

STATUS OF THE CASEA. INDICTMENT

The defendants are charged in an 11-count indictment with: conspiracy to defraud the United States in violation of Title 18, United States Code, Section 371 (Count 1); the illegal exportation of petrochemical equipment to Libya in violation of Title 50, United States Code, Section 1702 (Counts 2, 4, 6, 8 and 10); and causing false statements to be made on shipper's export declarations (hereinafter referred to as "SEDs") in violation of Title 18, United States Code, Section 1001 (Counts 3, 5, 7, 9 and 11).

B. CUSTODY STATUS

Defendants George and Cheryl Smith have posted \$100,000 personal surety bonds. Coconspirators Francis George Christie, a potential Government witness, has been detained without bond since January 8, 1987. Mr. Christie is currently awaiting sentencing which is scheduled after the conclusion of the Smiths' trial.

C. TRIAL STATUS

Trial is scheduled for September 29, 1987, at 9:00 a.m., before the Honorable Rudi M. Brewster, United States District Court Judge for the Southern District of California. The estimated length of the Government's case is approximately one to two weeks.

D. INTERPRETER

An interpreter will not be needed.

E. JURY WAIVER

The defendant has not filed a jury waiver.

F. PRETRIAL MOTIONS

Defendants have filed pretrial motions: (1) to dismiss the indictment; (2) for severance; (3) for a bill of particulars; (4) for change of venue; (5) to dismiss Count 1 as duplicious; (6) to dismiss counts for failing to state an offense; and (7) to dismiss the

1 indictment due to outrageous Government conduct. The court has denied all defense
2 motions except for the outrageous Government conduct claim which was continued until
3 the conclusion of the jury trial.

4 II

5 STATEMENT OF FACTS

6 Oil Patch Production Services, Inc. [hereinafter referred to as "Oil Patch"] was a
7 New Orleans company specializing in the servicing of gas and dual-fuel turbine and the
8 sale of turbine spare parts. In 1986, Oil Patch decided to expand into the international
9 marketplace. Accordingly, on November 4, 1986, George Smith, president of Oil Patch,
10 wrote a letter to Francis G. Christie, director of Christie Noble Services [hereinafter
11 referred to as "CNS"], a Scottish company specializing in the repair of gas turbines.

12 On November 11, 1986, Mr. Christie responded to Oil Patch's inquiry by writing a
13 letter outlining the operations of CNS. George Smith quickly followed up with a telex
14 suggesting that future business between the two companies could be mutually profitable.
15 Thereafter, Christie Noble Services sent a series of telexes requesting quotes on a
16 number of parts. These parts were eventually quoted by Oil Patch and a number of
17 purchase orders were then issued by Mr. Christie's company. Although the initial
18 purchase orders were not large, both companies projected that a substantial amount of
19 business could be done in 1987.

20 On February 1, 1987, the President of the United States imposed an embargo on
21 Libya due to its support of international terrorism. While this did not directly affect Oil
22 Patch, it contributed to a general depression in the oil business. However, through CNS,
23 Oil Patch was able to fill approximately \$30,000 in orders for non-Libyan customers
24 during the first part of the year.

25 In May, CNS received three separate requests for quotes [hereinafter "RFQs"] from
26 a London-based firm, P. C. O. S., Ltd. These RFQs for Solar, Coppus, and G. E. parts
27 differed markedly from their usual business which was concentrated in the North Sea.
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1 All of these new requests appeared to be for Libyan oil fields. Although not experienced
2 in supplying some of the parts, CNS decided to send these Libyan RFQs to a number of
3 their American suppliers, including Oil Patch.

4 Upon receiving the quotes, George Smith and his wife Cheryl attempted to get
5 prices for many of the parts on the three RFQs. They met with varied success. While
6 able to get quotes on some "generic" parts, the major manufacturers would not quote
7 prices without being supplied turbine serial numbers. Moreover, upon asking for a quote
8 from the Solar Turbine office in Louisiana, the Smiths were told that the parts were
9 "earmarked" for Libya.

