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U.S. Department of Justice

United States Attorney
District of Connecticut

915 Lafayette Boulevard
Bridgeport, Connecticut 06604

203/579-5596
FTS/643-4596

July 9, 1987

Mr. Jonathan Scharfen
National Security Council
Old Executive Office Building
Room 381
Washington, D.C. 20503

Re: United States v. Arif Durrani
Criminal No. B-86-59(TFGD)

Dear Jock:

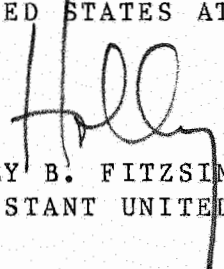
I am writing to thank you again for all the assistance you provided in the Durrani case. As you know, Durrani was sentenced on May 13, 1987 to a total effective sentence of ten years' imprisonment and a \$2 million fine. A copy of the Chief Judge's sentencing remarks is enclosed, along with his final ruling on the Motion to Quash.

Your help on the issues surrounding the subpoenas and your efforts in locating information and identifying Mike Sneddon as a potential rebuttal witness concerning Lt. Col. North's whereabouts were a substantial contribution to the case.

I very much appreciated the efforts you devoted to helping us out and hope to have a chance to work with you again.

Very truly yours,

STANLEY A. TWARDY, JR.
UNITED STATES ATTORNEY


HOLLY B. FITZSIMMONS
ASSISTANT UNITED STATES ATTORNEY

HBf:lad

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

U.S. DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, :

v. :

Criminal No. B-86-59 (TFGD)

ARIF DURRANI. :

RULING ON GOVERNMENT'S MOTION TO QUASH

The defendant in the above-captioned matter, Arif Durrani, has been charged in a three-count indictment with the unlicensed exportation of various defense articles, including Hawk missile system parts, and with engaging in the business of exporting such articles without the proper registration, in violation of the Arms Export Control Act, 22 U.S.C. § 2778, as well as regulatory provisions promulgated under that act. The Court assumes familiarity with previous rulings in this matter.

On what was practically the eve of trial, defense counsel caused subpoenae duces tecum to be issued and served upon the Acting Director of the Central Intelligence Agency, the Custodian of Records of the National Security Council, and the Custodian of Records of the United States Department of State 1/. Attached to each of the subpoenae is a rider (identified as

1 either "Attachment A" or "Exhibit A"), which consists of a list
2 of "documents" sought by the defendant. The substance of the
3 subpoenae and riders are set forth in the margin 2/.

4 It is the defendant's assertion that the production of
5 these "documents" is necessary for him effectively to present
6 his defense at trial. In short, Durrani's most recent defense
7 theory is one in which he claims exclusion from those sections
8 of the Arms Export Control Act which he is charged with
9 violating because he was acting on behalf of the United States
10 government 3/.

11 The government promptly moved to quash the subpoenae for
12 the defendant's failure to comply with the requirements of
13 either Fed. R. Crim. P. 17(c)(i.e., overbreadth, and the lack of
14 relevancy, admissibility, or specificity of the lists of items
15 sought), or with the notice requirements of the Classified
16 Information Procedures Act (CIPA), 18 U.S.C. App. IV § 5. Jury
17 selection was then continued on consent of the parties until
18 further order of the Court (see Order entered March 6, 1987),
19 and hearings were held during the week of March 9.

20 Through the course of the hearings it became apparent
21 through the affidavits and testimony of representatives of each
22 agency that was served with a subpoena, that there existed some
23 difficulty in retrieving the items sought. The source of the
24 difficulty included the lack of manpower to search through
25 voluminous and disorganized filing systems that lacked any sort
26 of an effective index, an inordinate number of document requests
precipitated by the investigations of "Iranscam," security

classifications for some documents (notwithstanding the
1 nonexistence of some of the documents). Also during those
2 hearings and by way of supplemental memoranda, the defendant
3 submitted several modifications of the original subpoenae sub
4 judice. One of the first such modifications limited, facially
5 at least, the temporal and subject matter scope of the subpoenae
6 4/. Subsequently, on March 9, Durrani again offered to modify
7 the subpoenae by providing what he suggested was a "narrow" list
8 of documents that he sought from the NSC and CIA. See
9 Supplemental Mem. in Response to Government's Motion to Quash,
10 March 9, 1987. At the hearing on the motion to quash, the
11 government consented to produce for the review of the Court
12 those documents on the list that were available. The government
13 represented that most of those documents were classified. As to
14 the documents that appear on that supplemental list, the
15 government's motion has been withdrawn. Transcript (Tr.) March
16 9, 1987 at 24; Tr. March 10, 1987, at 45 5/ .

17 On March 11, 1987, the Court issued a preliminary ruling on
18 the motion to quash. The following opinion provides the basis
19 of that ruling and applies to the subpoenae and not to the lists
20 of documents in defendant's Supplemental memorandum of March 9.

