

Judge Coughenour

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

AHMED RESSAM,

Defendant.

NO. CR99-666C

GOVERNMENT'S SENTENCING
MEMORANDUM

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Mark N. Bartlett, First Assistant United States Attorney, and Mike Lang, Assistant United States Attorney for said District, files this Sentencing Memorandum.

I. INTRODUCTION

On April 6, 2001, the defendant, Ahmed Ressam, was convicted of nine federal crimes related to his planned terrorist attack on U.S. soil. His crime, if carried to fruition, would have ended in the deaths and injuries of hundreds of innocent people. Following his conviction, Ressam entered into a cooperation agreement wherein he agreed to fully cooperate with the United States and other foreign governments. In exchange, Ressam hoped that the government would recommend a sentence far lower than his sentencing guideline range. Pursuant to that agreement, the parties agreed that no matter how much assistance he provided to the government, neither Ressam nor the government would recommend a sentence of less than twenty-seven (27) years

1 confinement. Ressay has since ended all cooperation with the government, thereby
2 breaching his agreement and effectively terminating at least two criminal cases of vital
3 interest to national security. Ressay now comes before this court for sentencing.

4 The government recommends a sentence of thirty five (35) years imprisonment.
5 This recommendation is based upon the defendant's sentencing guideline range, the
6 statutory sentencing factors set forth in Title 18, United States Code § 3553, the nature
7 of Ressay's crimes, and the nature and extent of Ressay's cooperation.

8 **II. FACTUAL BACKGROUND**

9 In November 1993, defendant Ahmed Ressay (hereafter Ressay) was arrested
10 in Corsica on immigration violations and faced the prospect of deportation back to his
11 native country, Algeria. To avoid this fate, Ressay created a crude false passport in
12 the name Tahar Medjadi and flew to Canada on February 20, 1994. Ressay's passport
13 was detected by Canadian immigration officials and he was arrested. In an effort to
14 remain in Canada and avoid deportation, Ressay applied for political asylum based on
15 a false claim of Algerian abuse and torture.

16 Over the next several years Ressay lived in Montreal with other Algerian
17 immigrants getting by on handouts from the Canadian government and money he made
18 committing a variety of petty crimes. In June 1995, Ressay was convicted of
19 shoplifting and ordered to leave Canada by July 23, 1995. He remained in Montreal,
20 and in October 1996, Ressay was arrested again and eventually convicted of
21 pickpocketing \$300 from a tourist.

22 In Montreal, Ressay met a man named Abderraouf Hannachi. Hannachi was a
23 member of al Qaeda and was actively recruiting individuals to join the holy war and
24 attend training in Afghanistan camps sponsored by Osama bin Laden. Hannachi
25 worked in conjunction with Abu Zubaydah, an al Qaeda leader who served as a
26 gatekeeper for recruits traveling to the Afghanistan camps.

27 In preparation for his jihad training in Afghanistan, Ressay needed a new
28 identity. He obtained a genuine Canadian passport through a document vendor who

1 stole a blank baptismal certificate from a Catholic Church. With these documents,
2 Ressay created a new identity for himself - Benni Antoine Noris. In March 1998,
3 Ressay obtained the Canadian passport in the name Benni Noris. He flew from
4 Toronto to Frankfurt, Germany, on March 16, 1998, and then to Pakistan. On the
5 border between Pakistan and Afghanistan, Ressay met Abu Zubaydah. In late April
6 1998, Ressay left Pakistan over the Khyber Pass into the Khalden training camp in
7 Afghanistan.

8 Ressay received basic terrorist training for several months. In September 1998,
9 Ressay was sent to a second camp where he received advanced training on explosives.
10 By January 1999, Ressay was ready to leave Afghanistan and return to Canada and
11 join a terrorist cell coordinated by Abu Dohah. Ressay departed Afghanistan with
12 instructions to organize an attack against the United States to coincide with the new
13 millennium. He was allowed to choose his own target and the date for his attack.

14 Ressay selected Los Angeles International Airport (LAX), in order to maximize
15 the impact on the United States public: the airport was in a large urban center, he
16 would likely inflict a large number of civilian casualties, and the attack would target a
17 critical transportation system and thereby effect the United States economy. Ressay
18 chose the date in December, 1999, in order to maximize the impact of the attack given
19 the huge fears of the public about the pending millennium, fears ranging from computer
20 breakdowns to the apocalypse.

21 On February 7, 1999, Ressay landed at LAX carrying handwritten notes on how
22 to make a bomb, and carrying two key ingredients for making a bomb: glycol and
23 hexamine. Ressay, still using the Benni Noris passport, left LAX and returned to
24 Canada.

25 On August 31, 1999, Ressay went to an electronics store in St. Laurent and
26 purchased \$237 worth of electronics equipment required for making a bomb. The next
27 day, September 1, Ressay purchased two Casio alarm watches to use as timing devices
28 for the bombs.

1 On November 17, 1999, Ressam and Abdel Dahoumane, an Algerian friend of
2 Ressam's from Montreal, flew from Montreal to Vancouver. They rented a Chrysler
3 300M automobile in Vancouver and, on November 19, rented a small cottage at the
4 2400 Court Motel in Vancouver. Ressam registered as Benni Noris and paid \$994 for
5 two weeks rent. Ressam and Dahoumane used the cottage to prepare the explosives
6 needed for the bomb.

7 Meanwhile, Abdel Meskini was in Seattle under a false name waiting to meet
8 with Ressam. Meskini had been introduced to Ressam (over the telephone) by Mokhtar
9 Haouari and had traveled to Seattle on December 11th. Meskini understood he was to
10 help Ressam by renting a car, providing him money and a cell phone, and helping him
11 communicate in English.

