
The Indictment and Presidential Pardon of Caspar Weinberger

BY JIM BROSNAHAN*

CASPAR WEINBERGER was secretary of defense under President Ronald Reagan when a scandal erupted over the illegal trade of weapons for hostages with Iran. The whole scandal was called Iran Contra. The Iran part concerned Reagan's personal decision to break the law and trade missiles for hostages with Iran, a terrorist country. The Contra part related to illegally funneling U.S. government money to the Contras who were fighting the communist government of Nicaragua. When called to testify Weinberger lied to Congress and the FBI, in order to save President Reagan from impeachment. My partner George Harris and I were asked by special prosecutor Lawrence Walsh to lead the prosecution trial team against Weinberger. The criminal trial was set to begin January 3, 1993, before Washington D.C. U.S. District Judge Thomas F. Hogan. I felt that a successful conviction could deter future officials from participating in presidential cover-ups.

In 1985, Iran, a terrorist nation, took American hostages and demanded U.S. weapons in exchange for releasing them. The U.S. initially supplied 96 TOW anti-tank missiles to Iran as part of a deal to return the American hostages, who were freed. How did that happen? American law and policy forbade such an exchange because it would endanger Americans in the future. That is when a presidential cover-up began. In a televised address, President Reagan told the country, "We did not — repeat — did not trade weapons or anything else for hostages." In November 1986, it was revealed that Reagan had personally authorized the trade of missiles for hostages. Between August 20, 1985 and October 1986, a total of 2,000 TOW and 18 Hawk anti-aircraft missiles were supplied to Iran in violation of American law. That action was an impeachable offense.

The president's defenders said Reagan was motivated by humane concern for the American hostages. No doubt true but he also wanted to avoid a public perception of personal weakness. Reagan assured the country that the arms shipments stories "had no foundation," and that no "third countries" were involved. High officials tried to follow the president's lead by sending mixed signals, for example, producing a story that the Israelis were responsible for the exchange. Still, as the scandal grew in importance, some reassessed their favorable view of Reagan and pondered impeachment.

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Weinberger was a lawyer with years of experience. Why would he lie to Congress and the FBI? Why would a president of the United States engineer a cover-up? Unfortunately, presidential cover-ups have become, if not routine, at least common. In the last 50 years, we have suffered through Watergate, Iran Contra and now investigations into Russian meddling in U.S. elections.

Each cover-up has followed the same playbook:

- Attack someone else.
- Deny everything.
- Distract attention from the governmental sin.
- Suppress the truth or at least delay, hoping the public will grow bored with the issue.
- Members of the president's party must stand with him, no matter what the evidence.
- The attorney general must assist the cover-up.
- Hire the best criminal lawyers to represent the president personally.
- Maintain public support by promoting unrelated accomplishments like a good economy.
- Conspirators must understand that the truth could destroy the president.
- An irrelevant admission by the president such as "My oversight was faulty" can be useful.
- If necessary, lie to high governmental officials and Congress.

The Reagan cover-up had all those ingredients.

FBI agents interviewed Caspar Weinberger when the scandal first broke. "We heard you keep notes. Do you keep notes?" referring to the meeting where Reagan ordered the missiles sent to Iran. "No," Weinberger replied definitively.

Several years later, a set of Weinberger's notes was discovered by accident in the Library of Congress. His minute-by-minute notes described each day of his time in government. If he went to a grade school class and spoke about government, it was in his notes. The notes showed definitively that Reagan personally made the decision to ship missiles to Iran. The president told his close advisors that he "could answer charges of illegality but could not answer a charge that 'big strong President Reagan passed up a chance to free hostages.'"

Weinberger was charged with five felony counts, including perjury, for lying to Congress and obstructing government investigations. I understood the human dynamics involved in Weinberger's decision to step across the criminal line. Reagan was the leader of the

free world. Those closest to him had pledged to help him succeed. I accepted that Weinberger could have been motivated by his view of what was best for President Reagan and the country.

However, no one is allowed to lie to an FBI agent. No one is allowed to lie to Congress. Every day men and women are charged, convicted, and serve jail time for lying to federal investigative authorities. Secretary Weinberger as a trained lawyer knew the law and the potential consequences for breaking it.

