Chief Judge Robinson

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 86-0207
	)	
JONATHAN JAY POLLARD	)	

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING

INTRODUCTION

The United States of America, by its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in order to aid the Court in its determination of the appropriate sentence to be imposed upon the defendant JONATHAN JAY POLLARD (hereinafter "defendant"). The defendant having pled guilty on June 4, 1986 to Conspiracy to Deliver National Defense Information to a Foreign Government, in violation of 18 U.S.C. Section 794(c), the maximum sentence which may be imposed by the Court is imprisonment for any term of years or for life, and/or a $250,000 fine.

This memorandum is comprised of four sections. The first section will recount the facts and circumstances which lead to defendant's arrest on November 21, 1985. In the second section of this memorandum, the government describes the nature and extent of defendant's espionage activities as revealed by the investigation conducted by the government following defendant's arrest. However, information relating to particular classified documents compromised by defendant, and the resulting damage to the national security, will be set forth in a separate memorandum and affidavit, filed in camera, because of their classified content. The third section of the instant memorandum sets forth certain information, obtained

from defendant pursuant to his obligations under the plea agreement concerning the formation and conduct of the conspiracy. The final section of this memorandum contains an analysis of the sentencing factors which, the government believes, warrant the imposition of a substantial period of incarceration and monetary fine.[1/]

I. EVENTS LEADING to DEFENDANT'S ARREST

By the time of his arrest in November, 1985, defendant had been an employee of the United States Navy for over six years. During that period of time defendant held various analytical and research positions within several divisions of the United States Navy. Beginning in June, 1984, defendant was assigned to the Anti-

1/ A sentencing judge may consider a wide variety of information as to a defendant's background, character and conduct, criminal and otherwise, in imposing a sentence. Roberts v. United States, 445 U.S. 552 (1980). The Supreme Court has consistently held that even acts and conduct not resulting in convictions may properly be considered. See Williams v. New York, 337 U.S. 241, 246-247 (1948) (It was proper for the trial judge to have considered evidence of 30 other burglaries believed to have been committed by the defendant, as well as the probation report); Williams v. Oklahoma, 358 U.S. 576 (1959) (The sentencing judge may consider hearsay information which is relevant to the crime and the defendant's life); United States v. Sweig, 454 F.2d 181 (2d Cir. 1972) (The sentence was affirmed where it was based on information not contained in the presentence report which included evidence of offenses for which the defendant was acquitted.)

See also 18 U.S.C. § 3577 - "No limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."

Terrorist Alert Center, Threat Analysis Division of the Naval Investigative Service (ATAC). Initially defendant held the position of Watch Officer, monitoring the daily classified message traffic received in the ATAC for information pertinent to terrorist activities, and passing the information along to the analyst responsible for the geographic area in which the activity was occurring. In October, 1985, defendant was promoted to the position of Intelligence Research Specialist within ATAC, specifically responsible for analyzing classified information concerning potential terrorist activities in the Caribbean and the continental United States.

Throughout his assignment to ATAC, defendant held a TOP SECRET security clearance. 2/ Moreover, defendant was also authorized to access certain Sensitive Compartmented Information (SCI). SCI is, principally, data about sophisticated technical systems for collecting intelligence, as well as the intelligence product collected by the systems. Conventional intelligence activities employ human sources; SCI intelligence collection primarily employs technical systems. Communications intelligence, as defined by 18 U.S.C. § 798, is the classic example of SCI as it is normally derived through a technical system which intercepts communications.

Because of the extremely fragile nature of SCI -- compromise of a technical collection system is much like the loss of a network

2/ Pursuant to Executive Order 12356 and its predecessors, information is classified TOP SECRET if its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security.

of agents -- strict security criteria have been established for access to SCI. A relatively small percentage of the individuals who have been granted TOP SECRET clearances are also approved for SCI access. Access to SCI information is limited to persons who (1) have a clearly established need for SCI information, and (2) meet more rigorous personnel security criteria.

Information classified TOP SECRET and/or SCI is maintained in several secure libraries and repositories throughout the Washington area. Certain of this information is contained in a secure computer system which is accessible through terminals located in such restricted locations as the ATAC work space in Suitland, Maryland. Defendant, as well as other ATAC analysts with TOP SECRET/SCI clearances and appropriate access codes, could readily access these libraries, repositories and computer terminals to obtain data in order to perform their specific duties.

It was understood that ATAC analysts, like defendant, operated on the honor system, and that they would limit their access to that information for which they had an official "need to know". However, once an ATAC analyst who had appropriate access codes was on these secure premises, he or she also had the capability to access and obtain highly classified information unrelated to their duties. For example, defendant was assigned to the Caribbean/Continental United States desk of ATAC, and his "need to know" classified information was limited to data which concerned terrorist activities or developments in those areas. Yet defendant could and, as early as June, 1984, did routinely access and obtain classified data

relating to the Middle East and other geographic areas remote from his assigned area of responsibility.

It was not until September - October, 1985 that defendant's superiors became aware of his routine acquisition of information from classified repositories which was completely unrelated to his duties as Caribbean/Continental United States analyst. It was this discovery which prompted defendant's Commanding Officer to undertake especially close scrutiny of defendant's work habits and product. Coincidentally, on October 25, 1985 one of defendant's co-workers reported observing defendant leaving the ATAC premises at the end of the work day, carrying materials which appeared to be classified.

Upon receipt of this information, the ATAC Commanding Officer personally undertook to identify any SCI material for which defendant was accountable and which was missing from defendant's workspace. The ATAC Commanding Officer discovered that on November 8, 1985 defendant obtained a quantity of SCI material which concerned certain events in the Middle East from a computer center within ATAC; the ATAC Commanding Officer could not locate these materials in defendant's workspace. Moreover, he learned that when defendant exited the ATAC security checkpoint that evening, he displayed his courier card, permitting departure from the ATAC premises without having his belongings checked by security personnel. Thereafter, the ATAC Commanding Officer alerted the Naval Investigative Service (NIS) and the Federal Bureau of Investigation (FBI) to the information which he had gathered concerning defendant's unauthorized acquisition of classified materials.

A joint NIS/FBI investigation ensued, including selected surveillance of defendant. On Monday evening, November 18, 1985, defendant was observed to repeat the procedure he followed on November 8, i.e. defendant retrieved from the ATAC computer center SCI material unrelated to his assigned duties and, using his courier card, departed the ATAC security area. At this time, defendant was approached by NIS and FBI agents as he attempted to enter his car in the parking lot outside of the ATAC facility. When questioned about the package he was carrying, defendant provided conflicting and incomplete responses, prompting the agents to request that defendant accompany them back to the ATAC offices for a further interview. While defendant willingly complied with the agents' request, it soon became clear that defendant's intent was to divert and stall the agents rather than to assist them in their efforts to recover and secure the classified documents which defendant had compromised.

a. The November 18 Interview

Throughout the interview conducted by FBI/NIS agents the night of November 18, 1985, defendant insisted that he was merely transporting the package of classified documents he had carried from his workplace to a meeting at another secure Navy office within the Suitland complex. 3/ Defendant provided the name of another Navy

3/ The package was subsequently searched by the agents and found to contain sixty (60) classified documents, twenty (20) of which were classified TOP SECRET.

analyst to whom, defendant claimed, he was taking the documents. While other FBI/NIS agents attempted to locate this individual and confirm defendant's story, defendant asked if he could call his wife at their Washington, D.C. apartment to explain that he would be delayed. The NIS/FBI agents acceded to defendant's request. Defendant then placed two telephone calls to his wife and during both calls mentioned to his wife that she should remove from their apartment a "cactus" and a wedding album, and should deliver these items to "friends" with whom the Pollards were to dine that evening. 4/

After defendant had placed the telephone calls to his wife, and set in motion what he believed to be the destruction of the evidence of his espionage activities, defendant agreed to further questioning by FBI/NIS agents. The agents had located the Navy employee with

4/ Subsequent events revealed that the term "cactus" was a code word which referred to a suitcase within the Pollard's apartment in which defendant maintained, without authorization, classified documents; classified documents were also kept by defendant in the wedding album to which he referred. Immediately upon receiving defendant's telephone calls, his wife Anne Henderson Pollard gathered the suitcase, and as many additional classified documents as she could quickly locate within the apartment. She then attempted to persuade a neighbor to remove the suitcase from the Pollards' apartment building and deliver it to Anne Henderson Pollard at a Washington, D.C. hotel where, defendant's wife told the neighbor, the classified documents would be destroyed. The suitcase was not delivered to defendant's wife by the neighbor, who instead turned it over to FBI/NIS agents the following day.

whom, defendant said, he was to meet that night for an authorized review of the classified documents defendant carried out of his workplace. This employee denied any plans to meet, or receive classified documents from defendant.

