THE WHITE HOUSE

WASHINGTON

November 1, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL ACR

SUBJECT: Declassification of Report/House Minority: "Did the United States Get 'Snookered'?: A Second Look at the Second Channel"

This section of the Report is 16 pages long and arrived for declassification on October 26. The salient points are noted below:

P. 1 - "The record reflects that during the fall of 1986, U.S. and Iranian negotiators appear to have engaged in extended discussions which contemplated the possibility of an expanded strategic relationship; because of the manner in which these discussions were disrupted, we are unable to determine where they might ultimately have led. Finally, the record is clear (1) that U.S. officials carefully conditioned their willingness to consider this new relationship on a resolution of the hostage issue, thus protecting the traditional concerns of the U.S., and (2) that they properly supervised the private citizens who assisted them in the negotiations."

P. 3 - "These changes in the [Iranian] leadership of the negotiations appear to have corresponded with an increasingly serious willingness on the part of the Iranian leadership to consider renewed strategic cooperation with the United States, though they did not abandon their interest in acquiring arms in return for hostages. But these apparently promising discussions were cut off by internal factional warfare within Iran, and by the public response to disclosures in the U.S. Since then, they have been overtaken by events in the Gulf."

P. 4 - "The Iranians paid for the weapons they received, but did not fulfill what we were led to believe were their promises with respect to the release of hostages. We should be cautions, however, before we conclude that the Iranians were the ones who were failing to keep their bargains. It seems at least as likely that the problem was with the intermediary. For example, the Iranian seems to have had some expectations about the capability of the Hawk missiles. Their information, probably obtained from Ghorbanifar, was wrong and they began to feel they were being taken."

P. 14 - "Because of the manner in which the negotiations between the U.S. and Iran concluded, as a result of exposure by hostile political forces, it will always be impossible to know whether they might have proceeded further toward development of a new relationship between the two countries. But the discussions themselves reveal a perceived commonality of interest between the parties, and a willingness to pursue it even in the face of severe domestic political disagreements. The record also shows that North and Poindexter did not unduly compromise American negotiating positions in their agreement with the second channel."

THE WHITE HOUSE

WASHINGTON

November 1, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL ACR

SUBJECT: Declassification of Report: "Rule of Law"

This section of the Report is 39 pages long and arrived for declassification on October 30. The salient points are noted below:

P. 1 - "Too many laws were cut down in the Iran-Contra affair by officials who, like Roper, decided that the laws inhibited pursuit of their goals.

This process began when members of the NSC staff decided 'to take some risks' with the law, in Admiral Poindexter's words, in order to continue support for the Contras."

P. 2 - "The Committees were charged by their Houses with reporting violations of law and 'illegal' or 'unethical' conduct, and if the Committees are to be true to their mandates, they cannot hesitate to draw the inevitable conclusions from the conduct these officials displayed during this affair.

The judgments of these Committees are not the same as those required of the Independent Counsel. He must decide whether there was criminal intent behind any violation, whether there are any extenuating circumstances, and whether prosecution is in the public interest. The Committees express no opinions on these subjects and our comments in this section are purposefully general so as not to prejudice any individual's rights . . . . the Committees find that activities in the Iran/Contra affair, including the diversion, were conducted and later covered up by members of the NSC staff in violation of the Constitution and of applicable laws and regulations."

P. 3 - "The Committees find that the scheme, taken as a whole to raise money to conduct a secret Contra-support operation through an 'off-the-shelf' covert capacity (the Enterprise) operating as an appendage of the NSC staff violated cardinal principles of the Constitution . . . . The Constitution contemplates that the Government will conduct its affairs only with funds appropriated by Congress. By resorting to funds not appropriated by Congress, and indeed denied the executive branch by Congress, the Administration committed a

transgression far more basic than a violation of the Boland Amendment."

P. 4 - "When members of the executive branch raised money from third countries and private citizens, took control over that money through the Enterprise, and used it to support the Contras' war in Nicaragua, they bypassed this crucial safeguard in the Constitution. As Secretary Shultz testified at the public hearings: 'You cannot spend funds that the Congress doesn't either authorize you to obtain or appropriate. That is what the Constitution says, and we have to stick to it.'"

P. 5 - "Congress' power of the purse was viewed by the Framers as resting exclusively in Congress, and as intrinsic to the system of checks and balances that is the genius of the United States Constitution."

