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# WITHDRAWAL SHEET

## Ronald Reagan Library

**Collection Name** CULVAHOUSE, ARTHUR B.:FILES

**Withdrawer**

DLB 5/14/2014

**File Folder** IRAN/ARMS TRANSACTION: NORTH/POINDEXTER  
CLASSIFIED DISCOVERY REQUEST (11 OF 13)

**FOIA**

S643

**Box Number** CFOA 1131

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145

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
164971	MOTION	GOVERNMENT'S MEMORANDUM PURSUANT TO SECTION 6 (A) OF CIPA ADDRESSING THE PROPOSED REDACTIONS IN THE GOVERNMENT'S CASE-IN-CHIEF EXHIBITS - DRAFT	4	11/28/1988	B1
164972	LETTER	DUPLICATE OF #164964; LAWRENCE WALSH TO GERHARD GESELL	3	7/20/2014	B1
164973	FORM	DOCUMENT TRANSMITTAL	1	ND	B1
164974	MOTION	GOVERNMENT'S MEMORANDUM PURSUANT TO SECTION 6 (A) OF CIPA ADDRESSING THE PROPOSED REDACTIONS IN THE GOVERNMENT'S CASE-IN-CHIEF EXHIBITS - PAGES 1-6 ONLY	6	ND	B1

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THE WHITE HOUSE

WASHINGTON

November 28, 1988

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: WILLIAM J. LANDERS

SUBJECT: OIC Filing

Attached is a redraft by the OIC of our proposed addition to their filing. I have taken the draft we submitted to them and highlighted in blue the portions that were kept. I have also marked in yellow the four points that were deleted that are of some significance. Generally, in order of priority to us, the five points are as follows:

1. The statement that the decisions that were made in July cover both testimony and documents has been deleted. In our draft, this statement is in the last paragraph of page 2 that carries over to the top of page 3. The bulk of that paragraph simply explains why we are telling the court that the decision covers both testimony and documents and could be deleted. However, we should insist that the last sentence of that paragraph be inserted at the end of the first paragraph of page 3 of the IC's new draft. (Late note: I just talked to Chris and think he has agreed to this.)
2. The statement that IC is satisfied that the classification decisions and the redaction decisions are legitimately based on national security concerns. The IC's draft in the paragraph beginning on page 2 simply states that they have "accepted the decision to withhold the information. I am not entirely certain what their objection is to our proposed language, although Chris Mixter said he believes they never really considered this issue during the redaction process. There are two possible compromises: (1) suggest they state they "accept the decision to withhold" and that they are "satisfied that the decision to withhold is based on national security concerns" or (2) limit the endorsement to only the "non-disclosable" information. We may not have



not a statement that we could make in a separate filing but, if we don't get some concession on this point it certainly makes the toned-down nature of the filing on other points a lot less acceptable. (In any event, I told Chris Mixter that we would be severely troubled if they did not believe that the redactions were for national security reasons.)

3. The statement about the nature of the withheld information at the end of the second paragraph on page 2 has been deleted. I think this statement explains why it may be difficult to devise stipulations and, more importantly, gives an indication of the decisions that has been made. The IC's draft simply states in the first full paragraph on page 3 that it is difficult to devise a substitution until it is known what is relevant. It in no way suggests that it may be difficult because we just cannot disclose anything about the program. However, while I think this is a good point to make, we can certainly make it forcefully in our "secrets" briefing that is being offered to the Court.
4. The statement that we are reviewing the Section 5 notice to determine if there are other categories of information has been deleted. Since we have informed the IC of this in your letter to him, I do not think this is particularly critical. Chris Mixter has said that they deleted it because it would undercut the arguments to strike North's Section 5 Notice.

On balance, I think we should insist that 1 and 2 be included and try to get 3 reinstated. For our purposes, the fact that the draft says it is OIC's view that all redactions are irrelevant gives us the record to say we did not decide to prevent disclosure of any information we were told by them to be relevant in an effort to ensure dismissal.

