constitutionally prohibit HEW from seeking other ways to promote desegregation and, if HEW believed a particular school district needed busing to enforce the requirements of the Constitution, the law could not be read to prohibit HEW from recommending that the Justice Department bring a suit in the federal courts. Brown v. Califano, 627 F.2d 1221 (1980).

In other words, Congress may not use its control over appropriations, including salaries, to prevent the executive or judiciary from fulfilling Constitutionally mandated obligations. The implication for the Boland Amendments is obvious. If any part of the amendments would have used Congress's control over salaries to prevent executive actions that a Congress may not prohibit directly, the amendments would be just as unconstitutional as if they had dealt with the subject directly.

There is one other important way the Constitution circumscribes legislative limitations on the executive. To explain the way it works, it is easiest to begin with a quotation from the 1893 case of Swaim v. U.S.: 'Congress

may increase the Army, or reduce the Army, or abolish it altogether; but so long as we have a military force Congress cannot take away from the President the supreme command Congress cannot in the disguise of 'rules for the government' of the Army impair the authority of the President as commander in chief."

- P. 21 - "The argument that a power must be implied by the Constitution because it is essential to some other constitutional power, is what lay behind the claims of President Carter's and President Reagan's Justice Departments that Congress may not constitutionally require President to give advance notification, or even notification to a limited number of members within 48 hours, of all covert operations. Some operations, by their very nature, may make notification within 48 hours impossible. The situations are rare, but they clearly exist."
- P. 23 - "Some people in Congress worry that the power to withhold notification may be abused, as we think it was in 1985-86 in the Iran arms sales. To avoid abuse, Representatives Stokes and Boland have introduced a bill that would require advance notification in most cases, and notification within 48 hours for all of the rest. We are convinced this approach would be unconstitutional. Equally importantly, we think it is not needed. The constitutional basis for withholding notification can only be invoked credibly, by its own terms, in very rare circumstances. A generalized fear that Congress might leak would not by itself do, because the same fear could be invoked equally for all covert actions and therefore would not be credible. The members who think they need new legislation underestimate the political leverage they now have to insure that a President will not abuse use his inherent power. The oversight rules already in place assure that Congress eventually will find out about any operation. Once that happens, Congress's control over the purse, and its power to investigate, give it ample means to exact a severe political price on a President whom it feels has overstepped proper bounds. The Iran/Contra investigations have made this abundantly clear to President Reagan. We cannot believe any future President will miss the point."
- P. 25 - "The executive branch's functions are the ones most closely related to the need for secrecy, efficiency, dispatch, and the acceptance by one person of political responsibility for the result. This basic framework must be preserved if the country is to have an effective foreign policy in the future."

THE WHITE HOUSE

WASHINGTON

October 29, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAU *ACR*

SUBJECT: Declassification of Report/House Minority -- "The Foreign Affairs Powers of the Constitution and the Iran/Contra Affair"

This section of the Report is 39 pages long and arrived for declassification from the House Minority on October 26. The salient points are listed below:

- P. 1 - "One can only see the Administration as having been engaged in a pattern of legal violations that amount to a subversion of the Constitution -- as the majority does -- by misreading our fundamental law in a way that would undermine the Presidency. We are unwilling to join the majority's analytic and rhetorical framework, or in its judgmental excesses, because it is based on such a misreading."
- P. 2 - "We will show that the President has inherent power to conduct many aspects of foreign policy materially related to the Iran/Contra affair, and that this inherent power, in many cases, cannot be altered or circumscribed by Congress."
- P. 15 - "From the point of view of constitutional theory, the most disturbing aspect of the way Admiral Poindexter handled the diversion issue, is the way his notion of deniability diminished the President's ability to take political responsibility. The Constitution strikes an implicit bargain with the President: in return for getting significant discretionary power to act, the President was supposed to be held accountable for his decisions. The bargain requires the President, however, to make sure the administration carries out his policies, acting with one voice under the law. If the President fails to maintain political accountability, the danger is that Congress will react by depriving him of needed discretion."
- P. 24 - "Jefferson justified his decision [to carry out the Louisiana Purchase] this way: 'A strict observance of the written law is doubtless one of the high duties of a good citizen, but it is not the highest. The laws of necessity of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself . . . absurdly sacrificing the end to the means.' [Jefferson evidently foreshadowed Hall.]

P. 25 - "We consider negotiations and communications with foreign governments or individuals to be Presidential powers protected by the Constitution, without reservation. They fall comfortably within precedents established during the Washington administration which have never been successfully challenged since."

