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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
vs.) Case No. 3:12-CR-317-L
) Case No. 3:12-CR-413-L
BARRETT LANCASTER BROWN,) Case No. 3:13-CR-30-L
)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
HAD ON THURSDAY, JANUARY 22, 2015
SENTENCING HEARING CONTINUATION

BEFORE THE HONORABLE SAM A. LINDSAY, JUDGE PRESIDING

A P P E A R A N C E S

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1 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN
2 COURT, WITH ALL PARTIES AND COUNSEL PRESENT.)

3 THE COURT: Let me apologize to the parties in
4 this case as well as the public. The Court is in the
5 middle of two legal matters. The Court is also in the
6 process of concluding a trademark infringement case and
7 the Court also has this matter, so I apologize for the
8 delay, but it was something that could not be avoided.

9 All right, this is United States versus Barrett
10 Lancaster Brown, case numbers 3:12-CR-317-L and
11 3:12-CR-413-L. Is the government ready?

12 MS. HEATH: Yes, Your Honor.

13 THE COURT: Is the defense ready to proceed?

14 MR. SWIFT: Yes, Your Honor, we are.

15 MS. CADEDDU: Yes, Your Honor.

16 THE COURT: Mr. Brown, are you ready to proceed?

17 THE DEFENDANT BROWN: Yes, Your Honor.

18 THE COURT: All right, this is a continuation of
19 the hearing that we held I believe December 16,
20 2014. The Court read into the record a number of
21 documents that it had received as of that date.

22 Since the hearing on December 16, 2014, there were
23 some additional documents submitted to the Court. There
24 was a letter from a Ronnie Walker, a letter in support of
25 Mr. Brown, and an e-mail from Sherry Martini on behalf of

1 Mr. Brown.

2 The Court has received the government's brief
3 regarding grouping which was ordered by the
4 Court. The Court has also received Defendant's brief
5 regarding grouping of counts which was ordered by the
6 Court.

7 The Court has also received Defendant's response to
8 the government's sentencing exhibits, and the
9 government's reply to Brown's response to government's
10 sentencing exhibits.

11 Are there any other written documents that the Court
12 has not received concerning this matter?

13 MS. CADEDDU: I don't believe so, Your Honor.

14 MS. HEATH: Not from the government, Your Honor.

15 THE COURT: All right. This is a reminder to
16 those in the audience. Last time we were here, there was
17 some conduct that was inappropriate. If that takes place
18 today, the persons who engage in such conduct will be
19 ushered outside of the courtroom.

20 If you were not one of the persons engaging in the
21 conduct, then you have nothing to worry about, but
22 security will remove you if the conduct is -- if conduct
23 is engaged in in which the Court finds objectionable.

24 We had several outstanding issues that need to be
25 resolved concerning the guidelines, and there are also

1 things that have to be considered under Title 18 United
2 States Code Section 3553(a)(1) through (7). The Court
3 will get to those in due time.

4 There was an objection made by the defense as to
5 grouping. With respect to this objection, the defense
6 contends that in calculating the guidelines, the Court
7 must first determine the base offense level for each
8 offense before grouping and apply any specific offense
9 characteristics or enhancements with respect to that
10 charge.

11 It further states that after -- when I say it, I
12 should say he. The defense further states after this is
13 done, the counts are then grouped according to Section
14 3D1.1 of the United States Sentencing Guidelines, the
15 offense with the highest total offense level as opposed
16 to the highest base offense level.

17 From what the Court can tell in response to
18 Mr. Brown's objections to the pre-sentence report, the
19 government agrees that this is the correct approach for
20 calculating the guidelines for counts grouped on a
21 nonaggregate basis pursuant to United States Sentencing
22 Guidelines Section 3D1.2(c).

23 Let me say this also before the Court gets to its
24 ruling on that. The Court believes that the three
25 offenses, that is, the accessory charge after the fact,

1 the obstruction charge, and the internet threat are
2 closely related and involve substantially the same harm,
3 and therefore it should be grouped on a nonaggregate
4 basis as proposed by the government pursuant to United
5 States Sentencing Guidelines Section 3D1.2(c), and there
6 is no need for the Court to read that into the record.
7 The parties are familiar with that.

8 With respect to these three counts, the Court
9 concludes that one of the counts embodies conduct that is
10 treated as a specific offense characteristic in or
11 adjustment to the guideline applicable to another of the
12 counts, that is, each of the counts involved obstructive
13 conduct and substantially the same harm.

14 The Court also determines that the argument made by
15 Defendant regarding the lack of the same victim a
16 temporal distinction is inapplicable under United States
17 Sentencing Guidelines Section 3D1.2(c), and therefore,
18 the Court overrules the Defendant's objections to the
19 extent that he contends that the count should not be
20 grouped into a single group.

21 As I initially stated, what the Court can
22 ascertain, the Defense objected to the matter in which
23 the guidelines were calculated by the probation officer.
24 As stated before, they cite United States versus Dickson,
25 which is found at 632 F.3d 186. The jump page is 190 to

1 191. That was a 2011 case by the Fifth Circuit.

2 The Court agrees with the defense with respect to
3 the grouping of the offenses as to how they should be
4 calculated. The Court believes that the Defendants are
5 correct -- the Defendant is correct on this point as set
6 forth by United States versus Dickson; therefore, the
7 Court sustains the objection made by the Defense
8 regarding the matter in which the guidelines should be
9 calculated.

10 Therefore, the Court will first determine the base
11 offense level for each offense and apply any specific
12 offense characteristics or enhancements to determine the
13 highest adjusted offense level before grouping the counts
14 according to Section 3D1.3.

