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3/9/87

① Conversation w/ Holley Fitzgimmons
Chambers

4 Request

① Memo from North to P and P.

April 16 1986 440 pm

Fans
"We ~~seem~~ have a problem
on our side in that over 50
of the parts now do not
appear to be in stock"
Profs Note

② Memo from N to P
including appendix dtd
Sept 2, 1986 titled or regarding
"Next Steps with Iran"
concerns various initiatives
being pursued by the USG
to exchange arms
including Hawk missile
parts for hostages

③ Memo from N to P dtd

②

8 Sept 86 stating that
CIA has located several
unknown quantities of
thrust missile parts that
could be used in hostages
exchanges

[I have asked Mrs. F. L.
to inquire whether # 3 is a
Refs Note]

④ Memo from N to P. ind. Ld.
10 Oct 86 re "Next Steps
with Iran" and disc further
differences of thrust missile
parts by the USG

[" " " " "]
" " " " "

#

Subpoena - proposed wording
to ① All docs relating to

3/9/87

NATIONAL SECURITY COUNCIL

Paul, Attached is the motion to Q.

Van + I may have to appear in court tomorrow (Tues 3/10/87). I'll know for certain when the Judge indicates his preferences in his chambers today - hopefully by noon.

I would like to meet shortly with you, Van, and Brian at this sometime today at your convenience.

Since the search (if the subpoena is enforced in some form) would involve Presidential docs, I suggest either you or I contact the Pres. Counsel.

JOCK



U.S. Department of Justice

United States Attorney
District of Connecticut

915 Lafayette Boulevard
Bridgeport, Connecticut 06604

203/579-5596

FTS/643-4596

March 5, 1987

DHL

Jonathan Scharfen
National Security Council
Old Executive Office Building
Room 381
Washington, DC 20503

Re: Subpoena Duces Tecum in
United States v. Arif Durrani

Dear Mr. Scharfen:


As we discussed, I am enclosing copies of our memorandum and motion to quash the subpoena that was served on the National Security Council (as well as the subpoenas that were served on the CIA and State Department). As you can see, we moved to quash for failure to comply with either rule 17(c) of the Federal Rules of Criminal Procedure or the Classified Information Procedures Act, 18 U.S.C. App II.

As soon as the judge rules on our motion to quash the subpoena, we will contact you. Pursuant to our discussion, we have notified the court and the defendant that if the motion to quash is denied (thus requiring production of the documents), we will invoke the procedures of the Classified Information Procedures Act, including a pretrial hearing under section 6 to determine the use, relevance or admissibility of the information.

We will keep you advised of developments. If you have any questions, please call.

Very truly yours,

STANLEY A. TWARDY, JR.
UNITED STATES ATTORNEY


JAMES T. COWDERY
ASSISTANT UNITED STATES ATTORNEY

JTC:jlm

Enclosures

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

:

v.

: CRIMINAL NO. B-86-59(TFGD)

ARIF DURRANI

: March 4, 1987

MEMORANDUM IN SUPPORT OF
SUPPLEMENTAL MOTION TO QUASH

A. BACKGROUND

The defendant Arif Durrani has caused subpoenas duces tecum to be served upon the Acting Director of the Central Intelligence Agency (CIA); the Custodian of Records of the United States Department of State (State Department); and the Custodian of Records of the National Security Council (NSC). The subpoenas command the above individuals to appear for testimony on March 4, 1987 and to bring with them a broad range of documents (described in an Attachment A), including:

- (1) all documents regarding or naming Durrani and eleven other individuals or entities concerning their sale of military equipment to governments or individuals outside the United States;
- (2) all documents relating to or describing the involvement of the (CIA/NSC/State Department) or their employees or agents with shipments of military equipment to Iran from 1982 through February 1987;

- (3a) all documents relating to or describing the policy of the (CIA/State Department) concerning arms shipments to Iran from 1982 through February 1987;
- (3b) (NSC only) all documents regarding payment for arms shipments to Iran that in any way involved the NSC or any of its employees from 1982 through February 1987.

"Document" is broadly defined in the subpoenas to include:

any written, printed, typed, recorded, or graphic material, photographic matter, sound reproductions or computer data files, tapes, inputs or outputs, however produced or reproduced, that are now or formerly in your actual or constructive possession, custody or control.

The subpoena to the CIA ("CIA subpoena") was served in the afternoon on Friday, February 27, 1987. The subpoenas to the NSC ("NSC subpoena") and the State Department ("State Department subpoena") were served on March 2, 1987. The CIA subpoena and NSC subpoena were forwarded to this office and were received on March 3, 1987. Copies are attached to the Supplemental Motion To Quash as Exhibits A and B respectively. The State Department subpoena, which apparently is substantially identical to the CIA subpoena, will be submitted to the Court as soon as it is received.

On March 2, 1987, the Government filed a motion to quash the CIA subpoena for failure to comply with the procedures set forth in the Classified Information Procedures Act (CIPA), 18 U.S.C. App. II. Having learned of the other subpoenas and having had an

opportunity to examine the CIA and NSC subpoenas, the Government on March 4, 1987 filed a Supplemental Motion To Quash for failure of the subpoenas to satisfy the requirements of rule 17(c) of the Federal Rules of Criminal Procedure and the requirements of CIPA. The Government submits this memorandum in support of its Supplemental Motion To Quash.

**B. The Subpoenas Should Be Quashed
For Failure To Satisfy The
Requirements of Rule 17(c)**

Rule 17(c) of the Federal Rules of Criminal Procedure provides:

A subpoena may also command the persons to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

The Supreme Court has held that Rule 17(c) was not intended to broaden the limited criminal discovery provided for in Rule 16: "Rule 17(c) was not intended to provide an additional means of discovery. Its chief innovation was to expedite the trial by providing a time and place before trial for the inspection of the subpoenaed materials." Bowman Dairy Co. v. United States, 341

U.S. 214, 220 (1950). Rather, a party seeking enforcement of a subpoena duces tecum under Rule 17(c) "must clear three hurdles: (1) relevancy; (2) admissibility; (3) specificity." United States v. Nixon, 418 U.S. 683, 700 (1974).^{1/} The determination of whether the proponent has met his burden is committed to the sound discretion of the district court and will be disturbed on appeal only where the ruling was arbitrary or without support in the record. United States v. Nixon, 418 U.S. at 702; United States v. Reed, 726 F.2d 570, 577 (9th Cir. 1984); United States v. MacKey, 647 F.2d 898, 901 (9th Cir. 1981). In this case, Durrani has failed to satisfy any of the requirements.

