ESSAY

IRAN-CONTRA: ETHICAL CONDUCT AND PUBLIC POLICY

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I. INTRODUCTION

It is a privilege to have been asked by Professor Leslie Griffin to recount my experience in the Iran-Contra affair. This great law school has always had a special place in my heart. Yale Rosenberg, of blessed memory, and Irene Merker Rosenberg have been my friends from my first year as a law student. Irene was the editor assigned to help me write a law note, and Yale was the editor who reviewed what we produced. They did such a great job, I was made editor-in-chief of the law review. I like to think

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that having to put up with me drove them together. Their commitment to justice is a model to us all.

The Iran-Contra affair was a major event in American history. It threatened the Reagan Administration's survival. Fewer than fifteen years earlier, President Richard Nixon had been impeached and driven from office for attempting to cover up illegal acts through deceit and the destruction of evidence. An Administration that had achieved important foreign and domestic successes was weakened by the Watergate scandal to the point that it became unable to govern effectively. From the moment he became aware of the Iran-Contra scandal, my boss, Secretary of State George P. Shultz, was determined to prevent another Watergate. I was privileged to assist him in that effort.

The scandal set off a struggle for power between those responsible for creating it and those seeking to expose and repudiate it. CIA Director William Casey led the effort to maintain secrecy and continue the policies that had caused the crisis. Secretary Shultz led the effort to force out the essential facts as rapidly as possible, and thereby to compel President Reagan to abandon the policy of trading arms for hostages. After a major internal battle, the essential facts of the scandal were discovered and revealed to the public within twenty days of public exposure. Numerous massive investigations ensued thereafter, but the ultimate damage that a cover-up would have inflicted had been prevented. Grave damage was done to U.S. credibility, but the President and his Cabinet were able to salvage much of what the Administration had achieved and to carry forward and complete several historic accomplishments.

My role in Iran-Contra came after the affair was publicly exposed and related to preventing the cover-up that several Administration officials attempted. While I did "blow the whistle" on this cover-up and thereby cut it off before it had gone far enough to do irreparable damage, the form that my actions took fall into a special category of whistle-blowing. I did not go public with my objections, but rather worked strictly within the Administration. My actions could be said to reflect a "Loyalty Model" of whistle-blowing, though that would be an oversimplification. Those whom I exposed felt they were the loyal ones and that I was a traitor—or at minimum a hopelessly rigid lawyer, incapable of facing the risks demanded of critical players in the national security process.

The crucial events in which I was involved covered a relatively short period, from November 3 to November 24, 1986, the day President Reagan fired two of his closest aides and brought an end to activities that were threatening his

presidency. My main purpose here will be to provide the facts necessary for readers to judge the propriety of my conduct and that of the other major participants, including the Attorney General and the Independent Counsel. I will therefore hold my own views on those issues until after recounting the events of those twenty-two days.

II. THE IRAN-CONTRA SCANDAL

A. The Scandal Exposed

On November 3, 1986, an article appeared in a Lebanese newspaper, *Al Shiraa*, reporting that former National Security Adviser Bud McFarlane had visited Iran on an official mission. He had reportedly attempted to convince the Iranian government to order Hezbollah fighters in Lebanon to release Western hostages in exchange for the sale to Iran of missiles and other military equipment. He supposedly had taken with him a Bible and a cake shaped like a key, presumably to symbolize the opening of a new relationship between the United States and the Islamic Republic.

On November 6, President Reagan denied that the United States had sold arms to Iran; McFarlane called the story "fanciful." I believed them, reacting with utter scorn for the press: "They will print anything, anything against this Administration," I remember saying to my wife. "It's inconceivable that Bud McFarlane would do such a thing." I had worked with McFarlane on some issues, and he struck me as a cool professional—ready to take risks for what he felt was in the national interest, but thoughtful and intelligent. As for the President, he had consistently declared that the United States would make no deals with terrorists, and he seemed a man of his word.

Two events made me very concerned about the story, however. First, while I was in Israel during November of 1986, an official suggested to me in a conversation that a deal with Iran had in fact been underway, but had been aborted. This in turn led me to think back to conversations I had had with Iran's Legal Adviser in The Hague during negotiations aimed at settling cases filed at the tribunal established by the two countries to deal with their many disputes after the hostage crisis. He repeatedly pressed me to let Iran keep weapons they had bought from the United States rather than having the United States pay compensation for refusing to return the weapons. He apparently knew something I didn't and could not

understand why we would sell Iran weapons in one channel but insist in The Hague on paying to avoid sending Iran weapons it already owned.

I soon discovered the story was true, and that the United States had secretly traded arms for hostages while carrying on a public campaign against compromising with terrorists. This was demoralizing to me because I had actively participated in formulating the Administration's policy of using force against states that sponsored terrorism and against terrorists in states that gave them protection. Even more shocking from the legal point of view was that we had taken profits from the arms sales to Iran and diverted them to the Contras in our effort to combat the Communist government of Nicaragua. I returned from my trip to Israel full of foreboding and completely out of the loop on the issues.

B. Arms Sales to Iran

The first sale of arms to Iran during the Reagan Administration took place on August 20, 1985, only two months after I joined the State Department. It followed months of discussion at the National Security Council (NSC) of an Israeli proposal to supply arms to Iran in an effort to establish a new relationship there, and in the process to secure the release of Western hostages held by Iran's allies in Lebanon. This proposal conflicted with U.S. policy as expressed by President Reagan on June 18, 1985, and on many other occasions, to "never make concessions to terrorists [because] to do so would only invite more terrorism."[1] Nonetheless, the arms-for-hostages policy was secretly adopted over the opposition of Secretary Shultz and Secretary of Defense Caspar Weinberger, but with the support of CIA Director Casey and others. The first shipment consisted of 96 TOW missiles from Israeli stocks, undertaken by Israel with U.S. approval and a commitment to Israel that the missiles would be replenished. Despite the promises of go-betweens, no hostage was released after this shipment.

On September 4, 1985, a shipment to Iran of 408 TOW missiles was made through Israel. A hostage, Benjamin Weir, was released on September 15, but Beirut CIA Station Chief William Buckley was not, though his release had been sought and expected. Iran then requested many additional types of weapons. After extensive discussions, the United States agreed to

1. The President's News Conference: Trans World Airlines Hijacking Incident, 1985 PUB. PAPERS 778, 779 (June 18, 1985).

supply HAWK missiles, once again through Israel, with the promise that the missiles would be replenished. Two major problems arose. One was tactical. Israel could not deliver the weapons directly, and efforts led by NSC staffer Lieutenant Colonel Oliver North and others to arrange the delivery through a European country were unsuccessful. Instead, North got the CIA to use an airline it owned to carry the weapons directly from Israel to Iran. The second problem was legal. On about November 20, Secretary Weinberger advised McFarlane that the transaction would be illegal without notification to Congress, pursuant to the Arms Export Control Act (AECA). No such notice was given at the time.