15 With respect to the internet threats count, the base
16 offense level, the Court determines to be 12. There are
17 two levels added pursuant Section 2A6.1(b)(2), that is,
18 because there were several threats to injure Agent Robert
19 Smith from August 12 and September 12, so two levels
20 would be added.

21 With respect to Section 3A1.2(b) of the Sentencing
22 Guidelines, there is an enhancement of six levels
23 pursuant to that section, so the adjusted offense level
24 for the internet threats is 20.

25 We next come to the offense -- excuse me -- the

1 offense of accessory after the fact. Before the Court
2 can determine the offense level, there are some
3 objections that the Court has to deal with.

4 Just so that we are all on the same page, Counsel
5 for both parties, I take it there is no additional
6 evidence to be introduced at this stage in light of the
7 Court's previous admonition at the last hearing.

8 MS. CAEDDU: That is correct, Your Honor, from
9 the defense.

10 MS. HEATH: Your Honor, other than for the
11 record the two exhibits that were mentioned in the motion
12 by the government in response by the Defense,
13 Government's Exhibit No. 62 and 63. For record purposes,
14 we would offer what the Court already has in its
15 possession.

16 THE COURT: All right, 62 and 63, -- one of them
17 I believe, and there has been a lot of paper involved in
18 this case, was attached to your reply and one is not; is
19 that correct?

20 MS. HEATH: Correct, Your Honor.

21 THE COURT: Which one was not attached? 63?

22 MS. HEATH: I believe 63 was attached. 62 was
23 not attached because it was 57 pages.

24 THE COURT: 62 was not attached. The question I
25 have is this then. When was your document filed?

1 MS. HEATH: The document was filed -- I don't
2 have the file mark. It was filed on the deadline the
3 Court gave the government to file.

4 THE COURT: That doesn't tell me anything,
5 Ms. Heath.

6 MS. HEATH: I am sorry.

7 THE COURT: There are a lot of deadlines set in
8 this case. There is a reason why I want a specific
9 date. It was filed before the end of the year?

10 MS. HEATH: Yes, Your Honor. It was filed in
11 December. The government's brief for grouping was filed
12 December 23rd, and the -- this other motion may have been
13 December 22nd.

14 THE COURT: Let me ask you with respect to
15 Exhibit Nos. 62 and 63, were copies of those documents
16 provided to the defense?

17 MS. HEATH: Yes, Your Honor.

18 MS. CADEDDU: Your Honor, may I just -- I have
19 63 as an attachment to the motion.

20 THE COURT: Well, she said 63 was attached. She
21 said 62 was not attached because it was 57 pages long.

22 MS. CADEDDU: I am trying to recall which one it
23 is. I guess --

24 MS. HEATH: That was the IRC that I e-mailed to
25 Mr. Ghappour.

1 MS. CADEDDU: Yes, we have received that.

2 THE COURT: All right, if that is the case then
3 those two documents will be considered as part of the
4 record of this case for sentencing purposes. One issue
5 we resolved last time was the loss amount. The Court
6 concluded that given the amount of loss, that is, because
7 it was between \$400,000 and not greater than a million
8 dollars, 14 levels would be added to the accessory
9 count.

10 The loss amount is really not in dispute insofar as
11 the Court is concerned because it was determined back at
12 the hearing on December 16, 2014.

13 So it appears to me that what we have to discuss with
14 respect to the accessory after the fact count is the
15 four-level enhancement. I believe the government's
16 position now is that the four-level enhancement is
17 appropriate as opposed to a six-level enhancement; is
18 that correct, Ms. Heath?

19 MS. HEATH: For the number of victims?

20 THE COURT: Yes.

21 MS. HEATH: Yes, Your Honor.

22 THE COURT: And what is the defense's position?
23 I know initially you objected to the six-level
24 enhancement. Are you saying there should be none? I
25 want to make certain everything is nailed down.

1 MS. CADEDDU: Yes, Your Honor, that's correct.
2 I believe we addressed that in -- in the brief regarding
3 the government's additional exhibits. As an initial
4 matter, we have a concern about the exhibit -- we don't
5 have an objection to admission.

6 We don't think it answers the questions. There are
7 no dates or times on the charges listed on that victim
8 list, so there is no way. We have the government --

9 THE COURT: Okay, which document are you talking
10 about?

11 MS. CADEDDU: -- discussing Exhibit No. 63, Your
12 Honor.

13 THE COURT: You said there are no dates or
14 times.

15 MS. CADEDDU: No, sir.

16 THE COURT: So Ms. Heath, how do you connect the
17 dots if that is correct?

18 MS. HEATH: The testimony from Agent Smith
19 during the last sentencing hearing on December 16th, he
20 indicated that he had prepared this chart based upon
21 charges that had occurred after Mr. Brown had posted or
22 posted the link to the file that had the credit cards.
23 So he did testify that all of the cards that he
24 considered to be stolen, he used several factors.

25 One factor was to make sure the card was a valid

1 card; two, to make sure that we had a CVV or other
2 identifier on the card; and third, that the cards were
3 actually used after the posting dates by Mr. Brown on
4 Project PM.

5 THE COURT: Ms. Cadeddu?

6 MS. CADEDDU: Well, Your Honor, I mean, the
7 government asserts without any back-up documents that
8 these charges all occurred after the date and the time, I
9 assume the time that Mr. Brown was supposed to have
10 posted the link.

11 THE COURT: Let me ask you this. If the agent
12 testified to that, what evidence do you have to
13 contradict that? In other words, if there is testimony
14 that it occurred as he said it did, what do you have to
15 contradict that? To say that you have no supporting
16 documentation does not necessarily refute what the agent
17 has testified to.