1. Relevancy

The defendant has failed to establish that any of the materials sought will be relevant to his defense. Where the defendant fails to make this threshold showing of relevance the subpoena must be quashed. United States v. Fields, 663 F.2d 880, 881 (9th Cir. 1981) (subpoena quashed where the material's only relevancy was possible impeachment value); United States v.

¹ Where the subpoena seeks production of the documents before trial, the proponent must also demonstrate that the material is not reasonably available from any other source, is necessary for his trial preparation, and is needed in advance to avoid delaying the trial. See United States v. Nixon, 418 U.S. 683, 699 (1974), quoting United States v. Iozia, 13 F.R.D. 335, 338 (S.D.N.Y. 1952) (Weinfeld, Jr.); United States v. Eden, 659 F.2d 1376, 1381 (9th Cir. 1981), cert. denied, 455 U.S. 949 (1982).

Purin, 486 F.2d 1363, 1368 (2d Cir. 1973), cert. denied sub. nom. DiSilva v. United States, 417 U.S. 930 (1974) (subpoena quashed where the relevancy of the materials was dependent on a witness who was never called); United States v. Haldeman, 559 F.2d 31, 76 (D.C. Cir. 1976), cert. denied, 431 U.S. 933 (1977) (subpoena quashed where the defendant did not demonstrate the relevance of any requested item to his defense); United States v. Orsini, 424 F. Supp. 229, 231-32 (E.D.N.Y. 1976), aff'd, 559 F.2d 1206 (2d Cir.) cert. denied, 434 U.S. 997 (1977) (subpoena quashed where the information sought had no connection with the defendant's claim of unconstitutional mistreatment).

Thus, the Second Circuit has observed, "[U]nlike the rule in civil actions, a subpoena duces tecum in a criminal action is not intended for the purpose of discovery; the document sought must at that time meet the tests of relevancy and admissibility." United States v. Marchisio, 344 F.2d 653, 669 (2d Cir. 1965). Moreover, Rule 17(c) does not permit the proponent to inspect the subpoenaed materials to establish relevancy; such a rule would permit precisely the broad discovery and "rummaging" forbidden by the cases. See United States v. Layton, 90 F.R.D. 514, 517 (N.D. Cal. 1981).

In this case, the subpoenas seek a huge volume of broadly defined "documents" concerning subjects as general as "the

involvement of the CIA, any of its employees, or any of its agents or operatives, with shipments of military equipment to the Islamic Republic of Iran, either directly or indirectly" and "the policy of the CIA concerning arms shipments to the Islamic Republic of Iran" and "the payment for arms shipments to Iran that in any way involved the NSC or any of its employees." Durrani's only "showing" of the relevancy of this massive amount of material apparently is based upon his extremely vague claim that his activities were somehow requested by unnamed representatives of the Government. Durrani Affidavit, dated February 4, 1987. The Government strenuously denies that claim and has seen nothing to support it, and it is now unclear whether and to what extent counsel for Durrani is pressing that claim. Mere conclusory statements are insufficient to establish relevancy under Rule 17(c). United States v. Eden, 659 F.2d 1376, 1381 (9th Cir. 1981), cert. denied, 455 U.S. 949 (1982). In the absence of a more specific assertion of the claim, the documents simply are not relevant to the case. This is particularly true where, as here, a voluminous number of documents are involved and the Court will be required to balance their purported relevancy against the "danger of confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403.

2. Admissibility

Second, Durrani has failed to meet the admissibility requirement. Only those materials "admissible as evidence" are subject to a Rule 17(c) subpoena. United States v. Nixon, 418 U.S. at 700; Bowman Dairy, 341 U.S. at 221; United States v. Marchisio, 344 F.2d at 669. The defendant simply asks for a vast range of material without any showing that it would be admissible as evidence. Where the defendant fails to meet this admissibility requirement the subpoena must be quashed. United States v. Fields, 663 F.2d 880, 881 (9th Cir. 1981) (subpoena quashed where there was no explanation how the materials could be admissible as evidence other than for purposes of impeachment).

3. Specificity.

Finally, and perhaps most strikingly, Durrani's subpoenas fail to satisfy the specificity requirement. Even a hasty reading of the subpoenas reveals that the material sought is extremely nonspecific. For example, the CIA and NSC subpoenas seek "all documents" describing the agencies' "involvement. . . with shipments of military equipment" to Iran and "all documents relating to or describing the policy" of the agencies concerning arms shipments to Iran. Moreover, "document" is defined to include virtually anything. These general requests are functionally indistinguishable from the requests that were quashed

as nonspecific in a variety of cases. See United States v. Haldeman, 559 F.2d at 75 n.89 ("books, records, tape recordings, drawings, graphs, charts, photographs, phono records, and other intangible matters which refer or relate to the concealment or cover-up of the break-in to the Democratic National Headquarters"); United States v. Wencke, 604 F.2d 607, 612 (9th Cir. 1979) ("all files, records, correspondence, writings, interoffice communications, interagency communications, and reports relating to the investigation"); United States v. Layton, 90 F.R.D. 514 (N.D. Cal. 1981) ("all State Department documents concerning People's Temple activities" in a given period). In the present case, Durrani's subpoenas lack the requisite specificity and would result in his "rummaging through" the Government's files in an apparent "fishing expedition." United States v. Iozia, 13 F.R.D. at 338.

C. Durrani's Subpoenas Fail To Comply
With the Notice Requirement of CIPA

All of Durrani's subpoenas call for the production of certain "documents" that contain "classified information" within the meaning of Section 1 of the Classified Information Procedures Act (CIPA) App.II §1. Section 5(a) of the Act explicitly provides, in relevant part:

If a defendant reasonably expects to disclose
or to cause the disclosure of classified

information in any manner in connection with any trial or pretrial proceeding involving the criminal prosecution of such defendant, the defendant shall, within the time specified by the court or, where no time is specified, within thirty days prior to trial, notify the attorney for the United States and the court in writing. Such notice shall include a brief description of the classified information.

