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 REPLY TO DEFENDANT'S MEMORANDUM IN AID OF SENTENCING

On March 7, 2012, the defense filed a 40-page "Defendant's Sentencing Memorandum" devoid of even the slightest expression of remorse, positing the absurd theory that – in spite of his considerable resources, brilliance, acclaim, and loving family – Nozette was left with virtually no choice but to commit espionage given his situation after pleading guilty to fraud and tax evasion and the aggressive nature in which the government agents pursued the case against him. Under our system of justice, we expect, indeed we demand, that defense attorneys make the strongest arguments possible on behalf of their clients. Sometimes, as is the case here, there is a fair amount of spinning (if not shredding) of certain facts to weave those into a defense theme or version of events. We understand that this is sometimes a part of the process. But where the spin devolves into spurious allegations and attacks against dedicated law enforcement agents, we feel compelled to respond. The evidence shows that the defendant made poor choices, and the government agents pursued him appropriately, consistent with their duty.[1]

[1] We take issue with the defense claim that the defense's robust filing was in response to the government's rejection of their view that "there was no need for a fulsome sentencing hearing or extensive sentencing memoranda." Defendant's Sentencing Memorandum at 2. The defense chides the government for its insistence on making an extended presentation (beyond "five minutes") to include the playing of clips of the undercover operation. To the contrary, the government understands that because this is a plea under Federal Rule of Criminal Procedure 11(c)(1)(C), an extended allocution is not

Defendant excoriates and cast aspersions on the federal agents for their "overbearing contrivances." Defendant's Sentencing Memorandum at 4. Defendant suggests, for instance, that the agents decided to "take advantage of that fact that Dr. Nozette is Jewish and might be more responsive to an approach designed to help [Israel]." Defendant's Sentencing Memorandum at 35. This suggestion is misleading. It conveniently ignores the salient facts that gave rise to the espionage investigation in the first place. On February 16, 2007, law enforcement agents executed a search warrant at Nozette's home and found classified documents. In addition to finding these documents, agents also discovered that defendant had been searching the internet for information concerning notorious convicted spies Ethel and Julius Rosenberg, the death penalty, and the electric chair. Further investigation revealed that: 1) In 2002, defendant sent an e-mail threatening that "I may just pack up and go to the UK or Israel and do it there selling internationally . . . "; 2) Defendant had unreported cash payments from an Israeli-owned aerospace company over a ten-year period; and, 3) Defendant stated that if the U.S. government prosecuted him or put him in jail as a result of the fraud investigation against him he would move to India or Israel or China and "tell them everything" and words to the effect, "It's not a crime if you don't do

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necessary. The Government's Memorandum in Aid of Sentencing, excluding the signature lines, is just over 6 pages long. It is simple and straightforward. Likewise, the government expects its allocution at the sentencing hearing to be brief, to the point, and under 12 minutes. Given the gravity of the crime, we do not see either the government's sentencing memorandum or planned oral allocution to be expansive by any measure. Information about the expected length and scope of the government's allocution and sentencing memorandum was communicated to the defense well in advance of the filing of its sentencing memorandum. As for the playing of video clips, the government accurately anticipated that the defense would attempt to paint a picture of defendant as a victim. Such a picture is a distortion of the truth, with no basis in fact. The most powerful evidence that rebuts such an argument are the videotapes of the undercover operation, throughout which the defendant's demeanor remains gleeful. We plan to play fewer than 4 minutes of video, all of which, as the defense was informed weeks ago, track the defendant's statements that are already contained in the agreed upon "Factual Support of Guilty Plea." These videotapes communicate one unalterable truth – defendant voluntarily agreed to be a traitor against the United States with a smile on his face and unbridled enthusiasm.

the time." But it is defendant's own reaction that best confirms the logical approach to designing the undercover operation as an Israeli "pitch" (emphasis added):

> NOZETTE: I don't get recruited by Mossad every day. I knew this day would come by the way.
>
> UCE: How's that?
>
> NOZETTE: (Laughs) I just had a feeling one of these days.
>
> UCE: Really?
>
> NOZETTE: I knew you guys would show up.
>
> UCE: How you, um . . .
>
> NOZETTE: (Laughs)And I was amazed to see they had the (UI) it didn't happen longer with [the foreign company]...
>
> UCE: Hm. I'm s-, I'm sure my, back at home, one of the few people had actually said it, but I, people did say I'm surprised you guys didn't come sooner than this but, um, um, but you . . .
>
> **NOZETTE: I thought I was working for you already. I mean that's what I always thought [the foreign company] was just a front.**

