

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARIF DURRANI,

Defendant.

**B 90-090**

CASE NO. \_\_\_\_\_

**TFGD**

MEMORANDUM OF FACTS AND LAW IN SUPPORT OF  
THE DEFENDANTS MOTION TO VACATE, SET ASIDE OR CORRECT  
THE SENTENCE UNDER 28 U.S.C. §2255

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APPROVED FOR RELEASE  
DATE: NOV 2007

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### PRELIMINARY STATEMENT OF FACTS

The instant defendant adopts by reference of incorporation all factual averments in the brief filed on appeal, and attached hereto as EXHIBIT A, except those portions of that record which are specifically contradicted by newly discovered evidence and facts, as set forth under Grounds, infra.

### SYNOPSIS OF THE CASE

Arif Durrani was arrested and charged in a single count indictment for shipment of Hawk Missile parts without an export licence under 22 U.S.C. §2778(b)(2). A later superceding indictment charging him with two (2) additional violation under 22 U.S.C. §2778 (b)(2) and §2778(b)(1), all three (3) counts of the second indictment arising out of the same incident, and the evidence for these charges was available to the government at the time of the first indictment. Twenty-six days after the initial appearance before the court on the second indictment, the trial of Arif Durrani began in the district court.

Mr. Durrani testified at trial and based his entire defense upon his belief that he participated in the highly irregular covert operation coordinated by the staff of the National Security Counsel, who were using private citizens in the transfer of Hawk Missiles and spare parts to Iran.

In pretrial motions, the court refused to enforce the subpoenas sought by Mr. Durrani's counsel which related to documents held by the government and which demonstrated the government's involvement in the procurement and export of arms and parts for the

Hawk Missile System. 1 /

The government's rebuttal case, in addition to that summarized in the Court of Appeals decision, United States v. Durrani, 835 F.2d 410 (2nd. Cir. 1987), was essentially an effort by the government to impeach Mr. Durrani's credibility, which was premised upon Mr. Durrani's inability to produce evidence to corroborate statements made in a pre-trial affidavit made in support of a motion to dismiss, EXHIBIT B. The government successfully thwarted Mr. Durrani's defense counsels efforts to introduce vital evidence which provided strong corroboration that Mr. Durrani was approached to supply the Hawk parts requested by Iran, but unavailable to those responsible for the government's operation.

In rebuttal to Mr. Durrani's assertion that he was working on behalf of the United States, The AUSA Fitzsimmons presented several government employees to testify in rebuttal, as summarized by the Court of Appeals:

#### THE GOVERNMENTS REBUTTAL CASE

"Two government witnesses challenged Durrani's account, disputing that North visited London at the time of their alleged meeting. Michael Sneedon of the NSC testified that NSC's travel records failed to indicate that North was traveling at all in September of 1986. Similarly, Adrian Owen of Her Majesty's Customs and Excise confirmed that his search of London hotel records disclosed no trace of North either under his own name or any known alias.

A third government witness challenged Durrani's entire story. Charles Moyer of the CIA testified that all parts procurements for North were handled by the CIA, not by private parties."

Id. United States v. Durrani, 835 F.2d 417.

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1 / Mr. Durrani was arrested prior to the full disclosure of the Iran arms sales by the United States government, Oliver North and John Poindexter, and as such, at the time of the trial, much of the evidence developed out of the numerous trial, hearings and Senate investigations was unavailable for Mr. Durrani's defense preparations.

Evidence discovered after the trial, and too late for a motion for new trial under Federal Rule of Criminal Procedure 33, both proves that the testimony of several of the government's witnesses was false; that the testimony of Mr. Durrani and the facts in his pre-trial affidavit were true; and, that the prosecutor in the case knew, or had a reasonable knowledge, that the evidence submitted in rebuttal was false, based upon her own suppressions.

The evidence detailing the government's complicity in the suppression of evidence and the presentation of the purjured testimony, was all withheld from Mr. Durrani's attorney at trial, this suppression severely undermines the confidence of the jury's verdict in the case.

THE DEFENDANT WAS DENIED DUE PROCESS OF  
LAW BY THE GOVERNMENTS SUPPRESSION OF EXCULPATORY EVIDENCE  
SUPPORTING MR. DURRANI'S DEFENSE AND TESTIMONY

a). As set forth above and summarized by the Court of Appeals, Michael Sneedon, a government witness employed by the National Security Counsel (NSC) testified that the records of the alleged meeting between Mr. Durrani and Oliver North in September of 1986, was not supported or reflected by the NSC's travel ledgers. This testimony was additionally supported by another government witness, Adrian Owen from the British Government. However, the meeting in London during the period of time claimed by Mr. Durrani, was admitted by the government in a semi-secret stipulation submitted by government counsel in the Oliver North trial. In the North trial, the government withheld the actual documents related to the September 1986 trip to London in the "interest of national

security." 2 / Clearly, the fact of this trip was in the possession of the government at the time of the Durrani trial, and diametrically opposite to the government's position and evidence in the Durrani trial. This stipulation, attached hereto as EXHIBIT C, together with the documents withheld for national security reasons, fully support Mr. Durrani's claims of the secret London meeting in September, a meeting so secret, that evidently the NSC did not have or wish to disclose any records in association with it. The government stipulation at page 40, paragraph 101 states clearly:

In mid-September 1986, LtCol [sic] North notified Admiral Poindexter that Noriega wanted to meet with him in London within a few days. North had discussed the matter with Assistant Secretary of State Abrams, who had raised it with Secretary of State Schultz. Schultz thought that the meeting should proceed. Admiral Poindexter approved.

The stipulation further goes on at page 41 paragraph 106:

In late September 1986, LtCol [sic] North reported to Admiral Poindexter on his London meeting with Noriega. Noriega would try and take immediate actions against the Sandinistas and offered a list of priorities including an oil refinery, an airport, and the Puerto Sandino off-load facility.

While failing to name Mr. Durrani and the other persons present in London for the September 1986 meetings, the travel of Oliver North and his presence at these meetings was so secret, the only possible way for Mr. Durrani to have had knowledge of them, prior to, or during trial, was for him to have been physically present.

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2 / In addition to the stipulation above, Oliver North has admitted to his presence in London during this period of time and the plans discussed with Manuel Noriega, now deposed dictator of Pannama, to assassinate Daniel Ortega, the President of Nicaragua.

The information and documentation of the above meeting were all suppressed from Mr. Durrani, his counsel and the jury, and accordingly. Mr. Durrani was denied access to documentary proof of his defense, and was unable to corroborate his statements, which at the time of the trial, seemed impossible to have occurred, e.g. the American Government using private citizens in supplying Iran with arms for hostages, in direct contravention of publicly stated foreign policy.

The above information, which was more than the "tip of the iceberg," in the hands of defense counsel would have led to the development of the evidence necessary to prove Mr. Durrani's defense, and would have resulted in the termination of the prosecution, since the Arms Export Control Act cannot be used to prosecute arms exports made in conjunction with or on behalf of the United States Government. This suppression had a great effect upon the preparation and presentation of Mr. Durrani's defense, and undermines confidence in the outcome of the proceeding.

b). As additionally set forth in the Court of Appeals summary, Charles Moyer of the Central Intelligence Agency (CIA) testified that all of the parts procurements for the NSC and Oliver North came from the U.S. Army and that no private parties had been involved in the arms or parts procurement. This testimony has now been shown to have been false, by the Senate Committee's, subsequent trials and recently declassified documents. The Senate Committee Investigation Report on the Iran-Contra Affair itself makes it clear that one of the problems inherent in the investigation,



was the extensive involvement of private parties such as Mr. Durrani in the covert arms dealings of the NSC, See Report of the Congressional Committies Investigating the Iran-Contra Affair, H.R. No. 433, S. Rep. No. 216, 100th Cong., 1st Sess. pages 327-72 (1987), attached hereto as EXHIBIT D.

This information, as was most of the developed records of the hearings, too late to assist Mr. Durrani or his counsel. It does however, at this juncture, show the extensive involvement of private parties in the procurement of Hawk Missile parts by Oliver North and others, including the Richard Secord/Albert Hakim use of Forways Industries, Inc. of New Jersey, which is still shipping military equipment to Iran through Beechcraft a subsidiary of the Hawk Missile manufacturer Raytheon in West Germany. Forways Industries, Inc. was indicted along with several of its employees for export violation in the Southern District of California, Case No. 88-0425 (JLT), filed May 26, 1988, and the entire prosecution terminated because of the continuing covert exports for the government. See EXHIBIT E. This information, now part of the public record, and formerly suppressed by the government, completely supports Mr. Durrani's testimony, destroys the governments rebuttal case, and demonstrates the continuing nature of the governments arms dealings with Iran. All using "Private Persons and Companys."

c). Deliberately suppressed by the Assistant United States Attorney (AUSA) Holly Fitzsimmons, was the information and documents obtained from the trip to Belguim with Customs Agent Steve Arruda.

During this trip, AUSA Fitzsimmons and Agent Arruda

interviewed T. Van de Meersche about the Hawk Missile shipments. Mr. Van de Meersche extensively answered questions and provided AUSA Fitzsimmons with documentation regarding the Hawk Missile shipments, both those alleged to have involved Mr. Durrani, and other shipments from West Germany. The first shipment of Hawks, as AUSA Fitzsimmons was informed, was made by an agreement dated August 22, 1985, the same day that President Ronald Reagan authorized the arms for hostage dealings. This shipment was arranged by Manuel Jose Pires and he shipped the first Hawk parts from the U.S. Stockpiles in West Germany. The parts went from West Germany to Brussels, Belgium and then to Iran. 3 / Mr. T. Van de Meersche additionally informed AUSA Fitzsimmons, that all operational details for that and later shipments, was set out by Manuel Jose Pires, and that Pires had claimed to be working for the U.S. Government. Mr. T. Van de Meersche executed a statement for Mr. Durrani, attached as EXHIBIT G, and set out the basic facts comprising the conversation of the interview with AUSA Fitzsimmons.

Additional support of Mr. Durrani's testimony in regard to his defense, were the documents linking Manuel Jose Pires with the CIA, something which the AUSA denied at trial, and a major focus of AUSA Fitzsimmons in her summation to the jury. The documents, together with the T. Van de Meersche documents, connect the elements of Mr. Durrani's testimony into a solid wall of evidence. Mr. Pires, according to the government in another prosecution, was involved with the CIA and the shipment of arms. In the case of

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3 / This visit is additionally confirmed by the contact between this court and Mr. T. Van de Meersche of COMEXAS, Brussels, Belgium. In which this Court was informed of the relationship of Mr. Manuel Jose Pires and the shipment of Hawk missile parts. The letter details the visit by AUSA Fitzsimmons, See EXHIBIT F.

