

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Culvahouse, Arthur B.: Files
Folder Title: Iran/Arms Transaction: Dismissal of
Counts One and Two
Box: CFOA 1132

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

Draw/Contra (Safe)
Dismissal of
Counts 1 & 2

CF 1132

THE WHITE HOUSE
WASHINGTON



Date: 1/5/89

FOR: Arthur B. Culvahouse, Jr.

FROM: **WILLIAM J. LANDERS**
Associate Counsel to the President

- Action
- Your Comment
- Let's Talk
- FYI

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

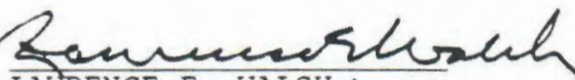
UNITED STATES OF AMERICA)
)
 v.) Criminal No. 88-0080 -
) 02 - GAG
 OLIVER L. NORTH,)
)
 Defendant.)
 _____)

GOVERNMENT'S MOTION FOR LEAVE TO FILE A
MOTION TO DISMISS COUNTS ONE AND TWO
OF THE INDICTMENT AS TO DEFENDANT NORTH WITHOUT PREJUDICE

Consistent with the Court's comments at the
December 21, 1988, pretrial hearing, the Government
respectfully moves for leave to file the following motion:
Government's Motion To Dismiss Counts One And Two Of The
Indictment As To Defendant North Without Prejudice. A copy
of this motion is attached hereto.

Respectfully submitted,

By:



LAWRENCE E. WALSH
Independent Counsel

Christian J. Mixter
John Q. Barrett
Associate Counsel

Office of Independent Counsel
555 Thirteenth Street, N.W.
Suite 701 West
Washington, D.C. 20004
(202) 383-8940

January 5, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)

v.)

OLIVER L. NORTH,)

Defendant.)
_____)

Criminal No. 88-0080 -
02 - GAG

ORDER

The Government's Motion For Leave To File A
Motion To Dismiss Counts One And Two Of The Indictment As To
Defendant North Without Prejudice is granted.

SO ORDERED.

UNITED STATES DISTRICT JUDGE

January __, 1989

Service list:

Brendan V. Sullivan, Jr., Esq.
Williams & Connolly
839 Seventeenth Street, N.W.
Washington, D.C. 20006

Office of Independent Counsel
Attn: Lawrence E. Walsh, Esq.
555 Thirteenth Street, N.W.
Suite 701 West
Washington, D.C. 20004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

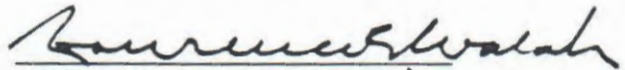
UNITED STATES OF AMERICA,)
)
 v.) Criminal No. 88-0080 -
) 02 - GAG
 OLIVER L. NORTH,)
)
 Defendant.)
 _____)

GOVERNMENT'S MOTION TO DISMISS COUNTS ONE AND TWO
OF THE INDICTMENT AS TO DEFENDANT NORTH WITHOUT PREJUDICE

For the reasons stated in the accompanying memorandum, the Government moves the Court for an order dismissing Counts One and Two of the indictment as to defendant North.

Respectfully submitted,

By:



LAWRENCE E. WALSH
Independent Counsel

Christian J. Mixter
John Q. Barrett
Associate Counsel

Office of Independent Counsel
555 Thirteenth Street, N.W.
Suite 701 West
Washington, D.C. 20004
(202) 383-8940

January 5, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 v.) Criminal No. 88-0080 -
) 02 - GAG
 OLIVER L. NORTH,)
)
 Defendant.)
 _____)

GOVERNMENT'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF ITS MOTION TO DISMISS COUNTS ONE AND TWO
OF THE INDICTMENT AGAINST DEFENDANT NORTH

On March 16, 1988, defendant North was indicted on sixteen counts alleging a number of crimes. Following the Court's rulings on a large number of pretrial motions, North stands charged with fourteen counts, alleging conspiracy to defraud the United States by conducting an unauthorized covert action in Nicaragua, diverting funds from the Iran arms sales to create a fund under his control, corrupting the Iran initiative, and violating specified criminal statutes (Count One); theft of government property (Count Two); obstruction of Congressional inquiries in 1985 (Count Four); making false statements to Congress in 1985 (Counts Five, Six and Seven); obstructing Congressional inquiries in the summer of 1986 (Count Nine); obstructing Congressional inquiries in November 1986 (Count Thirteen); obstructing a Presidential inquiry by the Attorney General (Count Fourteen); making

false statements to the Presidential inquiry (Count Fifteen); unlawful destruction of documents (Count Sixteen); illegal acceptance of a gratuity (Count Twenty); conversion of property received in his official capacity (Count Twenty-Two); and conspiracy to commit tax fraud (Count 23).

