

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

3	UNITED STATES OF AMERICA,)	
4	Government,)	No. 06 CR 380
5	Vs.)	Chicago, Illinois
6	JEREMY ALEXANDER HAMMOND,)	December 7, 2006
7	Defendant.)	11:19 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL
SENTENCING

For the Government:

THE HONORABLE PATRICK J. FITZGERALD,
UNITED STATES ATTORNEY
BY: Brandon D. Fox
Assistant United States Attorney
219 South Dearborn Street
Suite 500
Chicago, Illinois 60604

For the Defendant:

LAW OFFICES OF MATTHEW JOHN MCQUAID
BY: Matthew John McQuaid
53 West Jackson
Suite 1420
Chicago, IL 60604
(312) 726-9015

Court Reporter:

Blanca I. Lara, CSR, RPR
219 South Dearborn Street
Room 2504
Chicago, Illinois 60604
(312) 435-5895

1 THE CLERK: 2006 CR 380, United States versus
2 Hammond.

3 MR. FOX: Good afternoon, Your Honor.
4 Brandon Fox on behalf of the United States.

: 34 PM

5 MR. MCQUAID: Good afternoon, Your Honor.
6 Matthew McQuaid on behalf of Jeremy Hammond.

7 THE COURT: I see Mr. Hammond is here, as
8 well.

: 34 PM

9 PROBATION OFFICER ALPER: Good afternoon,
10 Judge.

11 Michael Alper on behalf of Probation.

12 PRETRIAL SERVICES OFFICER PAWLOWSKI: Good
13 afternoon, Your Honor.

: 34 PM

14 Amanda Pawlowski on behalf of Pretrial
15 Services.

16 THE COURT: Have both you and your client
17 seen the presentence report?

18 MR. MCQUAID: Yes, Your Honor.

19 THE COURT: And the supplemental report?

: 34 PM

20 MR. MCQUAID: Of the victim impact, Your
21 Honor?

22 THE COURT: Yes.

23 MR. MCQUAID: Yes, I have.

: 34 PM

24 THE COURT: And you have seen it, too,
25 Mr. Hammond?

1 MR. MCQUAID: We have not seen the victim
2 impact, Your Honor. I was shown that this
3 morning -- or this afternoon by Mr. Alper.

4 THE COURT: why don't you let him take a
5 quick look at this.

6 MR. FOX: I have a copy right here, Your
7 Honor.

8 THE COURT: Okay.
9 (Brief pause).

10 THE COURT: I have, in addition to that --
11 oh, do you and your client have any objections or
12 comments on this report other than your sentencing
13 memorandum?

14 MR. MCQUAID: No, Your Honor.

15 THE COURT: And then he can look at this one.
16 (Brief pause.)

17 MR. FOX: Your Honor, one thing with this
18 financial impact statement that we did receive, it's
19 my understanding from speaking with Mr. McQuaid that
20 there's no objection to providing [REDACTED] with the
21 restitution that he requests.

22 THE COURT: Did he tell this on his report --
23 oh, I see. He did tell it.

24 MR. MCQUAID: I believe \$1500, Your Honor,
25 and based on our plea of guilty --

:34PM

:34PM

:35PM

:35PM

:36PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: It's 1658.

MR. MCQUAID: 1658. He is accepting that.

THE COURT: All right.

And I have, in addition to the sentencing memorandum, a long well-written letter from the defendant's father.

MR. MCQUAID: Yes, sir.

THE COURT: Anything else that I should have?

MR. MCQUAID: No, sir, not on behalf of the defendant.

THE COURT: Then you can begin.

MR. MCQUAID: Thank you, Your Honor.

would it be appropriate at this time, Mr. Hammond, his father, would like to address Your Honor or he would stand on the letter. I believe it has been read.

THE COURT: Mr. Hammond, you can do this in a short period of time?

MR. HAMMOND: I can do this in a very shortly period of time.

THE COURT: Come on up, Mr. Hammond.

(Brief pause.)

MR. HAMMOND: Your Honor, you have read my letter. Okay, I don't want to take too much past that. I just want to emphasize, at one particular

:36PM

:36PM

:36PM

:36PM

:37PM

1 point the idea of a decision to commit a crime,
2 which I dealt with here. Jeremy had the possession
3 of those files for a long time and he decided not to
4 go ahead with the project and to leave the files,
5 essentially put the cash back.

6 His record with his work with other people,
7 and as far as I've known him, has been nothing but
8 for helping people, nothing but helping people and
9 working out with people.

10 On the Internet, he plugs people's holes.
11 Every person that does Internet security goes
12 through what Jeremy is going through right now, and
13 some day he will be quite an Internet security
14 professional.

15 I guess the bottom line is, judgment of
16 character. Will he do something like this again,
17 will he be a threat to society if he's allowed out
18 again. And I don't think anybody here is making
19 that case, and correct me if I'm wrong. And if
20 somebody is making the case that Jeremy is of poor
21 character, I would say that is certainly wrong.
22 Jeremy's instincts are good, his basic inner moral
23 core is good, and his sense of good and bad is good.
24 What's not good is, he was 19 years old and his
25 judgment was not good one time.

1 Early mistake and Jeremy realizes it, and we
2 realize the seriousness of such a charge. Internet
3 theft, if I had my credit cards on-line I would be
4 very happy that Mr. Fox and Mr. Brie from the FBI
5 was looking for the people that did that.

