

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

CASE NO.: 8:03-CR-77-T-30TBM

vs.

SAMEEH HAMMOUDEH

MOTION TO SUPPRESS EVIDENCE AND FOR HEARING
PURSUANT TO FRANKS VS. DELAWARE

COMES NOW, the Defendant, SAMEEH HAMMOUDEH, by and through his undersigned counsel, and respectfully moves this Honorable Court for an Order Suppressing all physical evidence, whether tangible or intangible; any statements or admissions of the Defendant; any and all observations of law enforcement officers and any other tangible or intangible evidence obtained during, or indirectly derived from, the search of the premises commonly known as the residence of 6004 Soaring Avenue, Tampa, Temple Terrace, Hillsborough County, Florida and any outbuildings or other structures, vehicles or other property located on or near said location, in which the Defendant had a reasonable expectation of privacy on or about February 20, 2003.

BACKGROUND:

On February 20, 2003, Law Enforcement Officers executed a search warrant at 6004 Soaring Avenue, Temple Terrace, Hillsborough County, Florida. The residence in search pursuant to a federal search warrant issued by Magistrate Mark Pizzo on February 19, 2003. The warrant was issued upon an Application and Affidavit for Search Warrant executed by Agent Carey L. Myers, Special Agent FBI.

Agent Myers Affidavit contains allegations where the Agent intentionally, or with

reckless disregard for the truth, omitted material facts from his Affidavit or included misleading conclusions drawn from facts that he must have been well aware of had he reviewed the translations referred to and that these omissions or inappropriate conclusions rendered allegations in the Affidavit misleading material that effects the probable cause determination so the Defendant hereby moves for the hearing on said issues. Franks v. Delaware, 439 U.S. 154 (1978).

SPECIFIC MISREPRESENTATIONS OR OMISSIONS.

1. The Affidavit contains an allegation, similar to Count Five, and in Overt Act 253, in the Indictment that “On December 20, 1999, the Defendant Sameeh Hammoudeh used his residence telephone line to call his father in the Occupied Territories. In this conversation, SAMEEH HAMMOUDEH indicated to his father that he raised some money and will be receiving more. He told his father that he will be sending him \$1,000.00 to distribute.” (Paragraph 62 at page 38 of the Search Warrant Affidavit). An examination of the “tech cuts” (summaries of translations done by Government translators and revealed during Discovery) for the November 17, 1999 intercepted conversation, and continuing through the December 20, 1999 conversation, documents and reveals clear evidence that the money raised and referred to is for charitable purposes and this information would have been available to the Agent at the time he prepared and signed the Affidavit but were not included in the Affidavit. (A copy of these tech cuts are included as composite Exhibit “1”)

1. There were additional conversations which were monitored and included for reference within the Indictment which correspond to tech cut translations which further clarifies this issue as follows:

(a) Overt Act 254 (Old Overt Act 212) page 81 of the Indictment “on or about December

29, 1999, Sameeh T. Hammoudeh called his father who was overseas. Sameeh Hammoudeh asked his father to distribute money that Sameeh Hammoudeh would reimburse him by sending money overseas via courier". A review of the tech cuts reveals that the translator of calls indicates the following:

"December 21, 1999, Sameeh Hammoudeh was conversing with an unknown female about the daily scheduled for the food donated to the mass of people who break their fasting and in the course of that conversation , the female asked the Defendant "Regarding the Zakah (meaning the Alms giving and tithes during Ramadan), I don't know if there are families that we can give this to?" Sameeh replied, "We have a committee that collects Zakah and distributed it in Palestine. If you send it, we will take care of it." The female promised to give it to him when she comes to the mosque". (A copy of the tech cuts is attached as Exhibit "2.").

(b) On December 27, 1999, the tech cut reveals the following through the interpreter. "There was a conversation for an individual named Khader from Clearwater who had \$1,000.00 of the Zakah fund (Alms giving during the month of Ramadan) and he wanted to send it to the Defendant. (He asked in whose name should he write the check and the Defendant replied in the name of the Islamic Community of Tampa (ICT). We will take it to the orphans. You can just write the amount and payee blank so we can cash it because we are going to disburse the money and give some people in cash or if you want you can put it in the name of ICT". (Copy of the tech cut is attached hereto as "Exhibit "3.") Khader agreed to write the amount on the check and leave the name blank to be delivered to the Defendant.

