THE WHITE HOUSE

WASHINGTON

June 24, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: WILLIAM B. LYTTON III

SUBJECT: TESTIMONY OF JUDGE STANLEY J. SPORKIN ON JUNE 24, 1987

Pat Duffy and Joy Yanagida report as follows on the testimony of Judge Stanley J. Sporkin, former General Counsel of the Central Intelligence Agency (May 1981 - February 1986):

I. Overview

Sporkin's testimony touched on three issues involving the President. First, he wanted the President to approve the sale of arms to Iran because of the gravity of that action. Second, he wanted the President to decide whether to notify Congress. In an early January 1986 meeting with LtCol North, he was led to believe that the President had made the choice not to notify Congress. Third, Sporkin defended his concept that the President could "ratify" the CIA assistance in the November 1985 Israeli retransfer, if it were part of a broader initiative which the President had authorized. Sporkin distinguished such a ratification from a "retroactive approval" of activity which had been entirely without prior authorization.

II. Summary of Testimony

Draft November 1985 Finding. Sporkin learned of the Israeli retransfers after the CIA was asked to assist the November 1985 HAWKs shipment. Sporkin said he raised three concerns:

(1) that the operation had to be approved by the President, prompting Sporkin to give "stiff legal advice" that a Finding was essential.

(2) that operational security be maintained. Sporkin recommended "non-notification," as permitted by the statute. However, his January draft Finding included, as an option, language that would have required prior notification. When North redrafted the Finding to provide for "non-notification," Sporkin asked him, "Was the decision appropriately made?" North affirmed. Sporkin understood this to mean that the President had decided to defer notification.

(3) that the Finding cover the 48 hours in November, 1985 during which a CIA proprietary had provided transport for the Israeli shipment from Portugal to Tehran. Sporkin characterized this as a "ratification" of a specific event which was consistent with a broader program that previously had been authorized by the President. This was different from "retroactive approval" of an activity that was wholly unauthorized.

Israeli Retransfers as a Covert Action. Democratic House Counsel John Nields brought to Sporkin's attention an internal CIA legal memo, prepared at Sporkin's request, that raised serious concern over whether the Israeli retransfers could be properly authorized--even with a covert Finding. Because the Israelis originally acquired the arms as a "foreign military sale" (FMS) under the Arms Export Control Act ("AECA"), the arms were subject to AECA restrictions on retransfer and could not be exempt from these restrictions by means of a subsequent Finding.

Nields cited the cover memo to the President that accompanied the January 17, 1986, Finding:

> "We have researched the legal problems of Israel's selling U.S. manufactured arms to Iran. Because of the requirement in U.S. law for recipients of U.S. arms to notify the U.S. government of transfers to third countries, I do not recommend that you agree with the specific details of the Israeli [retransfer] plan." [Thus, direct U.S. shipment of arms was the option covered by the January 17 Finding].

Replenishment as a Covert Action. The Israeli TOW stocks were replenished in spring 1986. Sporkin would not pronounce on whether replenishment could be a covert action (thus exempt from the AECA). Whether or not it was legal, he said, it was poor policy:

> "That's not the way to do it. It causes problems with the allies. It causes problems with the Congress. It jeopardizes the relationship."

Republican House Counsel George Van Cleve stated that the spring 1986 replenishment was, in fact, an upgrading of Israeli stocks, and that an upgrading certainly could not be performed as covert action. Sporkin did not comment.

Boland Amendment. Sporkin said that funding the Contras with arms sales profits was "not discussed nor considered." The January 17, 1986, Finding did not and could not be interpreted to approve diversion of proceeds to the Contras. In his view, the CIA (presumably in October 1984--December 1, 1985, perhaps until December 1986), could not participate in the raising of funds. He characterized himself and Casey as "strict adherents" of the letter and spirit of the Boland Amendment.

Other Issues. Pressed by Senator Sam Nunn, Sporkin testified that an oral Finding, while perhaps not advisable, was not illegal. Nunn stated that Sporkin's interpretation might prompt remedial Congressional action.

Representative Henry Hyde read into the record the 1868 Hostage Act, which mandates the President to take all acts, short of war, to free U.S. citizens unjustly held in foreign countries.

Sporkin declined to pronounce or whether a Finding would have been required for the DEA hostage rescue operation. He claimed to have no knowledge of the event, except from recent press reports.

III. Continuation of Hearings

The witness for Thursday is scheduled to be Charles Cooper, Department of Justice, who helped Attorney General Meese conduct his November 1986 inquiry. After he has finished, the hearings will recess until July 7, 1987, when Oliver North is scheduled to testify publicly. North will be examined in Executive Session on July 1, 1987 as to the President's knowledge of or involvement in the diversion.