

JUDGE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,	)	NO. CR99-666C
Plaintiff,	)	
vs.	)	DEFENDANT'S SENTENCING
	)	MEMORANDUM
AHMED RESSAM,	)	
Defendant.	)	

**I. STATUS OF CASE**

Ahmed Ressam was convicted on April 6, 2001, following a trial by jury. Sentencing is scheduled to take place on April 27, 2005. During the four years since his conviction, Mr. Ressam has cooperated extensively with the United States government and governments of other countries. That cooperation, unique in type and scope, required sentencing be delayed. The Honorable John C. Coughenour presided at trial and will sentence Mr. Ressam.

**II. RECOMMENDATION**

It is the respectful recommendation of counsel on behalf of Mr. Ressam that the Court impose a total sentence of 150 months imprisonment. Mr. Ressam was convicted on nine counts, all centered on the same criminal activity. The conviction on Count I,

1 intent to commit an act of terrorism, carries no mandatory minimum, but requires the  
2 sentence imposed to run consecutively to other sentences. Count IX, carrying an  
3 explosive during commission of a felony, requires a mandatory minimum penalty of 10  
4 years imprisonment to run consecutively to penalties imposed on other counts.  
5 Sentences on other counts may run concurrently. Our recommendation of 150 months  
6 imprisonment meets the penalty requirements for the counts of conviction.

### 7 III. DISCUSSION

#### 8 A. Introduction

9 By any measure, Ahmed Ressam's cooperation has been the most extensive and  
10 valuable ever provided by an individual prosecuted in the Western District of  
11 Washington. Because of its importance to the Court's sentencing decision, a detailed  
12 outline of the cooperation was filed on April 12, 2005. Dkt # 359. Mr. Ressam's  
13 assistance weighs heavily in our suggested sentence. However, our recommendation  
14 does not rest entirely upon the value of Mr. Ressam's cooperation. It is also guided by  
15 the Supreme Court's recent decision in *United States v. Booker*, 125 S. Ct. 738 (2005),  
16 holding that the mandatory application of the Sentencing Guidelines is unconstitutional  
17 and directing courts to consider a range of factors when sentencing an individual  
18 including "the nature and circumstances of the offense, and the history and  
19 characteristics of the defendant." 18 U.S.C. § 3553(a)(1). The *Booker* Court  
20 emphasized that sentences imposed must be "sufficient, but not greater than necessary"  
21 to achieve the purposes of sentencing. 18 U.S.C. § 3553(a). This return to a more  
22 humane sentencing system permits the Court's consideration of the visibility of  
23 decisions by Mr. Ressam, an Algerian born Muslim, to denounce his intended act of  
24 violence and to cooperate, decisions which put his life at risk. Attachment 3, at 5-6 (Mr.  
25 Ressam's letter to the Court). Our recommendation is further influenced by our review  
26 of sentencing decisions in U.S. terrorism prosecutions where no one died, and sentences

1 in European terrorism prosecutions, as well as United Nations war crimes prosecutions,  
2 some of which involved significant loss of life. *See* Attachment 4, containing three  
3 separate sentencing charts. Mr. Ressam's cooperation has had a significant, positive  
4 impact on the fight against terrorism. It is essential that his sentence be fair and  
5 balanced because it is certain his punishment will influence international strategies for  
6 preventing future acts of terrorism.

## 7 **B. The Source of Our Recommendation.**

### 8 **1. The Government's Pretrial Offer as a Reasonable Starting Point**<sup>1</sup>

9 Mr. Ressam's case presents unique sentencing issues. There is no point of  
10 comparison with any prosecution previously brought in this district. Sentences imposed  
11 against others prosecuted for acts or attempted acts of terrorism in the United States and  
12 elsewhere produce a vast array of possibilities and offer some guidance. Attachment 4.  
13 However, few cases, if any, prosecuted in the United States have involved cooperation  
14 of the type, extent and value provided by Mr. Ressam. Despite difficulties comparing  
15 Mr. Ressam's case with others, our recommendation is based on a simple, compelling  
16 calculus.

17 Before trial, the government offered Mr. Ressam a flat 25 year sentence with no  
18 requirement that he cooperate if he agreed to save the government the time, expense and  
19 other complications of trial. Is the Mr. Ressam who would have merely saved the  
20 government a trial, but offered no assistance, no intelligence and no clue on what his  
21 thoughts are for the future, deserving of a lesser sentence than the Mr. Ressam who now  
22 appears before the Court having renounced terrorism, having saved lives, and having  
23 provided priceless intelligence to our government and other governments? It is our view  
24 that Mr. Ressam is entitled to a sentence substantially lower than the 25 years offered to

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26 <sup>1</sup> For comparison purposes, later in this memorandum we use the Guidelines as a starting point  
for departure analysis. Attachment 9.

1 the individual who would merely save the government some time, energy and money.

2 The government has expressed concern over our use of its pretrial offer to frame  
3 our recommendation, suggesting that its offer is somehow secret or ought to be secret.  
4 The government is wrong. The Rules of Evidence, case law and principles of fairness  
5 firmly establish the relevance of the offer and permit its use in our recommendation and  
6 argument.<sup>2</sup>

## 7 **2. Mr. Ressay Should Not be Penalized for Going to Trial**

8 As noted, our recommendation is not unmindful of the time and expense  
9 associated with the Los Angeles trial. Pretrial offers invariably include sentencing  
10 consideration for saving trial time and expense. There are good reasons not to penalize  
11 Mr. Ressay for his decision to go to trial.

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13 <sup>2</sup> The government has referenced Federal Rule of Evidence 410(4) as providing a shield against  
14 disclosure of its pretrial offer. This rule of evidence does not apply at sentencing. Indeed, Fed.R. Evid.  
15 1101(d)(3) specifically states that the rules do not apply at sentencing. Predictably, the courts have  
16 uniformly held that prohibitions related to statements made during plea negotiations do not apply at a  
17 sentencing hearing. *See e.g., United States v. Upton*, 91 F.3d 677, 688 (5th Cir. 1996) (“We have held  
18 that Rule 11(e)(6)(d) and Fed. R. Evid. 410(4) do not prohibit statements made during plea negotiations  
19 to be used during sentencing.”); *United States v. Medina-Estrada*, 81 F.3d 981, 986 (10th Cir. 1996)  
20 (holding that neither Fed. R. Evid. 410 nor Fed. R. Crim. P. 11(e)(6) “apply to the District Court at  
21 sentencing; therefore, neither rule limits that which the District Court may consider in sentencing a  
22 defendant”); *United States v. Paden*, 908 F.2d 1229, 1235 n.3 (5th Cir. 1990) (noting that “the Federal  
23 Rules of Evidence expressly do not apply during sentencing”); *United States v. Ruminer*, 786 F.2d 381,  
24 385-86 (10th Cir. 1986) (holding that neither Fed. R. Evid. 410 nor Fed. R. Crim. P. 11(e)(6) precludes  
25 the admission at sentencing of statements made during the course of plea negotiations against the  
26 defendant).

21 Moreover, Rule 410(4) is designed to prevent prejudice to the *defendant* through the use of plea  
22 discussions at trial. This is clear from the plain language of Rule 410(4) which prohibits use at trial of  
23 statements made in the course of plea discussions against the *defendant*. Indeed, in *United States v.*  
24 *Mezzanatto*, 513 U.S. 196 (1995) the Supreme Court noted:

23 The Rules provide that statements made in the course discussions are inadmissible  
24 “against” the defendant, and thus leave open the possibility that a defendant may offer  
25 such statements into evidence for his own tactical advantage.

25 *Mezzanatto*, 513 U.S. at 206. The government’s pretrial offer is relevant and can be presented and  
26 considered.

1 To begin, the extent and value of Mr. Ressam's cooperation in this unique case  
2 far exceeds the sort of assistance that typically triggers cooperation based downward  
3 departures. Put simply, the extraordinary value of the cooperation offsets and  
4 substantially outweighs trial costs and sentencing penalties.

5 Also, Mr. Ressam's trial produced unanticipated and significant benefits. Mr.  
6 Ressam was moved by the fairness of the trial and the respect the Court and the parties  
7 showed him. Shortly after the verdict he made his decision to cooperate. Without the  
8 trial, the priceless life saving benefits of his cooperation might never have materialized.

9 The trial benefitted the government too. It was a national showcase allowing the  
10 government to demonstrate its ability and determination to prosecute acts of terrorism.  
11 Seattle prosecutors presented a clean, compelling case. Importantly, the trial was  
12 straightforward. It did not require testimony from traumatized victims or grieving  
13 family members who were forced to relive horrible events. Instead, government  
14 witnesses and agents were able to detail heroic deeds and a superb investigation. Trial  
15 costs were limited to time and expense.

16 Notably, the trial now stands as a symbol of why federal courts are the proper  
17 venue for trying individuals suspected of terrorist activities, a symbol of exceptional  
18 importance following September 11, 2001. In the wake of that tragedy, ranking  
19 government officials and some commentators called for trials of suspected terrorists  
20 before essentially secret military tribunals, believing that our federal courts are incapable  
21 of handling these cases. Some cited national security concerns as the basis for favoring  
22 secret trials. Others were more blunt, noting:

23 In cases where the government may be forced to rely on  
24 skimpy evidence because of the murky nature of terrorist  
25 operations, a secret tribunal with handpicked judges may  
26 take a more forgiving approach toward the government's  
case than a jury of ordinary Americans in an open federal  
courtroom, under the full glare of an international spotlight.

1 *Tribunals on Trial*, THE CHRISTIAN SCIENCE MONITOR, December 14, 2001.

2 Attachment 5, at 76.

3 Many vigorously disagreed, citing Mr. Ressam's trial as an example of how and  
4 why our trial courts are the proper venue for terrorism prosecutions. An example is  
5 found in an aptly titled article, *Reasons to Be Proud*, written by local attorney Irwin H.  
6 Schwartz and published in the nationally circulated CHAMPION magazine. Attachment 6,  
7 at 104. Mr. Schwartz wrote shortly after September 11, 2001, questioning the need for  
8 secret tribunals, noting the examples of the Oklahoma City trial and Mr. Ressam's trial.  
9 He wrote:

10 Ressam is not American. His efforts were those of a foreigner determined  
11 to attack and kill Americans.

12 \* \* \*

13 The world saw America treat the accused with fairness and with greater  
14 respect than he would have received in most other countries.

15 Irwin H. Schwartz, *Reasons to be Proud*, CHAMPION, 2002, at 7.

16 Despite this and other references to the quality of Mr. Ressam's trial, its lesson is  
17 largely forgotten in the wake of attacks on September 11, 2001. But the importance of  
18 its fairness is greater than ever. Criticism of the operation of the secret tribunals  
19 abounds.<sup>3</sup>

20 The government and the Court can take pride in Mr. Ressam's trial. Unforeseen  
21 benefits, tangible and intangible, emerged. Thus, we use the government's pretrial offer

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22 <sup>3</sup> Only weeks ago, on March 27, 2005, the WASHINGTON POST reported on an emerging  
23 international scandal provoked by a secret tribunal's finding that a German national was a member of Al-  
24 Qaeda and an enemy combatant. He was ordered detained indefinitely. He is also innocent.  
25 Declassification of evidence used by the tribunal shows that both U.S. military intelligence and German  
26 law enforcement concluded there was no credible evidence of guilt. The tribunal asserts its decision is  
beyond review and that the materials relied upon by the media and those criticizing the case should not  
have been declassified.

Carol D. Leonnig, *Panel Ignored Evidence on Detainee*, WASHINGTON POST, March 27, 2005, p. A1.  
Attachment 5, at 79.

1 as the starting point for deciding upon the extent of the cooperation based downward  
2 departure. Our recommendation is based on an unassailable reality: the world benefitted  
3 in unanticipated and immeasurable ways from Mr. Ressam's decision to cooperate. Had  
4 he plead guilty, been sentenced to twenty five years and not cooperated, this would not  
5 be so.

