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**Collection:** Culvahouse, Arthur B.: Files  
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# WITHDRAWAL SHEET

## Ronald Reagan Library

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

**Withdrawer**

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**File Folder** IRAN/ARMS TRANSACTION: NORTH/POINDEXTER  
CLASSIFIED DISCOVERY REQUEST (4 OF 13)

**FOIA**

S643

**Box Number** CFOA 1131

SYSTEMATIC

141

| ID     | Doc Type | Document Description                                                       | No of Pages | Doc Date  | Restrictions |
|--------|----------|----------------------------------------------------------------------------|-------------|-----------|--------------|
| 164962 | PAPER    | DISCUSSION PAPER [RE: CLASSIFICATION AND DISCLOSURE ISSUES IN US V. NORTH] | 8           | ND        | B1           |
| 164963 | CABLE    | SECTO 14129                                                                | 2           | 7/16/1988 | B1           |
| 164964 | LETTER   | LAWRENCE WALSH TO JUDGE GERHARD GESELL                                     | 3           | 7/20/1988 | B1           |

The above documents were not referred for declassification review at time of processing

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]

B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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~~TOP SECRET CODEWORD~~

No. 40390

COPY #7 (CULVAHOUSE)

div 5/13/14

# NATIONAL SECURITY COUNCIL INFORMATION

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~~TOP SECRET CODEWORD~~



THE WHITE HOUSE

WASHINGTON

SYSTEM IV  
NSC/ICS 40390

July 15, 1988

MEMORANDUM FOR SECRETARY OF STATE  
SECRETARY OF DEFENSE  
DIRECTOR OF CENTRAL INTELLIGENCE AGENCY  
DIRECTOR OF NATIONAL SECURITY AGENCY  
ASSOCIATE ATTORNEY GENERAL

THROUGH: KENNETH M. DUBERSTEIN  
CHIEF OF STAFF TO THE PRESIDENT

FROM: ARTHUR B. CULVAHOUSE, JR. *ABC*  
COUNSEL TO THE PRESIDENT

SUBJECT: Meeting at 9:30 a.m., on Sunday, July 17, 1988  
White House Situation Room

With the concurrence of the National Security Advisor, a meeting has been scheduled at 9:30 a.m. on Sunday, July 17 in the White House Situation Room to consider classification and disclosure issues arising in connection with United States v. North.

Judge Gesell has granted a defense discovery request for 20 items of classified information. Discovery of this material may be a prelude to public disclosure at trial. The meeting will provide a briefing on the information contained in those 20 items and elsewhere in the case that relevant departments and agencies have preliminarily decided should not be disclosed for reasons of national security. Judge Gesell has repeatedly urged that such decisions be made at the highest levels of the Executive Branch.

The purpose of the briefing will be to ensure that there is a consensus among the heads of the relevant Executive departments and agencies as to whether or not this information can be disclosed consistent with national security. A discussion paper describing this information is attached at Tab A. The discussion paper is of the highest sensitivity and should be closely held for the attention only of those attending the meeting. An Agenda is attached at Tab B.

Attachments

*4-2-88 10:00 AM*  
*4-2-88 10:00 AM* *4/13/14*  
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A-1

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### Theory of the Conspiracy.

The conspiracy is divided into two parts: a conspiracy to defraud the United States and a conspiracy to commit the substantive offenses set out in the remainder of the indictment. The second part of the conspiracy does not appear to present any insurmountable classified information problems. The first part, however, has three separate allegations and it is these allegations that cause vast amounts of classified information to be drawn into the case.

It is alleged that the defendant defrauded the United States (1) by running the Central American resupply operation; (2) by diverting funds from the Iranian arms sales to various other activities; and (3) by converting the arms sales into a profit-making transaction for purposes of creating a "slush fund." The illegality of these activities is premised on the conclusion that all covert actions must be authorized in writing pursuant to E.O. 12333 and NSDD 159, that no covert action may be conducted unless so authorized and that any covert action must be strictly limited to scope of such authorization.

