The original documents are located in Box 12, folder "India (5)" of the National Security Adviser. Presidential Country Files for Middle East and South Asia at the Gerald R. Ford Presidential Library.

6414 Add-on

MEMORANDUM

NATIONAL SECURITY COUNCIL

~~CONFIDENTIAL~~ (GDS) INFORMATION

December 21, 1976

MEMORANDUM FOR WILLIAM G. HYLAND

FROM: ROBERT B. OAKLEY

SUBJECT: Jhirad Extradition Case -- Coming Up for Final Decision

One item that will be around for final decision over the upcoming holidays is the Jhirad extradition case (previous background memo attached) which must be decided by January 3. The State Department has this action under control. The following is our understanding of the current state of play.

The State legal office has gone over and approved the final decision memo for the Deputy Secretary. The package is currently with Roy Atherton for NEA approval because of the US-Indian angle. Whereas we had previously understood that the trend was running in favor of extraditing Jhirad on the basis of court decisions and the extensive litigation over the past several years, we understand that the final memo contains two recommendations, with Robinson to choose between them. The first recommendation is that Jhirad be extradited. The second recommendation is that Jhirad not be extradited on grounds of a very technical legal finding having to do with the statute of limitations. In essence, this means that State lawyers, in conducting their review of the legal proceedings, dispute some of the judges' findings with respect to the statute of limitations and therefore determine that the legal case to extradite Jhirad is not sufficient. We gather that the technicality involved is unusual but not necessarily unprecedented.

The main point is that this second recommendation provides an out for not extraditing Jhirad but on technical, legal grounds which could hopefully be explained to the Indians to minimize a potential setback to US-Indian relations. This would also sidestep the "political persecution" charges which Jhirad has argued. [To the Indians, Jhirad by himself is not important; rather, they are sensitive to having pursued a case in the US judicial system -- which agreed with India -- and losing that case, particularly in a context which would suggest a political act tied to the emergency.]

~~CONFIDENTIAL~~ (GDS)

KJR 5/31/01

Bureaucratically, if Atherton signs off, the package will shortly move to Mr. Robinson for decision, in consultation with the Secretary. Mr. Buchen has been following the case (as has David Lissy) and reportedly it came up in a recent discussion between the Secretary and Senator Javits. I would assume that there will be a final round of informal consultations at the highest level before the final decision is made.

You may want to mention where the case stands in your next talk with General Scowcroft.

MEMORANDUM 6414

NATIONAL SECURITY COUNCIL

~~CONFIDENTIAL~~ (GDS) INFORMATION
December 7, 1976

MEMORANDUM FOR: BRENT SCOWCROFT

FROM: ROBERT B. OAKLEY

SUBJECT: Jhirad Extradition Case -- State of Play

The Jhirad extradition case has formally moved from the Courts to the Department of State for a final determination on whether to extradite. We understand that such a determination must be taken by January 3, 1977 (or 60 days from the November 5, 1976, date when the Courts sent the action to State) or Jhirad will no longer be extraditable. As the process moves closer to that deadline, there may be increasing pressures for a decision favorable to Jhirad (i.e. a decision to deny extradition). Mr. Buchen's office is following the case on an information basis and Mr. Lissy is also interested, as Jhirad has generated wide publicity in Israeli circles. The Israeli Embassy has raised it with Roy Atherton. As we understand it, the actual final action will be taken by State with the Deputy Secretary (Robinson) given the responsibility to sign the surrender warrant (approving extradition) or to not sign it (Jhirad would be free). Jhirad is currently out on bail.

In addition to the extradition case, Jhirad also recently filed a petition for political assylum in the US, invoking human rights issues and prospects of political persecution if he returns to India. According to State lawyers, the assylum issue is moot: So far as the petition's effect under immigration law is concerned, since Jhirad has been admitted to the US as a permanent resident he is in no danger of being returned to India except by extradition. If he is extradited, the assylum petition will not apply. Basically, therefore, the current package being prepared at State for the Deputy Secretary focusses on the merits of the extradition case under the extradition treaty between the US and India.

~~CONFIDENTIAL~~ (GDS)
KR 5/31/01

Subject to GDS of E.O. 11652
Automatically Declassified on
December 31, 1982

The following is a brief recap of the case: Jhirad, a native of India, formerly a citizen of India, presently a citizen of Israel, is charged in India with the crime of embezzlement (breach of public trust). A warrant for Jhirad's arrest was issued on November 7, 1967. He was in Israel from 1967 until he emigrated to the US on July 2, 1971. There is no extradition treaty between India and Israel. However, on May 8, 1972, India requested Jhirad's extradition from the US for the crime of embezzlement on grounds that it was an extraditable offense under the Treaty of 1931 between the US and the UK, made applicable to the US and India in 1942.

The Indian Government, represented by private counsel here, and Jhirad (with his own lawyers) pursued the case through the US. Courts all the way to the Supreme Court in October -- the net effect, according to lawyers, being that the Supreme Court upheld lower court rulings (always appealed by Jhirad) and thus upheld the extraditability of Jhirad under the terms of our treaty with India. On November 5, 1976, US District Judge Goettel, rendering the Court's legal position, signed the order certifying to the Secretary of State that Mr. Jhirad is committed for final determination on extradition. The 60 days began at that time, and if no decision is made, Jhirad may apply to be discharged.

One key feature of the extradition treaty between the US and India is that it does not provide for exercise of executive discretion. Thus, the only issues for review by the executive are whether the treaty applies, whether the Government of India has sufficiently proved its case in court, and whether any treaty defenses apply which would bar Jhirad's extradition. Thus, we gather there is less legal flexibility to refuse extradition of Jhirad in this case than in other extradition cases.

The current state of play is that the State Department is preparing a decision package for the Deputy Secretary in which State lawyers will apparently uphold the court legal opinion that Jhirad is technically extraditable and State/NEA and others will provide political input. We understand that State hopes to have the final package ready next week. Ambassador Saxbe will be returning to Washington at that time and may also wish to review the case again, although he has already cabled his views that Jhirad appears to be extraditable. State is aware of the wide publicity that Jhirad has generated, including approaches to the White House. It may be that in the final stages of the case, White House views will informally be sought, even if not legally required.

The only legal issue which was not discussed in our courts was whether Jhirad would receive a fair trial in India -- an issue in which interest has intensified because of the state of emergency in India. Jhirad has argued that political persecutionfor his allegedly pro-Zionist views while living in India is the sole reason that the Indians have pursued the case -- an argument that has become especially popular among human rights advocates here since the emergency in India. State has received assurances from the Indian Government that Jhirad, if returned to India, would be charged for only the two alleged acts of embezzlement for which he could be tried by our Courts and that he would be accorded the rights normally available to a criminal defendant in India (i.e. those in effect at the time of the extradition request in 1972 rather than those imposed by the emergency which limit normal rights). Embassy Delhi was also asked for its views (attached), which concluded that Jhirad should be extradited. [Tab A]

Conclusion: Obviously, the case is extremely complicated, given the tangle of legal and political issues embodied in the person of Mr. Jhirad. There may well be attempts made to get the President to involve himself in the case. Obviously that is his judgment to make, but this memo provides background information should he ask you about Jhirad.

[FYI: We have just received the latest of many letters appealing for a favorable decision on Jhirad -- Tab B from the President of Yeshiva University. We will be coordinating with Mr. Buchen's office in staffing this.]

Department of State TELEGRAM

~~CONFIDENTIAL~~ 2345

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~~C O N F I D E N T I A L~~ NEW DELHI 16150

E.O. 11652: GDS HR 5/31/01
TAGS: PFOR, IN
SUBJ: EXTRADITION: ELIJAH EPHRAIM JHIRAD

REF: STATE 266151

1. THE FOLLOWING ARE THE EMBASSY'S ANSWERS TO THE QUESTIONS RAISED REFTEL:

2. WAS JHIRAD PERSECUTED OR SUBJECT TO SIGNIFICANT POLITICAL PRESSURE BECAUSE OF HIS ALLEGED ZIONIST VIEWS AND ACTIVITIES WHILE HE RESIDED IN INDIA?--THERE ARE CONFLICTING VIEWS AS TO WHETHER JHIRAD WAS NOTABLY ACTIVE IN THE ZIONIST MOVEMENT WHEN HE RESIDED IN INDIA. A LEADING MEMBER OF THE NEW DELHI JEWISH COMMUNITY WHO WAS AND CONTINUES TO BE A CLOSE PERSONAL FRIEND OF JHIRAD STATED THAT JHIRAD WAS VERY ACTIVE IN ESPOUSING THE ZIONIST CAUSE AND OPENLY ADVOCATED EMIGRATION OF INDIAN JEWS TO ISRAEL. SOURCE RECALLED THAT JHIRAD WAS ACTIVE IN THE INDIA-ISRAEL FRIENDSHIP LEAGUE, THAT HE DID ARRANGE MEETINGS TO DISCUSS ISRAEL, AND THAT HE DID ENTERTAIN AND OFFER HOSPITALITY TO ISRAELI DIGNITARIES. THE ISRAELI CONSUL IN BOMBAY, ARMON, HOWEVER, TOLD CONGEN BOMBAY OFFICER THAT JHIRAD HAD NOT BEEN PARTICULARLY ACTIVE IN THE ZIONIST MOVEMENT IN INDIA. CONGEN COMMENTS THAT, ALTHOUGH ARMON HAS BEEN IN INDIA ONLY A FEW MONTHS, HE HAS STEEPED HIMSELF DEEPLY IN ALL MATTERS RELATING TO INDIA'S JEWISH COMMUNITY.

3. WHILE STATING THAT JHIRAD WAS VERY ACTIVE ON BEHALF

Department of State TELEGRAM

~~CONFIDENTIAL~~

OF THE ZIONIST CAUSE WHILE IN INDIA, OUR NEW DELHI SOURCE UNEQUIVOCABLY SAID THAT HE WAS UNAWARE THAT JHIRAD HAD EVER SUFFERED EITHER PROFESSIONALLY OR PERSONALLY FOR HIS ZIONIST VIEWS. THIS IS SIGNIFICANT IN VIEW OF SOURCE'S CLAIM TO HAVE BEEN CLOSE TO JHIRAD. PRESUMABLY IF JHIRAD HAD BEEN HARASSED, WHETHER BY POLICE SURVEILLANCE OR OTHER MEANS, HE WOULD HAVE MENTIONED IT TO HIS FRIEND. THE MOST OUR SOURCE COULD RECALL WAS JHIRAD'S COMPLAINT THAT HIS POSITION AS JUDGE ADVOCATE GENERAL OF THE NAVY HAD NOT BEEN UPGRADED AND THAT "PERHAPS" THIS WAS BECAUSE OF HIS ZIONIST VIEWS, SOURCE, HOWEVER, WAS CLEAR IN STATING THAT DURING PERIOD OF JHIRAD'S RESIDENCE IN INDIA, INDIAN ZIONISTS IN NO WAY SUFFERED FOR THEIR BELIEFS.