12 On December 14, 1999, Ressam and Dahoumane checked out of the hotel and
13 traveled from Vancouver to Victoria. Ressam had hidden all of the components of the
14 bomb in the trunk of the rental car: explosives, timing devices, urea, and aluminum
15 nitrate. Ressam purchased a bus ticket for Dahoumane back to Vancouver, and
16 Ressam drove his car onto American ferry MV Coho at Tswassen, British Columbia.
17 At the United States Immigration and Naturalization Service pre-clearance station in
18 Tswassen, Ressam stated his name was Benni Noris and showed INS Inspector Gary
19 Roberts his fraudulent Canadian Benni Noris passport. Ressam was cleared to board.

20 At approximately 6 p.m., the MV Coho arrived in Port Angeles. The last car
21 debarking the ferry was Ressam's Chrysler 300M. INS Inspector Diana Dean began
22 talking with Ressam and noticed he appeared nervous. He presented his Costco card to
23 inspectors when they asked him for identification. Even though this was the last car of
24 the day on the last ferry of the day (when they finished with Ressam they could all go
25 home), the INS inspectors sent Ressam over for a secondary inspection. Inspector
26 Danny Clem looked inside the spare-tire compartment and found a number of items,
27 none of which was a sparetire.
28

1 The substances in the wheel well were later identified as follows: hexamethylene
2 triperoxide diamine (HMTD), a primary explosive; cyclotrimethylene trinitramine
3 (RDX), a primary explosive; and ethylene glycol dinitrate (EGDN), a secondary
4 explosive similar to nitroglycerine. Four black plastic boxes were found to contain
5 electronic timing devices designed to detonate primary explosives using 9 volt batteries.
6 There was also a large quantity of urea, a fertilizer that can be converted to fuel for a
7 destructive device, and aluminum sulfate.

8 During the search of his car, Ressam was a short distance away with Inspector
9 Mark Johnson, who was holding Ressam by his coat. As Ressam saw what was going
10 on, he slipped out of his coat and fled on foot. Inspectors Johnson and Chapman
11 immediately gave chase but Ressam, with a slight head start, managed to temporarily
12 escape. Inspector Chapman found Ressam hiding under a pick-up truck. Although the
13 inspector had drawn his gun and ordered Ressam to come out, Ressam attempted to flee
14 a second time. This time Ressam tried to seize control of a car in an intersection,
15 causing the driver to run a red light to escape.

16 Ultimately, the inspectors seized Ressam and brought him back to the secondary
17 inspection area where Customs Officials had begun processing the contents of the
18 trunk. Not realizing what they were dealing with, the inspectors shook some of the
19 items as they were removing them. Inspectors noticed that Ressam would duck down
20 behind the automobile door where he was seated as the items were being removed.

21 Ressam's fear was warranted. FBI Supervisory Special Agent Gregory Carl
22 testified at Ressam's trial as to the explosive force of the 2.6 pounds of EGDN Ressam
23 was transporting in olive jars. Carl explained that EGDN is equivalent to
24 approximately two times the power of TNT. Carl then prepared a test using the
25 equivalent of the materials Ressam was carrying -- at both one quarter (because Ressam
26 had four timing devices), and the full explosive strength. The video depicting these
27 explosions, shown at trial, showed the utter devastation Ressam's explosives would
28 have caused -- the entire quantity completely destroyed a car, and the blast zone

1 reached hundreds of feet. Clearly, Ressam's bombs, placed at a crowded airport
 2 terminal during the busiest travel time of year, would have killed and maimed hundreds
 3 of innocent people.

4 **III. SENTENCING FACTORS**

5 In United States v. Booker, 125 S. Ct. 738 (2005), the Supreme Court recently
 6 clarified the process sentencing courts should undertake in determining a fair and just
 7 sentence. A court should, first, consider the sentencing guidelines and determine the
 8 applicable advisory guideline range. Next, the court should consider the factors set
 9 forth in 18 U.S.C. § 3553. As Judge Breyer noted in Booker at 764-765:

10 The Act nonetheless requires judges to consider the Guidelines
 11 'sentencing range established for . . . the applicable category of offense
 12 committed by the applicable category of defendant,' § 3553(a)(4), the
 13 pertinent Sentencing Commission policy statements, the need to avoid
 14 unwarranted sentencing disparities, and the need to provide restitution to
 15 victims, §§ 3553(a)(1), 3, (5)-(7) (main ed. and Supp. 224). And the Act
 16 nonetheless requires judges to impose sentences that reflect the
 17 seriousness of the offense, promote respect for the law, provide just
 18 punishment, afford adequate deterrence, protect the public, and
 19 effectively provide the defendant with needed educational or vocational
 20 training and medical care.

21 **A. SENTENCING GUIDELINE CALCULATIONS**

22 The United States Probation Office Revised Presentence Report (dated March
 23 25, 2003) accurately sets forth the sentencing guideline calculations.¹ The guideline
 24 calculations capture the seriousness of Ressam's crimes and conduct.

- 25 1. Count 1: Committing an Act of Terrorism Transcending a National
 26 Boundary.

27 Ressam was convicted in Count 1 of Committing an Act of Terrorism
 28 Transcending a National Boundary, in violation of 18 U.S.C. § 2332b(a)(1)(B). Since
 § 2332b is not listed in the statutory index, U.S.S.G. § 1B1.2 directs that the most
 analogous guideline section should be used. Section 2K1.4, property damaged by use
 of explosives, appears to be most analogous section. Under § 2K1.4, "if the offense

¹ The November 2000 edition of the United States Sentencing Commission
 Guidelines Manual has been used to calculate the applicable sentencing range.

