

H9DAASCHC Conference

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

17 CR 548 (PAC)

JOSHUA A. SCHULTE,

Defendant.

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New York, N.Y.
September 13, 2017
4:00 p.m.

Before:

HON. PAUL A CROTTY,

District Judge

APPEARANCES

JOON H. KIM
Acting United States Attorney for the
Southern District of New York

MATTHEW LAROCHE
Assistant United States Attorney

THE LAW OFFICES OF KENNETH F. SMITH
Attorney for Defendant Schulte
KENNETH F. SMITH

BRAFMAN & ASSOCIATES, P.C,
Attorneys for Defendant Schulte
ALEXANDER B. SPIRO

ALSO PRESENT: MARLON OVALLES, Pretrial Services

1 (Case called)

2 MR. LAROCHE: Good afternoon.

3 Matt LeRoche, for the government. With me is Jeffrey
4 David Donaldson and Richard Evancheck, both special agents with
5 the FBI.

6 THE COURT: OK.

7 MR. SPIRO: On behalf of my client, Alex Spiro, from
8 the Brafman firm.

9 THE COURT: Mr. Spiro.

10 MR. KOSS: Taylor, Koss, K-O-S-S.

11 MR. SMITH: Kenneth Smith.

12 THE COURT: Mr. Smith, how are you?

13 Mr. Schulte, how are you?

14 THE DEFENDANT: I'm OK.

15 THE COURT: You want to identify yourself,
16 Mr. Ovalles?

17 MR. OVALLES: Yes, your Honor.

18 Marlon Ovalles, from Pretrial Services. I'm covering
19 this matter for my colleague, John Moscado, who sends his
20 apologies for not being able to be here.

21 THE COURT: Thank you, Mr. Ovalles.

22 MR. OVALLES: Yes, sir.

23 Mr. LaRoche, the first thing we are going to do is
24 arraign, Mr. Schulte?

25 MR. LAROCHE: Yes, your Honor.

1 THE COURT: What else do we have on the agenda.

2 MR. LAROCHE: The government will discuss a discovery
3 schedule and I believe that defense counsel has asked the Court
4 to reconsider bail.

5 THE COURT: Is that right, Mr. Spiro?

6 MR. SPIRO: Yes.

7 THE COURT: OK. All right. Mr. Schulte, have you
8 seen a copy of the indictment?

9 MR. KOSS: One moment, judge?

10 (Pause)

11 THE COURT: I have an extra if you need it.

12 MR. KOSS: Yes. My apologies. Thank you very much.

13 THE COURT: You've seen it, Mr. Schulte?

14 THE DEFENDANT: Yes.

15 THE COURT: Have you had a chance to consult with your
16 counsel? Do you want me to read it to you or do you waive the
17 reading.

18 MR. SPIRO: We waive the reading.

19 THE COURT: Do you want to enter your plea now,
20 Mr. Schulte.

21 THE DEFENDANT: Not guilty.

22 THE COURT: A plea of not guilty will be entered.

23 Mr. LaRoche, what about the discovery schedule?

24 MR. LAROCHE: Yes, your Honor. The government would
25 request 45 days to complete discovery. We've already produced

1 initial discovery in this case but there is a voluminous amount
2 of discovered. If I could just summarize it for the Court,
3 includes the seizure of approximately 60 electronic devices
4 that were taken from the defendant's apartment in March of
5 2017. It also includes search warrant returns for Google and
6 other electronic accounts used by the defendant. It includes
7 subpoena returns for various facilities used by the defendant.
8 It also includes statements made by the defendant in several
9 meetings with the government on the night that the search was
10 executed, and also statements that were made, a limited number
11 on day of his arrest.

12 I wanted to flag two issues for the Court. I guess
13 first, the government has produced initial discovery including
14 Google searches that were conducted by the defendant and also
15 Internet relay chat logs between the defendant and others, both
16 of which have been cited in the complaint.

17 And I also just wanted to flag two issues for the
18 Court. There is over ten thousand images of child pornography
19 that were taken from the defendant's desktop computer.
20 Obviously, they those cannot be produced in discovery.

21 There is also a limited amount of classified documents
22 that were found on the defendant's computer. Again, they
23 cannot be produced in regular discovery. As we've discussed
24 with defense counsel, and our plan is to make those documents
25 and electronic evidence available at the FBI for their review.

1 THE COURT: Defense want to comment?

2 MR. SPIRO: Your Honor, obviously, this is a very
3 complex case in terms of the computers and the forensics
4 involved. We just learned of the government's schedule and
5 proposals outside in the hallway right before the court
6 appearance. It's something I am going to address in small part
7 during my bail application tot he Court but I sort of think we
8 have to see how that all plays out before I know whether and
9 consider with co-counsel before I know whether that is a
10 feasible schedule from our standpoint.

11 THE COURT: Do you have an alternative in mind, Mr.
12 Spiro?

13 MR. SPIRO: Not as a stand here, judge, without having
14 consulted with somebody who fully understands the forensic
15 implications and conferred with my client about that proposal.

