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WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name CULVAHOUSE, ARTHUR B.:FILES

Withdrawer

DLB 8/20/2014

File Folder IRAN/ARMS TRANSACTION: LEGAL MEMORANDA:
NICARAGUAN CONTRA AID [BOLAND AMENDMENT]
(8 OF 8)

FOIA
S643

Box Number CFOA 1131

SYSTEMATIC

158

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
165150	MEMO	KENNETH DEGRAFFENREID TO ROBERT MCFARLANE, RE: PIOB MEETING WITH THE PRESIDENT, 9:45 AM...	1	9/11/1985	B1
165151	MEMO	ROBERT MCFARLANE [TO THE PRESIDENT], RE: MEETING WITH THE INTELLIGENCE OVERSIGHT BOARD	1	9/12/1985	B1
165152	PAPER	TALKING POINTS RE: PIOB	1	ND	B1

The above documents were not referred for declassification review at time of processing

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File Boland File

Boland Does Not Apply to the President

By REX E. LEE

President Reagan did not violate the Boland Amendment when he asked the leaders of foreign governments to contribute funds to help the Nicaraguan *contras*.

The relevant language of the amendment during the period at issue prohibited "direct or indirect" support for the *contras* from any funds available to "the CIA, the Department of Defense, any intelligence agency, or any other agency of the United States."

Very simply, the Boland Amendment does not apply to the President because he is not an "agency of the United States."

The Federal Trade Commission, the Internal Revenue Service and the Coast Guard are agencies of the United States. Few if any Americans, if asked to give a comprehensive list of all agencies of the United States, would include the President. The President is not an agency of anything. He is the President of the United States, the person in whom the Constitution vests all executive authority.

If Congress had intended the Boland Amendment's prohibitions to apply to the President, it could have said so. In the absence of a clear expression, Congress should not be assumed to have limited the President's ability to exercise his best judgment as to what is in the best interest of the United States. Whether the same considerations would apply to the President's subordinates would depend on whether they acted at his direction or on their own.

In some areas it may be all right for Congress to express its will in ambiguous terms and then leave it to the courts and others to decide what it really meant. But congressional fuzziness followed by expansive judicial interpretation is not acceptable in cases in which Congress attempts to regulate the head of another coordinate branch of government.

Under our separation-of-powers system,

the dividing line between the responsibilities of Congress and the President is not always clear and bright. This is especially true in the area of foreign relations. It is quite clear that the Constitution contemplates a foreign-affairs role for both Congress and the President.

The President is our head of state. He deals on our behalf with his world counterparts, and is also the commander-in-chief of the Army and Navy.

Congress' foreign-affairs responsibilities include the power to appropriate money (including that needed for foreign relations and to maintain a military force), the power to regulate international commerce and the power to declare war.

Under ideal circumstances, the exercise by these two branches of their foreign-relations prerogatives will be mutually compatible and will combine to serve American interests. It is important, however, that neither branch unduly intrude on the responsibilities of the other.

Because of the differences in constitutionally assigned powers, and also because of inherent differences in the branches themselves, each branch must go about its foreign-policy tasks in quite different ways. Congress' legislative power is spread among 535 individuals. Their contribution, as a consequence, is limited to matters of broad policy determination. Congress is institutionally ill suited for such foreign-policy tasks as keeping secrets, authoritatively resolving a dispute and achieving a shared multinational objective. This nation, or any other nation, must have some person authorized to act on its behalf, decisively and authoritatively, when necessary.

From the standpoint of institutional capabilities, therefore, congressional hegemony is in the area of long-range policy determination. The President's inherent advantage, by contrast, is in his ability to move more quickly and decisively. The

importance of the President's greater agility is demonstrated by the fact that the last American war that we entered as a result of a deliberate decision by Congress, rather than because of action-forcing events that left us little choice, was the War of 1812.

Continuing dialogues with other foreign leaders, and requests that those leaders act in the interest of our country, lie at the very core of presidential responsibility. To be sure, he may differ from Congress about what is in the best interest of our country. Difficult constitutional problems would arise in the rare instances in which (1) Congress' and the President's views differ, and (2) Congress acts unambiguously to prohibit the President from pursuing his objectives rather than those of Congress. But such instances are so rare that the circumstances under which one branch of government can completely take away the foreign-policy prerogatives of the other need not, and should not, be decided as a blanket matter.