P. 26 - "In its 1973 hearings on the War Powers, the House Foreign Affairs Subcommittee on National Security Policy and Scientific Developments published a list of 199 U.S. military hostilities which occurred abroad without a declaration of war. (The five declarations of war in the nation's history were for the War of 1812, Mexican War, Spanish-American War, World War I and World War II.) The list was a revision of one published the year before in a law review article by J.T. Emerson. Of the 199 listed actions, only 81 could be said under any stretch of the imagination to have been initiated under prior legislative authority. The 81 included 51 undertaken under treaties, many of which left substantial room for interpretation. In addition, many of the remaining actions were undertaken with only the vaguest statutory authority. President Jefferson's five year campaign against the Barbary States, for example, was justified by the claim that Congress's general decision to provide a navy carried with it the authority to deploy the navy where ever the President wished, including a theater in which the President had every reason to expect hostilities.

The point here is not to quibble about the 81 occasions the subcommittee described as having had prior congressional authorization. Rather, it is to show that the list made every effort to include all examples for which some kind of prior congressional authorization could arguably have been claimed. That leaves an extremely conservative number of 118 other occasions without prior legislative authorization. What follows is a sampler of the 118 actions taken solely on executive authority."

P. 33 - "The relevance of these repeated examples of the extensive use of armed force, therefore, is that they indicate how far the President's inherent powers were assumed to have reached when Congress was silent, and even, in some cases, where Congress had prohibited an action. We shall show later that most of the Reagan administration's actions in Central America in fact were not covered by statute. They therefore fall constitutionally under the heading of unauthorized, but also unprohibited actions. As shown above, Presidents historically have had not only the power to negotiate and communicate, but also to deploy force overtly -- sometimes for major campaigns involving significant losses of life -- without congressional approval. The Reagan administration did not even come remotely close to

this level of activity in its support of the contras in Nicaragua."

- P. 34 - "As Representative Hyde mentioned during Admiral Poindexter's testimony on July 17, the Continental Congress -- which did not have a separate executive branch -- set up a Committee of Secret Correspondence made up of Benjamin Franklin, Robert Morris, Benjamin Harrison, John Dickinson and John Jay. On October 1, 1776, Franklin and Morris were told that France would be willing to extend credit to the revolutionaries to help them buy arms. They wrote: 'Considering the nature and importance of [the above intelligence,] we agree in opinion that it is our indispensable duty to keep it a secret from Congress As the court of France has taken measures to negotiate this loan in the most cautious and secret manner, should we divulge it immediately we may not only lose the present benefit but also render the court cautious of any further connection with such unguarded people and prevent their granting other loans or assistance that we stand in need of. We find by fatal experience the Congress consists of too many people to keep secrets.'
- P. 35 - "Beginning with George Washington, almost every Presidential has used 'special agents' -- people, often private individuals, appointed for missions by the President without Senate confirmation -- to help gain the intelligence about which Jay wrote, and to engage in a broad range of other activities with or against foreign countries."
- P. 36 - "The early examples that are most interesting for these investigations are ones in which the President used his discretionary power to authorize covert actions. ('Covert action' is an inexact term generally recognized to include covert political action, covert propaganda, intelligence deception and covert paramilitary assistance.) In the period of 1810-12, for example, Madison used agents to stimulate revolts in East and West Florida that eventually led to an overt, congressionally unauthorized military force to gain U.S. control over territories held by a country with which the U.S. was at peace. Even more telling, however, is the following example from the Madison administration.

Madison [in 1810] sent Joel R. Poinsett, secretly and without Senate approval, to South America as an agent for seamen and commerce. Poinsett did some commercial work, but he broadly construed instructions from Secretaries of State Smith and Monroe, and worked intimately with revolutionary leaders in Argentina and Chile, suggesting commercial and military plans, helping them obtain arms, and actually leading a division of the Chilean army against Peruvian loyalists. Nothing in Poinsett's instructions specifically authorized these activities. But he had kept the administration advised of most of his plans and received virtually

no directions for long period of time, and no order to refrain in any way from aiding the revolutionaries . . . Poinsett was given broad leeway to advance the republican cause, without any commitment from the administration. He was told to write in code, and all his important communications were withheld from Congress.'

In other words, Poinsett made Oliver North look like a piker."

