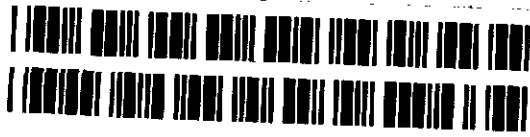


Judge Marsha J. Pechman



07-CR-00187-PLAGR

FILED ENTERED
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MAR 14 2008

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT ALAN SOLOWAY,

Defendant.

187 MS?
NO. CR07-0309JLR

PLEA AGREEMENT

The United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Kathryn A. Warma, Assistant United States Attorney for said District, and the defendant, ROBERT ALAN SOLOWAY, and his attorneys, Richard J. Troberman and Robert J. Wayne, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charges contained in the Indictment:

a. Mail Fraud, as charged in Count 8, in violation of Title 18, United States Code, Section 1341;

b. Fraud in Connection with Electronic Mail, as charged in Count 18, in violation of Title 18, United States Code, Sections 1037(a)(3) and (b)(1)(A);

and

1 c. Willful Failure to File Return, as charged in Count 26, in violation of
2 Title 18, United States Code, Section 7203.

3 By entering this plea of guilty, Defendant hereby waives all objections to the
4 form of the charging document. Defendant further understands that before entering his
5 plea of guilty, Defendant will be placed under oath. Any statement given by Defendant
6 under oath may be used by the United States in a prosecution for perjury or false
7 statement.

8
9 2. Elements of the Offenses.

10 a. The elements of the offense of Mail Fraud, as charged in Count 8, in
11 violation of Title 18, United States Code, Section 1341, are as follows:

12 First, Defendant devised or intended to devise a scheme or artifice to
13 defraud, or for obtaining money or property by means of material false or fraudulent
14 pretenses, representations, or promises;

15 Second, Defendant knew that the promises or statements were false;

16 Third, the promises or statements were of a kind that would reasonably
17 influence a person to part with money or property;

18 Fourth, Defendant acted with intent to defraud; and

19 Fifth, Defendant used, or caused to be used, the mails to carry out or attempt
20 to carry out an essential part of the scheme.

21 b. The elements of Fraud in Connection with Electronic Mail, as
22 charged in Count 18, in violation of Title 18, United States Code, Sections 1037(a)(3) and
23 (b)(1)(A), are as follows:

24 First, Defendant materially falsified header information in electronic mail
25 messages;

26 Second, the electronic mail messages were commercial;
27
28

1 Third, the volume of the electronic mail messages exceeded 100 messages
2 during a 24 hour period, 1,000 messages during a 30-day period, or 10,000 messages
3 during a 1-year period;

4 Fourth, Defendant intentionally initiated the transmission of such messages;

5 Fifth, Defendant did so in or affecting interstate or foreign commerce; and

6 Sixth, the offense was committed in furtherance of a felony under the laws
7 of the United States or of any State.

8 c. The elements of the offense of Willful Failure to File Return, as
9 charged in Count 26, in violation of Title 26, United States Code, Section 7203, are as
10 follows:

11 First, Defendant was a person required to file a federal income tax return;

12 Second, Defendant failed to file at the time required by law; and

13 Third, the failure to file was willful.

14
15 3. The Penalties. Defendant understands that the statutory penalties for the
16 offenses to which he is pleading guilty are as follows:

17 a. Count 8 (Mail Fraud): imprisonment for up to Twenty (20) years, a
18 fine of up to Two Hundred Fifty Thousand Dollars (\$250,000.00), a period of supervision
19 following release of Three (3) years, and a One Hundred Dollar (\$100.00) penalty
20 assessment.

21 b. Count 18 (Fraud in Connection with Electronic Mail): imprisonment
22 for up to Five (5) years, a fine of up to Two Hundred Fifty Thousand Dollars
23 (\$250,000.00), a period of supervision following release of Three (3) years, and a One
24 Hundred Dollar (\$100.00) penalty assessment.

