PHILOSOPHY OF LAW

By Robert Blecker

Truth in the Iran-Contra Affair: Making the Constitution Work

Editor's note: This is the first part of a two-part series, which in turn is part of a larger work still in progress.

BY THEIR OWN admission in the Iran-Contra hearings, Reagan administration officials, members of the executive branch, had made statements (sometimes under oath) to Congress shrewdly calculated to evade the legislative inquiry and mislead the inquirer. Yet, with a few exceptions, each of these misleading statements, taken alone, was "literally true." Does such a strategy undermine the constitutional scheme of shared powers and checks and balances envisioned by the founders? Or does an emergency that may justify a covert operation in support of American foreign policy also permit executive evasion of legislative oversight?

On Nov. 25, 1986, while briefing the Senate Intelligence Committee, Asst. Secretary of State Elliott Abrams was asked — "so we have the record clear" — whether he had "any knowledge or indication that the Contras were receiving funds from Israeli or other Mideastern sources?"

"No," he replied, despite recently having solicited $10 million from the Sultan of Brunei.[1] He later defended that denial as "truth": Brunei, although a mostly Moslem, oil-producing country, is located on the South China Sea.

"Your approach on November 25, before the Senate Intelligence Committee, was that unless the senators asked you exactly the right question, using exactly the right words, they weren't going to get the right answers. Wasn't that the approach?" challenged Mark Belnick, assistant Senate counsel of the joint House-Senate committee investigating the Iran-Contra affair.

"That is exactly the correct description of what I did on that date,' Mr. Abrams readily conceded.

"Therefore you could give this literally correct answer, despite the existence of the Brunei solicitation?"

"Literally correct and perhaps misleading.'"[2]

> I did not authorize him to make false statements. I did think he would withhold information and be evasive frankly in answering questions. My objective all along was to withhold from the Congress exactly what the [National Security Council] staff was doing in carrying out the President's policy....As I've said before, I did not expect him to lie to the committee. I expected him to be evasive....[W]ith his resourcefulness, I thought he could handle it.[3]

The man sent to the Hill to dodge the Congress was Lt. Col. Oliver L. North. The speaker here, his boss, Rear Adm. John M. Poindexter, throughout the hearings, perhaps alone, steadfastly insisted that in this complex and dangerous world, shrewdly evading and misleading Congress was sometimes necessary and proper, but in any case it was not lying.

In letters drafted by Lt. Col. North, National Security Advisers Poindexter and Robert C. McFarlane had assured Congress that the National Security Council staff was complying with the "letter and spirit" of the Boland amendment. As enacted by Congress, the Boland amendment required that "no funds available to the Central Intelligence Agency, the Department of Defense *or any other agency* or entity of the United States Government *involved in intelligence activity* may be obligated or expended for the purpose of or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group or organization, movement or individual.'"[4]

Mr. McFarlane expressed his regret about his written assurances, but Rear Adm. Poindexter and Lt. Col. North defended them as true: Insofar as the Boland admendment (as they interpreted it) in no way applied to the National Security Council staff, they could not possibly have violated it.

"Admiral, in saying that you are complying with the letter and spirit of law, when you mean that the law doesn't apply and that you are supporting the Contras, you do not consider that to be misleading Congress?" demanded Arthur L. Liman, chief counsel to the Senate's Iran-Contra committee.

"We did not — *I have not said that we weren't helping the contras.* We were clearly helping the contras.'"[5]

Armed with literal truth, Rear Adm. Poindexter could claim he had complied with the Boland amendment and Elliott Abrams could insist he truly knew of no solicitation of a *Middle* Eastern country.

Can these truths also be lies? Can they be perjury?

AP/Wide World Photos

REAR ADM. JOHN M. POINDEXTER

RICHARD V. Secord's Lake Resources account, used to channel funds to the Contras, was hardly the first secret Swiss bank account latruptcy proceeding, bankrupt movie mogul Samuel Bronston too was questioned about his bank accounts:

> Q: Do you have any bank accounts in Swiss banks, Mr. Bronston?
>
> A: No, sir.
>
> Q: Have you ever?
>
> A: The company had an account there for about six months, in Zurich.