On November 24, 1985, some 18 of the 80 anticipated missiles were delivered by Israel to Iran. The Iranians stopped further deliveries because they did not want the HAWKs, which were an older version than they had requested and were unable to reach the required altitudes. The Iranians were also infuriated that the missiles carried Israeli Star of David markings. No hostage was released after this delivery. This delivery did, however, have another significant result: North found that a surplus of some $800,000 was left in the account from which the operation was managed. The price the NSC had negotiated with the Department of Defense (DoD) was much lower that the price Iran was prepared to pay. North and General Richard V. Secord decided to use the surplus funds to support the Contra resupply activities, in which they were already separately engaged with the President's support.

CIA officials became concerned about the legality of the HAWK shipment because the Agency had been extensively involved in arranging the delivery. The justification for CIA involvement was that the arms transfer constituted a "covert operation" and was therefore arguably exempt from reporting requirements under other laws. However, under the National Security Act, such operations had to be initiated by the President by the issuance of a "Finding" certifying that the operation was required in the national interest. No such Finding had been issued prior to the November shipment. The CIA decided to suspend its involvement in the effort until a Finding was prepared and sent to the President on November 26, two days after the HAWKs were delivered to Iran. The proposed Finding authorized the CIA to engage in an effort to secure the release of American hostages in exchange for the shipment of weapons to Iran, directed that Congress not be notified of these shipments, and retroactively approved CIA activities prior to the date of its execution. The President signed this Finding on December 5,

1985.

Admiral John Poindexter took over as National Security Adviser on December 4, 1985, when McFarlane resigned. North and others, including Casey, wanted to continue the arms-for-hostages initiative. Shultz and Weinberger strongly opposed it. The President decided to send McFarlane to London to negotiate. McFarlane found that the Iranians were interested in arms, not in a broader relationship. North proposed more sales, arguing the hostages were now in danger due to the deficiencies in the November delivery. A new plan was devised, to be based on a new Finding that authorized arms sales, but for the broader purpose of improving U.S./Iranian relations rather than securing the release of hostages. This Finding also provided, as did the December Finding, that no notice of the sales be given to Congress as otherwise required by the AECA. Attorney General Edwin Meese approved the new Finding, and President Reagan signed a draft dated January 6, 1986. This draft was modified to deal with DoD concerns that any sale of U.S. arms of over $14 million to a foreign state would have to be reported to Congress. A revised Finding authorized the DoD to sell the arms to the CIA under the Economy Act, which allows intragovernmental transfers, and then to have the CIA transfer the arms to retired General Secord as its agent for the sale to Iran. North trusted Secord, who worked with him on Contra resupply. On January 17, 1986, President Reagan signed the revised Finding.

The first shipment of arms pursuant to the new Finding took place on February 18, 1986, and consisted of 500 TOW missiles. The financial arrangements developed by North and the Saudi arms merchant, Manucher Ghorbanifar, enabled the United States to engage in these transactions without the use of preexisting U.S. government funds. Ghorbanifar borrowed the funds needed to purchase the weapons from Adnan Khashoggi, a Saudi businessman, and deposited them into a Swiss Bank account controlled by Secord. Secord then transferred the price fixed by the DoD for the arms to the CIA, which in turn transferred the funds to the DoD. Secord then arranged for the transfer of the arms by the CIA-owned airline, Southern Air Transport, from the United States to Israel, where other planes carried the weapons into Iran. When the first 1986 shipment was delivered, Iran returned 17 of the 18 HAWKs it had received the previous November. Nine days later, on February 27, 500 additional TOW missiles were transferred to Iran.

North this time deliberately sought to make a profit on the transactions with Iran. He learned from Ghorbanifar that Iran was prepared to pay $10,000 per TOW missile. He negotiated a

price with the DoD of $3700 per TOW, had Secord pay that amount to the CIA out of the funds supplied by Ghorbanifar, and put the remaining funds into what he called the "Enterprise" account controlled by Secord and used for Contra resupply. North was very pleased with himself about this arrangement and wrote a memorandum entitled "Release of the American Hostages in Beirut," explaining the side benefit he had been able to arrange from the arms sales. He later testified that Casey, too, was very pleased with this development of a funding device for covert operations that bypassed Congress.

No hostages were released as a result of the February 1986 arms sales. After extended negotiations, U.S. officials agreed on a plan to deliver HAWK missile parts that Iran needed, but they insisted that this sale would take place only if all remaining hostages were released. Ghorbanifar assured the Americans the deal was acceptable to Iran. This is what led to the famous trip to Iran by McFarlane, North, and CIA and Israeli officials on May 25, 1986, in a plane carrying parts for HAWK missiles. Most of the promised equipment was left off the plane, however, and ultimately not delivered, because the promised hostage release did not occur. Once again, the Iranians were overcharged for the equipment delivered.

The arrangement was dealt another serious blow when the Iranians realized they were being overcharged. They obtained a DoD price list some time after McFarlane's trip, indicating they had paid six times the list price both for the TOWs and the HAWK parts. North blamed Ghorbanifar for excessive markups. Meanwhile, Ghorbanifar had paid Secord for the entire shipment of HAWK parts, most of which had not been delivered, and Iran would not reimburse him. Khashoggi and others who had put up the money wanted to be repaid and given the commissions they were due.

On July 24, 1986, American hostage Father Lawrence Jenco was released. North sought approval from the President to deliver the remaining HAWK missile parts. This was approved, and deliveries took place on August 3 and 4. On September 9 and 12, two Americans, Frank Reed and Joseph Cicippio, were taken hostage in Beirut. This meant that although the arms sales may have resulted in the release of two hostages, during that same time three additional hostages were seized. As Charles Krauthammer wrote at the time, it was "commerce without end."[2] North continued, nonetheless, to press for additional "deals," and

2. Charles Krauthammer, *Government as Rescue Squad*, WASH. POST, Nov. 7, 1986, at A27.

a further shipment of 500 TOWs was delivered to Iran on October 28. Five days later, David Jacobsen was released, although North was convinced that all the hostages would be freed at that time.

C. The Cover-Up Begins

My trip to Israel ended in early November of 1986, and I was back at the State Department on Monday, November 10. By then, Secretary Shultz was well aware that he faced a grave crisis. He had learned in 1985 and thereafter of proposals to secure the release of hostages in Lebanon by selling arms to Iran. He had opposed these proposals but knew that some shipments may have been made. When he heard on November 2 that hostage David Jacobsen had been released, he became concerned, and when he heard the next day of the story in *Al Shiraa* revealing McFarlane's trip, he feared that arms-for-hostages deals had in fact been made.