1 (A) created a substantial risk of death or serious bodily injury to any person other than
 2 a participant in the offense, and that risk was created knowingly," the base offense level
 3 is 24. Under U.S.S.G. § 3A1.4(a), "if the offense is a felony that involved, or was
 4 intended to promote, a federal crime of terrorism," the offense level should be
 5 increased by 12, thus providing an adjusted offense level of 36. In addition, under
 6 § 3A1.4(b), a defendant's criminal history category "shall be VI for offenses intended
 7 to promote a federal crime of terrorism." Thus, the applicable sentencing guideline
 8 range for Count 1 is a sentence of no less than 324 months and no more than 405
 9 months. Since § 2332b has a statutory maximum of 25 years (300 months), the
 10 sentencing guideline range for Count 1 is 300 months.

11 It should be noted that § 2332b(c)(2), Consecutive Sentence, requires that the
 12 term of imprisonment imposed under this section "shall" run consecutively with any
 13 other term of imprisonment. The statute, therefore, mandates that the sentence
 14 imposed by the Court on Count 1 (which the Sentencing Guidelines set at 300 months)
 15 be imposed to run consecutively to any sentence imposed on Counts 2, 3, 4, 5, 6, 7
 16 and 8. (Count 9, carrying an explosive during the commission of a felony in violation
 17 of 18 U.S.C. § 844(h)(2), requires the Court to impose a mandatory ten-year term of
 18 imprisonment to run consecutively to any other term of imprisonment imposed.)

19 2. Counts 2, 6, 7 and 8: Placing an Explosive in Proximity to a
 20 Terminal; Smuggling; Transportation of
 21 Explosives; and Possession of an Unregistered
 Destructive Device.

22 Ressay was convicted in Count 2 of Placing an Explosive in Proximity to a
 23 Terminal, in violation of 18 U.S.C. § 33; in Count 6 of Smuggling, in violation of
 24 18 U.S.C. § 545; in Count 7 of Transportation of Explosives, in violation of 18 U.S.C.
 25 § 842(a)(3)(A); and in Count 8 of Possession of a Destructive Device, in violation of
 26 26 U.S.C. §§ 5841, 5861(d) and 5871. Pursuant to grouping provisions U.S.S.G.
 27 § 3D1.2(b), these counts should be grouped (Group 1) because they involve the same
 28 victim and two or more acts connected by a common scheme or plan. The Count 6

1 smuggling conviction under § 2T3.1, which in turn cross-references § 2K2.1
2 (transportation of a destructive device), contains the highest base offense level - 20.
3 There are three specific offense characteristics that are also applicable to Count 6: a
4 one-point upward adjustment pursuant to § 2K2.1(b)(1)(A) for committing an offense
5 involving three to four destructive devices; a two-point upward adjustment pursuant to
6 § 2K2.1(b)(3) for committing an offense involving a destructive device; and a four-
7 point upward adjustment pursuant to § 2K2.1(b)(5) for possessing a destructive device
8 with knowledge that it would be used or possessed in connection with another felony
9 offense. There is also one victim-related adjustment applicable to Count 6: a twelve
10 point upward adjustment pursuant to § 3A1.4(a) for committing a felony that involved,
11 or was intended to promote, a federal crime of terrorism. These enhancements yield an
12 adjusted offense level of 39.

13
14 3. Counts 3, 4 and 5: Possessing False Identification Documents; Using a
15 Fictitious Name for Admission into the United States;
16 and Making a False Statement.

17 Ressay was convicted in Count 3 of Possessing False Identification Documents,
18 in violation of 18 U.S.C. § 1028; in Count 4 of Using a Fictitious Name for Admission
19 into the United States, in violation of 18 U.S.C. § 1546; and in Count 5 of Making a
20 False Statement, in violation of 18 U.S.C. § 1001. Pursuant to U.S.S.G. § 3D1.2(b),
21 these counts should be grouped (Group 2) because they involve the same victim and
22 two or more acts connected by a common scheme or plan. The Count 3 conviction for
23 possessing false identification documents is governed by § 2L2.2, which instructs a
24 Court to cross-reference a more relevant sentencing guideline section if the defendant
25 used a passport "in the commission of a felony offense, other than an offense involving
26 violation of the immigration laws." The most analogous substantive offense is Count 1,
27 which leads to the previously-discussed guideline calculations under § 2K1.4: base
28 offense level 24, plus a twelve point adjustment pursuant to § 3A1.4(a) for committing

1 a felony that involved, or was intended to promote, a federal crime of terrorism. Thus,
2 the adjusted offense level is 36.

3
4 4. Count 9: Carrying an Explosive Device during the Commission of a
Felony.

5 Ressay was convicted in Count 9 of Carrying an Explosive Device during the
6 Commission of a Felony, in violation of 18 U.S.C. § 844(h)(2). This statute requires
7 the Court to impose a ten-year mandatory sentence of imprisonment to run
8 consecutively to all other charges.

9 5. Multiple Count Adjustment

10 U.S.S.G. § 3D1.4 provides that Groups 1 and 2 are each assigned one unit
11 (two total units), resulting in a two-level increase to the group with the highest offense
12 level. This yields an adjusted offense level of 41 for Counts 2-8. Under § 3A1.4(b), a
13 defendant's criminal history category "shall be VI for offenses intended to promote a
14 federal crime of terrorism." Thus, the applicable sentencing guideline range for these
15 counts is a sentence of 360 months to life.

16 6. Final Sentencing Guideline Calculations

17 Based on a total offense level of 41 and a criminal history category of VI, the
18 guideline range of imprisonment on Counts 2-8 is 360 months to life. The term of
19 imprisonment imposed on Count 1 is to run consecutively to the term of imprisonment
20 imposed on Counts 2-8. The guideline range on Count 1, based on a total offense level
21 of 36 and a criminal history category of VI, is 324 months to 405 months. However,
22 since the maximum sentence the Court may impose on Count 1 is 25 years, the
23 guideline calculations is 300 months. Therefore the combined guideline range for
24 Counts 1-8 is 660 months to life. Finally, the sentence on Count 9 requires a 10-year
25 mandatory consecutive sentence.