25 c. Count 26 (Willful Failure to File Return): imprisonment for up to
26 One (1) year, a fine of up to Twenty-Five Thousand Dollars (\$25,000.00) for an individual
27 and a fine of up to One Hundred Thousand Dollars (\$100,000.00) for a corporation, the
28

1 costs of prosecution, a period of supervision following release of One (1) year, and a One
2 Hundred Dollar (\$100.00) penalty assessment.

3 Defendant agrees that the penalty assessment shall be paid at or before the
4 time of sentencing.

5 Defendant understands that in addition to any term of imprisonment and/or
6 fine that is imposed, the Court may order Defendant to pay restitution to any victim of the
7 offense, as required by law. Defendant further understands that a consequence of pleading
8 guilty may include the forfeiture of certain property, either as a part of the sentence
9 imposed by the Court, or as a result of civil judicial or administrative process.

10 Defendant agrees that any monetary penalty the Court imposes, including the
11 special assessment, fine, costs or restitution, is due and payable immediately, and further
12 agrees to submit a completed Financial Statement of Debtor form as requested by the
13 United States Attorney's Office.

14 Defendant understands that supervised release is a period of time following
15 imprisonment during which he will be subject to certain restrictions and requirements.
16 Defendant further understands that if supervised release is imposed and he violates one or
17 more of its conditions, he could be returned to prison for all or part of the term of
18 supervised release that was originally imposed. This could result in Defendant serving a
19 total term of imprisonment greater than the statutory maximum stated above.

20
21 4. Rights Waived by Pleading Guilty. Defendant understands that, by pleading
22 guilty, he knowingly and voluntarily waives the following rights:

23 a. The right to plead not guilty, and to persist in a plea of not guilty;

24 b. The right to a speedy and public trial before a jury of Defendant's
25 peers;

26 c. The right to the effective assistance of counsel at trial, including, if
27 Defendant could not afford an attorney, the right to have the Court appoint one for
28 Defendant;

1 d. The right to be presumed innocent until guilt has been established at
2 trial, beyond a reasonable doubt;

3 e. The right to confront and cross-examine witnesses against Defendant
4 at trial;

5 f. The right to compel or subpoena witnesses to appear on Defendant's
6 behalf at trial;

7 g. The right to testify or to remain silent at trial, at which trial such
8 silence could not be used against Defendant; and

9 h. The right to appeal a finding of guilt or any pretrial rulings.
10

11 5. United States Sentencing Guidelines. Defendant understands and
12 acknowledges that, at sentencing, the Court must consider the sentencing range calculated
13 under the United States Sentencing Guidelines, together with the other factors set forth in
14 Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances
15 of the offenses; (2) the history and characteristics of the defendant; (3) the need for the
16 sentence to reflect the seriousness of the offense, to promote respect for the law, and to
17 provide just punishment for the offense; (4) the need for the sentence to afford adequate
18 deterrence to criminal conduct; (5) the need for the sentence to protect the public from
19 further crimes of the defendant; (6) the need to provide the defendant with educational and
20 vocational training, medical care, or other correctional treatment in the most effective
21 manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims;
22 and (9) the need to avoid unwarranted sentence disparity among defendants involved in
23 similar conduct who have similar records. Accordingly, Defendant understands and
24 acknowledges that:

25 a. The Court will determine Defendant's applicable Sentencing
26 Guidelines range at the time of sentencing;
27
28

1 b. After consideration of the Sentencing Guidelines and the other factors
2 in 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
3 maximum term authorized by law;

4 c. The Court is not bound by any recommendation regarding the
5 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
6 range offered by the parties, or by the United States Probation Department; and

7 d. Defendant may not withdraw a guilty plea solely because of the
8 sentence imposed by the Court.

9
10 6. Ultimate Sentence. Defendant acknowledges that no one has promised or
11 guaranteed what sentence the Court will impose.

12
13 7. Statement of Facts. The parties agree on the following facts in support of
14 Defendant's guilty plea and sentencing. Defendant admits he is guilty of the charged
15 offenses.

16 a. At all times material, ROBERT ALAN SOLOWAY ("SOLOWAY")
17 was the sole owner, officer, operator and employee of NEWPORT INTERNET
18 MARKETING CORPORATION, also variously known as "Newport IM Corporation,"
19 "NIM," and "NPR," (hereinafter "NIM").