4. EMBASSY IS UNABLE TO COMMENT ON JHIRAD'S CLAIM THAT HE CLASHED WITH ARABISTS AT THE HIGHEST LEVELS OF THE GOI AND IN PARTICULAR WITH KRISHNA MENON. MENON'S SUPPORT FOR THE ARAB CAUSE AND IN PARTICULAR HIS CLOSE RELATIONS WITH EGYPT WERE WELL KNOWN. WE HAVE NO INFORMATION HERE ABOUT JHIRAD'S ALLEGED CLASH WITH MENON AT THE 1958 LAW OF THE SEA CONFERENCE.

5. THE EMBASSY, THEREFORE, CONCLUDES THAT JHIRAD WAS NOT SUBJECT TO POLITICAL PERSECUTION OR UNUSUAL POLITICAL PRESSURE BECAUSE OF HIS ZIONIST VIEWS DURING THE PERIOD OF HIS RESIDENCE IN INDIA.

6. IS THE GOI PRESENTLY SEEKING (REGARDLESS OF ITS EARLIER MOTIVATIONS) TO PERSECUTE JHIRAD FOR HIS POLITICAL VIEWS AND ACTIVITIES?--OUR NEW DELHI SOURCE STATED THAT BEGINNING WITH THE 1967 WAR (I.E., AFTER JHIRAD HAD ALREADY LEFT INDIA) INDIAN ZIONISTS BEGAN TO "LIE LOW." THE GOI'S SUPPORT OF THE RECENT UNGA RESOLUTION EQUATING ZIONISM WITH RACISM, HE SAID, HAD A SUBSTANTIAL INHIBITING EFFECT ON THE EXPRESSION OF PRO-ISRAELI VIEWS. THE DIFFICULT QUESTION IS WHETHER OR NOT THE GOI NOW SEEKS TO INTERJECT ITS WELL-KNOWN PRO-ARAB VIEWS INTO THE JHIRAD CASE. THE EVIDENCE AGAINST JHIRAD APPEARS FROM THE DECISIONS OF ALL THE U.S. COURTS TO BE SUBSTANTIAL, AND IN VIEW OF THIS IT WOULD NOT APPEAR NECESSARY FOR THE GOI TO INJECT ITS POLITICAL

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VIEWS INTO THE CASE TO ENSURE JHIRADS CONVICTION. HOWEVER, THAT POSSIBILITY CANNOT BE RULED OUT.

7. CAN JHIRAD GET A FAIR TRIAL IN INDIA? THE QUESTION RESOLVES ITSELF INTO TWO ISSUES: WHETHER THE COURTS IN INDIA TODAY ARE AFFECTED IN THEIR DECISIONS BY GOI POLITICAL PRESSURES: AND WHETHER SUCH PRESSURES ARE LIKELY TO BE EXERTED AND HAVE AN EFFECT IN THE JHIRAD CASE. IN SEEKING ANSWERES TO THESE QUESTIONS, THE EMBASSY, ON THE AMBASSADOR'S INSTRUCTIONS, HAS NOT CONSULTED SOURCES OUTSIDE OF THE EMBASSY.

8. AS THE EMBASSY HAS REPORTED, THE GOI HAS SOUGHT IN VAROUS WAYS TO EXERCISE POLITICAL INFLUENCE OVER INDIAN COURTS. CERTAIN JUDGES WHOSE DECISIONS HAVE PROVED CONTRARY TO GOI DESIRES HAVE BEEN TRANSFERRED (SEE NEW DELHI 3490 AND 10270). THE FORMER ATTORNEY GENERAL OF MADHYA PRADESH INFORMED US IN SEPTEMBER THAT HE HAD LOST HIS JOB BECAUSE OF HIS REFUSAL TO SUPPORT TE PRIME MINISTER AND THAT THE INDIAN JUDICIARY HAD LOST ITS INDEPENDENCE. NEVERTHELESS THERE HAVE BEEN DRAMATIC RECENT EXAMPLES OF THE INDEPENDENCE OF THE JUDICIARY. FOR EXAMPLE, THE COURTS IN NEW DELHI HAVE SHOWN UNUSUAL COURAGE IN PROTECTING THE INDIAN EXPRESS AGAINST GOI EFFORTS TO SHUT IT DOWN. COURTS ELSEWHERE HAVE RULED IN FAVOR OF HABEAS CORPUS FOR POLITICAL DETAINEES UNDER MISA.

9. WHILE WE HAVE NO BASIS FOR MAKING A CATEGORICAL JUDGMENT, WE BELIEVE THAT IT IS UNLIKELY THAT THE GOI WOULD EXERT POLITICAL PRESSURES IN REGARD TO THE JHIRAD CASE. WE WOULD ANTICIPATE THAT THE INDIAN EMBASSY WOULD PROVIDE ASSURANCES THAT JHIRAD WOULD BE TRIED SOLELY ON THE EXTRADITABLE CHARGES AND THAT HE WOULD BE ACCORDED RIGHTS NORMALLY AVAILABLE TO CRIMINAL DEFENDANTS; I.E., NOT CURTAILED BECAUSE OF THE EMERGENCY. FURTHERMORE, US COURT RECORDS SUGGEST THAT THE GOI WOULD BE SATISFIED THAT A CONVICTION WOULD BE OBTAINED ON THE BASIS OF CRIMINAL EVIDENCE IN AN IMPARTIAL TRIAL. ISRAELI CONSUL ARMON SAID HE KNEW OF NO DISCRIMINATION AGAINST JEWS IN LEGAL PROCEEDINGS IN INDIA ON RELIGIOUS GROUNDS AND THIS WAS CONFIRMED BY OUR NEW DELHI SOURCE IN THE JEWISH COMMUNITY. ARMON WAS OF THE VIEW THAT JHIRAD WOULD BE PROSECUTED FOR HIS ALLEGED CRIME AND NOT PERSECUTED FOR HIS RELIGION. HE ADDED, HOWEVER, THAT THE COURTS DO NOT WORK IN AN

~~CONFIDENTIAL~~

INTELLECTUAL VACUUM AND BECAUSE OF JHIRAD'S STATEMENTS IN THE US OF HIS VIEWS ON THE SITUATION IN INDIA, JHIRAD COULD EXPECT HEAVY PUNISHMENT WERE HE TO BE FOUND GUILTY. WE ARE UNABLE TO EVALUATE THIS VIEW BEYOND OUR GENERAL COMMENTS ABOVE AND OUR OBSERVATION THAT NO COURT IN ANY COUNTRY OPERATES WITHIN AN INTELLECTUAL VACUUM.

10. ADDITIONAL QUESTIONS REFTEL:

(A) THE ASSURANCES THE DEPARTMENT SEEKS FROM THE INDIAN EMBASSY SHOULD ADEQUATELY DEAL WITH THE QUESTIONS RAISED IN PARA 8D REFTEL.

(B) WE FIND NO MERIT IN JHIRAD'S CLAIM THAT THE FACT THAT THE SPECIAL POLICE ESTABLISHMENT HAD RESPONSIBILITY FOR HIS CASE IS INDICATIVE OF PROSECUTION FOR A POLITICAL CRIME. FIRST, IT SHOULD BE NOTED THAT THERE IS NO "INDIAN CENTRAL INTELLIGENCE AGENCY." RATHER THERE IS A CENTRAL BUREAU OF INVESTIGATION (CBI) OF WHICH THE SPECIAL POLICE ESTABLISHMENT IS AN INVESTIGATIVE ARM. WHILE THE CBI DOES HANDLE CASES WHERE THERE IS POLITICAL INTEREST, ITS PRIMARY CHARTER IS TO HANDLE CASES OF CORRUPTION WITHIN THE GOVERNMENT. SINCE JHIRAD WAS A CIVILIAN EMPLOYEE OF THE GOVERNMENT, HIS CASE WOULD APPEAR TO FALL PROPERLY WITHIN THE JURISDICTION OF THE CBI.

(C) WE ARE UNABLE TO PROVIDE A READING CONCERNING ACTUAL SENTENCING PRACTICES OF INDIAN COURTS.

11. IN VIEW OF THE ABOVE INFORMATION, THE AMBASSADOR SEES NO REASON WHY THE USG SHOULD WITHHOLD THE EXTRADITION OF JHIRAD ON THE BASIS OF HIS CLAIMS.

SAYRE

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APPEAL FOR JUSTICE FOR ELIJAH E. JHIRAD

30TH FLOOR
870 SEVENTH AVENUE
NEW YORK, N. Y. 10019
(212) 977-7447

December 3, 1976

The President
The White House
Washington D.C. 20500

Dear Mr. President:

We are impelled by humanitarian considerations to express our profound concern about the case of Elijah Ephraim Jhirad whose extradition from the United States is being sought by the government of India. We earnestly support his appeal to you to deny his extradition and to grant him political asylum in the United States should this become necessary.

Mr. Jhirad, who is a Barrister-at-Law of England was one of the leading members of the Indian Bar with a long history of public service. After a period of distinguished active war service he was retained as the Judge Advocate General of the Indian Navy from 1946 to 1964, was the adviser on Maritime Law to the government of India and represented India at the first U.N.Conference on the Law of the Sea. He was also a leader of the Indian Jewish Community, and an ardent supporter and outspoken advocate of Jewish and Israeli causes. Prominent citizens in the legal and academic fields and in public life who have had occasion to meet Mr. Jhirad, all attest to his outstanding character and distinguished standing as an eminent legal scholar and lawyer.

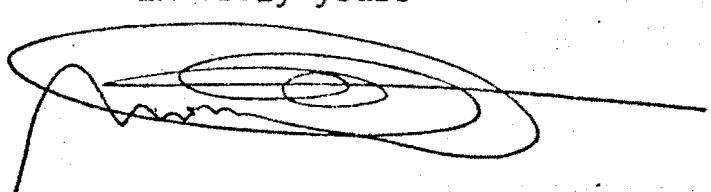
Extradition proceedings were brought against Mr. Jhirad in 1972 alleging misappropriation of naval funds in 1959-1961, some 15 to 17 years ago. The amount at issue is $1,600.

Prior to the bringing of the charges and while Mr. Jhirad was in India, he and his family experienced years of harrassment, surveillance, telephone taps and other indignities for his anti-communist, Jewish and Israeli activities. We are convinced that unquestionably there are political considerations which motivate the request for Mr. Jhirad's extradition.

Mr. Jhirad is sixty-three years old and the sole supporter of his wife and three teen-aged children. They all reside in a modest four-room apartment in New York City. The children attend Jewish religious day schools on scholarships based upon determined need. Since arriving in this country in July 1971, Mr. Jhirad has worked steadily as a writer and editor of legal publications and highly esteemed by his employers. He has authored several significant legal treatise on American Law and is presently the Managing Editor of three nationally regarded legal periodicals, The Banking Law Journal, the Securities Regulation Law Journal and the Uniform Commercial Code Law Journal.

We are certain that extradition would be a horrendous miscarriage of justice. It would be contrary to the fundamental principles of our country, and to all dictates of conscience, reason and humanity.

