IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 01-188-A
	)	
ROBERT PHILIP HANSSEN,	)	
	)	
Defendant.	)	

SENTENCING MEMORANDUM

Robert Philip Hanssen is a traitor. For all the words that have been written about him, for all the psychological analyses, the speculations about his motivation, and the assessments of his character, this is, at the end of the day, all that really warrants being said about Hanssen. He is a traitor and that singular truth is his legacy.

He betrayed his country – and he did so at a time when we were locked in a bitter and dangerous cold war with the Soviet Union. Hanssen's brazen and reckless misconduct, its surpassing evil, is almost beyond comprehension. Using the very tools he acquired as an FBI counterintelligence expert, he covertly and clandestinely provided the Soviet Union and then the Russians information of incalculable significance, extraordinary breadth, and exceptionally grave sensitivity. He did so knowing that his disclosures could – and ultimately did – get people killed and imprisoned, and he did so knowing that they placed in jeopardy the safety and security of our entire nation.[1] That we did not lose the Cold War ought blind no one to the fact that Robert Philip Hanssen, for his own selfish and corrupt reasons, placed every American citizen in harm's way.

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[1] All one has to do is look at the descriptions of some of the documents he compromised to the Soviets. See, .e.g. Count 8 ("A TOP SECRET United States intelligence analysis of the effectiveness of Soviet intelligence collection efforts against certain United States nuclear weapons capabilities....") and Count 12 ("A highly-restricted TOP SECRET/SCI analysis, dated May 1987, of the Soviet intelligence threat to a specific and named highly-compartmented United States Government program to ensure the continuity of government in the event of a Soviet nuclear attack....")

He betrayed the Federal Bureau of Investigation, not only in the sense that he betrayed its core mission of protecting our national security and our citizenry, but also in the sense that, having taken an oath of office to "support and defend the Constitution of the United States against all enemies, foreign and domestic" and having sworn to "bear true faith and allegiance to the same", he betrayed his thousands of fellow agents and fellow FBI employees who, unlike Hanssen, were truly committed to the core values of Fidelity, Bravery and Integrity.

And he betrayed the American people. Hanssen had an irreducible duty of loyalty to the American people – and not because, or not just because, he was a federal law enforcement officer with official responsibility for countering the Soviet and Russian espionage threat. Rather, Hanssen owed the American people his allegiance, his constancy and his faithfulness for no better reason, and there could be no better reason, than that he enjoyed the privilege of American citizenship. Instead, by his treachery, he made this a more dangerous and volatile world in which to raise our families.

Finally, Hanssen undermined the people's confidence in our government's ability and capacity to protect and defend even the FBI, the premier law enforcement agency in the world, from the perfidy of spies. In so doing, he did injury and insult to this American institution, a harm only partially ameliorated by the recognition that it was the FBI, to its enormous credit and honor, that unmasked Hanssen and brought him to justice.

Time is not likely to heal this particular wound. It is as raw, as penetrating, and as grievous today as it was the day Robert Philip Hanssen was arrested. In large part that is a product of the catastrophic impact of Hanssen's misconduct, beginning with the executions of Sergey Motorin and Valeriy Martynov, two KGB officers recruited by the United States intelligence services, compromised by Hanssen, and put to death by the Soviet Union. Even though Aldrich Ames also compromised each of them, and thus shares responsibility for their executions, this in no way mitigates or diminishes the magnitude of Hanssen's crimes. Their blood is on his hands.

And that is only the beginning: Hanssen's technical compromises cost the United States not only the value of its investments but the priceless value of lost opportunities to gather intelligence of the most vital importance to the United States. Hanssen's systematic compromise of comprehensive intelligence material concerning past successes and failures, current activities and capacities, and future intelligence plans, could only have left the Soviets and Russians in stunned disbelief that they should be privy to such material. Hanssen's betrayal of other human sources and assets not only compromised their value as reliable sources of intelligence information, but jeopardized their very lives. These individuals sided with America and made the hard and dangerous choice to help our country, not knowing of course that their existence and cooperation would come to be known to an individual who had made a profoundly different choice as to his basic allegiance. Similarly, Hanssen's clandestine warnings to the Soviets and Russians about some of the most sensitive investigative and intelligence collection activities of the United States intelligence community – such as the espionage investigation of Felix Bloch and ongoing technical operations of extraordinary value and significance – gave the Soviets and Russians the knowledge and ability to frustrate and even thwart essential intelligence activities of the United States Government.