10 Upon receiving serial numbers from CNS, the Smiths attempted to get quotes from
11 several of the manufacturers. Like Solar, these manufacturers stated that they could
12 not quote against the serial numbers provided as the parts were traced back to Libya.
13 Faced with this situation, the Smiths asked Frank Christie if he could supply serial
14 numbers from non-Libyan turbines that had similar parts. In addition, they requested a
15 letter to "cover their buns" when seeking parts for the Libyan orders.

16 Prior to responding, Frank Christie contacted his solicitor to determine the legality
17 of his actions in the United Kingdom. Upon determining that he was breaking no British
18 laws, he advised the Smiths to do the same in the United States. Cheryl Smith
19 subsequently informed Frank Christie that Oil patch wanted to fill the Libyan requests,
20 but insisted that CNS provide a telex indicating that the parts traced back to Libya were
21 exceptions, and that most of the items were for the North Sea. After receiving this
22 telex and a list of "dummy" serial numbers, Oil Patch continued to try to fill the Libyan
23 orders. However, future correspondence from Oil Patch to CNS sporadically contained a
24 disclaimer that Oil Patch reserved the right to refuse to sell any item destined for an
25 embargoed country.

26 On June 16, 1986, at approximately 8:35 a.m., while acting in an undercover
27 capacity, Special Agent Dan Supnick made a telephone call to Cheryl Smith. Identifying
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1 himself as Dan Saunders, a marketing representative for Solar, he informed Smith that
2 the Solar representative in New Orleans had referred the Oil Patch inquiry to him.
3 Ms. Smith stated that she was still interested in getting the price quote as they were in
4 the process of bidding on an order. In this regard, she stated that a discount would really
5 be helpful.

6 Although Smith claimed in the initial conversation not to know who the end-user
7 was, she repeatedly said that the previous end-user had definitely received a three
8 percent discount from Solar. At one point, Smith admitted having "a copy of the bid that
9 Solar had turned in [which had] a three percent discount on it." When questioned as to
10 this bid, Smith stated, "Quite frankly, the reason that I did not . . . bring a copy to
11 show the discount is because I don't Solar to know who the end-user is." She then quickly
12 added, "or rather who my customer is."

13 On June 20, 1986, at approximately 8:05 a.m., Agent Supnick called Cheryl Smith.
14 Smith told him that her customer called to tell them it appeared that Oil Patch had
15 gotten about \$250,000 of the purchase order. She stressed that with a discount they
16 could probably do one to four million dollars of business by the end of the year. After
17 receiving this news, Agent Supnick told Smith that based on his research it was apparent
18 that the parts were destined for Libya, being sought by their purchasing agent Um Al
19 Jawabi. Supnick added, however, that the deal could still be really sweet. Smith replied
20 that she hated Khadafi and was not interested in going to jail. Yet, she asked about
21 traveling to San Diego to meet with him personally.

22 On June 30, 1986, at approximately 1:00 p.m., Agent Supnick met George and
23 Cheryl Smith at the corporate office of Solar Turbines in San Diego. After initial
24 greetings, Supnick escorted the Smiths to a second-floor conference room. In the
25 conference room, he produced computer printouts of their inquiries and several of the
26 prior inquiries that Jawabi had obtained from Solar on behalf of Libya. As he did this,
27 Agent Supnick demonstrated to the Smiths that regardless of what their customer said,
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1 the computer clearly showed that the parts were going to Libya. Supnick also told the
2 Smiths that Um Al Jawabi was the only company that Solar gave a three percent
3 discount to. After being assured that the parts were destined for Libya, Cheryl Smith
4 asked if they could circumvent the computer data by breaking up the order. Agent
5 Supnick replied that there were other ways to handle inquiries and orders so as to
6 disguise the real end-user.