### 6 **C. Ahmed Ressam's Cooperation**

#### 7 **1. Introduction**

8 Mr. Ressam's cooperation is unique not only because of its exceptional worth and  
9 duration, but also because it is not confined to the "assistance in the investigation or  
10 prosecution" of others, the traditional paradigm for evaluating cooperation under  
11 U.S.S.G. § 5K1.1. While Mr. Ressam has cooperated in the investigation and  
12 prosecution of others and earned a § 5K1.1 motion, that motion, filed on February 26,  
13 2003, was "based on Mr. Ressam's substantial assistance in the case of *United States v.*  
14 *Mokhtar Haouari*, a matter prosecuted in the Southern District of New York in the  
15 summer of 2001." Dkt # 347. Although not mentioned in the government's 5K1.1  
16 motion, Mr. Ressam also testified before a German tribunal on behalf of the German  
17 government in the trial against Mounir el Motassadeq in December, 2002.<sup>4</sup> But more  
18 importantly, during weeks of interrogation, Mr. Ressam provided the United States  
19 government and the governments of Great Britain, Spain, Italy, Germany, France and  
20 Canada intelligence that has proven to be of immense value in the fight against  
21 terrorism. While post-*Booker* sentencing does not require strict adherence to a  
22 Sentencing Guideline departure analysis, the value and fruit of the information provided  
23 by Mr. Ressam authorizes mitigation of his sentence under U.S.S.G. § 5K2.0. A brief  
24 discussion of that authority follows.

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26 <sup>4</sup> It is our understanding that the trial resulted in a conviction, but that the conviction was overturned on appeal. On retrial, el Motassadeq was again convicted and sentenced to fifteen years.

1           **2. Mr. Ressam’s Decision to Cooperate was Historic and He Provided**  
2           **Extraordinary Information That is Invaluable to the Government and**  
3           **World Community**

4                   **a. A Departure Based on the Intelligence Value of Mr. Ressam’s**  
5                   **Cooperation is Authorized and Encouraged**

6           The government’s § 5K1.1 motion is carefully crafted and provides that it applies  
7           only to assistance provided by Mr. Ressam in the case of *United States v. Mokhtar*  
8           *Haouari*. This design does not limit the Court’s authority to reduce Mr. Ressam’s  
9           sentence based upon the value of the intelligence he provided during scores of  
10          debriefings. The Court’s general departure power under U.S.S.G. § 5K2.0 authorizes a  
11          further reduction of Mr. Ressam’s sentence.

12          In *United States v. Truman*, the Sixth Circuit considered whether § 5K1.1  
13          precludes a downward departure absent a motion from the government “where the  
14          information shared by the defendant with authorities involves exposing security breaches  
15          or revealing *modus operandi* that can be frustrated by prophylactic measures to prevent  
16          crime.” 304 F.3d 586, 591 (6th Cir. 2002). The court concluded that:

17                   when a defendant moves for a downward departure on the  
18                   basis of cooperation or assistance to government authorities  
19                   which does not involve the investigation or prosecution of  
20                   another person, U.S.S.G. § 5K1.1 does not apply and the  
21                   sentencing court is not precluded from considering the  
22                   defendant’s arguments solely because the government has  
23                   not made a motion to depart.

24          *Id.*

25          The Sixth Circuit noted its ruling was in accord with that of other circuit courts,  
26          including the Ninth. *Id.* (citing *United States v. Sanchez*, 927 F.2d 1092 (9<sup>th</sup> Cir. 1991)  
(holding that § 5K1.1 “by its plain language . . . applies only to assistance provided in  
the investigation and prosecution of another person” and that “assistance provided in a  
civil forfeiture proceeding is not ‘substantial assistance’ within the meaning of Section  
5K1.1”). In *Truman*, the Sixth Circuit also held that the information provided by the  
defendant and its worth could be considered by the district court on remand when

1 deciding whether, and to what extent, to depart under § 5K2.0. Similarly, the Second  
2 Circuit in *United States v. Kahn*, held that the information provided by a defendant  
3 which contributed to “rescuing confidential informants from the jaws of death,” while  
4 not § 5K1.1 assistance, provides a basis for a downward departure under § 5K2.0. 920  
5 F.2d 1100, 1107 (2d Cir. 1990).

6 These cases follow obvious, common sense sentencing principles, principles that  
7 are included in the plain language of § 5K2.0:<sup>5</sup>

8 Circumstances that may warrant departure from the  
9 Guideline range . . . cannot, by their very nature, be  
10 comprehensively listed and analyzed in advance. The  
11 decision as to whether and to what extent departure is  
12 warranted rests with the sentencing court on a case-specific  
13 basis.

14 U.S.S.G. § 5K2.0 (2000 Edition).<sup>6</sup>

15 § 5K2.0 defines the Court’s general departure authority and is caged in purposely  
16 broad language in recognition of the wide range of information that is relevant to  
17 sentencing decisions. That the intelligence value of Mr. Ressam’s cooperation should  
18 positively influence his sentence is beyond argument. A summary of the scope of Mr.  
19 Ressam’s cooperation follows.

20 **b. Overview of Debriefings**

21 By our count, interviews or testimony of Mr. Ressam occurred on 72 different  
22 days. This number illustrates how different Mr. Ressam’s case is from any other  
23 prosecution in the history of this district. Mr. Ressam’s decision to cooperate was made  
24 in mid-April, 2001. During meetings covering almost two weeks, Mr. Ressam and the  
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26 <sup>5</sup> These principles are universal. Reference to the chart found in Attachment 4c, demonstrates that international tribunals consider a similarly wide range of factors when deciding whether to mitigate or aggravate a sentence.

<sup>6</sup> At the time of Mr. Ressam’s arrest, the 2000 edition of the Sentencing Guidelines were in effect and apply to his sentence.

1 defense team discussed what he knew. The government was anxious to talk with Mr.  
2 Ressam and debriefings with government representatives began on May 10, 2001. At  
3 least one member of the defense team has been present whenever the government  
4 questioned Mr. Ressam.<sup>7</sup>

5 The May 10, 2001 debriefing was conducted by AUSA Jerry Diskin and Special  
6 Agent Fred Humphries of the FBI. In that meeting, Mr. Ressam provided details about  
7 his aborted plan and its target, the Los Angeles International Airport (LAX).  
8 Questioning focused first on how, why and when Mr. Ressam chose LAX as his target.  
9 He told Mr. Diskin and Agent Humphries that he believed the United States was  
10 conducting a war on Islam and that he acted in response to that belief. He provided  
11 details about his plan, including how he traveled and how he gathered materials to  
12 construct explosive devices. In this and subsequent debriefings, he revealed the  
13 identities and roles of those with whom he worked. He drew diagrams of the devices he  
14 constructed and provided formulas for the explosives he was making. He provided  
15 extensive, but general information concerning his travels to and training in Afghanistan.  
16 He identified key leaders and told about others he trained with in Afghanistan. He  
17 named individuals who were to be in his "cell" in Canada and described how they were  
18 unsuccessful entering Canada. He discussed how his plan was financed and named  
19 those who were to provide financing. Mr. Ressam also touched on what he knew of  
20 terrorist cells in other countries including Sweden, Germany, Jordan, Canada and Italy.  
21 The significance of this historic, first hand information about the workings of the  
22 Afghanistan training camps and terrorist cells was not lost on Special Agent Humphries.  
23 Agent Humphries knew it was essential to share Mr. Ressam's knowledge and  
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25 <sup>7</sup> On one occasion in the summer of 2001, a New York prosecutor needed to ask Mr. Ressam a  
26 question and he could not reach defense counsel. He asked the question and promptly advised us and  
offered unnecessary apologies.

1 information with other agencies and countries. He left the meeting enthusiastic and  
2 grateful for Mr. Ressam's decision to cooperate.

3 On May 15, 2001, a team of prosecutors and agents from the Southern District of  
4 New York (SDNY) joined the debriefings. For three days Mr. Ressam covered a vast  
5 territory of intelligence describing players, roles and the inner-workings of camps in  
6 Afghanistan. A substantial portion of the meetings over these three days was devoted to  
7 developing information related to individuals working with Mr. Ressam in Canada and  
8 exactly how they had helped him. This focus on Canada was occasioned by the  
9 imminent trial in the SDNY of Mokhtar Haouari, a Canadian. Mr. Ressam agreed to  
10 testify for the government against Mr. Haouari. The following week brought three more  
11 days of debriefing, again focusing on Canada, but expanding to include information  
12 concerning the identity and roles of leaders operating in Afghanistan. Mr. Ressam  
13 answered questions about Abu Zubaydah and Abu Doha and their respective roles at the  
14 camps.

15 On May 23, 2001, Special Agent Greg Carl of the FBI lab joined the debriefings.  
16 This meeting focused on bomb making, training for that activity, chemicals used and  
17 acquisition of chemicals. In this debriefing, Mr. Ressam described the making of a  
18 detonator that could escape detection at airport security checks because it was made with  
19 paper, not metal. Seven months later, Special Agent Carl was summoned from  
20 Washington D.C. and flown to the Boston airport in immediate response to the diversion  
21 of American Airline flight No. 63 and the arrest of Richard Reid, the "Shoe Bomber."  
22 An x-ray of Mr. Reid's shoe showed it contained no metal and some believed it  
23 contained no detonator and thus was not dangerous to handle. Agent Carl recognized a  
24 detonator of a type previously described by Mr. Ressam still attached to the explosive  
25 and he intervened. Agent Carl reported that the explosives in the device were sensitive.  
26 Had it detonated while being mishandled by an agent, it would likely have resulted in the

1 loss of that person's life.<sup>8</sup>

2 Extensive debriefings continued through the end of May, 2001 and into early  
3 June. Mr. Ressam provided exhaustive information on the type and location of training  
4 provided in Afghanistan. On May 30, 2001, he discussed training on tactics to be used in  
5 cities during street fighting – valuable information for our troops today in Iraq. Mr.  
6 Ressam elaborated on what he knew, who he knew and provided critical and detailed  
7 information concerning the roles of individuals he identified. He identified “camp”  
8 names and described methods used to keep true identities secret. He provided physical  
9 descriptions of people he met in camp and personal peculiarities. He was shown many  
10 photographs of suspects and made important identifications. This information prompted  
11 arrests in Europe later in the summer. Mr. Ressam's information throughout the summer  
12 of 2001 was repeatedly described by interviewing agents as “phenomenal”.

13 Meanwhile, the defense team met with AUSA Jerry Diskin and others from the  
14 Seattle prosecution team to discuss expectations concerning the effect of Mr. Ressam's  
15 cooperation on his sentence. Mr. Ressam knew that his team was arguing for a sentence  
16 between the mandatory minimum of 10 years and 15 years. Mr. Diskin refused to  
17 consider a sentence below ten years and was hesitant to recommend a sentence below 20  
18 years, but the parties agreed to continue attempts to reach an understanding. Mr. Ressam  
19 continued to cooperate.

20 On June 22, 2001, the government presented a letter to the defense team  
21 describing terms for Mr. Ressam's cooperation. A full description of the facts and  
22 circumstances surrounding the presentation of the letter follows at pages 34-42. The  
23 June 22 letter required Mr. Ressam's testimony at the Haouari trial if he was to receive  
24 the benefit of a 5K1.1 motion. Mr. Haouari's trial was imminent. Mr. Ressam agreed to

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26 <sup>8</sup> Attachment 7, at 106-107. Affidavit of Michael Filipovic.

1 testify despite the unexpected, time sensitive content of the June 22 letter. He was flown  
2 to New York shortly after a June 23 debriefing. Mr. Ressam was in New York City until  
3 July 10, 2001. During that period he did not falter in his commitment to the government.  
4 Intense debriefings continued and he testified at the trial of Mokhtar Haouari. A  
5 conviction was achieved.