20 b. SOLOWAY first incorporated and operated NIM in California on or
21 about May of 1997.. In or about January, 2000, SOLOWAY moved to Oregon, where he
22 lived and operated NIM from several locations before relocating to Seattle, Washington on
23 or about March 18, 2004. From on or about March 18, 2004, until his arrest on May 30,
24 2007, SOLOWAY resided at 1200 Western Avenue, Apartment 17E, Seattle, Washington
25 98101, and operated NIM from his residence at that address.

1 c. Beginning at a date uncertain, but at least by March 26, 2006¹, and
2 continuing until at least May 30, 2007, SOLOWAY and NIM knowingly and willfully
3 devised a scheme to defraud, and for obtaining money and property by means of material
4 false and fraudulent pretenses, representations, and promises; and in executing and
5 attempting to execute the scheme, knowingly caused things to be sent and delivered by the
6 United States Postal Service and private or commercial interstate carriers.

7 d. The essence of the scheme to defraud was that SOLOWAY and NIM
8 created and published a series of websites ("NIM websites") on the World Wide Web
9 during the period from November 28, 2003, until May 23, 2007, using a variety of
10 "company" names, and hosted with dozens of different domain names. The content of the
11 websites created and published by SOLOWAY and NIM consisted of commercial
12 advertisements for "broadcast email" services and products (that is, SOLOWAY was
13 offering, for a price, to either send out a high volume of e-mail messages on behalf of a
14 customer, or to sell a software product to customers that would enable them to send out
15 their own high volume e-mail messages). On their websites, SOLOWAY and NIM made
16 numerous material false and fraudulent representations regarding the "broadcast email"
17 services and products that they offered for sale. They also made material false and
18 fraudulent representations regarding the availability of technical assistance and the
19 payment of "full 100%" refunds to dissatisfied product customers.

20 e. The "service" advertised for sale by SOLOWAY and NIM was the
21 transmission over the Internet of a high volume of e-mail messages containing whatever
22 advertisement the customer supplied. Beginning in mid-2006, different "levels"
23 ("bronze," "silver," "gold," and "platinum") of this service were available; with each

24 _____
25 ^{March 26,} ^{kw/cB}
26 ^{March 26,} ^{kw/cB}
27 ^{March 26,} ^{kw/cB}
28 ^{March 26,} ^{kw/cB}

¹The parties disagree as to when the fraudulent scheme began. For purposes of this Plea, it is sufficient to agree that the scheme began by at least January, 2006. However, the government intends to submit evidence at the time of sentencing establishing that the scheme began at an earlier date. While the defendant may object to the government's evidence, and present his own evidence, the parties agree that all this evidence may be presented and considered by the Court in determining the number of victims and the amount of loss and any other applicable Sentencing Guideline enhancement. The defendant reserves the right to challenge the total number of victims and the total loss amount arising from the entire scheme.

1 successively "higher" level promising a higher number of e-mailed messages, at a
2 successively higher price. For example, a customer purchasing the "bronze" level of
3 service could purportedly have his "email ad [sent] to 2,000,000 emails over 15 days" for
4 \$195.00; and a customer purchasing the service at the "platinum" level purportedly would
5 have his "email ad [sent] to 20,000,000 emails over 15 days" for a cost of \$495.00.

6 f. The "product" that was advertised for sale was a "broadcast email
7 package" containing a handbook and software that would provide "everything [the
8 customer would] need to send lifetime broadcast email campaigns to millions of people for
9 free," along with e-mail addresses. Beginning in mid-2006, the number of e-mails ranged
10 from 5,000,000 ("bronze level" for \$195.00), to up to 80,000,000 e-mail addresses
11 ("platinum level" for \$495.00). SOLOWAY and NIM would send the "broadcast email
12 product" (software) to paying customers via the United States Postal Service or a private
13 or commercial interstate carrier.

14 g. SOLOWAY and NIM made numerous representations on the NIM
15 websites that were designed and intended to encourage readers to purchase the "broadcast
16 email services" or "product," including the ability of NIM to reach tens of millions of
17 potential customers with "broadcast email"; the relatively low cost of "broadcast email" in
18 relation to its effectiveness as a marketing and sales tool; and the potential significant
19 increases in sales that could be expected by those who purchased the NIM "broadcast
20 email services" or "product."