The company did have a Swiss bank account. But so, too, did Mr. Bronston have a personal Swiss bank account that he obscured from his creditors by his intentionally misleading reply. When, Mr. Bronston, under oath, successfully diverted attention by creating an illusion with a literally truthful statement — "the company did" — had *he* lied?

The government prosecuted Mr. Bronston for perjury on the theory that in order to mislead his questioner he had "unresponsively addressed his answer to the company's assets and not to his own — thereby implying that he had no personal Swiss bank account at the relevant time."[6] The trial judge had instructed the jury that the "basic issue" was whether Mr. Bronston "spoke his true belief," and that he could be convicted for an answer "*not literally false but when considered in the context* in which it was given, nevertheless constituted a *false* statement."

The majority of a divided 2d U.S. Circuit Court of Appeals, which affirmed Mr. Bronston's conviction, saw the — can constitute perjury?" Mr. Bronston's "nonresponsive answer very clearly indicated his comprehension of what was called for by the question," said Circuit Judge James L. Oakes, for the majority. "An answer containing *half* of the *truth* which *also* constitutes a *lie by negative implication*, when the answer is intentionally given in place of the responsive answer called for by a proper question is perjury. This must be so especially *in the context* of a [bankruptcy] examination which by its nature is a searching expedition, where the witnesses are the only parties who know the truth and are able to divulge it.'"[7]

For the trial and appellate courts in *Bronston v. U.S.*, lies include statements that individually correspond to reality but taken together in context present a false, misleading and deceptive portrait.

By this coherence view of truth, no single statement is "true" in isolation. "We get at one truth only through the rest of truth.'"[8] A statement is true insofar as it implies and is implied by other statements that are true. Truth is a matter of degree. Some statements are partly true or mostly true. *Half-truths* are also half false. By this coherence view, in the context of the inquiries, Mr. Abrams, Rear Adm. Poindexter and Mr. Bronston had lied.

As Judge Oakes said, affirming Mr. Bronston's conviction:

> A half-truth containing a lie, interjected by a knowledgeable and interested witness, may result in side-tracking the person inquiring or it may persuade the interrogator to proceed on another line of questioning. Either consequence is contrary to the 'whole truth' principle of the oath. The question here was not from out of the blue or on a collateral matter. The examination was for the very purpose known to the appellant — of eliciting the kind of information this question called for.[9]

THE U.S. SUPREME Court, however, saw truth differently. Granting certiorari "to consider a narrow but important question, [i.e.,] ...whether a witness may be convicted of perjury for an answer under oath that is literally true but not responsive to the question asked and arguably misleading by negative implication," the court found Mr. Bronston's answers "not guileless" but also not perjurious. "It is the responsibility of the lawyer to probe; testimonial interrogation, and cross-examination in particular, is a probing, prying, pressing form of inquiry," the high court reasoned. "If a witness evades, it is the lawyer's responsibility to recognize the evasion and to bring the witness back to the mark, to flush out the whole truth with the tools of adversary examination." The perjury statute was not to be "invoked simply because a wily witness succeeds in derailing the questioner — so long as the witness speaks the literal truth.'"[10]

In reversing Mr. Bronston's perjury conviction, the Supreme Court had embraced literal truth. So had Mr. Abrams and Rear Adm. Poindexter; so too had Aristotle, who followed Plato's definition: "To say of what is, that it is, and of what is not, that it is not, is true.'"[11] Combatting the sophists' view that it is impossible to speak falsely, because "what is not, cannot be uttered," Plato and Artistotle held truth to consist in the correspondence of a statement with the "things that are" or "the facts." How they correspond is not fully explained.[12]

For Bertrand Russell, too, "truth consists in some form of correspondence between belief and fact.'"[13] In his essay, "On the Nature of Truth," Mr. Russell observes that "a statement is true when a person who believes it believes truly, and false when a person who believes it believes falsely.'"[14] By

Mr. Blecker is a professor of constitu-

Continued from preceding page

this view, when Mr. Abrams denies there was a contribution from a Middle Eastern country he believes truly, because no Middle Eastern county had contributed — that is, Brunei is not a Middle Eastern county. Furthermore, at the moment he testified, the money had not yet been received.

