Iran/Contra

North Trial Documents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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

ORDER

Re: Defendant North's Motion (#39) to Dismiss Counts 1-3, Strike References to the Boland Amendments, and/or Preclude Evidence Concerning the Boland Amendments.

Defendant North's Motion (#40), to Dismiss Counts 1-3 Under the Political Question Doctrine.

Defendant North's Motion (#41) to Dismiss Count 1, Strike References to Executive Order 12333 and National Security Decision Directive 159, and/or Preclude Evidence Concerning Those Provisions.

Defendant North's Motion (#42) to Dismiss Count 1 for Lack of Fair Notice.

Defendant North's Motion (#44) to Dismiss Count 1 for Charging Multiple Conspiracies.

Defendant North's Motions (#45, #46) to Dismiss Counts 2, 3 for Failure to State an Offense.

Defendant North's Motion (#49) to Dismiss Count 1-3, 4-7, 9 and 23 as Based on Novel Legal Theories Beyond the IC's Authority.

After considering the briefs and full oral argument of these motions to dismiss counts One, Two and Three, motions 39, 40, 41, 42, 44, 45 and 49 are denied and motion 46 seeking dismissal of Count 3 is granted, for reasons set forth in summary below.

Motions Addressed to Count 1.

Count 1 clearly states all elements of a conspiracy to defraud the United States, and contrary to his assertions in Motion #42, North had fair notice that the conduct charged was subject to criminal charges. In 1924, the Supreme Court described defrauding the United States in terms that clearly encompass North's conduct as alleged. Chief Justice Taft said:

> To conspire to defraud the United States means primarily to cheat the Government out of property or money, but it also means to interfere with or obstruct one of its lawful government functions by deceit, craft or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane or the overreaching of those charged with carrying out governmental intention. Hammerschmidt v. United States, 265 U.S. 182, 188 (1924).

See also, United States v. Haldeman, 559 F.2d 31 (D.C.Cir. 1976), (en banc), cert. denied, 431 U.S. 933 (1977); United States v. Lewis, 716 F.2d 16, 23 (D.C.Cir. 1983).

The Count does not charge multiple conspiracies, to violate laws and to conceal the violations, as North asserts in Motion #44. The indictment clearly alleges a conspiracy which involved concealing the very existence of the profits of the enterprise from the start and hiding from Congress information relating to the conspirators' assistance for the contras. Its purpose depended on deceit from the start, and acts of concealment were actually part of the commission of the substantive crime. The

cover-up elements of the conspiracy were not improperly added to stretch the statute of limitations to cover the conspiracy. See, Grunewald v. United States, 353 U.S. 391 (1957); Forman v. United States, 361 U.S. 416, 422-424 (1960), reh. denied, 362 U.S. 937. One single conspiracy is alleged. The Independent Counsel must convince the jury that a conspiratorial agreement existed, with each co-conspirator having a specific intent to further a common unlawful objective, United States v. Tarantino, 846 F.2d 1384, 1391-1392 (D.C.Cir. 1988), cert. denied, 57 U.S.L.W. 3234 (U.S. Oct. 3, 1988), but that agreement may have several objects, including concealment. Braverman v. United States, 317 U.S. 49 (1942).

References to the Boland Amendments[1] will not be stricken

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[1] Two versions of the Boland Amendment applied during the time period relevant to Count One. Section 8066(a) of the Department of Defense Appropriations Bill, enacted as Section 8066 of P.L. 98-473, effective from October 12, 1984 to December 19, 1985, provided:

> (a) During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

Part (b) contained provisions relating to conditions in which the prohibition would cease. These provisions, including a Presidential report to Congress and a joint resolution approving assistance, were never fully met. Humanitarian aid was provided, beginning in August, 1985, through separate legislation, 99-83, Section 722, and other laws permitted some information to be exchanged.

On December 4, 1985, another Boland Amendment was enacted as Section 105 of P.L. 99-169. It was in effect until October 18, 1986 and provided:

> Funds available to the Central Intelligence Agency, the

from these counts of the indictment. Contrary to North's assertions in Motion #39, the references are appropriate to the charges in both counts 1 and 2, as well as to later counts in the indictment. Moreover, nothing has been presented to date that requires the Court to address the constitutional claim regarding the Boland Amendments or to question the legality of determinations made by the President in his working arrangements with the National Security Council.

North contends, in effect, that even if he was engaged in conduct that was inconsistent with the intent of the Boland Amendments, as the indictment recites, he still has not interfered with or obstructed a "lawful governmental function" by his effort to misrepresent what he was doing. The Boland Amendments are unconstitutional, he contends, because they attempt to regulate how the President should conduct foreign policy and, in any event, they were never meant to apply to the National Security Council. Thus according to North's view, his misrepresentations and evasions did not interfere with a lawful

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> Department of Defense or any other agency or entity of the United States involved in intelligence activities may be obligated and expended in fiscal year 1986 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only as authorized in section 101 and as specified in the classified Schedule of Authorizations referred to in section 102, or pursuant to section 502 of the National Security Act of 1947, or to section 106 of the Supplemental Appropriations Act, 1985 (P.L. 99-88).

The classified schedule and other provisions mentioned, in addition to the relevant report and Public Law 99-190, Section 8050, reveal Congressional intent to restrict lethal military or paramilitary supplies to the contras.

governmental function.