United States v. Abdulraheen M. Badir, Case No. CR-86-267-A, Northern District of Georgia, the government introduced the documents in EXHIBIT H, which establish the Jose Manuel Pires--Oliver North--CIA--Iran dealings, and other arms dealings prior to the public exposure of the Iran-Contra affair. This information was definitely in the hands of the government, and most of it was in the possession of AUSA Fitzsimmons personally.

The importance of the above cannot be understated, since AUSA Fitzsimmons herself presented witnesses who disavowed the CIA-Pires relationship. AUSA Fitzsimmons additionally made constant remarks to the jury in closing arguments, calling Mr. Durrani's testimony "unbelievable." Such conduct was particularly egregious, since AUSA Fitzsimmons knew the representations she was making on behalf of the government were false.

d). The government additionally suppressed the United States Customs Declaration forms showing the importation of ammunition in October of 1986, by the CIA under the names of Merex and Interarms, a company owned and operated by Samuel Cummings, 4 / Senator John Tower's former brother in law. These declarations demonstrating the labling of the containers as "machine parts and oil drilling equipment", exactly as set forth in Mr. Durrani's pretrial affidavit. This information and the supporting documents

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4 / Interarms has long been a close cousin and partner of the Central Intelligence Agency. Its arms manufacturing and dealings with the CIA began at the very inception and formation of the Office of Strategic Services (OSS), the forerunner of the CIA in World War II. The activities of Interarms continue to this day. In proper perspective, the appointment of John Tower to investigate the arms dealings, is a classic story of the fox being set to guard the henhouse, and could have been done for not other purpose than damage control for the NSC renegade operation.

included in EXHIBIT I, were suppressed by the government to conceal the arms through private parties such as Merex, which belonged to Mr. Durrani, and Interarms, which belonged to Samuel Cummings. The CIA used these individuals and their companies to ship covertly, arms and weapons to the contras. The pattern of false declarations made in the course of concealment included the falsification of customs declarations, shipping records, storage and transfer records at the Sunny Point Ammunition Depot.

The documents related to the customs declarations were located by an investigative journalist Rick Eyerdam in June of 1989, and show both the Merex shipment and the Interarms shipment in the same declaration from the manifest. See EXHIBIT I, pages 4 and 5.

These are the very facts the AUSA Fitzsimmons at the trial called false, contesting both the involvement of the CIA with Merex or Mr. Durrani, using her own statements and that of government witnesses. As the Durrani affidavit, EXHIBIT B, page 6, paragraph 18 states: It is my understanding that the arms shipments made by the United States government to Iran were made to the Iranian National Oil Company, generally shipped in individual airplanes in boxes labelled "oil drilling equipment," those being the arrangements set by the United States government. Until the documents were uncovered in June of 1989 by Mr. Eyerdam, the conformation of Mr. Durrani's testimony, and the documentry suppression of the government could not be shown.

e). Suppressed from the defense counsel and from Mr. Durrani, again, was the Munitions List from the United States State Department showing that the Bell Helicopter parts that the government claimed had been illegally exported by Mr. Durrani, were not even on the restricted list. While the government did not charge Mr. Durrani with these events as criminal offenses, they were used as "prior bad acts" in an attempt to show a pattern of export violations, demonstrating the lack of mistake, and alleged purposful conduct. The use of these actions, such as the Bell Helicopter parts exports, during the pre-trial phases, resulted in the detention of Mr. Durrani without bail, and eventually to the verdict. In spite of the fact that the Bell helicopter or the parts for it, were not subject to any State Department export controls.

This is the very equipment that the government allowed Brenda Carnahan, the para-legal from the State Department to testify were controlled by State Department export regulations. The State Department itself confirmed that the Bell Helicopter and its parts were not subject to their regulations, EXHIBIT J, the letter from the State Department dated the 19th. of July 1988 clearly conflicts with the governments "version" of facts in trial.

f). Suppressed again during the trial and later recovered by ABC News Department, Washington D.C. and given to Mr. Durrani, were the depositions of Charles Mulligan, the vice president of Southern Air Transport Company, a CIA controlled company, Richard Gadd, who worked for Richard Secord/Oliver North and Captain Saunders, a pilot for Arrow Air, a Florida Corporation contracted by the NSC/CIA/SAT to move weapons and equipment as part of the covert Iran-Contra

weapons/hostage operation.

In Mr. Durrani's pretrial affidavit, page 3, numbered paragraph 9, it was stated: Once when I met with Hassan in Lisbon in 1986, he showed me an airplane belonging to Arrow Air, an American Company, at air force base in Lisbon. The plane was a Boeing 707. There were 200 AIM-9P and 100 AIM-9B Sidewinder missiles on the plane, which were being taken out of NATO and Portuguese military stocks for shipment to Iran at prices of \$55,000.00 and \$45,000.00 respectively. EXHIBIT B, supra.

All of the testimony by Mr. Durrani going to Portugal and meeting with George Hassan was discredited by the government as was Mr. Durrani's related allegations concerning the involvement of Arrow Air in the weapons shuffle. The documents in the depositions given to Mr. Durrani and the testimony of the individuals, clearly show the CIA/NSC Arrow Air links. Charles Mulligan, from the Southern Air Transport (SAT) testified in the deposition at page 40:

BY MR. TIKFER

Q: CHARTER QUOTATIONS BY SOUTHERN AIR TRANSPORT ARE OR ARE NOT HANDLED IN YOUR DEPARTMENT?

A: NOT HANDLED.

Q: IN WHOSE DEPARTMENT ARE THEY HANDLED?

A: SALES.

Q: I SHOW YOU A DOCUMENT, A SERIES OF DOCUMENTS FROM 1148 TO 1159, I MAY GO THROUGH THEM ONE BY ONE. THE TOP ONE, FIRST, PAGE 1147 AND 1148 . . .

Q: CAN YOU TELL THE CIRCUMSTANCES UNDER WHICH YOU STARTED TO KEEP SUCH A FILE?

A: YES. YOUR DATES. BILL LANGTON TOLD ME THAT DICK

GADD HAD A SERIES OF TRIPS IN ORDER TO MOVE SOME CARGO, IT WAS NOT SPECIFIC WHAT THE CARGO WAS, BUT IT WAS SENSITIVE IN NATURE IS WHAT I WAS LED TO BELIEVE OR ACTUALLY TOLD, FROM [deleted] TO CENTRAL AMERICA, DESTINATION UNSPECIFIED AT THAT POINT.

WE AT THAT TIME DID NOT OPERATE 707 AIRCRAFT AND IT HAD TO BE DONE WITH A JET AIRPLANE BECAUSE OF THE PAYLOAD AND I THINK BILL HAD ORIGINALLY QUOTED GADD USING THE HERC, BUT THE PRICE WAS ASTRONOMICAL BECAUSE IT COULD CARRY ONLY ABOUT HALF, SO IT WAS NOT GOOD ECONOMICS.

BILL ASKED ME TO MAKE SUB-SERVICE ARRANGEMENTS, ACTUALLY BROKER THE TRIP OUT. SO I HANDLED THAT AND BECAME THE POINT OF CONTACT WITH DICK GADD ON THESE TRIPS, AND I CONTRACTED WITH ARROW AIR TO DO TWO TRIPS AND I DON'T KNOW WHETHER THIS FILE - - - AS I RECALL, I DON'T HAVE ANY NOTES FROM THE SECOND TRIP. I THINK THESE ALL PERTAINED TO THE FIRST TRIP, BUT WE DID TWO SUB-SERVICE WITH ARROW AIR.

I THINK ONE WAS IN JANUARY, EARLY JANUARY. I AM NOT SURE EXACTLY. I THINK THE OTHER ONE IN FEBRUARY OR MARCH.

Q: DID YOU NORMALLY HANDLE SUB-CHARTERS?

A: NO. WE WANTED THIS WAS---CONSIDERED TO BE VERY SENSITIVE IN NATURE AND I THINK THAT BILL LANGTON AND MYSELF WERE THE ONLY TWO PEOPLE IN THE COMPANY THAT WERE AWARE OF THESE TRIPS AND PEOPLE MAY HAVE HAD AN INKLING OF WHAT WAS . . .

Mr. Mulligan testified further concerning the Arrow Air involvement and the weapons dealings through Portugal at

pages 54-55:

BY MR. TIKFER

Q: THOSE PHONE NUMBERS?

A: THOSE PHONE NUMBERS. WHEN I TOLD GADD THAT I EVEN HAVE SECORDS CAR PHONE NUMBER, GADD EXPRESSED A LITTLE DISPLEASURE THAT I EVEN HAD THAT. BASICALLY, WHAT HAPPENED ON THIS TRIP, BECAUSE OF THE SNAFUS, ALL THE COORDINATING ACTIVITIES, GADD WAS OUT OF THAT LOOP AND I WAS DEALING DIRECT WITH TOM CLINES WHO GAVE ME THE IMPRESSION THAT HE WAS WORKING FOR SECORD.

SO I MAKE A NOTE HERE THAT THE [deleted] FLIGHT IS GOING TO ARRIVE WEDNESDAY AT 0130Z, THE REST OF IT DOESN'T MEAN MUCH TO ME. I NEVER DID CONTACT SECORD.

Q: WAS ARROW AIR WORKING WITH YOU ON THE SHIPMENT OUT ARRANGEMENTS OR HAD THEY LEFT ALL THAT TO YOU, THE GROUND ARRANGEMENTS [deleted] AND DEALING WITH THE DELAY AND SUCH?

A: I WAS GETTING FED THE INFORMATION ON THE DELAYS THE FIRST TRIP WAS DELAYED BECAUSE OF THE [deleted] FLIGHT BEING DELAYED OUT OF [deleted] I WAS GETTING THAT INFORMATION ON ARRIVAL TIMES FROM TOM CLINES WHO WAS IN LISBON.

THEN I WOULD IN TURN ADVISE ARROW WHEN THEY COULD EXPECT THE CONNECTING FLIGHT TO BE IN.

ARROW MADE THEIR OWN HANDLING ARRANGEMENTS FOR FUEL, AIR, AND ELECTRIC. SOMEBODY OVER THERE MADE ARRANGEMENTS FOR THE LOADING OF THE FREIGHT. I CAN'T REMEMBER WHO.



The ABC supplied depositions additionally contain the testimony of Richard Gadd, the interface between the NSC and the CIA in the weapons transportation through semi-private companies. Mr. Gadd, in the deposition, admitted his involvement in the covert operations.

At page 6:

Q: WHAT BRANCH OF THE SERVICE WERE YOU IN?

A: UNITED STATES AIR FORCE.

Q: AND WHEN DID YOU RETIRE FROM THE UNITED STATES AIR FORCE?

A: I BELIEVE IT WAS SEPTEMBER THE FIRST, 1982.

Q: AFTER YOU RETIRED FROM THE UNITED STATES AIR FORCE, DID YOU CONTINUE TO WORK AS A PRIVATE CITIZEN ASSISTING U.S. ARMED FORCES IN COVERT OPERATION?

