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.	)	
	)	

FACTUAL PROFFER IN SUPPORT OF GUILTY PLEA

The United States, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, Stewart David Nozette (hereinafter also referred to as "Nozette" or "the defendant"), hereby submit this factual proffer in support of the defendant's plea of guilty to Count Three of the Indictment.

1. The defendant is a United States citizen, born in 1957. The defendant 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 in the development of state of the art programs in the technology, defense and space arenas.

2. The defendant assisted in the development of the Clementine bi-static radar experiment which purportedly discovered water ice on the south pole of the moon. Defendant's Clementine satellite, a version of which currently hangs on display at the National Air and Space Museum of the Smithsonian Institution in Washington, D.C., was later hailed as the vanguard of the new "faster, cheaper, better" revolution in space exploration.

3. The defendant was selected to serve on the White House National Space Council, Executive Office of the President, where he served from approximately 1989-1990. Between

approximately 1990-1991, the defendant served as a member of the Synthesis Group, a Presidential Commission chartered to plan the Space Exploration Initiative.

4. The defendant also worked as a physicist in the "O Division," Advanced Concepts Group, at the United States Department of Energy's ("DOE") Lawrence Livermore National Laboratory from approximately 1990 to 1999, 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." At DOE, the defendant 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).

5. The defendant was also the President, Treasurer and Director of the Alliance for Competitive Technology ("ACT"), a corporation 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."

6. Between approximately January 2000 and February 2006, the defendant, through his company ACT, entered into agreements with several United States government agencies to develop highly advanced technology. The defendant performed some of this research and

development at the United States Naval Research Laboratory ("NRL") in Washington, D.C.; at the Defense Advanced Research Projects Agency ("DARPA") located in Arlington, Virginia; and at the National Aeronautics and Space Administration's ("NASA") Goddard Space Flight Center, located in Greenbelt, Maryland.

7. DARPA is the central research and development office for the United States Department of Defense. DARPA's mission is to maintain the technological superiority of the United States military and to prevent technological surprise from harming our national security.

8. NRL is a research laboratory that conducts scientific research and advanced technological development for the United States Navy and Marine Corps.

9. "Classified" information is defined in Executive Order 12958, as amended by Executive Order 13292, and Executive Order 13526, 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.

10. 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.

11. 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. Such materials are designated SPECIAL ACCESS REQUIRED ("SAR").

12. 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.

13. From 1989 through 2006, the defendant held security clearances as high as TOP SECRET and was indoctrinated for access to a variety of SCI programs. During this time, the defendant was indoctrinated into a number of SAPs and had regular, frequent access to classified information and documents related to the national defense of the United States.

14. In consideration of his being granted access to classified information, defendant signed nondisclosure agreements with the United States, including:

a. On or about February 2, 2001, defendant signed a SAP Indoctrination Agreement

in which he agreed that:

> I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information or materials protected within Special Access Programs, hereinafter referred to in this Agreement as SAP information (SAPI). . . . I understand and accept that by being granted access to SAPI, special confidence and trust shall be placed in me by the United States Government. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SAPI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. . . . I have been advised that any breach of this Agreement may result in the termination of my access to SAPI, removal from a position of special confidence and trust requiring such access, or termination of other relationships with any Department or Agency that provides me with access to SAPI. In addition, I have been advised that any unauthorized disclosure of SAPI by me may constitute violations of the United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18, United States Code, and of Section 783(a), Title 50, United States Code. Nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation. . . . Unless and until I am released in writing by an authorized representative of the Department or Agency that provided me the access(es) to SAPI . . . I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to SAPI, and at all times thereafter.

b. On or about October 3, 2002, defendant 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.

c. On or about September 16, 2004, defendant 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.
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> . . . 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 . . . .

d. On or about August 23, 2005, defendant 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.

15. On or about March 17, 2006, defendant 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.

16. On February 16, 2007, law enforcement agents executed a search warrant at Nozette's home and found classified documents. Further investigation into the classified documents revealed that in 2002, Nozette sent an e-mail threatening to take a classified program he was working on, "to [foreign country] or Israel and do it there selling internationally..." Based on this information and other information giving rise to suspicion of espionage, the FBI decided to conduct an undercover operation.