21
22 Rule 17(c) of the Federal Rules of Criminal Procedure
23 provides, as a discretionary matter, that a Court "may" direct
24 the production prior to trial of "books, papers, documents or
25 objects designated" in the subpoena, and upon their production
26 "may" permit their inspection. The purpose of the rule is not to

provide an additional means of discovery, but 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 (1951)(emphasis in original). Before production and inspection will be compelled, the burden rests with the defendant to establish good cause, and that the application "is made in good faith and is not intended as a general fishing expedition." United States v. Iozia, 13 F.R.D. 335, 338 (S.D.N.Y. 1952)(Weinfeld, J.), cited with approval in, United States v. Nixon, 418 U.S. 683, 689 (1974). Generally, good cause requires a showing of relevance, admissibility, and specificity. See, e.g., Nixon, 418 U.S. at 700. As the Court held in the preliminary ruling, the defendant's proffer and arguments were not sufficient to meet the required burden.

RELEVANCE

Basically, the allegations in the indictment present for trial the issue of whether Durrani exported and attempted to export certain defense items without the proper license or registration, and whether he did so with the specific intent required by law. It is conceded by the government that such intent may be negated were Durrani to prove that he believed that he was working at the behest of the United States government. In this regard, it is the substance of Durrani's proffer that if he were to establish that he was aware at the time of the alleged offenses that the United States government was involved in a widespread practice of exporting Hawk missile system parts to Iran in an effort to free American Hostages, and

1 independent of that knowledge and at the same time was given a
2 list of Hawk missile parts that he was told were wanted by Iran,
3 then specific intent may be negated. Tr. March 10, 1987 at 22-
4 23. It is of no import to this proffer that his receipt of the
5 list of parts wanted by Iran was in conjunction with or just
6 coincidental to any government operation. Id. at 23.

7 Other than some of the documents specified in his
8 Supplemental Memorandum, there is no claim that Durrani knew
9 about any of the "documents" he now seeks at any of the relevant
10 times. The subpoenae at issue are also vague in identifying the
11 items sought. Without identifying the document to be produced,
12 it is difficult at this juncture to determine their relevance.
13 The probative value of these "documents" on the issue of his
14 knowledge of his cooperation with any government program simply
15 runs too far afield, at least on the present record. Cf. United
16 States v. Wilson, 750 F.2d 7, 19 (2d Cir. 1984)(when offered to
17 negate intent, held not error to preclude testimony of details
18 of defendant's covert activities at behest of government). To
19 permit these "documents" into evidence would run the risk of
20 misleading or confusing the jury, not to mention the inordinate
21 delay that would be invited by a search of volumes of
22 unspecified documents that lack any accurate indices or
23 categorization. Fed. R. Evid. 403.

1 Failure to establish the relevance of these documents may
2 itself defeat the enforceability of the subpoenae. See, e.g.,
3 United States v. Haldeman, 559 F.2d 31, 76 (D.C. Cir. 1976),
4 cert denied, 431 U.S. 933 (1977)(subpoena quashed where
5 relevance to defense was not established).
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1 ADMISSIBILITY

2 The defendant also has failed to persuade the Court that if
3 produced, the documents would be admissible to prove his state
4 of mind. Rather, it appears, as the government argues, that
5 although he may testify that he believed he was working at the
6 behest of the government as part of a larger government program,
7 he cannot offer the documents to prove the underlying fact.
8 Although the extraneous evidence sought by the subpoenae, which
9 presumably contain statements of declarants who are not
10 available for cross-examination, may tend to prove the policy of
11 the government at the times in question, it is not admissible to
12 prove the defendant's state of mind absent a showing that he had
13 seen and had believed the contents of the documents at the time.
14 Since he cannot even clearly identify the documents in the
15 subpoenae, it is safe to assume that the required showing is not
16 forthcoming. Fed. R. Evid. 803(3); See United States v. Marin,
17 669 F. 2d 73, 84 (2d Cir. 1982); United States v. DiMaria, 727
18 F.2d 265, 270-71 (2d Cir. 1984) 6/.

19 SPECIFICITY AND BREADTH

20 On first blush the subpoenae lack any specificity or even a
21 reasonable degree of particularity that is required by Rule
22 17(c). E.g., Haldeman, 559 F.2d at 75 & nn. 89-90. The
23 subpoenae contemplate documents that encompass what are
24 potentially wide-ranging topics --i.e. United States foreign
25 policy and arms transactions with Iran-- yet fail to identify
26 with relative precision the actual documents sought. This,

1 coupled with the fact that the temporal scope (even after the
2 modification of March 9, supra, n. 4) of the subpoenae far
3 exceeds that specified in the indictment, creates "the
4 appearance of a fishing expedition" and flies in the face of the
5 purpose of Rule 17(c). Iozia, 13 F.R.D. at 340 (subpoena
6 quashed that covered period of eleven years where indictment
7 covered only three years); United States v. Layton, 90 F.R.D.
8 514, 517-18 (N.D. Cal. 1981)(prior to examining the items
9 sought, defendant must identify them with precision); Bowman,
10 341 U.S. at 220 (Rule 17(c) not to be used as a discovery
11 device).