Section 5(b) provides:

If the defendant fails to comply with the requirements of subsection (a) the court may preclude disclosure of any classified information not made the subject of notification and may prohibit the examination by the defendant of any witness with respect to any such information.

Thus, a defendant who reasonably expects to cause the disclosure of classified information must give written notice of intention and must provide a brief description of the information involved. Id.; United States v. Wilson, 750 F.2d 7, 9 (2d Cir. 1984).

After proper notice is given, the Government may request the Court:

to conduct a hearing to make all determinations concerning the use, relevance or admissibility of classified information that would otherwise be made during the trial or pretrial proceeding. Upon such a request, the court shall conduct such a hearing.

18 U.S.C. App II, §6. Pursuant to section 6, the Court must "set forth in writing the basis for its determination." Moreover, where the Government's motion for a section 6 hearing is filed prior to trial, the Court must rule "prior to the commencement of the relevant proceeding" -- in this case, the trial. Id. In subsequent sections the Act sets forth numerous procedures for the handling, sealing, introduction, disclosure, security and admission into evidence of classified information, as well as the availability of protective orders in certain circumstances. Id.

§§6(b)- 6(e), 8, 9. Section 7 permits the Government in a criminal case to take an interlocutory appeal from a decision or order of the district court:

authorizing the disclosure of classified information, imposing sanctions for nondisclosure of classified information, or refusing a protective order sought by the United States to prevent the disclosure of classified information.

Id. §7.

The Senate Report succinctly summarizes the purpose of CIPA:

[The Act] provides pretrial procedures that will permit the trial judge to rule on questions of admissibility involving classified information before introduction of the evidence into open court. This procedure will permit the Government to ascertain the potential damage to national security of proceeding with a given prosecution before trial.

S. Rep. 823, 96th Cong., 2d Sess. at 1, reprinted in 1980 U.S. Code Cong. & Ad. News 4294.

The notice requirement of section 5 is, of course, the springboard for the follow-up procedures under CIPA. In United States v. Collins, 720 F.2d 1195 (11th Cir. 1983), the Court held that the "Section 5(a) notice is the central document in CIPA" id. at 1199, and "is essential to put into motion the other CIPA procedures." Id. at 1198. The notice "must be particularized, setting forth specifically the classified information which the defendant reasonably believes to be necessary to his defense." Id. at 1199. The Court therefore held inadequate a notice that

the defendant expected to reveal "activities of the U.S. Government with respect to joint Intelligence/Military operations' and "the utilization of secret overseas bank accounts to finance such operations." Id. at 1200.

Similarly, in United States v. Wilson, 721 F.2d 967, 975 (4th Cir. 1983), the Court held:

CIPA creates uniform procedures allowing a court in criminal cases to rule on the admissibility of classified information before its introduction in open court. Thus, the Government is able to ascertain whether it should proceed with a prosecution knowing the risks to national security posed by the disclosure of relevant classified information, and opportunity for "greymail" by defendants -- the threat of disclosure of unspecified classified information at trial -- is minimized.

After providing a section 5 notice, Wilson issued subpoenas duces tecum to several government agencies requesting broad production of documents. The district court quashed the subpoenas duces tecum for lack of specificity.

After conducting a section 6 hearing, the district court determined that none of the classified information was relevant or material to the issues in the case. Ultimately, the district court allowed Wilson "to present his defense that he was working for the United States in an undercover capacity in Libya, and to call witnesses to corroborate this claim, so long as none of the

classified information determined to be irrelevant would be disclosed thereby." Id. at 975. The Fourth Circuit affirmed the district court's ruling over Wilson's claims that CIPA was unconstitutionally vague, deprived him of his right to confront witnesses or mount an effective defense, and deprived him of his privilege against self-incrimination. Id. at 976.

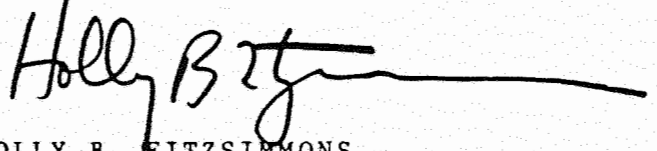
In this case, Durrani has filed no section 5(a) notice whatsoever. As a result, the entire procedural mechanism of CIPA has not been "put into motion." United States v. Wilson, 720 F.2d at 1198. The Government does advise the Court and counsel that it reserves the right under CIPA to seek a section 6 hearing as well as the other applicable procedures of the Act in the event that a section 5(a) notice is given.

CONCLUSION

For all of the foregoing reasons, the Supplemental Motion To Quash should be granted.

Respectfully submitted,

STANLEY A. TWARDY, JR.
UNITED STATES ATTORNEY

A handwritten signature in black ink, appearing to read "Holly B. Fitzsimmons", followed by a long horizontal line extending to the right.

HOLLY B. FITZSIMMONS
ASSISTANT UNITED STATES ATTORNEY
U. S. Courthouse & Federal Bldg.
915 Lafayette Boulevard
Bridgeport, Connecticut 06604

C E R T I F I C A T I O N

This is to certify that the within and foregoing Government's Memorandum in Support of Supplemental Motion to Quash was hand delivered this 4th day of March 1987 to:

Ira Grudberg, Esquire

William M. Bloss, Esquire

Jacobs, Grudberg, Belt & Dow P.C.

350 Orange Street

New Haven, Connecticut 06510


HOLLY B. FITZSIMMONS

ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

ARIF DURRANI

:

: CRIMINAL NO. B-86-59(TFGD)

: March 4, 1987

SUPPLEMENTAL MOTION TO
QUASH SUBPOENAS DUCES TECUM

The Government files this Supplemental Motion to quash the following subpoenas served on behalf of the defendant in this case:

- (a) Subpoena Duces Tecum served on the Acting Director of the Central Intelligence Agency (CIA);
- (b) Subpoena Duces Tecum served on the Custodian of Records of the National Security Council (NSC);
- (c) Subpoena Duces Tecum served on the Custodian of Records of the United States Department of State (State Department).