17. On September 3, 2009, the defendant was contacted via telephone by an individual purporting to be an Israeli intelligence officer from the Mossad, but who was, in fact, an undercover employee of the FBI ("UCE"). During that call, the defendant agreed to meet with the UCE that day on Connecticut Avenue, N.W., in front of the Mayflower Hotel in Washington, D.C.

18. Later that day, the defendant met with the UCE and had lunch in the restaurant of the Mayflower Hotel. During the lunch, the defendant demonstrated his willingness to work for Israeli intelligence, as illustrated by the following conversation:

UCE: I'll just say it real quick and then we'll just move on. Quick, I wanna clarify something from the start. And I don't say it very often, but umm, I work for Israeli Intelligence…

NOZETTE: Mm-hmm

UCE: Agency known here as Mossad.

NOZETTE: Mm-hmm

UCE: So from now on I'm not gonna say this. But if I say service…

NOZETTE: Mm-hmm

UCE: ….so you know what that, what it is. But I just wanna be sure, I'll let it out so we don't have any ambiguity later on. But….

NOZETTE: Mm-hmm

UCE: How you doin'?

NOZETTE: Good. Happy to be of assistance.

19. After lunch in the hotel restaurant, the defendant and the UCE retired to a hotel suite to continue their discussion. During the conversation, the defendant informed the UCE:

NOZETTE: I haven't been, I haven't, um, been involved in classified work for the last couple of years.

UCE: Okay.

NOZETTE: But I had everything.

UCE: Okay.

NOZETTE: And I had all, all the way to Top Secret SCI, I had nuclear....

UCE: That's prior to a couple of years ago.

NOZETTE: Yeah.

UCE: Is that what you...

NOZETTE: Yeah. And I had it, uh, I had it w-, I had all the nuclear clearances. I had a whole raft of...

UCE: Okay.

NOZETTE: ...special access.

UCE: Um...

NOZETTE: Uh, so any that the U.S. has done in space I've seen.

20. The UCE then asked the defendant if he would be willing to provide answers to questions about United States satellite information:

UCE: [A]nswers to those questions. And, uh, so if you were to give me those answers. I mean what is it that, you know, what would you like in return? Is there anything?

NOZETTE: Oh, you could pay me.

21. The UCE explained to the defendant that the "Mossad" had arranged for a "dead drop"[1] communication system so that the defendant could pass information to the "Mossad" in a "dead drop" facility in Washington, D.C. The UCE also provided the defendant with a "clean phone"[2] so that the defendant could send text messages to the UCE.

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[1] The term "dead drop" in this context refers to a prearranged location used for clandestine exchange of packages, messages, and payments. Dead drops are used to avoid meetings which can draw attention to the connection between an intelligence officer and an agent.

[2] The term "clean phone" in this context refers to a disposable, pre-paid cellular telephone that cannot be traced to the intelligence officer or agent.

22. The defendant made the following statements to the UCE:

NOZETTE: Well okay. So let me get to the bottom line.

UCE: Yes.

NOZETTE: So actually there are two things that . . .

UCE: Yes please....

NOZETTE: A couple things I want.

. . .

NOZETTE: But you want me to be a regular, continuing asset?

UCE: Right.

NOZETTE: Which I'm willing to do.

. . .

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.

. . .

NOZETTE: Now the second thing.

UCE: Yes.

NOZETTE: I would like, I don't know if it's going to cost anything, but I have no idea how to, or effectively, bureaucratically do it. So my parents are Jewish, right?

UCE: Okay, yeah.

NOZETTE: So I have a right, I theoretically have the right of return.

UCE: Okay. To the state, yes.

NOZETTE: Right. How could I get an Israeli passport?

NOZETTE: Because if I'm gonna work I wouldn't mind having another base of operations . . .

UCE: Uh-huh.

NOZETTE: . . . outside the U.S. to work out of.

UCE: Okay.

NOZETTE: You know, if I'm going to do other work internationally in space I wouldn't mind having to, uh, having a, alternative, uh, passport.

