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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

THE UNITED STATES OF AMERICA,)
) No. CR 07-187 MJP
Plaintiff,)
)
vs.)
)
ROBERT ALAN SOLOWAY,)
)
Defendant.)
_____)

VERBATIM TRANSCRIPT OF PROCEEDINGS
OF

A DETENTION HEARING

BEFORE THE HONORABLE JAMES P. DONOHUE

June 13, 2006

APPEARANCES

For Plaintiff United States: Kathryn Warma

For Defendant Soloway: Richard Troberman

Also Present: Courtney Knudsen, USPTS

Transcribed from CD recording using word processing equipment

Transcribed by Brian Killgore

1 (Proceedings of 6/13/2007)

2 THE CLERK: All rise. The United States District Court
3 for the Western District of Washington is now in session the
4 Honorable James P. Donohue presiding.

5 THE COURT: Good morning. Please be seated.

6 THE CLERK: Your Honor, the matter before you is
7 scheduled for a detention hearing in Cause Number CR 07-187,
8 assigned to Judge Pechman, United States v. Robert Soloway.

9 Will counsel please make appearances?

10 MS. WARMA: Good morning, your Honor, Kathryn
11 Warma on behalf of the United States.

12 THE COURT: Good morning, Ms. Warma.

13 MR. TROBERMAN: Good morning, your Honor, Richard
14 Troberman on behalf of the defendant Robert Soloway who is
15 present this morning for the detention hearing.

16 THE COURT: Good morning, Mr. Troberman. Good
17 morning, Mr. Soloway.

18 We are here on the government's motion to detain Mr.
19 Soloway pending trial in this matter.

20 In anticipation of the motion, I have re-reviewed the
21 indictment in this case. I also reviewed Pretrial Services'
22 report dated May 30, 2007, and June 5, 2007.

23 I reviewed the government's exhibits for detention
24 hearing bearing a date of May 30, 2007.

25 I see on my desk there appears -- I assume that that

1 has been replaced by the exhibit hearing notebook that I
2 have dated June 12, 2007?

3 MS. WARMA: That's correct, your Honor.

4 THE COURT: I have also reviewed the memorandum
5 filed on behalf of Mr. Soloway dated June 12, 2007.

6 At this point I will hear, Ms. Warma, from the
7 government.

8 MS. WARMA: Thank you, your Honor.

9 As you are aware, there are two principal factors that
10 the Court is asked to consider in terms of detention, and
11 those are serious risk a person will flee, and serious risk
12 that the person will obstruct or attempt to obstruct
13 justice.

14 We believe, your Honor, that we have clear and
15 convincing evidence that both of those conditions exist in
16 this case.

17 The factors that the Court is to consider in making
18 that assessment are set out at 3142G, and what I would
19 propose to do, your Honor, is to move through a number of
20 exhibits for your consideration and then address those
21 factors, tie the exhibits back to those factors.

22 What I would like to do, preliminarily, is review the
23 scheme itself and the components of the scheme. I
24 understand your Honor has read the indictment and certainly
25 that gives part of it, but the scheme was this: Beginning

1 no later than November of 2003 -- is the date we have
2 charged, because that was the time that Mr. Soloway moved to
3 Washington -- he began a scheme of mail fraud and wire fraud
4 that surrounded a company that he has variously called
5 Newport Internet Marketing and other things.

6 Through that company Mr. Soloway sold two things: He
7 sold what he characterized as broadcast e-mail services and
8 what he characterized as a broadcast e-mail product -- that
9 he would sell to people so that they could do their own,
10 what he called, "broadcast e-mail."

11 Those products and services were sold through a
12 website, a series of websites that Mr. Soloway has published
13 on a series of different domains, and he has advertised the
14 website and his services also through spammed messages.

15 On the website that he has published, he has made
16 fraudulent representations with respect to the services and
17 the product that he has sold; he has made fraudulent
18 representations with respect to the technical service he
19 will provide in support of those products; and he has
20 provided fraudulent representations with respect to
21 guarantees and money back.

22 The spammed messages that Mr. Soloway has sent out to
23 advertise his product and his website are criminal spam as
24 of January 1, 2004 -- in part because they contain,
25 routinely, false and forged header information -- that is he

1 makes it appear as though other people are responsible for
2 the spam, and they are sent using a network of proxy
3 computers. That is done to hide the originating IP address
4 of the spam messages.

5 Many of the forged headers that are used actually
6 contain the domain names or the e-mail addresses of real
7 people. As a result of that, these other real people or
8 real businesses have been blamed for criminal spam that has
9 been sent by Mr. Soloway. Many times their businesses have
10 suffered severe financial effects as a result of that, and
11 those have included their e-mail traffic being blacklisted
12 because it has been identified with spam.

13 Now as I proceed through these exhibits, I would like
14 to first take you to an example of Mr. Soloway's website,
15 and part of the reason for that is to again underscore the
16 categories of victims that he has impacted with his conduct.
17 And then I would like to demonstrate to the Court, through
18 exhibits, how he has dealt with the victims of his conduct,
19 which goes to the risk that he will obstruct justice if
20 released. And then I would like to go through some of the
21 financial information that is available in this case, which
22 we believe supports a risk of flight.

23 So if your Honor would turn to what has been marked
24 Exhibit 5, and these exhibits will -- we will display
25 electronically.

1 THE COURT: Exhibit 5 bearing Bates 71?

2 MS. WARMA: Right, and I am actually taking your
3 Honor to the second page of that exhibit, which is Bates
4 stamp 72.

5 The material in Exhibit 5 consists of what is called
6 "screen captures" of one of the iterations of Mr. Soloway's
7 website. The website has been published, as I indicated,
8 using a variety of -- based from a variety of different
9 domains, and also employing various names for the company.

10 If your Honor will notice in this particular example --
11 maybe this will work -- he has used the company name NPR
12 Corp., so that if someone would Google NPR, it would
13 actually give them information with respect to this website
14 that actually belongs to Mr. Soloway.

15 One of the things that I would like to emphasize on
16 this website, and I believe this was the homepage -- the
17 very first representation made: With our assistance, you can
18 reach 100,000 to 25 million potential new customers a day
19 with your ad for as low as this cost -- per 500,000 opt in
20 permission-based broadcast e-mail advertisement sent.

21 This is an important representation or
22 misrepresentation, false representation, which is made
23 consistently throughout Mr. Soloway's websites, his
24 representations to potential customers. This is significant
25 because whether or not addresses are opt in has to do with

1 whether they might be considered spam, and if people have
2 signaled their willingness to accept such e-mail messages,
3 of course they won't be offended by them.

4 If we look down further on this homepage, we can see as
5 well a representation also typical of Mr. Soloway with
6 respect to he is the number one broadcast e-mailer in the
7 world. He has much experience in this type of activity.

8 Then if we look at the next page of the exhibit --
9 this, your Honor, if you had gone up to the top of the
10 homepage, you would have seen what you also see here -- that
11 is various tabs. Click to home, charity info, e-mail
12 software, and e-mail services.

13 This is what you would see if you clicked on e-mail
14 software. This is his advertisement: Send your own e-mail
15 ads -- his advertisement for selling this product to people,
16 which he says will allow them to do the broadcast e-mail.

17 And turning to the next page, this is what you would
18 see if you clicked on the e-mail services tab. It would
19 take you to this page and some pages that follow it that
20 advertise more specifically he will send e-mail ads on
21 behalf of you and again many representations about the
22 business results, the financial results that people will see
23 if they buy his product or his service.

24 Turning to the next page of the exhibit, what you will
25 see here is the guarantee that was routinely offered to

1 individuals, to potential customers who were interested in
2 the broadcast e-mail package.

3 If you do not receive at least a 400% increase in sales
4 after using our broadcast e-mail package for 90 days, simply
5 return it to us for a full 100% refund, no questions asked.

6 And turning to the next page, again, another ironclad
7 guarantee, and this is with respect to the service. He is
8 representing the results that people will see if they buy
9 his service.

10 And finally I wanted to show this page to the Court.
11 This is another page, typical page from one iteration of his
12 website in which he is talking about the round-the-clock
13 technical support he is going to provide to customers, and
14 two other things I wanted to bring the Court's attention to.

15 On the left-hand side: We offer 24/7 easy hassle free
16 e-mail removal from all of our e-mail mailing lists. So
17 this is representing that people who get e-mail for which he
18 is responsible can enter in your e-mail address on this
19 website and they will be removed from his e-mail list.

20 On the right-hand side there is a corporate address
21 provided for, in this case, NPR Corporation, and that is a
22 fraudulent address.

23 Finally I have one more page in this exhibit, 78, and
24 again representations with respect to his -- how he operates
25 and the facts -- in particular, again, if you can see the

1 cursor, permission -- they are using -- he is offering
2 people permission-based opt in e-mail records, and that's
3 what will be used in his business.