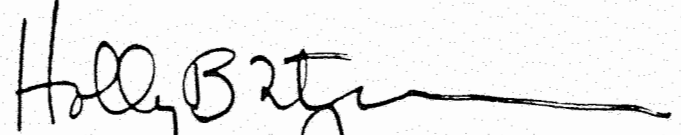
Copies of the subpoenas served upon the CIA and the NSC are attached hereto as Exhibits A and B respectively. The subpoena served upon the State Department has not been received by this office, but the Government is advised that it is substantially identical to the subpoena served upon the CIA. The

Government moves to quash all three subpoenas on the grounds that they fail to comply with the requirements of Rule 17(c) of the Federal Rules of Criminal Procedure and the Classified Information Procedures Act, 18 U.S.C. App.2.

In support of this motion, the Government submits the accompanying Memorandum of Law.

Respectfully submitted,

STANLEY A. TWARDY, JR.
UNITED STATES ATTORNEY

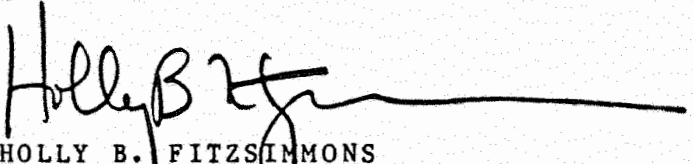
A handwritten signature in black ink, appearing to read "Holly B. Fitzsimmons", with a long horizontal flourish extending to the right.

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ASSISTANT UNITED STATES ATTORNEY
U.S. Courthouse & Federal Bldg.
915 Lafayette Boulevard
Bridgeport, Connecticut 06604

C E R T I F I C A T I O N

This is to certify that the within and forgoing Government's Supplemental Motion To Quash Subpoenas Duces Tecum was hand delivered this 4th day of March 1987 to:

Ira Grudberg, Esquire
William M. Bloss, Esquire
Jacobs, Grudberg, Belt & Dow P.C.
350 Orange Street
New Haven, Connecticut 06510


HOLLY B. FITZSIMMONS
ASSISTANT UNITED STATES ATTORNEY

United States District Court

General Counsel

87-00747

DISTRICT OF

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

V.

SUBPOENA

ARIF DURRANI

CASE NUMBER: CRIM. B-86-59 (TFGD)

TYPE OF CASE

☐ CIVIL☒ CRIMINAL

SUBPOENA FOR

☒ PERSON☒ DOCUMENT(S) or OBJECT(S)

TO: Acting Director
 Central Intelligence Agency
 c/o Office of the General Counsel
 1500 West Branch Drive
 McLean, Virginia

YOU ARE HEREBY COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE

United States District Court
 915 Lafayette Boulevard
 Bridgeport, Connecticut 06604

COURTROOM

Fourth Floor

DATE AND TIME

March 4, 1987, at 9:30 a

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s): *

See Attachment A

SERVICE ACCEPTED
 IN OFFICIAL CAPACITY OF

David Salerni
 2/27/87

☐ See additional information on reverse

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE OR CLERK OF COURT

IRVING S. BONE

DATE

2/24/87

(BY) DEPUTY CLERK

Sharon Collins

This subpoena is issued upon application of the:

☐ Plaintiff☒ Defendant☐ U.S. Attorney

QUESTIONS MAY BE ADDRESSED TO:

Ira B. Grudberg, Esq.
 Jacobs, Grudberg, Belt & Dow
 350 Orange Street
 New Haven, CT 06503 (203) 772-3100
 ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER

EXHIBIT A

EXHIBIT A

(1) All documents regarding or naming the following individuals or entities and concerning the sale of military equipment to governments or individuals outside the United States: Arif A. Durrani, of California; Manual Pires, of Lisbon, Portugal; Willy de Grief, of Brussels, Belgium; George Hassan, of Lisbon, Portugal; Richard Secord, of California; Albert Hakim, of California; Advance Technology, Inc., of Wilmington, Delaware; Radio Research, Inc., of Danbury, Connecticut; Kram, Ltd., of Belgium; Risenvest, of Belgium; and Rutland Trading, of Belgium.

(2) All documents relating to or describing the involvement of the Central Intelligence Agency, any of its employees, or any of its agents or operatives, with shipments of military equipment to the Islamic Republic of Iran, either directly or indirectly from 1982 through February 1987.

(3) All documents relating to or describing the policy of the Central Intelligence Agency concerning arms shipments to the Islamic Republic of Iran from 1982 through February 1987.

Definition: As used above, "documents" includes any written, printed, typed, recorded, or graphic material, photographic matter, sound reproductions or computer data files, tapes, inputs or outputs, however produced or reproduced, that are now or formerly in your actual or constructive possession, custody or control.

AD-88 (REV. 5-1-85)

United States District Court

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

V.

SUBPOENA

ARIF DURRANI

CASE NUMBER: CRIM. B-86-59 (TFGD)

TYPE OF CASE

☐ CIVIL

☒ CRIMINAL

SUBPOENA FOR

☐ PERSON

☒ DOCUMENT(S) or OBJECT(S)

TO:

Custodian of Records
National Security Council
c/o Administrative Office
Old Executive Office Building, Room 397
17th and Pennsylvania Aves., N.W.
Washington, D.C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE

United States District Court
915 Lafayette Boulevard
Bridgeport, Connecticut 06604

COURTROOM

Fourth Floor

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☐ See additional information on reverse

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U.S. MAGISTRATE OR CLERK OF COURT

NEVIN T. ROWE

(BY) DEPUTY CLERK

Sharon Collins

DATE

2/24/87

This subpoena is issued upon application of the:

☐ Plaintiff

☒ Defendant

☐ U.S. Attorney

QUESTIONS MAY BE ADDRESSED TO:

Ira B. Grudberg, Esq.
Jacobs, Grudberg, Belt & Dow
350 Orange Street
New Haven, CT 06503 (203) 772-3100

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER

ATTACHMENT A

(1) All documents regarding or naming the following individuals or entities and concerning the sale of military equipment to governments or individuals outside the United States: Arif Durrani, of California; Manuel Pires, of Lisbon, Portugal; Willy de Grief, of Brussels, Belgium; Howard Koser, of Washington; George Hassan, of Lisbon, Portugal; Richard Secord, of California; Albert Hakim, of California; Advance Technology, Inc., of Wilmington, Delaware; Varian Associates, of California; Radio Research, Inc., of Danbury, Connecticut; Kram, Ltd., of Belgium; Risenvest, of Belgium; and Rutland Trading, of Belgium.