18 MS. CADEDDU: I wasn't given the underlying
19 documents. I have no idea what the dates and times
20 were. I am saying as a foundational matter that is
21 problematic.

22 Even if you accept the fact, even if you accept the
23 government's arguments that all these charges, and by the
24 way there are several charges in there with zero loss.
25 There are countries listed or cities that are in

1 countries that don't match up. It is not -- it is
2 really -- the list is problematic itself.

3 Even if you accept the government's argument that
4 these charges were made after the date and time that
5 Mr. Brown reposted the link, the link he posted was
6 already public. The information was already in the
7 public domain. The link that he reposted was reposted in
8 the Project PM IRC Channel, but it was already out there
9 in Pastebin in an entirely public location, so there is
10 no -- the government can't prove causation.

11 The Fifth Circuit has held that you have to have --
12 you have to in order to hold someone accountable for
13 loss, there has to be causation and there simply isn't.
14 There is no way -- the government has presented no
15 evidence to show that Mr. Brown ever used a credit card
16 or that any person who had access to the Project PM IRC
17 used any of the credit cards.

18 There are no ways to show these credit cards were
19 used as result of reposting an already public
20 link. The link was already in the public domain and all
21 the credit card information was in the public domain, and
22 the mere fact that they were used even if you accept they
23 were used after the date and time that he reposted in
24 what essentially was a private channel, that doesn't make
25 the government's causation argument.

1 THE COURT: Ms. Heath?

2 MS. HEATH Your Honor, first as to the underlying
3 documentation back in March of 2014, the government
4 provided to Mr. Ghappour the spreadsheet provided to the
5 government by Capital One, American Express, Wells Fargo,
6 Sun Trust, and Alpha Bank, and these banks provided
7 spreadsheets showing the losses, so we did provide the
8 underlying documentation with regard to the loss.

9 With regard to the stolen data being in the public
10 realm doesn't undermine the fact that what was stolen
11 data that then was procured by Mr. Brown and
12 retransmitted or remade available to other individuals
13 and as to the conduct again, we were very careful to not
14 include the hundreds of thousands of dollars of loss that
15 occurred prior to Mr. Brown posting it, but just using
16 that loss occurring after Mr. Brown posted the link which
17 would be more than relevant conduct as to what other
18 people were doing with the credit cards.

19 THE COURT: Let me ask this question. Okay,
20 there was a posting by someone prior to the time
21 Mr. Brown posted; is that correct?

22 MS. HEATH: Yes, Your Honor.

23 THE COURT: There was a prior posting of this
24 information; is that correct?

25 MS. HEATH Yes, Your Honor, it was on a website

1 on the internet.

2 THE COURT: Now, does not the record reflect that
3 the prior posting -- let me say it like this, does not
4 the record reflect or do not those exhibits reflect that
5 between the time of the prior posting and Mr. Brown
6 posting that the lapse of time was approximately one to
7 two hours? Wasn't there a one to two-hour window?

8 MS. HEATH: The posting by the other person on
9 the internet relay chat, yes, there was a two-hour window
10 where Mr. Brown was talking with that individual after
11 they posted it about the stolen credit cards, yes, Your
12 Honor.

13 MR. SWIFT: We object to that.

14 MS. CADEDDU: Charles -- may I respond, Your
15 Honor.

16 THE COURT: Sure.

17 MS. CADEDDU: Actually, Your Honor, I believe
18 the record you will see an exhibit attached to one of our
19 briefs where we attached crypton which a crypton as
20 explained or crypton as explained in the brief is a place
21 where Anonymous typically posted links to stolen data --
22 I am sorry Pastebin Crypton is basically a historical
23 record of what is posted.

24 Pastebin was what Anonymous used in order to make
25 public information that they had stolen, and what Your

1 Honor is referring to is the fact that I think it was
2 about an hour I would have to check the times exactly,
3 but about an hour and 45 minutes before the link was and
4 in the AnonOp, and Mr. Brown in the Project PM an hour
5 and 45 minutes before that, Anonymous made the basically
6 big release of this data by posting that link in
7 Pastebin, so yes, it had been in the very public domain
8 for about an hour and 45 minutes before it was posted in
9 the IRC channels.

10 THE COURT: All right, do you have something
11 further to say, Ms. Heath?

12 MS. HEATH No, Your Honor.

13 THE COURT: Okay, let me say this with respect
14 to the number of victims and relevant conduct because
15 relevant conduct is also tied up with the issue. With
16 respect to the four-level enhancement that we are talking
17 about, there is no question that the government has the
18 burden of proving by a preponderance of the evidence, the
19 facts necessary to support any enhancement.

20 As we all know at least the parties a preponderance
21 of the evidence simply means that something is more
22 likely true than not and a court may, of course, draw
23 reasonable inferences from the evidence and the facts to
24 determine whether an enhancement applies.

25 With respect to the loss, a Defendant is responsible

1 for any loss caused directly by his offense conduct, and
2 when the Court makes this determination, it also
3 considers that a Defendant is accountable for losses due
4 to the Defendant's conduct as well as those due to the
5 Defendant's relevant conduct.

6 That is what the Fifth Circuit stated in United
7 States versus Hammond, found at 201 F.3d 346. The jump
8 page is 351. That is a 2001 case decided by -- a 1999
9 case decided by the Fifth Circuit.

10 Just so we are clear Defendant's relevant conduct
11 includes all reasonably foreseeable acts and omissions of
12 others in furtherance of jointly undertaken criminal
13 activity. That is also a cite from the Hammond case
14 which in turn cites the applicable section of the United
15 States Sentencing Guidelines.