4 And with that, your Honor, I would like to offer
5 Exhibit 5.

6 THE COURT: Any objection?

7 MR. TROBERMAN: No, your Honor.

8 THE COURT: Exhibit 5 will be received.

9 MS. WARMA: So I would like to move now to Exhibit
10 6. Exhibit 6, your Honor, consists of two pages, and these
11 are representative spammed e-mail messages that Mr. Soloway
12 would send out to advertise his website or his business.

13 A person who receives this e-mail could click on the
14 link he has provided in the e-mail, and that would take the
15 person to the website further advertising the product.

16 Two things to notice about this e-mail message: Of
17 course the e-mail advertised like this to 8 million people
18 for free, that was -- the numbers might change in the
19 spammed e-mail message, but basically that message was
20 always the same. Click on this link and I will show you how
21 you can do this.

22 Also the from and to addresses in this spammed e-mail
23 are characteristic of Mr. Soloway's conduct in forging
24 headers.

25 As you note, the to address and the from address are

1 exactly the same, and we will talk a little bit more about
2 that.

3 The message that is contained in the bottom of the e-
4 mail refers to -- this is only for -- this is only a
5 noncommercial offer. That content shows up in a number of
6 Mr. Soloway's spammed messages. I believe it is an attempt
7 to circumvent the elements of the crime, the federal crime
8 of spamming, because it applies to commercial e-mail
9 messages, so he has placed this in his spammed message. In
10 fact, of course, all he does is sell spam and sell spam
11 products.

12 The following page of that exhibit again is another
13 characteristic spammed e-mail message from Mr. Soloway. It
14 was turned in to law enforcement by victim who received --
15 has received many of these things who was -- who is Mr.
16 Major, and again, if you look at the header information --

17 THE COURT: I'm sorry, can you identify the
18 specific -- the one showing up on the screen doesn't have
19 the --

20 MS. WARMA: Bates stamp number?

21 THE COURT: Yes.

22 MS. WARMA: Yes, I will, your Honor. This is 80,
23 Bates stamp 80.

24 THE COURT: I'm sorry?

25 MS. WARMA: 80.

1 THE COURT: Thank you.

2 MS. WARMA: So it is the second page of Exhibit
3 5 -- Exhibit 6, excuse me.

4 So then again, this is another example, if you look at
5 the from, it says it is from sales at Dale Major.com. Dale
6 Major is a real person who owns a business; his business is
7 selling steel tubing in the airline manufacturing area, and
8 Mr. Major is very concerned that spam e-mail messages that
9 are really sent by Mr. Soloway have been identified as
10 coming from his company. That has impacted his ability to
11 do business. The "to" address is the same.

12 So one of the points I wanted to make with these
13 exhibits, your Honor, and I would offer Exhibit 6 --

14 THE COURT: Any objection, Mr. Troberman?

15 MR. TROBERMAN: No, your Honor.

16 THE COURT: Exhibit 6 will be received.

17 MS. WARMA: There are three categories of victims
18 that have been impacted by Mr. Soloway's criminal conduct,
19 and those are people who have been impacted by his spamming
20 activities, largely because he has fraudulently stolen other
21 people's online identities and placed them into forged
22 headers; people who are the victims of his fraudulent sales
23 of product and services; and also very specifically victims
24 of identity theft who have been damaged irrevocably and
25 significantly by his activities.

1 I would like to speak now to how it is that Mr. Soloway
2 has dealt in the past with victims of his criminal conduct,
3 which is quite relevant in this particular hearing, and in
4 that regard, I would like to ask the Court to look to
5 Exhibit 1, and this has a number of subsections to this
6 particular exhibit.

7 Exhibit 1 consists of material from a civil lawsuit
8 that was filed by a man named Robert Braver. Mr. Braver
9 lives in Oklahoma. He runs a small company, a small ISP.
10 He does such things as sets out electronic e-mail systems
11 for little companies or for law firms, for example.

12 Mr. Braver in his business began receiving spam from
13 Mr. Soloway, over and over and over again. He would set up
14 new e-mail systems for clients only to have those clients
15 begin receiving huge quantities of spam, which made them
16 very dissatisfied customers, which affected his ability to
17 run his business.

18 Mr. Braver tried to get Mr. Soloway to stop spamming
19 him and his clients. He had no success in doing that so he
20 felt his only option ultimately was to file a lawsuit, which
21 he did in Oklahoma, alleging violations of the Oklahoma
22 anti-spamming statute, and also the federal canned spam act,
23 the federal criminal spam statute, and the documents we are
24 going to go through now are documents from that case.

25 Beginning with what is Bates stamped as 1, and that is

1 just advising with respect to the identity of the case.
2 This was a case that ended up in federal court in Oklahoma.
3 It was actually originally filed in state court, but Mr.
4 Soloway had it removed to federal court, and you can see the
5 plaintiff is Braver, and the defendant Newport Internet
6 Marketing, one of the monikers for Mr. Soloway's businesses.

7 Then if we go to page 2, what we are starting to see
8 here is the docket sheet, and I just want to walk the Court
9 through this docket sheet because there is much in this case
10 that is very, very relevant to the issues we are to address
11 today.

12 THE COURT: If you do so quickly. I actually
13 reviewed -- the docket sheet was part of the materials
14 submitted to me before, and I have reviewed that.

15 MS. WARMA: Okay, I will do that, your Honor. I
16 will highlight just a few things, the first thing being the
17 notice of removal; again, it was Mr. Soloway who sought
18 removal to federal court, and at that point entered an
19 appearance through an attorney.

20 In February -- February 23, there was an unopposed
21 motion for extension of time to file an answer, so he has no
22 come into this federal case. The plaintiff says, Okay, yes,
23 you can have additional time to answer, and the answer due,
24 and this is in Docket number six, there was an order
25 granting an extension of time. An answer was due on March

1 22. That deadline, however, came and went. There was an
2 amended complaint filed, and by agreement of the parties, a
3 new deadline was agreed to, to answer, and that was to be
4 May 18, which isn't really reflected on this, but what the
5 Court can see is on May 20 what was filed, not an answer --
6 two days after the deadline to answer -- but a motion to
7 withdraw from the attorney of record for Mr. Soloway, as
8 well as a request for additional time to answer.

9 And if we go now to the next page, the plaintiff
10 answered in response to that motion for an extension of
11 time, and we will look more carefully at that specific
12 pleading. Then a few things I wanted to point out were the
13 answer was never filed. There was a motion for default
14 judgment filed by the plaintiff in June -- on June 13, and
15 that is docket number 13. The clerk entered an entry of
16 default on September 13. The Court then ordered -- said,
17 Wait, there has got to be a hearing on that motion, so on
18 9/14 -- this is docket entry 16 -- the Court ordered --
19 deferred ruling and scheduled a hearing, which was on
20 September -- to be on September 22. On 9/21 there was
21 notice by the former attorneys of the defendant with respect
22 to all of the notices having been sent to Mr. Soloway about
23 that hearing because the Court ordered those attorneys to
24 still notify him.

25 On 9/22 is the minute entry for the actual hearing at

1 which the defendant failed to appear. Again on 9/22 docket
2 entry 19, an order granting the motion for default judgment
3 and a permanent injunction.

4 Then -- and now we are looking at page 4 -- then Mr.
5 Soloway hires another attorney after the entry of default
6 judgment, and asks that the default judgment be set aside.
7 He makes a motion for that. Mr. Soloway files an affidavit
8 with respect to that. That motion is declined by the Court
9 and at docket entry number 26 the Court issues that order
10 denying the motion.

11 And now I would like to look at a few of the individual
12 pleadings in that case.

13 Those begin at 1-10, and the second number, your Honor,
14 signifies the docket entry number on the Court's docket.

15 That is plaintiff's objection to that first motion for
16 additional extension of time after the attorney had
17 withdrawn, and it recounts in some detail the shenanigans of
18 Mr. Soloway in the misconduct that went on in the context of
19 this lawsuit, and I think it bears making more mention of
20 it, and that includes that the plaintiffs had originally
21 filed in state court, and that they had attempted through a
22 process server to make service on Mr. Soloway, and we will
23 see an affidavit from the processor who swore that on 15
24 different occasions they attempted to make service.

25 On the next page, finally, they were given permission

1 to serve by mail, and we are looking at paragraph 4 now, and
2 these are -- this is some of the information with respect to
3 the defense notifying the plaintiff's counsel that they
4 would asked to be removed, the extension of time, the
5 agreement with respect to an amended complaint, the due date
6 for the amended complaint, and then the action on the part
7 of the defense down in paragraphs 6 and 7 that the attorney
8 instead withdrew and no answer was filed on the agreed date.