But for Sen. Bill Bradley, D-N.J., who asked the question, and for other members of the Intelligence Committee who heard his reply, Mr. Abrams' statement is correspondently false insofar as they (mis)understand it to assert that no money was solicited from countries that they would hold to include Brunei. Mr. Russell does not clearly address a statement's truth for the speaker and simultaneous falsity for a listener under a correspondence view. Of course, by a coherence point of view, Mr. Abrams' half-truth was also half-false. It failed to cohere with other true statements: it was false in context. But for Aristotle and other correspondence advocates, a statement is either true or false, but never both.

Chief Justice Warren E. Burger, writing for a unanimous Supreme Court in *Bronston*, had sent a message. However calculated to mislead or deceive, an evasive but literally true statement — a statement that corresponds to reality — cannot be perjury. The responsibility of a lawyer *in an adversary setting* is to prove and press on, forcing the witness either to reveal the fact at issue or make a literally false statement under oath and later be subject to a perjury prosecution.

But, as Rep. Lee H. Hamilton, D-Ind., pointedly reminded Asst. Secretary of State Abrams, when exercising its oversight function in the conduct of foreign policy, "Congress is a partner, not an adversary."

> The object here is not to avoid a perjury indictment. The object is not to work to make your answer literally correct but nonetheless misleading. The object is to make the Constitution of the United States work."

What standard of truth allows the Constitution to *work*? American pragmatists expound a theory of truth that focuses on a statement's practical consequences. True statements are those that place us in working touch with reality. "All that the pragmatic method implies," said William James, "is that truths should *have* practical consequences." The pragmatist posits "a reality and a mind with ideas. What now, he asks can make these [ideas] true of that reality?" Whereas others may content themselves "with the vague statement that the ideas must 'correspond' or 'agree'; the pragmatist insists on being more concrete, and asks what such 'agreement' may mean in detail." A pragmatist "finds first that the ideas must point to or lead towards *that* reality and no other, and then that the pointings and leadings must yield satisfaction as their result."[14]

SEVERAL YEARS before it decided that a misleading statement shrewdly calculated to evade an inquiry could not be perjury as long as it corresponded to reality and was literally true, the U.S. Supreme Court rejected an advertisement that placed the viewing public in working touch with reality but was literally false.

In *Colgate-Palmolive v. FTC*,[15] the TV commercial under consideration purported to show a hand shaving sandpaper soaked in Rapid Shave. The cream could make sandpaper shaveable, but if shown on television, sandpaper would appear like cardboard, so the ad agency had substituted plexiglass covered with sand. The 2d U.S. Circuit Court of Appeals had supported the advertisement as an "accurate portrayal" of the product's attributes. But the Supreme Court, in a decision by Chief Justice Earl Warren, reversed, holding it "false, misleading, and deceptive" to claim to demonstrate something that did not literally correspond to reality — i.e., a hand shaving sandpaper.

The majority's literalist view, as Justice John M. Harlan pointed out in his dissent, would permit an advertiser to exploit the fact that white shirts in a studio appear gray to a TV viewer, by "demonstrating" a "white" shirt washed in a competitor's detergent, holding it up for the viewer to judge. That would be literally true, but coherently false — false in context. It would be pragmatically false — not placing the shopper who relied on the demonstration in working touch with reality.

Similarly, Black's Law Dictionary defines a "true copy" pragmatically: it "does not mean an absolutely exact copy but means that the copy shall be so true that anybody can understand it."[16]

The "white" shirt shows a statement can be literally true yet false. The true copy shows a statement can be literally false, yet true. "Have you been to Grandma's recently?" asks one sister, who has never visited. The other, who has averaged visits twice a day for 10 days, responds: "A million times in the past week." That answer too, is literally false yet coherently/pragmatically true.

If truth is literal, consisting of some form of correspondence between statement and fact, it is true that Mr. Bronston's company *did* have a Swiss bank account; the United States did not solicit aid for the Contras from a *Middle* Eastern country. The Boland amendment, if it couldn't be violated, obviously wasn't violated. From a pragmatic perspective, however, neither Mr. Bronston's, Mr. Abrams' nor Rear Adm. Poindexter's statements placed the recipients in working touch with reality.

Editor's note: Next week Mr. Blecker will conclude by evaluating the standard of truth necessary to make the Constitution work.