16 For a defendant to be accountable under this section,
17 the Court has to determine the scope of the criminal
18 activity that the defendant agreed to jointly undertake.
19 The Court has to then determine whether the defendant
20 agreed to undertake criminal activity jointly with others
21 whether the loss is caused by others or within the scope
22 of that agreement and whether the third party's
23 misconduct was reasonably foreseeable to the defendant.

24 There is quite a bit of to and fro between the
25 government and the defense. The Court has read over a

1 number of documents and looked at exhibits, and at this
2 point, it is going to cut to the chase and of course if
3 either side disagrees with the Court, that side can
4 consider whether an appeal to the Fifth Circuit is
5 appropriate.

6 Despite the arguments and the to and fro between the
7 parties, the Court determines that paragraphs 28 through
8 54 and 75 to 79 support a relevant conduct finding.
9 These paragraphs show that the hacks and attacks
10 conducted by Anonymous and related groups were
11 perpetrated primarily to obtain compromised data of all
12 sorts whether it be credit card data or other information
13 for purposes of exploiting, threatening, harassing
14 destroying the person that entities target whom the
15 hackers thought or considered to be enemies.

16 These paragraphs that the Court just read into the
17 record set forth or describe Mr. Brown's involvement and
18 role in the hacker group as more than reporting the
19 hackers activities. The Court believes that these
20 paragraphs reflect that Mr. Brown considered himself as
21 one of the -- one of them and was all a part of the
22 hackers efforts. When the Court reads these paragraphs,
23 the Court concludes that Mr. Brown collaborated with and
24 supported the hackers identified targets, provided
25 advice, strategized and assisted in organizing hacker

1 activities.

2 He also used the hackers to obtain credit card and
3 other information illegal to exploit and harm other
4 persons or entities that he personally targeted in
5 retaliation for their investigation of him.

6 At times, Mr. Brown attempts to minimize his role by
7 certain statements. However, one thing that the Court
8 has noticed in its sentencing memorandum, he acknowledges
9 or admits that he crossed the line in journalistic
10 inquiry into criminal conduct when abandoned the role as
11 an observer and reporter of events and offered to aid
12 Hammond, and we are talking about Jerry Hammond -- Jeremy
13 Hammond.

14 In addition to the pre-sentence report, those
15 paragraphs that the Court read into the record, there are
16 also other exhibits. The Government's Exhibit 49, 50,
17 and 51 also indicated Mr. Brown's awareness and approval
18 of the hackers activities in exploiting stolen credit
19 card information prior to the Stratfor hack, and the
20 Court concludes that the information in these three
21 exhibits together with the information in the
22 pre-sentence report is sufficient to support a finding
23 that the scope of the criminal activity that Mr. Brown
24 agreed to jointly undertake with Anonymous and related
25 hacker groups included the use of stolen credit card

1 information as a means of exploiting, harassing, ruining,
2 or destroying targeted persons and businesses and that
3 the losses caused by the hackers who were actually used
4 the credit card stolen during the Stratfor hack, and that
5 is S-t-r-a-f-o-r making unauthorized charges to Mr. Brown
6 regardless of when the unauthorized charges were made
7 using credit card information posted by Mr. Brown or some
8 other person who participated in the hack.

9 As the Court eluded to earlier, the prior posting of
10 this information was not quote, unquote, hours a part,
11 but instead occurred between a one and two-hour window.

12 Also, there have been a couple other exhibits talked
13 about this morning. Those are Government's Exhibit No.
14 62 and 63, and when I take those exhibits in conjunction
15 with the agent's testimony, the Court concludes that this
16 information satisfies the Onenese, and the Court cited
17 the Onenese in the earlier hearing, it is not going to go
18 into that again.

19 When I say it satisfies the Onenese case, I'm
20 talking about with respect to the third category of
21 victims, and this information indicates that 109
22 individual credit cardholders sustained an actual loss
23 totaling \$20,678.

24 For that reason, the Court concludes there is a
25 preponderance of the evidence to support a four-level

1 victim enhancement based upon 109 individual credit card
2 victims pursuant to United States Sentencing Guidelines
3 Section 2B1.1(b)(2)(B).

4 Just so the record is clear, the Court was unable to
5 find any Fifth Circuit case discussing relevant conduct
6 in determining loss under Section 2B1.1 and the base
7 offense level.

8 There are a couple cases from the Seventh and Eighth
9 Circuits that indicate that relevant conduct applied to
10 determining the number of victims.

11 Okay, that is the Court's ruling with respect to the
12 loss amount, and the Court would state also for the
13 record that this includes any other evidence that was
14 adduced at the hearing on December 16, 2014. Are there
15 any more objections as to the accessory after the fact,
16 Counsel?

17 MR. SWIFT: Well, yes, Your Honor, there was the
18 trafficking, the objection to trafficking, the two-level
19 enhancement for that.

20 THE COURT: All right, Ms. Nassar, let me see
21 you at the bench a minute.

22 (PAUSE IN PROCEEDINGS.)

23 THE COURT: Ms. Cadeddu, what is your objection
24 with respect to the trafficking?

25 MS. CAEDDU: Yes, Your Honor, the argument is

1 essentially is it related to the argument we made before
2 and that is, you cannot traffic something that is already
3 in the public domain. By reposting a link to be
4 information that was already public, he didn't actually
5 traffic in anything.

6 The case -- the government cites a case, a child
7 pornography case where the government contends, and I can
8 find that cite. It is in the government's reply
9 actually.

10 It is United States versus Paul 274 F.3d 155, a
11 Fifth Circuit case from 2001. In that case, the
12 Defendant retrieved images from all -- the case says
13 images from the internet that were child pornography.
14 There is no indication about -- the government contends
15 that they were public, but there is no information that
16 says that they were public.