26 Under the Sentencing Guidelines, **THE LOW END OF RESSAM'S**
27 **SENTENCING RANGE IS 780 MONTHS (65 YEARS).**
28

1 **B. 18 U.S.C. § 3553(a) SENTENCING FACTORS**

2 In addition to considering the applicable sentencing guideline range, Courts are
3 instructed to consider a number other additional factors, under § 3553.

- 4 1. *The nature and circumstances of the offense and the history and*
5 *characteristics of the defendant.*

6 The offenses for which Ressam was convicted are among the most serious in
7 criminal law. (The fact that the low end of the applicable sentencing guideline ranges
8 is 780 months illustrates the seriousness of the offenses.) As the events of 9/11 proved
9 beyond all doubt, terrorists are not just attempting to murder innocent civilians and
10 destroy landmark structures. Their goal is much broader - they are seeking to tear the
11 fabric that binds the people of our nation together, and the nations of the world
12 together.

13 Ressam intended by his actions to fulfill the fatwa issued by Osama bin Laden
14 the year before. In 1998, bin Laden and Egyptian physician Ayman al Zawahiri
15 arranged for the publication of a fatwa, an interpretation of Islamic law, "Claiming that
16 America had declared war against God and his messenger, and they called for the
17 murder of any American, anywhere on earth, as the 'individual duty for every Muslim
18 who can do it in any country in which it is possible to do it.'" The 9/11 Commission
19 Report: Final Report of the National Commission on Terrorist Attacks Upon the United
20 States, at 47 (2004).

21 In accordance with this fatwa, Ressam's plan was not simply to plant a bomb.
22 He chose to plant his bomb at an international airport, and thereby lay in ruins one of
23 our nation's most critical transportation systems. And Ressam did not randomly choose
24 any airport: he chose Los Angeles International Airport, the fifth busiest airport in the
25 world and in one of the country's largest urban areas. He did not randomly choose any
26 date: he chose the millennium so that the chaos and fear flowing from his act would be
27 magnified ten-fold.
28

1 Ressay's history and characteristics provide little support for leniency. Ressay
2 supported himself primarily through criminal activity. He assumed numerous false
3 identities (Nassar Ressay, Anjer Tahar Medjadi, and Benni Noris) to allow him to
4 illegally enter and remain in various countries. While in Canada, Ressay submitted
5 false statements in a failed effort to obtain asylum. He ignored judicial deportation
6 orders, and was arrested on theft related offenses in 1996 and 1997. He was convicted
7 in France (in absentia) in connection with terrorist related activities committed by a
8 group of extremists associated with Fateh Kamel. Between March 1998 and February
9 1999, Ressay was in Afghanistan training to be a terrorist. After he returned and until he
10 was arrested in December 1999, Ressay undertook a series of steps to convert his
11 terrorist training to action. In sum, during Ressay's entire adult life, he has been
12 immersed in committing all manner of crimes.

13
14 2(A). The need for the sentence imposed to reflect the seriousness of the offense,
15 to promote respect for the law, and to provide just punishment for the
16 crime.

17 The Sentencing Guidelines recommended range of 65 years reflects the
18 extraordinary gravity of Ressay's offenses. But for the professional (and fortuitous)
19 work of the Port Angeles Customs Inspectors, the shock to our nation that occurred on
20 9/11 would have occurred 18 months earlier.

21 Ressay, as with all terrorists, was attempting to do more than murder innocent
22 people: he was participating in a war intended to claim as many innocent lives as
23 possible. The 9/11 attacks in the United States, the Madrid train bombings in Spain, the
24 Bali explosion in Australia, and the murder of Theo van Gogh in the Netherlands are
25 recent examples of criminal activity that extend far beyond the specific crime. The
26 killing of van Gogh on November 2, 2004, by Mohammed Bouyeri (allegedly) is
27 especially illustrative. On the one hand, it was simply a murder, a crime that sadly
28 occurs daily throughout the world. But van Gogh's homicide was more than murder, it
was a terrorist act. By targeting van Gogh because he had made a controversial film

1 about Islamic culture, by killing him publicly on the streets of Amsterdam, by almost
2 beheading him, by pinning a five page letter to his body with a second knife, the
3 perpetrators of this murder committed a terrorist act. In the days following van Gogh's
4 death, more than 60 mosques and churches were reportedly the victims of arson
5 attacks. Several leading European newspapers speculated that the murder would end
6 the dream of multiculturalism for Europe.

7 Ressay was looking for a similar impact. He intentionally chose a target within
8 the United States at one of the world's largest urban centers. He chose a critical
9 industry and a vulnerable time. Ressay's solemn and intended goal was to wreak
10 destruction - on lives, on structures, and on the nation. His sentence should be an
11 unflinching response to that heinous goal.

12 The American people and the world at large must have confidence that our
13 justice system works -- that when terrorists are arrested and indicted, they will be fairly
14 tried. When they are convicted, they will be held fully accountable for their crimes. In
15 this case, that punishment begins with a 65-year guideline range, and then takes into
16 account the inconstant cooperation Ressay provided the United States and other
17 countries.

18 2(B). *The need for the sentence imposed to afford adequate deterrence to*
19 *criminal conduct.*

20 The unfortunate reality of today's world is that the threat of future terrorists
21 attacks is a continuing and genuine threat. The number one priority of the President,
22 the Department of Justice, the Federal Bureau of Investigation, and the Department of
23 Homeland Security has been, and continues to be, to protect America against the
24 confounding menace of terrorism. The federal government itself has undergone a
25 wartime reorganization to address this threat.