(c) On December 29, 1999 there was a call between the Defendant and his father at his book store and the tech cut reveals the following: His father wanted to know the names for whom Sameeh needed receipts for their donations. Sameeh advised that they had collected another

\$1,000.00. His father said that he does not have enough funds to advance the payment. He used all the funds that he made from the sale of publication in the store. The Defendant asked him to use his own money because the funds are in his possession and he will send it to him as soon as he can find someone traveling to the homeland. The Defendant gives him the name of Ziyad Taha for \$400.00, Ziyad Nofal for \$300.00, Ibrahim Khader for \$900.00 and Ka'id Sa'id for \$300.00, that the money is available and he will send it to his father as soon he finds someone traveling to the homeland. The Defendant asked his father to give the funds to those in need especially the orphans. And his father said he will give it to the orphans, The Family Sponsorship Society, and the Disabled or Blind Society. The Defendant indicates that within the next ten days he may be able to collect or raise another \$1,000.00. (Copy of the tech cuts is attached hereto as Exhibit "4.")

(d) In Overt Act 255 (Old Overt Act 213) it is alleged that on or about January 15, 2000, the Defendant called an individual who was intending to travel to the Middle East. The Defendant made arrangements with the individual to deliver funds to the Defendant's father. This is captured in the tech cut of a January 6, 2000 telephone call between the Defendant and Tawfiq as follows: It is believed that Tawfiq is a religious leader of the Mosque in Sarasota. Defendant learned from Fareed Al Arouri that they have "Zakat Al Fitr" (meaning Alms given in the fasting month of Ramadan) The Defendant is asking if they can get some of it to send to those in need in the homeland. Tawfiq said that the had distributed it all yesterday in Tampa and in the conversation the Defendant told him that they have orphans and the disabled and if there is extra they can send it to them in the home land and Tawfiq said he will keep that in mind if they collect more before the end of the fasting of Ramadan. (Attached hereto as Exhibit "5.").

(e) On January 8, 2000 there was another call between the Defendant and Tawfiq where

Tawfiq advised him that they collected about \$1,400.00 and that the person in charge of the money was told about the Defendant's request to send it to the orphans and the disabled. The Defendant told him that Ziad Taha will be visiting them in Sarasota that day and that he could give the money to him.(a copy of this tech cut is attached as Exhibit "6.")

(f) In the tech cut for intercepted call of January 9, 2000 between the Defendant and his father it is revealed that in the conversation that the Defendant had asked his father to disburse and the Defendant said there is a guy traveling to the home land in a week or ten days and I will send you the funds with him whose name is Hasan and he is from the Beir Zit area and he knows the Defendant's father. (A copy of this tech cut is attached hereto as Exhibit "7.") This is correlated by a call on January 12, 2000 where the Defendant called the Islamic Center of Tampa Bay asking to talk to Abu Hasan, who was not there so he left a message, to tell him that the money had been received and thank you very much. (A copy of this tech cut is attached hereto as Exhibit "8.")

(g)The next intercepted call is on January 15, 2000 between the Defendant and Ribhi where the Defendant reveals that Abu Muhammad is coming and delivering an envelope with funds to go to his father and the purpose is for distribution to the needy. (Attached hereto is a copy of the tech cut marked as Exhibit "9.")

(h) On January 17, 2000 there is an intercepted call between the Defendant and his father in which the tech cut reveals that his father advised that he had asked the Defendant's brother to mail him the price list and publications which the Defendant had asked for. The Defendant then said that he had sent money with two people of Beit Heniah and gave them his number. His father then said that he had mailed receipts for the \$2,200.00 that he had given out and asked how much additional that the Defendant had sent to him, to which the Defendant replied,

\$3,300.00 and you can take if from the money that you have given out and then distribute the rest. Give some to the Blind and Disabled, and send a receipt for \$500.00 for the Islamic Center of Tampa. (A copy of this tech cut is attached hereto as Exhibit “10.”)

(i) The Affidavit for the Search Warrant at pages 38 and 39 in paragraphs 62 through 65 sets out part of the information but neglects to make any references to the charitable donation specifics which were stated in the phone calls despite having available at that time the tech cuts .

(j) The tech cuts reveals that a conversation occurring on January 18, 2000 between the Defendant and his father where the Defendant had called to see if his father had received the funds sent with Ribhai and Muhammad Hammad and his father confirmed that he had in fact received the funds from them. His father reported that he will give \$500.00 to the Blind and give the rest to some widows and orphans in the area and mail the Defendant a receipt of the same (A copy of this tech cut is attached as Exhibit “11.”)