6 But Jeremy responded not for larceny, not for
7 politics, but Jeremy responded as revenge and waited
8 a long time before retaliating for people doing the
9 same type of thing to his site. I fully understand
10 it does not explain or excuse what he did, he went
11 over the line, but he did not search out a website
12 to pursue this scheme. He responded, he found the
13 credit cards, and later on he brain-stormed
14 different types of ideas and eventually the idea he
15 came up with was that he wasn't going to do anything
16 with them at all.

17 I guess everything else I need to say is in
18 the letter. I add one last thing, I am very, very
19 proud of my son and where he is in his life. I'm
20 not proud of this, but he's a good man, he's a good
21 person, and he's an honest person, and he's not
22 violent. And whatever your judgment is for him
23 today, I will still be proud of my son. He will be
24 a leader in everything he does the rest of his life.
25 I guess everything else I have to say is in the

1 letter.

2 Thank you very much, Mr. Zagel.

3 THE COURT: Go ahead.

4 MR. MCQUAID: Your Honor, when Jeremy Hammond
5 committed this offense, he was 19 years old, and he
6 stands before you as a 21 year old young man and --

7 THE COURT: Actually, I think I made a
8 mistake. I think we'll start with the prosecutor
9 and then go to you.

10 MR. MCQUAID: That's fine, Judge.

11 MR. FOX: That's fine, Your Honor. I can do
12 it either way. So that's fine.

13 THE COURT: Go ahead.

14 MR. FOX: I want to focus on a couple of
15 things on 3553(a), Your Honor. The first one is,
16 promote respect for the law, that's clearly
17 something that Your Honor has to consider in
18 sentencing the defendant.

19 This was not the defendant's first action on
20 the Internet that was unlawful. He also had the
21 D.A.R.E.com defacing where he went on to websites
22 to -- that was an anti-drug website, and he went on
23 that website, hacked into it, and put on there
24 pro-drug messages. And, you know, D.A.R.E. is about
25 children staying off drugs. And so by doing that,

1 he did hack into something that I think is an
2 important value to society. And, obviously, we
3 don't want our children on drugs, and if a child was
4 to go on the D.A.R.E. website and see a pro-drug
5 message, that's not something that's positive for
6 society.

7 He's also hacked into other servers,
8 including his former employer computer server at
9 NOC Specialist. And when he was at UIC, he was
10 kicked out of UIC for a hack. So when we're talking
11 about promoting respect for the law, Mr. Hammond has
12 not shown any respect for the law and he needs a
13 stiff sentence in other to be shown that he needs to
14 have respect for the law.

15 The other thing that Mr. Hammond needs to
16 have respect for, Your Honor, is other people's
17 opinions, because Mr. Hammond has shown in those
18 hacks, and in this hack in this case, that he
19 doesn't respect other people's opinions. We are a
20 society that is filled with people needing to have
21 respect for other people's opinions and their
22 speech; if we don't, our society breaks down.

23 If you look at some of the countries that are
24 unstable right now, these are countries where they
25 have religious battles, where people do not respect

1 each other's religious points of view or they have
2 political battles that are bloody instead of being
3 peaceful like we have in this country, and I think
4 that does come down to having respect for other
5 people's viewpoints.

6 And Mr. Hammond has strong political
7 viewpoints, and he should be commended for having,
8 for caring, for having strong political viewpoints,
9 but what he has to understand is that other people
10 can have those same strong viewpoints on the other
11 side and still have an important message. And this
12 is not a speech in saying that Mr. Hammond's
13 viewpoint is wrong or that [REDACTED] viewpoint is
14 wrong, because that's not my job here today.

15 I think the other thing that's important to
16 look at is deterrence. And Mr. Hammond is viewed as
17 a leader in the hacking community, and this is a
18 community that is sometimes on the outside of the
19 law and it needs to be reigned in. It needs to be
20 shown that hacking is not okay. It is not okay to
21 take someone else's property, to go on to somebody
22 else's property and take advantage of it. And I
23 think that a strong sense of this case would be a
24 deterrence for other people who are considering
25 hacking. And also for Mr. Hammond, it would be a

1 deterrence for him in the future that would make him
2 think twice before hacking again.

3 That's why I think, Your Honor, that it is
4 important to have a stiff sentence in this case.
5 The guideline range, as you know, is above the
6 statutory maximum in this case. We are asking for a
7 sentence that is consistent with the statutory
8 maximum.

9 MR. MCQUAID: Your Honor, at the age of 19
10 Mr. Hammond committed this crime. He is now
11 21 years old and he stands before you prepared to go
12 to jail for what he did.

13 And when he was 19 years old, Your Honor, he
14 was in possession of two skills. Two skills that he
15 was highly qualified at, two skills that are not
16 common to most of the people that live in this
17 country: An amazing skill at computers. He can
18 walk into any computer and look around and see
19 everything that's been created, everything that can
20 be done, everything that could be done at any point
21 in time at the beginning of the creation of the
22 program or the site and how far it could go. That's
23 the skill that most people don't have, very few
24 people do have. He had it, and he had it at a young
25 age, a very young age, an emotionally young age.

1 And, I would say, at 19, he has not lived near as
2 much life as he needs to live to understand what
3 kind of power that is.

4 He also has a mind, a very strong mind, and a
5 mind that he uses to think about politics and social
6 change and things that are very volatile issues.
7 And he has a strong mind to understand what those
8 concepts are, what those policies are, how he agrees
9 or disagrees with them. And, again, Your Honor, in
10 the hands of a 19 year old, or in the mind of a
11 19-year old, Mr. Hammond is not emotionally equipped
12 to deal with all the emotions that came into him,
13 from these thoughts, from these viewpoints, from
14 these theories that he adopted.