Defendant persisted in his denial that he had removed the classified documents from his workplace for an unauthorized purpose, and claimed that he had never taken classified documents to any unauthorized locations. The interviewing agents sought defendant's consent to search his apartment, but he initially declined to provide it, explaining that he was concerned the agents might locate small amounts of marijuana in what would be an unsuccessful search for classified documents. The agents continued their interview of defendant, receiving implausible explanations for the removal of classified documents from his workplace. As the interview continued, the agents informed defendant that they had begun the process of obtaining a search warrant for the Pollard apartment. At this point, approximately 11:00 p.m. that evening, defendant gave his consent to a search of his apartment.[5/]

Defendant accompanied the agents to his apartment where a FBI/NIS search revealed approximately fifty-seven (57) classified documents secreted in a box, and under some women's clothing, in the master bedroom of the apartment. Defendant's wife was not at home when the agents commenced the search, although she returned to

5/ Defendant's belated consent to the search of his apartment was provided in the mistaken belief that his wife had sufficient time to remove all of the classified documents from the Pollard apartment.

the Pollard apartment while the search was in progress.

When confronted with the classified documents recovered by the agents, defendant feigned surprise. The only explanation offered by defendant was that he must have brought the documents home in order to continue his work, and forgotten to return them to his office. Because defendant's possession of classified documents in his home was, at the very least, a violation of Navy security regulations, defendant was requested to report to NIS offices the following day for a polygraph examination. Defendant agreed and the agents, who were at this time unaware of the existence of the suitcase delivered by defendant's wife to a neighbor, departed the Pollard apartment with the classified documents they had seized from that location.

b. The November 19 Interview

The next day following the seizure of classified documents from his apartment, defendant appeared at the NIS offices for the scheduled polygraph examination. However, as NIS agents began preparations for the polygraph examination, defendant asked to speak to one of the agents. Defendant stated that he would be unable to complete a polygraph examination successfully because he in fact had provided five or six U.S. classified documents to a friend who was not authorized to receive the documents. The NIS agent immediately advised defendant of his constitutional rights, and defendant stated that he was willing to discuss further his unauthorized disclosures of classified information. Upon questioning by the NIS agent, defendant's estimate of the number of

classified documents he had compromised quickly grew from "five or six", to fifty or a hundred each month for the past year.

When defendant admitted receiving money for the documents, FBI agents were contacted and a joint NIS/FBI interview of defendant began. On Tuesday, November 19, defendant ultimately provided an eleven page handwritten statement detailing the sale of classified documents to a person described by defendant as a long-time friend, a citizen and resident of the United States. Defendant specifically denied personally selling classified information to a foreign government representative, and disclaimed any actual knowledge that his friend was selling information to a foreign government. Defendant claimed that he merely suspected his friend was using the information to assist freedom fighters in Afghanistan.

In his November 19 statement, defendant described in detail the documents he claimed to be providing to his friend. Because of the breadth and scope of these documents, as well as the classified documents recovered from defendant's person and apartment the preceding day, the interviewing agents suspected that defendant actually was removing the documents from his workplace for routine delivery to an agent of a foreign country. Moreover, even though he had already provided a lengthy written statement, defendant insisted that he had more details to provide concerning the specific classified documents he had compromised. Accordingly, on late Tuesday night the agents decided to continue the interview the

following day, and to maintain round-the-clock surveillance of defendant in the interim. The agents accompanied defendant to his apartment after he agreed to return to NIS headquarters the next day. Surveillance was initiated in the event defendant attempted to contact any foreign government representative, or to flee from the District of Columbia.

c. The November 20 Interview

Defendant returned to NIS offices on Wednesday, November 20, having made no discernable attempt either to flee, or to meet with any foreign government representative the preceding night. At this time, defendant provided another written statement further describing the details of unauthorized disclosures of U.S. classified information to the same friend defendant had identified the preceding day. In this statement, defendant again recounted information which suggested to the interviewing agents that defendant was in fact delivering documents to a person acting on behalf of a foreign country. While defendant continued to deny actual knowledge of the involvement of a foreign country, he admitted to the interviewing agents that he and his wife, using the funds defendant had received in payment for the classified documents, had travelled to Europe in November, 1984 and July, 1985.

There was growing certainty among the interviewing agents that defendant was implicating his friend in order to disguise the direct involvement of a foreign country. At the conclusion of the Wednesday interview, defendant continued to insist that he had

additional details to reveal regarding the specific classified documents he had been asked to obtain for his friend. Defendant agreed to return to NIS offices the following day, after he had accompanied his wife to the doctor for some medical treatment which she had scheduled. While the agents were willing to accommodate defendant's desire to accompany his wife to her doctor's appointment, by scheduling the continuation of the interview for Thursday afternoon, round-the-clock surveillance of defendant continued.

d. The Attempt to Gain Asylum

On Thursday morning, November 21, the agents conducting surveillance followed defendant and his wife to Washington Hospital Center for her scheduled medical procedure. When the Pollards departed the hospital a few hours later, defendant did not drive directly home. Instead, defendant drove the Pollards' car along a circuitous route through Northwest Washington. Finally, at approximately 10:20 a.m., as the Pollards' car entered the 3500 block of International Drive, N.W., defendant fell in behind an embassy automobile and drove into the Israeli Embassy compound. The FBI agents at the scene, unable to pursue defendant into the compound, stood by at the Embassy gate and observed defendant and his wife standing outside of their car, engaged in protracted conversation with Israeli Embassy personnel. After approximately twenty minutes, defendant and his wife re-entered their car and drove out of the Embassy compound. At this point FBI agents placed defendant under arrest.

II. POST-ARREST INVESTIGATION

a. November 21, 1985 Interview

Following the arrest of defendant outside the Israeli Embassy, FBI agents sought to reinterview defendant in order to confirm that which they only suspected -- that the unauthorized person(s) to whom defendant had been selling classified information were agents of the Israeli government. While defendant agreed to the post-arrest interview, it immediately became apparent that defendant preferred to spar verbally with the agents rather than further their investigation.

Defendant acknowledged that his written statements of November 19 and 20 were correct insofar as the operational details were concerned, i.e., he confirmed the nature of the classified documents he had compromised, the timing and frequency of the unauthorized deliveries, and the amount of monthly compensation he had received in exchange for the classified documents. However, defendant admitted that the person to whom defendant had been selling classified documents for more than a year was not the American friend he had named in his earlier written statement. Defendant acknowledged that he had falsely identified his friend in earlier interviews so as to throw the agents off the trail.

Defendant admitted that he had sought to evade further questioning and ultimate arrest by the interviewing agents by obtaining asylum at the Israeli Embassy. He explained that as a member of the Jewish faith, he expected to be routinely granted asylum under the "law of return", and was astonished when the Embassy security personnel refused to admit defendant and his wife.

Despite persistent questioning, however, defendant refused to provide the nationality, let alone the names, of the persons to whom defendant had been selling classified information. 6/ Also defendant would not disclose the whereabouts of classified documents he had removed from his workplace, or reveal the location to which he had delivered the documents, except to state that the documents kept in the suitcase in his apartment had already been delivered to his "contact", copied and returned to defendant.

Defendant would only provide a one-word, affirmative response when asked by interviewing agents if he had ever provided classified information to a representative of the Israeli government. However, this affirmative response did not materially advance the agents' investigation, since defendant had on two occasions served as a member of U.S. teams who met with their Israeli counterparts for the authorized exchange of information and documents. In short, by the conclusion of the November 21 interview defendant had recanted his identification of his American friend as a coconspirator, and had thrown open the possibility that any number of foreign nationals could have been purchasing classified information from defendant. It was left to the FBI/NIS agents to identify the real recipients of the information compromised by defendant, and to recover the documents defendant had sold to those individuals.