Sincerely yours



Dr. Norman Lamm
President, Yeshiva University
Chairman, Ad Hoc Committee for
Justice for Elijah Ephraim Jhirad

NSC CORRESPONDENCE PROFILE

DOC MO	DOC DA	RECD MO	RECD DA	RECD HR	LOG NUMBER
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INITIAL ACTION O

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TO: PRES _____
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SECDEF _____
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SUBJECT: State of Play re Jhirad Extradition case

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INTERNAL ROUTING AND DISTRIBUTION	ACTION	CONCURRENCE	COORDINATE	INFO	REC CY FOR
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FAR EAST/ PRC					
INTELLIGENCE					
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ACTION REQUIRED

MEMO FOR SCOWCROFT . . . . . (____)
MEMO FOR PRES . . . . . (____)
REPLY FOR _____ (____)
APPROPRIATE ACTION . . . . . (____)
MEMO _____ TO _____ . . . . . (____)
RECOMMENDATIONS . . . . . (____)
JOINT MEMO . . . . . (____)
REFER TO _____ FOR: _____ (____)
ANY ACTION NECESSARY? . . . . . (____)
CONCURRENCE . . . . . (____)
DUE DATE:

COMMENTS: (INCLUDING SPECIAL INSTRUCTIONS)

SUBSEQUENT ROUTING/ACTIONS

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NATIONAL SECURITY COUNCIL

December 30, 1976

Loretta -

Please close this out. It should be filed with the rest of the action.

Rosemary

15 General Scowcroft 6414 Staff

In The Matter Of

The Request By The Government Of
India for the Extradition Of

ELIJAH EPHRAIM JHIRAD

Pursuant to Title 18 U.S.C. Section 3184

APPLICATION OF ELIJAH EPHRAIM JHIRAD TO THE SECRETARY OF STATE FOR DENIAL OF INDIA'S REQUEST FOR EXTRADITION

TENZER, GREENBLATT, FALLON & KAPLAN
COUNSELLORS AT LAW
100 PARK AVENUE, NEW YORK, N. Y. 10017

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PRELIMINARY STATEMENT

We submit this memorandum on behalf of Elijah Ephraim Jhirad in support of his application to the Secretary of State for the exercise by the Secretary - in accordance with the discretion vested in him by Title 18 U.S.C., §3184 - of his authority to decline the request for the extradition of Jhirad by the government of the Republic of India.

India's complaint commencing the extradition proceedings against Jhirad was filed in the United States District Court for the Southern District of New York on August 3, 1972. The complaint alleged that, in October 1968, Jhirad had been charged in India with misappropriating a portion of a Naval Prize Fund during the period between 1959 and 1961, when Jhirad was Judge Advocate General of the Indian Navy.

United States Magistrate Gerard L. Goettel heard the evidence of criminality presented by the government of India as called for in Title 18 U.S.C. §3184 in March 1973. On April 12, 1973, the Magistrate filed his decision holding that the government of India had presented sufficient evidence to support the extradition of Jhirad on the last four of the 52 charges lodged against him in India - finding

that the remainder of the charges were barred by lapse of time under Article 5 of the Extradition Treaty between the two countries.* On April 12, 1976, the Second Circuit Court of Appeals issued its decision affirming the Magistrate's holding that Jhirad is extraditable, but limiting the charges upon which he may be extradited to the last two of the 52 charges - holding that the remaining 50 are barred by lapse of time under Article 5 of the Treaty. On October 4, 1976, the Supreme Court of the United States denied Jhirad's petition for a writ of certiorari to review the decision of the Second Circuit Court of Appeals - thus exhausting Jhirad's rights to direct judicial review of the matter.

On November 8, 1976, the Magistrate issued his warrant (dated November 5, 1976) for Jhirad's commitment pending review by the Secretary of State; and, on the same date, the Magistrate certified the record and the proceedings before him and mailed same to the Secretary of State. We filed a preliminary application on behalf of Jhirad with the Secretary by letter-memorandum dated and mailed on June 16, 1976. On September 10, 1976, Jhirad filed a petition for

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* The courts have held that the applicable extradition treaty between the United States and India is the Extradition Treaty of 1931 entered into by the United States and Great Britain and acceded to by the latter on behalf of India in 1942. (The Republic of India and the United States exchanged diplomatic notes to this effect in 1967.)

political asylum with the District Director of the Immigration and Naturalization Service in New York. The District Director has requested the State Department to issue an advisory opinion on the petition for his guidance; and the matter is presently pending.

The purpose of this memorandum is to highlight those aspects of the record in this case which - when taken together - suggest that the Secretary of State should, in the exercise of his discretion under the statute, decline the request by India for Jhirad's extradition.

As Article 7 of the Treaty provides that India may try Jhirad only upon those charges for which he has been extradited, India is left in the posture of seeking Jhirad's return to India to stand trial for allegedly misappropriating approximately $1,600.00 over fifteen years ago.

Jhirad - a barrister of Great Britain's Lincoln's Inn, World War II Navy combat veteran, Judge Advocate General of the Indian Navy for almost twenty years, adviser to the Indian Cabinet on naval and maritime affairs, internationally recognized authority on the law of the sea, a Senior Advocate before the Indian Supreme Court [the equivalent of the British Queen's Counsel], author and editor - is a public servant with an unblemished record of devotion to the public service. He has steadfastly proclaimed his innocence of these patently stale and contrived charges.

POINT I.

THE SECRETARY OF STATE HAS THE POWER TO REVIEW THE EXTRADITION PROCEEDINGS DE NOVO AND TO DECLINE AN EXTRADITION REQUEST REGARDLESS OF THE FINDINGS OF THE COURTS

Article 8 of the Extradition Treaty provides expressly that:

> "The extradition of fugitive criminals under the provisions of this Treaty shall be carried out ... in conformity with the laws regulating extradition for the time being in force in the territory from which the surrender of the fugitive criminal is claimed."

Extradition requests made to the Government of the United States, are, therefore, governed by Title 18 U.S.C., §§3181 et seq. Section 3184 of Title 18 provides that, following receipt of the certified record from the judicial proceedings, the Secretary of State "may issue" a warrant for the surrender of the accused to the foreign government.

The courts and the Department of State have consistently interpreted this statute to vest broad discretion in the Secretary of State to review the judicial proceedings de novo and to decline requests for extradition upon legal, moral or humanitarian grounds - regardless of the findings by the courts. Matter of Stupp, 23 Fed.Cas. 281 (No. 13562) [C.C.S.D.N.Y. 1873]; Matter of Ezeta, 62 F. 972, at pg. 996 (N.D.Cal. 1894); Gallina v. Fraser, 278 F.2d 77, at pg. 79

(Second Cir.) cert. den. 364 U.S. 851 (1960); Wacker v. Bisson, 348 F.2d 602, at pg. 606 (Fifth Cir. 1965); 17 Ops. Att'y Gen. 184, 186 (1881); Four Hackworth §334, at pgs. 172-174. See also Whiteman, Digest of International Law, Vol. 6, at pgs. 1027, 1028.

The Fifth Circuit has summed up the power of the Secretary of State in this regard rather succinctly:

> "Review by habeas corpus or declaratory judgment tests only the legality of the extradition proceedings; the question of the wisdom of the extradition remains for the Executive Branch to decide." 348 F.2d 602, at pg. 606.

It is, therefore, the Extradition Treaty and the applicable American statute which mandate that the Secretary of State review the record of the extradition proceedings, de novo, and exercise his informed and humane discretion in determining whether or not to accede to India's request for Jhirad's return.

We readily acknowledge that the Secretary has exercised his discretion in favor of the accused on relatively infrequent occasions in the past. The infrequency of its exercise does not, however, detract from the power - indeed, the duty - of the Secretary to make this review. We respectfully submit that such a review will inevitably lead to the conclusion that this is a case which cries out for the Secretary's intervention on behalf of Jhirad.

POINT II.

EXTRADITION OF JHIRAD IS BARRED BY ARTICLE 5 OF THE TREATY BY VIRTUE OF LAPSE OF TIME

The Extradition Treaty provides in Article 5 that:

> "The extradition shall not take place if, subsequently to the commission of the crime or offense ... exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the High Contracting Party applying or applied to."

The alleged misappropriations from the Indian Naval Prize Fund are charged to have occurred between 1959 and 1961 - the last two extant charges presently pending being charged to have occurred on September 25 and September 27, 1961. The charges were first filed against Jhirad in India in October 1968. It is conceded that the applicable statute of limitations under Article 5 of the Treaty is the five year, non-capital statute, Title 18 U.S.C., §3282. As the charges were first filed against Jhirad in India just over seven years after the commission of the last alleged offense, the lapse of time would appear to bar Jhirad's extradition pursuant to Article 5 of the Treaty.

The courts, however, have held that the last two of the 52 charges are not barred by lapse of time because the running of the limitations period was tolled just two weeks before it was due to expire at the end of September, 1966 - five years after the last two offenses are alleged to have been committed.

We respectfully submit that, in so holding, the courts have not only acted contrary to law and to logic, but contrary, as well, to fundamental notions of human decency and fairness. We set forth below, seriatim, those considerations which in toto mandate a finding by the Secretary of State that Article 5 of the Extradition Treaty bars extradition of Jhirad:

A. The Policy of Repose Inherent In the Statute of Limitations And In Article 5 of The Extradition Treaty Is A Substantive Matter of Important Social Policy And Not A Mere Technicality.

The United States - at both the Federal and State levels - has an extensive history of passage of statutes of limitation (covering most civil as well as criminal matters) dating back to the earliest times. Literally hundreds and hundreds of legislative bodies have passed statutes of limitation over the years; and the trend has been toward shortening the statutory periods in favor of the accuseds.

The Supreme Court of the United States has repeatedly held, as a matter of substantive policy, that:

> "... [C]riminal limitations statutes are to be liberally interpreted in favor of repose." Toussie v. United States, 397 U.S. 112, 114 (1970).

Nor is there any doubt as to the social policy thus served. It is:

> "To protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far distant past." Toussie, 397 U.S., at pg. 114.

Although Jhirad has consistently argued that the Treaty bars extradition by virtue of the enormous lapse of time that has occurred, not one of the nine judicial opinions issued in this case even mentions - let alone discusses - this policy of repose and the reasons behind it. The courts have simply been blind to the command of the Supreme Court to interpret the statute of limitations made applicable by the Treaty "liberally in favor of repose". On the contrary, as will be shown below, the courts have reached out in bizarre and novel contortions of law and logic, in order to avoid the plain meaning of the Treaty and the Statute. None of the nine opinions issued by the courts suggests a rationale for requiring Jhirad to stand trial on 15 year old charges; nor did any of the courts suggest how Jhirad could prepare a meaningful defense to these ancient allegations. These unanswered questions - which strike at the roots of Jhirad's case - have been left by the courts for consideration by the Secretary of State.

We suggest that the Secretary consider the following:

B. Article 5 of the Extradition Treaty Does Not Call For The Application of the Tolling Provision - Only For Exemption By Lapse of Time.