P. 5, 6 - "By law, all gifts to the Government the receipt of which is not specifically authorized by statute for a particular purpose, must be placed directly in the Treasury and may be spent only in accordance with a Congressional appropriation . . . . Use by the Executive of gifts to pay for programs not funded by Congress is also prohibited by the doctrine against augmentation of appropriations,"

P. 7 - "The Constitutional and statutory process that lodges control of expenditures by the Government exclusively in Congress is further enforced by the Anti-Deficiency Act, 31 U.S.C. Section 1341, which prohibits an officer of the United States from authorizing an expenditure which has not been the subject of a Congressional appropriation, or which exceeds the amount of any appliable appropriation. Thus it provides: 'An officer or employee of the United States Government may not authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; or involve [the] government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.' Violations of the Anti-Deficiency Act are made crimes by 31 U.S.C. Section 1350."

P. 8 - "The Constitutional plan did not prohibit the President from urging other countries to give money directly to the Contras. But the Constitution does prohibit receipt and expenditure of gifts by this Government absent an appropriation, and this prohibition may not lawfully be evaded by use of a nominally private entity, if the private entity is in reality an arm of the Government and the Government is able to direct how the money is spent."

P. 36, Note 12 - "The Administration received precisely that advice. At the June 1985 NSPG meeting, Secretary Shultz warned that third country solicitation might be an

"impeachable offense," attributing this opinion to Chief of Staff James Baker. Casey disagreed and sought the opinion of Attorney General Smith, who gave oral advice that it was lawful for the President to urge Nicaragua's neighbors to help the Contras. The Attorney General was not asked, and expressed no opinion, that it was constitutional for the NSC staff to raise money for the Contras which they would control directly or indirectly."

P. 11 - "The concept of an off-the-shelf covert company to conduct operations with funds not appropriated by Congress is contradictory to the Constitution. The decision to use the Enterprise to fight a war with unappropriated funds was a decision to combine the power of the purse and the power of the sword in one branch of government . . . . The President may have received support for use of third-country moneys from a decision at the June 1985 National Security Policy Group meeting, which he attended, to seek the advice of Attorney General Smith before any funds were obtained from third countries. [See pp. ___ infra.]

At that meeting, Secretary Shultz warned that third-country solicitation might be an 'impeachable offense,' attributing this opinion to Chief of Staff James Baker. Casey disagreed and offered to obtain an opinion from Attorney General Smith.

P. 37, 17n - "The minutes of the NSPG meeting, attended by the President, reflect Shultz's warning. North's notes indicate he was told fundraising might be considered an impeachable offense and that the opinion of the Attorney General was going to be sought."

P. 12 - When Casey approached the Attorney General the following day, however, he drew the question narrowly, asking only whether Nicaragua's neighbors could be urged to help the Contras; and the Committees have evidence that Attorney General Smith gave an oral opinion that this would not be unlawful. As noted above, the Constitution does not prohibit a President from urging foreign countries and private citizens to give money to causes which the President supports, so long as this Government does not take control of the money.

But no representatives of the Justice Department ever expressed an opinion that it was constitutional for members of the executive branch to do what they did here -- raise money from third countries and private parties and put the money in an entity controlled by the Executive, and direct its expenditure for projects of the executive branch. Nor did any legal officer of the Government ever suggest that it was lawful or constitutional to divert proceeds from the sale of U.S. property for purposes forbidden by the Congress."

P. 13 - "But the Iran-Contra Affair cannot stand as a precedent for bypassing the constitutional requirement for appropriations. Securing funds, without Congressional authorization, to fund Government programs run by Government officials, is a direct violation of the Constitution that cannot be condoned.

The Committees find that the failure to notify the Intelligence Committees of the House and Senate of the covert action to support the Contras violated the Congressional notice provisions of Section 501 of the National Security Act; and that the delay in notifying Congress of the Iran arms sales abused whatever flexibility Congress built into the statute."

P. 15 - "Second, it enables Congress to fulfill its constitutionally mandated role of monitoring Executive actions in the area of national defense and foreign policy lest secret actions entangle the country in overt hostilities. As a mechanism for consultation between the Executive and Legislative branches, notification helps to address the anomaly of formulating plans for secret actions within a democracy."