On November 4, Shultz called on the White House to "give the essential facts to the public."[3] Poindexter responded on November 5, making clear that Poindexter and others wanted to continue the arms-for-hostages project. "Not only will [putting out the facts] complicate our efforts to secure the release of other hostages," Poindexter wrote, it "may also undermine opportunities for eventually establishing a correct relationship with Iran."[4] Poindexter said he had "talked with the Vice President, Cap [Weinberger], and Bill Casey," who all agreed with the plan to keep the facts from the public.[5] Shultz was astonished that Poindexter intended to go ahead and to "stonewall" the press, Congress, and the public, "despite revelations indicating that we had violated two of the president's most important policies."[6] "[I]t is somewhat like Watergate," Shultz told his staff.[7] "They get in and can't get out, so they stonewall and get in deeper."[8]

On November 5, Poindexter asked Attorney General Meese for legal advice on the arms sales issues. Meese asked Assistant Attorney General Charles Cooper to research the issue and to prepare an opinion on the arms sales that had taken place after

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3. GEORGE P. SHULTZ, TURMOIL AND TRIUMPH: MY YEARS AS SECRETARY OF STATE 786 (1993) (internal quotation marks omitted).

4. *Id.* (internal quotation marks omitted).

5. *Id.* at 786–87 (internal quotation marks omitted).

6. *Id.* at 787.

7. *Id.* (internal quotation marks omitted).

8. *Id.* (internal quotation marks omitted).

the Finding that Meese had helped prepare, dated January 17, 1986. Cooper was not asked to address the far thornier problem of authorized arms sales in 1985, which began at this time to be revealed in public reports.

That same day, President Reagan met with his senior advisors at the White House to prepare a public statement on the arms sales to Iran. Poindexter asserted that U.S. arms sales had begun only after the President's Finding of January 17, 1986. He claimed that the United States had learned of Israel's 1985 shipments of TOW missiles only after they had taken place in January 1986, and that those shipments were related to Israeli efforts to get Jews out of Iran. Poindexter knew these claims were lies. Everyone at the meeting knew that Israel had proposed selling arms to Iran as early as May 1985 in order to secure the release of U.S. hostages in Lebanon. The key players knew in fact that three Israeli transfers had been approved by the United States in advance, including one in November of HAWK missiles—but no one at the meeting objected to Poindexter's statements. Although Cooper had not yet finished his memorandum, Meese asked that the press release describing the Administration's position explicitly state that no U.S. laws or policies had been violated. The final release neither confirmed nor denied that arms sales had occurred, but it asserted that "no U.S. laws have been or will be violated and that our policy of not making concessions to terrorists remains intact."[9]

In my view, Shultz did not voice objections at the meeting because he was more interested in what the Administration planned to do than in what it had done. He asked whether further sales to Iran were contemplated. President Reagan refused to confirm that no more sales would occur. The President asked, in fact, that his advisors support his policy or say nothing. Shultz said that he supported the President but not the policy of selling arms to Iran.

On November 12, Poindexter told congressional leaders that the United States had no involvement in the 1985 Israeli arms sales to Iran. That same day, the *New York Times* published a story questioning the legality of the arms sales, including the sales in 1985. On November 13, Cooper gave Meese his memo, arguing that the Finding of January 17, 1986, made all the post-Finding sales lawful. He did not address the legality of pre-Finding sales.

9. LAWRENCE E. WALSH, IRAN-CONTRA: THE FINAL REPORT 527 (1993).

The President addressed the nation that evening. He acknowledged for the first time that arms sales to Iran had taken place, but he insisted the sales were of "modest" amounts of "defensive" weapons and had not been in exchange for the release of hostages. He said that all Cabinet officials had been informed about the sales, and he reiterated that no laws were broken. The President promised that all relevant Congressional committees would be fully briefed.

On November 14, committees in both houses of Congress called for briefings from Shultz, Weinberger, Casey, and Poindexter. Poindexter led the effort to prepare for the briefings. He and others began working on several chronologies of arms sales. On November 18, Poindexter asked McFarlane to review a chronology that was intended for the President's use at a press conference to be held on November 19. McFarlane went to North's office to review what North said was a CIA chronology, and which included explicit reference to the fact that Israel had delivered HAWK missiles to Iran in November of 1985. North told McFarlane that Administration lawyers had identified this shipment as having legal problems. He suggested a solution, proposing to McFarlane the story that U.S. officials believed at the time that the cargo delivered to Iran in November was oil-drilling equipment. McFarlane went along with this suggestion, deleted the reference to HAWKs, and inserted language describing the shipment as containing "equipment" rather than "oil-drilling equipment."

On that same day, while Poindexter, McFarlane, and North were attempting to create a viable chronology that disclaimed U.S. knowledge of any arms sales prior to the January 17, 1986 Finding, White House Counsel Peter Wallison convened the group of general counsels regularly called upon to consider national security issues. In addition to me, the group included Charles Cooper from the Department of Justice; Paul Thompson, Counsel to the NSC; H. Lawrence Garrett, General Counsel at the DoD; David Doherty, General Counsel of the CIA; and the legal counsel to the Joint Chiefs of Staff. Wallison asked Cooper to explain why, in Cooper's view, the arms sales in 1986 were lawful, despite not having been reported to Congress. In general, Cooper's argument was well received. However, by then word had spread of the Israeli sale of TOWs to Iran in September of 1985. Cooper explained this sale by relying on an NSC chronology that claimed the United States had no knowledge of the transaction until after the sale had occurred and that the United States replenished Israeli stocks only after January 17, 1986. Wallison interjected that he thought the United States had known of the

1985 sale when it occurred but had not approved it. It was unclear, in any event, whether Cooper's legal theory could be applied to the September 1985 shipment or to the other pre-1986 shipments (including the November shipment of HAWKs), of which Cooper had recently been informed but did not advise any of the lawyers sitting in the room.

By then, I was skeptical as to whether we lawyers were being told the full story. I could see that Cooper and Thompson had a chronology in their hands to which they were occasionally referring, so I asked them what they had and whether we could be given copies. Thompson refused to let us see it or to provide any additional information. I noted that Poindexter planned that day to brief congressional leaders. Would Thompson at least provide us with what Poindexter planned to provide to the congressmen? "No," Thompson said; he was not authorized to provide anything because we had no "need to know" anything. Those of us who had been excluded were shocked because no such exclusion of the Administration's attorneys had ever taken place in our collective experience. Lawyers are supposed to help their clients satisfy legal obligations, we argued to Thompson and Cooper, and to develop and argue defensible positions in their clients' behalf. We could provide no help if we were not given the true facts. The notion that the State Department had no need to know information related to arms sales to Iran was ridiculous. Poindexter had simply decided to stonewall not only Congress and the public, but even Administration officials with operational interest in the issues involved.

I was by then confident that Poindexter was blocking access to information that could undermine the story he was attempting to develop. When I got back to the State Department from the White House meeting, I went to the office of Secretary Shultz's Special Assistant, M. Charles Hill. When I needed to get something directly to the Secretary without going through bureaucratic channels, I knew that telling Charlie meant that very soon the Secretary would get a full report. I told Hill that I had just returned from a meeting at which the Administration's lawyers had been refused the facts necessary to form legal judgments as to the Administration's conduct of arms sales to Iran. We could not, therefore, comment on the legal positions taken by the White House or assist in formulating defensible positions. I told him it was clear that the Administration faced several difficulties based even on what I knew about the September 1985 shipment. But the facts were crucial. If it could be shown that the Administration did approve the 1985 shipment, "it's a Watergate style thing." I suspected that people

at the White House were "trying to hide the facts," with potentially catastrophic results. Hill said he would pass this information on to Shultz, and given Hill's knowledge of the true facts from the notes that he kept of Shultz's conversations and activities, he was well aware that my fears were more than warranted.