15 He had two extremely strong, powerful talents
16 that he was just learning to understand how to
17 harness. To understand that when you have that much
18 power, when you walk down the line, the blue line
19 between good and evil, or choosing to do good and
20 choosing to do bad, you have to be responsible for
21 every decision that you make along the way. And
22 it's my opinion, Your Honor, that Mr. Hammond was
23 never emotionally mature enough at the point when
24 these two skills collided in this particular case,
25 or in his life at this time, for him to completely

1 control his anger or how he reacted to the feelings
2 that came across him when these things happened.

3 He developed these two skills, Your Honor,
4 the skill of the social and political thought in his
5 computer, and he put them into good use for most of
6 his life, for all of his life. He made good
7 decisions with those two things. He established a
8 food bank where he feeds poor people, part of the
9 social changes that he wants to affect on the world.
10 He and some colleagues take old bike parts, put the
11 bikes together, donate them to children that can't
12 afford them or people that can't afford them.

13 He put those same skills, those social chain
14 skills, along with his computer skills, and opened
15 up a computer lab using used computer parts in his
16 community, and then volunteers his own time to teach
17 those valuable computer skills to those of us who
18 aren't as skilled in the use of computers. He's
19 done things like that.

20 And he's organized, and he has leadership
21 abilities, and he's used that to try to affect
22 changes, positive changes in the world, and to do
23 good things with those skills. Tries to understand
24 what it takes to take the responsibility for the
25 gifts that one's been given.

1 In this particular case, Your Honor, the
2 prosecutor points out -- and when we use the word
3 "hacking," Your Honor, hacking is a skill. It has
4 good and bad people or people that choose to make
5 good and bad choices with that skill, but the
6 ability to get into a computer and use computers in
7 the way that Mr. Hammond is capable of is not
8 necessarily a bad thing. I'm not saying that
9 Mr. Fox is saying that, Your Honor, but I think it
10 needs to be clear, something that is new and
11 powerful in developing, and we all need to
12 understand what it is that hacking really is. In
13 this case, he made a mistake. This one time, he
14 took financial information that he shouldn't have
15 had and did possess it.

16 On the balance of that, Your Honor, he had
17 that in his possession for a substantial period of
18 time and did not benefit himself financially in any
19 way. He did not steal money from anyone. He did
20 not do that. And we can only speculate -- and I
21 know his father believes he wouldn't have, and I
22 believe he wouldn't have. And I know it's only
23 speculation to say what would have happened had he
24 not been caught, but in this case, he was not using
25 this for financial gain. And the evidence that was

1 prepared in this case indicates that there was never
2 a contention to line his own pockets or enrich
3 himself financially from the results of this
4 computer hack.

: 48 PM 5 Does he have instances of computer-type acts
6 that would necessarily be considered black hat?
7 Mr. Fox did bring up two and I have no dispute to
8 that, but not on the scale of where we're at, Your
9 Honor. Not the scale to say 5 years is appropriate
: 48 PM 10 for what he did in this case, and that's really
11 where we're at when it comes to sentencing, the
12 maximum amount of time should be given to him for
13 what he did in this case.

: 48 PM 14 THE COURT: Your theory is is that the
15 guideline cannot really be entirely correct or
16 appropriate in this case because it overstates the
17 loss.

18 MR. MCQUAID: I'm not trying to deprecate the
19 guidelines, but yes, I am saying that.

: 48 PM 20 THE COURT: He may very well have intended,
21 when he did it, to have a larger loss --

22 MR. MCQUAID: Than zero, yes. That's
23 possible.

: 48 PM 24 THE COURT: Right. But that he essentially
25 changed his mind.

1 MR. MCQUAID: Yes.

2 THE COURT: Okay.

3 Really, I don't initially view this -- and
4 I'm willing to accept the proposition that he's not
5 doing this for a gain in the traditional sense of
6 the word. He hacks into Protestwarrior.com, a site
7 which has views that, at the very minimum, you could
8 say he disagrees with and possibly which he finds
9 abhorrent. And he sets up a scheme by which the
10 various ProtestWarriors wind up having their credit
11 cards used for donations to charities and other
12 humanitarian organizations.

13 The pro-drug message on the D.A.R.E. website
14 may be a little harder to deal with, but we've dealt
15 with this kind of stuff before. I think his name
16 was Donald Segretti, worked for Richard Nixon, and
17 went to prison, and he printed false campaign
18 literature. My recollection, if I'm not mistaken
19 is, on somebody's letterhead, maybe Edmund Muskie's
20 letterhead, he sent out a letter accusing Senator
21 Jackson of Washington of having an illegitimate
22 child, which was complete fabrication. And there's
23 a certain number of people who found that amusing.
24 And, in a sense, it is amusing. And, in a sense,
25 it's amusing that you would take somebody's credit

1 card number and use it not to benefit yourself but
2 use it to support organizations probably which the
3 credit card owners would not particularly support.

4 But the government's response is is that this
5 is an area where cute does not mitigate the offense.
6 It's an area where people eager to promote whatever
7 cause they promote are entitled to the use of
8 various media. And even in Segretti's case, it's
9 campaign literature, which many people think to be
10 valuable. Personally, I regard it as a pain in the
11 neck when I get it, but many people don't.

12 Really, if you start interfering with this
13 stuff, if you start making people lose confidence in
14 their ability to support a particular cause of
15 whatever that cause is, you're altering some
16 fundamental preconditions for an effective democracy
17 while not actually changing the form of structure of
18 it. And that's really what has to be answered,
19 because I'm willing to concede this was not done for
20 personal profit. Personal profit had no role in it.