9 On the next page -- and here I would like to take your
10 Honor down to paragraph 10 and focus on that for a moment.

11 This is beginning to recount the conduct of Mr. Soloway
12 in the context of this lawsuit while it was going on -- that
13 he began on March 25 anonymously broadcasting a message
14 clearly designed to threaten, harass, intimidate, and cast
15 aspersions on the plaintiff.

16 The gist of the message was he was soliciting other
17 people around the country or the world to join in various
18 lawsuits against Mr. Braver who had brought this action
19 against him. It was sent to various public online forums
20 and indicating that he would cover the costs of any of these
21 lawsuits.

22 Then in paragraph 11 -- meantime Microsoft had also
23 filed a spamming lawsuit against Mr. Soloway in Superior
24 Court in Washington, and Mr. Soloway was defaulting in that
25 case, as well. He was not cooperating. So this is a

1 reference to that and the fact that the Court had entered an
2 order against him in that case, and ultimately entered
3 judgment against him for \$7.85 million for his spamming
4 conduct in Washington in a case in which he failed to
5 cooperate with the Court -- follow the Court's instructions,
6 and he defaulted.

7 The next page again recounting more of Mr. Soloway's
8 conduct in how he's dealing with people who are trying to
9 address his criminal spamming.

10 Paragraph 12. More information with respect to Mr.
11 Soloway's posting messages on forums, talking about the
12 lawsuits and how they can't touch him -- basically. He will
13 never pay a penny. Nobody can get to him.

14 In paragraph 13 reference to the fact that Mr.
15 Soloway's attorney contacted the plaintiff's attorney,
16 threatened to file a defamation lawsuit against him in
17 California in an attempt to get him to drop the case in
18 Oklahoma.

19 Then on the next page, page 9, paragraph 14, some of
20 that conduct that Mr. Soloway engaged in to try and get back
21 at Microsoft -- he posted a press release saying he had
22 formed this organization. He was going to e-mail
23 information to 1,940,000,000 Internet users, making these
24 allegations against Microsoft, because they had filed an
25 action against him.

1 So this is the kind of stuff I wanted to emphasize to
2 the Court in terms of the defendant's conduct against people
3 who attempt to stand up to him. And if the Court -- I would
4 offer Exhibit 1 and Exhibit 1.10.

5 MR. TROBERMAN: No objection.

6 THE COURT: Exhibit 1.1 and Exhibit 1-10 will be
7 received.

8 MS. WARMA: Then if we move to 1.10-2, your
9 Honor -- this is the affidavit from the process server
10 swearing that he had attempted on 15 times to serve Mr.
11 Soloway; that he could hear Mr. Soloway inside. He could
12 hear people inside the condominium in which he lives, but no
13 one would ever come to the door to accept service.

14 The next page -- the next page consists -- it is again
15 an exhibit that was part of the Oklahoma case. It is a
16 conversation that appears to have been engaged in by Mr.
17 Soloway and another company that also challenged him for
18 spamming activity, and Mr. Soloway's comments response begin
19 on page 13 where it says --

20 THE COURT: Is that in the section that says
21 response to --

22 MS. WARMA: Right.

23 THE COURT: -- illegal activities by Magic --

24 MS. WARMA: Right. The company Magic Myth had
25 sent him a bill for spamming because he was spamming their

1 servers, and so this is Mr. Soloway's response to them.

2 He is alleging that they are involved in fraudulent
3 action, and they are involved in illegal action. And he's
4 threatening to have them convicted with a felony -- and the
5 next page -- that it will end up in their spending several
6 years in prison for their felonious actions. And he goes on
7 to bombast and threaten and make representations about
8 actions that he is going to take against these individuals.
9 And this e-mail is signed Robert, Seattle, Washington,
10 United States Minor Outlying Islands.

11 The next page, page 15, is a copy of one of these
12 postings Mr. Soloway apparently made to forums about the
13 Braver website -- I mean the Braver lawsuit, excuse me, and
14 in this he is -- this is where we see some of these threats
15 that he is going to initiate legal action against Mr.
16 Braver, and he is trying to solicit other people to join in
17 these lawsuits that he is allegedly going to file.

18 Page 17. This actually was a document that was part of
19 the Braver case, but it is from the Microsoft lawsuit
20 against Mr. Soloway, and in this particular thing, as you
21 can see, is an order granting the plaintiff's motion for
22 sanctions for defendant's failure to make discovery. He
23 failed to comply with the directions of the Court in terms
24 of his discovery obligations, and what the Court says
25 there -- there is handwritten comments that the Court has

1 also considered the pleadings and papers filed in this
2 action and concludes, and then it says see page 2, the next
3 page -- which is at Bates --

4 THE COURT: 18?

5 MS. WARMA: -- 19 -- woops, 18.

6 So this is the Court and hand writing in comments. The
7 defendant's discovery violations have been willful and have
8 caused substantial prejudice to the plaintiffs such that no
9 lesser sanctions that that imposed would be effective or
10 appropriate.

11 THE COURT: Well isn't that -- that is the
12 language that the Court has to pretty much adopt if it is
13 going to be entering those kind of sanctions on a civil
14 case, isn't it?

15 MS. WARMA: Thank you, your Honor. I just wanted
16 to emphasize the strength of the finding there.

17 Page 19 -- Bates pages 19 and 20 -- I don't think we
18 have to look much closer. These are one of the postings,
19 the press release that Mr. Soloway did -- this organization
20 that he was going to form in order to take action against
21 Microsoft because they had dared to file a case against him.

22 Moving on to Exhibit 1.17, what this consists of, your
23 Honor, is documentation with respect to the notices that
24 were sent to Mr. Soloway in the Braver lawsuit in Oklahoma
25 for appearance at the default hearing -- the motion for the

1 default judgment.

2 The Court had set a June deadline for an answer. There
3 was never an answer and the default motion was filed. The
4 Court noted the hearing and this is notice of the
5 transmission to him of those documents.

6 Then Exhibit 1.17-2 are more documentation from the
7 defense attorneys to that the Court's direction sent to Mr.
8 Soloway all of those notices by fax, by e-mail, and by mail.
9 And that is documentation with respect to that.

10 1.18 is the minute entry from the default hearing
11 indicating that Mr. Soloway failed to appear.

12 1.19, the default judgment that was actually entered by
13 the Court and the permanent injunction and this is at
14 Bates -- beginning at Bates page 34.

15 And part of what is recounted here is the attempts to
16 serve Mr. Soloway and his representations that he didn't get
17 service.

18 THE COURT: And with respect to the permanent
19 injunction, can you outline the -- those aspects of the
20 injunction that you are alleging by virtue of the activity
21 that Mr. Soloway is accused of engaging in -- that would --
22 in this case that would actually violate the terms of that
23 injunction?

24 MS. WARMA: Absolutely, your Honor.

25 Looking at page 37, Bates stamp, that is where the

1 Court begins with the ordering adjudging, and decreeing that
2 Mr. Soloway is permanently enjoined and restrained from --
3 and I would direct your attention to A) Initiating the
4 transmission of a commercial electronic e-mail message to
5 any computer involved in interstate commerce or a
6 transactional or relationship message that contains or is a
7 company by header information that is materially false or
8 misleading.

9 And then moving down to paragraph E, relaying or
10 retransmitting a commercial electronic mail message that is
11 unlawful under the civil terms -- from a protected computer
12 or network access without authorization.

13 This is the relaying. This is using proxy computers to
14 hide the origin of the message.

15 THE COURT: And then turning to the indictment, is
16 there information in the indictment that would indicate that
17 after the date of this injunction, the defendant has
18 violated those terms?

19 MS. WARMA: Yes, your Honor. That would be in the
20 mail fraud part of the indictment because in that part of
21 the indictment, we set out the entire scheme, and so I will
22 find for you in the scheme and artifice to defraud
23 section --

24 THE COURT: And the grand jury did find the time
25 from November 28, 2003, through May of 2007?

1 MS. WARMA: Correct, your Honor.

2 THE COURT: Excuse me --

3 MS. WARMA: And that would be paragraph 27, your
4 Honor, in the indictment. It was further part of the scheme
5 and artifice to defraud that he -- the e-mails contained
6 false and fraudulent headers, and there is more description
7 in that in paragraph 28 -- the forging technique. In
8 paragraph 29 the use of a multitude of servers with
9 different IP addresses to transmit millions of spam
10 messages. Paragraph 30, the use of proxy computers for the
11 relay of those messages to disguise their origin.

12 THE COURT: Thank you.

13 MS. WARMA: And I would like to offer, your Honor,
14 Exhibits -- I believe we are up to 1-17 -- 1-17-2, 1-18, 1-
15 19, 1-21-2, we've gone through all of those.