P. 17 - "The President did know of the Iranian arms sales, and he made a deliberate decision not to notify Congress. Thus, Congress did not learn of direct arms sales to Iran, approved by the Finding of January 17, 1986, until the press reported it in November 1986. Congress did not learn of the December 5, 1986 Finding approving U.S. participation the Israeli shipments until Poindexter's testimony was compelled under a grant of immunity. As a consequent of the President's decisions not to notify Congress, the operation continued for over a year through failure after failure, and when Congress finally did learn, it was not through notification by the Administration, but from a story published in a Beirut weekly . . . . the information the Administration withheld from Congress was given at various times to an Iranian intermediary who failed several CIA lie detector tests, officials of the Government of Iran, officials of the Government of Israel, officials of the Government of a European country, private Israeli businessmen, and private U.S. citizens who did not have security clearances, such as Hakim."

P. 19 - "It is a fair conclusion, therefore, that the Administration chose not to notify Congress of the arms-for-hostages initiative precisely because it anticipated Congress' objections and knew that the Secretaries of State and Defense would not defend the initiative. Indeed, the Iran initiative was contrary to longstanding national policies and to common sense, and the Administration might have abandoned the plan rather than disclose it to Congress.

All covert actions can be supported by strong arguments for secrecy. If the Administration can use these arguments as reasons to withhold notice where its plans are most suspect, Section 501 of the National Security Act is all but nullified. It is precisely when a covert action is suspect and potentially embarrassing that Congressional notice is most important. It is also then that the Administration is most in need of independent evaluations and criticism of proposed policies. And it is then when Congress, the representative of the people, must be given at least the opportunity to be heard in secret before action that could be calamitous for the Nation is carried out."

P. 20 - "The procedures applicable to covert actions are governed not only by statutes, but by Executive Orders and National Security Decision Directives ("NSDD's"). These are written regulations signed by the President of the United States, and are binding on the entire executive branch until they are rescinded or changed by the President. They too were violated.

Executive Order 12333 issued by the President provides that 'no agency except the CIA . . . may conduct any special activity (elsewhere defined to include covert actions overseas) unless the President determines that another agency is more likely to achieve a particular objective.

There was no Presidential determination that the NSC staff should conduct the operation, and thus the NSC's staff covert action in support of the Contras violated the President's Executive Order.

Similarly, National Security Decision Directive 159, promulgated by the President, provides that no covert action overseas may be conducted by an agency of Government unless it is authorized by a written Finding signed by the President.

There was no written Finding signed by the President approving the covert action by the NSC staff in support of the Contras. Thus the NSC's staff's activity violated this directive."

P. 22 - "Some officials claimed they were forced to choose between making false statements and revealing information they believed should remain secret. Government officials may claim any valid privilege including executive privilege, as a basis for refusing to answer questions or providing documents and thus set in motion procedures for lawfully resolving the claim. But under our legal system, public officials do not have the option of making false statements to Congress."

P. 23 - "The Committees find that the diversion of arms sales proceeds to the Contras' war effort was an evasion of the Boland Amendment no matter how narrowly that non-criminal statute is construed.

The missiles that were sold to Iran in 1986 came from Department of Defense stocks. The missiles had been purchased with money appropriated for the Department of Defense by Congress, and the missiles belonged to the Department of Defense. The Department of Defense sold the missiles to the Central Intelligence, and the Central Intelligence Agency sold the missiles to Iran.

The memorandum to the President dated January 17, 1986, outlining the arms sales which the President approved that day spells this out very clearly. It states that the CIA would purchase the missiles from DOD and would sell the missiles directly to Iran, using an 'agent' -- i.e., the various Enterprise companies -- to handle the actual transactions.

Iran paid $28.5 million for those weapons. In the ordinary course, the purchase price is paid to the seller, i.e., the CIA. In this case, however, National Security Adviser John Poindexter decided, on North's recommendation, that only a portion of the money should go to the CIA, with the rest remaining in the custody of Secord's companies before being used to support the Contras. Thus, Poindexter testified:

> Q: 'Who decided how that money would be used?'
>
> A: 'The -- my guidance to Colonel North what he requested and I approved, was that those funds should be used for support of the contras in Central America so they could keep pressure on the Sandinistas.'
>
> Q: 'So the decision -- and I think you said earlier in your testimony, 'the buck stops here' -- the decision as to how that money was to be used was made by you?'
>
> A: 'Was my decision; that is correct.'

