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File Folder IRAN/ARMS TRANSACTION: NORTH/POINDEXTER
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THE WHITE HOUSE
WASHINGTON

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FOR: *ABC*

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

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

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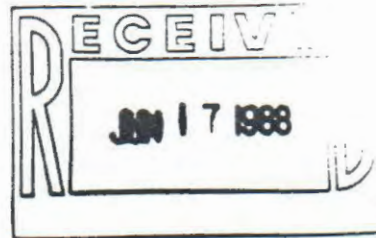
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June 17, 1988

BY HAND

The Honorable Gerhard A. Gesell
United States District Court
for the District of Columbia
333 Constitution Avenue, N.W.
United States Courthouse
Washington, D.C. 20001



COUNSEL
CHARLES H. WILSON
LYMAN G. FRIEDMAN
DONALD E. SCHWARTZ
*NOT ADMITTED IN DC

Re: United States of America v. Poindexter, et al.
CR No. 88-0080 -- 01, 02 (GAG)

Dear Judge Gesell:

Enclosed please find courtesy copies of the following pleadings filed today on behalf of defendants Poindexter and North:

- (1) Motion of Defendants John M. Poindexter and Oliver L. North for Reconsideration of the Court's June 6, 1988, Order Denying Defendants' Supplemental Discovery Motion (Defendants' Joint Pretrial Motion Number 14); and
- (2) Memorandum in Support of Motion of Defendants John M. Poindexter and Oliver L. North for Reconsideration of the Court's June 6, 1988, Order Denying Defendants' Supplemental Discovery Motion (Defendants' Joint Pretrial Motion Number 14).

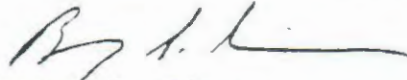
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Honorable Gerhard A. Gesell
June 17, 1988
Page 2

Thank you for your attention to these matters.

Respectfully submitted,



Barry S. Simon

cc: Lawrence E. Walsh, Esquire
N. Richard Janis, Esquire
Thomas C. Green, Esquire
Richard W. Beckler, Esquire

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 v.) Criminal No. 88-0080 --
) 01, 02 (GAG)
 JOHN M. POINDEXTER,)
 OLIVER L. NORTH,)
 RICHARD V. SECORD, and)
 ALBERT HAKIM,)
)
 Defendants.)
 _____)

**MOTION OF DEFENDANTS JOHN M. POINDEXTER
AND OLIVER L. NORTH FOR RECONSIDERATION
OF THE COURT'S JUNE 6, 1988, ORDER DENYING
DEFENDANTS' SUPPLEMENTAL DISCOVERY MOTION
(Defendants' Joint Pretrial Motion No. 14)**

Defendants John M. Poindexter and Oliver L. North,
through undersigned counsel, respectfully move this Court for
reconsideration of its June 6, 1988, Order denying the
Supplemental Classified Motion of Defendants Poindexter and
North to Compel Discovery and Authorities in Support Thereof
(Defendants' Joint Pretrial Motion Number 12).

The grounds for this motion are set forth more
fully in the accompanying memorandum.

Respectfully submitted,

FULBRIGHT & JAWORSKI

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Oliver L. North

Date: June 17, 1988


CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 1988, the foregoing Motion of Defendants John M. Poindexter and Oliver L. North for Reconsideration of the Court's June 6, 1988, Order Denying Defendants' Supplemental Discovery Motion (Defendants' Joint Pretrial Motion No. 14) was delivered by hand to the following:

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Barry S. Simon

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 v.) Criminal No. 88-0080
) -01, -02 (GAG)
 JOHN M. POINDEXTER,)
 OLIVER L. NORTH,)
 RICHARD V. SECORD, and)
 ALBERT HAKIM,)
)
 Defendants.)
 _____)

MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANTS
JOHN M. POINDEXTER AND OLIVER L. NORTH FOR
RECONSIDERATION OF THE COURT'S JUNE 6, 1988
ORDER DENYING DEFENDANTS' SUPPLEMENTAL DISCOVERY MOTION
(Defendants' Joint Pretrial Motion Number 14)

On June 6, this Court summarily and totally denied the classified supplemental discovery motion of defendants Poindexter and North.¹ Without even permitting defense counsel to present argument or make any showing of relevance, the Court prohibited the defendants from obtaining exculpatory classified information essential to the defense of this case. In its ruling, the Court simply stated that the defendants' requests for documents were "generalized" and "not specific at all," when, in fact, they are specific in the extreme and replete with names, dates, locations, and countless other details. This asserted basis for the Court's decision is patently wrong and cannot withstand even cursory examination.

¹ See Supplemental Classified Motion of Defendants Poindexter and North to Compel Discovery and Authorities in Support Thereof (Defendants' Joint Pretrial Motion Number 12).

The Court's flat denial of the defendants' supplemental discovery motion violates their constitutional and statutory right to obtain information essential to their defense. The Court's ruling, under a shroud of secrecy, sacrifices the defendants' rights in an effort to avoid the sensitive disclosures that a fair trial would necessitate. The Court's ruling also directly contradicts concerns the Court previously expressed about the defendants' right to a fair trial. To protect those rights, the Court should reconsider its Order denying the supplemental discovery motion.

