

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * *
UNITED STATES OF AMERICA *
v. * Cr.02-17M-1
STEVEN WILLIAM SUTCLIFFE * March 28, 2002
* 9:55 a.m.
* * * * *

TRANSCRIPT OF PRELIMINARY EXAM
AND DETENTION HEARING
BEFORE MAGISTRATE JUDGE JAMES R. MUIRHEAD

Appearances:

<u>For the Government:</u>	Arnold H. Huftalen, AUSA U.S. Attorney's Office 55 Pleasant Street Concord, NH 03301
<u>For the Defendant:</u>	Jonathan R. Saxe, Assistant Federal Defender Federal Defender's Office 22 Bridge Street Concord, NH 03301
<u>For Probation:</u>	Daniel Gildea
<u>Court Reporter:</u>	Sandra L. Kulacz, CSR, CM Official Court Reporter United States District Court 55 Pleasant Street Concord, NH 03301

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1 BEFORE THE COURT

2 THE CLERK: Court is in session this morning
3 and has for consideration a preliminary exam and a
4 detention hearing in Magistrate Number 02-17M-1, United
5 States of America versus Steven William Sutcliffe.

6 THE COURT: Before we begin, Mr. Saxe, have
7 you had an opportunity to confer with your client?

8 MR. SAXE: Yes.

9 THE COURT: I just want to be sure that
10 you're satisfied he's capable of providing adequate
11 assistance of counsel.

12 MR. SAXE: At this point, yes.

13 THE COURT: Okay. You may proceed.

14 MR. HUFTALBN: Thank you, your Honor. My
15 understanding of how the proceeding goes under Rules 5
16 and 5.1 is if the defendant is arrested in a district
17 other than that where the charges are brought, he's
18 entitled if he's arrested on anything other than an
19 indictment, entitled to a preliminary examination. He
20 requested such yesterday.

21 So that I'm clear, a preliminary examination
22 is to determine whether or not there's probable cause
23 to believe that a crime was committed upon which the
24 warrant in California was issued. My intention for
25 purposes of going forward with the preliminary

1 examination, your Honor, because this isn't my case,
2 I've certainly familiarized myself with the facts of
3 this case through conversations with the AUSA Elaina
4 Duarte in Los Angeles and with the case agent, Special
5 Agent Jeffrey Cugno who is in court with me today, I
6 certainly don't profess to know everything there is to
7 know about Mr. Sutcliffe's alleged criminal conduct.
8 What I do know is that Agent Cugno was the affiant on
9 the affidavit which was presented to Magistrate Judge,
10 I don't know how to pronounce the name, I believe it's
11 Eick, E I C K.

12 I would offer to the court as Government
13 Exhibit 1 a certified copy of the complaint and
14 affidavit in that case and would ask that the court
15 accept that affidavit as testimony in this case to
16 establish probable cause. I do not intend to put Agent
17 Cugno on the stand and have him, so to speak, go off
18 the reservation and discuss facts that are not in the
19 affidavit in a case that I am not particularly familiar
20 with.

21 I have Agent Cugno here in the event that Mr.
22 Saxe has a good faith belief that there are false
23 statements or that there are mistakes of a material
24 nature in the affidavit which would cause this court to
25 come to a contrary finding to that of Magistrate Judge

1 Eick in Los Angeles. He's here to answer and address
2 any of those issues.

3 Now, I spoke with Attorney Saxe before the
4 hearing and asked him if he would stipulate to
5 proceeding along those lines as a way to facilitate the
6 PC hearing or preliminary examination. I was told that
7 he wouldn't. I then told him that my other option, if
8 the court refused to accept the affidavit, would be to
9 place the agent on the stand and ask him under oath to
10 read into the record the 30-plus or 20-plus pages of
11 the affidavit, all of which everyone in this room has
12 already read.

13 THE COURT: Why isn't that hearsay?

14 MR. HUFTALEN: What's that?

15 THE COURT: Why isn't that all hearsay for
16 him to do that?

17 MR. HUFTALEN: Well, it's a public document.
18 It's an official record that's on file in the court in
19 Los Angeles, so if it's hearsay I think it would come
20 in under 803.

21 THE COURT: Well, by that token all a lawyer
22 would have to do in any case that's in any court would
23 be to file an affidavit in the courtroom and all of a
24 sudden it's a public document and therefore it's
25 admissible in court. That's not clear -- clearly not

1 what the -- it's hearsay. You've got some testimony by
2 the agent, put him on and let him testify, that's your
3 obligation. If you wanted to fly somebody here from
4 California because you had to, all you had to do was
5 tell me that yesterday.

6 MR. HUFTALEN: I have an agent from
7 California here.

8 THE COURT: All right, you've got live
9 evidence, let's hear it.

10 MR. HUFTALEN: Agent Cugno, please take the
11 stand.

12 THE COURT: You can offer it, the affidavit.
13 Do you have any objection?

14 MR. SAXE: I have an objection to the court
15 ruling -- basing a ruling on whether there's PC based
16 on the affidavit.

17 THE COURT: Do you have an objection to it as
18 an exhibit?

19 MR. SAXE: Yes.

20 THE COURT: Okay. Sustained. Mark for ID
21 only.

22 THE CLERK: It will be marked as Government's
23 Exhibit 1 for identification.

24 (Government's Exhibit 1 was
25 marked for identification.)

1 THE CLERK: Would you raise your right hand.

2 JEFFREY R. CUGNO

3 having been duly sworn, testified as follows:

4 THE CLERK: Please be seated. For the
5 record, please state your name and spell your last
6 name.

7 THE WITNESS: Jeffrey Raymond Cugno,
8 C U G N O.

9 DIRECT EXAMINATION

10 BY MR. HUFTALEN:

11 Q. Agent Cugno, if you would, please, introduce
12 yourself to the court, and by that I mean explain to
13 Magistrate Judge Muirhead who you are, where you're
14 employed, how long you've been employed, and what your
15 prior employment and educational background is?

16 A. I am currently a special agent with the FBI
17 in Los Angeles. I have been employed since May of 2000
18 as a special agent. Prior to that I was a computer
19 specialist with the FBI. I have a bachelor's degree
20 and a master's degree in criminal justice, and I have
21 also received training in computers and computer
22 software, computer evidence.

23 Q. Would you please tell us how you first came
24 to hear the name Sutcliffe with respect to this
25 investigation?

1 A. In November of 2001 I was contacted by
2 Elizabeth Greenwood which at the time was an assistant
3 counsel at Global Crossing in Los Angeles.

4 Q. And as a result of that contact with Ms.
5 Greenwood, can you tell us what actions you undertook?

6 A. Ms. Greenwood notified me that there was a
7 website on the Internet which contained the social
8 security numbers and confidential and private
9 information from Global Crossing. The name of that
10 website was www.evilgx.com. At that time I then went
11 to the Internet and reviewed the contents of that
12 website.

13 Q. And did you discuss this information that you
14 had received from Ms. Greenwood with anyone else in the
15 Department of Justice?

16 A. Yes, I did. I discussed it with other agents
17 of the FBI and with personnel from the United States
18 Attorney's Office in Los Angeles.

19 Q. Is that the FBI office in Los Angeles,
20 California?

21 A. Correct.

22 Q. And who have you worked with on this
23 investigation in the U.S. Attorney's Office?

24 A. Assistant United States Attorney Elaina
25 Duarte, D U A R T E.

1 Q. All right. Agent Cugno, I'd like you to tell
2 us in your own words, not reading the affidavit that
3 you prepared in this case but rather in your own words,
4 what your investigation revealed with respect to the
5 information that Ms. Greenwood had provided to you
6 about Mr. Sutcliffe and Global Crossing. If it assists
7 you during the course of your testimony to refer to any
8 notes that you may have or any documents that you have
9 written prior, please feel free, unless Mr. Saxe
10 objects, to review those, but I'm going to ask you not
11 to read from those. I want your original testimony
12 here today. Do you understand me?

13 A. Yes, I do.

14 Q. Thank you.

15 A. In December 12th of 2001 I accessed the
16 Internet and reviewed the contents of the website. On
17 that website I did find several web pages which I noted
18 in the affidavit. Can I read the text that I obtained
19 from that?

20 Q. Why don't you tell us what the text was. Do
21 you remember what the text was?

22 A. Not verbatim.

23 Q. Okay, did you record what that text was when
24 you saw it so it was fresh in your mind at that time?

25 A. I did.

1 Q. Unless Mr. Saxe objects, refer to your notes
2 that you wrote out when you were looking at that text
3 because your memory on it isn't clear today.

4 A. On the web page entitled www.evilgx.com
5 forward slash and then this is the word, S E E Y A dot
6 H T M, I found that it contained names and social
7 security numbers, and those were social security
8 numbers of the employees of Global Crossing.

9 Q. How did you determine that the names and
10 social security numbers on that website were those of
11 employees at Global Crossing?

12 A. Through contact with Ms. Greenwood at Global
13 Crossing.

14 Q. Are there any particular names of individuals
15 whose social security numbers or other identifying
16 information appeared there that you can give us
17 examples of today?

18 A. I'm not sure within that text, but there were
19 certain employees' names that I did find in there.

20 Q. Okay, as we go through and we discuss what
21 else you saw on that website, to the extent that there
22 are specific examples of employees of Global Crossing,
23 when we get there would you highlight that for us?

24 A. I will.

25 Q. All right. Now, did you simply look at the

1 website on that one day?

2 A. No, I reviewed it over several months.

3 Q. Okay, and did you download copies or folders
4 or files from that website?

5 A. I did.

6 Q. Tell us what other activities you engaged in
7 with respect to this investigation along those lines?

8 A. As a means of determining who was the owner
9 or the registrant of that website I used the Internet
10 address Networksolutions.com.

11 Q. Agent Cugno, I'm going to interrupt you and
12 I'm going to apologize, I want to go back, I should
13 have asked you this in the beginning and I didn't and
14 for that I apologize.

15 Can you very briefly give us an overview of
16 how web pages are set up on the Internet, how they are
17 registered, how they appear on the Internet, and how
18 they are accessed, if you are capable of doing that?

19 A. To the best of my ability I can.

20 Q. All right. You have experience in dealing
21 with computer-related cases, Internet cases in
22 particular?

23 A. Correct.

24 Q. If you would give a general overview of what
25 the web pages are and how they interface with the

1 Internet and how they are accessible.

2 A. My understanding is and specifically with web
3 pages that they have a domain name, and the domain name
4 in the case was www.evilgx.com. You're able to
5 register that name so that you can become the sole
6 proprietor of that website so that other people don't
7 have that same website, thereby when people go to
8 access it on the Internet they are going to see what
9 you intend them to see based on that name, and one of
10 the official registers on the Internet is
11 Networksolutions.com.

12 Q. When you say official registers, can you
13 explain that for us in more detail?

14 A. They are an agency or an organization which
15 accepts money for registering domain names so that
16 those become solely the ownership of one person or
17 entity.

18 Q. And that would be so that a particular
19 website that was up on the Internet could only be used
20 by one person, the person who had it registered?

21 A. Correct.

22 Q. Okay, and that website, so to speak, is a
23 specifically identifiable web address; is that right?

24 A. Correct.

25 Q. Is it also true that you can not possibly,

1 the way the Internet is established, have two website
2 addresses which are identical in all respects but go or
3 lead the user, or the user or the browser, to different
4 sites?

5 A. I don't know if I can say that definitively.

6 Q. Let me rephrase the question. If I were to
7 register a web page and the web page had a particular
8 address on it and someone unknown to me were to attempt
9 to access that web page via the Internet, could they?

10 A. I don't understand the term access.

11 Q. If I'm sitting at my home computer and I want
12 to view a web page, I would type into my browser the
13 web page address; correct?

14 A. Correct.

15 Q. That web page address would then cause my
16 computer to find that website on the Internet; correct?

17 A. Correct.

18 Q. And assuming that there were no password
19 protections or other impediments to that website, I
20 would be able to view the contents of the website;
21 correct?

22 A. You would.

23 Q. Each time I typed in that web address I would
24 be directed to that website; correct?

25 A. Yes.

1 Q. If I were to type in that web address on
2 Monday, and that website were present on Monday, I
3 would go there; right?

4 A. Correct.

5 Q. If that website was still there on Tuesday
6 and I typed in the same address, I'd go there on
7 Tuesday; right?

8 A. Correct.

9 Q. If I typed it in on Tuesday a second time and
10 the website was still there at the same address, would
11 my browser be directed to that website or could it be
12 directed to some other website?

13 A. You should go to that website if you type in
14 that address name.

15 Q. Okay. And if a person wants to register a
16 website or a domain name, can two people register the
17 same website, same domain name?

18 A. My understanding is that they cannot.

19 Q. Okay. Now, what is a website and how is
20 information stored on a website?

21 A. A website can be designed any number of
22 ways. Oftentimes it's set up with what is called a
23 home page which will be the initial page that you will
24 first view when you type in that address, and then
25 based on that home page there will be other links to

1 other web pages which are usually determined by whoever
2 designed that website. So if whatever those contents
3 are, are generally provided by the designer of that
4 website.

5 Q. And can the contents of a website be changed
6 periodically?

7 A. Yes, they can.

8 Q. And in your experience are they changed
9 periodically?

10 A. Yes, they are.

11 Q. Now, where does a website or web page exist
12 within the universe physically?

13 A. Given the dynamics of the Internet they can
14 be virtually anywhere.

15 Q. It can?

16 A. Correct.

17 Q. But they have to be somewhere; right?

18 A. Correct.

19 Q. And in the ordinary course, where they are is
20 on a web server; right?

21 A. Usually.

22 Q. And a web server is a computer, correct?

23 A. Correct.

24 Q. And a computer has to exist somewhere on the
25 planet; right?

1 A. Correct.

2 Q. With that background in mind, would you tell
3 us what investigation you took with respect to
4 www.evilmx.com?

5 A. I conducted many searches on the Internet
6 using various websites that allow you to access web
7 addresses and find out who the owner of the website is
8 and then who is currently hosting that website. The
9 host of a website can be the web server. In this case
10 I found at -- in January that --

11 Q. Of what year?

12 A. January of 2002 that the website was being
13 hosted by Hostingsolutions.com in Virginia.

14 Q. And did you take any actions to communicate
15 with anyone at that web hosting company?

16 A. I did and I spoke with the owner of that
17 company.

18 Q. You said in Virginia?

19 A. Correct.

20 Q. Can you tell us whether or not the servers
21 for that company were physically located in Virginia?

22 A. The owner of the company noted that the
23 servers were in Virginia.

24 Q. Okay. And what information did you get when
25 you spoke to that company with respect to this website

1 and its hosting by that company?

2 A. I was told that the website was -- actually,
3 can I refer to this just to clarify?

4 Q. Please do, yes. We want to make sure you get
5 it right.

6 A. Okay.

7 Q. For the record what you're referring to is
8 the affidavit that you swore to with respect to the
9 complaint in this case, is that right, Agent Cugno?

10 A. That's correct.

11 MR. HUFTALEN: Your Honor, a copy has
12 previously been provided to defense, but I'm handing
13 him a fresh copy now for his review.

14 A. I served a federal grand jury subpoena on the
15 owner of Hostingsolutions.com so that I could obtain
16 the subscriber information for the website that he was
17 currently hosting known as www.evilgx.com.

18 Q. And through the grand jury process were you
19 able to ascertain who that was or what that was?

20 A. The information that he provided to me was
21 that the subscriber for that website was Steven William
22 Sutcliffe.

23 Q. What else did you do with respect to this
24 information?

25 A. I had noted that when I went to the website

1 to view it that it appeared to be password protected.
2 That --

3 Q. Let me stop you there. What do you mean
4 appeared to be password protected?

5 A. When you access the website, it requested
6 that the user -- and again I'm going to have to refer
7 to this just to get this correct, and that is the
8 affidavit.

9 Q. Okay. What page and paragraph are you
10 referring to, agent?

11 A. I'm on page 14, paragraph 16.

12 THE COURT: When you accessed it prior to
13 that, you had never encountered a password protection?

14 A. No, sir.

15 THE COURT: Okay. This is something new
16 January 11th?

17 A. January 11th, correct.

18 THE COURT: Okay. All right.

19 Q. You say it appeared to be password protected,
20 was it in fact password protected?

21 A. You could still view the pages without having
22 to pay the membership, the \$100 cash, money or any
23 previously requested file to evilgx.com.

24 Q. There are websites, and I'm stepping back,
25 which are in fact password protected which only allows

1 people to access who know the true password to type in
2 to get into the web page or site; correct?

3 A. Correct.

4 Q. Were you required to enter into this web page
5 a secret or a password before you were able to enter it
6 or view its contents?

7 A. I was not sure at the time.

8 Q. Okay. Did you access the website or the web
9 page on January 11th?

10 A. I was able to get it up on my -- I was able
11 to view the contents, the first couple pages of the
12 website, on my browser.

13 Q. Okay. And what happened after January 11th?

14 A. After January 11th I consulted with the
15 United States Attorney's Office and they suggested
16 obtaining a search warrant for the contents of that
17 website.

18 Q. What action did you take?

19 A. I then went ahead and obtained a search
20 warrant for the website and presented that to the owner
21 of Hostingsolutions.

22 Q. As a result of that search warrant, what did
23 you learn?

24 A. I obtained a CD rom which contained the
25 actual copy of the content of the website.

1 Q. And was that CD rom pursuant to the search
2 warrant represented to you to be an accurate copy of
3 the data that was on the website?

4 A. Correct.

5 Q. Did you view that CD rom?

6 A. I did.

7 Q. And tell us what you saw when you viewed the
8 contents of the website on that CD rom?

9 A. I found several images that appeared on
10 several of the websites -- or several of the web
11 pages. To better explain them I would have to read
12 from the affidavit so as to get those words correct.

13 Q. Well, okay, again, you don't have an
14 independent recollection today of the words that were
15 on it; correct?

16 A. Correct.

17 Q. But you recorded those words when they were
18 fresh in your mind or when you were viewing the CD,
19 correct?

20 A. Correct.

21 Q. Okay, read for us, then, those words that you
22 recorded while viewing the CD.

23 A. Okay. This was found on the web page.

24 Q. Where in the affidavit are you?

25 A. I'm sorry, I'm on page 17. And several of

1 the web pages I found dealt with threats and then also
2 the possible ownership of employee social security
3 numbers.

4 Q. Okay, before you go any further, you
5 telephoned me at my residence last night at about 10
6 minutes of 11; correct?

7 A. I did.

8 Q. Would you explain to the court what prompted
9 your call to me at 10:50 last night?

10 A. I was reviewing this affidavit and then also
11 going back to the CD rom that was presented to me by
12 Hostingsolutions and I noted a discrepancy in the web
13 page that I had noted here in the affidavit.

14 Q. With particular reference to page 17,
15 subparagraph A at the top of the page, would you tell
16 us what the discrepancy is that you noticed?

17 A. In the affidavit I had typed the following
18 web page, www.evilgx.com/20020/magnumpi_not.htm.

19 Q. Now that address connotes what? That address
20 connotes a file within the web page; correct?

21 A. Correct.

22 Q. Now, you said you noted a discrepancy between
23 the CD which you were viewing and this affidavit?

24 A. Correct.

25 Q. Explain the discrepancy. What was on the CD

1 that's not in this affidavit or vice versa?

2 A. When I went back and reviewed the CD rom,
3 that web page contained pictures of two vehicles and
4 one picture of a female sitting in the driver seat.

5 Q. That web page meaning the address you just
6 read out; correct?

7 A. Correct. And it also contained some text.
8 Specifically the first paragraph here in A.

9 Q. The first paragraph that starts, "You now
10 have constructive notice...?"

11 A. Correct.

12 Q. Okay. Was the second paragraph that begins,
13 "Folks, the reason Evil," was that on the web page on
14 the address that's listed on the first line on page 17?

15 A. That was not.

16 Q. Can you tell us what you saw on the CD last
17 night?

18 A. I then continued to access the CD rom and
19 found that another web page located on the CD rom
20 provided by Hostingsolutions by the name
21 www.evilgx.com\magnumpi20010\magnumpi_not.htm was
22 virtually identical to that first address that I had
23 described earlier, however it also included the second
24 paragraph.

25 Q. The paragraph that begins, "Folks, the reason

1 evilgx and ends, "I won't settle until one of us is
2 dead?"

3 A. Correct.

4 Q. All right. I think what you said, and
5 correct me if I'm wrong, there were two folders on the
6 web --

7 MR. SAXE: Objection, leading.

8 THE COURT: I got the point. One says 20020
9 and the other one says 20010. And one has one
10 paragraph and the other one has the second paragraph.

11 Q. MR. HUFTALEN: One has one paragraph, the
12 other had both paragraphs; right?

13 A. Correct.

14 Q. All right. Both folders were on the web page
15 at the same time; right?

16 A. The contents of the website provided me by
17 Hostingsolutions provided both of those folders,
18 correct.

19 Q. Okay, fine. Now, you were telling us what
20 you saw when you reviewed the contents of the web
21 page. Continue.

22 A. As I noted before, that there were the two
23 vehicles and then one picture of a female sitting in a
24 driver seat and then I noted the text here.