A: SUBSEQUENTLY, I ASSISTED THE UNITED STATES GOVERNMENT IN THOSE TYPES OF OPERATIONS, NOT NECESSARILY COVERT.

Q: CLASSIFIED OPERATION?

A: CLASSIFIED OPERATIONS.

Q: AND DID YOU FORM YOUR OWN COMPANY SHORTLY THEREAFTER?

A: YES.

Again at 7:

Q: DURING THAT PERIOD OF TIME, NAMELY, FROM 1983 UNTIL SEPTEMBER 1985, DID GENERAL SECORD TELL YOU HE WAS WORKING FOR THE UNITED STATES GOVERNMENT IN ANY CAPACITY?

A: GENERAL SECORD MENTIONED ON SEVERAL OCCASIONS THAT HE WAS A CONSULANT TO THE NATIONAL SECURITY COUNCIL (NSC)

OR THE WHITE HOUSE, AND ALSO A CONSULTANT TO THE DEPARTMENT OF DEFENSE.

When questioned about certain transactions occurring between 1985 and 1986, Mr. Gadd testified to the number of trips and the types of materials carried on Arrow Air contract flights:

Page 10:

Q: FOR THE CHARTERS IN BOTH 1985 AND 1986, WHAT KIND OF MUNITIONS DID THEY CONTAIN?

A: I BELIEVE IT CONSISTED OF AMMUNITION, 7.62, EXPLOSIVES, 40 MILIMETER SHELLS, AND WEAPONS . . .

. . .

Q: COMPANY OR INDIVIDUAL, IF YOU KNOW?

A: THERE WAS ONE COMPANY IN CANADA, I BELIEVE IT WAS CONNECTED WITH SUPPLYING THE MUNITIONS.

In addition to the above depositions, the FBI conducted an investigation into the Gander, Newfoundland air crash of the Arrow Air charter flight in December of 1985, this report traced the flights back to Lisbon, Portugal where the shipments were loaded in to the aircraft, in exact conformity to the facts in the affidavit of Mr. Durrani and his trial testimony. The admissions above, and the involvement of the "private party" Arrow Air carrier in the weapons shuffle could not have been known by Mr. Durrani unless his involvement was intimate enough to know the exact details of the extremely secret operations. The stand off use of "private parties" and businesses was such, that the CIA/NSC could conduct their operations and yet as this case demonstrates, disavow any knowledge

to Congressional investigations, oversight committies and the Courts. (emphasis added). See EXHIBIT K.

g). Suppressed again, was the "CASEY" memorandum which Mr. Durrani claimed would show the governments decision to use "private parties" and to ship additional lethal weapons to Iran in exchange for hostages. Mr. Durrani testified at trial concerning the contents of the letter and Mr. Durrani's attorney attempted to subpoena it. The government in response to the subopoena denied the existance of the letter, Charles Moyer on the witness stand claimed it did not exist, and the AUSA Fitzsimmons impeached Mr. Durrani with the testimony of Charles Moyer, stated in summation that such a document did not exist.(RT-115, attached as EXHIBIT L)

Now, the CIA has confirmed the existance of the memorandum to Mr. Durrani, and the letter of confirmation is attached as EXHIBIT M. The AUSA in summation additionally told the jury that "he wished that a '"CASEY"' menorandum existed." Inferring that Mr. Durrani had lied to the court as had his counsel.

THE GOVERNMENT KNOWINGLY USED PERJURED TESTIMONY  
IN THE TRIAL TO CONVICT MR. DURRANI

a). The testimony of Michael Sneedon, incorporating subparagraph (a) of Ground One, supra, is documentable now as false. Oliver North, by his own admissions, in Senate hearings, his trial, public speaking engagements, and now the government in his trial admits he was in London at the same time as claimed by Mr. Durrani.

As shown by the points and authorities, infra, it is not essential and entirely tangential to the issue if the AUSA was personally aware of the false nature of the testimony, this may

however, if proven to have been within her actual knowledge, be germane to whatever remedy the court decides to apply.

b). The testimony of Charles Moyer of the CIA concerning the involvement of "private parties" and the "CASEY" memorandum, incorporating subparagraphs, (b) and (g) of Ground One, supra, is now documentable as false. Not only were private persons and their companies used by the NSC/Oliver North/Secord/Poindexter/CIA "covert action team", but it was the operational norm, so that the restrictions under the Boland Amendment could be evaded, that they could lie to the Congress, its oversight committees, and even this court. The false nature of this is emphasised by the documents in EXHIBIT I, set forth in subparagraph (d) of Ground One, supra, where the government shipments of ammunition and weapons, from both Interarms and MEREX, Mr. Durrani's company are contained in a single shipment for the CIA.

c). The testimony of Charles Moyer of the CIA concerning the lack of involvement of Manuel Jose Pires and his requests to Mr. Durrani to locate and arrange shipment to Jet Stream for the 240 missing Hawk Missile parts from the questionable dealings of Oliver North and Poindexter with Iran, was known to have been false by AUSA Fitzsimmons, since she and agent Arruda of the United States Customs both traveled to Brussels, Belgium in the investigation of the Hawk shipment. She was provided information and documents regarding the actions of Mr. Pires, his companies, and the governments involvement with the procurement. She was told that Mr. Durrani was instructed by Mr. Pires, to deliver all parts to Jet Stream and nothing more, the Pires/North/CIA are all additionally linked by

the documents in EXHIBIT G, and the actual knowledge of the facts concerning this connection, is documented by the letter that Mr. Van de Meerssche sent to this court, not understanding that a judge in an American Court does not decide the evidence and could release Mr. Durrani based upon the December 29th, 1989 letter. See EXHIBIT F, supra.

d). The AUSA Fitzsimmons claimed personally and by the testimony of Charler Moyer that Mr. Durrani and his company MEREX had no involvement with the CIA arms procurements, the representatons, and the testimony of Mr. Moyer in regard to these facts is now documentable as false, incorporating subparagraph (d) of Ground One, supra, the documents showing the MEREX and Interarms shipments in the same load of CIA acquired supplies completely contradicts the testimony of Charles Moyer and AUSA Fitzsimmons personal summation.

e). The suppressed Munitions List from the United States State Department concering the allegedly restricted status of the Bell Helicopter parts. The State Department itself denies this and maintains that the Helicopters and the parts are not subject to any State Department Export restrictions or licencing requirements.

Under the above, the testimony of Brenda Carnahan, the "para-legal" and a government witness, is false on its face, and should have, or was actually known to be so by AUSA Fitzsimmons. This misrepresentation was, in addition to the facts in the trial, a major part of why the Judge (Daly) would not release Mr. Durrani on bail before trial.

THE CONVICTION IS BARRED BY DUE PROCESS ESTOPPEL SINCE  
THE GOVERNMENT ITSELF THROUGH ITS AGENTS INDUCED THE SHIPMENTS OF THE  
MISSILE PARTS FROM THE UNITED STATES

In the light of facts developed in the hearings by the Congress, trials of government officials, private media investigators and other emerging public sources, The facts stand clear Mr. Durrani was telling the truth on the witness stand and in the pre-trial affidavit. That affidavit itself, contained information before the trial, which only now can be proven to be true. The veil of "national security" if legitimately employed in the first place, slowly lifts to confirm the involvement of Mr. Durrani's with government efforts to covertly procure and ship the Hawk Missile parts to Iran. The shredding of documents by Oliver North, the still persuasive concealment, makes exact documentation impossible. However, the level of information known to Mr. Durrani, and the exact circumstances could lead any reasonable jury to determine that his actions were, as claimed at trial, on behalf of the government. Additional supporting documentation, in the form of documents related to the the Hawk Missile shipments from the United States in November of 1985, in exact conformity with the testimony of Mr. Durrani at trial (RT of 3-24-87, pages 32-38; 3-25-87 page 172) is confirmed again by documents declassified in November of 1989. As was the letter of credit in the pre-trial affidavit, page 3, paragraph 8, was made public in the Congressional hearings. See EXHIBIT N. (Department of the Army "Point Papers")

In the face of the emerging proof of Mr. Durrani having

been induced to have procured the Hawk Missile parts by Manuel Jose Pires, who in turn was requested and authorized to act on behalf of the United States government, the CIA and Oliver North of the NSC, prosecution is prohibited on due process estoppel grounds, since the government by the actions of its agents and authorized representatives may not induce an individual to perform actions, and then prosecute them for having done what they requested.

Incorporating all facts in Grounds, One and Two, supra, and the level of knowledge held by Mr. Durrani before trial and during trial, a prima facie case of government involvement and inducement is established and the prosecution, indictments and conviction of Mr. Durrani may not stand.

THE GOVERNMENT HAS SELECTIVELY PROSECUTED  
AND PUNISHED MR. DURRANI.

The overall history of prosecutions under the Arms Export Control Act arising out of the Iran Contra affair shows, with few exceptions, that prosecution itself for export violations did not occur, or those so prosecuted received light sentences. Indeed the organizers of the Hawk Shipments, e.g. Oliver North, Richard Secord, and Albert Hakim were not even prosecuted at all, and the charges against those defendants which the government eventually did charge, try and convict them, arose out of the destruction of documents, and lying to the Congress.

Other cases connected, directly or tangentially, to the shipment of arms to Iran, in which individuals were convicted, the sentences ranged from 33 months at the highest, (reduced to

18 months), to probation. Mr. Durrani has at this point done more time in prison for violations under the Arms Export Control Act, than any person previously convicted.

Such selective prosecution and punishment cannot be justified or upheld, nor the detention of Mr. Durrani sanctioned by the court, in light of the sentences, treatment and liberty already granted to others similarly situated. This is particularly sailent, since this Court and the Federal Parole Commission both formulated such time of detention on the premise that Mr. Durrani had committed perjury by claiming to have been working for the government.

#### POINTS AND AUTHORITIES

##### I.

The Fifth Amendment of the Constitution of the United States reads in relevant part, "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law. . .", this language, together with the Sixth Amendment guarantee that "In all criminal prosecutions, the accused shall enjoy the right . . . to have compulasory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence., " and are relevant to the courts determination of the application of the facts in this memorandum to the case at bar, since the actions of the United States, in the suppression of evidence has denied the accused due process of law, witnesses in his favor and interfered with the assistance of counsel that the constitution guarantees.

Long since the Supreme Court decision in the landmark case of Brady v. Maryland, 373 U.S. 83 (1963), it has been held that



prosecution which withholds information or evidence from an accused, which if disclosed could bear upon the guilt or punishment, denies that defendant due process:

"[a] prosecution that withholds evidence. . . which if made available, would tend to exculpate him or reduce the penalty, helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice."

Id. 87-88.

This stems from the presumption that the trial process itself is a search for the truth, and the suppression of information from the accused, his attorney and the jury corrupts that function. C.F. Mesarosh v. United States, 352 U.S. 1 (1956) "[h]as poisoned the waters in this reservoir, and the reservoir cannot be cleaned without first draining it of all impurity." Id. at 13. And accordingly, a defendant who discovers and can prove the government has suppressed exculpatory evidence, whether towards guilt or punishment, is entitled to a new trial.