21 h. SOLOWAY and NIM made numerous material false and fraudulent
22 misrepresentations on their online NIM websites regarding the "services" and "product"
23 that were there offered for sale, including the following:

24 ~~(1) prior to May 2006, SOLOWAY and NIM represented that their~~
25 ~~service and package consisted of valid e-mail addresses;~~ *KW/CB*

26 / (2) beginning in May, 2006, SOLOWAY and NIM represented that
27 that their service and package consisted of opt-in e-mail addresses;

1 2. ~~2~~) that NIM provided "24/7 Customer and Technical Support
2 Department with everything you need";

3 3. ~~3~~) that if a purchaser of the software product did "not receive at least
4 a 400% increase in sales after using [the] broadcast email package for 90 days," the
5 customer could "simply return it . . . for a full 100% refund, no questions asked."

6 i. As a further part of the scheme, SOLOWAY advertised and promoted
7 the NIM websites by generating and transmitting multiple commercial e-mail messages
8 over the Internet, that contained an advertisement for "free" broadcast email services "for
9 charities," and also a hyper-link to the NIM website. The volume of these commercial e-
10 mail messages exceeded 100 in a 24 hour period, 1,000 in a 30 day period, and exceeded
11 10,000 in any one year period between the dates of January 1, 2004 and May 30, 2007.

12 j. The multiple commercial e-mail messages generated and transmitted
13 by SOLOWAY and NIM to advertise and link to the NIM websites contained false and
14 fraudulent headers. SOLOWAY and NIM utilized a computer program with the intent of
15 creating the false and fraudulent headers. The headers were false and fraudulent in one of
16 two different ways: 1) the "from" field in the header would contain a false and non-
17 existent e-mail address, or 2) the "from" field in the header would be a copy of the e-mail
18 address contained in the "to" field in the header.

19 k. The use of false and forged headers hid the identity of the true
20 originating sender (SOLOWAY and NIM) of the spammed e-mail messages from the
21 victim recipients. If the recipient opened the e-mail there would be a link to the NIM
22 website. Further, the technique of using the same address in the "from" and "to" field of
23 the header was intended to circumvent "spam filters" which are designed to keep spam out
24 of network systems or e-mail "in boxes."

25 l. One of the victims who purchased the "broadcast email product" was
26 M.F. of Cerritos, CA. M.F. first became aware of SOLOWAY and NIM's website after
27 receiving multiple unsolicited commercial e-mail advertisements for the same. M.F. was
28 running a small on-line business, and thought that his business would realize the benefits

1 advertised in the NIM website if he purchased their software "product." Relying on the
2 false and fraudulent material representations made on the NIM website, M.F. purchased
3 the "Silver Emailing Package Software" from SOLOWAY and NIM on May 30, 2006, for
4 \$195.00 plus shipping and handling. The "email distribution product" was delivered via
5 Fed Ex from SOLOWAY to M.F. on or about June 2, 2006. After using the "product" for
6 approximately five days, M.F.'s Internet Service Provider first threatened to, and then did
7 shut off his internet service, due to transmission of spam, using SOLOWAY'S product.
8 The costs of identifying the problem and the consequences of disconnection from the
9 Internet caused losses to M.F.'s family's business. Without waiting 90 days, M.F. sought
10 a refund of \$195 from SOLOWAY and NIM, which was denied. M.F. could not make any
11 followup telephone contact with SOLOWAY or NIM.

12 m. During calendar year 2005, SOLOWAY received gross revenue from
13 all sources totaling \$309,725.00. Although SOLOWAY was required to file an income tax
14 return for 2005, he willfully failed to file an income tax return for 2005 before September
15 15, 2006, or at any time thereafter.

16
17 8. Loss Amount. The parties agree and stipulate that the correct amount of the
18 loss for sentencing purposes will be determined by the Court at the time of sentencing.