25 Q. And what was the text that you noted?

1 A. Specifically the last sentence struck out at
2 me. It states:

3 "Now they are stuck with me and at this
4 juncture of the game I won't settle until one of us is
5 dead."

6 Q. Did you recognize anyone in the pictures
7 below which this text appeared?

8 A. I personally did not recognize any of those
9 people.

10 Q. Were you advised by anyone at Global Crossing
11 the identity of anyone in those pictures?

12 A. I was told that the female sitting in the
13 vehicle was a process server by the name of Tracy Hall.

14 Q. And who is Tracy Hall and what's her
15 relationship to Global Crossing?

16 A. I was told that she was employed to serve a
17 temporary restraining order upon Mr. Sutcliffe.

18 Q. What else did you find when you reviewed the
19 contents of the website that you got the search warrant
20 for?

21 A. I also found the following web page,
22 www.evilgx.com/SSN0/8000.htm, and it contained text.

23 Q. What was the text that it contained?

24 A. The text I wrote was:

25 "I lawfully own all present GX employees'

1 SSNs, along with their birth dates, home address and a
2 whole lot more."

3 Q. And did you note how many dates of birth
4 appeared on that site?

5 A. On the entire website there were
6 approximately 79 hundred dates of births.

7 Q. Did you find any other statements that you
8 took to be a threat on the website when you reviewed
9 it?

10 A. I did.

11 Q. Tell us what you found and where you found
12 it?

13 A. Excuse me. On the web page
14 www.evilgx.com/temp/tracy44H669.htm, the text read:

15 "To close, Tracy Hall, if you threaten my
16 counsel, call my home again, threaten me or any member
17 of my family, or ever appear near me or my family, I
18 will personally send you and the captains of the ship
19 straight back to the hell from where you came."

20 Q. What else did you find on the website?

21 A. I also found the website, on the website, the
22 web page www.evilgx.com/olympic0/integrity.htm with the
23 following text:

24 "Now they're stuck with me, and at this
25 juncture of the game, I won't settle until one of us is

1 dead. Literally."

2 Q. What else did you find?

3 A. I also found on the web page
4 www.evilgx.com/temp/tracytalk.htm, the following:

5 "If I ever see you near my family again, and
6 I know how to stalk too, I will kill you. That's my
7 offer."

8 Q. Do you know where the defendant in this case,
9 Mr. Sutcliffe, has lived in the last six months?

10 A. According to records I found through the New
11 Hampshire Department of Motor Vehicles and through the
12 utilities department, that he's been living at 315 East
13 High Street in Manchester, New Hampshire since November
14 21st, 2001.

15 Q. And prior to that do you know where he lived?

16 A. He lived at 1054 South Bedford Street in
17 Beverly Hills, California.

18 Q. Do you know whether or not within the last
19 six months he's lived in Virginia where the server was
20 where this web page was hosted?

21 A. To my knowledge he has not.

22 Q. With respect to the social security numbers
23 or other personal identifying information with respect
24 to Global Crossing employees, were you able to identify
25 any other of that type of information on the website

1 www.evilgx.com?

2 A. I'm afraid I don't understand the question.

3 Q. What personal identifying information of
4 Global Crossing employees did you find on the evilgx
5 website?

6 A. There was quite a bit. Certain individuals
7 had been singled out and given their own web pages
8 where all their identifying information including home
9 addresses, dates of birth, social security numbers, and
10 sometimes spouses' names, were also presented.

11 Q. Now, on this web page were there any things
12 called or referred to as hyper links?

13 A. Yes, there were.

14 Q. Was there a hyper link on this web page that
15 referred the browser or the person using it to any
16 documents that had been written or published by any
17 members of Congress?

18 A. Yes, there were.

19 Q. Would you tell us about that?

20 A. At the time when I was reviewing the contents
21 of the website in December of 2001 there were numerous
22 web pages, and one that I did find was labeled
23 www.evilgx.com/tracy44669.htm. On that web page there
24 was a hypertext link which directed me to the following
25 web page.

1 Q. Before you do that, tell us how a hypertext
2 link connects you to another web page?

3 A. My understanding is when an individual
4 develops a web page, they can use words or icons or
5 pictures, and when you click on those items it can
6 direct you to another web page or another website.

7 Q. In your browser through the magic of the
8 Internet, if you click on that icon or word or photo,
9 will redirect you to a different website or web page;
10 correct?

11 A. Correct.

12 Q. All right. Tell us what the hyper link was
13 here that you just referenced?

14 A. The hypertext link that I found were the
15 words: "It can get much, much worse." And those words
16 were underlined and that became a hypertext link.

17 Q. So those words, "It can get much, much
18 worse," were on the evilgx website?

19 A. Yes.

20 Q. And they were in fact the hyper link. If you
21 click on those words, you would go to another site?

22 A. Correct.

23 Q. What was the site you were directed to? Did
24 you click on that and go to that site?

25 A. I did click on that site.

1 Q. What did you see when you got there?

2 A. www.politicsol.com/guest-commentaries --

3 Q. Commentaries, right?

4 A. Commentaries.

5 Q. Forward slash 2001-06-01.html?

6 A. Correct.

7 Q. Okay. Tell us what that site is in your own
8 words very succinctly?

9 A. That was an article that described the
10 dangers of identity theft and how rapid it is and how
11 devastating it can be to the victims.

12 Q. Who wrote that article?

13 A. It was written by the Honorable E. Clay Shaw,
14 Jr.

15 Q. A Florida congressman?

16 A. Correct.

17 Q. And a hyper link of the article on identity
18 theft was in evilgx's website?

19 A. Correct.

20 Q. And the evilgx website is where identifying
21 information about the Global Crossing employees was
22 listed?

23 A. Correct.

24 Q. Tell us what you've learned about Mr.
25 Sutcliffe, his employment with Global Crossing, how it

1 began and how it ended?

2 A. He was employed by Tristaff who then
3 contracted him to Global Crossing where he worked in
4 the computer department. He was then offered a
5 full-time position by Global Crossing and accepted that
6 position.

7 Q. What did he do? What were his job duties at
8 Global Crossing generally?

9 A. I was told he was to work on the computers at
10 Global Crossing fixing them and repairing them.

11 Q. He was ultimately fired from Global Crossing;
12 correct?

13 A. Correct.

14 Q. Do you know when he was fired?

15 A. He was terminated from Global Crossing in
16 September of 2001.

17 Q. You were telling us about the web hosting
18 company, where it was located. Were you able to
19 ascertain whether or not evilgx.com had been hosted or
20 was later hosted on any other web hosting company's
21 servers?

22 A. The website was hosted by numerous servers.

23 Q. Tell us what you learned about those servers
24 with respect to Mr. Sutcliffe. Let me ask you another
25 way, I'm sorry.

1 You told us that you served a subpoena on
2 this web hosting company and you got information, and
3 included in that information was Mr. Sutcliffe's name;
4 correct?

5 A. Correct.

6 Q. Were you able to ascertain whether or not Mr.
7 Sutcliffe had any affiliation with evilgx.com when it
8 was hosted by any other web hosting company?

9 A. I was not.

10 Q. Did you attempt to ascertain that?

11 A. I did.

12 Q. And what was the result of your endeavor?
13 Did they not have the information is what I'm getting
14 at or did they tell you it was hosted by somebody other
15 than Mr. Sutcliffe?

16 A. I am sorry, but I do not remember actually
17 what happened.

18 Q. Okay. Let me ask you this. If you had
19 gotten information that said this particular website,
20 evilgx.com, was hosted by somebody other than Mr.
21 Sutcliffe, is that something that you would have
22 ordinarily pursued?

23 A. Yes.

24 Q. All right. Can you tell us how it is that
25 you came to learn that Mr. Sutcliffe was in New

1 Hampshire?

2 A. I was alerted by Elizabeth Greenwood at
3 Global Crossing that she had received an e-mail that
4 had been received by a former Global Crossing board of
5 director. She then forwarded that e-mail to me, and
6 that e-mail was sent from the e-mail address
7 gary_winnick2002@yahoo.com.

8 Q. Who is Gary Winnick?

9 A. Gary Winnick is the chairman at Global
10 Crossing.

11 Q. Were you able to ascertain whether Mr.
12 Winnick was the person who originated or sent that
13 e-mail?

14 A. I contacted Mr. Winnick and he noted to me
15 that he did not own that e-mail or he never used that
16 e-mail.

17 Q. Yahoo is a free web page e-mail service;
18 correct?

19 A. I believe they are.

20 Q. And without getting into the particular
21 details, any individual can set up an e-mail account
22 with Yahoo or with MSN Hotmail and use that as an
23 origin point for sending e-mails; correct?

24 A. Correct.

25 Q. All right, what did you do with respect to

1 identifying who was associated with that Yahoo e-mail
2 address?

3 A. I submitted a grand jury subpoena to Yahoo to
4 obtain the subscriber information which would include
5 the originating IP address and who initiated that
6 account.

7 Q. And that led you to know what, or what was
8 contained in the information that you received from
9 Yahoo?

10 A. The information I received described the IP
11 address.

12 Q. What's an IP address?

13 A. It's an Internet protocol address, which is
14 specific for a location.

15 Q. Series of numbers separated by dots; correct?

16 A. Correct.

17 Q. Is it fair to say that there are no two IP
18 addresses at any given point in time that are identical
19 in the world?

20 A. Correct.

21 Q. All right, what did you do once you learned
22 what the IP address was?

23 A. I then found out who owned that IP address
24 and I learned that AT&T Broadband owned that address.

25 Q. And this is meat and potatoes computer

1 investigation, right?

2 A. Correct.

3 Q. Once you had an IP address, you want to know
4 who the ISP is, who owns that IP address, right?

5 A. Correct.

6 Q. And then you go to that ISP and you ask to
7 whom was this IP address assigned?

8 A. Correct.

9 Q. Did you go to AT&T?

10 A. I did go to AT&T.

11 Q. What did you learn?

12 A. I learned that that IP address --

13 (Pause.)

14 Q. I direct your attention to page 12, paragraph
15 12 of your affidavit if you need to refresh your
16 recollection.

17 A. Yes, thank you. That at the time that that
18 e-mail address had been created, which was February
19 5th, 2002 at 7 hours, 31 minutes, 53 seconds Pacific
20 Standard Time, that IP address was assigned to a
21 subscriber by the name of Orly Mann, M A N N, at 315
22 East High Street, Manchester, New Hampshire 03104.

23 Q. At that time did you know who Orly Mann was?

24 (Pause.)

25 Q. Let me rephrase it. Did you know at that

1 time or did you later learn who Orly Mann was?

2 A. I did later learn who that person was.

3 Q. Who is it?

4 A. Orly Mann is the wife of Steven Sutcliffe.

5 Q. And once you had that information, what did
6 you do?

7 A. Excuse me, can I get some water?

8 Q. Certainly.

9 (Pause.)

10 A. I'm sorry, can you repeat the question?

11 Q. What else did you learn? I'm sorry, you had
12 an IP address, you went to AT&T, you found that it was
13 assigned to an account held in the name of Orly Mann in
14 Manchester, New Hampshire.

15 A. Correct.

16 Q. You later learned Orly Mann was the wife of
17 Mr. Sutcliffe?

18 A. Correct.

19 Q. Did you go back to Yahoo and seek additional
20 information or records with respect to access of the
21 Yahoo e-mail address by this IP address, and I direct
22 your attention to paragraph 13, page 13?

23 A. I did. I submitted another subpoena to Yahoo
24 and they provided logs which would show who had
25 accessed -- I'm sorry, where on the Internet that

1 e-mail account had been accessed, and they showed that
2 it had been accessed between February 18th, 2002 and
3 March 6th, 2002 by that same IP address.

4 Q. The one that ran back to Manchester, New
5 Hampshire?

6 A. Correct.

7 Q. So now you're in a situation or a position
8 where you know that the IP address in Manchester, New
9 Hampshire is tied to an e-mail that purports to come
10 from Gary Winnick or is, in computer lingo, spoofed
11 from Gary Winnick, right?

12 MR. SAXE: Objection, leading.

13 THE COURT: Sustained.

14 Q. Armed with that information, what did you
15 then know?

16 A. I knew that the e-mail that was sent from --
17 to Gary Winnick's Yahoo account which in the title line
18 said, "Stop by and say hi sometime," and then in the
19 narrative section had the web address www.evilgx.com
20 had all been sent from a computer at this address at
21 315 East High Street in Manchester using a cable modem
22 that was owned by or that had been provided by AT&T
23 Broadband.

24 Q. Did you confirm Mr. Sutcliffe's residence at
25 that address, 315 East High Street, Manchester?

1 A. I did.

2 Q. And did you obtain a search warrant to search
3 that residence?

4 A. I did.

5 Q. Was a search executed at that residence on
6 the 26th of March, two days ago?

7 A. It was.

8 Q. Who was present while the search was
9 executed, can you tell us?

10 A. Agents of the FBI.

11 Q. Was Orly Mann present?

12 A. I was told that she was.

13 Q. You weren't at the search scene?

14 A. No, I was not.

15 Q. All right, where were you?

16 A. I was transporting Mr. Sutcliffe.

17 Q. You had been involved in the arrest of Mr.
18 Sutcliffe, other agents were handling the search?

19 A. Correct.

20 Q. There was an agent from Squad C11 from
21 Boston, known as the computer squad, who was present at
22 the search scene?

23 MR. SAXE: Objection, he said he wasn't
24 there, he wouldn't know who was there.

25 Q. Have you spoken with the FBI agents who were

1 present?

2 A. Yes, I have.

3 Q. Are you -- do you know what was seized during
4 the course of that search generally?

5 A. Generally I do know that a computer was taken
6 as well as other items.

7 Q. What other items were taken?

8 A. Specifically I do not know, but it was
9 computer-related items, CD roms and other items.

10 Q. Any firearms taken?

11 A. There was a rifle taken.

12 Q. Do you know who the rifle belonged to?

13 A. I do not.

14 Q. Who lived in the apartment?

15 A. Orly Mann, her husband, Steven Sutcliffe and
16 their small child.

17 Q. How old is the child?

18 A. I believe she's four.

19 Q. Three or four?

20 A. Three or four, yes.

21 Q. Are you aware of any other statements made
22 recently by this defendant with respect to whether or
23 not he was involved with the posting of personal
24 identifying information of Global Crossing employees on
25 the website?

1 MR. SAXE: Your Honor, I don't object if the
2 statements were made to him, but I would object --

3 THE COURT: Well, the answer to this is first
4 of all, you're premature. The question is, is he
5 aware.

6 MR. SAXE: That's correct, your Honor.

7 THE COURT: Okay. So the answer to that is
8 yes or no. Then the next question is, how would you be
9 aware. Then you may or may not have an objection.

10 Q. Are you aware as to whether or not the
11 defendant has made any recent statements with respect
12 to being involved in the posting of personal
13 identifying information of Global Crossing employees on
14 evilgx's website?

15 THE COURT: You may answer that yes or no.

16 A. Yes, but I'm not sure if it was --

17 THE COURT: You didn't hear me very well.

18 A. I'm sorry.

19 THE COURT: Maybe they don't teach you how to
20 listen in the FBI. I say yes or no, you answer yes or
21 no and you shut up.

22 A. Yes, sir.

23 THE COURT: So the answer is yes?

24 A. Yes.

25 Q. Do you know what those statements were made

1 by Mr. Sutcliffe?

2 MR. SAXE: Objection.

3 THE COURT: Still premature. That's still a
4 yes or no, does he know?

5 A. Yes.

6 Q. And what were these, what I will represent to
7 the court are party opponent admissions and therefore
8 non-hearsay statements?

9 MR. SAXE: First of all, is that a question?

10 Q. What were these statements?

11 THE COURT: I think it was a speech.

12 MR. SAXE: Objection.

13 THE COURT: You object to the form of the
14 question?

15 MR. SAXE: It's hearsay. I object to him
16 being asked what was the substance of these statements
17 that supposably my client made.

18 MR. HUFTALEN: Your Honor, I would argue that
19 any statements attributable to the defendant are not
20 hearsay, they are party opponent admissions and
21 specifically not hearsay.

22 THE COURT: Well, first of all I'm going to
23 direct that you establish a foundation.

24 MR. HUFTALEN: Okay.

25 THE COURT: How do you know?

1 A. I spoke with his brother yesterday.

2 THE COURT: Okay.

3 Q. How else do you know? Did you read a New
4 York Times article this morning?

5 THE COURT: Well, there's authoritative
6 stuff. That's definitely hearsay.

7 MR. HUFTALEN: If there's a serious question
8 as to the trustworthiness of the reporter's recitation,
9 then I assume that an objection of hearsay would be
10 sustained.

11 THE COURT: Well, I also have some interest
12 in protecting the defendant's constitutional rights
13 here and I'm not going to let you go far afield here.
14 I mean, either you have a basis to get this evidence in
15 or you don't.

16 MR. HUFTALEN: May I make a proffer to you so
17 that you can rule on the admissibility.

18 THE COURT: Okay, why don't you make a
19 proffer at sidebar.

20 AT SIDEBAR

21 MR. SAXE: Your Honor, I think he has to make
22 a legal argument to see if there is any good faith
23 basis whatsoever upon which any of this evidence can
24 come in.

25 THE COURT: Well, first of all, the brother

1 is in the back, so if a statement was made, you can put
2 the brother on and he can testify and then it would be
3 a party admission.

4 MR. HUFTALEN: Sure, I can do that.

5 THE COURT: Otherwise you're a step removed
6 from -- secondly, I can tell there are reporters all
7 over the place and we are not going to be trying this
8 for the New York Times.

9 MR. HUFTALEN: We're not, we're simply doing
10 what --

11 THE COURT: I understand. I see them looking
12 up and smiling.

13 MR. HUFTALEN: They've read the article, they
14 know it's there.

15 THE COURT: They wrote it.

16 MR. HUFTALEN: That's Pat Grossman, she's
17 with the Union Leader, and the other is AP. They are
18 not from the Times. I don't think it's inadmissible.

19 MR. SAXE: I would ask that counsel lower his
20 voice.

21 THE COURT: First of all is the question, how
22 he heard it from the brother.

23 MR. HUFTALEN: I will put the brother on.
24 With respect to the Times, hearsay can be within
25 hearsay clearly. If it's a party opponent admission,

1 then it's non-hearsay, but it could be hearsay because
2 it came from the Times as opposed directly from the
3 brother, however, I don't think there is any indicia of
4 untrustworthiness.

5 MR. SAXE: Your Honor --

6 MR. HUFTALEN: Could I make the argument for
7 the record?

8 THE COURT: One at a time, Mr. Saxe.

9 MR. SAXE: Okay.

10 MR. HUFTALEN: I don't think there is any
11 indicia of untrustworthiness with respect to the New
12 York Times recording that there were several telephone
13 conversations with the defendant, and I know from my
14 own experience that the New York Times is fairly
15 sensitive and they don't have reporters quoting someone
16 when they are writing an article about a criminal
17 offense without verifying it was the person they spoke
18 with.

19 THE COURT: If only your boss, Mr. Ashcroft,
20 and others had the same confidence in the New York
21 Times, how good the world would be.

22 Now, Mr. Saxe, what do you have to say?

23 MR. SAXE: Okay, the substance of the article
24 was that my client admitted to writing the e-mail or
25 having a website where he posted stuff.

1 MR. HUFTALEN: And that he also declined to
2 disclose his location saying he knew the authorities
3 were on his trail. I assume you got the article, but I
4 will give it to you. Judge --

5 THE COURT: Well, right now we are on what he
6 said to his brother.

7 MR. HUFTALEN: I'm not going to ask him what
8 he said to his brother. I will put the brother on if I
9 want to get that out.

10 THE COURT: All right, this other stuff we
11 will deal with separately.

12 MR. HUFTALEN: That's what I want to do now,
13 I want to ask him about that.

14 IN OPEN COURT

15 Q. BY MR. HUFTALEN: Agent Cugno, I'm not going
16 to ask you any statements made by the defendant's
17 brother to you, okay, I want to limit my questions to
18 you to the other of the two issues that we just
19 raised.

20 Are you familiar, and just answer this
21 question yes or no, with statements which have recently
22 been attributed to this defendant, Mr. Sutcliffe, with
23 respect to the alleged criminal violations here, yes or
24 no?

25 A. Yes.

1 Q. How is it that you became familiar with those
2 statements which are allegedly attributed to Mr.
3 Sutcliffe without telling us the substance of any of
4 these alleged statements?

5 A. By reading an article in the New York Times.

6 Q. When did you read that?

7 A. This morning.

8 Q. When did that article appear I should have
9 asked?

10 A. I'm not --

11 Q. Was it in today's paper?

12 A. I'm not sure.

13 Q. But it was an article that you read?

14 A. Correct.

15 Q. And the article, without getting into any of
16 the statements attributable to the defendant, was an
17 article about the arrest of Mr. Sutcliffe and the
18 Global Crossing issue; right?

19 A. Correct.

20 Q. Now, before you answer, pause. Please tell
21 us what statements you read in the New York Times today
22 attributable to Mr. Sutcliffe with respect to this
23 investigation?