---

(1) Transcript of proceedings before the Senate Select Committee on Intelligence at 11 and 12. A little later Mr. Abrams added that "we never tried" to raise money from "any Middle Eastern sources" largely because "they [didn't] even know where Central America is."

(2) Cong. Quarterly (1987) at 1165.

(3) Ibid. at 1677.

(4) The amendment as read aloud to the committee by its author, Rep. Edward P. Boland, D-Mass. Cong. Quarterly at 1007.

(5) Cong. Quarterly at 1675. Emphasis added.

(6) Bronston v. U.S., 409 U.S. 352 (1973).

(7) U.S. v. Bronston, 453 F.2d 335. Emphasis added.

(8) William James, "The Meaning of Truth," at 214. For a classic statement of this coherence view, see Quine, "Two Dogmas of Empiricism," in "From a Logical Point of View" at 42-46.

(9) U.S. v. Bronston, supra note 7.

(10) Bronston v. U.S., supra note 6.

(11) Aristotle's "Metaphysics" 1011b26 ff. Plato's view of correspondence truth, which Aristotle followed, is stated in the "Sophist" (240c) cf. F.M. Cornford's discussion in "Plato's Theory of Knowledge" at 309-311.

(12) W.K.C. Guthrie, "A History of Greek Philosophy" Vol. 3 at 218.

(13) B. Russell, "Problems of Philosophy" at 121.

(14) Ibid. at 147-159.

(15) Cong. Quarterly at 1204.

(16) W. James, "The Meaning of Truth" at 52 and 191.

(17) Federal Trade Commission v. Colgate-Palmolive Co., 380 U.S. 374 (1965). Cf. Bishin and Stone's "Law, Language & Ethics" at 300-345 for an extended discussion of the case and a probing look at clashing standards of truth.

(18) Black's Law Dictionary (4th ed.) at 1680.

PHILOSOPHY OF LAW

By Robert Blecker

The Standards of Truth and Trust After the Iran-Contra Hearings

Editor's note: This is the second part of a two-part series, which in turn is part of a larger work still in progress. In last week's installment, the author presented examples of statements in the Iran-Contra hearings that were literally true yet coherently false and shrewdly calculated to evade the legislative inquiry and mislead the inquirer. This week he concludes by evaluating the standard of truth necessary to make the Constitution work.

NATIONAL SECURITY Adviser John M. Poindexter's assurance to Congress that the Reagan administration was complying with the letter and spirit of the Boland amendment is problematic. It remains disputed whether Boland does apply to the National Security Council staff. Rear Adm. Poindexter and Attorney General Edwin Meese III, among others, argue that it does not. Many viewers, however, found National Security Adviser Robert C. McFarlane most convincing on this point: "At the end of it we lost, and it was very evident that the intent of the Congress was that this amendment applied to the NSC staff... otherwise why would we have worked so hard to get rid of it after it was passed?" But the deeper untruth may lie with the major premise, i.e., "if Boland doesn't apply to us, then we have complied with its letter and spirit."

Recently, when Sen. Joseph R. Biden Jr., D-Del., was forced out of the presidential campaign because he'd presented as his own, parts of another's campaign speech, supporters protested that many politicians routinely have their entire speeches ghostwritten, passing them off as their own.

Several years ago to expose corruption in the criminal justice system, federal prosecutors staged an arrest that they processed as a criminal case and later fixed. An undercover agent posed as a mob hit man and was arrested for possessing two unlicensed guns. Although they found it foolish, the cooperating police officer and undercover agent were instructed to go through the arrest itself to the last detail including a pat down and Miranda warnings.

The prosecutors' goal was to eliminate any "lies" that later would be told to the judge. By going through the motions, the arresting officer could "truthfully" swear that "I saw defendant at the diner; I noticed a gun handle; I trailed him to the men's room where we were alone, etc." The prosecutors took comfort in believing these statements "truthful" in that they corresponded to actual events although the judge or jury would be totally unsuspecting of the phoniness of the entire context: i.e., that the "defendant-mobster" was really a federal agent, and that the "case" was manufactured and monitored.