Without ever stating any rationale for so doing, the courts have insisted upon applying Title 18 U.S.C., §3290, the so-called tolling provision, to the facts of this case. That provision states that:

> "No statute of limitations shall extend to any person fleeing from justice."

No provision of the Treaty, no statute, and no judicial precedent required the courts to conclude that Article 5 of the Extradition Treaty - in barring extradition on charges for which exemption from prosecution has been acquired by lapse of time - incorporated not only the statute of limitations itself, but the tolling provision as well. Despite the total absence of any authority or precedent, the courts insisted on applying the tolling provision to the facts of this case - and on applying it adversely to the accused.

We respectfully suggest that there is no rationale for applying the tolling provision, when the Treaty calls for merely application of lapse of time. Application of the statute of limitations only - with its absolutely clear cut and direct calendar measurement - is consistent not only

with the policy of repose inherent in the statute itself but consistent as well with the summary nature of extradition proceedings and the difficulties inherent in trying the complex questions of fact and motivation raised by application of the tolling provision. Indeed, application of the tolling provision in this case required an initial reversal of the lower courts by the Second Circuit Court of Appeals and a mini-trial of the fact issues raised under the statute - a mini-trial in which Jhirad was at an enormous disadvantage because of the impossibility of marshaling his evidence from half way around the world after the lapse of almost 15 years.*

We respectfully submit that the most fair and expeditious manner of interpreting Article 5 of the Extradition Treaty is one which applies only the five year statute of limitations and not the tolling provision.

C. There is No Authority or Justification For The Courts' Invention of the Doctrine of "Constructive Flight"

The first panel of the Second Circuit Court of Appeals to review this case (Jhirad I) concluded that the lower courts had been incorrect in holding that the tolling provision was triggered by Jhirad's mere absence from India after mid-July 1966. The Jhirad I panel held that, before

* Indeed, India itself presented an entirely hearsay case on this issue - as was true of much of its case on the original hearing on its prima facie case in chief.

§3290 was triggered, proof that the accused left the jurisdiction with the intent of avoiding prosecution was required. The panel remanded the case to the lower courts for a mini-trial of that issue.

Upon that hearing, the Magistrate expressly held that Jhirad "did not leave India for the immediate purpose of avoiding prosecution" but rather that he had left India in July 1966 "for the primary and immediate purpose of attending a World Jewish Conference in Brussels".

Based upon the opinion in Jhirad I, that should have been the end of the matter and Jhirad should have been freed. However, without any prior notice to the parties of his intentions, the Magistrate unilaterally exceeded the mandate of the Jhirad I panel and went on to find:

(a) that Jhirad had determined not to return to India in mid-September 1966, just two weeks before the five year limitations period would have expired; and

(b) that this determination by Jhirad not to return was the legal equivalent of a "constructive flight" sufficient to trigger the application of the tolling provision.

Both the findings of fact and the conclusion of the Magistrate were affirmed by the District Court and the Court of Appeals.

There is no legal authority or precedent for the fiction of "constructive flight". It is simply the invention of the Magistrate - conceived by him only after the hearing was concluded, unilaterally, and without any prior notice to the parties.

Neither the Magistrate nor any of the courts which reviewed his decision have enunciated any rationale for this unprecedented reaching out beyond the frontiers of settled law for a legal fiction that directly violates the policy of repose inherent in the statute of limitations.

We emphasize that: (a) Jhirad left India openly, with the written permission of the Indian Defense Department, and upon a recently and regularly issued Indian passport; (b) Jhirad was at no time under any duty to return to India; and (c) India at no time prior to August 1972 ever requested his return. Nor was there any probative evidence that Jhirad even knew that either that the charges were imminent or under investigation. On the contrary, the Indian police official who actually handled the case from the start testified before the Magistrate in New York that: (a) he officially opened the case in early July 1966; (b) he never contacted Jhirad, directly or indirectly, prior to the latter's departure from

India in late July 1966; and (c) his preparations for the commencement of the investigation during that interim period were not such, in his opinion, as would have brought the matter to the attention of Jhirad prior to his departure. The charges themselves were actually filed in India only in October of 1968 - over two years after Jhirad's departure - at a time when Jhirad was residing openly in Israel; and there is no claim made that Jhirad learned of the filing of these charges in India prior to his arrest in the United States on India's complaint in extradition in August 1972.

In short, the notion that Jhirad was "constructively" fleeing Indian justice in September 1966 merely by virtue of his continued - and completely open - residence in Western Europe is simply nonsense.

D. India Failed To Sustain Its Burden of Proof On The Application of the Tolling Provision.

It was conceded that, in a domestic criminal prosecution, where the limitations defense is raised, the burden of proof is upon the government and that burden is proof beyond a reasonable doubt. People v. Kohut, 30 N.Y.2d 183 (1972).

In applying the doctrine of constructive flight under the tolling provision, the Magistrate expressly found

that India had failed to prove the relevant facts beyond a reasonable doubt.* Jhirad argued that the government of India must be held to a standard of proof beyond a reasonable doubt because - unlike his guilt or innocence, which would be the subject of a plenary trial in India upon his extradition - the issues raised by the statute of limitations arise only in this extradition proceeding by virtue of Article 5 of the Extradition Treaty. Since the American courts are the only forum in which this Treaty right will be tried, Jhirad argued that due process required application of the beyond a reasonable doubt standard. The Magistrate - while remarking that "this argument is interesting and has a superficial attraction" - concluded that proof by a mere preponderance of the evidence on this issue would be sufficient; and he was affirmed on appeal by both the District Court and the Court of Appeals in Jhirad II.

The following considerations compel the conclusion that the courts were in error in refusing to hold India to the beyond a reasonable doubt standard - a standard which India has concededly failed to meet:

(a) Article 5 of the Extradition Treaty clearly calls for the application of the domestic criminal law of the United States. The requisite burden of proof is as much a part of the domestic law as the particular statute to which

* Jhirad v. Ferrandina, 401 F.Supp. 1215 (S.D.N.Y. 1975), at page 1218, headnote 4.

it applies. (It is certainly as much a part of the statute of limitations as is the tolling provision, which the courts held applied) It is the Treaty itself which incorporates the domestic burden of proof on the statute of limitations issue.

(b) To deny Jhirad the benefit of the domestic burden of proof merely becuase he is an alien contesting an extradition proceeding is to deny him the equal protection of the laws guaranteed by the United States Constitution to citizens and aliens alike. Yick Wo v. Hopkins, 118 U.S. 356 (1886); Graham v. Richardson, 403 U.S. 365 (1971); Bolling v. Sharpe, 347 U.S. 497 (1954).

(c) To deny Jhirad the benefit of the domestic burden of proof on the trial of the statute of limitations issue - the resolution of which directly and immediately determines whether or not he shall have or shall lose his liberty - is to deny him the due process of law guaranteed by the United States Constitution. Matter of Winship, 397 U.S. 358, 363 (1970); Mullaney v. Wilbur, 421 U.S. 684 (1975); Speiser v. Randall, 357 U.S. 513, 525-526 (1968).

Neither the Treaty, nor the statute, nor any judicial precedent required the courts to conclude that proof by a mere preponderance of the evidence on this critical limitations issue should be sufficient. Yet, despite the compelling considerations of policy and fairness which militated in favor

of holding India to the higher domestic burden of proof and despite the absence of any authority to the contrary, the courts refused to apply the domestic law called for by Article 5 of the Treaty and came down once again on the side of narrowing and restricting Jhirad's limitations defense - once again plainly violating the policy of repose inherent in the statute of limitations.

E. There is No Evidence In the Record Respecting Either the Timing of Jhirad's Decision to Return To India Or His Motivation In So Deciding

All of the evidence presented by both the government of India and by Jhirad on the mini-trial of the issues raised by the tolling provision related solely to the circumstances surrounding Jhirad's departure from India in late July 1966. This resulted from the decision of the Second Circuit in Jhirad I which framed the issue as being solely "the intent of the appellant in leaving India." Thus, all of the evidence - such as it was - presented by the government of India related to alleged occurrences prior to Jhirad's departure. The only evidence in the record respecting events after Jhirad's departure are his own testimony (a) that he attended the World Jewish Congress in Brussels, (b) that he then vacationed with his family in Western Europe and also saw certain of his clients there, (c) that he lived openly and mingled in the society of high Indian officials, (d) that he did not decide to remain away from India until late November or December 1966, and (e) that his motivation in so deciding

arose from his wife's deteriorating health and from the political persecution that he suffered in India as a result of his Zionist and pro-Israeli activities.

There was - literally - not a scintilla of evidence in the record (other than Jhirad's own testimony as set forth above) respecting the timing and the motivation of his decision to remain away from India.

Nonetheless, the Magistrate concluded that Jhirad decided not to return to India in mid-September 1966 out of fear of prosecution on the charges that were ultimately filed in India in October 1968 - over two years later. This was a totally irrational conclusion - the rankest speculation, unsupported by any evidence in the record.

The Magistrate declared his rationale for this "finding" to be that, by mid-September 1966, Jhirad had stayed away from India two weeks longer than the month which Jhirad stated was the amount of time he "normally" stayed away on vacation while he was in the Navy. This "finding" is nothing short of ludicrous:

First, the amount of time Jhirad normally spent on vacations abroad while he was in the Navy had absolutely no relevance to the timing of his vacation of 1966 because, for the first time in twenty years, he

was no longer on active duty in the Navy and was free to stay abroad as long as he wished.

Second, as Jhirad pointed out to the Second Circuit panel in Jhirad II to no avail (See Jhirad affidavit of April 23, 1976 annexed as Exhibit A to his application for re-hearing of his appeal to the Second Circuit) he was absolutely mistaken in testifying (purely from his off-the-cuff recollection) that his normal vacation stays abroad had been for no more than a month even while he was on naval duty. On the contrary, he had often stayed away two or three months at a time and this is conclusively demonstrated by the visa stamps in his various Indian passports. Despite the fact that this conclusively negated the fundamental premise on which the Magistrate based his speculation that Jhirad decided not to return to India in mid-September 1966, the Jhirad II panel refused Jhirad a re-hearing. 536 F.2d 485 (2d Cir. 1976)

Third, there is no evidence in the record whatever - other than Jhirad's own testimony - respecting Jhirad's motivation in determining not to return to India. Neither the Magistrate, the District Court, or the Jhirad II panel were able to point to a single event which occurred, or circumstance which arose <u>after</u> Jhirad's departure from India which either put him on notice that the charges of misappropriation were under investigation

or from which it could be concluded that he began to fear such prosecution. The only evidence in record referred to by the courts related to events which occurred prior to Jhirad's departure - a departure which the Magistrate expressly found to be innocent of intention to flee:

> "On all the evidence, I conclude that Jhirad left India for the primary and immediate purpose of attending a World Jewish Conference in Brussels."

It is impossible to over emphasize the utter irrationality of the courts' decision in this regard: (a) Jhirad's departure from India was innocent; (b) nothing thereafter occurred; and (c) but he decided to stay abroad a month and a half later out of fear of prosecution on charges filed two years afterwards. That is not merely inconsistent; it is nonsense.