6/ It since has been confirmed that one of defendant's Israeli co-conspirators, and perhaps a second, were still located within the United States on the day of defendant's arrest. Witnesses and documentary evidence have revealed that defendant's espionage "handler", Joseph "Yossi" Yagur, did not flee from the United States until November 22, the day after defendant's arrest. Defendant's refusal to identify Yagur during the November 21 interview enabled Yagur to elude the due administration of justice, perhaps for all time.

b. Recovery of Classified Documents

Later on November 21, 1985, the day of defendant's arrest, FBI agents executed a search warrant for the contents of the suitcase Anne Henderson Pollard had asked her neighbor to retrieve from its hidden location on Monday, November 18. The suitcase was found to contain twenty-five (25) classified documents relating to the national defense, including a document classified TOP SECRET. The suitcase also contained drafts and copies of a letter from defendant to one "Yossi" that recited certain classified information which defendant had obviously obtained from sources available to him at his workplace.

On Friday, November 22, 1985, FBI/NIS agents executed a search warrant at the Pollards' Washington, D.C. apartment. Four additional classified documents and notations were recovered from secreted locations within the apartment, apparently overlooked when on Wednesday night the Pollards prepared for their attempt to gain asylum at the Israeli Embassy. The apartment revealed clear evidence of the Pollards' intent to abandon it, including three large bags containing hand-shredded personal papers, letters, notes and U.S. government documents.

Within the two months following defendant's arrest, FBI/NIS agents gathered and analyzed documentary evidence which, taken together, revealed a pattern of activity engaged in by defendant to

acquire voluminous quantities of classified documents. From the various classified document repositories located in the Washington area, agents recovered all of the available receipts which had been executed by defendant and reflected his acquisition of classified documents, almost all of which concerned the Middle East, an area of the world unrelated to defendant's assigned duties. In and around defendant's work area, FBI/NIS agents recovered copies of hundreds of classified documents relating to areas of the world, and concerning subjects, unrelated to defendant's assigned duties. Also at defendant's workplace, agents recovered lists of documents in defendant's handwriting, including notes or instructions to obtain copies of the documents. These handwritten notes appeared to memorialize "tasking", i.e., instructions from defendant's intelligence handler to obtain certain specified documents.

Finally, in late December, 1985, FBI agents accompanied government counsel from the United States Attorneys Office, and the Department of Justice, on an investigative trip to Israel. During this trip, FBI agents retrieved from the Israeli government one hundred sixty-three (163) United States classified documents.[7/] An

7/ A subsequent examination of these documents revealed that they were photocopies of original publications and messages and thus would not have contained any of defendant's fingerprint impressions. As defendant would later admit during his post-plea debriefings, the original materials which he delivered were returned to him after being photocopied by his Israeli co-conspirators.

analysis of these classified documents retrieved from the Israeli government was undertaken by FBI/NIS agents who compared the publications against: (1) those classified documents found in defendant's suitcase, apartment and workplace; (2) those receipts executed by defendant available at the various classified libraries from which defendant had checked out documents; and (3) the notes recovered from defendant's workplace that appeared to memorialize the "tasking" he had received. This analysis revealed a compelling, statistical link between the documents defendant had signed out from classified repositories, or otherwise obtained during the twelve months prior to his arrest, and the publications retrieved from the Israeli government by the FBI.

c. Evidence of Unexplained Wealth

Following defendant's arrest, a financial investigation was undertaken of the income and expenditures of defendant and his wife. As an analyst with the Navy ATAC, defendant's average take-home pay amounted to approximately sixteen hundred dollars ($1,600) per month in the year preceding his arrest, for a total disposable income of nineteen thousand two hundred dollars ($19,200). In addition, defendant's wife, who was employed by a trade association until her resignation in July, 1985, received an average monthly take-home of approximately one thousand dollars ($1,000) during the year prior to her arrest, for a total disposable income of approximately ten thousand dollars ($10,000). Further analysis revealed that during the year prior to their arrest, this combined disposable income of defendant and his wife was more than exhausted by their routine living expenses of rent, food, clothing and the like. In

fact, four thousand dollars ($4,000) cash, of unexplained origin, was deposited into the bank accounts of defendant and his wife during this same period and similarly expended on routine living expenses.

Remarkably, the extraordinary cash expenditures of defendant and his wife during the year prior to their arrest almost equalled the disbursement of their legitimate wage income through their checking accounts. During the period November, 1984 through November, 1985, defendant and his wife made cash payments on their American Express credit card bills of almost twenty thousand dollars ($20,000). The charges to their American Express card during this period included almost daily lunches, dinners or drinks at various Washington restaurants; airline tickets for two trips abroad in November, 1984 and July, 1985, respectively; and twenty-three hundred ($2300) dollars in jewelry purchased by the Pollards in Israel in July-August, 1985.

Moreover, defendant and his wife made substantial cash expenditures for other goods and services during this same time period. In November, 1984 defendant and his wife travelled to Paris, France, so that defendant, the government subsequently learned, could meet with his Israeli co-conspirators. After departing Paris, defendant and Anne Henderson Pollard travelled to a number of European cities including Marseilles, Saint Tropez, Cannes, Nice, Monte Carlo, Pisa, Florence, Rome, Venice, Innsbruck and Munich. Since none of the hotel charges, and few of the meal expenses, incurred during this trip are reflected in the Pollards' credit card or checking

account records, it is apparent that the payments for these items were made in cash.

During their trip to Israel and Europe in July-August, 1985, defendant and his wife booked accommodations over a three-week period in hotels located in Tel Aviv, Jerusalem, Vienna, Venice, Zurich, Paris and London, including several five-star hotels. The charges for the hotel rooms alone were approximately forty-five hundred dollars ($4,500). None of these charges were paid for with a credit card or by check.[8/] Moreover, none of the restaurant charges incurred throughout Israel and Europe during this three week trip are reflected in the credit card or checking account records of defendant and his wife. Presumably, the meal expenses were as considerable as the hotel accommodations and paid for in cash as well.

Defendant and his wife also expended cash for certain items purchased in the United States. The financial investigation revealed the purchase of a gold necklace and earrings for approximately one thousand eight hundred dollars ($1,800) at a Georgetown jewelry store in March, 1985. Defendant and his wife also purchased a gold bracelet at the same establishment in June, 1985 for over three hundred dollars ($300). In payment of the combined cost of $2,100, defendant and his wife wrote checks for approximately $1,000 and paid the jeweler the balance in cash. However, Anne Henderson

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8/ Prior to this trip, Anne Henderson Pollard did issue a check to the Washington travel agency who booked the accommodations in the amount of $612 as a deposit on certain of the room accommodations. However, within a few days after writing the check Anne Henderson Pollard deposited $600 in cash into her account to cover the check.

Pollard covered one of the checks which she wrote to the jeweler by depositing $440 in cash into her bank account three days after she wrote the check. Thus, of the $2,100 paid for the jewelry, approximately $1,500 was paid in cash.[9/]

The above-mentioned cash expenditures are those which could be identified by sales receipts or other third-party records reflecting the expenditure of cash. It is believed that other cash expenditures were made for meals, clothing and personal items for which no records exist. For example, according to close friends and colleagues, defendant regularly drove from his offices in Suitland, Maryland, to meet his wife for lunch at one of a number of downtown Washington restaurants. While certain of these meals are reflected in the Pollards' credit card records, friends and associates report that payment was frequently made in cash.

In short, during the year prior to their arrest, defendant and his wife expended through their checking accounts their entire combined salaries of twenty-nine thousand dollars ($29,000), for what appear to be routine, although hardly paltry, living expenses. During the same time-period, defendant and his wife also spent a minimum of between twenty-five thousand ($25,000) and thirty thousand

9/ This expensive jewelry was acquired by defendant and his wife in the United States, after they had received a diamond and sapphire ring from the Israelis valued at approximately $7000 (see p. 20, infra), and in addition to several expensive items of jewelry purchased by the Pollards in Israel in July-August, 1985 (See p. 18, supra)

($30,000) in cash for what can only be described as extraordinary expenses.

d. Evidence of Israeli Relationship

In the course of the investigation, FBI agents located a witness who was aware of defendant's financial relationship with unidentified Israelis. After defendant's arrest, a friend of defendant's reported to the FBI that, at one time, defendant had sought to recruit the friend in an ill-defined effort to aid Israel. In the summer of 1984, defendant, accompanied by Anne Henderson Pollard, visited the friend and stated that money could be made if the friend would help defendant make deliveries of certain unspecified information to the Israelis. In a clumsy effort to interest the friend in this endeavor, defendant and Anne Henderson Pollard were critical of the friend's lifestyle, and stated that it could be substantially improved by additional income. The friend was aware of the nature of defendant's employment, and assumed that defendant was proposing the delivery of classified information to Israel. The friend firmly rejected defendant's proposal and the subject was never raised thereafter. However, at about this same time, in the summer of 1984, defendant informed his friend that he (defendant) was going to be meeting with the Israeli pilot who led the 1981 air raid on the Iraqi nuclear facility.[10/]

10/ In his post-plea debriefings, defendant has reported that his first Israeli "handler", Colonel Aviem Sella, claimed to have led the Israeli air attack on the nuclear facility in Baghdad in 1981.