- P. 37 - "During the country's first century, Presidents used literally hundreds of secret agents on their own discretion. Congress did give the President a contingency fund for these agents, but never specifically approved, or was asked to approve any particular agent or activity. In fact, Congress never approved or was asked to approve covert activity in general. The Presidents were simply using their inherent executive powers under Article II of the Constitution. For the Congresses that had accepted the overt presidential use of military force summarized in the previous section, the use of executive power for these kinds of covert activities raised no constitutional questions."
- P. 39 - "This history speaks volumes about the Constitution's allocation of powers between the branches. It is apparent, by common consent, that the President is to have the primary role of conducting the foreign policy of the United States. Congressional actions to limit the President in this area therefore should be reviewed with a considerable degree of skepticism. If they interfere with core presidential foreign policy functions, they should be struck down. Moreover, the lesson of our constitutional history is that doubtful cases should be resolved in favor of the President."

THE WHITE HOUSE

WASHINGTON

October 29, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL *AR*

SUBJECT: Declassification of the Report -- "Clearing Hurdles: The President Approves a New Plan"

This section of the Report is 70 pages long and arrived for declassification on October 23, 1987. The salient points are noted below:

- P. 2 - "Having already travelled down the path of bargaining for the hostages' lives, the President and his NSC staff were reluctant to turn back. North quickly began to plan another arms deal, and the President signed the Finding prepared by Sporkin. North claimed repeatedly in December that reversing course would cause the radical captors to kill the hostages."
- P. 3 - "Unlike the 1985 deals, the President decided that the weapons for Iran should now come directly from U.S. stocks. The NSC staff took charge of the initiative, relegating the Israelis to a secondary role. Poindexter and Casey designated Secord's Enterprise as the agent of the United States Government. This created the opportunity to generate profits on the arms sales that the Enterprise could use for its other covert projects -- including support of the Contras."
- P. 10 - "On December 5, in his first act 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 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.' Poindexter testified that he was never happy with the Finding because it failed to mention any objectives other than trading arms for hostages. He said he submitted it to the President without the staffing and review that normally accompanies a Finding. In fact, other than Casey and

McMahon -- who both urged that the Finding be signed -- Poindexter did not recall discussing it with anyone else."

- P. 12 - ". . . when the Iran initiative was unravelling almost a year later, Poindexter destroyed this Finding. He believed that if the Finding came to light it would cause 'significant political embarrassment' to the President because it would reinforce the emerging picture that the United States had traded arms for hostages. In addition, it was evidence of the Administration's contemporaneous knowledge of the HAWK shipment, a fact that Poindexter, Casey, North, and others sought to conceal in November 1986."
- P. 14 - "One of the Israeli officials made handwritten notes of this meeting on December 12, 1985. According to these notes, the Israelis were told by North that, not only did the United States have no budget to pay for the 504 TOW missiles (and planned on the Israeli government receiving this money from the Israeli intermediaries), but that in the future the United States wanted to generate profits from this transaction in order to finance part of its activity in Nicaragua. According to the Israeli Historical Chronology, North had a position paper with him at the meeting which he said was to be presented to the President at a meeting the following day. North testified that he recalled no such conversation, though he could not rule it out. 'My recollection was that the first time it was specifically addressed was during a [later] meeting with Ghorbanifar. It may well have come up before, but I don't recall it.' North testified that his "clearest recollection" was that the notion of using the residuals for the Contras was first suggested by Ghorbanifar in January 1986."
- P. 16 - "Weinberger also forcefully voiced opposition, including on legal grounds. He said the proposed arms deal would violate both the U.S. embargo against shipment of arms to Iran and the restrictions on third-country transfers of U.S.-provided arms in the Arms Export Control Act. He said: '[T]here was no way in which this kind of a transfer could be made if that particular Act governed.'"
- P. 17 - The President, along with McFarlane and Poindexter, favored continuing the initiative. According to Shultz, 'The President, I felt, was somewhat on the fence but rather annoyed at me and Secretary Weinberger because I felt that he sort of -- he was very concerned about the hostages, as well as very much interested in the Iran Initiative.'
- P. 18 - "In response to Weinberger's legal objections, the President responded: "'Well, the American people will never forgive me if I fail to get these hostages out over this legal question,' or something like that." Weinberger

replied: "'[B]ut visiting days are Thursday', or some such statement."