Attachments



Section 6 of CIPA envisions a two-step process for resolving issues concerning the disclosure and use of classified information. First, under Section 6(a), a hearing is held to determine "the use, relevance or admissibility of classified information that would otherwise be made at the trial." Second, under Section 6(c), the Government may propose a stipulation or summary statement to be used in lieu of any classified information which the the Court rules must be disclosed at trial.

OK //

The Court's order setting Section 6 hearings indicates that the Court intends to follow this two-step process generally, but that the consideration of substitutions for some information will overlap with the relevance determinations as to other information. Thus, proposed substitutions for the identities of countries and officials of those countries and the names of agents in the field are to be prepared prior to the hearing commencing on November 30. With respect to other information that the Court may order to be disclosed, the Court's order indicates that it expects proposed substitutions to be solicited during the hearings, but that the resolution of these matters will be at "an appropriate later stage."

In order to assist the Court in conducting the Section 6 hearings as indicated and as expeditiously as possible, the Government submits this memorandum pursuant to Section 6 of CIPA. The first section of this memorandum discusses the nature of the redactions generally in order to assist the Court in considering how to proceed with the CIPA proceedings and to respond to certain comments made by the Court at the hearing on November 21, 1988. The second section of this memorandum groups the redactions by categories of information and briefly addresses the irrelevance of these categories of information to the case.

#### I. The Nature of the Redacted Information

The information redacted from the documents that are intended to be used in the case-in-chief were the result of careful interaction between the Independent Counsel and the Inter-Agency Review Committee representing the affected departments and agencies. We are satisfied that, with the exception of three proposed substitutions, all information that is essential and necessary to the Government's case-in-chief has been declassified or will be declassified prior to trial; that, as discussed below, the information redacted from the case-in-chief is irrelevant and immaterial to the case; and that deletion of this information from the documents will not distort the meaning of any document or otherwise be unfair to Defendant North.



The Independent Counsel is also satisfied that the classification decisions as well as the decision to prevent public disclosure of the redacted information are legitimately based on national security concerns. Consequently, in view of our assessment that such information is wholly irrelevant and immaterial, we accept the decision of the Executive Branch to withhold this information and are prepared to prove the Government's case without this information. However, we have informed the Executive Branch that should the Court rule that some of this information is relevant to the defense and must be disclosed by Defendant North, we intend to raise the matter with the affected Departments and agencies to determine if the needs of the Defendant can be accommodated by a stipulation or summary. (2)

We do not believe that deferring further discussion between the Independent Counsel and the Executive Branch concerning classification and disclosure decisions until after the Court rules on materiality and relevance will unduly delay or prolong the proceedings. In this regard, we wish to inform the Court that last July, the Director of Central Intelligence notified the Independent Counsel that the heads of the affected departments and agencies unanimously agreed that there were certain categories of information redacted from the case-in-chief that could not be publicly disclosed. We were further informed that the department and agency heads would recommend that a Section 6(e) order preventing disclosure of this information be obtained by the Attorney General if acceptable substitutions or stipulations could not be agreed upon. However, without a ruling from the Court concerning what information is needed by the defense, it is difficult to determine if substitutions or stipulations are possible. We have been informed that the information that must be protected concerns, in some instances, the details of government activities or programs and, in other instances, the very existence of the government activity or program.<sup>1</sup> (P)

We are informing the Court of these decisions not only to aid it in proceeding with the Section 6 hearings, but also to respond to the Court's comments on November 21 concerning the President's statutory and constitutional authority to prevent disclosure of information, regardless of its relevance to the case, and the Court's statements that it can only "define the broad limits of what is relevant" and that there may be wide-ranging testimony concerning "high security matters." We (P)

---

<sup>1</sup>The affected departments and agencies are now reviewing the documents listed on North's section 5 notice to determine if there are additional categories of information that similarly must be protected from public disclosure. (P)



have been informed that those categories of information that agency and department heads have determined cannot be publicly disclosed must not be disclosed either in documents or by testimony from any witness.

It is our belief that it would not be timely to set forth these categories prior to any rulings on relevancy. If we identified these subject matters, North would target this information and construct a defense theory designed solely to support strained relevancy arguments. This would only enhance his efforts to "greymail" the Government into dismissing the case.

