THE WHITE HOUSE

WASHINGTON

November 9, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL

SUBJECT: Declassification of Report: "Recommendations"

This section of the Report is 17 pages long and arrived for declassification on November 6. The salient points are noted below:

P. 1 - "It is the conclusion of these Committees that the Iran/Contra affair resulted from the failure of individuals to observe the law, not from deficiencies in existing law or in our system of governance . . . . the principal recommendations emerging from the investigation are not for new laws but for a renewal of the commitment to constitutional government and sound processes of decision-making.

. . . . Decision-making processes in foreign policy matters, including covert action, must provide for careful consideration of all options and their consequences. Opposing views must be weighed, not ignored. Unsound processes, in which participants cannot even agree on what was decided (as in the case of the initial Iranian arms sale) produce unsound decisions."

P. 2 - "Congress' role in foreign policy must be recognized, not dismissed, if the benefit of its counsel is to be realized and if public support is to be secured and maintained . . . . Excessive secrecy in the making of important policy decisions is profoundly anti-democratic and rarely promotes sound policy decisions . . . . Congress cannot legislate good judgment, honesty or fidelity to law. But there are some changes in law, particularly relating to oversight of covert operations, that would make our processes function better in the future. They are set forth below:

1. Findings: Timely Notice. The Committees recommend that Section 501 of the National Security Act be amended to require that Congress be notified prior to the commencement of a covert actions except in certain rare instances and in no event later than 48 hours after a finding is approved. This recommendation is designed to assure timely notification to Congress of covert operations.

2. Written Findings. The Committees recommend legislation requiring that all covert action Findings be in writing and personally signed by the President. Similarly, the Committees recommend that legislation require that the Finding be signed prior to the commencement of the covert action, unless the press of time prevents it, in which case it must be signed within forty-eight hours of approval by the President."

P. 4 - "3. Disclosure of Written Findings to Congress. The Committees recommend legislation requiring that copies of all signed written Findings be sent to he Congressional Intelligence Committees."

P. 5 - "4. Findings: Agencies Covered. The Committees recommend that a Finding by the President should be required before a covert action is commenced by any department, agency, or entity if the United States Government regardless of what source of funds is used."

P. 6 - "5. Findings: Identifying Participants. The Committees recommend legislation requiring that each Finding should specify each and every department, agency, or entity of the United States Government authorized to fund or otherwise participate in any way in any covert action and whether any third party, including any foreign country, will be used in carrying out or providing funds for the covert action. The Congress should be informed of the identities of such third parties in an appropriate fashion."

P. 7 - "6. Findings: The Attorney General. The Committees recommend that the Attorney General be provided with a copy of all proposed Findings for purposes of legal review . . . .

7. Findings: Presidential Reporting. The Committees recommend that, consistent with the concepts of accountability inherent in the Finding process, the obligation to report covert action Findings should be placed on the President."

P. 8 - "8. Recertification of Findings. The Committees recommend that each Finding shall cease to be operative after one year unless the President certifies that the Finding is still in the national interest. The Executive Branch and the Intelligence Committees should conduct frequent periodic reviews of all covert operations.

9. Covert Actions Carried Out by Other Countries. The Committees believe that the definition of covert action should be changed so that it includes a request by an agency of the United States to a foreign country or a private

citizen to conduct a covert action on behalf of the United States.

10. Reporting Covert Arms Transfers. The Committees recommend that the law regulating the reporting of covert arms transfers be changed to require notice to Congress on any covert shipment of arms where the transfer is valued at over $1 million."

P. 9 - "11. NSC Operational Activities. The Committees recommend that the members and staff of the NSC not engage in covert actions.

12. NSC Reporting to Congress. The Committees recommend legislation requiring that the President report to Congress periodically on the organization, size, function and procedures of the NSC staff."

P. 10 - "13. Privatization. The Committees recommend a strict accounting of all U.S. Government funds managed by private citizens during the course of a covert action.

14. - Preservation of Presidential Documents. The Committees recommend that the Presidential Records Act be reviewed to determine how it can be made more effective. Possible improvements include the establishment of a system of consultation with the Archivist of the United States to ensure complete compliance with the Act, the creation of a program of education of affected staff as to the Act's provisions, and the attachment of criminal penalties for violations of the Act."