- P. 19 - A striking aspect of the December 7 meeting was that the Finding signed two days before was not discussed.
- P. 23 - At a December 10 meeting, McFarlane recalled that the President asked "Why couldn't we continue to let Israel manage this program, . . . and was searching for, I think understandably, ways to keep alive the hope for getting the hostages back, and it is quite true that the President was profoundly concerned for the hostages."
- P. 34 - North's January 1986 memorandum regarding the new Finding "makes plain that he understood that, without a Finding, the sale of U.S.-made weapons by Iran to Israel would violate the Arms Export Control Act."
- P. 35 - "On Monday, January 6, North hand-carried the draft Finding and cover memorandum to Attorney General Meese for his review. North discussed it with Meese and his deputy, D. Lowell Jensen. Meese approved the Finding and the 'procedures we were using,' according to North. Meese does not recall the meeting, but is 'satisfied that it took place.' Jensen testified that North presented the papers for 'informational' purposes only, and that Meese was not asked for, and did not offer, any opinion."
- P. 37 - At a full NSC meeting on January 7, Meese provided a legal opinion that the arms sales could be done legally with Israel making the sales and the United States replenishing Israel's stocks. Weinberger again objected that the proposed transaction would violate the Arms Export Control Act; Meese responded that there were mechanisms outside the AECA through which the operations could proceed legally, including "the President's inherent powers as Commander in Chief, the President's ability to conduct foreign policy." Meese referred to a 1981 written legal opinion of Attorney General William French Smith stating that the CIA could legally sell weapons obtained from the Defense Department under the Economy Act.
- P. 40 - "The proposed transaction would upgrade Israel's arsenal substantially at no cost to it. The possibility that this might be an objective of the operation had caused some CIA lawyers discomfort."
- P. 42 - North told Defense Department official Koch that he hoped that the initial steps of the operation were finished in time for the President to refer to the freeing of the hostages in his State of the Union message.

- P. 45 - At Ledeen's home on January 13, 1986, Ghorbanifar told Charles Allen that funds generated through the projects he was discussing could be used for "Ollie's boys in Central America." Allen recorded this remark in his handwritten notes of the meeting as "can fund Contras." Allen did not refer to this in his memorandum to Casey and others on the session saying that at the time he did not consider it important or even relevant to his particular mission. He subsequently forgot about it.
- P. 54 - Sporkin testified that the addition of "third parties" to the subsequent version of this January 7 Finding was intended "merely to make the first paragraph of the Finding symmetrical with the second, which already contained a reference to "third parties." He said that the term did not refer to Secord but to Ghorbanifar and other other Iranian intermediaries.
- P. 57 - "In a change from the 1985 arms deals, Poindexter, Casey, and North had structured the transactions planned for 1986 in a manner which would leave the United States in possession and control of the large 'residuals' that would flow from the sales. Secord and the Lake Resources Enterprise were established as a conduit for the money paid for the missiles by Iran. North and Nir had several ideas about how these profits would be used. Foremost in North's mind was the potential for diversions to the Contra effort."

THE WHITE HOUSE

WASHINGTON

October 30, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM:

ALAN CHARLES RAUL 

SUBJECT:

Declassification of Report: "Keeping the Contra
Operation Secret: 1986"

This section of the Report is 61 pages long and arrived for declassification on October 27. The salient points are noted below:

- P. 1 - "In 1986, the Contra support project finally achieved a degree of operational success. By mid-year, weapons and other material were being dropped to Resistance troops inside northern Nicaragua; by fall, similar air-drops were being made in the South. Congress had appropriated funds for the humanitarian needs of the Contras, it had authorized third-country solicitation for humanitarian aid, and it had allowed the CIA to provide intelligence to the Resistance. But Congress had maintained the prohibition on lethal support. Following the pattern of 1984-1985, allegations in the media and independently obtained information prompted Congressional inquiries, which in turn were met with categorical denials by Administration officials, some of whom know the statements to be misleading and false."
- P. 2 - "Administration officials, not all of whom knew the true facts, denied before Congress and to the media that the U.S. Government was involved in the Hasenfus flight. Even the President spoke out. With no protest from his National Security Advisor or others aware of the facts, the President told the American people: '[T]here is no government connection with that at all.'"
- P. 3 - "The allegations in the new series of articles were almost always attributed to anonymous officials, and some of the details were incorrect. But the main charge -- that the U.S. Government had continued to provide lethal aid to the Contras despite the Boland Amendment -- was accurate."
- P. 5 - "On June 22, the Miami Herald reported that the 'controversial program to coordinate private aid to anti-Sandinista rebels through the National Security Council was approved by officials in the White House.' This was attributed to 'several current and former administration officials.' The article went on to quote 'one source,' unidentified, as

saying that McFarlane briefed Reagan on the proposal to aid the Contras and that the President verbally approved the plan. The Herald reported that McFarlane denied knowledge of any such plan to aid the Contras."