Later that day, perhaps because of my complaints to Thompson and to Howard Teicher of the NSC staff, Poindexter invited Under Secretary of State Michael Armacost and me to the White House for a briefing. Reading from one of the chronologies he had prepared, he claimed that the United States had not sanctioned the September 1985 shipment of TOWs; he did not even mention the shipment of HAWKs that November. Armacost and I left the meeting certain that Poindexter was making up the facts as he went along. Before leaving, we urged Poindexter to carefully prepare all witnesses for their forthcoming appearances, especially with regard to arms shipments prior to January of 1986.[10]

On November 19, Shultz met with key members of his staff—Whitehead, Armacost, and Hill—to discuss whether he should resign. He knew that a crisis was coming. The Administration was about to lie on the record, under oath, and his own records could ultimately be used to impeach their positions. The White House also persisted in pursuing further arms sales to Iran with the President's support, which conflicted with Shultz's public position on the issue. Everyone at the meeting urged Shultz to stay on and fight to regain control of U.S./Iranian policy.

Shultz tried to do just that later in the day, asking President Reagan to return the shaping of U.S./Iranian relations to the State Department. He also urged the President not to be misled into claiming that no deals of arms for hostages had occurred, reminding him that transfers had occurred in 1985 and specifically mentioning a call by McFarlane to Shultz regarding the sale of HAWKs in November of 1985.

Despite these warnings, President Reagan at a news conference that evening specifically denied U.S. involvement in arms shipments to Iran prior to January 17, 1986, and claimed he had not traded arms for hostages. Shultz was angry and desperate. He knew the President's statement was false and that the President was being led into adopting an untenable defense based on the premise that he had not known of and approved

10. *Id.* at 530.

arms sales to Iran prior to the written Finding of January 17, 1986. Shultz therefore returned to the White House the next day with a written presentation to which a number of us contributed. He went in detail through the errors that the President had made in his public statements. The President acknowledged at this meeting that he knew of the arms sale in November of 1985, but he continued to insist he had not traded arms for hostages.

Casey's testimony to the Intelligence Committees of the Senate and House, scheduled for November 21, became the primary focus of the Administration's effort to explain the arms sales. On the morning of November 20, Meese and Cooper met at the White House with Casey, Deputy CIA Director Gates, Poindexter, North, and Thompson to review a draft of Casey's testimony. Meese was committed by then to the view that the key legal danger to the President was the Administration's involvement in the 1985 arms shipments. He knew of the shipments of TOWs and HAWKs, and according to Poindexter, he suggested "that it would make a difference whether the President approved it ahead of time or afterwards."[11] No one in the room mentioned that the President had in fact approved the 1985 transfers in advance.

Casey's draft testimony stated that the CIA had no knowledge of any arms shipment to Iran prior to January of 1986, although the CIA—and Casey in particular—were well aware of the November 1985 shipment, had worked on it intensively, and had drafted a Finding for the President retroactively approving the CIA's activities. Nonetheless, nobody in the November 20 meeting corrected this statement or informed Meese and Cooper of the true facts. Instead, North—unwilling to let the CIA claim that it alone had no knowledge of the November 1985 shipment—insisted that Casey's statement be changed to say that "no one in the U.S. government," not just the CIA, knew that the November 1985 shipment was a cargo of arms. North had, of course, worked hard to ensure delivery of the HAWK missiles and later testified that everyone in the room knew the statement was false.[12] The change North requested was made, however, and the revised version of Casey's testimony attempted to exonerate all U.S. government officials from any responsibility for the November 1985 shipment. Most significantly, approving this statement meant, as far as Meese was concerned, that he could defend the President only on the theory that the President, too, had no knowledge of the true

11. *Id.* at 531.

12. *See id.* at 115.

contents of the November 1985 shipment. This occurred despite the fact that the President had acknowledged to Shultz only the evening before that he knew of and had approved the November 1985 shipment of HAWKs and that he had approved the entire initiative and all of the 1985 transfers.

Shultz was silent at the meetings, but he was fully aware at this point that Poindexter was determined to put out a false version of events and that Meese was allowing it in an attempt to protect the President from the charge that he approved arms sales without a prior written Finding. Casey's draft testimony had been delivered that morning for the State Department's review and clearance, and his statements under oath would likely cement the Administration's position, leaving the President no alternative but to support a version of the facts that was false and that would eventually be proven false. Armacost was to testify on the same day as Casey, and if he went along with what Casey said, he would be speaking for the State Department, including Shultz, who knew—and whose written records established—that the Administration, if not the President personally, had approved the 1985 sales.

That morning, Shultz decided to give me and Armacost access to some of the notes that Charlie Hill had kept of meetings and calls from the time Shultz became Secretary of State. He asked Hill to review the notebooks and read us the key events related to the 1985 arms sales. Armacost and I sat in Hill's office and listened to a number of excerpts. Among these was a note of a meeting with McFarlane while he and Shultz were in Vienna during November of 1985. The notes recounted that McFarlane, then still the NSC Adviser, told Shultz that a shipment of HAWKs was being made to Iran that month by Israel with U.S. approval for the purpose of securing the release of hostages. This single note established beyond any doubt that the White House knew of and had approved that shipment.

Normally, the Legal Adviser is not asked to review testimony of the Director of the CIA, but this time Casey's draft testimony was given to me to read after I had obtained the readout from Hill. I immediately noticed the statement that no one "at the CIA" had known that the November 1986 shipment was an arms shipment until later in 1986, and that they had believed the shipment was of oil-drilling equipment. McFarlane's statement to Shultz did not establish that the CIA also knew that the shipment was arms, not oil-drilling equipment, but it made the truthfulness of the draft testimony statement highly unlikely. The draft testimony also contained the statement that the CIA had been enlisted to move the shipment to Iran and that

it had used its own airline, Southern Air Transport, to handle the work. This proprietary airline was being used by North to support the Contras, and Armacost and I wondered why the CIA would be called upon to use this asset to handle a shipment of oil-drilling equipment. Armacost agreed that the testimony was false and possibly reflected some sort of conspiracy involving Central America as well. We agreed to demand that the CIA make the necessary changes in Casey's testimony.

Meanwhile, after seeing Casey's testimony, I realized that Meese was proceeding under an erroneous assumption about the November 1985 shipment, and that the White House's refusal to brief me and the other Administration lawyers reflected an intention to lie to Congress. I went to Hill and told him that I was going to call Meese and Wallison to report the information I had learned from Hill's note and to reiterate my concern about pre-1986 activities. Hill did not object, but I later realized that he was unhappy that I was determined to reach out to Meese.