This was a trial of enormous import. I asked myself, *what had we gotten into?* The office of special prosecutor had the windows covered to prevent spying from outside, giving the space the look of a secret secure bunker. There were brutal unremitting attacks on Judge Walsh by Republican senators.

Nominated to the federal bench and later, as deputy attorney general by President Dwight Eisenhower, Lawrence Edward Walsh seemed to ignore the fact that he was taking a battering ram to his own political party. As unmovable as a boulder, he believed what happened in the Iran Contra affair was wrong. His office obtained 11 convictions and guilty pleas over six years.

Caspar Weinberger was an accomplished, smart, and interesting man. With a full head of black hair and an expression that seemed to say, *now this is interesting*, he had made his way into the heart of America's political and military establishments. Before moving to Washington, he had served in the California Legislature and in Governor Reagan's state cabinet where he was known as "Cap the Knife" for his budget cutting. He would be a strong witness but given the perjury charge, the jury would be suspicious.

In Washington, as secretary of defense, Weinberger oversaw massive defense expenditures. He gave our military most of what it asked for and enjoyed enormous support from the military-industrial complex. *Time* magazine ran a cover with his picture surrounded by dollar signs under the heading, "How to spend a trillion."

Weinberger testified before Congress on July 31, 1987, bringing to the committee credibility and gravitas built over years of service. Looking down at him were senators, members of the House and co-chairs Sen. Daniel K. Inouye from Hawaii, and Rep. Lee H. Hamilton of Indiana. The hearings were nationally televised. Weinberger raised his right hand and swore to tell the truth but he actually decided to protect the president — a human decision, yet a criminal one.

He repeatedly told the joint committee investigating Iran Contra that he thought he had stopped the Iran arms sales. He said he was surprised to find that White House officials were negotiating arms sales to Iran. He said an agency had been ordered to exclude him from the matter and said he was outraged when he heard about it. He said he voiced his strong opposition to the



President Ronald Reagan with Caspar Weinberger, George Shultz, Ed Meese, and Don Regan discussing the president's remarks on the Iran-Contra affair, Oval Office.

COURTESY RONALD REAGAN LIBRARY, OFFICIAL GOVERNMENT RECORD

president's actions. (That, at least, was true.) He said the arms deal was pushed by National Security Council officials with their own agendas.

One criticism of the original indictment was that it lacked specificity. We were required to file a new indictment on Friday, October 29, 1992. I was told by one of the deputies that an effort to postpone the filing until after the 1992 election had been unsuccessful. Shortly after my arrival in the office and one day before the amended indictment was to be filed, I received a draft that I carefully read. It contained many allegations drawn from Weinberger's notes that had been found in the Library of Congress. The most relevant note, from January 7, 1986, read,

Met with President, Schultz, Poindexter, Bill Casey, Ed Meese, in oval office. President decided to go with Israel-Iranian offer to release our five hostages in return for sale of 4,000 TOW'S to Iran by Israel — George Shultz & I opposed — Bill Casey, Ed Meese & VP favored — as did Poindexter.

The words "VP favored" revealed that then Vice President George H. W. Bush, by now President Bush, knew and approved of Reagan's decision to ship arms to terrorist Iran. Was it appropriate to include those words in the new indictment? If the note showing Bush's participation in the Iran Contra decision to send missiles was taken out we felt we would be furthering a cover-up. That is not the job of the special prosecutor. Word of Bush's involvement was not new. Judge Walsh and I discussed the matter. We concluded that his involvement had been thoroughly aired by the press. There had been public discussion indicating that Bush knew Reagan gave the order. We both thought the note reflected that public understanding, and was not particularly newsworthy. How wrong we were.

The grand jury indictment was filed on Friday, October 30, four days before the presidential election between Bush and Clinton. In the corner of the courthouse newsroom one journalist furiously typed a story about “VP favors.”

Walter Pincus and George Lardner immediately wrote a story for the *Washington Post* with the headline “A 1986 note contradicts statements by President Bush.”