It is argued that the defendant defrauded the United States because he knew that the specific authorization for covert action had to be obtained, that he knew no such authorization existed for the resupply operation or for the diversion of funds or for conducting the arms sales so as to generate profits that could be diverted. Furthermore, it is argued that he intentionally kept the generation of excess funds and the resupply operation out of the specific authorization procedure so that they would be hidden both from others within the Executive Branch and from Congress. This provides the necessary deception element of a fraud charge.

### Potential Defense Theories.

Because the first part of the conspiracy inherently involves an element of the defendant's knowledge of the procedures required to be followed to authorize covert action, three potential defenses are immediately drawn into the case. First, the defendant may argue that he had a good faith belief that his activities were within the scope of any findings and authorizations that were in existence. For example, he might attempt to prove a number of legitimate activities that the government undertook pursuant to any Central American finding since those activities would be evidence of the government's view of the scope of activity permitted under such findings. He could then argue that to the extent his activities in Central America were parallel to the government's activity, he believed his activities were also authorized.

Second, with respect to the diversion he may argue that this was known and authorized since this "financing" mechanism was used to support a number of operations that the government had undertaken or proposed to undertake. Thus, he might attempt to prove



government consideration of the specific activities that were financed by the diverted funds. He could then argue that he had a good faith belief that his activity did not need any specific additional written authorization.

Third, the defendant may argue that there was no cast-in-concrete procedure for authorizing covert action, that there was some residual authority for his activity, or that he had a good faith belief that this was the case. Relevant to this theory would be proof of other government activity similar or analogous to any of the defendant's activity that was undertaken without strict compliance with E.O. 12333 and NSDD 159 or based on some other authority.

A fourth defense theory is opened up because the Independent Counsel needs to prove that the defendant intended not to have his activity properly authorized in order to hide it. He may argue that he believed he had implicit authorization at high levels of the government, or that he did not intend to hide anything because he knew that substantial intelligence about his activities was collected and disseminated throughout the government.

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THE WHITE HOUSE

WASHINGTON

MEETING OF  
HEADS OF DEPARTMENTS AND AGENCIES  
AFFECTED BY POTENTIAL CLASSIFIED INFORMATION  
DISCLOSURES IN U.S. V. NORTH

AGENDA

- |                                                      |                     |
|------------------------------------------------------|---------------------|
| I. Introduction                                      | Powell              |
| II. Case Update                                      | White House Counsel |
| III. Classified Information Briefing                 | CIA/NSA             |
| IV. Department and Agency<br>Decisions re Disclosure | Review/approve      |
| V. Briefing of Independent Counsel                   | Discuss/assign      |
| - Talking points                                     |                     |
| - Attendees                                          |                     |
| VI. Briefings of Congressional Committee             | Discuss/assign      |
| VII. Summary                                         | Powell              |



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## COUNSEL'S OFFICE TALKING POINTS

MEETING - JULY 17, 1988

- ° Legal discussion can be brief. The legal status of Independent Counsel Walsh's prosecution of Oliver North is set forth in the discussion paper distributed prior to the meeting.
- ° It is important to remember that the issue we are considering relates not to whether classified information will be provided to the Independent Counsel. The President pledged his cooperation, and the Executive Branch has cooperated extensively and provided over 900,000 pages of documentation, much of which is exceedingly sensitive. To our knowledge, nothing has been withheld from Judge Walsh, although special arrangements have been made for restricted access or review by limited number of individuals. What we are discussing is whether still classified information which appears relevant and material to Judge Walsh's case, as presently formulated, and relevant to Oliver North's defense to that case, can be publicly disclosed at trial consistent with U.S. national security interests.
- ° We first began raising these concerns with the Independent Counsel last year. There was an exchange of correspondence in the early fall and many follow-up conversations. Unfortunately, the Independent Counsel did not avail himself of our repeated offers for him to consult with the national security community prior to bringing his indictments.
- ° This also is not a discussion of whether Judge Walsh can proceed with his prosecution. Our purpose is to define for Judge Walsh the information that must not be publicly disclosed. It will then be up to him to determine how to keep that information secret. Frank Keating and John Martin may want to address this more fully, but we believe prosecution of North as it relates to obstruction of justice, false statements to Congress, accepting bribes and other substantive counts can go forward without disclosure of sensitive secrets.
- ° The Department of Justice also is agreeable to working with Walsh to devise ways to keep the secrets protected. One solution might be a more narrow conspiracy count since it is the breadth of the conspiracy that implicates a fairly wide array of very sensitive information.