III. THE PLEA AGREEMENT -- DEFENDANT'S VERSION OF THE CONSPIRACY

a. The Terms of the Plea Agreement

Beginning in January, 1986, defendant, through his counsel, engaged in plea discussions with the undersigned government counsel and attorneys for the Department of Justice. Certain preliminary conditions were required by the government. Defendant was to submit to interviews by the undersigned government counsel and the FBI. Following these interviews, defendant was to submit to polygraph examinations by the FBI. Only after these preliminary conditions were satisfied was a plea offer extended to defendant. These conditions were agreed to by defendant, and at the conclusion of the interviews and polygraph examinations, a plea offer was extended to and accepted by defendant. The principal terms of the plea offer can be summarized as follows:

1. Defendant must enter a plea of guilty to the charge of Conspiracy to Commit Espionage, in violation of 18 U.S.C. § 794(c), carrying a maximum sentence of imprisonment for any term of years or for life, and a $250,000 fine;

2. Defendant must submit to damage assessment debriefings by any military and intelligence community representatives, and such additional polygraph examinations as are deemed necessary by those representatives;

3. Defendant must testify during any grand jury, trial on other proceedings at which his testimony may be relevant concerning his espionage activities and those of his co-conspirators;

4. Defendant must submit to the Director of Naval Intelligence all information he may intend to provide in interviews, articles, books or any other public disseminations for pre-publication review in order to prevent further disclosure of classified information;

5. Defendant must execute an assignment to the United States of any profits, proceeds or interest he may receive for interviews, articles, books or other public disseminations by, or about him;

6. Defendant must acknowledge that the Court is free to sentence him to the maximum term of imprisonment and fine; that the government is obliged only to inform the Court of the nature, extent and value of defendant's cooperation; and that notwithstanding the value of defendant's cooperation, the government would nonetheless recommend that the Court impose a sentence of substantial incarceration and a monetary fine;

7. Defendant must acknowledge that if he fails to cooperate fully with the government or otherwise fails to fulfill his obligations, the plea agreement is null and void.

b. Defendant's Outline of the Conspiracy

In the numerous interviews of defendant conducted by government counsel, FBI/NIS agents and representatives of the military and intelligence communities, defendant has detailed the origins and scope of the espionage operation conducted by defendant and his Israeli co-conspirators. Certain of the information recounted by defendant is itself classified as public disclosure would cause serious damage to the national security. Such classified details relevant to the imposition of sentence are contained in the

government's classified sentencing memorandum which has been filed with the Court in camera. However, the following constitutes an outline provided by defendant of the criminal activities engaged in by defendant in concert with Colonel Aviem Sella, Rafi Eitan, Joseph "Yossi" Yagur, Irit Erb and other unknown Israeli coconspirators.

Defendant has revealed that he decided to become an Israeli intelligence agent as early as 1982, following several authorized meetings with Israeli military representatives attended by defendant and other selected U.S. intelligence analysts. After attending these meetings, defendant says he concluded that the United States was not providing Israel with classified information sufficient to enable Israel to strengthen its military capability. Defendant has acknowledged that he was well aware of the restrictions on the disclosure of classified information to a foreign government, including allies of the United States. However, insofar as Israel was concerned, defendant concluded that these official restrictions were inappropriate and should be disregarded. Defendant, of course, did not make his beliefs known within the United States intelligence or military community, and instead chose to establish a clandestine contact with Israeli officials.

The opportunity to establish such a contact arose in the spring of 1984, when an associate of defendant's mentioned that he (the associate) had met a Colonel Aviem Sella. According to the associate, Sella was a famous Israeli Air Force pilot who was at that time on

leave from his military assignment, pursuing a graduate degree at New York University. Defendant immediately recognized that Sella could be the Israeli contact which defendant had been seeking, and he requested that the associate arrange for defendant and Sella to meet.

Shortly thereafter, Sella contacted defendant and they arranged to meet in Washington, D.C. At the very outset of the meeting, defendant described the position which he held with the U.S. Navy and the nature of the classified information to which he had access. Defendant then informed Sella of his desire to work covertly as an Israeli intelligence agent within the U.S. Navy. Defendant stated that while he ultimately intended to emmigrate to Israel, he was willing to remain in his present position to exploit, on behalf of Israel, the "holes" in the U.S. intelligence system. According to defendant, Sella said that while he did not want to request information on U.S. military capabilities, the Israelis were very much interested in acquiring information from the U.S. to strengthen Israel's defense capability. Sella also said that he (Sella) wished to see certain examples of the type of classified information defendant could produce, and proposed another meeting for this purpose.

In order to facilitate subsequent clandestine meetings, Sella requested that defendant provide a list of numbers of pay telephones located near defendant's apartment. Once defendant provided the list, Sella assigned a Hebrew letter to each number. Sella then explained that he would call defendant at home, mention a Hebrew letter and thereby direct defendant to a particular pay telephone to await Sella's call.

Sella followed the above-described procedure to contact defendant a few days later to arrange another meeting, which was then held in a secluded outdoor location at Dumbarton Oaks in Washington, D.C. Defendant brought to this second meeting a briefcase full of U.S. classified documents which he gave to Sella for review. Sella then described other particular technical information which would be of primary interest to Israel and stressed that defendant should obtain "Top Secret" documents. Notably, in doing so Sella specifically informed defendant that Israel did not need U.S. classified information relating to terrorism; defendant was subsequently told by his Israeli co-conspirators that Israel already had sufficient information on the subject of terrorism. Defendant and Sella also discussed the need for defendant to receive a "salary" from the Israelis, and alternative methods by which defendant could be compensated. At the conclusion of this second meeting between defendant and Sella, plans were made for a third meeting at which defendant would begin the actual delivery of U.S. classified information for copying by the Israelis.

The third meeting was again initiated by a telephone call from Sella, made in the previously agreed upon fashion utilizing the Hebrew alphabet. Defendant was directed to bring the U.S. classified documents to a location in Maryland where Sella met defendant and accompanied him to a house, also located in Maryland, which the government has since learned was the residence of an Israeli diplomat. On this occasion, defendant again brought the classified documents he had displayed to Sella at their second meeting. Additionally, defendant delivered to Sella highly classified message

traffic and intelligence summaries. After Sella and defendant reviewed the documents, the material was taken to the second floor of the Maryland residence, apparently for copying, by an unknown male who was waiting at the house when defendant and Sella arrived.

While defendant was waiting for the classified documents for which he was accountable to be returned, he and Sella discussed the need for defendant to travel abroad to meet "the old man" (Rafi Eitan) who would prescribe collection priorities and determine the amount of defendant's compensation. With respect to the subject of compensation, defendant and Sella again discussed various ways by which defendant could explain his new-found wealth. It was agreed that defendant would explain his ability to pay for a trip abroad by stating that it was an engagement gift from a relative. Sella told defendant to make reservations to travel to Paris, along with Anne Henderson Pollard, in November, 1984. It was also agreed that prior to the trip, Anne Henderson Pollard would meet Sella on a social occasion, at which time Sella was to be introduced as a potential business partner.[11/] Sella also had informed defendant that Sella soon would be returning to Israel to resume his military responsibilities. Accordingly, Sella stated that defendant would also be meeting his new "handler" in Paris.