23. The defendant and the UCE met again on September 4, 2009, at the Mayflower Hotel on Connecticut Avenue in N.W., Washington, D.C. During this encounter, the defendant assured the UCE that although he no longer had legal access to any classified information at a United States government facility, he could, nonetheless, recall the classified information to which he had been granted access. The defendant said, "It's in my" head, and pointed to his head.

24. The defendant initially claimed to be wary of providing any classified information to the UCE. For example, when the UCE implied that the "Mossad" was only interested in obtaining sensitive United States government information from him, the defendant replied, "You show me mine, I show you yours."

25. The defendant's purported concerns were soon assuaged, once he became satisfied in the belief that he was actually dealing with a foreign intelligence officer. The defendant remarked, "So but, you know, I'm trusting you. I'm just thinking that this is a, although the.... that seems kind of Mossad-like . . . "

26. The defendant later agreed not only to communicate classified information to the "Mossad," but to be tape recorded while he recited the classified information. The 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."

27. The defendant later offered, "I can always come over there," meaning Israel, to disclose the classified information. The defendant then informed the UCE, "I always fly business class . . . Have them pay for business class."

28. 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."

29. 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."

30. 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."

31. On or about September 10, 2009, FBI agents left a letter in the prearranged "dead drop" facility for the defendant. In the letter, the FBI asked the defendant to answer a list of questions concerning classified United States satellite information. FBI agents also provided signature cards, in the defendant's true name and an alias, for the defendant to sign and asked the defendant to provide four passport sized photographs for the Israeli passport the defendant requested. The FBI agents also left $2,000 cash for the defendant in the "dead drop" facility which the defendant retrieved the same day, along with the questions and signature cards.

32. On or about September 16, 2009, the defendant left a manila envelope in the "dead drop" facility in the District of Columbia.

33. On or about September 17, 2009, the FBI agents retrieved the sealed manila envelope the defendant had dropped off. Inside the envelope were the following items:

a. The signed passport signature cards (in true name and in an alias);

b. Four passport-sized photographs of the defendant;

c. One page document containing "Answers" to the questions left by the FBI undercover agents on September 10, 2009, which employed a prearranged code used to identify the most sensitive information;

d. The document containing the questions left by the FBI agents on September 10, 2009; and

e. An encrypted computer "thumb drive" or "memory stick."

34. One of the "Answers" provided by the defendant contained information classified as SECRET/SCI which related to the national defense, in that it directly concerned classified aspects and mission capabilities of a prototype overhead collection system and which disclosure would negate the ability to support military and intelligence operations.

35. In addition to disclosing SECRET/SCI information, the defendant offered to reveal additional classified information that directly concerned nuclear weaponry, military spacecraft or satellites, and other major weapons systems. The defendant stated:

> Held a DOE Q clearance from 1990-2000, which involved insight into all aspects of US nuclear weapons programs. Held TS/SI/TK/B/G clearance 1998-2006, . . . Held at least 20+ SAP . . . from 1998 -2004 . . . Full understanding of these programs would require interactions in the homeland..
>
> . . . These are among the most sensitive subjects and it will have to be recreated from memory over some time..
>
> . . . Your token is most appreciated and at the level, which is reasonable for each weekly interval given the support requested.

36. Also on or about September 17, 2009, FBI agents left a second communication in the "dead drop" facility for the defendant. In the letter, the FBI asked the defendant to answer another list of questions concerning classified United States satellite information. The defendant retrieved the questions from the "dead drop" facility later that same day.

37. On or about October 1, 2009, the defendant left a manila envelope in the "dead drop" facility in the District of Columbia. The FBI also left a cash payment of $9,000 in the "dead drop" facility.[3]

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[3] On October 19, 2009, FBI agents executed a search warrant at defendant's home in Chevy Chase, Maryland and recovered $1,400 of the marked currency.

38. On or about October 1, 2009, the FBI agents retrieved the sealed manila envelope left by the defendant.

39. Inside the envelope, FBI agents discovered the encrypted thumb drive that was provided to the defendant on September 17, 2009, which included another set of "Answers" from the defendant. The "Answers" contained information classified as TOP SECRET/SCI and other information classified as SECRET/SCI. This classified information related to the national defense, in that it directly concerned satellites, early warning systems, means of defense or retaliation against large-scale attack, communications intelligence information, and major elements of defense strategy.