It was 2:30 p.m. when I called Meese. He was still at the White House working on Casey's testimony and could not be interrupted. I insisted on speaking to Deputy Attorney General Arnold Burns. I wanted to make a record as quickly as possible of having conveyed what I had learned—that the U.S. government undoubtedly was aware that the November 1985 shipment was of HAWK missiles and that Casey's testimony was probably false in claiming that the CIA had no knowledge of that fact. Burns knew nothing about the matter, but he passed on my information concerning the November shipment to Meese and called me back to say that, while Meese appreciated my concern, he "knew of certain facts that explained all these matters and that laid to rest all the problems [Sofaer] might perceive."[13] Meese was by then at or on the way to West Point, and Burns was unable to explain any further what he properly called this "mysterious" assurance.[14] I refused to accept that response as adequate reassurance, so I called Wallison, determined to rally whatever support I could. I felt that the new evidence I had collected provided me with the ability to block the cover-up that was underway and would become the Administration's sworn position in testimony scheduled for the next morning.

Wallison was in his office when I called. By coincidence, Cooper and Thompson were with him. Wallison had called them in to discuss the September 1985 transfer of TOWs, which Wallison believed might have been illegal even if approved after

13. *Id.* at 532 (alteration in original).

14. *See id.* (internal quotation marks omitted).

January 17, 1986, because Congress had not been notified of the transaction. I told Wallison we had bigger problems than the failure to notify Congress of a shipment that we claimed to have learned about after it had occurred. I was convinced, I told him, that the President "had not told the truth last night," and that I hoped this was because he had not been properly informed.[15] I asked, "Do you know about a shipment of HAWKs in November 1985?" "No," he said, even though that shipment was known to dozens of people working around him. I told him that such a shipment had taken place, that McFarlane had told Shultz about it at the time, and that it was an effort to get Iran to secure the release of hostages. I mentioned the statement in Casey's testimony that "the CIA" had not been aware of the true contents of the shipment until after January of 1986 and said that this fact seemed doubtful in light of McFarlane's contemporaneous statement to Shultz.

Wallison was stunned but not really surprised. He had been deeply suspicious of the people around him at the White House. While we were on the phone, Wallison asked Cooper and Thompson if they knew about the November 1985 shipment of HAWKs. They admitted that they knew about it but had not told him—the President's counsel. He gave the phone to Cooper in disgust, I am sure. I told Cooper that McFarlane had informed Shultz of the November 1985 shipment at the time it was happening and that they knew the transfer was of HAWKs and was for the purpose of securing the release of hostages. The legal problems this created, I said, were very serious, but they were nothing compared to the problems that would be created by the lies that were about to be told to Congress as to the transfers and their purpose.

Cooper knew the problem was even more serious than I realized. Armacost and I had seen the early morning version of Casey's testimony; the version that Cooper now had in his possession included the change demanded by North that would have had Casey assert that "no one in the U.S. government" knew the November 1985 shipment was of arms, not oil-drilling equipment. McFarlane's admission to Shultz made this statement absolutely untrue. Cooper realized that he had been deceived. He told Thompson "'in very manly terms . . . to get with North and McFarlane immediately and clear this up.'"[16] Wallison got back on the phone, thanked me for my intervention, and

15. *See id.* at 533 (quoting Wallison).

16. *Id.* (quoting Grand Jury testimony of Assistant Attorney General Charles Cooper).

promised to work with me to head off the disaster that the White House staff seemed determined to inflict.

Cooper called me soon thereafter from his office and told me of the broader denial that had been put into Casey's testimony at North's request. "That's impossible," I said, in light of McFarlane's statement to Shultz. He asked what evidence I had to prove the conversation between Shultz and McFarlane. I explained that Hill had a contemporaneous note and that Casey must not be allowed to testify inconsistently. In fact, I warned, if Casey went ahead, I would insist that Armacost's testimony include a statement that McFarlane had told Shultz at the time that the shipment was likely, that it consisted of HAWK missiles, and that it was intended as a trade for hostages. I also said that if Casey's testimony was not corrected, I could no longer be part of the Administration and would resign. Cooper was stunned, but he knew we had no other choice but to stop our principals from implementing the strategy they had agreed on at the White House that morning. He promised that the testimony would be corrected or he too would resign.

Cooper called Meese and told him that Shultz had evidence that McFarlane had known of the contents of the November 1985 shipment. Meese told Cooper to make sure Casey's testimony included nothing about the November 1985 shipment. He canceled an appearance at Harvard and returned to Washington to seek authority from the President to conduct an investigation. Casey's testimony was changed, though the fact that the United States *did* know that the shipment contained arms was not included. Casey also managed to lie about other aspects of the affair. I accepted this outcome as a temporary fix, counting on the fact that the Department of Justice was now engaged and would investigate. North continued to deny knowing the contents of the shipment, as did Casey, but they must have known the cover-up was in jeopardy from within.

Cooper called me late that night to tell me that Casey's testimony had been changed "to avoid the issue" of the Administration's knowledge of the contents of the November shipment. He assured me that Meese now shared my concerns. I congratulated him, and we agreed that the critical objective was to keep the President from being "placed at risk [until the] truth is known."[17] Legal problems were difficult; lying would be "self-immolation."[18] Casey's reaction was very different than Cooper's. When I saw Casey the next day at the Senate Intelligence

17. *Id.* at 535.

18. *Id.* (internal quotation marks omitted).

Committee prior to his testimony, whatever hope I had that he would understand the wisdom and need for my intervention was shattered. The normally warm, even affectionate regard in which he held me was gone; in its place, an ice-cold stare and a curt, pointed "Good morning, Abe."

On November 21, Casey and Poindexter briefed members of Congress at the White House. They again claimed that the United States had not approved any transfer of arms to Iran before January of 1986. On that same day, however, Meese met with his Justice Department team (including Cooper, Assistant Attorney General William B. Reynolds, and chief of staff John Richardson) to begin his investigation. They made up a list of people to interview and questions to ask. First among the questions proposed by Meese's team was a request for records, and the first person Meese called to ask to collect his records was Poindexter. Cooper called me to confirm that the President had authorized Meese to investigate. Cooper asked to see Hill's notes, which Hill was reluctant to provide, but which he agreed to show the prosecutors the next day.[19]

By then, Poindexter knew his story was crumbling, so he resorted to outright obstruction. He collected all his documents related to the arms sales (and to the diversion of funds from those sales to the Contras), and in the presence of North and Thompson he destroyed them all, including the signed Finding dated December 5, 1985 that had been intended to authorize the 1985 shipments retroactively. North followed suit. He met later that day with McFarlane and told him "we are going to have a shredding party," suggesting thereby that McFarlane would be protected from embarrassment.[20] North returned to his office at the NSC that evening and destroyed all the documents on arms sales and the diversion that he could find.[21]

Meese interviewed McFarlane that afternoon. McFarlane told him that he knew of no one in the U.S. government who had contact with the Israelis regarding the 1985 shipments of TOWs and that he believed the November 1985 shipment was oil-drilling equipment. He said the President was interested in

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19. Hill did not want to relinquish his notes; he regarded them as his own property and feared they would be used as a basis for prosecuting McFarlane and others. I told him he had to make the notes available, and he agreed. Later, when asked to provide the notes relevant to the investigation, Hill exercised what he considered sound discretion in withholding some relevant entries. The Independent Counsel was upset and investigated, but Hill had never denied access to the notes so no proper charge could be made against him.