24 MR. SAXE: Objection, hearsay, your Honor. I
25 mean, I think that the court can rely on its experience

1 to note that quite often things that are written in the
2 paper as attributable to an individual are not what the
3 individual actually said. It happens all the time in
4 politics. It happens all the time all over the place.
5 So if the government is offering this evidence to show
6 that my client made that exact statement, I would
7 suggest that's not reliable enough. That person can't
8 be cross-examined. It's a newspaper reporter. I don't
9 care if he works for --

10 THE COURT: Well, if the reporter were here
11 then it could be the admission of a party.

12 MR. SAXE: Then that would be their argument
13 I would assume.

14 THE COURT: But the article itself would be
15 considered hearsay.

16 MR. SAXE: I would agree, and I think that
17 the reliability -- well.

18 THE COURT: Well, it's the New York Times,
19 reliability.

20 MR. SAXE: Well, it's not the Union Leader I
21 would agree, your Honor, but --

22 THE COURT: All right, objection is
23 sustained.

24 Q. That means don't answer that question, Agent
25 Cugno.

1 Do you have other information that you've
2 uncovered during the course of this investigation with
3 respect to Mr. Sutcliffe's association with the website
4 evilgx.com, which is material to the issue of whether
5 or not there's probable cause to believe a crime has
6 been committed that you haven't yet told Magistrate
7 Judge Muirhead?

8 A. Yes.

9 Q. What is that?

10 (Pause.)

11 A. And I will note this because I don't believe
12 we have already discussed it. I know I touched on it
13 before. Through my investigation I did look up the
14 registrant for evilgx.com, the website, through
15 Networksolutions, and listed there was the name S.
16 Sutcliffe at the address 231 East Palm Avenue, Suite A,
17 Burbank, California 91502.

18 Q. Do you know if during the course of his
19 employment Mr. Sutcliffe had access to personal
20 identifying information of Global Crossing employees?

21 MR. SAXE: Objection, foundation, doesn't
22 have any personal knowledge of that.

23 THE COURT: Establish the foundation first.

24 Q. During the course of this investigation did
25 you determine what Mr. Sutcliffe's employment duties

1 were while he worked at Global Crossing?

2 A. I did.

3 Q. Did you determine whether or not he had
4 access, legitimate access during the course of his
5 employment, to personal identifying information of
6 Global Crossing employees?

7 MR. SAXE: I object to that, your Honor,
8 that's based on hearsay.

9 MR. HUFTALEN: It's his investigation, your
10 Honor.

11 THE COURT: Well, the question was did you
12 determine whether he had access. The answer to that
13 would either be yes or no.

14 A. Yes.

15 Q. How is it that you determined that he had
16 access --

17 MR. SAXE: Objection, that's not what he
18 said. He just said yes, I determined, he didn't say
19 yes, he had access, so that assumes a fact not in
20 evidence.

21 THE COURT: Overruled.

22 MR. SAXE: But your Honor --

23 THE COURT: The question was did you
24 determine whether there was access? Yes, I did
25 determine. Okay, what did you determine?

1 Q. What did you determine?

2 THE COURT: I thought he was just
3 establishing a foundation first, how did you determine
4 it before he asked what, because when you get to what
5 you're going to object.

6 MR. SAXE: Well, the issue is whether he had
7 access to that information, and the witness did not
8 testify I determined that he had access to that
9 information.

10 THE COURT: Okay.

11 MR. SAXE: He said whether or not, did you
12 determine whether or not, and I don't have an objection
13 to that. I do have an objection to yes, he had access.

14 MR. HUFTALEN: I can rephrase the question
15 hopefully to avoid this issue.

16 Q. Will you please tell us what you did during
17 the course of your investigation with respect to
18 determining whether or not Mr. Sutcliffe did, during
19 the course of his employment or contract duties at
20 Global Crossing, have access to personal identifying
21 information of Global Crossing employees?

22 A. I again contacted Elizabeth Greenwood at
23 Global Crossing and inquired into what Mr. Sutcliffe's
24 duties would have been and what his access would have
25 been in regards to the computers at Global Crossing.

1 Q. Did Mr. Sutcliffe have access to databases
2 within the computers at Global Crossing?

3 MR. SAXE: Objection, that's hearsay, number
4 one. Number two, Ms. Greenwood is not even an employee
5 of Global Crossing, she's counsel, she's an attorney,
6 and there is no evidence whatsoever that she would have
7 any knowledge or be a supervisor of the defendant or
8 have any knowledge about what he did with the computer
9 systems or about -- have any knowledge about how far
10 into the computer system he might go.

11 THE COURT: I understood the testimony to be
12 that Ms. Greenwood was in-house counsel. She was an
13 employee. Overruled.

14 Q. Do you remember the question?

15 A. I don't.

16 Q. Could you please read that back, Sandy.

17 (Previous question read back.)

18 Q. Let me ask it differently. I was going to
19 ask you a two-step question. Let's just get it out.

20 Did Mr. Sutcliffe have access to personal
21 identifying information of Global Crossing employees
22 while he, Mr. Sutcliffe, was at Global Crossing?

23 A. Yes.

24 Q. Do you know whose personal identifying
25 information Mr. Sutcliffe had access to?

1 A. Not all -- I don't know who entirely he had,
2 but I know he had access to the computers at Global
3 Crossing which did contain that information.

4 Q. This case has a history that precedes your
5 criminal investigation; correct?

6 A. Correct.

7 Q. Prior to you becoming involved in a criminal
8 investigation, there was civil litigation between --

9 MR. SAXE: Objection, leading.

10 MR. HUFTALEN: It's preliminary information,
11 your Honor.

12 THE COURT: Do you know whether or not there
13 was civil litigation before?

14 A. Yes, I do.

15 THE COURT: How would you know?

16 A. Elizabeth Greenwood notified me.

17 Q. Was Ms. Greenwood involved personally in the
18 litigation that she told you about?

19 A. Yes, she was.

20 Q. Did that litigation involve Mr. Sutcliffe?

21 A. Yes, it did.

22 Q. Can you tell us -- you made reference earlier
23 about Tracy Hall attempting to serve process of a
24 document on Mr. Sutcliffe. That's where I'm going. Do
25 you know what Global Crossing did with respect to Mr.

1 Sutcliffe in civil litigation prior to your criminal
2 investigation?

3 A. Global Crossing sought and obtained a
4 temporary restraining order and then later a
5 preliminary injunction against the dissemination of
6 Global Crossing information.

7 Q. And a preliminary injunction was granted in
8 California; correct?

9 A. Yes.

10 Q. And a temporary restraining order was entered
11 in California; correct?

12 A. Yes.

13 Q. Can you tell us whether or not Mr. Sutcliffe
14 has published on the website, evilgx.com, a pleading
15 from the court in California with respect to that civil
16 litigation? If you can't find it, you can't find it,
17 we will go on to something else.

18 A. I don't know if that's what it was.

19 Q. Okay. Now, part of this investigation, and
20 this is a preliminary question to direct you in a
21 particular direction, part of this investigation was
22 with respect to identity fraud or identity theft;
23 right?

24 A. Correct.

25 Q. Part of it was interstate communications of

1 threatening -- interstate transportation or
2 transmission of threatening communications; right?

3 A. Correct.

4 Q. With respect to that aspect, the threatening
5 communications, did you endeavor to determine whether
6 or not there was a prior pattern of conduct by Mr.
7 Sutcliffe with respect to communications of a
8 threatening nature on the Internet?

9 A. Yes, I did.

10 Q. Tell us what you found?

11 A. We found that there had been a previous
12 posting of an another website that had also been
13 registered to Mr. Sutcliffe.

14 Q. The name of the site was what?

15 A. www.killercop.com.

16 Q. In a nutshell can you tell us what
17 killercop.com was?

18 MR. SAXE: Your Honor, I object. I don't
19 think that's relevant. That has nothing to do with
20 what he's charge with, which I'm not even clear really
21 what that is. It has nothing to do with that.

22 THE COURT: Well, I mean I guess there are
23 two ways we can get to it. This is a preliminary
24 examination, I agree with you it's not particularly
25 relevant to whether or not there's probable cause to

1 believe that the offenses have been committed, but when
2 you get to the issue of bail you can either hear it
3 from a proffer or you can hear it from the witness,
4 take your choice.

5 MR. SAXE: Okay, fine.

6 THE COURT: Okay. I will receive it with
7 respect to what I assume the next step of this
8 procedure is going to be which is the bail hearing.

9 MR. HUFTALEN: Thank you, your Honor.

10 THE COURT: To the extent that it's offered
11 as evidence of either of the two crimes, I obviously
12 can't receive it because it's not relevant.

13 MR. HUFTALEN: To digress only for a minute,
14 I think it is admissible and relevant under 404(b)
15 because it's evidence of intent, preparation, plan and
16 knowledge.

17 THE COURT: Okay, offered for that purpose.
18 Sustained.

19 Q. Tell us what you know about -- I'm sorry?

20 THE COURT: I will overrule the objection,
21 you may ask.

22 MR. HUFTALEN: I'm sorry, I thought you said
23 sustained.

24 THE COURT: I did. You caught me.

25 MR. HUFTALEN: There's a first time for

1 everything.

2 THE COURT: You know, it's just that age, it
3 creeps in.

4 Q. Can you tell us what you learned of the
5 website killercop.com?

6 A. The website primarily was offering a monetary
7 reward for the killing of any police officer.

8 Q. Who was the registrant on that particular
9 website?

10 A. On March 7th of 2002 I accessed the Internet
11 and went to the website again, Networksolutions.com,
12 and looked for the **killercop.com** address and found that
13 the registrant was -- the registrant of the website was
14 Mr. Sutcliffe at 231 East Palm Avenue, Suite A, Burbank
15 California 91502.

16 Q. Is that address an address that you knew to
17 be a residence of Mr. Sutcliffe?

18 A. No, that was not.

19 Q. Did you learn what that address was?

20 A. That address was the offices of Leslie
21 McAfee, M C A F E E.

22 Q. Who is Leslie McAfee, Esquire?

23 A. I understand that he was an attorney for Mr.
24 Sutcliffe.

25 Q. Did you attempt to view the website

1 killercop?

2 A. I attempted to view it on the Internet and I
3 was unable to view it.

4 Q. Because it was no longer available?

5 A. Correct.

6 Q. Do you know whether or not the website,
7 killercop.com, when it was available was captured on CD
8 by anyone?

9 A. It was.

10 Q. Or the content of it I should say was
11 captured?

12 A. It was.

13 Q. Tell us what you know about that?

14 A. I met with detectives from the Los Angeles
15 Police Department who had captured the contents of the
16 website.

17 Q. Without getting into any statements by those
18 police officers can you tell us why the LAPD captured
19 or snagged the content of the website killercop.com?

20 A. Contained within the website were statements
21 about two officers who had arrested Mr. Sutcliffe.

22 Q. And who were those two officers?

23 A. Officers Utley and Ippolito, I P P O L I T O,
24 Utley, U T L E Y.

25 Q. Can you tell us what you learned about

1 Officers Utley and Ippolito's interactions with Mr.
2 Sutcliffe?

3 A. They had arrested Mr. Sutcliffe and after
4 that, after one of the arrests, that's when the website
5 became public.

6 Q. Specifically what was on the website as you
7 viewed its contents of the CD the LAPD had obtained?

8 A. It noted a cash reward for the home address
9 of Officer Utley and/or a picture of Officer Ippolito.
10 And there was also a hypertext link, and when you
11 clicked upon that link it displayed the graphics -- the
12 lyrics of rapper Ice-T's song "Cop Killer."

13 Q. Can you tell us any of the specifics with
14 respect to that website threats to kill police
15 officers?

16 A. The detectives also presented to me copies of
17 instruments and tools, weapons that were for sale on
18 the website.

19 Q. Copies of the actual weapons or copies of the
20 descriptions and photos that had appeared on the
21 website?

22 A. Copies of the photos and the descriptions of
23 those weapons and tools.

24 Q. Tell us very generally what the weapons that
25 were listed on that website were?

1 A. Some of them were stabbing devices, knives,
2 and then other -- some of the tools with handcuff keys
3 and other instruments.

4 Q. Were there any descriptive phrases that were
5 associated with any of these weapons posted on the
6 website?

7 A. Yes, there were.

8 Q. Just give us a sample of one or two of those
9 descriptive phrases?

10 A. I'm referring now to the photocopies that
11 were presented to me by those detectives of the
12 pictures and descriptions of those tools. On one
13 particular entitled "Knife-gun," there are four
14 photos. The description of the weapon is "Virtually
15 indistinguishable from a combat or hunting knife, this
16 weapon is capable of firing six 22 caliber rounds from
17 a revolving cylinder, employing a firing mechanism
18 concealed in its handle," and then at the bottom it
19 reads "Message for the LAPD, Officer Utley," spelled
20 U T L I E: And then below that the text "Don't resist
21 me next time, Officer Ut-lie, or else."

22 Q. Were there any rewards posted on that website
23 indicating that the website or people behind the
24 website would pay financial rewards for the killing of
25 police officers?

1 A. Yes, there were.

2 Q. Give us an example or two of those; please?

3 A. I don't have that in front of me.

4 Q. Let me hand you something and ask you to look
5 at it and see if it refreshes your recollection. And
6 what I'm handing you is a document from an earlier
7 draft of an affidavit, directing your attention to the
8 bottom of this page. Why don't you take a look at that
9 and then tell us whether or not that helps you to
10 recall.

11 (Pause.)

12 A. Yes, I do recall this.

13 Q. All right, give us an example or two of the
14 rewards that were offered on the website.

15 A. One of the web pages entitled
16 www.killercop.com/reward.html contained the following
17 text:

18 "For example, we of the domain will pay
19 \$1,000.15 U.S. Federal notes for any man or woman who
20 while in lawful defense of their liberty against the
21 illegal conduct or unlawful authority of a police
22 officer which for the purpose of this site is defined
23 broadly to include any of the following: sheriffs,
24 rangers, highway patrol, all cops, school cops,
25 marshals, rangers, game wardens, prison wardens, or any

1 other law enforcement agency personnel which winds up
2 inflicting deadly force resulting in the lawful death
3 of the same. What is unlawful authority you ask."

4 Below that it also says: "Will pay you an
5 extra \$1,000.39 U.S. Federal notes if they are/were a
6 member of the LAPD, a little less if they are from the
7 Sacramento Sheriff's Department."

8 The text goes on to continue that there will
9 be other monies offered depending upon how that officer
10 is killed.

11 Q. I'm not going to ask you to review everything
12 that was on that website, but can you fairly
13 characterize that website as a website which contained
14 information generally speaking with -- why don't you
15 generally characterize what that website was for us so
16 I don't draw an objection on this question, but I don't
17 need you nor do I want you to get into the detail of
18 every posting and every reward for the death of a
19 police officer.

20 A. The website appeared to me to be offering
21 cash reward for any individual that would in fact kill
22 a police officer or someone in law enforcement.

23 Q. And there was specific reference to two
24 police officers who had arrested this defendant, Mr.
25 Sutcliffe; right?

1 A. Correct.

2 Q. Can you tell us when Mr. Sutcliffe was
3 arrested in Manchester the other night whether or not
4 he alluded to the fact that that was an illegal arrest
5 made by Manchester police officers?

6 A. Yes, he did.

7 Q. What information do you have that ties Mr.
8 Sutcliffe to the killercop website?

9 A. Again, as I noted before, that the website
10 was registered to his name.

11 Q. Is there anything that I haven't asked you
12 with respect to this investigation that I should have
13 that you need to tell the magistrate judge with respect
14 to whether there's probable cause to believe that this
15 defendant committed either of the two crimes listed in
16 the complaint and warrant?

17 A. Not that I can think of.

18 MR. HUFTALEN: Thank you. I have no further
19 questions.

20 MR. SAXE: I would move for discovery of any
21 of the documents which were handed to this witness that
22 he used and referred to when he was testifying. In a
23 few minutes I would move pursuant to Rule 5.1 which
24 refers to Rules 26(a) through (d) of the Federal Rules
25 of Criminal Procedure.

1 THE COURT: Well, obviously anything he used
2 to refresh his recollection you can look at right now.

3 MR. HUFTALEN: Sure, it's right here.

4 MR. SAXE: I might need a little bit of time.

5 THE COURT: If you would like to take a
6 break, tell me how long you want or estimate and we
7 will take a break.

8 MR. SAXE: Well, if I could see exactly how
9 much stuff is there, I might be able to give you a
10 better idea.

11 (Pause.)

12 MR. SAXE: 15 minutes.

13 THE COURT: All right. About 11:25.

14 MR. SAXE: Thanks.

15 MR. HUFTALEN: Excuse me, your Honor, do you
16 mind if I speak with the witness? I won't discuss his
17 testimony with him.

18 THE COURT: That's fine. You have no
19 objection?

20 MR. SAXE: No.

21 (Recess.)

22 MR. HUFTALEN: Excuse me, your Honor, during
23 the recess one of the documents that I had shown to the
24 witness and had given to Mr. Saxe was a multi-page
25 document, the last page of which were some of my own

1 notes. I spoke with Mr. Saxe, the witness didn't look
2 at those, didn't review them, he's agreed that I've
3 taken that off.

4 CROSS-EXAMINATION

5 BY MR. SAXE:

6 Q. My name is Jonathan Saxe and I represent Mr.
7 Sutcliffe.

8 A. Good morning.

9 Q. First of want to ask you some questions about
10 the killercop websites, okay. Now that's killercop,
11 not cop killer; right?

12 A. Correct.

13 Q. All right. And when you testified about the
14 material that was on the website, you didn't testify
15 about all of the contents of the website; right?

16 A. Correct.

17 Q. I mean it was a very large website. There
18 was a lot of stuff on the website in addition to the
19 stuff that you testified about; correct?

20 A. Correct.

21 Q. For instance, you testified about a bunch of
22 weapons that were listed, you said, for sale on the
23 website?

24 A. Correct.

25 Q. The fact of the matter is there wasn't

1 anything for sale on the website; isn't that true?

2 A. They were listed for sale.

3 Q. Okay, but you forgot to tell the judge that
4 there was some language on every page, at the bottom of
5 the page. Why don't you tell the judge now what that
6 language said on every page?

7 A. I don't know if it was on every page but on
8 the page you're showing me it notes fiction, ad and/or
9 personality parody.

10 Q. Okay, and that was on the picture of the
11 Bloodsucking Pen?

12 A. Correct.

13 Q. All right. And then on the Key Chain Knife
14 it says what at the bottom of the page?

15 A. Fiction, ad and/or personality parody.

16 Q. Okay, and at the bottom of the page of this
17 Safety Pin Key it says fiction, ad and/or personality
18 parody; right?

19 A. Correct.

20 Q. And then here's another one that says Cuff
21 Link Key; right?

22 A. Correct.

23 Q. And there's a picture of -- I don't know what
24 that's a picture of, but it's a picture of something,
25 at the bottom there it says fiction, ad and/or

1 personality parody; right?

2 A. Correct.

3 Q. And again on the Switch Blade Lighter which
4 there is a picture of, right, fiction, ad and/or
5 personality parody, right?

6 A. Correct.

7 Q. And on the Spring Loaded Knife, fiction, ad
8 and/or personality parody; right?

9 A. Correct.

10 Q. And on the Cell Phone, fiction, ad and/or
11 personality parody; correct?

12 A. Correct.

13 Q. So on every page it says it's a parody;
14 right?

15 A. Except for the first one.

16 Q. Which is what?

17 A. The one in your hand. The one that I read.

18 Q. Okay. Now also there was another page that
19 you didn't even talk about and that was the -- let me
20 get my notes here. There was a lot of stuff, there was
21 a lot of other stuff on there which was maybe not a
22 good attempt at humor but an attempt at humor; isn't
23 that true?

24 A. I'm not sure what the attempt was, sir.

25 Q. Well, there was one on there called the Bee

1 Stinger which was a big bow-like device that you're
2 supposed to fill full of bees and then if the cops came
3 at you you shot the bees at them, did you see that?

4 A. I don't remember that.

5 Q. Did you see the site?

6 A. I saw the contents that were provided to me.

7 Q. Okay, well, then you weren't provided with
8 the entire contents, were you?

9 A. I don't know. I was provided with the
10 contents of the website.

11 Q. What you do know is you were provided with
12 those contents which the members of the LAPD wanted you
13 to be provided with; right?

14 A. I don't know how to answer that, sir.

15 Q. Who did you get this stuff from?

16 A. Detectives from the Los Angeles Police
17 Department.

18 Q. Did you ask them if there was anymore to the
19 website that you might want to take a look at?

20 A. No, I did not.

21 Q. So it would be fair to say that you only saw
22 those portions of the website that the LAPD wanted you
23 to see; right?

24 A. I don't know if that's fair to say, I don't
25 know.

1 Q. Okay.

2 THE COURT: Are you going to share those with
3 me or --

4 MR. SAXE: Yes, I am, your Honor, but I need
5 to look for some other questions.

6 Q. And you would agree with me, would you not,
7 that a website is a different form of media than the
8 written page. Like for instance, there's a big
9 difference between a website and a 20-page document;
10 right?