The difficulty with this argument is that the President and the White House staff, whatever their doubts as to the constitutional propriety of some aspects of the Boland Amendments as they applied to the NSC, were functioning in respect to pertinent aspects of this case as if they were in compliance with Boland.[2] While any White House uncertainty may bear on North's intent under certain counts, his understanding as to the constitutionality of Boland in no way affords an excuse for his alleged misconduct or entitled him to obstruct the way the government was, in fact, functioning. The President signed the laws containing the Boland Amendments and he apparently decided to comply with relevant aspects of the Boland Amendments, and was willing to respond to Congressional committee inquiries relating to compliance with the Boland Amendments. As discussed in the Court's memorandum filed November 29, 1988, North did not refuse to answer Congressional inquiries on the grounds that Congress had no constitutional right to query National Security Council

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[2] Another difficulty with North's motion to dismiss is that the conspiracy alleged involves more than just a conspiracy to circumvent Boland's restrictions. The conspiracy to defraud the United States has three parts, only the first of which hinges in large part on Boland. The second part involves conflicts of interest and self-dealing with respect to creation and disposition of surplus funds from the arms sales to Iran. The third part involves the corruption of the arms deals with Iran, and departures from its specified functions as stated in the President's written authorization. In addition to the three parts of the conspiracy to defraud the United States, the indictment also alleges a conspiracy to violate five separate substantive offenses.

officials with respect to covert acts being conducted through employees of the NSC. In fact, he is alleged to have asserted his, and the NSC's full compliance with the Boland Amendment. (See, Memorandum re Defendant North's Motions to Dismiss Counts 5, 6, and 7, Charging North with Making False Statements to Congress.)

The President was free within the prerogatives of his office to comply with the prohibitions of the Boland Amendments or to resist them in whole or in part if compliance would have unduly infringed on his responsibilities in the realm of foreign relations and national security. The language of the Boland Amendments is not precise in some pertinent respects and it has many aspects, but these ambiguities are of no consequence where the Executive and the Legislative branches act in harmony. If, as Independent Counsel contends he is prepared to prove, the President, both previous and subsequent to the enactment of Boland, chose to limit the activities of the National Security Council by directives and Executive Orders that were consistent with the Boland Amendments, North's alleged unauthorized deviation from such limitations must be viewed as contrary to lawful government functions. Thus he is alleged to have defrauded the United States. Similarly, if the President in some respect took, for example, a narrow view of the words "supporting" or "support" in the texts of the Amendments and authorized certain types of diplomatic contact with other nations vis-a-vis Nicaragua, North cannot be held to a higher

standard if an aspect of his own conduct in this regard was so authorized. Thus, under all these circumstances, a facial attack on the constitutionality of the Boland Amendments is misplaced. As in most criminal cases, there are facts to be resolved, and separation of powers theories -- over which much dispute exists-- do not come under consideration if the facts show the affected Branches have accommodated to each other's interest to establish the manner in which government will function.

The Court also refuses to strike references to Executive Order 12333 and National Security Decision Directive 159 and to preclude evidence relating to these provisions, as North urges in Motion #41.[3] These orders form part of the framework of laws and regulations which North is alleged to have conspired to circumvent and impair. That they themselves do not carry criminal penalties is of no consequence. These are counts alleging conspiracy to defraud the United States and defeat its lawful governmental functions.

Moreover, the political question doctrine does not require dismissal of Counts 1 and 2, as the motion papers (#40) suggest.

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[3] Executive Order 12333, promulgated by the President in December of 1981, prohibits any United States intelligence agency, with the exception of the Central Intelligence Agency, from conducting covert actions with a Presidential finding that the agency was more likely than the CIA to achieve a particular objective. In early 1985, the President signed NSDD 159, which required the President to specifically approve by a written finding all covert actions undertaken by any United States Government agency or entity. NSDD also states that each covert action is also considered a significant anticipated intelligence activity under Section 501 of the National Security Act and is subject to certain Congressional reporting requirements.

Not every matter touching on foreign affairs is barred by the political question doctrine. Japan Whaling Association v. American Cetacean Society, 478 U.S. 221, 229-230 (1986); Baker v. Carr, 369 U.S. 186, 211 (1969). It is the Court's duty to interpret statutes and Executive Orders, See, Japan Whaling, 478 U.S. at 227, and the indictment does not indicate that the case should be dismissed as involving a non-justiciable political question. Ramirez de Arellano v. Weinberger, 745 F.2d 1500, 1511-1515 (D.C.Cir.. 1984) (en banc), vacated on other grounds, 471 U.S. 1113 (1985). Trial will not require resolution of questions committed by the text of the Constitution to a coordinate branch. The facts of the case, while complex, are not beyond judicial ken. United States v. Duggan, 743 F.2d 59, 74 (2d Cir. 1984). Moreover, prudence does not in fact counsel dismissal in the circumstances of this case, as North contends. It would be imprudent to dismiss the case on political question grounds simply because sensitive covert activities may be involved, or because the Congress and an employee of the President may have different views of an issue relating to foreign affairs. The President's conduct in implementing his foreign policy or intelligence functions is not being brought under scrutiny. Rather, it is what he did and authorized or didn't authorize that controls the outcome of this claim, and the Court need not explore the purposes of the Iran initiative beyond the President's formal written statement of its purposes.

Motions Addressed to Count 2.

All claims addressed to Count 2 are covered by the foregoing, except Motion No. 45 seeking dismissal for failure to state an offense.

Count 2 is sufficient to charge a violation of 18 U.S.C. § 641.[4] The allegations underlying Count Two concern the generation of excess funds stemming from arms sales to Iran and the diversion of these funds to the Enterprise, for personal enrichment of some of the co-conspirators and use in projects designated by themselves, such as sending lethal military supplies to the Nicaraguan resistance.

Among other things, conversion of government funds is specifically alleged. Regardless of ancient common law definitions, this more modern statute includes conversion, which ". . . adds significantly to the range of protection of government property . . . " Morissette v. United States, 342 U.S. 246, 272 (1952). Justice Jackson's delineation of the elements of conversion in Morissette closely fits the allegations of this count, that is, that North wrongfully deprived another of possession of property. Id., at 276. Conversion may encompass a wide variety of acts:

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[4] 18 U.S.C. § 641 provides that:

"Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

"Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted --

"Shall be fined...."

> Conversion, however, may be consummated without any intent to keep and without any wrongful taking, where the initial possession by the converter was entirely lawful. Conversion may include misuse or abuse of property. It may reach use in an unauthorized manner or to an unauthorized extent of property placed in one's custody for limited use. Money rightfully taken into one's custody may be converted without any intent to keep or embezzle it merely by commingling it with the custodian's own, if he was under a duty to keep it separate and intact. It is not difficult to think of intentional and knowing abuses and unauthorized uses of government property that might be knowing conversions but which could not be reached as embezzlement, stealing or purloining. . . .

