

# **VIDEO: Iran Contra at 25: Reagan and Bush 'Criminal Liability' Evaluations**

Reagan Briefed In Advance on Each Group of Missiles Sold to Iran

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**Presidential 'Exposure' and roles detailed in Special Prosecutor Reports**

**Reagan Briefed In Advance on Each Group of Missiles Sold to Iran**

**Bush Chaired Secret Committee that Recommended Mining Harbors of Nicaragua**

**National Security Archive Electronic Briefing Book No. 365**

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Washington D.C., November 25, 2011 - President Ronald Reagan was briefed in advance about every weapons shipment in the Iran arms-for-hostages deals in 1985-86, and Vice President George H. W. Bush chaired a committee that recommended the mining of the harbors of Nicaragua in 1983, according to previously secret Independent Counsel assessments of "criminal liability" on the part of the two former leaders posted today by the National Security Archive.

Twenty-Five years after the advent of the "Iran-Contra affair," the two comprehensive "Memoranda on Criminal Liability of Former President Reagan and of President Bush" provide a roadmap of historical, though not legal, culpability of the nation's two top elected officials during the scandal from the perspective of a senior attorney in the Office of Independent Counsel Lawrence Walsh. The documents were obtained pursuant to a Freedom of Information Act (FOIA) request filed by the National Security Archive for the files compiled during Walsh's six-year investigation from 1987-1993.

The posting comes on the anniversary of the November 25, 1986, press conference during which Ronald Reagan and his attorney general, Edwin Meese, informed the American public that they had discovered a "diversion" of funds from the sale of arms to Iran to fund the contra war, thus tying together the two strands of the scandal which until that point had

been separate in the public eye. The focus on the diversion, as Oliver North, the NSC staffer who supervised the two operations wrote in his memoirs, was itself a diversion. "This particular detail was so dramatic, so sexy, that it might actually-well divert public attention from other, even more important aspects of the story," North wrote, "such as what the President and his top advisors had known about and approved."

The criminal liability studies were drafted in March 1991 by a lawyer on Walsh's staff, Christian J. Mixter (now a partner in the Washington law firm of Morgan Lewis), and represented preliminary conclusions on whether to prosecute both Reagan and Bush for various crimes ranging from conspiracy to perjury.

On Reagan, Mixter reported that the President was "briefed in advance" on each of the illicit sales of missiles to Iran. The criminality of the arms sales to Iran "involves a number of close legal calls," Mixter wrote. He found that it would be difficult to prosecute Reagan for violating the Arms Export Control Act (AECA) which mandates advising Congress about arms transfers through a third country-the U.S. missiles were transferred to Iran from Israel during the first phase of the operation in 1985-because Attorney General Meese had told the president the 1947 National Security Act could be invoked to supersede the AECA.

As the Iran operations went forward, some of Reagan's own top officials certainly believed that the violation of the AECA as well as the failure to notify Congress of these covert operations were illegal-and prosecutable. In a dramatic meeting on December 7, 1985, Secretary of Defense Caspar Weinberger told the President that "washing [the] transaction thru Israel wouldn't make it legal." When Reagan responded that "he could answer charges of illegality but he couldn't answer charge that 'big strong President Reagan passed up a chance to free hostages," Weinberger suggested they might all end up in jail. "Visiting hours are on Thursdays," Weinberger stated. As the scandal unfolded a year later, Reagan and his top aides gathered in the White House Situation Room the day before the November 25 press conference to work out a way to protect the president from impeachment proceedings.

On the Contra operations, Mixter determined that Reagan had, in effect, authorized the illegal effort to keep the contra war going after Congress terminated funding by ordering his staff to sustain the contras "body and soul." But he was not briefed on the resupply efforts in enough detail to make him criminally part of the conspiracy to violate the Boland Amendment that had cut off aid to the Contras in October 1984.

Mixter also found that Reagan's public misrepresentations of his role in Iran-Contra operations could not be prosecuted because deceiving the press and the American public was not a crime.

On the role of George Herbert Walker Bush, Mixter reported that the Vice President's "knowledge of the Iran Initiative appears generally to have been coterminous with that of President Reagan." Indeed, on the Iran-Contra operations overall, "it is quite clear that Mr. Bush attended most (although not quite all) of the key briefings and meetings in which Mr. Reagan participated, and therefore can be presumed to have known many of the Iran/Contra facts that the former President knew." But since Bush was subordinate to Reagan, his role as a "secondary officer" made it more difficult to hold him criminally liable.