There is in addition to the suppression itself, an element of materiality required, this element must entail evidence which creates a doubt which did not exist or which undermines confidence in the outcome of the jury's verdict. Recently, the Supreme Court In United States v. Bagley, 473 U.S. 667 (1985) restated this principal, and held:

"[a] constitutional error occurs and the conviction reversed, only if the evidence is material in the sense that it's suppression undermines confidence in the outcome of the trial."

Id. 677.

The actual question of what constitutes suppression of information in the governments files has under gone much analysis with often conflicting results. In this regard, there is no bright line rule for the court to follow. However, the principle is clear enough, the defendant is entitled to any information in the government's files, if that evidence is potentially useful to the actual question of guilt or punishment. The Supreme Court in Giglio v. United States 405 U.S. 150 (1972), held the U.S. Attorney responsible for information not actually known or possessed by that particular attorney, because the United States is an entity, and the knowledge held by any party of that entity is imputed to the case prosecutor, Id. at 154, this, based upon the agency realtionship of inter-governmental agencies. Yet in spite of this decision, the circuit's have failed to establish just what is possession of information for purposes of defining a violation of the Brady mandate.

In reply to this failure to make definite rulings on the relevance of failure to disclose, the Supreme Court again returned to the issue in United States v. Agurs, 427 U.S. 97 (1976), and created a three part test for reversal of criminal cases, under the first test, reversal is required if the suppressed information demonstrating that the prosecutions case contained perjured testimony and that the prosecution should have known of the perjury, Id. at 103, the second situation, is if the prosecution failed to produce specific information requested by defense counsel, reversal is then warranted if that information suppressed was "material, " Id. at 104, the third situation, is where defense counsel has not made any request, but the prosecutor is in possession of exculpatory evidence

which is obviously of use to the defendant, reversal is required if that type of information undermines confidence in the outcome of the proceedings or which created a doubt which did not exist, Id. at 106-108.

With respect to the application of the above guidelines to the information suppressed in the instant case, this court must make inquiry to determine which information was in the prosecutors files and deliberately suppressed, and that which was in other government files and negligently suppressed, and weigh both against the entire trial record for determination of it's overall effect. The defendant Durrani asserts that with the reasoned application of the suppressed evidence, the proof of the governments prosecution would crumble before the jury like a sand castle at high tide. The information clearly showed that Mr. Durrani told the truth, exposes the prosecutor for deliberate suppression, at least in regard to the Brussels, Belgium evidence, and shows the governments covert hand of suppression to be a thumb on the scales of justice, tilting the outcome by means most foul.

## II.

The suppression of evidence under the due process of the constitution, is perhaps only surpassed by a prosecutors use of perjured testimony to gain a conviction, In Mesarosh v. United States, 352 U.S. 1 (1956), the Supreme Court in reversal of that case on motion for the government, stated in dicta, "The dignity of the United States Government will not permit the conviction of any person on tainted testimony." This stems from the very foundation of the Judeo-Christian principals which underly the English and

American judicial process.

The extension of the perjured testimony rules go beyond just not allowing or suborning false testimony, and encompass the prosecutor making misleading or false statements to the jury, Miller v. Pate, 386 U.S. 1 (1967); United States v. Valentine, 820 F.2d 565 (2nd. Cir. 1987) at 570-71.

In this respect, the testimony claimed by the defendant in the instant motion to be false, should have been known by the prosecutor, since the evidence attached as exhibits came from the governments own files. In particular regard, the Oliver North trip to London at the end of September 1986, was the most hotly disputed point of the trial and the repeated focus of the prosecutors rebuttal and closing argument. Yet it was the government itself, in the North trial which stipulated to the same September 1986 trip which the government, its witnesses and the AUSA herself denied ever took place in the Durrani trial. The AUSA herself should have equally known that the Bell helicopter parts were not subject to the export restrictions claimed by the State Department witness Brenda Carnahan, the involvement of the "Private Parties" such as Merex, Interarms, Arrow Air, Comexas, Forways, MWB of West Germany, and numerous other individuals as the commercial cutouts to avoid the scrutiny of Congress and investigative committies were the standard operating procedures of the CIA/NSC staff, e.g. Oliver North, Richard Secord, Albert Hakim and a host of errant players from each agency. The relationship of Pires-North-CIA in the shipments of arms to Angola in 1985 were additionally in the actual possession of the government, since they were used as evidence and exhibits in the Badir case, in the District of Georgia

(charges dismissed). And the relationship of Manuel Pires-Comexas-Jet Stream, and the particularized and limited involvement of Mr. Durrani in executing the instructions supplied by Mr. Pires, the CIA Lisbon, Portugal asset, in locating and arranging the delivery of the Hawk missile parts to Jet Stream. Was all known by AUSA Fitzsimmons to have been exactly as testified to by Mr. Durrani, since the documents and statements to all of the above was supplied to her personally in Belgium by Mr. T. Van de Meersche prior to trial. Yet the AUSA herself made constant misleading arguments and statements to the jury and the court, and allowed witnesses to testify to facts contrary to her own suppressed evidence. By the statement of Mr. T. Van de Meersche himself, Mr. Durrani had nothing to do with the export of the parts, Mr. Durrani was only to pick up and deliver the parts to Jet Stream, for export to Belgium on explicit instructions of Manuel Pires given to Comexas.

Under the above, the logic of the Second Circuit in Perkins v. LeFevre, 691 F.2d 616 (2nd. Cir. 1982), is both applicable and proper. This court should not hesitate to find the challenged testimony false, the statements by AUSA Fitzsimmons misleading, and order the reversal of the conviction and a new trial, since the above actions represent a corruption of the truth seeking process.

### III.

The Due Process clause and the statute under which Mr. Durrani was indicted both prohibit prosecution for exports of weapons on behalf of the United States and its agencies, whether or not the exports are overt or covert. In this the statute itself makes the following definition:

22 U.S.C. § 2278(b)(1)(2) Except as otherwise specifically provided in regulations issued under subsection (1)(1) of this section, no defense articles or defense services designated by the President under subsection (a)(1) of this section may be exported or imported without a license for such export or import, issued in accordance with this chapter and regulations issued under this chapter, except that no license shall be required for exports and imports made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

As the emerging picture of suppression and secrecy disintegrate and the documentary proof of the inducement and involvement of the government itself in the actions of Mr. Durrani, the language of the statute itself mandates the court reverse the convictions, since the government itself, by and through the actions of its agents, may not induce an individual to procure, transport or ship items under the guise of national policy, and then prosecute the individuals who perform the tasks they induced. This is in addition to the prohibition on punishments under the statute above, constitutionally mandated by the defense of entrapment estoppel, and the Due Process Clause of the Fifth Amendment.

Due process, under the estoppel defense, prohibits the government from prosecuting those who its own agents have authorized to perform acts. This had been repeatedly before the Supreme Court beginning with Raley v. Ohio, 360 U.S. 423 (1959), and most recently in United States v. Pennsylvania Industrial Chemical Corp., 411 U.S. 655 (1973). The factual situation and the holding of the Supreme Court in United States v. Pennsylvania Indus. Chem. Corp., supra, is most applicable, since that case, as here, involved the restrictions

against the defendant in offering evidence that it had been misled by government officials into believing that the law in question did not apply against the Corporation in the situation for which charges were eventually brought.

In the instant case, Mr. Durrani pled and attempted to have the charges dismissed, based upon his having been induced to commit all actions by agents of the United States Government and was foreclosed from proving this by the massive suppression by the government of the very evidence which it possessed. This was then effectively foreclosed, as the conviction should now be, based upon the proof of the Manuel Pires-Oliver North-CIA/NSC links in the dealings, including the evidence attached to this motion, since these individuals had all been authorized or ordered to perform the actions which eventually led to the prosecution of Mr. Durrani.

#### IV.

The Due Process and Equal protection Clause of the Fifth Amendment prohibits the government from selectively prosecuting or punishing an individual, while not prosecuting or lightly punishing other individuals similarly situated. In order to make out a colorable claim on selective prosecution, a defendant such as Mr. Durrani must satisfy a two part test, as set forth in St. German of Alaska E. Orthodox Catholic Church v. United States, 840 F.2d 1087 (2nd. Cir. 1988) at 1095, this test consists of:

(1) that, while others similarly situated have not generally been proceeded against because of conduct of the type forming the basis of the charge against him, he has been singled out for [investigation], and (2) that the government's discriminatory selection of him for [investigation] has been invidious or in bad faith, i.e. based upon impermissible considerations as race, religion, or the desire to prevent his exercise of constitutional rights.

In regard to satisfying the two part test, a defendant's burden in regard to the above is not one lightly carried, and must be supported by conclusive evidence. If the defendant can make a colorable showing of being singled out for prosecution, he may be allowed to conduct discovery to make the necessary determination of the second prong of the test, United States v. Gordon, 817 F.2d 1538, 1540 (11th. Cir. 1987), cert. dismissed, 109 S.Ct. 28 (1988).

While obvious limitations are imposed upon Mr. Durrani because of his incarceration, from that evidence made available to him from media and other sources, such as clerks of district courts, it is evident that with this exception, charge for arms exports on behalf of the covert arms dealings of the NSC/CIA have not resulted in prosecution by the government. This raises serious questions then as to the actual motive of the government in prosecuting Mr. Durrani and subjecting him to the harshest sentence of those previously prosecuted. Here, the motive of the government is suspected of being motivated by participation in concealing the Iran-Contra affair, since Mr. Durrani was the first case to break. If this is true, then the prosecution is based upon improper motivation and must be dismissed for being in violation of the Due Process and Equal Protection Clause. The instigators, Oliver North, Albert Hakim, Richard Secord, Thomas Clines, Richard Gadd, Charles Mulligan and the entire bevy of players from the shadow government "enterprise" supplying arms covertly around the globe were all left uncharged on weapons export violations, and were only prosecuted for destroying documents and lying to investigators and Congress. The above individuals additionally profited handsomely from their dealings and



allowed to keep the proceeds.

#### SUMMARY AND CONCLUSION

It is clear now, that the role of the government from the onset of Mr. Durrani's arrest, was to contain the shattering and sickening pieces of the Iran-Contra puzzle from the American Public, in the parlance of those in the government, it was the absolute first line of "plausible deniability and damage control." It was a shadow government being run without official records, of the planning, the approval, the implementation and the ultimate failure. Where politically sensitive information was being put to the test, the truth was quickly labeled as lies, disavowed and disclaimed. By suppressing the very documents, which formulated and proved Mr. Durrani's defense the government and its attorneys twisted the truth to suit the occasion, and worked out the entire script of the trial in advance, to arrive at a predetermined conclusion.