16 THE COURT: Any objection, Mr. Troberman?

17 MR. TROBERMAN: No, your Honor.

18 THE COURT: They will be received.

19 MS. WARMA: Your Honor, next looking at Exhibit
20 1.21-2, this is the affidavit that Mr. -- excuse me, Mr.
21 Soloway filed in the Braver lawsuit after the default
22 judgment was entered in which he makes certain
23 representations and those representations included what
24 appear to have been false representations to the Court --
25 that he had never received any of the notices with respect

1 to the hearing. He was not aware of the default judgment or
2 the hearing until September 23, 2005.

3 The plaintiff in the lawsuit in their response filed a
4 number of documents indicating that in fact Mr. Soloway had
5 had notice prior to that time, and prior to the hearing --
6 one of those being an affidavit of an individual, and this
7 is Exhibit 1.25-2, Susan Gunn, who sets forth a transcript
8 from an e-mail conversation that she had with Mr. Soloway on
9 September 22, for example, in which they are discussing the
10 Braver lawsuit, and in fact he is again representing that
11 he's not subject to the spam laws, or his spam is immune
12 because it is not commercial.

13 Then Exhibit 1.26, which begins at Bates page 46, that
14 is the final quarter of the Court at which it denies Mr.
15 Soloway's motion to set aside the judgment in which the
16 Court recounts again some of his misconduct in the context
17 of that particular suit, and on the next page advising that
18 Mr. Soloway, regardless of whether he perjured himself, has
19 made -- has totally failed to follow the Court's orders in
20 all of these various ways -- again imposing the permanent
21 injunction against that particular type of activity.

22 So the government offer those exhibits, as well, your
23 Honor.

24 THE COURT: Those exhibits being Exhibit 1-

25 MS. WARMA: 21-2, 1-25-2, and 1-26.

1 THE COURT: Any objection, Mr. Troberman?

2 MR. TROBERMAN: No, your Honor.

3 THE COURT: They will be received.

4 MS. WARMA: Now I would like to refer the Court to
5 what has been marked Exhibit 2, and that begins at Bates
6 page 48. And this consists, your Honor, of, again, some
7 conversation on an online forum between Mr. Soloway and
8 another individual who is discussing his -- Mr. Soloway's
9 default judgments that were entered against him, in
10 specifically the Microsoft lawsuit.

11 And if we go to the second page, page 49, this is Mr.
12 Soloway's response. I am Mr. Soloway. My company will not
13 be filing for bankruptcy. Microsoft will never collect a
14 dime from me, nor has anyone ever collected a single dime
15 from me from any lawsuit I have been in -- saying you don't
16 know anything about this. The Microsoft lawsuit was just a
17 lot of fun, ha ha ha. It doesn't matter if they receive a
18 judgment for \$8 million or \$8 billion, Microsoft won't see a
19 single dime as all of assets are protected.

20 And then the types of --

21 MR. TROBERMAN: Well, your Honor, if she is going
22 to read part of a sentence --

23 THE COURT: That is correct. Because all assets
24 are protected under the Washington State Asset Protection
25 Act.

1 MS. WARMA: Correct. Correct, your Honor.

2 And down below: I have been sued for hundreds of
3 millions of dollars and have had my business running for
4 over 10 years without ever paying a dime, regardless of the
5 outcome of any lawsuit.

6 And then he represents that he is a non-US citizen.

7 And then in the bottom paragraph of that particular
8 communication: The only thing the Microsoft lawsuit did to
9 me was help me with perjured discovery provided by them to
10 be used for my foundation -- for the 38 class-action
11 lawsuits being formed in 38 states as we speak for their
12 violations of state spam laws -- the Computer Fraud Abuse
13 Act, and the Canned Spam Act, and I would also like to refer
14 the Court to the next page wherein this statement is
15 continued.

16 You have no idea about -- there is only one winner in
17 the Microsoft suit against me, me, and in regards to the
18 Braver suit, if he doesn't drop the case on me -- and so the
19 Braver suit was going on at this time -- shortly, I will
20 bring it all the way to trial, costing him a fortune, and
21 win, as I always -- do not to mention he will have about
22 \$500,000 in legal bills defending himself from some of the
23 best legal firms in four states due to his previous abuses
24 in the telemarketing and junk fax arena regarding previous
25 individuals that used to reside near his location.

1 I always win -- regardless of the judgment amount.
2 Losing is not an option, and I never, ever, ever have to pay
3 a single cent to anyone.

4 The government would offer Exhibit 2.

5 THE COURT: Any objection, Mr. Troberman?

6 MR. TROBERMAN: No, your Honor.

7 THE COURT: Exhibit 2 will be received.

8 MS. WARMA: I would like to refer the Court to
9 Exhibit 3.

10 Exhibit 3 is a portion, an excerpt from the affidavit
11 that was sworn in support of the search warrant for Mr.
12 Soloway's apartment, and the purpose of adding that material
13 in this case, your Honor, is that it explains in some
14 further detail in paragraphs 30, 31, 32, 33, 34, 35, 36, 37,
15 38 -- what happened to many of the victims of Mr. Soloway's
16 criminal conduct, and it recounts, for example, the story of
17 a person, initials EO, in Texas, who bought his product
18 believing it would work, and the efforts to go through to
19 get the money, the refund that was guaranteed, and the fact,
20 if you look, your Honor, at page 52 -- the last portion of
21 paragraph 31 -- and that Nim has threatened to send a
22 collection agency if he tries to reverse the charges.

23 This was recounted over and over and over again by
24 victims in this case. I would also note that this
25 particular individual that reported that Mr. Soloway and Nim

1 charged him three different times for the product, \$149,
2 three different times, but what happened to this victim,
3 what happened to countless victims, hundreds of victims is
4 that when they attempted to get their money back on this
5 money back guarantee you saw on the website, Mr. Soloway
6 would immediately threaten them with collection. He would
7 threaten to ruin their credit for seven years. He would
8 indicate -- he would imply or suggest or state explicitly
9 that they were stealing his product, and this is how he
10 responded to people.

11 I would like also to draw your attention, your Honor,
12 to paragraph 37, which is on page 54. The paragraphs
13 beginning on that page reference a complaint that was filed
14 with the Washington Attorney General's office by an
15 individual, initials JN -- senior computer specialist with a
16 government agency, the Santa Barbara Department of Social
17 Services.

18 In the Paragraph -- the material that follows, this
19 individual recounts how Mr. Soloway is spamming that
20 government agency. He is spamming them using forged
21 headers, which incorporate the names of employees who work
22 at that agency. They cannot filter out the spam because to
23 do so would totally shut down their ability to receive any
24 e-mail, and if you go down, your Honor, to the subparagraph
25 C, and this is very recently -- this was in April of 07 --

1 that individual is recounting that it is costing that agency
2 \$1000 a week to deal with spamming activity.

3 Going on to the next page -- there is just, I believe,
4 another paragraph at the top -- other complaints about
5 individuals whose identity has been stolen and forged into
6 to and from headers.

7 And finally, your Honor, I would note that, and I am
8 not sure that we need to go into it, but Exhibit -- so at
9 this point I would offer Exhibit 3.

10 THE COURT: Mr. Troberman?

11 MR. TROBERMAN: No objection.

12 THE COURT: Exhibit 3 will be received.

13 MS. WARMA: And I would refer the Court to Exhibit
14 7.

15 Exhibit 7 consists of the conversations and the
16 communications that took place between a customer of Mr.
17 Soloway who purchased his product -- all of the e-mails back
18 and forth when the customer was reporting that the product
19 did not work, his attempt to get assistance with it. Mr.
20 Soloway's failure to give him assistance with it, other than
21 to tell him he needed to go to another ISP that would not
22 block spam, and then this customer's attempt to get his
23 money back.

24 This culminated in threats by Mr. Soloway that he would
25 be referred to collection and if you go, your Honor, to page

1 88 -- you will see what many of these victims saw when they
2 tried to have their money returned. This collection notice
3 that the negative credit rating would be reported. And if
4 you go down to the bottom paragraph, the statement that your
5 financing and credit in the future for the next seven years
6 will be affected.

7 THE COURT: Well, I will tell you -- I understand
8 the point that you are making with respect to these
9 individual customers in that regard. The tie-in that I
10 don't see at this point, as it relates to those victims, is
11 the issue that we are here for, which is the detention
12 hearing -- if in fact Pretrial Services is recommending that
13 he be separated from any computer and separated from Nim,
14 which is what they have recommended in this case, it seems
15 to me that the -- at least for those victims, or alleged
16 victims in this case, there are a combination of conditions
17 that can address the safety of the community, i.e., make
18 sure that to the extent that those are crimes, and I'm not
19 stating that they are, but those can be addressed.