(2) All documents relating to or describing the involvement of the National Security Council or any of its employees with shipments of military equipment to the Islamic Republic of Iran, either directly or indirectly, from 1982 through February 1987.

(3) All documents regarding payment for arms shipments to Iran that in any way involved the National Security Council or any of its employees, from 1982 through February, 1987.

Definition: As used above, "documents" include any written, printed, typed, recorded, or graphic material, photographic matter, sound reproductions or computer data files, tapes, inputs or outputs, however produced or reproduced that are now or formerly in your actual or constructive possession, custody or control.



U.S. Department of Justice

United States Attorney
District of Connecticut

915 Lafayette Boulevard
Bridgeport, Connecticut 06604

203/579-5596

FTS/643-4596

March 5, 1987

DHL

Jonathan Scharfen
National Security Council
Old Executive Office Building
Room 381
Washington, DC 20503

Re: Subpoena Duces Tecum in
United States v. Arif Durrani

Dear Mr. Scharfen:

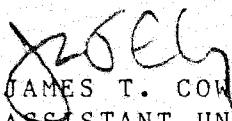
As we discussed, I am enclosing copies of our memorandum and motion to quash the subpoena that was served on the National Security Council (as well as the subpoenas that were served on the CIA and State Department). As you can see, we moved to quash for failure to comply with either rule 17(c) of the Federal Rules of Criminal Procedure or the Classified Information Procedures Act, 18 U.S.C. App II.

As soon as the judge rules on our motion to quash the subpoena, we will contact you. Pursuant to our discussion, we have notified the court and the defendant that if the motion to quash is denied (thus requiring production of the documents), we will invoke the procedures of the Classified Information Procedures Act, including a pretrial hearing under section 6 to determine the use, relevance or admissibility of the information.

We will keep you advised of developments. If you have any questions, please call.

Very truly yours,

STANLEY A. TWARDY, JR.
UNITED STATES ATTORNEY


JAMES T. COWDERY
ASSISTANT UNITED STATES ATTORNEY

JTC:jlm

Enclosures

UNITED STATES DISTRICT COURT,

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

:

v.

: CRIMINAL NO. B-86-59(TFGD)

ARIF DURRANI

: March 4, 1987

MEMORANDUM IN SUPPORT OF
SUPPLEMENTAL MOTION TO QUASH

A. BACKGROUND

The defendant Arif Durrani has caused subpoenas duces tecum to be served upon the Acting Director of the Central Intelligence Agency (CIA); the Custodian of Records of the United States Department of State (State Department); and the Custodian of Records of the National Security Council (NSC). The subpoenas command the above individuals to appear for testimony on March 4, 1987 and to bring with them a broad range of documents (described in an Attachment A), including:

- (1) all documents regarding or naming Durrani and eleven other individuals or entities concerning their sale of military equipment to governments or individuals outside the United States;
- (2) all documents relating to or describing the involvement of the (CIA/NSC/State Department) or their employees or agents with shipments of military equipment to Iran from 1982 through February 1987;

- (3a) all documents relating to or describing the policy of the (CIA/State Department) concerning arms shipments to Iran from 1982 through February 1987;
- (3b) (NSC only) all documents regarding payment for arms shipments to Iran that in any way involved the NSC or any of its employees from 1982 through February 1987.

"Document" is broadly defined in the subpoenas to include:

any written, printed, typed, recorded, or graphic material, photographic matter, sound reproductions or computer data files, tapes, inputs or outputs, however produced or reproduced, that are now or formerly in your actual or constructive possession, custody or control.

The subpoena to the CIA ("CIA subpoena") was served in the afternoon on Friday, February 27, 1987. The subpoenas to the NSC ("NSC subpoena") and the State Department ("State Department subpoena") were served on March 2, 1987. The CIA subpoena and NSC subpoena were forwarded to this office and were received on March 3, 1987. Copies are attached to the Supplemental Motion To Quash as Exhibits A and B respectively. The State Department subpoena, which apparently is substantially identical to the CIA subpoena, will be submitted to the Court as soon as it is received.

On March 2, 1987, the Government filed a motion to quash the CIA subpoena for failure to comply with the procedures set forth in the Classified Information Procedures Act (CIPA), 18 U.S.C. App. II. Having learned of the other subpoenas and having had an

opportunity to examine the CIA and NSC subpoenas, the Government on March 4, 1987 filed a Supplemental Motion To Quash for failure of the subpoenas to satisfy the requirements of rule 17(c) of the Federal Rules of Criminal Procedure and the requirements of CIPA. The Government submits this memorandum in support of its Supplemental Motion To Quash.

**B. The Subpoenas Should Be Quashed
For Failure To Satisfy The
Requirements of Rule 17(c)**

Rule 17(c) of the Federal Rules of Criminal Procedure provides:

A subpoena may also command the persons to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

The Supreme Court has held that Rule 17(c) was not intended to broaden the limited criminal discovery provided for in Rule 16: "Rule 17(c) was not intended to provide an additional means of discovery. Its chief innovation was to expedite the trial by providing a time and place before trial for the inspection of the subpoenaed materials." Bowman Dairy Co. v. United States, 341

U.S. 214, 220 (1950). Rather, a party seeking enforcement of a subpoena duces tecum under Rule 17(c) "must clear three hurdles: (1) relevancy; (2) admissibility; (3) specificity." United States v. Nixon, 418 U.S. 683, 700 (1974).^{1/} The determination of whether the proponent has met his burden is committed to the sound discretion of the district court and will be disturbed on appeal only where the ruling was arbitrary or without support in the record. United States v. Nixon, 418 U.S. at 702; United States v. Reed, 726 F.2d 570, 577 (9th Cir. 1984); United States v. MacKey, 647 F.2d 898, 901 (9th Cir. 1981). In this case, Durrani has failed to satisfy any of the requirements.

1. Relevancy

The defendant has failed to establish that any of the materials sought will be relevant to his defense. Where the defendant fails to make this threshold showing of relevance the subpoena must be quashed. United States v. Fields, 663 F.2d 880, 881 (9th Cir. 1981) (subpoena quashed where the material's only relevancy was possible impeachment value); United States v.

