**MEMORANDUM**

TO: Judge Walsh

FROM: C. J. Mixter CJM

DATE: March 21, 1991

RE: Criminal Liability of President Bush

You have asked me to analyze the criminal liability, if any, of President Bush (hereinafter "the Vice President" or "Mr. Bush") for matters within your mandate as Independent Counsel under the Ethics in Government Act. This memorandum reflects that analysis.

Three issues of methodology and approach should be described at the outset. First, as we have discussed, there is an outstanding area of investigation -- the Gregg/Watson matter -- that could conceivably lead to wholly-new evidence regarding Mr. Bush's role in Iran/Contra. In putting together this memorandum, I have generally attempted to consider all the relevant information concerning Mr. Bush that has been developed by this Office's investigation to date, including the immunized testimony of Admiral Poindexter and Colonel North, as well as the investigation conducted by the Congressional Iran/Contra Select Committees, again including Poindexter's and North's immunized testimony. However, I have made no effort to describe the current status

of the Gregg/Watson investigation, or to speculate on information that might emerge as a result of different possible outcomes of that matter.

Second, this memorandum, like my memorandum on the Criminal Liability of Former President Reagan (the "Reagan Memorandum"), is devoted strictly to potential criminal-law concerns. It is not focused upon either the wisdom of any Vice Presidential policies during the relevant period, or the candor or lack thereof that has been exhibited in Mr. Bush's public statements concerning Iran/Contra, both of which areas lie in the political domain.

Finally, the shape of this memorandum has been affected substantially by my conclusion, as stated in Parts I-III of the Reagan Memorandum, that former President Reagan has no criminal liability stemming from the substantive Iran/Contra events that he can be proved to have authorized or known about. Although the quantity of information compiled on Mr. Bush's Iran/Contra activities is much smaller than that amassed on former President Reagan, it is quite clear that Mr. Bush attended most (although not quite all) of the key briefings and meetings in which Mr. Reagan participated, and therefore can be presumed to have known many of the Iran/Contra facts that the former President knew. However, if then-President Reagan faces no criminal liability for having "authorized" any of the core Iran/Contra events of which both he and Mr. Bush were aware, then there is no basis

on which to find a secondary officer like Mr. Bush liable for simply "being there" while those events were discussed with the President.[1/] Thus, although this memorandum is organized around the same broad topics as the Reagan Memorandum, I have not restated as to Mr. Bush the complete analytical construct, or all the background facts, that are contained in the Reagan Memorandum. Instead, I have concentrated upon those instances in which Mr. Bush appears to have known more or different facts about Iran/Contra than those that were available to Mr. Reagan. The relevant areas are covered as follows below:


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[1/] In this respect, my view of the Vice President's role parallels that taken by Judges Greene and Gesell in rebuffing efforts by Iran/Contra defendants to subpoena Mr. Bush's papers and/or testimony in search of "authorization" evidence. See United States v. Poindexter, 725 F. Supp. 13, 30 (D.D.C. 1989); United States v. North, Crim. No. 88-0080-02, slip. op. (D.D.C., January 30, 1989). Each court acted after it had considered an ex parte submission from the defendant in support of his subpoena.

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I. Arms Sales to Iran, 1985-1986

As noted above, Mr. Bush's knowledge of the Iran Initiative appears generally to have been coterminous with that of President Reagan. Thus, Mr. Bush was apprised contemporaneously of the initial Israeli contacts that led to the August/September 1985 TOW shipment (see January 11, 1988 Bush Dep. 65-68, 77-79; [redacted] March 16, 1989 McFarlane North Trial Tr. 4762-63), although he is not entirely certain that he recalls the President's approval of the 500 TOWs, or being informed of a connection between the 500 TOWs and the September 1985 release of hostage Weir (see January 11, 1988 Bush Dep. 78-79). In November, 1985, Mr. Bush and North were involved in hostage-related meetings (see, e.g., [redacted] on November 27, 1985, the Vice President wrote North a note thanking him for his "dedicated and tireless work with the hostage thing and with Central America" (see [redacted]

(b)(3) GJ

Mr. Bush also has a memory that in November 1985, "there was an airplane that was supposed to land, pick up weapons, and fly to . . . Iran -- and once it was either airborne or landed over there, why then you were going to have this other half of this deal . . . some facilitation of the release of the hostages" (January 11, 1988 Bush Dep. 80; see also ALU028242 (Presidential meeting record confirming that the Vice President was present at the November 25, 1985 national security briefing described in Poindexter's notes,

[redacted]

Assuming the accuracy of Admiral Poindexter's testimony that the retroactive Iran Finding was presented to President Reagan at the December 5, 1985 National Security Briefing,[2/] Presidential meeting records recently produced to us indicate that Mr. Bush was not present for that event (see ALU0135169). Poindexter has testified that he does not recall whether the Vice President witnessed the signing of the Finding, but that if Mr. Bush had been there, Poindexter would have given him a copy of the Finding to read (see May 2, 1987 Poindexter Cong. Dep. 106-107).

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Early December 1985 provides the first example of an NSC document that singles out Mr. Bush in connection with the Iran Initiative, as well as the first instance in which

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[2/] Pointing to a reference to "Iran-Finding" in his notes for December 5, 1985 [redacted] Poindexter has consistently identified December 5 as the date when the Finding was signed (see May 2, 1987 Poindexter Cong. Dep. 105-107; July 15, 1987 Poindexter Cong. Tr. 43-44; [redacted] Interestingly, both the President's autobiography/diary [redacted] and Presidential meeting records that we recently received from the Archivist (see ALU0135169) identify Mr. McFarlane as having been present at the December 5, 1985 National Security Briefing; McFarlane, though, like Regan, claims to have no recollection whatsoever of the 1985 Finding (see July 2, 1987 McFarlane Cong. Dep. 49-50; July 30, 1987 Regan Cong. Tr. 243; July 31, 1987 Regan Cong. Tr. 15). [redacted]

Mr. Bush apparently was not present for a key Iran-related meeting. In a lengthy December 4, 1985 PROF note to Poindexter, North stated that

> [The Iranians] have not the slightest idea of what is going on in our government or how our system works. Today for example, Gorba called Copp in absolute confusion over the fact that Rafsanjani had just received a letter from (of all people) Sen. Helms regarding the American Hostages. Since the Iranians are adamant that they not be publicly connected with the seizure, holding or release of the AMCITs, why, Gorba wanted to know, was Helms being brought into this "solution to the puzzle". Gorba reiterated that "Batri [Vice President Bush] ought to have more control over the members of his parliment [sic]" than to allow them to confuse an already difficult problem. (GX 41 in U.S. v. Poindexter, at 2.)

Similar references occur in intelligence that was gathered during the Iran Initiative concerning discussions among the Iranian players. [redacted]

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[redacted]

By almost all accounts[3/], Mr. Bush was absent from a December 7, 1985 meeting concerning the future of the Iran Initiative that was certainly attended by President Reagan, Secretaries Shultz and Weinberger, Regan, McFarlane, Poindexter, and Deputy Director of Central Intelligence McMahon. At this meeting, Secretaries Shultz and Weinberger made known their policy and Arms Export Control Act-based objections to the Iran arms sales, and McFarlane was authorized to meet with Ghorbanifar in London to propose a unilateral release of the hostages. [redacted]

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[redacted]

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3/ President Reagan's diary, the White House meeting records consulted by the Tower Commission, Shultz, and Poindexter do not place the Vice President at this meeting. Secretary Weinberger (see July 31, 1987 Weinberger Cong. Tr. 35-36) and McFarlane (see May 11, 1987 McFarlane Cong. Tr. 138) have testified that Mr. Bush was there, although their accounts of the meeting do not include any particular contribution to the discussion by him. On August 5, 1987, Mr. Bush stated in a press interview that he was at an Army-Navy football game when the meeting took place. (See "Bush Asserts Vindication in Iran Affair; Says Key Facts Were Denied Him", Washington Post, August 6, 1987, at A-1.) The Iran/Contra Select Committee Report also concluded at page 198 n.51 that "The Vice President was not present" for this meeting.

In any event, the Vice President was back in the loop by early January, when the key decisions on the future shape of the Iran Initiative were made. Mr. Bush was present at the 0930 National Security Briefing on January 7, 1986, when Poindexter says that he re-acquainted the President with the Shultz-Weinberger position on Iran (see July 2, 1987 Poindexter Cong. Dep. 78-79; July 21, 1987 Poindexter Cong. Tr. 139-141), as well as a meeting later that morning at which the Secretaries again presented that position to the President, Meese opined preliminarily that the Arms Export Control Act could be overridden by the National Security Act, and the President clearly indicated his support for the Initiative (see, e.g., ALU012319; July 23, 1987 Shultz Cong. Tr. 82-87; July 31, 1987 Weinberger Cong. Tr. 110-111; July 28, 1987 Meese Cong. Tr. 4-6). [redacted]

(b)(3) GJ

[redacted] according to Poindexter's note on the accompanying briefing memorandum, the Vice President was also in the Oval Office when the President signed the January 17 Iran Finding (see [redacted] Mr. Bush has testified that he does not recall being present when the President signed any Finding relating to Iran (see January 11, 1988 Bush Dep. 82-83). [redacted]

[redacted]

While none of the other participants' recollections of the January 1986 meetings appears to include a strong impression of the Vice President's views on the Initiative, by February 1 Poindexter placed him with the Reagan-Casey-Meese-Regan-Poindexter majority who favored the Initiative, and not with the Shultz-Weinberger minority who dissented and were in some measure cut out of the flow of Iran-related information thereafter. (See ALU049637 (Poindexter PROF note to McFarlane stating that "most importantly, President and VP are solid in taking the position that we have to try".)

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[redacted] Regan has not specified when Mr. Bush raised those concerns, and the earliest documentation of them occurs in November 1986 (see page 62 below). (See also May 2, 1987 Poindexter Cong. Dep. 137 [redacted]

As the 1986 Iran arms sales went forward, the Vice President's primary source of information appears to have been the 0930 National Security briefings (see January 11, 1988 Bush Dep. 67-73; [redacted] [redacted][4/] In this manner Mr. Bush, like the President and Regan, would have learned about the first "U.S." TOW missile shipment to Iran in February 1986 [redacted] By the same token Poindexter has testified that, as with the President, he did not tell the Vice President about the diversion of Iran arms sales proceeds to the Contras (see July 2, 1987 Poindexter Cong. Dep. 21-22; [redacted] Mr. Bush has also testified that he was ignorant of both the diversion and the Iranians' complaints about pricing (see January 11, 1988 Bush Dep. 73, 74-77, 88, 95), although in his deposition he seemed to allow some room for the possibility that he heard of the use of arms sale proceeds to finance replenishment of Israeli stocks for weapons shipped to Iran (see id. at 73-74, 88-89).

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4/ [redacted]

At some unrecalled time, the Vice President remembers learning from McFarlane or Poindexter that Secord, "a two star general who had served very well and knows about procurement and getting his hands on all these weapons in the arms market", was involved in the Initiative as a "facilitator" (see January 11, 1988 Bush Dep. 82, 81); he does not recall hearing of Hakim until after the fact (see id. at 88). There is no doubt that Mr. Bush knew in advance of McFarlane's trip to Iran (see, e.g., [redacted] ALU0128243 & ALU028432; January 11, 1988 Bush Dep. 89-91), and the fact that the McFarlane mission entailed a further delivery of weapons systems parts in Iran (see id.). The Vice President also was briefed on the unsuccessful outcome of that trip (see id.; ALU0128248). (b)(3) GJ

The next major Iran-related event for the Vice President was also the only provable occasion on which Mr. Bush was exposed to Iran-related information that was of a different sort than that available to President Reagan.[5/] On

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[5/] An episode that has received a certain amount of press play, but which cannot be linked to the Vice President personally or to the NSC's Iran Initiative, is the early 1986 effort by a man named Richard Brenneke to communicate with the Vice President about massive arms sales to Iran under a program that Brenneke called Condor/Demavand. These contacts with Brenneke were handled by Mr. Bush's military aide, Douglas Menarchik, who has told the Office that he passed Brenneke's information to the Department of Defense and concluded, based on their advice, that the Vice President should neither meet nor correspond with Brenneke. Menarchik instead wrote Brenneke a letter advising him that the U.S.

(continued...)

July 25, 1986, following a meeting with McFarlane, the Vice President left on a twelve-day trip to the Middle East, visiting Israel, Egypt, and Jordan. While in Israel, Mr. Bush was told by his Chief of Staff, Mr. Fuller, that the Prime Minister of Israel wished him to meet Amiram Nir.[6/] According to Mr. Bush, he was uncomfortable with the idea of the meeting and tried to call Poindexter; unable to reach Poindexter, he spoke with North, who told him that Nir was as knowledgeable about the Iran matter as the relevant U.S.