For present purposes, the point is simply that, short of such an express confrontation, Congress' laws should be interpreted so as to avoid clashes between the constitutional prerogatives of our two elected branches of government. As long as any other interpretation is possible, neither Congress nor the President should be assumed to have impaired the ability of the other to implement its own foreign-relations objectives. To the extent possible, each should be given the leeway to exercise its own best judgment, and then leave the ultimate judgment where the ultimate power is: in the people to whom both the President and Congress must periodically account for their stewardship.

Rex E. Lee, the solicitor general of the United States from 1981 to 1985, teaches law at Brigham Young University and is a partner in the law firm of Sidley & Austin.

~~SECRET~~

CLASSIFIED MATERIAL

UNCLASSIFIED INFORMATION
EXCLUDED FROM AUTOMATIC
DECLASSIFICATION
db 8/20/14

87-TF-0068
Copy No. 1

Arthur B. Culvahouse, Jr.

CLASSIFIED MATERIAL

~~SECRET~~

~~SECRET~~

THE WHITE HOUSE

WASHINGTON

June 24, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.
ALAN RAUL
DEAN McGRATH
MICHAEL SMITH

FROM: WILLIAM B. LYTTON III *W*
SUBJECT: LEGAL ADVICE TO THE PRESIDENT ON BOLAND
AMENDMENT'S APPLICABILITY TO THE NSC

Attached is a package of documents which reflects that the President met with and was briefed by the PIOB on September 13, 1985, at which time the PIOB gave to the President and orally summarized their annual report. Poindexter wrote on the annual report, "President has seen." On the second page of the report, the PIOB said,

The Board has well under way a study of the legality of covert action that will address many of the concerns voiced by critics of the Intelligence Community and its role in Central America. In this connection we have sent to your National Security Adviser a legal opinion that the Boland Amendment does not apply to the National Security Council.

(Emphasis added.)

Thus, the President was specifically advised in writing and probably orally at least by September 13, 1985, that the Boland Amendment did not apply to the NSC. Since the PIOB was specifically charged with reporting to the President whether any intelligence agency had violated any statute, the President was certainly justified in relying on that advice with regard to the Boland Amendment's non-applicability to the NSC.

Thus, this was--as far as the President is concerned--no after the fact justification. And, it establishes clear evidence of his state of mind that since the Boland Amendment did not apply to the NSC, the NSC was not acting illegally.

Attachments: NSC/ICS #401042

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TO UNCLASSIFIED UPON REMOVAL OF
ATTACHMENTS.

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Declassify on OADR
Derived from Multiple

87-TF-0068
Copy No. 1

~~SECRET~~

5/28/14

ROUTING

To	Name and Address	Date	Initials
1	Robert C. McFarlane		
2			
3			
4			
5			
6			

~~SECRET~~

12/20/14

NSC/ICS CONTROL NO. 401042

COPY NO. 1 OF 4

HANDLE VIA SYSTEM IV CHANNEL ONLY

X	ACTION	FILE
	APPROVAL	INFORMATION
	COMMENT	PREPARE REPLY
	CONCURRENCE	RECOMMENDATION
	DIRECT REPLY	RETURN
	DISPATCH	SIGNATURE

REMARKS:
 PIOB Meeting with President
 Friday, September 13, 1985
 9:45 a.m.

NSC INTELLIGENCE DOCUMENT


 Warning Notice
 Intelligence Sources and Methods Involved
 NATIONAL SECURITY INFORMATION
 Unauthorized Disclosure Subject to Criminal Sanctions

850401042-52
 6/4/87
 EG - Obtained
 through hand search
 JLC
 9/1/86

~~SECRET~~

National Security Council
The White House

298 080

System # IV

85 SEP 11 P 2: 05

Package # 401042

1967

	SEQUENCE TO	HAS SEEN	DISPOSITION
Bob Pearson	<u>1</u>	<u>P</u>	
William Martin	<u>2</u>	<u>Wm</u>	
John Poindexter	<u>3</u>	<u>[Signature]</u>	<u>A</u>
Paul Thompson	<u>4</u>	<u>[Signature]</u>	<u>I</u>
Wilma Hall			
Bud McFarlane			
William Martin	<u>5</u>	<u>Wm</u>	
NSC Secretariat	<u>6</u>	<u>[Signature]</u>	<u>D</u>
Situation Room			

