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## War Stories: In Pursuit of Oliver North

By **Kate Rix**

RECORDER STAFF WRITER

**J**ohn Keker is among the best known and most successful criminal defense specialists in San Francisco, and has been for many years. But the

will of Congress by using proceeds from the sale of weapons to Iran to bolster the rebel effort to overthrow the government of Nicaragua.

In this installment of War Stories, reporter Kate Rix talks with Keker about putting the colonel on the stand,

His four-month trial on charges related to the Iran-Contra scandal nearly a decade ago bumped daytime soaps off the air and dazzled millions of TV viewers.

Lead prosecutor John Keker went mano a mano with North, grilling the misty-eyed Marine about his role in a scheme that funneled proceeds from the sale of arms to Iran to the Contra rebellion in Nicaragua. North would be convicted of only three counts from a 12-count indictment, and those convictions were later flipped.

A San Francisco trial attorney renowned for several sensational victories over the last 20 years, Keker had never before prosecuted a case. After hearing of the Iran-Contra scandal, though, he pursued a spot on the government team out of "outrage" and ended up working as Independent Counsel Lawrence Walsh's lead trial attorney. In 1989, two years after congressional hearings on the affair, Walsh brought conspiracy charges against North and three other men, including then-National Security Advisor John Poindexter. But after the White House under President Ronald Reagan refused to hand over evidence it insisted was classified, the cases were severed and Walsh dropped the conspiracy charges at the heart of the indictment.

The case against North - tried before the late U.S. District Judge Gerhard Gesell - was saddled by unusual handicaps. Various government intelligence agencies declared evidence off-limits to prosecutors; charges of a sophisticated, globe-trotting scam that would test the most savvy political science junkies were presented to lay jurors; and prosecutors needed to use congressional testimony given by



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Keker & Van Nest partner's most famous case is the one and only trial where he served as a prosecutor. In January of 1989, Keker was the lead trial attorney in the case against Lt. Col. Oliver North, who faced 12 criminal charges for his role in the Iran-Contra scandal, in which high-ranking Washington officials working under President Ronald Reagan subverted the

the scene in the Washington courtroom, and his reflections nearly a decade later.

Long before O.J. Simpson found himself on trial before a nation of television watchers, or Kenneth Starr and his case against the president went before Congress and several networks, there was Lt. Col. Oliver North.

the defendant two years earlier - testimony that was later held to have tainted the jury verdict.

Opposite Keke in the stiflingly hot federal courtroom was defense attorney Brendan Sullivan, of New York's Williams & Connolly. But Keke says his real opponent was the defendant and his superiors in the military hierarchy.

Poindexter was later convicted of lying to Congress and destroying documents. Robert McFarlane, who preceded Poindexter as national security advisor, pleaded guilty to misdemeanors and was placed on probation.

Keke says today that he never expected North to do any jail time. It was a case he tried on principle.

"The idea that people from within the White House, working covertly with people from the CIA, would just completely ignore one branch of government because they felt strongly about something was about as threatening as anything I'd heard of to the idea behind American democracy," he says.

In this installment of War Stories, reporter Kate Rix talks with Keke about his experience prosecuting North nearly 10 years ago.

**Recorder:** This was your first job as a prosecutor.

**Keke:** First and last. I never will do it again. I might do it again if something similar happened, but I have no interest in being a prosecutor.

**Recorder:** Specifically because of this case?

**Keke:** Being a prosecutor isn't in my soul. The good prosecutors have to want what they think is justice and protect society, and they do have a lot of opportunity to do justice and make discerning decisions. I want to just fight with people. I like being a defense lawyer.

**Recorder:** A lot was made in the press at the time that you were a Marine and Oliver North was a Marine and I wondered if that really was a big issue for you.