342 U.S. at 271-72. Thus the count must stand as stating a more limited conspiracy within the larger scope of Count One. It can be considered as stating an alternative claim of conversion. The Court is presently unable on the papers and arguments to resolve whether or not the facts to be presented will support embezzlement and theft under the same claim.

Motions Addressed to Count 3.

Count 3 is, in many ways, a purely cumulative count. The difficulty of charging the jury with the elements of Count 1 and then attempting to charge the narrower confines of this wire fraud count suggested by McNally v. United States, 107 S. Ct. 2875 (1987) presents a likelihood of creating substantial confusion in the minds of the jurors. Evidence going to a deprivation of honest and faithful services would be relevant for Count 1, for instance, but the jury could only consider deprivations of property for Count 3. The difficulty of untangling the elements of these alleged frauds would require the Court at a minimum to sever the count to avoid confusion. Yet

severance would do an injustice to North who should stand trial but once. Count 3 is dismissed.

It is obviously clear from the foregoing that neither Count 1 nor Count 2 states a novel legal theory (#49). They each allege well-established offenses.

SO ORDERED.

Gerhard A. Gesell
UNITED STATES DISTRICT JUDGE

November 29, 1988.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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

MEMORANDUM AND ORDER

Re: Defendant North's Motions to Dismiss Counts 5, 6, and 7, Charging North with Making False Statements to Congress.

Each of North's motions urging dismissal of counts 5, 6, and 7 which charge him with making false statements to Congress in violation of 18 U.S.C. § 1001 is denied. In a series of overlapping, somewhat repetitive motions,[1] North has urged that these counts must be dismissed for numerous reasons, most of which relate more to policy than to law.

A. Facts.

The Independent Counsel has outlined the factual background of the charges from his viewpoint as follows. In the summer and

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[1] These include (#30) to Dismiss Counts 5, 6, and 7 on the Ground that 18 U.S.C. § 1001 Does Not Apply to the Nonadministrative Functions of Congress; (#34) to Dismiss Counts 4, 5, 6, 7, and 9 Because of Lack of Fair Notice That the Conduct Charged Was Criminal; (#49) to Dismiss Counts 1-3, 4-7, 9, and 23 As Based on Novel Legal Theories Beyond the IC's Authority; and (#31) to Dismiss Counts 5, 6, 7, and 15 on the Ground That They Allege Conduct Within the "Exculpatory No" Exception to 18 U.S.C. § 1001. All these motions are denied insofar as they relate to counts 5, 6, and 7. Motion (#48) to Dismiss on the Ground that the Independent Counsel had no Lawful Jurisdiction to Investigate or Prosecute the Crimes Charged will be addressed in another memorandum.

fall of 1985, press reports sparked two committees of the House of Representatives to institute inquiries directed towards North's conduct regarding advice and fund-raising support to the Nicaraguan rebel leaders. North was then a Marine detailed to the National Security Council. Both of these committees had jurisdiction under the Rules of the House over the matters in question.[2] The letters, sent by The Honorable Michael Barnes, Chairman of the Subcommittee on Western Hemisphere Affairs of the House Foreign Affairs Committee (HFAC), and the Honorable Lee Hamilton, Chairman of the House Permanent Select Committee on Intelligence (HPSCI), referred explicitly to the Boland Amendment. Chairman Hamilton's letter queried into the "legal justification" for any military support for the contras. Chairman Barnes' letter referred to his subcommittee's jurisdiction over United States policy toward Nicaragua, and requested all documentation of North's contacts with Nicaraguan

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[2] According to the Rules of the House of Representatives, House Doc. 98-277, the Committee on Foreign Affairs has responsibility for matters including: Relations of the United States with foreign nations generally; Intervention abroad and declarations of war; and reviewing and studying, on a continuing basis, all laws, programs, and Government activities dealing with or involving...intelligence activities relating to foreign policy. Rule X, cl.1(i)(1),(6), cl.3(d). In addition, all committees have oversight responsibility, pursuant to Rule X, cl.2. Rule XLVIII outlines the responsibilities of HPSCI. The select committee is referred all proposed legislation, messages, petitions, memorials, and other matters relating to intelligence and intelligence-related activities of all departments and agencies of the Government. Among other duties, the select committee makes regular and periodic reports to the House on the nature and extent of intelligence and intelligence-related activities of the various departments and agencies of the United States.

rebel leaders as of October, 1984. Both letters were on official stationery and each letter was signed by the Congressman in his official capacity as Chairman.

The indictment alleges that North prepared the responses which, to take the letter to HFAC, state in part that

> From that review I can state with deep personal conviction that at no time did I or any member of the National Security Council staff violate the letter or the spirit of the law.... It is equally important to stress what we did not do. We did not solicit funds or other support for military or paramilitary activities either from Americans or third parties. We did not offer tactical advice for the conduct of their military activities or their organization.

The indictment alleges that this response and the similar one sent to Chairman Hamilton contain false statements. After receiving the response drafted by North and after meeting with Robert C. McFarlane, the President's National Security Advisor, Chairman Hamilton sought further information concerning allegations about the activities of North, in the form of specific questions developed by Committee members. The indictment alleges that, once again, North prepared responses to the Committee's specific questions for McFarlane to transmit to HPSCI, which falsely stated, among other things, that North did not use his influence to facilitate movement of supplies to the resistance, and that no member of the NSC staff was officially or unofficially raising funds for the Nicaraguan democratic opposition. He did not suggest that the President was not bound by the Boland Amendment, nor did he refuse to answer. Rather, the indictment alleges that he spoke falsely and misled the

Committees.

B. Constitutional Argument.

North urges that the criminal statutes proscribing false statements within the jurisdiction of any department or agency cannot be applied to communications between an employee of the Executive Branch and Congress. North proceeds to fashion a constitutional argument, contending that the asserted primacy of the White House in foreign affairs precludes officials working for the Executive from being prosecuted for false statements made to Congress regarding foreign affairs.[3] This argument lacks

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[3] Though the parameters of Congress' powers may be contested, Congress surely has a role to play in aspects of foreign affairs, as the Constitution expressly recognizes and the Supreme Court of the United States has affirmed.