(k) Additional tech cut translations or summaries further reveal that discussions between the Defendant and his father were about funds sent clearly for the purposes of serving the needy. On January 25, 2000 a tech cut reveals in a conversation between the Defendant and his father, concerning the Defendant receiving a list of books his father had mailed to him in other conversations, the Defendant asked his father if he had distributed the money. His father replied that he had but had about \$200.00 left, which he plans to give to a particular orphan in need. The Defendant then indicated that he wanted to send more money and that his father told him not to send it right then but to delay and the Defendant said “ I will send it to you and you can deal with it as you see fit”. (Copy of this tech cut is attached hereto as Exhibit “12.”)

(l) On January 29, 2000 an intercepted call and the tech cut reveals that the Defendant had a conversation with both of his parents and he advised his father that he was sending another \$2,000.00

with a traveler to the West Bank. (Copy of this tech cut is attached hereto as Exhibit "13.")

- (m) On February 5, 2000, there was another call captured between the Defendant and his parents and in an amongst other conversation, the Defendant discussed the disbursement of the \$2,000.00 that his father had received from him and that some was given to his mother. Other minimized calls reveal that this was to purchase a slaughtered goat for the needy. (A copy of this tech cut is attached hereto as Exhibit "14.")
- (n) The intercepted translated conversations clearly indicated that the Defendant and his father were engaged in a bookstore business in the Middle East and that many of their conversations concern the printing, mailing, and distribution of books and encyclopedias. In the mix with these is additional conversation about the collection of charitable donations by the Defendant of funds to be sent and/or delivered by courier to the father in the Middle East for distribution to charitable organizations including but not limited to the Blind Girls Society and Orphans.
- (3) The agent made the representation in the Affidavit that in the late 1990's the Defendant Sameeh Hammoudeh became a close confidant of Co-Defendant Sami Al-Arian and took up his role or responsibility because of the Co-Defendant Al-Arian attempted to conceal his involvement. (Beginning at paragraph 57 of the Affidavit.) The Affidavit also asserts that Co-Defendant Sami Al-Arian sponsored the Defendant's graduate school education at the University of South Florida (Paragraph 53 of the Affidavit). All of this was contradicted in the translated intercepted conversations:
 - (a) In a call intercepted on August 7, 2000 between Co-Defendant Sami Al-Arian and Bashir Nafi, after talking about American politics, the Co-Defendant Al-Arian complained about the Defendant Sameeh Hammoudeh, who had been requesting more salary for him and his wife because they could not afford to exist on what they were being paid. Clear references were made

to the Defendant's scholarship and co-defendant Al-Arian's lack of knowledge of his graduate studies. This conversation is documented in both the tech cut and in a more detailed translation. (Tech cut August 7, 2000 and detailed translation - ten pages long, copies of which are attached as Exhibit "15.")

(b) That On June 18, 2000 there was a call captured between Mazen Al-Najjar and the Defendant where the Defendant voiced his opinion that Co-Defendant Al-Arian expected things and that the Defendant was in disagreement with his expectations and that he did not choose to follow him and that he did not agree with him and that he had serious disagreement over Al Arian's running of the community affairs. The situation had become so serious that the Defendant was expressing dissatisfaction with projects and because Al-Arian would not pay attention to him and was extremely critical of Co-Defendant Al-Arian. (A copy attached as Exhibit "16."). The hostility between Defendant and Al-Arian are well documented in Tech cuts of conversations at this same time period.

(4) In the search warrant Affidavit at page 39, paragraph 66, the FBI Agent represents that on June 14, 2000 the Defendant called his father and was sending money by courier to his brother. The purpose of this money was for investment on behalf of Defendant as revealed in tech cut for May 15, 2000 . (A copy of which is attached hereto as Exhibit "17.")

(5) On January 18, 2001 the Defendant spoke to an individual regarding the paying of \$1,500,00 to the Defendant's father at the bookstore. (A copy of this translation tech cut Jan. 18, 2001 is attached as Exhibit " 18.")

(6) On January 28, 2001 there is a conversation between the Defendant and Abdul Fattah Zahalika where the Defendant had been ordering books for Zahalika and ordered more from him promising to send him the cost by courier to the home land through the Defendant's

father. (A copy of this tech cut is attached hereto as Exhibit “ 19”).)