26 The sentence this Court imposes on Ressay must impart a deterrent to others
27 contemplating actions against the United States. It must broadcast a clear message to
28 extremists that when caught and convicted, they will suffer serious consequences. At

1 least one commentator has discussed the importance of deterrence particularly as it
 2 relates to acts of terrorism. In Why Terrorism Works, attorney Alan Dershowitz
 3 chronicled the rising tide of terrorism in the latter Twentieth Century, particularly
 4 noting the toothless response of other nations. He concluded:

5 [I]t is highly likely that an immediate and firm negative, rather than
 6 positive, response to terrorism would have reduced its frequency and
 7 severity. . . This requires unambiguous action that sends only one clear
 8 message – namely, that terrorism *never* pays, that it *always* sets back the
 9 cause, and that, if the cause is to succeed, then its leaders must resort to
 10 other techniques for bringing about change.

11 . . .

12 The only way [terrorism] can be thwarted is by eliminating the
 13 incentives for terrorism and enforcing disincentives, severely punishing
 14 and incapacitating the terrorists themselves, and deligitimizing their
 15 leaders. If the international community had taken these measures –
 16 instead of rewarding terrorist acts, releasing the terrorists, and honoring
 17 their leaders – it would almost certainly have made a considerable
 18 difference in how terrorism was viewed by those contemplating its
 19 continued use as a tactic for change.

20 Alan Dershowitz, Why Terrorism Works, (Yale University Press, 2002) at 86, 88
 21 (emphasis in original).

22 In sum, it is quite possible that the deterrent impact of this Court's sentence will be
 23 far greater than in any other case this Court has ever considered, in terms of the message
 24 this Court sends to others considering similar acts.

25 2(C). *The need for the sentence imposed to protect the public from further crimes*
 26 *of the defendant.*

27 Ressam's arrest on December 14, 1999, was not the result of a sudden lapse of
 28 judgment. It was the culmination of years of planning and work, all aimed at causing
 as much harm to the United States as he could possibly inflict. Ressam's hatred toward
 the United States and its people was not something that he could simply shut off.

Following his conviction in April 2001, Ressam claimed that after he observed
 the fairness with which the Court treated him throughout the trial, he had a change of
 heart. He declared that he was "firmly against" terrorist operations in America and
 around the world. Ressam's sudden change of heart raises suspicion about the
 motivations for his cooperation. It suggests that Ressam chose to go to trial because he

1 had no intention of accepting responsibility for his actions and felt no remorse for them.
2 It suggests that Ressay embraced America only after he was convicted and faced the
3 near certainty that his sentence of imprisonment would ensure he would die in prison.
4 Regardless of motivation, Ressay chose to cooperate and then, after he extracted the
5 substantial assistance motion from the United States, he chose to end his cooperation.

6 If Ressay had undergone a genuine change of heart, as opposed to merely trying
7 to minimize his period of incarceration, he would continue to cooperate. His decision
8 to end cooperation raises the specter that he continues to pose a real and serious threat
9 to the United States. Thus, this Court must decide at what age would Ressay no
10 longer pose a threat to this county.

11 6. *The need to avoid unwarranted sentence disparities among defendants with*
12 *similar records who have been found guilty of similar conduct.*

13 It is difficult to find other analogous defendants that provide the Court a clear
14 comparison. There are, however, a few cases for the Court to consider:

15 ***United States v. Mokhtar Haouari***: CR00-00015, SD NY:

16 Mokhtar Haouari and Abdel Meskini, were indicted on January 6, 2000, on 8
17 counts in the United States Court for Southern District of New York. The
18 defendants were indicted based on their connection to Ressay and fugitive
19 Abdelmajid Dahoumane. A credit car in Ressay's possession linked him to
20 Defendant Haouari.

21 Haouari and Meskini were charged with: 2 counts for violations of 18
22 U.S.C. § 371 & 18 USC § 842, conspiracy to provide false identification for the
23 purposes of importing, manufacturing, or dealing in explosive materials; 2 counts
24 for violations of 18 USC § 1028, fraud related to identification documents; 2
25 counts for violations of 18 USC § 1029, fraud using an access device; 1 count for
26 violating 18 USC § 1344, bank fraud; and, 1 count for violating 18 U.S.C. § 922,
27 importing or manufacturing firearms or ammunition without a license.

28 Meskini pleaded guilty prior to trial to all counts and was sentenced to a total of
72 months and ordered to pay \$59,545 in restitution. Tried on seven counts,
Haouari was convicted on counts 1, 3, 4, 5, and 6. He was acquitted of count 2,
and the government dismissed count 7. On January 17, 2002, Haouari was
sentenced to a total of 288 months in prison.

1 ***United States v. Ramzi Yousef, et al:*** CR93-180-KTD SD NY (World Trade Center
2 Bombings)

3 On February 26, 1993, at approximately 12:18 p.m., an improvised explosive
4 device detonated on the second level of the World Trade Center parking basement.
5 The resulting blast produced a crater, approximately 150 feet in diameter and five
6 floors deep, in the parking basement. The main explosive charge consisted of
7 approximately 1,200 to 1,500 pounds of a homemade fertilizer-based explosive,
8 urea nitrate. The investigation following the explosions linked several distinct
9 groups to the bombing and resulted in an indictment that was filed on March 17,
10 1993. The investigation continued for almost two years after the first
11 indictment. The final 20-count indictment, filed on December 13, 1995, named
12 10 defendants.