17 In fact, the case talks about various child
18 pornography communities and illegal communities and so
19 forth, so in any case, the Defendant had images and then
20 reposted those to a community.

21 In this case, Mr. Brown didn't take credit card
22 numbers and move them anywhere. The credit card numbers
23 existed in a public location.

24 There is a public link that was already out there,
25 and he reposted a link, so he didn't traffic in any

1 credit card information. He reposted a link and we do
2 not believe that a trafficking enhancement is warranted
3 on those facts.

4 THE COURT: All right, thank you.

5 MS. CAEDDU: Thank you, Your Honor.

6 THE COURT: Ms. Heath, what is your response? Do
7 you rely on United States versus Paul, which is found 274
8 F.3d 155, and the jump cite appears to be page 163? How
9 is that applicable to the situation we have here?

10 MS. HEATH: Your Honor, in United States versus
11 Paul, it is the government's understanding that this
12 individual obtained images from the internet and then
13 re-presented them or re-sent them to other individuals
14 and made them available to other individuals. That would
15 be trafficking.

16 He is making -- he is furthering the accessibility
17 by other people who may not have had access to the
18 original place he went to. In Mr. Brown's case, he was
19 in one IRC chat room talking to a certain group of
20 people.

21 The link to the file is posted. He takes that
22 link. He downloads it to his computer, so he is actually
23 in possession of it and takes the link and retraffic or
24 resubmits it to another IRC channel to make it available
25 to another group of people. Therefore, you can traffic

1 in things that are publicly available or have been
2 available to other people.

3 Most of the child pornography cases are just that,
4 retrafficking in items that have been taken from other
5 sites. Very rarely do you have a child pornography
6 trafficking case that they have original images that they
7 have created themselves and trafficked.

8 They are trafficking in things that have already
9 been out there in the public. That case, to the
10 government's belief is on point with regard to the
11 complaint that the defense has made regarding the public
12 stature of the stolen goods.

13 THE COURT: Okay, does the government have any
14 cases that deal with the situation that we have here?

15 MS. HEATH: No, Your Honor.

16 THE COURT: Well, let me ask you this. That
17 particular case, I am talking about the Paul case, it
18 seemed to mention in passing that videotapes of children
19 filed in public settings quote, unquote, and other
20 materials were seized by the agents, but is there any
21 discussion in that case regarding the effects of
22 trafficking or dissemination or disseminating data that
23 is already publicly available whether generally or
24 specifically? That was the case involving pornography,
25 but there are some statements made.

1 Is there any discussion by the Court, and this is
2 what I am looking for?

3 MS. HEATH: It does not appear that the Court or
4 that issue was an issue that was specifically contested
5 in that opinion, so no, the Court didn't specifically
6 address it. All the government can assume is that the
7 courts from the year from handling child pornography
8 cases and the standard case in trafficking you are taking
9 images that are publicly available on one site and making
10 them available to other individuals.

11 So it has been an -- all I can say is it has been an
12 understood feature in child pornography trafficking
13 cases, so no, this Court did not specifically address
14 that issue of making available items that were already
15 publicly available.

16 THE COURT: Well, I guess my question is, how
17 does that support your position then?

18 MS. HEATH: In that the term used for
19 trafficking in child pornography cases is the simple
20 definition of trafficking. You take items and you
21 redistribute them to other individuals.

22 In drug cases, you are trafficking in items. You
23 are basically taking possession of it from one location
24 and giving it to other people, so the basic definition of
25 trafficking in this case, Mr. Brown, is taking stolen

1 data that is presented in one IRC chat room.

2 He is taking that link to the file containing the
3 stolen data, and he is making it available, furthering
4 the availability to other individuals in another site, so
5 I am just seeing that the definition of trafficking is
6 similar in all these cases where you have taken from
7 potentially a public domain, but it doesn't seem to
8 matter in the definition where it comes from.

9 I don't have a case that says it didn't matter, but
10 it seems that the case that support trafficking often
11 come with the element of taking the item from a public
12 domain and presenting it to other individuals so the
13 traffic is just furthering in transferring that data to
14 another individual or another entity.

15 THE COURT: Ms. Cadeddu.

16 MS. CAEDDU: Thank you, Your Honor. I just
17 don't believe that these are analogous cases. What the
18 government is doing is complaining of transmitting data
19 with the posting of a link.

20 In the child pornography case, if you take contraband,
21 the actual images, the drugs or the contraband, and you
22 move them and give them to someone else. In this case,
23 what happened was there was a public -- there was a link
24 to a public website that contained this data, and
25 Mr. Brown took a link that was posted in an IRC channel

1 for AnonOps and reposted to a public website.

2 He didn't move the data and give it to someone else,
3 and the analogous situation in child pornography would be
4 if someone said I found child pornography on X website,
5 so you can go look there. That would be equivalent, and
6 there is no case, I have never had a case -- never seen a
7 case where that is considered trafficking.

8 Telling someone where they can find child
9 pornography is not trafficking and this is exactly what
10 happened here. Mr. Brown took a link to a public website
11 and said essentially there is data related to the hack,
12 took the link and reposted somewhere else. He did not
13 traffic in the data.

14 THE COURT: Any final remarks, Ms. Heath? The
15 burden of proof is on the government to prove that the
16 enhancement applies.

17 MS. HEATH: Your Honor, Mr. Brown did take
18 possession of the accessibility of that data by taking
19 the link to the file and reposting it to make it
20 available to other people.

