

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

UNITED STATES OF AMERICA)	CRIMINAL NO. 09-276 (JR)
)	
v.)	VIOLATIONS:
)	
STEWART DAVID NOZETTE,)	18 U.S.C. § 794(a)
)	(Attempted Espionage)
Defendant.)	
)	
)	

SUPERSEDING INDICTMENT

The Grand Jury charges that:

COUNT ONE

At all times material to this Indictment, except as otherwise indicated:

1. STEWART DAVID NOZETTE (NOZETTE) was a United States citizen, born on Redacted, in Chicago, Illinois. Defendant NOZETTE received a Ph.D. in Planetary Sciences from the Massachusetts Institute of Technology in 1983. Since that time, he has worked in various capacities on behalf of the United States government as an astrophysicist.

2. Defendant NOZETTE assisted in the development of the Clementine bi-static radar experiment which purportedly discovered water ice on the south pole of the moon. Defendant NOZETTE’s Clementine concept was later hailed as the vanguard of the new “faster, cheaper, better” revolution in space exploration.

3. Defendant NOZETTE worked as a physicist in the “O Division,” Advanced Concepts Group, at the U.S. Department of Energy’s (DOE) Lawrence Livermore National Laboratory from approximately 1990 to 1999, where he designed highly advanced technology. At DOE, defendant NOZETTE held a special security clearance, referred to as a DOE “Q”

clearance. Q clearance is a DOE security clearance equivalent to the United States Department of Defense Top Secret and Critical Nuclear Weapon Design Information clearances. DOE clearances apply to information specifically relating to atomic or nuclear-related materials (“Restricted Data” under the Atomic Energy Act of 1954).

4. Defendant NOZETTE was the President, Treasurer and Director of the Alliance for Competitive Technology (ACT), a corporation that he organized in March 1990 for the stated purpose of serving “the national and public interest by conducting scientific research and educational activities aimed at expanding the utilization of National and Government Laboratory resources.”

5. Between approximately January 2000 and February 2006, defendant NOZETTE, through his company ACT, entered into agreements with several United States government agencies to develop highly advanced technology. Defendant NOZETTE performed some of this research and development at the U.S. Naval Research Laboratory (NRL) in Washington, D.C.; the Defense Advanced Research Projects Agency (DARPA) located in Arlington, Virginia; and the National Aeronautics and Space Administration’s (NASA) Goddard Space Flight Center located in Greenbelt, Maryland.

6. DARPA is the central research and development office for the U.S. Department of Defense. DARPA’s mission is to maintain the technological superiority of the U.S. military and to prevent technological surprise from harming our national security.

7. NRL is a research laboratory that conducts scientific research and advanced technological development for the U.S. Navy and Marine Corps.

8. “Classified” information is defined in Executive Order 12958, as amended by

Executive Order 13292, as information in any form that: (1) is owned by, produced by or for, or is under the control of the United States government; (2) falls within one or more of the categories set forth in the Order; and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security.

9. Where such unauthorized disclosure could reasonably result in “serious” damage to the national security, the information may be classified as “SECRET” and must be properly safeguarded. Where such damage could reasonably result in “exceptionally grave” damage to the national security, the information may be classified as “TOP SECRET” and must be properly safeguarded. Access to classified information at any level may be further restricted through compartmentation in “SENSITIVE COMPARTMENTED INFORMATION” (SCI) categories. SCI is classified information concerning or derived from intelligence sources, methods or analytical processes which must be handled within formal limited-access control systems established by the Director of National Intelligence.

10. When the vulnerability of, or threat to, specific classified information is exceptional; and the normal criteria for determining eligibility for access to classified information are insufficient to protect the information from unauthorized disclosure, the United States may establish “SPECIAL ACCESS PROGRAMS” (SAPs) to further protect the classified information. A SAP limits the number of persons who will have access, in order to further protect the information.

11. Classified information, of any designation, may be shared only with persons determined by an appropriate United States government official to be eligible for access, and

who possess a “need to know.” If a person is not eligible to receive classified information, classified information may not be disclosed to that person. In order for a foreign government to receive access to classified information, the originating United States agency must determine that such release is appropriate.

12. From 1998 through 2006, defendant NOZETTE held security clearances as high as TOP SECRET and was indoctrinated for access to a variety of SCI programs. During that time period, defendant NOZETTE had regular, frequent access to classified information and documents related to the national defense of the United States.