P. 11 - "15. CIA Inspector General and General Counsel. The Committees recommend that a system be developed so that the CIA has an independent statutory Inspector General confirmed by the Senate, like the Inspectors General of other agencies, and that the General Counsel of the CIA be confirmed by the Senate . . . .

16. Foreign Bank Records Treaties. The Committees recommend that treaties be negotiated with foreign countries whose banks are used to conceal financial transactions by U.S. citizens, and that these treaties covering foreign bank records specify that Congress, not just the Department of Justice, has the right to request, to receive and to utilize such records."

P. 12 - "17. National Security Council. The Committees recommend that all statutory members of the National Security Council should be informed of Findings.

18. Findings Cannot Supercede Law. The Committees recommend legislation affirming what the Committees believe

to be the existing law: that a Finding cannot be used by the President or any member of the Executive Branch to authorize an action inconsistent with, or contrary to, any statute of the United States."

P. 13 - "19. Improving Consistency in Dealing with Security Breaches. The Committees recommend that consistent methods of dealing with leaks of classified information by government officials be developed . . . .

20. Review of Congressional Contempt Statutes. The Committees recommend that the Congressional contempt statutes be reviewed by the appropriate Committees."

P. 14 - "21. Review of Special Compartmented Operations Within the Department of Defense. The Committees recommend that oversight by Intelligence and Armed Services Committees of Congress of special compartmented operations within the Department of Defense be strengthened to include systematic, and comprehensive review of all such programs.

22. Review of Weapons Transfers by Chairman of Joint Chiefs of Staff. The Committees recommend that the President issue an order requiring that the Chairman of the Joint Chiefs of Staff should be consulted prior to any transfer of arms by the United States for purposes of presenting his views as to the potential impact of the military balance and on the readiness of United States forces.

23. National Security Adviser. The Committees recommend that future Presidents adopt as a matter of policy the principle that the National Security Adviser to the President of the United States should not be an active military officer and that there should be a limit placed on the tour of military officers assigned to the staff of the National Security Council.

24. Intelligence Oversight Board. The Committees recommend that the Intelligence Oversight Board be revitalized and strengthened.

25. Review of Other Laws. The Committees suggest that appropriate standing Committees review certain laws for possible changes: Arms Export Control Act, Hostage Act.

P. 16 - "26. Recommendations for Congress

a. The Committees recommend that the oversight capabilities of the Intelligence Committees be strengthened by acquisition of an audit staff.

b. The Committees recommend that the appropriate oversight committees conduct review of sole source contracts for potential abuse.

c. The Committees recommend that uniform procedures be developed to ensure that classified information is handled in a secure manner and that such procedures should include clear sanctions for violations which shall be strictly enforced.

27. "Joint Intelligence Committee. The Committees recommend against consolidating the separate House and Senate Intelligence Committees into a single joint committee.

THE WHITE HOUSE

WASHINGTON

November 10, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL ACR

SUBJECT: Declassification of Report/House Minority: "The Iran Initiative: Legal Disputes"

This section of the Report is 22 pages long and arrived for declassification on October 29. The salient points are listed below:

P. 1 - "These Committees' hearings, and the Democrats' report, has trivialized important disagreements over international policy, and over the political relationships between the legislative and executive branches, by trying to turn, for partisan advantage, into legal disputes. We have indicated several times that we have some policy disagreements with the Administration's actions of 1984-86. We disagree, for example, with the decision to sell arms to Iran. We also think it was a political mistake for the President not to have confronted Congress over the Boland Amendment in 1984. In neither case, however, do we think the Administration made serious legal missteps. Our reasoning with respect to the Boland Amendment was laid out in an earlier chapter. Here, we shall look at the major legal points Democrats have tried to make about the Iran initiative.

Our conclusion is that the Administration was in substantial compliance with the laws governing covert action throughout the Iran initiative. We believe the point is clear with respect to the legal requirements for presidential findings and congressional notification for covert action. We reach this legal conclusion even though we disagree, for policy reasons, with the decision to withhold notification for as long as the President did in this case.