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[5/] (...continued)
government would not permit arms sales to Iran, and would prosecute any U.S. citizen who became involved in such sales (see October 8, 1987 Manarchik [sic] 302; ALU11650).

[6/] The most likely origin for the Prime Minister's interest in seeing this meeting take place is North's July 26 statement to Nir that the Vice President wished to go to Syria to welcome the soon-to-be-released hostage Jenco. To the Israelis, such a visit would have represented an unwelcome diplomatic benefit to Syria, because it would have given the Syrians implicit or explicit credit for the release. According to the Israeli Historical Chronology (see Part Two, pages 61-63), on July 26 Nir asked North to urge the Vice President not to go to Syria and to explain to Mr. Bush what had actually precipitated Jenco's release; on July 27, North told Nir that he had not been able to talk with Mr. Bush, but said that he had spoken with Fuller and asked Nir to meet with the Vice President in Israel to tell him the facts. Fuller confirms the basic outline of these facts to the extent that he was involved in them (see June 11, 1987, October 1, 1990, October 10, 1990 Fuller 302s). Secretary Shultz has informed the Office that in a luncheon discussion before the Vice President's Middle East trip, Mr. Bush suggested a Syrian stop and Shultz advised him against it (see December 11, 1990 Shultz OIC Interview 108). The Vice President's interest in the Syrian visit is referred to in documents dating from before the trip (see Poindexter note of 7/9/86 Shultz meeting with President, AKW000293 ("VP Trip-Syria?"), and long after the fact (see Charlie Hill notes for December 2, 1986, ANS0001948).

officials, and that the meeting was mainly a "listening session". (See January 11, 1988 Bush Dep. 91-93.) In his December 12, 1986 FBI interview, Mr. Bush added that "North advised the Vice President that he wanted him to meet with Nir because it would give an official imprimateur [sic] to the Israeli role in the hostage negotiations and Iranian initiative" (December 12, 1986 Bush 302 at 3). The attempted call to Poindexter (but not the conversation with North) is documented by White House telephone records (see ALU019000-04).[7/]

The meeting between the Vice President and Nir took place on July 29, 1986. Mr. Fuller attended, and prepared a memorandum of the meeting (ALU018994-96). According to Fuller's memorandum, the meeting lasted for twenty-five or thirty minutes. The memo reflects that Nir told Mr. Bush that he was briefing him at the request of the Prime Minister and of Nir's "White House contacts"; it goes on to describe a discussion in which Nir did almost all the talking, and essentially gave the Vice President a history of the Iran Initiative between January 1986 and late July 1986. Fuller records only the most modest description of the 1985 phase of the Initiative ("the effort began last summer. This early phase . . . 'didn't work well'.".) Except for some passing

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[7/] The same telephone records indicate that on July 27, Fuller and Menarchik "were called by the [Situation Room] Duty Officer and filled in on the latest details concerning Father Jenko's release from captivity" (ALU019003-04).

references to discussions with the Iranians about pricing of the weapons, there is no reference at all in the memo, or in any other accounts of the meeting (see January 11, 1988 Bush Dep. 91-96; GOI Historical Chronology, Part Two, at 63-64), to "residual" monies, or to the diversion. In fact, the only possibly-new information in the memorandum, from the standpoint of the Vice President, was Nir's characterization of the Iranians who were then being dealt with as "the most radical elements", which is not consistent with the January 17 Finding's description of the Initiative as involving "efforts . . . to establish contact with moderate elements within and outside the Government of Iran" (see AKW001921). Whatever its political significance, I am not aware of any criminal ramifications that would flow from this variance.

According to Nir, the key decision to be made as of July 29 was whether to continue to deny the Iranians the balance of the Hawk spare parts, or to accept the Iranians' proposal for a "sequenced" release of the remaining hostages; Nir advocated that the arms deliveries be continued. Fuller closes his memorandum by stating that

> The VP made no commitments nor did he give any direction to Nir. The VP expressed his appreciation for the briefing and thanked Nir for having pursued this effort despite doubts and reservations throughout the process. (ALU018996.)

We know from other sources that while the Vice President was still in the Middle East, Poindexter obtained President

Reagan's approval for the release of the remaining Hawk spares (see ALU0128244; [redacted]).

After the meeting, Mr. Bush asked Fuller to call North to tell him what had happened; Fuller did so, but North only wanted to know whether Nir had asked for anything. Fuller told him that Nir made no requests (see June 11, 1987 Fuller 302). Later in the day, Prime Minister Peres asked Mr. Bush whether he had had a good meeting with Nir (see January 11, 1988 Bush Dep. 93).[8/]

Fuller completed his memorandum on August 6, 1986, after he and the Vice President had returned to Washington; Fuller believes that he brought North a copy of the memorandum on the evening of August 6 (see October 10, 1990 Fuller 302 at 2). Earlier on that same day, North's notebook records a meeting between North and the Vice President (see AMX001395). [redacted] (b)(3) GJ Mr. Bush has not been asked what took place during that session; following the public release of the notebook entry last spring, Bush

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[8/] A CIA document from September 1986 (ER 27545) suggests that, at least by then, Nir and Vice President Bush had also discussed hostage-related projects other than the Iran Initiative.

Administration officials stated on background that the meeting "centered on the arms sales to Iran and efforts to secure the release of American hostages in Lebanon" (see "Bush Discussion of Contras Denied", New York Times, May 10, 1990, at A25). [redacted]

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The Vice President recalls being informed about a new channel to Iran that involved a relative of Majlis Speaker Rafsanjani (see January 11, 1988 Bush Dep. 96-97; see also July 15, 1987 Regan Cong. Dep. 60); other records show Mr. Bush being present on September 23 when the Second Channel discussions were briefed to President Reagan (see ALU0128259; ALU0128240; ALU028642), and on October 3 when the President inscribed the Bible that North presented to the Iranians in Frankfurt (see ALU0128260; ALU028661; January 11, 1988 Bush Dep. 98-99; [redacted]. The Vice President does not, however, recall learning of Secord's and Hakim's enhanced prominence in the Second Channel discussions (see January 11, 1988 Bush Dep. 97).

To sum up, the investigative record contains no indication that Vice President Bush was possessed of any

criminally-material information concerning the Iran arms sales that went beyond the facts that were known to President Reagan, under whose authority the Iran Initiative took place. In light of the determinations reached in Part I of the Reagan Memorandum, there is, accordingly, no basis on which to conclude that Mr. Bush has any criminal liability arising out of those sales.

## II. Military and Paramilitary Assistance to the Contras, 1984-October 1986

In considering the Vice President's activities with respect to the Contras, it is useful to divide his role into two parts: first, his "official" activities as a member of the Reagan Administration and a statutory member of the National Security Council; second, his "unofficial" contacts with figures involved in the Contra resupply effort, notably Felix Rodriguez and Col. North.

### A. Official Activities of the Vice President

#### 1. Contra-Related Meetings Through October 1984

Given the level of attention that the Reagan Administration devoted to the Contras, it is not surprising that the record reveals a substantial number of Contra-related meetings and diplomatic activities in which the Vice President participated. For example, in mid-1983, during the most active phase of CIA involvement in covert operations against the Sandinistas, Mr. Bush chaired a Special Situation Group which recommended specific covert activities -- the mining of Nicaraguan rivers and harbors and attacks on Nicaraguan shipping -- aimed at "arms interdiction". (See AKW043733-35.) Consistent with his membership on the NSC, the Vice President was a regular attendee at NSC and NSPG meetings that discussed Central American matters during the period that led up to the passage of the "full prohibition" Boland Amendment in October 1984. (See ALU007710-16 (NSPG

minutes for May 31, 1983); ALU0027858 (attendance list for NSPG meeting on October 23, 1983); ALU011829 (Gregg memo briefing Bush for January 6, 1984 NSPG meeting); ALU027983 (attendance list for NSPG meeting of June 29, 1984); AKW043519-29 (minutes of NSC meeting of July 27, 1984.)[9/] In September 1983, as Congressional opposition to the Nicaraguan covert program was beginning to gather strength, the Vice President received a copy of the Presidential NSPG talking point "What plans do we have if Congress cuts off our support to the resistance forces?" (see GJX 1271; AKW43323).

According to McFarlane, the Vice President was present at the morning briefings in which President Reagan expressed his desire that the Contras be supported "body and soul" (see March 14, 1989 McFarlane North Trial Tr. 4351-52). McFarlane also included Mr. Bush in the very small group of officials with whom he shared his first success in obtaining Contra funding from the Saudis (see May 11, 1987 McFarlane Cong. Tr. 38; see also January 11, 1988 Bush Dep. 30-31), as well as the later doubling of the Saudi contribution in February 1985 [redacted] (b)(3) GJ The Vice President not only attended, but briefly spoke up at, the June 25, 1984 NSPG meeting at which the solicitation

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[9/] During 1983-1984 Mr. Bush also had some responsibility for U.S. policy toward the civil war in El Salvador, and particularly the problem of "death squads". In December 1983, Col. North accompanied the Vice President on a visit to El Salvador (see April 6, 1989 North North Trial Tr. 6768; see also January 11, 1988 Bush Dep. 25, 36-39).

of third countries for Contra support was inconclusively debated; toward the end of the minutes of that meeting, Mr. Bush is quoted as saying:

> "How can anyone object to the US encouraging third parties to provide help to the anti-Sandinistas under the finding? The only problem that might come up is if the United States were to promise to give these third parties something in return so that some people could interpret this as some kind of an exchange." (DX Reagan 2 in U.S. v. Poindexter at ALU0096995.)

On at least one occasion following the June 25, 1984 meeting, the Vice President requested information about Contra funding; in September, Mr. Bush asked Dewey Clarridge how the Contras were being supported, and received the answer that since U.S. funding had run out on June 1, the Contras had received about $1.5 million "from other sources, probably private, not governmental" (see ALU011847-48). On November 15, 1984, CIA sent the Vice President, along with McFarlane and North, a copy of an analysis that reported on the successes and failures of Contra groups in obtaining funds from various foreign countries, as well as material assistance from Honduras and El Salvador (see AKW015392-405). Although far more specific, the information that the Vice President received on these occasions was not substantively different from what CIA was telling the NSC as a whole during late 1984. (See AKW043522 (minutes of July 27, 1984 NSPG meeting at which Casey says "Despite lack of funds from us,

the resistance carries on surprisingly well . . . . They are getting the funds from somewhere"); AKW043816 (minutes of October 30, 1984 NSPG meeting at which Casey states that since May, the Contras had "made substantial purchases of ammunition and have been able to sustain themselves with food . . . . If the private funding they are getting continues they should be able to maintain pressure on the Sandinista Government for an indefinite period").) Apart from North's testimony that an October 1985 briefing paper on soliciting communications equipment from an Asian country was prepared "for use by the President or the Vice President, I can't remember which" (see April 7, 1989 North North Trial Tr. 6937), there is no indication that Mr. Bush played any active

role in the process of lining up third-country funding for the Contras.[10/]

2. Contra-Related Meetings Between October 1984 and October 1986

Following the passage of the "full prohibition" Boland Amendment in October 1984, the Vice President of course continued to attend the President's daily National Security Briefings[11/], as well as the three Contra-related NSC and NSPG meetings that took place in 1986. Because these briefings and meetings were, by definition, conducted in the

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[10/] Notwithstanding his intermittent role in attempting to persuade Congress to resume support for the Contras (see AKW038060-61; DX 57 in U.S. v. North; ALU012391, ALU012378-79; ALU025549-62), by the time of his January 1988 deposition Mr. Bush claimed to have little or no recollection of what the Boland Amendment did or did not prohibit (see, e.g., January 11, 1988 Bush Dep. 47-52, 107, 133-134). Mr. Bush is of the opinion that Congress was without power to "suggest that no nation could support some other nation" (id. at 49); instead, he has expressed the view that the thrust of the Boland Amendment was "Just don't send any arms" (id. at 50). Mr. Bush has stated that he received advice from his Counsel, Mr. Gray that the Administration did not violate Boland (January 11, 1988 Bush Dep. 48, 144-147), but cannot recall whether that advice preceded or followed the revelations of November 25, 1986 (id. at 146). He also states that he may have consulted White House Counsel on the issue (id. at 147). Mr. Bush does not recall having seen the September 1985 PIOB Opinion which concluded that the NSC staff was not covered by Boland, but does remember some "vague discussion" of that distinction (see January 11, 1988 Bush Dep. 147-149).