6 Mr. Ressam continued to cooperate throughout the summer of 2001, spending  
7 many days being debriefed on a multitude of topics related to information he had already  
8 shared and much more.

9 Following September 11, 2001, the FBI and prosecutors regularly questioned Mr.  
10 Ressam, covering topics related to that tragedy and expanding on information already  
11 provided. On November 28, 2001, Mr. Ressam began a series of extended, repetitive  
12 and difficult sessions with prosecutors and investigators from other countries. From  
13 November 28 through November 30, 2001, Canadian law enforcement officials  
14 interrogated Mr. Ressam.

15 Mr. Ressam was taken to New York City in January, 2002, where he was  
16 interviewed over a period of six days by German officials and, once again, by the  
17 Canadians. He returned to New York City in mid-June, 2002, to answer questions posed  
18 by authorities from Spain, Great Britain and France. German authorities deposed Mr.  
19 Ressam and Italian police questioned him. These arduous meetings spanned nine days,  
20 and required multiple translations, from English to Arabic to English again and to the  
21 language of the questioning country. These sessions involved answering the same  
22 questions again and again.

23 Sporadic debriefings continued throughout 2002. On December 18, 2002, Mr.  
24 Ressam testified on behalf of the German government in its prosecution of Mounir el  
25 Motassadeq. This trial resulted in a conviction. German officials expressed gratitude to  
26 counsel for Mr. Ressam's assistance and participation in the trial. The presiding judge's

1 view is noteworthy.

2 As he left the courthouse yesterday, Chief Hamburg Judge  
3 Albrecht Mentz said through a translator that “the witness is  
4 important as a piece of evidence in Germany. The impact of  
the statement will be made in final evaluation” of el  
Motassadeq at the trial’s conclusion next month, he said.

5 Sam Skolnik, *Algerian’s Details on Al-Qaida May Be Key in Trial*, SEATTLE POST  
INTELLIGENCER, December 19, 2002. Attachment 5 at 43.

6 By early 2003, Ahmed Ressam was showing the effects of more than three years  
7 of solitary confinement and almost two years of interrogation. Meetings became less  
8 frequent and less productive. By the end of April the defense team called off further  
9 contact with Mr. Ressam pending efforts to restore his health.

10 To summarize, Mr. Ressam provided the government and authorities throughout  
11 the world an astonishing insider’s view of the workings of what is commonly called Al  
12 Qaeda. He identified key players in that network. Our detailed submission on  
13 cooperation includes a breathtaking list of individuals Mr. Ressam identified and speaks  
14 to his courage and candor. Beyond naming individuals, Mr. Ressam, during arduous and  
15 repetitive debriefings, described the varied organizations at play in Afghanistan and their  
16 relationships. It is our understanding that based on Mr. Ressam’s information, the  
17 intelligence gathering community confirmed for the first time that the Afghanistan  
18 training camps did not operate under the sole authority of Osama bin Laden, but rather,  
19 involved a number of leaders and groups with similar objectives. This was important  
20 news to the intelligence gathering community and was relayed to the Senate Select  
21 Committee on Intelligence. *Infra* at 23; Attachment 5 at 87-88.

22 Mr. Ressam provided critical information about the makeup of cells, and their  
23 actual or intended locations. As discussed *infra* at 16-18, this information  
24 unquestionably saved lives as authorities were able to “connect the dots” and arrest  
25 suspected terrorists in Europe during the summer of 2001.  
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1           Importantly, Mr. Ressam's information detailed the many different functions of  
2 cells and cell members. He described activities ranging from production of  
3 identification documents to fund raising. He described apparently lawful activity and its  
4 relationship to planned acts of terrorism. He filled information gaps.

5           Mr. Ressam provided extensive and previously unknown information about the  
6 recruitment and training of individuals attending the camps in Afghanistan and the  
7 financing of those camps and the cells they produced. He told how he and others were  
8 able to enter Afghanistan. He provided information that allowed the authorities to track  
9 cell members throughout the world and to deter their criminal activity. He gave  
10 information about arms, explosives and other destructive devices used by these groups.  
11 He provided information related to covert activity and secret transmission of false  
12 identification to cell members throughout the world. Attachment 1 at Dkt # 359.

13           Never has any person in this district provided as much assistance and cooperation  
14 as that provided by Mr. Ressam. Never has any individual provided information as  
15 important as that provided by Mr. Ressam. Never has an individual in this district  
16 endured questioning as intense, demanding and as repetitive. And never has courage  
17 and risk of life been so evident.

18           **c. Use of Information Provided by Ahmed Ressam**

19           While we know what Mr. Ressam has told the authorities, it is unlikely we will  
20 ever know the full extent to which his information has been used and used productively.  
21 We have made unsuccessful attempts to obtain information concerning the use of Mr.  
22 Ressam's information from foreign governments.<sup>9</sup> We have made a series of written

23 \_\_\_\_\_  
24           <sup>9</sup> For example, following the el Motassadeq trial, counsel for Mr. Ressam contacted a lead  
25 German prosecutor and asked if she could provide a letter on Mr. Ressam's behalf. She was most grateful  
26 for Mr. Ressam's assistance and said she would discuss the request with others. In a follow up  
conversation she informed counsel that, on advise of the Department of Justice, a letter could not be  
provided.

1 requests for information from the government. The first request was made July 1, 2002.  
2 Attachment 8, at 125-126. AUSA Jerry Diskin's response expressed his desire to gather  
3 complete information as quickly as possible and he asked for our help in identifying  
4 meetings and sources of information. *Id.* at 127. We responded with details on October  
5 7, 2002. *Id.* at 128-129. We wrote again on January 29, 2003. *Id.* at 130-131. On  
6 February 28, 2003, the Court suggested to the government that it begin assembling  
7 materials that assess the value of Mr. Ressam's cooperation. Dkt # 349 at 14-15. On  
8 March 15, 2005, with sentencing less than two months away, we made another detailed  
9 request. During the more than thirty two months since our first request, the government  
10 has produced nothing. We are told we will receive the government's submission with its  
11 sentencing recommendation. We hope it will be fair and complete, but offer here some  
12 of what we know about the use and value of Mr. Ressam's information.

13 Much of what we summarize is in the public domain. We begin with a report  
14 attributing the 2001 arrests of individuals planning terrorist acts in Europe to Mr.  
15 Ressam's cooperation.

16 On September 5, 2001, National Public Radio reported:

17 Over the course of the past few months, at least a dozen  
18 Algerians and other North Africans have been arrested  
19 across Europe. They're believed to be connected to the  
20 network that planned to bomb American targets around New  
21 Years Day, 2000. **The arrests have come as a result of the  
22 cooperation of Ahmed Ressam, who was tried and  
23 convicted earlier this year of conspiring to blow up the Los  
24 Angels International Airport.**

21 \* \* \*

22 In June, an Algerian was arrested in Spain, believed to have  
23 been trained in sabotage and explosives in a camp in  
24 Afghanistan run by Osama bin Laden. Earlier in the spring,  
25 half a dozen Algerians and Tunisians were taken into  
26 custody in Italy, suspected of plotting an attack on the US  
Embassy in Rome. There have been similar arrests in Great  
Britain and Germany and in New Delhi this summer, where a  
plot to bomb the US Embassy was uncovered. **Much of the  
information for these arrests has come from Ahmed**

1                   **Ressam. Before Ressam decided to cooperate, western**  
2                   **law enforcement knew very little about this Algerian**  
3                   **network**, says Vincent Cannistraro, former head of Counter  
4                   Terrorism Operations for the CIA. (Emphasis added)

5 See Attachment 5 at 38-39.

6                   This report illustrates the immeasurable worth of Mr. Ressam's intelligence.  
7                   Planned terrorist attacks in Europe were prevented and individuals arrested. Information  
8                   provided by Mr. Ressam was essential to these events. He identified individuals  
9                   associated with European cells and provided information that allowed authorities to  
10                  understand the workings of these cells thereby establishing cause to arrest. Mr.  
11                  Ressam's critical role in these arrests standing alone merits a substantial sentence  
12                  reduction, but there is much more.

13                  We have been searching European media reports related to the arrest and  
14                  prosecution of terrorists. This task has proven enormously difficult and time consuming.  
15                  We have discovered some highly significant information demonstrating a direct  
16                  relationship between Mr. Ressam's cooperation and the fight against terrorism in  
17                  Europe.

18                  The conviction of individuals in Germany and France for the plot to bomb the  
19                  Christmas Market in Strasbourg, France on New Year's Eve, 2000 illustrates both the  
20                  extreme importance of Mr. Ressam's cooperation and our frustration over having yet  
21                  received no sentencing discovery or *Brady* information.

22                  We have copies of an incomplete set of letters rogatory provided by the German  
23                  government in anticipation of depositions of Ahmed Ressam. Mr. Ressam was deposed  
24                  by German officials over a three day period in January, 2002 and for another three days  
25                  in June, 2002. The letters rogatory included a list of individuals under investigation for  
26                  suspicion of membership in a terrorist association, conspiracy to murder, intent to  
                    commit a crime through use of explosives, document fraud and firearm and drug

1 offenses. Among other matters, the Germans wanted to question Mr. Ressam about  
2 individuals on the list. At first glance, we did not recognize listed names. Upon closer  
3 examination we recognized aliases for two people Mr. Ressam had, early on, identified  
4 as North Africans he met while in training camps in Afghanistan and whom he believed  
5 to be in Europe. Those individuals were Mohamed Bensakhria, aka, Meliani and  
6 Yassine Aknouche, aka, Mouhayman.

7 Media research shows that trials were held in both Germany and France in  
8 relation to the planned Strasbourg bombing. These trials resulted in many convictions.  
9 Bensakhria and Aknouche were among those convicted. *See* Attachment 5 at 90.  
10 Because of the extent of information Mr. Ressam provided the Germans, the many  
11 names he provided, descriptions, personal histories, dates of travel and itineraries, travel  
12 documents used, telephone numbers and other information, it is certain Mr. Ressam's  
13 information directly contributed to the convictions of Aknouche and Bensakhria, and  
14 undoubtedly others.

15 The French court sentenced Mr. Aknouche to eight years and Mr. Bensakhria to  
16 ten years. In these cases, Mr. Ressam's information was directly relevant and more  
17 important than it was in the trial of Mounir el Motassadeq where Mr. Ressam actually  
18 testified, even though he knew nothing about el Motassadeq, but where German  
19 authorities found his background testimony necessary and beneficial. Mr. Ressam's  
20 information has been put to many uses.

21 Fateh Kamel, Said Karim Atmani and Mustapha Labsi for years were targets of  
22 investigations by French and Canadian authorities. They were associates of Mr. Ressam  
23 and were mentioned during his trial. All have been arrested. Atmani received a five  
24 year sentence in France and Kamel eight years. Labsi awaits deportation from Great  
25 Britain to France. Mr. Ressam provided extensive information about all three during  
26 debriefings. His information was almost certainly used to obtain their convictions. By

1 all accounts, Kamel, was an active, connected, high “ranking” terrorist , and a  
2 measurably more significant and culpable figure than Mr. Ressam. He has finished his  
3 sentence and is free.

4 Others associated with the planning of acts of terrorism have been identified,  
5 arrested and marginalized because of Mr. Ressam. For example, in Italy authorities used  
6 information provided by Mr. Ressam to expand and intensify probes of suspected  
7 terrorists. Attachment 5, at 40-41. He provided “important” assistance in the  
8 prosecution of Mounir el Motassadeq. *Id.* at 42-43. His information was essential to the  
9 post-9/11 efforts in Spain. *Id.* at 46-47. Arrests in Canada were keyed to information  
10 supplied by Mr. Ressam. *Id.* at 51-52, 55-57. Mr. Ressam

11 “again provided crucial evidence in the U.S. government’s  
12 efforts to bring terrorists to justice, this time identifying a  
13 captured Libyan paramilitary trainer as the man who ran  
14 Osama bin Laden’s terrorist camps.”