That Friday night, all three national networks led with the story of the amended indictment indicating that President Bush had favored trading missiles for hostages when he was vice president. Bush’s avoidance of his responsibility, his half-statements, and his participation in Iran Contra had come home to roost. Presidential candidate Bill Clinton said the indictment undercut the President’s credibility. Vice presidential candidate Al Gore asked, “How can Bush ask the American people to trust him?”

Senate Minority Leader Bob Dole thought our office should be investigated. On CBS’s *Face the Nation* he said that I was a Democratic attorney who contributed \$500 dollars to the Clinton campaign without mentioning that the contribution was made before Judge Walsh first contacted me. Vice President Dan Quayle derisively called me “that San Francisco lawyer,” not appreciating that for some people out west that was a high compliment.

Bill Clinton was elected president, gaining 370 electoral votes and 43 percent of the popular vote. In the political vacuum of the interregnum, George Harris and I went around Washington interviewing senators, members of the House, and the defense and intelligence communities. We found that some Republicans were disappointed with Weinberger’s testimony.

William S. Cohen, Republican Senator from Maine was impressive, New Hampshire Republican Senator Warren Rudman was outraged at the scandal and Maine Senator George Mitchell, wearing a modest gray sweater, was precise, helpful, and warm. We could have been chatting around a cracker barrel in one of Maine’s famous 100-year-old penny candy stores in Augusta or Kennebunkport. He was not happy about the scandal and the lying to the Senate.

At the time of the Weinberger case, lawyers all over the country and a few prosecutors were using mock trials to prepare for their actual trials. Our mock trial was on December 15, 1992, two weeks before the scheduled trial. We had a total of 36 mock jurors on three juries and all three juries voted to convict Weinberger.

One of our mock jurors went to the press, violating his written confidentiality agreement, and reported on the mock trial. Was he a plant? The press made it into an extraordinary revelation. The political effect of the leaked mock trial was negative for the special prosecutor.

On December 16, Judge Hogan called us into chambers to discuss housekeeping details for the trial. Robert

Bennett, counsel for Weinberger, announced in a calm voice that he would call President Bush as a witness in his defense case but would wait until Bush was out of office. It was a bombshell. Could a former president be summoned to court and asked about things that happened while in office? Before Bill Clinton was subpoenaed while in office and then volunteered to testify there had been 200 years of legal resistance to compelling a president to testify. Because President Bush was being summoned to give testimony in a criminal case the courts would probably enforce the subpoena in the interest of Weinberger’s right to command all needed evidence.

Although President Bush could refuse the subpoena, citing executive privilege, our team pulled together all of the public statements by Bush on the subject of Iran Contra. Using these, I prepared a cross-examination of the president. How should I approach such a witness? One thing was certain: He knew Weinberger’s testimony was false.

On December 23, I flew home to California for Christmas with two briefcases filled with work. The trial was ten days away. The morning of December 24, I was in our kitchen. The warmth and familiarity of our family in our old Berkeley house contrasted dramatically with what came out of the TV.

“President Bush today granted full pardons to six former officials in Ronald Reagan’s administration, including former defense Secretary Caspar Weinberger.”

The words coming from the TV made me numb. The president had slammed the hammer down. Faced with the misery of testifying, a long trial highlighting President Reagan’s scandal, and gloomy about his election loss, President George H. W. Bush had employed one of the strongest presidential powers, the pardon.

Judge Walsh held a press conference and announced for the first time that President Bush had been a subject of the investigation. He said there is “evidence of a conspiracy among the highest-ranking Reagan administration officials to lie to Congress and the American public.”

Robert Bennett’s announcement that he would call Bush as a witness was the impetus to pardon Weinberger. Let’s be clear: Mr. Bennett had done exactly what he should have for his client. Atty. Gen. William Barr — now again the attorney general — announced he had advised President Bush to pardon Caspar Weinberger. Given the present presidential cover-up of Russian meddling in our elections, we the people are back at our testing point. We need candidates who will raise the flag of clean government and be like some of the presidential examples we have revered in the past. Our future as a nation depends on it. The Iran-Contra cover up had been successful. Reagan had served out his two terms. Weinberger went home to Maine. I went back to San Francisco, suffering from post-pardon depression. ★