11 CLASSIFIED INFORMATION PROCEDURES ACT

12 It is the representation of the government that the
13 subpoenae call for the production of documents that contain
14 "classified information" within the meaning of CIPA, 18 U.S.C.
15 app. IV § 1. Consequently, before disclosure procedures may be
16 set in motion, the defendant must give written notice to the
17 government and the Court within thirty days of trial and provide
18 a brief description of the information sought. 18 U.S.C. app.
19 IV § 5(a). Wilson, 750 F.2d at 9. The record does not support
20 a finding that the defendant complied with these requirements.

21 Given the affidavit of defense counsel that was filed in the
22 Court of Appeals on November 11, 1986 in conjunction with the
23 interlocutory appeal on pre-trial detention 7/, neither the
24 government nor the Court was on notice that Durrani was making a
25 claim based on arms shipments to Iran --let alone any theory
26 that involved his cooperation with the government-- until the

1 later filing of Durrani's affidavit in support of his pre-trial
2 motions on February 4, 1987. It is doubtful that even then the
3 government had the burden of determining which defense Durrani
4 was to pursue at trial. The first inkling on the record that
5 the government had that these documents were to be claimed as
6 necessary to Durrani's defense was when the United States
7 Attorney's Office was notified of the service of the subpoenae
8 on the three agencies in Washington, only three to four days
9 prior to the date scheduled for jury selection.

10 Equally unavailing is defendant's argument that he was not
11 aware of the classified nature of the documents he would
12 eventually seek. It simply is not realistic for anyone claiming
13 to have dealt with the government in the area of international
14 weapons parts shipments to claim ignorance of the classification
15 of government documents relating to such activities. This type
16 of argument contradicts the weight of authority. United States
17 v. Wilson, 571 F. Supp. 1422, 1427 (S.D.N.Y. 1983)(Weinfeld,
18 J.), aff'd, 750 F.2d 7 (2d Cir. 1984).
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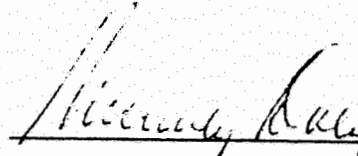
1 Because of the Court's conclusion that CIPA notice
2 requirements were not met, the government will not be compelled
3 to produce those classified documents sought in the subpoenae at
4 issue here 8/.

5 CONCLUSION

6 Accordingly, for the foregoing reasons the motion to quash
7 is GRANTED.

8 SO ORDERED.

9 Dated at Bridgeport, Connecticut this 13th day of May,
10 1987.

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13 T. F. GILROY DALY Ch. U. S. D. J.
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2. The riders listed the following items:

(2) all documents relating to or describing the involvement of the (CIA/National Security Council (NSC)/Department of State (DOS)) or their employees or agents with shipments of military equipment to Iran from 1982 through February 1987;

(4) (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.

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.

4. Paragraphs two and three of the riders would read as follows:

1 All documents relating to or describing the
2 involvement or policy of the agency, any of
3 its employees, or any of its agents or
4 operators, with shipments of Hawk missile
5 systems or spare parts for Hawk missile
6 systems to the Islamic Republic of Iran from
7 1984 through February 1987.

8 Def. Mem. in Response to Governments's Motion to Quash
9 Trial Subpoenas, March 5, 1987, at 5.

10 5. Once produced, several of the documents that
11 appeared on the March 9 modification were reviewed ex
12 parte, and because of their security classification,
13 some were reviewed in camera outside the presence of
14 either party. The ruling of the Court on the
15 admissibility, etc. of those documents appear in the
16 record, portions of which have been placed under seal
17 6. On the present record, the Court finds equally
18 unpersuasive defendant's argument with regard to
19 admissibility on the grounds of the government records
20 exception, Fed. R. Evid. 803(8), or the regularly
21 conducted business activities records exception to the
22 hearsay rule, Fed. R. Evid. 803(6). Tr. March 10,
23 1987 at 46. See also Ruling on Tower Report Offer and
24 Offer of Documents Contained Therein, April 2, 1987.

25 7. Defense counsel represented in the affidavit,
26 inter alia, that the defendant believed the arms that
were exported were destined for Jordan.