15 Mike Carter, *Ressam Identifies Captive as Man Who Ran Terror-Training*, SEATTLE  
16 TIMES, January 8, 2002. *Id.* at 53.

17 Information provided by Mr. Ressam lead to the arrest of Abu Doha in Great  
18 Britain and his indictment in the Southern District of New York. Mr. Ressam met Abu  
19 Doha in Afghanistan where Doha played a significant role. Mr. Ressam remains  
20 available to testify against Doha. The government is concerned about Mr. Ressam’s  
21 inability to recall details of his 1998 and 1999 contacts with Doha. As discussed in Dr.  
22 Grassian’s Report, Dkt # 361, Mr. Ressam is experiencing cognitive difficulties as the  
23 result of his prolonged solitary confinement. But he stands by statements previously  
24 made and testified to and will continue to testify to the best of his ability.

25 Time and again, events and arrests in Europe evidenced the worth and reliability  
26 of Mr. Ressam’s information. Authorities here acknowledged its reliability.

Much of the information has proved credible and  
been corroborated by “intelligence services  
throughout the world; according to [Special Agent

1 Fred] Humphries.

2 Mike Carter, *Ressam Associate May Have Been Double Agent*, SEATTLE TIMES,  
3 November 30, 2001. *Id.* at 56.

4 As already noted, information provided by Mr. Ressam led Special Agent Greg  
5 Carl to recognize a potentially dangerous situation following the arrest of Richard Reid.  
6 Agent Carl's quick action prevented the mishandling of sensitive explosives. According  
7 to Special Agent Carl, accidental detonation likely would have been fatal.

8 The importance of Mr. Ressam's information also is manifest in its use in the  
9 interrogation of individuals being held in Guantanamo Bay and elsewhere. Some  
10 detainees attempt to deceive interrogators. Mr. Ressam's information, known to be  
11 accurate, assists interrogators who decide who is providing truthful information, who is  
12 not, and perhaps most importantly, who might be innocent.

13 A specific example of the use of Mr. Ressam's information at Guantanamo Bay  
14 relates to the detention of Ahcene Zemer. Zemer figured prominently in the  
15 debriefings of Mr. Ressam. Mr. Ressam mentioned Zemer in the trial of Mokhtar  
16 Haouari. In April, 2005 we learned that Zemer was arrested in Afghanistan in 2001 and  
17 is being held at Guantanamo Bay. He has had a hearing and has been designated as an  
18 enemy combatant. We have confirmed that decision makers relied on information  
19 provided by Mr. Ressam in finding Zemer is an enemy combatant. It seems very likely  
20 there other examples at Guantanamo Bay like Zemer.

21 An extremely important example of the use and value of Mr. Ressam's  
22 intelligence is seen in the arrest and interrogation of Abu Zubaydah. Early on, Mr.  
23 Ressam provided detailed information about Abu Zubaydah and his role in Afghanistan  
24 and elsewhere. Mr. Zubaydah is often described as one of Osama bin Laden's top  
25 lieutenants. Following September 11, 2001, he became the object of an intense  
26 manhunt. On February 14, 2002, the New York Times published an article describing

1 that hunt, Mr. Zubaydah's role in Al-Qaeda and Mr. Ressam's information and  
2 testimony about Zubaydah. Attachment 5 at 61-65. In it, a senior law enforcement  
3 official states "[Zubaydah's] as dangerous as anyone we are looking for, including bin  
4 Laden". *Id.* at 62. Zubaydah was wanted not just because he was dangerous, but  
5 because he was a gatekeeper of critical information. As one source observed:

6 "He has played a very significant role in the  
7 recruitment, training and travel of new Al-Qaeda  
operatives for several years".

8 Phillip Shenon and James Risen, *Qaeda Deputy Reported to Plan New Attacks*, NEW  
YORK TIMES, February 14, 2002. *Id.* at 63..

9 According to the article, investigators were:

10 [p]articulary eager to apprehend him because he is  
11 one of the few Al Qaeda leaders believed to know the  
12 identities of the thousands of terrorist recruits who  
passed through the network's training camps in  
13 Afghanistan.

14 *Id.* at 62.

15 Before Zubaydah was arrested, Mr. Ressam had already testified at Haouari's trial  
16 where he said of Zubaydah, "He is the person in charge of the camps . . . He receives  
17 young men from all countries. He accepts you or rejects you. And he takes care of the  
18 expenses of the camps. He made arrangements for you when you travel, coming in or  
19 leaving." *Id.* at 64. The prominence of Zubaydah was revealed to the authorities by Mr.  
Ressam.

20 Zubaydah was arrested in late March, 2002. It has since been reported that he has  
21 provided information "that American officials say is central to the administration's  
22 efforts to preempt a new wave of attacks against the United States". Phillip Shenon and  
23 James Risen, *Traces of Terror: The Investigators*, NEW YORK TIMES, June 12, 2002, at p.  
24 1. *Id.* at 71.

25 Information provided by Mr. Ressam was used to test the truthfulness of  
26

1 information supplied by Mr. Zubaydah. As noted:

2 Zubaydah is not considered a cooperating  
3 witness. But law enforcement and intelligence  
4 officials say that he is talking with American  
5 interrogators and that the information he has  
6 provided is matched and checked against other  
7 evidence collected from Afghanistan and  
8 Pakistan as well as intelligence gathered from  
9 other terrorist suspects and captured Qaeda  
10 members.

7 \* \* \*

8 Many of the threat warnings based on Mr.  
9 Zubaydah's information were later discredited.  
10 "He's cagey, and we certainly don't believe  
11 everything he says," an American law  
12 enforcement official said. Still, officials said,  
13 Mr. Zubaydah has provided valuable  
14 information, often without meaning to do so."

12 *Id.* at 71-72.

13 While it is unlikely Mr. Zubaydah will ever be prosecuted in a federal court, the  
14 government's ability to obtain credible information from him was aided by information  
15 supplied by Mr. Ressam. Unquestionably, Mr. Ressam's cooperation justifies Mr.  
16 Zubaydah's continued detention. On April 2, 2002, the Seattle Times reported that:

17 Ressam may be the only Al Qaeda insider who could testify  
18 about Zubaydah's role in the camps, a federal source said.  
19 "This makes Ressam's testimony that much more important"  
20 said another federal source, speaking on condition of  
21 anonymity. "Zubaydah is a big catch, and it is likely Ressam  
22 will play a critical role in any prosecution, be it in federal  
23 court or military tribunal."

21 Mike Carter, *Al-Qaida Leader Caught; Ressam Now Key*, SEATTLE TIMES, April 2, 2002.  
22 Attachment 5 at 69.

23 Thus, it is Mr. Ressam's courageous and forthright assistance that has allowed the  
24 government to question effectively Mr. Zubaydah, a principal terrorist, and obtain from  
25 him critical intelligence.

26 Mr. Ressam provided information linking Zachrias Moussaoui with the training

1 camps in Afghanistan. Mike Carter and Steve Miletich, *Ressam Account of Moussaoui*  
2 *Key to First September 11 Indictment*, SEATTLE TIMES, December 14, 2001. Attachment  
3 5 at 48-49. Moussaoui is reportedly prepared to enter a plea of guilty to charges pending  
4 against him.

5 Mr. Ressam's information was believed to be important enough to be included in  
6 the now infamous Presidential Daily Briefings of August 6, 2001. The significance of  
7 this reference to Mr. Ressam is discussed in THE 9/11 COMMISSION REPORT at 253 - 265.

8 On July 31, 2002, Marion E. (Spike) Bowman, Deputy General Counsel for the  
9 FBI testified before the Senate Select Committee on Intelligence. His testimony  
10 included lengthy references to important information and intelligence provided by Mr.  
11 Ressam, especially as related to the structure of authority in the Afghanistan camps.  
12 Attachment 5 at 87-88.

13 Special Agent Fred Humphries reports that information provided by Mr. Ressam  
14 has produced changes in FBI training on interrogations and information gathering. Mr.  
15 Ressam's honesty was essential to these training decisions. Even now, Agent  
16 Humphries is regularly invited to talk about lessons learned from Mr. Ressam's trial and  
17 his cooperation.

18 These examples of known uses of Mr. Ressam's cooperation evidence its  
19 immense worth. What is in the public domain is likely the "tip of the iceberg" regarding  
20 its importance. The secrecy surrounding ongoing events at Guantanamo Bay and  
21 elsewhere and the government's efforts to both control and delay release of information  
22 clouds a clear view of the value of Mr. Ressam's assistance. But what we do know is  
23 remarkable and supports a substantial sentence reduction.

### 24 3. Summary

25 Principles underlying our sentencing laws favor similar treatment of similarly  
26 situated individuals. 18 U.S.C. § 3553(a)(6). But it is difficult to compare Mr.

1 Ressam's case with any other. His cooperation has been historic. Never before has an  
2 individual prosecuted in this district undergone such extensive and trying questioning.  
3 The volume of information provided by Mr. Ressam was enormous and its worth  
4 immeasurable.

5 The practical value of Mr. Ressam's effort is seen in arrests that occurred in  
6 Europe in the summer, 2001, the actions of Special Agent Greg Carl in response to the  
7 arrest of Richard Reid, the efforts of Special Agent Fred Humphries and others like him  
8 in reshaping intelligence gathering techniques based on inspiration provided by Mr.  
9 Ressam, and the identification, arrest, isolation and marginalization of scores of  
10 individuals associated with unlawful terrorist-linked activities.

11 We turn now to a discussion of Mr. Ressam's life and the circumstances that led  
12 to his arrest and ultimate decision to cooperate. Mr. Ressam's life history is especially  
13 relevant to the Court's consideration of Title 18 U.S.C. § 3553 factors and the purposes  
14 of sentencing.

#### 15 **D. Mr. Ressam's Personal History**

##### 16 **1. Introduction**

17 Perhaps the most dramatic aspect of the story leading to Mr. Ressam's sentencing  
18 is the simple fact that he decided to cooperate. Mr. Ressam is a devout Muslim. For a  
19 time, he held extremist views. He believed that the United States was waging war on  
20 Islam and that attacking the United States was justified. He no longer believes in  
21 violence as a tool for effecting political change. He risked his life by agreeing to sit  
22 down and be interviewed by the government. This shift is remarkable. To understand  
23 how this could happen requires careful examination of Mr. Ressam's life. Doctor Stuart  
24 Grassian's report details relevant events in Mr. Ressam's life and their relationship to his  
25 decision to cooperate. Attachment 2, Dkt # 361 at 5-8.

## 2. An Overview of the Course Leading to Mr. Ressam's Arrest and Cooperation

Ahmed Ressam was raised in Bou Ismael, a small town in Algeria. He is the oldest of seven children. His parents and siblings all remain in Algeria and Mr. Ressam's concern and love for them is firmly intact. Approximately once each month he enjoys a monitored telephone conversation with his family.

Mr. Ressam's family is poor. The environment in Algeria at the time he was raised was confusing and dangerous. A long struggle for independence from France was followed by civil war. Ahmed's father fought against the French, but came to realize that the struggle for political independence did not bring economic independence. Ironically, Ahmed's father was forced to leave Algeria to work in France. His absence was rough on the family. Ahmed reports it the most difficult time of his youth. PSR at ¶ 85. Ahmed's father returned to Algeria and tried to sustain his family by running a small café. Providing for the family was not easy. A total of fourteen people, including Ahmed's aunt and children, occupied the small Ressam house.

Ahmed worked hard at school in hope of being accepted at the local university and better prospects upon graduation. He was crushed when he learned he was denied entrance to the university. His application for work in the police force also was rejected. He could not find employment.