20 I mean it is -- what I am concerned about is making
21 sure that we are not in a situation where we have a person
22 that is detained simply because they are not abiding by
23 their product warranty information, and there are other
24 issues that I think that you may want to focus on more than
25 those particular -- than these particular victims -- not to

1 suggest that these victims have not had a grievous problem,
2 but that is not the issue that is before us right now.

3 MS. WARMA: Right. I understand, your Honor, and
4 the final thing I would like to say at this -- about this
5 particular victim and what is typical and why it is
6 relevant, if you look at page -- what has been marked --
7 Bates stamped 93, this particular individual went to his
8 bank, which was the Navy Credit Union, I believe, and he
9 said, I believe I should get a refund for this product.
10 They gave him a refund.

11 What you see at page 93 is a letter from Mr. Soloway to
12 that bank saying, Oh, no, no, the product I gave him was
13 exactly right. It works -- well, your Honor can read it --
14 indicating that -- representing that the customer is not
15 eligible for a refund.

16 He was able to get the refund returned so that he
17 actually was paid the money for the product, and what
18 follows at page 94 is a letter from the customer to the
19 credit union, again saying all of the reasons why there was
20 fraud involved. He thinks he should get his money back.

21 He never got his money back, and the point I wanted to
22 make, your Honor, is this was typical behavior on Mr.
23 Soloway's behalf. People complained to the Better Business
24 Bureau, if people complained to their banks, he didn't let
25 it rest. He went after them with those institutions. He

1 wrote letters in response casting aspersions on those
2 customers. And this, your Honor, I would submit goes to is
3 risk of obstruction of justice.

4 But let me move on, and what I would like to address
5 now, your Honor, are the finances, which we believe is very
6 relevant to his risk of flight.

7 If your Honor would look please at what has been marked
8 Exhibit 8, having read the indictment, your Honor, you will
9 know that in there the government asked for a civil judgment
10 in the amount of \$773,000, which at the time of the
11 indictment was the amount of money that we could ascertain
12 from Mr. Soloway's financial records that had come in as
13 payment for fraudulent product.

14 What we -- what the exhibit represents, eight -- what
15 Exhibit 8 represents, excuse me, is an initial spreadsheet,
16 which has been done since the time of the search warrant, in
17 which we found invoices for this various product, and if
18 your Honor will look at page 97, the total figure for
19 invoices that could be found beginning, if your Honor looks
20 over to the left, and I will see if I can do that -- the
21 earliest invoices that are included in this compilation
22 begin in March of 2004, so that is four months past the time
23 that we are initiating the charges, which were in November
24 of 2003.

25 So this is the amount of money that apparently he

1 billed from March 2004 through the date of the search
2 warrant -- almost \$1 million -- and if we extrapolate from
3 the amounts of money he's earning based on these invoices,
4 the amount should be over \$1 million for the period at which
5 our charges begin.

6 If your Honor looks to the financial affidavit that was
7 filed in this case, and that is at Exhibit 4, and just for a
8 minute now put Exhibit 8 aside, Exhibit 4 was the affidavit
9 that was done by IRS agent Sylvia Race in preparation for
10 the execution of the search and seizure warrants, and this
11 begins at Bates page 56.

12 What the government was attempting to seize at that
13 time were the only accounts that we could ascertain might
14 currently contain funds. If you proceed through that
15 affidavit, you will see Agent Race sets forth her
16 qualifications, and then on the second page, page 57,
17 summarizes the case -- on page 58 -- identifies the only
18 four counts, and they are listed right there, that we
19 believed were currently being used -- because what the agent
20 discovered, if you proceed through this affidavit, is that
21 Mr. Soloway opened and closed accounts rapidly, very
22 rapidly. He was doing this constantly and he was moving
23 money through accounts rapidly and erratically -- what
24 appeared erratically to us -- probably not erratically to
25 him.

1 If your Honor goes, for example, to page 62 of that --
2 of the exhibits, looking at paragraph 25, Agent Race
3 recounts in there that she has looked through all of these
4 accounts; that she has determined from 2003 through 2006 he
5 has generated income in excess of \$1 million. That is
6 longer than the period that we charged, but if you proceed
7 downward, you will see some of the many bank accounts that
8 were opened and used during that period of time to move
9 funds, and that information goes over to the next page.

10 By my count there are 14 different bank account, which
11 were used during that period of time, and if you look at the
12 total deposits at the bottom, through those accounts, during
13 that period of time, \$1,647,000 moved.

14 In addition, as Agent Race recounts, in addition to the
15 14 plus -- 14 at least bank accounts, she discovered e-
16 commerce accounts including Google accounts, e-passport
17 accounts, PayPal accounts, and eBay accounts, and if we go
18 down to paragraph 28, he knew -- she was able to discover 18
19 PayPal accounts, for example. Those are just the PayPal
20 accounts. Those aren't these other e-commerce accounts, and
21 those are the accounts that were able to be associated with
22 Mr. Soloway.

23 The point of all of this, your Honor, is we don't know
24 where his money is. He made a lot of money. We don't know
25 where it is. He was moving it through accounts constantly.

1 When the seizure warrants were executed on the date of
2 the search -- of those four accounts, we found \$5,000, and
3 those funds were seized.

4 The agent was advised by an individual with e-passport,
5 for example, that Mr. Soloway had wiped those accounts the
6 previous weekend -- in a matter of days before the search.

7 So he was moving money constantly. We don't know where
8 it is. He has made a lot of it.

9 And I would offer Exhibit 4 and Exhibit 8, your Honor.

10 THE COURT: Any objection, Mr. Troberman?

11 MR. TROBERMAN: No, your Honor.

12 THE COURT: Exhibits 4 and 8 will be received.

13 MS. WARMA: And now I would like your Honor please
14 to look at Exhibit 9.

15 THE COURT: Actually Exhibit 9 appears to be --
16 there's no entry for Exhibit 9 in the notebook.

17 MS. WARMA: And do you have --

18 THE COURT: Will it be on the --

19 MS. WARMA: It will be, your Honor. I apologize
20 for that.

21 THE COURT: Actually, it is tabbed in with
22 Exhibit -- now that I see it, it is tabbed in with -- put
23 in, in the Exhibit 8 section.

24 What are the Bates numbers for Exhibit 9?

25 MS. WARMA: Exhibit 9 begin at 98, and it goes

1 through -- it goes to 103 -- through 103 --

2 THE COURT: I do have it. It was just placed in
3 the tab for Exhibit 8. I do have the exhibits.

4 MS. WARMA: Okay.

5 Your Honor, Exhibit 9 represents, if you look up at the
6 top, Soloway review and notes of search warrant inventory.
7 Okay, these are some notes taken by agents as they have
8 moved through and tried to inventory records were found
9 during the search warrants.

10 There is much material in here that is relevant to our
11 determination today. Some of those things include, for
12 example, applications and e-mails from offshore high-
13 risk.com. He is going offshore to establish bank accounts.

14 Here is another one now displayed on the screen:
15 Direct.com. Removing merchant account to an offshore bank,
16 possibly Mexico, due to charge back issues and being on the
17 TMF, terminated merchants file list.

18 And these are two items I want to talk about
19 specifically which are of grave concern to the United
20 States, and particularly relevant.

21 These entries we are referencing, and what I'm pointing
22 to now -- copy of a check from -- we have redacted the
23 name -- in the amount of \$1876 -- copy of check from another
24 redacted name, \$1528.

25 There were two different -- the names of two different

1 individuals redacted there. Those individuals were located
2 and interviewed by agents with this case subsequent to the
3 search -- the time these records were found.

4 What the agents learned is both of those were young men
5 living in this area were asked by Mr. Soloway if he could
6 use their PayPal accounts to move money that he generated in
7 his scheme.

8 He represented to one of these individuals, just about
9 the time this individual turned 21, that he was having
10 problems with his credit, so could he please use this other
11 young man's PayPal account to receive the proceeds of his
12 scheme.

13 This young man, who was still living with his
14 parents -- still lives with his parents -- agreed to that.
15 He reported to the agents he was quite taken with Mr.
16 Soloway's lifestyle. He was quite taken with the parties
17 thrown by Mr. Soloway in his apartment. He was quite taken
18 with Mr. Soloway's expensive car and the expensive meals
19 that he would take him to, and his expensive clothing.

20 So this 21-year-old man agreed to do this and did it
21 for several months. There was a point in time in April of
22 2007 where Mr. Soloway asked him also to use the business
23 account belonging to his parents to process credit card
24 transactions. The young man disagreed with that and Mr.
25 Soloway then approached this second individual whose name is

1 hidden -- to process proceeds for him through this other
2 individual's PayPal account.

3 The father of the first young man only learned of this
4 activity on the day of Mr. Soloway's arrest. His son then
5 told him about it. The father is very concerned because
6 there may be some connection that has been made between his
7 legitimate business and Mr. Soloway's criminal activity.