Justifying lying to Congress about Eugene Hasenfus' downed flight over Nicaragua and about covert operations generally, Lt. Col. Oliver L. North said:

> This nation is at risk in a dangerous world...By their very nature, covert operations...are a lie. There is great deceit, deception practiced in the conduct of covert operations. They are at essence a lie. We make every effort to deceive the enemy as to our intent, our conduct.[1]

The fallacy in Lt. Col. North's statement consists in his equating telling lies *in* undercover operations with telling lies *about* them.

All of these scenarios shed light on Rear Adm. Poindexter's reported statement, "[W]e are complying with the letter and spirit of Boland." Without alerting Congress, Rear Adm. Poindexter was silently construing the Boland amendment, talking about it, and not applying it to himself, and the staff. The statement, "[W]e have complied with the letter and spirit of Boland" denotes, "We are within it, acting consistently with its purposes, and our acts individually correspond to its commands."

The statement, "I have always driven within the speed limit" is definitely false if made by someone who has driven above the speed limit. Is it also false if uttered by someone who has never driven at all?

In essence then, Rear Adm. Poindexter's assurance was a meta statement — a statement *about* the Boland amendment rather than an analysis under it. It corresponds to fact, if at all, *in a different context*. Ultimately, it probably fails under a correspondence test, but in any event it fails to cohere with other true statements and the recipient was not placed in working touch with reality by relying on it, so it was clearly false from a coherence/pragmatic perspective.

There is a connection between the sleight of mind involved in Rear Adm. Poindexter's statement and logician Alfred Tarski's famous semantic definition of truth as a metalinguistic adjective: "A sentence," Mr. Tarski pointed out, "is true or false only as part of some particular language."[2]

AP/Wide World Photos

NO EASY ANSWERS: Some statements made by witnesses before the Iran-Contra committee may have been literally true yet coherently false and shrewdly calculated to evade the legislative inquiry. What is the standard of truth that is necessary to make the Constitution work as it should work?

JOHN W. DEAN III, President Nixon's counsel, had taken refuge in literal truth to cover up the Watergate conspiracy:

> When [presidential adviser John D.] Ehrlichman suggested I 'deep-six' sensitive materials from [E. Howard Hunt Jr.'s] safe by throwing them into the Potomac River ...I delayed for several days searching for an alternative. I did not want to disappoint Ehrlichman, but I did not want to take responsibility for destroying potential evidence. Finally I came up with what I thought was a clever idea — to give the documents directly to L. Patrick Gray III, the acting [FBI] director after [J. Edgar] Hoover's death. By this ruse we could say we had turned all evidence over to 'the FBI' and literally it would be true....On such half-truths I sustained the image of myself as a 'Counsel' rather than an active participant for as long as I could but the line blurred and eventually vanished.'

Rep. Lee H. Hamilton, D-Ind., insisted that "we cannot advance U.S. interests if public officials who testify before the Congress resort to legalisms and word games."[3] Courts however, in commercial affairs, have sometimes supported these word games:

> Loretta Peckman sued on the life insurance policy of her husband, the victim of a homicide, within the contestability period. Mutual Life Insurance Co. argued the policy was void because Alan L. Peckman had materially misrepresented his occupation and employment history by listing himself as "self-employed in marketing," when in fact he was a notorious drug dealer. Granting summary judgment for the insured, Justice Kenneth L. Shorter observed, "Webster's Dictionary defines marketing as 'the act or business of buying or selling in the market.' This definition clearly encompasses applicant's alleged pursuit of drug dealing.'"[4]

> With an eye toward the law requiring that Congress be notified of weapons purchases exceeding $1 million, the CIA probably thought it correspondently clever to issue to the Pentagon five separate checks of $999,999 for weapons bound for Iran. "Ironically, the law probably did not apply because it apparently covers weapons that cost $1 million or more for each item, rather than a total amount for the weapons shipment."[5]

> Lt. Col. North took similar refuge in literal truth, claiming he had not "solicited" funds for the Contras when he had set forth their dire situation to a wealthy contributor, whereupon a friend took her to the airport asking for money. Characterizing this as "the old one-two punch," Sen. Warren B. Rudman, R-N.H., relentless in his pursuit of truth throughout the hearings, called it "a fiction for anyone to assume somehow that's not a solicitation. The *whole event* was a solicitation done by two different people."[6]

From a larger pragmatic view, the question is: Which standard of truth *works* constitutionally? The Iran-Contra hearings showed that a literalist attitude toward truth, which refuses to punish intentionally misleading and deceptive statements, if extended beyond the formal adversary context into the daily operations of government by coordinate branches attempting to keep one another in check, will corrode, perhaps destroy the constitutional plan.