Ahmed became increasingly sad and restless. Doctor Grassian's unredacted report includes especially poignant recollections by Ahmed of his life in Algeria. The struggles he and his family endured are unlike anything we experience in the United States. Conditions drove thousands of young men to leave Algeria in the 1990s.<sup>10</sup>

At age 24 Ahmed left Algeria to seek work and worth in Corsica. As an Algerian Arab he was the subject of gross discrimination. "Sometimes they even kick you out of

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<sup>10</sup> See, Jonathan Randal, OSAMA, THE MAKING OF A TERRORIST, pp. 163-195, (2004).

1 a café, and if you are walking by the street, they drive close to you and give you the  
2 finger.” Grassian Report at 6. In Corsica Ahmed made barely enough money to survive  
3 and was able to send little home to help his family. This fact further demoralized him.  
4 After a year and a half he was arrested as an illegal alien, jailed and deported to Morocco  
5 and by Morocco back to France.

6 Mr. Ressay ultimately immigrated to Canada where he was again immediately  
7 jailed and subjected to deportation proceedings. He was denied asylum and lived  
8 underground, out of the light of mainstream society. He lost all self respect and fell into  
9 bad habits, drinking and committing petty crime as a means of getting by. Doctor  
10 Grassian’s report describes this moment in Mr. Ressay’s life:

11 Thus, the extremists found him when he was at an emotional nadir -  
12 hopeless, demoralized, and living without self respect or dignity.  
13 Their deep religious conviction and philosophy was very seductive,  
14 and the training camps in Afghanistan gave him a sense of purpose  
15 and dignity. Mr. Ressay embraced the extremist Jihad perspective  
16 because it corresponded so well with his own life history. “You  
17 cannot accept oppression. You have to live life with dignity and  
18 self respect. I felt that it was the right path, a duty that I liked, a  
19 purpose. I was enthusiastic for it.”

20 Grassian Report at 6-7.

21 Though Ahmed found a sense of purpose and belonging in Afghanistan, problems  
22 continued. He contracted malaria while there and the four individuals who were to be  
23 part of his cell and join him in Montreal all failed to gain entry into Canada. Ahmed was  
24 alone, exhausted, confused and sick. But he decided to go forward with an action and  
25 was arrested in Port Angeles, Washington, sweating from the effects of malaria and  
26 using a Costco card as identification.

Doctor Grassian’s report details Mr. Ressay’s emotional state before and after  
trial and describes the effect of his prolonged solitary confinement. His trial was like a  
play. He watched as his folly and failure was shown to the world. After trial, he

1 suffered a severe emotional collapse. His emotional collapse so alarmed his custodians  
2 that he was placed on a 24 hour watch. When he pulled out, he told his lawyers that he  
3 wished to cooperate with the government. This was surprising news. Here too, Doctor  
4 Grassian offers important insight:

5 His decision to cooperate with the government thus cannot  
6 be seen as simply the product of a rational calculation of  
7 what actions would serve him best. He was desperate to find  
8 some moral compass, some means of reestablishing a sense  
9 of personal worth and value. The government seemed to  
10 offer him all that. The information which he could provide  
11 was valuable; it might save innocent lives - not only of  
12 nonbelievers, but also of the Muslim lives which would be  
sacrificed in the inevitable retaliation against terrorist acts. Fred Humphries, the FBI case agent who conducted much of the initial debriefings, treated him with respect; he had valuable information, and he has acquired a great deal of technical expertise during his training in Afghanistan. He felt valued, and valuable, once again. This is why he seemed so enthusiastic when he began cooperating.

13 Grassian Report at 8-9.

14 Not two months later Mr. Ressam was in New York, on the witness stand,  
15 testifying in open court before worldwide media. Mr. Ressam's testimony was strong  
16 and was critical to the government's case. But it was far from easy. The following  
17 notes of Jo Ann Oliver provide a view of the turmoil Ahmed suffered outside the  
18 courtroom:

19 7-03-01: AR testifies. During break in testimony, Marshal  
20 gets Bianco (AUSA) who gets me to go downstairs to  
21 holding because AR is sobbing. When I arrived, AR crying  
22 and picture of grief, asked if he is doing bad job. I assure  
23 him he is doing fine. Explain to Bianco who says he is doing  
24 great; I translate, and AR calms down.

25 Later break, Steve Gonzales tells me AR is doing well.  
26 Francois Thierren tells me AR is doing very well, very  
honest, very brave to do it.

7-05-01: Before AR renews testimony, USMS report he's  
having big issues. Bianco and I go down, and AR looks fine  
and seems surprised. When I say what USMS said, he says  
he needed to tell Bianco that he forgot detail re thefts of

1 computers. Bianco says he'll ask him. During testimony,  
2 judge asks AR about who was other friend who gave AR  
3 money. AR says it was Hussan Zemiri. Gov rests. Break,  
4 and AR leaves court crying.

5 As amply documented, Mr. Ressam continued to provide the government with  
6 critical, detailed information concerning his activities in Afghanistan and individuals he  
7 met. He was interviewed again and again, a process that became repetitive and onerous.  
8 All the while he suffered social isolation and the utter monotony of his confinement.  
9 Doctor Grassian reports on the combined effect of Mr. Ressam's mental state, solitary  
10 confinement and the oppressive, repetitive interrogations. Grassian Report at 12-17. He  
11 has suffered memory deterioration. Steps have been taken to improve Mr. Ressam's  
12 conditions of confinement. His health is better and he is stronger. He stands by  
13 statements previously made, and he is available to the government should he be called as  
14 a witness.

15 Mr. Ressam's remarkable journey includes many elements relevant to the  
16 purposes of sentencing as described in 18 U.S.C. § 3553(a). This nexus is discussed  
17 next.

### 18 **3. The Relationship Between Mr. Ressam's Life and Sentencing Purposes**

#### 19 **a. The Application of 18 U.S.C. § 3553(a) Factors**

20 The Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738 (2005)  
21 "significantly altered the sentencing regime that has existed since the Guidelines became  
22 effective on November 1, 1987." *United States v. Crosby*, 397 F. 3d 103, 108 (2d Cir.  
23 2005). Those significant changes include a reduction of the role the Guidelines play in  
24 sentencings and a counterbalancing magnification of the importance of "offender  
25 characteristics" or a person's life history and individual circumstance, to the sentencing  
26 decision. The decision frees sentencing judges to consider "larger questions" related to  
the sentencing function and it revitalizes the mandate that sentences should be

1 “sufficient but not greater than necessary” to achieve sentencing purposes. 18 U.S.C. §  
2 3553(a). These changes are especially relevant to Mr. Ressam’s case and benefit him  
3 enormously.<sup>11</sup>

4 Mr. Ressam’s life history and personal characteristics support, we contend,  
5 favorable sentencing consideration. As detailed by Dr. Grassian and above, Mr.  
6 Ressam’s life and reasons for involvement in his crime do not support a conclusion that  
7 he is a bad person who poses a future danger to society. His history suggests an opposite  
8 conclusion. He is quiet, solitary and devout. His true character is manifest in his  
9 decision to cooperate. The importance of this decision is difficult to overstate. In an  
10 entirely public way, he abandoned the methodologies that led to his arrest. By doing so,  
11 he put his life at risk. He did not put his life at risk because he is suicidal. Through the  
12 course of the trial and immediately thereafter he wrestled with what he had done and  
13 why. He determined that violent action brought shame to the concerns he was trying to  
14 promote and, as a result, what he was doing was harmful in all respects. This reasoning  
15 reflects well on Mr. Ressam’s character.

16 These same considerations bear upon the sentencing purposes as found in §  
17 3553(a). Specifically, the Court is to consider the need for the sentence to provide just  
18 punishment, afford deterrence and to protect the public from further crimes of the  
19 defendant. With regard to deterrence and the need to protect the public from the  
20 defendant, it scarcely needs saying that “this experience surely capped [Mr. Ressam’s]  
21 illegal career”. *United States v. Jaber*, No. 02-CR-10201NG, 2005 WL 605787, at 14  
22 (D. Mass. March 3, 2005). By naming and identifying scores of former associates, Mr.  
23 Ressam not only has imperiled his life, but also has decisively walked away from the  
24 illegality that led to his arrest.

25 \_\_\_\_\_  
26 <sup>11</sup> As discussed in *infra* at pp. 44-47, the *Booker* decision has the additional effect in this case of  
freeing Mr. Ressam’s counsel from any constraints in the June 22, 2001 letter.

1 The Court's sentence must also reflect the seriousness of the crime. Mr.  
2 Ressam's crime was serious. Through the good fortune of his arrest, no one was hurt.  
3 The fact that no one was hurt is important, but is not controlling. Mr. Ressam was  
4 convicted of terrorism, a crime that provokes fear and hatred. Mr. Ressam's arrest  
5 ignited a chain of consequences that impacted this community and others. At the same  
6 time, the very nature of Mr. Ressam's crime emphasizes the enormous importance of his  
7 decision to cooperate. Mr. Ressam's association with a network of individuals bent on  
8 violence is what drives the public cry for incapacitation. But Mr. Ressam's cooperation  
9 provided the world powerful information of immeasurable worth in the effort to fight  
10 terrorism and prevent future acts of terrorism. "Just desserts" in Mr. Ressam's case must  
11 take into account the courage and significance of his decision. Overemphasis on the  
12 seriousness of the crime, as suggested by the government, would have the irresponsible  
13 effect of discouraging others who might carry Mr. Ressam's efforts into the future.

14 While considerations related to Mr. Ressam's cooperation dominate the  
15 sentencing decision, a number of custody related factors further support sentence  
16 mitigation.

17 Mr. Ressam's extended solitary confinement was a particularly onerous form of  
18 custody. It took a toll on his mental health. Grassian Report at 12-17. Courts have  
19 provided sentencing relief to individuals who have suffered solitary confinement. *See,*  
20 *U.S. v. Noriega*, 40 F. Supp. 2d 1378 (S.D. Fla. 1999) (court reduced old-law sentence  
21 from 40 to 30 years because of disparity of time served by codefendant and informants  
22 and because of nature of incarceration – "There is little question that [segregated  
23 confinement] is a more difficult type of confinement than in general population. For  
24 some, the consequences of such deprivation can be serious."); *see McClary v. Kelly*, 4 F.  
25 Supp. 2d 195, 207 (W.D.N.Y. 1998) ("a conclusion however, that prolonged isolation  
26 from social and environmental stimulation increases the risk of developing mental

1 illness does not strike this court as rocket science. Social science and clinical literature  
2 have consistently reported that when human beings are subjected to social isolation and  
3 reduced environmental stimulation, they may deteriorate mentally and in some cases  
4 develop psychiatric disturbances (citing cases).” *See also*, “*The Eighth Amendment and*  
5 *Psychological Implications of Solitary Confinement*,” 21 Law and Psychology Review,  
6 Spring 1997, p. 271; “*Solitary Confinement, Legal and Psychological Considerations*,”  
7 15 New England Journal on Criminal and Civil Confinement, 301, Summer (1989)).

8 In a similar vein, a person who is particularly vulnerable to abuse in prison is  
9 eligible for sentencing relief. *See, U.S. v. Volpe*, 78 F. Supp. 2d 76, 89 (E.D.N.Y. 1999)  
10 (“*Volpe II*”) (defendant granted a two-level departure because “[t]he extraordinary  
11 notoriety of this case and the degree of general opprobrium toward Volpe . . . , coupled  
12 with [his] status as a police officer,” left him “unusually susceptible to abuse in prison”  
13 and likely to spend most of his time in segregation); *U.S. v. Bruder*, 103 F. Supp. 2d 155,  
14 182 (E.D.N.Y. 2000) (same).