8. The Court notes for the record, however, that the
Court did Order the government to produce for the
Court's inspection, so as not to cause any further
delay in the trial, the documents that they agreed to
produce in response to the defendant's Supplemental
Memorandum of March 9, 1987. The Court, recognizing
at that time that the documents were classified,
further Ordered the government to commence clearance
procedures should the Court eventually Order the
receipt of those documents by defense counsel.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF CONNECTICUT

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4 UNITED STATES OF AMERICA

5 - versus -

6 ARIF A. DURRANI

7 - - - - - x

:
: Criminal Action

:
: No. B-86-59 (TFGD)

8
9 Bridgeport, Connecticut
May 13, 1987

10
11
12 B e f o r e:

13
14 Hon T. F. GILROY DALY

15 Chief United States District Judge

16
17 A p p e a r a n c e s:

18 For the Government:

19 HOLLY B. FITZSIMMONS, AUSA

20 For the Defendant:

21 IRA B. GRUDBERG, Esq.

1987 AUG -5 A 11:23

MS. FITZSIMMONS: The next matter, your Honor, is Criminal Case B-86-59, the United States versus Arif Durrani. Mr. Durrani is before the Court for sentencing this morning following his conviction by a jury of three counts of a violation of Title 22, Section 2778.

With the Court's permission, since the Government has set forth its general position in our sentencing memorandum I'd like to withhold my comments until Mr. Durrani and Mr. Grudberg have had an opportunity to speak.

THE COURT: All right. I do have the presentence report, I do have the sentencing memoranda. I also have a number of letters that were submitted on behalf of Mr. Durrani, all of which I have read and for all of which I thank those who provided them.

And I'll be glad to hear from you, Mr. Grudberg.

MR. GRUDBERG: May it please the Court. I do not intend to speak at great length. Our position, I think, has been set forth concerning this matter in a number of bail motions and before the Court of Appeals concerning the offense and concerning the governmental activity of the same type over the past five and a half months.

I would comment in a couple of ways concerning the presentence report. The Government has gone to trial and the jury has found Mr. Durrani guilty of the offenses charged. It does seem to me that in the Government's version which has been

1 adopted at great length in the presentence report there are a
2 number of overstatements and very, very misleading kinds of
3 things. Although the statement of what happened beginning in
4 early 1986 through November of 1986 is clearly the Government's
5 version and one can argue about it. But I -- the Court has
6 heard the evidence on both sides in that regard and I'm not
7 going to stand here and cavil about that.

8 In a number of other ways, however, the Government
9 has taken what happened in 1986 and blown it up by saying some
10 general things that investigation had shown Customs has learned
11 concerning matters in 1984 and 1985. Based upon the happenings
12 at trial, and I think the Court is aware also of the so-called
13 happenings in 1984, I think, involved statements allegedly -- or
14 statements allegedly taken from the defendant's older brother
15 who was at the time involved in very lengthy, bitter, acrimoni-
16 ous litigation.

17 THE COURT: And seemed to have had something of a
18 change of heart anyway.

19 MR. GRUDBERG: Apparently. But in the presentence
20 report it just said that -- you know, this is what Customs
21 learned, and so forth. And that plus the 1985 statement about
22 what allegedly Mr. Shams and Mr. Durrani had been doing is
23 totally unsubstantiated anywhere in the record. And I just
24 really think that it's unfair for the Government to ask the
25 Court to take that sort of thing which is totally unsubstantiated

1 into consideration.

2 A similar kind of thing is indicated where the
3 Government says that subsequent investigation has indicated
4 that a number of items which they've been unable to find, track
5 down and substantiate in terms of exactly what was shipped
6 were licensed. The matter is -- before the Court, is -- is
7 clear enough in light of the jury finding, anyway, for purposes
8 of sentencing without the kind of overreaching that the
9 Government has done here. And I just think it is wrong and I
10 think it is wrong for the Court to consider it.

11 A number of things -- the whole thing about Kram,
12 Limited not existing. It is kind of a red herring. Because
13 the stuff was shipped to Kram, Limited. Mr. Pires apparently
14 does not indicate in any way or did not indicate in any way
15 that the stuff was going to anyone other than him or his
16 representatives. So I just don't understand that in terms of
17 it not existing.

18 So I just don't understand that in terms of it not
19 existing. I can tell the Court without regard to matters that
20 were sent to me of dubious extraction which were part of the
21 affidavit before the Court of Appeals. I have seen and have
22 absolutely every reason to believe a telefax of the matter from
23 Lisbon with a Lisbon number on it, and your Honor has seen how
24 telefax works, on October 27, 1986 of a document with Kram,
25 Limited on the top.

1 I don't think it's terribly important, but it seems
2 to me what the Government has done in terms of marshalling
3 everything it has taken statements made by anybody and every-
4 body, put them in their worst possible light concerning Mr.
5 Durrani and continues to twist -- Mr. Pires and the whole --
6 the whole thing on Page 7 of the presentence report beginning
7 on Page 7 indicating that Mr. Durrani was making lots of
8 profits. The fact is, is very wide of the mark, very much wide
9 of the mark. They take markups that deGreef and Pires are
10 doing between Belgium and Iran and making it sound like those
11 are profits going to Durrani.