The only element of consistency in the courts' approach is their consistent refusal to apply the relevant statute "liberally in favor of repose". At every step of the way, the courts have reached out beyond the law and the facts in order to hold Jhirad for extradition.

F. Lapse of Time Has Rendered Jhirad's Defense Against These Charges an Impossibility

Despite the issuance of nine judicial opinions, the courts have entirely ignored the fundamental social policy inherent in the statute of limitations and its particular application to the facts of this case. The nine judicial opinions will be searched in vain for a single sentence that acknowledges - never mind discusses - the

fact that the courts are enabling the government of India to force Jhirad to trial on charges that are fifteen years old. We respectfully suggest that such a result would be a moral and legal outrage.

The Supreme Court of the United States in Toussie v. United States , supra, stated that the fundamental rationale for the statute of limitations was "to protect individuals from having to defend themselves against charges when the basic facts may have become obscure by the passage of time." This is a case in which the government of India has admitted (a) that it never audited the Naval Prize Fund in question, (b) that it no longer has the records of the Naval Prize Fund, (c) that it has no eligible claimant who filed a timely claim available to testify that he did not receive his proper share of the Naval Fund, and (d) that it has no evidence whatever that any money from the Naval Prize Fund is actually missing. How Jhirad is to prepare a defense in view of these conceded facts is a mystery - a mystery which the courts chose to ignore.

Perhaps if the lapse of time had been fifty years, that might have been enough to shock the conscience of the courts. We submit that, in the context of this case, fifteen years is the same as fifty; the damage has

already been done; a defense in India to these charges is, as a practical matter, an impossibility.

We respectfully submit, in sum, that the considerations outlined above require a finding by the Secretary of State that exemption from extradition has been acquired by lapse of time pursuant to Article 5 of the Extradition Treaty. The policy of repose inherent in the statute of limitations has been violated by the decision of the courts. Instead of applying the statute "liberally in favor of repose", the courts concededly reached out beyond the facts and the law to hold Jhirad for extradition. The courts were forced to invent new legal fictions. They did not hesitate to do so. The courts were forced to rule on speculation and surmise. They did not hesitate to do so. The courts were forced to ignore settled precedents, and uncontradicted fact. They did not hesitate to do so. The courts, in short, have perpetrated a travesty, for no discernible purpose other than to force Jhirad to travel halfway around the world to defend himself on a charge of misappropriating $1600 fifteen years ago.

We respectfully urge upon the Secretary of State the wisdom and necessity of preventing such a miscarriage of justice.

POINT III.

ARTICLE 9 OF THE TREATY BARS EXTRADITION BY VIRTUE OF INDIA'S FAILURE TO PRESENT A PRIMA FACIE CASE AGAINST JHIRAD

Article 9 of the Extradition Treaty provides:

> "The extradition shall take place only if the evidence be found sufficient, according to the laws of the High Contracting Party applied to, ... to justify the committal of the prisoner for trial in case the crime or offense had been committed in the territory of such High Contracting Party ...."

It is settled that this provision of the treaty calls for the requesting government to present a prima facie case. Charlton v. Kelly, 229 U.S. 447 (1913); First National City Bank v. Aristeguieta, 287 F.2d 219 (Second Circuit 1960). As the Supreme Court explained in Collins v. Loisel, 259 U.S. 309 (1922), the evidence must be sufficient "to block out those elements essential to a conviction".

The Second Circuit panel in Jhirad II found that the misappropriation charged by India required the identical elements of proof of such a crime in the United States. 536 F.2d, at page 482 , footnote 5.

One of the elements charged by India in its charge sheet (Exhibit 4 at the March 1973 Hearing before the United States Magistrate) with respect to each of the original 52 charges against Jhirad was that:

> "Some of the Naval personnel who were entitled to a share of Prize Money have on being examined stated that they did not receive their share of Prize Money."

This element derives from §405 of the Indian Penal Code which requires a conversion to the accused's own personal use of property entrusted to him by another. 536 F.2d, at page 482, footnote 5. In other words, it is no crime for the accused to exercise dominion or control over the property. On the contrary, he has been entrusted with it, in the first place. It is only when the lawful owner of the property is actually deprived of it by virtue of the wrongful act of the accused that a crime is made out.

The law on this element is identical in the United States. 29A Corpus Juris Secundum, Embezzlement, §11(b):

> "To constitute conversion so as to make out a case of embezzlement, there must be an unauthorized assumption and exercise of the right of ownership to the exclusion of the owner's right or the other must be actually deprived of his property or money by an adverse using or holding ...."

It makes no difference that the case involves a public officer distributing funds belonging to others; for a crime to be charged, there still must be proof that a true owner was actually deprived of his share of the distribution. 29A C.J.S., Embezzlement, §11(e); People v. Reynolds, 214 App.Div. 21 (2d Dept. 1925), at pg.34-35; 26 Am.Jur.2d, Embezzlement, §39, at pg.592.

Mere proof that funds belonging to others

were placed in the bank account of the accused is insufficient to make out a prima facie case of embezzlement, for the mere exercise of dominion over the funds by the accused is not, in and of itself, unlawful. Embezzlement can only arise when the accused in the first instance has possession, dominion and control over the funds under a legitimate claim of right. See, for example, Tinsley v. Bauer, 271 P.2d 110 (Cal. 1954); Parnell v. State, 339 So.West2d 49 (Tex.Ct. of Criminal Appeal 1959); People v. Von Cseh, 9 A.D.2d 660 (1st Dept. N.Y. App.Div. 1959).

In short, a critical element to the case - whether under Indian or American law - was proof either that money from the Naval Prize Fund was missing from the account or that some eligible recipient had not in fact received his proper share. The Indian government explicitly recognized that this was indeed a critical element to its case not only by setting forth that element in each of its charge sheets (as set forth hereinabove) but by assuming the burden of presenting proof on that issue to the United States Magistrate.

The Magistrate expressly held that the government of India had utterly failed to sustain its burden on that element of its case:

> "India attempted to prove that a number of former seamen who were entitled to participate in the Fund were not in fact paid. Their evidence was insufficient in that, although they showed that these persons were entitled

> to file claims against the Fund, there was no proof that they had in fact filed timely claims."

Under Article 9 of the Extradition Treaty, that should have been the end of the case, but the Magistrate was not satisfied with the proof - or lack of proof - on the record before him. He chose to continue beyond the record and, once again, passed into the realm of speculation and surmise. He hypothesized as follows:

> "Other ways in which funds could have been embezzled were by enlarging the number of claimants by adding fictitious names, by miscomputing the amount to be paid to proper claimants or by appropriating unclaimed funds when claimants had died or disappeared following a submission of their claims. Other ways of tapping the Fund surely exist, so it certainly is not necessary to show that the monies were taken from persons who had filed proper and timely claims...." [emphasis added]

The Magistrate's sheer and unadulterated speculation as to the manner in which the Fund "could have been embezzled" demonstrates more elequently than the record itself that India had utterly failed to prove any such scheme. The one scheme upon which India relied - the alleged failure to pay an eligible claimant - was not, according to the express holding of the Magistrate, established.

The Court of Appeals panel in Jhirad II conceded that India had failed to block out this element of the alleged crime; but it held that there was evidence that Jhirad had

diverted monies from the Naval Prize Fund to his own personal use, relying solely on Jhirad's testimony that he had occasionally used his own personal cash to advance monies for the Fund and had then reimbursed himself by appropriate transfers from the one account to the other. The reasoning of the Jhirad II panel was a total non sequitur; there was no proof at all that Jhirad had used the Fund's monies for his own personal use; India did not even purport to present such proof.

The Court of Appeals confused the mere passage of monies from the one account to the other with proof of diversion of the Fund's monies to Jhirad's personal use. But, in the absence of proof that any money was missing or that an eligible claimant failed to receive his share, evidence of deposits in the accused's bank account is utterly meaningless. Parnell v. State, Tinsley v. Bauer, and People v. Von Cseh, supra. The deposits may give rise to an inference of misappropriation only when money is missing.

We do not suggest for a moment that Jhirad's method of handling the distribution of the Fund was wise or unworthy of some investigation. But that is hardly the point. Mere suspicions and surmise are a far cry from a prima facie case. And India's burden before the Magistrate was not to arouse his speculations about what might have occurred but rather to present probative evidence sufficient to block out each element of the crime charged. Lack of wisdom in handling other people's money is hardly an element of the crime charged. Yet, at root, that is the central element in the courts' finding

of probable cause.

To put the matter most bluntly, Jhirad was perfectly free to take the entire Naval Prize Fund and keep it in a sock underneath his mattress - just so long as he ultimately distributed the proper amount to each eligible recipient and kept none of it for himself. India conceded that it had no proof that Jhirad actually used any of the money himself; that is precisely why it charged, and attempted to prove, that eligible recipients of the Fund had failed to receive their shares. The Magistrate rejected that proof, expressly holding the proffered evidence insufficient to sustain that element of the offense. Yet he then found probable cause to hold Jhirad for extradition.

There was a further irrational element in the Magistrate's finding of probable cause. There is absolutely no proof in the record that the two deposits into Jhirad's account which form the basis of the two charges remaining against him came from the Naval Prize Fund account, in the first place. The 51st charge alleges a 30,000 rupee withdrawal from the Prize Fund on September 25, 1961 and a 14,000 rupee deposit into Jhirad's account on the following day. The 52nd charge alleges a 10,000 rupee withdrawal from the Prize Fund on September 27, 1961 and a 5,000 rupee deposit into Jhirad's account on the same day. The charge sheet then alleges - in an attempt to make a connection between the withdrawals and the deposits - that:

> "there were no withdrawals from the personal bank accounts of the accused for making the deposits mentioned...."

But the government of India failed to present any evidence from which one could infer that the two deposits in question came from the Naval Prize Fund account. In particular, the government refused to provide copies of Jhirad's numerous bank and brokerage accounts in India for the relevant periods - accounts which Jhirad testified would have shown substantial cash deposits and withdrawals all during the period in question. Jhirad sought an order - first from the Magistrate and then from the District Court - requiring India to produce these records; but in each case his application was refused. These refusals by the courts were of irremediable harm to Jhirad's case.

By specifically charging that there were no withdrawals from Jhirad's other bank accounts to provide the source of the funds deposited into the account referred to in the last two charges, India expressly acknowledged that some such proof was required before a court could make any connection between those deposits and the prior withdrawals from the Prize Fund. Yet India refused to present the very evidence called for in its own charge sheets - the other accounts of the accused. The Alice-in-Wonderland quality of its case in this regard is obvious; yet the courts nonetheless held that India had presented a prima facie case. The Mad Hatter would surely agree.

Faced with this gap in its case, the government of India attempted to rely upon an alleged "pattern" between the withdrawals and deposits set out in the 52 counts in the charge sheets. But no such pattern was found. Many of the pairs of withdrawals and deposits were of differing amounts and occurred on different days. Moreover, there were many cash withdrawals from the Prize Fund and cash deposits into Jhirad's account - which showed up on the records of these two accounts which India did produce - that are not the subject of any charges, although nothing distinguishes them from those made the subject of the charges.