- P. 7 - "Poindexter also directed North not to put in writing matters relating to 'his operational activities, especially with regard to the support for the Contras.' And he stressed to North the need to avoid speaking of his secret operational activities with anyone, including other administration officials.

In a PROF he titled 'Be Cautions,' Poindexter directed North to maintain absolute silence about his activities: 'I am afraid you are letting your operational role become too public. From now on I don't want you to talk to anybody else, including [CIA Director] Casey, except me about any of your operational roles. In fact you need to quietly generate a cover story that I have insisted that you stop.'

Poindexter testified that he was particularly concerned about keeping Casey ignorant of the operation because he could be called to testify before Congressional Committees. Poindexter also kept the existence of the covert operation hidden from officials who did not ordinarily testify before Congress, such as Chief of Staff Donald Regan."

- P. 8 - "North did share Poindexter's desire to conceal his coordination of Contra support activities from those outside the small circle of officials involved. He told these Committees: 'I didn't want to show Congress a single word on this whole thing.'"

- P. 14 - "By any standard the response [of Poindexter to the House's Resolution of Inquiry] was misleading. First, the National Security Adviser implied in the letter that he accepted the view that the Boland Amendment applied to the NSC staff, and that the NSC staff under his tenure was not providing covert lethal support to the Contras. Poindexter referred explicitly to the information McFarlane had provided Congress that 'made it clear that the actions of the National Security Council staff were in compliance with both the spirit and the letter of the law regarding support of the Nicaraguan resistance.' He did not disclose that he had authorized North to provide to the Contras precisely the kind of covert aid the Boland Amendment was intended to prohibit.

Poindexter testified: 'I felt that the Boland Amendment did not apply to the NSC staff and I felt that indeed we were complying with the letter and spirit of the Boland Amendment. Now, it doesn't say that we are not helping the Contras. We were.'"

- P. 16, (see note 45, p. 55) - "The [HPSCI] Committee members came to the meeting [with North in August 1986] believing that official Administration policy held that the NSC staff was covered by the Boland Amendment. The former National Security Adviser had told the House Intelligence Committee as much the year before, and the current National Security Adviser had indicated by his letter that the interpretation stood. North, in his statement to the Members, said nothing to the contrary. He stated that he had always acted in compliance with the letter and the spirit of the Boland Amendment. During the session, he admitted undertaking only those actions clearly permitted by all officials of the Executive Branch. He denied activities that Members who believed the Boland Amendment applied to the NSC would have interpreted as illegal."
- P. 17 - "North conceded in his testimony that Poindexter did not give him specific prior authority to make false statements According to Earl, North tried to obtain guidance from Poindexter but could not reach him. Poindexter 'was on leave, yes, out of the office' during this period, according to Earl, who testified: 'My impression was that the leave was not accidental. The timing of the leave was just not a coincidence.'"
- P. 20 - "In his testimony, Poindexter acknowledged that he did not expect North to disclose the truth: 'I did think that he would withhold information and be evasive, frankly, in answering questions. My objective all along was to withhold from the Congress exactly what the NSC staff was doing in carrying out the President's policy I thought that Colonel North would withhold information. There was no doubt about that in my mind.'"
- P. 27 - "The Hasenfus flight was part of the resupply operation coordinated by North with the support and approval of the President's National Security Adviser. North acknowledged in testimony about the flight: 'I was the U.S. Government connection.' James Steele, the U.S. Military Group Commander in El Salvador; Lewis Tambs, the U.S. Ambassador to Costa Rica; and Tomas Castillo, the CIA Station Chief in Costa Rica, all provided assistance to the secret operation to support the Contras. Yet, virtually every newspaper article on the incident in the days after the downing would quote senior government officials, including the President himself, denying any U.S. government connection with the flight. And within a week, high government officials would offer the same categorical denials, under oath, before Congressional Committees."
- P. 30 - "There is no evidence the President knew of U.S. involvement in the Hasenfus flight. But the National Security Adviser and officials on the NSC staff did know. Also, the day of the downing, Felix Rodriguez called

Col. Sam Watson in Vice President Bush's office, suggesting to him that North was involved with the flight. Donald Gregg earlier had been alerted to the possibility that North was linked to the resupply operation.

Nevertheless, the President was permitted to deny any U.S. Government connection with the flight. In an exchange with reporters on October 8, the President praised the efforts to keep the Contras armed, comparing resupply efforts to those of the 'Abraham Lincoln Brigade in the Spanish Civil War.' But when asked whether the Hasenfus plane had any connection with the American Government, the President replied, 'Absolutely none.' He told reporters: 'There is no government connection with that at all 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.'