8 I would ask your Honor to turn to the next page, and
9 this is Bates stamp page 99. And what you will see, your
10 Honor, if you move through this particular page are a number
11 of entries with respect to the rental of servers, but here
12 is one I wanted to point out, too -- a communication with an
13 Egyptian charity that want US e-mail addresses -- responds
14 to questions are e-mails opt in? Yes. Again, this was this
15 fraudulent representation that Mr. Soloway has made
16 consistently and continues to make, that the e-mail
17 addresses he is sending are opt in when in fact they are
18 fraudulent e-mail addresses. And I would ask your Honor to
19 look at the next page, page 100 -- again, other things that
20 are showing up in his records, and one thing I wanted to
21 note here -- a wireless prepaid cellular phone that was
22 purchased, and scrolling down further, reference to payment
23 for travel from Seattle to Barbados.

24 On the next page -- that is 101 -- another cellular
25 phone. In fact when the search took place, four cellular

1 phones were seized from Mr. Soloway's apartment.

2 And then I would like to go down and show what is a
3 three-day trip, apparently, by Mr. Soloway, over -- if you
4 go over to the other side you will see -- these items are
5 dated around December 26 of 2006. Mr. Soloway makes a quick
6 trip to New York, stays apparently at the Helmsley Hotel for
7 three nights, and does a lot of shopping, and these are the
8 kind of designer items -- there will be additional mention
9 of them -- that were referenced by the young men in terms of
10 their being impressed with the lifestyle that he was leading
11 that allowed him to entice these individuals into his
12 conduct.

13 On the next page, 102 --

14 THE COURT: I am not sure that I see that staying
15 at the Helmsley Hotel -- how that relates to a detention
16 hearing, though?

17 MS. WARMA: Well, your Honor, it pertains to the
18 lifestyle, which was used as an enticement to others. It
19 pertains to a lifestyle that is lavish and that is being
20 experienced at the same time that judgments from two civil
21 actions are outstanding against this individual, and he is
22 dragging about, No one is ever going to touch his money.

23 THE COURT: But we don't -- we got rid of debtors'
24 prisons a long time ago.

25 MS. WARMA: I know, your Honor, but I think it

1 is -- it goes to his compliance with what a court has
2 imposed, and his thumbing his nose at the authority of the
3 Court, which is relevant.

4 And finally, your Honor, on the next page, again, an
5 item of particular concern to the government, and that is a
6 receipt for an item that had been purchased -- an Archos
7 portable media device receipt -- Internet browser -- and the
8 point I would I can make with regard to this, your Honor, is
9 there are any number of ways that the defendant can access
10 the Internet. This particular item I don't believe was
11 found or seized during the search warrant. It does not take
12 a computer, it does not take any particular specialty
13 equipment that is difficult to get. He can walk into any
14 store and buy the means to access the Internet. He can
15 access the Internet through a cell phone.

16 And the final item I would like to note on this page
17 begins here -- this may be a misspelling -- Atlantic
18 Time.com receipt for model --

19 THE COURT: And which Bates number is it?

20 MS. WARMA: This is still on Bates 102, your
21 Honor.

22 And what this appears to be is a watch that Mr. Soloway
23 purchased for \$1500, and the point I would like to make with
24 respect to that, your Honor, is this is not an isolated type
25 purchase. There were many receipts found in the records,

1 purchases at Cartier, Tiffany -- purchases for expensive
2 jewelry and watches -- things that were not found in the
3 apartment when the search warrant was executed -- things
4 that could be easily converted to cash.

5 And the government would offer Exhibit 9, your Honor.

6 THE COURT: Any objection, Mr. Troberman?

7 MR. TROBERMAN: Your Honor, my only objection is
8 that all this document purports to be are notes of an
9 investigator who is reviewing certain materials, and it is
10 filled with information that is irrelevant and quite frankly
11 wrong.

12 The watch to which Ms. Warma made reference was a gift
13 purchased by Mr. Soloway's parents who are here in court and
14 can certainly testify to that. The reason the receipt was
15 there was because it needed warranty work, and they sent him
16 the receipt so he could have warranty work done.

17 THE COURT: I will receive Exhibit 9. I'm not
18 sure I find the relevance to be the same -- of this exhibit
19 to be the same as being urged by the government.

20 MR. TROBERMAN: Thank you, your Honor.

21 MS. WARMA: And finally, your Honor, we would
22 offer, without additional -- much additional comment,
23 Exhibit 10. Exhibit 10 is a copy of the lease agreement Mr.
24 Soloway has executed for his Mercedes automobile.

25 Exhibit 11 is an initial inventory of items, designer

1 clothing that were seized during the search warrant. So
2 these are items that were seized because it was believed by
3 the seizing agents that they could be reasonably sold for
4 money in satisfaction of the judgment that the United States
5 is pursuing. That is Exhibit 11, and as you will see, there
6 are countless designer clothing items of the type, again,
7 referenced by individuals who have been brought by Mr.
8 Soloway into his criminal conduct.

9 And Exhibit 12, your Honor, is the initial valuation
10 that has been done by the seizing agency -- in this case the
11 IRS -- in which you can see the value that was put on there.
12 For example, \$3700 on the designer sunglasses, which were
13 seized, and the outerwear, \$13,000.

14 And the entry for the one bank account that held any
15 funds, the West America bank account held \$5,800 in funds,
16 and those were the only funds that were found to be seized.

17 The government would offer Exhibits 10, 11, 12, your
18 Honor.

19 THE COURT: Mr. Troberman?

20 MR. TROBERMAN: Your Honor, with the same comments
21 I made with respect to number 10, we have no objection.

22 THE COURT: Exhibits 10, 11, and 12 will be
23 received.

24 MS. WARMA: Thank you, your Honor.

25 I am done with exhibits. I would like to talk to you

1 now about how all of that bears on whether Mr. Soloway
2 should be released -- whether there is a serious risk that
3 he will flee, and whether there is a serious risk that he
4 will obstruct justice.

5 And in doing that I would like to also reference the
6 factors set out in paragraph G, the first of which is the
7 nature and circumstances of the offense charged.

8 I think your Honor has a sense at this point of the
9 enormity of the scheme that went on. He has been charged by
10 us only since the day that Mr. Soloway moved to the state of
11 Washington, but by his own statements and representations,
12 has gone on for 10 years.

13 We have hundreds of complaints from victims who have
14 attempted to deal reasonably with Mr. Soloway. Instead of
15 responding to them as he has represented, he has responded
16 to them viciously. He has threatened them, and he has
17 harassed them.

18 This is also true with respect to the victims of his
19 illegal criminal spamming activity. He has aggressively
20 come after people who have complained about that activity --
21 notably that activity, every day since a federal district
22 judge in Oklahoma entered an order in 2005, is in violation
23 of a standing court order -- in violation of that permanent
24 injunction.

25 Mr. Soloway has demonstrated every day since then he

1 has no intention, apparently, of any adherence to what a
2 court orders, and we would suggest to you that that is the
3 best evidence there could be of his -- his disrespect for
4 the law, essentially, your Honor, and clear and convincing
5 evidence to show that there is a risk that he will not
6 adhere to any order this court imposes.

7 You have seen evidence with respect to his finances --
8 a substantial -- substantial amount of money has been earned
9 by Mr. Soloway. We would suggest the evidence shows that,
10 and it is not accounted for. He has gone to great lengths
11 to hide his money, to deceive anyone who might be looking
12 for it. We have no way of knowing how much assets are truly
13 available to him and where they are. We know that he has
14 purchased many items that could easily be hidden and resold.
15 We think that goes as well to his risk to flee.

16 Finally, your Honor, I would like to emphasize that the
17 criminal conduct here is conduct that occurred on the
18 Internet. It is conduct that Mr. Soloway can engage in
19 within a half hour or less of leaving this courtroom.

20 There is effectively, we would submit, no way to
21 preclude him from getting access to the Internet, from
22 arresting people who may be victims or witnesses against
23 him. He has demonstrated that conduct over and over again,
24 and there would be no reason to suggest he would act
25 contrary to that pattern.

1 For those reasons, your Honor, we think that we have
2 met by clear and convincing evidence the standards
3 applicable. We would ask that he be detained.

4 THE COURT: Thank you, Ms. Warma.

5 Mr. Troberman?

6 MR. TROBERMAN: Yes, thank you, your Honor.

7 Your Honor, I will and be specific in responding to
8 allegations made by the government and hopefully won't take
9 up too much time, and then I would be happy to respond to
10 any questions or concerns the Court has.

11 The government argues that there were thousands of
12 customers who complained, but in reality, your Honor, if the
13 Court looks at the search warrant in this case, there were
14 approximately 100 to the Better Business Bureau or to the
15 Attorney General, and the invoices that the government
16 seized during the search in this case shows that Mr. Soloway
17 had thousands and thousands of customers.