¹ Where the subpoena seeks production of the documents before trial, the proponent must also demonstrate that the material is not reasonably available from any other source, is necessary for his trial preparation, and is needed in advance to avoid delaying the trial. See United States v. Nixon, 418 U.S. 683, 699 (1974), quoting United States v. Iozia, 13 F.R.D. 335, 338 (S.D.N.Y. 1952) (Weinfeld, Jr.); United States v. Eden, 659 F.2d 1376, 1381 (9th Cir. 1981), cert. denied, 455 U.S. 949 (1982).

Purin, 486 F.2d 1363, 1368 (2d Cir. 1973), cert. denied sub. nom. DiSilva v. United States, 417 U.S. 930 (1974) (subpoena quashed where the relevancy of the materials was dependent on a witness who was never called); United States v. Haldeman, 559 F.2d 31, 76 (D.C. Cir. 1976), cert. denied, 431 U.S. 933 (1977) (subpoena quashed where the defendant did not demonstrate the relevance of any requested item to his defense); United States v. Orsini, 424 F. Supp. 229, 231-32 (E.D.N.Y. 1976), aff'd, 559 F.2d 1206 (2d Cir.) cert. denied, 434 U.S. 997 (1977) (subpoena quashed where the information sought had no connection with the defendant's claim of unconstitutional mistreatment).

Thus, the Second Circuit has observed, "[U]nlike the rule in civil actions, a subpoena duces tecum in a criminal action is not intended for the purpose of discovery; the document sought must at that time meet the tests of relevancy and admissibility." United States v. Marchisio, 344 F.2d 653, 669 (2d Cir. 1965). Moreover, Rule 17(c) does not permit the proponent to inspect the subpoenaed materials to establish relevancy; such a rule would permit precisely the broad discovery and "rummaging" forbidden by the cases. See United States v. Layton, 90 F.R.D. 514, 517 (N.D. Cal. 1981).

In this case, the subpoenas seek a huge volume of broadly defined "documents" concerning subjects as general as "the

involvement of the CIA, any of its employees, or any of its agents or operatives, with shipments of military equipment to the Islamic Republic of Iran, either directly or indirectly" and "the policy of the CIA concerning arms shipments to the Islamic Republic of Iran" and "the payment for arms shipments to Iran that in any way involved the NSC or any of its employees." Durrani's only "showing" of the relevancy of this massive amount of material apparently is based upon his extremely vague claim that his activities were somehow requested by unnamed representatives of the Government. Durrani Affidavit, dated February 4, 1987. The Government strenuously denies that claim and has seen nothing to support it, and it is now unclear whether and to what extent counsel for Durrani is pressing that claim. Mere conclusory statements are insufficient to establish relevancy under Rule 17(c). United States v. Eden, 659 F.2d 1376, 1381 (9th Cir. 1981), cert. denied, 455 U.S. 949 (1982). In the absence of a more specific assertion of the claim, the documents simply are not relevant to the case. This is particularly true where, as here, a voluminous number of documents are involved and the Court will be required to balance their purported relevancy against the "danger of confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403.

2. Admissibility

Second, Durrani has failed to meet the admissibility requirement. Only those materials "admissible as evidence" are subject to a Rule 17(c) subpoena. United States v. Nixon, 418 U.S. at 700; Bowman Dairy, 341 U.S. at 221; United States v. Marchisio, 344 F.2d at 669. The defendant simply asks for a vast range of material without any showing that it would be admissible as evidence. Where the defendant fails to meet this admissibility requirement the subpoena must be quashed. United States v. Fields, 663 F.2d 880, 881 (9th Cir. 1981) (subpoena quashed where there was no explanation how the materials could be admissible as evidence other than for purposes of impeachment).

3. Specificity.

Finally, and perhaps most strikingly, Durrani's subpoenas fail to satisfy the specificity requirement. Even a hasty reading of the subpoenas reveals that the material sought is extremely nonspecific. For example, the CIA and NSC subpoenas seek "all documents" describing the agencies' "involvement. . . with shipments of military equipment" to Iran and "all documents relating to or describing the policy" of the agencies concerning arms shipments to Iran. Moreover, "document" is defined to include virtually anything. These general requests are functionally indistinguishable from the requests that were quashed

as nonspecific in a variety of cases. See United States v. Haldeman, 559 F.2d at 75 n.89 ("books, records, tape recordings, drawings, graphs, charts, photographs, phono records, and other intangible matters which refer or relate to the concealment or cover-up of the break-in to the Democratic National Headquarters"); United States v. Wencke, 604 F.2d 607, 612 (9th Cir. 1979) ("all files, records, correspondence, writings, interoffice communications, interagency communications, and reports relating to the investigation"); United States v. Layton, 90 F.R.D. 514 (N.D. Cal. 1981) ("all State Department documents concerning People's Temple activities" in a given period). In the present case, Durrani's subpoenas lack the requisite specificity and would result in his "rummaging through" the Government's files in an apparent "fishing expedition." United States v. Iozia, 13 F.R.D. at 338.

C. Durrani's Subpoenas Fail To Comply
With the Notice Requirement of CIPA

All of Durrani's subpoenas call for the production of certain "documents" that contain "classified information" within the meaning of Section 1 of the Classified Information Procedures Act (CIPA) App.II §1. Section 5(a) of the Act explicitly provides, in relevant part:

If a defendant reasonably expects to disclose
or to cause the disclosure of classified

information in any manner in connection with any trial or pretrial proceeding involving the criminal prosecution of such defendant, the defendant shall, within the time specified by the court or, where no time is specified, within thirty days prior to trial, notify the attorney for the United States and the court in writing. Such notice shall include a brief description of the classified information.

Section 5(b) provides:

If the defendant fails to comply with the requirements of subsection (a) the court may preclude disclosure of any classified information not made the subject of notification and may prohibit the examination by the defendant of any witness with respect to any such information.

Thus, a defendant who reasonably expects to cause the disclosure of classified information must give written notice of intention and must provide a brief description of the information involved. Id.; United States v. Wilson, 750 F.2d 7, 9 (2d Cir. 1984).