7 Prior to discussing other methods, Supnick stated that they may simply want to
8 tear up the orders. George Smith, however, insisted that they did not want to tear them
9 up. Cheryl Smith added that this would be a good opportunity for everyone to make
10 some money. Cheryl stated that, although she was patriotic, she did not believe in the
11 United States trade sanctions, but believed in making money. Cheryl also stressed that
12 filling these orders for Libya would take a great deal of trust, and that nobody is going to
13 be able to open up, "even under sodium pentathol." According to Cheryl, they were
14 already demonstrating trust as Supnick could get them into trouble by just singing like a
15 bird. She added that she had no interest in sharing a jail cell with him.

16 Before the meeting concluded, Cheryl told the agent that if their plan was
17 uncovered she wanted to be able to "play dumb." The deal should be set up, she stated,
18 so that she could tell people that she did not know where the parts were really going. At
19 the conclusion of the meeting, Supnick told Cheryl and George that he would
20 immediately shred their suspect inquiry. George replied, "Outstanding."

21 On July 2, 1986, at approximately 9:16 a.m., Cheryl Smith called Solar and asked to
22 speak with Dan Saunders. After being informed that he was not available, she told the
23 secretary that Dan should call her no matter what time it was. Later that day, Agent
24 Supnick called Oil Patch and spoke with Cheryl. In addition to discussing pending orders,
25 Cheryl told the agent that she would remove the serial "T" numbers on future inquiries.
26 Agent Supnick had previously related to the Smiths that those numbers could be traced
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1 back to Libya. In this conversation, Cheryl also said that her customer might be willing
2 to pay Supnick a "commission" in cash [for filling the "Libyan" orders].

3 On July 7, 1986, at approximately 8:40 a.m., George Smith called Solar. On July 8,
4 1986, at approximately 7:30 a.m., Agent Supnick returned his call. During the conver-
5 sation, Supnick told Cheryl that she did not have to white out certain serial numbers on
6 her last inquiry as he could handle it at Solar. Cheryl apologized, stating that she just
7 wanted to make sure that the numbers did not get into the wrong hands.

8 Due to her apparent success at finding a source for many of the Libyan parts,
9 Cheryl Smith convinced Frank Christie to visit New Orleans to discuss the business. In
10 New Orleans, Mr. Christie agreed to supply a certificate demonstrating that he was
11 selling the goods only to British registered companies. While technically true, the Smiths
12 wanted it as further evidence that they could use to demonstrate that they did not know
13 the shipments were destined for Libya.

14 On July 11, 1986, Agent Supnick spoke with the Smiths. In the conversation, they
15 related that their customer was obtaining orders from other suppliers for the end-user
16 [Libya] while in Louisiana. Cheryl also discussed how to maintain security so that the
17 authorities would not learn of any illegal shipments. In addition to discussing specific
18 purchase orders, Agent Supnick told Cheryl to make a good impression on the first order
19 because the money would then be flowing in from Khadafi. He also told her that as long
20 as the embargo was not lifted, they would be "riding on a wave." Cheryl responded that
21 she did not foresee the embargo being lifted in the near future "unless there's a hit
22 squad" [to assassinate Khadafi].

23 On July 17, 1986, Express Mail envelope No. 49906676 was mailed from Oil Patch
24 Production Services, inc., 82 Derbes Dr., Gretna, La. to Dan Saunders at Solar Turbines,
25 Inc., 2200 Pacific Hwy., San Diego, California. The envelope was received by Solar at
26 approximately 10:00 a.m. on July 19, 1986. This envelope contained 12 computer-
27 generated purchase orders for 25 different line item components related to oil field.
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1 technology. The total cost was \$42,726.77, not including Oil Patch's five percent
2 discount.

3 On July 21, 1986, at approximately 6:35 p.m., Agent Supnick called Cheryl Smith
4 and inquired whether the components comprising the 12 purchase orders were all going to
5 the "same country" [Libya]. Smith responded that she could "pretty much tell where it's
6 going by the purchase order number issued, as well as the bid number issued." These, she
7 stated, clearly indicated that the shipment was all going to the country [Libya] they had
8 been talking about. Cheryl emphasized that Agent Supnick could rest easy because she
9 knew the shipment was destined for Libya. However, she added that she would telex her
10 customer and confirm that the destination was nowhere but Libya.