[11/] [redacted] (b)(3) GJ

presence of President Reagan -- who, as discussed in Section II of the Reagan Memorandum, has no criminal liability for Contra-support activities in October 1984-October 1986 -- I will not discuss them at length, but will list the more important of them, with citations to the fuller treatment and the broader context that they receive in the Reagan Memorandum:

- According to Presidential meeting records (ALU028088), the Vice President attended the March 25, 1985 National Security Briefing at which, according to Poindexter's notes, "private aid to contras" was discussed and "Bud covered our plan: 3rd country assistance; non-lethal aid; intelligence restrictions; private humanitarian aid" ([redacted]; see Reagan Mem. 64-65). (b)(3) GJ

- A National Security Briefing note for April 30, 1985 states that "Bud briefed on proposed economic action against Nicaragua." "JP gave President, Don Regan and VP an update on Clair George's contact . . . and DEA activity with . . . and 200K."[12/]

- McFarlane has testified that following the receipt of the August 1985 Congressional inquiries into the NSC staff's Contra-support activities, he discussed the letters with President Reagan, described what he was doing in response, and told the President that a search of the files had produced evidence of occasional advice and assistance to the Contras -- which McFarlane did not think was illegal under Boland (see Reagan Mem. 91). McFarlane states that Vice President Bush was present for this

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[12/] As is the case with President Reagan (see Reagan Mem. 22 n.12), there is no indication that Vice President Bush was aware that some of the funds for the DEA operation originated with the Contras.

discussion, but that he had no separate conversation with the Vice President concerning the inquiries (see March 13, 1989 McFarlane North Trial Tr. 4133). This tallies with the Vice President's testimony at his deposition that he has a general recollection of the 1985 letters, but was never asked to comment on either the inquiries or the answers (see January 11, 1988 Bush Dep. 57-62, 149-154).[13/]

- According to Presidential meeting records (see ALU028249), the Vice President was present for the December 13, 1985 National Security Briefing, which Poindexter's notes [redacted] described as covering:

> Meeting with President: Panama, Costa Rica, El Salvador, Honduras & Guatemala; met with Jack Galvin; Noreiga-warning; Piza in San Jose - real estate; El Salvador - military leaders - insurgents 13,000 [arrow] 6000 - good control in countryside - concerning about urban areas - beef up police forces, Duarte scare [?] - must keep up momentum - economy; Honduras - contra supplies [arrow] out of country; Guatemala [arrow] congrat Mejia will need help; contras - need supplies - 7000-8000 in country - 170 incidents a month - plan for lethal aid."

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(See Reagan Mem. 68-69.)

- Mr. Bush received briefing materials [redacted] for, and attended [redacted] the January 10, 1986 NSC meeting concerning the Contras. (See Reagan Mem. 70.)

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[13/] Mr. Bush also has a general recollection of the appearance of press reports in the summer of 1985 concerning alleged Boland violations by the NSC and North in particular (see January 11, 1988 Bush Dep. 55-57, 151-154).

- Vice President Bush attended a March 20, 1986 NSC meeting that was called to discuss what to do in light of an unfavorable House vote that same day on renewing military and to the Contras [redacted]. (See Reagan Mem. 70.) In the wake of the March 20 NSC meeting, the Vice President, along with President Reagan, was apprised of Abrams' success in obtaining commitments to Contra support from various Central American leaders (see DX 85.6 in U.S. v. North; ALU028364).

(b)(3) GJ

- Mr. Bush received a copy of the briefing memorandum [redacted] and attended the May 16, 1986 NSPG meeting [redacted] at which both third-country solicitation and domestic Presidential fundraising for the Contras were discussed. (See Reagan Mem. 72-75.)
- According to Presidential meeting records (see ALU028449-50), the Vice President attended the May 19, 1986 National Security Briefing at which Poindexter discussed candidate countries for Contra support (see ALU0128245, ALU0128238). (See Reagan Mem. 75.)

- According to Presidential meeting records (ALU028488), Mr. Bush attended the June 9, 1986 National Security Briefing at which McDaniel records a discussion of the status of contra aid legislation and the possibility of a private aid campaign if the legislative effort failed (see ALU0128250, ALU0128239). (See Reagan Mem. 75.)

- Presidential meeting records (ALU028502) also show Mr. Bush present at a June 20, 1986 National Security Briefing at which the President was told "contras 30 days ammo left" (see Cong. Ex. DTR 58).

- On August 14, 1986, Presidential meeting records (ALU028587) show the Vice President as being present when there was another discussion of the status of Contra legislation and the possibility of private and/or Honduran aid for the

Contras (see ALU0128256, ALU0128239). (See Reagan Mem. 75-76.)

- Following the crash of the Hasenfus aircraft, McDaniel's notes show an October 7, 1986 briefing of the President concerning the subject (see ALU0128262), but record no such discussion on October 8. [redacted] (b)(3) GJ Presidential meeting records show that Vice President Bush was absent from the October 7 National Security Briefing (see ALU0135170), but present on October 8 (see ALU0135171). (See Reagan Mem. 87-89.)

* * *

The picture of Vice Presidential knowledge of Contra support efforts during the "full prohibition" Boland period that emerges from these meetings naturally resembles the very sketchy involvement in the "secret war" by President Reagan. Indeed, in one fairly significant respect -- knowledge of Secord's role in Contra resupply -- Mr. Bush seems to have known somewhat less than the President (compare January 11, 1988 Bush Dep. 87 with Reagan Mem. 82-83). In any event, given the negative conclusion on criminal liability reached in Section II of the Reagan Memorandum, there is no basis for reaching a different result as to the Vice President.

### 3. Contra-Related Diplomatic Activities

Early 1985 saw the Vice President involved in the first (and the most famous) of a series of Central American diplomatic encounters that continued throughout the "full prohibition" Boland period. As early as January 23, 1985, Mr. Bush was apparently scheduled to make a mid-March stop in Honduras as an adjunct to a trip to Brazil (see, e.g., AMX000383). In late-January discussions involving North and U.S. Ambassador to Honduras John Negroponte, and then in a group of February memos authored by North and Ray Burghardt, the chief of the NSC's Latin American Directorate, the forthcoming Vice Presidential visit is discussed in the context of NSC staff concern over flagging support for the Contras by the government of Honduras, and Honduran President Suazo in particular. This concern spilled over to the State Department as the Administration debated how best to communicate with Honduras, what incentives to use, and how clearly the incentives should be linked to the desired behavior by the Hondurans -- in other words, whether to be explicit about what everyone recognized as an implicit quid-pro-quo relationship. North and Burghardt advocated having any "linkage" between U.S. aid to Honduras and Honduran assistance to the Contras communicated by a "special emissary" who would not be subject to questioning by Congress; the State Department preferred to have any and all

messages delivered by Ambassador Negroponte. (See DX 54.3 in United States v. North; AMX000459 (North notebook entry for February 15, 1985).) The hoped-for "special emissary" -- who the documents identify as either North (see ALW030321-26) or Burghardt (see DX 54.3 in United States v. North) -- evidently was never dispatched.

Although the documents suggest that at least some of the "special emissary's" work was to be done by Vice President Bush during his March visit (see id.), the information that we have about Mr. Bush's March 16, 1985 meeting with President Suazo does not show that Mr. Bush conveyed an explicit quid pro quo to the Hondurans. The State Department's recommended "Talking Points" for the meeting (ALW030827-30) plainly discuss the United States' appreciation for Honduran support of the Contras in virtually the same breath as U.S. security commitments and economic assistance to Honduras; a letter from President Reagan that the Vice President was to deliver on his visit does the same in more muted tones (see ALW030850). The Burghardt/Negroponte cable that summarizes the Bush-Suazo meeting likewise reports discussions of both Honduran support for the Contras and U.S. aid to Honduras, but does not reflect any explicit linkage between the two (see ALW0029909-15). Moving beyond the paper record, the two participants in the March 16, 1985 Bush-Suazo meeting who have provided unsworn accounts of the session -- Mr. Bush and former

Assistant Secretary of State Langhorne Motley -- have stated that no quid pro quo was discussed. (See "President's Answer to Honduras Query", USA Today, May 5, 1989, at 4A; "I Was With George Bush in Honduras", Washington Post, May 5, 1989, at A26.)

In connection with a May 1985 visit to Washington by President Suazo, Mr. Bush was scheduled to attend a "Pre-Brief"; the background paper describes the agenda as being "to confirm our support for the resistance and the importance we attach to Honduran cooperation" (see DX 54.11 in U.S. v. North). The sort of "loose" linkage that is shown by these documents, which would have been obvious to the most casual observer of Central American affairs, was hardly a secret; indeed, the Administration was willing to conduct virtually the same type of discussion in the presence of leading Congressmen who were invited to a May 22, 1985 breakfast meeting between Suazo and the Vice President (see ALU030993-402).

Vice President Bush returned to the Honduran diplomatic scene in mid-January 1986 for a pre-inaugural trip to Washington by Jose Azcona Hoyo, the newly-elected President of Honduras. In connection with that visit, the State Department enlisted the Vice President to, among other things, "pursue a commitment by the President-elect to renewed Honduran logistical support for U.S. assistance to the Nicaraguan resistance" (see ALW0030112). The background

papers and talking points that were prepared for the Vice President in connection with the Azcona visit advised that Mr. Azcona "will continue Honduran insistence that it receive clear economic and social benefits from its close cooperation with the U.S.", suggest that Mr. Bush inform Mr. Azcona of the strength of U.S. commitment to the Contras, and urge the Vice President to refer to a separate session in which "Admiral Poindexter will meet privately with Azcona to seek a commitment to continued logistical support for the resistance" (ALU0030118, ALU0030121).

On January 26-27, Mr. Bush served as the Administration's representative to President Azcona's inauguration. In consultation with others in the U.S. government [redacted] Col. Samual Watson of the Vice President's staff prepared a series of talking points on index cards [redacted] The last of these is labelled "Special Talking Point", and recommends that the Vice President discuss privately with Azcona the supply of the armed Nicaraguan resistance, express the President's and the Vice President's hope that they could work quietly, "discretely" [sic], and deniably with Azcona on the issue, and ask Azcona to tell his military to work out ways to assure a supply effort. [redacted]

(b)(3) GJ

[redacted]

[redacted] consistent with the fact that there was, indeed, substantial friction between the U.S. and Honduras during 1985 concerning NHAO flights into the country see generally Iran/Contra Select Comm. Rpt. 61). It is also somewhat corroborated by a February 4, 1986 memo from Watson, through Donald Gregg, to the Vice President in which Watson states that "what is lacking is our ability to provide outright logistical support, advice, planning or even direction for cross-border operations (emphasis by Gregg), and that "only lethal aid would send a clear message" (emphasis by Gregg) (see ALU012380). [redacted] (b)(3) GJ Neither Gregg [redacted] nor the Vice President himself (see January 11, 1988 Bush Dep. 106-114) recalls whether the "Special Talking Point" was used.

Two subsequent Vice Presidential trips -- to Guatemala and to Costa Rica, again for the inauguration of those countries' respective new Presidents -- appear to have been uneventful [redacted] Mr. Bush did have an indirect contact concerning Guatemalan President Cerezo's willingness to support and train the Contras, which the Vice

President described in a May 21, 1986 memorandum to Poindexter (ALU025608).[14/]

Later in the spring of 1986, the Vice President met again with President Azcona of Honduras on the occasion of Azcona's May 27 visit to Washington; the briefing materials for this meeting once more stress the importance of communicating that "Our support, my support is strong for the Contras" (see [redacted] (b)(3) GJ [redacted] 11, 1988 Bush Dep. 114-116).

* * *

Readers of the Reagan Memorandum will recall that at his deposition in United States v. Poindexter, Mr. Reagan articulated his Administration's policy toward Central American countries and the Contras as follows:

> A. Well, again I think it is the same tone. That we don't want to press them to go so far that they challenge the Sandinista government and wind up in open hostilities with them. And the -- it would be useful however to remind them that in return for our help in the form of security assurances as well as aid that we do expect cooperation. That we feel that there is an obligation on their part, too.
>
> Q. Right. So, in other words, if some aid and assistance is given to them, you would expect some aid and assistance back from them --

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[14/] The Vice President also received a copy of an October 1986 memorandum (ALU08597-8601) that reflects a quite explicit quid pro quo proposal from President Cerezo, but which relates prospectively to the period after Congress resumed Contra aid. See United States v. Poindexter, Cr. No. 88-0080-01, slip op. (D.D.C. February 16, 1990).