Poindexter could also have decided that all of the purchase price be remitted to the CIA. North testified as follows:

> Q: 'The question was, if those higher-ups in the U.S. Government from whom you sought approval decided that the $10 million [residue] should not, any part of it, be sent to the contras but should all come back to the U.S. Treasury, that is what would have happened isn't it?'
>
> A: 'Yes.'"

P. 25 - "Given the Enterprise's status as an agent, and the NSC's staff's control over the pricing and proceeds of the arms sales, full purchase prices was available to the CIA. These funds, generated from the sale of U.S. weapons, could no more be diverted to the Contras than the weapons themselves.

The Committees find that the full proceeds of the arms sales to Iran belong to the United States Government. Consequently, these funds are governed by statutes applicable to Government funds, including statutes prohibiting conversion of United States Government funds to unauthorized purposes . . . . The President approved the arms sales based on the January 17, 1986 memorandum, which states that the purchase price 'would be transferred to an agent of the CIA', and that the CIA would 'deliver the weapons to Iran through the agent.'

P. 27 - "Government funds coming into the hands of an officer or agent of the United States must be paid immediately into the Treasury, 31 U.S.C. Sections 484, 3302 and may not be applied to some other use. 18 U.S.C. Section 641. Consequently, it is the Committees' judgment that all funds derived from the proceeds of the sale of arms to Iran which are currently in the custody of the Enterprise or its representatives belong to the United States and by law should be returned to the United States Treasury forthwith . . . . The Committees find that the Administration's approval of the transfer of weapons to Iran by Israel violated the Arms Export Control Act (AECA).

Under the AECA, the President may not provide that consent unless (1) the United States itself would transfer those arms to that country; (2) the transferee country (here Iran) agrees in writing that it will not further transfer the items without obtaining the consent of the President; and (3) the President notifies Congress of the transfer (22 U.S.C. Section 2753(a))."

P. 29 - "The Administration takes the position that the CIA may transfer weapons as part of an intelligence operation, outside the context of the AECA, by using the President's powers under the National Security Act. That is the approach the President used in 1986 regarding his January 17, 1986 Finding. However, no such Finding existed for the sale of 504 TOWs; only a retroactive Finding existed for the November 1985 HAWKs sale; and the weapons transferred by Israel to Iran were governed by the AECA having been earlier transferred to Israel pursuant to that Act."

P. 30 - "The destruction or alteration of documents or the giving of false testimony to frustrate a Congressional inquiry is a felony if done with 'corrupt' intent -- i.e., the purpose of impeding an inquiry."

P. 31 - "On November 18, 1986, three days before the scheduled appearance of Casey and Poindexter, Presidential aides began to focus on the legal problems attending U.S. involvement in the Israeli shipments made prior to the January 17, 1986, Finding. Then during the next three days, several Administration officials who were involved in the pre-Finding shipments told conforming stories denying U.S. involvement in these shipments, at times using a false cover story that the United States had been told that the Israelis weres shipping oil-drilling equipment, not arms. These officials wrote this false cover story into NSC chronologies; they told the false cover story in one version or another to Congress and to the Attorney General; and they destroyed documents which would have revealed the truth . . . . Whether or not any of the individuals had the requisite criminal intent to violate 18 U.S.C. Section 1505, their conduct violated the very thrust of that law -- to ensure that Congress' access to the truth would not be obstructed . . . . Government employees do not have the discretion to destroy or alter embarrassing or incriminating documents. The Presidential Records Act was enacted after Watergate for the very purpose of ensuring that official records would be preserved. The Act has no criminal penalties but it was willfully violated by Admiral Poindexter in destroying the December 1985 Finding."

P. 34 - "In modern government, with its hundreds of thousands of employees, a President obviously cannot personally supervise the acts of all who act in his name. But if the 'take care' clause has any vitality, it invests in a President the responsibility for cultivating a respect for the Constitution and the law by his staff and closest associates. When the President's National Security Adviser, who had daily contact with the President, can assume that he is carrying out the President's wishes and policy in authorizing the diversion; when White House aides believe that the destruction of official documents is appropriate and the deception of Congress is proper; and when laws like the Boland Amendment can be treated as if they do not exist, then clearly there has been a failure in the leadership and supervision that the 'take care' clause contemplated."

THE WHITE HOUSE

WASHINGTON

November 2, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL

SUBJECT: Declassification of Report: "The Boland Amendments and the NSC Staff"

This section of the Report is 65 pages long and arrived for declassification on October 30. The salient points are noted below:

P. 1 - "Beginning in 1983, Congress responded to the President's policy toward the Contras principally through its power over appropriations -- one of the crucial checks on Executive power in the Nation's system of checks and balances. Because the President's program depended upon providing financial assistance to the Contras, appropriations bills became the forum for debating what the Nation's policy should be."

