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IN THE UNITED STATES COURT OF FEDERAL CLAIMS
 RICHARD M BARLOW,)
 Plaintiff.)
) Docket No.: 98-887X
) (Judge Bruggink)
 v)
 THE UNITED STATES.)
 Defendant.)
 Deposition of:
 SHERMAN FUNK
 a witness of lawful age, taken on behalf of the Plaintiff,
 pursuant to notice, in the offices of Howrey, Simon, Arnold
 & White, 1299 Pennsylvania Avenue, N.W., Room 2C,
 Washington, D.C. on Thursday, September 21, 2000, at 9:40
 a.m., before Sharon Bellamy, Notary Public in and for the
 District of Columbia, when were present:
 APPEARANCES:
 On behalf of Plaintiff:
 JEFFREY PEARLMAN, Esquire
 Howrey Simon Arnold & White
 1299 Pennsylvania Avenue, N.W.
 Washington, D.C. 20004
 (202) 783-0800

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(1) APPEARANCES (Continued):
 (2) On behalf of Defendant:
 (3) ROBERT E. KIRSCHMAN, Esquire
 (4) U.S. Department of Justice
 (5) Civil Division, Commercial Litigation Branch
 (6) 1100 L Street, N.W.
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 (8) (202) 616-0328
 (9) On behalf of Agency:
 (10) JUDITH K. LEADER, Esquire
 (11) U.S. Department of State
 (12) U.S. Arms Control and Disarmament agency
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 (15) KAREN HOLCOMB, Esquire
 (16) U.S. Department of Defense
 (17)
 (18)
 (19)
 (20)
 (21)
 (22)
 (23)

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(1) EXHIBITS
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 (3) EXHIBITS IDENTIFIED DESCRIPTION
 (4)
 (5) No. 1 20 Memorandum of Inquiry
 (6)
 (7) No. 2 52 Memorandum dated 9/17/93
 (8)
 (9) No. 3 55 Letter to Sen. Bingiman
 (10) dated 11/4/93
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 (12) No. 4 70 Letter from Derek Vander
 (13) Schaaf
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 (15) No. 5 73 Letter to Sen. Bingiman
 (16) dated 12/13/93
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 (18) No. 6 74 Letter to the Honorable
 (19) Strom Thurmond
 (20)
 (21)
 (22)
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- (1) I'd say. That's a guess. I don't know.
 (2) Q In your opening investigations, did you make use
 (3) of Mr. Barlow in investigating these allegations?
 (4) A Well, I wanted him to come over to work with us on
 (5) the thing because he had the information that triggered it.
 (6) The difficulty was he didn't have the requisite clearances.
 (7) And this I found -- upset because Derek had told me that his
 (8) clearance had been restored.
 (9) Q If I can just interrupt you, he didn't have the
 (10) requisite SCI clearances?
 (11) A Yes. So, for example, we needed some information
 (12) from Energy Department, and needed a Q clearance, which is
 (13) the Atomic Energy clearance, and he didn't have it. So
 (14) Energy refused to -- said we can't use him if he doesn't
 (15) have the Q clearance. So I went back to Defense and said,
 (16) what gives? I was told the clearance had been restored. I
 (17) never got a satisfactory answer, but he never got those
 (18) advanced clearances. He did have a TS clearance, but he did
 (19) not have the requisite covert clearances.
 (20) Q And by TS you mean Top Secret?
 (21) A Top Secret, yeah. And some of this information
 (22) was extremely sensitive.
 (23) Q But you did have the opportunity to review with

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- (1) Mr. Barlow some documents?
 (2) A Yes, yes. But we could not -- he could not review
 (3) the SCI material.
 (4) Q Based on the documents that you could review with
 (5) Mr. Barlow, what was your impression of his ability to go
 (6) through these documents?
 (7) A Outstanding, outstanding.
 (8) Q What was outstanding about it? Can you be more
 (9) specific?
 (10) A He was able to get the sense of the document. He
 (11) was able to look behind it in terms of where did it go from
 (12) here. In many cases, he was able to identify the method of
 (13) obtaining information, which would get into a sticky area,
 (14) so we had to pull him back from there. He was a very good
 (15) intelligence analyst. I don't think anybody doubted that.
 (16) He may have an irritating personality in many ways, but he
 (17) was a superb analyst. And my people, with one or two
 (18) exceptions in the investigating team, did not have a
 (19) background in the nature of what we were dealing with. And
 (20) his advice to them was really absolutely wonderful.
 (21) Q So your view of him as an intelligence analyst was
 (22) not based just on your interviews with other people, but
 (23) your actual working experience with him?

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- (1) A (No audible response)
 (2) Q I'd like you to take a look at again Bates 1616.
 (3) what is enumerated paragraph 2. It begins, "As it turned
 (4) out -- " and just read that paragraph to yourself.
 (5) A Yeah, I will.
 (6) (Witness reviewed document)
 (7) THE WITNESS: Yeah. I'm ready.
 (8) BY MR. PEARLMAN:
 (9) Q What were the allegations that you were
 (10) investigating?
 (11) A I can't get into that.
 (12) Q Is the reason that you can't get into it because
 (13) it is classified information?
 (14) A Classified, yes.
 (15) Q Is there a general --
 (16) A I can only put it this way. Two of them related
 (17) to the basic issue of the reason that Defense tried to get
 (18) rid of him, or people in Defense tried to get rid of him,
 (19) not Defense as a total entity. In other words, it had to do
 (20) with the question of nuclear weapons in Pakistan. I may add
 (21) this: this material was so sensitive that the only copies of
 (22) some of the cable traffic were kept in Baker's private
 (23) files, and we had to go up and look at that.