A. Yes.

Q. -- in combating the spread of the Sandinistas?

A. Yeah.

[Discussion of objection by President's counsel]

THE WITNESS: Well, I answered in this case because I have already indicated on other questions that this was a problem in our relationship, about the threat to them as per our ability to lessen the threat in their minds in return for joining with us on this particular subject. So, that is why I answered here on that. It is in keeping with what our whole attitude was. (February 16, 1990 Reagan Dep. 109-110.)

In my judgment, Vice President Bush's contacts with Central American leaders represent, at most, the implementation of this policy of President Reagan -- who, as noted in the Reagan Memorandum, has no criminal liability arising out of Contra-support activities in 1984-86.

4. The Vice President and Contra Fundraising

As we know, an aspect of the NSC staff's Contra support activities was the raising of funds through the National Endowment for Liberty ("NEPL"), which funds were routed by North to purchase military supplies for the Contras. Like President Reagan, Vice President Bush had a number of contacts with NEPL, intermingled with photo sessions with Contra leaders under the rubric of White House "public liaison" activities (see, e.g., GX 221 and DXs 21 and

29 in U.S. v. North; February 23, 1989 Calero North Trial Tr. 2065-73, 2096; [redacted] (b)(3) GJ ALU019045-47). As with President Reagan, however, there is no indication that Mr. Bush was aware of NEPL's role in funding lethal aid for the Contras; in particular, the now-deceased President of NEPL, Carl Channell, has testified that his solicitation of money for weapons did not come up at any of his meetings with the Vice President (see March 8, 1989 Channell North Trial Tr. 3553; March 9, 1989 Channell North Trial Tr. 3633). At his deposition, Mr. Bush acknowledged having made speeches to Contra support groups, but denied having solicited contributions for anything other than medical supplies (see January 11, 1988 Bush Dep. 31-37), denied seeing or hearing anything, before November 25, 1986, that would have led him to believe that North or Poindexter had access to Swiss bank accounts or to cash (see id. at 100-101), and stated that he did not know where Channell's organization fit into the scheme of things (see id. at 158). I am not aware of any evidence that impeaches these statements.

B. "Unofficial" Vice Presidential Contacts with Contra-Support Figures

In addition to his Vice Presidential duties as a member of the NSC and as a member and emissary of the Reagan Administration, Mr. Bush had a number of less official

contacts with Felix Rodriguez (a/k/a "Max Gomez") and Col. North, both of whom were active in the Contra resupply effort. The existing record on those contacts is described below.

1. Felix Rodriguez

The story of Felix Rodriguez and the Office of the Vice President begins not with Mr. Bush, but with Donald Gregg, who in August 1982 left his position as chief of the NSC's Intelligence Directorate to become the National Security Advisor to the Vice President. In March 1983, Gregg received a visit in Washington from Mr. Rodriguez, whom Gregg had met in Vietnam. Rodriguez suggested a plan for helicopter operations against the anti-government guerrillas in El Salvador. Rodriguez left behind a written proposal for such operations, which Gregg forwarded with a favorable recommendation to then-Deputy National Security Advisor McFarlane (see ALU011806-13; AKW028060; AKW027859-66). McFarlane, in turn, sent the plan to Col. North for his comments (see AKW028060; AKW027859-66). I am not aware of any indication that North did anything with Rodriguez' proposal. Rodriguez and Gregg met again to discuss Central America in November 1983 [redacted] and December 1984 [redacted] (b)(3) GJ [redacted] During the December 1984 visit to Washington, Rodriguez was taken by his friend William Bode to meet Col. North; Rodriguez also met in the United States with Juan Bustillo, the Chief of the Salvadoran

Air Force, and with Salvadoran General Blandon, who urged Rodriguez to come to El Salvador to try out his helicopter concept.

On January 22, 1985, Rodriguez first met Vice President Bush himself and discussed his counterinsurgency experience in Bolivia, Vietnam, and Peru, as well as his wish to become involved in assisting the Salvadoran government (see, e.g., [redacted] January 11, 1988 Bush Dep. 124-126; May 27, 1987 Rodriguez Cong. Tr. 225-226; [redacted] Rodriguez becomes a fairly regular subject of Col. North's notebooks after January 28, 1985 (see AMX000393, AMX000396); as early as January 30, the notebooks reflect a discussion between North and Ambassador Negroponte of the possibility of using Rodriguez in Honduras in connection with the Contras -- specifically, an "FDN Air Arm" (see AMX000409). Rodriguez has advised this Office that in February 1985 he told General Gorman of the U.S. Southern Command of his intention to assist the Contras in delivering equipment (see December 3, 1987 Rodriguez 302; see also F. Rodriguez, Shadow Warrior, at 227); it is not clear whether, at this very early stage, anyone on the Vice President's staff was aware of any activity by Rodriguez in support of the Contras, although Philip Hughes, Mr. Gregg's assistant, gained that knowledge at some point between January and September, 1985 (compare October 15, 1987 Hughes 302 with July 16, 1990 Hughes 302 and [redacted]

(b)(3) GJ

[redacted] Hughes claims that he did not pass this information to Gregg (id.).

Following one more meeting with Mr. Gregg to thank him for his support [redacted] in March 1985 Rodriguez moved to El Salvador (see May 27, 1987 Rodriguez Cong. Tr. 226). Rodriguez wrote his thanks to Gregg on April 20, 1985 (see ALU012402-05) and again on May 31 (see ALU011618), and Mr. Gregg saw to it that the Vice President was informed of the early success of Rodriguez' helicopter concept (see ALU012410-11). On June 5, 1985, Gregg and Col. Steele, the chief of the U.S. military assistance group in El Salvador, met with Rodriguez in Washington (see [redacted]; there is no evidence that this conversation ranged afield of the Salvadoran civil war.

(b)(3) GJ

On September 20, 1985, North wrote Rodriguez a letter [redacted] that requested Rodriguez to use his influence with Salvadoran officials to facilitate the creation of a Contra resupply operation at Ilopango Air Base in El Salvador. Col. North has testified that he discussed this new assignment for Rodriguez with Mr. Gregg (see April 11, 1989 North Trial Tr. 7434-35); [redacted]

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15/ Col. North's notebook for September 10, 1985 contains a reference to what appears to be a conversation among North, Gregg, and Col. Steele concerning Contra-support activities by Rodriguez (see AMX001726). [redacted]

(continued...)

Rodriguez was back in Washington on December 20, 1985, for a visit that included attendance at the Vice Presidential staff Christmas party, where he saw Gregg and was also introduced to Col. Watson, Gregg's assistant [redacted] Apparently on this same trip Rodriguez also met with Gregg at a restaurant near the Old Executive Office Building (see December 3, 1987 Rodriguez 302). On a copy of a December 21 State Department cable, which was routed to Mr. Bush either at the time or in early March, 1986 (see page 40 below), Gregg noted ". . . Felix says we are doing nothing to direct the Contra planning. . ." (ALU025422).

(b)(3) GJ

[redacted] Rodriguez hosted Watson on a January 1986 "familiarization trip" to Central America that preceded a Vice Presidential visit to the region.[16/] Although

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15/ (...continued)

[redacted]

16/ [redacted]

an October 16, 1986 statement in the Hill notebooks that "A

(continued...)

the first planeload of Enterprise lethal aid for the Contras had arrived at Ilopango in December 1985 (followed in February 1986 by the arrival of the first Enterprise C-7) (see May 27, 1987 Rodriguez Cong. Tr. 231-236), [redacted] (b)(3) GJ

[redacted]

Interestingly, however, Watson's February 4, 1986 memorandum, passed through Gregg to Vice President Bush, contains a description of the Contras' training and supply situation (see ALU012381); in the margin next to Watson's statement that

> What is lacking is our ability to provide outright logistical support, advice, planning, or even direction of cross-border operations. As you know, we are proscribed by Congress from any of these more active measures . . . .

Gregg wrote "Felix agrees with this - it is a major shortcoming" (see ALU012380), which suggests that either Rodriguez and Gregg, or Rodriguez and Watson, must have had at least a general discussion of Contra resupply. The same thought reappears in a March 6, 1986 briefing memorandum from Gregg, Watson and Phil Brady to Mr. Bush (ALU025418-22), which attaches a copy of the December 21, 1985 State

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16/ (...continued)
yr ago Pdx & Ollie told VP staff stop protecting FR as a friend -- we want to get rid of him from his involvement w/private ops." (see ANS0001661). (See also AMX000876 (January 9, 1986 North notebook entry stating "Felix talking too much about VP connection").)

Department cable on which Gregg wrote ". . .Felix says we are doing nothing to direct the Contra planning . . ." (see pages 36-37 above).

In mid-April 1986, Felix Rodriguez requested a meeting with Vice President Bush [redacted] Gregg approved the request (id.) and the meeting was ultimately scheduled for May 1 in the West Wing of the White House.[17/] Mr. Rodriguez did not tell the secretary with whom he spoke what the purpose of the meeting might be (see id.). The scheduling proposal and the later briefing memorandum for the Vice President [redacted] describe the purpose as follows:

(b)(3)
GJ

> Felix Rodriguez, a counterinsurgency expert who is visiting from El Salvador, will provide a briefing on the status of the war in El Salvador and resupply of the Contras.

The secretary who prepared the briefing memorandum is certain that she received the information regarding "Purpose" from Col. Watson; [redacted]

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[17/] Between the date of the request and the date of the actual session, Rodriguez participated in a meeting in El Salvador among Rodriguez, North, Secord, and Enrique Bermudez, the FDN military commander, concerning Contra resupply, at the conclusion of which Rodriguez claims to have decided to withdraw from his involvement with the resupply operation because of his concerns over Secord, Clines and Quintero (see [redacted] May 27, 1987 Rodriguez Cong. Tr. 252-255).

[redacted] Mr. Bush has testified that he probably did not see the scheduling memorandum, but that if he did he glanced at it and paid no attention to it (see January 11, 1988 Bush Dep. 120).

The actual meeting on May 1 -- [redacted] was attended by the Vice President, Gregg, Watson, Rodriguez, former Senator from New Jersey Nicholas Brady, and, for the latter part, Col. North and U.S. Ambassador to El Salvador Edwin Corr [redacted] All of the participants who have testified on the subject recall Rodriguez showing a photo album about his activities in the Salvadoran civil war (see, [redacted] January 11, 1988 Bush Dep. 117-124, 126-129; October 1, 1987 Brady Cong. Dep. 8-11); none has testified to any discussion of the Contras (id.) According to the participants, this was also true of the informal discussions between Rodriguez and the Vice President's staff that surrounded the May 1 visit (see [redacted] [18/]

(b)(3) GJ

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[18/] [redacted] The upper left corner of a June 3, 1986 memorandum from Gregg and Watson reporting on their compliance with this request [redacted] bears the notation "SW, Good! GB."

The Vice President's third and final meeting with Rodriguez during the time before December 1986 took place at a May 20, 1986 reception in honor of Cuban Independence Day in Miami, Florida, where Rodriguez turned up in the company of General Bustillo. According to all accounts of this event, Mr. Bush, Rodriguez, and Bustillo spoke briefly and were photographed together, but had no discussion of Contra resupply (see, e.g., January 11, 1988 Bush Dep. 124-126; [redacted]

The summer of 1986 saw growing friction between Rodriguez and the Enterprise managers of the Contra resupply operation. [redacted] (b)(3) GJ [redacted] Robert Dutton accompanied Rodriguez for at least part of the meeting with North and waited outside during Rodriguez' meeting with Watson (see March 26, 1989 Dutton North Trial Tr. 3285-87, 3332). [redacted]

[redacted] (b)(3) GJ

[redacted] On July 30, Earl wrote a PROF note to North (AKW022053), which states, in relevant part,

> Max will be in town next week. Sam is puzzled by your comments to him about Max and seeks further info, if appropriate, before Max meets w/him and the VP. (Sam

apparently sees no problem w/[the chief of the CIA Latin American Division] hiring his own airlifters rather than Max's . . . .)"

[redacted]

(b)(3) GJ

[redacted] Earl's notes for August 6 (see ALV053308) suggest NSC staff concern about press interest in Rodriguez and his ties to the Vice President; it is also on August 6 that North and Mr. Bush meet in Mr. Bush's office following North's briefing of HPSCI on H. Res. 485, as well as a 10:30 a.m. meeting between North and Don Gregg (see AMX001395). As noted at page 16 above, North has suggested that his meeting with the Vice President concerned the hostages.