18 Granted there were a few that were unsatisfied, but
19 most of those complaints that were received by the Better
20 Business Bureau had to do with spamming and not fraud.

21 The government argues that he disregarded orders of the
22 courts in Oklahoma and in this district in the Microsoft
23 suit.

24 Mr. Soloway did not disregard orders of any court in
25 that respect in that it is his right to default. The Court

1 does not order someone to appear and defend against a
2 lawsuit. There are ramifications if one doesn't, and
3 judgments can be entered, but that is not a court order that
4 says you have to come and spend hundreds of thousands if not
5 millions of dollars defending yourself against a suit from
6 Microsoft. If someone could be so weighted down by that
7 that they just would choose the alternative of having a
8 judgment entered against them, so be it, but it is not a
9 violation of any court order.

10 THE COURT: I will go back to the same comment I
11 made to the assistant United States Attorney: I recognize
12 we have done away with debtors' prisons; nevertheless, the
13 same cannot be said of a permanent injunction. It is indeed
14 one thing to ignore a money judgment. It appears that the
15 evidence proffered would suggest that the -- that Mr.
16 Soloway has not been -- has been in active violation of a
17 court's injunction, and a defendant is not free to actively
18 violate an injunction.

19 MR. TROBERMAN: Your Honor, that really is --

20 THE COURT: There is a distinction --

21 MR. TROBERMAN: I do understand --

22 THE COURT: -- between the two.

23 MR. TROBERMAN: -- those distinctions -- between
24 the injunction that was entered and whether or not it was
25 entered by default.

1 I agree with the Court that it was a court order and he
2 is subject to being regulated by the Court once that
3 injunction was entered, but your Honor, that is really what
4 this lawsuit is all about -- what this indictment is all
5 about -- did he violate that injunction?

6 Certainly the government has been following this for
7 several years now with that injunction in place and no
8 effort was ever made to go back into court and argue that he
9 was in violation of that injunction.

10 It seems to me that that would have been the
11 appropriate starting place for the government to take up
12 this matter, but Mr. Soloway disputes the allegations in the
13 indictment. He has pled not guilty. He doesn't believe
14 that he has violated the Canned Spam Act, and he has
15 indicated in some of the e-mails and chat room documents
16 that the government has submitted as to why he believes he
17 wasn't in violation of that.

18 The government argues that he poses a threat to
19 obstruct justice because he has harassed people or might
20 somehow otherwise intimidate them, and I would like the
21 Court to look at Exhibit 15, which -- Bates number 15, which
22 is an example proffered by the government as to these so-
23 called intimidation tactics that the government fears Mr.
24 Soloway will engage in.

25 That notice, your Honor, was obviously something that

1 was prepared by a professional. If you compare the context
2 and content of this document with other chat room postings
3 by Mr. Soloway, it is obvious that this was not prepared by
4 Mr. Soloway, but by some professional -- most likely lawyers
5 who were seeking evidence to use in a lawsuit.

6 There is certainly nothing wrong with that. Lawyers do
7 it all the time. There is nothing in here that in any way
8 could be construed as unlawful or intimidating or anything
9 else. It is seeking information because as I understand it,
10 Mr. Braver is a serial filer who has filed dozens of
11 complaints against any number of individuals, and there is
12 nothing illegal or improper about filing countersuits and
13 seeking information that would support that. That is part
14 of the discovery process.

15 Exhibit 8, your Honor, is the invoices that were seized
16 during the search of Mr. Soloway's residence and storeroom,
17 and the government tallies up all of those numbers as if to
18 say, Well, this is how much money he made, but your Honor,
19 these are gross receipts. His net receipts are less than
20 half of this.

21 It is interesting that the government that has both
22 sides of the equation, only offers up the income -- provides
23 nothing to the Court by way of the expenses of Mr. Soloway,
24 which it has -- every document -- there is nothing
25 transparent about Mr. Soloway's business. There is no cash

1 sales. It is all done through merchant bank accounts,
2 credit cards, PayPal, things like that. The government
3 knows where every penny came from and the government knows
4 where every penny went.

5 There are no cash withdrawals from his accounts in
6 excess of \$1000, and very few that even rise to that level.

7 They talk about a dollar figure from the bank accounts
8 totaling \$1,647,000, but that doesn't take into account,
9 your Honor, transfers between bank accounts, so there is
10 double and triple counting.

11 Please again are every dollar that went through the
12 accounts, so if you have \$100 in account A and transfer it
13 to account B, it is going to show up in the government's
14 tally as \$200, where for the rest of the world it's \$100.

15 Many of his accounts had automatic withdrawals to pay
16 for credit cards. Mr. Soloway owes American Express over
17 \$100,000, and those amounts are deducted on a regular basis.

18 The government has had years to look at Mr. Soloway,
19 and they know that he doesn't have any substantial assets,
20 and it makes sense, of course, that he doesn't, because he
21 has almost \$20 million in judgments outstanding against him.

22 He doesn't own a house. He doesn't own a car. He
23 doesn't own a boat or a plane or train or anything else.
24 What he owns is a lot of clothes.

25 The government says, Well, we don't know where his

1 money went, and then they submit exhibits here showing 24
2 pairs of sunglasses valued at thousands of dollars and so on
3 and so forth.

4 Every penny that came into Mr. Soloway's accounts and
5 went out of Mr. Soloway's accounts are accounted for by the
6 government. He is cash poor. The government knows he has
7 spent tens of thousands if not hundreds of thousands of
8 dollars on lawyers in the Oklahoma case, and in the
9 Microsoft case. They know every penny -- where it has come
10 in and where it has gone out.

11 Now the government says, Well, we are very concerned
12 because we see something about offshore bank accounts. Your
13 Honor, I submit there is nothing in the record submitted by
14 the government about offshore bank accounts. What there is
15 was discussion about an application for an offshore credit
16 card merchant. The reason for that is that his lifeblood
17 was credit cards, and in order to make money in these kinds
18 of sales, the typical payments were through credit card or
19 PayPal.

20 And when one reaches more than 1% in chargebacks, the
21 credit card companies simply terminate you. Some of the
22 offshore merchant account are a little more liberal with
23 those chargeback percentages, and so Mr. Soloway had applied
24 for some offshore credit card merchants, but the money goes
25 directly into his back account. It doesn't -- they are not

1 banks. They don't his money. They just process the credit
2 cards and then deposit it directly into his accounts here
3 and the government knows of each and every one of those
4 accounts.

5 The two individuals, the young men that the government
6 referred to on the PayPal accounts, again was another effort
7 by Mr. Soloway to have a method of receiving payment for the
8 various products, and bear in mind again, your Honor, the
9 vast majority of his customers were very satisfied
10 customers, and so there was a lot of people out there who
11 were receiving the product they wanted, and they got, and
12 they used it and they liked it -- and they paid for it. But
13 because of the problems he was having with the credit card
14 merchants, he was seeking additional PayPal accounts, and he
15 had these two individuals allow the use of their own private
16 PayPal accounts to receive money, but those monies again
17 tracked directly into Mr. Soloway's bank accounts. It is
18 not like they went into those other people's PayPal accounts
19 and were never seen again.

20 The government has the records that show that the money
21 went from those individuals' PayPal account directly into
22 Mr. Soloway's accounts. There is no missing money.

23 The government said it was concerned because there was
24 records of travel to Barbados. Your Honor, Mr. Soloway has
25 never traveled outside the United States without being

1 accompanied by his parents. These were typically cruises.
2 There were a few of them. He has never gone out of the
3 country on his own.

4 The New York trip over Christmas, I think the Court hit
5 that on the head. It is -- you know, it is just not
6 relevant to any of the issues here.

7 The Internet access, that was an MP3 player that the
8 government was pointing out in one of its exhibits. I have
9 told the Court about the watch.

10 Quite frankly, your Honor, Mr. Soloway has no assets to
11 speak of, other than his clothing collection and the
12 electronics that were in the apartment. Most of the money
13 that comes in now goes back out to pay off his credit card
14 debt and as the government said, he has lived a lavish
15 lifestyle.

16 They wonder where the money went and yet they stand
17 here and say, Well, he is living this lavish lifestyle.
18 They themselves account for where most of his money went.

19 Your Honor, there is nothing that I have heard in the
20 government's presentation that suggests that Mr. Soloway is
21 a risk of flight, and certainly there is nothing that
22 suggests that he is a danger to the community.

23 The conditions that Pretrial Services has recommended
24 will prevent him from having access to the Internet. The
25 GPS will allow the government to keep track of him at all

1 times.