20. WALSH, *supra* note 9, at 24.

21. *Id.*

improving relations with Iran but was "cautious" about sending weapons. Meese then told McFarlane about Hill's note of the conversation with Shultz in which McFarlane described the November 1985 shipment as being HAWK missiles. McFarlane backed away from his false story, claiming he did not remember the conversation but admitting that Shultz was probably correct. McFarlane then had a private conversation with Meese (outside Cooper's presence) and advised Meese that the President had in fact fully supported the transfer of arms to Iran from the outset of the project in 1985.[22] Meese did not ask McFarlane, however, what McFarlane had told the President about any shipment, including that of November 1985.

McFarlane called Shultz after his meeting with Meese, but Shultz refused to take his call pursuant to my request that he not discuss any issues with any participant likely to be under investigation. Shultz did not like this recommendation. I was sure, though, that once a cover-up investigation began every meeting, call, statement, and action would be examined and reexamined by prosecutors with a skeptical, even biased eye. Shultz resented the fact that he could not talk to former colleagues and friends, but he went along with my request.

Unable to reach Shultz, McFarlane called me. He wanted to see the Hill note concerning his conversation with Shultz. While the Iran-Contra Independent Counsel's Final Report correctly states that "[h]e was not successful" in getting the note, the Report failed to mention that I read the note to him.[23] I did this very deliberately. I did not want to give McFarlane physical evidence that had not yet been given to the Attorney General, but I wanted him to know that the effort to cook the facts about the November shipment was untenable and should be abandoned. I realized then that this disclosure could help McFarlane avoid prosecution by causing him to alter the course he was on, but I did not believe it was my duty to refuse to give McFarlane information that could lead him to avoid committing perjury.

On November 22, Meese came to the State Department with Cooper to interview Shultz. I had arrived early, expecting to be called into the meeting, but I was not summoned. Meese (in the presence of Hill) reviewed the note that proved McFarlane and Shultz—and therefore others—knew the November 1985 sale was of HAWK missiles, not drilling equipment, that the government approved it, and that it was intended as an exchange for the release of hostages. Shultz urged Meese to accept the fact

22. *Id.* at 100.

23. *See id.* at 101.

that the President knew of and approved the arms-for-hostages initiative. He told Meese that the President had told Shultz only two days earlier that he remembered the November 1985 transfer of HAWKs. But Meese was unprepared to accept this conclusion; he said the President kept no notes and had trouble remembering things. He also asked Shultz whether he knew that McFarlane had in fact told the President about the November 1985 shipment. Shultz said he did not know that McFarlane had done so. According to Hill's notes of the meeting, Meese concluded the interview by saying that "[c]ertain things c[ou]ld be a violation of a law. P[resident] didn't know about HAWKs in Nov[ember 1985]. If it happened [and] P[resident] didn't report to Congress, it's a violation."[24] This comment certainly made clear Meese's strategy to defend the President from the threat of having possibly violated reporting requirements, but he was in the process exposing the President to another, far greater threat because the evidence simply would not accommodate his version of events.

At 9:45 a.m., after Meese's meeting with Shultz was over, I was asked to go to the Secretary's office. I found, arrayed around the room, Deputy Secretary Whitehead, Under Secretary Armacost, Executive Secretary Nicholas Platt, and Charlie Hill. Shultz told me right away that he had not invited me to the earlier meeting because he wondered whether I was his lawyer or whether he should get someone else to represent him. He said that Hill and Platt had told him that I had taken upon myself the task of using information given to me by Hill, at Shultz's request, to assist the White House in formulating its position. "You seem to feel you also serve the President, which is right," he said, "but which may mean I should get my own attorney." I was shocked by this statement, but I realized immediately that it stemmed from the fact that Hill and Platt had questioned my loyalty to the Department, not any breach of trust between Shultz and myself. Hill and Platt were (properly) suspicious of what was underway at the White House. I was determined not to flinch.

"I am a government lawyer," I told Shultz. "Ultimately, I serve the United States, so both you and the President are my clients. I see no conflict in representing both the President and you on the basis of what I know. If you have any reason to believe that you have violated the law, then you should get your own lawyer. But I have no reason to believe that, so I see no problem in representing you as Secretary of State while I also serve the President."

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24. *Id.* at 539 (internal quotation marks omitted) (fifth alteration not in original).

Shultz was surprised by my frankness, but he liked what he heard. He trusted me and said he had no concern about the propriety of his own conduct. But, he said, "I need to be able to talk to you without feeling that whatever I said was going to the White House. I've been in Washington before. You can't trust the White House. You must keep your distance." He reminded me that Poindexter had already provided false information. Hill put it more brutally: "The White House is a sewer. You must keep yourself and the Department away from it."

I held my ground. "When information comes to my attention that indicates a violation of law," I said, "I have to pass it on to the proper people—specifically, the Attorney General and the White House Counsel. You are safe, but the President is in the hands of people who are lying."[25] Shultz understood immediately, having already expressed his fear of another Watergate. I then explained why and how I had used the information regarding the November 1985 shipment of HAWKs and how that action had led to the deletion of a sentence in Casey's testimony that would have otherwise constituted perjury, locking the Administration into an untenable version of events. Meese was now investigating, I explained, and the Administration's position was likely to evolve in the proper direction. "Everything I have done," I added, had been cleared with Hill and Platt and was having precisely the effect intended, namely preventing a cover-up. "It may be a pain to proceed in this manner," I acknowledged, "but it was best in the long run." Whitehead, who said very little throughout the meeting, emphatically approved of what I had done. He supported the President and understood fully the importance of protecting him.

Shultz was pleased I had held my ground, and he put the bureaucratic battle to rest, saying simply: "Go on doing what you are doing." His questions and concerns made me realize again, however, that while he was concerned about the legal issues—and especially about the President being drawn into a false version of events—his principal focus was on the fact that our foreign policy had been jeopardized. He was at war with the White House staff, trying to regain control to put an end to the arms-for-hostages lunacy.

While Meese was conducting his interview of Shultz, Reynolds and Richardson were reviewing documents at the NSC. In North's office they found evidence of pivotal importance—a copy of the memo that North had prepared after the 1986 transfers that described the sale of arms to Iran, as well as the

25. *See id.* (recounting this conversation).

scheme by which profits were made on those sales and passed on to support the Contras. North had missed this copy in his purge the night before. The Justice Department lawyers gave the memo to Meese at lunch. The cover-up was essentially over. That afternoon, Meese learned from former CIA General Counsel Stanley Sporkin that the CIA had been well aware of the November 1985 shipment and that Sporkin had drafted the December 5, 1985 Finding in order to retroactively approve the CIA's involvement.