21 MR. MCQUAID: May I, Your Honor?

22 THE COURT: Yeah.

23 MR. MCQUAID: That is the hardest thing that,
24 as an advocate, I've had to deal with. These are
25 truly victims. These people had no ax to grind with

1 Mr. Hammond. They chose to support a particular
2 viewpoint, and, basically, they had their
3 information stolen. It's happened to me, not for
4 this reason, but I've had my information stolen
5 just because I trusted a website to be secure. They
6 didn't ask what was coming and he understands that.

7 And it is an offense punishable by prison,
8 Your Honor. And Mr. Hammond is not deprecating the
9 seriousness. He's not calling this, you know,
10 pizzas sent to a campaign office, things like that.
11 It's not a dirty trick. It's an imprisonable
12 offense. He's prepared to accept a prison sentence
13 in this case. I'm trying to ask Your Honor to take
14 a look at Mr. Hammond, this particular defendant,
15 what he did.

16 And I don't disagree with anything Your Honor
17 said, and I don't have any dispute what the
18 ramifications on our country is for people who do
19 these kind of things. It is a dangerous thing to
20 do. And Mr. Hammond is in the possession of a very
21 powerful, powerful power, is what I call it, because
22 it's something that most people can't do. And I
23 think that because of his age, because of the fact
24 that, you know, he didn't show the responsibility
25 that he needed to show utilizing that skill, these

1 skills. It's like bazookas in the hands of a child,
2 Your Honor, that's the kind of the way I look at it.

3 And I believe that prison -- I'm not asking
4 for probation. I'm not asking that he be sentenced
:54PM 5 for 5 years based on who he is, on what he did do.
6 I think a sentencing range more towards the lower
7 end of prison is suffice to send that deterrent
8 effect to those who choose to use hacking or their
9 computer skills to do black-hat type of acts and
:54PM 10 punish Mr. Hammond, accordingly, for what he did
11 based on who he is at this time in his life, and
12 give him the punishment and the deterrence that he
13 needs to go on after he is out of prison and he
14 still will be a young man, no matter what sentence
:54PM 15 you give him, to be a responsible citizen.

16 THE COURT: Do you have any rebuttal to that?

17 MR. FOX: Your Honor, I think that you
18 expressed my viewpoint. So I don't have any
19 rebuttal for that. I agree with everything you say,
:54PM 20 and Mr. McQuaid seems to agree with it, as well.

21 THE COURT: Mr. Hammond, do you want to say
22 something for yourself? Come to the center, it's
23 easier.

24 (Brief pause).

:55PM 25 DEFENDANT HAMMOND: I prepared this, briefly.

1 Thank you.

2 First, I would like to take responsibility
3 for my actions. Although I clearly broke the law,
4 my motivations were not to steal or to bring harm to
5 anybody, physically or financially.

6 At the time, I was younger, and the whole
7 situation was taking place in a context of political
8 rivalry between a protest lawyer and other
9 republican counter-protest groups who were trying to
10 disrupt, you know, pro-peace marches and
11 demonstrations, both on the streets and on the
12 internet. There were small skirmishes taking place.

13 And although I had toyed with the idea of
14 making donations to humanitarian and charity groups,
15 which although it was very clearly against the law,
16 I was motivated out of altruism, not out of
17 self-interest, not out of personal financial goals.

18 All my life I have worked not out of
19 self-interest but to teach and share, you know,
20 skills and other organizing opportunities for
21 people. I want to help people. And since before
22 and after, and especially after, you know, I was
23 charged and indicted, I've been using the position
24 that I am with other people, you know, who look up
25 to me for having gone through, like, these computer

1 hacking charges and stuff, to share with them the
2 lessons that I have learned from these experiences.
3 And, in several cases, I've, you know, told people
4 who were as young and as reckless as I was at the
5 time not to get involved in this sort of, you know,
6 illegal direct action which would bring harm to
7 themselves and to others.

8 On the other hand, not just myself but the
9 people I work with, work as Internet security
10 experts and as hackers to help support, you know,
11 groups and organizations and institutions who try
12 to, you know, help people over here and around the
13 world.

14 Hackers are a necessary part of democracy, in
15 a sense, to help protect free speech on the Internet
16 and on the streets. And there's other community
17 programs that I've helped work with, such as Food
18 Not Bombs, which is like a community public serving
19 collaborative, because food is a right, not a
20 privilege.

21 I've helped build a community computer lab
22 out of spare parts, and helped teach people about
23 open source software, and otherwise provide, you
24 know, computers and printing to people who won't
25 otherwise have it; and other social justice-related

1 activism.

2 Essentially, all my years of being involved
3 in hacking and computer security, I have never
4 brought harm to, or stolen from, or done any
5 physical damage to a protest lawyer, or otherwise.
6 And although I broke the law, a prison sentence
7 would only unnecessarily bring harm to myself and
8 others.

9 And, essentially, no matter what happens
10 today, I'm going to use this opportunity that, you
11 know, it's not the end, you know, of my life here.
12 That I'm going to continue my work and research in
13 trying to help the community, and sharing skills,
14 and otherwise. So my goals are to help people.
15 That's all I really have to say.

16 THE COURT: I'm going to ask you a couple of
17 questions, but I want to tell you, you don't have to
18 answer this. You are not obliged to answer any of
19 my questions. And if you don't want to, you don't
20 have to.