[redacted]

[redacted]

On August 8, Rodriguez appeared in Gregg's office. [redacted] it appears that at some point Robert Earl was summoned to join Gregg, Watson, and Rodriguez, and the four men discussed Rodriguez' concern that the resupply operation was so poorly run that it might not last until CIA assistance again became available, as well as Rodriguez' opinion that the assets of the resupply operation belonged to the Contras and not to Secord (see December 29, 1986 Rodriguez 302; December 3, 1987 Rodriguez 302 at 5; April 22, 1987 Earl 302 at 4; September 21, 1987 Earl 302 at 6-7; ALU012419; ALV053311-12; [redacted] May 27, 1987 Rodriguez Cong. Tr. 280-82, 292-94; May 28, 1987 Rodriguez Cong. Tr. 2-6, [redacted].[19/] After this meeting, Earl spoke with Gregg and

(b)(3) GJ

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[19/] In an August 13, 1986 KL-43 message, Secord wrote "Threat of air piracy lawsuit has nothing to do with Bustillo. This comment made to V.P. by Ollie ref Max vice Bustillo" [redacted]

(continued...)

tried to convey North's view of the resupply operation and North's low opinion of Rodriguez (September 21, 1987 Earl 302 at 7; [redacted] (b)(3) GJ

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19/ (...continued)

[redacted] The Vice President has testified only that he has a vague recollection of Gregg telling him that Rodriguez was concerned about Secord and Clines "ripping off" the Contras, but Mr. Bush believes that he heard this in or after November, 1986 (see January 11, 1988 Bush Dep. 134-139).

[redacted]

In any event, during September the only recorded contact between Rodriguez and Mr. Bush's staff was a single telephone call concerning the Salvadoran helicopter operation (see ALU025843). (b)(3) 6 J

The Rodriguez connection reemerged with a vengeance in early October 1986 following the Hasenfus shootdown. On the evening of October 5, Rodriguez called Col. Watson at his home and advised him that a C-123 resupply plane with three Americans on board was missing; at 11:50 p.m., Watson relayed this information to the White House Situation Room (see AKW042275), [redacted] The next day, Watson called North's office on the subject. Rodriguez also called Watson again with further information on the missing aircraft and crew; Watson's notes of this conversation contain the line "C-123 = Ollie's" [redacted] Watson was later warned by

Coy to "get out of this business" (see ALU025490), and at some point was told by Earl that the crash was "Felix's fault" because Rodriguez would not permit two resupply aircraft to sortie at one time (see September 21, 1987 Earl 302 at 7; see also [redacted] (Dutton KL-43 message to North's office stating in part "V.P.'s office should know our friend Max is prime reason we have had to send a/c in single. He should be taken out of this net.")).

Apart from North's office and the Situation Room, the only other officials to whom Watson passed the information about the missing aircraft were Col. Menarchik (see October 8, 1987 Manarchik [sic] 302) and Gregg. [redacted] (b)(3) GJ Evidently the Vice President learned of the Hasenfus crash through his Chief of Staff, Mr. Fuller, and his Press Secretary, Marlin Fitzwater, who had spoken with Gregg or Watson (see June 30, 1987 Fuller 302); Fuller claims that Watson and Gregg did not tell him, and he did not tell the Vice President, about the North and Rodriguez connections with the missing C-123 (id.) Watson likewise did not include this information in an October 7, 1986 Gregg/Watson memorandum which responded to

Mr. Bush's request for proposed press guidance concerning the Hasenfus matter (see [redacted]. That guidance, which Watson prepared after consulting the White House Press Office and the State Department, instead picked up the emerging Administration line on the C-123's mission -- "Don't know if General Singlaub's organization was involved and they certainly were not on a mission for the U.S. government" (see id.; [redacted] (b)(3) GJ

On October 8, President Reagan told the press that there was no U.S. involvement in the Hasenfus flight (see [redacted]. The next day, Eugene Hasenfus surfaced in Sandinista custody in Managua for a press conference at which he claimed to have been working for CIA under the supervision of Max Gomez and Ramon Medina (see AKW015137-45). By October 10, the San Francisco Examiner was quoting intelligence sources as denying CIA involvement, but linking Hasenfus, through Gomez/Rodriguez, to the Office of the Vice President in the person of Mr. Gregg. The Examiner quoted Gayle Fisher, an OVP spokeswoman, as stating that Gregg "'is not involved in any type of situation like that, like weapons to the Contras from El Salvador.'" Also on October 10, Watson authored a one-page paper captioned "Nicaragua," apparently for use by Gregg, which describes Rodriguez as a "hero" and goes on to say

- Don't know Max Gomez
- We (VP, OVP, I) have not, did not, organize, coordinate, order, direct, or any other way to

describe it, any operations, supply, whatever in El Salvador, Nicaragua, or Central America.

- We are aware of UNO/FDN efforts by intelligence reporting.

[redacted]

In any event, on October 11 Vice President Bush, responding to press questions in Charleston, South Carolina, admitted having met with "Felix Gomez" on three occasions and having discussed El Salvador with him, but denied any connection with the Hasenfus crash or any discussion with Gomez about Nicaragua, and "unequivocally" denied that anyone in the Vice President's Office was "running" the Hasenfus operation. [redacted] Several days later, Mr. Bush transmitted both a description of his position on Rodriguez, and the text of his statement to the press, to Secretary Shultz and requested that Shultz pass the information to President Duarte of El Salvador (see ALW0030248-52). Gregg sent the same information to Ambassador Corr and Elliott Abrams (see ALW030376-83; ALU012377). By October 17, 1986, several members of Congress had requested Attorney General Meese to appoint an independent counsel to look into allegations that the Vice President, Casey, Weinberger, Gregg, North, Poindexter, and others had been involved in

(b)(3) GJ

unlawful Contra-support activities [redacted][20] The subsequent evolution of the Rodriguez-OVP matter is discussed in Part III below, under "November-December 1986 Activities."

2. Oliver North

As we have seen, Col. North was a figure who plainly was known to Vice President Bush as being very active in hostage matters and in the Central American arena (see January 11, 1988 Bush Dep. 24). The two men became acquainted at least as early as the Vice President's December 1983 trip to El Salvador to deal with the "death squad" problem, and the Vice President came to perceive North as an energetic officer and one who was more visible than other NSC staffers at his level (see id. at 25). Mr. Bush appears to have met alone with North on two occasions during the relevant period; apart from Secord's hearsay evidence, described in footnote 18 above, all appearances are that those meetings related to the hostages if they had any bearing on Iran/Contra at all (see id. at 25-26; [redacted]

(b)(3)
GJ

[redacted]

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20/ [redacted] As noted at page 39 n.16 above, the echo of a similar North-Gregg conversation appears in the Hill notebooks for October 16, 1986.

[redacted] Other contacts between the Vice President and Col. North appear to have taken place in the presence of others, usually members of the Vice President's staff. By November 27, 1985, Mr. Bush thought well enough of Col. North to have written him a "thank-you" note (one of five hundred to a thousand that Mr. Bush wrote during 1985) expressing appreciation for North's "dedicated and tireless work with the hostage thing and with Central America" ([redacted] see January 11, 1988 Bush Dep. 39, 44-47, 172-173); even after the Iran/Contra affair broke in November 1986, the Vice President invited North, as well as Poindexter, to his Christmas party (see January 11, 1988 Bush Dep. 22-24).

It is quite evident that the Vice President and his staff, like many in the Reagan Administration, shared a general awareness of North's status as the NSC's "action officer" with respect to the Contras [redacted] (b)(3) GJ

In early March 1985, at the recommendation of OVP staffer Philip Hughes, the Vice President advised a Guatemalan doctor who was interested in providing medical aid to the Contras to get in touch with North (see ALU012354-75). On April 22, 1985, Gregg wrote the Vice President a memorandum about the legislative situation on Contra aid which credits "Ollie North [as] my major source, along with my own following of the issue" (see ALU012378-79). North was also consulted by

Mr. Hughes in June to answer a Vice Presidential question about the sympathies of Edgar Chamorro, a disaffected former Contra leader (see ALU011855-59). In late January, 1986, Col. North asked Vice President Bush to meet with three Contra leaders who were to visit the White House (see AKW035263; [redacted] (b)(3) GJ although Mr. Bush's appearance on this occasion was cancelled due to the Challenger explosion (see id.), a similar meeting apparently went forward on March 6, 1986 (see ALU012323, ALU025451-64). Finally, as discussed in the preceding subsection, the Vice President's staff had a substantial "window" into North's resupply operation by virtue of their dealings with Felix Rodriguez.

* * *

The ultimate question concerning the Vice President's "unofficial" contacts with Contra resupply figures is, of course, whether those contacts -- taken alone or in conjunction with his official duties as described in Section II(A) above -- provided him with a grasp of the NSC staff's Contra resupply and Contra fundraising activities sufficient to implicate him as a member of the type of 18 U.S.C. § 371 conspiracy charged in Count One of the March 1988 Indictment.[21/] At present, Mr. Bush is surrounded by a

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[21/] As discussed in Section II(A) of the Reagan Memorandum, even this knowledge would not suffice to show any violation of Section 371 unless the Vice President was also aware of, and in some measure joined in, the deception of Congress that (continued...)

solid wall of denials on this issue. To begin at the beginning, Mr. Bush himself has testified that prior to late November, 1986, he was not aware of the diversion (see January 11, 1988 Bush Dep. 88-89), had no knowledge of North and Poindexter's access to Swiss bank accounts, of "Project Democracy", or of Secord's Contra resupply operation (see id. at 100-103, 154-55), had had no private conversations with North or Casey concerning Contra resupply (see id. at 26, 63-65, 172-73), and was not acquainted with any of Rodriguez' activities with respect to the resupply operation (see id. at 134-139). [redacted] (b)(3) GJ [redacted] North's testimony is that if Mr. Bush knew about his role in Contra resupply, he didn't learn about it from North (see July 8, 1987 North Cong. Tr. 161-162; [redacted]

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21/ (...continued)
lay at the heart of the conspiracy. On the current record, the latter showing would be extremely difficult to make.

[redacted] (b)(3) GJ Finally, Rodriguez said under oath many times that he did nothing to bring North's or his own Contra resupply activities to the Vice President's attention through October 1986 (see, e.g., May 28, 1987 Rodriguez Cong. Tr. 19, 60-61). On this record there is no basis for concluding that Mr. Bush has any criminal liability in connection with Contra assistance.

III. November-December 1986 Activities

Part III of the Reagan Memorandum sets forth at considerable length the evolution of the White House's public relations positions following the November 3, 1986 exposure by a Lebanese newspaper of the Iran Initiative. Essentially, the Reagan Administration's reaction to the cascade of Iran-related stories moved from an initial "stonewall" toward a strategy of admitting the publicly-known facts that could not be denied, opportunistically denying reports that were demonstrably false and, at the end, attempting through lies and the destruction of documents to protect three key facts from the Congress and the public: the diversion; U.S. participation in the November 1985 Hawk missile shipment; and the 1985 Iran finding. As stated in the Reagan Memorandum, to the extent that those efforts were directed at Congressional inquiries or involved the destruction of federal records, the President himself has no criminal exposure because they were carried out by his subordinates with no clearly-culpable participation by him. As will be seen below, the same appears to be true of Vice President Bush. This section will also carry through December the OVP-Rodriguez story, which continued to dog Mr. Bush and his staff even as the Iran disclosures gathered momentum.

A. Responses to Congressional Inquiries into the Iran Arms Sales; Document Destruction, Alteration, and Removal

Like much of official Washington, the Vice President heard of the Lebanese newspaper article shortly after it appeared (see January 11, 1988 Bush Dep. 158-161). Thereafter, Mr. Bush appears to have been present at each of the Presidential meetings that discussed how the Iran story should be managed, except for several key November 19-20 conversations between President Reagan and Secretary Shultz and the ensuing discussion among the President, Donald Regan, and Attorney General Meese that commissioned the "Meese investigation" of November 21-25.