12 How on earth that was supposed to get through to
13 Durrani is news to anybody. And when questioned about it, and
14 the Government all of a sudden assumes Mr. Pires is choirboy.
15 Pires says, "Ah. That's some sort of a deal between deGreef
16 and Durrani."

17 The thought that Pires didn't know what was going on
18 in terms of pricing things that were headed for Iran and did
19 go to Iran is a stunner, if the Court please.

20 Now, that doesn't -- it doesn't mean that the jury
21 hasn't convicted of this offense, it doesn't mean a lot of
22 things, but it does indicate clearly to me that just as has
23 been the case from the very beginning of this case, from the
24 time the matter first came before Magistrate Latimer, that it
25 has gotten very, very special kind of treatment and attention

1 from the Government.

2 And I think as far as the -- many of the factual
3 statements made, and I'm talking about the ones that were not
4 put before the jury, very, very questionable for the purpose
5 of making this defendant look like Ali Kahn or something like
6 that, and I just don't think that's justified. Even if one
7 takes what Pires says concerning the money that was sent here
8 to the United States as one hundred per cent accurate.

9 The evidence would indicate that Durrani's role for
10 what he was doing was not to be a highly profitable one. If
11 in fact, as the records indicate, \$800 thousand was sent here
12 either from Belgium or from Lisbon and 400 thousand was -- stuff
13 was still owed to -- to Pires, you are talking about nothing
14 very much more than a businessman's markup.

15 If one compares this to what Radio Research, who was
16 cooperating with the Government and who purchased a number of
17 items, about \$30 thousand, and sold about half of them for \$200
18 thousand, sure, dealing in arms can be and is generally, without
19 regard to the interdicted list, a profitable business. But if
20 one looks at what Radio Research did at the beginning and what
21 deGreef was doing at the end concerning those shipments, and I
22 think just looking at it, the Court has really got to presume
23 that was being done on behalf of Pires, Durrani is some sort of
24 middleman, was not set up in an immensely profitable situation.

25 This is not to say that the Court does not sentence

1 based upon him having been found guilty. It just does go to
2 the fact that I think they have unfairly painted him as some sort
3 of huge deal when I think the evidence would indicate that it
4 is not the case. The Government suggests somehow initially --
5 initially -- it is hard to deal with something saying, well,
6 you say one thing at one point and another thing at another
7 point.

8 The fact is that this kind of thing happens lots and
9 lots of times in litigation and it certainly happened in this
10 case with the Government's position. The Government resisted
11 bail on this case relying on the fact that Mr. Durrani's mother
12 was a highly wealthy woman and that he could run and his mother
13 would support him. Now the position is taken that that was all
14 a bunch of lies. The bank records were available to them and
15 they had them at that time.

16 So, you know, the Government is not averse to playing
17 both ends against the middle and using what it thinks is helpful
18 at any given point in time and making a total about-face when
19 it's helpful to them.

20 The Government took the position during the trial
21 that the Tower Commission report was unreliable and should not
22 be admitted into evidence. The Government now takes the
23 position, sort of theorizing, that Mr. Durrani was standing in
24 the way of national policy because national policy perhaps to
25 strangle the Iranians and make it difficult for them to get

1 these parts. It is a little difficult to take in light of the
2 North Profs in September of 1986, which the Court has been
3 exposed to and the jury was not, indicating that as of that
4 point Mr. Casey and Colonel North were trying very, very hard
5 to find an additional new source of Hawk spare parts.

6 Now, you know, we stand here and debate these things.
7 And there is no way the Court is going to give any sort of
8 suspended sentence on this thing. On the other hand, the
9 bitterness and vigor with which the Government comes at this
10 sentencing in my experience is unprecedented, and my practicing
11 in this district for 26 years, and I have difficulty understand-
12 ing just quite the level of intensity that the Government has
13 brought to this case, and the savagery with which they ask the
14 Court to sentence Mr. Durrani.

15 In fact, as I read the paper, the last couple of days,
16 it would appear, last week, it would appear that much of many
17 things that Mr. Durrani testified to concerning Mr. Secord's
18 companies that were used in Portugal which, to my knowledge,
19 were not in the press before, have been confirmed, is plain that
20 these matters were going through a phony company and -- fellow
21 in Canada, and appears to have been confirmed, it appears that
22 at the very least it was kind of a mixed bag, and I think it is
23 not totally off the wall to think that a man in Mr. Durrani's
24 business and with his overseas contacts was not totally aware
25 of, in a large measure, of what the Government was doing.

Be that as it may, the jury has rejected the defense interposed and the Court has to sentence. But I think the fact still remains that when one sentences, one has to look at a whole lot of things. In this particular case I think it is reasonable and proper for the Court to look at the fact that the President of the United States and people working under him were in fact busily engaged in doing exactly the same thing at the same time.