CHRONOLOGY OF EVENTS

The following brief chronology sets forth the facts--many of which are not in the public record--essential to understand the arbitrariness and fundamental unfairness of the Court's ruling.

May 23: Defendants Poindexter and North filed a supplemental discovery motion containing 147 highly specific and relevant requests for documents and information. The motion was not some "fishing expedition," as suggested by the Court, but was based on detailed knowledge about the events related to the indictment and the existence of documentary evidence relevant to those events. The motion requested information that would demonstrate, among other

May 23:
(cont'd)

things, the knowledge of high government officials about the events charged in the indictment. Under extraordinary security, a single copy of the supplemental motion was delivered directly to the White House, where it was conveyed by assistant White House counsel directly to the National Security Advisor.

May 26:

The Court requested that counsel for the IC, LtCol North, and Adm. Poindexter meet with the Court in chambers to discuss a procedure for dealing with the classified discovery motion. Tr. of 5/26/88, at 140. Present at the meeting in chambers were the Court and its law clerk, Messrs. Bromwich and Mixter for the IC, and Messrs. Sullivan, Simon, Beckler, and Small for defendants North and Poindexter. At the meeting, the Court proposed that defense counsel provide the Court an ex parte written statement of the relevance of the documents requested in the classified discovery motion. The Court acknowledged that it did not understand the relevance of the requests; the Court stated that the requests read like a "Chinese Bible, and I don't read Chinese." The Court stated that it would like the narrative

May 26:
(cont'd)

statement so that it could see the "total picture." The Court acknowledged that defense counsel would not have requested the documents and information if counsel did not believe that they were relevant.

During the meeting, the Court speculated about what the defense theory of the case would likely be, and described why the Court assumed the material was considered relevant. The Court suggested that the case could not proceed if the Court ordered the material produced, because the government would refuse to release the information. The Court also stated that it could never get through the CIPA procedures that discovery of the highly sensitive materials would require, and the Court asserted several times that it did not want to spend the rest of its life on this case.

The defense indicated that it would inform the Court after the next court session (scheduled for June 6) whether it would accept the Court's proposal that it provide a written narrative on relevance. Associate ICs

May 26:
(cont'd)

Bromwich and Mixter indicated that they would consult with Mr. Walsh on the proposal. At the in-chambers session, the Court never stated or implied that the classified discovery requests were not sufficiently specific.

May 31:

The IC informed the Court by letter (attached hereto as Exhibit A) that it accepted the Court's proposal to the defense on May 26. Thus, the IC agreed with the Court that defense counsel could make an ex parte written presentation to the Court explaining the relevance of the requested information.

June 3:

The IC filed its opposition to defendants' discovery motions, including the classified supplemental motion filed by defendants Poindexter and North. The IC argued that virtually none of the material requested in the supplemental motion was relevant to any issue in the case. An attached affidavit from Russell Bruemmer, general counsel of the CIA, asserted that the discovery requests were burdensome, but did not claim that the requests were too general or non-specific. Under Local Rule 108(d) of this Court, the

June 3:
(cont'd)

defense had until June 10 to file its reply memorandum to the IC's opposition.

June 6:

The parties returned to court for the first time since May 26. The defense came prepared to accept, with slight modification, the Court's request, made at the May 26 conference, that the defense explain the relevance of the discovery requests. The defense had not yet filed its reply to the IC's opposition to the defendants' supplemental discovery motion, which was not due for four days. Indeed, the issue scheduled to be addressed at the hearing was the constitutionality of CIPA § 5 as applied, not the defendants' discovery motions.

At the very outset of the hearing, the Court made the following announcement:

I'm going to totally deny the supplemental motion filed by North and Poindexter's counsel, some 147 generalized requests. It was filed, I think, on May 24th. And you must assume that there's to be no discovery of that type in this case. That motion is denied.

June 6:
(cont'd)

Tr. of 6/6/88, at 4. In response to objections from counsel for defendants Poindexter and North, the Court asserted without elaboration that the discovery requests "were not specific at all," id. at 5, and "weren't specific in any respect," id. at 15. The Court flatly denied defense counsel's request to be heard before the supplemental motion was denied. Id. at 5.

During the hearing, counsel for defendants North and Poindexter offered to provide the Court with an oral, ex parte, in camera explanation of the relevance of classified information as to which the Court had concerns. Id. at 62-66, 74-76. The Court neither accepted nor rejected this proposal.

After the hearing concluded, the Court entered a written order stating that the supplemental discovery motion of defendants Poindexter and North was denied. The Order did not offer any reason for the denial.

As this chronology makes clear, the Court denied each and every one of the 147 requests in the defendants' supplemental discovery motion without permitting counsel to

be heard on the motion, without awaiting defendants' reply to the IC's opposition to the motion, and--most astounding of all--without either receiving the defendants' response to the Court's May 26 request for an explanation of relevance or, apparently, even assessing relevance. In short, the Court's denial of the supplemental motion was arbitrary, baseless, and in our view, totally irrational. Worse still, the Court would not even hear from defense counsel to explain why the specific requests were relevant, and it acted without giving the defense a chance to reply to the IC's opposition to the supplemental motion. This failure of basic due process is so gross as to call into question the fairness of these proceedings. In our experience, no court ever decides an important issue in criminal litigation without hearing from each side.