A continuing problem in the case has been the protection of national security information in light of this defendant's insistence on disclosing large quantities of such information at trial. From the very outset of pretrial proceedings, the attention of the Court, the Government, and the intelligence agencies has been occupied by classified discovery, and, most recently, by the processes mandated by the Classified Information Procedures Act ("CIPA") for the treatment of classified exhibits and testimony at the trial. Those CIPA proceedings have only now begun to focus on the defense case.

As the Court has recognized,^{2/} by far the most difficult classified information problems stem from Counts One and Two of the indictment. These counts allege broad-reaching activities by defendant North that include North's interaction with a number of intelligence agencies and touch upon a number of highly-classified covert programs. Independent Counsel has attempted, both through responses to defendant's motions to dismiss and in several memoranda filed

^{2/} See, e.g., Aug. 8, 1988 Order.

during last month's CIPA § 6 hearings, to simplify the scope of Counts One and Two in an effort to meet those problems.

Although partially successful, Independent Counsel's efforts to simplify the charges have not eliminated the risk that a quantity of classified national security information would be compromised by a public trial of defendant North on Counts One and Two. Independent Counsel has concluded, in the light of defendant North's insistence on introducing classified information in his defense, the Court's December 12, 1988 Memorandum and Order Following CIPA § 6 In Camera Hearings (including the Court's denial this week of partial reconsideration of that Order), and the position of the nation's intelligence agencies on maintaining the classified status of certain information, that Counts One and Two cannot be tried in a manner that protects that information.

Accordingly, in order to minimize the exposure of classified information and after consulting with the Attorney General and the Department of Justice, Independent Counsel has determined that, as to North, it should proceed with Counts Four through Twenty-Three and dismiss at this time Counts One and Two. Independent Counsel hopes that the dismissal will enable the trial to commence on January 31, 1989, and believes that proceeding to a speedy trial is in the interests of justice for all concerned.

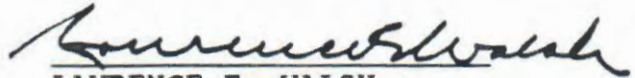
Historically, prosecutors had absolute discretion to enter a nolle prosequi before the jury was empaneled. See United States v. Weber, 721 F.2d 266, 268 (9th Cir. 1983); United States v. Ammidown, 497 F.2d 615, 620 (D.C. Cir. 1973). Since the enactment of Rule 48 of the Federal Rules of Criminal Procedures, however, a prosecutor's decision to dismiss all or part of an indictment is subject to judicial review. See Rinaldi v. United States, 434 U.S. 22, 29-30 (1977).

Decisions under Rule 48(a) demonstrate that court review of a prosecutor's decision to dismiss all or part of an indictment must be narrow in scope. The Government's motion to dismiss counts of an indictment must be granted unless the court finds that dismissal would be "clearly contrary to manifest public interest." Rinaldi, 434 U.S. at 30; accord United States v. Manbeck, 744 F.2d 360, 372 (4th Cir. 1984), cert. denied, 469 U.S. 1217 (1985). As the United States Court of Appeals for the Fourth Circuit has explained, "the trial court has little discretion in considering a government motion to dismiss made pursuant to Federal Rule of Criminal Procedure 48(a). It must grant the motion absent a finding of bad faith or disservice to the public interest." United States v. Perate, 719 F.2d 706, 710 (4th Cir. 1983).

CONCLUSION

For the national security and judicial economy reasons discussed above, the public's and the defendant's interests would be well served by granting the Government's motion to dismiss Counts One and Two.

Respectfully submitted,



LAWRENCE E. WALSH ·
Independent Counsel

Christian J. Mixter
John Q. Barrett
Associate Counsel

Office of Independent Counsel
555 Thirteenth Street, N.W.
Suite 701 West
Washington, D.C. 20004
(202) 383-8940

January 5, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)

v.)

OLIVER L. NORTH,)

Defendant.)
_____)

Criminal No. 88-0080 -
02 - GAG

ORDER

The Government's motion to dismiss Counts One and Two of the indictment as to defendant North without prejudice is hereby GRANTED.

SO ORDERED.