16 THE COURT: All right. We'll put that off till the
17 end of the conference then. You want to make your application
18 now for bail?

19 MR. SPIRO: Yes, your Honor.

20 This consideration is obviously de novo and I
21 understand that I've provided the minutes to the Court. While
22 there is a minor so-called burden of production to rebut the
23 presumption that rests with the defense, the ultimate burden of
24 persuasion is, of course as the Court knows, with the
25 government. I don't think there's any real concern of flight

1 risk here. I think that was well sort of established at the
2 initial hearing in front of the magistrate. It's my view that
3 the government does not come close to satisfying their burden
4 of clear and convincing evidence in terms of dangerousness.

5 We're talking here, judge, obviously, about so
6 dangerous that no possible reasonable alternative could
7 guarantee the safety of the community. And that presumption of
8 innocence that's also within that statute and in the Adam Walsh
9 Act, they both -- and the Bail Reform Act, Adam Walsh Act that
10 then modifies it in the same way that that presumption of
11 innocence.

12 And you can't really get away from that in talking
13 about why this is not case that is the type of dangerousness
14 that courts consider in setting complete detention. This is
15 somewhat anecdotal and somewhat legal but if you canvass the
16 case law in this area there seems to be a divide between the
17 cases in which an individual has child pornography or is
18 alleged, just alleged to have child pornography and approaches
19 a minor versus cases in which they have possessions on their
20 server or on their hard drive and do not approach a minor and
21 the courts seem to almost entirely, consistent with this, seem
22 to always essentially allow for pretrial release unless there
23 is compelling evidence of an actual danger to a minor.

24 The reason I say it's somewhat anecdotal is because of
25 my background in psychology and other things. I handle a great

1 number of these cases. I have personally never had anybody
2 under such circumstances detained prior to trial and I on
3 conferral with Pretrial and in asking Mr. Moscado the basis for
4 their recommendation. Mr. Moscado told me his office handles
5 these cases and he exclusively essentially handles these child
6 pornography cases and in his experience and this isn't to usurp
7 your Honor's discretion and of course, we'll respect whatever
8 ruling that we get hear today, but it was Pretrial's experience
9 and their recommendation to the Court that this is not a case
10 that warrants detention.

11 You know the litigation surrounding the Adam Walsh Act
12 and detention really focuses on whether even the curfew and
13 even the electronic monitoring and even the home detention are
14 constitutional. And I'm sure the Court is familiar with the
15 litany of cases that have come down. My research, there's 17
16 federal courts that have addressed whether the part of the
17 act -- forget detention -- that even allows for a presumption
18 without a hearing of house arrest and electronic monitoring.

19 THE COURT: But I gather you consent to that.

20 MR. SMITH: I would consent to that which is my point.
21 But to be here consenting to that without even challenging it
22 when courts are really focused on if that is OK, it does say
23 something about the mindset of courts when it comes to these
24 charges and this amendment essentially to the Bail Reform Act.

25 I would also just point out that it would appear,

1 right, that to the degree and there are no congressional
2 findings or commentary on why they, a stated purpose on why
3 they viewed these sets of offenses to create this presumption.
4 But it goes to reason and it's consistent with principles of
5 statutory interpretation, if they are going to say that there's
6 a presumption and give you what they want in terms of pretrial
7 release conditions that they're saying in essence, at least in
8 my view, that OK we're creating this presumption but we're
9 giving you a way to do it that accounts for this kind of a
10 case.

11 We're going to write in electronic monitoring and home
12 detention because this isn't like many other cases and many
13 other crimes in which there's a conspiracy and there could be
14 people on the outside and there's international ties and there
15 are other things that, perhaps, do support pretrial detention.
16 None of that have is here. In the absence of the Adam Walsh
17 Act is amendment which is a decade or so old. No one, I would
18 submit to the Court, would think that this man who's lived an
19 otherwise unblemished life on these first offense charges
20 presumed innocent would ever be detained pretrial.

21 So I think when you consider that you get back to the
22 factors that are well thought out that go to how we normally
23 assess bail and pretrial detention. And when we talk about the
24 nature and circumstances of the offense, we're talking about
25 approximately a decade ago is when most of these conversations

1 occur that are listed in the complaint.

2 THE COURT: Yes.

3 MR. SPIRO: And if you consider that's the
4 government's discovery schedule, I would submit by the time all
5 of that is done it will literally be a decade in between that
6 conversation and when my client would stand trial for those
7 charges presumed innocent.