- ° Bill Landers briefly explain broad conspiracy count of indictment, Judge Walsh's theory, and likely defense theories.
- ° We feel that this issue must be addressed with Walsh now. If we legitimately conclude that there are secrets that must be kept out of the case we cannot delay action until the September 20 trial to fashion a remedy to keep them protected, especially if that remedy is dismissal of all or a part of the conspiracy. If the broad conspiracy count is dismissed by Judge Gessell, the secrets that must be protected will be at serious risk because of public and press scrutiny, because they will have already been produced to the defense and because of the extreme pressure upon the Executive Branch to allow the conspiracy count to proceed. We have some hope of keeping those secrets protected, however, if Judge Walsh is convinced of the soundness of our concerns and he initiates appropriate action to narrow the conspiracy.
- ° Finally, we should bear in mind that the President has the ultimate decision under the Classified Information Procedures Act to determine whether secrets can be publicly disclosed at trial. Judge Walsh may appeal any agency head decision to the President, and Judge Gessell may insist that agency heads and/or the President substantiate their decisions in court. This means that quite apart from the press and Congressional scrutiny, any decision to keep secrets secret should be not only sound, but be a consensus decision supported by all of the President's senior advisers in the community.



Revised

7:30 pm

7/18

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### TALKING POINTS

- o As we have discussed before, there are substantial concerns about the public release of vital national security information in connection with the case. Much has been done to alleviate these concerns to the extent they arise from the prosecution's case. I am told that the effort to declassify the case-in-chief documents has been successful. Consequently, if Judge Gesell agrees to allow substitutes for some NSA material, all information essential to the prosecution case can be introduced at trial without compromising national security. We urge you to resolve the substitution question as soon as practical.
- o The focus now is upon the defense. As expected, the defense has engaged in an unprecedented effort to graymail the government. Until Judge Gesell granted the Supplemental Discovery Request on July 8, 1988 with respect to 20 items of extremely sensitive information, we believed this effort would prove unsuccessful. We were under the impression that the earlier denial of the discovery request on June 6, 1988, indicated that Judge Gesell did not believe that this highly sensitive information was relevant. We were mistaken.
- o Judge Gesell's order of July 20 now raises two issues: production to the defense and public disclosure at trial. I would like to discuss public disclosure first.
- o We know there has been no opportunity to respond to North's arguments that the information is relevant to his defense. However, we have reviewed the charges, the information requested and Judge Gesell's order. Our assessment is that Judge Gesell fully intends to allow North to engage in wide-ranging proof at trial concerning authorization for and knowledge of a number of North's activities, not just his military support to the Contras. As Judge Gesell stated in the order, "North's counsel particularized and illustrated . . . his need for certain classified materials not included in the government's case-in-chief, and illustrated how some of that material tended to exonerate North." That Judge Gesell is likely to order public disclosure of this information is underscored by his statements that "[t]he Court is not the trier of fact. . . . The jury must decide where the truth lies."
- o We will brief you on the nature and substance of the very sensitive secrets at issue so you can determine for yourself whether it is relevant to the defenses Judge Gesell has described in his order. Quite candidly, our assessment is



that many of the secrets are relevant to North's defenses to the conspiracy as briefly laid out in that order.