21 In the real world -- I am trying to think of an
22 example even in drug deals when a drug dealer has a key
23 to an apartment and gives the key to somebody for them to
24 go to the apartment. They are physically not taking
25 drugs and moving them themselves.

1 They are giving a key or a means of accessibility to
2 the items that they want traffic in, so giving the key to
3 the other person so that person can then go retrieve the
4 items themselves, that type of situation has occurred in
5 drug cases.

6 So in this situation, the key here would be the
7 link. He has provided access to the data and it is
8 stolen data, and he knows that it is stolen data. I
9 don't know there is any question about that. So the
10 actual making available for that to other people is the
11 trafficking of the data, Your Honor.

12 In this case, it is not as if he is going to print
13 out the five thousand credit cards on a piece of paper
14 and fax them to be somebody. He is making accessible
15 electronically by providing the link to the file that
16 contains the data.

17 MS. CADEDDU: Would you like a response from me,
18 Your Honor?

19 THE COURT: Well, she has the burden, so she has
20 the right to have the last reply unless you have
21 something new to tell the Court.

22 MS. CADEDDU: No, Your Honor. I was going to
23 point out the drug examples. Drugs are in a private
24 location in her example. In this case, we are talking
25 about public data on Pastebin. I don't think it is a

1 correct analogy.

2 THE COURT: One final response, Ms. Heath, in
3 light of Ms. Cadeddu's comments since the burden is on
4 you. Do you have anything to say in regard to her last
5 comment about the drug situation?

6 MS. HEATH: Your Honor, I don't think the issue
7 comes down to whether it is a public or private place.
8 That was just an example to show that you don't have to
9 physically touch the items to be involved in trafficking
10 of the item.

11 The individual can leave it at a public location and
12 tell the other person where to go find it and provide
13 them a map to a public location where they can find the
14 item. I think there are all instances or ways in which
15 data or physical items, in this case this is trafficking
16 in electronic data. In this case, Mr. Brown made
17 accessible the data to other people by providing the data
18 link to the file.

19 THE COURT: The Paul case is not directly on
20 point. The Court readily acknowledges that. However,
21 the Court does believe that through analogy there is
22 sufficient evidence and adequate basis to apply the
23 two-level enhancement for trafficking; therefore, the
24 Court overrules the defense's objection to the
25 enhancement for trafficking pursuant to United States

1 Sentencing Guidelines Section 2B1.1(b)(11)(B)(i) and
2 (11).

3 Any other objections with respect to the accessory
4 after the fact count?

5 MS. CAEDDU: I don't believe so, Your Honor. I
6 think that is the only pending objection.

7 THE COURT: All right, then the Court is now
8 going to compute the guidelines for that count. The base
9 offense level under this count is 6. That is pursuant to
10 United States Sentencing Guidelines 2B1.1(a)(2).

11 With respect to the loss amount, as the Court
12 previously stated, the appropriate enhancement for the
13 loss amount is 14. That issue was resolved at the
14 previous hearing.

15 We next come to an enhancement for whether or not
16 the offense was used -- committed by sophisticated
17 means. The Court believes there is more than ample
18 evidence or more than preponderance of the evidence to
19 show that the offense was committed by sophisticated
20 means, therefore, two levels are added.

21 Also pursuant to 2B1.1(b)(17)(B), two levels are
22 added pursuant to the unauthorized dissemination of
23 personal information.

24 We next get to whether or not four levels should be
25 added for the number of victims. The Court has discussed

1 that in fairly substantial detail.

2 The Court stated earlier that it read the position
3 of the parties, the exhibits, looked at the applicable
4 provisions of the pre-sentence report and concluded that
5 based upon the applicable law and the section of the
6 applicable guidelines, that the four-level enhancement
7 was -- or should apply, and the Court overrules the
8 Defendant's objection in that regard, and the Court does
9 apply the four-level enhancement pursuant to the
10 applicable provision of guidelines.

11 We have talked about the trafficking
12 enhancement. The Court has ruled that that should
13 apply. That would give an offense level of 30. There
14 is no dispute by any of the parties pursuant to United
15 States Sentencing Guidelines Section 2X3.1(a), six levels
16 are to be deducted, so that would give an offense level
17 of 24.

18 Then there is an obstruction enhancement that should
19 apply pursuant to Section 3C1.1 of the Sentencing
20 Guidelines. That is a two-point enhancement.

21 With respect to accessory after the fact, the Court
22 comes up with an offense level of 26 at this point.

23 Finally, we get to the obstruction count. The base
24 offense level is 10, and there are no enhancements or
25 characteristics to add there, therefore, the adjusted

1 offense level would be 10. Out of the three counts based
2 upon the Court's determination, the count for accessory
3 after the fact has the highest adjusted offense level,
4 and we have a 26 adjusted offense level.

5 Other than the objections that have already been
6 ruled on by the Court, does any party have any objections
7 as to the Court's determination or calculation of the
8 adjusted offense levels as to the three charges that are
9 the subject of this sentencing hearing?

10 MS. CADEDDU: Just the previously discussed
11 objections, Your Honor.

12 THE COURT: I said other than those.

13 MS. CADEDDU: Yes, Your Honor. I want to make
14 sure I have not waived.

15 THE COURT: You are not waiving those. I think
16 you adequately briefed those. I think I have ruled on
17 them.

18 MS. CADEDDU: No new objections.

19 THE COURT: One of them I sustained, and the
20 others I did not.

21 Does the government have anything?

22 MS. HEATH: No, Your Honor.

23 THE COURT: So based upon the Court's calculation
24 with respect to the three offenses involved the accessory
25 count produces the highest adjusted offense level of 26.