8 So again, he is presumed innocent but looking at the
9 complaint and the evidence here, I would point out a few things
10 to the Court. One is a search warrant's conducted. On the
11 search warrant return and in none of the applications and
12 anything are there the kinds of devices, whatever that would
13 lead anyone to think that he is a danger to children, an active
14 danger to children. There aren't handcuffs. There are cases
15 where courts have weighed-in --

16 THE COURT: The search warrant was executed when, Mr.
17 LaRoche.

18 MR. LAROCHE: March 23, 2017.

19 THE COURT: OK.

20 MR. SPIRO: While this is all going on mind you, your
21 Honor -- I think the Court knows this -- my client is meeting
22 with and engaged in open conversations with the government,
23 turned in his passport, told them --

24 THE COURT: That's why Magistrate Judge pitman found
25 there was not a danger of flight.

1 MR. SPIRO: Right. I only mention that just in terms
2 of the timing of the search warrant because you're right. I
3 think that that is why the magistrate so clearly found that
4 there wasn't a danger of flight. But I think it speaks a
5 little bit also to notions of impulsivity and danger. There
6 are communications, constant communications in which my client
7 has travel plans and is checking in with his lawyer and
8 checking-in with the government. I mean I'm going to move to
9 character in a second but I just want the Court to just picture
10 that dynamic about how dangerous he is walking into a
11 government office weeks ago with his lawyer unfettered, no
12 issue ever in 30 years.

13 So if you continue to read on in the complaint -- I'm
14 just going to pull a couple snippets because he's presumed
15 innocent. I haven't seen any of the forensics and we can't
16 have a trial here today. Even in these little conversations
17 they pull from over a decade ago or approximately a decade ago
18 rather, just don't put something too illegal on there. Like
19 what? I'd be pretty pissed off if the FBI knocked on my door
20 and said I had a terrorist plan to nuke the U.S. on my server.

21 That's kind of like, I guess the government would say
22 that's consistent with concern over what's on his computer but
23 I'm not so sure that that's elicit concern. If you are running
24 servers they mention how much data he has on his computers. If
25 you are running servers that lots of people can put stuff on

1 there, you don't want them selling fake Louis Vuitton bags.
2 You don't want them doing all sorts of things. And you say
3 some comment like that nine years ago, it just doesn't, to me
4 it speaks of OK, be careful don't do anything crazy on my
5 server. You go down to the bottom of that page and on page
6 eight of the complaint, the response to Mr. Schulte:

7 Well, 15-year-old-girls are sexy but maybe that's
8 because I'm 16.

9 It's a teenager, judge.

10 You go on and they talk about the movie "Taken". I
11 don't know if you saw that reference in the complaint.

12 THE COURT: Yes.

13 MR. SPIRO: And at one point they say, dude, it's
14 porn. I don't even like porn. But just to take a notice of
15 the movie "Taken" and again, I don't want to sort of try the
16 case right now but I would submit to the Court that my client
17 is a teenager at the time, that some of this stuff, the
18 comments are better left unsaid. Part of it is fantasy. Part
19 of it is -- and you know we're talking about a not nice subject
20 matter and something that is uncomfortable and something that
21 is shocking and something that is not positive in any way,
22 shape or form. But we have to put that aside a little bit and
23 realize that the teen-aged mind may not understand that you are
24 re-victimizing people, just like the teenaged mind might stare
25 at a car crash where somebody got horribly injured and not

1 think oh, I'm hurting that person by staring at them because
2 the harm had been done in the teen-aged mind.

3 So that is the window with which this case is being
4 presented. And that's what we know about the nature and
5 circumstances. You know the government I have no doubt will
6 stand up as they do in all of these cases, and say there were
7 ten thousand images, OK. It seems to me that there are
8 thousands of images in all of these cases. I don't think when
9 the law talks about the "weight of the evidence" they're
10 talking about how many images downloaded onto a massive server
11 that is going to take months and months and months to copy.
12 They are not talking about that.

13 What the courts I believe are talking about is is
14 there a defense? And they're absolutely is. And the reason
15 that there's a defense in this case and the Court can, I think,
16 start to see that there is a defense is because when you're
17 dealing with all these levels of encryption, when you're
18 dealing with public servers that people can download things on,
19 that things can come off of, that things can come onto your
20 computer through, it is like running an entire, like running an
21 exchange. And you are going to have lots of things on the
22 exchange. And people can excess the exchange and put things on
23 the exchange and people can take things off the exchange. The
24 bigger your exchange is, the more likely there is that there is
25 going to be things on the exchange that shouldn't be there.

1 That's just how running any large information storage database
2 would work.

3 THE COURT: But Mr. Schulte was running the
4 information storage, right? He had the servers on his
5 premises.

6 MR. SPIRO: Correct.

7 THE COURT: As I understand the complaint, there was a
8 personal computer which had an inscription feature on it that
9 if you penetrated the encryption feature you got into the
10 server. The server then had a double encryption before the
11 materials became available.

12 MR. SPIRO: That is relatively consistent with my
13 understanding at this early phase.

14 THE COURT: Where am I wrong?

15 MR. SPIRO: No, no, I don't think the Court is wrong.

16 THE COURT: OK.

17 MR. SPIRO: But of course I'm not in a position. This
18 is a case that all of those --

19 THE COURT: So Mr. Schulte had access to this computer
20 because he, behind all of the levels of encryption he had
21 passwords that protected his access. Now are you saying that
22 other people had similar access?

23 MR. SPIRO: Well, I don't know if people had similar
24 access but other people had the ability to access. People had
25 other -

1 THE COURT: Strike the word "similar". How would they
2 get access to the server that was maintained -- I gather it was
3 maintained in Mr. Schulte's apartment.