When defendant and his wife travelled to Paris during the second week of November, 1984, Sella treated defendant and his wife

11/ Defendant and Sella had agreed at their very first meeting that the true nature of their relationship would not be revealed to Anne Henderson Pollard, at that time defendant's girlfriend. Defendant, Anne Henderson Pollard, Sella and his wife met for dinner at the Fourways Restaurant in Washington, D.C. in July, 1984. Sella, who paid for the dinner, presented himself as an old acquaintance of defendant's and a potential business contact. Anne Henderson Pollard acquiesced in this pretext, even though defendant had revealed to her the clandestine nature of the relationship at the time of the very first meeting with Sella.

to expensive meals and entertainment throughout their week-long stay in Paris. In addition, according to defendant, it was Sella who took note of Anne Henderson Pollard's interest in a particular $7000 diamond and sapphire ring she saw in a Paris jewelry store, and saw to it that the ring was purchased and delivered to defendant as part of his compensation.

It was during this trip to Paris in November, 1984 that defendant was first introduced to his new "handler", Joseph "Yossi" Yagur, and the head of the espionage operation, Rafi Eitan. Sella escorted defendant to an apartment in Paris and there introduced him to Yagur and Eitan. Defendant engaged in "business" discussions with Sella, Eitan and Yagur on several occasions over a period of several days. According to defendant, he was repeatedly told throughout these meetings that defendant would be "taken care of" if apprehended by the U.S. authorities. Eitan, in particular, assured defendant that any action by U.S. authorities against defendant could be "contained". Eitan also told defendant that he (defendant) was "one of them", and directed defendant to provide passport photos of himself and Anne Henderson Pollard.

The manner and amount of defendant's compensation was also discussed at these meetings. First, defendant was told that his travel expenses for the trip would be covered by the Israelis, and defendant was given over $10,000 in cash before he and Anne Henderson Pollard departed Paris. Second, defendant was told that he would be given a diamond and sapphire ring which Anne Henderson Pollard

had admired in a Paris jewelry store the preceding day. Third, a monthly salary of $1500 was agreed upon, based upon defendant's monthly Navy salary in the same amount. As to all of the above-compensation, defendant and his Israeli co-conspirators discussed various cover storys, regarding the source of the wealth, that defendant was to convey to Anne Henderson Pollard and any relatives, friends or colleagues who might inquire.

The majority of the time during these meetings was dedicated to the "tasking" of defendant. Sella, Eitan and, in particular, Yagur, described in detail the specific weapons systems and other subjects as to which defendant was to obtain classified documents and information for Israel. It is again notable that during this "tasking", the Israelis expressed little interest in U.S. classified information concerning terrorism or counter-terrorist activities, explaining that they already had sufficient information on this subject. At the conclusion of these meetings, it was agreed that defendant would deliver the U.S. classified information he obtained to Yagur; a meeting location in the United States -- the Maryland home of the Israeli diplomat -- was designated, and a date established for the next meeting between defendant and Yagur.

After defendant's return to the United States, he met with Yagur at the previously designated location in December, 1984. On this occasion, defendant delivered suitcases containing U.S. classified documents for copying by Yagur, who in return provided defendant with the agreed monthly cash payment. During this meeting defendant

was introduced to another Israeli named "Uzi". Yagur and Uzi informed defendant of the procedures which had been established for future deliveries of U.S. classified documents. In brief, defendant was given the address of a Washington, D.C. apartment, the residence of Irit Erb, to which the documents should thereafter be delivered. Defendant was also provided an emergency telephone number to call, and code words to be used, to alert the Israelis to unexpected occurrences or in the event the espionage operation was detected.

Beginning in January, 1985 and continuing until the time of his arrest, defendant's delivery of U.S. classified national defense documents became, for defendant and his Israeli co-conspirators, a matter of routine. The particulars of defendant's biweekly deliveries of U.S. classified documents to Irit Erb, and monthly meetings with Joseph Yagur, are recounted in the Indictment to which defendant has plead guilty, and will not be repeated here. Several aspects of this "routine" are, however, notable. First, defendant's monthly cash payments from Yagur increased from fifteen hundred dollars ($1500) to twenty-five hundred dollars ($2500) in the spring of 1985. Second, Yagur's detailed monthly "tasking" of defendant, with the exception of one isolated occasion, did not include requests for U.S. classified information concerning terrorist or counter-terrorist activities. Indeed, according to defendant, on his own initiative he brought certain classified information relating to terrorism to one of the monthly meetings with Yagur,

who then specifically informed defendant that no further delivery of such information should occur. Third, and most significantly, the United States classified national defense information compromised during these biweekly deliveries to Erb and Yagur was immense in volume and far-reaching in scope, including thousands of pages of documents classified TOP SECRET and/or SCI.

In the summer of 1985, defendant was told by Yagur that Eitan wanted to meet with defendant, and that the expenses for a trip to Israel for this purpose would be paid as part of defendant's compensation. According to defendant, he readily accepted this offer, since an Israeli-financed trip abroad enabled defendant and Anne Henderson Pollard to be married that summer in Europe, instead of in Washington, D.C. as originally planned.

Upon their arrival in Israel in late July, 1985, defendant and his wife were entertained at a dinner held in defendant's honor by the previously-mentioned "Uzi". The dinner was attended by Yagur, Sella and their respective spouses. Defendant has revealed that as a result of this dinner, as well as his subsequent meetings with Eitan a few days thereafter, he was encouraged to redouble his espionage efforts on the part of Israel.

During his meetings with Eitan, who was at that time hospitalized in Tel Aviv, defendant was again reassured that he would be protected by the Israelis if his espionage activities were detected. Eitan and Yagur, who also attended the meetings, requested that defendant provide even greater quantities of U.S. classified documents. When defendant expressed some reluctance, pointing to the

risk of detection, Eitan and Yagur offered defendant an additional thirty thousand dollars ($30,000), to be paid each of the following ten years, into a foreign bank account established for defendant. Eitan also instructed Yagur to give defendant an additional two thousand dollars ($2,000) in cash, over and above the more than ten thousand dollars ($10,000) defendant had already received to cover the expenses of this trip. With this additional incentive, defendant departed Israel, continued on his three week tour of Israel and Europe with Anne Henderson Pollard, then returned to the United States to resume his espionage activities on behalf of Israel.

Defendant states that, following his return to the United States in late August, 1985, the volume of U.S. classified documents which he routinely delivered to his Israeli co-conspirators increased substantially. Defendant admits that he was further encouraged to accelerate his efforts when, in or about the fall of 1985, Yagur showed defendant an Israeli passport, bearing defendant's photograph, in the name of Danny Cohen. Defendant considered the passport to be a demonstration of gratitude for the services he had rendered and understood that he would assume this name upon his eventual return to Israel.

In addition to the passport, Yagur provided to defendant for execution the signature cards for a foreign bank account in the name Danny Cohen. Yagur told defendant that thirty thousand dollars ($30,000) had already been credited to the account, and a deposit

in the same amount would be made annually for the ten years defendant had agreed to continue serving as a covert Israeli agent operating in the United States Navy. Although defendant contends that he continued to be concerned about the detection of his activities, he nonetheless executed the bank account signature cards provided by Yagur. Furthermore, he continued to accept the twenty-five hundred dollar ($2500) monthly cash payments from Yagur, and to make bi-weekly deliveries of U.S. classified documents. In fact, the last delivery to his Israeli coconspirators was made by defendant only three days before he was stopped outside of his office by FBI/NIS agents on November 18, 1985.

According to defendant, while he realized that the FBI/NIS intervention on November 18, 1985 cut short his service as an Israeli agent, he remained convinced that he could stall the authorities long enough to make good his escape. With this goal in mind, during the interviews conducted on November 18-20, defendant provided to the FBI/NIS agents considerable detail concerning his unauthorized disclosure of classified documents, while at the same time falsely identifying a U.S. citizen as his intelligence "handler". Defendant shrewdly anticipated that the interviewing agents would suspect the involvement of a foreign nation, and would continue to allow defendant to remain at liberty in the hope that surveillance might lead the agents to the true recipients of the classified documents compromised by defendant.

During this three day period, defendant surreptitiously pursued his plan of escape. Defendant learned from Anne Henderson Pollard that she had already alerted Aviem Sella on Monday night, November 18, after defendant had been detained at work. Using pay telephones, defendant contacted Joseph Yagur that same night to report the detection of their espionage activities, and twice called the Israeli Embassy to request asylum for defendant and Anne Henderson Pollard. According to defendant, when he spoke to an unknown Israeli Embassy security officer on Thursday morning November 21, defendant was told that he and Anne Henderson Pollard should come to the Embassy so long as they could "shake" the FBI surveillance.