1 This is the offense level that will be used to calculate
2 the guidelines for this group.

3 There is only one single group. It is not necessary
4 for the Court to apply Section 3D1.2 regarding the number
5 of units. The adjusted offense level is 26.

6 We next come to the issue of acceptance of
7 responsibility. The question in this regard is whether
8 Mr. Brown gets a two-level reduction for acceptance of
9 responsibility or a three-level reduction for acceptance
10 of responsibility.

11 Ms. Heath, at this time, does the government move for
12 the additional level for acceptance of responsibility
13 pursuant to United States Sentencing Guidelines Section
14 3E1.1(b)?

15 MS. HEATH: Yes, Your Honor, the government has
16 made its intention clear that if the Court gave the
17 initial two levels, the government would move for the
18 third level.

19 THE COURT: All right, thank you.

20 The Court does conclude that Mr. Brown has accepted
21 responsibility for his conduct. The government has moved
22 for the additional level for acceptance of
23 responsibility. The offense level is 16 or greater. The
24 Court determines that the government's motion is well
25 taken. Accordingly, Mr. Brown will be granted a

1 three-level reduction for acceptance of responsibility.
2 That makes the total offense level 23.

3 Mr. Brown has a criminal history category of II.
4 There were objections made by the defense as -- stating
5 that the criminal history category overstates -- the
6 criminal history category is overstated. The Court
7 disagrees.

8 The Court determines that the criminal history
9 category determined by the probation officer is correct,
10 and therefore, with respect to any objection regarding
11 the criminal history category made by the defense, the
12 Court overrules such objection. Therefore, there is a
13 total offense level of 23 and a criminal history category
14 of II.

15 With a criminal history category of II and an
16 offense level of 23, that gives a guideline range of
17 imprisonment of 46 to 57 months.

18 Are there any other matters concerning the
19 guidelines?

20 MS. CAEDDU: None from the defense, Your Honor.

21 MS. HEATH: Your Honor, the government reads
22 offense level 23 with a criminal history category II to
23 be 51 to 63 months.

24 THE COURT: You are correct. I looked at the
25 wrong column. It is 51 through 63, offense level 23,

1 criminal history category II, that is 51 through 63.
2 That is where the lines intersect, so you are correct,
3 Ms. Heath. But actually, would it not be capped at 60
4 since that is the maximum amount that any -- isn't it
5 capped at 60 since that is the maximum amount
6 statutorily for any of the counts involved?

7 MS. HEATH: No, it is 8-and-a-half years, Your
8 Honor.

9 THE COURT: That is 102 months. All right, the
10 60 months is only for the internet threats.

11 MS. HEATH: Correct, Your Honor.

12 MR. SWIFT: Yes, Your Honor; that's correct.

13 THE COURT: All right, thank you, Mr. Swift.
14 All right, in addition to considering the advisory
15 guidelines the Court must also consider the statutory
16 factors set forth in Title 18 United States Code Section
17 3553(a)(1) through (7).

18 When the Court considers these statutory factors, it
19 must impose a sentence that is sufficient but not greater
20 than necessary to accomplish the objectives of paragraph
21 (a)(2) of Section 3553 Title 18.

22 In particular, the Court must consider or impose a
23 sentence that reflects the seriousness of the offense,
24 one that promotes respect for the law, one that provides
25 just punishment, one that protects the public from

1 further crimes of the defendant, one that affords or
2 serves as an adequate deterrence to criminal conduct, and
3 finally, a sentence that provides the defendant with the
4 needed or necessary educational or medical care -- needed
5 vocational training, medical care, or other correctional
6 treatment in the most effective manner.

7 The Court will take all those matters into
8 consideration before it imposes sentence against
9 Mr. Brown.

10 Ms. Cadeddu, would you like to be heard on behalf of
11 your client?

12 MS. CAEDDU: With the Court's permission,
13 Mr. Swift will discuss the 3553(a) factors.

14 THE COURT: Very well, let me ask you, Mr. Swift,
15 do you prefer to discuss those first -- or let me ask
16 this. Was there anybody who is going to speak on behalf
17 of Mr. Brown?

18 MR. SWIFT: There is one witness that will speak
19 on behalf of Mr. Brown.

20 THE COURT: Who is that witness?

21 MR. SWIFT: Tim Rodgers of D Magazine, Your
22 Honor.

23 THE COURT: All right, do you prefer him to go
24 first?

25 MR. SWIFT: I would prefer him to go forward,

1 sir.

2 THE COURT: All right, call him forward. Are
3 you doing it narrative form or what?

4 MR. SWIFT: Narrative form, Your Honor.

5 THE COURT: Any objection from the government?

6 MS. HEATH: No objection, Your Honor.

7 THE COURT: All right, sir just step forward to
8 the lectern, right where you are, and state your name,
9 please.

10 THE WITNESS TIM RODGERS: Tim Rodgers.

11 THE COURT: All right, sir, what would you like
12 to tell the Court?

13 THE WITNESS TIM RODGERS: Barrett has been
14 writing for me, and there has been discussion whether the
15 guy is a journalist. I have maintained for a long time
16 that he is that and many other things. What I would like
17 to speak to is just the journalism part of it.

18 Barrett has been writing the entire time he has been
19 incarcerated. He has earned if not a living at least
20 money doing it, and I would hope to employ him when he
21 gets out.

22 As for his other activities, I am not here to talk
23 about that, just whether the guy is a legitimate
24 journalist, and I would say yes.