Mixter's detailed report on Bush's involvement does, however, shed considerable light on his role in both the Iran and Contra sides of the scandal. The memorandum on criminal

liability noted that Bush had a long involvement in the Contra war, chairing the secret “Special Situation Group” in 1983 which “recommended specific covert operations” including “the mining of Nicaragua’s rivers and harbors.” Mixter also cited no less than a dozen meetings that Bush attended between 1984 and 1986 in which illicit aid to the Contras was discussed.

Despite the Mixter evaluations, Independent Counsel Lawrence Walsh continued to consider filing criminal indictments against both Reagan and Bush. In a final effort to determine Reagan’s criminal liability and give him “one last chance to tell the truth,” Walsh traveled to Los Angeles to depose Reagan in July 1992. “He was cordial and offered everybody licorice jelly beans but he remembered almost nothing,” Walsh wrote in his memoir, *Firewall, The Iran-Contra Conspiracy and Cover-Up*. The former president was “disabled,” and already showing clear signs of Alzheimers disease. “By the time the meeting had ended,” Walsh remembered, “it was as obvious to the former president’s counsel as it was to us that we were not going to prosecute Reagan.”

The Special Prosecutor also seriously considered indicting Bush for covering up his relevant diaries, which Walsh had requested in 1987. Only in December 1992, after he had lost the election to Bill Clinton, did Bush turn over the transcribed diaries. During the independent counsel’s investigation of why the diaries had not been turned over sooner, Lee Liberman, an Associate Counsel in the White House Counsel’s office, was deposed. In the deposition, Liberman stated that one of the reasons the diaries were withheld until after the election was that “it would have been impossible to deal with in the election campaign because of all the political ramifications, especially since the President’s polling numbers were low.”

In 1993, Walsh advised now former President Bush that the Independent Counsel’s office wanted to take his deposition on Iran-Contra. But Bush essentially refused. In one of his last acts as Independent Counsel, Walsh considered taking the cover-up case against Bush to a Grand Jury to obtain a subpoena. On the advice of his staff, however, he decided not to pursue an indictment of Bush.

Among the first entries Bush had recorded in his diary (begun in late 1986) was his reaction to reports from a Lebanese newspaper that a U.S. team had secretly gone to Iran to trade arms for hostages. “On the news at this time is the question of the hostages,” he noted on November 5, 1986. “I’m one of the few people that know fully the details. This is one operation that has been held very, very tight, and I hope it will not leak.”

## **Read the Documents:**

### **Document 1, [Part 1](#), [Part 2](#), [Part 3](#), [Part 4](#)**

### **Office of the Independent Counsel, C.J. Mixter to Judge Walsh, “Criminal Liability of Former President Reagan,” March 21, 1991, 198 pages.**

In this lengthy evaluation, Christian Mixter, a lawyer on the staff of the Independent Counsel, provides Lawrence Walsh with a comprehensive evaluation of the legal liability of President Ronald Reagan in the Iran-Contra operations. The memorandum reviews, in great detail, not only the evolution of the operations, but Reagan’s central role in them. It includes “a summary of facts” on both the sale of arms to Iran, in order to free American hostages held in Lebanon, and the evolution of the illicit contra resupply operations in Central America, as well as the connection between these two seemingly separate covert efforts.

The report traces Reagan's knowledge and authorization of the arms sales, as well as his tacit authorization of the illegal contra resupply activities; it also details his role in obtaining third country funding for the Contras after Congress terminated U.S. support in 1984. The document further evaluates Reagan's responses in two official inquiries to determine whether they rise to the level of perjury. For a variety of reasons, Mixter's opinion is that "there is no basis for a criminal prosecution" of Reagan in each of the areas under scrutiny, although he notes that it is a "close legal call" on the issue of arms sales to Iran.

## [Document 2](#)

### **Office of the Independent Counsel, C.J. Mixter to Judge Walsh, "Criminal Liability of President Bush," March 21, 1991, 89 pages.**

In this assessment, Mixter traces then-Vice President Bush's involvement in both sides of the Iran-Contra operations, including his meeting with a high Israeli official on the sales of arms to Iran in July 1986, and his presence at no fewer than a dozen meetings during which illicit assistance to the Contras was discussed. The legal evaluation also contains a detailed overview of Bush's role in arranging a quid pro quo deal with two Presidents of Honduras in order to garner Honduran support for allowing the Contras to use that country as a base of operations against the Sandinistas in Nicaragua. "It is quite clear that Mr. Bush attended most (although not quite all) of the key briefings and meetings in which Mr. Reagan participated, and therefore can be presumed to have known many of the Iran/Contra facts that the former President knew." But since Bush was subordinate to Reagan, his role as a "secondary officer" rendered him less likely to be criminally liable for the actions he took.