There is some indication that Mr. Bush absorbed rather too well the November 6-7 National Security Briefing discussions at which the "stonewall" policy was laid out. Although no one seems to be able to locate the televised Vice Presidential statement in question,[22/] the Charlie Hill notes

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[22/] None of the print media from early November 1986 reflect any public comment by the Vice President on the topic of Iran. The closest news item preserved in NEXIS is a November 9 Chicago Tribune story in which Marlin Fitzwater, the Vice President's press secretary, reacted to a version of the Brenneke story (see page 11 n.5 above) by stating that the idea that Mr. Bush or any of his staff had arranged weapons deals for Iran was "bizarre, outrageous and absurd . . . . not true [and] crazy" (see "Iran Deal Broke U.S. Ban; White House Left Congress in the Dark", Chicago Tribune, Nov. 9, 1986, at 1C).

for November 9 (ANS0001748) attribute the following account to Secretary Shultz:

> S . Nick Brady called me last night [i.e., Saturday night, November 8, 1986] about whether I would resign. I sd what concerns me is Bush on TV says it ridiculous to even consider selling arms to Iran. VP was part of it. In that mtg. Getting drawn into web of lies. Blows his integrity. He's finished then. Shd be v[ery] careful how he plays the loyal lieutenant role now. Nick's coming at 12 to talk. I'll tell him this flat out. [Emphasis in original.]

The Hill notes for November 10 (ANS0001758) finish the story:

> S=CH . . .
>
> - I told Brady to tell the VP not to get enmeshed in lies . . . .
>
> - So VP calls me after NB left. NB had talked to him - he sd come over, I did. He was admonishing me. Sees me as a threat. 'Are you aware there are major strategy objectives w Iran?' 'I'm v careful what I say' he says. I sd you cant be tech. right, you have to be right. I told him he was there and approved it. He knew & supported it. I sd that's where you are. (They are now lying to themselves.) You need strong people around you. Like PN [Paul Nitze]. People who speak up. [Emphasis in original.]

Secretary Shultz has advised the Office as follows concerning his November 10 meeting with the Vice President:

> I think . . . he was uncomfortable with my reaction to what he said, and his point to me was that there are -- there is this major strategic objective in Iran. And I said, well, that may be, but this is not the way to pursue it. And at any rate, there were -- there was the structure of arms for hostages. and all I had in mind was that November [1985]

> phone call. And so -- and I must have said that -- that he was at that January meeting, so he -- he didn't join Cap and I in opposing it, so he was in effect a supporter.
>
> * * *
>
> I was giving [the Vice President] bad news in a tense situation . . . so he didn't like it, . . .
>
> . . . I was giving him -- I was saying to him that I saw this statement that he had made on television, and that I thought -- I was certain that if he kept saying things like that, as the facts emerged -- whatever they were -- even the one thing that I particularly knew about -- would show that what he said was wrong. So, he should not say that . . . . Now, maybe he believed that what he said was right, but I felt that he was part of that meeting that I remembered . . . . and so at least he knew that much. And he argued the strategic relationship with Iran point with me, and I have no quarrel with that; except that I never thought this was the way to go about it.

(December 11, 1990 Shultz OIC Int. 102, 104-105.)

Thereafter, and continuing through November 25, 1986, the Vice President appears to have been extremely circumspect in making any public pronouncements on the Iran matter; on the weekend of November 22-23, Treasury Secretary James Baker told Shultz "you saved the VP's political life by telling him to be quiet ab arms" (ANS0001893).

Mr. Bush's newfound determination to "be quiet ab arms" manifested itself not only in public but also in the critical arena of Administration statements to Congress. Indeed, the only Congressional briefing with which the Vice President had any involvement was the November 12, 1986

session with four Congressional leaders, which was also attended by the President, Poindexter (the principal briefer), Regan, Shultz, Weinberger, Meese, Casey, Deputy National Security Advisor Keel, Will Ball, Larry Speakes, and Paul Thompson. At that briefing, like the Administration strategy session that preceded it on November 10, Poindexter purported to describe the Iran Initiative but omitted any mention of either the diversion or U.S. participation in the "pre-Finding" arms shipments in 1985. The lack of any reference to the diversion would not, of course, have seemed remarkable to any of the Administration attendees, including the Vice President, who did not know about it in the first place. Poindexter's omission (and, in one question and answer, his active concealment)[23/] of the 1985 transactions is a different matter, because a number of the Administration officials present in addition to Poindexter -- notably, President Reagan, Vice President Bush, Donald Regan, and

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[23/] According to Thompson's notes of the briefing,

> Byrd asked, initial contact was made when?
>
> Poindexter said, first in 1985 but no transfer of material. We needed to assess the situation in Iran. About one year until the Finding. [redacted].

(b)(3) GJ

A more skeletal version of this exchange appears in Meese's notes ("Contacts w/ Iranians began in 1985 (about 1 yr before finding)"). [redacted]

Secretary Shultz -- had been aware of one or both of the 1985 shipments as they had taken place.

At pages 159-162 of the Reagan Memorandum, I noted that one cannot conclude with any certainty whether President Reagan recalled his authorization of the 1985 missile shipments at any time before November 25, 1986 -- i.e., during the period when various Administration officials, notably Poindexter, were attempting to cover up U.S. involvement in those shipments. The state of Vice President Bush's recollection of those matters during the November 12 - November 25, 1986 period has not been established. As noted at pages 5-6 above, during his January 1988 deposition the Vice President testified to an uncertain memory of the September 1985 TOW shipment and a relatively concrete recollection of the November 1985 Hawks, and other evidence suggests that the Vice President had contemporaneous knowledge of those matters. Likewise, although it is not entirely clear, a fair reading of Secretary Shultz' December 1990 interview with the Office, quoted at pages 58-59 above, is that Mr. Shultz drew the Vice President's attention to the Hill reference to the November Hawk shipment in the course of his November 10, 1986 attempt to dissuade the Vice President from making ill-advised public statements about Iran. Beyond

this, however, the record supplies no answers about what Mr. Bush did or did not remember in mid-November 1986.[24/]

The Vice President was present at the National Security Briefings on November 12-14 and November 17-18 (see ALU0128265-69; AKW000295-96; AKW044122-23; ALU028681; ALU028686; ALU028690; ALU028694). Mr. Bush's only recorded contributions take the form of questions. On November 14, the day after the President's televised speech on Iran, McDaniel records the Vice President as asking about the "Rabin/Israeli angle" and inquiring whether there were any "further commitments", apparently referring to undertakings by the Iranians with respect to the hostages (see ALU0128267). At the November 17 National Security Briefing the Vice President is quoted by McDaniel as asking "Chronology?" and receiving the answer "Do it in Congress" (see ALU0128268). On November 18, Mr. Bush apparently asked "Who attended what meeting?" (see ALU0128269).

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[24/] At pages 160-161 n.60 of the Reagan Memorandum, I observed that the application of 18 U.S.C. §§ 1001 and 1505 to the November 12 briefing is somewhat problematic. In view of this uncertainty and the fact that the most grievous conduct that the Vice President -- like Mr. Regan and Secretary Shultz -- could be accused of with respect to the November 12 briefing is having stood silent while Poindexter provided Congressional leaders with essentially the same misleading account of the 1985 events that Poindexter had given the President and the other NSC principals on November 10, I would not recommend any new investigative initiatives in this area.

It would appear that by November 19, the Vice President began receiving more answers, solicited or not, about the Iran Initiative. At 11:38 a.m. on November 19, Poindexter sent a PROF note to McFarlane in which Poindexter referred to a Vice Presidential call to McFarlane, about Iran (see AKW021663). McFarlane has told our Office that the call related solely to the Vice President's interest in learning how McFarlane was portraying the geostrategic rationale for the Iran Initiative, and did not involve any discussion of the Iran arms sales or the diversion (see March 8, 1991 McFarlane 302 at 2); [redacted] Mr. Bush and Craig Fuller, his Chief of Staff, were scheduled to attend the pre-brief for the President's press conference on November 19 [redacted] which, according to Regan, so "confused the Presidential mind" as to lead to the President's total denial of third-country involvement in the Iran arms sales (see July 30, 1987 Regan Cong. Tr. 64); the Vice President has testified that he indeed attended the pre-briefs (see January 11, 1988 Bush Dep. 161). (b)(3) GJ

Fuller recalls that before the press conference, North gave him a copy of the NSC Historical Chronology with the words "You and the Vice President might be interested in it" (see December 14, 1990 Fuller 302 at 5). There is a copy

of the November 19 Chronology taken from the Office of the Vice President (see ALU019005-027) that bears the Vice President's handwriting, although Mr. Bush has testified that he cannot recall whether he saw it before or after November 25 (see January 11, 1988 Bush Dep. 161-164). As we know, the November 19 version of the Chronology was totally false in both its treatment of the November 1985 Hawk shipment and its omission of the diversion; assuming that the Vice President read the Chronology between November 19 and November 25, his ability to recognize those falsehoods from his own knowledge would presumably have been no better and no worse than it was with respect to Poindexter's statements at the November 12 briefing (see pages 59-61 above). Fuller has told our Office that the Chronology "didn't seem correct to him", but cannot specify what he thought was incorrect about it (see December 14, 1990 Fuller 302 at 5); the issue of what Fuller spotted as incorrect is further occluded by the fact that Fuller believes he saw at least two versions of the Chronology during this period (id. at 6).

Vice President Bush was not present for either the Shultz-Reagan conversation that preceded the President's November 19 press conference (see Reagan Mem. 136) or Shultz's telephone call to the President following the press conference, in which Shultz told Mr. Reagan that he had made many statements that were wrong or misleading (see Reagan

Mem. 139). However, Charlie Hill's notes for the morning of November 20, 1986 recount a conversation in which Donald Regan told Secretary Shultz:

> P w VP told Pdx of my [i.e., Shultz's] telling him [i.e., President Reagan] things were wrong -- shd convene a meeting to go over what everybody knows & get it together. On Monday P will think it over at ranch.

(ANS0001866.) None of the apparent participants has pinpointed a Reagan-Bush-Poindexter conversation, witnessed by Regan, concerning Shultz's protestations; however, the November 20 0930 National Security Briefing featured precisely that cast of characters, and also lacked a note-taker such as McDaniel who might have recorded what was said (see ALU028705; see also AKW044199 (Poindexter Appointment Schedule stating that at 9:30 a.m. on November 20 there was a Presidential NSB -- "JMP alone w/Regan and VP")). Regan believes that he did not hear about Shultz's concerns until later in the day on November 20, and therefore does not recall them coming up at the 0930, where he thinks that the President's press conference and the associated problems were discussed (see March 6, 1991 Regan 302 at 3-5). [redacted]

[redacted] (b)(3) GJ

Also on the morning of November 20, Col. North paid a visit to Craig Fuller, who recorded North's message in a memorandum to the Vice President (ALU019028):

> Ollie came to see me privately. He made the following points.
>
> - he has produced a complete chronology on the contacts with Iran and only you and I should see it . . .
> - there is as part of the briefing process the President promised, [redacted reference to intelligence information mentioning the Vice President (see December 14, 1990 Fuller 302 at 6-7)]
> - the reason Ollie says your name will appear is because many of the Iranians believe that you are running this country . . .
> - remarkably, according to Ollie, the Iranians kept their scheduled time to call last night after the press conference;
> - during this call, Ollie's contact indicated that Rafsanjani would like to meet with you;
> - a speech will be given in Iran and a readout on Friday will indicate whether conditions exist such that a visit would even be considered;
> - no one other than Poindexter has been told of this contact and it is not likely that it will be discussed with others at this point
> - if conditions are right, a visit could lead to the end of the war (Ollie's view)
> - you should seek the counsel of three people before arriving at a judgement: Helms, Cave and Seacord

....more on Shultz and Israel that we can discuss.

Fuller has advised our Office that he quickly typed up North's comments and provided them to the Vice President in time for a luncheon that Mr. Bush was to have with the President on November 20; according to Fuller, the routing that is written in the upper right-hand corner of the memo ("CF-VP-P") refers to his intended use for the memorandum and does not necessarily reflect that the President received the document (see December 14, 1990 Fuller 302 at 6-7). Fuller states that he also discussed North's information with the Vice President, and that Mr. Bush seemed surprised that his name was cropping up in the intelligence (id.). At his deposition, the Vice President testified that he vaguely recalls that North had spoken with Fuller and remembers learning that in intelligence, North and others had told the Iranians that the Vice President was actively involved in the operation in order to establish its legitimacy; the Vice President added that he did not seek the counsel of Helms, Cave or Secord, as North had recommended to Fuller. (See January 11, 1988 Bush Dep. 164-167.) Although we do not know whether Vice President Bush went on to discuss the substance of the North-Fuller conversation with President Reagan, the nature of the information imparted by North does not raise

any criminal issues, whether or not it was passed along to Mr. Reagan.[25/]

Vice President Bush attended neither the late-afternoon meeting among President Reagan, Secretary Shultz, and Donald Regan on November 20 in which Shultz reiterated his concerns over the manner in which the Administration was portraying the Iran arms sales, nor the 11:32 a.m. November 21 meeting when the President commissioned the Meese investigation (see ALU028708). Mr. Bush did turn up at the November 21 0930 National Security Briefing (conducted by Keel while Poindexter briefed Congressional committees), which McDaniel's notes describe as follows:

> NSB (AGK, DTR, VP) - Iran - channels still open; - McFarlane - misquoted; - Congress: organization/Legal battery; - Bandar . . . ; - Hussein - RR personal reply; - Iraq - VP: Call in Ambassador deal w/legitimate arguments.