This is the government's face, whether it was a deliberate attempt by devious methods or a incompetent investigation, the result was the same, the conviction of a man who was just asked to "do something for his adopted country."

The court should not tolerate or condone the conduct of the government, which accused Mr. Durrani, and got caught center stage in the act of manipulating the justice system, by suppressive slight of hand.

For reasons set forth under grounds I through IV of the foregoing motion, supported by the exhibits attached in the appendix. The court should reverse the convictions of Mr. Durrani

and order a new trial free from the abusive tactics of the government.

Respectfully submitted this the 20<sup>th</sup> day of February,  
1990.

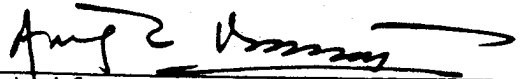
  
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Mr. Arif A. Durrani  
P.O. Box 5000  
Sheridan, Oregon 97378  
#09027-014

EXHIBIT A

Department of State, in violation of 22 U.S.C. §2778(b)(1).

He was sentenced to a term of five years imprisonment on count 1 with a fine of one million dollars (\$1,000,000), a concurrent five year sentence and a consecutive one million dollar (\$1,000,000) fine on count 2, and a concurrent 10 year sentence and one million dollar (\$1,000,000) fine on count 3. Defendant, who was initially held on pretrial detention, is currently incarcerated.

#### PRELIMINARY STATEMENT

Defendant Arif Durrani was charged with the unlicensed export to Iran of parts designed for the Hawk missile system.<sup>1</sup> The shipment, and a subsequently planned shipment, occurred in late August and early October, 1986 -- the same period during which the staff of the National Security Council was coordinating its secret transfer of spare Hawk missile parts to Iran.

Through the widely publicized Congressional hearings on the Iran/Contra affair that took place this summer, the nation has learned much about this highly irregular covert operation that was not presented at this trial -- about the utilization of private citizens who were not accountable to the government, about contemplated military operations outside accepted principles of governmental oversight, about the willful destruction of government documents. These matters not

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<sup>1</sup>Under 22 U.S.C. §2778, the President is authorized to control the import and export of defense articles which have been designated on the United States Munitions List. One engaged in the business of exporting designated defense articles must register with the Secretary of State. 22 U.S.C. §2778(b)(1). Export of designated items requires a license from the Secretary of State. However, a license is not required for exports "made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means." 22 U.S.C. §2778 (b)(2).

only cast suspicion on the evidence that was presented but raise even graver suspicion about evidence that may have been withheld. They also provide a telling backdrop to a number of flawed legal decisions made by the trial court and leave the ultimate conclusion reached by the jury of questionable validity.

Throughout the proceeding, the trial court based a series of critical decisions on two erroneous premises: first, that the activities of all participants in the covert government arms sales to Iran would be fully and regularly documented and such documents would be accessible to government personnel at the time of the trial; and, second, that the question of whether defendant's activities could have been part of the government's clandestine military sales program with Iran rested on an assessment of defendant's credibility.

Thus, despite Durrani's pre-trial affidavit stating his belief that he was involved in the United States operation coordinated by Richard Secord, and despite striking coincidences between the defendant's conduct and the conduct of the NSC and CIA as subsequently reported in the Tower Commission Report, the court ruled that the government was not obligated to prove that the exports were not part of the NSC operation unless and until the defendant presented affirmative evidence that they were.

Then, after the defendant testified, the court not only precluded the introduction of evidence that corroborated his connection with the American arms sale to Iran, but accepted as adequate government proof that in fact failed to negate it. Finally, the court gave a charge to the jury that shifted the burden of proof, conveyed the impression the case turned on the credibility of the defendant, and misstated both the law and the defendant's theory of the case.

## STATEMENT OF FACTS

Prior to trial, defendant submitted an affidavit, dated February 4, 1987, in which he attested to his prior knowledge of the movement of arms to Iran by the American government through various individuals and entities, and his belief that the persons who had approached him to procure the Hawk missile parts had, in turn, been approached by U.S. government agents (in particular Richard Secord) to obtain the Hawk missile spare parts. According to Durrani, he had been informed that these parts were needed to complete deals that had already been concluded between the United States and Iran. (A.20)

A month later, with the publication of the Tower Commission Report, documents came to light that substantiated defendant's affidavit. On March 9, counsel elaborated that it was defendant's theory that he was asked to procure parts which could not be obtained by the Department of Defense through normal means. (T.3/9/86, 136) To corroborate this theory, counsel attempted to secure, among other government records, several documents referred to in the Tower Commission Report. (A.30-34)

In particular, defendant identified a list of Hawk missile parts provided by the Iranians to the CIA in March of 1986, the packing list of items subsequently shipped from the United States in early May and delivered by the government to Iran in late May and early August, and four documents (PROF memos) written by Oliver North to Admiral Poindexter between April 16 and October 2, 1986.

In the first North memo, dated April 16, 1986, North wrote about the inability to locate all the parts Iran had requested:

We have a problem on our side in that over 50 of the parts now do not appear to be in stock or are no longer made for our version of the system. Nir [an advisor to

Israeli Prime Minister Shimon Peres] is checking in their older inventories to see if they have them on hand. (A.91B)

This was significant corroboration of the assertion in defendant's February 4th affidavit that he had been informed the parts he supplied were needed to complete the American deal. In fact, defendant contacted the private parts supplier from whom he ultimately purchased the Hawk spare parts less than three weeks after North reported the unavailability of parts, in early May, and furnished them with a list of 240 Hawk missile parts that was identical to the list of parts provided by the Iranians to the CIA in March of that year. (T.3/17/87, 30-33; 3/26/87, 28-29)

Durrani's February 4th assertion that he was supplying some of the parts the government originally had been unable to locate was further corroborated by the packing list of items subsequently delivered by the United States to Iran in late May and August. That list showed that, of the seven items on the Iranian list which defendant contracted to buy, four were either not delivered by the United States or were short. (T. 4/1/87, 127-28, 147, 173)

Moreover, Durrani arranged for the export of five of the items in the last week of August, 1986. (T.3/20/87, 57) Notably, another revelation contained in the Tower Report was that on September 8, 1986, a little over a week after Durrani's first export, North reported to Poindexter that some of the missing parts had been located:

Since last week, CIA and Army Logistics have located a significant number of HAWK parts which had previously been listed as 'unavailable.' We now believe that the total 'package' will be sufficient to entice the Iranians to proceed with the sequential release pattern proposed in the London meetings. (A.91J-K)

Notwithstanding the defendant's affidavit, as substantiated by the subsequently disclosed CIA lists and North memoranda, the court ruled that the question of whether the defendant arranged for the export as part of the NSC's military sales program to Iran -- i.e., the question whether an export license was needed in the first place -- need not be addressed by the government in its case in chief. The defendant was obliged to produce evidence raising the issue before the government would be obligated to negate it. (T. 3/23/87, 28)

Then, after defendant testified, he was effectively precluded from corroborating his testimony because of Oliver North's assertion of his Fifth Amendment privilege against self-incrimination and the court's sustaining of the government's objection to the introduction of North's memoranda. (T. 3/9/87, 141-49; 3/24/87, 67; 3/25/87, 244-51; 3/26/87, 6-25; 4/1/87, 105)

In other words, defense counsel was not only given the extraordinary task of unraveling the entire Iranian arms for hostage deal -- a task found impossible even by the government's own investigators -- but, more unjustly, was prohibited from sharing with the jury the fruits of the government's investigation.<sup>2</sup>

#### The Government's Case in Chief

In early May, 1986, Durrani, representing himself as the Chairman of the Board of a company called "Merex," visited Radio Research Instrument Company, a supplier of government surplus radar equipment located in Danbury, Connecticut, and indicated he was

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<sup>2</sup>The unfairness of putting the burden on defendant to produce evidence about the government's covert operation when the government's point-man on the operation was pleading the Fifth and withholding information from the government's own investigators is patent. North's refusal to cooperate and his shredding of documents certainly suggests that important evidence was withheld.



interested in buying Hawk missile parts. (T.3/17/87, 30, 25, 32) He furnished a list of 240 parts (GX 6) to Executive Vice President Edmund Doyle and asked which parts Radio Research had available. (T.3/17/87, 33) While Durrani did not indicate who he was buying these for, Doyle explained that the export of all Hawk parts required a State Department license. Durrani indicated his familiarity with export regulations and assured Doyle that the required licenses would be obtained. (T.3/17/87, 32, 39)

In late May and throughout June, Doyle both wrote and telexed Durrani at Merex, advising him that Radio Research could supply about a dozen items on the list, enumerating the quantities available and quoting prices. (T.3/17/87, 35-44) At the end of June, Durrani expressed his desire to purchase various quantities of eight of the items. He indicated to Radio Research President Paul Plishner that the parts he was purchasing were going to Jordan and assured him that any necessary documentation would be taken care of. (T.3/17/87, 41-42, 51, 58, 63-4, 69; 3/18/87, 62-63, 71; GX 8)

After considerable prodding from Radio Research for written confirmation, on August 11, Durrani sent four written purchase orders, and requested that they each be invoiced to "CAD Transportation, Inc."-- a company not previously mentioned by Durrani-- in Westlake Village, California. (T.3/17/87, 69, 75, 77-78, 79 81-88)<sup>3</sup> Thereafter Durrani, at Doyle's instruction, sent corrected orders that included a statement on each concerning the export license. (T.3/17/87, 89-90)

A few days later, Doyle inquired about the intended freight

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<sup>3</sup>The government's theory was that Durrani utilized CAD Transport and conducted its business without records in order to conceal assets from his wife in anticipation of a divorce. (T. 3/24/87, 190-95)

forwarder. Durrani responded that he would get the necessary information from his customer and that the customer "does everything." (T.3/17/87, 111-13; GX 30-a, at 6) Later, Durrani provided the information about the freight forwarder, Jet Stream Freight Service in New York. (T.3/17/87, 113)<sup>4</sup>

#### The First Shipment

On August 22, Durrani visited Radio Research and inspected various quantities of five of the items that were ready for shipment. He signed an invoice, which was made out in care of Jet Stream Freight Service, Valley Stream, New York, and which included at the bottom a warning that any export required a State Department license. Durrani informed Doyle that Jet Stream would have the necessary license. (T.3/17/87, 123-27)

Thereafter, Doyle contacted Jet Stream and was told that Jet Stream did not have the requisite licenses. He reported this to Durrani and informed him that, to protect Radio Research, the goods would not be released unless Durrani signed a document guaranteeing that the licenses would be obtained. Durrani agreed to sign whatever