Defendant also criticizes the law enforcement agents for doing things such as speaking to numerous people who knew defendant and experts to better understand defendant. He also criticizes the agents for planning the undercover operation down to the smallest of details, including what would be in the hotel room during the meetings with defendant and what would be asked of him. His inflated rhetoric aside, what defendant is attempting to do is assail the law enforcement agents for being prepared, for carefully thinking through the operation, and for being dedicated to the pursuit of justice. At most, defendant's arguments revolve around the fact that there is no perfect undercover operation. Post-operation analysis, Monday morning

quarterbacking, however you describe the process, it almost inevitably leads to quibbling about operational details. Moreover, the fact that the espionage investigation occurred at the same time as the fraud case posed unique challenges.[2] And yes, hastily drafted emails in the midst of an undercover operation will never be as formal or precise as what might be found in a legal brief. Ultimately, defendant is seeking to discount and tarnish fully prepared, exceedingly thorough, and patriotic investigators through use of pithy phrases such as "overbearing contrivances." That crosses the line of fair argument.

Apparently, in defendant's view, to "resolve the issue," the federal agents should have set up a meeting and politely asked him whether he had been engaged in prior acts of espionage. Put another way, the government should have just accepted his word. The word of an admitted fraudster. That notion is preposterous on its face.

The choice to agree to be a traitor was his, and his alone. As for the issue of entrapment, the government will refrain from filing a classified supplement to this memorandum, particularly as the defense concedes, as it must (albeit in a footnote), that:

> [O]ther factors weighed against Dr. Nozette on the [entrapment] issue, including the fact that he took money, returned on September 4 and thereafter, did not report the initial contact to either of his attorneys, the fraud agents monitoring his cooperation or security officials of the various agencies, was inclined to help Israel when requested ("Im not going to screw Israel"), accepted the clean phone and drop box idea, and told the UC that he thought he was, at least indirectly working for Israeli intelligence through is work at [Israeli aerospace company] . . .

Defendant's Sentencing Memorandum at 38 n.23.

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[2] Prior to and during the undercover operation, the prosecution team in this matter sought and received advice from the Department of Justice Professional Responsibility Advisory Office concerning what measures needed to be taken as part of the espionage undercover investigation to avoid impinging on the defendant's status as a represented party in the fraud investigation. These measures were followed throughout the investigation.

As for the Israeli aerospace company, while the defendant argues that he simply wanted to provide to the purported Mossad agent written, unclassified reports, similar to what he previously provided the Israeli aerospace company, the evidence shows that any reluctance on his part was due to the fact that he was not sure the UCE was actually "Mossad." At first, the defendant cagily probed the UCE, "**I'll show you mine, you show me yours**." Later, after his "concerns" about the legitmacy of the spying operation were assuaged by different things the UCE told him, defendant remarked, "**So but, you know, I'm trusting you. I'm just thinking that this is a, although the post office box deal, it sounds, that seems kind of Mossad-like . . .** " Once defendant felt assured that the UCE was actually "Mossad," he agreed not only to communicate written classified information, but also to be recorded while he recited the classified information. Defendant told the UCE, "**So one good thing I can easily do for you is like what we're doing here . . . is we can just talk . . . and you can have people come and we can chat and they can like, record it or something.**" Defendant also offered later that, "**I can always come over there**," meaning Israel, to disclose the classified information.

Despite defendant's best efforts to muddy the waters, the evidence is crystal clear that he voluntarily provided classified information to an individual he believed was a member of a foreign intelligence organization. Simple math proves this point. During the meetings with the purported Mossad agent, defendant remarked that his choice was "voluntary" approximately 39 times. He had the opportunity to tell the fraud agents, his lawyer, or the prosecuting attorney that a member of Mossad was asking him to commit espionage. Indeed, defendant had approximately 65 contacts with the fraud agent during the course of his meetings with the UCE. Defendant decided, however, to keep his plan to be a traitor to himself. During their October 19, 2009,

meeting, Nozette told the UCE that, **"Like I said I've crossed the Rubicon."** Nozette went on to say that "**so now I've made, now I've made a career choice.**"

Conclusion

The defendant engages in much name calling throughout his sentencing memorandum. He spends 40 pages attacking the law enforcement agents and describing his "fragile mental state" at the time he committed the crime. He speaks woefully of the pressures which he faced as a result of his own crimes and distributes blame widely. What is missing from defendant's expansive sentencing memorandum is some expression of remorse for committing this crime. To be sure, there are expressions of regret from his possible removal from the "pantheon of space exploration" as a result of his criminal activity. But there is nothing we can discern from his sentencing memorandum which even comes close to an expression of sincere and genuine remorse for having committed this crime.

Defendant can make up a variety of excuses. In the end, defendant is the only person to blame for his predicament. There is no excuse for betrayal of one's country. There is no excuse for defendant's conduct.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served upon counsel for defendant, on this 16th day of March, 2012.

/s/
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