21 Talk to me about D.A.R.E., the D.A.R.E. site
22 and why you did what you did.

23 DEFENDANT HAMMOND: well, at the time, it was
24 even before the protest lawyer incident, D.A.R.E.com
25 being in what many people feel--I know it's not the

1 position of the state--but as a tool to use to,
2 like, promote the war on drugs which many people
3 feel are putting many people in jail unnecessarily,
4 millions of people, for crimes when there are
5 greater crimes.

6 So, essentially, what happened was, a few
7 people put up a message on D.A.R.E.com's website.
8 It was up for a couple of hours, and it,
9 essentially, was like a criticism of the D.A.R.E.
10 program. There's no damage done to the server, no
11 files were deleted. It was back on line in, like, a
12 day or something like that.

13 THE COURT: Do you remember what the message
14 said?

15 DEFENDANT HAMMOND: I don't have it in front
16 of me right now. It did make a reference to such as
17 why is tobacco and alcohol, like, not only legal but
18 promoted by, you know, television and commercials,
19 and stuff like that, while at the same time millions
20 of people are put away for the use of marijuana
21 which does far less harm than alcohol, tobacco, and
22 if not less, then at least the same harm.

23 So, essentially, it was not necessarily a
24 pro-drug statement, but more like instead of someone
25 going to D.A.R.E.com and ordinarily seeing the same

1 facts and stuff that D.A.R.E. would normally put up,
2 that it would provide not an opposing viewpoint but
3 an alternative viewpoint.

4 THE COURT: Stop for a second.

:00PM

5 Is that about right, from the government's
6 perspective?

:00PM

7 MR. FOX: That is consistent. Mr. Hammond
8 also put out a message about his girlfriend at the
9 time, is my recollection. We don't have a printout
10 of that website, so we don't have anything to the
11 contrary.

12 THE COURT: If his description is
13 approximately true, is what I want to know.

:01PM

14 MR. FOX: And if I could, Your Honor, if I
15 may respond to the one point that he's made. There
16 are plenty of websites that have the type of message
17 that Mr. Hammond was trying to create on that
18 D.A.R.E.com website, the fact is that he was trying
19 to stop D.A.R.E. speech from coming out.

:01PM

20 THE COURT: No, I understand, but the
21 substance of the message matters.

22 MR. FOX: I can't dispute that at this point.

23 THE COURT: All right.

:01PM

24 And why did you stop short with respect to
25 the charitable humanitarian donations?

1 DEFENDANT HAMMOND: well, I had been talking
2 to a few close colleagues and activists, at the time
3 I was already in a certain amount of trouble because
4 I was facing state charges and stuff, who thought
5 that this would probably bring increased repression
6 down not just on myself but on other people, as
7 well, if we were to carry through the plot, and it
8 would probably end up doing more damage to the left,
9 anyway, like if we had gone through with it. In
10 fact, at the time, I felt that it would be making
11 more of a statement if we actually had access to the
12 stuff and didn't go through with the plot than if we
13 actually would have had to.

14 THE COURT: Thank you.

15 There's one issue that I do want to address
16 with counsel and that is the guideline calculation.

17 The guideline calculation is, obviously, an
18 intended loss calculation, and I do have some
19 difficulty with applying it, and the reason I have
20 some difficulty with applying it is, the fairly
21 unique situation we face here.

22 Ordinarily, you apply intended loss where
23 somebody intends to cheat another person out of
24 2 million dollars and then they start down that road
25 and they get caught. And they may take nothing,

1 they may take a small amount, and we count 2 million
2 dollars against them because that was their intent.
3 And for people who don't have a particularly
4 intended loss, we count the loss that they actually
5 inflicted.

6 In this case, we have an intended loss that
7 might be quite large, but it wasn't carried out, and
8 the reason it wasn't carried out had nothing to do
9 with his getting caught, it had to do with the fact
10 that he changed his mind.

11 So at the time that he's actually
12 apprehended, what we have is a loss that I would
13 have some difficulty classifying as intended in the
14 sense that it was intended at one point -- in the
15 fairly technical and arbitrary way in which the
16 guidelines deal with intended loss, because people
17 rarely have a specific intent with a specific number
18 in mind, but, realistically, we deal with that
19 because we see where the scheme might have gone, we
20 see what the consequences would have been, even if
21 the calculation has not been made by the
22 perpetrator. And we probably have that in this case
23 where he hasn't made an actual calculation, but he
24 subverts his own intent later on, and the usefulness
25 of using the full intended loss in this case strikes

1 me as raising a question. So you can speak to that
2 one.

3 MR. FOX: In terms of the strict guideline
4 application, Your Honor, I think it's right that the
5 guideline calculation is the 2.5 million using the
6 \$500 a credit card. It's an issue I looked at
7 before we even charged this case and I did research
8 on it. I agree with Your Honor that it's a unique
9 case.

10 And, ultimately, what I came to was, if you
11 look at 2B1.1, its provision in the notes regarding
12 stolen or counterfeit credit cards, it doesn't
13 mention anything there about fraud, it just talks
14 about the value of the credit card. And what
15 Mr. Hammond took, they were credit cards, and if you
16 went with their intrinsic value of \$500 per credit
17 card, that's where you come to it, and that's where
18 I think the guidelines are talking about it.

19 There is no law that I found on this. So
20 Your Honor might be doing something here novel which
21 may or may not be appropriate considering a
22 guideline calculation versus just considering what
23 you're talking about under 3553(a). I think
24 probably under the guidelines, that the proper
25 allocation is \$500 per card, I think Your Honor can

1 consider his intent under 3553(a).