11 On July 22, 1986, at approximately 7:04 p.m., Agent Supnick called Oil Patch and
12 spoke with George Smith. During their conversation, Supnick told George that he ~~was~~
13 concerned that some of the parts might not be going to Libya. George assured the agent
14 that everything he had received so far "has tied in 100 percent" with that end-user. He
15 added that one or two items had come in for the United Kingdom or the North Sea area,
16 but that had nothing to do with the shipments they were arranging for Libya. Prior to
17 concluding the conversation, George also mentioned that other American companies
18 were probably bidding on orders destined for Libya.

19 On August 6, 1986, Solar Turbines shipped Oil Patch's July 17, 1986 order on
20 Transcon Lines, invoice No. 37716C/E3628 to Oil Patch Productions in New Orleans,
21 attention George Smith, telephone number 504-368-2809. This order was billed to Oil
22 Patch Production, 82 Derbes Drive, Gretna, Louisiana. It consisted of 25 line items
23 weighing a total of 762 pounds. The invoice reflected a purchase price, after discount,
24 of \$40,589.90. This same day, Agent Supnick contacted Oil Patch regarding the
25 shipment. Cheryl stated that they would remove Solar's identifying markings prior to
26 transshipment and export.

1 During the next months, the Smiths continued the Libyan business with Agent
2 Supnick. On September 3, 1986, at approximately 7:35 p.m., the agent spoke with
3 George and Cheryl Smith. As they were discussing her customer's mark-up, Cheryl
4 stated that he was not the one sticking his neck out. Agent Supnick responded that they
5 were the only ones at risk as long as her customer was in the United Kingdom. In their
6 next conversation, Cheryl Smith stated that she was helping our country because only an
7 "asshole" could have established an embargo considering our balance of trade. Cheryl
8 also stated that when the United States becomes friendly with Libya, she hoped they
9 would remember what a "nice girl" she was during the embargo. During their
10 conversation, Cheryl also admitted that she did not want to go to jail.

11 In addition to the Libyan purchase orders from Oil Patch, Agent Supnick also
12 inquired if George and Cheryl wanted to arrange a sale to Libya of a triple tandem unit
13 worth several million dollars that was being repurchased by Solar from Saudi Arabia.
14 Cheryl indicated that she was extremely interested and would discuss the matter with
15 her customer. This "buy-back" equipment was allegedly needed by the Libyans for their
16 Bu Attifel oil field.

17 On September 26, 1986, at approximately 10:55 a.m., in a phone conversation,
18 Cheryl stated that "they" wanted their customer [Christie Noble Services] to visit the Bu
19 Attifel oil field [in Libya]. She also asked what would happen if Solar ever discovered
20 where the shipments were really going. Agent Supnick replied that Solar would probably
21 notify the authorities. Cheryl responded that such a position was "kinda dumb" and if she
22 was president of Solar she would look the other way.

23 During their conversation, Cheryl also told Supnick that she saw a television
24 program about the Israelis selling arms to the Iranians. After watching the show, she
25 thought that maybe they were being too loose about disguising the shipments [destined
26 for Libya]. Supnick responded that he was taking care of his end. She wondered,
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1 however, if she was doing enough to disguise the Libyan shipments so that the authorities
2 would not discover them.

3 On September 30, 1986, in a phone conversation, Supnick again told Cheryl they
4 would wind up in jail if Solar ever found out where the shipments were going. Cheryl
5 replied that she was doing everything she could to cover up the operation and that her
6 customer would not open his mouth.

7 In a later phone conversation, George stated that the freight forwarder handled all
8 the details regarding the export of their shipments. Supnick asked if the forwarder knew
9 where they were going. George replied that the freight forwarder only knew that they
10 were going to the United Kingdom. In this conversation, Cheryl indicated that an
11 employee of CNS would be bringing Supnick's commission and the agent's souvenirs
12 [Libyan] coins. She also stated that we should have "Reagan" [the President] in our little
13 partnership so he could blow up their oil fields and thus speed up our sales.