15 Mr. Ressay was verbally abused and physically assaulted at SeaTac FDC  
16 immediately following September 11, 2001. Absent special measures or solitary  
17 confinement and its especially punitive and debilitating effects, Mr. Ressay faces the  
18 prospect of future harassment and abuse while in prison.

19 Since incarcerated, Mr. Ressay has been a model prisoner. *See infra* at 48. His  
20 compliant and respectful behavior is information the Court can consider to mitigate his  
21 sentence. Title 18 U.S.C. § 3661. International tribunals also recognize that conditions  
22 of confinement and behavior while in custody are relevant to the sentencing decision.  
23 (*See eg* sentence of Tihomin Blaskic, (No. IT-95-14), Attachment 4c, at 5; Attachment  
24 4a). In fact, similarities between the principles that underlie sentencing purposes in the  
25 United States and Europe are remarkable and discussed next.

**b. Sentencing Purposes and the International Law**

Mr. Ressam is a North African and citizen of Algeria. He came to this country from Canada and Canadian authorities were very involved in the investigation of his crime. His cooperation involved extensive contact with authorities from throughout Europe. The fruit of that cooperation was put to effective use on that continent. We have compiled information relating to sentences imposed against people prosecuted in Europe for acts of terrorism or war crimes. Almost universally, punishment in Europe is not as severe as that in the United States. But the factors influencing sentences and the purposes of sentences in Europe are substantially similar to those at play in our country. We offer the following short discussion for the Court's consideration.

The chart contained in attachment 4c, at 22-34, references the case of Mario *Cerkez*. *Cerkez* was convicted of unlawful confinement of Bosnian Muslim citizens and sentenced to 6 years. Attachment 4c, at 25. He appealed his sentence and on review the Appeals Chamber canvassed the purposes of sentencing relevant to the international tribunal. Those purposes are almost identical to our own. Because of the nature of *Cerkez's* crime, the Appeals Chamber recognized that the concept of "retribution" played heavily in the sentencing decision and the public's perception of the decision. But the court took pains to emphasize principle over reaction to rage. It noted:

It is important to state that retribution should not be misunderstood as a way of expressing revenge or vengeance. Instead, retribution should be seen as an objective, reasoned and measured determination of an appropriate punishment which properly reflects the . . . culpability of the offender . . . taking into account . . . the consequential harm cause by the offender . . . and nothing more.

[Http://www.un.org/icty/kordic/appeal/judgement/cer-aj041217e.pdf](http://www.un.org/icty/kordic/appeal/judgement/cer-aj041217e.pdf) at p. 290. (Last visited April 18, 2005).

This reasoning is in accord with the *Booker's* court's directive that the sentencing process should be balanced, taking into account offender characteristics, the purposes of sentencing and the principle that a sentence shall be "sufficient but not greater than

1 necessary.” 18 U.S.C. § 3553(a).

2 In considering the appropriate sentence in the case of the *Prosecutor v. Dragan*  
3 *Obrenovic*, the court reviewed factors relevant to the sentence of the defendant who was  
4 found guilty of crimes against humanity, namely persecutions. The crime involved the  
5 mass murder of and forcible transfer of members of the Muslim population of Eastern  
6 Bosnia. Attachment 4c at 30. The defendant admitted he took actions which furthered  
7 the killing operation. He was also said to be a man of exceptional character and a soldier  
8 of renowned leadership ability. He entered a plea of guilty, accepted responsibility and  
9 cooperated. *Obrenovic*’s character figured heavily in his sentence as did his  
10 cooperation. The fact that he plead guilty also mitigated his sentence, but the court went  
11 on address an issue of relevance here:

12 The Trial Chamber appreciates the saving of Tribunal  
13 resources. The Trial Chamber finds, however, that in cases  
14 of this magnitude, where the Tribunal had been entrusted by  
15 Security Council – and by extension, the international  
16 community – to bring justice to the former Yugoslavia  
17 through criminal proceedings that are fair, and in accordance  
18 with international human rights standards, and accord due  
19 regard for the rights of the accused and the interests of the  
20 victims, the **saving of resources cannot be given undue  
21 consideration or importance.** (Emphasis added)

22 un.org/icty/transe60-21031210IT.htm at p. 165

23 After assessing all the purposes of sentencing and mitigation information, Mr.  
24 Obrenovic received a sentence of 17 years imprisonment.

25 The above discussion is presented to emphasize that opinions on what constitutes  
26 a just sentence differ, but justice is most readily achieved when the sentencing court  
takes into account every bit of information relevant to the character of the defendant and  
the seriousness of the crime and conducts a careful analysis of how specific sentencing  
principles inform the decision in a particular case. The *Booker* decision allows the Court  
to do so.

1 **E. The Government's Recommendation Represents an Inadequate Appraisal of**  
2 **the Value and Importance of Mr. Ressam's Cooperation.**

3 **1. Introduction**

4 The government's sentencing recommendation begs the question: Should Mr.  
5 Ressam's cooperation after trial produce a harsher penalty than had he simply entered a  
6 plea of guilty and not cooperated? The answer is obvious and the answer is no. To  
7 understand how the government came to its recommendation requires a review of  
8 meetings, conversation and events during the months immediately following Mr.  
9 Ressam's initial decision to cooperate.

10 **2. The Source of the Government's Recommendation**

11 Mr. Ressam's arrest in December, 1999 was followed by a fair and highly capable  
12 prosecution by the Seattle United States Attorney's Office. By the time a conviction  
13 was achieved, political winds had changed. In April, 2001, a new administration and a  
14 new Attorney General were in place. As fully discussed below, hopeful discussions with  
15 the Seattle prosecution team on the issue of sentencing halted in mid-June, 2001 because  
16 decision making authority had shifted to Washington, D.C. As reported in the SEATTLE  
17 TIMES:

18 U.S. Attorney General John Ashcroft personally chose 27  
19 years as the lowest sentence to offer Ahmed Ressam in  
20 exchange for his cooperation with federal prosecutors and  
his testimony against an alleged co-conspirator.

21 \* \* \*

22 Details of the delicate negotiations between the Justice  
23 Department and Ressam were provided yesterday for the first  
time by a person familiar with the talks, who spoke on  
condition of anonymity.

24 Steve Militech, *Ashcroft Crafted Offer to Ressam*, SEATTLE TIMES, July 5, 2001.  
Attachment 5 at 36.

25 News of the 27 year sentence "floor" offer was delivered to the defense by faxed  
26

1 letter at 4:50 p.m. on June 22, 2001. We were stunned and believed the government's  
2 position stemmed from an underappreciation of the value and potential of Mr. Ressam's  
3 intelligence. Publication of THE 9/11 COMMISSION REPORT substantially confirms our  
4 view. A core finding of the 9/11 Commission was that the administration failed to  
5 appreciate the gravity of the threat of a terrorist attack and to effectively share  
6 intelligence concerning the potential of an attack.

7 In Chapter Eight of the report, titled "The System was Blinking Red," the  
8 Commission reviews events that occurred between April and September, 2001, the very  
9 time Mr. Ressam was cooperating. "In the late spring and early summer of 2001, the  
10 level of reporting on terrorist threats and planned attacks increased dramatically . . . In  
11 May 2001, the drumbeat of reporting grew louder". REPORT, at 255. Advisories  
12 concerning a threat continued through the summer culminating in the controversial  
13 Presidential Daily Brief [PDB] of August 6, 2001, wherein Mr. Ressam's warning of  
14 planned attacks was relayed to the president. REPORT, at 255 - 265. But the seriousness  
15 of Mr. Ressam's information and the impending threat was not fully embraced.

16 Attorney General Ashcroft was briefed by the CIA in May and by (acting  
17 FBI Director Thomas Pickard) in early July about the danger. Pickard said  
18 he met with Ashcroft once a week in late June, through July, and twice in  
19 August. There is a dispute regarding Ashcroft's interest in Pickard's  
20 briefings about the terrorist threat situation. Pickard told us that after two  
such briefings Ashcroft told him that he did not want to hear about the  
threats anymore. Ashcroft denied Pickard's charge. Pickard says he  
continued to present terrorism information during further briefings that  
summer, but nothing further on the "chatter" the U.S. government was  
receiving.

21 THE 9/11 COMMISSION REPORT, at 265.

22 This troubling passage provides a telling backdrop to the government's  
23 recommendation. In mid-June, 2001, we were attempting to persuade AUSA Jerry  
24 Diskin that the primary value of Mr. Ressam's cooperation lay in its worth as  
25 intelligence. But control of the government's sentencing recommendation was moved to  
26

1 Washington D.C. where, at the same moment in time, THE 9/11 COMMISSION REPORT  
2 reveals, the then Attorney General was apparently disinterested in reports from the  
3 acting director of the FBI about intelligence forewarning a terrorist attack – intelligence  
4 which came in part from Mr. Ressay. The terms of the June 22 letter reflect an utter  
5 failure to appreciate the value of the information Mr. Ressay was courageously sharing.  
6 The following discussion of the history of sentencing negotiations sheds further light on  
7 the origin and unreasonableness of the government’s recommendation.

### 8 **3. Background Relevant to Production of the June 22 Letter**<sup>12</sup>

9 When the government was made aware of Mr. Ressay’s willingness to cooperate,  
10 AUSA Diskin requested a written outline of the information Mr. Ressay might be able  
11 to provide. On May 4, 2001, a letter generally describing matters that Mr. Ressay could  
12 and would discuss was sent to AUSA Diskin. Attachment 8, at 110-111. Because Mr.  
13 Ressay was trained at camps in Afghanistan, the prospect of interviewing him received  
14 an enthusiastic response from federal law enforcement. On May 9, 2001, Mr. Diskin  
15 wrote counsel stating the government would “certainly accept” the invitation to meet  
16 with Mr. Ressay. Attachment 8 at 112-113. Mr. Diskin further wrote that if Mr.  
17 Ressay’s information proved to be of “substantial assistance in the investigation or  
18 prosecution of others who have committed offenses against the United States,” he would  
19 consider filing a motion pursuant to USSG § 5K1.1. He went on to note he would not  
20 agree to file a motion that permitted a departure below any applicable mandatory  
21 minimum sentence, ten years in Mr. Ressay’s case.

22 Cooperation began immediately. Mr. Diskin and Special Agent Fred Humphries  
23 met with Mr. Ressay on May 10, 2001. Debriefings intensified on May 15, 2001, when  
24

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25 <sup>12</sup> The discussion in this section substantially tracks information provided the Court in  
26 “Defendant’s Opposition to Government’s Request to Continue Sentencing”, filed February 20, 2003  
Dkt. # 346.

1 New York prosecutors and FBI agents joined the meetings. Over the next two weeks,  
2 eight days were occupied by meetings with Mr. Ressam. Mr. Ressam provided  
3 intelligence concerning the operation of training camps in Afghanistan and the identity  
4 of individuals associated with those camps. Questions also focused on Mokhtar Haouari  
5 and Abu Doha. New York AUSAs were preparing Mr. Ressam for anticipated  
6 testimony in the trial of Mokhtar Haouari.

7 Due to the imminence of Mr. Haouari's trial and the apparent value of Mr.  
8 Ressam's cooperation and information, the defense requested an opportunity to meet  
9 with government counsel to discuss expectations concerning the government's  
10 sentencing recommendation. A meeting took place in Seattle in June, 14, 2001, at the  
11 United States Attorney's office and was attended by all members of the defense team  
12 and the Seattle prosecution team.

13 Because the government sought to settle Mr. Ressam's case pretrial with an  
14 agreed sentence of 25 years, without cooperation, our discussions centered on that  
15 number as a starting place for negotiations. A description of what occurred at the  
16 meeting with Seattle prosecutors is memorialized in a letter dated March 7, 2002, from  
17 defense counsel to AUSA Jerry Diskin.