(7) On February 18, 2001 a telephone conversation between Afdulfattah Zahaliqa where Zahaliqa was providing the Defendant with names and number of books that had been shipped to him at that the Defendant promised him prompt payment. (A copy attached hereto as Exhibit “ 20”). There was a similar conversation captured on March 1, 2001 between the Defendant and Faraj Hasan where the Defendant asked whether the funds had been delivered. On March 5, 2001 a conversation between Afdulfattah Zahaliqa and the Defendant again is translated, and it becomes clear when placed in the context of the previous conversations, the translator reveals that these conversations were about exporting and importing books and dictionaries and that the money was in fact received. (A copy of these tech cuts are attached hereto as “Exhibit “21 ”.)

(8) The Indictment alleged that on or about October 12, 2002 the Defendant had a telephone conversation with his father in which he informed his father that a person would bring \$4,000.00 for distribution. The specific reference in the tech cut translation was \$3,500.00 for the school for the blind and that the Defendant needed a receipt and then the balance would be going to relatives who were in need (including a nephew and a niece) (A copy of which is attached hereto as Exhibit “22”).

(9) On January 25, 2003 there is another call between the Defendant and his father where the Defendant confirmed receiving a shipment of books and informs his father that a \$1,000.00 had been sent through a transfer agency. The father had not yet received the funds but clearly the translation reveals that the funds were for the Society of Blind Women which is a specific religious donation (A copy of the translation is attached hereto as Exhibit “23”).)

ALLEGATIONS OF THE USE OF COMPUTERS:

(10) The Affidavit at page 66 states that on November 20, 1995 in Tampa, the Defendant

along with the Co-Defendant's possessed in a computer the Wills of three PIJ members, who died on April 6, 1992 committing terrorists acts in Israel and had wills prepared that year prior to their deaths. This claim of the Defendant's involvement in the computer activity on these wills ignores the known fact that the Defendant had not even entered the United States at that time and was not in possession of any of the computers in Tampa or anywhere that contained these documents and therefore was inappropriately included as an allegation which was known to the FBI when it in fact was not true. In fact this allegation has now been removed from the Superseding Indictment but was nevertheless known or at least within the possession of the Agent at the time of the Affidavit.

SUPERSEDING INDICTMENT:

(11) The Agent attached a copy of the Indictment as an Exhibit to the original Search Warrant Affidavit and the Government has since Superseded that Indictment and corrected several factual errors which were included in the initial Indictment but which were known at the time the Affidavit was created by the Agent including but not limited to:

(a) That the graduate school education of the Defendant was sponsored by the Co-Defendant Sami Al-Arian at paragraph 94 of the initial Indictment which was removed in the Superseding Indictment.

(b) The Defendant's name was removed from Overt Act 14 which is now Overt Act 18 in the Superseding Indictment since the Government was aware that the Defendant had not entered the country at the time these items were placed on a computer.

(c). That the Defendant's name was removed from Overt Acts 133, 138, 145, 146, 147, 148, 149, 152, 153, and 160 and that Counts 5-13 and Count 15 were dropped because the fax machine data revealed that the faxes were not sent to a number that the Defendant had access to

but were limited to co-defendant Shallah's home fax machine. This was clearly known because the translator of the facsimile which has a control number of 132.5 (which includes it as one of the top 800 documents used in the Indictment from the control number given by the translators and the interpreter of this fax which was dated February 20, 1995) states "a two page fax, in Arabic, consisting of what appears to be one page of handwritten text and one page printed text with hand written notations. At the top Center has a header 04/30/1991 and 0000 0000 OMIGA and, (sender number 813-985-3445, Ramadan Abdullah)" This clearly indicates that the Government on the date this translation was made was aware that this was Shallah's fax number. This pattern occurred on at least 60 tech cuts involving faxes sent to and from Shallah's fax number.

(d) Overt Act 136 was removed totally. Again this information was available to the Agent at the time of the Affidavit.

(e) Overt Act 202 was removed from the Indictment.

(f) That Overt Acts 208, 209, 210 and 211 are removed totally and involved a mistake by the agent despite the fact that the translator distinguished between the name "Saleh" and the nickname "Abu Saleh" which the Defendant clearly briefed and outlined in his Motion for Bail and where he stated at that time was a mix up and an incorrect assumption by the prosecution.

Again, all of this information was available to the Agent had he reviewed the translators notes on the tech cuts which were in existence at the time he prepared the Affidavit.