- o With this in mind, the relevant Executive agencies and departments took a hard look at the information covered by Judge Gesell's order and other secret information redacted from the case-in-chief. The heads of those departments and agencies unanimously agree that there are nine categories of information implicated in the defense case as it is described in Judge Gesell's order that cannot be publicly disclosed.
- o We did not lightly reach the conclusion that public disclosure of this information would do serious damage to national security. We are reluctant to make any decision that may have a substantial adverse consequence on the case. However, the information at issue involves a wide array of secrets of the utmost sensitivity. Although the sensitivity of some of these secrets is more self-evident than that of others, I personally am convinced that none of them can be made public because of national security concerns. I reached this conclusion after subjecting the arguments against disclosure to the greatest scrutiny. The heads of the other departments and agencies are in personal agreement with me.
- o Since there is a unanimous consensus that this information must not be publicly released, we wanted to inform you as soon as possible so that you can develop a strategy to keep this information out of the case. If action is delayed until after August 15, when North identifies the information he wishes to use, it may be too late to pursue some of the options now available. In addition, we can predict now that North probably will designate as essential information in each category of sensitive information.
- o More importantly, if Judge Gesell dismisses a part of the case because information that is needed by the defense cannot be publicly released, those secrets will be at greater risk of disclosure than if you act now to insure protection of information that I am sure you will agree must be protected. If no action is taken until the court threatens to dismiss a part of the case, disclosure may be inevitable. Pursuing the discovery process simply increases the number of people who are privy to this information and as we get closer to trial, there will be an even greater public curiosity to know the reason for dismissal of any count.
- o As I mentioned earlier, Judge Gesell's order also raises questions about production of this information to the defense. While the Executive agencies and departments unanimously agree that none of the sensitive information can be publicly disclosed, there are varying degrees of concern



about production to the defense. Some have expressed the view that none of this material should be provided even to the defense. They believe that from a national security standpoint, we should not expose extremely sensitive secrets to the risks of disclosure arising from discovery if in the end the information can not be used by the defense at trial.

- o Whatever the degree of consensus on this view, there are certainly some categories of information that are so sensitive they would not be disclosed to the defense. We are aware that some information in these sensitive categories has been contained in the discovery provided to date, but that information has been limited in scope and detail. By and large we have only provided information touching on these categories that was contained in documents found in North's office. Thus, disclosure has been limited to only information that North unquestionably already knew. To comply with the discovery order, however, would provide the defense with a volume of information that would reveal vital secrets in unprecedented detail.
- o We must discuss these issues raised by the discovery order immediately. But even if we arrive at some solution to these issues, the various departments and agencies have indicated that it is not possible to meet the August 1 discovery deadline for getting this information to the defense. The defense request has not been narrowed in any significant respect and, despite Judge Gesell's modifications, there are logistical problems with identifying and locating all information responsive to the 20 categories in the order.
- o We would be happy to discuss how you can address our paramount concern of preventing public disclosure of information that we have determined is critically sensitive to our national security. We have worked with the Department of Justice a number of times to develop the means to remove information like this from other cases it prosecuted. The Department is willing to aid and assist you in fashioning a remedy, and the resources of the national security community are available to you as well.



EYES ONLY

CLASSIFICATION

CIRCLE ONE BELOW

MODE

PAGES 6

IMMEDIATE

SECURE FAX # \_\_\_\_\_

DTG \_\_\_\_\_

PRIORITY

ADMIN FAX # \_\_\_\_\_

RELEASER \_\_\_\_\_

ROUTINE

FROM/LOCATION

1. PHILLIP D. BRADY, WHITE HOUSE, WASHINGTON

TO/LOCATION/TIME OF RECEIPT

1. ARTHUR B. CULVAHOUSE, JR. SANTA BARBARA WHITE HOUSE

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

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1. \_\_\_\_\_

2. \_\_\_\_\_

SPECIAL INSTRUCTIONS/REMARKS:

EYES ONLY

CLASSIFICATION

THE WHITE HOUSE

WASHINGTON

July 20, 1988

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: PHILLIP D. BRADY

Pursuant to your request, please find attached Bill's draft memorandum summarizing the substance of Director Webster's July 19 meeting with Judge Walsh. Bill has not had an opportunity to review the memorandum other than telephonically as he has been ensconced in the Independent Counsel's Office since early this morning. As you will note from the caption Bill has also shared a copy of this draft with Nick Rostow to assist in his preparation of a backgrounder for Colin Powell.