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<sup>4</sup>Jet Stream became involved with Durrani through its customer in Europe, Willy de Greef. In June of 1986, the owner of Jet Stream, Hank Spreewenberg, received a telex from a fellow freight forwarder in Brussels, Tony Van Memeeryert who was with a company called "Comexas," regarding some shipments of spare parts from the United States for de Greef, a Comexas customer. According to Van Memeeryert, de Greef had given instructions to his supplier to forward various shipments to Jet Stream which would then reforward the parts to Brussels in care of Comexas. Thereafter, Durrani arranged for some 16 shipments for de Greef through Jet Stream. In each instance, the freight costs were paid for by the client in Brussels and Jet Stream split the profits with Comexas. On numerous occasions, Jet Stream received telexes from Comexas expressing de Greef's concern with delays and urging Jet Stream to apply pressure on Durrani to expedite the shipments. With regard to the August shipment charged in this case, Jet Stream received not only telexes from Comexas, but also a phone call from de Greef. (T. 3/20/87, 44, 118, 140, 159, 165-70, 219-40)

Doyle prepared. To accommodate Durrani's travel schedule, Doyle telefaxed a document to Jet Stream and Jet Stream personnel took it to Durrani at John F. Kennedy Airport on August 26 for his signature.<sup>5</sup> (T.3/17/87, 127-29; 3/18/87, 11; GX 47-A)

Upon receipt of the signed statement and a check for payment, Doyle delivered the goods to a local trucker for transport to Jet Stream in New York. (T.3/17/87, 129-30; 3/19/87, 169) The box containing the goods was stenciled with black spray paint: "RJAF Amman, Jordan" and had a Radio Research label on it. (T.3/19/87, 171)

Following customary practice, Jet Stream obliterated the markings on the box and removed the packing list so that the supplier's name would not be revealed. Pursuant to faxed instructions from Durrani, Jets Stream owner Spreeuwenberg then prepared new invoices, using blank invoices he had been given with CAD transports name and

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<sup>5</sup>The document, prepared by Doyle with the assistance of Customs Service Special Agent Steven Arruda, and signed by Durrani, stated:

"To whom it may concern. The export of Hawk missile parts being sold to you by Radio Research requires a U.S. State Department export license prior to their export. I certify that the appropriate State Department export license will be obtained prior to the exportation of the Hawk missile parts from the U.S." (GX 65; T.3/18/87, 11)

When Durrani signed the statement, he told Jet Stream's Spreeuwenberg not to worry about the license, that he was getting his orders from Washington, and showed him a paper with "Merex" on it. At the time, Durrani was with Manual Pires whom he introduced as de Greef's boss. Pires gave Spreeuwenberg a canvas bag of personal effects and directed him to ship it to Lisbon. Durrani then gave Jet Stream a check for \$10,000. According to Spreeuwenberg's assistant, Muhammed Moosa, the money was intended to cover the cost of the shipment for Pires, Durrani's outstanding balance, as well as costs of future shipments to Jet Stream from Durrani. However, the money was not recorded in Jet Stream's ledger on Durrani's account. (T.3/20/87, 48-50, 51, 86-90, 179)

address. On the CAD invoice, the value was reduced from \$22,165 to \$367.85.<sup>6</sup> The invoice showed that the parts were sold to "Kram, Ltd.;" the shipment was consigned to Comexas in Brussels. (T. 3/19/87, 190-91; 3/20/87, 7, 56-64, 182-88, 216) The shipment was consolidated with another smaller shipment from CAD to Comexas and sent to Brussels on August 29. (T. 3/19/87, 182; 3/20/87, 189) The freight charges for the flight to Europe were billed to Jet Stream's and Comexas' customer in Brussels, Willy de Greef. (T.3/20/87, 159)

#### The Preparations for a Second Shipment

Throughout the month of September, Durrani spoke with Doyle on a regular basis about testing that Radio Research was to perform on certain of the ordered but still undelivered parts, the possible purchase of additional equipment, and the repair of two "klystron tubes" Durrani had delivered to Radio Research. Finally, after Durrani arranged for the payment of \$148,860, Doyle advised that the parts were ready for inspection. (T.3/18/87, 15-29)

Durrani went to Radio Research to inspect the goods on October 3. Once again, he signed a statement that the necessary export licenses would be obtained, instructed that the boxes be marked for Amman, Jordan, and arranged for the delivery of the boxes to Jet Stream. When he left Radio Research, he was arrested and the boxes were seized. While in custody, Durrani claimed, "I don't know why I'm arrested, I have all the licenses in California." (T.3/18/87, 31-33,

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<sup>6</sup>By valuing the shipment at less than \$1000, Jet Stream, listed on the airway bill as the "shipper," avoided filing a "Shipper's Export Declaration" with Customs; such a declaration is generally required for shipments valued in excess of \$1000. On at least one prior occasion, on instructions from de Greef and without discussion with Durrani, Jet Stream falsified shipping documents for de Greef. (T. 3/19/87, 193; 3/20/87, 7, 248-49)

As evidence that the exported items were on the United States Munitions List<sup>8</sup> and that Durrani neither registered with the State Department, nor applied for or obtained export licenses, the government introduced the testimony of Billy Boland, an electronic technician equipment specialist at the Hawk Project Office, U.S. Missile Command, Redstone Arsenal, and Brenda Carnahan, a paralegal in the Department of State's Office of Munitions Control.

On direct examination, Boland claimed that, of the five items exported to Brussels on August 29, two of them (items 48 and 64) were "specifically designed" for the Hawk system, while a third (item 240) was "specifically used" in the Hawk system. (T.3/19/87, 75, 79, 81) One, a relay switch (item 54), was not designed specifically for the Hawk; it is a repair part used in other pieces of equipment as well as the Hawk. (T.3/19/87, 78) According to Boland, each of the line items prepared for export on October 3 was "specifically designed" for the Hawk system. (T.3/19/87, 82, 83, 84)

However, on cross, Boland clarified that he was not involved

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<sup>7</sup> Shortly after Durrani's arrest, a woman identifying herself as "Mrs. Durrani" called Jet Stream and instructed Mr. Moosa to send the shipment destined for Belgium to California instead, to destroy all files, and that if asked, to deny knowing anything about Durrani or CAD. Later, Durrani called and asked if the message had been received and if the files could be destroyed. When Spreeuwenberg reported that customs agents had already been there and seized the files, Durrani said, "I have a lot of trouble." Spreeuwenberg responded, "Me too." (T.3/20/87, 79, 82, 200-03) (In his testimony, Durrani denied that he instructed Spreeuwenberg to destroy documents.

<sup>8</sup> Category IV subsection (b) and (H) of the Munitions List includes missile systems and all "specifically designed or modified components, parts, accessories, attachments, and associated equipment" for such systems.

in the manufacturing process, and, therefore, could not say whether the items, particularly such low level electronic equipment as the delay line (item 48), were used in other equipment; he only knew that the items met the Hawk's specifications. (T.3/19/87, 91)<sup>9</sup>

Paralegal Brenda Carnahan was employed in the Services Support Division of the Department of State Office of Munitions Control, an office responsible for enforcing 22 C.F.R. §§120-130. (T.3/19/87, 110-12) Over defense objection, Carnahan testified that, at the request of the case agent, she made a determination that each of the items exported and planned for export in this case fell within Category IV of the Munitions List. (T. 3/19/87, 127-44) On cross, she admitted that none of the items was specifically referred to in the Code of Regulations, that she had no expertise in the design of the Hawk system, that the State Department had never previously made a formal determination with respect to any of the parts, that the question of whether a particular part is on the List may be a difficult and delicate one, and that her determination that each part was on the Munitions List was based entirely on a telephone conversation she had with Ralph Wills, an engineer at Redstone Arsenal. (T.3/19/87, 155-59, 164, 167)<sup>10</sup>

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<sup>9</sup>Boland also explained that the U.S. Army supplies spare parts to every country around the world with a Hawk missile system except Iran; the spare parts are stocked at Redstone Arsenal. If a part is ordered that is not in stock, the Army will procure it, though obsolete parts could take as long as two years to procure. (T. 3/19/87, 73-74, 87-88, 108-09) According to Boland, with the exception of one of the items at issue, each of the items was in stock in May of 1986, and Redstone Arsenal received no orders at that time that it could not fill. (T.3/19/87, 86-87) However, Boland had no knowledge of any Hawk missile parts being shipped to Iran in 1986, and had no knowledge of the NSC or the CIA procuring Hawk parts in 1985 or 1986. (T.3/19/87, 102, 104, 94)

## The Defense Case

Durrani testified in his own behalf and told the jury that which he had told to the court in his pre-trial affidavit: his belief that he was working for people connected with the government's covert arms for hostage deal with Iran. Durrani also sought to introduce portions of the Tower Commission Report which outlined the government's covert operation and the two North memoranda, discussed above, which, along with the CIA lists, provided strong corroboration that he was approached to supply parts requested by Iran but initially unavailable to those responsible for the government's operation. The court, however, thwarted this vital effort at substantiating his testimony by ruling that the Tower Commission Report and the North memoranda were untrustworthy and inadmissible. (A.92)<sup>11</sup>

Durrani described the international community of arms dealers as a handful of people all known to one another; those in the community sooner or later learn of every movement of weapons in the Western world. As part of this community, Durrani learned of the shipment of arms to Iran by Israel and the United States in 1985 and 1986.

(T.3/24/87, 27, 29)

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<sup>10</sup> According to Carnahan, there was no record of any registration or export license application, or export license issued during the period of October, 1981 through February, 1987 for a host of individuals and companies including Durrani, Pires, de Greef, CAD Transportation, Comexas, and Jet Stream. (T.3/19/87, 148-149) However, Carnahan also explained that the Department of State does not license "foreign military sales;" that is handled by the Department of Defense. (T.3/19/87, 124)

<sup>11</sup> The proffered portions of the Tower Commission Report are included in the appendix. Two editions of the report were before the court; the version included in the appendix, from the New York Times Edition, is paginated differently from the version referred to in the court's ruling.

Durrani was familiar with several Iranian officials involved with the procurement of arms for the government of Iran. Through Merex associate Ahmed Shams, an Iranian, Durrani became socially acquainted with Rahim Malekzede, the Chief of Logistics and "number 2" man in the Iranian Revolutionary Guard. In the autumn of 1985, Malekzede informed Durrani about Israeli shipments of arms to Iran, and about American overtures to Iran through Japan and other countries.