(12) Paragraph number 70 of the Affidavit alleges that the Defendant had a conversation with co-defendant Hatim Fariz where they discussed the fact that the school's cash income was going to a coalition (Tampa Bay Coalition for Justice and Peace) and they discussed that the checks to IAF have to be deposited into the school account while the cash donations could be

used for anything. What is not included are the translation of calls on September 4, 2004 between Ayman Osman and the Defendant and another call on September 5, 2002 between Hatim Fariz and the Defendant and finally a September 5, 2002 call between the Defendant and Hatim Fariz. The Search Warrant Affidavit refers only to the third call when the context of all three calls is about rumors which Osman heard and wanted to verify. Co-Defendant Hatim Fariz and the Defendant never discussed that these were facts, as the Search Warrant claims, but rather that they were untrue rumors and in fact the Government's translator wrote something that contradicts the Search Warrant Affidavit's claim when he noted "Hammoudeh said, all of Osman's sayings are not true. I don't know where he is getting his information from." The Search Warrant Affidavit treated Osman's saying as facts when the actual conversations between co-defendant Fariz and the Defendant were discussing as rumors and left off the other two calls. Further there was contrary evidence in the intercepted calls. For example, on May 2, 2002 at 13: 21: 35 between the Defendant and Deena Filai (IAF's accountant) regarding depositing the \$1,000.00 in the school's bank account. See also the call on February 10, 2002 at 12: 09: 13 between the Defendant and Deena Filai about depositing \$4,200.00 cash in the school's bank account. (A copy attached hereto as Exhibit "24").

THE AGENTS EXCEEDING THE SCOPE OF THE WARRANT:

The Law Enforcement Officers executing the Search Warrant exceeding the scope of the warrants authorization by seizing items not specifically named in the warrant without probable cause or any other constitutionally permissible justification. The Officer so far exceeded the scope of any search which was purportedly authorized by the warrant and the search which occurred amounted to a general exploratory search prohibited under the Federal and State Constitution. Walter v. United States, 447 U.S. 649 (1980); Marron v. United States, 275 U.S.

192 (1927); Coolidge v. New Hampshire, 403 U.S. 443 (1971); Texas v. Brown, 460 U.S. 730 (1983); United States v. Leon, 468 U.S. 897 (1984). The seizure of items not specifically named in the warrant were warrantless seizures and the Government can not bear to burden the demonstrating that said seizures were justified by any recognized exception to the warrant requirements of the Fourth Amendment. Coolidge v. New Hampshire, 403 U.S. 443 (1971).

The documents seized illegally from the Defendant's residence were the following;

14. The FBI carried a whole box of personal documents from the Defendant's residence (1B226). A white Office Depot Box. This box contains the following documents:

704800 - A blue file containing Apartment Lease documents from January 6, 1993 through July 31, 2000.

704802 - Dental laser pictures for the Defendant and other related papers.

704804 - A flyer for a lecture by Dr. Agha Saeed on November 1, 2002 issued by the Islamic Community of Tampa.

704806 - Printed pages of Defendant's draft of his Ph.D. qualifying exam.

704807 - Ph.D. Independent Study contract for Defendant, Fall 2002.

704810 - A letter from Life Charity Organization to Defendant asking for donations to Iraq.

704811 - Medical Report by Dr. Ghiath Mahmaljy on Defendant's health, dated March 15, 2002. Other medical reports and lab tests.

704812 and 704813 - Hospital and medical invoices.

704815 - An article titled: "4000 Israeli Employees in WTC."

704816 - An email letter by Anthony Razook, Bethlehem, Palestine about the Israeli Army's violations of human rights in Bethlehem.

704817 - A facsimile from George Kelly of St. Petersburg, Florida to Defendant.

704836 - Several family pictures.

704841 - Lab tests for Defendant and other medical papers.

704846 - Car insurance papers.

704847 - GEICO: Insurance documents.

704849 - Photos of the Hammoudeh's residence, part of the "House Appraisal."

704850 - Draft of Defendant's Ph.D. qualifying exam (39 pp).

704851 - Solid Waste Contract between Defendant and the City of Temple Terrace.

704853 - University Community Hospital Invoice.

704854 - House insurance papers: Hull & Company

704855 - Hertz Car Rent Application

704856 - Florida International University: Housing papers for Weeam Sameeh Hammoudeh.