P. 32 - "Typical of [Elliot Abrams'] statement during this period were the following, made on the CNN "Evans & Novack" show which aired October 11:

EVANS: 'Mr. Secretary, can you give me categorical assurance that Hasenfus was not under the control, the guidance, the direction, or what have you, of anybody connected with the American government?'

ABRAMS: 'Absolutely. That would be illegal. We are barred from doing that, and we are not doing it. This was not in any sense a U.S. government operation. None.'

P. 46-48 - "Throughout the period of Congressional restrictions on lethal aid to the Contras, Administration officials were asked repeatedly whether the U.S. Government was in any way providing such support. In every instance, officials responded to the inquiries with evasive answers or categorical denials. Some of these officials made their statements as part of a deliberate attempt to conceal what they knew about U.S. Government support for the Nicaraguan Resistance.

The Committee found no evidence suggesting that the President was a knowing participant in the effort to deceive Congress and the American public. But the President's actions and statements contributed to the deception. Congressional Committees overseeing the implementation of the Boland Amendment repeatedly sought to determine how the Contras were being funded. The President knew that a Middle Eastern country had provided substantial sums of money to the Resistance; he had personally discussed such a contribution with the leader of that country. But knowledge of this contribution was not widely shared within the Administration. Indeed, high-ranking State Department

officials were permitted on several occasions to testify to Congress that it was not the policy of the United States to facilitate or encourage third-country donations following the enactment of the full prohibition Boland Amendment in October 1984, Ambassador Motley testified that 'soliciting' or 'encouraging' third country donations would violate the law.

In October 1986, the President denied that the U.S. Government had any connection with the Hasenfus flight, depicting it as part of a 'private' operation. These Committees found no evidence suggesting that the President knew his statements were false The National Security Adviser and others who knew the President's remarks were false appear to have made no effort to ensure that the President's statements were accurate and his knowledge complete. Poindexter testified he was too busy with the Reykjavik summit to correct the public record North endeavored to explain the need for the deception by arguing that he was forced to weigh 'the differences between lives and lies.' . . . North's justification for his decision to deceive does not withstand analysis. Congress is routinely briefed on covert operations where lives are at risk."

P. 49 - "Only the American people and the Congress were kept in the dark. Had they known, it would not have been lives at risk but the NSC staff's secret operation itself. Poindexter told these Committees he believed during his tenure in the White House that disclosure of the NSC staff operation would have almost surely triggered tighter restrictions on aid to the Contras. McFarlane testified that disclosure of the 'troubling' documents on North's activities which he had gathered in response to a Congressional inquiry 'would be an extremely torturous, conflicting, disagreeable outcome and that I hoped we didn't come to that.

North's contemporaneous actions and words provide clear evidence that the reasons for the deception had more to do with the political risk to the operation than to the physical risk to operation personnel. The record is clear that North's actions after the revelation of the Santa Elena airfield were motivated by a desire to prevent the discovery of 'USG fingerprints,' in his words, on the airfield.

In addition, in a May 1986 PROF note to Poindexter, North warned that members of Congress were bound to become 'more inquisitive' as the Contra operation's level of activity increased. He wrote: 'While I care not a whit what they say about me, it could well become a political embarrassment for the President and you.'

THE WHITE HOUSE

WASHINGTON

November 1, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL *ACR*

SUBJECT: Declassification of Report: "Exposure and
Concealment: Introduction"

This section of the Report is 6 pages long and arrived for declassification on October 30. The salient points are noted below:

- P. 1 - "Administration officials denied both publicly and in testimony to Congress that the U.S. Government had any connection to the Hasenfus flight. Nonetheless, investigations were commenced by the FBI and the Customs Service, which, if continued uninterrupted, might have uncovered both the Contra and Iran covert actions and Secord's Swiss bank accounts. North and Poindexter moved promptly to delay and narrow those investigations."
- P. 2 - "The Administration's first response to the disclosure was silence. Encouraged by Poindexter and others on the NSC staff, the President told his advisers that comment should be withheld so as not to jeopardize release of the hostages.

Silence promptly proved infeasible, however, and the President was forced to comment. The President's first public statement was to assert that the press reports of arms sales to Iran had "no foundation." Shortly thereafter, on November 13, 1986, the President conceded publicly that arms had been sold to Iran, but branded as "wildly false" the charge that he had traded arms for hostages. The President also denied on November 13, 1986 that the sales violated any laws.