19
20 9. Restitution. Defendant shall make restitution in an amount to be determined
21 by the Court at the time of sentencing. Said amount shall be due and payable immediately
22 and shall be paid in accordance with a schedule of payments as set by the United States
23 Probation Office and ordered by the Court.

24
25 10. Forfeiture. Defendant agrees to forfeit to the United States immediately all
26 of his right, title and interest in any and all property, real or personal, constituting or
27 derived from proceeds traceable to violations of the mail fraud or fraud in electronic mail
28 statutes (18 U.S.C. §§ 1037 and 1341), which are subject to forfeiture pursuant to Title 18,

1 United State Code, Section 1037(c)(2), and Title 18, United States Code, Section
2 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which may include some
3 or all of the following assets:

4 a. Money Judgment

5 The sum in the amount determined by the Court, at the time of
6 sentencing, representing the amount of proceeds obtained as a result of the offenses
7 charged in the Indictment for which Defendants are jointly and severally liable.

8 b. Contents of Bank Accounts

9 The following amount of currency or other monetary instruments
10 credited to or contained in the following account:

11 1) \$5,825.87 contained in West America account; owner: Newport
12 Internet Marketing, account number ****3285.

13 c. Personal Property

14 1) 24 pairs of sunglasses with a fair market value of \$3,724.34
15 (detailed inventory contained in Attachment A);

16 2) 27 pairs of shoes with a fair market value of \$7,412.00 (detailed
17 inventory contained in Attachment A);

18 3) 51 outerware garments with a fair market value of \$13,429.00
19 (detailed inventory contained in Attachment A);

20 4) 6 pairs of pants with a fair market value of \$405.00 (detailed
21 inventory contained in Attachment A);

22 5) 10 shirts with a fair market value of \$780.00 (detailed inventory
23 contained in Attachment A);

24 6) watch and purse with a fair market value of \$575.00 (detailed
25 inventory contained in Attachment A); and

26 7) electronic equipment with a fair market value of \$2,094.00
27 (detailed inventory contained in Attachment A).

28 d. Computer

1 1) Sony Vaio desktop computer, SN # 3014916, subject to forfeiture
2 as facilitating property under Title 18, United States Code, Section 1037(c)(2).

3 Defendant agrees to fully assist the United States in the forfeiture of the listed
4 assets and to take whatever steps are necessary to pass clear title to the United States,
5 including but not limited to: surrendering title and executing any documents necessary to
6 effectuate such forfeiture; assisting in bringing any assets located outside the United
7 States within the jurisdiction of the United States; and taking whatever steps are
8 necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted,
9 hidden, or otherwise made unavailable for forfeiture. Defendant agrees not to file a
10 claim to any of the listed property in any civil forfeiture proceeding, administrative or
11 judicial, which may be initiated.

12 Defendant further agrees to provide a truthful statement regarding all of his
13 assets, and to make a full and complete disclosure of all assets in which Defendant has
14 any interest or over which Defendant exercises control and those which are held or
15 controlled by a nominee. Defendant further agrees to submit to a polygraph
16 examination on the issue of assets if it is deemed necessary by the United States.

17 The United States reserves its right to proceed against any remaining assets not
18 identified in this Plea Agreement, including any property in which Defendant has any
19 interest or control, if said assets, real or personal, tangible or intangible, constitute or
20 are traceable to proceeds or facilitated violation of Title 18, United States Code, Section
21 1037, or are proceeds traceable to violations of Title 18, United States Code, Sections
22 1341 or 1343.

23
24 11. Cooperation with Internal Revenue Service. Defendant agrees to fully
25 cooperate with the Internal Revenue Service and its auditors and agents to determine his
26 income tax liability beginning with calendar year 2005, and continuing with calendar years
27 2006 and 2007. Defendant understands that this Plea Agreement does not preclude the
28 Internal Revenue Service from assessing and determining any additional civil tax,

1 penalties, and/or interest that may be owed by Defendant. In addition, Defendant
2 understands that he is required to pay the costs of the tax offense prosecution for Count
3 26..
4