(T.3/24/87, 44-47, 210) Later Malekzede told Durrani that Iran was dealing with a number of Americans and Israelis, including Oliver North, George Cave and Amiram Nir. (T. 3/24/87, 218)

In late 1985, through Shiraz Dewji, an employee with a subsidiary of Varian Corporation in Switzerland, Durrani learned about two shipments of tubes -- the VA-145-E (known as the "heart" of the Hawk missile system) -- by Major General Richard Secord from the United States to West Germany and Sweden, through Portugal and, ultimately to Iran. (T.3/24/87, 32-38; 3/25/87, 172)

As corroborated by Merex phone records, Durrani was in Portugal in April, 1986. While in Lisbon, Durrani met with George Hassan, a former Iranian Secret Service Agent with ties to Israel. Hassan was working with Secord and Albert Hakim coordinating the American shipment of parts to Iran. Hassan, who wanted Durrani to vouch for Secord and Hakim with Malekzede, showed Durrani three leased aircraft loaded with Sidewinder missiles parked on the tarmac at U.S./NATO air bases in Lisbon. (T.3/24/87, 40-44, 49, 50, 218)

Also while in Lisbon, Durrani was told by an Israeli Air Force Officer that Manuel Pires was looking for Hawk parts. Durrani knew that Pires was one of two individuals licensed to export arms from Portugal. Since Durrani also had learned from Hassan that Pires was a



supplier of small arms and ammunition to Secord, he deduced that the United States was shipping the goods to Iran through Pires. (T.3/24/87, 48-50, 238) Durrani tried unsuccessfully to reach Pires at his office in Lisbon, but he was not in. Thereafter, he received a call from Willy de Greef, who arranged a meeting in Geneva on April 23. (T.3/24/87, 50-52)

At the Geneva meeting were not only Durrani, Pires and de Greef, but also a Mr. Hussein, an Iranian official responsible for Iran's Hawk missile system. Durrani was asked generally about the kinds of parts he could supply and specifically whether he could supply Hawk parts included on a list given to the United States by Iran. Durrani agreed to locate whatever parts he could. He was given the phone number of a "Mr. Korser" and instructed to call him in Washington D.C. to arrange to obtain the list. (T.3/24/87, 52-57)

Durrani was also told that if there was a procurement, the shipping arrangements would be taken care of. According to Pires, though the parts would actually be going to Israel and then to Iran, any end user certificates would show that the parts were going to Jordan and would be obtained with the assistance of the Government of Jordan. (T.3/24/87, 58-59)

Durrani returned to the United States and, as instructed, arranged the meeting to obtain the list of parts. Thereafter, he determined that Radio Research possessed some of the parts and went to them with the list the first week of May. The list of parts Durrani submitted to Radio Research (GX 6) was identical to the list of parts given to CIA agent George Cave by the Iranians in Paris on March 7, 1986; while typed on different typewriters, both lists included the identical 240 parts and misspellings or missing portions were the same

on both. (T.3/24/87, 63-66, 71-72; 3/26/87, 28-29; DX 609-C)<sup>12</sup>

Durrani forwarded to de Greef and Pires in Brussels the information he received from Radio Research. De Greef and Pires indicated which items they were interested in and which prices were too high. Durrani made it clear to Pires and de Greef that he would arrange for the purchase of parts and inspect them, but would not be responsible for obtaining any licenses. They again assured him that they had arrangements to obtain export licenses from Jordan. Based on this, Durrani placed his orders with Radio Research.

By the end of August, Durrani was under increasing pressure from Pires and de Greef to obtain the parts at any cost and increasing pressure from Radio Research to obtain an export license. Based on the assurances of Pires that export licenses would be provided, Durrani agreed to sign whatever statement Doyle prepared and arranged to have Pires with him at the airport when the statement was delivered by Spreeuwenberg of Jet Stream. At the airport, he was told that Spreeuwenberg had obtained the license and had been obligated to pay \$10,000 for it. Durrani agreed to reimburse Jet Stream for the expense on Pires' behalf. (T.3/24/87, 86-92)

In September, Pires made clear what Durrani had previously only deduced: Pires related that he was working with people, particularly Secord, who were working on behalf of the United States. He explained that the man identified as "Korser" from whom Durrani had

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<sup>12</sup>At the end of May, Durrani met with Malekzedeh in Brussels and learned about a trip to Tehran by various officials of the United States and a shipment of arms. Malekzedeh showed Durrani a copy of the packing list that accompanied the first American shipment. (A copy of the packing list, obtained from the CIA, was introduced into evidence. (DX 609-B)) (T.3/24/87, 71-72; 3/25/87, 187, 214)

obtained the list of parts was with the NSC. (T.3/24/87, 216, 237-40)

Exhorting Durrani that the delivery was urgent, Pires pressed Durrani for the parts that were not available with the August shipment. He informed Durrani that the United States was planning to deliver parts to the Iranian delegation in Frankfurt in early October and, therefore, delivery to Brussels had to be confirmed for October 3. In order to reassure the Americans that the parts would be delivered, Pires urged Durrani to meet with an American official in London in late September. (T. 3/24/87, 96, 243, 251)

Durrani went to London and was summoned to the Hilton Hotel by a man using a code name but who Durrani subsequently identified as Oliver North. Durrani explained the reasons for the delay and assured North that the parts would be available as soon as Durrani returned to the United States. When Durrani mentioned that part of the delay was attributable to the supplier's insistence on an export license, North told him not to worry about it, just deliver the parts to New York. (T. 3/24/87, 101, 244, 248)<sup>13</sup>

#### Rebuttal

There were essentially three parts to the government's rebuttal case: an attempt to negate, through absence of record evidence, defendant's assertion that he was working indirectly on

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<sup>13</sup> Durrani's testimony concerning his relationship with de Greef and Pires and his understanding about their relationship with Secord and the United States Government was admittedly at odds with two prior statements: his post-arrest statement that the licenses were in California, as well as a submission of his attorney to the Court, made in connection with an appeal from the detention order, that Durrani believed the goods were to be forwarded to Jordan. Durrani explained that he made the first statement because he was frightened. He did not tell "the whole truth" to his lawyer because he thought he could get out on bail and resolve the matter with Pires and the people at the NSC (T.3/24/87, 61-62, 102; 3/25/87, 74-76, 157-61)

behalf of the United States government; an effort to impeach defendant's credibility, mainly about the nature of his business with bank records;<sup>14</sup> and, the introduction of so-called "similar act" evidence designed to rebut defendant's contentions that he believed he was working on behalf of the government and/or was not responsible for obtaining the necessary licenses.<sup>15</sup> (The government also sought to elicit the testimony of Manual Pires. However, after it had made all the necessary arrangements to take his mid-trial foreign deposition, Pires balked and refused to cooperate.)

To rebut Durrani's claim that he actually met with Oliver North in London, the government presented the testimony of an English Customs Officer who had been asked to search various London hotel records for a period in late September, 1986. While he found registration records for Durrani and Pires, he found no such record at the Hilton Hotel under the names of North, White or Goode, aliases

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<sup>14</sup>The introduction of the bank records was part of the government's relentless effort to prejudice the defendant by revealing to the jury that he had structured certain financial transactions in a way to conceal assets from his wife in anticipation of a divorce. (T. 3/24/87, 190-195; 3/26/87, 59, 164; 4/1/87, 14) The trial court correctly precluded the prosecution from introducing evidence of his extra-marital relationship, and the bank records ultimately proved little more than that Durrani was paid by Pires and had access to Swiss bank accounts in his mother's name.

<sup>15</sup>Over objection, Nathan Newbern, the president and owner of Imperial Tool and Manufacturing Machine Shop in Fort Worth, testified about a sale to Durrani of Bell military helicopter parts which Durrani said were destined for Turkey. (T.3/26/87, 81-154) Some of the parts were consolidated by Jet Stream with the unlicensed August shipment from Radio Research and, though Durrani had represented himself to Newbern as Chairman of Merex, were also invoiced from CAD Transport to Kram, Ltd. (T.3/18/87, 181-90; 3/26/87, 112) Evidence was also introduced to show that these parts were on the U.S. Munitions List. (T.4/1/87, 34-40, 153) Durrani testified that he understood that the parts were for helicopters privately owned by Pires and de Greef in Malta and that he did not think that an export license was required. (T.4/1/87, 213-14)

attributed to North during the trial. (T. 4/1/87, 77-79)

In addition, Michael Sneddon, an accounting and budget analyst for the NSC responsible for processing the Council's travel documents, testified that there were no travel records for travel by North to London between September 28 and October 2, 1986. (T.4/1/87, 109-10) Sneddon explained, however, that if North financed his trip outside the NSC, there would be no NSC travel records to reflect it, and admitted that he made no effort to ascertain North's whereabouts on these particular days. (T.4/1/87, 118-21) Moreover, though the court precluded defendant from inquiring of Sneddon whether North and Poindexter talked to him about covert operations (T.4/1/87, 114), Sneddon confessed that prior to November 1, 1986, he had no knowledge of North's trip to Tehran in May of that year. (T. 4/1/87, 112-114, 123)<sup>16</sup> Sneddon also testified that there was no record of a "Jack Korser" working with the NSC. (T.4/1/87, 110)

To prove that defendant's activities did not fall within the statutory exception of 22 U.S.C. section 2778 (b)(2), the government also relied on the testimony of Charles Moyer, Senior Records Management Officer of the CIA's Directorate of Administration. Over repeated hearsay objections, Moyer was permitted to testify, based on his examination of unspecified records maintained by the CIA's Office of Logistics/Administration, that the Office of Logistics had responsibility for obtaining the Hawk missile parts sold to Iran and

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<sup>16</sup>North's trip to Tehran in May of 1986 -- along with Robert McFarlane and others-- has been widely reported. See, e.g., The Tower Commission Report, Appendix B "The Iran/Contra Affair: A Narrative," VII. "Hostages and Iran Pursued: March- May 1986," D. "Tehran: May 25-28, 1986." It was acknowledged at trial by a senior record keeper from the CIA called as a witness for the government. (T.4/1/87, 167)

delivered in May and August of 1986.<sup>17</sup> Moyer testified that the CIA did not make any effort to obtain Hawk parts after May and did not participate in any further shipments of Hawk missile parts after the delivery in August. (T. 4/1/87, 124-34, 147, 158)<sup>18</sup>

On cross-examination, Moyer explained that he only searched for records relating to the actual acquisition of parts by the CIA. He did not check for documents by CIA officials relating to the need to acquire additional parts, or the location of parts that were on the Iranian list but were not included in the May shipment to Israel. (T.4/1/87, 161-63, 168, 182, 187)<sup>19</sup>

Moreover, the records Moyer did search showed only the parts that the CIA bought and paid for; Moyer explained that CIA records

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<sup>17</sup> According to Moyer, the packing list (DX 609-B) for the Hawk missile parts shipped in May and August was generated by the Office of Logistics. All the items on the list were obtained by the CIA from the Department of Defense through established procedures and no effort was made to obtain any parts from a non-Department of Defense Source. All left the United States by May and were delivered to Iran in May and August of 1986. Moyer candidly admitted that he had no knowledge as to where the Department of Defense obtained the parts that the CIA requisitioned; he assumed "from a supplier." (T.4/1/87, 127-30)

<sup>18</sup> In addition, Moyer testified that Office of Logistics records would reflect whether the CIA attempted to obtain any of these parts from any sources outside of the Department of Defense. According to Moyer, searches of records conducted by him and by persons whom he supervised and interviewed did not uncover a record of an effort by the CIA to obtain parts included in the May and August shipments from a number of individuals and entities including Durrani, Pires, de Greef, George Hassan, Richard Secord, Albert Hakim, Jack Korser, CAD Transportation, Merex, and Kram, Ltd. (T.4/1/87, 132-37) Moyer also testified that, with the exception of Secord and Hakim, there was no record of any of these individuals or entities being employed by or associated with the CIA. (T.4/1/87, 137-44)