704857 - A facsimile from Ghulam Malik, Lakeland, Florida, to Defendant giving directions to Ayesh Mosque in Lakeland. Date: 8/8/2002 [note that this facsimile was

intercepted by the Government, at IAF's fax lin: (813) 987-9262, but was not included in the discovery, i.e. no copy was given to the case, why the it was seized from Hammoudeh's residence?

704858 - Yahoo e-mail: article "Belfast Festival."

704859 - An invitation to attend the Association of Muslim Social Scientists' Conference.

704866 - An add by the Islamic Center of Irving soliciting donations.

704867 - A collection of documents rapped with rubber bands with an FBI note: "Non-pertinent documents". This collection was never examined in the house and was never returned to the Hammoudehs after deciding that it is non-pertinent to the case. However, these documents could easily and quickly be ruled as non-pertinent. They include.

a. Blue binder with plenty of school honor roll certificates to Hammoudeh's daughters (more than 25 of these).

b. Weeam Hammoudeh's school report 2001-2002.

c. Weeam Hammoudeh's Principal Honor Roll Certificate.

d. New York Times articles.

e. Weeam Hammoudeh's correspondence with a number of universities.

704874 - Has two business cards of Taj Indian Cuisine - at the back "handwriting of several academic books for Hammoudeh's Ph.D. research. Also has a business card of Ali Baghdadi, a Chicago Arab journalist.

704878 - Academic Article: "Ibn Al Haytham's Theory of Knowledge and its Significance for Later Science."

704877 - Contains 16 articles transmitted via the internet.

704885 - File contains the Hammoudeh's INS applications and correspondence. Also, the Hammoudeh's correspondence with their immigration attorney.

This file includes the documents from #704866 to #704893.

800641 - Deir Dibwan Association's the year 2000 calendar.

800640 - Lifta Arab Association for Charity (Amman): The year 2000 calendar.

800766 - An academic article in Arabic: "The Noble Quran and Civilization."

800761 - Handwritten religious notes (non-political in nature) in Arabic.

800760 - Handwritten notes in Arabic about Western Civilization and Owsald Shpingler's study of it.

800762 - Handwritten notes in Arabic about history.

800763 - Handwritten notes in Arabic about Life and Politics in Western societies.

800764 - Handwritten notes in Arabic: Religious ideas, non-political in nature.

800765 - Handwritten Arabic notes about the Quranic philosophy.

800768 - Handwritten notes in Arabic about Capitalism.

800770 - Handwriting of 2 words in English and their Arabic meaning: syllable and milon

800771 - Arabic handwritten religious

800772 - Arabic academic article: "Ijtihad and Consensus as the Two Dynamic Sides of Islam."

800772 - Arabic academic article: "The Dimension of Worship in Islam."

800774 - An Arabic academic review article: "The Moral Dimension of Islamic Sufism in the Third Century of Hijra." and another Arabic academic article: "Us and the Wes."

800776 - Handwritten brief notes in Arabic about Islam and the West, the characteristics of the Jews, and the relationship between Islam and the Middle East.

800777 - Notes about Brnard Lewis' "A Middle East Mosaic"

800780 - Handwritten notes about identity and awareness.

800782 - One page of an article in "Mother Jones" magazine.

800984 - Handwritten Arabic religious notes about "Work in the Quran," notes about "Us vs. them." in cultures, and a note about the misunderstanding of Western Civilization by some Muslim scholars.

800983 - pages from a draft of Hammoudeh's qualifying exam.

800982 - An outline for an Arabic lesson at USF.

800981 - A handwritten notes about the philosophy of Ibn Bajah, a medieval Muslim philosopher.

800664 - (part of 1B226) Notes by SH for his Ph.S.D. work.

Same number for a Chapter of the Holy Quran.

800717 - Manila envelope with a written note about the contents in Arabic. The note says: The Arab and Palestinian interest in the traditional clothes in London and the interest in the Arab-Islamic civilization with a stamp from Jordan reflecting that. Inside the envelope there is a stamp from Jordan depicting women wearing traditional clothes.

800643 - A booklet of religious prayers and a Quranic chapter and ideas.

800686 - Notes in Arabic by Sameeh Hammoudeh about differences between men and women, his experience with applied anthropology, and the relationship between human beings and place and time.

800647 - A small paper with a note to call David Himmel Green [at USF] 974-2138.

800649 - An invitation card to the wedding party of Samer Salhab and Dania Sarsour.