The approach we have outlined is consistent with CIPA. Section 6(e)(1) makes it clear that an order under that section preventing the disclosure of classified information need not be sought until the Court has denied an order preventing disclosure pursuant to Section 6(c)(1) upon a finding that a substitution or stipulation is not sufficient. In addition, the procedures specified by CIPA indicate that the appropriate time to submit affidavits concerning the harm that would result to national security from disclosure of information is in connection with a motion for substitutions. See Section 6(c)(2). We are prepared, however, to submit a written brief to the court ex parte so that it may familiarize itself with the information and determine the most appropriate manner in which to proceed with the Section 6 hearings.

## II. The Relevancy of the Redacted Information

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164971 MOTION

4 11/28/1988 B1

GOVERNMENT'S MEMORANDUM PURSUANT  
TO SECTION 6 (A) OF CIPA ADDRESSING THE  
PROPOSED REDACTIONS IN THE  
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DRAFT

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OFFICE OF INDEPENDENT COUNSEL  
SUITE 701 WEST  
555 THIRTEENTH STREET, N.W.  
WASHINGTON, D. C. 20004  
(202) 383-8940

November 29, 1988

Honorable Arthur B. Culvahouse, Jr.  
Counsel to the President  
The White House  
Washington, D.C.

Dear Mr. Culvahouse:

Your letter of November 28, 1988 was received Monday evening. It was apparently written before you received our proposed memorandum to be submitted to the Court today. We agree with you that the Court should again be informed that there are certain categories of information which the heads of the affected departments and agencies agreed could not be disclosed publicly.

Actually, the Court was informed of this decision last July. (See copy of my letter to Judge Gesell relating to discovery dated July 20, 1988. Attachment 1.) There has never been any doubt that certain information, particularly material called for by the Defendant's Supplemental Discovery Motion could never be made public. I'm sure the Court realizes this. On July 27, 1988 the Court and I had the following colloquy:

Now, I don't want to mislead the Court.  
I don't want to mislead the Defendant.  
There are, as I tried to indicate in my report last Wednesday because as soon as I saw the problem I wanted to alert the Defendant and your honor, there are certain areas where they say the price is too high, that Colonel North has found a price they can't pay.

The Court: Mr. Webster, said there are five of them.

Mr. Walsh: They're five. Well, there's only really one where --

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November 29, 1988

Page 2

The Court: Well, he said in his letter there are five of them.

Mr. Walsh: There's one that is more difficult to deal with even by stipulation than the other.

As you recognize in your letter we intend to argue that the classified information sought to be used by the defense is not relevant. If the Court should hold otherwise we will attempt to deal with the problem by substitution or concession. That is the whole purpose of the hearing beginning on November 30. The Court has been informed that the affected departments and agencies object to the release of the material which has been redacted and in certain cases it has been necessary to substitute for the entire document. The Court is fully aware of this and we shall do our best to sustain the redactions and substitutions which the inter-agency group has requested.

From the time we first started working with the inter-agency group it has expressed a strong preference that we proceed in accordance with the Classified Information Procedures Act (CIPA); that we first obtain determinations as to materiality and then make whatever accommodations that may be necessary to protect information that cannot be made public. This is exactly what we are trying to do. On November 22, 1988, Mr. Mixter and I met with Assistant Attorney General Dennis, Mr. Keeney, and Mr. Saltzburg. We welcomed their advice as we did the advice from Mr. John Martin and Mr. Edward Walsh who represented the Department of Justice previously.

It is my belief that Judge Gesell's remarks, which you quote, were addressed to a brief filed by the Department of Justice as amicus curiae which seemed to suggest a cleavage to some degree between the Administration and this Office in the protection of the constitutional powers of the President. As our brief made clear there was in fact no significant disagreement. I believe Judge Gesell's remarks must be read in this context. He was expressing frustration that peripheral issues of this sort should be raised when on the critical question of classified documents there had been no separation whatever between Independent Counsel and the Administration.