ARGUMENT

I. THE COURT IMPROPERLY AND UNFAIRLY DENIED THE DEFENDANTS AN OPPORTUNITY TO EXPLAIN THE RELEVANCE OF THE DISCOVERY REQUESTS.

The Court acted arbitrarily and unfairly in denying the defense an opportunity to explain the relevance of the material requested in the supplemental motion. The 147 specific requests set forth in the motion call for information that is essential to the defense of this case. The first paragraph of the supplemental motion sets forth the legal basis for the requests. The second paragraph

specifically represents to the Court that the information sought is

directly material to pivotal defense issues relating to the elements of the offenses charged, including the defendants' knowledge, intent, and motive, as well as to the authority or perceived authority of the defendants to act for or on behalf or with the consent of the United States Government. . . . The requested documents will also play a crucial role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, and assisting impeachment and rebuttal.

Supplemental Motion at 2. These are all proper bases for obtaining this crucial discovery. The defense stands ready to provide the Court, in camera and ex parte, with an oral explanation of the relevance of each and every discovery request. See, e.g., Tr. of 6/6/88, at 62-66, 74-76. There is no conceivable basis on which the Court can deny access to the documents without providing the defense this opportunity.²

The IC's opposition to the supplemental motion provides no basis whatever for the Court's failure even to hear the defense on relevance. The IC's principal contention is that it already has gathered from the various agencies and produced or agreed to produce to the defense all documents

² The Court's denial of the supplemental motion does not enable it to sidestep an item-by-item determination of the relevance of huge amounts of classified information. These issues will arise again in connection with trial subpoenas, in connection with CIPA (unless the Court declares § 5 of the statute unconstitutional), and in many other contexts. Failure to provide discovery now will only result in further delay at other points in these proceedings.

that the prosecution regards as relevant and, by implication, that no additional documents can be relevant. Opp. 23, 24, 30, 31, 33, 37. But the IC's view of relevance is not controlling, and in fact is far narrower than the defense view. As the Court has observed:

[I]n all fairness, the question is whether those documents in the defendants' view of the case are relevant to their intent. This is a case in which these defendants or some of them are being accused of theft and fraudulent conduct. And they are entitled to show to the jury what motivated them in what they were doing, why they did it, who told them to do it, who knew of it and what was going on. [3]

So while they may not seem relevant to the prosecutor, I assume he's acting genuinely and conscientiously, the defendants may have some view of their case and their intent which is different. And I have to allow them that chance to give them a fair trial, as I see this case.

Tr. of 4/12/88, at 85-86 (emphasis added); see, e.g., Tr. of 4/28/88, at 25; Tr. of 6/6/88, at 36-38. The IC has consistently taken the most narrow view of intent, and continues to do so in its opposition.⁴ Moreover, it is certainly not

³ The classified discovery requests were designed to accomplish these purposes. The defendants cannot be limited to their testimony to show these things. They are entitled under the Constitution, the criminal rules, and the rules of evidence to offer documents that corroborate their testimony and that can be used to cross-examine any government witnesses who present a different, distorted view of the facts.

⁴ For example, the IC consents to produce all intercepted information that the IC believes to be relevant to the Iranian arms sales, Opp. 33, but does not agree to any production of similar information relevant to the allegations in the indictment concerning the Nicaraguan Resistance. (continued...)

clear that the IC's general requests for documents from government agencies--based on knowledge far less detailed than that available to the defense--would have triggered review for, or caused the production of, extremely sensitive and highly relevant information. It is far from evident that the IC is aware of the full scope of the case it has launched. Indeed, the IC's statements about lack of relevance of the 147 requests demonstrate its considerable ignorance of many important facts. Defendants should not be punished through summary denial of the supplemental motion due in part to the IC's failure to know the full breadth of its case and to have gathered relevant information.

Even under the IC's constricted view of relevance, it has failed to furnish the defense with all relevant classified information.⁵ For example, as the IC is aware,

⁴(...continued)

Yet such information is critical to the defense, and particularly to the issue of intent, for reasons defense counsel are prepared to explain to the Court ex parte and in camera.

⁵ In many instances, the defense requests call for information in specified communications channels of which the IC probably was not even aware at the time it requested information from the Executive Branch. As to information of this kind, it is obviously not sufficient for the IC merely to provide what it has already obtained; rather, an entirely new search of agency files must be conducted. Mr. Bruemmer of the CIA estimates that it could take "months" to retrieve the requested documents from agency files. Bruemmer Aff.

¶ 5. This assertion appears to be an exaggeration, since (1) according to Mr. Bruemmer, a number of relevant documents have already been produced to the IC, and (2) many of the supplemental requests call for a small number of specified documents, which could be quickly located and easily pro-

(continued...)

the CIA documents responsive to the IC's document requests were divided into three categories: "clearly relevant," "arguably relevant," and "wholly irrelevant." The IC took possession of CIA documents in the "clearly relevant" category, but apparently declined to take copies of those in the "arguably relevant" category, which may include tens or hundreds of thousands of pages.⁶ The "arguably relevant" category--which has already been segregated and which is apparently being maintained by the CIA--undoubtedly contains many documents that unquestionably are relevant. Yet, under the Court's summary ruling, the defense will never be provided with any of these documents.⁷

⁵(...continued)
duced. In any event, given the magnitude of the documentary evidence, the large number of pretrial witnesses, and the breadth of the allegations, the defense cannot reasonably be prepared to try this case before next year, so that a few months to produce these documents will not be a cause for any delay. Even more important, if exculpatory documents sought by the defense are in existence, the defendants have a Fifth and Sixth Amendment right to have them produced, and no one has a legitimate interest in avoiding production.