A preliminary Justice Department analysis written on or about November 13, 1986 concluded the sales were lawful because they were done pursuant to an Intelligence Finding signed by the President on January 17, 1986. But the author of the opinion was unaware that the United States had been involved in shipments of arms by Israel in 1985 prior to any Finding."

- P. 4 - ". . . in the two days following chronology, conference, North and McFarlane prepared a false chronology, Poindexter and Casey gave misleading testimony to Congressional Committees, and McFarlane gave a false statement to the Attorney General, denying in each case that the United States knowingly participated in the pre-Finding Israeli shipments; and in the afternoon on November 21, 1986, Poindexter destroyed a key document -- a Presidential Finding -- which would have exposed these statements as false."
- P. 5 - "Not all Administration officials participated in this effort to rewrite history. Secretary Shultz argued repeatedly for prompt and full disclosure of the facts. He warned the President directly on November 19 and 20 that certain of his subordinates were giving out inaccurate information. Abraham Sofaer, Legal Adviser to the State Department, warned the White House and the Justice Department that a false story was being put forward regarding the November 1985 HAWKS shipment. Faced with this information, the Attorney General sought and received authority from the President to commence an inquiry on November 21."

THE WHITE HOUSE

WASHINGTON

November 1, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL *AR*

SUBJECT: Declassification of Report: "The Diversion"

This section of the Report is 30 pages long and arrived for declassification on October 29. The salient points are noted below:

P. 5 - "By the end of November 1985, the Enterprise received a portion of the arms sales proceeds. At North's request, the Israelis paid the Enterprise \$1 million from the proceeds of its August-September TOW shipments. According to North and Secord, the money was to cover the Enterprise's expenses in arranging five shipments of HAWKs to Iran. But when the deliveries were halted after one shipment, the Enterprise held \$800,000 in unexpended funds. North received the Israelis' permission to use the \$800,000 for "whatever purpose we wanted," and he directed Secord to spend the money for the Contras.

Thus, by early December, the notion that the Iran sales could be used as a vehicle for financing the Contras was firmly planted in North's mind. On December 6, 1985, North told Israeli Ministry of Defense officials that he needed money and that he intended to divert profits from future Iranian transactions to Nicaragua. On December 9, North recommended to Poindexter that the United States take control of the arms sales from Israel, and use 'Secord as our conduit to control Ghorbanifar and the delivery operation.' This mechanism was adopted in the President's January 17, 1986 Finding, thereby avoiding the Arms Export Control Act requirement of Congressional notification for Israel to continue sales to Iran of the U.S. weapons. The mechanism allowed the CIA to sell arms to Iran directly or through a 'third party,' although it did not authorize or even mention the generation of profits. Nevertheless, by permitting the CIA to sell through a third party, the [January 17] Finding created an opportunity for profits to be generated and placed in the hands of a third party -- an opportunity that would not have existed if the CIA sold the arms directly. So far as the record shows, this fact was not discussed with the President in connection with his execution of the January 17 Finding."

- P. 8 - "According to North, Nir proposed in January 1986 that Israel use some of the profits from selling additional TOWs to pay for replenishment of the original 504 TOWs."
- P. 9 - "North testified, however, that the proposal to support the Contras from arms sales proceeds was first suggested by Ghorbanifar in late January 1986. He did not recall discussing the idea in December 1985 with Israeli Ministry of Defense officials, although he said the 'subject may well have come up before [late January], but I don't recall it.' According to North, during a meeting abroad with Nir and Ghorbanifar relating to the February 1986 TOW shipment to Iran, 'Ghorbanifar took me into the bathroom and . . . suggested several incentives to make that February transaction work, and the attractive incentive for me was . . . that residual could flow to support the Nicaraguan resistance.'

The tape of the meeting shows that the idea of assisting the Contras was, in fact, discussed, not alone with North in the bathroom, but with the whole group present."

- P. 11 - "Although both Poindexter and North testified that they never told the President about the diversion, the substance of their testimony diverges from there."

Poindexter testified that he made 'a very deliberate decision not to ask the President about the diversion in order to 'insulate [the President] from the decision and provide some future deniability for the President if it ever leaked out.' Although Poindexter asserted that the President would have approved of the diversion as an 'implementation' of his policies, he nevertheless chose to protect the President from knowledge of the diversion because it was a 'politically volatile issue.' Poindexter testified as to the success of his efforts to provide the President with 'future deniability' of the diversion. When Poindexter was questioned about the White House statement (issued the day after his initial hearing testimony) that the President would not have authorized the diversion, Poindexter responded: 'I understand that he [the President] said that, and I would have expected him to say that. That is the whole idea of deniability.'