18 Given the original offer, the nature of the offense, and the  
19 extent of Mr. Ressam's cooperation, it was the defense  
20 position that we should agree upon a sentencing range of 10  
21 to 15 years. You were troubled by our proposal because, as  
22 you stated, you doubted that the intelligence offered by Mr.  
23 Ressam amounted to cooperation under USSG § 5K1.1 and  
24 with respect to the anticipated testimony against Mr.  
25 Haouari, you felt it was not sufficiently significant to merit a  
26 sentence in the 10 to 15 year range. It was clear that you  
agreed that testimony against Mr. Haouari would generate a  
5K motion. You repeatedly suggested a range of 20 to 25  
years and were not inclined to agree to a sentence less than  
20 years. We were not happy with your proposal and the  
meeting adjourned with the idea that we would have further  
discussions with the hope of coming to an agreed range.

Attachment 8 at 122.

1 Our discussions with the Seattle prosecution team, while incomplete and difficult,  
2 left us with hope that a sentencing range that included a low end of less than 20 years  
3 imprisonment could be achieved. FBI agents involved in the debriefings immediately  
4 recognized and repeatedly praised the "phenomenal" intelligence value of Mr. Ressam's  
5 information. Mr. Diskin was of the view that intelligence did not qualify as cooperation.  
6 We believed he would ultimately come to appreciate and acknowledge that the value of  
7 Mr. Ressam's cooperation extended far beyond the anticipated and imminent testimony  
8 against Mokhtar Haouari. Mr. Ressam continued to cooperate and we continued to push  
9 the government for a sense of its sentencing position. We hoped to meet again with  
10 government counsel before Mr. Ressam was moved to New York. We were stalled.  
11 What happened next was completely unexpected.

12 After our meeting, prosecutors from the Southern District of  
13 New York continued to push us given Mr. Haouari's  
14 imminent prosecution. Mr. Ressam continued to be  
15 debriefed by the FBI and others in anticipation of his  
16 testimony. We made repeated calls to you with the hope of  
17 nailing down an agreement. Our calls were not returned.  
18 You had not heard back from the Department. This stall  
19 continued until the eve of the New York trial. The June  
20 22nd letter arrived in our office on Friday afternoon at 4:50  
21 p.m. by facsimile. Mr. Ressam was scheduled to leave for  
22 New York that weekend if he agreed to testify. We were  
stunned by the content of the June 22nd letter. It was a "take  
it or leave it" offer of a sentence of not less than 27 years, a  
number neither suggested nor discussed at any previous  
meeting. Moreover, the letter required that the defense not  
request a sentence of less than 27 years. These terms were  
not negotiated in any way, shape, or form. The letter was  
presented at the last possible second and placed us in an  
intolerable position. In good faith, over the weekend, Mr.  
Ressam signed and was whisked away to New York where  
he testified against Mr. Haouari.

23 Attachment 8 at 122.

24 Our frustration over the requirements of the June 22 letter was heightened by its  
25 late arrival, at 4:50 p.m. Friday, foreclosing the possibility of further discussions. We  
26 sensed we were being manipulated because earlier on June 22, Ms. Oliver had had a

1 conversation with one of the SDNY prosecutors. He was anxious to have Mr. Ressam  
2 interviewed on June 23, Saturday, to clarify details of expected testimony. He was  
3 concerned about the shortness of time before Mr. Ressam's transportation to New York.  
4 Ms. Oliver advised the prosecutor that she and Mr. Ressam would be available  
5 Saturday. He told Ms. Oliver the government's position on sentencing would be  
6 presented in a letter for Mr. Ressam to sign on Saturday, June 23. He said the offer  
7 wasn't great, but that the floor was "soft," and the only "hard" floor was the mandatory  
8 minimum. Ms. Oliver asked for details, but he would say no more.

9 For more than a week, the defense team had been attempting to resolve  
10 sentencing issues with the government. During that entire time our persistent calls were  
11 not returned. In hindsight, it seems obvious we were being stalled.<sup>13</sup> The June 22 letter  
12 included language requiring the defense to recommend no lower than a 27 year sentence  
13 of imprisonment. This limitation on the defense had never been the subject of  
14 negotiations with Seattle prosecutors and was not included in Mr. Diskin's letter of May  
15 9, 2001.

16 The transmission of the Friday, June 22 letter at 4:30 left the defense in a difficult  
17 position. Ultimately, we counseled Mr. Ressam to continue to cooperate and sign the  
18 letter of understanding. Our advise was influenced by a number of factors. First, Mr.  
19 Ressam had set a course. He had given his word and was determined to keep it.  
20 Second, Mr. Ressam figured as a key witness in the prosecution of Mokhtar Haouari and  
21 we had no way to assess the response of SDNY prosecutors should we balk. We could  
22 have refused to sign thinking the government would still call Mr. Ressam in its case  
23 against Mr. Haouari. But we did not know how the government would react. Moreover,  
24 control of our discussions had apparently shifted to the Attorney General. We feared a

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25  
26 <sup>13</sup> The Seattle prosecution team was not responsible for the delay. Jerry Diskin was on leave during much of this period and, and as noted, decision making authority had passed to Washington D.C.

1 negative response and harm to Mr. Ressam's liberty interest. Third, we remained  
2 hopeful that, as events unfolded, the government would reassess its view of the value of  
3 Mr. Ressam's cooperation and revisit sentencing recommendations. We felt this  
4 possibility was implied by the comment that the floor was "soft". Mr. Ressam did testify  
5 in New York against Mokhtar Haouari and a conviction was achieved. His testimony  
6 was the subject of considerable media attention. Significantly, at the exact time Mr.  
7 Ressam was testifying in the New York, prosecutors in that district prepared and filed a  
8 complaint against Abu Doha. The complaint against Mr. Doha rests in large part on  
9 information supplied by Mr. Ressam during debriefings before June 22. We were  
10 unaware of the particular significance of this questioning, on the other hand, the  
11 government knew exactly what it was doing. Thus, even while the government was  
12 reaping the benefit of Mr. Ressam's cooperation in the trial of Mr. Haouari, it was  
13 holding from Mr. Ressam and the defense team information favorable to Mr. Ressam's  
14 bargaining position.<sup>14</sup> When the June 22 letter was belatedly provided, we had been told  
15 nothing of the plan to prosecute Mr. Doha nor did we have any idea that his arrest was  
16 imminent. What we had been told, repeatedly, was that the sentencing recommendations  
17 in the June 22 letter reflected the minimal value of Mr. Ressam's anticipated testimony  
18 against Mokhtar Haouari. Despite our belief that we had been manipulated, we chose to  
19 look forward. We sincerely believed the government would come to recognize Mr.  
20 Ressam's courage and the importance of his cooperation.

21 We remained hopeful because, as already noted, Mr. Ressam's detailed  
22 information about the workings and locations of camps in Afghanistan and the identities

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23  
24 <sup>14</sup> At a subsequent meeting with DOJ officials in Washington, D.C., defense counsel noted that  
25 the timing of the Doha complaint suggested the defense team had been "sandbagged" by the government  
26 during negotiations. An AUSA from the Southern District of New York, the same prosecutor who  
refused to reveal the content of the June 22 letter in the morning of that date, quickly denied any such  
thing and offered that the timing of the complaint was a coincidence precipitated by unanticipated and  
*undisclosable* events.

1 of individuals involved with European cells lead to arrests and aborted violence in  
2 several countries. September 11, 2001, magnified the importance of Mr. Ressay's role  
3 in the fight against terrorism and regular reports in the media suggested a softening of  
4 the government's June 22 stance. A December report notes a federal official confirmed  
5 Mr. Ressay "is working hard" and that arrests have resulted from information he has  
6 provided. Attachment 5 at 49. In the same article, an official of the Justice Department  
7 is reported to have acknowledged that it expects a request "for a reduced sentence, and  
8 they will consider it." *Id.* Referring to the terms of the June 22 letter of understanding,  
9 the Justice Department official noted that, upon review, "everything goes out the  
10 window." *Id.*

11 Such reports buoyed our hope for a favorable review of the terms of the June 22  
12 letter and vindicated our belief that the government would ultimately agree that Mr.  
13 Ressay's contribution to the effort against terrorism deserved further consideration.  
14 We looked forward to discussions with an open minded government. We also recalled  
15 that the floor in the letter was referred to as "soft" by a SDNY prosecutor before it was  
16 presented to the defense.

17 We were unduly optimistic. We made repeated requests to meet with DOJ  
18 decision makers so that we could discuss the changed circumstances surrounding Mr.  
19 Ressay's cooperation and our view that the terms of the June 22 letter of understanding  
20 required rewriting to take into account those changes. We were anxious because at that  
21 point, sentencing was scheduled to take place in March 2002. On February 11, 2002, we  
22 traveled to Washington, D.C. and met with a group of Department of Justice lawyers.  
23 We made our pitch and were politely dismissed. On March 1, 2002, nearly a month  
24 later, we were informed by the government that it refused to reconsider, at *any* time, the  
25 terms of the June 22 letter. Though the government would not budge, it continued to  
26 question Mr. Ressay and continued to obtain valuable information related to its ongoing

1 and intensifying effort to prevent future acts of terrorism. As previously noted,  
 2 questioning was especially intense in June, 2002. During one stretch in that month, Mr.  
 3 Ressam endured nine days of repetitive interrogation.

4 All the while, Mr. Ressam was aware of difficulties with negotiating a  
 5 sentencing understanding that accounted for unexpected events and the escalating value  
 6 of his assistance. We were frustrated and confused. Mr. Ressam was disappointed. By  
 7 December, 2002, he had endured approximately 1100 days of solitary confinement.

8 **4. Guideline Calculations Further Demonstrate the Unreasonableness of the**  
 9 **Government's Recommendation**

10 We have suggested that the Court begin its departure analysis at 25 years because  
 11 that is the sentence the government suggested in pretrial negotiations, a sentence the  
 12 government believed fit the crime. Reference to the Guidelines to find a starting point  
 13 for deciding the extent of the downward departure is the usual practice of this district.  
 14 However, the government's charging scheme produces a complicated Guideline calculus  
 15 that drives recommended penalties artificially high. Beyond inflating the Guideline  
 16 calculations, charging decisions interfere with a sentencing court's ability to impose fair  
 17 punishment.<sup>15</sup> As observed by Professor Stith and Judge Cabranes:

18 In sentencing, the Guidelines have sought to minimize the opportunity and  
 19 authority for judges to reason and to apply general principles of law to  
 20 particular circumstances. Instead, the Guidelines require judges to address  
 many quantitative and definitional issues in excruciating detail, while  
 staying away from larger questions relating to culpability and the purpose  
 of criminal punishment.

21 FEAR OF JUDGING, *supra* p. 83.

22 The indictment in this case offers a textbook example of how charging decisions  
 23

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24 <sup>15</sup> "As we observed in the previous chapter, mandatory sentencing schemes also inevitably shift  
 25 power towards prosecutors: Because the sentencing rules are known in advance, prosecutors may greatly  
 26 influence the ultimate sentence through their decisions on charges, plea agreements, and motions to depart  
 for substantial assistance to law enforcement authorities." Kate Stith and Jose A. Cabranes, FEAR OF  
 JUDGING, at 195 (1998).

1 can be used to manipulate guideline recommended sentences.

2 The explosives charge in Count IX requires a mandatory minimum sentence of 10  
3 years. That count and Count I require consecutive sentences. According to the  
4 Guidelines, conviction on Count I requires placing Mr. Ressam's criminal history score  
5 in Category VI despite its relative insignificance. Grouping applications add years of  
6 imprisonment even though the grouped charges are insignificant "throw ins" and all  
7 relate to a single episode. Acceptance of responsibility is presumptively lost because of  
8 Mr. Ressam's trial decision, this despite his remarkable change of course and  
9 cooperation.