13 Ramzi Ahmed Yousef was convicted of 18 counts, including: destruction by
14 explosion by Improvised Device causing death; assault upon a federal officer with
15 a deadly weapon; using a destructive device in relation to an assault of a federal
16 officer; attempt to destroy aircraft; attempt to bomb U.S. commercial airliner;
17 conspiracy to kill U. S. nationals with the intent of retaliate against the
18 government; and, conspiracy to bomb U.S. nationals out side the U.S. and
19 bombing a civil aircraft. Yousef was sentenced to 8 life sentences plus 240
20 years, fined \$4.5 million dollars, and ordered to pay \$250 million dollars in
21 restitution.

22 Mahmud Abdouhalima was convicted on 9 counts, sentenced to 240 years
23 imprisonment, fined \$250,000, and ordered to pay \$250 million dollars in
24 restitution.

25 Mohammad Salameh was convicted of 10 counts, sentenced to nearly 117 years
26 imprisonment, fined \$250,000, and ordered to pay \$250 million dollars in
27 restitution.

28 Nidal Ayyad was convicted of 9 counts, sentenced to 117 years, fined \$250,000,
and ordered to pay \$250 million dollars in restitution.
Bilal Alkaisi turned states evidence and pleaded guilty to one count, making false
statements. He was sentenced to 20 months and 2 years supervised release.

Ahmad Mohammad Ajaj was convicted of 9 counts, sentenced to 115 years,
fined \$250,000, and ordered to pay \$250 million dollars in restitution.
Abdul Hakim Murad was convicted on 7 counts, sentenced to life plus 60 years
of imprisonment, and fined \$250,000.

Eyad Ismoil was convicted of 10 counts, sentenced to 240 years imprisonment,
fined \$250,000, and ordered to pay \$10 million dollars in restitution.

29 ***United States v. Mohamed al-'Owhali, et al:*** CR98-1023 SD NY (Embassy
30 Bombings)

31 On August 7, 1998, bombs exploded at the United States Embassys in Kenya
32 and Tanzania killing 224 people, including 12 Americans. After a series of
33 indictments were returned relating to the bombings, one defendant pleaded guilty
34 and four defendants went to trial.

1 **Mohamed Rashed Daoud Al-Owhali**, a Saudi, was the passenger in the actual
 2 bomb truck. He got out of the truck and threw a stun grenade at the guards
 3 before fleeing the scene. Owhali survived the bomb blast and was arrested at the
 4 hospital. In May 2001, Owhali was convicted by a federal jury of conspiracy and
 213 counts of murder, including 12 Americans, in the bombing of the U.S.
 Embassy in Kenya. He was sentenced to life in prison without the possibility of
 parole.

5 **Khalfan Khamis Mohamed**, a Tanzanian, was arrested in South Africa and
 6 extradited to the U.S. in October 1999. His house was used as a bomb factory
 7 and a base of operations for the bombing conspiracy. In May 2001, Mohamed
 8 was convicted by a federal jury of conspiracy to kill Americans and 11 counts of
 9 murder in the bombing of the U.S. Embassy in Tanzania. He was sentenced to
 10 life in prison without the possibility of parole.

11 **Mohammed Saddiq Odeh**, a Jordanian, was arrested trying to enter Pakistan
 12 with a fake Yemeni passport on the day of the East African Embassy bombings.
 13 He was interrogated by Pakistani officials, and he eventually admitted being part
 14 of the Embassy bombing conspiracy. In May 2001, Odeh was convicted by a
 15 federal jury of conspiracy in the Kenya bombing. He was sentenced to life in
 16 prison without the possibility of parole.

17 **Wadiah El Hage**, an American citizen, was a known bin Laden associate. In
 18 May 2001, El Hage was found guilty by a federal jury of conspiracy and
 19 perjury. He was sentenced to life in prison without the possibility of parole.

20 **Ali Mohamed**, a 48 year old Egyptian native and former U.S. Army sergeant,
 21 plead guilty to charges resulting from the embassy bombings. On Friday,
 22 October 20, 2000, Mohamed told Judge Leonard Sand of the U.S. District Court
 23 in Manhattan that at the request of bin Laden, he had conducted surveillance of
 24 U.S., British, and French targets in Nairobi, including the U.S. Embassy. He
 25 then delivered pictures, diagrams, and a report to bin Laden in Khartoum,
 26 Sudan. He said that bin Laden looked at a photograph of the U.S. Embassy and
 27 pointed to the place where a bomb truck could be driven through. The targets
 28 were chosen, Mohamed said, to retaliate against the U.S. intervention in the
 civil war in Somalia. Mohamed pleaded guilty to five federal counts of
 conspiracy, which included plotting to kill U.S. citizens, destroy U.S. facilities,
 and murder U.S. soldiers in Somalia and Saudi Arabia. Mohamed has not yet
 been sentenced.

21 C. SUBSTANTIAL ASSISTANCE.

22 After considering the defendant's guideline range and the statutory sentencing
 23 factors, this Court must also consider what affect the defendant's substantial assistance
 24 should have on his sentence.

25 1. The Government's Substantial Assistance Motion.

26 On February 26, 2003, the United States filed a motion pursuant to U.S.S.G.
 27 § 5K1.1 to sentence Ressay "below the otherwise applicable guideline range." The
 28 motion was based on Ressay's "substantial assistance in the case of United States v.

1 Maohtar Haouari, a matter prosecuted in the Southern District of New York in the
2 summer of 2001."

3 The Southern District of New York has filed a motion describing Ressam's
4 cooperation in the Haouari case. The motion details Ressam's initial cooperation in the
5 investigation and indictment of Abu Doha (pending extradition from the United
6 Kingdom) and Samir Ait Mohamed (pending extradition from Canada). In assessing
7 how much of a benefit Ressam should receive for this cooperation, the Court must also
8 take into account more recent events.