2 THE COURT: Mr. McQuaid, you want to speak to
3 that point?

4 MR. MCQUAID: Your Honor, when I looked at
5 the application note 3F1--and, again, I agree with
6 Mr. Fox--I mean, there's nothing about the
7 application of the guidelines, using the guidelines,
8 that I find inappropriate. However, when I look at
9 the application note 3F1 and I see that in any case
10 involving a counterfeit access device, in this case
11 being the possession of the credit card numbers, and
12 they apply a \$500 per access device, I did make an
13 interpretation that this is referring to actual loss
14 and intended loss. If someone did use the credit
15 card and did not charge up to \$500, I think what the
16 guideline is trying to say is that, at the very
17 least, the victim's card should be given the
18 appropriate monetary weight, that being 500, so the
19 defendant, in particular, having harmed the victim
20 in this way, even at a low amount, let's say 25 or
21 50 dollars, should be punished for the utilization
22 of the card.

23 It goes on further to note that there is
24 another situation where "if the unauthorized access
25 devices is a means of telecommunication access," and

1 I can't tell Your Honor if I have any idea of what
2 that means, but it does indicate that it's basically
3 information that is in mere possession of the
4 defendant and then classifies that mere possession
5 of that information, that counterfeit access device,
6 at the level of \$100.

7 So there seems to be a case where we might
8 have possession which could have maybe a lesser
9 monetary qualification than \$500. And I'm not
10 saying that that makes any sense, Your Honor, but
11 when I was reading it and trying to think about it,
12 trying to make an argument that, you know, would
13 fly, that did cross my mind, that it is a monetary
14 amount that would be applied to actual loss, as
15 well. That if it was not used up to 500, it would
16 be given \$500 worth of credit, and they do make a
17 distinction in mere possession of another type of
18 access device that mere possession is only \$100. So
19 I believe there is some -- there could be some
20 fluctuation in the loss amount even using the
21 guidelines, possibly.

22 MR. FOX: Your Honor, if I may respond to
23 that real quick. The probation officer, who is in
24 agreement with me on this, the telecommunications
25 instrument or account that they talk about is a

1 phone card, it's not a credit card, so that's the
2 distinction, because certainly phone cards have less
3 of a value than credit cards do.

4 THE COURT: In a sense, I believe the
5 guideline is correctly calculated if you read
6 literally, but I believe that I'm thinking of
7 departing on 5K2.0A3.

8 MR. FOX: 5K? What was it, Your Honor?

9 THE COURT: 5K2.0A3. A 3, the title explains
10 it all:

11 "... departure is based on circumstances present
12 to a agree not adequately taking into
13 consideration"

14 and the reason I believe that the
15 circumstances are not adequately taken into
16 consideration are two:

17 The first is, this is a case in which the
18 guideline calculation, appropriately made, at its
19 high end, exceeds the maximum sentence. Because it
20 exceeds the maximum sentence, I regard that as, at
21 least, evidence that the guideline calculation
22 significantly outstripped, outstripped to some
23 extent, the Congressional intent in passing the
24 statute with a maximum sentence. It's not
25 necessarily the case, but it's one thing that points

1 me in the direction of believing that 5K2.0A3 would
2 apply here.

3 More significantly, is the complete absence
4 of any specific addressing within the guidelines of
5 the issue present here where somebody forms an
6 intent to inflict a loss, and then before the loss
7 is inflicted, changes that attempt. It's not
8 addressed in the guidelines.

9 More importantly, even than that, is the fact
10 that there is really no case law on it, which says
11 to me that it is unique. It doesn't happen very
12 often. And it is precisely the kind of thing that
13 the Sentencing Commission could not be expected to
14 take into account and didn't take into account. So
15 I believe that a departure is called for.

16 And I intend to calculate the guideline, even
17 though the guideline is no longer binding on me,
18 because I think it is appropriate to do so. And
19 unless anybody has anything further to add, I will
20 tell you approximately what my calculation would be.

21 MR. FOX: Your Honor, let me just make sure
22 that I'm understanding. Because the Seventh Circuit
23 has said that departures are obsolete at this point
24 based on Booker, my understanding is that you're
25 looking at this grounds for departure in order to

1 adequately calculate the loss figure as kind of
2 guidance for the loss figure, is that what you're
3 saying?

4 THE COURT: Yes.

5 MR. FOX: Okay.

6 THE COURT: It's not a departure in the sense
7 that the Seventh Circuit has said is irrelevant.
8 It's a departure which justifies the recalculation
9 of the guideline, and that's assuming that the
10 Seventh Circuit's view that departures no longer
11 matter is valid, and there's other circuits that
12 disagree, but it's not that kind of departure that
13 we're talking about.

14 MR. FOX: Thank you, Your Honor.

15 THE COURT: Do you have anything to add?

16 MR. MCQUAID: No, Your Honor.

17 THE COURT: My view is this, the full loss
18 calculation -- let me get back to that one in the
19 book.

20 MR. FOX: In the new book, Your Honor, it's
21 on Page 75.

22 THE COURT: There is a temptation to reduce
23 it to close to zero, but we actually know there was
24 a loss, but it falls into that category. But I
25 don't think that would be right either because there

1 was certainly a period of time when there was a
2 substantial risk of a very large loss, and a risk
3 not only from the defendant but a risk that perhaps
4 he might have lost control of the data and someone
5 else might have taken advantage of it. And the risk
6 of loss to the victim, that he inflicted on the
7 victim for a period of time before he ultimately
8 decided not to do it, I think, is substantial.

