PHILOSOPHY OF LAW

By Robert Blecker

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

Mr. Blecker is a professor of constitutional law or paramilitary operations in Nicaragua by any nation, group or individual." Mr. McFarlane expressed his regret about his written assurances, but Rear Adm. Poindxeter and Lt. Col. North defended them as true. Insofar as the Boland amendment states they interpreted it as no way applied to the National Security Council staff, they could not possibly have violated it.

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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

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Workhorse.
PHILOSOPHY OF LAW

By Robert Blecker

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

NATIONAL SECURITY Adviser John M. Poindexter’s assurance to Congress that the Reagan administration was not involved with the letter and spirit of the Boland amendment is problematic. It remains disputed whether the Boland amendment’s letter, or spirit, was violated. The Public Interest, a consumer and environmental advocacy group that does not accept federal money, issued a report that it does not. Many viewers, however, found National Security Advisor Robert C. McNamara 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 protestated that many politicians routinely have their entire speeches ghostwritten, passing them off as their own.

Several years ago to expose corruption and expenditure in the judicial 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 him 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 hand... I realized it was the men’s room where we were alone, etc.” The prosecutors took comfort in believing these statements “truthful” that they could respond at the sentencing and events while the judge or jury would be totally unsuspecting of the phoniness of the entire procedure. The “decommissioned mobster” was really a federal agent, and that the “case” was manufactured and monitored.

Justifying lying to Congress about Eugene Hasenfeld’s downed flight over Nicaragua and about covert operations generally, Lt. Col. Oliver L. North said: “This nation is at war in a third world... by their very nature, covert operations... are a lie. It 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.”

The fallacy in Lt. Col. North’s statement consists in his equating telling lies within the speed limit is definitely false if made by someone who has been pulled over at 35 mph, but also false if uttered by someone who has never driven at all.”

In 1984, 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 neglect of mind involved in Rear Adm. Poindexter’s statement and logician Alfred Tarski’s famous semantic definition of truth as a metalogical adjective: “A sentence.” Mr. Tarski pointed out, “is true or false only as part of some particular language.”

NO EASY ANSWERS: Some statements made by witnesses before the Iran-Contra committee may have been literally true yet inherently 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? The standard is one that has been clearly established in the past.

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

The Office of Rent and Housing Maintenance, Division of Evaluation and Compliance of HPD has issued a Request for Proposal (RFP) for the Development of a Trial Advocacy Training Program for its litigation staff.

Copies of the RFP package and additional information may be obtained upon application, in person from HPD’s Division of Evaluation and Compliance, Room 222, 2 Gold Street, New York, New York. The pre-submission conference is scheduled for Wednesday, December 8, 1987, in Room 707, 5th Floor, 100 Gold Street, New York, New York, at 11 A.M.

All parties interested in submitting proposals are encouraged to attend this conference.

All proposals must be submitted no later than 11 A.M. on January 6, 1988 to be considered by HPD.
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 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 to any other question."

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.


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. I have 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: "Soviets Place Sec- ond 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)

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In the end, the U.S. Supreme Court in U.S. v. Bronston, as well as Ass't. Secretary of State Elliott Abrams and Rear Adm. Poindexter before the Iran-Contra committee, were...
Standards of Truth After the Iran-Contra Hearings

Continued from page 9
literally, but 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, if 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 you have 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.”

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 drafted, 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.

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

‘That particular version of the finding taken by itself ... taken out of context creates a misleading picture to the American public and that’s what I was trying to avoid.’

Rear Adm. Poindexter was responding to Rep. Jack Brooks, D-Texas, who had accused him of “stealing” 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 situation in which the President would deny the American people their chance to learn what had actually happened.”

Senate committee Chief Counsel Arthur L. Lberman followed up: “What about preservation of Presidential documents?”

“After a month earlier, after this December hearing was signed, I talked and we did produce a much more detailed finding that provided the total picture,” Rear Adm. Poindexter responded.

When the U.S. Constitution’s bicentennial, coinciding with the Iran-Contra hearings, proves our system of government is soundly constructed. The solution was: Representative Hamilton recognized in his closing statement, “lies less in new structures or new laws, more in the proper attitudes.” Twenty-five centuries ago, the sophists proclaimed that truth did not exist. That it did, we could not know it, and if we could, we could not communicate it. Truth was what any person could be made to believe. Through rhetoric, the great art of manip-

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