9 Section 5K1.1 of the Guidelines is framed to recognize a defendant's "substantial
10 assistance in the investigation or prosecution of another person who has committed an
11 offense." Ressam provided substantial assistance in the case of Haouari by testifying at
12 the trial. This clearly falls within the scope of § 5K1.1. Ressam also provided
13 "cooperation" in the form of intelligence debriefings to the United States and other
14 countries. Whether that type of activity falls under § 5K1.1 is an open question that the
15 Court need not address since Ressam's intelligence debriefings are clearly a factor that
16 the Court should consider in arriving at Ressam's final sentence of imprisonment under
17 18 U.S.C. § 3553 and United States v. Booker, 125 S. Ct. 738 (2005).

18 **2. The Cooperation Agreement**

19 On June 23, 2001, Ressam and his attorneys signed a cooperation agreement
20 with the United States. (See Attachment 1.) This agreement required Ressam to
21 cooperate with law enforcement and intelligence agencies from the United States and
22 from foreign countries by providing complete and truthful information and by testifying
23 truthfully before the grand jury or at any trial, including the trial in the Southern
24 District of New York against Mokhtar Haouari. Prior to signing the cooperation
25 agreement, Ressam had previously provided statements to federal law enforcement
26 personnel on May 10, 16, 17, 22, and 24 of 2001. In these statements, Ressam
27 detailed, among other topics, his planned bombing of LAX, the training camps in
28 Afghanistan, and the identity and positions of individuals involved in other terrorist

1 cells outside the United States. It should be noted that of the 55 pages in reports
2 produced by the Federal Bureau of Investigation in connection with these five
3 debriefings, only a small portion was devoted to Mokhtar Haouari. In exchange for
4 Ressam providing intelligence information and testimony at trial, the United States
5 agreed to file a § 5K1.1 motion if his cooperation proved to be of "substantial
6 assistance."

7 The June 23, 2001, cooperation agreement had one additional critical
8 element:

9 **"Further, the parties stipulate and agree that if the government files
10 a downward departure motion, pursuant to U.S.S.G. 5K1.1, in view
11 of the defendant's crime and notwithstanding any assistance provided
12 by Ressam, the government *and the defense* will jointly recommend
13 that the defendant be sentenced to a term of imprisonment of not less
than twenty-seven (27) years. That is, while either party may
recommend a sentence not less than twenty-seven (27) years, the
government may recommend a sentence in excess of twenty-seven (27)
years up to the high end of the applicable guideline range."**

14 The Court should honor this cooperation agreement entered into by both parties. This
15 is especially true given the present situation where Ressam has not even lived up to the
16 requirements of the agreement. His decision to end his cooperation not only
17 jeopardizes two critical pending criminal extradition matters (Abu Doha and Samir Ait
18 Mohamed), it is a clear violation of his agreement.

19 In correspondence to Ressam's attorney in March 2002 related to continuing the
20 sentencing date, the government stated:

21 "Because Mr. Ressam's cooperation is incomplete, [we] cannot predict
22 what sentence the government will ultimately recommend. However, the
23 greater amount of cooperation Mr. Ressam has rendered to the
24 government at the time of sentencing, the more equity he will hold in the
25 calculation of the government's sentencing recommendation. As noted
26 above, at this time, the government is not prepared to reconsider the 27
27 year floor. ***Further, based on the cooperation to date, we would not
28 recommend a sentence in the 27 year range.***"

Thus, as of March 2002, and well before Ressam breached the agreement by ceasing all
cooperation, the government had determined that its recommendation would be over 27
years.

1 **3. Ressam's Refusal to Cooperate and Rejection of the Cooperation**
2 **Agreement.**

3 Since entering into the cooperation agreement, Ressam has reneged on his
4 promise to cooperate and, in doing so, has created new and serious problems for
5 prosecutions in this country. The United States currently finds itself in the extremely
6 difficult situation of trying to proceed with these critical prosecutions after the most
7 significant evidence (Ressam's testimony) has evaporated. The situation is especially
8 troubling because the United Kingdom and Canada arrested Doha and Mohammed
9 respectively and have detained the men for several years based on the United States'
10 assurances that we had sufficient evidence to convict the men of the pending charges
11 (Doha was arrested in February 2001, as he attempted to fly from London's Heathrow
12 Airport to Saudi Arabia under a false passport. Mohammed was arrested by Canada on
13 July 2001, as he attempted to cross the border from Canada into the United States.)
14 To dismiss the charges would be a significant blow to the United States' efforts to fight
15 the global war on terrorism.

16 **4. The Report of Dr. Stuart Grassian.**

17 Ressam has attempted to justify his current refusal to cooperate by submitting to
18 the Court a report by Dr. Stuart Grassian, a psychiatrist who espouses expertise on the
19 effects of solitary confinement. Dr. Grassian's report is an interesting assemblage of
20 observations and commentary, the entirety of which suggests that Dr. Grassian
21 perceives his role to be far more that of an advocate than that of a dispassionate
22 clinician.