9 what I think the more appropriate calculation
10 in all of this is entirely hypothetical because I'm
11 looking back at an event that we know happened and
12 there's no way for me to calculate what the
13 probability would have been that he would have
14 changed his mind when he did it. But I think given
15 his justification for doing what he did, given the
16 fact that he was more interested in countering
17 speech that he found wrong than he was in picking
18 the pockets of those uttering the speech, that the
19 appropriate adjustment level in this case would be
20 an adjustment -- and this, of course, is a guess,
21 but I believe the chance at initiation that he would
22 have actually carried this out is perhaps 30 percent
23 and I believe the correct guideline calculation
24 would then be 30 percent of 2 million.

25 MR. FOX: I think that's about 800,000, it's

1 a little more than 800,000, but that falls right
2 between more than 400, less than a million, which
3 would be a 14 level increase, Your Honor.

4 THE COURT: The calculation is what?

:19PM 5 MR. FOX: One-third of -- I'm doing one-third
6 of 24 million which -- or 2.4 million, which would
7 be 800,000. I'm guessing .3 of 2.5 can be around
8 the same figure, so I'm getting 800,000,
9 approximately, as a loss, which would fall between
:19PM 10 the 400,000 and 1 million as a loss figure under the
11 guidelines.

12 THE COURT: what is your base you're figuring
13 this on?

14 MR. FOX: I'm looking at, if I'm not
:19PM 15 mistaken, Your Honor, 2B1.1.

16 THE COURT: Right. But the loss level
17 calculated is?

18 MR. FOX: In looking at over \$400,000, it
19 says add 14.

:20PM 20 MR. MCQUAID: Less than a million.

21 THE COURT: Right. But the calculation, the
22 base is \$2,500,000.

23 MR. FOX: Right.

24 THE COURT: And 30 percent of \$2,500,000 is?

:20PM 25 MR. FOX: Close to 800,000.

1 THE COURT: Right.

2 MR. FOX: Yes.

3 THE COURT: which takes him to offense level
4 21 for guideline purposes, 21.2, which is 41 to
5 51 months.

:21PM

6 Anybody have anything further to say?

7 MR. FOX: Not from the government, Your
8 Honor.

9 MR. MCQUAID: No, sir.

:21PM

10 THE COURT: Mr. Hammond, you want to come to
11 the center. Right there. Stand in the middle.

12 (Brief pause)

13 THE COURT: This case presents--although I
14 suspect, Mr. Hammond, you have not spent a lot of
15 time studying the history of sentencing--the problem
16 we always have with gifted people, and you do have a
17 gift, is that the defense lawyer, and in this case
18 your father as well, will point to a gift as a great
19 mitigating factor, but that's not right.

:21PM

20 The prosecutors will sometimes point to it as
21 a great aggravating factor on the theory that
22 somebody with a gift has a special responsibility to
23 use it wisely and within the law. And I don't think
24 that's true either.

:22PM

25 A gift is very much like a firearm. It

:22PM

1 depends entirely on how it's used. So I don't give
2 you the credit or debit for the fact that you have a
3 gift. I do consider what your father said as true.
4 And I don't think your father actually uses these
5 words, but the core of his message is that you were
6 19 years old and you were an idiot when you did
7 this. And although I suspect there is some people
8 in this courtroom of whom I can see who are not that
9 far over 19 years of age, I can tell you that, from
10 the perspective of my age, all 19-year olds are
11 idiots. So I'm willing to accept that, as well.

12 And what young people have the most
13 difficulty dealing with is playing by rules. And
14 they have the single greatest difficulty playing by
15 rules when they see that some opponent of theirs or
16 believe that some opponent of theirs is not playing
17 by the rules. And one of the great lessons of
18 adulthood and one of the foundations of our society
19 is, that it's not a defense to an allegation of rule
20 violation that your opponent violated the rules, as
21 well. It's not a defense to a charge of cheating
22 that your opponent was cheating. Understandable,
23 but not a defense.

24 The other aspect of this case is is that,
25 like the firearm, the gift you possess has a lot of

1 power in it. Segretti, who I mentioned before, used
2 the printing press, something which also has a lot
3 of power. And he used the media and television and
4 a variety of other things, and if he had done the
5 same kind of thing today, he'd use the web. And he
6 went to prison, and you're going to go to prison,
7 the question is for how long.

8 The guideline says 41 to 51 months. And I
9 don't have to follow the guideline and I'm not going
10 to follow the guideline. I believe you when you say
11 that you have learned. I think, also, that after
12 you're done serving your sentence, I would be
13 willing to believe you if you told me that you
14 understood precisely how damaging the democratic
15 discourse of what you did is. I don't know that you
16 fully understand that now. I concede that you fully
17 understand what you did was wrong.

18 I believe a 41-month sentence is too long in
19 this particular case. It is, from my perspective,
20 out of line with other sentences for computer
21 hacking offenses, particularly those done out of
22 unguided malice, a desire to wreak havoc, which
23 motivates many hacking offenses, and those done for
24 profit, and I suppose you could add to that those
25 done to perpetrate particular harm against the named

1 person. Yours, in many respects, is on the low end
2 of the scale, but it's not at the bottom of the
3 scale, because the prosecutor was right, that the
4 damage you did, more precisely the threat of what
5 you did, is damaging the democratic discourse, your
6 side's as well as the other. And to deter others, I
7 think you have to go to prison.

8 The sentence of the Court is 24 months in the
9 custody of the Bureau of Prisons, to be followed by
10 a period of supervised release of 3 years. I'm
11 assessing a fine of \$3,600. I'm ordering
12 restitution to be paid to [REDACTED] in the amount
13 of \$1,658, and I'm also imposing a \$100 assessment.