After proper notice is given, the Government may request the Court:

to conduct a hearing to make all determinations concerning the use, relevance or admissibility of classified information that would otherwise be made during the trial or pretrial proceeding. Upon such a request, the court shall conduct such a hearing.

18 U.S.C. App II, §6. Pursuant to section 6, the Court must "set forth in writing the basis for its determination." Moreover, where the Government's motion for a section 6 hearing is filed prior to trial, the Court must rule "prior to the commencement of the relevant proceeding" -- in this case, the trial. Id. In subsequent sections the Act sets forth numerous procedures for the handling, sealing, introduction, disclosure, security and admission into evidence of classified information, as well as the availability of protective orders in certain circumstances. Id.

§§6(b)- 6(e), 8, 9. Section 7 permits the Government in a criminal case to take an interlocutory appeal from a decision or order of the district court:

authorizing the disclosure of classified information, imposing sanctions for nondisclosure of classified information, or refusing a protective order sought by the United States to prevent the disclosure of classified information.

Id. §7.

The Senate Report succinctly summarizes the purpose of CIPA:

[The Act] provides pretrial procedures that will permit the trial judge to rule on questions of admissibility involving classified information before introduction of the evidence into open court. This procedure will permit the Government to ascertain the potential damage to national security of proceeding with a given prosecution before trial.

S. Rep. 823, 96th Cong., 2d Sess. at 1, reprinted in 1980 U.S. Code Cong. & Ad. News 4294.

The notice requirement of section 5 is, of course, the springboard for the follow-up procedures under CIPA. In United States v. Collins, 720 F.2d 1195 (11th Cir. 1983), the Court held that the "Section 5(a) notice is the central document in CIPA" id. at 1199, and "is essential to put into motion the other CIPA procedures." Id. at 1198. The notice "must be particularized, setting forth specifically the classified information which the defendant reasonably believes to be necessary to his defense." Id. at 1199. The Court therefore held inadequate a notice that

the defendant expected to reveal "activities of the U.S. Government with respect to joint Intelligence/Military operations' and "the utilization of secret overseas bank accounts to finance such operations." Id. at 1200.

Similarly, in United States v. Wilson, 721 F.2d 967, 975 (4th Cir. 1983), the Court held:

CIPA creates uniform procedures allowing a court in criminal cases to rule on the admissibility of classified information before its introduction in open court. Thus, the Government is able to ascertain whether it should proceed with a prosecution knowing the risks to national security posed by the disclosure of relevant classified information, and opportunity for "greymail" by defendants -- the threat of disclosure of unspecified classified information at trial -- is minimized.

After providing a section 5 notice, Wilson issued subpoenas duces tecum to several government agencies requesting broad production of documents. The district court quashed the subpoenas duces tecum for lack of specificity.

After conducting a section 6 hearing, the district court determined that none of the classified information was relevant or material to the issues in the case. Ultimately, the district court allowed Wilson "to present his defense that he was working for the United States in an undercover capacity in Libya, and to call witnesses to corroborate this claim, so long as none of the

classified information determined to be irrelevant would be disclosed thereby." Id. at 975. The Fourth Circuit affirmed the district court's ruling over Wilson's claims that CIPA was unconstitutionally vague, deprived him of his right to confront witnesses or mount an effective defense, and deprived him of his privilege against self-incrimination. Id. at 976.

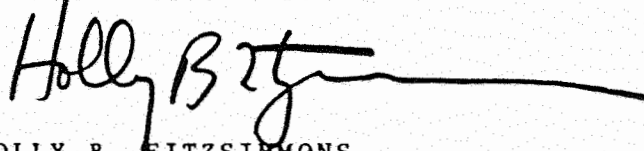
In this case, Durrani has filed no section 5(a) notice whatsoever. As a result, the entire procedural mechanism of CIPA has not been "put into motion." United States v. Wilson, 720 F.2d at 1198. The Government does advise the Court and counsel that it reserves the right under CIPA to seek a section 6 hearing as well as the other applicable procedures of the Act in the event that a section 5(a) notice is given.

CONCLUSION

For all of the foregoing reasons, the Supplemental Motion To Quash should be granted.

Respectfully submitted,

STANLEY A. TWARDY, JR.
UNITED STATES ATTORNEY

A handwritten signature in black ink, appearing to read "Holly B. Fitzsimmons", with a long horizontal flourish extending to the right.

HOLLY B. FITZSIMMONS
ASSISTANT UNITED STATES ATTORNEY
U. S. Courthouse & Federal Bldg.
915 Lafayette Boulevard
Bridgeport, Connecticut 06604

C E R T I F I C A T I O N

This is to certify that the within and foregoing Government's Memorandum in Support of Supplemental Motion to Quash was hand delivered this 4th day of March 1987 to:

Ira Grudberg, Esquire

William M. Bloss, Esquire

Jacobs, Grudberg, Belt & Dow P.C.

350 Orange Street

New Haven, Connecticut 06510


HOLLY B. FITZSIMMONS

ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

ARIF DURRANI

: CRIMINAL NO. B-86-59(TFGD)

: March 4, 1987

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SUPPLEMENTAL MOTION TO
QUASH SUBPOENAS DUCES TECUM

The Government files this Supplemental Motion to quash the following subpoenas served on behalf of the defendant in this case:

- (a) Subpoena Duces Tecum served on the Acting Director of the Central Intelligence Agency (CIA);
- (b) Subpoena Duces Tecum served on the Custodian of Records of the National Security Council (NSC);
- (c) Subpoena Duces Tecum served on the Custodian of Records of the United States Department of State (State Department).

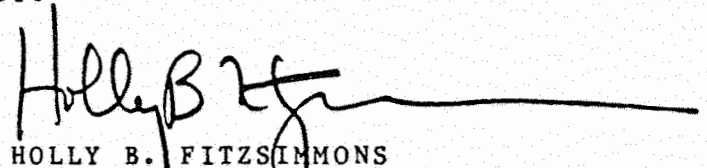
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Copies of the subpoenas served upon the CIA and the NSC are attached hereto as Exhibits A and B respectively. The subpoena served upon the State Department has not been received by this office, but the Government is advised that it is substantially identical to the subpoena served upon the CIA. The

C E R T I F I C A T I O N

This is to certify that the within and forgoing Government's Supplemental Motion To Quash Subpoenas Duces Tecum was hand delivered this 4th day of March 1987 to:

Ira Grudberg, Esquire
William M. Bloss, Esquire
Jacobs, Grudberg, Belt & Dow P.C.
350 Orange Street
New Haven, Connecticut 06510


HOLLY B. FITZSIMMONS
ASSISTANT UNITED STATES ATTORNEY

United States District Court

General Counsel

87-00747

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

V.