11 A. I'm sorry, I don't know.

12 Q. That's a terrible question, that's probably
13 why you don't understand it.

14 The medium of the Internet is a lot different
15 than the medium of hard documents, right, it's a lot
16 different?

17 A. In so much that you can touch an actual
18 document.

19 Q. Right. Well, you can't like click on a piece
20 of paper and go to another website; right?

21 A. Not that I know of.

22 Q. Okay. And so we just talked about one
23 website which the LA police provided you with, just
24 printed versions of the part of the website, right, the
25 killercop.com, right?

1 A. I'm sorry, can you repeat the question.

2 Q. The killercop.com is a website; right?

3 A. Correct.

4 Q. Did you ever go to that website?

5 A. I did not.

6 Q. Okay. Because you can't get to it anymore?

7 A. Correct.

8 Q. All right. In fact, there wasn't any charges
9 brought in Los Angeles against the defendant for that
10 website, was there?

11 A. No, there were not.

12 MR. SAXE: Do you have any objection to me
13 showing these to the judge?

14 MR. HUFTALEN: I have no objection to all of
15 these documents being admitted as full exhibits, your
16 Honor.

17 THE COURT: Okay.

18 MR. HUFTALEN: Cover page is the 302 from
19 Agent Cugno with attachments. I have no objection to
20 the documents going in with or without the 302,
21 whatever Mr. Saxe prefers.

22 Q. Okay, you never went to that website; right?

23 A. I could not get to it, no.

24 MR. SAXE: I want to have those marked as an
25 exhibit.

1 THE CLERK: Sure. Your exhibit.

2 MR. SAXE: Yeah, right.

3 (Defendant's Exhibit A was
4 marked for identification.)

5 Q. Now, also when you testified about -- or you
6 testified on direct about going to the evilgx.com;
7 right?

8 A. Correct.

9 Q. Now, that's a website that has a lot of other
10 sites that are referred to in it, right? In other
11 words, you click on the underlying portions of words
12 and you can go to another page; right?

13 A. Correct.

14 Q. So it's like multiple layers of documents in
15 a way; right?

16 A. Yes.

17 Q. All right. So you didn't present that whole
18 website to the judge, did you, you just presented
19 portions of it; right?

20 A. Correct.

21 Q. Now, for instance, I'm going to show you
22 what's been marked as Defendant's Exhibit A for
23 identification purposes. Without telling me -- without
24 reading from that document, why don't you tell the
25 court basically what that is?

1 A. The top of it is listed as a disclaimer,
2 terms, conditions, licensing agreement.

3 Q. No, no, I mean what does that -- does that --
4 if you look at that, have you ever seen that type of
5 page or those words written in any other place like,
6 for instance, on the Internet? Let me make this a
7 little easier. That's the -- when you click on
8 evilgx.com, that's the first thing you see; right?

9 A. I don't know, I haven't looked at it today.

10 Q. Well, okay, the last time you -- when was the
11 last time you looked at evilgx.com?

12 A. Some time in March. I do not know the exact
13 date.

14 Q. Okay. Didn't you testify that you looked at
15 it last night?

16 A. I looked at the copy of the contents of it.

17 Q. Okay, all right. Well, when you looked --
18 when the last time you looked at it did it have a first
19 page that looked anything like that document that's in
20 front of you there?

21 A. One of the times I looked at it there was
22 something that looked like that, but I'm not sure if
23 it's identical.

24 Q. Okay, and what -- well, why don't you do
25 this, why don't you describe when you first -- when you

1 saw it on that CD that you saved it on and you clicked
2 on it, what was the first thing that came up when you
3 clicked on evilgx.com, what's the first thing you saw
4 on the screen?

5 A. I think I should probably describe the
6 contents. The format that was provided to me, when you
7 opened the CD rom using my computer, it comes up with a
8 computer folder, and contained within that computer
9 folder were the contents of the website. So the
10 website didn't come up with a page like this
11 automatically.

12 Q. Okay, well, did you click on what would be --
13 if I was to call that the opening page, would that make
14 sense?

15 A. Last night I did not.

16 Q. But you know what I mean when I say the page
17 that comes up when you click on the website, you know
18 what that means? When you click on a website, you come
19 to a page; right?

20 A. Correct.

21 Q. All right, and did you ever look at that
22 particular page on the evilgx.com?

23 MR. HUFTALEN: I may be presumptuous but if
24 he wants to offer these documents, I have no
25 objection. I will even stipulate if Mr. Saxe will make

1 a representation that they were printed from the
2 website as of yesterday.

3 MR. SAXE: Okay, I would represent to the
4 court that when I viewed evilgx.com, hopefully there
5 was nothing illegal about that, and I printed out the
6 home page and I printed -- and I went through and
7 printed out one level down of a page, second web page
8 that was sent to when I clicked on the underlying
9 passage of type.

10 THE COURT: We will receive it without
11 objection.

12 MR. HUFTALEN: That's not the entirety of the
13 website, though, right?

14 MR. SAXE: Oh no, it's not the entirety of
15 the website.

16 MR. HUFTALEN: I have no objection.

17 MR. SAXE: And I'll be dealing with that a
18 little bit later on, your Honor. I think the court
19 needs to, at some point before this hearing is over,
20 take a look at the website because you cannot get any
21 kind of idea about what really this case is about until
22 you look at the website, because testimony about the
23 website and paper that's, you know, printed from a part
24 of the website doesn't give you any idea of what the
25 website is really like, just like taking little

1 portions out of **killercop.com** doesn't give you any idea
2 about what that website is like. But just so I can
3 give you a little idea of that, because I don't know
4 whether you're going to agree to go on that website, I
5 would like to ask him a couple questions about what I
6 now have --

7 THE COURT: I will be happy to go on the
8 website if both parties -- you can come up and
9 accompany me. I mean, I don't think we can do it hear
10 in the courtroom because I don't think we're wired for
11 that.

12 MR. HUFTALEN: I think it wouldn't be a
13 useful exercise, judge, because the complaint doesn't
14 charge any conduct with respect to the website as it
15 exists now, and as the agent has testified, websites
16 change over time. The complaint information deals
17 specifically with the website and how it appeared
18 between November -- or excuse me, things that were
19 posted on the website between November 2001 and
20 February 2002 with respect to the identity fraud, and
21 January 2, '02 to February 2, '02 with respect to the
22 threats. So it's irrelevant to your determination of
23 whether or not there is PC with respect to what took
24 place back --

25 THE COURT: I understand.

1 MR. SAXE: I would disagree entirely. It's
2 completely relevant because I think at this point in
3 time the court has a completely unrealistic view based
4 on testimony.

5 THE COURT: The court would have --

6 MR. SAXE: Not because that's the court's
7 fault, your Honor, but because the way that this case
8 is presenting, we are presenting through one medium, or
9 the government has presented through one medium what it
10 wants the court to find happened in a completely
11 different medium, the Internet, and it's completely
12 different and it looks different, and if you rely on
13 that you're just not going to get any idea about what
14 that site was really about.

15 Now, if the prosecutor wants to have the
16 agent come in and explain the points where it's
17 different than it was when he looked at it before to
18 the extent that he's able to remember that, that's fine
19 with me, okay, but I think you can't really decide
20 whether this is a criminal case or a bunch of baloney
21 until you look at that site.

22 THE COURT: Well, ultimately it's for a jury
23 to decide whether it's a criminal case or a bunch of
24 baloney.

25 MR. SAXE: Possibly.

1 THE COURT: That's true, but, okay. Well,
2 all right, you go on with your exam and then we will --

3 MR. SAXE: All right, well, this, I'm looking
4 at -- maybe we should have the ID stricken on these.
5 You said you don't have any objections to a full
6 exhibit?

7 MR. HUFTALEN: No objection to their
8 admission. I think they are irrelevant. I don't
9 object to putting them in so we can get by.

10 (Defendant's Exhibits A, B & C admitted.)

11 Q. BY MR. SAXE: Okay, now, we've already
12 determined that at the bottom of the pages of the
13 **killercop.com** we've basically said it's a parody;
14 right?

15 A. Except for one.

16 Q. Except for one page, right. Now, if you want
17 to take a look at -- there's a -- this would represent
18 the first page and it basically says that it's asking
19 the reader or the surfer to determine whether or not
20 they agree with the set of conditions or disagree,
21 correct?

22 A. Correct.

23 Q. And that's a common thing on an Internet
24 site?

25 A. Not necessarily.

1 Q. Well, sometimes it occurs on Internet sites?

2 A. Correct.

3 Q. And if you agree to be -- abide by the
4 conditions, you click on I read and agree?

5 A. Correct.

6 Q. All right. And that's what this appears to
7 be; correct?

8 A. I'm not aware if those are links that would
9 then enter you into the website.

10 Q. And you can't be aware of that because this
11 is a printed page; right?

12 A. Correct.

13 Q. You need to look at the site itself to
14 determine that?

15 A. That's correct.

16 Q. Okay, and I'm going to read this and correct
17 me if I'm wrong. I'm about in the middle of this
18 disclaimer where it says, "While this site offers
19 rewards and benefits to people who engage in lawful
20 conduct to support this site, this site does not
21 advocate, encourage or condone any conduct that is
22 illegal at any time by any person or entity against any
23 other person or entity." That's correct; right?

24 A. That's what it says, yes.

25 Q. Now, I'm also going to show you Defendant's

1 Exhibit B which is, I would represent to the court, a
2 subsequent web page that I got when I clicked on one of
3 the underlying passages on Exhibit A, okay, and I want
4 you to read that paragraph right there which is in the
5 middle of page one of Defendant's Exhibit B.

6 A. This one?

7 Q. Yes.

8 A. "As such I have made an arrangement post
9 links like below to the information given to this
10 domain on free servers only. If you have any inside
11 information you would like published, send me a file."

12 Q. So this appears to be a request by whoever
13 wrote this for people to send them inside information?

14 A. Correct.

15 Q. And you know from looking at your version of
16 this site that this is a site about Global Crossing;
17 right?

18 MR. HUFTALEN: I object.

19 Q. Your site evilgx.com is a site that's
20 dedicated to, well, not dedicated to but it deals with
21 problems that one of the employees that Global Crossing
22 had with Global Crossing, right?

23 A. Among other things, yes.

24 Q. Okay. And there's a lot of complaints on
25 this site about Global Crossing, correct?

1 A. Correct.

2 Q. All right. And this appears to be an attempt
3 to solicit information from anybody who has information
4 on Global Crossing; right?

5 A. Well, it doesn't say for Global Crossing,
6 just if you have insider information.

7 Q. Right, and if that was on evilgx.com,
8 wouldn't you figure that it was about Global Crossing?

9 A. I don't know what the intentions of the
10 writer were.

11 Q. Okay. Now also you testified at a good
12 degree of length about going to the site; right?

13 A. Correct.

14 Q. The website?

15 A. Correct.

16 Q. Now, you didn't -- the only e-mail that you
17 uncovered, at least that you testified about, was an
18 e-mail that was purportedly from a Mr. Winnick; right?

19 A. Correct.

20 Q. And in the subject line it said "Stop by and
21 say hi sometime," right?

22 A. Correct.

23 Q. And the only thing else that was there was a
24 link to evilgx.com?

25 A. Correct.

1 Q. There wasn't any message?

2 A. Other than that you've already noted, no.

3 Q. Okay, so all it was was you would assume that
4 whoever sent that said if you want to take a look at
5 evilgx.com, you press your mouse on this, push the
6 button, and you will go to evilgx.com; right?

7 A. Correct.

8 Q. All right. Now, at no time did anybody ever
9 e-mail anybody any message other than that, right, in
10 your investigation?

11 A. I'm sorry, I don't understand the question.

12 Q. Other than that one e-mail, your entire
13 investigation focused on you going to -- either not
14 going to -- either going to the site directly or going
15 to the recorded version of the site that you had. You
16 went into the site or you went into the recording of
17 the site; correct?

18 A. Correct.

19 Q. And in order to access the information that
20 you testified about, you had to go into that site;
21 right?

22 A. Correct.

23 Q. And that site would be if anyone wanted to go
24 there, they could just go there, right? There's no
25 restrictions on anybody going to that site; right?

1 A. Other than the one that I had stated
2 previously.

3 Q. Which was?

4 A. The request for the hundred dollars cash, I
5 don't remember the exact words, but what appeared to be
6 a password protection.

7 Q. Okay, but you could get in there and read it
8 anyway, right?

9 A. I believe so, yes.

10 Q. So that really didn't do anything, correct?
11 I mean, you could still go to the site even if you
12 didn't give a hundred dollars?

13 A. Correct.

14 Q. Okay, and all of the information that was on
15 that site was basically passive information, right?
16 You could go there and get information?

17 A. Correct.

18 Q. That's all it was. Look at this, this is
19 information. You want to look at this, here it is.

20 MR. HUFTALEN: I object to the form of the
21 question in saying that the only information was
22 passive. We've heard direct testimony that there were
23 overt threats to kill and violence, when characterized
24 as passive --

25 THE COURT: Well, he's an FBI agent, he

1 should be qualified to answer it. Overruled.

2 Q. Well, there was nothing on this particular
3 site that said buy this, right? He wasn't selling
4 anything on evilgx.com?

5 MR. HUFTALEN: Object to the form of the
6 question, assumes facts not in evidence. Who's he? Is
7 that the defendant?

8 MR. SAXE: Okay, let me rephrase the
9 question.

10 THE COURT: Rephrase.

11 Q. Whoever was running evilgx.com, there was no
12 advertising to sell products from whoever that person
13 was to the person who was accessing the site; correct?

14 A. Which time are we talking about?

15 Q. Evilgx.com.

16 A. Right, but which time period?

17 Q. Whatever time -- you saw the site, right, you
18 had a copy of it on a CD?

19 A. Correct.

20 Q. You read, I assume, every page on the site;
21 correct?

22 A. I believe I did.

23 Q. Did you attempt to read every page on the
24 site?

25 A. I did attempt to.

1 Q. And there wasn't any effort to try to sell
2 anything to whoever was reading it, right? Give me
3 your credit card number and I'll sell you whatever?

4 A. The site has been for sale.

5 Q. Was he trying to sell the products on the
6 site or whoever had the -- let's strike that. Whoever
7 had the site, okay, was that person attempting to sell
8 products on the site?

9 A. Do the contents of the website -- I mean do
10 those -- the contents of the website had been for sale
11 at different times.

12 Q. Okay.

13 A. So is that a product?

14 Q. No, let me make this clear. You talked about
15 **killercop.com**, right?

16 A. Correct.

17 Q. And you said that there was things for sale
18 on that?

19 A. Correct.

20 Q. Right, but there wasn't any evidence that
21 there was any way to buy them, right?

22 A. It says available.

23 Q. Okay, but there isn't any evidence that
24 there's any provision by which somebody could give a
25 credit card; right?

1 A. I don't know that.

2 Q. Okay, so it looks, looking at those pictures
3 like maybe there was something for sale, but you don't
4 know whether there was anything there for sale or not;
5 right?

6 A. Correct.

7 Q. All right. Now, as far as the evilgx.com
8 goes, there wasn't even any provisions like that to try
9 to sell something; right?

10 A. Again, I'm going to have to say that the
11 website was for sale, so --

12 Q. You mean the whole site was for sale?

13 A. Correct.

14 Q. And where did you learn that?

15 A. By viewing the website.

16 Q. And where did it say that?

17 A. There were several references to it. I don't
18 have anything in front of me that would be able to open
19 that up further.

20 Q. Excuse me a second.

21 (Pause.)

22 Q. When did you first learn of that?

23 A. I don't recall.

24 Q. Was it from the site that you -- was it from
25 the materials that you read on the CD when you accessed

1 the site? Well, you didn't access the site, you
2 accessed a copy of the site that was on CD; right?

3 A. I did both, sir.

4 Q. Oh, okay. And when did you learn that the
5 website was for sale?

6 A. Again, I don't remember.

7 Q. Now, anybody who wanted any information that
8 was on the website wouldn't have to buy the website;
9 right?

10 A. I don't understand.

11 Q. Well, I accessed the website this morning.

12 A. Correct.

13 Q. And I could print anything I want off the
14 website.

15 A. Correct.

16 Q. So what do you mean by buying the website? I
17 don't know what you mean. If I can access a website
18 and copy anything I want off the website for nothing,
19 what's the person who is selling the website selling if
20 he's going to sell?

21 A. I imagine the contents. I don't know.

22 Q. Well, I don't know anything about computers,
23 so I do know, though, if I can get something for
24 nothing just by pressing a button, I'm not going to pay
25 for it.

1 A. I'm not the designer of the website, sir, so
2 I don't know.

3 Q. Well, you testified that the website was for
4 sale?

5 A. Correct.

6 Q. Well, what do you mean by that?

7 A. That there was text on the website that noted
8 that the website and its contents were for sale.

9 Q. Okay, and as an expert in computers what does
10 that mean?

11 A. I'm afraid I don't know how to answer that
12 question. I took it to mean what it said.

13 Q. Okay, and what is it that was for sale and
14 how would you -- what would you walk away with if you
15 bought it?

16 A. At the time I viewed the website I imagine
17 you would buy the contents that were contained within
18 that website.

19 Q. And those are the contents you could print
20 for free?

21 A. Correct.

22 Q. Right. And was there any way that you were
23 able to manifest the desire to buy the website? If you
24 wanted to buy the website, what would you do?

25 A. There was a contact that you were supposed to

1 go through to obtain that website.

2 Q. Do you remember who the contact was?

3 A. I don't. I don't want to mistakingly say, so
4 I don't.

5 Q. Well, what was it -- was it an e-mail
6 address?

7 A. I believe I did see an e-mail address, yes.

8 Q. Okay. And again, you didn't have to do that
9 because you had all the information you wanted on the
10 CD; right?

11 A. I don't know what you're referring to.

12 Q. You didn't have to buy the website to get the
13 information off it, right?

14 A. Correct.

15 Q. And that was true both the time you saw it at
16 the CD and when you actually went to the website?

17 A. Correct.

18 Q. And how many times did you go to the website?

19 A. I don't know.

20 Q. More than one?

21 A. Correct.

22 Q. More than 10?

23 A. Probably.

24 Q. Now, you also testified that there was some
25 personal information on the website that you found;

1 right?

2 A. Correct.

3 Q. And you initially learned that from talking
4 to this attorney, Elizabeth Greenwood; right?

5 A. Correct.

6 Q. You didn't uncover any evidence that anybody
7 tried to use those, for instance, social security
8 numbers to obtain a fake ID, did you?

9 A. I had not done that.

10 Q. You didn't obtain any evidence that anybody
11 used any of the information which was on the site to
12 obtain a fake ID or -- correct?

13 A. Correct.

14 Q. All right, and you didn't uncover any
15 information that anybody used any of that information
16 on the site to try to steal money?

17 A. Correct.

18 Q. And as an expert on computers, you're aware
19 that it isn't very hard for anybody to get somebody's
20 social security number; right?

21 A. I'm not an expert in social security numbers,
22 so I wouldn't know.

23 Q. But you're an expert on computers; right?

24 A. I don't know if I've been specified as one.

25 Q. Are you?

1 A. I don't know, sir, I've never been qualified
2 as an expert.

3 Q. You have a lot of training; right?

4 A. Correct.

5 Q. You know that there's search engines on the
6 Internet; right?

7 A. Correct.

8 Q. There's a lot of them; right?

9 A. Yes.

10 Q. And you can look for information on the
11 Internet; correct?

12 A. Correct.

13 Q. One of the things that you can look for on
14 the Internet are social security numbers; right?

15 A. I've never attempted.

16 Q. So you're not aware that you can get
17 somebody's social security number by putting in their
18 first and last name?

19 A. I have access and I can do that, yes.

20 Q. I'm not talking about the FBI access. I
21 realize that's substantially different than we have
22 access to. Are you aware -- I mean maybe you're not
23 aware. Are you aware that there are ways that a
24 private citizen can seek to get and successfully get
25 somebody's social security number off the Internet?

1 A. Yes.

2 Q. Now, you indicated that there was some sort
3 of civil action between Global Crossing and the
4 defendant?

5 A. Correct.

6 Q. And the one that you talked about was the
7 civil action in which they were trying to get whoever
8 was running the website to stop running it; correct?

9 A. Correct.

10 Q. And they thought that person was the
11 defendant; correct?

12 A. Correct.

13 Q. Now, there was also other -- had been other
14 civil actions between the defendant and Global
15 Crossing; correct?

16 A. I believe there were.

17 Q. As a matter of fact the defendant was suing
18 Global Crossing; right?

19 A. Correct.

20 Q. And the defendant in fact was fired by Global
21 Crossing, you testified about that?

22 A. Yes, sir.

23 Q. And then do you realize that he was fired and
24 he had to be rehired based on a lawsuit?

25 A. Um, I do not know that.

1 Q. Okay, and that he was then subsequently fired
2 again when they claimed that he put false information
3 on the application?

4 A. That was the reason I was given.

5 Q. Okay. Well, you indicated that -- or are you
6 aware that he in fact was picketing outside the offices
7 of Global Crossing?