You may be sure that we shall inform Judge Gesell that there are categories of vital National Security information that cannot be disclosed publicly. I believe you may also be sure that he already knows this. Nevertheless,

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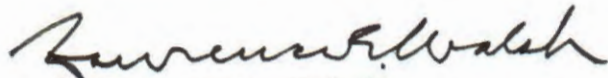
~~TOP SECRET~~

November 29, 1988  
Page 3

both in our memorandum and in our oral discussion, we shall make this clear. We should very much appreciate your suggestions as to our memorandum so that we may file it early today.

Once again let me thank you for the help you have extended to us in this very difficult area. The assembly of the inter-agency group, its dedicated hard work, and your cooperation at times of difficulty will always be appreciated. We are determined to assist the President in protecting vital National Security interests. We nevertheless intend to utilize the procedures provided by CIPA to continue this prosecution with the approval of the Court.

Sincerely yours,



Lawrence E. Walsh  
Independent Counsel

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THE WHITE HOUSE  
WASHINGTON

Date: 11/29/88

**FOR:** Arthur B. Culvahouse, Jr.

**FROM:** **WILLIAM J. LANDERS**  
Associate Counsel to the President

Here are the relevant pages of the filing made by OIC. Although it is marked top secret, these pages contain no top secret information, it is contained only in the last pages that I have removed from this copy.

Attachment



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164973	FORM  DOCUMENT TRANSMITTAL	1	ND	B1

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THE WHITE HOUSE  
Office of the Press

PRESS A. B. Culvahouse  
MARLIN F West Wing

December 1, 1988  
The Briefing Room

11:08 A.M. EST

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#2349-12/02

THE WHITE HOUSE  
Office of the Press Secretary

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PRESS BRIEFING  
BY  
MARLIN FITZWATER

December 2, 1988

The Briefing Room

11:08 A.M. EST

MR. FITZWATER: On Monday, December 5, the President will address and attend a reception with current, former, and newly elected Republican members of the House of Representatives. This group of approximately 250 represents those who served in the House since 1981. This on Monday, December 5. The remarks will be in the House Chamber and the reception will be in Statuary Hall at the Capitol. Both events are closed, at the request of the GOP leaders.

Q Do you believe that?

Q What time is this?

Q What time of day?

MR. FITZWATER: I can't believe it, but we depart the White House at 6:00 p.m. We return to the White House at 7:25 p.m. Travel pool to accompany.

Q Are you going to have a text like you did last --

MR. FITZWATER: If we have a text, we'll --

Q What's their problem with reporters?

Q Will it be --

MR. FITZWATER: Because it's closed -- I don't know what that means. We'll have to check it out.

Q Will it be piped in here?

MR. FITZWATER: Well, I don't know. Closed event -- I'm not sure how we'll handle it. We'll check it out between now and December 5.

Q You did it last week, didn't you? You put -- or earlier this week or whenever it was -- the text on the other --

MR. FITZWATER: Yes. It was just that that was the Senatorial group and they had coverage, as I recall.

Q No, not to be closed.

Q No, they were closed, too.

Q No, they weren't.

Q No, they were open. We were there.

MR. FITZWATER: Basically, the coverage is dictated by the House group and we'll have to wait and see. But we'll press for

MORE

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release.

Q Are we really down to that?

Q Whom do we press? Bob Michel?

MR. FITZWATER: I'm not sure. That's really strange.

All right. Kennedy Center honors. The President and Mrs. Reagan will attend the 11th Annual Kennedy Center Honors Gala at the Kennedy Center Sunday evening, December 4. The honorees were announced in August by the Kennedy Center, but as you'll recall, they are Alvin Ailey, dancer-choreographer; George Burns, actor-comedian; Merna Loy, actress; Alexander Schneider, violinist-conductor; and Roger Stevens, founding chairman of the National Council on the Arts and founding chairman of the Kennedy Center.

A travel pool will accompany the Reagans and should assemble here at 7:00 p.m. Expected return time is 10:10 p.m. And the First Lady's press office has a detailed pool schedule for those of you who want to go.

We will also have a tentative summary schedule for the Gorbachev meeting in New York, and we should have that soon after the briefing or soon -- later this morning. I will just say that it shows press charter departing at 8:45 a.m. and returning to Andrews at 7:20 p.m. So you probably will miss the AEI speech -- if you want to arrange for other coverage by your news organizations.

Q What time is AEI?