We do concede that one can make a respectable legal argument designed to show that there was a technical violation of the Arms Export Control Act (AECA) of Foreign Assistance Act (FAA) in the 1985 shipments of Israeli arms to Iran. We believe that even these shipments, however, were in substantial compliance with the letter and purpose of the law. The most that can be said on the Democrats' side of this issue is that they do have some arguable legal points. Their decision to treat the matter as if it were an open and shut case, however -- presenting only the arguments on one side of the issue -- will prove to any reasonable person

that the Committees' report must be read as a politicized legal brief that makes no pretense of presenting a balanced picture of what happened."

P. 4 - "If the AECA and FAA were the only acts governing arms sales, it would be clear that the President should have reported a waiver to Congress for both the direct U.S. arms sales and the Israeli arms sales to Iran. Arms sales may also proceed covertly, however, under the National Security Act, with prices set under the terms of the Economy Act. The National Security Act does contain rules requiring notification of Congress, and the Hughes-Ryan Amendment to the Foreign Assistance Act of 1961 limits the use of appropriated funds to support CIA foreign operations to ones for which the President finds the operation to be important to the national security."

P. 5 - "The position that covert arms sales could proceed without triggering the requirements of the AECA was expressed as the Administration's interpretation of the law in October 1981. In conjunction with one covert transaction that year, Davis R. Robinson, Legal Adviser to the Secretary of State, wrote:

> It seems clear that Congress has not regarded the FAA and the AECA as an exclusive body of law fully occupying the field with respect to U.S. arms transfers. There are several illustrations where Congress, having been made aware of transfers to foreign countries outside that body of specific authorities, has reacted by enacting limited restrictions or reporting requirements rather than by prohibiting such transfers altogether."

P. 5, 11n - "'Memorandum of Law on Legal Authority for the Transfer of Arms Incidental to Intelligence Collection,' by Davis R. Robinson, Legal Adviser, Department of State, October 2, 1981, p. 5."

P. 6 - "Three days after the Robinson memo was written, Attorney General William French Smith forwarded a copy to Director Casey. Smith wrote:

> We have been advised by the State Department's Legal Adviser that the Foreign Assistance Act and the Arms Export Control Act were not intended, and have not been applied, by Congress to be the exclusive means for sales of U.S. weapons to foreign countries and that the President may approve a transfer outside the context of those statutes."

P. 6, 12n - "Letter from Attorney General William French Smith to William J. Casey, Director of Central Intelligence, October 5, 1981, reproduced as Weinberger testimony, exhibit 1."

P. 6 - "The Attorney General concurred with this opinion, and Congress was well aware of this fact.

Congressional awareness is shown most clearly in a provision if the Intelligence Authorization Act for Fiscal Year 1986. This provision, which became a new section to the National Security Act, reads as follows:

> Sec. 503. (a)(1) The Transfer of a defense article or defense service exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of Section 501 of this Act.
> (2) Paragraph (1) does not apply if --
> (A) The transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or
> (B) the transfer --
> (i) is being made pursuant to authorities in part II of the Foreign Assistance Act of 1961, [or] the Arms Export Control Act.

This act makes it clear, beyond any doubt, that Congress intended some covert arms transfers to occur outside normal AECA channels. It was precisely for this reason that it put in a threshold to trigger the reporting requirements under the provision governing reporting and congressional oversight of intelligence.

The General Accounting Office agreed with this conclusion. In a March 1987 report on the direct U.S. arms sales to Iran the GAO said:

> Since Congress has explicitly recognized that intelligence activities may include the secret transfer of arms (Intelligence Authorization Act for fiscal 1986, section 403 [quoted above as section 503 of the National Security Act]), the CIA is authorized by the Economy Act to turn to other agencies for that equipment. Therefore, we believe that the decision to

use the Economy Act to provide support for this covert transaction was proper.

Transfers of equipment by the CIA and others, including foreign governments, are governed by applicable laws relating to intelligence and special activities, rather than the Arms Export Control Act, which ordinarily governs overt arms transfers overseas. Consequently, we consider those transfers to be subject to the requirements pertaining to the conduct of intelligence and special activities. As a general rule, those transfers would not be subject to the pricing or reporting restrictions applicable to overt arms transfers conducted under the Arms Export Control Act."