To be sure, people working directly with them, much more clearly than Mr. Durrani, had available to them the defense that the Government was -- asked them to do it or caused them to do it or they were doing it at the instance of the Government. It still sets up a situation where on a sub rosa basis our national policy was being carried out and clandestinely doing things, things that other people at least not in the know were not supposed to be doing.

In light of the North Profs, which the Court is aware of, speaking as of the very time between the two offenses charged in the indictment, two substantive importation and attempt -- exportation and attempt to export count, that North was excitedly talking about the fact that they thought they might have another source. I have some difficulty seeing the level of heat that's generated here. The Government holds up as a counter in terms of what sentences are being done, a lengthy sentence given to a businessman who was dealing with

1 \$6 million worth of sophisticated weaponry to the Soviet
2 Union, Soviet bloc countries. I just think that's a very, very
3 different thing from dealing in the kind of parts that the
4 Government as a matter of policy had decided to send.

5 Now, it's not been a defense to him because the
6 jury rejected it. But I think it is -- should not be ignored
7 for purposes of sentencing. The Court has before it a man who
8 has no prior record. He's in his late Thirties. He is married.
9 Has three children. Although the Court is well aware of the
10 problem recently in the marriage, the Court also has the
11 letters from his wife and his in-laws and from friends and
12 family indicating that he has been for many, many years a caring
13 and sensitive husband and father. And he's clearly not been
14 perfect. And few of us are. But I think the Court's aware of
15 the extent to which often the rats leave the ship, and I think
16 that the way Sandra Durrani and her family and others have
17 stood by Arif in this, I think, have to be read at least
18 significantly as some indication of the way he has led his
19 life over the period of the 11 years they've been married --
20 ten years that they've been married and the two years prior to
21 that that they were close. And I realize, although it is
22 always the case, that children suffer when parents get incar-
23 cerated, I don't think in a case like this where we are not
24 talking about a hardened criminal who has shown consistent
25 antisocial tendencies, I think it is properly a situation

1 where the Court can and should take into consideration the
2 family and the extent to which they inevitably will be hurt
3 based upon the length of the Court's sentence.

4 In a case where he's testified, I -- I think, again,
5 in terms of the inconsistency of a number of things. I think
6 it is improper, unwarranted for the Government to ask the Court
7 to, or for the Court to make some sort of specific findings
8 without a trial that this man has perjured himself. Whether
9 or not someone has testified at his behalf, I suppose, is
10 something that Courts have traditionally -- that Courts
11 traditionally take into consideration, as well as the Court's
12 impression of the testimony to make a formal finding it seems
13 to me is wrong. And to place undue weight on that, also, I
14 think is -- is not justified in this case.

15 All things considered, when one looks at the overall
16 background of what sentences have been in the past six months
17 since it has become public just what the Government was doing
18 and for what purpose in terms of the hostages, when one looks
19 at Mr. Durrani's background, his present family situation, I
20 do not think a very substantial period, length of incarceration
21 is justified. I would ask your Honor to impose, as he's done
22 already many months, I would ask your Honor to impose a modest,
23 moderate, very little period of incarceration.

24 THE COURT: Thank you, sir, Mr. Grudberg. Is there
25 anything you want to say to me before sentence is imposed?

1 THE DEFENDANT: No.

2 THE COURT: Thank you, sir. Ms. FitzSimmons.

3 MS. FITZSIMMONS: Your Honor, could I inquire through
4 the Court of Mr. Grudberg whether there are any other specific
5 statements in the presentence report that he wishes to
6 challenge besides the -- it's my understanding that he challenges
7 the information about the previous dealings and the amount of
8 markup.

9 MR. GRUDBERG: I have not gone through this with a
10 fine-tooth comb. I have nothing to add to what I said.

11 THE COURT: Basically, obviously, I have read
12 what is in the presentence report, and I have no criticism
13 with it being included there, as it is as the Government's
14 version, but it's the proceedings in this case that particularly
15 interest me both by way of trial and pretrial proceedings.

16 MS. FITZSIMMONS: Yes, your Honor. I would like to
17 file with the Court some specific documents which back up the
18 statements in the presentence report. Just for the record,
19 for example, and I think Mr. Grudberg misunderstood the portion
20 concerning 1984 and 1985.

21 It's my understanding that in 1984 the information
22 comes from a letter which is dated November 13th, 1984, a copy
23 of which I'm providing to the Clerk.