Before departing for the Embassy, defendant and Anne Henderson Pollard hand-shredded virtually all of the personal papers and records located in their apartment, as well as numerous receipts and other documents reflecting defendant's acquisition of U.S. classified information from government libraries and repositories. On Thursday morning, November 21, defendant and Anne Henderson Pollard drove to the Israeli Embassy, taking a circuitous route in an unsuccessful effort to elude the FBI agents conducting surveillance. While defendant and Anne Henderson Pollard did manage to gain access to the Embassy grounds, defendant states that the obvious presence of numerous FBI agents at the gates of the Embassy prompted the Israeli security officers to turn defendant and Anne Henderson Pollard away.

As previously noted, even after his arrest on November 21, defendant refused to identify his co-conspirators during the interview conducted that day by FBI/NIS agents. Defendant acknowledges that he continued to believe the representations made to him on several occasions by Rafi Eitan that the matter would be "contained" if defendant's espionage activities were detected by U.S. authorities. Significantly, as a result of defendant's decision to alert his co-conspirators that the espionage operation had been detected, and to continue to protect their identity, Aviem Sella, Joseph Yagur and Irit Erb were able to flee from the United States.

IV. FACTORS COMPELLING SUBSTANTIAL SENTENCE

In the foregoing sections of this memorandum, the government has set forth in substantial detail the facts and circumstances surrounding defendant's espionage activities. The length of this factual statement reflects the government's view that this is a case wherein the facts are so compelling as to warrant, vel non, the imposition of a substantial period of incarceration and a monetary fine. These facts reveal an espionage operation which was in existence for over eighteen months, during which defendant compromised thousands of pages of classified documents, a substantial number of which contained TOP SECRET and SCI information. But for the intervention of FBI and NIS agents, defendant and his co-conspirators contemplated that the compromise of classified information would have continued at this rate for another nine years.

Defendant's espionage activities on behalf of Israel constituted a flagrant breach of the trust conferred by the United States upon a select group of government employees who hold security clearances to access the most sensitive of our nations military secrets. This breach of trust is all the more venal in that, despite the expected protestations of defendant to the contrary (see p.39, infra), it is clear that the money and gifts provided by the Israelis were significant, if not the primary factors motivating defendant in his espionage activities. In short, the evidence establishes that, in exchange for substantial sums of money, paid as well as promised, defendant wrought damage to the national security which was exceptional in both its volume and scope.

In an effort to offset this overwhelming evidence, defendant will undoubtedly urge the Court also to consider his post-arrest conduct, i.e., defendant's submission of a plea of guilty and his cooperation with the government's ongoing espionage investigation. The entry of a guilty plea, and post-plea cooperation with law enforcement authorities, are traditional factors which may be considered by courts at the time of sentencing. See, e.g., ABA Standards, Pleas of Guilty, § 1.8 (1979). It is in recognition of this fact that, after defendant agreed to submit to interviews by government counsel and polygraph examinations by the FBI, the government formulated a plea offer in this case and agreed to make known the nature, extent and value of defendant's cooperation.

The defendant has submitted to numerous post-plea debriefings conducted by law enforcement agents and representatives of the intelligence community. During those debriefings, defendant revealed a substantial amount of information regarding the formation, conduct and extent of the espionage operation which was previously unknown to the government. For this reason, defendant's post-plea cooperation has proven to be of considerable value to the government's damage assessment analysis, and the ongoing investigation of the instant case.

In the final analysis, it is for the Court to determine the weight which should be given to defendant's post-plea cooperation. The government acknowledges that defendant has been candid and informative in describing his wrongdoing, and that it has derived benefit from the information defendant has provided. However, in deciding whether defendant's cooperation warrants sentencing consideration, it is also appropriate for the Court to evaluate the extent to which "the defendant has given or offered cooperation [and if] such cooperation has resulted or may result in the successful prosecution of other offenders engaged in equally serious or more serious criminal conduct." ABA Standards, Pleas of Guilty, § 1.8 (a)(iv)(1979). In this regard, it must be noted that three of defendant's Israeli co-conspirators were able to flee beyond the reach of United States law enforcement because, in the three days prior to his arrest, defendant chose to mislead the FBI/NIS agents as to the identity of defendant's co-conspirators. Thus, it cannot be said at this time that defendant's cooperation is likely to result in the successful prosecution of other, equally culpable offenders.

Moreover, there remains the very substantial question of defendant's motivation --- whether defendant's cooperation has been proffered because of genuine remorse, or merely pursued out of self-interest, as a hedge against imposition of a severe sentence. It has been recognized that sentencing consideration is appropriate for a defendant who has entered a guilty plea where "the defendant is genuinely contrite and has shown a willingness to assume responsibility for his or her conduct." ABA Standards, Pleas of Guilty, § 1.8(a)(i)(1979).

In this regard, the government asks the Court to weigh the following factors. First, defendant has expressed no remorse during the post-plea debriefings conducted by government counsel and investigators; in fact early in the debriefing process defendant informed two FBI agents that he would do it all again if given the chance. Second, from the outset of the conspiracy defendant was assured by his Israeli co-conspirators that the matter would be "contained" if defendant was apprehended. It is certainly reasonable to infer that defendant, even on the day of his arrest, persisted in his refusal to identify either the foreign nation on whose behalf he had been acting or his individual co-conspirators, in the hope that his continuing loyalty to Israel would be rewarded by efforts to free him. Third, defendant has repeatedly expressed resentment at being "abandoned" by his Israeli co-conspirators, in connection with his unsuccessful attempt to gain asylum, as well as after defendant's arrest. It may well be defendant will concede that, in the absence of the assistance that his co-conspirators --

in particular Rafi Eitan -- had promised, he chose to cooperate fully with the U.S. government in an effort to reduce the likelihood that the maximum sentence will be imposed. Such a candid assessment would, it is submitted, be more consistent with the factors listed hereinabove, than an exaggerated claim of remorse for his espionage activities.

While post-plea cooperation concededly is a relevant sentencing factor, certain other exculpatory arguments have been advanced by defendant that, in the government's view, are self-serving and without evidentiary support. First, defendant has publicly proclaimed that his espionage activities were motivated, not by the prospect of financial gain, but rather by his desire to aid Israel in the fight against terrorism. Second, defendant has contended that he is entitled to a more lenient sentence because his disclosure of classified information to an ally was less damaging than in cases where espionage has been committed on behalf of a communist country. For the reasons set forth hereinbelow, the government submits that both of these arguments should be summarily rejected by the Court.

With respect to defendant's claim that he was motivated by altruism rather than greed, a number of articulable facts demonstrate that this claim is superficial rather than substantial. Initially, it must be recognized that defendant's espionage relationship with the Israelis is not the only instance where defendant has disclosed classified information in anticipation of financial gain. The government's investigation has revealed that defendant provided to certain of his social acquaintances U.S. classified

documents which defendant obtained through U.S. Navy sources. The classified documents which defendant disclosed to two such acquaintances, both of whom are professional investment advisers, contained classified economic and political analyses which defendant believed would help his acquaintances render investment advice to their clients. Defendant also gave classified information to a third social acquaintance who defendant also knew would utilize it to further the acquaintance's career.

Defendant has acknowledged that, although he was not paid for his unauthorized disclosures of classified information to the above-mentioned acquaintances, he hoped to be rewarded ultimately through business opportunities that these individuals could arrange for defendant when he eventually left his position with the U.S. Navy. In fact, defendant was involved in an ongoing business venture with two of these acquaintances at the time he provided the classified information to them.

Unlike the prospective business opportunities presented by his social acquaintances, defendant's espionage relationship with the Israelis provided the opportunity for immediate financial gain. The evidence reveals that from the very outset of his relations with his Israeli co-conspirators, defendant was enamored of the prospect for monetary gain. For example, when in the summer of 1984 he attempted to recruit a friend to assist him in delivering information to the Israelis (see p. 21, supra), defendant touted

the opportunity for financial reward in return for delivery of information to the Israelis. In the earliest meetings with Aviem Sella, the necessity of a "salary" for defendant was discussed. During the meetings in Paris in November, 1984, the amount of defendant's monthly "salary" was the subject of arms-length negotiation between defendant, and Aviem Sella, Rafi Eitan and Joseph Yagur. In several of the earlier meetings with his co-conspirators, defendant also actively participated in developing a cover story to disguise the true source of these additional monies.