> "If we're going to do business in this democracy, we're going to have to depend on the truth of what we're told," declared Sen. Paul Trible, R-Va., during the hearings. "We've seen the withholding of information, evasion, false and misleading statements made to virtually everyone...Now in a free society that doesn't work."[7]

Representative Hamilton was in accord:

> Congress cannot play its Constitutional role if it cannot trust the testimony of representatives of the President as truthful and fully informed...[B]oth parties have a deeply-felt desire to show that our government system of shared powers works, and I do not see how that can be done unless those of us who are charged with that responsibility speak to one another the truth.[8]

TRUTH AND TRUST are vitally linked: As Chairman Daniel K. Inouye, D-Hawaii, observed in his opening statement, "trust" is the "lubricant of our system."[9] Secretary of State George P. Shultz quoted Bryce N. Harlow, a former presidential adviser, and was himself quoted many times in declaring that "trust is the coin of the realm."[10] Truth and trust also reign in

Continued on following page

Mr. Blecker is a professor of constitutional history, legal ethics and criminal law at New York Law School.

Continued from preceding page

well-functioning families: When a daughter assures her father she's read a book "cover to cover," he trusts she has more than read the front cover, outer binding and back cover.

Three hundred years ago, John Locke gave Reagan administration officials their best defense: "Many things there are which the law can by no means provide for, and those must necessarily be left to the discretion of him, that has the Executive power in his hands, to be ordered by him, as the public good and advantage shall require...Prerogative can be nothing, but the *People's permitting their rulers to do* several things of their own free choice where the law was silent, and sometimes too *against the direct letter of the law* for the public good; and their acquiescing in it when so done."[12]

For the constitutional plan to work, we must trust that when the people's representatives enact legislation, everyone, including the executive branch, routinely complies or openly tests its constitutionality. And when an emergency arises where executive prerogative arguably applies, and the executive acts outside the rules — even against the law for the good of the nation — as soon as practically possible, the executive must submit its violation of law, its assertion of prerogative to the scrutiny of the people's representatives who may judge whether the emergency was real, the extraordinary action warranted, the prerogative power used wisely.

The Iran-Contra hearings may be seen as the occasion for the people to decide whether they acquiesce. This is not the place to join the constitutional controversy surrounding the exercise of executive prerogative, but destroying a presidential finding that specifies the facts and circumstances justifying covert action most seriously corrodes well-functioning prerogative.

> Must we regard every claim of executive privilege and every statement of explanation with great skepticism? When can we be assured that we are hearing the *whole truth*? How can we get a *total account* of what is happening so that we can be a responsible partner rather than an adversary in the process? How can our system of government *work* if the Administration is not candid in its answers to the Congress?[13]

"The truth, the whole truth, and nothing but the truth" — what does that literally mean? "Nothing but the truth" means that nothing included is false. But what about the "whole truth"? It is literally impossible to give a "total account of what is happening." To tell the whole truth would take forever. On the other hand, on some occasions in certain contexts, silence can be lying.

"But certainly when Admiral Poindexter and Mr. McFarlane were silent and they didn't refute that fact in the Attorney General's presence on November 20, and let this testimony apparently be put that way with regard to the Hawk missiles and the lack of awareness, they too were lying weren't they?" demanded Rep. Bill McCollum, R-Fla., in indignation that Mr. Meese had been kept in the dark by other members of the administration.[14]

The "whole truth" part of the oath cannot be understood literally; it must be taken pragmatically/coherently: The speaker promises not to exclude anything materially true and clearly called for in the context of the inquiry. As a definition of truth that combines correspondence with coherence and pragmatism, the oath should read, "The truth: the whole truth and nothing but the truth."

IN THE END, the U.S. Supreme Court in *U.S. v. Bronston*, as well as Asst. Secretary of State Elliott Abrams and Rear Adm. Poindexter before the Iran-Contra committee, were truth as unworkable in the extreme. In *Bronston*, the District Court had offered a hypothetical: "If it is material to ascertain how many times a person has entered a store on a given day and that person responds to such a question by saying 'five times' when in fact he knows that he entered the store 50 times that day, that person may be guilty of perjury even though it is *technically true* that he entered the store five times."