⁶ These are documents beyond those on the "Discovery Inventory--Government Items," which includes several hundred thousand pages of concededly relevant classified material not yet produced to the defense.

⁷ The IC faults the defense for failing to provide an explanation in its discovery motion of the relevance of the requested documents. But the IC's opposition makes clear why a detailed written explanation of relevance of each request would be unthinkable; the IC blasts the defense for creating, through the requests themselves, "a single compromisable document" containing "an array of ultra-sensitive programs." Opp. 22-23. It should be obvious that if the bare requests are "compromisable," a written explanation of their relevance would be far more so. As the Court has recognized, an oral
(continued...)

There is no conceivable justification for denying the defendants' discovery requests on relevance grounds. To do so without a hearing is unconscionable. The relevance--and in most instances the highly exculpatory nature--of the requested information can scarcely be overstated. No trial conducted in the absence of this information can even pretend to be fair.⁸

II. THE REQUESTS SET FORTH IN THE SUPPLEMENTAL DISCOVERY MOTION ARE IN FACT HIGHLY SPECIFIC.

In denying the supplemental discovery motion of defendants Poindexter and North, the Court asserted that the

⁷(...continued)
presentation on relevance is preferable to a written presentation. Tr. of 6/6/88, at 64-65.

⁸ The IC's assertion that "defendants may be denied discovery of sensitive national security information even where material to the defense," Opp. 26, is flatly incorrect. Discovery of classified information is properly denied only when the district court reviews the classified information and determines that it is "not relevant to the determination of the guilt or innocence of the defendants, [is] not helpful to the defense and [is] not essential to a fair determination of the cause." United States v. Pringle, 751 F.2d 419, 428 (1st Cir. 1984) (quotation omitted) (emphasis added) (citing Brady v. Maryland, 373 U.S. 83 (1963), and Roviaro v. United States, 353 U.S. 53 (1957)). In United States v. Clegg, 740 F.2d 16 (9th Cir. 1984), for example, the court of appeals affirmed a district court order requiring the government to produce sensitive documents that were "relevant to the development of a possible defense." Id. at 18. Significantly, in Clegg the district court had reviewed the requested documents after permitting the defendant "to submit in camera ex parte an affidavit setting out in detail why the requested information was material to the preparation of the defense." Id. at 17. The Court in this case has not reviewed the requested information and has denied the defendants an opportunity to demonstrate that the information is relevant to the defense.

requests were "generalized," "not specific at all," and not "specific in any respect." Tr. of 6/6/88, at 4, 5, 15. The Court and the IC both know that this basis for denying each and every item requested in the motion is wrong.⁹ The Court and the IC also know that the defense is prohibited by laws protecting classified information from subjecting the Court's ruling to full public scrutiny. Nevertheless, the defense will demonstrate, within the constraints imposed by secrecy laws, the specificity of the defense requests and the utter baselessness of the Court's stated reason for denying discovery.

Among the 147 requests that the Court denounced as "not specific at all" are the following:

- Documents relating to the replenishment of specific weapons to a specific foreign government at the core of the case. (Request No. 1)
- Documents relating to a specific covert operation in a specific foreign country by means of a specific platform expressly covered by the allegations of the indictment. (Request No. 2)
- Documents relating to the hostage rescue efforts at issue in the indictment, including specific contacts with an identified individual with respect to those efforts, communications between two identified NSC officials and a specific foreign government concerning that issue, and documents relating to a specific meeting involving specific individuals in a

⁹ Even if a request were overbroad, the Court should not automatically deny that request in its entirety, as it has done here. The proper and fair approach would be to order production of a narrower range of documents, as appropriate.

specific location with respect to a specific topic. (Request No. 3)

- Documents relating to a specific hostage rescue effort at issue in the indictment and detailed descriptions of existing types of documentation that would demonstrate knowledge of government officials (including the President) with respect to that issue. (Request No. 4)
- Documents relating to the ship referred to in Count I, ¶ 52 of the indictment. (Request No. 5)
- Documents relating to the provision of communications equipment for a foreign political group referred to in Count I, ¶ 52 of the indictment. The request identifies a meeting of a specific group of government officials with respect to that issue, knowledge by identified DoS officials concerning the issue, and a Presidential finding that would encompass the issue; the request also identifies specific means of classified communications that would demonstrate the knowledge of identified DoS officials, including the Secretary of State, with respect to the issue. (Request No. 6)
- Documents relating to U.S. government support for a specific organization in a specific country relating to the indictment, including support provided to four identified individuals and a specific meeting involving a specific individual and Contra leaders. (Request No. 7)
- Documents relating to specific, identified efforts to obtain a specific foreign weapons system at issue in the indictment, and the knowledge of identified DoD, DoS, and CIA officials with respect to the issue, including an identified legal opinion by a former Attorney General with respect to an issue critical to the indictment; the request includes documents relating to the efforts of an identified foreign individual to obtain the weapons system. (Request No. 8)
- Documents relating to efforts to obtain a specific foreign weapons system at issue under

the allegations of the indictment, including specific acts taken in furtherance of that request. (Request No. 9)