8 A. I was made aware of that.

9 Q. You saw pictures of that, right?

10 A. Yes, sir.

11 Q. And he did that for quite some time?

12 A. Yes, sir.

13 Q. There wasn't anything illegal about that, was
14 there?

15 A. I don't know the municipal violations, I
16 don't know.

17 Q. Okay, well, no one told you there was
18 anything illegal about that; was there?

19 A. No, sir.

20 Q. When was the last time that you accessed the
21 site?

22 A. Which version, sir?

23 Q. I'm sorry, bad question. When was the last
24 time that you accessed evilgx.com from the Internet?

25 A. I believe it was sometime in March.

1 Q. Okay. And was it after March 4th?

2 A. It may have been.

3 Q. Could that have been the time that you
4 learned that there was something in the website about
5 it being for sale?

6 A. It may have been.

7 Q. Do you recall whether there was any
8 information in that regard in the CD that you got?

9 A. I can't remember right now.

10 Q. Okay.

11 MR. SAXE: Your Honor, could I see that
12 exhibit again, C, I think it is. Thank you.

13 Q. You also talked about, I'm going back to the
14 killercop.com that was linked to an Ice-T song; right?

15 A. Correct.

16 Q. Now that Ice-T song, that was not an illegal
17 song, right? I mean, Ice-T was never prosecuted or
18 convicted of a crime for writing that song; correct?

19 A. I don't know.

20 Q. Okay. And there is nothing illegal about
21 putting those song lyrics on a website; is there?

22 A. I don't know, sir.

23 Q. You're familiar with the First Amendment;
24 right?

25 A. Correct.

1 MR. SAXE: I may be finished. If I could
2 have a minute, your Honor.

3 THE COURT: Sure.

4 (Pause.)

5 Q. BY MR. SAXE: You in your, not in your
6 affidavit but in your notes, you talked about on the
7 killercop.com website that there were rewards offered
8 for ways that you would kill a police officer, right?

9 MR. HUFTALEN: Excuse me, your Honor. I'm
10 not objecting. I'm not sure I understand the
11 question. I don't think we had any of the witness's
12 notes out. I certainly didn't introduce any of his
13 handwritten notes.

14 MR. SAXE: Well, if I said something to that
15 effect, that was not my intent. I meant it to the
16 extent that the question was unclear and --

17 THE COURT: Why don't you rephrase it.

18 Q. Okay. You testified about viewing the
19 killercop.com website and there were rewards listed for
20 killing a cop; right?

21 A. Correct.

22 Q. Now, on those pages do you remember whether
23 at the bottom of those pages it said parody as well?

24 A. I don't remember.

25 Q. You don't remember. You didn't remember that

1 about the pages that I showed you just a few minutes
2 ago, did you, that there was a parody put on the bottom
3 of the page; right?

4 A. No, sir.

5 Q. Okay, so it's possible that those pages about
6 paying people for killing police officers was also on a
7 page entitled or with parody written on the bottom of
8 the page; right?

9 A. I don't know.

10 Q. And one of the rewards was that if you did it
11 with a butter knife you got a little more money,
12 right? Do you remember that?

13 A. I don't remember that. If you could show me
14 something that may --

15 Q. Okay, I will in just a minute.

16 (Pause.)

17 Q. This might refresh your recollection.

18 A. I'm not sure about that.

19 Q. Okay, take your time.

20 A. I'm not sure what this document is.

21 Q. Okay.

22 THE COURT: Well, make a representation for
23 him

24 Q. Okay. I was handed this document by the
25 prosecutor as notes that you had used to refresh your

1 recollection on your direct testimony. I assume that
2 these are notes that you took in preparation for your
3 direct testimony?

4 A. This appears to be a previous draft of a
5 portion of the affidavit.

6 Q. Okay, and who did that?

7 A. I would have.

8 Q. Okay, so is that fair to say that's what it
9 is?

10 A. Yes.

11 Q. Okay, because you had it in front of you on
12 direct testimony?

13 A. Correct, correct.

14 Q. Now, it says there -- why don't you read that
15 paragraph. We're talking about rewards for killing a
16 police officer, okay, and it says the same with page
17 also containing the following text which describe an
18 extra bonus section. This is the killercop.com; right?

19 A. Correct.

20 Q. And it says and this is what you wrote, "If
21 you are unlawfully detained and a cop attempts to
22 arrest you and you are naturally forced under the
23 operation of law to kill them. If you kill them with
24 your bare hands only, we will add an additional
25 \$1,000.03."

1 A. Correct.

2 Q. It doesn't say \$1000, it says \$1,000.03,
3 right?

4 A. Correct.

5 Q. "If done with firearms and with one clean
6 shot in the heart or head, we will add \$5,000.07."

7 A. That's what it says.

8 Q. "If you use a knife only, you can add \$750.09
9 U.S. Federal notes."

10 A. That's what it says.

11 Q. And then it says, "If it's a butter knife,
12 add \$500.36 more on top of that."

13 A. It also says that.

14 Q. Now, I'm not going to ask if you think that's
15 in good taste, but I mean, do you think that's serious,
16 that this guy is telling someone to go out and kill
17 somebody with a butter knife and get an extra \$500.06?

18 A. That's what it says.

19 Q. You think it is serious?

20 A. Yes.

21 Q. So you think that whoever wrote this website
22 is telling people to go out there and stab cops with a
23 butter knife?

24 A. I'm not sure if it was his intention, but
25 that's what the wording says.

1 MR. SAXE: I don't have any further
2 questions, your Honor.

3 MR. HUFTALEN: One question, your Honor. May
4 I approach?

5 THE COURT: Yes.

6 MR. SAXE: Is that approach the court or
7 approach the witness?

8 MR. HUFTALEN: Approach the witness.

9 THE COURT: Witness.

10 REDIRECT EXAMINATION

11 BY MR. HUFTALEN:

12 Q. Very narrow. On the **killercop** website, below
13 what Mr. Saxe just read into the record, it also says,
14 "We at killercop.com would prefer you..." -- well, why
15 don't you read the rest of it here. I don't want to
16 read it and then ask you if you listened to me read it
17 correctly.

18 A. "We at killercop.com would prefer you arrest
19 the cops who is/are breaking the law. Check back soon
20 to learn how to arrest a cop. Here are some tools of
21 the trade."

22 Q. And it goes on and says what, one more
23 paragraph?

24 A. "Fun ammo. More fun ammo here."

25 Q. Fun what?

1 A. Ammo, A M M O.

2 THE COURT: Ammo, all right.

3 A. "Thanks to caliberpress.com for the
4 contribution towards the cause. In the meantime, watch
5 your fellow Americans' backs. If you do kill a cop,
6 then contact Tony. Tell him KC sent you. Or call my
7 buddy, his name is Steven too. He loves the FBI too,
8 but not as much as I do."

9 Q. So whoever wrote this said his name is Steven
10 too; right?

11 A. Correct.

12 Q. Thanks. I lied, I said one question, I have
13 two. All of this killercop notes and what you've been
14 reading from came from paragraphs that you had
15 originally written for insertion in both the arrest
16 warrant and the search warrant in this case; right?

17 A. Correct.

18 Q. But over the course of streamlining the
19 affidavit and reducing information, those pieces of
20 information were taken out; right?

21 A. Correct.

22 MR. HUFTALEN: Thanks. I have no other
23 questions.

24 MR. SAXE: Nothing further.

25 THE COURT: You may step down.

1 MR. HUFTALEN: I have no other witnesses.
2 I'm not going to call his brother, your Honor.

3 THE COURT: Thank you. He has no more
4 witnesses he said.

5 MR. SAXE: I don't have any witnesses, your
6 Honor. I have some argument that I'd like to make.

7 THE COURT: All right.

8 MR. SAXE: But I do have my request that I
9 had earlier that the court take a look at the website.

10 THE COURT: Okay.

11 MR. SAXE: I think it's very important
12 because there's just no way that you're going to get an
13 idea. What they've done is they've not only selected
14 portions to show and make it look as bad as possible,
15 but they've selected stuff from a medium that is
16 completely different than the medium which they are
17 presenting to the court. There's no way you can get an
18 accurate view of the nature of the site. Even if some
19 things are different and even if things have been
20 changed, and I would agree that some things have been
21 changed, you will get an idea and a flavor for the
22 site. Or, if you will, I have no problem with them
23 presenting the CD that contains the site as long as it
24 looks exactly like it does when you go on the Internet,
25 because the issue here is the person comes on the

1 Internet, he clicks on the site, what does he see and
2 what goes on, how do you get the information, and
3 what's the intent of the person who put the information
4 on the site, and you can't get that unless you see the
5 site.

6 MR. HUFTALEN: Interesting issues maybe for
7 trial but not for a PC hearing. I object.

8 THE COURT: Well --

9 MR. SAXE: And just for the record -- I mean
10 not just for the record, I think it's important that my
11 client have a meaningful hearing here. And I don't
12 think he can get a meaningful hearing unless you see
13 our side. Our side is the website.

14 THE COURT: All right, I will look at the
15 website. I'm not going to look at the website unless
16 both of you are present.

17 MR. SAXE: That's fine.

18 THE COURT: I'm not going to spend a whole
19 lot of time looking at the website because what you're
20 basically saying to me is that I will get a flavor for
21 whether or not this is in fact the transfer of real
22 threats or whether it's all a joke.

23 MR. SAXE: It's even -- you need to see the
24 website. You need to see it because there's a number
25 of arguments that I'm making. And the first argument

1 is --

2 THE COURT: All right, I will look at it if
3 for no other reason so that I can understand your
4 arguments.

5 MR. SAXE: Okay.

6 THE COURT: Okay. And I guess one of the
7 things in particular, Mr. Huftalen, I'm going to ask
8 you to address is with regard to the first charge which
9 is the allegation of a violation of 18, U.S.C.,
10 1028(a)(7). I think I can understand what you would
11 claim there was a knowing transfer without lawful
12 authority a means of identification of another person,
13 i.e., social security numbers, et cetera, but there's a
14 second part to that statute. With the intent to commit
15 or to aid or abet any unlawful activity that
16 constitutes a violation of federal law or that
17 constitutes a felony under any applicable state or
18 local law. And I have to say I've listened to the
19 evidence and I've actually read the affidavit and I
20 will be happy to be informed what the second prong of
21 that is that substantiates that there is any probable
22 cause to believe that crime was committed.

23 The other one, I assume it is the threats to
24 kill. With regard to the interstate communications of
25 a threat to injure the person of another which carries

1 with it under the statute a five-year sentence, which
2 under the guidelines it depends on whether there's more
3 than two threats, depends on whether or not there's
4 additional conduct evidencing intent to carry out the
5 threat, and whether or not the TRO or preliminary
6 injunction constitutes a court protection order under
7 guideline 2A6.1B3.

8 So when we come back here, I would hope you
9 would both address those and --

10 MR. HUFTALEN: Be happy, judge.

11 THE COURT: Pick a time when you want to come
12 up to my chambers and we will open up -- we can't a get
13 a computer in here -- we can? Well, I'd rather do it
14 here.

15 THE CLERK: You should be able on yours.

16 THE COURT: How about that. I can do it on
17 line if I knew. I'm probably more inept than Mr.
18 Saxe. Here we go, downward spiral.

19 (Pause.)

20 MR. HUFTALEN: With the court's permission or
21 indulgence, while the deputy clerk is hooking you up on
22 line, would it be all right if I snuck back to the
23 anteroom for a moment for a personal emergency.

24 THE COURT: For a strategic -- yes, go ahead.

25 MR. SAXE: Your Honor, I don't want to

1 address the court in Mr. Huftalen's absence.

2 THE COURT: Well, why don't you wait, then,
3 this is an emergency.

4 MR. SAXE: Is there sound on that machine?

5 THE COURT: I have no idea.

6 MR. SAXE: I mean is the machine equipped
7 with speakers because there is sound on the site that
8 could be -- audio, I should say, on the site.

9 THE COURT: I don't know. Do you have sound?

10 MR. GILDEA: Not on this one.

11 MR. SAXE: Hold on a second.

12 (Pause.)

13 MR. SAXE: I think it's probably important,
14 your Honor.

15 THE COURT: Sound is important. Well, why
16 don't we ask the MIS if we can get some speakers.

17 MR. GILDEA: I don't see any speakers.

18 THE COURT: Well, I know, but we've got a
19 whole MIS department. They've got to be good for
20 something.

21 MR. GILDEA: I will go over and ask, your
22 Honor.

23 (Pause.)

24 THE COURT: Okay, the people in our MIS
25 department who would be those who would be able to hook

1 our computers up with sound are all at lunch, so I
2 can't get any sound until they come back. So the
3 deputy clerk now has my computer at www.evilgx.com.\.
4 The computer over there is at the same site, but you
5 want me to have sound.

6 MR. SAXE: Well, yeah, I think we do.

7 THE COURT: All right, well, we're just going
8 to have to take a recess until they are back, then, and
9 we can get sound. I don't know what else to do. I
10 can't do it, that's for sure. I couldn't even get this
11 --

12 MR. SAXE: I mean is it possible to do?

13 THE COURT: Is it possible? I don't know
14 until they come back. I can tell you that we have
15 sound in chambers on our computers.

16 MR. SAXE: I don't have any objection to
17 doing it in chambers with a record. Do you? Just --

18 MR. HUFTALEN: I object to the court looking
19 at it at all.

20 THE COURT: Well, I understand that. You
21 know, I happen to be one of those people who is not a
22 big fan of, you know, Star-chambers, and I think that
23 public hearings and trials are supposed to be public.

24 MR. SAXE: Okay, then that's fine.

25 THE COURT: And I prefer not to do it in

1 chambers, and the only reason I suggested it is because
2 I knew I had a computer there. As it turns out, we can
3 do it here. If we can do it here with sound --

4 MR. GILDEA: Your Honor, I'm sure we can,
5 your Honor, I just think it's going to take a few
6 moments to locate one of the people.

7 THE COURT: Well, why don't we come back in
8 an hour, okay.

9 (Recess.)

10 THE COURT: Okay, I'm going to explain first
11 what I hope we're going to do, okay.

12 The marshals have arranged so the defendant
13 can be at a terminal with his attorney. His attorney
14 can direct us to how he wants us to see what on this
15 web page.

16 Mr. Gildea is going to operate that computer
17 to go to the same place so that people in the public
18 can see what's going on.

19 You're an officer of the court, Mr. Huftalen,
20 he's with the FBI, you can come up here and watch on
21 this terminal. And as an officer of the court, if he
22 makes one move toward me, you get him, all right?

23 And anybody over there that wants to see
24 should move over here because there's only one
25 terminal, all right? And I'm going to have Ms. MacEwen

1 operate my computer because she is computer literate.

2 THE CLERK: You can sit down.

3 THE COURT: That's all right, go ahead. You
4 want the robe too?

5 THE CLERK: I'll pass on that one.

6 THE COURT: All right, so he wants to go to
7 that website, right?

8 MR. SAXE: Yes.

9 THE COURT: Are you on the Internet?

10 MR. SAXE: We're on the website right now.

11 THE COURT: All right. You're on the
12 website. We're the only ones that aren't. We'll get
13 there.

14 THE CLERK: Because this has sound as you
15 begin to start it.

16 THE COURT: Okay, this one has sound and the
17 sound is coming out of speakers.

18 (Sound coming from the speakers.)

19 MR. SAXE: Click on I disagree.

20 THE COURT: All right, what do you say I
21 should be seeing?

22 MR. SAXE: Disney Land.

23 THE COURT: That's what I'm seeing.

24 MR. SAXE: Let the record reflect that the --

25 THE COURT: Disney Online.

1 MR. SAXE: Disney Online. Click back
2 computer.

3 (Sound coming from the speakers.)

4 MR. SAXE: Why don't you click down so that
5 you can read the first paragraph there.

6 THE COURT: What, you mean under
7 definitions?

8 MR. SAXE: No, what you need to do is --

9 THE COURT: All right --

10 MR. SAXE: Scroll down so you can read the
11 first paragraph.

12 THE COURT: Does it say evilgx.com?

13 MR. SAXE: Yes. For the record, this is a
14 disclaimer at the top of the home page. I think that's
15 represented in Defendant's Exhibit A if I'm correct.

16 When everybody is done, let me know and I'll
17 --

18 THE COURT: All right.

19 MR. SAXE: Click on I read them and agree.

20 THE CLERK: Oh, it was up above.

21 (Sound coming from the speakers.)

22 MR. SAXE: If you could slowly scroll down to
23 read what's on the site. Let me know when you're done
24 reading that.

25 (Pause.)

1 MR. SAXE: If you want to stop the music, you
2 can hit stop. If you want to click -- if you look down
3 about six lines, there's a blue hyper link that says
4 help desk. It's in maybe the third paragraph. I work
5 with the help desk. If you want to click on that.

6 THE COURT: I think it's up above.

7 THE CLERK: Yup.

8 (Sound coming from the speakers.)

9 THE COURT: Now what?

10 MR. SAXE: Okay, you want to go -- close that
11 window, and where are we now on the -- okay, I just
12 want to make sure everybody is on the same page here.

13 THE COURT: Well, we're back to the little
14 help desk paragraph.

15 MR. SAXE: Oh, where it says help desk?

16 THE COURT: Yeah.

17 MR. SAXE: Okay, so go to the left of the
18 screen and there's a --

19 MR. GILDEA: Hold on.

20 MR. SAXE: If we're on the same page, on the
21 left-hand column there's a number of -- there's a site
22 there that says story of the ship. Does everybody see
23 that?

24 THE COURT: Yes.

25 MR. SAXE: If you click on that.

1 (Sound coming from the speakers.)

2 MR. SAXE: You want to maybe read a little
3 bit of that.

4 THE COURT: Yeah.

5 (Pause.)

6 THE COURT: Okay, so I've read the first two
7 paragraphs.

8 MR. SAXE: From this particular page there is
9 a column on the left and if you scroll down a little
10 bit in red it says picket. It's a hyper link.

11 (Sound coming from the speakers.)

12 THE COURT: Yup. What do you want us to do?

13 MR. SAXE: Read, if you want to read a little
14 bit of that.

15 THE COURT: You mean there is some something
16 below the sign -- oh, I see.

17 MR. SAXE: I'm sorry.

18 (Pause.)

19 MR. SAXE: Okay, when you're done reading
20 that to the extent you want to, there's a column on the
21 left. Okay, there's a -- it starts out who steals my
22 purse steals trash to something, nothing, then if you
23 go down three stanzas there's a blue hyper link that
24 says if he that filches from me my good name. It's in
25 blue, it's a hyper link on the column on the left. Do

1 you see it?

2 THE COURT: Yup.

3 MR. SAXE: Everybody there? Want to click on
4 that.

5 THE COURT: Yeah.

6 (Sound coming from the speakers.)

7 MR. SAXE: Okay, and then there's another, if
8 you go down a little further it says -- up further, I'm
9 sorry, on the column on the left, there's a blue link
10 that says whores and liars. And then in the middle
11 there if you start scrolling down, there's a thing that
12 says Johnny-on-the-spot, a hyper link in blue.

13 THE COURT: Nothing came up -- oh, it's still
14 loading.

15 (Pause.)

16 MR. SAXE: That's all I have to offer.

17 THE COURT: Well, we haven't seen anything
18 yet. I mean, we're still loading. I don't know what
19 you're looking at, but we've got the world's slowest
20 computer over here I guess. Is it supposed to be
21 saying Second Amendment dated February 15th, 2001 to
22 the employment agreement, Mr. Saxe?

23 MR. SAXE: Yes, that's the one, I'm sorry.

24 THE COURT: What do you want me to see
25 there?

1 MR. SAXE: Just read that little bit.

2 THE COURT: All right.

3 MR. SAXE: Get the idea of what's on here.

4 (Pause.)

5 THE COURT: So that's what you wanted to show
6 me?

7 MR. SAXE: Yes.

8 THE COURT: All right. Mr. Huftalen, while
9 we're here, if you want me to look at something, tell
10 me.

11 MR. HUFTALEN: Sure. I would like you to
12 look at one thing back on the home page. Close this
13 one down.

14 MR. SAXE: Back on the home page? Let's make
15 sure we are all on the same page here.

16 MR. HUFTALEN: Just close it.

17 THE CLERK: I know, my finger slipped.

18 MR. HUFTALEN: Close this one.

19 THE COURT: He wants to go back to the home
20 page.

21 MR. SAXE: Okay, go back to the home page.

22 MR. HUFTALEN: Keep going until you get back
23 to the home page. Now, back on the home page would you
24 please click on the I read and would agree. Would you
25 scroll down to --

1 MR. SAXE: Okay, let's find --

2 MR. GILDEA: Where are we at?

3 THE COURT: Home page, I agree, scroll down.

4 Speak up, Mr. Huftalen.

5 MR. HUFTALEN: Yes, sir.

6 MR. SAXE: Okay, that's it.

7 MR. HUFTALEN: Partially down that page in
8 the paragraph that begins Friday, 3:22, there's a hyper
9 link in blue, L I Z Z Y.

10 MR. SAXE: Want to hit that?

11 (Sound coming from the speakers.)