I = Information **A = Action** R = Retain D = Dispatch N = No further Action

cc: VP Regan Buchanan Other _____

COMMENTS Should be seen by: _____
(Date/Time)

Bud,
Paul has talked w/ Sciaroni and does not expect Nath to come up. *ix.*
Roz
President's meeting w/ PIOB - 9/13 @ 0945

JS

National Security Council
The White House

85 SEP 11
System # 14
A 9: 36
Package # 401042

	SEQUENCE TO	HAS SEEN	DISPOSITION
Bob Pearson	<u>1</u>	<u>P</u>	
William Martin			
John Poindexter			
Paul Thompson			
Wilma Hall			
Bud McFarlane			
William Martin			
NSC Secretariat			
Situation Room			

degauffenseid 2 done 9/11

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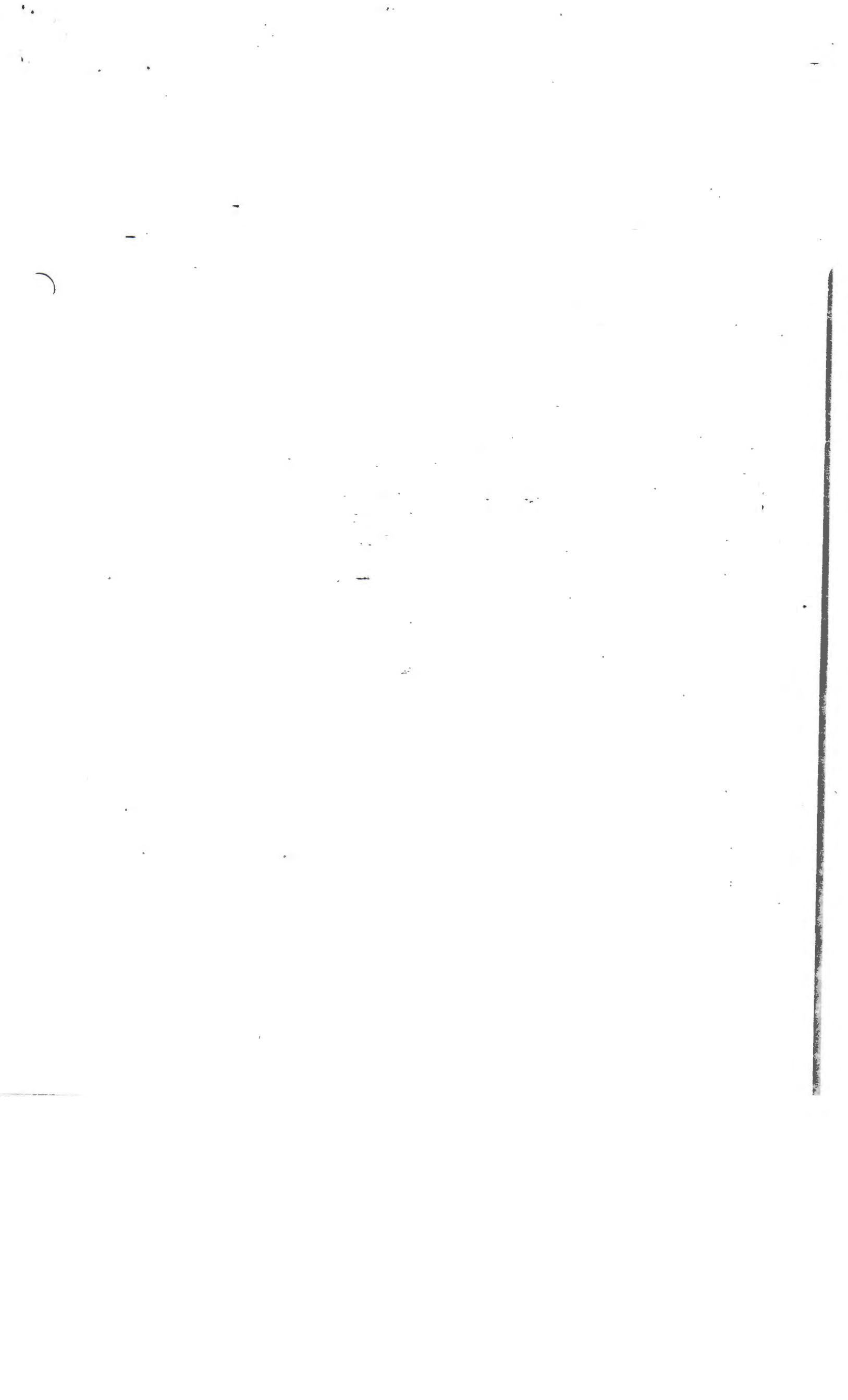
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<i>ID</i>	<i>Document Type</i> <i>Document Description</i>	<i>No of</i> <i>pages</i>	<i>Doc Date</i>	<i>Restric-</i> <i>tions</i>
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165151	MEMO ROBERT MCFARLANE [TO THE PRESIDENT], RE: MEETING WITH THE INTELLIGENCE OVERSIGHT BOARD	1	9/12/1985	B1