4 MR. SPIRO: Right. So again, I think that all of
5 these questions are fair and I will respond but I would just
6 point out that every response is exactly the reason why I come
7 back to how complicated this is. The passwords to the
8 different encryption levels within the servers were made
9 publicly available, meaning that there was a group of
10 individuals who all had access to the servers. He was running
11 a host much like somebody could run an exchange. That's why I
12 used that analogy. He is not the only one that could input,
13 download, output onto these servers. So it becomes very
14 complex in terms of what is available and what is not
15 available.

16 THE COURT: But Mr. Spiro, I don't want to interrupt
17 you but he said at page 13 of the complaint at paragraph D
18 Schulte explained that he had personally installed encryption
19 on his desktop computer. He stated that he did not share the
20 password for the encrypted portion of the desktop computer with
21 anyone else.

22 MR. SPIRO: Right. It is my understanding, judge,
23 that as to one component of the desktop he did have his own
24 password. But the massive server, speaking to the government
25 and colloquially, I don't want to put words in their mouths,

1 but there's as much computer data in this case as almost you
2 could find in any case, certainly, more than in any case I've
3 handled so much that we're going to have to go to the FBI
4 headquarters for the confidential stuff. And we're talking
5 about we may have to have our own servers, 12 terabytes, maybe
6 50 terabytes in total.

7 So one point of it and in that statement in that
8 context speaks to one point of access to one point of this
9 information, not all of it. Much of it, if not the majority of
10 it is other people moving in and out of his server. So all of
11 these questions --

12 THE COURT: So he talks about the desktop computer
13 being encrypted and he didn't give the password to his desktop
14 computer.

15 MR. SPIRO: I think that that is correct.

16 THE COURT: So when you get through that you get
17 access to the server and the server has a double encryption
18 level?

19 MR. SPIRO: I don't think that that is entirely
20 correct, meaning that you can get remote access to the server
21 as well. I am getting assurances that that is the accurate way
22 the servers work. So you can get access to the server without
23 being anywhere near the computer or the encryption on the
24 desktop or anything else.

25 THE COURT: How would that happen?

1 MR. SPIRO: Over the Internet. It's like hosting
2 Google.

3 THE COURT: "Hosting"?

4 MR. SPIRO: Google or something, right? It's like how
5 do things get on Craig's List if you're Craig? Everybody can
6 put it on and take it off. So it's just, there are none of the
7 aggravating factors that we often see in child pornography
8 cases. There's no evidence of him contacting a minor. There's
9 no evidence of binoculars, no evidence of any pictures of
10 kidded in the neighborhood, none of that. And there is all of
11 this complex computer stuff that's going to do a couple things.
12 One, it's going to make the case more complicated and more
13 defensible, all things equal no matter what. And number two is
14 it's going to make this case take an extraordinary long amount
15 of time probably to get to the bottom of what happened here.
16 And if the Court were not willing to release my client it makes
17 it a very, very challenging case, judge, to properly defend it.

18 So I don't want to get -- I think the Court can see
19 even through its own questions that there is some complexity to
20 the computer systems and experts and forensics people are going
21 to have to get involved and have to bring me a little bit up to
22 speed to be candid, your Honor.

23 But really then you go down to, OK, it's a first
24 arrest child pornography case. If you can move past the sort
25 of shock and awe of child pornography, it's a first arrest

1 child pornography case. So what do we know about him, about
2 his character, about his danger? I can't even believe that I'm
3 arguing about his danger. So for the last decade here is what
4 we know. He's worked for the federal government.

5 THE COURT: CIA and NSA.

6 MR. SPIRO: Being polygraphed, being watched everyday
7 to some level, great oversight. They take that responsibility
8 very, very seriously vetted to the highest order. No question.
9 He leaves that world and he goes to work at Bloomberg. And I
10 don't know of a private entity really that does a better job of
11 vetting and making sure they're up to compliance and making
12 sure they understand.

13 He is then been meeting with the government for the
14 last several months so that we know a snapshot into how he
15 conducts himself in the present time. And all the while they
16 have ten years of every inch of his history on computers, on
17 his cellphone that they voluntarily gave him, everything, all
18 of that. We couldn't know more about his last decade.

19 And where are these crazy acts of danger that the
20 community has to be concerned about? Where is this acting out?
21 There's acting in. There's stuff on the computer. So what
22 does the law say about that? What reasonably assures? He's go
23 a problem with the computer? No computer at his house when he
24 is detained. There is not a more dovetailed answer to this
25 than that. There is no other evidence, not an iota of any

1 dangerousness outside of the computer. So, no computer. It
2 matches up with the law and the mandates and all of our
3 evolving senses of what bail is in the first place.