The most prominent among these Congressional powers is of course the general appropriations power. Other provisions of the Constitution include the power to provide for the common defence, regulate foreign commerce, declare war, define and punish piracies and felonies committed on the high seas and offenses against the laws of nations, raise and support armies, provide and maintain a navy, make rules for the government and regulation of land and naval forces. And Congress has a check on many constitutionally-assigned Executive powers relating to foreign affairs, through for instance, the confirmation process for treaties and ambassadors.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952), Dames and Moore v. Reagan, 343 U.S. 654 (1981), and Japan Whaling Association v. American Cetacean Society, 478 U.S. 221 (1986), are among the cases recognizing Congress' role in foreign affairs. United States v. Nixon, 418 U.S. 683 (1974), explicitly disavowed that it was addressing the balance between the confidentiality interest and congressional demands for information. Id., at 712, n.19.

For examples of statutes in the arena of foreign affairs which provide for congressional checks on executive authority, by requirements for findings, notification or other means, see, e.g., Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1801-1811 at § 1802(a)(1)(C) and (a)(2), § 1808; International

substance and it misses the point it attempts to make.

Each of the three counts allege false statements made to the House Intelligence Committee, HPSCI. Executive officials have a statutory obligation to provide intelligence information to this Committee on request. 50 U.S.C. § 413 (b).[4] More generally, congressional committees act well within their authority when they seek explanation from Executive Branch officials regarding matters that may affect substantive legislative decisions. It is essential that Congress legislate based on fact, not falsifications, in the realm of foreign affairs as well as in domestic legislation.

If Congress is increasing its power in a manner that infringes upon the President's prerogatives, the President may assert executive privilege or direct a person in North's position not to answer. Deliberate falsifications are another matter, and North did not himself have executive privilege. Indeed, the inquiries were directed to McFarlane as the President's National Security Advisor regarding North's personal conduct. North did not simply refuse to answer; he affirmatively deceived Congress, and there is not the slightest suggestion in North's papers that the President instructed North to give false information. He

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Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706; Central American Democracy, Peace and Development Initiative, 22 U.S.C. §§ 2271-2276.

[4] The House and Senate Intelligence Committees also must be notified of significant intelligence activities pursuant to 22 U.S.C. § 2422.

cannot claim any sort of privilege for this.[5] The thought that any one of the hundreds or thousands of persons working for the President can affirmatively and intentionally mislead Congress when it seeks information to perform one of its assigned functions for any reason -- including self-interest or the belief that the President would approve -- is unacceptable on its face. Such a disdainful view of our democratic form of government has no constitutional substance. Where, as here, power is shared among the branches, willful and deliberate deceit such as North allegedly espouses cannot be excused on constitutional grounds. See, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635-637 (J. Jackson, concurring).

C. Policy Arguments.

Apart from his constitutional arguments, North's counsel argue in Motion #30 that applying the law to statements to Congress would have untoward effects on constituent communication with their elected officials, communication by persons interested in legislation, and communication from Executive Branch officials and their staffs to Congress. He argues that requiring Executive officials to tell the truth would have a "chilling effect" that "would disrupt the orderly functioning of government." Yet the effects of not enforcing

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[5] Even constitutionally explicit Fifth Amendment privileges do not exonerate affirmative false statements. United States v. Wong, 431 U.S. 174, 178 (1977). As the Court in Wong said, "Our legal system provides methods for challenging the Government's right to ask questions -- lying is not one of them." Id., at 180, quoting Bryson v. United States, 396 U.S. 64, 72 (1969).

the law in these circumstances are surely worse than the consequences of enforcing it, and North's assertion ignores the requirement of criminal intent, that the false statements be made "knowingly and willfully." North seems to state that Executive Branch officials and their staffs habitually and properly lie to Congress. He thus again devalues the democratic premise that sound legislation depends on a free-flowing, accurate stream of information to Congress, from government officials who must execute the laws as enacted. Most officials no doubt find that responding truthfully to congressional inquires is not only in keeping with our structure of shared powers, but that it is also useful to their agencies to build a trusting relationship with Congress. Whatever the practice, Congress has not accepted North's policy contentions, and Congress has set the standard.

The law is clear that Section § 1001 does apply to false statements made to any branch of government: Executive, Legislative or Judicial. United States v. Bramblett, 348 U.S. 503, 509 (1955). In light of the broad legal sweep of § 1001, North advances other policy-related arguments for excluding him from the strictures of § 1001. He contends that because § 1001 does not apply to the non-administrative functions of the Judicial Branch,[6] it should be held inapplicable to the non-

[6] Dicta in a case from this Circuit, Morgan v. United States, 309 F.2d 234 (D.C.Cir.), cert. denied, 373 U.S. 917 (1962), and some cases from other Circuits have said that Section 1001 does not to apply to in-court statements. Courts have largely relied on the fact that perjury statutes cover in-court statements, and have stated that the conventions of courtroom advocacy might create many ambiguous, borderline cases in which

administrative functions of Congress, and he contends that his statements were made in a non-administrative context. He urges that statements to committee chairmen deserve to be treated like statements in open court to judges, that perjury statutes are adequate safeguards.[7] These policy arguments are addressed to the wrong forum. Not only does the judiciary face somewhat different conditions in a courtroom than Congress faces, but the statute does not allow North's interpretation. Congress may set the policy it expects from those who deal with it. Congress felt that less exacting standards than are included in the perjury statute were appropriate for ensuring the integrity of governmental functions. United States v. Gilliland, 312 U.S. 86, 95 (1941); United States v. Rodgers, 466 U.S. 475, 482-483 (1984).

D. Fair Warning.

As part of North's ubiquitous "no fair warning" argument, made in Motions #30, #34 and #49, his counsel say that their "research has not disclosed a single conviction under § 1001 based on a statement to Congress that did not relate directly to

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application of § 1001 could harm other important interests, such as rights of the criminal defendant. See, e.g., United States v. Erhardt, 381 F.2d 173 (6th Cir. 1967); United States v. Abrahams, 604 F.2d 386 (5th Cir. 1979).