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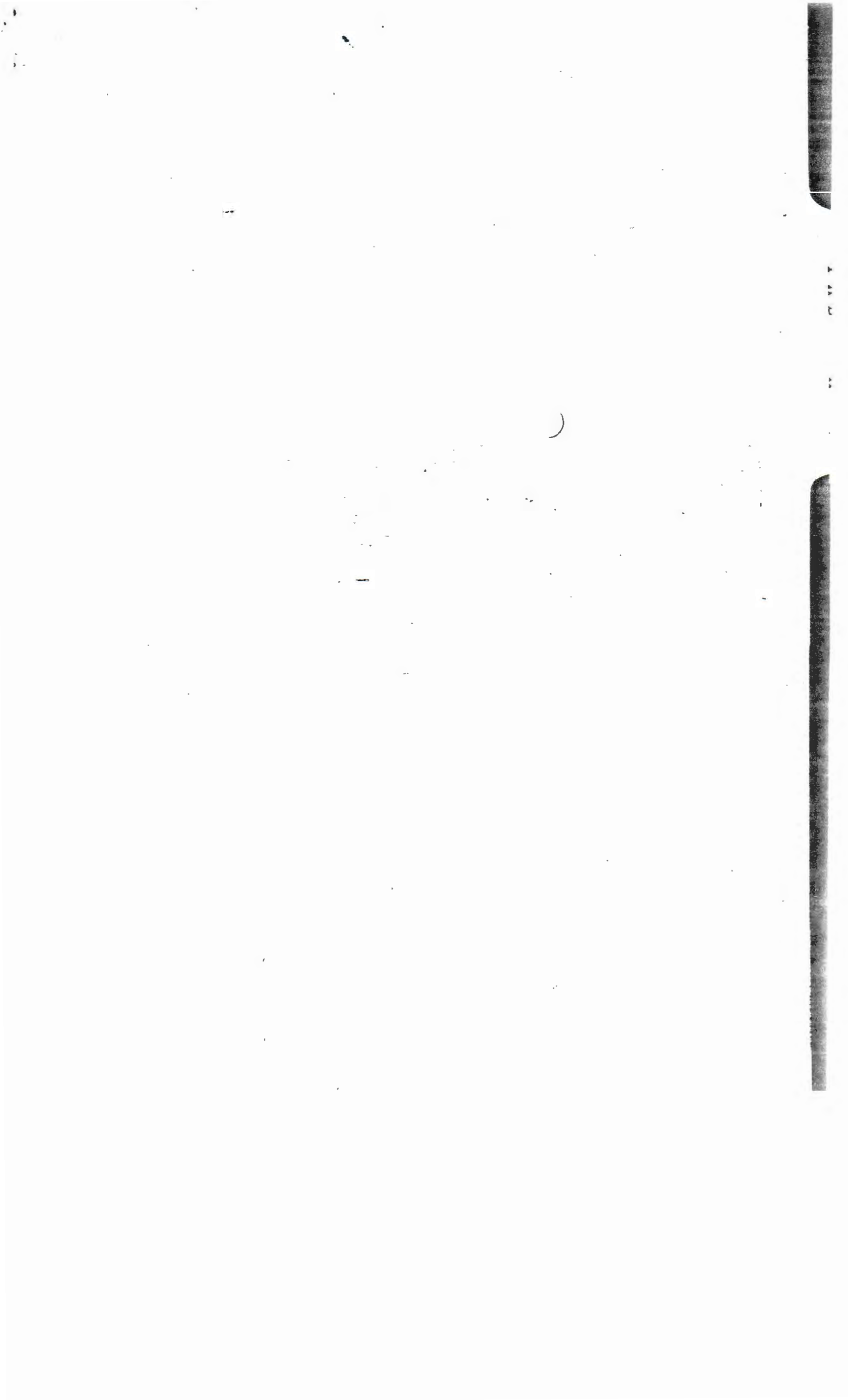
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*President has
seen. J*