12 MR. HUFTALEN: The window that opened should
13 be a text window that begins "Dear employees, sorry we.
14 There's a hyper link really bad hair day..." -- excuse
15 me, if you scroll down you can see that that purports
16 to be the signature over the line that says Elizabeth
17 A. Greenwood. On the hyper link text, "A really bad
18 hair day --

19 MR. GILDEA: Mr. Huftalen, can you do me a
20 favor, we're kind of lost. We're on the home page. I
21 missed where he said to go.

22 MR. HUFTALEN: Jon, are you there?

23 MR. SAXE: Yes.

24 MR. HUFTALEN: On the picture of Liz
25 Greenwood.

1 MR. SAXE: Yes.

2 MR. HUFTALEN: Are you there, Dan?

3 MR. GILDEA: Yes.

4 MR. HUFTALEN: On the picture itself, all
5 right, if you close that window and go back to the
6 textual page it has the purported signature of Liz
7 Greenwood, you will see in blue underneath her name and
8 address 200 S. Bently LA, California 90049. You click
9 on that. You should be brought to the Yahoo.maps. If
10 you enlarge that, you will see that there is a map with
11 a star identifying Elizabeth Greenwood's home.

12 Thank you, I have nothing else on that
13 website, judge --

14 THE COURT: Okay.

15 MR. HUFTALEN: -- that I would like you to
16 look at.

17 THE COURT: Shall we close them all up, I
18 guess.

19 All right, anything else, Mr. Saxe?

20 MR. SAXE: No.

21 MR. HUFTALEN: Yes, your Honor. In light of
22 the defense evidence that they put in which I take the
23 argument is this is a fun-loving generally individual
24 who's not engaged in conduct which should be construed
25 as threatening, I'd like to offer one additional piece

1 of evidence by way of proffer. I know that Mr. Saxe
2 will object, but I understand the court knows that
3 rules of evidence don't necessarily apply. I have a
4 witness that I will not put on the stand in this case
5 and I will explain to you why.

6 Let me briefly make a proffer and allow the
7 court to take it for what it deems appropriate or not
8 take it at all.

9 THE COURT: Just so you understand, Rule 5.1
10 does allow hearsay, you understand that?

11 MR. SAXE: Yes, your Honor.

12 THE COURT: And I was more restrictive. It
13 says may, the court may allow hearsay. And I chose
14 this morning not to let the government do that for
15 reasons that I think are now obvious. But at this
16 point where I think there may be a valid reason for not
17 putting the witness on, I'm going to hear the proffer
18 over your objection. Objection is noted.

19 MR. HUFTALEN: I offer this, your Honor, for
20 the same reasons that I offered the killercop.com
21 information. I believe that it's permissible 403(b)
22 even in the event the rules of evidence did apply that
23 shows that the defendant in fact is not only -- let me
24 strike that. Which goes to the allegation that he may
25 use the Internet to send death threats, and the

1 evidence I want to proffer is that as recently as
2 January of this year in Manchester, New Hampshire, in
3 the event she were to testify, the defendant's wife,
4 Orly Mann, with whom I met this morning and made
5 available to be interviewed by Mr. Gildea, would
6 testify that the defendant while seated at the dinner
7 table with their three-year-old child in the course of
8 a discussion between he and his wife about whether or
9 not the child should be allowed to leave the dinner
10 table before dinner was finished, leaned over to the
11 daughter in the presence of the mother and said to this
12 three-year-old child, one of these days I'm going to
13 kill your mother.

14 She would also testify that the defendant has
15 physically abused her in the past when they lived in
16 California. That she obtained a restraining order to
17 keep him from the home. That she entered counseling
18 with the defendant. The defendant refused to continue
19 with the counseling. She ultimately took him back to
20 the home for financial reasons.

21 When they moved to New Hampshire, she would
22 testify that she was instructed by the defendant that
23 her life would be made miserable. She was not allowed
24 to leave the house freely. She was not allowed to
25 obtain a driver's license in New Hampshire. And he on

1 a number of occasions threatened to kidnap their child,
2 three, perhaps now four-year-old daughter.

3 Yesterday without prompting from or
4 encouragement by the government Ms. Mann petitioned for
5 and obtained a domestic violence temporary order
6 prohibiting her husband from coming within 100 yards of
7 where the plaintiff is. She was allowed to stay in the
8 residence at 315 East High Street, and she was given
9 temporary custody of the minor daughter. I have a
10 certified copy of that temporary order and notice of
11 hearing that I would submit to the court as
12 Government's Exhibit Number 2. I have a copy that I'm
13 giving to defense counsel right now. Thank you.

14 MR. SAXE: I would like to call a witness in
15 rebuttal.

16 THE COURT: Well, all right, first of all, I
17 want to see the exhibit. There are a lot of exhibits
18 nobody has bothered to show me yet today.

19 (Pause.)

20 MR. GILDEA: I call Mr. Gildea to the stand.

21 THE CLERK: Raise your right hand.

22 DANIEL GILDEA

23 having been duly sworn, testified as follows:

24 THE CLERK: Please be seated. For the
25 record, please state your name and spell your last

1 name.

2 THE WITNESS: My name is Daniel Gildea,
3 G I L D E A. I'm a United States probation officer.

4 DIRECT EXAMINATION

5 BY MR. SAXE:

6 Q. And you're a probation officer in this
7 district?

8 A. That's correct.

9 Q. Have you been assigned to work on this case?

10 A. That's correct.

11 Q. And in your working on this case did you come
12 into contact with a person named Orly Mann?

13 A. I did.

14 Q. Who is Orly Mann?

15 A. Apparently it's the defendant's wife.

16 Q. When did you first meet her?

17 A. This morning at approximately 9:15.

18 Q. And what were the circumstances under which
19 you met her?

20 A. I was contacted by Mr. Huftalen who had told
21 me he had some additional information that may be of
22 some use to me in making my decision regarding my
23 recommendation today.

24 Q. Okay, and you I guess in the course of your
25 work interview a lot of people?

1 A. I do.

2 Q. You find that you get more accurate
3 information from people when you interview them alone?

4 A. I do.

5 Q. Did you make an effort to try to interview
6 Orly Mann, just you and her together, without any
7 interference from anybody else?

8 A. I did.

9 Q. And were you permitted to do that?

10 A. Not directly, no.

11 Q. Okay, well, why don't you tell the court what
12 you -- did you convey to somebody a request that you be
13 able to talk to this person alone?

14 A. I did.

15 Q. Who did you initially convey that request to?

16 A. Well, when I initially met the defendant's
17 wife she was visibly upset and there was two agents, a
18 friend and Mr. Huftalen. I thought in order for me to
19 make her feel comfortable it would be easier if she
20 wasn't around so many people, so I did request if I
21 could speak to her in private.

22 Q. Who did you make that request to?

23 A. I made a general statement to everybody who
24 was there.

25 Q. Did somebody answer?

1 A. Yes, the two agents looked at Mr. Huftalen
2 and left. Apparently the other woman there was a
3 friend of Ms. Mann, and Mr. Huftalen said he was going
4 to stay there.

5 Q. So Mr. Huftalen wouldn't leave while you were
6 questioning this person?

7 A. He said he was going to stay there.

8 Q. So the answer to that is yeah, he wouldn't
9 leave there?

10 A. The answer was he was going to stay there. I
11 didn't specifically ask him to leave. I made that
12 initial comment, but I didn't turn to him and say would
13 you please leave. I was at his office, I wasn't at my
14 office.

15 Q. All right, now, when you spoke with the
16 witness, did you ask questions?

17 A. I did.

18 Q. Did Mr. Huftalen interrupt any of those
19 questions?

20 A. During the course of the conversation her
21 friend and Mr. Huftalen did join in the conversation
22 during portions of the conversation.

23 Q. All right, now, did you talk to Orly Mann
24 about the allegation that my client said, quote, I'm
25 going to kill your mother, close quote, in front of the

1 child?

2 A. That was one of several conversations we had,
3 yes.

4 Q. And after you asked her about that particular
5 topic, based on what she told you what was your
6 characterization of what happened in that apartment?

7 A. If I could, I would kind of like to set the
8 foundation to the conversation.

9 Q. Fine, absolutely.

10 A. Um, it was brought up that this statement was
11 made and I asked her to explain to me exactly what
12 happened. And what she explained in her words was that
13 they were in the middle of a dinner, the defendant, his
14 wife and their three-year-old child, and the mother
15 said that the child was not eating and didn't appear to
16 be hungry. And at that time the defendant had told the
17 child that she needed to finish her dinner, and there
18 appears to be some conversation between the defendant
19 and his wife about whether the child was going to eat.
20 At some point the child decides that she wants to leave
21 the table and the defendant said that, you know, she's
22 going to sit at the table until we're all done and
23 we'll all leave together. And apparently there was
24 some additional conversation about -- between the
25 defendant and his wife about maybe some, you know,

1 practices of his own family and that she didn't want to
2 subject her daughter to that. And in the defendant's
3 wife's own words she said, I didn't write it down, but
4 it was either in a joking or a playful manner, leaned
5 over to the daughter and whispered into her ear one of
6 these days I'm going to kill your mother.

7 Q. Okay, playful and joking manner?

8 A. Like I said I did not write it down, but that
9 was the way I interpreted the statement.

10 Q. Now, did you also attempt to ask her whether
11 or not any of the agents had anything to do with the
12 filing of the restraining order?

13 A. No, I didn't have an opportunity to do that.

14 Q. Did you want to do that?

15 A. I would have liked to have done that, yes.

16 Q. And why were you unable to do that?

17 A. Time was somewhat of an issue, and again, it
18 was difficult to talk to her because there was multiple
19 people joining in on the conversation during the course
20 of my visit.

21 Q. So you never asked her that question?

22 A. I did not.

23 MR. SAXE: All right, thank you. No further
24 questions.

25 MR. HUFTALEN: May I inquire?

1 THE COURT: Yeah, sure.

2 MR. HUFTALEN: Thanks.

3 CROSS-EXAMINATION

4 BY MR. HUFTALEN:

5 Q. Mr. Saxe I am sure unintentionally used the
6 phrase interfering. Would you characterize my presence
7 as interfering with your ability to talk with the
8 defendant's wife?

9 A. I wouldn't characterize it as interfering.

10 Q. Did I prevent you from asking her any
11 questions?

12 A. No.

13 Q. Did I ask her follow-up questions on
14 questions that you had asked to elicit additional
15 information?

16 A. During certain parts of the conversation you
17 did.

18 Q. You said you didn't specifically ask me to
19 leave. You did clearly say I'd like to spend 10 or 15
20 minutes alone with her; right?

21 A. I did.

22 Q. And I said to you, well, the hearing starts
23 at 9:15, I've got to talk with her, I'm going to stay,
24 okay; right?

25 A. That's correct.

1 Q. And you didn't voice objection and say no,
2 that's improper, I must interview her alone, I think
3 you're going to interfere with this, Mr. Huftalen?

4 A. No, I did not.

5 Q. She did tell you that she was in physical
6 fear of the defendant; didn't she?

7 A. She expressed some fear --

8 Q. Okay, did she tell you --

9 MR. SAXE: Your Honor, I'd ask that the
10 witness be permitted to finish his answer.

11 MR. HUFTALEN: I think he did.

12 MR. SAXE: Well, he was still talking.

13 THE COURT: Did you finish?

14 A. I was just going to say it was very hard to
15 ascertain information from her again because when I
16 tried to get her to articulate things, all the people
17 were in some instances prompting her about other
18 things. So when I, for instance, when I was trying to
19 ascertain, you know, why she now would have got this
20 restraining order all of a sudden, then someone else
21 would give, you know, what about this, what about this,
22 what about this, so it was very difficult to have her
23 complete a complete thought because there was multiple
24 people in the room prompting, you know, reminding her
25 of certain obviously conversations she had prior to my

1 arrival.

2 Q. Okay, that's fine. But she did tell you that
3 she was in fear --

4 A. She did.

5 Q. -- of the defendant; right?

6 A. She did.

7 Q. And she told you that he had been physically
8 abusive of her when they lived in California; right?

9 A. She described one incident.

10 Q. Okay, one incident of physical abuse is
11 physically abusive; isn't it?

12 A. I guess, yeah.

13 Q. Did she tell you while you were up in the
14 library in the U.S. Attorney's Office that he, the
15 defendant, since he had been in New Hampshire, on more
16 than one occasion had threatened to take the child from
17 her?

18 A. That I didn't --

19 Q. You don't remember that?

20 A. No, I don't remember that portion of the
21 conversation.

22 Q. Do you remember her telling you that at one
23 point she locked herself in the bedroom with the door
24 chained because she was afraid of him until he came
25 over and said it's okay Orly, and then she opened the

1 door?

2 A. No, I don't remember that part of the
3 conversation either.

4 Q. Okay. Do you recall that she broke down in
5 tears twice in the 10 to 12 minutes that you were
6 there?

7 A. Yes, she was very emotional about -- about
8 the whole situation.

9 Q. And one of the other of all the people who
10 were there was a woman from the neighborhood who is
11 basically being her support person; correct?

12 A. I guess that's who she was. I wasn't really
13 able to ascertain.

14 Q. Those were the only --

15 A. Yeah, she was the only other woman there and
16 appeared to be a friend.

17 Q. Four people at the table. A friend, Orly
18 Mann, you and me; right?

19 A. That's correct.

20 Q. And you said, you used the word playful
21 manner. Do you recall that Ms. Mann said to you he
22 would say things that scared me, although the tone in
23 his voice was in a playful voice?

24 A. I recall saying that he was extremely
25 verbally abusive to her. Again, I was unable to -- I

1 would have liked to have her expand on that, but I was
2 unable to do that, but I do recall her saying that
3 after the one physical incident I want to ask her was
4 there any additional physical contact, she said no, but
5 most of the stuff was verbal abuse. I didn't write, as
6 you know, I didn't write down, I wasn't taking notes
7 during this conversation so I don't know exactly what
8 she said regarding that stuff.

9 Q. That's fine, I don't expect you to have a
10 perfect recollection, but I just want generally what
11 happened to be clear here --

12 A. Ah-hum.

13 Q. -- in that regard. You wouldn't characterize
14 my participation as interfering, would you?

15 A. No. However, I would characterize your
16 interpretation of what she said different than what I
17 viewed it as.

18 Q. Okay, let's go back to what she said. Did
19 she say to you, I am in fear of this defendant for my
20 life?

21 A. No, she said I was in fear of this. I don't
22 ever recall her saying that she was fearful that he was
23 going to kill her or anything like that.

24 Q. What I want to do is get away from any
25 characterizations that I may have put on it.

1 A. When I made that final statement, I was
2 referring to the incident at the kitchen table. My
3 interpretation of that incident and yours after we
4 spoke, I viewed that differently than did you.

5 Q. Okay. You knew yesterday when you had a copy
6 of the arrest affidavit that she had called the
7 Manchester Police Department Domestic Violence Unit to
8 her apartment because that was in the affidavit; right?

9 A. I was unaware of that.

10 Q. You didn't read the affidavit before you made
11 the recommendation?

12 A. The 30-something pages?

13 Q. 20-something pages.

14 A. Yes, I read that.

15 Q. All right. Were you aware that she had
16 called the Domestic Violence Unit of the Manchester
17 Police Department to her apartment?

18 A. I knew she had been in contact with them. To
19 be honest with you I browsed -- I only had a short
20 period of time, I browsed over it this morning. I was
21 more interested in the conduct of the offense opposed
22 to the stuff leading up to his arrest.

23 Q. Okay, you knew that the government was going
24 to seek detention based upon not only risk of flight
25 but danger; right?

1 A. After having a conversation with you, that's
2 correct.

3 Q. And you knew that there was reason to believe
4 that he was a danger to his wife because she had called
5 the Manchester PD Domestic Violence Unit as stated in
6 the affidavit; right?

7 A. I knew that that occurred, I did not know
8 that that was going to be the grounds for the --

9 Q. Okay.

10 A. -- for the dangerousness that was going to be
11 towards her. I was more inclined to focus on the
12 potential victims of the offense as opposed to the
13 defendant's wife.

14 Q. Okay, fair enough. Based upon what you know
15 now, would you say that his wife is a potential victim?

16 A. Based on her relationship I would certainly
17 characterize it as a dysfunctional relationship in that
18 it's one that's certainly fractured and she's fearful
19 of him, yeah, I would say that.

20 Q. And did she tell you in my conference room or
21 in my library that as recently as yesterday the
22 defendant talked with her to try to make arrangements
23 for her to leave the country to go to Israel, her home
24 country?

25 A. She did say that they had a conversation and

1 that he had said, you know, that he would make
2 arrangements if she wanted to go home or something to
3 that extent. Again, I didn't expand on that comment
4 she made.

5 MR. HUFTALEN: Okay, thank you very much, Mr.
6 Gildea.

7 THE COURT: I'm trying to understand
8 something. What is it you remember her saying about
9 going to Israel, that he would arrange for her to go or
10 that they would go?

11 MR. HUFTALEN: My proffer, your Honor --

12 MR. SAXE: Your Honor.

13 THE COURT: Just a minute, I want to hear
14 what Mr. Gildea remembers first --

15 MR. SAXE: That's what I'm requesting, that
16 Mr. Gildea --

17 THE COURT: Hey, you know what, you guys
18 remember the local rules. You stand up, you say
19 object, and you say the basis, and if I invite you to
20 have further colloquy with me, you're invited,
21 otherwise you don't say anything more. Go back and
22 read the local rules.

23 Mr. Gildea, answer my question.

24 A. My recollection of that statement was that
25 her husband had contacted her and said that he would

1 make arrangements for her to go home if she wanted to.
2 I did not take that inferring that he was going to go
3 with her. She had, during the course of my
4 conversation, had said that a lot of her reasons for
5 continuing to be in this relationship was financial
6 reasons, and I took that as a sense that he was going
7 to now let her go home if that's what she wanted to
8 do. That was my interpretation. And again, I didn't
9 have an opportunity to do follow-up questions regarding
10 that particular comment.

11 THE COURT: Okay. Now do you have further
12 questions of him?

13 MR. HUPTALEN: I do on that.

14 RECROSS-EXAMINATION

15 BY MR. HUPTALEN:

16 Q. Do you recall her telling you that once they
17 moved to New Hampshire she was not allowed to do that
18 what she wanted to do, she could only do what the
19 defendant would let her do?

20 A. I do recall her saying that, that he was very
21 restrictive about and told her this was not California,
22 in New Hampshire it's going to be different than this
23 and that, and I interpreted that he was a very
24 controlling individual. That's how I interpret those
25 statements. Again, I didn't ask her for examples, this

1 and that, but I do recall her making those statements.

2 Q. And do you recall her saying that he would
3 secret himself in the bedroom where the computer was
4 and would not allow her access to his portion of the
5 computer?

6 A. Yes, she was very specific regarding that.
7 She said that he would spend extended periods of time
8 in one of the rooms on a computer and that when she and
9 her daughter wanted to use it, they had separate
10 passwords, you know, and again I interpreted that
11 because he didn't want her to know what his dealings
12 were on the computer and didn't want her to have access
13 to that and he was limiting her ability to do that.

14 Q. One final question. With respect to her
15 possibly leaving the immediate jurisdictional reach of
16 the United States and going to Israel, do you recall
17 her saying that he told her he would make arrangements
18 for she and the child to go to Israel? If you don't
19 recall, that's fine.

20 A. No, I don't recall. I'm not saying it didn't
21 happen. I don't recall, I wasn't focusing on that
22 aspect of the conversation.

23 MR. HUFTALEN: Thank you very much. Thank
24 you, your Honor.

25 MR. SAXE: I don't have any further

1 questions, your Honor.

2 THE COURT: Just so we don't leave this up in
3 the air, Mr. Gildea, you and all of the employees of
4 your department work for whom?

5 A. For the court.

6 THE COURT: And how is it that you go to
7 either get information at Mr. Huftalen's request or Mr.
8 Saxe's request?

9 A. Well, it's my job to give an independent view
10 of the proceedings. Often during the course of the
11 investigation we will learn about additional
12 information either from the prosecutor or the defense,
13 and it's my job to attempt to ascertain how valid the
14 information is. And so Mr. Huftalen called me and told
15 me that he had additional information that may warrant
16 my decision to be different, and at that time we had a
17 brief conversation about it and I asked him if I could
18 in fact interview the witness to ascertain whether in
19 fact that was going to happen.

20 THE COURT: And had Mr. Saxe asked you to
21 talk with the witness, would you have done so?

22 A. Absolutely.

23 THE COURT: And after you've obtained the
24 information, to whom do you give it?

25 A. I present it to the court. Unfortunately,

1 and I did meet with your Honor this morning, due to
2 time constraints I would have put my interview into
3 writing, present it to the court, however, due to time
4 constraints I was unable to do that. I did meet with
5 your Honor this morning, explained what I just
6 testified to about my interview with the defendant's
7 wife.

8 THE COURT: All right, thank you. Any
9 further evidence by either of you?

10 MR. HUFTALEN: No other evidence.

11 THE COURT: Okay.

12 MR. HUFTALEN: But for the court's
13 edification, I also made this information to Mr. Saxe
14 available, or available to Mr. Saxe before the hearing
15 started.