800650 - An envelop with an Arabic note: receipt of medicine expenses during 2002.

800651 - 2 samall papers with handwritten ideas by Sameeh Hammoudeh about writing and writers, the Holy Quran and logic, writing and its role in civilizations.

800655 - An evenlope titled: "Medical Tests."

800656 - Notes for Sameeh Hamddoudeh's Ph.D. work from Edward Said's book: "Covering Islam." (Also #800688)

800657 - A page from an Arabic Magazine containing pictures of women wearing traditional dress.

800658 & 800659 - Immunization records for Weeam Hammoudeh

800660 - A review paper for Hanan Hammoudeh, 5th Grade, for an Arabic lesson (school paper).

800862 - A piece of paper with telephone numbers of students at USF, Sameeh Hammoudeh's Arabic class students.

800668 - An Arabic dictation paper for a child at IAF checked by her Arabic teacher.

800671 - copies of propaganda flyer distributed by the American Army during the Gulf War in 1992.

800669 & 800672 - Arabic poetry by Arab poets.

800673 - An ad for a publication by the Institute of Palestinian studies.

800674 - Yellow file titled: "Information about Diabetes."

800677 - Notes from Hilma Grangvist's book: "Birth and Childhood Among the Arabs in a Muhammadan Village in Palestine" published in 1947 in Helsingfors, Holland.

800679 - An Arabic writing: "The names of the Quran, and the names of the Day of Judgment."

800680 - A receipt for the purchase of a piece of jewelry (Gold) from Al-Nabali Jewelry in Chicago on 11/19/2000.

800681 - List of websites for Islamic institutions.

800687 - An Arabic religion article taken from an Arabic magazine.

800689 - List of daily activities by Sameeh Hammoudeh.

800690 - A booklet by Meron Benvenisti: "The USA Funded Projects in the West Bank and Gaza Strip (1977 - 1983), The Palestinian Section." (In Arabic)

800693 - Religious notes: "Major Themes of the Quran," in Arabic.

800692 - The verb "read" in the Quran, an Arabic notes.

800691 - An Arabic writing: headline for a Friday Sermon: cleanliness and purity.

800694 - An Arabic writing: Ideas about dialogue between Islam and the West.

800697 - Academic notes in Arabic: Writing the Palestinian History.

800698 & 800700 - A drafted notes about: "The Role of History As in the Quran."

800702 - A religion writing: "The Quran and Water."

800703 - Part of a draft of Sameeh Hammoudeh's Ph.D. Qualifying Exam.

800705 - Personal letter from Naim Abdurrahman to Sameeh Hammoudeh

800707 - 5 pages of ideas by Sameeh Hammoudeh about the mind, the spirit and the soul and an evaluation to Western Civilization.

800708 - A philosophical idea.

800709 - A copy of Sameeh Hammoudeh's social security card.

800711 - Birth Certificate and Immunization record for Sameeh Hammoudeh.

800712 - A list of jobs to be done and name of a needed academic article by Dr. Albert Hourani.

800714 - A letter from an Arabic magazine.

800715 - A letter from an Arabic journal.

800718 - An Arabic writing on a piece of paper about The Muslim Loss.

800719 - An Arabic writing about religious matters.

800720 - A draft of an article about The Muslim Mind.

800721 - An Arabic handwritten ideas about "The Balance in the Quran," and about the development of human thinking.

800722 - An incomplete draft of an article, in Arabic, titled: "Self-Critique: Muslims and Methods of Thinking."

800723 - Short note in Arabic, handwritten, about the backwardness of current Muslims' Thought.

800724 - 800727 - Outline and notes for a lecture about Islamic culture and the Quran and civilization.

800728 - Handwritten Arabic historical notes.

800729 - Handwritten Arabic historical notes about "Concepts and how to understand culture."

800730 - A short handwritten note about the Salafiyyah movement.

800731 - An incomplete handwritten article about "Concepts."

800732-800734 - A draft of an article titled: "Studies in Palestine's modern history, "Arabic handwriting."

800739 - Handwritten notes in Arabic about the study of Arab identity.

8007402 - 800715 - Religious writings by Sameeh Hammoudeh, handwritten in Arabic.

15. In addition there was a big red box that contained 77 video cassettes. The FBI took the entire box without examining its contents and the box contained many tapes that were clearly not material to the Government's investigation. In addition, audio tapes were seized again without any examination of what was recorded on them and the included recitations of the Holy Quran, Aerobic Music and Songs, Religious chanting and music which was not material to any investigation.