But Mr. Bronston's situation was "hardly comparable," asserted the Supreme Court in a footnote. " 'Five times' is responsive to the...question and contains nothing to alert the questioner that he may be sidetracked." So, correspondently true, coherently false statements such as Mr. Abrams' and Rear Adm. Poindexter's that do not alert the questioner to the fact that they are unresponsive, although literally true, *may be perjury*.

Was the Supreme Court correct that Mr. Bronston's statement, "The company had" was unresponsive and therefore should have alerted an attentive questioner? By definition, any really evasive statement must appear responsive or it will alert the questioner. By initially characterizing Mr. Bronston's reply — "the company had" — as unresponsive rather than responsive and false, the prosecution may have fatally blurred the search for a standard of truth.

Further on in that footnote the Bronston court edged closer to coherence truth, observing that "whether an answer is true must be determined with reference to the question it purports to answer, *not in isolation*."[15]

There was Bronstonlike questioning during the Iran-Contra hearings:

> Senator Rudman: General, do you have a Swiss bank account?
>
> Army Maj. Gen. (Ret.) John K. Singlaub: No.
>
> Senator Rudman: You have never had a Swiss bank account?
>
> Maj. Gen. Singlaub: Never.

Maj. Gen. Singlaub's "Never" was unequivocal. He flatly denied having a Swiss bank account. But suppose instead Maj. Gen. Singlaub did have a Swiss bank account and answered, "You have never had a Swiss bank account?" with: "No!" Surely a lie. But "Yes" to the question, "You have never had a Swiss bank account?" could *literally* mean: 'Yes, I have never had a Swiss bank account.' Then "No!" can mean: "No, it is is not true I never had a Swiss bank account," i.e., "I sometimes had one."

Preposterous? Nearly 40 percent of a legal ethics class at New York Law School thought that, under oath, an answer of "No" to "You never had a Swiss bank account?" made by a speaker who had one was not false, and therefore could not be perjury. (Presumably, many of these same students would find nothing "untruthful" about a Pravda correspondent whose headline proclaimed the result of a two-person race between the champions of the Soviet Union and the United States, won by the latter: "Soviet Places Second in International Competition; American a Disappointing Next-to-Last" — which of course is correspondently true and coherently false.)

Sen. David L. Boren, D-Okla., had instructed Mr. Abrams that he'd better have learned his lesson — "that it is always right and wise to tell the truth...[i.e.,] to not only tell the truth

Continued on page 22

Standards of Truth After the Iran-Contra Hearings

Continued from page 21

literally, but to also make sure that you're conveying the right impression of what is going on."

"Conveying the right impression and conveying a full picture," Mr. Abrams added, moving toward coherence truth.

The senator was not satisfied, and forced the assistant secretary of state to enunciate his standard:

"Mr. Abrams I come from a part of the country where people still like to leave their doors unlocked. Could you explain to me the difference that you think there is between knowing that you've left a false impression or a wrong impression and lying, to use an old-fashioned term?"

Mr. Abrams, on the spot, replied: "Yeah, I think lying, we really mean, I mean, a deliberate effort to mislead people, through a deliberate effort to leave them with a misleading impression."[1]

So for Mr. Abrams, deliberately creating a misleading impression *was* lying.

WHEN IT CAME to truth, perhaps the most unrepentant witness was former National Security Adviser John Poindexter. Lt. Col. North had admitted that he'd lied to Congress face to face, but his former boss, clinging to correspondence truth, refused to concede it:

> I would really like to know exactly what was asked and what his answers were. I'm sure they were very carefully crafted, nuanced. The total impact, I'm sure, was one of withholding information from the Congress, but I'm still not convinced — I know he testified that he lied and made false statements — but I'm not totally convinced of that myself.[15]

But in the end, Rear Adm. Poindexter himself was forced not only to relinquish literal truth but also to *advocate* coherence truth in order to justify violating the law by destroying a presidential finding that authorized an arms transfer to Iran:

> That particular version of the finding *taken by itself...taken out of context presents a misleading picture* to the American public and that's what I was trying to avoid.[16]

Rear Adm. Poindexter was responding to Rep. Jack Brooks, D-Texas, who had accused him of "steal[ing] from the American people their chance to learn what actually happened." Earlier, too, Rear Adm. Poindexter had insisted that "The finding did not in any way present a *total and accurate description* of what Mr. McFarlane had in mind, what I had in mind, or what the President had in mind. It addressed part of the issue."