UNITED STATES DISTRICT JUDGE

January __, 1989

Service list:

Brendan V. Sullivan, Jr., Esq.
Williams & Connolly
839 Seventeenth Street, N.W.
Washington, D.C. 20006

Office of Independent Counsel
Attn: Lawrence E. Walsh, Esq.
555 Thirteenth Street, N.W.
Suite 701 West
Washington, D.C. 20004

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true copy of the attached Government's Motion For Leave To File A Motion To Dismiss Counts One And Two Of The Indictment Against Defendant North Without Prejudice, the Government's Motion For Leave To File A Motion To Dismiss Counts One And Two Of The Indictment Against North Without Prejudice, the memorandum in support thereof and the proposed order to be hand delivered to Brendan V. Sullivan, Jr., Esq., Williams & Connolly, 839 Seventeenth Street, N.W., Washington, D.C. 20006, this 5th day of January, 1989.


John Q. Barrett
Associate Counsel



Department of Justice

FOR IMMEDIATE RELEASE
THURSDAY, JANUARY 5, 1989

AG
202-633-2028
(TDD) 202-786-5731

Statement released by the Department of Justice:

Yesterday, the Independent Counsel informed the Attorney General of the Independent Counsel's plan to dismiss Counts One and Two of the indictment in the case of the United States v. Oliver North. The Department of Justice was informed today that a motion to dismiss those counts was filed at approximately noon. The Department of Justice believes that the motion is a constructive step in the handling of very sensitive national security issues.

###

89-003

CLOSE HOLD

Press Guidance

The President's senior-most national security and legal advisers have been concerned for many months that the Independent Counsel's case, as originally charged, necessarily would involve the disclosure of national security secrets of the highest order. The Court's ruling this week requiring disclosure of certain information confirmed their assessment. The constructive decision by Independent Counsel Walsh to narrow the case would appear to reduce and perhaps eliminate the need for the Executive Branch to exercise its statutory right to obtain an order preventing disclosure of extremely vital national security information. The Administration will continue to cooperate fully with the Independent Counsel.

na--w

a1375na--w

u w bc-iranarms:130pes 1d 2takes 1-5 0467

^ (combining into 2takes)<

By GREGORY GORDON=

WASHINGTON (UPI) - Independent prosecutor Lawrence Walsh, blocked by U.S. intelligence agencies from disclosing classified information necessary for his case, Thursday moved to dismiss the two central Iran-Contra charges against Oliver North.<

North still can be prosecuted on 12 other counts charging him with obstruction of Congress and making false statements, but the action means any trial will not lead to another public recounting of the Reagan administration's worst scandal.<

Walsh filed court papers seeking dismissal of the two central counts of conspiracy and theft of government property a day after meeting with Attorney General Dick Thornburgh in an attempt to resolve the impasse. The problem arose after months of extraordinary attempts to protect national security secrets during the ex-White House aide's criminal trial.<

The conspiracy count charged North and three others with scheming to divert more than \$12 million in proceeds of U.S. arms sales to Iran to finance the Nicaraguan Contra rebels' private war against the Sandinista government.<

Dropping the charge means Walsh will not be able to lay out the central conspiracy allegations against North, but the prosecutor also will need to use fewer classified documents at the trial, scheduled to begin Jan. 31.<

One administration source termed the clash over classified documents so serious that, even if Walsh had resolved the latest issue, he probably only would be "prolonging the inevitable."<

Walsh said only that he and Thornburgh had "a very serious discussion" Wednesday.<

Thornburgh also declined comment, but it was clear the meeting marked a watershed for Walsh's attempts to prosecute North, former national security adviser John Poindexter and two arms dealers. As a result of Walsh's decision, it appeared likely that Poindexter and the other defendants also would face reduced charges.<

Walsh's decision came just days after North issued subpoenas for testimony at trial from President Reagan, Vice President George Bush, Secretary of State George Shultz and some two dozen State Department and CIA officials - raising yet another threat that classified information would be revealed. The administration has planned to seek to quash the subpoenas to Reagan and Bush.<

Walsh had attempted to use the 1980 Classified Information Procedures Act to navigate the case to successful prosecution although North threatened to expose some of the nation's best-kept intelligence secrets at trial.<

^more<

na--w

a1378na--w

u w bc-iranarms:130pes 1d 1stadd 1-5 0673

x x x at trial@<

In recent months, North sought access to hundreds of thousands of pages of government documents, many of them classified, and his lawyers stubbornly refused to say which ones they would use at trial. Finally, U.S. District Court Judge Gerhard Gesell limited them to use of 300 documents, the same number Walsh planned to use.<