14 The conditions of supervised release would be
15 that within 72 hours of release from the custody of
16 the Bureau of Prisons you have to report in prison
17 to the Probation Office in the district to which you
18 are released. You may not commit another federal,
19 state or local crime, you can't violate any criminal
20 law of any jurisdiction.

21 You have to abide by the standard conditions
22 that have been adopted by this court. You must
23 refrain from any unlawful use of a controlled
24 substance, you must submit to one drug test within
25 15 days of release, and as many random drug tests as

1 the Probation Office orders, except it can't exceed
2 104 tests per year.

3 If there is a restitution balance left over
4 at the end of your term, your monthly payment will
5 be 10 percent of your net monthly income. You shall
6 participate in a drug-after care treatment, which
7 may include testing at the direction of the
8 probation officer.

9 During the period of supervised release, you
10 should have no involvement with hackthiscite.org or
11 related electronic civil disobedience in websites
12 and organizations, and you shall have no involvement
13 or contact with the Chicago Anarchist Network or
14 related civil disobedience organizations. You may
15 not possess a firearm or destructive device.

16 It's not that you picked the wrong side or
17 the right side, Mr. Hammond, it's that you picked up
18 the wrong weapon to wield in support of the side you
19 picked.

20 Surrender date?

21 MR. FOX: Your Honor, both Pretrial Services
22 and Probation have expressed to me their belief is
23 that Mr. Hammond should report today, that he should
24 be taken into custody.

25 I can tell you from Pretrial Services

1 perspective, that Mr. Hammond has not reported for
2 three weeks, that he's also failed two drug tests,
3 and during the period that he has been on supervised
4 release Mr. Hammond has been arrested twice. So he
5 has not been in compliance with term of supervised
6 release.

7 THE COURT: The two arrests, were those the
8 ones that I dealt with earlier?

9 MR. FOX: You dealt with one and then there
10 was a separate one, my recollection is. And I can
11 also tell you that after you dealt with his arrest
12 when he was in court before, you know, since then,
13 he hasn't reported to Pretrial Services for the
14 three weeks. So even though after you admonished
15 him, he didn't comply with conditions.

16 PRETRIAL SERVICES OFFICER PAWLOWSKI: Your
17 Honor, one arrest occurred June 8th, he had been
18 arrested and has plead guilty and sentenced to
19 6 months. The second arrest was September 7th,
20 failed to report to the Cook County Probation
21 Officer and I believe he has now satisfied the term
22 of probation, but he failed to report to her and
23 that's why he was arrested in September.

24 MR. MCQUAID: I believe Mr. Hammond was aware
25 of his responsibilities, Your Honor. I believe his

1 last drug test was negative. I'm asking that he at
2 least stay out until after the holidays, Your Honor,
3 three weeks.

4 THE COURT: Surrender date is January 3rd.

5 You do have the right to appeal the sentence
6 which I've imposed upon you. And if you want to do
7 that, talk to Mr. McQuaid, he'll tell you how to go
8 about doing this.

9 There is one other thing I ought to tell you
10 too, because of what happened in the pretrial
11 administration of this. When you're on supervised
12 release, if you disobey the conditions of supervised
13 release, you're basically subject to the kind of
14 sentence that I didn't give you this time. And it's
15 not a mere condition. You, actually, have
16 surrendered a lot when you plead guilty, more than
17 maybe you think, because it's not just the 24 months
18 and whatever pain in the neck there is at dealing
19 with the probation officer. It's the fact that, for
20 example, you couldn't own a firearm, even if you
21 wanted to. You have to submit to some restrictions,
22 some of them may be, from your point of view,
23 arbitrary, some of them may even mean, from my point
24 of view, arbitrary, and you have no right to say no.
25 It's a real loss of rights and abilities. And it's

1 important that you understand that, because if you
2 tread over the line during the period of supervised
3 release, you could very easily end up in the Bureau
4 of Prisons. And there was a lot to be said for when
5 imposing a higher sentence in this case, but I
6 believe you have learned your lesson about limits,
7 and that's the only thing we're talking about.
8 We're not taking about your views, we're talking
9 about limits, but those limits are there and they
10 are tighter than they would be on an ordinary
11 citizen during the period of supervised release.
12 Don't miss the surrender date.

13 Anything further?

14 MR. FOX: Your Honor, if I may have a moment
15 with Mr. McQuaid?

16 THE COURT: Yes.

17 (Brief pause)

18 MR. MCQUAID: Mr. Hammond is requesting if
19 the Court can recommend an institution closest to
20 his family in Illinois.

21 THE COURT: Yeah, I'll make a recommendation
22 that the institution be as close as possible to
23 Chicago.

24 MR. FOX: And, Your Honor, I do want to
25 state, I don't think the BOP will have made its

1 designation by January 3rd, so I ask Your Honor to
2 order Mr. Hammond to report to probably the MCC.

3 THE COURT: Yeah, he will report, he'll have
4 to report to the MCC.

5 MR. FOX: Or the marshal's office here.

6 THE COURT: Or the marshal's office, yes.
7 Anything further?

8 MR. MCQUAID: No, sir. Thank you.

9 THE COURT: Thank you.

10
11 (Which concluded the proceedings had on this
12 date in the above entitled cause.)
13
14
15
16

17 * * * * *

18
19
20 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
21 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
22 MATTER
23
24

25 /s/Blanca I. Lara

date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Blanca I. Lara

Date