[7] North's written false statements would not fit in the perjury statute's stricter standards. False statements may be written or oral, they need not be taken under oath, and there is no rule necessitating witnesses. See, United States v. Massey, 550 F.2d 300, 305 (5th Cir. 1977); United States v. Isaacs, 493 F.2d 1124 (7th Cir. 1974); United States v. Ratner, 464 F.2d 101 (9th Cir. 1972).

governmental functions of the committees receiving the deceptive letters.

North's motions to dismiss counts 5, 6, and 7 are denied.

SO ORDERED.

Gerhard A. Gesell
UNITED STATES DISTRICT JUDGE

November 29, 1988

LAW OFFICES

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November 28, 1988

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

Re: United States of America v. North,
CR No. 88-0080 - 02 (GAG)

Dear Judge Gesell:

Enclosed please find courtesy copies of the following pleadings filed today on behalf of defendant Oliver L. North:

1. Defendant's Opposition to IC's Motion to Strike Defendant's CIPA § 5 Notices and to Preclude Defendant from Disclosing Classified Information at Trial; and

2. Motion of Defendant Oliver L. North for Leave to File Motion for an Order That the CIPA § 6 Hearing Scheduled to Begin November 30 Be Conducted Ex Parte (Defendant's First Pretrial Motion for Leave to File).

Respectfully submitted,

Barry S. Simon

Enclosures

cc: Lawrence E. Walsh, Esquire

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DEFENDANT'S OPPOSITION TO IC'S MOTION TO STRIKE DEFENDANT'S CIPA § 5 NOTICES AND TO PRECLUDE DEFENDANT FROM DISCLOSING CLASSIFIED INFORMATION AT TRIAL

Preliminary Statement

Having brought a case alleging "a course of conduct carried out using classified materials in classified channels from a highly classified site," Order of 4/6/88--a case that the Court has found to be "littered with classified documents," Tr. of 11/21/88, at 79--the IC now seeks to preclude defendant North from disclosing any classified documents or other information in his defense at trial.[1] The IC asks the Court to withhold critical classified information from the jury solely because defendant North, in strict compliance with CIPA § 5 as modified by the Court's Orders, has included in his supplemental second CIPA notice (by the IC's estimate) some 40,000 pages of classified material--less than seven percent of the 600,000 pages of classified documents that the IC has produced and conceded to be relevant.

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1/ See Government's Motion to Strike Defendant's CIPA Notices and to Preclude Defendant from Disclosing Classified Information at Trial (filed 11/16/88) [hereafter cited as "IC Mem."].

The Court should reject the IC's frontal assault on defendant North's fundamental Fifth and Sixth Amendment right to present a defense. The IC decided to indict North on charges that implicate some of the nation's most vital national security interests and challenge the conduct of American foreign policy over a three-year period. The IC chose to list 87 witnesses in its case-in-chief, many of them government officials "acquainted with high security matters," Tr. of 11/21/88, at 80, and eight of whom are so sensitive that they cannot even be identified publicly. Having had the bad judgment to bring this case, despite repeated warnings that the charges could not be tried without massive disclosures of classified information, the IC cannot shift the blame to defendant North merely because North must use a tiny fraction of the relevant classified information to defend himself.

Since the beginning of this case, the defense has complied with the Court's CIPA Orders, despite our constitutional objections to CIPA § 5 as applied and the impossible time constraints imposed by the Court. CIPA is intended to protect national security, and we have scrupulously observed its requirements (as modified by the Court) to avoid the potential damage caused by the IC's charging decision. Our CIPA notices have been filed with the Court Security Officer as sealed pleadings to protect their contents from disclosure. We have understood throughout the proceedings that

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the relevance of the classified documents that we reasonably expect to disclose will be determined in advance of trial at a closed CIPA § 6 hearing conducted with all appropriate security precautions. And we have been aware from the outset of the case that under CIPA § 6(e), the Attorney General has an absolute right to prevent disclosure of classified material that the Court determines to be relevant, with appropriate sanctions. Accordingly, the Court should reject as mere "spin control" the IC's charge, repeated throughout its motion, that we have somehow threatened national security or engaged in "graymail" by taking the first step, required by statute, to protect this nation's secrets.[2/]

[2/] The IC's complaint that the defense has "intentionally overloaded the CIPA process," IC Mem. at 13, is just another example of the IC's insistence on blaming the defendant for problems that the IC itself created. (In a similar vein, after the IC had charged CIA Operations Officer Fernandez in the wrong district, it tried to blame counsel for Mr. Fernandez for not advising the IC sooner that the indictment had been returned on the wrong side of the Potomac.) If the CIPA process is "overloaded," it is only because the IC insisted on ignoring the Attorney General's CIPA Guidelines and bringing a "global case" that implicates massive amounts of classified information, including some 82,000 pages of classified material that the IC itself has acknowledged to be "core." The defense specifically advised the Court more than six months ago that "[t]he sheer volume of classified information involved in this case would pose massive administrative problems if the government were to request a § 6(a) hearing," and argued that any such hearing would violate defendant North's Fifth and Sixth Amendment rights. Memorandum in Support of Motion for a Declaration That Section 5 of CIPA, and the Protective Order Entered April 15, 1988, Are Unconstitutional (Defendants' Joint Pretrial Motion No. 4), at 26-27 n.25 (filed 4/29/88). The Court itself recognized that "[i]t probably was never contemplated that classified information problems of this magnitude would be presented to a trial judge in a single case,"

(continued...)

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ARGUMENT

The IC devotes the bulk of its motion to an attack on defendant North's supplemental second CIPA notice--the notice in which the defense lists and briefly describes the classified documents that it presently reasonably expects to disclose or to cause the disclosure of at trial.[3] The IC's motion raises three principal objections to the supplemental second notice, none of which has merit.