Poindexter testified that he considered the diversion so controversial that he understood he would have to resign if it ever were exposed. Nevertheless, he also testified that, in approving the diversion, he did not consult Casey, a political expert who had managed the 1980 Reagan campaign, and that, only 2 months after taking office, he made this decision on his own. Poindexter had been commended in the Navy for keeping his superiors informed. He testified that he had never before withheld information from any of his

commanders in order to give them deniability. Moreover, McFarlane, for whom Poindexter had worked for 2 years, assumed that Poindexter would have informed the President. Preempting a decision by the President to provide political deniability -- which Poindexter testified that he did -- was totally uncharacteristic for a naval officer schooled in the chain of command."

- P. 14 - "Poindexter's story on Presidential knowledge of the diversion was that he had constructed a situation whereby only he and the President would know whether the President had been advised of the diversion. In this regard, Poindexter testified that he never told North that the President was not privy to the diversion decision.

In contrast, North testified that he always 'assumed that the President was aware of [the diversion] and had, through my superiors, approved it.' "

- P. 16n - "In his first deposition before the Committees, James R. Radzinski, the NSC's System IV Control Officer in 1985 and through October 1986, recalled two such North memoranda to Poindexter discussing the diversion -- one in late 1985, the other in mid-April 1986. Radzinski recalled also that the April memorandum attached a proposed memorandum from Poindexter to the President. Radzinski Dep., 4/29/87, at 53-57, 68-74. The Committees directed an exhaustive search of White House files and compute entries, in which the FBI participated, but no evidence was found to corroborate Radzinski's testimony. Furthermore, Radzinski's own document log did not support his recollection. Radzinski Dep., 8/11/87, Ex. 3. Accordingly, the Committees recalled Radzinski for further deposition, where he testified that there was a 'distinct possibility' his recollection 'is not completely accurate.' "

- P. 17 - "North also testified that Poindexter had communicated approval either orally or in writing on at least three of the diversion memoranda, and that he believed that he 'had received authority from the President.' Finally in this regard, he testified that early on November 21, 1986, he had assured Poindexter that all documents referring to the use of proceeds for the Contras had been destroyed.

North assumed without asking Poindexter explicitly that the President knew and approved of the diversion. North had worked under three National Security Advisers. Based on that experience, he concluded that a decision of this magnitude would be taken only with Presidential approval -- a view that McFarlane shared."

- P. 18 - "There is no evidence that North did tell the President about the diversion; according to White House records, he never met alone with the President.

North said that he continued until November 21, 1986 to assume that the President had approved the diversion. He testified that, on or about that day, he asked Poindexter directly, 'does the President know?' He told me [the President] did not.' North testified that the President confirmed this lack of knowledge that, 'I just didn't know.' Robert Earl, North's officemate, testified that North had told him that the President had said 'it is important that I not know.' Commander Coy, the third officemate, who was also present, did not recall any conversation about the President's knowledge. Fawn Hall testified that North told her that the President had 'called him an American hero' and saw that 'he [the President] just didn't know.'

- P. 21 - "While still at the NSC, North made inconsistent statements about Casey's knowledge. He told Earl in the spring of 1986 that Casey knew. But on November 23, when questioned by the Attorney General, North omitted Casey from the list of persons privy to the diversion. According to North, this omission occurred after Casey had suggested a 'fall guy plan' in which North and, if necessary, Poindexter, would take the blame."
- P. 22n - "George Cave of the CIA grew suspicious when he learned that the Iranians were paying significantly more for the U.S. arms than the CIA was receiving, and heard speculation of a diversion to the Contras. Cave stated in his deposition that he did not report these concerns."
- P. 28 - "The Committees have concluded that at least \$3.8 million of the \$16.1 million in arms sales profits were used for Contra assistance. Poindexter testified that he believed the entire surplus was used for that purpose. In contrast, North testified that the surpluses were to be used for a number of other covert projects, and that Secord and Hakim were entitled to a fair profit."
- P. 29-30 - "Money generated by arms sales authorized by a Presidential Finding for only one covert purpose -- the Iranian initiative -- was used for a wholly different covert purpose -- Contra support. Arms-for-hostages also became arms-for-Contras, a purpose that was not authorized by any Finding and that was proscribed by the Boland Amendment for appropriated funds."