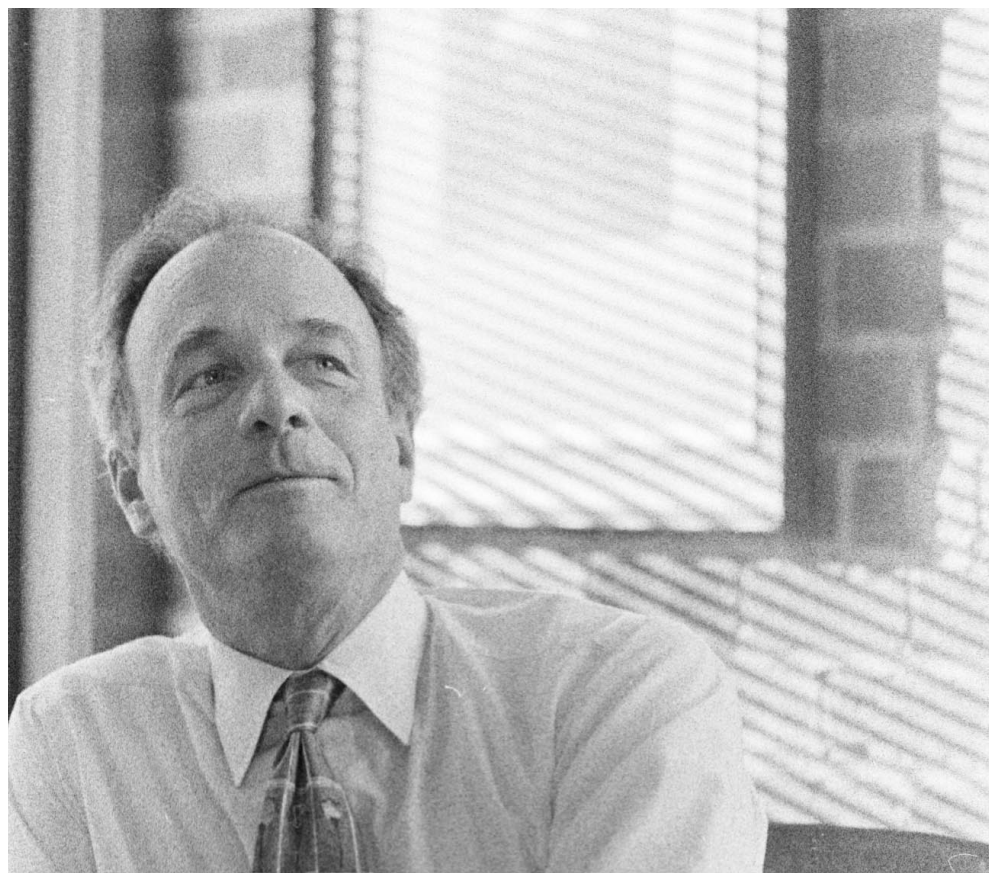
**Keke:** It was not a big issue. Oliver North was not a Marine, he was a politician when he did this. Once he left the Marine Corps, where he had a perfectly good record and had done a good job as a Marine, and went over

to the White House and got involved in politics, I think he kind of lost his bearings and everything he had ever learned about the Constitution. What rankled me, frankly, was his use of his

staged three or four days, on both sides, frankly.

**Recorder:** Were you trying to poke at his aura of a serene, patriotic calm?

**Keke:** Absolutely.



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Christianity. I thought it was fine if somebody's a devout Christian. That's great. To sit around with a bible ostentatiously displayed on counsel table in front of you where everybody can see that it's a bible -- that, I thought was inappropriate.

**Recorder:** Was it there every day?

**Keke:** Every day.

**Recorder:** Did he consult it? Keke: No, he'd just finger it in faith, that kind of stuff.

**Recorder:** What was he like to cross-examine?

**Keke:** He was a very carefully prepared witness. He had lawyers who'd done a comprehensive investigation. . . They had decided he would not get mad and not try to defend himself and be fairly demure on the stand, and he was. They'd also decided, or maybe this is just how Brendan Sullivan tries cases, that they wouldn't object while he was on the stand no matter what happened. . . . So it was a reasonably

**Recorder:** Did you feel you succeeded?

**Keke:** Yes. There was no question. It was a riot. Every morning I would say, "Good morning, Col. North," and he would not answer me. After a while the jurors began to laugh because it was so clear he was refusing to buy into anything. There was clearly a lot of effort on his part to control me and effort on my part to control him in front of the jury.