10 While not addressing "larger questions" and easily manipulated to produce a wide  
11 range of possible sentences, a sample of three possible and reasonable calculations  
12 produces recommended sentences of 16 years, 18.5 years, and 22 years, further  
13 suggesting the unreasonableness of the government's position.<sup>16</sup> Attachment 9 at 135-  
14 137.

15 Possible Guideline sentences are myriad. If anything, the Guidelines demonstrate  
16 how unique this case and Mr. Ressam's cooperation are. Moreover, the charging  
17 scheme and Guideline "diktats"<sup>17</sup> confound responsible analysis of the factors that are  
18 most relevant to the sentencing decision and inflate advised sentences. Nonetheless,  
19 even the Guidelines favor a sentence resoundingly less than that recommended by the  
20 government. To be sure, the government's recommendation is out of bounds.

## 21 5. Summary

22 The government's recommendation exceeds its pretrial settlement offer. Since  
23 that offer, America witnessed a trial that was a model of fairness and serves as an

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24  
25 <sup>16</sup> These calculations assume use of this district's usual practice of a fifty percent downward  
departure for cooperation.

26 <sup>17</sup> FEAR OF JUDGING, *supra*, at p. 95.

1 enduring example of the capabilities of our federal court system. Since the pretrial offer,  
2 the world has learned of Mr. Ressam's remarkable and courageous change of course and  
3 decision to cooperate. Since the pretrial offer, this country and countries throughout the  
4 world have benefitted in immeasurable life saving ways because of Mr. Ressam's  
5 cooperation. Since the pretrial offer, federal law enforcement has adopted the  
6 "preventative counter terrorism posture" recommended by THE 9/11 COMMISSION  
7 REPORT, at 425. Indeed, on November 8, 2001, then Attorney General Ashcroft  
8 announced plans to reorganize law enforcement resources. He states:

9           The attacks of September 11th have redefined the mission of the  
10           Department of Justice. Defending our nation and defending the citizens of  
11           America against terrorist attacks is now our first and overriding priority.  
12           To fulfill this mission, we are devoting all resources necessary to eliminate  
13           terrorist networks, to prevent terrorist attacks, and to bring to justice those  
14           who kill Americans in the name of murderous ideologies.

15 [Http://www.usdoj.gov/archive/ag/speeches/2001/agcrisisremarks11\\_08.htm](http://www.usdoj.gov/archive/ag/speeches/2001/agcrisisremarks11_08.htm).  
16 Attachment 5 at 97.

17           Ironically, the Department of Justice now boasts information "leveraged" from  
18 Mr. Ressam has proven "critical" to the efforts to prevent future acts of terrorism.

19           . . . we are gathering information by leveraging  
20           criminal charges and long prison sentences . . .

21           \* \* \*

22           These [cooperating] individuals have provided critical  
23           intelligence about al-Qaida and other terrorist groups,  
24           safe houses, training camps, recruitment, and tactics  
25           in the United States, and the operations of those  
26           terrorists who mean to do Americans harm.

27 [http://www.usdoj.gov/01whatsnew/safer\\_america/war\\_on\\_terror.html](http://www.usdoj.gov/01whatsnew/safer_america/war_on_terror.html) (Last visited April  
28 18, 2005).

29           Thus, even while championing the worth of Mr. Ressam's information in  
30 preventing future acts of terrorism, the government is keeping its March, 2002, promise  
31 to never reconsider its sentencing position. This one-sided advocacy betrays the  
32 language of *Booker*, our sentencing statutes and principles of fairness.

1 **F. The Effect of the June 22, 2001, Letter on the Defendant's Recommendation as**  
2 **to Sentence**

3 Federal prosecutors have expressed the view that the June 22, 2001, letter from  
4 the government constrains Mr. Ressay to a sentencing recommendation of no less than  
5 27 years. Our recommendation of 150 months signals our disagreement. The  
6 government deserves to know why. While it is obvious that we believe the terms of the  
7 June 22 letter and the circumstances of its production raise troubling questions, that  
8 dissatisfaction does not drive our decision to make an independent sentencing  
9 recommendation on behalf of Mr. Ressay. As discussed below, it is our view that the  
10 *Booker* decision discharges the defense from any obligation contained in the June 22,  
11 2001 letter.

12 It is important to note first that this dispute is confined to the parties and our  
13 relationship. It is of no consequence to the sentencing process or the Court's sentencing  
14 decision. At all times the parties have agreed and understood that the Court "is not  
15 bound by to sentence based upon the recommendation of either the government or the  
16 defense". June 22, 2001 letter, Attachment 8 at 114-116. Subject to the mandatory  
17 minimum of ten years, the Court may impose any sentence it deems appropriate.

18 Applying the contract doctrine of frustration of purpose, due to the unexpected  
19 intervening Supreme Court in *United States v. Booker*, 125 S. Ct. 738 (2005), Mr.  
20 Ressay is discharged from any obligation in the June 22, 2001, letter to recommend a  
21 particular sentence. *See United States v. Bunner*, 134 F.3d 1000, 1004-5 (10th Cir.  
22 1998) (parties discharged from obligations under the plea agreement due to frustration of  
23 purpose caused by the intervening Supreme Court opinion in *Bailey v. United States*, 516  
24 U.S. 137 (1995)); *United States v. Moulder*, 141 F.3d 568, 571-72 (5th Cir. 1998)  
25 (same). The frustration of purpose doctrine addresses "the problem that arises when a  
26 change in circumstances makes one party's performance virtually worthless to the other,

1 frustrating his purpose in making the contract.” REST. 2nd CONTR. § 265 cmt. a. Here,  
2 the opinion in *Booker* makes the government’s performance of its obligation to file a  
3 motion pursuant to U.S.S.G. § 5K1.1 of no value to Mr. Ressay and frustrated his  
4 purpose in signing the letter.

5 Under the doctrine, following a change in circumstances, any remaining  
6 obligations by an aggrieved party are discharged if the following requirements are met:  
7 First, the purpose that is frustrated must have been a principal purpose of that party in  
8 making the contract. Second, the frustration must be substantial. Third, the non-  
9 occurrence of the frustrating event must have been a basic assumption on which the  
10 contract was made. REST. 2nd CONTR. § 265 cmt. a. Mr. Ressay satisfies all of the  
11 criteria necessary to discharge him from any remaining obligations imposed by the June  
12 22, 2001, letter. First, Mr. Ressay’s principal purpose in signing the letter was to obtain  
13 a commitment from the government that it would file a motion pursuant to § 5K1.1  
14 which at the time provided the means by which this Court could consider Mr. Ressay’s  
15 assistance in the investigation and prosecution of others and its affect on his sentence.

16 Second, this purpose was substantially frustrated by *Booker*. With Supreme  
17 Court’s determination that the Sentencing Guidelines may only be applied on an advisory  
18 basis, the value of the government’s § 5K1.1 motion evaporated. Now that the  
19 Guidelines are not mandatory, this Court may consider Mr. Ressay’s assistance in the  
20 investigation and prosecution of others regardless of whether the government files a  
21 motion in support.

22 Finally, the letter reflects the basic assumption by the parties in June, 2001 that at  
23 the time of Mr. Ressay’s sentencing the Guidelines would still be mandatory in nature  
24 and a motion by the government would be a necessary precursor to this Court  
25 considering Mr. Ressay’s assistance in the investigation and prosecution of others when  
26 determining his sentence. Under these circumstances, Mr. Ressay is discharged from

1 any obligation to recommend a particular sentence.

2 The interest at stake for Mr. Ressam, his liberty, and the government's superior  
3 bargaining position and are also factors that support our position. *See United States v.*  
4 *Barron*, 172 F.3d 1153, 1158 (9<sup>th</sup> Cir. 1999) (en banc) (the analogy between commercial  
5 contracts and plea agreements is not perfect) (citing *United States v. Partida-Parra*, 859  
6 F. 2d 629, 634 (9<sup>th</sup> Cir. 1988)). The interests at stake in a criminal case are dramatically  
7 different from those in a commercial contract: "What is at stake for the defendant is his  
8 liberty . . . What is at stake for the government is its interest in securing just punishment  
9 for violation of the law." *Id.* Under the circumstances, something more than contract law  
10 must be applied. *Id.* ("a plea bargain is not a commercial exchange. . . . The interests at  
11 stake and the judicial context in which they are weighed require that something more  
12 than contract law be applied.").

13 In this case, that "something more" compels consideration of the events at the  
14 time the government prepared the June 22, 2001 letter as well as those that have  
15 transpired since then. This is especially indicated because, as courts have recognized,  
16 the government enjoys an "awesome advantage in bargaining power." *United States v.*  
17 *Ready*, 82 F. 3d 551, 559 (2d Cir. 1996) (citing *United States v. De la Fuente*, 8 F. 3d  
18 1333, 1338 (9<sup>th</sup> Cir. 1993)). The government, in its superior bargaining position, refused  
19 to negotiate with Mr. Ressam regarding the terms of the letter. That letter materially  
20 altered the context and terms of previous discussions concerning benefits Mr. Ressam  
21 would receive for his cooperation. The government withheld any information  
22 concerning the terms of the letter until the opportunity for discussion was foreclosed.  
23 The government's timing and the take it or leave it presentation gives the June 22 letter a  
24 startling resemblance to an adhesion contract.

25 Most important for purposes of this discussion, the law governing Mr. Ressam's  
26 sentencing was radically altered by the Supreme Court's opinion in *Booker*. As a result,

1 the June 22, 2001 letter does not obligate Mr. Ressay to recommend a particular  
2 sentence.

3 **G. Concerns and Issues Related to Conditions of Confinement**

4 We are concerned about the conditions that will apply to the duration of Mr.  
5 Ressay's imprisonment. We hope to enlist the Court and government's support in  
6 making recommendations to the Bureau of Prisons. We will present specific proposals at  
7 or before the time of sentencing.

8 We will ask the Court to recommend to the Bureau of Prisons that Jo Ann Oliver  
9 and members of his Federal Public Defender defense team be allowed to visit him while  
10 he is imprisoned. Mr. Ressay has no family in the United States. He has had no visitors  
11 save the defense team and government interrogators since his arrest in December, 1999.

12 Since that time, Mr. Ressay has been a "model prisoner". The warden and prison  
13 employees at FDC SeaTac have nothing but praise to offer concerning Mr. Ressay's  
14 conduct. U.S. Marshals here and in Los Angeles have expressed genuine respect for Mr.  
15 Ressay and gratitude for his conduct. He has presented absolutely no problem to the  
16 authorities.

17 On the other hand, confinement has been difficult for Mr. Ressay. Apart from  
18 the observations and concerns reported by Dr. Grassian, Mr. Ressay endured vicious  
19 verbal harassment and an instance of physical assault by a prison guard at the FDC  
20 SeaTac immediately following September 11. That event prompted temporary  
21 installation of video equipment outside his cell. Mr. Ressay responded appropriately.  
22 He agreed that charges should not be pursued and continued to cooperate with the  
23 government. But his crime and nationality cause our continuing concern over Mr.  
24 Ressay's well being after sentencing. Because he poses no security problem, we are  
25 adamantly oppose designation to a "supermax" type facility, a grossly imperfect form of  
26 incarceration which is entirely inappropriate in Mr. Ressay's case.

1 A specific recommendation as to custody may be premature at this time. We do  
2 request permission to address our concerns when the time is right.

3 **IV. CONCLUSION**

4 It is beyond argument that Mr. Ressam's cooperation has been the most extensive  
5 and valuable in any case prosecuted in this district and thus calls for a substantial  
6 reduction in the sentence which otherwise would have been imposed. It is therefore  
7 respectfully requested that the Court impose a 120 month sentence on Count IX, a  
8 consecutive sentence of 29 months on Count I and a one month sentence on Counts II  
9 through VIII to run concurrently with each other and consecutive to Counts I and IX.

10 DATED this 19<sup>th</sup> day of April, 2005.

11  
12 Respectfully submitted,

13  
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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

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