<sup>19</sup> The court precluded defense counsel from eliciting testimony about the existence of one such document, written by CIA Director William Casey in July of 1986, concerning the need to acquire additional parts that was turned over to the Tower Commission. (T.4/1/87, 187-88) (A.91C-E)

would not reflect activities on behalf of the NSC unless the CIA participated in such activity. Thus, if, for example, Manual Pires was involved in the purchase of Hawk parts, CIA logistics records would not reflect this unless the CIA paid for the parts. (T.4/1/87, 170-71) Similarly, the CIA would not necessarily record all contacts made by persons associated with the agency. For example, Moyer confessed, the absence of a record of George Hassan is not evidence that he was not working with Secord or Hakim. (T.4/1/87, 186) Furthermore, there would be no record of attempts to purchase parts unless that attempt was "normal enough to be committed to paper, ...[i]f we put out a solicitation for bid for Hawk missile parts that would be in the file." Moyer agreed that the sale to Iran was not one "put out...for bid." (T.4/1/87, 171-73)

Moyer conceded that the CIA was unable to obtain all the parts it was looking for from the Department of Defense, that the arms for hostage deal with Iran was unique, and that if the CIA needed something, it would probably obtain it from whatever source it could. (T.4/1/87, 173, 175-77)<sup>20</sup>

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<sup>20</sup> However, he insisted that, nevertheless, any procurement of parts by the CIA would follow normal CIA procurement procedures and would be accomplished through and fully documented by the Office of Logistics. (T.4/1/87, 173-75, 180) Defense counsel's effort to discredit this assertion by reference to the use of Secord and Hakim to divert arms to the Nicaraguan Contras was thwarted by the court. (T.4/1/87, 181) Moyer did admit, though, that the Office of Logistics would have records of CIA procurements only if its agents complied with federal record-keeping regulations. (T.4/1/87, 190)

EXHIBIT B



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CLERK  
U.S. DISTRICT COURT  
BRIDGEPORT, CONN.

4 52 PM '87

UNITED STATES OF AMERICA,  
Plaintiff

VS.

ARIF DURRANI,  
Defendant.

CRIM. NO. B-86-59 (TFGD)

FEBRUARY 4, 1987

AFFIDAVIT OF ARIF DURRANI

STATE OF CONNECTICUT )  
COUNTY OF NEW HAVEN ) ss. New Haven, Connecticut

The undersigned, Arif Durrani, being duly sworn deposes and says

1. I am of legal age and believe in the obligation of an oath.
2. I am the defendant in the above-captioned action. I make this affidavit in support of my Motion to Dismiss and my Motion to Refer to the State Department.

3. I make this affidavit based upon personal knowledge and/or information and belief, based on a combination of personal knowledge and items reported in the press.

4. I believe, although I was not directly hired by the United States government, that the work I was doing to help procure spare parts for Hawk missiles, for shipment to Iran, was initially at the instance of the government of the United States, and that prosecution of me under these circumstances is not justified, as

others in the government who have been responsible for shipping arms to Iran without licenses are not being prosecuted, and that the government has no intention of prosecuting said people (except for possible embezzlements from the proceeds of said sales, for the purpose of illegally arming rebels in Nicaragua).

5. I am aware of a number of people who I understand have been actively working with the government, or one of its agencies, such as the Central Intelligence Agency or the National Security Council in Europe, for the purpose of moving arms to Iran. Among those individuals are Manuel Pires, of Lisbon, and Willy de Grief, of Brussels. Those are the individuals who asked me to find the Hawk missile parts that I am charged with exporting.

6. Another man, George Hassan, who lives in Lisbon, Portugal, and is connected with the CIA, also had been working to facilitate shipment of arms to Iran. Hassan was originally Chief of Police in Tehran, and had free access in and out of Iran, acting on behalf of the CIA to effect arms sales to that country.

7. At the time Pires and de Grief asked me to obtain the Hawk missile parts, I knew that the government of the United States was moving large quantities of arms to Iran through various entities and individuals. Richard Secord and Albert Hakim of Stanford Technology in San Jose, California, were among those shipping arms to Iran with government approval. I was informed by officers of Varian Associates

that the CIA had ordered them to ship radar tubes (number VA-145E) to Iran. <sup>+</sup>Sanford Technology shipped tubes to Iran for \$250,000 each, and the money was deposited into Secord's account at Credit Suisse, Geneva, by the government of Iran.

8. Secord made other shipments to Iran directly from stocks at Kelly Air Force Base, San Antonio, Texas, including entire TOW missiles. A divisible, transferable letter of credit was issued by Sedrat Ban., an Iranian bank based in Frankfurt, to cover the shipment of the TOW missiles. The amount of the letter of credit was Forty Million (\$40,000,000.00) Dollars, and it was issued to Credit Suisse, Geneva. The letter was negotiated by Advance Technology, Inc., 725 Market Street, Wilmington, Delaware, an entity cooperating with the CIA and Hassan. I was shown a copy of this letter of credit by George Hassan in Lisbon, a contact of Hakim and Secord, who is a former SAVAK agent and CIA operative, who also has ties to the Israeli Mossad. Hassan offered to introduce me to officials of the CIA who arranged the deal.

9. Once when I met with Hassan in Lisbon in 1986, he showed me an airplane belonging to Arrow Air, an American company, at air force base in Lisbon. The plane was a Boeing 707. There were 200 AIM-9P and 100 AIM-9B Sidewinder missiles on the plane, which were being taken out of NATO and Portuguese military stocks for shipment to Iran at prices of \$55,000.00 and \$45,000.00 respectively.

10. While I was in Lisbon at that time, Pires approached me to inquire about obtaining the Hawk missile parts that I am charged with exporting illegally. Pires is a weapons supplier for Secord for the Contra rebels in Nicaragua. Pires and Secord regularly use companies called Defex (Defense Export) and Energy Resources International to ship such weapons.

11. Pires told me that certain parts were needed to complete deals that had already been concluded between the United States government and the government of Iran. I agreed to help him locate the particular parts as a favor to him, and I was told that I would be given a list of parts needed upon my return to the United States.

12. Shortly after my return to the United States, I met an individual at Washington National Airport who called himself Jack Koser. He provided me with the list of the required Hawk missile parts. I believed and have since been able to confirm that the man who called himself Koser worked for the National Security Council.

13. I approached Radio Research, Inc., of Danbury, with the list. Radio Research is a small dealer of surplus parts that it buys from the United States military for scrap. It then sells the parts as what it calls reconditioned material. Radio Research promised that it could quickly supply the parts, but they stalled and lied to me when I inquired as to their status.

14. At the same time, Pires, on his own and through de Grief, constantly pressured me to obtain the parts. While I was travelling in the Far East on other business in September, I was urgently requested by Pires to return to Lisbon, which I did. Upon arrival in Lisbon, I met with an individual who was said to be a staff member of the NSC. I was told at that meeting for the first time of the urgency in obtaining the parts, which I was told were part of a package for freeing American hostages being held in Lebanon. Pursuant to that request, I immediately returned to the United States and again asked Radio Research to expedite delivery, but it continued to stall.

15. I was then requested to fly to London by Pires. I did so, where I met with individuals who identified themselves as United States officials. One individual, who identified himself as "Mr. White," I have come to believe was Lt. Col. Oliver North of the NSC. I had met Mr. White two other times. Others at the meeting included a representative of the Anglican Church. At that meeting, the American officials urged me to quickly obtain the parts. I told them that Radio Research was delaying the shipment for lack of licenses. American officials made numerous telephone calls that night from London, and the next day, October 2, I was told that President Reagan would sign orders the next day to authorize shipments of arms to Iran. I was told by Mr. White not to worry about the paper work.

16. I have come to learn that on October 3 the President did execute such an order, and that he sent a message to Iran saying he would honor the American commitments to ship arms in exchange for the hostages.

17. I returned to the United States from London on October 2, and had intended to fly to Washington after confirming that Radio Research had shipped the parts to Jetstream Freight Services, as instructed to Pires. I was to inform Koser that the parts were shipped to Jetstream, and I understood that I would have no further involvement with the parts after that point. I knew that the shipment was so small that the government would not ship them in a separate airplane, which was normal practice.

18. It is my understanding that the arms shipments made by the United States government to Iran were made to the National Iranian Oil Company, generally shipped in individual airplanes in boxes labelled "oil drilling equipment," those being the arrangements set by the United States government.

19. I have had numerous other contacts with Pires and de Grief, who now works for Pires, and believe that they regularly cooperate with the United States government, Secord, and other former government officials. Mr. de Grief was previously employed by Mehdi Heshemi Rafsanjani, to whom the CIA shipped parts through International Air Tours of Nigeria, Ltd. The shipments all went through Brussels, and I

learned they were part of an effort to obtain the release of hostage William Buckley. When Medhi fled Belgium with Six Million (\$6,000,000.00) Dollars in cash he pocketed from the deal, de Grief was left without a job, until Pires hired him and he continued to work in Brussels as usual.

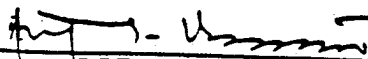
20. I know, and knew that Pires had very substantial prior dealings with both the government of the United States, and with the North Atlantic Treaty Organization, when he contacted me about these parts. I understood that my mission was to attempt to obtain various spare parts for Hawk missiles, to replace parts which had been shipped by Israel, at the instance of the United States government for shipment to Iran. Many of those Israeli-shipped parts had been rejected by Iran as defective, and replacements were necessary.

21. I was told, both orally and in writing, by Pires and his companies in Portugal and Belgium that the obtaining of necessary licenses would not be my responsibility, and I had every reason to believe (since I knew the government of the United States was largely behind the shipments of arms to Iran) that Pires, through his contacts with the United States, would stand behind that representation.

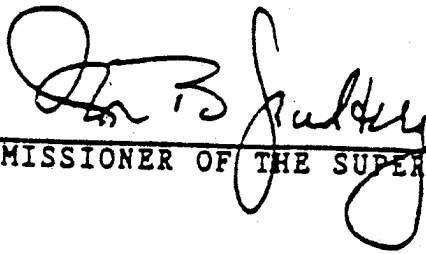
22. It seems clear to me that the Customs Service agents investigating this case and the federal prosecutors here were unaware of the government's program of arms shipments to Iran when I was arrested. I believe the above information justifies dismissal of this

case and/or referral of the matter to the United States Department of State for advice to the court.

Dated this 4<sup>th</sup> day of February, 1987 at New Haven, Connecticut.

  
ARIF DURRANI

Subscribed and sworn to before me this 4<sup>th</sup> day of February, 1987.

  
COMMISSIONER OF THE SUPERIOR COURT