**Recorder:** It was hot in the courtroom, wasn't it?

**Keke:** Yes. It was late January to about May, but I remember it being hot because of all the press that was in there, all the gas bags of the press were present every day with their notebooks. What I remember is Judge Gesell, who just looks like a federal judge ought to look, with white hair - he looked something like God - in this enormous courtroom. On the left side you had the jurors who had been cho-



sen because they swore they had never heard of Oliver North and had never seen him on television and never read about him in the newspaper . . . but the result was that the people chosen for the jury had, at best, a high school education and a lot of them had that high school education in the South, where there's only 11 years of school, so these are people that I think



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with maybe one or two exceptions didn't work or use reading skills and knew almost nothing about the government and didn't know much about Nicaragua or Iran. So you had them, and they were all African-Americans. Then at counsel tables you had a whole bunch of white men, with the exception of Nicole Seligman, who was on the defense side, and in the back you had the journalists, all of whom were white men and women, and you had a few marshals who were African-American. It was a real Washington, D.C., scene. I said at the time that I think Washington, D.C., was as segregated at times as Johannesburg and Soweto used to be. It was a very odd place.

**Recorder:** There was a point of debate on your team about when to file the indictment in 1987, immediately before he testified before Congress. But it was filed after the testimony .

That was an issue that would come back to haunt the prosecution . . .

**Keker:** More than haunt it. It was the reason the court of appeals turned over the convictions.

**Recorder:** What were the variables you were considering in filing the indictment?

**Keker:** We had all the evidence we needed six months into the investiga-

half later and it did explain what had gone on, but he couldn't prove it without using a lot of classified information.

So through this process of fighting with the intelligence agencies we had to dismiss all the broad stuff - the conspiracy to violate the Boland amendments which prohibited the government from providing military aid to the Contras - because the defense to those charges would have probably allowed North to bring out a lot of classified information, and the intelligence agencies, for some good reasons and others I was kind of suspicious of, wouldn't let us do it. So we ended up exactly where we would have been six months after it broke. I think that was unfortunate.

**Recorder:** You brought a case largely about foreign diplomacy to a jury of 12 regular folks. Was this really a jury of North's peers? What was your strategy to present the case? This wasn't a case of a guy hitting another guy over the head.

**Keker:** What I did was what any trial lawyer would do -- try to present as simple a case as possible. As a result of these rulings about classified information, the case was not about foreign diplomacy. It was about some specific instances of lying to Congress, of taking the security fence from somebody and trying to cover it up, of cheating on tax returns. Before it was over, the case for the prosecution was fairly simple-minded, it was the case we could have brought early. The charges that involved foreign diplomacy and what the president should or should not have done were dismissed but were brought back in almost as a defense. It was very much in North's interest to make the case as complicated as possible. Instead of saying, "Yeah, I lied" he had to say, "I lied, but it was in the interest of the nation because of all this foreign diplomacy."

**Recorder:** Were there challenges in presenting the political issues to the jury?

**Keker:** Oh yes, and they were huge. In our opening statement, we started out with a map of the world, just to show people what we were talking about. The idea of how we'd gotten

tion . . . for all the things he was tried and convicted of. What we didn't have was the details about money flow in Europe, Swiss bank records, there was a lot of information about what exactly had gone on in Nicaragua and in Iran that was not yet available. The thought, my thought, was let's prosecute this guy on these things that he's guilty of, get a conviction, immunize him, make him testify and give answers to the other questions, and then begin to see who else was responsible and at the same time put some pressure on him. The thinking of the people that didn't want to do it that way - Judge Walsh being the main one and the independent counsel and obviously the one who was going to decide - was that what people were looking for was an indictment that explained what was wrong with what went on and it had to be a full exposition. He did bring such an indictment a year and a

into this fix with the people of Iran, things that the political class of this country probably remember well, these people didn't remember or hadn't known about because they weren't interested in reading a newspaper. Why it mattered that the executive branch and the Congress had to be truthful with each other wasn't obvious to people, so we started with retired U.S. Rep. Lee Hamilton D-Ind. who did a very good job of explaining why it was so important that executive officials not lie to Congress. . . . One of the most difficult things about that trial was not something that people face very often but it was the whole problem of classified information and the abuse of security by the government and those guys who think that everything they do should be vastly protected.