For his betrayal of our country, and for the unpardonable consequences of his misconduct, Hanssen deserves to forfeit his right ever to live again within our community and within our society.[2]

COOPERATION

Before Hanssen pled guilty, he faced a potential death sentence. Specifically, fourteen of the counts in the indictment carried the required statutory language that made them death penalty eligible. As part of the plea, the United States gave up the potential for a death penalty

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[2] The parties agreed and stipulated as part of the Plea Agreement that the appropriate sentence for the defendant was life imprisonment without parole or reductions for good behavior or for any other reason. See ¶ 5 of the Plea Agreement. The Court accepted the Plea Agreement and, pursuant to a Rule 11(e)(3) Order, agreed to embody in its judgment and sentence the agreed upon disposition. See ¶ 6 of the Plea Agreement and the Court's Rule 11(e)(3) Order entered June 14, 2001.

sentence and it did so for two principal reasons. First, a contested trial of this matter would have itself imposed a severe burden on our national security. Second, it was essential to the United States intelligence community that it obtain a thorough and comprehensive debriefing of the defendant and the only way to obtain this was through a Plea Agreement. Indeed, it is a fundamental requirement of the defendant's Plea Agreement that he "cooperate fully, truthfully and completely with the United States...." see Plea Agreement at ¶ 10, the violation of which would constitute a breach of the agreement and subject it to termination[3].

It is now ten months since the entry of the defendant's guilty plea and, while the defendant's cooperation obligation is "a lifetime commitment", see Plea Agreement at ¶ 10(g), it is appropriate that we assess at this time whether the defendant has honored his cooperation obligation.

Four United States Government entities have debriefed Hanssen: (1) The FBI; (2) The Hanssen Damage Assessment Team ("HDAT"), an interagency task force created at the direction of the Director of Central Intelligence for the purpose of assessing the damage caused by Hanssen; (3) The Commission for the Review of FBI Security Programs (the "Webster Commission"); and (4) the Inspector General of the Department of Justice. Each entity, at the request of the United States Attorney's Office, has written a letter or memorandum to this office summarizing their assessment of Hanssen's cooperation.[4]

At the outset, it should be noted that the defendant submitted to several hundred hours of debriefings and, with the exception of a brief time period after September 11th when FBI personnel were unavailable to conduct debriefings, Hanssen has met with law enforcement and

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[3] It should be emphasized here that a party claiming a breach of a Plea Agreement has a heavy burden of proof, whether it is a defendant attempting to get out of a deal he regrets or the Government asserting that a defendant has not lived up to the terms of his agreement. In either case, the party claiming a breach must prove by a "preponderance of the evidence" that the other party has broken the agreement in a material manner. See United States v. Conner, 930 F.2d 1073, 1076 (4th Cir. 1991). See also ¶32 of the Plea Agreement.

[4] Although several of these documents are excerpted in this memorandum, the full documents contain sensitive and/or classified material and, therefore, are filed with the Court in an in camera and classified submission, along with the results of two polygraph examinations of the defendant.

intelligence entities continuously since the entry of his plea. The FBI debriefed Hanssen on 41 separate occasions, including two proffer sessions prior to entry of the plea. The HDAT debriefed Hannsen on 27 separate occasions. Coupled with the interviews done by the Webster Commission and the IG, Hanssen submitted to some 75 separate interviews during this ten month period. In addition, he submitted to polygraph examinations conducted by two different entities, underwent psychological evaluations and testing and, at the request of the United States Attorney's Office, waived both an attorney-client privilege and a priest-penitent privilege.

We turn first to the FBI's assessment of Hanssen's cooperation. In the evaluation of a defendant's cooperation, the United States Attorney's Office principally relies upon the investigative agency responsible for the case. In this case, that is the Washington Field Office of the FBI. The FBI's judgment, which was based on some six months of interviews, is that Hanssen was "in substantial compliance with the terms of his plea agreement." Specifically, the FBI notes, Hanssen "provided information during the debriefings that was identical or consistent with independent investigative results, and in some cases was previously unknown to us and damaging to himself."