- Documents relating to the provision of support to a specific organization in a specific country at issue in the indictment. (Request No. 10)
- Documents relating to the provision of support or assistance to a specific movement in a specific country at issue in the indictment, including contacts with a specific domestic organization in furtherance of the efforts. (Request No. 11)
- Documents relating to the provision of support to specific groups in a specific country at issue under the allegations of the indictment. (Request No. 13)
- Documents relating to the provision of military, humanitarian, or other support to the Nicaraguan Resistance (specifically defined), which is at the core of the allegations in this case. (Request No. 14)
- Documents relating to six specifically identified actual or potential covert intelligence operations at issue under the allegations of the indictment. (Request No. 15)
- Documents relating to a specific covert operation to perform a specific function for a specific purpose in a specific country relevant under the allegations of the indictment. (Request No. 16)
- Documents relating to provision of humanitarian support to two identified individuals and a specific organization. (Request No. 18)
- Documents relating to efforts to facilitate the provision of support to the Nicaraguan Resistance by an identified official of a specific foreign country. (Request No. 19)
- Documents relating to meetings between the President and an identified foreign official concerning issues that are at the core of the allegations of the present indictment. (Request No. 20)

- Documents relating to a specific meeting between the Vice President of the United States and a named official of an identified foreign government in a specific month of a specific year. (Request No. 21)
- The audio and tape recordings of a meeting between an NSC official and an identified representative of a named foreign government with respect to the sale of specific armaments to the Contras, and communications about that subject between two identified officials of the Department of Defense in connection with a trip to that foreign country in a particular year. (Request No. 23)
- Documents relating to the sale by a particular foreign government of identified military equipment to an identified country in a specific year. (Request No. 24)
- A copy of a particular intelligence document relating to the gathering of intelligence concerning the subject matter of the indictment, specifically including intelligence relating to specific missions concerning particular locations in Nicaragua. (Request No. 27)
- Tapes of meetings between NSC officials, DCI William J. Casey, and a particular head of a foreign government in two different specified locations in specified months. (Request No. 29)
- Two specific documents provided to the IC (as reported in the press) by the government of Israel, which contain Brady material exculpating defendants North and Poindexter. (Request No. 30)
- Copies of two specific intelligence documents (and records of the governmental officials to whom they were circulated) discussing matters that are the basis for the indictment. The President's copies of these documents are specifically requested. (Request Nos. 31 and 32)
- Documents relating to a specific, highly sensitive intelligence capability and its use

for a specified purpose concerning a named individual whose actions are integral to the allegations in the indictment. (Request No. 35)

- Documents relating to a specific, highly sensitive operation by a specific, identified organization to obtain weapons for the Contras. (Request No. 40)
- Documents relating to specific leaks of intelligence information from Congress and elsewhere. (Request No. 42)
- A specific document maintained by former DCI Casey for a specific, identified purpose relevant to the allegations in this indictment. (Request No. 44)
- Documents contained in a specific, identified file in a named U.S. intelligence agency with respect to the activities of two identified individuals involving contact with three named hostile foreign states. (Request No. 46)
- Documents relating to an investigation by the U.S. government into a specific act by certain members of Congress relating to the Sandinistas. (Request No. 47)
- Documents relating to conduct similar to that charged in the indictment (standard operating procedure in the intelligence community) with respect to specific, identified resistance movements. (Request No. 50)
- Documents relating to efforts to obtain specific military equipment for the Contras through three specific, identified foreign governments, including communications between named individuals through a specified means of communication. (Request. No. 54)
- Relevant portions of the President's diary relating to the subject matter of the indictment. (Request No. 59)
- A specific memorandum of November 1986 making a specific statement with respect to the conduct of Attorney General Meese. (Request No. 60)

- Documents and certain intelligence information relating to 23 bank accounts, identified by account number. (Request No. 76)
- Documents relating to meetings between President Reagan and/or DCI Casey and an identified foreign head of state concerning the subject matter of the present indictment. (Request No. 77)
- Specified documentary records of telephone calls between President Reagan and identified heads of foreign governments with respect to the subject matter of this indictment, including a record of a conversation between the President and an identified head of a foreign government on a specified date relevant to a particular identified subject. (Request No. 78)
- A request for certain Presidential findings with respect to a specific area of the world and a specific time period, and an indication of the number of findings that would be encompassed by the request. (Request No. 80)
- Documents relating to a specific facility in a specific country relevant to the indictment, and the knowledge of U.S. government officials with respect to that facility. (Request No. 81)
- An identified National Security Decision Directive. (Request No. 83)
- Documents relating to the provision of specified documents by a specified foreign government relating to a specific, identified purpose relevant to the indictment. (Request No. 88)
- Legal opinions of two identified government attorneys relating to the conduct at issue in the indictment. (Request No. 90)
- Documents relating to specific concerns by a specified foreign government concerning a specific leak by an identified member of Congress of information concerning a specific incident. (Request No. 91)