4 THE COURT: At the time of arrest was the computer
5 seized, the personal computer?

6 MR. SPIRO: Yes.

7 THE COURT: And the server?

8 MR. SPIRO: Yes.

9 THE COURT: So and it was not replaced?

10 MR. SPIRO: At that point --

11 THE COURT: Well --

12 MR. SPIRO: At that point the government without just
13 like --

14 THE COURT: From the time of the search warrant to the
15 time of the arrest was the computer replaced?

16 MR. SPIRO: Let me make sure I get that answer.

17 (Pause --

18 MR. SPIRO: There was a simple desktop computer that
19 was replaced. But of course at this point, judge, passports
20 are retained and any time he went anywhere he would send an
21 e-mail to his lawyer at the time who would then communicate
22 with the government and he would say I'd really like to go to
23 San Diego with the family. And government would say, no
24 problem, provide us with the flight details. They'd go to San
25 Diego. No issues with the airport. No issue anywhere in 30

1 years, judge.

2 THE COURT: All right now, Mr. Spiro, you've been
3 going on for quite some time. Let me see if I have your point
4 here. Your point here is that the Magistrate Judge Pitman was
5 not correct when he found that there was a risk of danger here.
6 He found no risk of flight but he said that there was a risk of
7 danger given the salaciousness of the materials on the
8 computer.

9 MR. SPIRO: I am saying yes, judge, unequivocally that
10 that was an incorrect determination. And I'm asking you to de
11 novo look at that determination. And I have been going on for
12 quite some time so I will end.

13 THE COURT: Not end but I think --

14 MR. SPIRO: Move to that.

15 THE COURT: I think that I'd like to hear from the
16 government and then I'll hear your response.

17 MR. SPIRO: Yes, judge. I just also -- he has no
18 extreme wealth. His family is here. He's got a place to live
19 in Manhattan and Pretrial recommends it. And I thank you for
20 listening, judge.

21 THE COURT: Thank you.

22 Mr. Laroche

23 MR. LAROCHE: Thank you, your Honor.

24 the Government believes that he is a danger to the
25 community and we agree with Judge Pitman. We also believe he

1 is a flight risk. But I want to focus on danger.

2 This is not a run-of-the-mill child pornography case.
3 The defendant had a enormous volume of child pornography. Even
4 by the number of child pornography cases that we have in this
5 district. He had over ten thousand images and videos

6 THE COURT: How does that make him more dangerous?

7 MR. LAROCHE: It does because of the manner in which
8 he committed this crime, your Honor. It makes him more
9 dangerous because he is a highly sophisticated individual when
10 it comes to computers. He buried the child pornography within
11 severals layers of encryption. It makes him more dangerous
12 because he talked regularly in the IRC chats about the
13 distribution and receipt of child pornography. So we do
14 believe that it makes him more dangerous and separates him
15 from --

16 THE COURT: The IRC chats according to the complaint
17 stops in 2009.

18 MR. LAROCHE: We don't believe that they stopped, your
19 Honor.

20 THE COURT: No record of it.

21 MR. LAROCHE: It's simply that we don't have a record
22 of it. And there's nothing that indicates to us that the
23 defendant all of a sudden changed tune in 2012 or 2013 and
24 stopped discussing these types of issues.

25 THE COURT: You have the computers now, correct?

1 MR. LAROCHE: That's correct, your Honor.

2 THE COURT: And the servers.

3 MR. LAROCHE: That's correct.

4 THE COURT: Do you have any reason to contradict
5 Mr. Spiro's suggestion that Mr. Schulte doesn't have computers
6 now?

7 MR. LAROCHE: Well, it's our understanding that he did
8 have computers at the time of his arrest. So as soon as -- to
9 take us back --

10 THE COURT: -- really impose a condition that says no
11 computers, what is the danger of that?

12 MR. LAROCHE: Well, I believe there still is a danger
13 because it's not just computers, your Honor, but electronic
14 devices are all over society and easy to procure and this type
15 of defendant having the type of knowledge he has does in terms
16 of accessing things -- so he has expertise and not only just
17 generally computers but using things such as wiping tools that
18 would allow him to access certain website and leave no trace of
19 it. Those can be done from not just a computer but from other
20 electronic devices.

21 Based on what we've recovered from his apartment,
22 there were numerous different types of electronic devices. So
23 we don't think that simply saying to him, you can't have a
24 computer is going to be enough to ensure that the community
25 will be safe.

1 And I will just note that defense counsel made a lot
2 of the fact that there is not evidence in the complaint that he
3 did anything to a minor. Well, that's not the only danger that
4 courts have been concerned of when we're talking about child
5 pornography. Just the mere fact the defendant is involved in
6 the receipt and distribution of these types of materials
7 creates a danger to the community because the production of
8 these materials necessarily involves putting children in
9 danger. And the defendant has clearly shown a proclivity
10 towards that type of activity.

11 If I could focus back on where exactly --

12 THE COURT: But on other cases -- I know you are going
13 to tell me this case is different because of its dimensions --
14 but in numerous other cases involving child pornography,
15 possession and receipt of child pornography, the accused has
16 been admitted to bail, correct?