First, the IC claims that the supplemental second CIPA notice is "grossly inflated" because it contains some 40,000 pages of classified material. IC Mem. at 8. Even accepting the IC's figure, it provides no basis for striking the supplemental second notice. The IC ultimately produced some 600,000 pages of concededly relevant classified material to the defense, of which roughly 82,000 pages contained what

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[2] (...continued)
Memorandum and Preliminary Order Re CIPA, at 8 (filed 6/22/88), and it recently reiterated that "the constitutional attack on CIPA, as applied, remains under consideration in the light of continuing and further developments in the case," Order of 10/19/88, at 1 (emphasis in original). Apparently, the IC still does not understand the insuperable problems posed by the unprecedented volume of classified information at issue in this case.

[3] The IC asked the Court to strike defendant North's supplemental first CIPA notice as well. That part of the IC's motion, which was obviously without merit, is now moot in light of the Court's Order setting a CIPA § 6 hearing to begin November 30 with respect to the redactions in the IC's case-in-chief documents and specifically finding that a number of the IC's proposed substitutions are inadequate in their present form. See Order of 11/22/88.

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the IC acknowledged to be "core" information.[4] Even by the IC's count, therefore, the defense has designated on its supplemental second notice only a small fraction of the total number of relevant classified pages produced, and less than half of the total amount of material that the IC concedes to be at the "core" of the case. In light of the immense scope of this case, the supplemental second CIPA notice is perfectly reasonable and proper. The defense achievement in reducing the amount of classified information to the extent it has is particularly striking because failure to list a document on the CIPA § 5 notice may cause the Court to preclude the use of that document at trial. Thus, the defense has been forced to draft its supplemental second notice in an effort to avoid having critical documents precluded at trial.[5]

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[4] Our preliminary review of the documents has revealed that the IC omitted some of the most critical documents in the case from the "core" 82,000 pages that it produced initially.

[5] The defense informed the Court at the time it filed its supplemental second CIPA § 5 notice that, in light of the time constraints under which the defense reviewed and analyzed the classified documents, hundreds of thousands of pages of classified material had not been reviewed. The IC takes the defense to task for advising the Court of this fact, claiming that "at some future time, [the defendant's] selections of defense documents could grow by an order of magnitude, notwithstanding the Court's November 14 deadline." IC Mem. at 8 (emphasis added). This speculation furnishes no basis for striking the supplemental second CIPA notice, which lists those documents that the defense has reviewed and determined that it presently reasonably expects to disclose at trial.

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Second, the IC complains that it cannot understand the relevance of a handful of documents listed on the supplemental second CIPA notice. IC Mem. at 8-9. The IC's inability to grasp the relevance of these documents is hardly surprising; throughout this case, it has displayed a myopic view of what is relevant and what is not.[6/] In any event, it is clear, as the defense has repeatedly pointed out, that determinations of relevance must await an appropriate CIPA § 6 hearing. The § 5 notice clearly is not the proper point at which to argue for, or object to, the relevance of particular documents; the notice, as modified by the Court's CIPA Orders, is nothing more than a list of classified documents that the defense "presently reasonably expects" to disclose or to cause the disclosure of at trial. Order of 10/19/88, at 1. The IC is trying to short-circuit the CIPA process by insisting that the Court make determinations of relevance based on the CIPA § 5 notice alone, without conducting an appropriate § 6 hearing as CIPA mandates.

6/ Indeed, the IC actually argued at one point that evidence tending to show that defendant North was authorized to engage in the conduct alleged in the indictment would not be relevant, a position that the Court quickly rejected. Tr. of 6/8/88, at 57-59. The IC's distorted view of authorization is typical of its inability (or refusal) throughout this case to recognize that a broad range of information (much of it classified) is relevant to the defendant's intent as well as to other matters placed in issue by the allegations of the indictment. Moreover, the IC appears to have forgotten about cross-examination, which, as the Court has pointed out, may implicate "sensitive events other than events relevant under the indictment." Tr. of 11/21/88, at 81.

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Third, the IC claims that defendant North's detailed supplemental second CIPA notice is insufficiently specific under CIPA § 5 as interpreted by the Court's Orders--an absurd contention. The supplemental second notice complies with each of the Court's CIPA Orders. In its July 8 Order, the Court specified that the defendant's second CIPA notice must "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." Order of 7/8/88, at 7 (emphasis added). In its August 8 Order, the Court required the defense to tie each listed document to the count or counts to which it is relevant. Order of 8/8/88. And in its Order of October 19, the Court again made clear that the defendant's second CIPA notice should list the "classified documents obtained or made available to North by the government which North presently reasonably expects he will disclose or cause to be disclosed in connection with the trial." Order of 10/19/88, at 1 (emphasis added). Defendant's supplemental second CIPA notice--prepared in an unreasonably short time period, over defense objection--complies with these Orders in every respect; the notice lists each document that the defense presently reasonably expects to disclose at trial (including the date of each document, the document identification by government production file and/or number, and a description of the document), and it

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specifies the count or counts to which the document relates.7/

* * * *

After bringing this highly complex case in which "the most sensitive information and most critical national security intelligence methods and sources available to the government . . . are inextricably enmeshed in the events challenged by the indictment," Memorandum and Preliminary Order Re CIPA, at 7 (filed 6/22/88), the IC now accuses defendant North of "arrogance" and "graymail" for designating a tiny fraction of the concededly relevant classified documents--approximately 3500 documents in all--for use in his defense. Indeed, the IC attempts to foreclose from the jury's consideration all classified information (except, presumably, any classified information that the IC chooses to

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7/ The cases upon which the IC relies in arguing that defendant's supplemental second notice is inadequate are clearly inapposite, even if it is assumed that they state the law correctly. In United States v. Collins, 720 F.2d 1195 (11th Cir. 1983), the defense failed to identify a single classified document upon which it intended to rely, despite ample opportunity to do so. Instead, it described in vague terms the general subject matter as to which it intended to disclose classified information. See id. at 1197-98. In United States v. Badia, 827 F.2d 1458 (11th Cir. 1987), cert. denied, 108 S. Ct. 1115 (1988), the defense filed no CIPA § 5 notice whatsoever, despite urging by the government. Obviously, neither Collins nor Badia has any bearing on this case, in which (a) the Court expressly modified CIPA § 5, in light of the constitutional challenge asserted by the defense, to require only a list of documents, by count, that the defense "presently reasonably expects" to disclose or to cause the disclosure of at trial, and (b) the defense has furnished a supplemental second CIPA notice that complies in every respect with the Court's Orders.