14 During October 1986, Agent Supnick filled four other Libyan purchase orders
15 totalling approximately \$170,000. On these orders, Frank Christie was paying the Smiths
16 a two percent discount in cash which they stated Agent Supnick had demanded for
17 fulfilling the illegal shipments. In reality, Agent Supnick had asked the Smiths to see if
18 he could get a one percent "kickback." The Smiths, on their own, lied to Christie about
19 the amount and pocketed the extra cash payment. This payment they insisted had to be
20 delivered in person, and could not be transferred into their business account.

21 On November 13, 1986, at approximately 11:02 a.m. and 7:33 p.m., in telephone
22 conversations, Cheryl said that she was concerned about the Arabs cutting them out of
23 the "buy-back" she and Supnick had been discussing. She stated that after Frank
24 [Christie] approached "AGIP," the Libyan purchasing agent, concerning the buy-back,
25 AGIP apparently attempted to set up the purchase of oil field-related equipment through
26 Legidio Saki. According to Cheryl, Saki and Technoil, his company in Lugano,
27 Switzerland, were planning to approach Solar to try to purchase the oil field-related
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1 equipment which the Smiths and Supnick had been discussing. This equipment would have
2 been a significant portion of the major transaction. Supnick assured Cheryl that this
3 would be impossible as any Solar representative would throw Saki out of the office if he
4 attempted to purchase any parts or equipment destined for Libyan oil fields.

5 Prior to the completion of the buy-back, Agent Supnick demanded a meeting with
6 Mr. Christie. While this was being arranged, in December Oil Patch received one last
7 Libyan purchase order filled by Agent Supnick. On January 8, 1987, a meeting was
8 arranged between the Smiths, Agent Supnick, and Frank Christie. Following the
9 meeting, the Smiths and Christie were arrested.

10 III

11 WITNESSES

12 A witness list will be provided at the time of trial.

13 IV

14 EXHIBITS

15 Defense counsel has already examined or been provided all of the documents the
16 Government presently has in its possession that it will use in its case-in-chief. An
17 exhibit list will be provided at the time of trial if defense counsel agree to do the same.

18 V

19 LEGAL ISSUES

- 20 A. DEFENDANTS SHOULD BE PRECLUDED FROM MENTIONING IN
21 THEIR OPENING ARGUMENT OR QUESTIONING AGENT SUPNICK
22 ABOUT THEIR OWN STATEMENTS UNLESS THEY TESTIFY AT TRIAL

23 As a general proposition, tape-recorded and video-recorded transactions have two
24 requirements prior to their admissibility into evidence. First, they must be authenti-
25 cated. This is usually satisfied through the testimony of one party to the transaction
26 who can verify the accuracy and reliability of the material being presented. See
27 Rule 901, Federal Rules of Evidence. Presumably, this prong can be met through the
28 testimony of an undercover agent. However, the admissibility of tapes or recordings

1 must also overcome hearsay objections because authenticity and hearsay are two
2 separate problems. See, e.g., Zenith Radio Corp. v. Matsushita Electric Industry Co.,
3 505 F. Supp. 1190, 1221 (E.D. Pa. 1980) (discussing authentication and hearsay problems
4 in the context of the business records exception to the hearsay rule). -

5 During the Government's case-in-chief, the hearsay issue will be eliminated by
6 virtue of the fact that the defendants' taped statements will be offered against them as
7 an admission. Rule 801(d)(2) provides, in pertinent part, as follows: "A statement is not
8 hearsay if . . . [t]he statement is offered against a party and is . . . his own
9 statement. . . ." [Emphasis supplied.] Any statements by the defendants will thus be
10 authenticated and admissible as non-hearsay under Rule 801.