On November 23, Meese met with North to confront him with the evidence in Hill's notebook. Meese then knew that North was lying. He warned North that the worst thing that can happen in an investigation is for someone to conceal something that others can call a cover-up. North failed to take the hint. He continued to deny any contemporaneous knowledge of the transfer of HAWKs in 1985, and he claimed not to know of the December Finding that was intended retroactively to approve the transfer. At this point, however, he told Meese: "Someone ought to step up and say [that the 1985 shipment] was authorized." This did not, however, lead Meese to ask North if he meant the President, even though Meese's staff had recommended that he ask all the witnesses about the President's knowledge and approval of the 1985 transfers. Meese did, however, confront North with the diversion memo, and North conceded that he had done what the memo said. He told Meese that only Poindexter and McFarlane knew about the diversion of money to the Contras, and he urged that if the memo was not revealed, the only problem they would have was the shipment of HAWKs.

North met later that day with his attorney and McFarlane. He told McFarlane he thought his "only potential problem" was the diversion.[26] McFarlane asked if the diversion had been approved. North said, sarcastically I am sure, "[Y]es. You know I wouldn't do anything that wasn't approved."[27]

On the morning of November 24, Cooper and I met with Hill, who had prepared and read to us a partial chronology of arms-sales evidence. It showed that Poindexter had been aware of the November 1985 shipment and that the President wanted to continue the arms-for-hostages initiative even after that transaction went awry.

Meese reported his findings that morning to the Senior Advisors meeting, which included Reagan, Bush, Shultz, Weinberger, Casey, White House Chief of Staff Donald T. Regan,

26. *Id.* at 101 (internal quotation marks omitted).

27. *Id.* (internal quotation marks omitted).

and Poindexter. Regan asked who had known of the 1985 HAWK shipment. Poindexter came up with a new line: McFarlane had conducted all of the 1985 shipments alone, and without documentation. Meese told the group, however, that McFarlane had advised Shultz of the 1985 transfer. He also expressed the view that the 1985 shipment was illegal because it was done without a Finding, but that the President did not know about it. Shultz and the others knew that this statement about the President's knowledge was wrong but said nothing at the meeting. Later that day, Meese reported the diversion of funds from arms sales to the Contras to the President, Vice President, and Regan.

On November 25, the President convened the full Cabinet and told them of the diversion of funds to the Contras. He then held a press conference with the Attorney General who disclosed the scheme, of which he said only three people were aware—Poindexter, North, and McFarlane. The Attorney General announced that Poindexter had resigned and that North had been reassigned to other duties. He also repeated the claim that the President did not know of the November 1985 shipment until February of 1986. He declared publicly, despite his private view of the illegality of the 1985 transfers, that all the shipments were "legal."[28]

III. THE IRAN-CONTRA INVESTIGATIONS

After Poindexter and North were fired, several major investigations were conducted into all aspects of the Iran-Contra affair. On November 26, the Department of Justice began a criminal investigation. On December 1, the President appointed a panel chaired by former Senator John Tower to conduct an investigation. On December 4, Meese requested the appointment of an independent counsel to take control of the criminal investigation. Senate and House Select Committees to investigate the affair were established on January 6 and 7, 1987, respectively.

The investigations soon forced out evidence that made clear that the President could not be insulated from the arms sales of 1985. Contrary to the Attorney General's fears, the fact that the President could not be defended on the basis of a claim of ignorance of the 1985 sales actually saved him from the dangers

28. On that same day, in a final effort to destroy the evidentiary record, North persuaded his secretary, Fawn Hall, to smuggle incriminating documents out of his office at the NSC, to which he no longer had access. North thereafter destroyed the smuggled documents.

of so untenable a position. While many allegations were made concerning other cover-ups—and a few clearly did occur—once the diversion of funds from arms sales to the Contras was revealed, and Hill's notes made available, nothing further was discovered that jeopardized the President. This frustrated some of the investigators, especially the Independent Counsel, and much of the press. One could not help but sense the desire for another Watergate and the disappointment that dozens of theories and efforts to bring down the Administration went nowhere.

As subsequent events have proved, the principal offenses committed by White House staff and their allies were discovered by the Administration during the first thirty days of the scandal. Unlike what had happened during the Watergate scandal, the principal offenders were not permitted to lie to Congress on the essential issues, the evidence of their activities was publicly revealed, and they were fired. After years of investigation, the Iran-Contra scandal ended with a sweeping pardon that included some individuals who had in fact violated the law. But by then the investigation had itself become a scandal, and the Independent Counsel's overambitious agenda negated some of the important lessons the nation should have learned, including some that relate to the ethical obligations of government servants.

IV. CONCLUSION

The Iran-Contra affair involves many ethical issues, including several that concern the conduct of attorneys. The key issue in terms of whistle-blowing, in my view, is whether and in what ways it is proper to be loyal to the President and to an Administration while attempting to ensure that applicable laws are not violated. The proper answers may seem obvious, but in the hurly-burly of political action, the meaning of loyalty is itself an issue and perceptions of duty arise that differ radically from each other.

The problem stems ultimately from the fact that many who serve in the White House, or who work at implementing presidential initiatives, view their work as akin to a military operation, demanding secrecy and, if necessary, sacrifice. When they are working on a project for which they have not received proper interagency and legal clearance, they preserve secrecy by denying its existence and stonewalling efforts to reveal the facts. If forced to respond to questions or allegations, they provide as little information as possible and, if necessary, deceive or lie to

protect the project and themselves. If essential, they destroy evidence to prevent disclosure. The aim of protecting the President is very quickly equated with the aim of protecting the entire operation and everyone involved in it.

One cannot understand the danger created by Casey, McFarlane, Poindexter, and North without considering the beliefs that accounted for their conduct. These individuals were very patriotic and strongly committed to accomplishing the missions they undertook. Each of them would readily die for their country, and they seemed to believe that lying for their country was a lesser, included commitment. They considered the objectives they pursued—freeing the hostages and defeating the Communist government of Nicaragua—the equivalent of military missions to which they had been assigned by the Commander-in-Chief (or at least his deputy) and for which they had to do everything possible to accomplish. If the missions required destroying evidence or lying, such conduct could not, they believed, be equated with ordinary criminal action. As North explained: "We sat and tried to formulate and put the very best possible face on what was a diplomatic disaster and a political catastrophe in this country, but I did not regard it to be a criminal act."[29]

This sense of a duty to protect an operation or scheme, and the leadership group or entity involved, may be a factor in both government and private sector crimes and cover-ups. The underlying quality of loyalty to the government or private entity, and to the specific leaders involved, is one that is highly valued by political leaders.