In addition, a so-called pattern on the first 50 charges - upon which extradition is barred by lapse of time under the Treaty - can hardly be relevant - even if it existed - to the last two charges where there is no correlation at all between the amounts withdrawn from the Fund and the deposits into Jhirad's account.

And there is no rule of evidence - let alone of common sense or logic - that would permit a court to conclude, from the mere similarity in amounts between withdrawals from one account and deposits into another, that the former was the source of the latter. This is particularly so in view of (a) Jhirad's testimony that he had a substantial cash flow through a number of accounts in the relevant period; (b) India's refusal to produce the records of those accounts; and (c) the totally dissimilar amounts involved in the only two charges held to be unbarred by lapse of time.

In sum, India failed to present a prima facie case against Jhirad in the courts in view of:

(a) its failure to present any evidence either that monies were missing from the Naval Prize Fund or that an eligible recipient had failed to receive his proper share; and

(b) its failure to present any probative evidence sufficient to permit a court to conclude that the two withdrawals from the Fund set out in the two extant charges against Jhirad were the source for the two deposits into Jhirad's account therein alleged.

There is no evidence, therefore, that a crime has been committed or that Jhirad is that criminal.

Where the record does not sustain a finding of probable cause, the Secretary of State has not hesitated to decline extradition requests - regardless of the prior action of the courts. See 62 Columbia Law Review 1313 (1962), at pages 1319-1321 and in particular the State Department proceedings referred to at footnotes 48, 49, 51, 53, 55 and 59; see also 1 Moore, Extradition, §365.

The case presented by the government of India against Jhirad was not merely weak. On critical elements of the crime charged, it was non-existent. The Secretary of State should, therefore, decline India's request for the extradition of Jhirad pursuant to Article 9 of the Treaty.

POINT IV.

THE EVIDENCE ESTABLISHED THAT JHIRAD IS SOUGHT BY THE GOVERNMENT OF INDIA TO PUNISH HIM FOR PRO-ISRAELI POLITICAL ACTIVITY

Article VI of the Extradition Treaty provides that:

> "A fugitive criminal shall not be surrendered if the crime or offense in respect of which his surrender is demanded is one of a political character or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for a crime or offense of a political character."

The District Court correctly concluded that Article VI sets forth "two separate tests"; and the court held that:

> "A fair reading of the Treaty compels the conclusion that this Treaty creates a prohibition against politically motivated extradition, and therefore the Magistrate properly allowed evidence to be presented on this issue."

The Magistrate found that Jhirad was an "outspoken apostle of the cause of the new nation of Israel" which was "unpopular" since India "is aligned with the Arab bloc of nations", a rather startling understatement of the case, given the passions aroused all over the Moslem world by the Arab-Israeli conflict.

Nonetheless, the Magistrate found no political motivation in India's actions against Jhirad, even though the uncontradicted evidence showed that Jhirad was under surveillance by the Special Police Establishment because of his public pro-Israel activity, that his telephone was tapped, his mail was opened, and that he had been chastized by the Defense Minister, Krishna Menon, for having negotiated a pro-Israeli International Convention on the law of the sea.

These elements, coupled with the extraordinarily flimsy case brought against Jhirad, the length of time it has taken India to put it together, and its continued pursuit of Jhirad even after 50 of the 52 charges against him have been time-barred, leads inevitably to the conclusion that India's requisition for Jhirad's surrender has, in fact, been made with a view to punish him for his political activities in India and not for the misappropriations set forth in the charge sheets.

The Government of India produced not a single shred of evidence to contradict this evidence of its political motivation; nor did it in any way attempt to challenge the necessary inferences which must be drawn from that evidence, despite the fact that India has known since Jhirad's bail hearing over four years ago that such a defense would be raised.

When one views the case of the Government of India as a whole, particularly in the light of the enormous effort and expense to which it has gone and the length of time which has passed since the investigation began, and one considers how remarkably sparse that case is, there can be little doubt that the motivation of the Government of India derives from some far darker source than the supposed loss of a few thousand rupees. The charge is embezzlement from a Naval Prize Fund; yet the case was begun not by the Navy but by the Special Police Establishment; the case was presented to the Magistrate in India by the Special Police Establishment; the chief witness before the Magistrate in the United States District Court was from the Special Police Establishment; and it is clearly the Special Police Establishment and not the Indian Navy that wishes to return Jhirad to India.

Indeed, the sheer implausibility of India's case simply boggles the imagination. What India alleges, on the 52 counts in its charge sheets, is that Jhirad embezzled well over 40 percent of the Fund. And yet - in a country of such grinding poverty that 100 rupees may be a year's income - there is no evidence of any complaint being made by any claimant until nine years after the Joint Proclamation was issued, when a sailor named A.C. John wrote to the Navy that

he'd like a share despite the fact that he never filed a claim (Exhibit 9). The Government of India has apparently been unable to locate a single eligible sailor who did not receive his share of the Fund. The only witenss India produced at the extradition hearing was not from the Navy at all but from - of course - the Special Police Establishment.

It is also noteworthy that India has apparently not sought to bring Admiral Katari or P.L. Sharma to trial, despite the fact that they were co-administrators of the Prize Fund with Jhirad. Sharma actually handled a good many of the checks which India relies upon as proof of Jhirad's alleged misappropriation; yet Sharma remains at work in the Indian Naval Law Directorate.

We readily admit that Jhirad's case in this regard must, of necessity, be inferential to some extent. After all, India cannot be expected to wear its heart on its sleeve. Nonetheless, the overt political movement in India toward dictatorship over the last two years - which plainly did not occur overnight but, rather, was but the culmination of forces at work in India during Jhirad's public service there - lends substantial credence to his charge of persecution by the Special Police Establishment.

Indeed, at the original March 1973 extradition hearing in the Southern District of New York - well before Prime Minister Ghandi moved overtly to supress civil liberties - Jhirad attempted to present the live testimony of Messrs. Friend, Weeramantry and Rath - each an acknowledged international expert in his field and personally familiar with both Jhirad and his activities in India during the 1950's and 1960's - but the Magistrate refused to hear this testimony, apparently on the theory that India was a democracy like ours - a widespread perception in the United States which has only just begun to change in response to public disclosure of events in India.

The exclusion of the testimony of these witnesses was of enormous prejudice to Jhirad, for Article 6 of the Treaty bars politically motivated extradition requests, and these witnesses were prepared to testify, in substance, that the Special Police Establishment was and is nothing more than a secret political police whose aims and methods differ not a wit from their more notorious brethren in other countries.

We respectfully call to the attention of the Secretary of State the recent grant of political asylum in the United States to Mr. Ram Jethmalani, the President

of the Indian Bar Association, who faced imminent arrest in India solely for making public speeches criticizing the Indian government. On September 4, 1976, the New York Times reported that, in announcing the grant of political asylum to Mr. Jethmalani, the Department of State explained its rationale as being:

> "...a decision consistent with American policy not to require individuals to return to their home country when this would place them in jeopardy because of their political beliefs or actions."

There could be no more eloquent statement of the basis of the justification for denying India's request for the extradition of Jhirad. It is inconceivable that India truly intends to bring her former public servant half way around the world to stand trial on 15 year old charges of misappropriating but $1600. On the contrary, it is plain that India's sole motivation for the enormous expense it has undergone is to punish Jhirad for his political activities in support of the State of Israel.

On that ground, extradition should be denied.

POINT V.

HUMANITARIAN GROUNDS

Should Jhirad be extradited to India, his wife and three infant children will be left alone in the United States bereft of any means of support. His wife is suffering under great emotional and nervous stress because of Jhirad's pending extradition to India; and we fear for her health should asylum be refused.

In addition, Jhirad is suffering from heart disease and a severe asthmatic condition; We respectfully suggest that he will not survive a return to India.

Moreover, Jhirad has devoted the bulk of his adult life to public service to India, both in peace and in war. Jhirad served her honorably for almost twenty-five years in military and civilian positions. Jhirad's brother gave his life to India in combat during the 1965 Indian/Pakistani conflict. Jhirad left India openly in 1966 at a time when no charges of any kind were pending against him.

We respectfully suggest that no view of fairness and justice requires the Government of the United States, in the circumstances described above, to refuse Jhirad asylum based merely on India's stated desire to return him to that country for trial on charges of misappropriating

$1600 fifteen years ago. It is patently obvious that, after fifteen years, Jhirad will have an impossible task of defending himself against these charges, since India has already conceded that it has no records of the Prize Fund and yet plans to prosecute him anyway.

The very nature of India's request reveals its sham quality and affirms the basis of Jhirad's application for its denial.

CONCLUSION

Based upon all of the foregoing, we respectfully request, on behalf of Elijah Ephraim Jhirad, that the Secretary of State exercise his right to decline the request of the government of India for Jhirad's extradition for the reasons set forth hereinabove.

Respectfully submitted,

TENZER, GREENBLATT, FALLON & KAPLAN
Attorneys for Elijah Ephraim Jhirad
Office & Post Office Address
100 Park Avenue - 17th Floor
New York, New York 10017
(212) 953 - 1800

Of Counsel:

Herbert Tenzer
Edward L. Sadowsky
Stacy L. Wallach

MEMORANDUM

2

THE WHITE HOUSE

WASHINGTON

6414 Add-on

INFORMATION

January 6, 1977

~~CONFIDENTIAL~~ (GDS)

MEMORANDUM FOR: THE PRESIDENT

FROM: BRENT SCOWCROFT

SUBJECT: Jhirad Extradition Case -- State of Play

You asked for a report on the status of extradition proceedings against Elijah Ephraim Jhirad. In brief he is now a free man since extradition papers were not signed and the statute of limitations has expired. The following is a brief recap of the case:

Jhirad, a native of India, formerly a citizen of India, presently a citizen of Israel, is charged in India with the crime of embezzlement (breach of public trust). A warrant for Jhirad's arrest was issued on November 7, 1967. He was in Israel from 1967 until he emigrated to the US on July 2, 1971. There is no extradition treaty between India and Israel. However, on May 8, 1972, India requested Jhirad's extradition from the US for the crime of embezzlement on grounds that it was an extraditable offense under the Treaty of 1931 between the US and the UK, made applicable to the US and India in 1942.

The Indian Government, represented by private counsel here, and Jhirad (with his own lawyers) pursued the case through the US Courts all the way to the Supreme Court in October--the net effect, according to lawyers, being that the Supreme Court upheld lower court rulings (always appealed by Jhirad) and thus upheld the extraditability of Jhirad under the terms of our treaty with India. On November 5, 1976, US District Judge Goettel, rendering the Court's legal position, signed the order certifying to the Secretary of State that Mr. Jhirad is committed for final determination on extradition. This notification had the legal effect of requiring the State Department to decide within 60 days (prior to January 3) whether or not to approve extradition.