16 THE COURT: Well, I knew that if you didn't,
17 Mr. Gildea would have.

18 MR. HUFTALEN: Oh, I did.

19 THE COURT: It's his obligation. I just want
20 to be sure on the record that everybody understands
21 that Mr. Gildea is an employee of the court, he works
22 for the court, his job is to collect information,
23 whether it comes from you or Mr. Saxe, and his job is
24 to report it back to the court, which he did, and as
25 you know you both get copies of the probation report

1 and where he has to supplement orally, he supplements
2 it orally to both of you. I understand he did that in
3 this case, right?

4 MR. SAXE: Correct.

5 THE COURT: Okay.

6 MR. HUFTALEN: Mr. Gildea has reminded me on
7 a number of occasions that he works for the court.

8 MR. SAXE: Can I have one moment, your
9 Honor?

10 THE COURT: You may.

11 (Pause.)

12 MR. SAXE: We don't have anything else, your
13 Honor.

14 THE COURT: Okay. With regard to the
15 preliminary examination, do you have argument?

16 MR. HUFTALEN: I do, your Honor. Your Honor,
17 -- may I begin?

18 THE COURT: Yes, absolutely.

19 MR. HUFTALEN: With respect to the --
20 generally speaking with respect to the determination
21 that I believe this court must make, the court
22 obviously must determine whether or not there's
23 probable cause to believe that a crime has been
24 committed.

25 In this case two crimes have been alleged,

1 two crimes have been listed in the complaint, two
2 crimes have been listed by statute on the arrest
3 warrant which has issued from Central District of
4 California.

5 The First Circuit has defined the phrase
6 probable cause on a number of occasions, but in 1999 in
7 the case Samos Imex versus Nextel Communications, 194
8 F.3d 301, a particularly helpful definition is found.
9 At page 303 the court said, "The phrase probable cause
10 is used in the narrow confines of Fourth Amendment
11 precedent to establish a standard less demanding than
12 more probable than not. For example, if an arrest is
13 made, long before all proof is assembled for a trial,
14 can be justified as based on probable cause by a
15 showing" -- excuse me, "by showing a reasonable basis
16 for belief that a suspect committed a crime. In many
17 cases such a basis exists without a 50 percent plus
18 likelihood that the suspect is guilty," citing to
19 United States versus Garcia, 179 F.3d 265, Fifth
20 Circuit 1999, and United States versus Sokolow, 490
21 U.S. 1 at 7, 1989.

22 With respect to the facts of this case, and
23 particularly with respect to the facts of this case on
24 the identity fraud, there's another First Circuit case
25 that I would like to bring to the court's attention

1 because the focus is on reasonable inferences to be
2 drawn in making the probable cause determination. That
3 case is U.S. versus Velez-Saldana, V E L E Z - S A L D
4 A N A, 252 F.3d 49 at page 52 -- 53, pardon me. Quote,
5 the question then is whether an objectively reasonable
6 police officer would believe that Velez-Saldana was
7 involved with the drug shipment, internal quotation
8 omitted, giving due weight to inferences drawn from the
9 facts by the arresting officer.

10 Your Honor, with respect to the death threats
11 first, or the threats of physical harm which I think
12 include threats of death under 875(c), the evidence as
13 put forth by Agent Cugno I believe clearly establishes,
14 certainly establishes probable cause to believe that
15 the defendant maintained and operated the website
16 evilgx.com.

17 I believe the evidence clearly demonstrates
18 that during the time periods as set forth in the
19 complaint there were threats against a number of
20 individuals that were posted on that website, the
21 domain of which was registered to the defendant.

22 In particular and without re quoting the
23 language from the website, on the page
24 evilgx.com\tracy44669.htm, one of the threats that
25 Agent Cugno did testify about, the phrase "I will

1 personally send you back to the hell from where you
2 came," follows the name Tracy Hall.

3 With respect to the web page evilgx.com, this
4 is the one where there was a factual error in the
5 identification of the web page that Agent Cugno
6 clarified, that one says at the end of it, "Now they
7 are stuck with me," referring to evilgx earlier, "Now
8 they are stuck with me and at this juncture of the game
9 I won't settle until one of us is dead."

10 Finally, on the web page
11 evilgx.com\temp\tracytalk.htm, the following was found,
12 "If I ever see you near my family again, and I now how
13 to stalk too, I will kill you. That's my offer."

14 The law in the First Circuit with respect to
15 what the government has to prove with respect to an
16 875(c) charge is favorable law for the government so to
17 speak. In particular, in U.S. versus Whiffen, 121 F.3d
18 18, First Circuit 1997, the court generally stated that
19 the standard is whether the defendant should have
20 reasonably foreseen that the statement he uttered would
21 be taken as a threat by those to whom it was made.

22 In United States versus Kelner, 1976 Second
23 Circuit case at 534 F.2d 1020, and I'm reading from an
24 A.L.R. report but it's talking about the case, where
25 the court affirmed the defendant's conviction under 18

1 U.S.C.A. 875(c) for causing to be transmitted in
2 interstate commerce a communication containing a threat
3 to injure the person of another, the court held that it
4 was not necessary under the statute for the government
5 to prove that the defendant had a specific intent or a
6 present ability to carry out his threat, but only that
7 he intended to communicate a threat through a means
8 reasonably adapted to that process. To support
9 conviction for making interstate threat it is not
10 necessary for the government to prove that the
11 defendant had specific intent or present ability to
12 carry out his or her threat but only that he or she
13 intended to communicate the threat of injury through
14 means reasonably adapted to the purpose.

15 I believe that the death threats on the
16 evilgx website, which by now in uncomfortable detail
17 the court is clearly aware, was a website that arose
18 out of a conflict that came after Mr. Sutcliffe was
19 dismissed from Global Crossing. A reasonable person
20 would be fair in inferring that individuals in
21 management and employees at Global Crossing would view
22 the website because of the content, not the least of
23 which, as the court just saw during the presentation of
24 the defendant's case, Mr. Sutcliffe has posted personal
25 pictures of individuals associated with the -- with

1 Global Crossing, including pictures of their minor
2 children, and posted hyper links to maps to their
3 homes. I think a reasonable person would not only
4 infer but would assume that those at Global Crossing
5 who were aware of these threats would look at that
6 website or who were aware of the contentious issues
7 would look at the website. But that isn't part of the
8 proof that's required in the case. It only be that
9 there was a threat made, it was communicated in
10 interstate commerce.

11 Agent Cugno provided testimony that the
12 server for the web hosting company was in Virginia and
13 that the defendant lived in both New Hampshire and
14 California at the time that these web postings were
15 listed, and that a reasonable person would look at
16 those threats and see a threat. On their face it's
17 hard to believe that a reasonable person would not take
18 "I will kill you," as a threat.

19 Taking into account -- let me strike that.
20 Therefore I believe that the burden of the proof of
21 probable cause is in the ordinary course a relatively
22 minimal burden. In this case I believe that there
23 clearly is probable cause to believe that the defendant
24 has communicated threats through the use of the
25 interstate commerce aspect of the Internet.

1 With respect to the identity theft, clearly
2 the evidence with respect to the identity theft or
3 identity fraud I should say, and I use that term
4 loosely, is less compelling than that with respect to
5 the threats. Nonetheless, there is evidence in the
6 record that this defendant had access to data in the
7 Global Crossing computer systems, that he worked there,
8 that he had access to data which included personal
9 identifying information. And the personal identifying
10 information including not only social security numbers,
11 but also dates of birth, addresses, and all the rest
12 that the court's heard he posted on the website which
13 is owned by and registered to this defendant.

14 The question the court had before the break
15 had to do with the intent to cause harm or the second
16 portion of that statute, 1028(a)(7) I believe. I
17 believe the First Circuit case law with respect to
18 reasonable inferences drawn from the facts support this
19 court's finding that there is probable cause to believe
20 that it was done with that intent. I believe that --

21 THE COURT: Well, let me just ask you a
22 question. It says, I'm reading from the statute, with
23 the intent to commit or to aid or abet any unlawful
24 activity that constitutes a violation of federal law or
25 that constitutes a felony under which -- under any

1 applicable state or local law. So the question I have
2 for you is, even if I used a reasonable inference, what
3 law is it that I'm supposed to infer he intended to
4 violate?

5 MR. HUFTALEN: It's a felony for the
6 unauthorized use of a social security number that is
7 not yours. It is a felony to apply for credit using
8 personal identifying information which is not yours.
9 Could be mail fraud, could be wire fraud, could be bank
10 fraud depending on the circumstances. I think that the
11 court's inference can be drawn based in part, in large
12 part, through the hyper link to the Congressman's paper
13 which is posted on the site, which points out the
14 tragic problem that the United States is in the midst
15 of now with identity fraud, but unfortunately that
16 paper goes on to explain or the testimony was the paper
17 goes on to state, I believe Agent Cugno said, how easy
18 identity theft and fraud is.

19 Now, if you take the context in which these
20 web postings were made, the firing of Global Crossing
21 and the obviously clear animosity which exists in both
22 directions, between Global Crossing and this defendant,
23 and you take the personal identifying information that
24 is posted there and have next to it, as you saw through
25 other examples today, hyper links which bring you

1 directly to a paper which extols the problems or talks
2 about the problems of identity theft and identity
3 fraud, then I think, looking at the big picture, it is
4 a reasonable inference to believe that Mr. Sutcliffe
5 posted that information with the intent that people
6 would look at that, see that there's an opportunity
7 here to take these people's identifying information and
8 use it for illegitimate purposes. And there are a
9 number of federal violations that would fit the bill if
10 that information is used inappropriately or without
11 authorization.

12 THE COURT: Okay.

13 MR. HUFTALEN: Thank you.

14 THE COURT: All right, Mr. Saxe.

15 MR. SAXE: Well, I'm not going to cite cases
16 to tell you what probable cause, your Honor, is because
17 I know that you know what it is, and it's interesting
18 that Mr. Huftalen cited cases to tell you what probable
19 cause is, but he doesn't have any cases that say if you
20 post somebody's social security number on a website
21 that that's a crime. It's not a crime. I couldn't
22 find any cases. He says it's illegal to use a social
23 security number posted on a website. That's not using
24 it to get a credit card or in any manner whatsoever.

25 This is a statute that's really clear.

1 Doesn't say eliclitly gained access to a credit card
2 number with bad intent. It says eliclitly gained access
3 to the credit card number to commit a federal crime.
4 And there just isn't any that they are alleging. There
5 isn't an allegation of what it is because there isn't
6 any. And I would submit to you that -- I mean that
7 therefore there shouldn't be any probable cause for
8 that.

9 I would also point out that they are asking
10 you to draw an inference that because he had access to
11 the computers, that he went into the computers and got
12 this information. There's also evidence in front of
13 the court that on that Internet site people could send
14 information in. He was outside of that building
15 picketing, okay, he is not a friend of that company.
16 They didn't like him. They were out to shut him down.
17 But there wasn't anything illegal about what he was
18 doing.

19 So with respect to probable cause on the
20 first charge, there just isn't any because there's no
21 evidence, not a shred, to demonstrate that the
22 information was being used in an illegal manner.

23 With respect to the second charge I noted
24 some language in one of the cases that Mr. Huftalen
25 cited. I think it was the Whiffen case, but I may be

1 incorrect. It said a threat to those to whom it was
2 made. And I would point out there was only one e-mail
3 in this case that was allegedly sent by my client
4 acting as someone else, and it was sent to a chairman
5 of the board. And the only thing that it said was
6 check this website out. That was sent to a chairman of
7 the board. Now, there isn't even anything close to
8 possibly considering that a threat to that person,
9 absolutely not. And all that was done other than that,
10 allegedly, was posting things on an Internet site.

11 Now, with respect to just posting things on
12 an Internet site there's federal case law in the civil
13 context which says that if somebody has a website in,
14 say, New Hampshire and they post information, and that
15 information upsets somebody in California, that if all
16 they do is just post information on an Internet site,
17 that that doesn't even give personal jurisdiction or
18 that it doesn't give federal jurisdiction. And the
19 case that I would cite for that proposition although
20 that's not right on point, it's analogous, Zippo
21 Manufacturing versus Zippo.com, 952 F.Supp. 1119. I
22 can get some other case law on that as well.

23 So that all that was done here was if you
24 find, as they want you to find, that he had this site
25 and that he posted information on it, there is a ton of

1 information on that site. There is funny songs. There
2 is all kinds of stuff. And there is no indication that
3 any threat was ever sent to anybody, okay. And if you
4 look at the site -- the reason why I wanted you to look
5 at the site was the government's whole case here is
6 they take something out of context and then they
7 present it to you, like he threatened to kill his wife
8 in front of his son. Well, that's just ridiculous,
9 okay. I mean, I'm going to kill your mother when she
10 gets home, or I'm going to kill Johnny when he gets
11 home is not a threat to kill somebody, okay.

12 The same thing with the references to the
13 **killercop site**. They want to portray that as he's
14 selling weapons, and if you look at it it's a parody.
15 It's like a parody of Hustler Magazine versus the
16 Evangelical Guy where they have him in an outhouse with
17 a parody on the bottom. Was it in good taste? I don't
18 think it was in good taste. I wouldn't do it. I don't
19 think it's funny. But it's not criminal and there
20 wasn't any suggestion that killercop.com was criminal
21 or that he was prosecuted for it.

22 They took little bits of it and presented you
23 with a little bit of his website, and that's the same
24 thing they did with evilgx.com. They are presenting
25 you with little bits of it and saying look, here's a

1 threat. In reality it's not a threat. If he is found
2 to be the guy that ran that site, the evidence is that
3 this big company is really mad at this little guy
4 because he was picketing outside the company, he
5 thought he was unjustly treated, started a website, if
6 in fact that's the facts that the court finds, and
7 there's tons of material in that website, and if you
8 read all of that material there's a story about a ship
9 and how corporations are ships and how there's all
10 kinds of problems going on with the corporation and
11 there was never any threats conveyed to anybody.
12 Someone wants to come on that site and read the story,
13 that's fine. But there isn't one shred of evidence
14 that anything was ever conveyed to anybody, and I think
15 that that's the essence of a threat. It's not like
16 sending child pornography. We're not talking about is
17 there an interstate commerce connection here. We're
18 talking about transmitting a threat to somebody and
19 there isn't any evidence that there was transmission of
20 a threat to somebody. And as the case cited by Mr.
21 Huftalen says, those to whom it was made, and there was
22 no threat made to anybody.

23 So I would submit that there's no probable
24 cause which -- there's definitely no probable cause on
25 the first one because they haven't even presented with

1 a straight face an argument as to which statute is in
2 question and I would admit -- I would agree that the
3 issue on the second one is closer, but I would submit
4 that, you know, just posting information like that on a
5 site is not transmitting a threat. And I assume --
6 well, that's all I have, your Honor.

7 THE COURT: Okay. Anything else?

8 MR. HUFTALEN: I don't want to be redundant,
9 but I do want a clear record. If I might just point
10 out the explicit nature of the threats one more time so
11 that it's put altogether in conjunction with --

12 THE COURT: I took notes.

13 MR. HUFTALEN: Please?

14 THE COURT: I took notes.

15 MR. HUFTALEN: I understand, your Honor.

16 THE COURT: I wrote it down word-for-word
17 when you read it.

18 MR. HUFTALEN: Okay. Those threats were
19 directed to Tracy Hall by name and they said I will
20 kill you. The statute doesn't require that it be
21 personally hand-delivered to Tracy Hall. It requires
22 that it be made and that a reasonable person consider
23 it to be a threat and that it be in interstate
24 commerce. Thank you.

25 THE COURT: As counsel have correctly pointed

1 out, it certainly is not necessary, in fact it would be
2 inappropriate for me to use as a standard of proof in a
3 preliminary examination of probable cause beyond a
4 reasonable doubt or even a balance of probabilities.
5 In other words, it is what a reasonable person would
6 determine, and that standard of proof is less than a
7 fifty/fifty proposition.

8 I find on the evidence that there is no
9 probable cause with respect to the violation of 18,
10 U.S.C., Section 1028(a)(7) because there is absolutely
11 no evidence and no appropriate inference that I could
12 draw that I think a reasonable person could draw to
13 establish probable cause that he posted those social
14 security numbers with a specific intent to commit a
15 crime.

16 However, with respect to 18, U.S.C., Section
17 875(c) I find that there is probable cause to believe
18 that the defendant has made threats, and those threats
19 were communicated on a website which he had and
20 encouraged people from that corporation to visit,
21 knowing that they would visit, that those threats were
22 very direct to Ms. Tracy or Mr. Tracy, whatever he was,
23 and to the assistant general counsel whose photograph
24 with her child appeared there as well as to other
25 people.

1 Therefore, with regard to the preliminary
2 examination I have found probable cause to believe that
3 he has committed a federal crime.

4 So we will move to the question of
5 detention.

6 MR. HUFTALEN: Thank you, your Honor.

7 THE COURT: Or bail.

8 MR. HUFTALEN: Your Honor, the government
9 respectfully requests that this court detain the
10 defendant for transport back to the district in which
11 the charges are now pending, the Central District of
12 California, pursuant to Section 3142 on the dual bases
13 -- excuse me, on the three bases that the defendant is
14 a flight risk, the defendant now has no place to live
15 in New Hampshire, pursuant to the restraining order
16 which was issued yesterday in Manchester, he has no
17 home, he has for all intents and purposes no wife and
18 no child.

19 I believe that his actions are actions of an
20 individual not likely to abide by the court's
21 instructions to appear voluntarily. However, I think
22 the evidence with respect to his danger is far more
23 compelling.

24 Third basis which the statute refers to in
25 certain portions of the statute but not in others, is

1 the risk that the defendant will obstruct or attempt to
2 obstruct the due administration of justice. I think
3 the comments proffered to the court from Ms. Mann are
4 suggestive, and I submit strongly suggestive, given the
5 nature of their relationship to date, wherein Ms. Mann
6 was not allowed to leave the residence, was basically
7 controlled by this defendant, and was not given free
8 rein to live her life, the fact that he spoke with her
9 yesterday, apparently yesterday from custody status,
10 and suggested to her that he could assist her in making
11 arrangements for she and her minor child, their minor
12 child, to leave the jurisdiction of this country and go
13 to Israel is indicative of a person who is inclined to
14 obstruct the administration of justice.

15 As I said, most importantly I think the
16 defendant's risk to others in the community is what I
17 believe compels a finding that he be detained. The
18 court must find by clear and convincing evidence under
19 3142 that he is a threat.

20 I've read the report and recommendation
21 prepared by Mr. Gildea, and I know the court has
22 carefully, and I've looked at the attached rap sheet so
23 to speak, as I'm sure the court has as well. Most of
24 what appears there admittedly has resulted in
25 dismissals or de minimus sentences. However, it

1 evinces a pattern of behavior and not a non-violent
2 behavior reaching back as far as March of 19 -- excuse
3 me, March of 1985. There are earlier crimes, but they
4 don't appear to be violent crimes. In March of '85 the
5 defendant was arrested for assault and battery. In
6 July of 1985, he was again apparently arrested for
7 assault and battery. He was found guilty in that
8 case. There's also a robbery arrest with a guilty
9 split sentence. Another assault and battery, guilty
10 split sentence. Larceny from a person, not from a
11 building, as well as another assault and battery in
12 October of 1986.

13 But most importantly is the conduct that is
14 within the charges. This individual is, from my
15 unprofessional view, a troubled individual. This
16 individual is, if you will, on a, perhaps a poor word
17 choice, a blood lust with respect to Global Crossing.
18 He feels as if he's been wronged and unfortunately he's
19 not chosen to deal with that through an amicable
20 process. Instead he's made death threats against
21 people who were simply, in one case Tracy Hall, a young
22 woman who is paid I'm sure an hourly wage to serve
23 process. He's threatened to kill her on at least two
24 occasions.

25 The defendant has owned and operated a

1 website which in the past has encouraged viewers,
2 notwithstanding counsel's very commendable
3 representation of the killercop site as parody, it
4 commends to people who read it that it is appropriate
5 not only to carry weapons to injure police officers but
6 to kill them.

7 You will recall that Mr. Saxe pointed out
8 parody, parody, parody, parody. You will also recall
9 that parody did not appear on every page. And whether
10 parody appears or not really is of no consequence.
11 This man has disseminated information encouraging
12 violence by others. He's identified himself on that
13 website by name as Steven. He's encouraged people to
14 kill in particular Los Angeles police officers who
15 happen to cross his path, as his wife, Orly Mann, now
16 has. He's posted information requesting information on
17 the website for personal identifying information for
18 those police officers including their home addresses.
19 What possible reason could Mr. Sutcliffe have had for
20 wanting that information other than seeking vengeance on
21 those individuals.

22 This individual for years before he was hired
23 by Global Crossing, and unfortunately it appears for
24 years from now, will continue to deal with matters in
25 an inappropriate and threatening and violent manner.

1 The defendant's wife is in fear. She's gone
2 to the extreme measure of obtaining a restraining
3 order, and I will represent to the court
4 notwithstanding the implication during the direct of
5 Mr. Gildea that the United States Attorney's Office and
6 to my knowledge the FBI did not encourage, entice,
7 cajole or have an active role in Ms. Mann obtaining
8 that restraining order.