The only known contact between the Vice President and any of the Iran/Contra principals, including the Attorney General, over the weekend of November 22-23 was a nine-minute telephone conversation with Admiral Poindexter on Saturday morning, November 22 (see AKW045592), about which both Mr. Bush and Poindexter have testified that they have no

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[25/] Donald Regan has advised the Office that the President and the Vice President regularly had lunch on Thursdays, and that no one else attended those lunches; Mr. Regan has no information whether the two men discussed the Iran matter at lunch on Thursday, November 20 (see March 6, 1991 Regan 302 at 7).

recollection (see January 11, 1988 Bush Dep. 167-170; [redacted] There is no indication that Mr. Bush had any knowledge of the document destruction at NSC that continued and intensified over that weekend (cf. January 11, 1988 Bush Dep. 170-171).

Although the Vice President was not present for the two occasions on November 24 when Meese reported his discovery of the diversion to President Reagan, at some point on that day Meese briefed Mr. Bush on the subject (see January 11, 1988 Bush Dep. 12-18, 67; [redacted] (b)(3) GJ Mr. Bush also attended both the 0930 briefing on November 24 (see ALU028711) and the 2:00 NSPG meeting concerning Iran, but nothing of interest was said at either of those sessions except for the following exchange captured in Meese's notes of the NSPG:

> DTR-Q re Hawk missile shipment - Who authorized? Who knew? Was RR told?
> JMP - Bud handling by self from Jul to Dec 85. No documentation.
> GPS - Knew about situation and opposed it.

(Cong. Ex. EM-49.)[26/]

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[26/] In a conversation with Earl that is recorded in Earl's notes, George Cave also reported that at the NSPG, the Vice President asked him "Israeli involvement?" and Cave replied "Yes, it'll hurt if that comes out" (see ALV053060-61).

[redacted] In place of the usual 0930 National Security Briefing, Admiral Poindexter entered the Oval Office and submitted his resignation along with his apology for what had happened; the President responded that he was sorry that Poindexter's career had to end in this way, and, according to Regan, Vice President Bush added that Poindexter had been a good National Security Advisor [redacted] see also January 11, 1988 Bush Dep. 19-21). (b)(3) GJ

[redacted]. Thereafter, and continuing at least through January 1988, the Vice President's contacts with North and Poindexter have

apparently been entirely social (see January 11, 1988 Bush Dep. 21-24).[27/]

Notwithstanding the disclosures of late November, 1986, Vice President Bush has testified that he "never fully understood" the dimensions of Iran/Contra until his briefing by SSCI Chairman Durenberger (see id. at 162), which occurred on December 20, 1986, the day after a similar session between the Senator and President Reagan (see January 20, 1987 McMahon SSCI Tr. 36-38). Following the December 20 meeting, at which the Vice President shared an account of the July 1986 discussion with Amiram Nir that is described at pages

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[27/] Two other "phantom" Vice Presidential telephone calls, suggested to have taken place on November 25, appear not to have happened. Col. Dutton has told our Office that he believed that Mr. Bush called General Secord in the wake of the November 25 news conference (see April 10, 1987 Dutton 302 at 6); in May 1987 General Secord stated that he had had no contacts with the Vice President since he left government (see May 7, 1987 Secord Cong. Tr. 215-16), although he does recall being with North on November 25 when North received the above-mentioned call from Mr. Bush (see May 6, 1987 Secord Cong. 176; [redacted] (b)(3) GJ

Col. North's notebook for November 25 (AMX001708) contains the following entry:

> Call from JMP
> - VP Call Peres
> - Discovered contra connection
> - wd be best if Israel wd accept that they were aware that some funds were diverted

Poindexter has testified that he never had a discussion with the Vice President, or with anyone else, about trying to persuade Israel to accept responsibility for the diversion (see July 2, 1987 Poindexter Cong. Dep. 10).

12-16 above, Mr. Fuller furnished SSCI with a copy of Fuller's memorandum of the Bush-Nir conversation (id.).

B. Felix Rodriguez

In November and, particularly, December 1986, the time and attention of the Office of the Vice President continued to be occupied with allegations concerning Vice Presidential connections with Felix Rodriguez and Contra resupply. Because this effort appears to have been focused on the press and to have had only a peripheral relationship to any official investigations that might have been protected by criminal penalties,[28/] the discussion of the Rodriguez matter that follows will be fairly brief.

On November 6, 1986, Rodriguez once again travelled to Washington to give a lecture at the National War College.[29/] On both this visit and a November 11-12 return

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[28/] As noted at page 51 above, in the wake of the Hasenfus crash several members of Congress had requested the Attorney General to appoint an independent counsel to investigate allegations of unlawful Contra assistance by, among others, Vice President Bush and Donald Gregg. The fate of this request, which descended into bureaucratic limbo until it ultimately was overtaken by your appointment as Independent Counsel, is chronicled at page 288 of the Iran/Contra Select Committee Report. [redacted] The OVP-Rodriguez connection also came up tangentially during the Vice President's December 18, 1986 interview with the Tower Commission, which is discussed in the following section.

(b)(3) GJ

[29/] Judging from a November 18 PROFs exchange between Earl and North, this appearance by Rodriguez had Gregg's blessing. On that day Earl passed along Secord's question whether Rodriguez had, in fact, visited the War College (see AKE018159); North answered:

(continued...)

trip by Rodriguez in the company of General Bustillo, Rodriguez had contact with Watson and Gregg [redacted]; perhaps understandably, there appears to have been no effort made to put Rodriguez into direct contact with the Vice President.

Following the principal Iran/Contra disclosures in late November, the Vice President told Time magazine that allegations that he had conducted a Contra-assistance operation were "untrue, unfair and totally wrong", and repeated his October 11 statements that he had met Rodriguez on only three occasions, and had never discussed Nicaragua with him (see "An Interview with the Vice President; 'When the flak gets heavy, the wingman doesn't go peeling off'", Time, December 8, 1986, at 42). On December 12 and 13, Gregg provided interviews to the New York Times and the Washington Post in which he said that both he and the Vice President had been ignorant of Rodriguez' Contra activities until August 1986, and that he did not believe that he had reported his August 1986 conversation with Rodriguez to Mr. Bush (see "The White House Crisis; Aide to Bush Says Neither Knew of

(b)(3)
GJ

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29/ (...continued)

> Yep. Gregg the genius o.k.d. it. I told Gregg that it was dumb. He doesn't understand.

(AKW01200-01.) [redacted]

Friend's Link to Contra Arms," New York Times, December 13, 1986, at 1; "Bush Aide Discussed Contra Aid; Gregg Set Up Meeting on Rebel Resupply Effort," Washington Post, December 14, 1986, at A1). On December 14 UPI published a story containing similar statements by Gregg, along with an announcement by Marlin Fitzwater that the Vice President had asked Gregg to produce by the next day a chronology of his activities "to get all the information out about Don Gregg and his contacts so there can be no questions about his role." (See "Bush aide pushed for ex-CIA man to help run Contra network," UPI, AM Cycle, December 14, 1986.)

The chronology was released on the next day, December 15, along with a Fitzwater statement disclosing that it had been reviewed by Vice President Bush and stating that the Vice President had not been informed of Gregg's August 8 and August 12 meetings on the topic of Contra resupply [redacted] (b)(3) GJ [redacted] The December 15 OVP Chronology has formed the backbone of that office's position on Rodriguez and contra resupply ever since. In a Washington Post story that appeared on December 21, Mr. Bush is quoted as stating that he was "not in the least bit troubled" by his aides' failure to advise him of their meetings with Rodriguez (see "Bush Takes Some Blame For Scandal," Washington Post, December 21, 1986, at A1). In late December 1986 Rodriguez was interviewed by the FBI in connection with Iran/Contra; on January 2 he issued a

statement in Miami recounting the essential points of the interview and adopting the OVP Chronology (see ALU011609-10). At about the same time, according to page 271 of Rodriguez' 1989 book Shadow Warrior, the Vice President sent Rodriguez a note stating "The truth is a very powerful weapon. We have all be [sic] smeared by the lie and insinuation; but the truth will prevail, it always does."

* * *

My review of the events of November-December 1986, as discussed above, has disclosed no evidence of criminal conduct by Vice President Bush.

## IV. Responses to Investigations

Vice President Bush provided oral statements to the Tower Commission and to our Office, and the Office of the Vice President produced documents to all three of the major Iran/Contra investigations. From a prosecutorial standpoint, the quality of the interviews of the Vice President is somewhat spotty; the production of Vice Presidential documents to our Office is, as of this writing, still ongoing. Subject to these limitations, I will attempt in this section to evaluate whether Mr. Bush's responses to the Iran/Contra investigations violated any provision of the criminal law.

### A. The Tower Commission

On December 18, 1986, early in the work of the Tower Commission, all three Commission members along with staffers Rhett Dawson and Clark McFadden spoke for roughly one hour with Vice President Bush, who was accompanied by Craig Fuller and Boyden Gray. Our record of this session is Mr. McFadden's December 29, 1986 Memorandum for the File (ALS000209-19).

Consistent with the non-inquisitorial tone set at the outset by Senator Tower, who "invited the Vice President to provide any information or recommendations that he felt might be appropriate" (ALS000209), Mr. McFadden's eleven-page memorandum, aptly titled "Discussion with the Vice

President", suggests less an interview than a conversation. Over half of it was apparently devoted to the Vice President's thoughts on national security structure. Correspondingly, the memorandum reflects only a few scattered factual statements by the Vice President; as will be seen below, where those statements are organized by topic, they are sufficiently "soft" and imprecise that they preclude application of 18 U.S.C. §§ 1001 or 1505.

1985 Iran Arms Transactions

> The Vice President was asked if he was present in a meeting in August 1985 where Mr. McFarland reported on discussions with Mr. Kimke [sic]. Mr. Bush stated that he did not remember participating in such a meeting but offered to provide a chronology of his activities to the Board. Mr. Gray interjected that he had not yet been able to place the Vice President at such a meeting, but further checking was underway.
>
> The Vice President stated that he remembered the Israeli connection with an opening to Iran very early on. It was raised in several of the 9:00 a.m. meetings where no minutes were taken.
>
> The Vice President stated that much activity regarding the Iranian policy was done on an informal basis and without records. During the course of these discussions, the Vice President affirmed that he had never heard the expression "oral finding." At the same time, he declared that he could not conceive of Bud McFarland acting like a loose canon [sic], or doing "anything like this on his own."

The Vice President did remember that there had been disagreement over the need for advanced approval for covert operations. He acknowledged that one version of the story was that the President said let's not permit arms to go to the Iranians via the Israelis; in other words, he did not approve the proposal. The Israelis then went ahead anyway, and the President subsequently acquiesced but took the position that it should not be done again. The Vice President said he was unable to confirm this version. (ALS000215.)[30/]

* * *

Vice President Bush indicated that he had not been present at a meeting in early December 1985, when State and Defense objected to the arms sales to Iran. He did have a general knowledge of arms sales to Iran as a result of attendance at various briefings on the hostages and the so-called 9:00 a.m. meetings with the President. He also maintained that much of what happened consisted of Lt. Col. North acting on his own, e.g., opening Swiss back [sic] accounts. Perhaps the CIA was aware of this activity but the Vice President stated that he was not.

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[30/] On the following page, Mr. Gray is credited with a rather remarkable legal opinion concerning the coverage of the Arms Export Control Act (compare Reagan Mem. 23-25):

> It was pointed out to the Vice President that the number of TOW missiles sent by the Israelis to the Iranians represented a major drawdown of the Israeli stocks from roughly 4,000 to 2,000. Mr. Gray suggested that since these weapons came from Israeli stocks, the transfer did not trigger reporting requirements to Congress under U.S. law. (ALS000216)

> The Vice President acknowledged that there were discussions with the President and the Vice President regarding the Tow missiles. He did not recall any discussion regarding the Hawk missiles and the Hawk parts being returned. He suggested that Israel was more involved in this matter than is commonly known. (ALS000210; emphasis supplied.)