~~CONFIDENTIAL~~ (GDS)

HR 5/31/01

After very careful review, the Department of State (in informal consultation with the Department of Justice and the Office of the White House Counsel) prepared a memorandum for Deputy Secretary Robinson pointing out that there were irregularities in the legal proceedings of extradition against Mr. Jhirad which would justify a decision not to extradite. On December 30, Mr. Robinson decided that Jhirad should not be extradited on grounds of these legal irregularities, and explained the position of the State Department to the Indian Embassy. He made it clear that there were no political considerations involved in the decision and a formal diplomatic note was sent by State to the Indian Embassy explaining the full circumstances of the decision. Pursuant to Mr. Robinson's decision, the surrender warrant for Mr. Jhirad was not signed by the State Department and the statute of limitations on his case has now expired.

MEMORANDUM 6414 Add-on

NATIONAL SECURITY COUNCIL

~~CONFIDENTIAL~~
ATTACHMENT

ACTION
January 5, 1977

MEMORANDUM FOR: WILLIAM G. HYLAND

FROM: ROBERT B. OAKLEY

SUBJECT: Jhirad Extradition Case -- State of Play

Per your request, at Tab A is a brief memo to the President on the Jhirad case.

RECOMMENDATION. That you forward the attached memo to the President.

~~CONFIDENTIAL~~
ATTACHMENT

MEMORANDUM 6414

NATIONAL SECURITY COUNCIL

~~CONFIDENTIAL~~ (GDS) INFORMATION
December 7, 1976

MEMORANDUM FOR: BRENT SCOWCROFT

FROM: ROBERT B. OAKLEY

SUBJECT: Jhirad Extradition Case -- State of Play

The Jhirad extradition case has formally moved from the Courts to the Department of State for a final determination on whether to extradite. We understand that such a determination must be taken by January 3, 1977 (or 60 days from the November 5, 1976, date when the Courts sent the action to State) or Jhirad will no longer be extraditable. As the process moves closer to that deadline, there may be increasing pressures for a decision favorable to Jhirad (i.e. a decision to deny extradition). Mr. Buchen's office is following the case on an information basis and Mr. Lissy is also interested, as Jhirad has generated wide publicity in Israeli circles. The Israeli Embassy has raised it with Roy Atherton. As we understand it, the actual final action will be taken by State with the Deputy Secretary (Robinson) given the responsibility to sign the surrender warrant (approving extradition) or to not sign it (Jhirad would be free). Jhirad is currently out on bail.

In addition to the extradition case, Jhirad also recently filed a petition for political asylum in the US, invoking human rights issues and prospects of political persecution if he returns to India. According to State lawyers, the asylum issue is moot: So far as the petition's effect under immigration law is concerned, since Jhirad has been admitted to the US as a permanent resident he is in no danger of being returned to India except by extradition. If he is extradited, the asylum petition will not apply. Basically, therefore, the current package being prepared at State for the Deputy Secretary focusses on the merits of the extradition case under the extradition treaty between the US and India.

~~CONFIDENTIAL~~ (GDS)
NR S/31/01

Subject to GDS of E.O. 11652
Automatically Declassified on
December 31, 1982

The following is a brief recap of the case: Jhirad, a native of India, formerly a citizen of India, presently a citizen of Israel, is charged in India with the crime of embezzlement (breach of public trust). A warrant for Jhirad's arrest was issued on November 7, 1967. He was in Israel from 1967 until he emigrated to the US on July 2, 1971. There is no extradition treaty between India and Israel. However, on May 8, 1972, India requested Jhirad's extradition from the US for the crime of embezzlement on grounds that it was an extraditable offense under the Treaty of 1931 between the US and the UK, made applicable to the US and India in 1942.

The Indian Government, represented by private counsel here, and Jhirad (with his own lawyers) pursued the case through the US Courts all the way to the Supreme Court in October -- the net effect, according to lawyers, being that the Supreme Court upheld lower court rulings (always appealed by Jhirad) and thus upheld the extraditability of Jhirad under the terms of our treaty with India. On November 5, 1976, US District Judge Goettel, rendering the Court's legal position, signed the order certifying to the Secretary of State that Mr. Jhirad is committed for final determination on extradition. The 60 days began at that time, and if no decision is made, Jhirad may apply to be discharged.

One key feature of the extradition treaty between the US and India is that it does not provide for exercise of executive discretion. Thus, the only issues for review by the executive are whether the treaty applies, whether the Government of India has sufficiently proved its case in court, and whether any treaty defenses apply which would bar Jhirad's extradition. Thus, we gather there is less legal flexibility to refuse extradition of Jhirad in this case than in other extradition cases.

The current state of play is that the State Department is preparing a decision package for the Deputy Secretary in which State lawyers will apparently uphold the court legal opinion that Jhirad is technically extraditable and State/NEA and others will provide political input. We understand that State hopes to have the final package ready next week. Ambassador Saxbe will be returning to Washington at that time and may also wish to review the case again, although he has already cabled his views that Jhirad appears to be extraditable. State is aware of the wide publicity that Jhirad has generated, including approaches to the White House. It may be that in the final stages of the case, White House views will informally be sought, even if not legally required.

The only legal issue which was not discussed in our courts was whether Jhirad would receive a fair trial in India -- an issue in which interest has intensified because of the state of emergency in India. Jhirad has argued that political persecutionfor his allegedly pro-Zionist views while living in India is the sole reason that the Indians have pursued the case -- an argument that has become especially popular among human rights advocates here since the emergency in India. State has received assurances from the Indian Government that Jhirad, if returned to India, would be charged for only the two alleged acts of embezzlement for which he could be tried by our Courts and that he would be accorded the rights normally available to a criminal defendant in India (i.e. those in effect at the time of the extradition request in 1972 rather than those imposed by the emergency which limit normal rights). Embassy Delhi was also asked for its views (attached), which concluded that Jhirad should be extradited. [Tab A]

Conclusion: Obviously, the case is extremely complicated, given the tangle of legal and political issues embodied in the person of Mr. Jhirad. There may well be attempts made to get the President to involve himself in the case. Obviously that is his judgment to make, but this memo provides background information should he ask you about Jhirad.

[FYI: We have just received the latest of many letters appealing for a favorable decision on Jhirad -- Tab B from the President of Yeshiva University. We will be coordinating with Mr. Buchen's office in staffing this.]

Department of State TELEGRAM

~~CONFIDENTIAL~~ 2346

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ACTION L-03

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~~C O N F I D E N T I A L~~ NEW DELHI 16150

E.O. 11652: GDS HR 5/31/01
TAGS: PFOR, IN
SUBJ: EXTRADITION: ELIJAH EPHRAIM JHIRAD

REF: STATE 266151

1. THE FOLLOWING ARE THE EMBASSY'S ANSWERS TO THE QUESTIONS RAISED REFTEL:

2. WAS JHIRAD PERSECUTED OR SUBJECT TO SIGNIFICANT POLITICAL PRESSURE BECAUSE OF HIS ALLEGED ZIONIST VIEWS AND ACTIVITIES WHILE HE RESIDED IN INDIA?--THERE ARE CONFLICTING VIEWS AS TO WHETHER JHIRAD WAS NOTABLY ACTIVE IN THE ZIONIST MOVEMENT WHEN HE RESIDED IN INDIA. A LEADING MEMBER OF THE NEW DELHI JEWISH COMMUNITY WHO WAS AND CONTINUES TO BE A CLOSE PERSONAL FRIEND OF JHIRAD STATED THAT JHIRAD WAS VERY ACTIVE IN ESPOUSING THE ZIONIST CAUSE AND OPENLY ADVOCATED EMIGRATION OF INDIAN JEWS TO ISRAEL. SOURCE RECALLED THAT JHIRAD WAS ACTIVE IN THE INDIA-ISRAEL FRIENDSHIP LEAGUE, THAT HE DID ARRANGE MEETINGS TO DISCUSS ISRAEL, AND THAT HE DID ENTERTAIN AND OFFER HOSPITALITY TO ISRAELI DIGNITARIES. THE ISRAELI CONSUL IN BOMBAY, ARMON, HOWEVER, TOLD CONGEN BOMBAY OFFICER THAT JHIRAD "HAD NOT BEEN PARTICULARLY ACTIVE" IN THE ZIONIST MOVEMENT IN INDIA. CONGEN COMMENTS THAT, ALTHOUGH ARMON HAS BEEN IN INDIA ONLY A FEW MONTHS, HE HAS STEEPED HIMSELF DEEPLY IN ALL MATTERS RELATING TO INDIA'S JEWISH COMMUNITY.

3. WHILE STATING THAT JHIRAD WAS VERY ACTIVE ON BEHALF

Department of State TELEGRAM

~~CONFIDENTIAL~~

PAGE 02 NEW DE 16150 041425Z

OF THE ZIONIST CAUSE WHILE IN INDIA, OUR NEW DELHI SOURCE UNEQUIVOCABLY SAID THAT HE WAS UNAWARE THAT JHIRAD HAD EVER SUFFERED EITHER PROFESSIONALLY OR PERSONALLY FOR HIS ZIONIST VIEWS. THIS IS SIGNIFICANT IN VIEW OF SOURCE'S CLAIM TO HAVE BEEN CLOSE TO JHIRAD. PRESUMABLY IF JHIRAD HAD BEEN HARASSED, WHETHER BY POLICE SURVEILLANCE OR OTHER MEANS, HE WOULD HAVE MENTIONED IT TO HIS FRIEND. THE MOST OUR SOURCE COULD RECALL WAS JHIRAD'S COMPLAINT THAT HIS POSITION AS JUDGE ADVOCATE GENERAL OF THE NAVY HAD NOT BEEN UPGRADED AND THAT "PERHAPS" THIS WAS BECAUSE OF HIS ZIONIST VIEWS. SOURCE, HOWEVER, WAS CLEAR IN STATING THAT DURING PERIOD OF JHIRAD'S RESIDENCE IN INDIA, INDIAN ZIONISTS IN NO WAY SUFFERED FOR THEIR BELIEFS.

4. EMBASSY IS UNABLE TO COMMENT ON JHIRAD'S CLAIM THAT HE CLASHED WITH ARABISTS AT THE HIGHEST LEVELS OF THE GOI AND IN PARTICULAR WITH KRISHNA MENON. MENON'S SUPPORT FOR THE ARAB CAUSE AND IN PARTICULAR HIS CLOSE RELATIONS WITH EGYPT WERE WELL KNOWN. WE HAVE NO INFORMATION HERE ABOUT JHIRAD'S ALLEGED CLASH WITH MENON AT THE 1958 LAW OF THE SEA CONFERENCE.

5. THE EMBASSY, THEREFORE, CONCLUDES THAT JHIRAD WAS NOT SUBJECT TO POLITICAL PERSECUTION OR UNUSUAL POLITICAL PRESSURE BECAUSE OF HIS ZIONIST VIEWS DURING THE PERIOD OF HIS RESIDENCE IN INDIA.