- Documents relating to the President's knowledge and approval of a specific covert operation presented to the head of a foreign state by identified officials of the U.S. government in a specific year. (Request No. 93)
- Documents referred to or used in the preparation of a specific government document relevant to the allegations of the indictment prepared by a government agency and produced during the course of discovery. (Request No. 99)
- Documents relating to the involvement of a named individual in a specific activity relevant to the matters at issue in the indictment. (Request No. 100)
- Documents relating to the use of a specific intelligence platform to obtain certain types of information relevant to the indictment, and the distribution of that information to officials of the U.S. government. (Request No. 104)
- Intelligence information concerning a specific, specially created operation relevant to the indictment, and the distribution of that intelligence to officials of the U.S. government. (Request No. 105)
- Documents relating to the involvement of two identified private corporations in specific intelligence operations at specific, identified locations for the purpose of obtaining specific intelligence information relating to the allegations in the indictment, and the dissemination of that information to officials of the U.S. government. (Request No. 106)
- Documents relating to a meeting between the Vice President and a specified foreign head of state on a specific date. (Request No. 110)

- Documents relating to meetings between Admiral Poindexter and leaders of specific foreign governments in a specific month in specific, identified countries, including documents prepared as a result of those meetings and disseminated to DoD, the State Department, and the CIA. (Request No. 112)
- Documents relating to the knowledge and approval of a specific, identified Ambassador (now a responsible official of another organ of the United States government) concerning the activities alleged in the indictment, and communications between that Ambassador and the State Department. The request includes information concerning meetings held at the residence of that Ambassador involving identified U.S. government officials, the Contras, and officials of a specific foreign government. (Request No. 114)
- Documents, including notes, involving Secretary of Defense Weinberger and a named aide with respect to a trip taken to a specified location by Secretary Weinberger in a specific year, including meetings held at the residence of an identified Ambassador concerning a specified subject at the heart of the present indictment. (Request No. 123)
- Documents relating to provision by an identified foreign government of specified military equipment to the Contras, and documents relating to the knowledge of that operation by U.S. government officials. (Request No. 125)
- Documents relating to a specific meeting of U.S. government officials in a specific foreign country in a specific year. (Request No. 131)
- Documents relating to the role of General Secord in the acquisition of identified military equipment from an identified foreign country in a given year. (Request No. 142)

As this partial summary makes clear, the supplemental discovery motion of defendants Poindexter and North

sets forth specific requests for documents and information, replete with exact dates, names, locations, account numbers, and other concrete detail.¹⁰ The Court's denial of the motion as "not specific at all" is irrational and unsupportable.

If the Court refuses to reconsider its summary denial of the supplemental discovery motion, it must at least order the government to gather the requested materials and preserve them or deposit them with the Court. This step is essential to preserve the materials for the appellate record so that, if necessary, another court can afford the defense its right to be heard and undertake the duty of determining whether the documents are relevant.

CONCLUSION

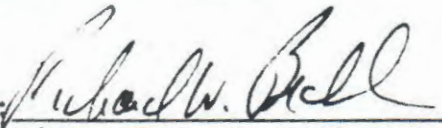
For the foregoing reasons, defendants Poindexter and North respectfully request that the Court reconsider its Order of June 6, 1988, denying defendants' supplemental

¹⁰ The supplemental requests are at least as specific as the categories that the IC suggested and the Court incorporated verbatim in its Discovery Order filed June 14, 1988. For example, the Discovery Order sets forth the following categories, among others: "United States Government support of the Contras, including direct support and efforts to obtain support from other countries," *id.* ¶ VIII(3)(A); "Private Support of the Contras," *id.* ¶ VIII(3)(B); "The Iranian Initiative," *id.* ¶ VIII(3)(C); "Congressional Inquiries Concerning" these three subjects, *id.* ¶ VIII(3)(D); and "Activities following the disclosure of the sale of arms to Iran," *id.* ¶ VIII(3)(E). A majority of the defense requests constitute more specific sub-categories of these categories selected by the IC and adopted by the Court (without awaiting a response by, or argument from, the defense) in its June 14 Order.

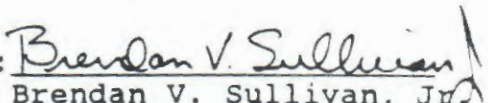
discovery motion; that, upon reconsideration, the Court permit the defense to make an ex parte, in camera, oral presentation on relevance; and that, following the presentation, the Court order the government to produce the requested materials to the defense.

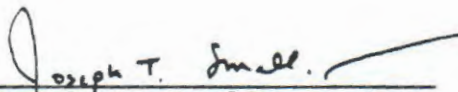
Respectfully submitted,

FULBRIGHT & JAWORSKI

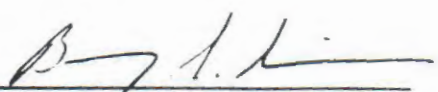
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May 31, 1988

BY HAND

Honorable Gerhard A. Gesell
United States District Judge
United States Courthouse
3rd & Constitution Avenue, N.W.
Room 2327
Washington, D.C. 20001

RE: United States v. Poindexter, et. al.
Criminal No. 88-0088


Dear Judge Gesell:

This letter is provided in response to a suggestion concerning discovery made by the Court at a conference in chambers on May 26, 1988 involving defense counsel and the Office of Independent Counsel. Michael Bromwich and Christian Mixter of my staff have advised me that the court suggested that, in connection with the defendants' classified discovery request made on May 20, 1988, defendants be required to submit to the Court, ex parte, a narrative description of what information they believe those documents and materials they have requested would produce. The Court suggested that such a narrative description would serve to describe the purported relevance of the particular items requested by the defense in their classified discovery request. In addition, such a narrative might conceivably constitute a substitution of evidence pursuant to Section 6(c) of the Classified Information Procedures Act. Mr. Bromwich and Mr. Mixter said that the Court sought a response to its proposal from both defense counsel and this office.