MR. FITZWATER: Six o'clock.

Q When does the President leave?

MR. FITZWATER: The President arrives at Andrews at 4:40 p.m., and I don't know yet -- I don't know whether we come back to -- what time we get to the White House and what time we get there. But presumably, it's almost a straight trip right to AEI.

Q He does -- the speech is at 6:00 p.m. though.

MR. FITZWATER: Yes, that's my understanding.

Q So what time does he leave for New York?

MR. FITZWATER: In the morning, the President leaves Andrews at 11:05 a.m. This shows leaving here at 11:00 a.m. addressing --

Q Is he -- to make a luncheon?

MR. FITZWATER: The President would leave here at 11:00 a.m. and arrive back here at 6:00 p.m. -- or he gives his address at 6:15 p.m. this shows.

Q So he could go directly from Andrews to the hotel?

Q No.

MR. FITZWATER: No, I think he'd come here first, but --

Q To change clothes.

MR. FITZWATER: -- I mean, it'd be pretty much a direct flight.

Q Marlin, will the AEI text be available to the New York -- press in New York?



MR. FITZWATER: I don't know yet. I think not because we want to crank in some language from the meeting. So, we'll do the best we can. I certainly understand your situation, but I doubt it.

Q Will the AEI speech be on the mult here?

MR. FITZWATER: Yes, it will be.

Q Do you not plan to break up the press room and load the buses until the speech is over?

MR. FITZWATER: In New York?

Q Yes.

MR. FITZWATER: Now, that's an interesting point. You mean if the press wants to stay in New York and listen to the AEI speech?

Q And file out of New York, yes.

MR. FITZWATER: I don't know, I have to check that.

Q -- make the speech at 6:45 p.m.

MR. WEINBERG: I don't think he'll get to the podium till 6:45 p.m. --

Q A 6:45 p.m. speech is what you're saying, Mark?

MR. WEINBERG: I think by the time he is -- does his reception, is introduced, actually begins to speech, it will be 6:45 p.m.

MR. FITZWATER: Which means, you're out of luck in both places. (Laughter.)

Q But he leaves here at sixish?

Q Be a nice trip.

Q Thank you for your general views. (Laughter.)

Q So we won't cover it?

Q He's not going to spend the whole evening there then, obviously.

MR. FITZWATER: No.

All right, unemployment's up to -- is out for November. A large increase in the labor force -- 578,000 persons, accompanied increases in employment and the unemployment rate in November. Total employment rose a strong 473,000 persons. The unemployment rate for all workers and for civilian workers each rose .1 percentage points to 5.3 and 5.4 percent respectively. One hundred and sixteen million Americans are employed, or 62.6 percent of the adult population 16 and over. Both are record highs. The .1 percent increase in the jobless rate was due almost entirely to a \$578,000 increase in the civilian labor force. The number of people either holding jobs or --

Q Dollars?

Q You mean person increase.

MR. FITZWATER: What?

Q A 578,000-person increase? You said dollars.

MR. FITZWATER: Yes, person, I'm sorry. But factory



workers continue to average four hours of overtime a week last month indicating that the manufacturing sector is continuing to grow and there is no slowdown in the rate of economic growth.

Q What's the reason for the increase?

MR. FITZWATER: It's that there are more people looking for work.

Q Oh. (Laughter.)

Q Aren't there enough hamburger-flipping jobs?

Q Accent the positive.

Q More good news. (Laughter.)

Q Apple sales have dropped off.

Q Interest rates rose this morning on the concern that the economy is overheating. Does the administration think the economy is overheating, and does the Federal Reserve need to raise interest rates to slow the economy down?

Q Say yes.

MR. FITZWATER: I don't have any comment on interest rates.

Q How about the dollar?

MR. FITZWATER: Or the dollar.

Q How about overheating?

MR. FITZWATER: Seasonally adjusted sales of new one family houses rose 3.5 percent in October following a 1.4 percent decline in September. Housing sales continue on an upward trend following last year's lows. The sales rate in October, which was 3.3 percent above the third quarter average, may contribute to modestly strengthening housing production in the near term, staying about the same.