6. IS THE GOI PRESENTLY SEEKING (REGARDLESS OF ITS EARLIER MOTIVATIONS) TO PERSECUTE JHIRAD FOR HIS POLITICAL VIEWS AND ACTIVITIES?--OUR NEW DELHI SOURCE STATED THAT BEGINNING WITH THE 1967 WAR (I.E., AFTER JHIRAD HAD ALREADY LEFT INDIA) INDIAN ZIONISTS BEGAN TO "LIE LOW." THE GOI'S SUPPORT OF THE RECENT UNGA RESOLUTION EQUATING ZIONISM WITH RACISM, HE SAID, HAD A SUBSTANTIAL INHIBITING EFFECT ON THE EXPRESSION OF PRO-ISRAELI VIEWS. THE DIFFICULT QUESTION IS WHETHER OR NOT THE GOI NOW SEEKS TO INTERJECT ITS WELL-KNOWN PRO-ARAB VIEWS INTO THE JHIRAD CASE. THE EVIDENCE AGAINST JHIRAD APPEARS FROM THE DECISIONS OF ALL THE U.S. COURTS TO BE SUBSTANTIAL, AND IN VIEW OF THIS IT WOULD NOT APPEAR NECESSARY FOR THE GOI TO INJECT ITS POLITICAL

~~CONFIDENTIAL~~

VIEWS INTO THE CASE TO ENSURE JHIRAD'S CONVICTION. HOWEVER, THAT POSSIBILITY CANNOT BE RULED OUT.

7. CAN JHIRAD GET A FAIR TRIAL IN INDIA? THE QUESTION RESOLVES ITSELF INTO TWO ISSUES: WHETHER THE COURTS IN INDIA TODAY ARE AFFECTED IN THEIR DECISIONS BY GOI POLITICAL PRESSURES; AND WHETHER SUCH PRESSURES ARE LIKELY TO BE EXERTED AND HAVE AN EFFECT IN THE JHIRAD CASE. IN SEEKING ANSWERES TO THESE QUESTIONS, THE EMBASSY, ON THE AMBASSADOR'S INSTRUCTIONS, HAS NOT CONSULTED SOURCES OUTSIDE OF THE EMBASSY.

8. AS THE EMBASSY HAS REPORTED, THE GOI HAS SOUGHT IN VAROUS WAYS TO EXERCISE POLITICAL INFLUENCE OVER INDIAN COURTS. CERTAIN JUDGES WHOSE DECISIONS HAVE PROVED CONTRARY TO GOI DESIRES HAVE BEEN TRANSFERRED (SEE NEW DELHI 3490 AND 10270). THE FORMER ATTORNEY GENERAL OF MADHYA PRADESH INFORMED US IN SEPTEMBER THAT HE HAD LOST HIS JOB BECAUSE OF HIS REFUSAL TO SUPPORT TE PRIME MINISTER AND THAT THE INDIAN JUDICIARY HAD LOST ITS INDEPENDENCE. NEVERTHELESS THERE HAVE BEEN DRAMATIC RECENT EXAMPLES OF THE INDEPENDENCE OF THE JUDICIARY. FOR EXAMPLE, THE COURTS IN NEW DELHI HAVE SHOWN UNUSUAL COURAGE IN PROTECTING THE INDIAN EXPRESS AGAINST GOI EFFORTS TO SHUT IT DOWN. COURTS ELSEWHERE HAVE RULED IN FAVOR OF HABEAS CORPUS FOR POLITICAL DETAINEES UNDER MISA.

9. WHILE WE HAVE NO BASIS FOR MAKING A CATEGORICAL JUDGMENT, WE BELIEVE THAT IT IS UNLIKELY THAT THE GOI WOULD EXERT POLITICAL PRESSURES IN REGARD TO THE JHIRAD CASE. WE WOULD ANTICIPATE THAT THE INDIAN EMBASSY WOULD PROVIDE ASSURANCES THAT JHIRAD WOULD BE TRIED SOLELY ON THE EXTRADITABLE CHARGES AND THAT HE WOULD BE ACCORDED RIGHTS NORMALLY AVAILABLE TO CRIMINAL DEFENDANTS; I.E., NOT CURTAILED BECAUSE OF THE EMERGENCY. FURTHERMORE, US COURT RECORDS SUGGEST THAT THE GOI WOULD BE SATISFIED THAT A CONVICTION WOULD BE OBTAINED ON THE BASIS OF CRIMINAL EVIDENCE IN AN IMPARTIAL TRIAL. ISRAELI CONSUL ARMON SAID HE KNEW OF NO DISCRIMINATION AGAINST JEWS IN LEGAL PROCEEDINGS IN INDIA ON RELIGIOUS GROUNDS AND THIS WAS CONFIRMED BY OUR NEW DELHI SOURCE IN THE JEWISH COMMUNITY. ARMON WAS OF THE VIEW THAT JHIRAD WOULD BE PROSECUTED FOR HIS ALLEGED CRIME AND NOT PERSECUTED FOR HIS RELIGION. HE ADDED, HOWEVER, THAT THE COURTS DO NOT WORK IN AN

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

INTELLECTUAL VACUUM AND BECAUSE OF JHIRAD'S STATEMENTS IN THE US OF HIS VIEWS ON THE SITUATION IN INDIA, JHIRAD COULD EXPECT HEAVY PUNISHMENT WERE HE TO BE FOUND GUILTY. WE ARE UNABLE TO EVALUATE THIS VIEW BEYOND OUR GENERAL COMMENTS ABOVE AND OUR OBSERVATION THAT NO COURT IN ANY COUNTRY OPERATES WITHIN AN INTELLECTUAL VACUUM.

10. ADDITIONAL QUESTIONS REFTEL:

(A) THE ASSURANCES THE DEPARTMENT SEEKS FROM THE INDIAN EMBASSY SHOULD ADEQUATELY DEAL WITH THE QUESTIONS RAISED IN PARA 8D REFTEL.

(B) WE FIND NO MERIT IN JHIRAD'S CLAIM THAT THE FACT THAT THE SPECIAL POLICE ESTABLISHMENT HAD RESPONSIBILITY FOR HIS CASE IS INDICATIVE OF PROSECUTION FOR A POLITICAL CRIME. FIRST, IT SHOULD BE NOTED THAT THERE IS NO "INDIAN CENTRAL INTELLIGENCE AGENCY." RATHER THERE IS A CENTRAL BUREAU OF INVESTIGATION (CBI) OF WHICH THE SPECIAL POLICE ESTABLISHMENT IS AN INVESTIGATIVE ARM. WHILE THE CBI DOES HANDLE CASES WHERE THERE IS POLITICAL INTEREST, ITS PRIMARY CHARTER IS TO HANDLE CASES OF CORRUPTION WITHIN THE GOVERNMENT. SINCE JHIRAD WAS A CIVILIAN EMPLOYEE OF THE GOVERNMENT, HIS CASE WOULD APPEAR TO FALL PROPERLY WITHIN THE JURISDICTION OF THE CBI.

(C) WE ARE UNABLE TO PROVIDE A READING CONCERNING ACTUAL SENTENCING PRACTICES OF INDIAN COURTS.

11. IN VIEW OF THE ABOVE INFORMATION, THE AMBASSADOR SEES NO REASON WHY THE USG SHOULD WITHHOLD THE EXTRADITION OF JHIRAD ON THE BASIS OF HIS CLAIMS.
SAYRE

APPEAL FOR JUSTICE FOR ELIJAH E. JHIRAD

30TH FLOOR
870 SEVENTH AVENUE
NEW YORK, N. Y. 10019
(212) 977-7447

December 3, 1976

The President
The White House
Washington D.C. 20500

Dear Mr. President:

We are impelled by humanitarian considerations to express our profound concern about the case of Elijah Ephraim Jhirad whose extradition from the United States is being sought by the government of India. We earnestly support his appeal to you to deny his extradition and to grant him political asylum in the United States should this become necessary.

Mr. Jhirad, who is a Barrister-at-Law of England, was one of the leading members of the Indian Bar with a long history of public service. After a period of distinguished active war service he was retained as the Judge Advocate General of the Indian Navy from 1946 to 1964, was the adviser on Maritime Law to the government of India and represented India at the first U.N.Conference on the Law of the Sea. He was also a leader of the Indian Jewish Community, and an ardent supporter and outspoken advocate of Jewish and Israeli causes. Prominent citizens in the legal and academic fields and in public life who have had occasion to meet Mr. Jhirad, all attest to his outstanding character and distinguished standing as an eminent legal scholar and lawyer.

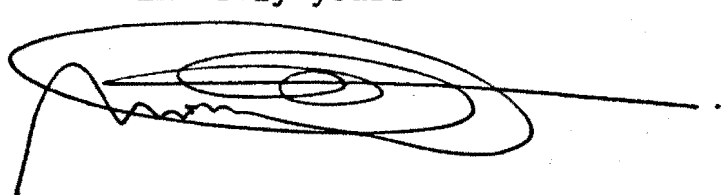
Extradition proceedings were brought against Mr. Jhirad in 1972 alleging misappropriation of naval funds in 1959-1961, some 15 to 17 years ago. The amount at issue is $1,600.

Prior to the bringing of the charges and while Mr. Jhirad was in India, he and his family experienced years of harrassment, surveillance, telephone taps and other indignities for his anti-communist, Jewish and Israeli activities. We are convinced that unquestionably there are political considerations which motivate the request for Mr. Jhirad's extradition.

Mr. Jhirad is sixty-three years old and the sole supporter of his wife and three teen-aged children. They all reside in a modest four-room apartment in New York City. The children attend Jewish religious day schools on scholarships based upon determined need. Since arriving in this country in July 1971, Mr. Jhirad has worked steadily as a writer and editor of legal publications and highly esteemed by his employers. He has authored several significant legal treatise on American Law and is presently the Managing Editor of three nationally regarded legal periodicals, The Banking Law Journal, the Securities Regulation Law Journal and the Uniform Commercial Code Law Journal.

We are certain that extradition would be a horrendous miscarriage of justice. It would be contrary to the fundamental principles of our country, and to all dictates of conscience, reason and humanity.

Sincerely yours



Dr. Norman Lamm
President, Yeshiva University
Chairman, Ad Hoc Committee for
Justice for Elijah Ephraim Jhirad

NSC CORRESPONDENCE PROFILE

DOC MO	DOC DA	RECD MO	RECD DA	RECD YR	LOG NUMBER
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INITIAL ACTION ☐

FOREIGN/DOMESTIC CORRESPONDENCE

TO: PRES _____ SCOWCROFT ✓ HYLAND _____ DAVIS _____

FROM: SECSTATE _____ SECDEF _____ DCI _____ STATE EXSEC _____ OTHER Oakley

S/S _____ _____ X REF _____ _____

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SUBJECT: State of Play re Ahrad Extradition case

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ACTION REQUIRED

- MEMO FOR SCOWCROFT ☐
- MEMO FOR PRES ☐
- REPLY FOR _____ ☐
- APPROPRIATE ACTION ☐
- MEMO _____ TO _____ ☐
- RECOMMENDATIONS ☐
- JOINT MEMO ☐
- REFER TO _____ FOR _____ ☐
- ANY ACTION NECESSARY? ☐
- CONCURRENCE ☐
- DUE DATE

COMMENTS: (INCLUDING SPECIAL INSTRUCTIONS)

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