P. 2 - "The Boland Amendments were compromises between supporters of the Administrations' programs and opponents of Contra aid. As compromises, they were written not with the precision of a tax code, but in the language of trust and with the expectation that they would be carried out in good faith. None expected the Administration to pour over them seeking loopholes, or to mislead Congress into believing that support was not being given to the Contras when, in fact, it was."

P. 9 - "As fiscal year 1983 progressed with Boland I in place, the Administration's support for the Contras continued. In addition, the Administration began to expand its justifications for the program beyond the interdiction of arms to include bringing the Sandinistas to the bargaining table and forcing free elections."

P. 14 - "The period between October 12, 1984 (the effective date of Boland II) and August 8, 1985 (the effective date of the legislation providing for 'humanitarian aid') was the high-water mark of restrictions on assisting the Contras. During this period, the covered agencies and entities were proscribed from expending any funds whatsoever to support, directly or indirectly, those resistance forces."

P. 23 - "Unlike Boland I, which applied by its terms solely to the CIA and the DOD, Boland II also applied to 'any other agency or entity . . . involved in intelligence activities.' After this investigation began, members of the Administration asserted that Boland II did not apply to the NSC. The Committees disagree, and note that this assertion was never made publicly prior to this investigation.

Indeed, before August 1985, not a single document even suggested that the NSC was outside the scope of Boland II. By its terms, Boland II reached any agency 'involved in intelligence activities.' Thus, Boland II did not put just the CIA out of the Contra support business; it prevented other agencies of the Government from covertly taking the CIA's place.

Any other interpretation would have rendered the law meaningless. The target of Boland II was not the CIA, but any covert operation supporting the Contras, directly or indirectly. Shifting responsibility from the CIA to the NSC staff would have accomplished nothing, other than to change the personnel running the Contra support operation."

P. 24 - "North and Poindexter, however, both testified that there was discussion among the NSC staff after Boland II was adopted that it did not apply to the NSC because, in their view, the NSC was not involved in intelligence activities. No documentary evidence exists, however, to suggest that this interpretation was ever put forward before August 1985. On the contrary, North's memos and McFarlane's and Poindexter's responses in late 1984 and early 1985 reflect a sensitivity that, at least for the record, the NSC staff had to comply with Boland. McFarlane in his public testimony scoffed at the view that Boland II did not apply to the NSC staff -- even though, because McFarlane has not sought immunity, it was in his interest to deny Boland's applicability. Similarly, the Secretary of State was emphatic in his view that Boland II applied to the NSC staff."

P. 25 - ". . . the Justice Department, the Counsel to the President, and the Attorney General were never asked for legal opinions on whether Boland II applied to the NSC staff."

P. 27 - "An undated memorandum prepared by the Congressional Research Service of the Library of Congress in response to an inquiry dated August 13, 1985, found 'strong, if not conclusive evidence that the [language] was intended to apply to the National Security Council.' Similarly, a staff memorandum prepared for Representative Henry J. Hyde, which the FBI later found in North's files, explained that the 'NSC is clearly a U.S. entity involved in intelligence activities, subject to the Section 8066(a) prohibition.'"

P. 28 - "The opposing view, that the Boland prohibition did not apply to the NSC staff, found its only contemporaneous expression in an opinion by Bretton Sciaroni, counsel to the Intelligence Oversight Board."

P. 29 - "Sciaroni based his opinion on certain key factual premises that turned out to be incorrect. Addressing the statute's language, Sciaroni admitted in his opinion that, 'on the face of it the NSC would appear to be an agency or entity of the United States covered by the amendment.' He concluded that the NSC was not an agency or entity 'involved' in intelligence activities from the factual premise that 'it is a coordinating body with no operational role,' so that the NSC 'does not function as an operational unit.'"

P. 32 - "Even by its terms, the Sciaroni opinion did not give North -- or Poindexter -- a clean bill of health. Sciaroni noted that if North's salary was borne by the DOD, an entity expressly named in Boland II, he would be subject to its restrictions. This, in fact, was the case. Referring to this caveat in Sciaroni's opinion, Poindexter testified in his deposition that, 'we were willing to take risks with the law' to keep the Contras going."