SUBPOENA

ARIF DURRANI

CASE NUMBER: CRIM. B-86-59 (TFGD)

TYPE OF CASE

☐ CIVIL☒ CRIMINAL

SUBPOENA FOR

☒ PERSON☒ DOCUMENT(S) or OBJECT(S)

TO: Acting Director
 Central Intelligence Agency
 c/o Office of the General Counsel
 1500 West Branch Drive
 McLean, Virginia

YOU ARE HEREBY COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE

United States District Court
 915 Lafayette Boulevard
 Bridgeport, Connecticut 06604

COURTROOM

Fourth Floor

DATE AND TIME

March 4, 1987, at 9:30 a

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s): *

See Attachment A

SERVICE ACCEPTED
 IN OFFICIAL CAPACITY

David Salerni
 2/27/87

☐ See additional information on reverse

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE OR CLERK OF COURT

IRVING E. HONE

DATE

2/24/87

(BY) DEPUTY CLERK

Sharon Collins

This subpoena is issued upon application of the:

☐ Plaintiff☒ Defendant☐ U.S. Attorney

QUESTIONS MAY BE ADDRESSED TO:

Ira B. Grudberg, Esq.
 Jacobs, Grudberg, Belt & Dow
 350 Orange Street
 New Haven, CT 06503 (203) 772-3100
 ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER

EXHIBIT A

EXHIBIT A

(1) All documents regarding or naming the following individuals or entities and concerning the sale of military equipment to governments or individuals outside the United States: Arif A. Durrani, of California; Manual Pires, of Lisbon, Portugal; Willy de Grief, of Brussels, Belgium; George Hassan, of Lisbon, Portugal; Richard Secord, of California; Albert Hakim, of California; Advance Technology, Inc., of Wilmington, Delaware; Radio Research, Inc., of Danbury, Connecticut; Kram, Ltd., of Belgium; Risenvest, of Belgium; and Rutland Trading, of Belgium.

(2) All documents relating to or describing the involvement of the Central Intelligence Agency, any of its employees, or any of its agents or operatives, with shipments of military equipment to the Islamic Republic of Iran, either directly or indirectly from 1982 through February 1987.

(3) All documents relating to or describing the policy of the Central Intelligence Agency concerning arms shipments to the Islamic Republic of Iran from 1982 through February 1987.

Definition: As used above, "documents" includes any written, printed, typed, recorded, or graphic material, photographic matter, sound reproductions or computer data files, tapes, inputs or outputs, however produced or reproduced, that are now or formerly in your actual or constructive possession, custody or control.

United States District Court

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

V.

SUBPOENA

ARIF DURRANI

CASE NUMBER: CRIM. B-86-59 (TFGD)

TYPE OF CASE

☐ CIVIL☒ CRIMINAL

SUBPOENA FOR

☒ PERSON☒ DOCUMENT(S) or OBJECT(S)

TO:

Custodian of Records
National Security Council
c/o Administrative Office
Old Executive Office Building, Room 397
17th and Pennsylvania Aves., N.W.
Washington, D.C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE

United States District Court
915 Lafayette Boulevard
Bridgeport, Connecticut 06604

COURTROOM

Fourth Floor

DATE AND TIME

March 4, 1987,
at 9:30 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s): *

See Attachment A

☐ See additional information on reverse

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE OR CLERK OF COURT

KEVIN F. BONE

DATE

2/24/87

(BY) DEPUTY CLERK

Sharon Collins

This subpoena is issued upon application of the:

☐ Plaintiff☒ Defendant☐ U.S. Attorney

QUESTIONS MAY BE ADDRESSED TO:

Ira B. Grudberg, Esq.
Jacobs, Grudberg, Belt & Dow
350 Orange Street
New Haven, CT 06503 (203) 772-310

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER

SERVED ON (NAME)

FEES AND MILEAGE TENDERED TO WITNESS(2)

☐ YES ☐ NO AMOUNT \$ _____

SERVED BY

TITLE

STATEMENT OF SERVICE FEES

DECLARATION OF SERVER (2)

Executed on _____
Date

Signature of Server

Address of Server

ADDITIONAL INFORMATION

(2) As to who may serve a subpoena and the manner of its service see Rule 17(d), Federal Rules of Criminal Procedure, or Rule 45(c), Federal Rules of Civil Procedure.

(2) "Fees and mileage need not be tendered to the deponent upon service of a subpoena issued on behalf of the United States or an officer or agency thereof (Rule 45(c), Federal Rules of Civil Procedure; Rule 17(d), Federal Rules of Criminal Procedure) or on behalf of certain indigent parties and criminal defendants who are unable to pay such costs (28 USC 1825, Rule 17(b) Federal Rules of Criminal Procedure)".

ATTACHMENT A

(1) All documents regarding or naming the following individuals or entities and concerning the sale of military equipment to governments or individuals outside the United States: Arif Durrani, of California; Manuel Pires, of Lisbon, Portugal; Willy de Grief, of Brussels, Belgium; Howard Koser, of Washington; George Hassan, of Lisbon, Portugal; Richard Secord, of California; Albert Hakim, of California; Advance Technology, Inc., of Wilmington, Delaware; Varian Associates, of California; Radio Research, Inc., of Danbury, Connecticut; Kram, Ltd., of Belgium; Risenvest, of Belgium; and Rutland Trading, of Belgium.

(2) All documents relating to or describing the involvement of the National Security Council or any of its employees with shipments of military equipment to the Islamic Republic of Iran, either directly or indirectly, from 1982 through February 1987.

(3) All documents regarding payment for arms shipments to Iran that in any way involved the National Security Council or any of its employees, from 1982 through February, 1987.

Definition: As used above, "documents" include any written, printed, typed, recorded, or graphic material, photographic matter, sound reproductions or computer data files, tapes, inputs or outputs, however produced or reproduced that are now or formerly in your actual or constructive possession, custody or control.