2 This is simply not the type of case that pretrial
3 detention was intended for.

4 You know, when the Bail Reform Act first came into
5 play, it was intended that it would reach only a very few
6 types of very egregious cases, and in fact certain
7 presumptions were set forth in the statute for certain types
8 of offenses. None of those types of offenses are present in
9 this case, and it just seems to me, your Honor -- quite
10 frankly, when I got involved in this case, I was somewhat
11 taken aback by the fact that the government would even urge
12 Mr. Soloway's detention in this case. And I certainly don't
13 think that they have shown by a preponderance of the
14 evidence that he is a risk of flight, nor by clear and
15 convincing evidence that he is a danger to anyone in the
16 community or that he is a risk to obstruct justice.

17 The conditions set forth in the Pretrial Services
18 recommendation are reasonable. We concur with them and we
19 would ask the Court to release him on those conditions --
20 and I am more than willing, your Honor, to answer any
21 questions the Court might have at this point.

22 THE COURT: No, I don't have any. Thank you, Mr.
23 Troberman.

24 MR. TROBERMAN: Thank you, your Honor.

25 MS. WARMA: Your Honor, excuse me. I believe

1 there is one victim who is here who would like to address
2 the Court?

3 THE COURT: I will hear from -- briefly from that
4 person.

5 MS. WARMA: And your Honor, this is Mr. MacLeod.

6 THE COURT: Mr. MacLeod -- actually, at this
7 point, I will ask you to be sworn in.

8 WITNESS MACLEOD: Sure.

9 THE CLERK: Please raise your right hand.

10 Do you solemnly swear or affirm that the testimony you
11 are about to give is the truth, the whole truth, and nothing
12 but the truth, so help you God?

13 WITNESS MACLEOD: I do.

14 THE COURT: Would you state your full name,
15 please?

16 WITNESS MACLEOD: My name is Wolf MacLeod.

17 THE COURT: And Mr. MacLeod, do you wish to
18 address the Court as to issues that relate to this court's
19 determination about detention issues, and specifically what
20 I have in mind is -- what I'm governed by are two principal
21 factors: The risk of danger to the community and the risk
22 of flight -- and if you do, then I would be happy to hear
23 any statement that you wish to make.

24 WITNESS MACLEOD: This man makes a living off of
25 making millions of people absolutely miserable. He made me

1 miserable for a number of months --

2 MR. TROBERMAN: Your Honor, I am going to object
3 to this line of testimony. It is just about another victim.
4 It has nothing to do with the two issues that the Court --

5 THE COURT: I will permit him to continue for the
6 current time.

7 WITNESS MACLEOD: I was a victim of his mail bombs
8 and what we call being Joe jobbed where he uses our e-mail
9 addresses in his mailings. We get all of the bounce back
10 returns. He impacted my business severely, making it
11 difficult for me to retrieve my legitimate e-mail. This
12 went on for a long time. I received hundreds of thousands
13 of e-mails from this man and I do not think that he should
14 be freed.

15 THE COURT: Thank you, Mr. Wolf.

16 Mr. Troberman, do you have anything?

17 MR. TROBERMAN: I don't, your Honor.

18 THE COURT: Mr. Wolf, thank you for coming and
19 thank you for your statement.

20 WITNESS MACLEOD: Thank you.

21 THE COURT: You are excused.

22 The Bail Reform Act requires -- as passed by
23 Congress -- requires the release of a person facing trial
24 under the least restrictive conditions that will reasonably
25 assured the appearance of the person as required and the

1 safety of the community.

2 As a general proposition, and as is true in this case,
3 Congress has directed that the government bear the burden by
4 proving -- using a preponderance of the evidence standard
5 that the defendant poses a flight risk and by clear and
6 convincing evidence that the defendant poses a danger to the
7 community.

8 I will find that the government has satisfied its
9 burden in this case, and I will direct the pretrial
10 detention of Mr. Soloway in this case.

11 I note that the defendant in this case does have dual
12 citizenship. He is both a citizen of the United States and
13 a citizen of Sweden.

14 In my judgment, in terms of looking through the
15 Pretrial Services report, I see, even though he has been
16 here three years, minimal ties to the Western District of
17 Washington.

18 He has family in Sweden and has traveled extensively.

19 Now the grand jury in this case has found that there is
20 probable cause that the defendant has engaged in aggravated
21 identity theft and has been participating in fairly
22 sophisticated crimes involving fraud in connection with
23 electronic mail.

24 The defendant is obviously entitled to the presumption
25 of innocence, which all defendants have in this case, and I

1 stress that this is simply a probable cause determination by
2 the grand jury. Nevertheless it seems very clear that the
3 defendant is very sophisticated when it comes to the use of
4 computers, and frankly, I believe issues relating to
5 identity issues and travel documents would be something that
6 would be relatively simple for this defendant to accomplish.

7 I am concerned in large part because of his prior
8 conduct as it relates to court ordered injunctions. I do
9 not believe that this court, sitting as a criminal court,
10 should be a collection agency, and that is why I made the
11 comments that I did -- that this -- we no longer have
12 debtors' prisons. Nevertheless, it is -- and therefore I am
13 not ordering him detained because he did not pay the
14 judgments. There are civil means of forcing somebody to
15 abide by judgments, which have been entered in a case.

16 Nevertheless the courts have entered -- excuse me --
17 the Court, at least the record before me, in Oklahoma,
18 indicated that the defendant was permanently enjoined from
19 certain conduct, which is the very subject matter of these
20 particular criminal proceedings.

21 What that indicates to me is the defendant's
22 unwillingness to abide by court orders and makes highly
23 questionable the whole issue of whether he would comply with
24 supervision in light of that prior conduct.

25 I am also concerned that the defendant in this case has

1 been less than forthcoming about his assets. I am not again
2 making any sort of finding or determination regarding a
3 lavish lifestyle. There is nothing criminal with having a
4 lavish lifestyle. There are -- creditors may be upset by a
5 lavish lifestyle, but I am not upset by it -- in the context
6 of making a detention determination about whether somebody
7 lives a lavish lifestyle.

8 What I am concerned about is the possibility of assets
9 being hidden in an area that would then permit somebody to
10 continue if they left the jurisdiction, and what makes this
11 especially troubling is that these are allegations of cyber
12 crimes that respect no geographic borders.

13 It would be, for example, just as easy to continue to
14 do the activities for which the defendant has been indicted
15 in Sweden as it would be here in the United States. And
16 that is what concerns me -- particularly in light of the
17 conduct as it relates to following prior court orders.

18 And I am concerned that there have been, in the past,
19 attempts to -- attempts to -- some -- that could be
20 categorized as intimidation -- when somebody has asserted
21 certain legal rights.

22 I am not making a finding that the defendant has in
23 fact attempted to intimidate somebody in this case; somebody
24 is entitled to file counterclaims asserting their rights in
25 this case, and I don't have enough information in front of

1 me to make a specific determination as to whether there was
2 intimidation.

3 Nevertheless, in light of the proffers, it is very
4 easy, it seems to me, that again if one is outside of the
5 jurisdiction, to continue with a course of conduct that
6 is -- would fit in the context of intimidation for those who
7 have stepped forward.

8 It is for all of these reasons that I will direct the
9 continued detention of Mr. Soloway pending trial in this
10 matter.

11 Ms. Warma, is there anything further on this matter for
12 the government?

13 MS. WARMA: No, thank you, your Honor.

14 THE COURT: Mr. Troberman, is there anything
15 further for Mr. Soloway?

16 MR. TROBERMAN: No, your Honor.

17 THE COURT: We will be in recess.

18 THE CLERK: All rise, the Court is in recess.

19 (End of proceedings for 6/13/2007)
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C E R T I F I C A T E

1 I, Brian Killgore, do hereby certify:

2
3 That ACE Reporting Services, Inc., is a court-approved
4 transcription company for the state of Washington, counties of
5 King and Cowlitz, and for the United States District Court for
6 the Western District of Washington;

7 That the annexed and foregoing transcript of electronically
8 recorded proceedings was transcribed by me to the best of my
9 ability;

10 I further certify that I am not a relative or employee or
11 attorney or counsel of any of the parties to said action, or a
12 relative or employee of any such attorney or counsel, and that I
13 am not financially interested in the said action or outcome
14 thereof;

15 I further certify that the transcript is a true and correct
16 record of all audible portions of the taped testimony, including
17 questions and answers, and all objections, motions and
18 exceptions of counsel made at the time of the foregoing
19 proceedings. Areas of the tape(s) or CD(s) that were not
20 decipherable for any reason are noted as [INAUDIBLE].

21 Dated this 15th day of June 2007.

22 / Brian J. Killgore /
23 Brian J. Killgore
24 ACE Reporting Services, Inc.
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Notary Public in and for the
State of Washington,
Residing at Seattle.

My commission expires 11/1/2008