P. 33 - "Representative Boland, on the other hand, read his amendment more broadly at the time of its enactment so as to give meaning to the phrase 'directly or indirectly'"

> 'Let me make very clear that this prohibition applies to all funds available in fiscal year 1985 regardless of any accounting procedure at any agency. It clearly prohibits any expenditure, including those from accounts for salaries and all support costs. The prohibition is so strictly written that it also prohibits transfers of equipment acquired at no cost.'

Opinions issued by the Comptroller General of the United States in other contexts would seem to confirm Representative Boland's interpretation. Moreover, McFarlane candidly told the Committees that, during his tenure as National Security Adviser, he understood Boland II as precluding any assistance by the NSC staff to the Contras."

P. 34, 71n - "If the NSC was in fact covered by Boland II, then 'the payment of salaries to persons who work for it <u>from funds available to that or any other covered agency</u> for performing proscribed activities would violate the law.'"

P. 37 - "In the Committees' view, Boland II had a discernable purpose: to end <u>covert</u> support for the Contras by the United States. By involving the NSC in intelligence

operations and continuing covert, albeit quasi-private, assistance to the Contras, the Administration chose to ignore the clear purpose of Boland II."

P. 41 - "[In August, 1985], the President signed a Supplemental Appropriations Act for fiscal year 1985, Public Law 99-88, that included another provision relevant to the Committees' inquiry. After incorporating by reference the prohibitions contained in Boland II and suspending those prohibitions only insofar as necessary to distribute the humanitarian aid authorized a week earlier, the Act provided:

> 'Nothing in this Act [or Boland II] shall be construed to prohibit the United states government from exchanging information with the Nicaraguan democratic resistance.'

The conference report accompanying the earlier legislation providing humanitarian assistance similarly prescribed that, 'none of the prohibitions on the provision of military or paramilitary assistance to the democratic resistance prohibits the sharing of intelligence information with the democratic resistance.'"

P. 45 - "The legislation that became effective August 15, 1985, provided that nothing in Boland II or the International Security and Development Act would thereafter prohibit 'exchanging information' with the Contras. As the legislative history makes clear, moreover, the 'information' that could be exchanged included intelligence. Representative Hyde, a supporter of the exception, suggested that the exception would allow the transfer of intelligence, not only in support of humanitarian aid, but also 'so [the Contras] can defend themselves against the helicopter gunships.'"

P. 46 - "Boland II had contained no provision specifically addressing third-country solicitation. But the subject had not been overlooked either in Congress or in the executive branch.

In 1984, before Boland II was adopted but as Contra funding was running out, third-country funding became the focus of a legal debate within the Administration. At a National Security Planning Group meeting in June 1984, Secretary of State Shultz conveyed the concern of White House Chief of Staff James A. Baker, III, who was not present, that solicitation of third countries for the Contra program was an 'impeachable offense.' Others at the meeting disagreed, and the Attorney General orally expressed his opinion the following day that solicitation was lawful as long as there was no quid pro quo. In October 1984, Congress complicated the legal picture further by passing Boland II with its

prohibition of expending funds to provide support, 'directly or indirectly[.]'"

P. 47 - "In March 12985, appearing before the Senate Committee on Foreign Relations, Assistant Secretary of State for Inter-American Affairs Langhorne A. Motley -- Elliott Abrams' predecessor -- was asked for assurances that the Administration knew, and agreed, that solicitation of funds from third countries was prohibited; he agreed with that interpretation and gave those assurances. Motley stated, 'even if today we wanted to go to third countries to encourage or solicit, we could not because there is a prohibition.'"

P. 50 - "Indeed, North wrote a memorandum to McFarlane outlining the options for financing the Contras. He noted that Boland II was silent on third-country funding but that Congress would regard it as an evasion of the law. He therefore concluded that third-country solicitation could be safely undertaken only upon consultation with Congress and with the risk that it might say no. At the time North wrote the memorandum, he was secretly involved in trying to raise money from Asian countries, and a Middle Eastern country had already contributed $32 million.

On August 8, 1985, with the enactment of the Pell Amendment, U.S. officials were prohibited from agreeing, 'expressly or implicitly,' that foreign aid or military assistance would be contingent upon assistance to the Contras. In their report on that legislation, the conferees attempted to draw a distinction between discussing U.S. policies in Central America and agreeing on a quid pro quo:

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

The conferees specified that the legislation did not prohibit 'recipients of United States assistance from furnishing assistance to any third party on their own volition and from their own resources.'"