Senate committee Chief Counsel Arthur L. Liman followed up: "What about preservation of Presidential documents?"

"As I said earlier, after this December finding was signed, I talked and we did produce a much more detailed finding that addressed the *total* picture," Rear Adm. Poindexter responded."[17]

THE U.S. Constitution's bicentennial, coinciding with the Iran-Contra hearings, proves our system of government is soundly constructed. The solution, as Representative Hamilton recognized in his closing statement, "lies less in new structures or new laws than in proper *attitudes*."[20]

Twenty-five centuries ago, the sophists proclaimed that truth did not exist; that if it did, we could not know it, and if we could know it we could not communicate it. Truth was what any person could be made to believe. Through rhetoric, the great art of persuasion, "a jury in court, senators in the council, the people in the assembly" could be convinced of anything. Every discussion was a verbal battle. Socrates rejected rhetoric and embraced dialectic — two minds not engaged in a contest but in a "common search," one helping the other, that both could come nearer the truth.[21]

Then, as now, it was a matter of attitude. Senator Rudman thundered: "This Congress assumes...that when it passes a law, that an outrageous, blatant attempt to subvert the law will be recognized by the courts for what it is...This is not a contract between adversaries, it is the intent of the United States Congress."[22]

Members of the executive branch must see themselves as partners and not adversaries of Congress. They must understand, as Sen. George J. Mitchell, D-Maine, pointed out to Mr. Abrams, that "in the last analysis, you don't have much beyond your own reputation for integrity, and your own word."[23]

An indictment is necessary: Not necessarily an indictment for perjury, obstruction of justice, conspiracy, or destroying official records, but an indictment of an attitude toward truth. It is not enough to proclaim that except in dire emergencies public officials should not lie. We need a commitment not only to tell "the truth" but to a standard of trust; honest accurate portrayal; coherence truth; the whole truth; truth among partners — truth that works.

---

(1) Cong. Quarterly (1987) at 1519.
(2) The Encyclopedia of Philosophy, at 230 (P. Edwards ed. 1973).
(3) John Dean, Blind Ambition, at 117-118.
(4) Cong. Quarterly (1987) at 1204.
(5) Peckman v. Mutual Life Insurance Co. of New York, N.Y.L.J., May 20, 1986, at 12, col. 4.
(6) Cong. Quarterly (1987) at 1779. Article by John Felton and Steven Pressman.
(7) Cong. Quarterly (1987) at 1095-1096.
(8) Testimony of Sen. Paul Trible, R-Va., July 20, 1987 (transcribed by Robert Bleicher).
(9) Cong. Quarterly (1987) at 1205. Representative Hamilton closed the first phase of the hearings: "Our Government cannot function cloaked in secrecy. It cannot function unless officials tell the truth. The Constitution only works when the two branches of government trust one another and cooperate." Cong. Quarterly (1987) at 1281.
(10) Cong. Quarterly (1987) at 931.
(11) Testimony of George Shultz, July 23, 1987 (transcribed by Robert Bleicher).
(12) Locke, Two Treatises of Government, paras. 156 and 164.
(13) Cong. Quarterly (1987) at 1012.
(14) Cong. Quarterly (1987) at 1463.
(15) 409 U.S. 354 n.3.
(16) N.Y. Times, June 4, 1987.
(17) Cong. Quarterly (1987) at 1677.
(18) Cong. Quarterly (1987) at 1682.
(19) Cong. Quarterly (1987) at 1608 (emph. added).
(20) Cong. Quarterly (1987) at 1851.
(21) See Plato's Protagoras, 335a; Gorgias, 452e. cf. W.K.C. Guthrie's extended analysis of the sophists and Plato, A History of Greek Philosophy, vol. 3 (esp. at 40-43; 180-181.)
(22) Cong. Quarterly (1987) at 1278.
(23) Cong. Quarterly (1987) at 1204.