5 12. Acceptance of Responsibility. The United States acknowledges that
6 Defendant has assisted the United States by notifying the authorities of his intention to
7 plead guilty, thereby permitting the Court to allocate its resources efficiently. If at the time
8 of sentencing, the United States remains satisfied that Defendant has accepted
9 responsibility, then it will recommend a sentence that takes this acceptance of
10 responsibility into consideration. Defendant understands and agrees that the United States
11 will base its recommendation on factors set forth in the United States Sentencing
12 Guidelines, including Section 3E1.1.
13

14 13. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,
15 the United States Attorney's Office for the Western District of Washington agrees to
16 dismiss the remaining counts of the Second Superseding Indictment at the time of
17 sentencing, and not to prosecute Defendant for any additional offenses known to it as of
18 the time of this Agreement that are based upon evidence in its possession at this time, or
19 that arise out of the conduct giving rise to this investigation. In this regard, Defendant
20 recognizes that the United States has agreed not to prosecute all of the criminal charges
21 that the evidence establishes were committed by Defendant solely because of the promises
22 made by Defendant in this Agreement. Defendant acknowledges and agrees, however,
23 that for purposes of preparing the Presentence Report, the United States Attorney's Office
24 will provide the United States Probation Office with evidence of all relevant conduct
25 committed by Defendant.
26
27
28

1 14. Waiver of Appeal. Defendant is aware that 18 U.S.C. § 3742 gives the right
2 to appeal the sentence to be imposed, and that other federal statutes give Defendant the
3 right to appeal other aspects of the conviction. In consideration of the United States's
4 agreement to dismiss the remaining counts of the Second Superseding Indictment, and not
5 to prosecute Defendant for additional offenses, Defendant knowingly and voluntarily
6 agrees to waive the following rights:

7 a. The right, conferred by 18 U.S.C. § 3742, to appeal the sentence
8 imposed by the Court;

9 b. The right to appeal any aspect of Defendant's conviction, including
10 any pretrial suppression matters or other pretrial dispositions of motions and other issues;
11 and

12 c. The right to bring any collateral attack against Defendant's conviction
13 or sentence, except as it may relate to the effectiveness of legal representation.
14

15 15. Statute of Limitations. In the event that this Agreement is not accepted by
16 the Court for any reason, or Defendant has breached any of the terms of this Plea
17 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
18 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
19 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea
20 Agreement by Defendant is discovered by the United States Attorney's Office.
21

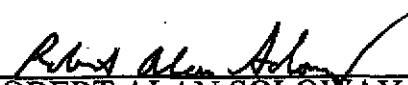
22 16. Post-Plea Conduct. Defendant understands that the terms of this Plea
23 Agreement apply only to conduct that occurred prior to the execution of this Agreement.
24 If, after the date of this Agreement, Defendant should engage in illegal conduct, or
25 conduct that is in violation of his conditions of release (examples of which include, but are
26 not limited to: obstruction of justice, failure to appear for a court proceeding, criminal
27 conduct while pending sentencing, and false statements to law enforcement agents, the
28 Pretrial Services Officer, Probation Officer or Court), the United States is free under this


1 Agreement to seek a sentence that takes such conduct into consideration. Such a sentence
2 could include a sentencing enhancement under the United States Sentencing Guidelines or
3 an upward departure from the applicable sentencing guidelines range.
4

5 17. Voluntariness of Plea. Defendant acknowledges that he has entered into this
6 Plea Agreement freely and voluntarily, and that no threats or promises, other than the
7 promises contained in this Plea Agreement, were made to induce Defendant to enter these
8 pleas of guilty.
9


10 18. Completeness of Agreement. The United States and Defendant
11 acknowledge that these terms constitute the entire Plea Agreement between the parties.
12 This Agreement only binds the United States Attorney's Office for the Western District of
13 Washington. It does not bind any other United States Attorney's Office or any other office
14 or agency of the United States, or any state or local prosecutor.


15 Dated this 14th day of March, 2008.

16
17 
18 ROBERT ALAN SOLOWAY
19 Defendant

20 
21 Richard J. Troberman
22 Attorney for Defendant

23 
24 Robert J. Wayne
25 Attorney for Defendant

26 
27 Carl Blackstone
28 Assistant United States Attorney


Kathryn A. Warma
Assistant United States Attorney