P. 7, 14n - "U.S. General Accounting Office, Report to the Chairmen, Senate and House Select Committees Investigating Iran Arms Sales, 'Iran Arms Sales: DOD's Transfer of Arms to the Central Intelligence Agency,' March 1987, pp. 6-8."

P. 10 - "The fact is that the 1985 Israeli transactions essentially -- and legally -- were equivalent to ones in which the United States sold the weapons directly to Iran.

The evidence indicates that Israel participated in the 1985 transactions in reliance on U.S. assurances, provided by the NSC staff with the President's approval, that the U.S. would not oppose the transactions, and that the U.S. would replenish the arms sent to Iran. The same arms could have been supplied lawfully ever, directly from American stocks."

P. 11 - "The retransfer restrictions of the AECA and FAA were intended to cover situations in which the transferring country, rather than the United States, is the sole source of the retransfer request. The laws seek to ensure that such retransfers foster the national security interests of the United States. But in the case of the Iran arms sales, the Israeli shipments were made with the agreement of American authorities, and Israel was promised and later was given substantially identical replacements. Clearly, the Iran arms sales were premised on U.S. views about America's own national security interests. In short, the substantive purposes of the AECA and FAA were met."

P. 12 - "For most of the country's history, covert activities were conducted by giving the President a contingency fund, without any additional, explicit statutory authorization."

P. 14 - "As pathbreaking as Hughes-Ryan was at the time, its omissions are at least as important as its coverage for analyzing the Iran arms sales. Hughes-Ryan applies only to

those covert operations involving the expenditure of appropriated funds by or on behalf of the CIA.

August-September 1985 shipments: Specifically, the omissions of Hughes-Ryan mean that the Israeli's TOW transfers to Iran in August and September 1985 -- which did not in any way involve the CIA -- did not require a covert action finding under the terms of the law. In fact, no written finding was made at that time. Nonetheless, there is evidence indicating that the August-September and November 1985 shipments were carried out pursuant to the oral authorization of the President."

P. 15 - "One important difference between the summer and the November shipments was that the CIA did play a role, albeit a minor one, in November. It should be emphasized that this shipment consisted of a mere 18 HAWK missiles, and the CIA did not pay for their transportation. CIA officials merely referred North and Secord to a CIA proprietary airline, and this airline transported these missiles in a single plane as a strictly commercial transaction with full payment by Secord's enterprise to the airline. No CIA funds financed the shipment. The CIA's only direct role in this shipment was to facilitate overflight clearances from foreign governments. Thus, the CIA provided logistical support for a secret initiative conducted by the NSC staff."

P. 15, 28n - "There has been an inordinate amount of attention paid to the CIA's role in the November 1985 shipments. The underlying theory seems to have been (a) that the CIA and others in the Administration knew the November 1985 shipment was illegal and (b) attempts to 'cover up' the 1985 'illegalities' explain the altered chronologies, shredding and other events of November 1986. We consider both the theory and the underlying premise to be unfounded. For one thing, we do not consider the November 1985 shipments to have had legal problems, except possibly ones of a technical, minor sort."

P. 16- "We do not believe that support of this sort rises to the level of a CIA covert action that would require a finding under Hughes-Ryan. The action, at most, should be treated as being de minimis. In any event, there is evidence that the President orally approved this HAWK shipment from Israel to Iran, and a written finding was made within days.

Then-CIA General Counsel, and now U.S. District Judge, Stanley Sporkin, who had as much experience interpreting Hughes-Ryan as any other federal official, testified that when CIA Deputy Director John McMahon told him to draft a finding to cover the CIA's involvement, Sporkin thought a finding was not required by law in this instance, even though he agreed it was prudent."

P. 17 - "Strictly read, the Hughes-Ryan Amendment does not permit retroactive findings. In substance, however, the November-December 1985 finding reflected in written form that the President had been briefed before the shipments on the efforts made to obtain the release of the hostages, and that the President himself had found that these efforts were important to the national security of the United States."

P. 22 - "There can be no question from the legislative history, in other words, that the statute contemplated situations in which the President would not give prior notification. The remaining question is, how long is 'timely'? We would maintain that the answer must vary with circumstances. To weigh circumstances requires one to use discretion; that function, therefore, must, belong to the President.