PIN REGISTER ANALYSIS:

16. The Search Warrant Affidavit lists a PIN Register Analysis which recorded calls from one telephone number to another during the period of September 2002 through January 25, 2003 as part of the factual basis for the issuance of the Search Warrant. In particular, there were calls from telephone number 985-4664 (Shallah's telephone) on thirty-three occasions to the telephone number of the Defendant, (899-0175) yet none of these telephone calls was deemed worthy of a summary. In other words, while they list the thirty-three calls as having some bearing on whether a search warrant should be issued, they already had the information that none of those thirty-three calls were significant enough to warrant summary of translation by the people conducting this investigation.

17. The Pin Analysis list twenty-seven calls to Mazzan Najjar at a time when the Government knew that Mazzan Najjar had already been deported from the United States and therefore could not have been a participant in these calls. There were one hundred eighty-three calls listed in the Search Warrant Affidavit from the Defendant's home number (899-0175) to the telephone number Mazzan Najjar (985-1291) at time when Mazzan Najjar had already been

deported. The truth of the matter is that the Defendant's children and the children of Mazzan Najjar attended the same school and frequently called back and forth about school activities. What is obvious is that none of these one hundred-eighty-three calls in the Pin Analysis involves a telephone conversation between the Defendant and Mazzan Najjar despite the manner these calls are listed in the Search Warrant Affidavit. There are eleven calls listed to and/or from 899-0175 to 453-8381 which is a second telephone number for Mazzan Najjar. These calls are equally inappropriate to be listed in the Search Warrant Affidavit. There were thirty-three calls listed to or from 985-4664 (Shallah's number) and none of these were summarized. For the second line of the Defendant's home (984-6895) there were forty-one calls listed to or from 985-1291 (Mazzan Najjar) and two more calls to or from 453-8381 (second line for Mazzan Najjar) when the Agent already knew that Mazzan Najjar had been deported and it is also important that none of these listed telephone calls were ever summarized. The Agent merely included the numbers of these calls in the Pin Analysis for its prejudicial value when it was well known that these calls were either made at a time when Mazzan Najjar was no longer in the country or not significant enough in their own merit to be scrutinized and recorded by a tech cut or a summary of the conversation.

MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS

Agent Myers intentionally or with reckless disregard for the truth omitted material facts from his Affidavit. Said omissions rendered allegations in the Affidavit misleading and materially effected the probable cause determination and the Defendant hereby moves for a hearing on said issue. *Franks v. Delaware*, 438 U.S. 154 (1978).

The theory of the agent to establish PIC was that the Defendant raised funds and then sent them by mail, courier, or otherwise to his father in the Middle East and that some how they were

then converted to the use of PIJ. Therefore, the systematic exclusion of intercepted phone calls which documents that the funds collected by the Defendant and sent to his father were for specific charitable purposes and named beneficiaries was reckless and misleading. Furthermore, there were documented files identifying receipts for donations that were located in the 1995 search of offices were also excluded from the agents affidavit. WISE / ICP, these along with the tech cut summaries were clearly identified charitable purposes of the specific conveyance of funds were in the possession of the Government but were omitted from any reference in the affidavit.

“The good faith” exception to the Fourth Amendment exclusionary rule of the United States v. Leon, 468 U.S. 897 (1984) does not apply to the instant case because it does not apply to search warrants issued upon Affidavits containing false statements intentionally or recklessly made or to Affidavits from which material information has been intentionally or recklessly omitted. Leon supra Franks v. Delaware, 438 U.S. 154 (1978).

The Fourth Amendment mandates that a Defendant be permitted to challenge a warrant affidavit on its face when it contains deliberate or reckless omissions of fact that tend to mislead. United States v. Stanert, 762 F. 2d 775, 781 (9th Cir. 1985): see also, United States v. Williams, 737 F.2d 594, 604 (7th Cir. 1984).

WHEREFORE, the Defendant prays that the Court enter an Order Suppressing the aforesaid evidence for the reasons set forth herein and to suppress the evidence seized, the statements and admissions made by the Defendant after the conduct of the search of his residence and office as well as the evidence, tangible, intangible, including observation of law enforcement officers while on the aforesaid property and for such other relief as the Court deems just.

DATED this 22nd day of November 2004.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion has been furnished to

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