17 MR. LAROCHE: There are certainly examples of other
18 cases where in similar charges they have been provided bail,
19 your Honor. I would not dispute that. I wouldn't. I would
20 just say that in this particular case --

21 THE COURT: What makes this different?

22 MR. LAROCHE: Several things. The type of defendant
23 we have. We have a defendant who is highly sophisticated when
24 it comes to computer. As I said he is able to hide things
25 versus in several layers of encryption. I think also the

1 personal history and characteristics of the defendant. At the
2 last initial bail hearing we notified the Court that we found a
3 picture on the defendant's phone of one of his friends who
4 appeared to be sexually assaulted on the phone.

5 So if I can explain what the picture showed, it was
6 someone who lived with him who was unconscious on the floor.
7 Her underwear was removed. And it appeared that fingers were
8 sexually assaulting her. Now we just have those pictures on
9 his phone. But what it says to the government is the defendant
10 isn't just someone who has these thoughts. He is someone that
11 appears willing to, at a minimum, be OK with his own friends
12 being assaulted in this manner. In some of the other IRC --

13 THE COURT: Judge Pitman explicitly said he wasn't
14 relying on that.

15 MR. LAROCHE: He didn't rely on it, your Honor. We
16 are simply brining it to your attention as another factor to
17 consider.

18 I would note that there is other IRC chats that are
19 not cited in the complaint that gave us a lot of pause and
20 suggested that he condones sexually dangerous activity,
21 including IRC chats whether he talks about using the date-rape
22 drug where he talks about having sex with high school girls,
23 where he even sees a user name of "I Rape Babies". And he says
24 in response to that user name, "That's pretty cool". So in our
25 view this isn't the typical child pornography defendant. It's

1 someone who's shown himself to condone sexually dangerous
2 behavior and has shown a proclivity to collect thousands of
3 images of child pornography.

4 And if I could just clarify the Court where exactly
5 that child pornography was found. There's been a lot of talk
6 about a lot of servers and there certainly were a lot of
7 servers from the apartment. But the child pornography itself
8 is located on the defendant's desktop computer. They can be
9 accessed irrespective of those servers. So if all the
10 government had was this desktop computer, we could recover the
11 child pornography. So I think this idea that numerous people
12 had access to the serves and potentially could have put it
13 there, is simply a red herring. This was on the defendant's
14 desktop computer.

15 And the location where it was found, this sub-folder
16 within several layers of encryption, there were other personal
17 information of the defendant in that area. There was his bank
18 accounts. I think there was even a resume for the defendant
19 where he was storing this information.

20 And the passwords that were used to get into that
21 location, those passwords were the same passwords the defendant
22 used to access his bank account, to access various other
23 accounts that are related to him. So this idea that he shared
24 them with other people, the government just strongly disagrees.
25 And as the Court noted, he admitted to the government that he

1 didn't share those passwords with anyone else.

2 So when we are looking at both the nature of the
3 offense we think that this defendant is different and
4 dangerous. When we're looking at the weight of the evidence we
5 think that it's overwhelming in this case, that it is very
6 clear and not complicated that this defendant had this
7 material. So when you look at all those factors the government
8 believes that they cannot rebut the presumption that he is a
9 danger.

10 THE COURT: Can you tell me why then when you were
11 arguing this matter before Judge Pitman you spent so much time
12 on servers?

13 MR. LAROCHE: Your Honor, and that's my fault. After
14 Judge Pitman asked those specific questions we went back and
15 talked to specific analysts who did this and they clarified for
16 me that that was not the correct way to think about where this
17 stuff was located. They said very clearly that this was
18 located on the desktop computer. So where the CP is has to do
19 with the desktop computer. The servers seem to be used to run
20 a movie streaming service that the defendant seemed to be
21 involved in. But the actual CP itself is through the desktop
22 computer irrespective of the servers.

23 THE COURT: Anything else?

24 MR. LAROCHE: No, your Honor.

25 THE COURT: Mr. Spiro.

1 MR. SPIRO: Yes. I mean every single point made is
2 completely negated if he doesn't have a computer, and to be
3 perfectly clear, any device that could access the Internet. So
4 that is my first response to all of those arguments.

5 THE COURT: How would that be enforced? It's easy to
6 impose that requirement. How is it enforced?

7 MR. SPIRO: As I told the Court initially and I don't
8 want to speak as if I'm a witness, but in a dozen or so cases
9 I've handled, they do spot checks. And I spoke to Pretrial
10 about that and Mr. Moscado and my client will know that he will
11 be immediately remanded and it'll be used against him in every
12 phrase of this proceeding and if there ever was a conviction or
13 sentence in this case, if he were to violate the terms of his
14 release. So he wouldn't have the server and it would be
15 spot-checked. And Pretrial said that's what they do in all of
16 these run-of-the-mill child pornography cases.

17 And there's nothing that the government said, nothing
18 that it is run-of-the-mill child pornography case. And in
19 every bail application it's "This isn't a run-of-the-mill child
20 pornography case". There is this many images. And the Court
21 pointed it out but it is of no moment. It doesn't have think
22 argumentative weight.