Was eleven months too long for President Reagan to have withheld notification of the Iran arms sales. We think so; he could have purchased what Rep. Henry Hyde has described as some good political 'risk insurance early by coming to us and getting us on board. On the other hand, we are also well aware that President Carter withheld notification for about six month in a parallel hostage crisis. In fact, President Carter, in his four years in office, withheld notification two or three times -- about the same number of times and for roughly the same kind of waiting period as President Reagan."

P. 22, 38n - "These examples were discussed previously in the Constitution chapter at ____. As was there pointed out, in one of the cases Canadian participation was conditioned on a U.S. agreement not to notify Congress until Americans hidden in the Canadian Embassy were safely out of Iran."

P. 22 - "In any event, when it finally comes time to notify, the President will have to pay a significant political price if Congress is not persuaded by the reasons the President gives for having withheld notice."

THE WHITE HOUSE

WASHINGTON

November 10, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL

SUBJECT: Declassification of Report/House Minority: "Who Did What to Help the Democratic Resistance?"

This section of the Report is 23 pages long and arrived for declassification on October 29. The salient points are listed below:

P. 1 - "Given the nature of the strategic threat in Central America, we also believe President Reagan had more than a legal right to pursue this course of assistance to the Contras. We believe he was correct to have done so. The mixed signals Congress was giving indicates that many members agreed. Our only regret is that the Administration was not open enough with Congress about what it was doing."

P. 2 - "President Reagan gave his subordinates strong, clear and consistent guidance about the basic thrust of the policies he wanted them to pursue toward Nicaragua. There is some question and dispute about precisely the level at which he chose to follow the operational details. There is no doubt, however, about the overall management strategy he followed. The President set the U.S. policy toward Nicaragua, with few if any ambiguities, and then left subordinates more or less free to implement it."

P. 3 - "The President instructed the NSC staff, according to both McFarlane and Col. North, as early as the spring of 1984 to keep the 'body and soul' of the resistance together until Congress could be persuaded to resume support for them. North testified that he understood this to mean specifically, among other things, that he was to keep the Contras together in the field as a fighting force. Although McFarlane appears to have interpreted the President's desires somewhat more narrowly, McFarlane said that the President repeatedly made his general desire to support the resistance known both privately and publicly.

. . . There is no evidence that the President authorized or directed McFarlane or the NSC staff to contact third countries in 1984 or 1985 to raise funds for the resistance. There also is no evidence that the President personally solicited such funds from foreign heads of State, and the

President has denied having done so. However, it is clear that the President knew such funds had been given to the resistance during 1984-85, and that he did not tell the NSC staff not to encourage such foreign political or financial support. In addition, Poindexter said the President considered contributions from third countries to be entirely acceptable and thought they should be encouraged. But whatever the President's precise knowledge or direction of the NSC staff's role in encouraging contributions, we are firmly convinced that the Constitution protects such diplomacy by the President or by any of his designated agents -- whether on the NSC staff, State Department or anywhere else.

The President also knew that some private U.S. citizens were giving money to help the democratic resistance -- another activity that was perfectly legal."

P. 5 - "The President's exact knowledge of other aspects of the NSC staff's support for the resistance is less clear. The President knew North was the main staff officer acting as liaison to the resistance. The President was briefed by Poindexter about the construction of an emergency air field in a neighboring country that was to be used for the private Southern Front resupply operation and he [according to McFarlane] personally intervened with the head of state of a Central American country to obtain release of an arms shipment for the resistance that had been seized immediately after a vote in Congress to reject an effort to resume Contra funding. On most other aspects of the resupply operation and North's military advice to the resistance, the President seems not to have been informed of what McFarlane and Poindexter considered to be 'details', many of which McFarlane denied knowing himself. Again, whatever the President's precise level of information, it is clear that the matters about which these committees can be sure of Presidential knowledge -- including the ones just cited -- all fall within the sphere of constitutionally protected diplomatic communication or the equally protected speech and encouragement of legal activity by U.S. citizens.