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- (1) Q Were the two of the five allegations that had to
 (2) do with the nuclear weapons in Pakistan issue, were those
 (3) the ones that were actually borne out?
 (4) A Yes. I don't want to be misleading. One, without
 (5) question, one inferentially was -- in other words, if you
 (6) realized what the subject was, you knew what they were
 (7) talking about, and it was that subject. But I really can't
 (8) go -- you are getting into sources and methods, and I can't
 (9) do that.
 (10) I wish I could, but I can't go into it. That's
 (11) why I'm so frustrated. I don't see how either of you can
 (12) really understand this whole issue without having access to
 (13) this material. It must be intensely frustrating to you.
 (14) And I just don't understand how it can be done.
 (15) Q Well, I share your frustration, Mr. Funk. To the
 (16) extent that we can talk about this, let's continue and do
 (17) so. Can you tell me whether you wound up convicting
 (18) anybody?
 (19) A Yes, we did.
 (20) Q As the basis of these allegations?
 (21) A Yes, we did indeed.
 (22) Q You did convict someone?
 (23) A No, we did not convict. One person who was

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- (1) eminently convictable – this gets into the privacy area of
 (2) the case we are talking about. He had AIDS and was dying of
 (3) AIDS at the time. And I thought and the deputy Secretary,
 (4) Harry Eagleburger (phonetic), agreed with me that there was
 (5) no point to – he was dying, and he died a few months after
 (6) the investigation was completed. There was no point to
 (7) ruining his family's life and everything. So we didn't
 (8) pursue that.
 (9) The other one, involving a much more senior person
 (10) in the department, the only way we could have proven the
 (11) case was to have public access, so we didn't – the court
 (12) system access to information, which NSA vehemently refused
 (13) to let us do. So – but it was proven beyond a doubt.
 (14) MR. KIRSCHMAN: Can we go off the record?
 (15) MR. PEARLMAN: Sure..
 (16) (Discussion off the record)
 (17) MR. PEARLMAN: Can you read back the last
 (18) question?
 (19) (The reporter read the record as requested.)
 (20) BY MR. PEARLMAN:
 (21) Q Now paragraph 2 also states, "Three of Barlow's
 (22) allegations were not borne out by our review." Did you find
 (23) those allegations credible?

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- (1) A Yes. Based on the information that he had and
 (2) that we had going into it, they were credible. And he
 (3) properly thought that they warranted an investigation. They
 (4) did warrant investigation. As it turned out, there was
 (5) nobody guilty, but the indicia were there. And he properly
 (6) called the shots on it.
 (7) Q So for all of these allegations, is it fair to say
 (8) that based on the information that was available to
 (9) Mr. Barlow at the time that he made these allegations, he
 (10) had sound reason for believing that they were true?
 (11) A Yes. Even more than that, I found it
 (12) reprehensible that nobody, other than Barlow, had raised
 (13) some of these earlier because the information that he had
 (14) was available to other intelligence analysts in three
 (15) different agencies, one of which was State. And nobody had
 (16) flagged that. I think some action was taken – personally,
 (17) I don't know what it was – by the Secretary about that. I
 (18) don't know. He never confided that.
 (19) Q Based on the experience that you had with
 (20) Mr. Barlow, is it your view that when Mr. Barlow makes
 (21) allegations about the misconduct of government officials
 (22) that he is reasonable in doing so?
 (23) A Based on the information available to him, yes.

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- (1) Q You don't believe that he would make frivolous
 (2) allegations?
 (3) A No. He made several allegations about his senior
 (4) in the office – Gerald Brubaker I think his name was. I
 (5) have no personal knowledge of that, so I don't know. Not
 (6) criminal allegations, allegations of quality of supervision,
 (7) things like that, which by the way our subsequent
 (8) investigation did prove, but I had no personal knowledge of
 (9) that.
 (10) Q In investigating these allegations, did you see a
 (11) general pattern of obstruction of justice by government
 (12) officials?
 (13) MR. KIRSCHMAN: Objection. Vague, lack of
 (14) foundation.
 (15) THE WITNESS: I can answer it. No.
 (16) BY MR. PEARLMAN:
 (17) Q You are aware of the process of Pressler's
 (18) (phonetic) certification, right?
 (19) A Of what?
 (20) Q Pressler's certification?
 (21) A Yes, of course.
 (22) Q Were you aware of Pressler's certification during
 (23) your investigation into these allegations?

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- (1) A The process you mean?
 (2) Q The process, yes.
 (3) A Yes, of course.
 (4) Q You are familiar with the process.
 (5) A Yes. It was a matter of some discussion in the
 (6) State Department, and it had come up in several Secretarial
 (7) staff meetings. So, yes, I was familiar with it.
 (8) Q As a result of your investigation, did you have a
 (9) view as to how the government went about handling Pressler's
 (10) certification issues?
 (11) A Yes.
 (12) Q And what was that view?
 (13) A I phrase this diplomatically – trying not to see
 (14) what was happening. You must understand two things. The
 (15) lesser thing is that very significant sums of money were
 (16) riding on the F-16 sales to Pakistan. And if the
 (17) certification had not been made, Defense would not be
 (18) permitted to sell aircraft to Pakistan. More important, the
 (19) war was sort of winding toward an end but was still on at
 (20) this time between Afghanistan and the Soviet Union. And the
 (21) only place we had of doing both material and developing
 (22) information as well of what was happening in Afghanistan was
 (23) from the Pakistan – the Paks. So, therefore, it was to the