

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 09-276 (PLF)
)	
STEWART DAVID NOZETTE,)	
)	
Defendant.)	
)	

GOVERNMENT’S MEMORANDUM IN AID OF SENTENCING

Defendant Stewart David Nozette sought to sell some of America’s most closely guarded secrets – including information directly concerning satellites classified as Top Secret/SCI – to a person he believed was an agent for a foreign intelligence organization. His motive for betraying his country was greed, pure and simple.

That defendant was by all accounts a brilliant scientist makes this crime especially troubling. His statement to the undercover FBI agent that anything “that the U.S. has done in space I’ve seen” was not hyperbole. His statement that the classified information to which he had been granted access was “in my head” was not exaggeration. His intellectual and creative gifts put him in positions of trust, which in turn literally opened for him secret vaults of information related to the national defense of the United States. As defendant himself put it to the FBI’s undercover employee (“UCE”): “I had all the nuclear clearances. I had a whole raft of . . . special access [clearances].”

Defendant’s experience in the space arena was diverse and impressive. His related accomplishments in the field were matched by few, if anyone else, on the planet. He served on the White House National Space Council. He was a member of the Synthesis Group, a Presidential Commission chartered to plan the Space Exploration Initiative. He worked as a

physicist in the “O Division,” Advanced Concepts Group, at the United States Department of Energy’s (“DOE”) Lawrence Livermore National Laboratory, where he designed highly advanced lightweight satellite technology for application under Department of Defense sponsorship.

Between approximately 1994-1997, during his tenure at DOE, the defendant was assigned to the office of the Secretary of Defense, Strategic Defense Initiative Organization, later renamed the Ballistic Missile Defense Organization, also known colloquially as “Star Wars.” In addition, defendant performed research and development into highly advanced technology at the United States Research Laboratory, the Defense Advanced Research Projects Agency, and the National Aeronautics and Space Administration.

The great responsibility that came with gaining access to this treasure trove of information and secrets was not lost on defendant. Throughout his career, he signed Classified Information Nondisclosure Agreements in which he made it clear that he understood that the direct or indirect unauthorized disclosure by him of classified information “could cause irreparable injury to the United States, and be used to advantage by a foreign nation,” and pledged to protect this information. In retrospect, it was a pledge that he never intended to keep. During the undercover operation, the defendant admitted to the UCE that over the years he had illegally secreted classified materials in safe deposit boxes because he knew the information would become valuable one day. Specifically, in a face-to-face meeting with the UCE on October 19, 2009, defendant stated he had two safe deposit boxes, “one here and for further safeness . . . I have one in California . . . in La Jolla . . . It’s all backed up out of state.” He explained that he had “had that box there since, you know, the nineties. You know so it’s been there for awhile.” When asked by the UCE why he kept the safe deposit boxes, Nozette replied

that he wanted to protect the contents – classified information pertaining to a DoD satellite program including “all the technical specifications,” – from “anybody coming into my house and searching it.” Nozette also told the UCE that he had just been to La Jolla and “got some stuff off of [the safe deposit box].”

Nozette also had illegally stored a vast amount of classified information on his home computers and was eager to provide more than the basic information the UCE was asking for during their October 19, 2009 meeting. To accommodate all the information the defendant asked the UCE for a computer thumb drive with more memory. The defendant stated:

UCE: . . . if there’s anything you want me to take back to the homeland personally, let’s show it to me while we’re here together. This would be a good op-, time and opportunity for you to do so.

NOZETTE: Um, do you have, um a larger coded memory stick?

UCE: Okay, alright, well. . .

NOZETTE: I need at least an eight gig one.

In the end, defendant’s unraveling was due to the fact that he always wanted more. Despite his exceedingly comfortable lifestyle in Chevy Chase, Maryland, he had expensive tastes which stretched him financially. He thus chose to supplement his income unlawfully. As this Court is aware, in January 2009, defendant pleaded guilty to a two-count Information charging him with conspiracy to defraud the government and tax evasion (U.S. v. Nozette, Crim. No. 08-371 (PLF)). As part of his plea, defendant admitted that he conspired to defraud the government from 2000 through 2006 of over \$265,000 through the intentional submission of false claims by the non-profit entity through which he conducted business with the government. Defendant also admitted that from 2001 through 2005, he wilfully evaded over \$200,000 in federal taxes. It was

only by virtue of his extensive fraud that agents discovered the separate crime of defendant's illegal squirreling away of highly classified information, coupled with unreported cash payments from an Israeli-owned aerospace company over a ten year period.

That he was supremely motivated by greed is also clear throughout his meetings with the UCE. For example, on September 3, 2009, the very first time defendant met the UCE, after the UCE had identified himself as a member of a foreign intelligence organization, the UCE asked defendant if he would be willing to provide answers to questions about United States satellite information. Defendant did not skip a beat: "you could pay me." The very next day, throughout the meeting with the UCE, the defendant repeatedly asked when he could expect to receive his first payment from the "Mossad." The defendant specified that although "cash it's fine," he preferred to receive cash amounts "under ten thousand . . . per lump you can handle here because they don't report it." The defendant then assured the UCE that "what you do with cash is you buy consumables . . . cash is good for is anything . . . you eat it, drink it or screw it." At the conclusion of the second meeting, the defendant informed the UCE, "Well I can tell you my first need is they should figure out how to pay me . . . they don't expect me to do this for free." Likewise, on the very last day defendant met with the UCE, the extent of defendant's greed was spelled out in no uncertain terms:

UCE: . . . the price. Let's talk about that.