HDAT and the IG, however, perceived Hanssen's cooperation in essentially negative terms. Both entities expressed to this Office serious reservations about Hanssen's candor and cooperation. The HDAT particularly questioned Hanssen's claims of a poor memory as an excuse for either not engaging fully in the debriefing or as a means to hide facets of his activity. Similarly, the IG found that Hanssen's answers were often contradictory, inconsistent, or illogical, and found Hanssen's cooperation concerning his finances, the significance of his espionage and his motives to be "particularly problematic."

Finally, the Webster Commission concluded that it had no reason to conclude that Hanssen had not responded to its questions fully, truthfully and completely.

Thus, this Office has before it four evaluations, two of which can generally be characterized as positive and two which can generally be characterized as negative.[5] In light of these assessments, this Office considered whether it had a sufficient basis by which to move this Court to abrogate the Plea Agreement, in other words, whether we have sufficient hard and admissible evidence by which to convince a Court that he has broken his promise of full and candid cooperation. There are three factors that convince us that we could not carry this burden, even if we chose to declare a breach of the agreement:

First, this case does not involve a defendant who refused to be debriefed at all or who cut off debriefings at some point in time; rather, this defendant has submitted to hundreds of hours of debriefing, on some 75 separate occasions, underwent psychological testing and, upon request, executed waivers to permit the Government to seek information which was otherwise privileged.

Second, while we are troubled and concerned with the IG and HDAT reservations about Hanssen's candor, a breach proceeding would require an evidentiary hearing in which the Government would have to prove to the Court's satisfaction, and by a preponderance of the evidence, that the defendant breached his agreement. Typically, that would suggest evidence of either a complete failure to cooperate or the making of false statements of such an explicit and unequivocal nature that it could even subject a defendant to a false statements or perjury prosecution. We do not believe we have that here. Rather, what we have here are conscientious analytical judgments and assessments which have led both HDAT and the IG to have serious reservations about the defendant's candor and cooperation but which do not permit abrogation of the plea agreement. As the HDAT acknowledged in its report: "We recognize that our assessment of Hanssen's cooperation may not give you hard, actionable facts that can withstand legal scrutiny."

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[5] In addition, this Office also has before it two polygraph summaries, each of which is classified SECRET, and therefore cannot be further described in this pleading. However, both summaries are submitted in camera to the Court.

Finally, we have before us the considered judgment of the FBI, signed by a senior FBI Headquarters official, and reflecting a conclusion based on approximately six months of comprehensive debriefings, which states that the defendant was in "substantial compliance" with his obligation of full, truthful and complete cooperation.

Given these factors, the Government cannot carry its burden of proving a breach of the Plea Agreement. It should be emphasized here that, even if we could carry this burden of proof, that would not be dispositive as to the appropriate course of action. The Government would also have to consider, evaluate and weigh the burden on national security associated with proceeding to trial, a principal concern and consideration in every national security prosecution. In this respect, we would note that Paul J. Redmond, Chief of the Hanssen Damage Assessment Team, has advised the Department of Justice that despite his significant reservations about Hanssen's candor and completeness, on balance he believes it would not be in the national security interest of the United States to abrogate the plea agreement and put Hanssen on trial.

WHEREFORE, we respectfully request that the Court sentence Robert Philip Hanssen to life in prison.[6]

Respectfully submitted,
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6 ¶ 21 of the Plea Agreement concerns the cooperation of the defendant's wife, Bernadette Hanssen. The paragraph indicates that, if Mrs. Hanssen continues to be fully cooperative, the Government will invoke at the time of sentencing the provisions of 5 U.S.C. § 8318(e) to provide Mrs. Hanssen the equivalent of a survivor's annuity. Prior to sentencing, the Government will advise the Court as to whether Mrs. Hanssen has continued to be fully cooperative. If so, the Government will provide the Court a copy of the certification contemplated by 5 U.S.C. § 8318(e).