9 But whether they did or whether they didn't,
10 wouldn't be the issue. The issue is whether or not
11 she's in fear for her life, or whether or not she had
12 the right to go seek this restraining order, which she
13 did, or this temporary order, which she did.

14 Mr. Saxe has said, and I wrote, quote, well
15 that's just ridiculous, close quote, with respect to
16 his client telling the three-year-old that he's going
17 to kill the mother at some point. I agree with him,
18 that is just ridiculous. That's abhorrent and
19 abhorrent behavior. That is not dinner time
20 conversation that any humane person would consider to
21 be appropriate to the ears of a three-year-old. He's a
22 danger. He had a rifle in his apartment at the time
23 the search was executed two days ago. He had the means
24 to kill people. He had the motive. And he's evidenced
25 the desire to put people in fear of their lives through

1 the threats, both to his wife and to the people at
2 Global Crossing.

3 I submit, your Honor, that with the lack of
4 ties he has to the community to date and the threats
5 that are on record, not only with respect to the people
6 involved in this complaint but with his wife, and given
7 his past behavior which has resulted in criminal
8 convictions as well as dismissals, coupled with his
9 propensity to encourage others to engage in criminal
10 conduct, that he's clearly a risk of flight.

11 Now he, if he is detained by this court,
12 obviously once he gets situated in the Central District
13 of California, is free under the statute to petition
14 the court to reopen his bail or detention hearing in
15 the event there is new evidence which comes to light.
16 This is not a death sentence so to speak with respect
17 to his detention. This is a mechanism by which the
18 safety of the individuals in this community can be
19 obtained while he's transported.

20 Everyone is aware of instances where people
21 who have not in the past engaged in violent conduct,
22 have done it. There are articles in today's paper in
23 both the Herald and the Globe. One of the headlines
24 talks about judge releasing defendant week before
25 kills. This is in Amesbury last week. A restraining

1 order was sought. The defendant got out. The woman
2 was in fear for her life. Apparently a determination
3 was made that it wasn't necessary to detain the
4 defendant. And he killed her. Nobody, nobody, not Mr.
5 Saxe, not me, not anyone in this room or in this
6 building wants that to happen to anyone.

7 I submit to you that the evidence in this
8 case militates very strongly in favor of a finding that
9 he is a danger and he should be remanded in custody to
10 California where all of these very interesting issues
11 with respect to the charges and the potential for bail
12 in the future could be aired and addressed in probably
13 not a lengthier hearing, but perhaps a hearing if
14 there's additional evidence that the defendant has to
15 bring forward. But I think on the state of the record
16 today, a remand is appropriate and I would request that
17 you do it. Thank you.

18 THE COURT: Mr. Saxe.

19 MR. SAXE: Your Honor, I mean, I think it's
20 unconscionable at most that the prosecutor is trying to
21 turn this into a domestic violence case. He takes an
22 offhand comment at dinner, geez, I'm going to kill your
23 mother some day, which an independent evaluator, his
24 view was I wasn't there, okay.

25 THE COURT: Mr. Saxe, first of all, put your

1 mind at rest. That will have no part in my decision
2 whether he gets bail or not.

3 MR. SAXE: My mind's at rest.

4 THE COURT: Okay? There is a state court
5 judge who has entered a state court order, it's a state
6 court matter. It's not for my consideration. Go
7 ahead.

8 MR. SAXE: Okay. To the extent that the
9 government claims that there's no ties to the community
10 because there's an order in effect, my client -- his
11 father is here, his brother is here, he has lived --
12 this is his home state. He has a residence. He can
13 stay with his brother. His brother's name is Michael
14 Sutcliffe. They live at 58 Miner Road in Auburn, New
15 Hampshire, so he has plenty of ties to the community,
16 they are very close, and there's not any issue about
17 him not having ties to the community, that's just not
18 true.

19 He also has a lawyer named Leslie McAfee who
20 is actually referenced in these pleadings who has
21 represented him in the past and it's my understanding
22 will represent him on this case when he gets in
23 California. That doesn't sound like somebody who is
24 going to take off.

25 Also the notion that he's going to leave to

1 go to Israel is nonsense. And secondly, he didn't call
2 anybody from the jail last night. I don't know where
3 that came from. I mean, there was a representation
4 that there was a phone call from the house of
5 corrections last night between he and his wife where he
6 was trying to arrange his wife to go to Israel. That
7 didn't happen. There might have been some
8 conversations in the past about her going, but nothing
9 about him going. I mean, there's just no evidence that
10 this guy is going to get on a plan and fly to Israel.
11 That's a complete fabrication.

12 So he has ties to the community, there's no
13 doubt about that. He has a lawyer out there. He
14 informs me he has a place to stay out there. In this
15 record, which is almost all the cases were dismissed,
16 and the ones that weren't dismissed were like guilty
17 filed. Well, there is nothing less that you can do to
18 somebody after a finding of guilt than to find him not
19 guilty and file it. That means there's no probation,
20 no incarceration, no suspended sentence, no anything.

21 THE COURT: But they are all in
22 Massachusetts. You don't go to jail unless you kill
23 somebody in Massachusetts.

24 MR. SAXE: Well, then you go to jail, I can
25 tell you that, okay, and it's a very minor record.

1 It's also a very old record. The most recent
2 conviction here is 1987. That's 13 years ago, 15 years
3 ago. There's no convictions involving, you know, any
4 problems with he and his wife. And if he gets
5 convicted of this, this is an offense level 12.
6 There's a possibility of a theoretical possibility of
7 enhancements under the statute, but I mean all that
8 they are alleging and all the evidence that they
9 presented to the court is he posted something on a
10 website. That was it.

11 THE COURT: Well, I want you to answer my
12 questions with regard to this. There are some specific
13 offense characteristics under 2A6.1B. If the offense
14 involved any conduct evidencing an intent to carry out
15 such a threat, increase by six levels. I could see a
16 U.S. Attorney in California if he were to be convicted
17 arguing that the posting of the photographs is
18 evidence, the posting of the address, the map, is
19 evidence of conduct with an intent to carry out the
20 actual threat.

21 MR. SAXE: I think that that was part of the
22 -- if it did in fact happen, it's part of the threat,
23 that's what makes it a threat. It doesn't --

24 THE COURT: Well, there's a threat I'm going
25 to kill you. And then there's a photograph of Tracy

1 whatever her name is sitting in a car, i.e., I'm
2 watching you too. I mean, I think that would be -- I'm
3 not saying your argument has got to be convincing, but
4 I'm not so sure that this is just a level 12. I mean
5 that's something some judge out there is going to have
6 to determine in a much more full record than I've got
7 and an investigation by the probation department. But
8 I think there is the very real possibility from what I
9 heard that this could be very well at a 20 or 22 level
10 and it could carry in excess of a 40-month sentence.

11 MR. SAXE: Well, I mean, I haven't thoroughly
12 researched the issue but there was no conduct
13 subsequent to the alleged threat which indicated
14 anything whatsoever was done to carry out the threat.
15 I think that's the way that that guideline is supposed
16 to read, okay, so I mean my point is is that this is a
17 level 12 offense, we can agree on that. There may be
18 an argument, I don't think it's a very good argument,
19 that the sentence should be longer. But at level 12,
20 even without a guilty plea, that's a 10 to 16-month
21 sentence. That's -- half of that could be served in
22 incarceration. That's in Zone C. So half of that
23 could be served in home detention. So it would make no
24 sense for him not to go out there.

25 And the other thing that I need to point out

1 is there is some insinuation here that, well, he was
2 aware that the FBI was after him so he ran away. No,
3 he was aware that that company was trying to serve him
4 and he didn't want to get served. No one ever
5 suggested that there was any kind of criminal
6 allegations here. And he moved to this state, he got a
7 place in Manchester and filed with the Department of
8 Motor Vehicles. I mean, there's no indication that he
9 was trying to run away from the government.

10 And the first time he -- and he wasn't hard
11 to find, all right, so I don't think there's any
12 indication here whatsoever and there's no indication in
13 his past record, to the extent that he has a record,
14 that he is going to run away. That's -- I mean he
15 could, everybody could. But the law is just because
16 you could doesn't mean -- I mean there's got to be more
17 than that for a client to be a flight risk. There's no
18 evidence that he's a flight risk whatsoever. He's got
19 a place to stay in this community with his brother, his
20 father is also here, and there's no indication
21 whatsoever that he is not going to go back to
22 California and face these charges. And there isn't any
23 evidence that he's taken any affirmative step once
24 these alleged threats were made to do anything about
25 it.

1 So there's conditions that you can impose
2 that would ensure that there's nobody in this community
3 that's in danger and there's nobody out there that's in
4 danger and he has a place to stay and he's going to
5 show up at the hearing.

6 THE COURT: What is the condition that you
7 say I can impose that would assure that he is not a
8 danger to the individuals against whom the threats have
9 allegedly been made in California? I mean, I
10 understand that he can stay with his brother, he can
11 stay with his father, he has a caring family. There's
12 a restraining order that's going to keep him away from
13 his wife. But the so-called victims of this alleged
14 crime are in California, and whether I -- and if I
15 release him at some point and he doesn't flee, and
16 frankly, I will tell you the truth, I will find right
17 now I don't believe that the government has met its
18 burden with regard to risk of flight, so I'm not going
19 to find him a risk of flight, I think he would show up
20 in California. Now, I want to know what set of
21 conditions I could impose that's going to avoid the
22 danger to the California community when he gets out
23 there.

24 MR. SAXE: Any of the conditions that are set
25 forth in the recommendation by Mr. Gildea. I think

1 that he will be actually staying with his lawyer when
2 he goes out there.

3 THE COURT: That isn't necessarily a good
4 recommendation.

5 MR. SAXE: Well, I mean there's --

6 THE COURT: I mean, it's like you were to say
7 he was going to stay with you.

8 MR. SAXE: I don't live in California, other
9 than that it wouldn't be a problem. But I mean this is
10 a cyber case, this is a cyber imagination case, okay.
11 When you're looking in cyber space, you have what they
12 characterize as a threat. I wouldn't characterize it
13 quite that way, but you found that, so let's go with
14 that. It's all cyber space. We get into the real
15 world and there's no indication that he's a problem.
16 If he's a problem for these people, he picketed them.
17 There's nothing wrong with that. That's what he's
18 supposed to do if he has a grievance, he pickets
19 outside the offices. He doesn't go get a gun and
20 shoots somebody. He gets a picket sign and he carries
21 it outside the office. And then allegedly he forms
22 this website and engages in writing words. I think
23 that's what we're supposed to do in this country when
24 you have a problem with somebody, you write words, you
25 picket, you exercise your First Amendment right. Now

1 the problem is that the government says you stepped
2 over the line because some of those words were a
3 threat. But that's all -- it's not even on paper, it's
4 in cyber space. There's no indication that he's
5 actually going to go out and get a gun and do this. I
6 mean that danger is basically I think being, you know,
7 fabricated is not the right word, but I mean they are
8 taking the record and showing you a little bit of it
9 and then they are stretching that even further by
10 making some kind of argument like he's dangerous. He's
11 not dangerous.

12 THE COURT: Well, all right, I want to hear
13 from Mr. Gildea and find out since he's been here with
14 me all day listening to all this, is your
15 recommendation the same as it was or not?

16 MR. GILDEA: Your Honor, I stand by my
17 recommendation. I would suggest that if the court is
18 concerned about potential victims out in the State of
19 California, I would agree with Mr. Saxe that most of
20 the stuff occurred on the Internet. We can certainly
21 limit his access to that if he stays with a brother or
22 family member, we can tell him that he cannot be in the
23 presence of a computer and he cannot have access either
24 in their home or any other home. In that sense it will
25 potentially eliminate that aspect of it. We can

1 restrict his movement to the State of California beyond
2 his court appearance, unless he gets out there to the
3 State of California and the probation department can
4 deal with it.

5 THE COURT: But that doesn't really quite go
6 to my problem. It seems to me the quandary is really
7 this. If I were to assess is he a danger to the New
8 Hampshire community based on what I heard and what I
9 know in terms of a restraining order issued by the
10 judicial branch of Hillsborough County Manchester
11 District Court, I wouldn't find him a danger to this
12 community. It seems to me I have two options. I can
13 say very explicitly on the record that any decision I
14 would make with respect to whether he's a danger to the
15 community in California where I know he must go, is
16 better assessed by the district court in California who
17 can hear from people who are in California who are the
18 supposed objects of those threats, or -- and I can just
19 say, well, you know, I'm doing this without any
20 prejudice to the magistrate judge in California to
21 re-examine that because I'm doing it on less than a
22 full record. Or I can say, well, I'm going to let him
23 go on bail and then the U.S. Attorney seeks detention
24 out there based upon newly discovered evidence, and my
25 concern is he gets on the airplane, he goes out there,

1 now what? What condition do I impose that assures that
2 he is not a risk to anyone out there?

3 MR. GILDEA: Well, I would agree with your
4 Honor, I think that the State of California is in a
5 better position to assess that than we are. I don't,
6 you know, beyond what was represented today in court, I
7 don't even know these alleged victims and, you know,
8 and not knowing that it's almost impossible to factor
9 conditions to protect their safety. So I can only
10 address what's known to me at this point, and what's
11 known to me at this point is the victims are all the
12 way across the country. If the court wants to restrict
13 the defendant's movement, we can put on electronic
14 monitoring to prevent him from leaving his residence,
15 and if he does leave his residence, you know, we can
16 check on where he's going, but as the court knows
17 that's just another tool that we have at our disposal.
18 There's no guarantees that he can't remove that or any
19 other thing he may come up with. But I would say
20 again, these victims are in the State of California.
21 It's not -- the victim is not, you know, the next town
22 over, the victim is not two towns over. Certainly we
23 will notify any potential victim, give them proper
24 notification, and let them know if they have any direct
25 contact they can contact us immediately and then we

1 will take appropriate actions if in fact that occurs.

2 MR. SAXE: Your Honor, if I could point
3 something out, my client pointed out, I neglected it.
4 After these threats, alleged threats were made, if they
5 were made, he's here now. He left California. I mean,
6 if he was going to like threaten somebody and then as
7 part of the plan he was going to do something to them,
8 he wouldn't come to New Hampshire. I mean, he would go
9 to California. And he's here. He's not even there.
10 He doesn't really want to be there. If you want to
11 just leave him here, that's fine --

12 THE COURT: Well, I'm sure he doesn't.

13 MR. SAXE: He has no desire whatsoever to go
14 to California and no intent to do harm to any of those
15 people. If he had, he probably would have done harm to
16 them already.

17 THE COURT: Well, the reality is this. If I
18 put him out on bail he's going to have to report on
19 April 10th out there in any event, so that I know for a
20 fact that in roughly two weeks he is going to have to
21 appear in a California court. And my concern is
22 whether or not he is a danger to the community. And it
23 seems to me that I can make a reasonable inference that
24 if I were that young woman who is house counsel, Ms.
25 Greenwood, and my picture with my infant were posted on

1 the Internet in this heated situation with the threats
2 that have been made, that I might perceive that I am
3 truly threatened.

4 MR. SAXE: There wasn't any threat made to
5 her. I mean, there's nothing in that report that
6 indicates there's an allegation of a threat to her.

7 THE COURT: You guys are both terrific
8 lawyers and you've done a great job today, both of you,
9 and you certainly have, Mr. Saxe, your client should be
10 very proud of your effort, but the fact of the matter
11 is any reasonable young mother pictured with her young
12 child who is posted on the Internet with a map to her
13 house on an Internet site that's been created because
14 of a war with the corporation that fired the guy is
15 going to feel threatened. And my concern is, is she
16 threatened. I mean my real concern, and I want to be
17 perfectly frank with you, it goes back to the very
18 first question I asked you today, I will give, just for
19 purposes of argument, your client the benefit of
20 believing that this super giant corporation picked a
21 fight with him and because somebody in house counsel's
22 office got their nose out of joint, a circumstance with
23 which I was intimately familiar with when I was
24 practicing law, house counsel in giant corporations
25 always tell their outside counsel no holds barred, bury

1 the person, I can see somebody in that house counsel's
2 job trying to do that to your client. I'm not saying
3 they did, but I think that's how he perceives it. His
4 reaction to it when he was picketing is admirable
5 because that's the free exercise of the First Amendment
6 right.

7 The establishment of this website tells me
8 two things. One, that your client is extraordinarily
9 talented. That's a brilliantly conceived and put
10 together website. But it's scary. I don't know
11 whether there's a screw loose with your client or not,
12 and that's what I asked you first thing this morning.
13 To my mind that's what makes him dangerous.

14 MR. SAXE: I can tell you the more that I
15 work with him, the less I think so.

16 THE COURT: Well, that's because both minds
17 work together.

18 MR. SAXE: Well, that's possible.

19 THE COURT: You are the perfect lawyer to
20 understand that.

21 MR. SAXE: Your Honor, one of the test areas
22 is if he's a help to me, and he's been a help to me in
23 presenting his case.

24 THE COURT: I noted that and I've been happy
25 to see that my initial concern is not there. But my

1 concern now is with regard to an unstable mind with
2 real threats knowing where people live and whether that
3 makes him a danger to that community into which I know
4 one way or the other I must send him. I either send
5 him with the marshals by way of Oklahoma City on their
6 fabulous airline, or he gets a ticket on his own and
7 ends up out there, but it's all got to be within two
8 weeks, and that's the group I'm worried about.

9 MR. HUFTALEN: I would like to add two
10 points, your Honor, please. This is the first time
11 that this defendant is facing serious jail time. The
12 ante has been upped significantly through the bringing
13 of these charges and this contested hearing today. In
14 the event that the defendant was predisposed to violent
15 conduct before these charges and before this
16 contentious hearing, I submit to you that that hasn't
17 abated.

18 Additionally, to the extent that you're on
19 the fence with respect to --

20 THE COURT: I shouldn't give him bail because
21 he got mad at what you did today?

22 MR. HUFTALEN: No, I think you shouldn't give
23 him bail because he's a danger to people in the
24 community. And in other cases we've all agreed that
25 when someone is facing serious jail time and testimony

1 by people close to them, that the risk to those people
2 increases, and I submit that in this case that would be
3 a reasonable thing for you to draw.

4 But the other point I wanted to make was to
5 the extent that you're on the fence with respect to
6 whether or not detention should or should not take
7 place, I think you need to balance the equity so to
8 speak and find a downside risk to this defendant being
9 temporarily housed in BOP custody for the transport
10 versus the safety of those people that I think all of
11 us in this room understand is seriously in issue.

12 To help you in that regard, although it's not
13 binding, the magistrate judge in the district of
14 prosecution has affixed on the warrant, which is not
15 binding upon you, but according to the information that
16 the deputy clerk provided to me yesterday from the
17 legal manual, that perhaps considerations of propriety
18 and comity suggest that you take into account that the
19 issuing magistrate has requested on the face of the
20 warrant with respect to bail, dollar sign, all caps,
21 underlined, detention. It is the court's position in
22 California, having had the benefit of reviewing only
23 the evidence that was in the affidavit, that in their
24 district, in their court under their proceedings, they
25 want him in custody. They want him detained. And I

1 think to the extent that you're on the fence that may
2 weigh in favor of detention.

3 If it's, you know, if he should be released,
4 he can be released through a motion to reopen the bail
5 hearing out there. If he hurts somebody here, we can't
6 unscramble those eggs, and my office is firmly
7 committed to the position that he should be detained.
8 Thank you.

9 MR. SAXE: Your Honor, I will also point out
10 that the judge out there found probable cause or issued
11 a warrant on an offense that you found wasn't even any
12 probable cause for. That may change the court's
13 decision out there if they found out there really was
14 nothing to half of what the government was saying.

15 THE COURT: Yeah, well, I don't know the
16 circumstances of what was done and what wasn't done out
17 there and this isn't a 40(f) situation.

18 MR. HUFTALEN: I understand that, your Honor,
19 and I didn't mean to imply it was. It's not an
20 indictment.

21 THE COURT: And I understand the legal manual
22 issued to us when we go to baby judge's school says
23 that I'm supposed to have some deference to the
24 magistrate judge in California, and I certainly have
25 considered what he suggested.

1 Just so I can be perfectly clear about this.
2 On the record before me, which I want to acknowledge
3 could be testimony that could be elicited in
4 California, vary or more mitigate the question of
5 danger, but on that record I find that the government
6 by clear and convincing evidence has established the
7 defendant is a danger to the community, particularly in
8 California, and I therefore remit him to the custody of
9 the United States Marshals in order that he be
10 transported to court in California.

11 MR. HUFTALEN: Nothing further from the
12 government. Thank you, your Honor.

13 (Adjourned at 3:10 p.m.)

14

15

16 C E R T I F I C A T E

17

18 I, Sandra L. Kulacz, do hereby certify that
19 the foregoing transcript is a true and accurate
20 transcription of the within proceedings, to the best of
21 my knowledge, skill, ability and belief.

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SANDRA L. KULACZ, CER, CM