By defendant's own admission made during his post-plea debriefings, at no time did defendant resist or refuse Israeli offers to pay him for U.S. classified information. Moreover, as the operation progressed, defendant actively sought increases in the compensation he was to be paid. Only a few months after the Paris meetings, it was defendant who prompted the payment of additional compensation by emphasizing for Yagur the quality of the information defendant had provided. When Yagur asked defendant what salary increase would be necessary, defendant told Yagur to "up it by a thousand. As a result of these discussions, defendant's monthly salary increased to twenty-five hundred dollars ($2500).

In the summer of 1985, defendant raised the spectre of detection by U.S. authorities to obtain additional money. During his meetings in Israel with Eitan, defendant repeatedly expressed concern that he was going to be caught. In direct response to this apparent negotiating tactic, defendant was given additional cash in

Israel and promised the substantial annual payments into a foreign bank account. Defendant will no doubt insist that the Israelis, not defendant, conceived of the foreign bank account and the additional sums of money to be deposited therein. At the same time, defendant cannot dispute that he willingly accepted the additional compensation and, upon his return to the United States, defendant redoubled his efforts by increasing the volume of classified documents he delivered to the Israelis.

By the summer of 1985, the evidence shows that defendant had become literally addicted to the high lifestyle funded by his espionage activities. As previously noted, the checking account disbursements made by defendant and his wife consumed defendant's Navy salary and Anne Henderson Pollard's public relations income. In addition, the government has identified cash expenditures by defendant and his wife, funded by defendant's espionage activities, which equalled the Pollard's legitimate salaries. It was during the summer of 1985 that defendant and Anne Henderson Pollard acquired a number of items of expensive jewelry in Israel as well as here in the United States (see pp. 18, 19-20, supra). Also illustrative are the accommodations which defendant arranged for himself and Anne Henderson Pollard during their travel abroad that summer. According to the travel agency which booked the travel accommodations, in each of the seven major cities visited during that three week trip defendant insisted that reservations be made only at certain first-class hotels. Moreover, in order to travel from

Venice to Zurich in August, 1985, defendant obtained a private compartment on the Orient Express at a rate of more than seven hundred dollars ($700).

At the time of his apprehension, defendant had already received, in hand, approximately fifty thousand dollars ($50,000) in cash for his espionage activities. Moreover, he understood that another thirty thousand dollars ($30,000) had been deposited in his foreign bank account. At the current monthly rate of twenty-five hundred dollars ($2500) cash paid to defendant per month, and with an annual foreign bank account deposit of thirty thousand dollars ($30,000), defendant stood to receive an additional five hundred forty thousand dollars ($540,000) over the expected life of the conspiracy. This expected compensation is the absolute minimum contemplated by defendant, and does not take into account increases in his monthly stipend or further gifts such as the diamond and sapphire ring purchased by the Israelis for Anne Henderson Pollard. It can be seen from these facts, that throughout his relationship with the Israelis the lure of money motivated and, eventually, consumed this defendant.

In light of this overwhelming evidence of defendant's financial excesses, his suggestion that his espionage activities were intended to combat terrorism scarcely warrants examination. Yet only a cursory review of the evidence is necessary to dispel defendant's characterization of himself as a well-intended source of information crucial to Israeli anti-terrorism efforts.

First, of the thousands of pages of classified documents which defendant admitted delivering to the Israelis, only a miniscule portion concern terrorist or counter-terrorist activities. Secondly, in his initial meetings with Aviem Sella in the summer of 1984, as well as in the meetings with Rafi Eitan in Paris in November, 1984, defendant was informed that the Israelis were not interested in U.S. classified information relating to terrorism. Third, and perhaps most revealing, Joseph Yagur actually rejected terrorist-related information when on an occasion early in the conspiracy it was offered by defendant. During one of their monthly meetings, defendant included some classified, terrorist-related information in materials he delivered to Joseph Yagur; Yagur specifically instructed defendant not to waste time obtaining this type of information.

In short, neither defendant's own conduct, nor that of his co-conspirators, provide any support for the claim that defendant's anti-terrorist beliefs played a major role in this conspiracy. In contrast, the evidence compels the conclusion that defendant had a keen interest in financial gain from the very outset of his relationship with the Israelis. As that relationship ripened, defendant's interest in money, and the lifestyle which that money made possible, became the force which drove defendant to provide increasingly greater numbers of classified documents despite the growing risk of apprehension.

The second contention which defendant may advance as a mitigating factor is that the unauthorized delivery of U.S. classified information to an ally, in this case Israel, should be punished less severely than espionage committed on behalf of a hostile foreign nation. As an initial matter, the government submits that, in assessing the culpability of a defendant convicted of espionage, it is simplistic and inappropriate to focus on the identity of the foreign country which has benefited from defendant's unlawful acts. The fallacy of such an approach can be quickly demonstrated by reference to a hypothetical example: Is defendant "A" more culpable, having on a single occasion gratuitously delivered to a communist agent a dozen pages of confidential information, than defendant "B", who has sold thousands of pages of TOP SECRET and SCI information to a U.S. ally? Obviously the identity of the foreign nation on whose behalf a particular defendant acts, is less significant than the nature and volume of classified information compromised and whether the defendant was financially rewarded for his actions.

It is notable that Congress did not distinguish, in establishing the penalty for espionage, between friends and foes of the United States. Under Title 18, United States Code, Section 794(a), the substantive provision which defendant conspired to violate, the maximum penalty provided for espionage committed on behalf of <u>any</u> foreign nation is imprisonment for any term of years or for life. It is, of course, true that where a defendant has provided sensitive information to an enemy during wartime, Congress has recognized

that the hostile intentions of the recipient of the information may be considered as an aggravating element of the offense. See, Title 18, United States Code, Section 794(b). However, by legislating a separate statutory provision applicable to espionage committed during peacetime, the provision to which defendant has pled guilty here, Congress expressed no intent that the identity of the foreign nation involved should be considered as a mitigating factor.

Apart from the issue of Congress' intent in espionage cases generally, the instant case presents a host of factors that are no less aggravating because the recipient of the classified information was a non-communist country. A detailed classified submission detailing the injury to our national security caused by defendant's conduct has been submitted to the Court in camera. However, certain general observations about the serious impact of defendant's espionage activities can be made here.

During the approximately eighteen months that defendant was selling U.S. secrets to Israel, more than a thousand classified documents were compromised, the majority of which were detailed analytical studies containing technical calculations, graphs and satellite photographs. A substantial number of these documents were hundreds of pages in length. More than eight hundred (800) of these documents were classified TOP SECRET, since the unauthorized disclosure of the documents' contents "reasonably could be expected to cause exceptionally grave damage to the national security." Executive Order 12356 at § 17.7(b).

In providing these thousands of pages of classified information to his Israeli coconspirators, defendant acted as a self-appointed, combination Secretary of Defense and State, making daily decisions as to whether disclosure of this information furthered both U.S. foreign relations and defense interests. To say that defendant was ill-equipped to make these crucial decisions is a gross understatement. Moreover, unlike those men and women appointed to cabinet-level positions by the President, and confirmed by Congress, defendant was not accountable to the American public for the clandestine decisions he made. Furthermore, defendant's view of world events was unbalanced, skewed as it was in favor of a single country. Because defendant was so ill-equipped to perform the role he chose, and for the additional reasons specified hereinbelow, defendant's actions have had, and will continue to have, adverse consequences for the national defense and foreign relations interests of the United States.

Defendant cannot be heard to argue that he did not divulge information which betrayed U.S. military secrets. In addition to the examples detailed in the government's classified submission, two general examples which can be cited here are illustrative. First, defendant has admitted that he provided to his Israeli co-conspirators three separate categories of daily message or cable traffic for approximately seventeen (17) months. One of these categories of messages, in particular, provides details about U.S. ship positions, aircraft stations, tactics and training operations. Second,

numerous, classified analyses of Soviet missile systems which defendant sold to Israel reveal much about the way the United States collects information, including information from human sources whose identity could be inferred by a reasonably competent intelligence analyst. Moreover, the identity of the authors of these classified publications were included in the unredacted copies which defendant compromised.