Hope this is helpful.



# DRAFT

READ TO BILL OVER  
THE PHONE -- NOT  
CAREFULLY REVIEWED YET

July 20, 1988

MEMORANDUM FOR COLIN L. POWELL  
ASSISTANT TO THE PRESIDENT  
FOR NATIONAL SECURITY AFFAIRS

FROM: ?

SUBJECT: Meeting with Office of Independent Counsel

On July 19, Director Webster met with Judge Walsh, the Independent Counsel, to discuss the decisions concerning public disclosure of classified information in U.S. v. North. Also in attendance were Russell Bruemmer, General Counsel, CIA; Christian Mixter, Associate Independent Counsel; and William J. Landers, Associate Counsel to the President.

Judge Webster began the meeting by explaining to Judge Walsh that the heads of the Intelligence Communities had met to discuss the classified information required to be disclosed by Judge Gesell's order of July 9, 1988. Judge Webster indicated that the heads of the agencies had unanimously agreed that there was certain information contained in that request that could not be publicly disclosed. Judge Webster also indicated that those who were familiar with the case and the information believed that the information was drawn into the case because of the conspiracy count, the conspiracy to defraud the United States. Judge Walsh initially responded that he understood that there was information that could not be publicly disclosed. He indicated that if in

fact the only way to protect that information was to dismiss a count or to cut some allegations out of the indictment he would certainly be amenable to doing so. He stated he did not intend in any way to jeopardize national security. Judge Walsh indicated, however, that he did not believe that the case had progressed to the stage where it was necessary to take such dramatic action. He expressed his opinion that he could convince Judge Gesell that the information contained in the 20 items on the discovery request would not be relevant to the case. He said he also believed that Judge Gesell had intentionally limited the defense to those 20 items and had no intention of allowing them to delve beyond those items.

Judge Walsh explained that if there was some way that the material could be provided to the court and to the defendants, he was reasonably confident that he could persuade Judge Gesell that the information was immaterial. This would mean that he would be able to prevent public disclosure of the information and all of his charges could go forward.

Judge Webster asked Judge Walsh what he would do if we were unable to provide discovery. He explained that while he was not necessarily advocating that we not turn the information over to North, that there were many people who believed that we should not provide discovery. Judge Walsh responded that he could not support a decision to not provide the information in discovery. He believed that he could protect the information but that he



could do so only if we provided discovery and allowed him to litigate the materiality and relevance of the critical information.

There was a brief discussion as to how the information in the 20 categories might be relevant to North's defense. Judge Walsh expressed his view that since it had nothing to do with either the arms transaction or the military support to the Contras he did not believe it was relevant or material. William Landers expressed the views of the interagency group with respect to relevancy. He stated that as best they could surmise, North was arguing that there were a number of operations that the government had either contemplated or in fact had undertaken and had to terminate for various reasons, and that North was always the backup for these operations. The interagency group surmised that North would argue that he could not have picked up these operations and funded them without government officials knowing that he was doing so. Judge Walsh responded that he did not believe that the legality or authorization for any of these other activities that may have been undertaken by North was an issue in the case. After Judge Walsh explained his view of the irrelevancy of some of the specific material, it was suggested that he needed to be able to make that argument to Judge Gesell immediately, that it would serve all of our interests to have Judge Gesell more strictly construe the relevancy requirements of this case and to cut down the information that he has indicated so far is drawn into the case.