But the issue came to a head even before North's documents could be evaluated, because of classified information contained in the prosecution documents. Gesell refused, following 6 { days of closed hearings last month, to entirely allow deletions proposed by an inter-agency committee of administration intelligence experts.<

The Justice Department said in a statement that, during his visit Wednesday, Walsh informed Thornburgh of his plan to dismiss the first two counts.<

"The Department of Justice believes that the motion is a constructive step in the handling of very sensitive national security issues," the statement said.<

In his motion, Walsh said, "Although partially successful, independent counsel's efforts to simplify the charges have not eliminated the risk that a quantity of classified national security information would be compromised by a public trial on counts one and two."<

He said he took the action "to minimize the exposure of classified information and after consulting with the attorney general and the Department of Justice."<

North's chief lawyers, Brendan Sullivan and Barry Simon, had no immediate comment on the ruling. If convicted of the remaining counts, North still could face up to 60 years in prison and fines of up to \$3 million.<

As attorney general, Thornburgh is the ultimate arbiter of any dispute over the release of classified documents for a court case, although administration officials say he lacks authority to overrule other Cabinet officers on the issue.<

Walsh's visit occurred just a day after Gesell rejected his request that the court reconsider its decision to allow disclosure of some of the classified information in the prosecution documents.<

A government source said Thursday that an inter-agency task force was "adamant" that the information remain deleted. The source said the material would reveal "operations and activities" of U.S. intelligence agencies abroad and "intelligence sources and methods."<

The task force consists of representatives of the departments of Defense, State and Justice, the CIA, the National Security Agency and national security adviser Colin Powell. The source said heads of all of those agencies have been consulted and that all of them, including Thornburgh, "are in agreement at this point that this stuff can't be released."<

Gesell's guidelines for preserving national security secrets also included censorship rules under which certain information would be disclosed, while other data would be described only in generic terms, such as "a CIA official," or "a Central American country." It could not be learned whether the task force also objected to this arrangement.<

The source said that Walsh had a couple of options. One was to try to persuade Gesell to seek stipulations from both prosecutors and defense lawyers to certain facts in the case to protect classified data. However, the source said North's lawyers could not be expected to cooperate with such a plan, knowing that the government might otherwise be compelled to withdraw the two central counts.<

A second option would be for Walsh to drop use of certain documents containing the most sensitive information.<

"The problem is," one administration official said, "those same documents are going to end up in the defense case. You're just prolonging the inevitable."<

<

r
a0616-----

b w PW-Iran-Contra 3rdLd-Writethru a0605-a0610-a0442 01-05 0655

^PW-Iran-Contra. 3rd Ld-Writethru. a0605-a0610-a0442,670<

^URGENT<

^Walsh Asks Dismissal of Conspiracy Charge Against North<

^Eds: Combines previous. minor editing throughout<

^By PETE YOST=

^Associated Press Writer=

WASHINGTON (AP) - Independent counsel Lawrence Walsh, citing "difficult classified information problems," moved today to dismiss the two central charges against fired National Security Council aide Oliver L. North in the Iran-Contra case.

Walsh said he filed the motion to dismiss the conspiracy and theft charges because the Reagan administration was refusing to allow the release of numerous classified documents that North wants to introduce in his defense. In resisting North's disclosure request, intelligence officials have cited concerns over national security.

Trial is scheduled to begin Jan. 31.

If U.S. District Judge Gerhard Gesell approves Walsh's motion, there still would be a dozen criminal charges remaining against North, including allegations that he obstructed inquiries and made false statements in the Iran-Contra affair.

Walsh's move came a day after he met with Attorney General Dick Thornburgh to discuss the problems posed by the numerous classified documents that North indicated he needed to use to present an adequate defense.

Under the Classified Information Procedures Act, the attorney general can decide to seek dismissal of criminal charges to prevent disclosure of secrets that might endanger national security.

The conspiracy and theft of government property charges were the main counts against North for selling missiles to Iran and diverting some of the profits from those sales to the Nicaraguan Contras.

In the initial indictment, former national security adviser John M. Poindexter and middlemen Richard V. Secord and Albert Hakim were named in these two counts. Their trials were severed from North's and have not been scheduled yet.

In his motion to dismiss the two central counts, Walsh said that because of several factors, including "the position of the nation's intelligence agencies on maintaining the classified status of certain information," the conspiracy and theft counts "cannot be tried in a manner that protects that information."