24 THE COURT: Does Mr. Grudberg have a copy of it?

25 MS. FITZSIMMONS: I don't think so, your Honor.

1 MR. GRUDBERG: I would expect not.

2 THE COURT: I beg your pardon?

3 MR. GRUDBERG: I haven't seen it, so I can't tell.

4 But I would expect not.

5 THE COURT: Well, I think you ought to see it before
6 I see it.

7 All right. I've read it.

8 MS. FITZSIMMONS: Thank you, your Honor.

9 With respect to the markup on the items that were
10 shipped by Mr. Durrani I'm going to hand up to the Court,
11 after showing to Mr. Grudberg, copies of invoices which I do
12 think he has, four items supplied by Mr. Durrani. And if
13 your Honor will look at the invoices you will see they reference
14 the KAD Transportation, Incorporated invoices which are -- in
15 which either came into evidence at trial or produced at trial
16 and a copy of which is attached here.

17 MR. GRUDBERG: I have no objection to those. My
18 point on those was not that -- I had seen those, I think, at
19 the bail hearing, my point there is that there's no indication
20 that that goes to Durrani at all. That's a markup from Pires
21 hyphen deGreef to the Iranians.

22 THE COURT: All right. I've looked at them.

23 MS. FITZSIMMONS: Your Honor, the point with that,
24 of course, is that they tack on a management fee of 5 per
25 cent on the invoice which is on KAD letterhead. We don't know

1 what Mr. Durrani actually invoiced these amounts to Risenvest
2 for or what his markup was. Because Mr. Durrani, with respect
3 to the invoices that were provided with the shipments provided
4 false invoices, and he refused to produce his records. So it's
5 hard to determine what Mr. Durrani actually made from all of
6 this. We do know, however, that there were at least \$800
7 thousand in payments to Mr. Durrani by Mr. Pires and Mr.
8 deGreef during the period of time that this proceeding was
9 pending. And we also know, based on Agent Arruda's conversa-
10 tions with Mr. Pires, that Mr. Durrani signed a \$30 million
11 contract with Mr. Pires in London the weekend before he was
12 arrested to supply him with further items. This does not sound
13 like a man who is not making any profit.

14 And, in fact, I think the presentence report shows
15 clearly that Mr. Durrani was able to come from a man who
16 declared bankruptcy to a man with a large number of material
17 possessions in a very short period of time, during the same
18 period of time that the Government's investigation has shown
19 he was shipping arms to Iran.

20 I think that what your Honor has to take into account
21 here in the sentencing is not only the national interest as
22 Mr. Grudberg defined it, not only the foreign policy debate
23 that may have been going on concerning the shipments of arms
24 to Iran, but a much broader national interest. And that is
25 whether persons like Mr. Durrani are going to be permitted to

1 determine for themselves which laws they will obey and which
2 laws they will not obey. It's clear, and Mr. Durrani knew it
3 from his previous dealing; that he was required to engage in
4 the export business. And it was clear, and Mr. Durrani knew
5 it from his previous dealings that he was required to get an
6 export license to export certain commodities from the United
7 States regardless of their destination. Those legal require-
8 ments, those legal obligations Mr. Durrani totally disregarded.

9 I think the evidence shows that he totally disregarded
10 them because of greed, not because of any kind of higher purpose
11 or intent to help the United States Government in the conduct
12 of its foreign policy, but because he could make a lot of money
13 by disregarding the requirements of the law. And it simply is
14 not acceptable behavior in a society that's based on law like
15 ours, for people to determine which laws they're going to obey
16 and which laws they're not.

17 That's a message that I think this sentence has to
18 send to the public at large. I think there's another message
19 that it has to send. And that is when people break the law they
20 can't attempt to evade the consequences of their actions by
21 lying about it. Mr. Durrani did lie about it. He lied about
22 it repeatedly, he lied about it under oath, and he put his
23 counsel in a very bad position with the Court of Appeals by
24 requiring Mr. Grudberg to file an affidavit which turned out
25 to be false.

1 That is also something that the system cannot tolerate.
2 It's in the national interest, your Honor, to deter this kind
3 of activity. To prevent people like Mr. Durrani from taking
4 the law into their own hands and then from attempting to evade
5 the consequences of their actions. I think it's also important
6 for the Court to send the message through the sentencing that
7 the law is going to be enforced. And they're going to be
8 enforced against anyone who breaks them no matter what their
9 position, no matter what their rationale.

10 For those reasons, your Honor, and because Mr.
11 Durrani throughout this proceeding has by his lying and by his
12 positions taken in court has shown absolutely no remorse for
13 breaking the law, that we ask that the Court impose a sub-
14 stantial sentence of incarceration on Mr. Durrani to deter
15 others from engaging in this kind of conduct and also to
16 impose upon him a substantial fine.

17 MR. GRUDBERG: Just very briefly, if the Court please.
18 Just two items.

19 The Court is aware from the evidence that both people
20 like Radio Research and the gentleman from Texas, even if one
21 knew that certain items needed export and needed an export
22 license, that they both took the position they were not in the
23 export business, that someone who got it from them was going
24 to be responsible for the license.