P. 52 - "A question not addressed by the conferees was whether Administration officials could, consistent with Boland II, solicit contributions from foreign countries. In the Committee's judgment, however, any such solicitation by a covered entity, including the NSC staff, would have been prohibited by Boland II because it would have involved, at a minimum, salaried employees."

P. 54 - A classified amount was appropriated to the CIA [in Dec. 1985] to provide the Contras with communication equipment and related training. An additional classified amount was allocated to bolster intelligence-gathering in the region. Thus, Boland III permitted covered agencies to support the Contras only in particular ways, specifically by the provision of communications equipment, related training, and intelligence 'information and advice.'"

P. 55 - "Section 105(b)(2) of the Public Law 99-169 explicitly stated that nothing in this section precludes . . . activities of the Department of State to solicit . . . humanitarian assistance for the Nicaraguan democratic resistance.' The Administration had sought this exception, but notably did not ask for permission to solicit lethal aid. The House conferees, moreover, specified that Boland III was intended to prohibit any solicitation that it did not authorize explicitly:

> '. . .the State Department may solicit, through its normal diplomatic contacts, humanitarian assistance of the same type as is authorized by the Supplemental Appropriations Act for fiscal year 1985. No other department or agency involved in intelligence activities may engage in any type of solicitation for the Contras. [Emphasis added.]"

P. 58 - "Boland II forced the CIA to withdraw from its role of financing, arming, training, clothing, feeding, and supervising the Contras. But the vacuum was quickly filled. Acting to carry out the President's direction to keep the Contras together 'body and soul,' North, with the express approval of Poindexter and at least the acquiescence of McFarlane, took over where the CIA left off. With North as the action officer, the NSC staff raised funds from third countries, directed whether those funds should be sent to Secord or Calero, recruited the Enterprise to handle the logistics, ran the resupply for the men in the field, and gave the ultimate directions to Secord and his aides on how to conduct the operation. Even an ambassador, Lewis Tambs, took orders from North on opening a front against the Sandinistas."

P. 59 - '. . . while the NSC staff started its support of the Contras at least in part with private funds, the diversion gave it control over funds that belonged to the United States. The profits that were skimmed were generated by the sale of weapons belonging to the United States. North, sometimes with the mathematical assistance of Earl, fixed the mark-up to ensure that there would be money to divert. The Secord-Hakim Enterprise was not only brought into the sales as the 'agent of the CIA,' but, according to Hakim's and Secord's testimony, functioned at North's direction. Because Boland II and III both prohibited direct or indirect use of the United States funds, the diversion was a flagrant violation of those proscriptions.

Even the amendment to Boland III, authorizing the State Department to solicit humanitarian funds for the Contras, was abused by the NSC. When Brunei agreed to transfer $10 million, North gave Abrams the account number of Lake Resources. According to Abrams that North represented this account was one of Calero's and that the money would be used for non-lethal expenditures. But, in fact, it was controlled by the Enterprise and was used to pay for arms for the Contras, to pay their leaders, and to finance the military airlift. Giving Abrams the Lake Resources account was a deliberate effort to divert funds solicited for humanitarian purposes to lethal ends, and was foiled only because of an error in the account number."

P. 61 - ". . . at no time prior to public disclosure of alleged violations of the Boland Amendment did anyone, least of all the Administration, come forward to challenge their legality. On the contrary, Congress and the American People were routinely being assured that the statutes were being observed, 'in letter and in spirit.' As President Reagan himself stated on _____, 'I may not like it, but it is the law.'

Surely an Administration should identify in a timely fashion those laws it claims a constitutional prerogative to ignore or subvert. But even beyond the aura of disingenuousness, the attack on the constitutionality of the Boland Amendment falls, in the Committee's collective opinion, far short of the mark.

The analysis must begin, of course, with an appropriate statement of what is, and is not, in issue. Some have attempted, for example, to cast the Boland Amendment as violative of the Supreme Court's famous dictum in Curtis-Wright v. _____, _____ U.S. _____, _____ (19__):

> 'The President is endowed with plenary and exclusive power as the sole organ of the Federal Government in the field of internal

> relations; a power which does not require as a basis for its exercise an Act of Congress.'