There is no evidence that Vice President George Bush knew about either the Contra resupply effort or the diversion of funds to the democratic resistance. The Vice-President's staff does acknowledge having learned about General Secord's resupply operation from Felix Rodriguez in August 1986. The staff members informed the relevant agencies, but said they did not think the issue warranted informing Bush at the time. The testimony all says the subject was not discussed with the Vice-President. Two April scheduling memoranda did use the word 'resupply' in connection with one Rodriguez visit to the Vice-President's office, but there is no reason to infer from a single phrase that the

Vice-President's staff had full knowledge of a subject the NSC staff was deliberately keeping from them."

P. 12 - "It is important to note, however, that there is no evidence of any kind in the records of the committees which suggests that any quid pro quo was sought or received in return for any third country contribution to the resistance."

P. 17 - "In sum, the NSC's activities, aside from its normal duties, generally fell into two categories. One involved information sharing with the democratic resistance and encouraging contributions that -- with the possible exception of the diversion -- were perfectly legal. Activities such as these could not constitutionally have been prohibited by statute. The second category involved North's military advice to the resistance and detailed coordination of the resupply effort. Since the NSC was not covered by the Boland Amendment, these activities were clearly legal. But even if one assume the NSC were covered, we showed earlier that the amendment did not prohibit general military advice and resupply coordination. Some of these latter activities, however, perhaps could have been reached by Congress without violating the Constitution. It was to protect these unpopular, but legal activities from possibly being made illegal that we believe the NSC staff misled Congress. There is no evidence that the President knew more than general information about this side of North's activities, or anything at all about the deception of Congress.

Little or no evidence surfaced during these hearings to suggest that the State Department was used wittingly or unwittingly to circumvent the Boland Amendment. Louis Tambs (Ambassador to Costa Rica) and Robert Owen (who had a contract relationship with the Nicaraguan Humanitarian Assistance Office or NHAO) did assist North with the resupply effort, but this was done without the knowledge and blessing of their superiors at the Department. Owen's assistance arguably took place during his 'off' hours, but Tambs' assistance with the establishment of the Point West airfield was clearly done in the course of his long, ambassadorial day. Even Tambs' activities, however, fell within the normal, legal and constitutionally protected scope of activity for an ambassador. His error was to bypass his superiors in the State Department by reporting outside channels to North. That is, the error -- like that of the CIA's station chief 'Tomas Castillo' -- was a matter of violating his own department's policy rather than violating the law."

THE WHITE HOUSE

WASHINGTON

November 10, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL

SUBJECT: Declassification of Report/House Minority: "Recommendations II: Diversion and Privately Funded Covert Activities"

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

P. 1 - "Recommendation 4: Laws and Regulations that Relate to the Ownership of U.S. Arms Sales Proceeds Should be Clarified.

Reasonable people can disagree, as we have shown, about whether the proceeds of the Iran arms sales belonged to the United States under existing law. If statutes spoke clearly to this issue, it would not need to be resolved in the courts. Even without new laws, however, a great deal can and should be done for the future through contracts and regulations . . . . Regulations could require that this type of transaction be governed by a contract which clearly spells out the issues of ownership, liabilities, control and appropriate compensation."

P. 2 - "Regulations should clearly establish what kinds of activities are permissible in an arms length relationship between federal officials and covert contractors or agents. As with the recommendation in the previous paragraph, this can be done under existing law.

Recommendation 5: Federal Officials Should be Barred by Law from Exercising Formal or Informal Control over Foreign Bank Accounts or Other Financial Instruments Except as Specifically Provided by Law.

P. 3 - "We do not believe federal officials should be able to work through Swiss bank accounts, or similar accounts available elsewhere, unless they are required to do so for official reasons. Under present law, anyone, including a federal official, is permitted to open such an account. If funds are used in a way that raises legal questions, it is up to the government to discover the facts and then find whether any legal prohibition on their use applies. We think the law should not be so free. Federal officials

should generally be barred from exercising any form of control over such accounts, unless the law specifically permits such an account to be opened for official purposes."

P. 4 - "Recommendation 6: It Should be Unlawful for Federal Officials to Participate in the Creation or Use of a Privately Funded, Covert Operation Capability.