40. In addition to providing the TOP SECRET/SCI and SECRET/SCI information, the defendant wrote:

> The holdings are appreciated and another token would be appropriate as the information density is increasing. It is important to try to specify what is needed as has been done. Please bear in mind that an extremely valuable (handler) piece of information has been provided . . . Assuming the quality is moving in the correct direction a thumb drive 8 G or more is needed.

41. On or about October 5, 2009, the defendant left a manila envelope in the "dead drop" facility in the District of Columbia.

42. On or about October 5, 2009, the FBI agents retrieved the sealed manila envelope left by the defendant.

43. Inside the envelope, FBI agents discovered the encrypted thumb drive that was provided to the defendant on October 1, 2009, which included another set of "Answers" from the defendant. The "Answers" contained information classified as TOP SECRET/SAR. This classified information related to the national defense, in that it directly concerned satellites, early

warning systems, means of defense or retaliation against large-scale attack, communications intelligence information, and major elements of defense strategy.

44. The defendant and the UCE met again on October 19, 2009, at the Mayflower Hotel on Connecticut Avenue in N.W., Washington, D.C. During that meeting, the following exchanges took place:

NOZETTE: So, uh, I gave you even in this first run, some of the most classified information that there is.

UCE: Okay.

NOZETTE: You know, and so I'm in a, I, I've sort of crossed the Rubicon.

UCE: Mm-hmm.

NOZETTE: Uh, in a sense that I can't go back and take a CI polygraph now.

UCE: Okay.

NOZETTE: You know, so I'm yours. I mean I, I've made the commitment.

UCE: Mm-hmm.

NOZETTE: Now the, uh, so I think when I said like fifty K, I think that was probably too low.

* * *

NOZETTE: All right. Do you have anything for me today?

UCE: I'm here, I'm here to discuss any concerns you have.

NOZETTE: Right. . . . Do you have a token for me today?

UCE: . . . I forget, before I forget, absolutely. . . . [the UCE hands him an envelope containing $10,000 in pre-recorded funds]

NOZETTE: Now the other thing is I've been, I think I've been very good with cash. I've been able to make it disappear. . . . Okay. So there's

ten?

* * *

NOZETTE: Like I said I've crossed the Rubicon. . . . So now I've made, now I've made a career choice (Laughs). . . . I have, on the XXXX (redacted because classified) program alone, I gave them samples. . . . Okay, I'm prepared to give them the whole thing. . . . The whole, the whole, all the technical specification. But it's a big set of files. . . . You know, it's like eight gig. . . . What I've done is I've copied it onto hard discs and put it in a safety deposit box.[4]

* * *

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.

45. This factual proffer summarizes the offense charged in Count Three of the Indictment and the defendant's participation in that offense. It is not intended to be a complete

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[4] On October 23, 2009, FBI agents executed a search warrant for defendant's safe deposit box at the Bank of America in La Jolla, California. Among items seized from the box were 3 computer hard drives which contained material classified Secret/SAR. There were 52 copies of the Secret/SAR classified material stored on the hard drives.

accounting of all facts and events related to the offense. The limited purpose of this factual proffer is to demonstrate that a factual basis exists to support the defendant's plea of guilty in this case.

Respectfully submitted,

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DEFENDANT'S ACKNOWLEDGMENT

I have read and discussed this Factual Proffer in Support of Guilty Plea (Factual Proffer) fully with my attorney. I agree and acknowledge by my signature that this Factual Proffer is true and accurate. The information set forth in this Factual Proffer is not intended to be exhaustive, or to include all relevant information known to me or to the government. Instead, this Factual Proffer contains those facts that were deemed by the government to be relevant to my plea of guilty to Count Three of the indictment in this matter.

Date: 8-23-11

Stewart David Nozette
Defendant

Date: 23 Aug, 11

John C. Kiyonaga
Attorney for the Defendant

Date: 8-23-11

Robert L. Tucker
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