11 The defendants, however, cannot rely on Rule 801(d)(2) because they are the
12 proponent of the evidence and the evidence is not being offered against them.
13 Therefore, defendants cannot have "self-serving hearsay" brought before the jury without
14 the benefit of cross-examination by the Government. Such a procedure is simply not
15 allowed. In United States v. DeLuca, 692 F.2d 1277, 1285 (9th Cir. 1982), the defendant
16 attempted to call a Government witness who had made a tape-recording of himself and
17 the defendant which contained potentially exculpatory statements. In that case, the
18 court of appeals held that the district court properly excluded the contents of the
19 tape.^{1/}

20 Defendants are, of course, free to testify about the events which they seek to
21 place in evidence before the jury. However, they should not be allowed to circumvent
22 cross-examination by eliciting any allegedly favorable hearsay statements through Agent
23 Supnick.

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^{1/} Although the court's rationale was Rule 803(24) of the Federal Rules of
27 Evidence, an equally good rationale was Rule 801(d)(2) which, on its face, excludes out-
28 of-court statements made by a party which are in his favor.

1 B. DEFENDANTS SHOULD BE PROHIBITED FROM INTRODUCING
2 EVIDENCE REGARDING SHIPMENTS OF GOODS TO LIBYA
3 NOT RELATED TO THIS CASE, INCLUDING ANY SHIPMENTS
4 FOR WHICH PROPER EXPORT LICENSES WERE OBTAINED

5 1. The Libyan Sanction Regulations

6 Defendants in this case have served a subpoena on the office of Foreign Assets
7 Control calling for the production of records relating to the export of good by foreign
8 subsidiaries to Libya since the Presidential Embargo. While it is inarguable that the
9 defendant can not introduce evidence of other unrelated illegal shipments, see Federal
10 Rules of Evidence 402, it is equally clear that defendants can not properly introduce
11 evidence relating to licensing decisions by a governmental agency in their case-in-
12 chief.^{2/} Such decisions are reserved solely for the governmental agency and are not
13 reviewable by the court or jury.

14 As previously noted, this case concerns the control of exports from this country
15 under the International Emergency Economics Powers Act, Title 50, United States Code,
16 Section 1701, et seq. As a starting point, it should be noted that the President
17 promulgated the Libyan Sanction Regulations after finding that the:

18 . . . actions of the Government of Libya constitute an unusual and extra-
19 ordinary threat to the national security and foreign policy of the United
20 States and hereby declare a national emergency to deal with that threat.

21 Executive Order No. 12543 (January 8, 1986). See Title 31, Federal Code of Regulations,
22 Section 550. The Secretary has broad authority in the field of exports. Among other
23 things, he is empowered to require licenses before commodities may be exported.
24 Title 31, Federal Code of Regulations, Sections 550.501 and 550.801. In addition, the
25 Secretary has the right to any person or property from the operation of any license or to
26 restrict the applicability thereof to any person or property. Id. at Section 550.501(c).

27 ^{2/} This evidence may potentially be admissible in their outrageous Government
28 conduct hearing, although its logical connection is not apparent to the Government at
this time.

1 All export license applications required under the Act are to be submitted to the
2 Secretary. Id. at Section 550.801. A license applicant who encounters delay or an
3 adverse action has the right to appeal that decision.

4 2. The Secretary's Licensing Determination
5 Is Not Reviewable By This Court

6 There is no general federal statute which permits judicial review of a policy
7 decision of an Executive Branch agency. Instead, limited jurisdiction is conveyed
8 pursuant to the Administrative Procedure Act, Title 5, United States Code, Section 701,
9 et seq. Policy decisions of an agency, such as the Department of Treasury, are
10 reviewable except to the extent that: (1) statutes preclude judicial review; or (2) agency
11 action is committed to agency discretion by law. Title 5, United States Code,
12 Section 701(a)(2).

13 The limited review power conferred upon the judiciary in this area has been
14 uniformly upheld by the appellate courts. For example, in Morris v. Gressette, 432 U.S.
15 491 (1977), the Supreme Court refused to allow judicial review of the Attorney General's
16 action under Section 5 of the Voting Rights Act of 1965. The Court reasoned that the
17 Attorney General's policy decision in that case was within his discretion, and as such,
18 was not reviewable. Id. at 507, n.24.