To the extent that they are at all concrete, these statements are, by and large, consistent with the facts described in Section I above. The only one of them that arguably undersells the Vice President's recollection as of his January 1988 deposition -- the sentence, underscored above, in which the Vice President is attributed with the statement that "[h]e did not recall any discussion regarding the Hawk missiles and the Hawk parts being returned" -- could not be a basis for prosecution because it is hopelessly ambiguous. As rendered in McFadden's memorandum, it confuses two distinct transactions (the November 1985 Hawk missile shipment, which was largely "returned", and the 1986 shipments of Hawk spare parts, which were not returned), and cannot be regarded as a conclusive statement of the Vice President's December 1986 recollection of either event.

The Reliability of the First Channel Used in the Iran Initiative

> With respect to Mr. Gorbanifar, the Vice President declared that it was never represented to him or the President how shady or unreliable this fellow was. For example, they had no knowledge that Gorbanifar had betrayed 130 people to

> Savac after the Iranian revolution. Similarly, the Vice President indicated that the opening to Iran by the Israelis was not known by the President or the Vice President. In response to a question about Mosad involvement, Mr. Bush stated that the fact that Mosad was giving us intelligence was not raised in the NSC context, nor was it presented to the President or the Vice President. The Vice President stated that he did not know how Lt. Col North may have interacted with Mosad. (ALS000214.)

McFarlane told the Tower Commission that upon his return from his December 1985 London meeting with Ghorbanifar, he had a discussion with President Reagan, Vice President Bush, Secretary Shultz (who, in fact, was not there), Secretary Weinberger, and DDCI McMahon that Ghorbanifar was "a person of no integrity", and that the Iranian "was not a trustworthy person and had a very different agenda from our own and was an unsatisfactory intermediary" (Tower Commission Report at B-50-B-51). Others seem to recall a somewhat less emphatic presentation by McFarlane. The President told the Tower Commission that McFarlane expressed "no confidence" in Ghorbanifar (id. at B-50); Regan stated that McFarlane indicated that Ghorbanifar "wasn't as good as they had hoped and that it wasn't as productive a contact as they had hoped" (id. at B-51); and McMahon, in a memorandum to Casey, noted that McFarlane "did not have a good impression of Gorbanifehr [sic]" (id. at B-50). In light of this record, the Vice President's less

informative, but qualitative, statement to Tower on this subject ("it was never represented to him or the President how shady or unreliable this fellow was" (emphasis added)), followed as it is by a specific example of "shadiness" that no one claims to have told the Vice President about, does not strike me as worthy of prosecutorial attention.

The July 1986 Bush-Nir Meeting

> The Vice President recounted a meeting he had with Mr. Nir in the Middle East. Prior to the meeting, he had been uneasy about it. Indeed, the night before the meeting was to take place, Mr. Bush, unable to sleep, attempted to call Admiral Poindexter in Washington to obtain confirmation that his meeting with Mr. Nir was advisable. Failing to contact Admiral Poindexter, Mr. Bush spoke with Lt. Col. North who indicated that the Israeli Prime Minister thought the meeting with Mr. Nir was important. According to the Vice President, Lt. Col. North had originally requested that the Vice President meet with Mr. Nir. on the basis that the Israeli Prime Minister thought the meeting was important. Lt. Col. North's position was apparently confirmed when after the meeting with Mr. Nir, the Israeli Prime Minister asked Mr. Bush how the meeting with Mr. Nir, the Israeli Prime Minister asked Mr. Bush how the meeting had gone. The Vice President indicated that there had been no discussion of the Nir meeting between himself and the Israeli Prime Minister.
>
> The Vice President speculated that the Israelis may have said things publicly about the Iranian situation that were not completely accurate. Mr. Bush has been uneasy about the situation with Israel as it relates to Iran because he felt to a significant extent U.S. interests were in the grip of the

> Israelis. Now, according to the Vice President, the Israelis themselves may be in some sense seeking cover.
>
> Vice President Bush related that his discussion with Mr. Nir was generally about counterterrorism. There was no discussion of specifics relating to arms going to the Iranians, e.g., the price of TOW missiles was never raised. (ALS000210-211; emphasis supplied.)
>
> * * *
>
> The Vice President returned to a description of his meeting with Mr. Nir, noting that no reference was made in the meeting to any ongoing diversion of funds with respect to the arms sales or any reference to the contras generally. (ALS000216.)

In his July 29, 1987 Memorandum to the White House File memorializing his notes on the McFadden memorandum, Associate Counsel Roth characterized the Vice President's description of the Nir meeting (underscored above) as "deceptive", presumably because the Fuller memorandum of the meeting suggests that indeed there was discussion of arms. However, particularly since Fuller's memorandum itself was voluntarily produced to SSCI a few days after Mr. Bush's Tower interview (see pages 71-72 above), and is reprinted in full text at pages B-145-147 of the Tower Report, I do not regard the Vice President's statement about the level of "specifics" discussed at his meeting with Nir to be a very promising candidate for a Section 1001 or Section 1505 prosecution.

The Diversion

> The Vice President began by setting forth what he saw as the key question with respect to the current situation: what did the President and the Vice President know about the diversion of funds to the contras? He emphasized that neither he nor the President knew anything about the alleged diversion. He was sure the President knew nothing about the diversion because he, Mr. Bush, sat in the Oval Office and heard Admiral Poindexter say to the President that he, Admiral Poindexter, had not told the President about it. (ALS000209.)
>
> * * *
>
> . . . the Vice President emphasized that had the concept of "CONTRA money" ever have been mentioned in his presence, it would have "hit me in the gut." In other words, such a concept would have set the roof off in the White House. (ALS000213.)

As noted in Section I above and in Sections I and II of the Reagan Memorandum, there is no evidence that the Vice President or the President knew of the diversion.

Assistance to the Contras Generally

> In response to a question about Lt. Col. North's role with the contras, the Vice President indicated that he was unfamiliar with Lt. Col. North's activities and was not involved with the contras himself except for meetings with Mr. Felix Rodriguez. Mr. Bush explained that Mr. Don Gregg of his staff introduced him to Mr. Rodriguez. In his meeting with Mr. Rodriguez, the Vice President talked only about counterinsurgency in El Salvador, never discussing the contras. Mr. Bush suggested that the Board may want to

speak with Mr. Gregg about the contra situation. (ALS000214.)

This description is essentially consistent with the facts described in Section II(B) above. As a matter of interest, the Tower Commission apparently did not follow up on the Vice President's suggestion that they interview Mr. Gregg (see Tower Commission Report at F-1).

I am not aware of any information in our possession that would permit us to evaluate the OVP's compliance with any requests for documents that may have been made by the Tower Commission.

B. The Iran/Contra Select Committees

To the best of my knowledge the Congressional Select Committees neither sought nor received any statements or testimony from Vice President Bush himself, although they plainly included the Office of the Vice President within the scope of their investigation (see, e.g., Iran/Contra Select Committee Report at 71-74, 145, 247-48), and took the depositions of Nicholas Brady (October 1, 1987), Donald Gregg (May 18, 1987), and Col. Watson (June 16, 1987), among others.

Except by inference from the OVP's still-ongoing production of documents to us (see Section IV(C) below), we are in no position to evaluate the adequacy of that Office's document production to the Select Committees.

C. The Office of Independent Counsel

This Office received two sets of oral statements from Vice President Bush: an interview conducted by FBI (b)(7)(C) agents [redacted] and Glasser on December 12, 1986 (one week before your appointment as Independent Counsel), and a January 11, 1988 sworn deposition. On both occasions the Vice President was accompanied by his counsel, Mr. Gray.

In my judgment, the 302 of the December 12, 1986 interview contains only two statements by the Vice President that require discussion; the balance either track Mr. Bush's representations to the Tower Commission (analyzed in Section IV(A) above) or (as with Mr. Bush's statement that he had only recently learned about the occurrence of his name in Iran-related intelligence and was "upset" that he had not heard about it earlier) are consistent with the facts discussed in Section I above. The two more noteworthy statements are as follows:

Knowledge of Iran Findings

> Bush stated that he had not had an opportunity to review his notes prior to this interview as they were unavailable to him because of the inquiry being conducted by the Federal Bureau of Investigation (FBI). He advised that it would therefore be difficult for him to precisely track all meetings or briefings that he attended concerning the Iran/Israeli/Contra transactions. He advised that he was aware that there was a Presidential covert-action finding concerning the arms transactions with Iran. He did not know when he first became aware of the Presidential finding but was fairly certain

> that he was not at the January 17, 1986, meeting at which it was widely reported that the finding was discussed. He may have attended a meeting concerning National Security matters on January 7, 1986, but does not recall the exact substance of the meeting. Concerning a January 6th finding he was not aware that that draft existed, but found out from VICE ADMIRAL JOHN POINDEXTER about it much later.[31/]

As noted at page 9 above, there is evidence that the Vice President was present for the inadvertent signing of the January 6, 1986 Iran Finding, as well as the signing of the January 17 Finding. Moreover, the concept of a Finding was apparently discussed in the Vice President's presence at the January 7, 1986 meeting concerning Iran. However, both in his December 1986 FBI interview, quoted above, and at his subsequent deposition (see January 11, 1988 Bush Dep. 82-83), Mr. Bush has consistently denied any recollection of being present when the President signed any Iran-related Finding, as opposed to having learned later of their existence. I do not believe that this apparent quirk in the Vice President's description of his recollection is either so demonstrably false or, for that matter, so material, as to call for any prosecutorial attention.

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31/ [redacted] (b)(3) GJ

1985 Arms Transactions

> The Vice President recalled having knowledge of the September 1985, shipment because of a National Security briefing by ROBERT MC FARLANE, who was then the National Security Advisor. The discussion surrounded a problem with landing rights in [a European country] and Israeli involvement.
>
> BUSH stated that it was his impression that the total shipment of TOW missiles would be about 2,000 and that some ABM parts, not ABM missiles, would be shipped to Iran. This would allegedly establish the bonafides of the Americans negotiating for the hostages' release. He realized that part of the policy by the United States addressed an effort to reach moderate elements of the Iranian government.

Like the Vice President's statement to the Tower Commission concerning his knowledge of the 1985 arms transaction (see page 79 above), this statement can be read to suggest that Mr. Bush was not aware of the November 1985 Hawk missile shipment, which he admitted to knowing about during his January 1988 deposition (see page 5 above). However, for prosecutorial purposes the form in which this statement appears in the 302 is quite defective, for two reasons: (a) the initial paragraph quoted above starts out talking about the September 1985 TOW shipment, but then recites facts (the "landing rights" problem) that relate not to that transaction but instead to the November Hawk transfer, leaving it unclear just what was under discussion; (b) the second paragraph quoted above can easily be read as

simply an accurate description of the 1986 "U.S." phase of the arms shipments (which, indeed, did not include any whole Hawk missiles, as opposed to Hawk battery parts), rather than an effort to deny that Hawk missiles had been sent at an earlier time.[32/]

With respect to the Vice President's deposition, the highlights -- Mr. Bush's statements concerning his lack of knowledge of the diversion and North's role with respect to the Contras (see January 11, 1988 Bush Dep. 12-21, 24-27, 63-65, 67, 100-103, 154-58), his recollection of the 1985 arms shipments to Iran (see id. at 78-81), his nonrecollection of the Iran Findings (see id. at 82-86), and his characterization of his relationship with Felix Rodriguez (see id. at 117-139) -- have been discussed elsewhere in this Section. Other parts of the Vice President's January 1988 testimony, to the extent relevant, have been cited in Sections I-III above as primary evidence of Mr. Bush's role in the Iran/Contra events; none of them is impeached in any substantial way by other information so far compiled in the investigation. I have found no basis for concluding that

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[32/] The absence of any clearly-false and material statements in the Vice President's December 1986 FBI interview makes it unnecessary to consider whatever lingering effects may still exist in this district from Judge Gesell's decision in United States v. Ehrlichman, 379 F. Supp. 291 (D.D.C. 1974), which casts doubt on the application of 18 U.S.C. § 1001 to false statements made in FBI interviews.

Vice President Bush violated any criminal statute with respect to any of his statements at his deposition.

Members of Craig Gillen's team are currently reviewing documents from the Office of the Vice President, which are being produced to us through the Archivist. I will accordingly leave any analysis of the adequacy of that production, as well as any comparison of the recently-produced materials with the OVP documents that we received through White House Counsel in 1987, to whatever reporting mechanism you and Craig have set up with respect to that portion of the Continuing Investigation.

* * *

Bearing in mind the previously-stated reservations relating to the ongoing work of the Office (<u>see</u> pages 1-2, 89 above), I do not believe that Mr. Bush violated the criminal law with respect to his responses to the Iran/Contra investigations.