25 Now, I realize that we tried the case, and that's been

1 rejected. On the other hand, that's not so immensely clear
2 just from because he had knowledge, and clearly he did, that's
3 never been disputed, that he believed that he was the one who
4 was supposed to get it.

5 And the only other thing I'd like to address, since
6 I was not a witness, to whatever extent it means anything, I
7 would state to the Court that Mr. Durrani's testimony that he
8 hadn't seen those three invoices before they were sent to the
9 Court of Appeals is, to the best of my knowledge, probably
10 true. I did not have a ready access to them, and I think -- I
11 can't say that he put me in that position because my best
12 recollection would be that he probably did not see those until
13 after the papers were filed with the Court of Appeals.

14 THE COURT: Mr. Durrani, anything?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Anything further from the Government?

17 MS. FITZSIMMONS: No, your Honor. Thank you.

18 THE COURT: All right. I don't like to delay the
19 inevitable, and I'm going to take not more than five minutes.
20 Stand in recess.

21 (Recess)

22 THE COURT: All right. Are we all set?

23 MR. GRUDBERG: Yes, sir.

24 THE COURT: Anything from counsel or Mr. Duraani?

25 MS. FITZSIMMONS: No, your Honor.

1 THE COURT: All right. I'm ordering a transcript of
2 this morning's proceedings made and attached to the presentence
3 report. That includes remarks of counsel, the declination of
4 Mr. Durrani to make any statements and my remarks both during
5 the course of counsels' arguments and now.

6 I have read with care the excellent presentence
7 report and all the submissions, including memoranda and letters
8 and newspaper articles. I thank all concerned for their
9 interest and efforts. I also have a very clear recollection of
10 and am relying on all the prior proceedings in this case
11 including the evidence at trial, and pretrial matters, and I
12 have listened to you all this morning.

13 I should and do thank all counsel for a hard tried
14 case. As I'm sure Mr. Grudberg will tell you, Mr. Durrani, if
15 he hasn't already, you must file your notice of appeal within
16 ten days of today's date. That's an appeal from everything
17 including the sentence that I'm going to impse this morning, •
18 sentences, or you lose your right to appeal. You understand
19 that?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. And I must and do assess you
22 \$50 on each of the three counts for a total of \$150.

23 As to the sentences to be imposed on each of the
24 three counts with which you stand convicted by the jury, let
25 me say preliminarily, Mr. Durrani, that I find relatively

1 little, despite my scrutiny of the entire record before me,
2 and contrary to the very able arguments of your counsel by way
3 of mitigation of these offenses. Instead I find throughout
4 greed and lies, money and perjury, avarice and conniving. You
5 are not charged with it and, obviously, I am not sentencing
6 you on it, but your behavior might under other circumstances
7 be considered by some as bordering on treason. And whatever
8 was going on in Washington is and was no excuse to your
9 profiteering and repeated lying under oath as the occasion
10 suited you.

11 The sentence of the Court is that you, Arif Durrani,
12 on Count 1 be entrusted to the custody of the Attorney General
13 of the United States or his authorized representative for a
14 term of five years and I fine you \$1 million.

15 On Count 2 that you be entrusted to the custody of
16 the Attorney General of the United States or his duly authorized
17 representative for a period of five years and I fine you \$1
18 million.

19 These sentences on Counts 1 and 2 are consecutive and
20 cumulative and not concurrent.

21 On Count 3, the sentence of the Court is that you
22 be entrusted to the custody of the Attorney General of the
23 United States or his duly authorized representative for a
24 period of 10 years and I fine you \$1 million.

25 The sentence on Count 3 is concurrent to the sentences

1 on Counts 1 and 2 and not consecutive or cumulative to those
2 sentences.

3 Is there anything further at this time?

4 MR. GRUDBERG: No.

5 THE COURT: Does the Government have anything
6 further?

7 MS. FITZSIMMONS: Nothing further from the Government,
8 your Honor. Thank you.

9 THE COURT: All right. Thank you. Stand in recess.

10 (Recess)

11 THE COURT: Present are Mr. Grudberg, Ms. FitzSimmons,
12 my law clerks, myself and Mr. Russell.

13 Mr. Grudberg has made a request, which I gather is
14 on consent of the Government.

15 MS. FITZSIMMONS: Yes, your Honor.

16 THE COURT: That I recommend to the Bureau of
17 Prisons that Mr. Durrani be incarcerated in a facility in the
18 State of California.

19 MR. GRUDBERG: Yes.

20 THE COURT: And if not there, at least on the West
21 Coast. And I will make that recommendation on the appropriate
22 forms when I file them, hopefully, later today. And I would ask
23 Mr. Grudberg to be sure and tell Mr. Durrani that I'm doing that,
24 but that is simply a recommendation. The Bureau of Prisons gen-
25 erally accommodates me, but I have no control over that.

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