Many other individuals in the government were far less committed to the President and his staff but were unwilling to challenge any improprieties they may have seen or sensed. This was a widespread phenomenon in the Iran-Contra investigation. Several individuals at the State Department, the Department of Defense, and other agencies were aware of the sales of arms to Iran; some may even have been aware of the diversion or of facts that suggested a diversion. Nonetheless, they kept their information to themselves. The reaction that I received from State Department personnel when I weighed in at the White House in order to undercut the story that Poindexter was attempting to create was one that bordered on hostility. Hill, Platt, and others would not have had any part of a cover-up, but they wanted no part of uncovering one either. They did not trust the White House staff, whom they considered an inferior form of

29. *Id.* at 115 (internal quotation marks omitted).

humanity—too ambitious, too eager, too partisan, and lacking moral limits. What they failed to appreciate is that, like Watergate, the Iran-Contra affair could not be contained at the White House and that Shultz and others in the Cabinet, including the Vice President, were well aware of the operation, though not of the diversion. Had they been able to convince Shultz to remain passive in the face of the false testimony Casey and others were prepared to give, the "gutter" that they perceived as the White House would have engulfed us all.

Preventing the cover-up that North, Poindexter, Casey, and others had initiated served to protect the President. No serious argument could have been made against blocking perjured testimony or against the investigation and firing of the central figures in the diversion of funds to the Contras. Had these steps not been taken, the sheer amateurishness of the cover-up would inevitably have led to its unraveling and, ultimately, to a serious threat to the President's ability to govern. The Independent Counsel and others raised serious objections, however, against the manner in which the Attorney General went about his investigation. Meese was determined to protect the President and sought to do so with a minimum of disruption. Even after I had alerted Meese to the fact that a cover-up was being attempted, he conducted an investigation that was deliberately informal, perhaps to avoid pinning down the people he interviewed to any particular statements while he was getting the overall picture and deciding on what basis the President could best be defended. He picked political appointees from his staff to help him conduct his investigation, none of whom had any professional prosecutorial experience, and he did not follow even their advice as to the questions he should ask those he interviewed. In particular, he did not ask the witnesses he interviewed what they had said to the President about the 1985 arms sales. He did not place his interviewees under oath or record their statements. He spoke to a few key witnesses alone, specifically asking his staff to step outside of their hearing. Nor did he directly ask the President what he had learned about those sales at the time and whether he had approved them. He had decided that the President would be at risk if it could be proved that he had approved sales of arms prior to signing the January 1986 Finding. He therefore pushed at Cabinet meetings, and at individual interviews with Shultz and others, for all those with access to the President to agree that they had not told the President about the 1985 arms transfers and that they had no personal knowledge that the President had been aware of those transfers.

While I disagree with the manner in which Meese went about his interviews, the Independent Counsel was wrong to expect him to act as a federal prosecutor in his dealings with the President and the White House. Meese's efforts were unwise because they were based on a false premise drawn from an incomplete record, and because they thereby exposed the President, and potentially other individuals, to the danger of committing themselves to a false and ultimately indefensible version of the facts. But Meese's purpose—to develop, if possible, a lawful explanation for the President's conduct—was entirely proper and indeed required by his duty as a member of the President's Cabinet. Like Meese, my own efforts were intended to protect the President and the Administration. The difference between his effort and mine is that I was determined to develop all the relevant facts (to the extent possible), and then to formulate the best possible defense. Meese, on the other hand, was not pressing to uncover facts that the White House staff preferred to keep secret. In fairness to him, he had the right to expect full and truthful cooperation. As soon as it became clear, based on my report concerning Hill's notes, that he could not rely on North and Casey for the truth, Meese shifted ground and pursued the facts based on an independent investigation performed by people he had initially chosen for their political allegiance, but who also had impeccable integrity when it came to performing their duty to the government under the law.

The model of loyalty implicit in the criticism of the Independent Counsel differed not just with what Meese had done, but also with my own view of my duty as a government attorney. What Independent Counsel Walsh wanted was for the lawyers within the Administration to approach their tasks in examining the Iran-Contra issues as though they were prosecutors, making formal records of statements, holding back what we discovered from principals, and allowing—even encouraging—officials to trap themselves, or be trapped by others, in lies and misstatements. These techniques are effective. They make cases. They get people who have done improper things in trouble and make it more likely that those individuals will tell all about others who in turn will give evidence until the most high-ranking individuals involved are trapped and convicted and punished.

No government could operate effectively or fairly on the basis of such interaction between officials and their attorneys. Officials frequently attempt to accomplish objectives that can be achieved through lawful measures without giving adequate thought to the legal issues in advance. It is the job of government

lawyers to help such officials before they act, if possible, but also after they have acted, to the extent proper. Where disclosure of errors or violations is necessary, it is the job of lawyers to see that disclosures occur—not for the purpose of securing the maximum damage to the individuals involved, but rather to satisfy the law in a manner that does as little damage as possible so that the interests of the United States are not unnecessarily harmed. Government lawyers should not be trying to trap their clients into wrongdoing, but rather to prevent them from doing further wrong when wrongdoing or questionable conduct is found to have occurred.

When I told McFarlane about Hill's note, I knew that he would alter the course he was on and avoid at least the false statements he may have been contemplating. That was my job. Had I known even more, I would have told him so, and I would have told the Attorney General as well in order to prevent not only McFarlane but any and all who served the President from taking positions that would get them, and through them the President and the Administration, into greater trouble. I later realized this is why the Department of Justice prosecutors never want regular government lawyers to attend interviews of individuals from the agencies they serve as general counsels. The prosecutors are interested in making cases, setting traps, and proving lies, while government lawyers are—or should be—interested in ensuring full cooperation that is truthful, but at the same time that emerges in a manner that minimizes—not maximizes—damage to the agency and to the public.

Whether my approach or the approach suggested by the Independent Counsel is correct, the ultimate political question remains: Did the efforts to protect President Reagan save him from a fate that he deserved? We will never know the definitive answer to this, and at one level I frankly do not care. Nothing in the evidence, fully developed over years of investigation, establishes that the President did anything that could be equated with fraud, false testimony, or dishonesty. He was therefore entitled to the full efforts of Secretary Shultz and those of us who assisted Shultz in supporting him through that awful crisis. In fact, the evidence strongly indicates that President Reagan was not part of the cover-up and did not know about or approve of any illegal act that would have been suppressed by a successful cover-up. He readily admitted his support for the arms sales to Iran and for the many efforts with foreign states and wealthy individuals to raise funds for the Contras. He testified inconsistently on what he had known about the 1985 arms shipments to Iran, but his memory was far from clear, and he

conceded that he might have known about the shipments and certainly supported them. He consistently insisted, on the other hand, that he had not known about and had not approved the diversion of funds from the arms sales to the Contras. At no time did anyone testify convincingly to the contrary. District Judge Gerhard Gesell explicitly rejected North's claim that the President had approved any of the illegal actions with which he was charged.[30]

The fact remains that President Ronald Reagan and much of his Administration survived the Iran-Contra affair. They went on, moreover, to complete many important initiatives in many areas, and in some respects, especially in issues related to the Cold War, to triumphant victories and achievements. On other issues, the record is far less bright. But that is a part of the story that must be saved for another time.

30. *Id.* at 119–20.