The private, off-the-shelf, stand alone covert action capability that Colonel North testified Director Casey envisioned, presents difficult issues that ought to be addressed. We have no problem with the idea that the federal government will sometimes rely on private people -- whether volunteers on special missions or paid contractors -- to perform public functions."

P. 5 - "But the idea of government officials cooperating in using private, nonappropriated funds to develop these capabilities is a mistaken one. If public officials believe a course of action to be necessary or wise they should be forced to obtain the funds for such action through publicly accountable means. We believe, therefore, that the law should state clearly that government officials should not be allowed to supervise, coordinate or obtain the use of private funds to support a private covert action capability.

The majority report contends that the principle barring the 'augmentation of appropriations' in existing law already prohibits this practice. It is not clear to us, however, that this principle, or the related statutes, would reach a situation in which the activity undertaken is not a federal program, but is instead a private action undertaken without official sanction. If such a private covert action is structured carefully, it could be undertaken without violating the Neutrality Act as it currently stands. In that case, the action would be considered essentially private for legal purposes and could avoid the statutes on which the majority relies."

P. 6 - "The first is that public actions should be held accountable through the appropriate organs of government. The second is that in matters as serious as war and peace, or the lesser uses of force or governmental power involved in convert actions, public officials should be expected to pursue the public interest without any hint of a potential conflict of interest. Unfortunately, such conflicts, or potential conflicts, inevitably arise when private funds are used -- particularly if the funds come from or pass through the hands of someone who stands to gain from the transaction."

THE WHITE HOUSE

WASHINGTON

November 10, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL ACR

SUBJECT: Declassification of Report/House Minority: "The CIA's Role"

This section of the Report is 16 pages long and arrived for declassification on October 30. The salient points are noted below:

P. 1 - "The Central Intelligence Agency was not a major player in the Administration's efforts to help the Nicaraguan resistance during the period of the prohibitory Boland Amendments. That was partly because the amendments explicitly limited the CIA and other intelligence agencies. In addition, the CIA, as an agency, wanted to avoid even coming close to the edge of the law. As Admiral Poindexter said in our public hearings, 'They wanted to be careful and Director Casey was very sensitive to this, they wanted to keep hands-off as much as they could.' . . . the agency could not simply keep hands off. For one thing, it was expected throughout this period to continue intelligence gathering and political support for the resistance. At the same time, the CIA felt it had to be responsive both to Congress's mandate and to the Administration's strong support for the Contras. The result was an extremely difficult situation for career professionals who had to implement policy at the operational level. The Chief of the Central American Task Force (C/CATF) described his feelings this way:

> 'I knew almost from the beginning that I was caught between the dynamics of a giant nutcracker of the Legislative on the one hand and the Executive on the other, and I was in the center of a very exposed position.'"

P. 3 - "Our bottom line judgments, however are as follows: The CIA tried to work within the boundaries of the Boland Amendment, and succeeded . . . . we do not believe that these dedicated civil servants deserve to pay with their own careers for the political guerilla warfare that was going on over Nicaragua between the President and a vacillating Congress."

P. 15 - "One should not underestimate the extent of concern of these Committees over misleading testimony. We are satisfied, however, that this was not a byproduct of an orchestrated conspiracy to keep Congress in the dark.

Conclusion: The CIA had to work under difficult, politically charged circumstances. To protect the agency, its personnel steered a wide berth around the prohibitions of the law. This was particularly difficult to do in an environment in which people were dying for a cause the Administration and the agency supported. There were misunderstandings in management, and errors in judgment in congressional testimony. But the blame for this situation must rest upon unclear laws, and a vacillating congressional policy, at least as much as it does upon the career professionals who were faced with the Herculean task of implementation."

THE WHITE HOUSE

WASHINGTON

November 10, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: ALAN CHARLES RAUL

SUBJECT: Declassification of Report/House Minority: "Recommendations I: The Need to Patch Leaks"

This section of the Report is 24 pages long and arrived for declassification on October 30. The salient points are noted below:

P. 1 - "We agree that the National Security Council, under Admiral Poindexter, let its concern over secrecy get carried too far. We should not be so deceived by self-righteousness, however, that we dismiss the Admiral's concern as if it had no serious basis. Our national security, like it or not, does depend on many occasions on our ability to protect secrets . . . . But unless we can understand the real problems that led the NSC staff to its decision, future Administrations will once again be faced with an unpalatable choice between excessive secrecy, risking disclosure or foregoing what might be a worthwhile operation.