23 The other thing is the government was right the first
24 time when they moved to have him remanded about the servers and
25 they're wrong today. I can't have that trial here and that

1 individual isn't here to testify. But I think it should remind
2 the Court, I'm hopeful it reminds the Court about the
3 presumption of his innocence and the triable issues here that
4 the government itself has now in the matter of days stood in
5 front and said, no, this password and this image was from this
6 server and now today oh, this desktop and this server, it shows
7 how live this issue is and that we're not at a point of wait or
8 absoluteness that rebuts my client's presumption of innocence
9 and that he should be able with those restrictions to be out.
10 They still have not come up with one colorable argument for how
11 if he has no computer and he has no other device that accesses
12 the Internet -- I mean they bring up a wiping device. Well, a
13 wiping device is irrelevant if you don't have a computer. So
14 he would be able to meet with his lawyers at his --

15 THE COURT: As I understood the government's position,
16 you don't need a computer to wipe certain materials.

17 MR. SPIRO: If you don't have a computer, what are you
18 wiping? I will take your Honor's -- nothing.

19 THE COURT: Well, that's what Mr. LaRoche said --

20 MR. LAROCHE: There are a number of electronic devices
21 that potentially the defendant could get, that he would have
22 the ability and sophistication to be able to delete things. It
23 doesn't have to be a computer. It could be a telephone. It
24 could be an iPad. It could be anything that could access the
25 Internet and today that could be a wide variety of different

1 types of electronic devices. This is an defendant whose
2 identity is computers. After his materials were seized he
3 immediately got more cellphones and computers. So I don't
4 think the Court can be confidently assured that just by saying
5 "no electronic devices" that this particular defendant isn't
6 going to go out and just start getting.

7 MR. SPIRO: Judge, if I may respond to that? The
8 government did not arrest him when they executed the search
9 warrant and they led him to be at liberty and check-in with the
10 government and didn't forbid him from having cellphones and
11 computers. Everybody who has their cellphone damaged, lost,
12 destroyed or seized by the government replaces that cellphone.

13 What about that make it likely that he wouldn't listen
14 to the Court's order? He's been able to serve our federal
15 government for the better part of a decade and obey all of
16 those orders. He's been able to work at Bloomberg and obey all
17 of those orders. He is here today obeying the Court's orders.
18 Why --

19 THE COURT: He doesn't have much of a choice today.

20 MR. SPIRO: He is not going to have much of a choice
21 period, judge. He is on home detention without computers or
22 computer devices or any device -- just so we're perfectly all
23 on the same page -- that is able to access the Internet. Like
24 what happens in many, many of those cases in which Pretrial
25 detention is not ordered. And so he is going to be meeting

1 with lawyers and have spot checks from Pretrial and if he
2 breaches that he'll be immediately remanded and he is not going
3 to. He is not even going to be allowed to leave his home,
4 judge. So where is he going to get there from? How is this
5 going to even happen? The Court can restrict who is there in
6 all manner, shapes and forms. He is not going any where. He
7 is just going to be able to actually participate in his
8 defense.

9 THE COURT: Let me hear from Mr. Ovalles.

10 Mr. Ovalles.

11 MR. OVALLES: Yes, your Honor.

12 THE COURT: What does Pretrial Services have to say?

13 MR. OVALLES: Pretrial Services, as your Honor is
14 aware, makes the recommendation of the least restrictive
15 conditions without considering the weight of the evidence or
16 whether the defendant can overcome the presumption. The
17 recommendation made by Officer Moscado back in August Pretrial
18 Services stands by that recommendation and believes that the
19 defendant can be adequately supervised by our office.

20 THE COURT: Now Mr. Moscado updated this?

21 MR. OVALLES: Yes, your Honor.

22 THE COURT: As of when?

23 MR. OVALLES: It was updated I believe it was today as
24 a matter of fact. The only update, your Honor, is on the first
25 page of the report that is before you which makes reference

1 that the defendant appeared before Magistrate Judge Pitman on
2 August 24. With that exception everything in the report that
3 you have before you now is the same that was before Magistrate
4 Judge Pitman.

5 THE COURT: How would Pretrial Services enforce a
6 direction that Mr. Schulte should not have access to computers
7 or cellphones?

8 MR. OVALLES: Well, the only way we can do that, your
9 Honor, is by conducting unannounced home visit and doing a spot
10 search. With that exception, I can't think of any other way
11 how we can ensure the Court that there aren't any computers in
12 the house or electronic devices.

13 THE COURT: Any other additional restraints that you
14 can recommend other than the ones set forth in the final page,
15 page four of the Pretrial report?

16 MR. OVALLES: None right now, your Honor, no.

17 THE COURT: Mr. LaRoche, do you have any suggestions
18 you want to make with respect to the recommendations?

19 MR. LAROCHE: If the Court is considering a bail
20 package I would say that I think that the defendant does have
21 assets that are reflected on this report and at a minimum I
22 think he should be required to actually put up some assets.
23 And I think if the Court is considering granting some sort of
24 bail package, it should be more than two financially
25 responsible co-signers and a large bond.

1 That said, we still do believe that these conditions
2 are not enough to ensure that he is not going to continue to
3 download, receive and encourage the download and receipt of
4 child pornography.