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introduce in its case). Under the IC's perverse regime, the trial would not be a search for truth; witnesses could not tell what they knew about the facts, critical documents would never be presented to the jury, and the verdict would rest upon a distorted sliver of information selected almost entirely by the prosecution. The Court should swiftly reject the IC's latest attempt to deny defendant North his fundamental right to due process.

CONCLUSION

For the foregoing reasons, the defense requests that the Court deny the IC's motion to strike defendant's CIPA § 5 notices and to preclude defendant North from disclosing classified information at trial.

Respectfully submitted,

WILLIAMS & CONNOLLY

By: _____

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Attorneys for Defendant
Oliver L. North

DATED: November 28, 1988

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of November, 1988, the foregoing Defendant's Opposition to IC's Motion to Strike Defendant's CIPA § 5 Notices and to Preclude Defendant from Disclosing Classified Information at Trial was delivered by hand to the following:

Office of Independent Counsel
555-13th Street, N.W.
Suite 701 West
Washington, D.C. 20004
Attn.: Lawrence E. Walsh, Esq.

Barry S. Simon

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

MOTION OF DEFENDANT OLIVER L. NORTH FOR LEAVE TO FILE MOTION FOR AN ORDER THAT THE CIPA § 6 HEARING SCHEDULED TO BEGIN NOVEMBER 30 BE CONDUCTED EX PARTE
(Defendant's First Pretrial Motion for Leave to File)

Pursuant to the Court's Order of November 7, 1988, defendant Oliver L. North, through undersigned counsel, requests permission to file the following motion: Motion of Defendant Oliver L. North for an Order That the CIPA § 6 Hearing Scheduled to Begin November 30 Be Conducted Ex Parte. The motion is prepared and can be filed promptly after the Court grants this motion.

Respectfully submitted,

WILLIAMS & CONNOLLY

By: _____

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Attorneys for Defendant
Oliver L. North

DATED: November 28, 1988

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of November, 1988, the foregoing Motion of Defendant Oliver L. North for Leave to File Motion for an Order That the CIPA § 6 Hearing Scheduled to Begin November 30 Be Conducted Ex Parte (Defendant's First Pretrial Motion for Leave to File) was delivered by hand to the following:

Office of Independent Counsel
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Attn.: Lawrence E. Walsh, Esq.

Barry S. Simon

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

ORDER

Upon consideration of the Motion of Defendant Oliver L. North for Leave to File Motion for an Order That the CIPA § 6 Hearing Scheduled to Begin November 30 Be Conducted Ex Parte (Defendant's First Pretrial Motion for Leave to File), and the entire record in this case, it is hereby

ORDERED, that said motion is granted, and defendant North is hereby granted permission to file his Motion for an Order That the CIPA § 6 Hearing Scheduled to Begin November 30 Be Conducted Ex Parte.

UNITED STATES DISTRICT JUDGE

Dated:

TO BE NOTIFIED IN EVENT
OF ENTRY OF THIS ORDER
BY THIS COURT:

Brendan V. Sullivan, Jr.
Williams & Connolly
839-17th Street, N.W.
Washington, D.C. 20006

Office of Independent Counsel
555-13th Street, N.W.
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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

MEMORANDUM AND ORDER

Re: Defendant North's Motion (#35) to Dismiss Counts 4, 9, and 13 as Duplicitous or, in the Alternative, to Compel the IC to Elect Within Each Duplicitous Count a Single Alleged Offense.

The above motion is denied.

Counts 4, 9, and 13 charge defendant North with violations of 18 U.S.C. § 1505 for obstructing and endeavoring to obstruct inquiries of congressional committees. Motion #35 asserts that within each obstruction count, more than one violation is alleged, and that these counts are duplicitous and should therefore be dismissed.

Even if within each of these counts, different violations are alleged which could each be a separate count, the dismissal North seeks is not necessarily warranted. Fairness to the defendant, as measured by the purposes of the duplicity doctrine, governs the Court's resolution of this issue. United States v. Shorter, 809 F.2d 54, 58 n.1 (D.C.Cir. 1987). The principal purpose of the duplicity doctrine is to erase the danger that a jury may return a guilty verdict without being unanimous on

exactly the same offense.[1] It is the function of the Court, through instructions and other means, whenever an obstruction count can be interpreted as covering more than a single specific event, to ensure that the jury verdict returned is truly unanimous. A verdict in which some jurors focused on one event and others on another would be wholly impermissible. Stromberg v. California, 283 U.S. 359 at 367-368 (1931). Thus, to avoid the evils of duplicity, where more than one event may be involved within the compass of a count, the jury verdict must either be unanimous on all events or be taken in a form that demonstrates it is clearly unanimous on one distinct event designated when the verdict is returned. Of course, where several events are encompassed within a single count and the jury selects one for a unanimous finding, the other events in the circumstances of this case will still have evidentiary significance. These principles are clearly established by precedents controlling in this Circuit. United States v. Mangieri, 694 F.2d 1270, 1281 (D.C.Cir. 1982).

The doctrine of duplicity allows the charging of multiple means constituting a single and continuing offense. Shorter, 809 F.2d at 56; United States v. Kearney, 444 F.Supp. 1290, 1293 (S.D.N.Y. 1978), citing United States v. Zeidman, 540 F.2d 314, 316-317 (7th Cir. 1976); Mellor v. United States, 160 F.2d

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[1] Another vice of duplicity is that the defendant must be adequately informed of the nature and cause of the accusation, United States v. Kearney, 444 F.Supp. 1290 (S.D.N.Y. 1978). That, however, is not at issue here, and any possible double jeopardy problem will be removed at the time a verdict is taken.

757-762 (8th Cir.), cert. denied, 331 U.S. 848 (1947). Obstruction of justice, in its various statutory forms, may be charged by stating a continuous course of conduct or by stating in separate counts specific identified events occurring over a period of time. United States v. Brimberry, 744 F.2d 580 (7th Cir. 1984), citing United States v. Berardi, 675 F.2d 894 (7th Cir. 1982). Under federal law a prosecutor has considerable discretion in choosing whether to charge obstruction as a continuous course of conduct or as separate events.