But one does not have to be a proponent of an imperial Congress to see that this language has little application to the situation presented here. We are not confronted with a situation where the President is claiming inherent constitutional authority in the absence of an Act of Congress. Instead, to succeed on this argument the Administration must claim it retains authority to proceed in derogation of an Act of Congress -- and not just any act, at that. Here, Congress relied on its traditional authority over appropriations, the 'power of the purse,' to specify that no funds were to be expended by certain entities in a certain fashion.

P. 62 - Bearing this in mind, the Committees believe a more instructive decision than Curtis Wright is Dames & Moore v. Reagan, 453 U.S. 654 (1981). There, the Supreme Court upheld Executive Orders issued by President Carter to govern the treatment of claims against Iran after resolution of the hostage crisis 1979 and 1980. Chief Justice Rehnquist, then an associate justice, wrote for the Court and quoted portions of a concurring opinion filed by Justice Jackson in the Steel Seizure Case. According to Chief Justice Rehnquist:

> 'When the President acts pursuant to an express or implied authorization from Congress, he exercises not only his powers but also those delegated by Congress. In such a case the executive action 'would be supported by the strongest presumptions and widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.' When the President acts in the absence of congressional authorization he may enter a 'zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.' In such a case, the analysis becomes more complicated, and the validity of the President's action, at least so far as separation-of-powers principles are concerned, hinges on a consideration of all the circumstances which might shed light on the views of the Legislative Branch toward such action, including 'congressional inertia, indifference or quiescence.' Finally, when the President acts in contravention of the will of Congress, 'his power is at its lowest ebb' and the Court can sustain his actions

'only by disabling the Congress from action on the subject.'"

P. 63 - ". . . the Administration's activities in support of the Contras were conducted in direct contravention of the will of Congress. It follows, then, that the President's constitutional authority to conduct those activities as 'at its lowest ebb.'

It strains credulity to suggest that the President has the constitutional prerogative to staff and fund a military operation without the knowledge of Congress and in direct disregard of contrary legislation. To endorse such a prerogative would, in the language of Dames & Moore, '[disable] the Congress from action on the subject' and leave the Administration entirely unaccountable for such clandestine initiatives."

P. 64 - "While each branch of our government undoubtedly has primary in certain spheres, none can function in secret disregard of the others in any sphere. That, in essence, was the Administration's attempt here.

Congress must be able to depend upon the PResident for the execution of laws. It cannot be thrust into an adversarial role in which it must treat representations from the President's staff with skepticism and incredulity. If the President believes that a law has provisions that are unconstitutional, he must either veto it or put Congress on notice of his position -- as he did with portions of Gramm-Rudman. The one option the executive branch does not have is to pretend that it is executing the law when it is, in fact, evading it.

The American system works well only when its branches of government trust one another. The Iran-Contra Affair is a perfect example of how to destroy that trust."

THE WHITE HOUSE

WASHINGTON

November 2, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL ACR

SUBJECT: Declassification of Report: "Introduction to the Enterprise"

This section of the Report is 10 pages long and arrived for declassification on October 30. The salient points are noted below:

P. 1 - "By the summer of 1986, the organization that Richard Secord ran at Lt. Col. Oliver L. North's direction controlled five aircraft, including C-123 and C-7 transports. It had an airfield in one country, warehouse facilities at an airbase in another, a stockpile of guns and military equipment to drop by air to the Contras, equipment to protect their communications from eavesdropping, and U.S. communication codes"

P. 2 - "In Robert Dutton, a recently retired U.S. Air Force lieutenant colonel, the organization had an expert in special operations. Dutton was reporting to a White House official, North, and a retired Air Force general, Secord, both of whom told him that the operation was authorized by the President of the United States."

P. 3 - "Secord first described the Enterprise as the group of offshore companies that carried out the Iran and Contra operations, but later testified that it was fair to describe the Enterprise as his own covert operations organization formed at the request of North and Poindexter to carry out all of the operations described in his testimony. Secord declared that he 'exercised overall control' over the enterprise, but acknowledged that he depended upon North's support."

P. 3, 4 - "Poindexter never defined the Enterprise, but stated that he found attractive the idea of a 'private organization properly approved, using nonappropriated funds in an approved sort of way,' and indicated that he discussed the concept with North.

Secord consistently turned to the same group of individuals in order to accomplish the tasks that North assigned to him. Albert Hakim, an Iranian-born American citizen, was his partner and, by agreement, Secord and Hakim were to share