Walsh said there were other factors leading him to seek abandonment of the two charges. One was North's continued insistence on introducing classified information in his defense. Another was Gesell's Dec. 12 order directing that classified information not be purged from the documents that Walsh planned to introduce as part of the prosecution.

Walsh also cited Gesell's refusal on Tuesday to reconsider part of that order.

Walsh said he hoped "the dismissal will enable the trial to commence on Jan. 31, 1989."

Walsh said that "by far the most difficult classified information problems stem from" the conspiracy and theft of government property charges. They allege North's "interaction with a number of intelligence agencies and touch upon a number of highly classified covert programs."

Walsh said that his "efforts to simplify the charges have not eliminated the risk that a quantity of classified national security information would be compromised by a public trial" on the conspiracy and theft charges.

The remaining charges include obstruction of Congress in 1985 and 1986, concealing and destroying documents in connection with a 1986 inquiry into the affair by then-Attorney General Edwin Meese.

North also is charged with converting travelers' checks to his own use, and accepting a free security system installed at his home.

Meanwhile, the U.S. Court of Appeals on Wednesday dissolved a temporary stay it issued the day before and denied a motion to bar Gesell permanently from giving Walsh's office a classified summary of proposed defense testimony.

The request could have forced a delay in the trial.

North's lawyers have said providing the 162-page summary to prosecutors would give them an unfair, early idea of North's defense.

But a three-judge appeals court panel said its intervention was warranted "only in extraordinary situations."

"This court will not interrupt a criminal proceeding and invade the province of the district court when petitioner has an effective remedy through direct appeal from a final judgment of conviction," the judges said in a two-page order.

AP-NY-01-05-89 1312EST<

For Wallace
Interview
1/6/89

Q: You must have been pleased that Independent Counsel Walsh dropped the central conspiracy counts against Oliver North. Wasn't withholding evidence on national security grounds simply a back-door pardon for North?

A: One of a President's primary responsibilities is to protect national security. We gave everything to the prosecutors and the court in classified form, but we could not allow state secrets to be publicly disclosed. That decision was made upon the recommendation of my senior national security advisers. Our job is to protect national security; the conduct of the trial is up to the court and the prosecution. [The judge has not yet agreed to dismiss counts 1 & 2 and will not rule until Monday].

Q: Will you pardon Oliver North?

A: I believe that the legal process should continue.

Q: Will you be willing to voluntarily appear as a witness at the North trial?

A: That matter is still being considered by government lawyers. There is strong legal precedent indicating that Presidents and former Presidents should be witnesses in court only in the most compelling circumstances. This would seem to be a case where any information I have could be provided in written answers.

Q: Doesn't the dropping of the conspiracy counts mean that we will never know whether Ronald Reagan authorized the diversion of funds?

A: That issue has been fully examined by the Congressional Committees, the Tower Board, and the Independent Counsel. John Poindexter and Oliver North have testified under oath that they did not tell me about the extra money. I did not know about any extra money until the Attorney General told me that his investigation had turned up a document indicating that there was extra money from the arms sales which had gone to the contras. The national security information which cannot be disclosed has nothing to do with whether I knew about the diversion.

THE WHITE HOUSE
WASHINGTON

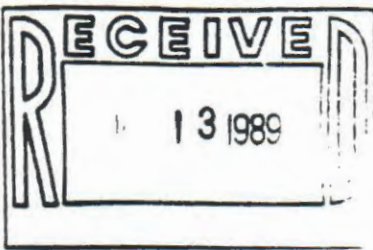
Date: 1/18/89

TO: KENNETH M. DUBERSTEIN
M. B. OGLESBY
COLIN L. POWELL
FROM: **ARTHUR B. CULVAHOUSE, JR.**
Counsel to the President

FYI.

Iran / Contra

Dismissal of
Counts One & Two



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
 v.) Criminal No. 88-0080-02
)
 OLIVER L. NORTH)

ORDER

Upon consideration of the government's unopposed motion to dismiss Counts One and Two of the indictment, with prejudice, as to defendant North, and after reviewing the affidavit of the Attorney General and related information filed therewith in camera, it is hereby

ORDERED that the government's motion is granted and Counts One and Two are dismissed with prejudice as to defendant North pursuant to Section 6(e) of the Classified Information Procedures Act.

Richard A. Esell
UNITED STATES DISTRICT JUDGE

January 13, 1989.

RECEIVED
OFFICE OF
THE CLERK OF COURT

009533