All right, let's see, on the President's schedule today -- this afternoon he receives a report from the Advisory Committee on the Arts and leaves for Camp David at about 3:30 p.m.

Q Are you distributing the report, Marlin?

MR. FITZWATER: We'll have a -- I don't --

Q I don't want it. (Laughter.)

MR. FITZWATER: We'll check with the committee, but I don't think we have one at this point.

Q Do we have a week ahead?

MR. FITZWATER: We'll have General Powell in the Briefing Room on the record for sound and camera at 3:00 p.m. to discuss the luncheon in New York Monday.

Q Monday?

Q Wednesday.

MR. FITZWATER: I mean Wednesday. The President also meets with the Pan American press charter flight attendants today at 2:00 p.m.

Q Why?

Q Ahhh.

Q Readout? (Laughter.)

Q Why?

Q This would be good copy.

MR. FITZWATER: Pardon? To say thank you for eight years of flying the Press Corps around.

Q Will Pan Am continue to charter the Bush press?

MR. FITZWATER: I have no idea.

Q Can we vote on it? (Laughter.)

MR. FITZWATER: Well, it's kind of a slack day today. I don't have a thing here.

Q How about week ahead?

MR. FITZWATER: Week ahead.

Q Do you anticipate a vote in the U.N. on the resolution to move to Geneva -- just information?

MR. FITZWATER: You mean today?

Q Yes.

MR. FITZWATER: I haven't heard. Do you know if it's going to be today or not?

MR. POPADIUK: I don't know, it could be. We had -- they had 24 hours to bring the vote so it could come today.

Q Do you care?

Q Do you have anything on the --

Q No?

MR. FITZWATER: Yes, in response to your question earlier, Bill, on President Duarte, he took ill -- I guess it was yesterday in Mexico City -- and the last information we have is that he is still in Mexico City and being treated there. We obviously would offer our support in any way should he want to come to the United States for treatment, but we've had no indication yet that he plans to do that.

Q How ill is he?

MR. FITZWATER: I don't know.

Q Are you talking about a military transport or something like that --

MR. FITZWATER: If he would request that, yes. He has been treated, you'll recall, at Walter Reed previously.

Q Marlin, do you have any information on the death of Amiram Nir -- the apparent death in Mexico?

MR. FITZWATER: We don't.

Q Week ahead?



Q Is he going to be the disguised Santa? (Laughter.)

Q When do they do the Christmas Tree lighting?

MR. FITZWATER: The Christmas Tree lighting? I don't know the date for that. Does anybody know the date? It's closer to --

Q What do you know about the dissidents being -- the refuseniks?

MR. FITZWATER: Leslye says the Christmas Tree lighting is December 15th.

Q How about the refuseniks?

MR. FITZWATER: What refuseniks? What do you mean?

Q The restrictions have been released on -- have been lifted on about 40 or so has been reported.

MR. FITZWATER: I saw that report. In Moscow, you mean? The Soviet Union? Yes, I saw that report, but I haven't -- I don't have any -- do I have anything on it? I do? (Laughter.) This just in.

Q Marlin, you've got to start doing your homework.

Q What was the question?

Q Refuseniks.

MR. FITZWATER: My golly, look at this. Roman Popadiuk, trusted Deputy Press Secretary, provides this information. We have nothing official from the Soviet -- (Laughter and applause.)

Q Very good.

Q Thank you, Roman.

MR. FITZWATER: I should have stuck with my original answer. (Laughter.) My instincts were right once more.

Q Does he get paid for this advice? (Laughter.)

Q Does he go on to say that --

MR. FITZWATER: He not only gets paid, he has five paragraphs to say it. (Laughter.)

Q Well, does it go on to say that if true, this is encouraging and that you hope the Soviet Union will continue to live up to its responsibilities under the Helsinki Final Act?

MR. FITZWATER: I wish to associate myself with Bill Plante's remarks. (Laughter.)

I believe we'd better leave it at that.

Q Is the U.S. tracking or involved in any way in this hijacking of the Soviet airliner?

MR. FITZWATER: Just that we're watching it. CNN is providing the most up-to-date monitoring --

Q Ohhhh.

Q But you're not sharing --