13. In consideration of his being granted access to classified information, defendant NOZETTE signed nondisclosure agreements with the United States on at least five occasions.

Specifically:

a. On or about October 3, 2002, NOZETTE signed a Classified Information Nondisclosure Agreement in which he acknowledged that:

. . . I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of [classified information] by me could cause irreparable injury to the United States or could be used to advantage by a foreign nation.

. . . I have been advised that any unauthorized disclosure of [classified information] by me may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18 United States Code Nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

. . . I understand that all information to which I may obtain access by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law I agree that I shall return all materials that may have come into my possession or for which

I am responsible because of such access . . . upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such material.

b. On or about September 16, 2004, NOZETTE signed a Sensitive Compartmented Information Nondisclosure Agreement in which he acknowledged that:

. . . I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures.

. . . I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be SCI, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.

. . . I have been advised that . . . any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18, United States Code . . .

c. On or about August 23, 2005, NOZETTE signed another SCI Nondisclosure Agreement, in which he reaffirmed he had received security indoctrinations and understood, among other things, that he had been advised that the direct or indirect unauthorized disclosure by him of SCI information “could cause irreparable injury to the United States, and be

used to advantage by a foreign nation,” and pledged, “I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it . . .” He also re-acknowledged he had been advised that such unauthorized disclosure could constitute violations of criminal laws including Title 18, United States Code, Section 794.

14. On or about March 17, 2006, NOZETTE was notified by the United States government that his access to SCI had been suspended and he was reminded of his continuing obligation to comply with the terms of the Nondisclosure Agreements he had signed.

15. From on or about September 3, 2009, until on or about September 17, 2009, in the District of Columbia, STEWART DAVID NOZETTE, did knowingly and unlawfully attempt to communicate, deliver, and transmit to a foreign government, to wit the Government of the State of Israel, and representatives, officers, and agents thereof, directly and indirectly, documents and information relating to the national defense of the United States, specifically, documents and information classified SECRET/SCI which directly concerned classified aspects and mission capabilities of a prototype overhead collection system and which disclosure could negate the ability to support military and intelligence operations, with the intent and reason to believe that such documents and information were to be used to the injury of the United States and to the advantage of a foreign government, namely, the Government of the State of Israel.

(Attempted Espionage, in violation of Title 18, United States Code, Section 794(a))

COUNT TWO

16. Paragraphs 1 through 14 of Count One of this Indictment are hereby incorporated by reference as if fully realleged and restated herein.

17. From on or about September 3, 2009, until on or about September 17, 2009, in the District of Columbia, STEWART DAVID NOZETTE, did knowingly and unlawfully attempt to communicate, deliver, and transmit to a foreign government, to wit the Government of the State of Israel, and representatives, officers, and agents thereof, directly and indirectly, documents and information relating to the national defense of the United States, specifically, documents and information classified SECRET and controlled through special handling controls, which directly concerned classified aspects and mission capabilities of a U.S. Navy system which directly involved satellite operations and which disclosure could negate or diminish the ability to support military and intelligence operations, with the intent and reason to believe that such documents and information were to be used to the injury of the United States and to the advantage of a foreign government, namely, the Government of the State of Israel.

(Attempted Espionage, in violation of Title 18, United States Code, Section 794(a))

COUNT THREE

18. Paragraphs 1 through 14 of Count One of this Indictment are hereby incorporated by reference as if fully realleged and restated herein.

19. From on or about September 17, 2009, until on or about October 1, 2009, in the District of Columbia, STEWART DAVID NOZETTE, did knowingly and unlawfully attempt to communicate, deliver, and transmit to a foreign government, to wit the Government of the State of Israel, and representatives, officers, and agents thereof, directly and indirectly, documents and information relating to the national defense of the United States, specifically, documents and information classified TOP SECRET/SCI and SECRET/SCI which directly concerned satellites, early warning systems, means of defense or retaliation against large-scale attack, communications intelligence information, and major elements of defense strategy, with the intent and reason to believe that such documents and information were to be used to the injury of the United States and to the advantage of a foreign government, namely, the Government of the State of Israel.

(Attempted Espionage, in violation of Title 18, United States Code, Section 794(a))

A TRUE BILL:

FOREPERSON

Attorney of the United States in and for
the District of Columbia