The logistics of production was then discussed by Mr. Landers. He indicated that there were three steps involved in providing the information for discovery. First, each of the agencies would have to collect all of the documents pertaining to the subject matters. Second, the documents would have to be reviewed to determine which, within the large body of documents collected, were responsive to the discovery order. Third, the documents would have to be reviewed because there might be material in them that could not be disclosed to the defense. It was indicated that with respect to about 10 categories on the Supplemental Discovery Request that this process could not be completed by August 1.

Judge Webster also indicated that because of the sensitivity of some of this information discovery could only go forward if Judge Gesell allowed us to present certain information directly to the court and not to the defense.

The question of how long it would take to produce the information was discussed generally. Mr. Landers indicated that he would contact the relevant agencies and provide a time estimate to the Independent Counsel on Wednesday. Judge Walsh proposed to file with Judge Gesell a pleading that would indicate that discovery would substantially delay the trial, that there was certain information on the discovery list that would not be publicly disclosed, and that it was his view that none of that information was relevant. He believed that Judge Gesell might be persuaded

under those circumstances to cut back the discovery request or to change his view of relevancy in the case. In order to allow the Independent Counsel to make such a filing, it was agreed that the Intelligence Community would brief Judge Walsh as to the content of the information. He suggested that there were some specific questions that needed to be answered for him to argue that the information was not relevant in any degree.

Mr. Landers indicated he would contact the various agencies to determine a time frame for production of the information, which would include all necessary time for search and review, and he would attempt to provide information to brief Judge Walsh so that he could certify that the information was not relevant to any defenses to be raised by North.

Judge Walsh indicated that he wanted to file on Wednesday, July 20. Mr. Landers indicated that he would respond to Judge Walsh in the morning of the 20th as best he could.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

|                          |   |                        |
|--------------------------|---|------------------------|
| UNITED STATES OF AMERICA | ) |                        |
|                          | ) |                        |
| v.                       | ) | Criminal No. 88-0080 - |
|                          | ) | 02 - GAG               |
| OLIVER L. NORTH          | ) |                        |
|                          | ) |                        |
| Defendant.               | ) |                        |

GOVERNMENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF CROSS-MOTION FOR MODIFICATION  
OF THE COURT'S ORDER OF JULY 8, 1988

The Government respectfully submits this Memorandum in support of its motion for modification of the Court's Order of July 8, 1988 to relieve the government of the August 1 deadline for production of documents specified at pages 6-7 of that Order, and to provide alternative procedures for addressing the issues as to which that discovery was ordered.

FACTUAL BACKGROUND

In its Orders of June 6, 1988 and June 22, 1988, the Court twice denied defendants' Supplemental Classified Motion to Compel Discovery, originally served on May 23, 1988. On July 8, 1988, following an ex parte conference held with defense counsel, the Court granted discovery on Items 1-20 of defendants' Supplemental Motion (with certain modifications), along with certain extracts from the President's Daily Briefing and documents forwarded to the White House from the Central American Joint Intelligence Task Force.

the more likely of those theories. As to each of them, the government is prepared to make available to the Court appropriate officials to present, on an ex parte basis, the facts surrounding each of the covert actions that are the subject of the Court's July 8 Order.

First, defendant may have argued that his actions as charged in the Indictment somehow fell within a "custom and practice" used in previous covert actions, and that he therefore believed that his actions were appropriate when he undertook them. The documents sought cannot support such a claim. The government is not aware of any analogue or precedent for North's diversion of proceeds of the Iranian arms sales to other covert activities and uses. Diversion of funds from one covert action to another contravenes long-standing policy that covert actions are to be kept separate from one another. Indeed, even the notion of taking a profit from the covert sale of U.S. weapons (as distinct from a middleman taking a profit on acquisition of arms by the government) -- let alone the continuing control of such profits by a U.S. official -- is without precedent. No previous operation invites the trial-delaying discovery sought by defendant.

Second, North may have told the Court that knowledge by certain senior U.S. officials of some of his actions led him to believe that all of his activities were implicitly authorized. The government knows of no Presidential decision that North can point to as authorizing his activities. The