NOZETTE: Right.

UCE: You said that initially fifty thousand dollars that you kind of said would be okay.

NOZETTE: I didn't know what you were looking for.

UCE: Right, right, right. Now that you know I'm looking for classified stuff how much, what's the price, well what is it that you're looking for?

NOZETTE: The cost to the U.S. Government was two hundred million. . . . To develop it all. Uh, and then that's not including the launching of it. . . . Uh, integrating the satellites. . . . So if you say okay that probably brings it to almost a billion dollars. . . . So I tell ya at least two hundred million so I would say, you know, theoretically I should charge you certainly, you know, at most a one percent.

Defendant all too eagerly agreed to be a traitor to the United States and did so with obvious glee and with no apparent remorse or hesitation. As is evident in the videotapes of the undercover operation, approximately 4 minutes of which will be played during the sentencing hearing, defendant was relaxed, smiling, and laughing, all the while negotiating the terms of his betrayal of his country.

The Defendant's Plea Agreement and Cooperation

Defendant was arrested on October 19, 2009. On September 7, 2011, pursuant to a written plea agreement, defendant entered a plea of guilty to Count Three of the Indictment, in violation of 18 U.S.C. § 794(a). This Court accepted the Plea Agreement and entered it on the record. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the parties also agreed that the appropriate sentence for the offense to which the defendant is pleading guilty is 156 months incarceration. The sentencing concession – defendant would otherwise face a sentencing range under the Federal Sentencing Guidelines of 262 months to 327 months – is the result of an assessment by the Government that a contested trial would be exceedingly complicated given the classified information at issue. It is not a decision based on any mitigation that defendant has proffered to the government.

Entering into a negotiated plea of guilty also allowed for the debriefing by the law enforcement and intelligence communities concerning defendant's activities prior to the undercover FBI operation. The debriefings began on September 20, 2011, and concluded on February 7, 2012. There were 37 sessions in total, lasting for approximately 186 hours. The value of these debriefings was limited. Defendant provided no actionable information. There were times that defendant's professed lack of recollection was baffling. There were other times when the FBI assessed that defendant gave uncooperative, less than complete, or untruthful responses. The Government, however, will not seek to hold defendant in breach of his plea agreement as, in the end, this plea results in an acceptable sentence, and saves the Government enormous resources.

Defendant Should Be Sentenced to 156 Months

Unlike many defendants who appear for sentencing before this Court, defendant was brought into this world with many advantages. He was raised in an environment void of financial hardship. He attended the finest schools, including the Massachusetts Institute of Technology from which he received his Ph.D. He has a profound intellectual gift. One need only walk steps away from the courthouse to the National Air and Space Museum of the Smithsonian Institution to view the prototype of the Clementine satellite, part of the Clementine bi-static radar experiment which purportedly discovered ice on the south pole of the moon, the concept for which defendant first sketched out in a burst of brilliance on a paper napkin.

He has squandered his considerable gift. He is in the position he finds himself not because he did not have ample opportunities and resources, but because he made poor choices. His legacy now, first and foremost, is not what is found within the Smithsonian Institution or

within various Sensitive Compartmented Facilities throughout various agencies of the United States. His legacy is now what has occurred before this Court. He is someone who agreed to be a traitor to the United States. For all of the defense arguments about his state of mind at the time of the crime, he remains, at his core, a man willing to betray his country because of greed.

Consistent with his plea agreement, the United States submits that defendant should be sentenced to 156 months of incarceration.

Respectfully submitted,

RONALD C. MACHEN JR.
United States Attorney
D.C. Bar No. 447889

By: /s/
ANTHONY ASUNCION
Assistant United States Attorney
D.C. Bar No. 420822
U.S. Attorney's Office
National Security Section
555 Fourth Street, N.W. (11th Floor)
Washington, D.C. 20530
Tel: 202-252-7786
Anthony.Asuncion@usdoj.gov

/s/
DEBORAH A. CURTIS
CA Bar No. 172208
Trial Attorney/Counterespionage Section
Department of Justice
600 E Street, N.W. (10th Floor)
Washington, D.C. 20530
Tel: 202-233-2113
Deborah.Curtis@usdoj.gov

/s/

HEATHER M. SCHMIDT
D.C. Bar No. 496325
Trial Attorney/Counterespionage Section
Department of Justice
600 E Street, N.W. (10th Floor)
Washington, D.C. 20530
Tel: 202-233-2132
Heather.Schmidt@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was electronically served upon counsel for defendant, on this 12th day of March, 2012.

/s/

ANTHONY ASUNCION

Assistant United States Attorney