19 In Schilling v. Rogers, 363 U.S. 666 (1960), the Court construed the Trading With
20 the Enemy Act, Title 50, United States Code, Appeals Section 1, et seq. The Court
21 noted that Section 7(c) of that Act prohibited judicial review of the actions of the
22 Executive Branch (i.e., the United States Attorney General). Id. at 676. Thus, the
23 Supreme Court affirmed the District Court's dismissal of the petitioner's claim as being
24 outside the scope of the Administrative Procedures Act. See also Switchmen's Union of
25 North America v. National Mediation Board, 320 U.S. 297 (1943).

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1 In the field of export controls, the President has enacted an exhaustive statutory
2 scheme designed to provide the Secretary with exclusive discretion in licensing deter-
3 minations. Review of these determinations should be by normal administrative channels.
4 Further, it has long been the rule that the President's conduct of foreign affairs is not to
5 be reviewed by the courts. United States v. Curtis-Wright Export Corp., 299 U.S. 304,
6 320 (1936); Behring v. Miller, 504 F. Supp. 552, 558 (D.N.J. 1980).

7 The question of judicial review of the Secretary's decisions in the field of export
8 licenses was squarely addressed in United States v. Moller-Butcher, 560 F. Supp. 550
9 (D. Mass. 1983). In that case, defendants were charged with violations of the Export
10 Administration Act. Prior to trial, they moved to dismiss the indictment on the basis
11 that it failed properly to charge an offense.

12 In denying the motion to dismiss, the district court observed that the Secretary has
13 the ultimate authority to decide on the licensability of goods to be exported. Moller-
14 Butcher, 560 F. Supp. at 552. The court further ruled that at trial the Government need
15 prove only that the defendants knowingly exported equipment without a license in
16 violation of the regulations. Id. at 553. The final word on which items are licensable is
17 the Secretary's, not the court's. See also Beacon Products Corp. v. Reagen, ____
18 F. Supp. ____ (D. Mass. 1986) (declaring that the President's decision to embargo
19 Nicaragua was non-justiciable).

20 In the present case, defendants have no right to present evidence on exports to
21 Libya that have been properly licensed. Regardless of whether such exports have been
22 made by a United States company or by a foreign subsidiary, the decisions are non-
23 justiciable. Moreover, as previously stated, they are totally irrelevant to the present
24 inquiry. To allow the introduction of such evidence can only cloud the issue that the jury
25 must decide--whether the Smiths' illegally exported petrochemical equipment to Libya.

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VI

DISCOVERY

The Government has complied with all the mandates of Rule 16. To date, no reciprocal discovery has been provided by the defendants.

VII

JURY INSTRUCTIONS

The jury instructions will be filed prior to trial.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 v.)
6 CHERYL ANN SMITH (1))
7 GEORGE LEROY SMITH, (2))
8 Defendant(s).)

Criminal Case No. 87-0073-B

CERTIFICATE OF SERVICE

9 IT IS HEREBY CERTIFIED that:

10 I, Alice J. Paradis, am a citizen of the United States
11 over the age of 18 years and a resident of San Diego County, California;
12 my business address is 940 Front Street, San Diego, CA 92189; I am not a
13 party to the above-entitled action; and subsequent to filing with the
14 Clerk of the Court, I will deposit in the mailbox

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16
17 GOVERNMENT'S TRIAL MEMORANDUM and REQUESTED JURY INSTRUCTIONS
18 OF THE UNITED STATES

19 TO: Judy Clarke, Esq. Warren R. Williamson, Esq.
20 Federal Defenders of San Diego Utsinger and Williamson
101 W. Broadway, Ste. 440 2366 Front St.
San Diego, CA 92101 San Diego, CA 92101

21 I declare under penalty of perjury that the foregoing is true and
22 correct.

23 Executed on the 28th day of September, 1987.

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25 Alice J. Paradis
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