23 Dr. Grassian's research and methodology on the effects of solitary confinement
24 have recently come under attack. For example, in April, 2005, Grassian testified in the
25 case of Michael Ross, a serial killer and Ivy League graduate who confessed to killing
26 eight teenage girls and young women. Ross was convicted of six counts of capital
27 murder and for several years has asked that his appeals be stopped and that he be put to
28 death. Dr. Grassian, who admitted to a reporter his opinion that the death penalty

1 “doesn’t serve us well,” (Matt Apuzzo, “Psychiatrist Says Ross Wants to Go Out in
2 Blaze of Glory,” Newsday.com, April 12, 2005), has testified against Ross’ own
3 wishes, asserting that Ross’s confinement conditions led to Ross’s mental
4 incompetence. Another expert in the Ross case testified, “I have not found any research
5 that supports [Dr. Grassian’s] theory,” and she criticized Grassian’s methodology.
6 (Associated Press, “Ross Psychiatrist Says He’s Competent,” April 12, 2005).² Ross’s
7 own attorney “was especially harsh with Dr. Stuart Grassian. [The attorney] said
8 Grassian manipulated facts to make Ross fit his theory that solitary confinement can
9 create mental incompetence.” (Matt Apuzzo, “Judge Promises Ruling Soon on Ross
10 Competency,” Newsday.com, April 15, 2005). The Ross case highlights the danger
11 of this Court relying solely on Dr. Grassian’s report, without subjecting his conclusions
12 and methodology to careful scrutiny.

13 Even assuming that Dr. Grassian’s opinions are solely the result of clinical
14 objectivity and not serving a philosophical agenda, this Court must acknowledge that
15 Ressay’s time in solitary confinement was limited in duration and, for a significant
16 portion of time, at his request. After his arrest in December 1999, Ressay spent all of
17 2000 meeting extensively and frequently with his defense team preparing for trial.
18 Ressay was transferred to Los Angeles for trial in early 2001, and was in trial during
19 March and April. Within weeks of his conviction, Ressay began a series of
20 debriefings and interviews with law enforcement personnel that lasted through the end
21 of 2001 and beginning of 2002. (For a more complete picture of the extensive contact
22 Ressay had following his conviction, see Docket 357, Defendant’s Preliminary
23 Submission on the Duration and Nature of His Cooperation filed April 12, 2005.) On
24 March 1, 2002, AUSA Jerry Diskin sent a letter to Ressay’s defense team offering to
25

26 ² Dr. Grassian’s opinions have been subject to similar objections in the past, one
27 expert claiming, “Dr. Grassian’s research ‘does not stand up to the most elementary
28 form of scientific scrutiny.” McClary v. Kelly, 4 F.Supp.2d 195, 207 (W.D.N.Y.
1998).

1 assist in getting Ressam removed from solitary and placed him in the Bureau of Prisons
2 Witness Security Program. That offer was rejected. It is inconceivable that the
3 defense would have rejected the government's offer if Ressam suffered the alleged
4 extraordinary hardships of solitary confinement. Thus, factually, Dr. Grassian simply
5 is not accurately portraying Ressam's confinement. Moreover, the letter submitted to
6 this Court by the United States Attorney's Office for the Southern District of New York
7 points out that since at least April, 2004, Ressam has been in the Witness Security
8 Program, in a facility where he is not housed in solitary confinement. Thus, for at
9 least a year, his confinement conditions should have led to some change in his
10 willingness to cooperate. That Ressam has not altered his mind set suggests that he
11 believes he has achieved his objective--receiving a lesser sentence with no further
12 cooperation required.

13 **5. Conclusion.**

14 In sum, even taking into account that Ressam's purported cooperation, resulted
15 in his taking one step forward by testifying in the Haouari trial, but then two steps
16 backward by renegeing on his promise to cooperate against Doha and Mohammed. This
17 Court must consider the serious repercussions of Ressam's renegeing on his agreement
18 to cooperate - a promise which, under its terms, was to be ongoing so long as the
19 government sought his cooperation.

20 In light of this incomplete cooperation, the government's recommendation,
21 which takes *thirty years* off of the low end of Ressam's guideline range, is
22 extraordinarily generous. The government's recommendation has taken into
23 consideration the multiple occasions that Ressam has met with and provided
24 information to the United States and international law enforcement agencies, and his
25 testimony in the Haouari trial in New York. The government's recommendation has
26 also taken into account Ressam's decision to end all future cooperation with the
27 government.

1
2 **IV. GOVERNMENT'S SENTENCING RECOMMENDATION**

3 In considering the applicable sentencing guideline range, the factors under
4 § 3553(a), Ressam's cooperation in the trial of Haouari, his cooperation in providing
5 intelligence to the United States and other countries, his decision to cease his
6 cooperation, his age, and his potential danger when released, the United States
7 recommends that the Court impose a thirty-five (35) year sentence of imprisonment.

8 If Ressam had not been captured at the United States border, hundreds of
9 innocent men, women, and children would have died or been severely injured at his
10 hand. The sentence that this Court imposes must be commensurate with the
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 malevolence intended by that crime, and must acknowledge the worldwide
2 condemnation of terrorism, in all its forms.

3 DATED this 20th day of April, 2005.

4 Respectfully submitted,

5
6 S/JOHN McKAY
7 JOHN McKAY
8 United States Attorney
9 WA Bar #12935
10 United States Attorney's Office
11 700 Stewart Street, Suite 5220
12 Seattle, WA 98101
13 Telephone: 206-553-7970
14 Fax No.: 206-553-0755
15 E-Mail: John.McKay@usdoj.gov

16
17 S/MARK N. BARTLETT
18 MARK N. BARTLETT
19 First Assistant United States Attorney
20 WA Bar #15672
21 United States Attorney's Office
22 700 Stewart Street, Suite 5220
23 Seattle, WA 98101
24 Telephone: 206-553-7970
25 Fax No.: 206-553-0755
26 E-Mail: Mark.Bartlett@usdoj.gov

27
28 S/MIKE LANG
MIKE LANG
Assistant United States Attorney
WA Bar #19262
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98101
Telephone: 206-553-7970
Fax No.: 206-553-0755
E-Mail: Mike.Lang@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2005, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/FAY FRENCH _____
Fay French
Program Assistant
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101
Phone: (206) 553-2270
FAX: (206) 553-0755
E-mail: Fay.French@usdoj.gov