Turning to Counts 4, 9 and 13, it is apparent that Count 4 relates to events in the fall of 1985 involving very similar letters sent to two different congressional committees.[2] Count 9 involves events in August 1986 occurring at a meeting with a particular committee at the Situation Room of the White House.[3]

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[2] Count 4 alleges that North obstructed congressional inquiries regarding his activities on behalf of the Nicaraguan contras before the House Permanent Select Committee on Intelligence (HPSCI) and the Subcommittee on Western Hemisphere Affairs of the House Committee on Foreign Affairs (HFAC) in September and October of 1985. The indictment alleges that in response to press reports of improper and illegal activities by members of the NSC staff, HPSCI and HFAC initiated their investigations within days of each other. In response to separate letters from the chairmen, North allegedly drafted obstructive responses. A comparison of the text of the initial letters North allegedly prepared for McFarlane, as quoted in counts 5 and 6 of the indictment, shows that North was asserting virtually the same propositions, in similar language, to each of the Committees. Count 4 also encompasses the follow-up letter he allegedly drafted and that was sent to HPSCI, explicated in Count 7.

[3] Defendant's objection to Count 9 is puzzling. In August 1986, Congress once again became concerned with activities of North and the NSC with respect to the contras and North's contacts with Robert W. Owen and John K. Singlaub. A resolution of inquiry was introduced in the House of Representatives which

Count 13 involves events occurring in November 1986 in which North allegedly prepared a false chronology in response to similar requests of two committees.[4] The congressional inquiries on these three occasions concerned different aspects of the evolving Iran-contra matter, and there were substantial differences in time among the counts. It is apparent that where more than one committee was involved, as in the case of Counts 4 and 13, and perhaps remotely even in the case of Count 9, the manner in which each committee was directly or indirectly treated

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would, if adopted, have directed the President to provide the House certain information concerning the activities of North or other members of NSC in support of the contras. The resolution was referred to the appropriate committees, HFAC, HPSCI, and the House Committee on Armed Services. Chairmen of two of these committees wrote on behalf of their committees to the President, seeking comments on the proposed resolution, and defendant Poindexter responded in separate letters to all three committees. In response to Poindexter's letter, the Chairman of one of the committees, the Permanent Select Committee on Intelligence, asked to meet with North to probe the events more fully. Count 9 concerns North's conduct in that meeting with members and staff of HPSCI. Count 9 does allege that at the meeting in the Situation Room, North sought to obstruct and impede the due and proper exercise of the power of inquiry of all three pending inquiries. Nevertheless, North's argument that IC and the grand jury should have charged three separate counts for his conduct at this one meeting with members of HPSCI is strained, indeed.

[4] In early November 1986, the foreign and domestic press began reporting on United States arms sales to Iran. The House Permanent Select Committee on Intelligence, this time with the parallel Senate Select Committee on Intelligence (SSCI), again stirred into action, giving notice to the CIA and other Executive Branch agencies and entities that the committee would be conducting hearings to inquire into these matters. John Poindexter, among other officials, was requested to appear before the respective committees on November 21. In preparation for his appearance, North allegedly participated in the preparation of a false and misleading chronology of events, and spent four or five days altering, destroying, concealing and removing documents, records and papers of the NSC and its staff concerning aid to the contras and arms to Iran.

was so comparable as to make dealings with each committee relevant and material under the respective counts. Joining events occurring closely in time before separate committees was reasonable because the Independent Counsel has contended that North was seeking to stymie congressional oversight or forestall any and all congressional action at that particular time. When responding to contemporaneous congressional inquiries sparked by fresh press revelations, North took the same tack toward each committee, whether it be the House Permanent Select Committee on Intelligence, the House Armed Services Committee, the House Committee on Foreign Affairs, or the Senate Select Committee on Intelligence.

In this case, it was reasonable and fair for the Independent Counsel and the grand jury to frame the counts as was done. North says that the continuing offense concept of Shorter, employed here, is inappropriate because the IC chose to charge three separate counts. (P. 4, n.2). In a responsible, understandable fashion, the IC avoided charging a multitude of additional counts, each of which could carry an additional penalty if conviction occurred. He did not unnecessarily duplicate the charges, but he properly recognized that there were three critical times, involving somewhat separate questions, when North sought to block Congress' proper inquiries. Had he chosen to charge one violation of § 1505, the dangers of a non-unanimous jury on any particular set of facts, but a unanimous finding of guilty overall, would be much greater.

Defendant urges that counts must be dismissed for duplicity if a separate element is involved for the different offenses within a single count. This Blockburger test[5] is inapposite for an offense which may be continuing, such as obstruction of a congressional inquiry. Just as cheating on one's taxes year after year involves a separate element -- a distinct year -- but can still be characterized as a single count of tax evasion, as in Shorter, North's efforts to impede or obstruct separate congressional inquiries closely related in time may also constitute a single violation of § 1505 in each instance.

The Court finds no prejudice to the defendant in the Independent Counsel's approach. All concerns expressed by North on grounds of duplicity can readily be met by the guidance the Court would normally give the petit jury and appropriate instructions that the jury unanimously agree that there was at least one obstruction of a single committee inquiry. North's motion to dismiss is denied.

SO ORDERED.

UNITED STATES DISTRICT JUDGE

November 29, 1988

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[5] Blockburger v. United States, 284 U.S. 299, 304 (1932), articulated the principle defendants urge: "The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not."

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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

ORDER

Re: Motion of Defendant Oliver L. North for Leave to File Motion for an Order that the CIPA § 6 Hearing Scheduled to Begin November 30 be Conducted Ex Parte.

The above motion is denied. Reference is made to the Court's Order of November 22, 1988, scheduling the CIPA § 6 hearing for tomorrow. An ex parte proceeding would alter the purpose of the hearing and result in further and wholly unnecessary delay.

SO ORDERED.

Gerhard A. Gesell
UNITED STATES DISTRICT JUDGE

November 29, 1988.