**Recorder:** Did Judge Gesell rule on all the material that the government or the CIA wanted classified?

**Keker:** Under the Classified Information and Procedures Act the judge can't decide whether they're right. No matter how stupid the classification. They could say the location of Washington, D.C., is top secret, the judge can't overrule them. All he can say is that the defendant won't receive a fair trial unless you let him prove the location of Washington, D.C., and therefore unless you declassify it I'll dismiss the case or that count or have some sanction, and that's when the Justice Department and the security agencies are supposed to fight over it to see how important it is to the prosecution.

**Recorder:** Specifically, how did this play out in court?

**Keker:** It greatly interfered with the presentation of evidence. We had in the back, during the trial, representatives of the National Security Agency, the CIA, the State Department, the DOD, and in the middle of presentations they'd want to interrupt, pull me outside - or co-prosecutors David Zornow or Michael Bromwich - and say we can't say that. Judge Gesell was very impatient with them. It was like there were three sides. There was the prosecution, the defense and the government security agencies. They really wanted to see the prosecution

end, partly to protect their secrets, but also, I think, because they thought North was a sympathetic figure.

**Recorder:** What was Judge Gesell like?

**Keker:** He was a very strong, smart judge. Probably his favorite case was one of the Watergate cases and here he was close to 80 and the idea of having this trial made him happy as he could be. He loved being in the newspapers every day and he loved controlling the press and he loved being a federal judge and he was great at it. He was a no-nonsense judge who knew the courtroom could turn into a circus and that the jury would be under a tremendous amount of pressure. He knew the lawyers, if he gave them too much leeway, would run away with it. So he

properly convicted but didn't deserve to be punished any more than he had been by going through this process, so he gave him basically a slap on the wrist and sent him on his way.

**Recorder:** Did that piss you off?

**Keker:** It pissed some people off more than me. I didn't ever think the world would change if Oliver North had to spend some time in jail. There was no question at any time that he wasn't going to get very much. I would have much rather seen him lose the Senate election, which he eventually did.

**Recorder:** It must have been pretty tense in the courtroom.

**Keker:** The tension was with the witnesses. When you're trying to prosecute somebody by proving the case



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controlled that courtroom like a good federal judge does. He was also absolutely determined to make sure North got a fair trial and was willing to dismiss it and take on the government if he had to. I can't imagine a better judge for that case. In the end, I think he was convinced North was

through people who are essentially the defendant's friends, that's a lot of tension. That's not the way you like to prosecute a case. I remember the second witness, Adolfo Calero, who was the head of the Contras for a long time. We asked him questions about money he gave North which is what



we needed for our case and then Brendan Sullivan got up and asked him questions like, on cross-examination, "Would you say Oliver North is the finest man you've ever met?" "Yes I certainly would." It was this complete softball. . . .

A lot of the lying was because Robert McFarlane set that in motion. McFarlane had signed letters to Congress that weren't true and we had to call him as a witness to establish this and the last thing he wanted in the world was to testify. So you had this witness who should have been a defendant.

wrong . . . just talking mush. It was like swimming through tofu.

**Recorder:** You didn't really have an obvious victim in presenting this case.

**Keker:** The victim here was the American political process. But the immediate victim was Congress and it's really hard to feel sorry for Congress and it's hard to defend them. . . . The people that I think suffered were the victims of that war that went on longer than it needed to and was fought harder than it needed to in Central America, but Walsh decided, and I think he was right, that trying to fight

Clearly his boss, Poindexter, who was later convicted, and his previous boss, McFarlane, were aiding and abetting. We never wanted to get into the issue of how much the president knew. . . . I still don't know the answer to that.

**Recorder:** What pieces of evidence, if any, do you think the jury overlooked or ignored in their deliberations?

**Keker:** I don't think they ignored very much. . . . I think they were convinced that he lied, that's what they said later, but they also thought he was lying because his boss told him to lie and they could put themselves in his position, like the American people and Bill Clinton. . . . They convicted him more of cover-up activity than of the initial lying. . . . It was pretty unpleasant, though, sitting there listening to count one, not guilty, count two, not guilty. I thought I was going to die. But then the jury got it right.

**Recorder:** There was something that got you in trouble a little bit -- analogizing North to Hitler.

**Keker:** Well, I didn't think I was analogizing North to Hitler, but I understand why people were so upset and it was a terrible lack of judgment. Sometimes I'm too wont to speak dramatically, but what I had was this quote from Hitler, "Nobody asks the victor whether or not he lied," so I said, "As Hitler said . . ." What I should have known is if you mention Hitler in connection with anything, the lights go out and the blinds come down and it's over and all you're talking about is Hitler. . . .