Honorable Gerhard A. Gesell
May 31, 1988
Page 2

We believe that any effort to help clarify the relevance, or irrelevance, of the matters requested by the defendants in their classified discovery request will serve to promote the expeditious resolution of discovery issues in this case. As a result, although we would prefer that the process be done with full disclosure to this Office, we are prepared in the first instance to accept the Court's proposal that the defendants' narrative statement and description of the relevance of those documents they are seeking be done ex parte. In this way, we would hope that the Court would be in a position to make preliminary determinations that certain categories of documents and materials requested by the defendants in their classified discovery request are not relevant to the trial of any issues in this case. To the extent that the Court requires the participation of Independent Counsel to respond to specific discovery requests or allegations of relevance, we would of course participate in the process.

Respectfully submitted,


Lawrence E. Walsh
Independent Counsel

cc: Richard W. Beckler, Esquire
Brendan V. Sullivan, Jr., Esquire
James E. Sharp, Esquire
N. Richard Janis, Esquire

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BY HAND

THE WHITE HOUSE
WASHINGTON

Date: July 8, 1988

FOR: Arthur B. Culvahouse, Jr.

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

- Action ^① Done is chief redactions
 - Your Comment
 - Let's Talk ^② ~~Send~~. Discovery
 - FYI Requests
-

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

OLIVER L. NORTH

)
)
) Criminal No. 88-0080-02
)
)

FILED

JUL 8 1988

FURTHER MEMORANDUM
AND ORDER RE CIPA
AND TRIAL SCHEDULE

JAMES F. DAVEY, Clerk

Two major pretrial issues in this case have been hotly contested. Each issue has raised questions concerning the government's ability to prosecute one or more of the counts naming Oliver L. North.

The Court has rejected North's pretrial claim that the government has misused his immunized testimony before Congress. What has remained unresolved are North's various claims that the requirements of the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. IV, as applied to this unique case, will result in denying him the right to use certain classified government documents he needs for his defense and will, in other respects, deprive him of his constitutional protections as a criminal defendant. These claims had some merit. In its Memorandum Opinion of June 22, 1988, the Court refused mechanically to apply certain CIPA procedures because of its concern that their strict application in this case would contravene established constitutional protections afforded all

defendants facing criminal charges. In addition, the Court urged that the Attorney General designate an appropriate official to carry out the Executive Branch's responsibilities under Section 6 of CIPA to avoid any question as to Independent Counsel's authority, and this has been done.¹

This further Memorandum considers the principal remaining CIPA questions which concern North's ability to conduct adequate documentary discovery before trial and his right to use material obtained through discovery at trial, along with certain classified material found in government exhibits which the government intends to redact and withhold from the jury.

Although numerous documents have been disclosed to North in classified form, Independent Counsel has advised the Court that the interagency group responsible for declassifying and releasing classified material for use at trial remains adamantly opposed to any public disclosure of the classified information redacted from the Independent Counsel's case-in-chief documents. Independent Counsel has scrupulously deferred to agency representatives who insist on withholding certain information from public view. However, North contends that much of this redacted material is relevant to his defense.

A continuing dispute has also developed between the parties as to the relevance and materiality of certain documents

¹ The Attorney General has appointed Edward S.G. Dennis, Jr., Acting Assistant Attorney General, Criminal Division, as his statutory designee under Section 6(c) of CIPA.

requested by North, which North suggests reflect both the incompleteness of Independent Counsel's grand jury inquiry into the underlying facts and the insufficiency of the government's proof.

Although North contends this withholding of information distorts the documentary evidence and fails to reveal the true nature and effect of certain events disclosed by those portions of papers to be publicly released, he has resolutely refused to disclose any details of his defense to Independent Counsel for fear that this could alert the government prematurely to what he considers the inherent weakness in the Independent Counsel's theory of prosecution. This, in turn, led him to make insufficiently particularized discovery requests and prevented his access through discovery to papers related to his theory of defense.

The informal give-and-take between the parties which normally takes place during pretrial stages of criminal cases never occurred and issues have remained unresolved.

The Court has attempted to remove these obstacles by its decision, announced in open court on June 23, 1988, and not opposed by Independent Counsel, to hear North's counsel at an in camera, ex parte hearing for the sole purpose of becoming more precisely informed as to the details of North's proposed defense, as it relates to his demand for access to classified materials the government has indicated it will refuse to release publicly, and materials which the government has already redacted from its proposed proof and apparently considers wholly irrelevant and

immaterial.

At the in camera, ex parte hearing,² on July 6, 1988, which lasted over four hours, North's counsel particularized and illustrated by reference to specific documents his need for certain classified material not included in the government's case-in-chief, and illustrated how some of the material tended to exonerate North of guilt on certain charges. He also demonstrated how his theory of the defense requires use of redacted portions of the government's case.