The Mixter memo on Bush was written before the existence and cover-up of the Vice President's diaries became known in late 1992. The Independent Counsel's office did launch an investigation into why the diaries were not previously turned over and considered bringing charges against the former Vice President for illegally withholding them.

### **More - The Top 5 Declassified Iran-Contra Historical Documents:**

## [Document 1](#)

### **NSC, National Security Planning Group Minutes, "Subject: Central America," SECRET, June 25, 1984**

At a pivotal meeting of the highest officials in the Reagan Administration, the President and Vice President and their top aides discuss how to sustain the Contra war in the face of mounting Congressional opposition. The discussion focuses on asking third countries to fund and maintain the effort, circumventing Congressional power to curtail the CIA's paramilitary operations. In a remarkable passage, Secretary of State George P. Shultz warns the president that White House adviser James Baker has said that "if we go out and try to get money from third countries, it is an impeachable offense." But Vice President George Bush argues the contrary: "How can anyone object to the US encouraging third parties to provide help to the anti-Sandinistas...? The only problem that might come up is if the United States were to promise to give these third parties something in return so that some people could interpret this as some kind of exchange." Later, Bush participated in arranging a quid pro quo deal with Honduras in which the U.S. did provide substantial overt and covert aid to the

Honduran military in return for Honduran support of the Contra war effort.

## **Document 2**

**White House, Draft National Security Decision Directive (NSDD), “U.S. Policy Toward Iran,” TOP SECRET, ([with cover memo from Robert C. McFarlane to George P. Shultz and Caspar W. Weinberger](#)), June 17, 1985**

The secret deals with Iran were mainly aimed at freeing American hostages who were being held in Lebanon by forces linked to the Tehran regime. But there was another, subsidiary motivation on the part of some officials, which was to press for renewed ties with the Islamic Republic. One of the proponents of this controversial idea was National Security Advisor Robert McFarlane, who eventually took the lead on the U.S. side in the arms-for-hostages deals until his resignation in December 1985. This draft of a National Security Decision Directive, prepared at his behest by NSC and CIA staff, puts forward the argument for developing ties with Iran based on the traditional Cold War concern that isolating the Khomeini regime could open the way for Moscow to assert its influence in a strategically vital part of the world. To counter that possibility, the document proposes allowing limited amounts of arms to be supplied to the Iranians. The idea did not get far, as the next document testifies.

## **Document 3**

**Defense Department, Handwritten Notes, Caspar W. Weinberger Reaction to Draft NSDD on Iran (with attached note and transcription by Colin Powell), June 18, 1985**

While CIA Director William J. Casey, for one, supported McFarlane’s idea of reaching out to Iran through limited supplies of arms, among other approaches, President Reagan’s two senior foreign policy advisers strongly opposed the notion. In this scrawled note to his military assistant, Colin Powell, Weinberger belittles the proposal as “almost too absurd to comment on ... It’s like asking Qadhafi to Washington for a cozy chat.” Richard Armitage, who is mentioned in Powell’s note to his boss, was an assistant secretary of defense at the time and later became deputy secretary of state under Powell.

## **Document 4**

**Diary, Caspar W. Weinberger, December 7, 1985**

The disastrous November HAWK shipment prompted U.S. officials to take direct control of the arms deals with Iran. Until then, Israel had been responsible for making the deliveries, for which the U.S. agreed to replenish their stocks of American weapons. Before making this important decision, President Reagan convened an extraordinary meeting of several top advisers in the White House family quarters on December 7, 1985, to discuss the issue. Among those attending were Secretary of State Shultz and Secretary of Defense Weinberger. Both men objected vehemently to the idea of shipping arms to Iran, which the U.S. had declared a sponsor of international terrorism. But in this remarkable set of notes, Weinberger captures the president’s determination to move ahead regardless of the

obstacles, legal or otherwise: “President sd. he could answer charges of illegality but he couldn’t answer charge that ‘big strong President Reagan passed up chance to free hostages.’”

## **[Document 5](#)**

### **NSC, Oliver L. North Memorandum, “Release of American Hostages in Beirut,” (so-called “Diversion Memo”), TOP SECRET/SENSITIVE, April 4, 1986**

At the center of the public’s perception of the scandal was the revelation that the two previously unconnected covert activities — trading arms for hostages with Iran and backing the Nicaraguan Contras against congressional prohibitions — had become joined. This memo from Oliver North is the main piece of evidence to survive which spells out the plan to use “residuals” from the arms deals to fund the rebels. Justice Department investigators discovered it in North’s NSC files in late November 1986. For unknown reasons it escaped North’s notorious document “shredding party” which took place after the scandal became public.

### **Introduction From Tom Blanton**

### **President Reagan’s 1990 Testimony (39 parts):**

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