5 THE COURT: Well, how many responsible people do you
6 suggest?

7 MR. LAROCHE: We'd request four co-signers, your
8 Honor. We'd also request that the defendant put up at least
9 some property in support of a bail package.

10 THE COURT: What property does he have?

11 MR. LAROCHE: I believe he has a home in Virginia.

12 THE COURT: Mr. Spiro, do you want to be heard?

13 MR. SPIRO: Yes, judge. I did speak to Mr. Moscado
14 myself after the initial bail hearing and he re-enforced to me
15 these recommendations and observations that I made earlier. We
16 have no objection to all of the intense restrictions that
17 Pretrial suggests here. I would simply state that his parents
18 are in the audience with his cousin. That is three co-signers.
19 That is more than sufficient. I asked Pretrial --

20 THE COURT: Four. I need four co-signers.

21 MR. SPIRO: You would like a fourth co-signer.

22 THE COURT: I want a fourth co-signers.

23 MR. SPIRO: Understood, judge. My last ditch effort
24 was the suggestion of three. If the Court --

25 THE COURT: No. I want four. And I agree with the

1 government's suggestion that if Mr. Schulte has a home in
2 Virginia -- and I gather he does -- that that ought to be put
3 up as well. The other conditions are imposed --

4 MR. SPIRO: Thank you, judge.

5 THE COURT: -- as set forth in the recommendation of
6 Mr. Moscado of September 13th at 8:45 this morning.

7 MR. LAROCHE: Your Honor, can I make one more request?

8 THE COURT: Yes.

9 MR. LAROCHE: Can I request that the Court not permit
10 his release until all conditions are met?

11 THE COURT: All conditions have to be met prior to
12 release, including the four responsible co-signers and the
13 putting up of the house in -- where is the house in Virginia?

14 MR. LAROCHE: Sterling, your Honor, Sterling Virginia.

15 THE COURT: Where is Sterling, Virginia?

16 MR. LAROCHE: I think that's near the capital area,
17 near Dulles Airport.

18 THE COURT: All right. Those are the conditions I am
19 going to impose. Four financially responsible persons, the
20 house in Sterling, Virginia and each of the recommendations
21 made by Mr. Moscado on September 13 at 8:45 this morning.
22 Mr. Schulte, will not be released until all these conditions
23 have been met.

24 MR. SMITH: Understood, your Honor.

25 THE COURT: Anything else? Oh, we've got to talk

1 about the schedule.

2 MR. LAROCHE: Yes, your Honor. I think the government
3 is requesting 45 days to complete discovery on a rolling basis,
4 and I think it would make sense to come back for a
5 conference sometime shortly after that.

6 THE COURT: Would 45 days would bring us to the end of
7 October?

8 MR. LAROCHE: Yes, your Honor.

9 THE COURT: David, gave me a date.

10 COURTROOM DEPUTY: Tuesday, October 31st at 11:30 a.m.

11 THE COURT: OK.

12 MR. LAROCHE: That works for the government, your
13 Honor.

14 THE COURT: Mr. Spiro?

15 MR. SPIRO: Yes, your Honor.

16 THE COURT: Is that date acceptable to the defendants?

17 MR. SPIRO: Yes.

18 MR. LAROCHE: One final matter, your Honor. The
19 government would move to exclude time from today until the next
20 conference in the interests of justice under the Speedy Trial
21 Act so the government can produce discovery and the defendant
22 can review it with counsel and the parties can begin discussing
23 potential dispositions.

24 MR. SPIRO: In light of my client's likely release, I
25 have no objection to that.

1 THE COURT: All right. For the reasons stated, the
2 time will be excluded between now and October 31. Those
3 interests outweigh the interests of the defendant and the
4 public in a speedy trial.

5 I am around the next six weeks. So any need for Court
6 intervention, you can write to Mr. Gonzalez. He'll set up
7 promptly a conference. Otherwise, we'll see you on October 31.

8 Anything else?

9 MR. LAROCHE: No, your Honor.

10 Thank you.

11 MR. OVALLES: Your Honor?

12 THE COURT: Mr. Ovalles.

13 MR. OVALLES: The last recommendation by Officer
14 Moscado indicates:

15 "Refrain from possessing and using a computer,
16 computer network and/or Internet access unless specifically
17 approved by Pretrial Services".

18 Is the condition imposed by the Court that the
19 defendant not have any computer or electronic devices while out
20 on bail or should we just go by the recommendation by Officer
21 Moscado?

22 THE COURT: I read Officer Moscado's recommendation is
23 that Mr. Schulte should not have, possess or use a computer,
24 computer network, Internet access. He shouldn't use that. If
25 Pretrial Services wants to change that recommendation, it can

1 at its discretion but otherwise Mr. Schulte is to have no or
2 possess or use a computer, computer network and/or Internet
3 access.

4 MR. OVALLES: Thank you, your Honor.

5 THE COURT: Is that clear?

6 MR. SPIRO: Yes, your Honor.

7 (Adjourned)

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