I'm sorry I said that. I'm sorry I mentioned Hitler and I'm never going to mention him again in a closing argument. Although I must say I do like the line. It's that cynical view of the ends justify the means and that if you win, then you can patch up all the nastiness, criminality that happened along the way. It's a real Hitler way to think, but you can't say it. You can't compare Hitler to anybody and I understand that.

**Recorder:** What else would you have handled differently?

**Keker:** I don't know what I would have done about McFarlane. I really wish he'd been a defendant instead of a witness. It would have been a much



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**Recorder:** He was hostile?

**Keker:** He acted like he wasn't hostile . . . but psychologically he was sort of a wreck. Didn't want to be there. We were tense in part because we had no idea what would come out of the man's mouth.

**Recorder:** What did come out of his mouth? How much did he cop to?

**Keker:** He would say things that would go right up to admitting the facts and then pull back and say he didn't think he was doing anything

the battle of who was right or wrong in Nicaragua was not a good or smart or fair way to prosecute any one individual, so we didn't touch that.

**Recorder:** Wasn't it easier then to have one man standing trial, to isolate things to one man's alleged abuse of the political process and keep things more personal?

**Keker:** I think it would have been better to have more people, and especially his boss. The trouble was he was too far down the food chain.

better trial for people to understand if McFarlane and Poindexter and North had been tried together for these lies. You wouldn't have run against the charge, which I think was completely unfair, "Oh, you're blaming it on the underlings and letting the big bosses get away."

**Recorder:** The severance of those men from one another was a decision Walsh made?

**Keker:** No, Judge Gesell, based on defendants' motions to sever. He granted the motions to sever and Walsh had to make a decision about who to try first. . . . At that point, and it was clear later, it seemed that you needed to start with North. You had the most evidence on North and you wanted to convict North and immunize him and use him as a witness against the others, which is what prosecutor Dan Webb did when he tried the Poindexter case.

**Recorder:** When the convictions were overturned, was there any discussion of taking that reversal up?

**Keker:** . . . What happened was they didn't outright reverse. They reversed and said, if you can establish that the grand jury wasn't affected in any way and the witnesses weren't affected in any way by his immunized

testimony, then the conviction can stand, you should go back and have another hearing. But the way they wrote the opinion made it plain that you could never establish that. It's impossible. So Walsh thought about it a while and said, to hell with it. The conviction was dismissed.

**Recorder:** Was there a moment that really surprised you in court?

**Keker:** We knew that North, on a lieutenant colonel's salary, had bought a car, paid \$8,000 cash, and it was a couple of days after Richard Secord who assisted North in arming the Contras had given him \$5,000 cash supposedly for his work in Central America, and he'd gotten some cash from Secord just before. So it was pretty clear to us that the \$8,000 cash he was using to buy his car was money he'd been given to do his military stuff. That struck me as dirtying him up a lot. It made him look like a hypocrite. He also had all these travelers' checks from Adolfo Calero . . . and that was supposed to be for his work in Central America to buy guns and missiles and stuff. But we knew he'd cashed them . . . to buy stockings and at the grocery store. He'd used them for personal items. We also expected that when confronted with this he'd

have some story about paying back the money or where he'd gotten the cash. But what he came up with I never would have dreamed, and almost laughed out loud. He said he had a little cash box and every day he'd come back from work and he had change in his pocket and he'd put it in his cash box . . . and that's where this money came from.

**Recorder:** \$8,000?

### **Correction to War Stories: In Pursuit of Oliver North**

Because of a reporting error by Kate Rix, the Nov. 25 War Story interview with John Keker inaccurately quoted Keker as saying, "We never wanted to get into the issue of how much the president knew, . . . I still don't know the answer to that." What Keker actually said was, "We never wanted to get into the issue of trying, of how much Reagan, I mean how much was the president lying, how much was it that he just couldn't remember, how much was he just asleep at the switch. I still don't know the answer to that except I certainly think he knew and encouraged and was happy that all this was going on." We regret the error.