Time after time over the past several years, the details of extremely sensitive covert operations have been revealed in the media."

P. 3 - "Protecting Secrecy in the Early Congress: To put the issue in perspective, it is worthwhile to consider how the country's Founders dealt with the problem. Those hardheaded realists understood that breaches of security during that perilous revolutionary period could mean the difference between life and death. Consequently, only five members of the Second Continental Congress -- the most famous being Benjamin Franklin -- sat on the Committee of Secret Correspondence, America's original foreign intelligence directorate.

The Continental Congress was especially careful about protecting sources and methods. For example, the names of those employed by the Secret Correspondence Committee were kept secret, as were the names of those with whom it corresponded. Even then, there was concern about Congress keeping a secret. As a result, when the Committee learned that France would covertly supply arms, munitions and money to the revolution, Ben Franklin and another Committee

member, Robert Morris, stated: 'We agree in opinion that it is our indispensable duty to keep it a secret, even from Congress . . . . We find, by fatal experience, the Congress consists of too many members to keep secrets.' . . . Thomas Paine, the author of 'Common Sense', was fired as an employee of the Continental Congress for disclosing information regarding France's covert assistance to the American Revolution. Interestingly, Congress then resorted to its own covert action and passed a blatantly false resolution repudiating Paine's disclosure. Obviously, the Founding Fathers realized that there are some circumstances when a well-intentioned 'noble lie', as Plato put it, is a necessary alternative to the harsh consequence of the truth."

P. 9 - "The Senate Select Committee was one of the bodies to which Poindexter would have had to report the Iran arms sales. Of course it could have limited the report to the committee chairmen and ranking minority members as well as the party leaders of the House of Representatives and Senate. The problem with this scenario is that the person who was chairman of the Intelligence Committee at the time of the arms sales, David Durenberger, reportedly has been put under investigation by the Senate Ethics Committee for an alleged leak. The vice-chairman at the same time, Patrick Leahy of Vermont, was reported to have inadvertently disclosed communications intelligence during a 1985 interview about the Achille Lauro hijacking. Leahy resigned from the committee in January 1987 after acknowledging he had prematurely and inadvertently leaked the committee's report of the Iran arms transactions after having voted with the committee majority, not to release it."

P. 10 - ". . . on November 3, 1985 -- in the weeks just before the November arms transaction -- a Washington Post article by Bob Woodward broke a story about a 'CIA Anti-Gadhafi Plan.' Director Casey responded to this article with a blistering letter to the President about executive and legislative branch leaks. The Washingtonian magazine, accurately in our view, linked the atmosphere in the White House immediately after this leak to the decision not to notify Congress about the Iran arms sale."

P. 14 - "Some of these revelations by staff and Members, as well as current and former Administration officials, occurred during intense questioning and cross examination of witnesses and appeared to be inadvertent. Such mistakes, however, suggest in retrospect that this nation's security interests would have been better served had we decided to take more testimony in closed session. Potentially damaging slips of the tongue could then have been redacted before a transcript was made available to the public."

P. 16 - "Recommendation 1. Congress should replace its Senate and House Select Committees on Intelligence with a joint committee. . . . Such a committee need not have the 32 Members and 100 staff now needed for two separate committees. Fewer Members, supported by a small staff of apolitical professionals, could make up the single committee. In recognition of political reality, the majority-party membership from each House would have a one vote edge."

P. 18 - "Recommendation 2. To improve security, the Joint Intelligence Committee (or the present House and Senate committees) should adopt a secrecy oath with stiff penalties for its violation."

P. 20 - "Recommendation 3. Sanctions Against Disclosing National Security Secrets or Classified Information Should be Strengthened.

Current federal law contains many provisions prohibiting the disclosure of classified information, but each of the existing prohibitions has loopholes or other difficulties that make them hard to apply. The section that covers the broadest spectrum of information, 'classified information,' only prohibits knowing, unauthorized communication to a foreign agent or member of a specified Communist organization."