After considering counsel's representations the Court has concluded that:

(A) The government has redacted certain information from its documentary case-in-chief which must be available to North for his use at trial.

(B) The Court is also satisfied that some defense discovery claims, supported by information presented to the Court, may be sufficiently pertinent to require disclosure of other classified documents previously sought under North's supplemental discovery request (Defendants' Joint Pretrial Motion No. 12).

North contends that money raised by Secord and Hakim from the sale of missiles to Iran was combined in private accounts with money received from foreign governments and private donations. In turn, the combined funds were used to plan and

² This hearing was recorded but not transcribed and the reporter's notes are sealed in the Court's SCIF. No transcription may be ordered or prepared except under written Court order.

carry out various covert operations, including actions directly or indirectly supporting the contras. Further, he contends that these initiatives were all approved at or near cabinet level; their execution was closely monitored through the use of a variety of intelligence methods and sources -- sometimes at the specific request of North -- and were made generally known to North's superiors through a variety of means. Thus he will submit that his activities were known and authorized and he seeks material that will reinforce this position. Among materials sought are documents bearing primarily on issues of criminal intent, which is of particular significance to the first three counts of the indictment. The materials he seeks -- even if not a "smoking gun" -- may serve to corroborate testimony of defense witnesses, including North himself, if he takes the stand. They may also support defense challenges to the credibility of certain known prosecution witnesses who have, in the past, denied that North's funding and other activities were monitored, known and approved at the highest levels of the government.

The Court is not the trier of fact in this case. The jury must decide where the truth lies. But North has sufficiently demonstrated to the Court that information redacted from Independent Counsel's case-in-chief documents and certain documents requested in his supplemental discovery motion require the Court to enter the following directives to assure that the truth, whatever it ultimately proves to be, "will out."

(1) North shall, by August 1, 1988, designate in the form of a CIPA § 5 notice those redactions made in documents in the government's case-in-chief he requires to support his defense.

(2) Independent Counsel ^{attached} shall supply all documents included within items 1 through 20, inclusive, of North's supplemental discovery request of May 23, 1988, (Defendants' Joint Pretrial Motion No. 12), which in any respect reflect any of the following: (a) the funding of the activity from any source;

(b) whether or not senior government officials were aware of the activity; (c) whether or not North participated individually under any pseudonym; and/or (d) any use or contemplated use of the vessel Erria.

(3) North shall also receive all references to any form of aid or military assistance to the contras, or entities supporting the contras, direct or indirect, contained in any record of the daily Presidential intelligence briefing, specifically including non-identical copies of the President's Daily Briefing ("PDB"), formal or informal, together with records showing distribution of the information for the period September 1, 1984 through December 31, 1986.

(4) North shall also receive all information concerning activities in aid of the contras, direct or indirect, contained in any document forwarded to any offices in the White House from the Central American Joint Intelligence Task Force ("CAJIT") in the period from September 1, 1984 through December 31, 1986.

(5) These items 2-4, inclusive, shall be delivered in full

classified text to the defense SCIF for North's review on or before August 1, 1988.

(6) North shall, by August 1, 1988, notify the government pursuant to Section 5 of CIPA of any other classified document then in its possession he proposes to present in his defense at trial. This notice shall include all items selected under (1) above.

(7) North shall, on or before August 15, 1988, notify the government pursuant to Section 5 of CIPA of each classified document obtained under this Order he proposes to present in his defense at trial.

The Court may be obliged to widen North's discovery as the trial proceeds and reserves the right to do so, with notice to the prosecution, as exigencies of trial may demand. However, North's numerous other discovery requests do not presently appear sufficiently pertinent to justify pretrial discovery into areas involving sensitive national security.

(8) Independent Counsel shall, by August 1, 1988, also relate each document in its case-in-chief to the specific count or counts naming North -- other than the first three counts -- for which the document will be offered as proof.

(9) A jury trial on those counts remaining after the CIPA process takes its course is set for September 20, 1988, in Courtroom No. 6, commencing at 10:00 a.m. It presently appears that, at a minimum, substantive charges of cover-up, falsification and North's alleged receipt of personal benefit

derived from his conduct as a government employee can proceed to trial. This trial date is six months after indictment. It must be met.

Nothing in the foregoing involves even a tentative decision by the Court as to the merits of North's defense or the admissibility of any documentary evidence that may be offered by North. Nor is it intended to supersede prior orders requiring disclosure of Brady and other relevant and material records, including tapes and video records.

SO ORDERED.


UNITED STATES DISTRICT JUDGE

July 8, 1988.

WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name

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Withdrawer

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File Folder

IRAN/ARMS TRANSACTION: NORTH/POINDEXTER
CLASSIFIED DISCOVERY REQUEST (2 OF 13)

FOIA

S643
SYSTEMATIC

Box Number

CFOA 113I

139

<i>ID</i>	<i>Document Type</i> <i>Document Description</i>	<i>No of</i> <i>pages</i>	<i>Doc Date</i>	<i>Restric-</i> <i>tions</i>
164959	MOTION PG. 5-14; REQUEST FOR PRODUCTION [OF DOCUMENTS - GOVERNMENT RESPONSE]	10	7/8/1988	B1

The above documents were not referred for declassification review at time of processing
Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
- B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.