THE WHITE HOUSE
WASHINGTON

PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD

September 13, 1985

MEMORANDUM FOR THE PRESIDENT

FROM: PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD

SUBJECT: Annual Report on Oversight of U.S. Intelligence
Activities

Under Executive Order 12334 the President's Intelligence Oversight Board is charged with reporting to you if any member believes an intelligence agency has violated the Constitution, statutes, Executive Orders, or Presidential Directives. Your Board has been functioning for over three years and, although we have not found any unlawful intelligence activity we think it useful to provide you with a brief summary of our activities since our previous report of June 13, 1984.

The Board is pleased to state its belief that the oversight system you have established continues to be effective. Since the Board began operation over three years ago we have examined 287 quarterly reports and 33 special reports from the departments and agencies in the Intelligence Community and have conducted a number of investigations on our own. Our examination of the reports and our investigations have produced no evidence of wrongdoing in virtually all instances, and where violations have occurred nearly all have been inadvertent or technical violations and relatively trivial in any case. The Intelligence Community appears to be abiding by the rules you established to protect individual rights.

Our most significant investigation during the last year concerned allegations about the Nicaraguan manual on psychological operations, the so-called "Tayacan Manual." On October 18, 1984 you directed the Board to conduct an inquiry into the circumstances surrounding the publication of the manual and allegations of improper conduct on the part of employees of the Central Intelligence Agency. On November 2, 1984 the Board concluded its investigation and delivered its findings to you. We concluded that although the manual had many worthy purposes there were passages in it that could be interpreted to permit unacceptable conduct. Those passages appeared in the manual because of shortcomings in command and control procedures at the Agency and we offered recommendations for improvement in this area. However, it was our unanimous conclusion that no violation by CIA personnel of the Constitution or laws of the United States, Executive Orders or Presidential Directives occurred in this matter.

We are pleased to report, Mr. President, that we will be fully briefed on covert action by the Central Intelligence Agency. Because of the sensitivity of those operations and the potential for problems associated with them, it is imperative that this practice continue. The Board has well underway a study of the legality of covert action that will address many of the concerns voiced by critics of the Intelligence Community and its role in Central America. In this connection we have sent to your National Security Adviser a legal opinion that the Boland Amendment does not apply to the National Security Council. The Board is also undertaking a study of the relationship between the laws governing intelligence and Special Operations Forces.

We wish to express our appreciation for the cooperation we have received from the National Security Adviser, Robert C. McFarlane, from Director of Central Intelligence William J. Casey, and from the other fine officials in the Intelligence Community. And as always, we are indebted to you, Mr. President, for your trust and confidence.

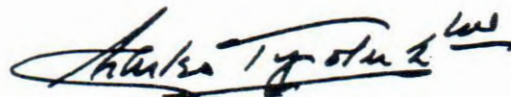
Most respectfully,



W. Glenn Campbell
Chairman



Charles J. Meyers
Member



Charles Tyroler, II
Member

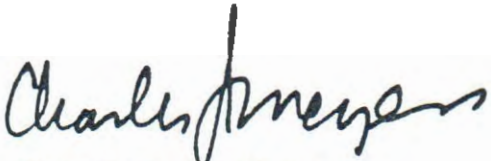
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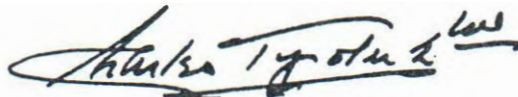
Most respectfully,



W. Glenn Campbell
Chairman



Charles J. Meyers
Member



Charles Tyroler, II
Member