Disclosure of such specific information to a foreign power, even an ally of the United States, exposes these human sources of information, and U.S. analytical personnel, to potential intelligence targeting. While no one can predict with certainty that these human sources and analysts will be themselves pressured, it is important to remember that the Israeli co-conspirators who received this sensitive information from defendant are still at large. Thus, as a direct result of defendant's unlawful activities, the potential for additional damage to U.S. national security now exists.

The damage to U.S. foreign relations wrought by defendant's activities is even more identifiable than the adverse consequences to our military capability. First, the widely-published reports of defendant's espionage activities on behalf of Israel have led to speculation within other countries in the Middle East, with which the U.S. also has enjoyed friendly relations, that defendant's unauthorized disclosures to Israel may have adversely affected the national security of these other Middle Eastern countries. Secondly, countries around the world having close relations with the United

States have expressed serious concern that a government employee with such far-ranging access to sensitive information has breached his fiduciary duty to protect that information. Obviously, the very survival of the close intelligence relationship which exists among a number of free-world countries is grounded in mutual trust and responsibility; defendant's actions in this case surely do not inspire confidence in the ability of the United States to protect the sensitive information it receives from other friendly countries.

A wholly separate reason for rejecting defendant's expected claim -- that espionage on behalf of a U.S. ally is somehow less invidious -- is that a moderate sentence would not deter, and may even invite, similar unlawful conduct by others. Deterrence is, of course, a major factor for the Court to consider in fashioning the sentence to be imposed. If a less severe sentence were ruled out because the foreign nation involved is a U.S. ally, a potentially damaging signal would thereby be communicated to individuals, or foreign countries, contemplating espionage activities in the United States.

When U.S. intelligence personnel, or other government employees holding security clearances assess the risks of committing espionage, or disclosing sensitive documents to individuals or entities not authorized to receive them, such U.S. personnel should not be encouraged to "factor" into the risk assessment the political beliefs of the foreign nation or other intended recipient of the classified information. Instead, in the government's view, only

the knowledge of swift, certain and substantial incarceration, without regard to the political beliefs of the parties involved, will deter would-be purveyors of classified information.

The imposition of a substantial prison sentence in espionage cases, regardless of the involvement of a U.S. ally, will serve to deter not only those U.S. government personnel with access to classified information, but also make more difficult the task of foreign nations who target and solicit such personnel in pursuit of U.S. secrets. For example, it would no longer be profitable for intelligence "handlers" acting on behalf of hostile countries to advise U.S. sources to claim, if caught, that the classified information was intended for a U.S. ally.[12/] Moreover, a common technique used by foreign agents seeking U.S. classified information is the so-called "false flag" approach. This technique refers to instances where the U.S. source is falsely persuaded that the foreign agent is acting on behalf of a friendly or allied country; implicit in this approach is the assurance that the likelihood of a substantial prison sentence is remote where the U.S. source does not intend to aid a hostile country by his unauthorized disclosures.

12/ It is notable that in the recent espionage case of United States v. Jerry Whitworth, the defendant, who was charged with obtaining U.S. classified information for the Soviet Union, contended that he believed the information was being delivered by a coconspirator to Israel.

Whether a potential U.S. source is the target of a "false flag" approach, or is wittingly advised by his "handler" to merely pretend an intent to benefit a friendly foreign power, the deterrent effect of certain, substantial jail sentences would be the same. Americans targeted by the "false flag" approach could no longer be encouraged to proceed on the belief that apprehension will bring penalties less severe than in espionage cases involving communist-bloc countries. Similarly, Americans who wittingly cooperate with hostile foreign agents would be stripped of the ability to fabricate an intent to aid a friendly nation in an effort to avoid lengthy incarceration.

Deterrence is only one of several traditional sentencing factors which, we submit, should be satisfied by the sentence to be imposed upon defendant. An equally important factor is that of the protection of society against further harm which might be wrought by the offender. Recent public statements by the defendant demonstrate that he poses a continuing danger to the security interests of the United States.

On November 21, 1986, the one-year anniversary of his arrest, defendant granted an interview to a reporter for the Jerusalem Post (copy of November 21, 1986 Jerusalem Post article attached hereto as Exhibit A). Initially it should be noted that in providing information regarding his espionage activities to a reporter for publication, without first clearing that information with the Director

of Naval Intelligence, defendant violated an express provision of his written plea agreement.[13/] The information provided to the Jerusalem Post reporter, at least so much of it as is recounted in the article, is not itself classified. However, defendant's failure to follow the procedure required by the plea agreement for publication or dissemination of information demonstrates his continuing unwillingness or inability to conform his conduct to proscribed rules or laws. If defendant refuses to honor agreed upon procedures designed to protect U.S. classified information even while he is incarcerated, he clearly cannot be relied upon to protect that classified information about which he is currently knowledgeable.

In fact, there is every reason to believe that defendant would make further disclosures of classified information to Israel if given the opportunity. By his own account as related to the Jerusalem Post reporter, defendant considers Israel his "home" and intends to live there once released; defendant claims he is "as much a loyal son of that country [Israel] as anybody has been"; and the only apology defendant offers is that his espionage activity "wasn't the most effective thing from a long-range standpoint."

13/ Paragraph nine of the May 23, 1986 plea agreement executed by defendant provides, in pertinent part. "Mr. Pollard understands and acknowledges his legal obligation to refrain from the unauthorized disclosure, either orally or in any writing, of classified information derived during his employment by the United States Navy and/or in the course of the activities which resulted in his arrest in the above-captioned case. Should Mr. Pollard at any time author any book or other writing, or otherwise provide information for purposes of publication or dissemination, he hereby agrees to first submit said book, writing or information to the Director of Naval Intelligence for pre-publication review and deletion of information which, in the sole discretion of the Director of Naval Intelligence, is or should be classified."

At no point during the interview as reported did defendant express any remorse for the damage he caused to U.S. national security interests, let alone express any remaining loyalty to this country. Indeed, he compares his current posture to that of an Israeli pilot who, after having been shot down behind enemy lines, is left by Israel to languish. Even if one were to momentarily accept defendant's claim that he withheld from his Israeli co-conspirators some of the voluminous U.S. classified information he possesses directly relating to U.S. military capabilities, there can be no doubt that he is prepared to divulge all that he knows once he becomes, in his words, a "productive member of Israeli society."[14/]

All of the law enforcement personnel who have interviewed the defendant during post-plea debriefings have been impressed with the capacity of his memory. Defendant's ability to relate the classified information he obtained during his U.S. Navy employment remains undiminished after a year of incarceration. Only the passage of time will serve to minimize the extent and sensitivity of the information he retains. Only the imposition of a substantial prison term can guarantee that defendant will pass that time in an environment in which U.S. authorities can exercise some control over the classified information defendant is capable of revealing.

14/ We do not, of course, question the right of the defendant to hold or express particular cultural or religous beliefs, or suggest that he should be punished for those beliefs. The above-quoted statements of the defendant are recounted solely to evidence his stated commitment to further the interests of a foreign nation by any and all means. As defendant himself acknowledged to the Jerusalem Post reporter, he could have gone to Israel to pursue his beliefs before he became a member of the U.S. intelligence community. Instead defendant chose to pursue his beliefs through unlawful means, thereby damaging U.S. security interests in the process.

In conclusion, an examination of defendant's conduct throughout the course of this espionage conspiracy, as well as at the time of his arrest, reveals only factors which aggravate the severity of the offense. The offense itself -- espionage -- is, of course, the most grievous of crimes. The commission of such an offense becomes intolerable in circumstances where, as here, one betrays his country for money. When in the days immediately prior to his arrest defendant had the opportunity to redress at least some of the damage he had wrought, he mislead the investigating agents, notified his co-conspirators and, once again, put his self-interest ahead of the national interest as he made his own plans to escape. He continued to pursue this course of action even on the day of his arrest, with the result that several of his Israeli co-conspirators succeeded in making good their escape from the United States.

It is in this light, the government believes, that defendant's post-plea cooperation must be viewed. The value of this cooperation in connection with the government's damage assessment, and continuing espionage investigation is, as previously noted, conceded. Yet it has been offered by defendant belatedly, and without remorse for

the crime he has committed. Accordingly, and in view of the severity and circumstances of the offense, it is submitted that the imposition of a substantial period of incarceration and a monetary fine is warranted.

Respectfully submitted,

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