25 THE COURT: All right, thank you, Mr. Rodgers.

1 THE WITNESS TIM ROGERS: Thank you.

2 THE COURT: All right, Mr. Swift.

3 MR. SWIFT: Thank you, Your Honor. From the
4 podium?

5 THE COURT: Yes, sir.

6 MR. SWIFT: Yes, Your Honor. I began, Your
7 Honor, by pointing to something that with respect to the
8 guidelines factors which is the first factor that you
9 start with in utilizing the 3553.

10 Understanding what Your Honor has calculated, I
11 would point out several things to the Court that we
12 pointed out in the sentencing memorandum, the first being
13 that the maximum sentence for which the accessory after
14 the fact charge for which Mr. Brown has been found guilty
15 is actually two-and-a-half years.

16 THE COURT: 30 months; that is correct.

17 MR. SWIFT: 30 months, and we argue that that
18 maximum under the circumstances is appropriate.
19 Although, the guidelines have a higher one.

20 In normal circumstance absent the other charges,
21 absent the other charges, the guidelines maximum would be
22 set at the maximum sentence. I think that there are a
23 lot of factors to look at this in looking at applying
24 3555(sic) here, but the first one is to recognize the
25 basic justice of someone, so we are not importing

1 sentencing power in the form of other crimes that were
2 committed to go beyond what Congress had intended or the
3 Court should impose for a particular offense.

4 And under accessory after the fact, as the Court has
5 found there are some significant factors. There is the
6 amount of loss. There is the number of persons who were
7 effected, but I think also accessory after the fact when
8 one looks at Mr. Brown's role within that, he has
9 admitted that he crossed over from a journalist also
10 adequately deters that, and we have to be sure that we
11 don't over deter it.

12 If we look at the remainder of the questions, I
13 think the questions for the Court because of how we --
14 how this case was charged because we actually have three
15 different cases is whether to run -- run the additional
16 sentences or any sentences consecutively or
17 concurrently. That is really the question.

18 I am not standing before the Court arguing that 30
19 months is not appropriate on the accessory after the
20 fact. There are a lot of benefits for him. There are a
21 lot of deterrents, but I am not going to stand here and
22 argue given all the part that 30 months would not be
23 appropriate.

24 The question that we said applying the 3555 factors
25 is, does the Court need to do more. Looking at the

1 threats applying the facts to the threats, we have
2 understand where Mr. Brown was in his mental health. His
3 statement what has been otherwise lucid and sometimes
4 controversial person, the threats were completely
5 uncharacteristic of him. They were a meltdown --
6 the Court has the entire transcript -- a rage, if you
7 will, for which he expressed remorse and will express
8 remarks.

9 THE COURT: You said the threats need to be
10 looked at in terms of Mr. Brown's mental state, and I
11 understand your position on that, and I guess I will let
12 you finish because you can be thinking about this. When
13 a threat is made, the intended victim or intended target
14 does not know that.

15 MR. SWIFT: That is absolutely true.

16 THE COURT: I have no way -- if a threat were
17 made to me, I would have no way of assessing the mental
18 -- necessarily assessing the mental state of that
19 person.

20 So you have a public official who is conducting an
21 investigation or part of an investigation and threats are
22 made not only to him, but also to harm his children.

23 You know, one concern of Congress was that you make
24 threats to individuals. Individuals are intimidated.
25 They are afraid. They are harassed.

1 When you talk about a public official or any public
2 official, not just public official in this case, but that
3 can have a chilling effect on that individual doing his
4 or her job.

5 MR. SWIFT: I agree on all of that.

6 THE COURT: I would like for you to address that.

7 MR. SWIFT: The first part is I agree. That is
8 why Mr. Brown pled guilty to the statements he made.
9 When applying the 3555, you need to apply that factor. I
10 do also say that we need to look at in applying a
11 punishment not greater or sufficient but not greater. We
12 need to look at Mr. Brown at the time that he makes the
13 threats. We need to look at where he is at, and at that
14 particular time, he in some respects admirably, but
15 foolishly by all reports had gone off of drug medication
16 and is in the process of the equivalent of a nervous
17 breakdown.

18 So one of the things the Court has to ask itself is
19 in appointing a punishment here on what is beyond is
20 Mr. Brown likely to do this again? Is this abnormal or
21 abhorrent conduct for him or is this normal conduct? I
22 would say to Your Honor, that it is abnormal. It is not
23 representative of him, and that is another factor to be
24 put on the scale, to be put on the scale, at the time is
25 the seriousness of the conduct. Those are both things

1 that Your Honor is weighing, and so what I am saying to
2 Your Honor is that there -- the factors of his mental
3 health, et cetera, is something else you should be
4 looking at in determining what additional punishment
5 should be made for the threats.

6 The other part I think you have to look at in part
7 on it is the unique world of the internet in that part,
8 and the conversation and part in which we behave on the
9 internet. If Your Honor googled this morning Deflategate
10 with the Patriots, we would see --

11 THE COURT: You would see Bill Belichick's name.

12 MR. SWIFT: We would see people in the comment
13 section going on and on, and I cannot believe that anyone
14 would behave that way in the public square. At least I
15 would hope not.

16 I would hope they would not say these things to one
17 another, but in the internet world we often do, and so it
18 goes over the top, and so the next thing I think that
19 needs to be looked at inside the threat is where it
20 occurs in judging on that level is that they go over the
21 top.

22 I realize that that may have a -- still has an
23 effect on the agent, but I would also point out that the
24 threats -- first, the threats that Mr. Brown was
25 convicted of by the way are threats to do actual physical

1 harm. That is why it carries the five years sentence,
2 and those threats were not made against the agent or his
3 family.

4 They are listed as other ones or additional threats
5 that were made, but the threats he made very clear were
6 not to do physical harm.

7 They were simply in Mr. Brown's chats to dox them or
8 expose, ridicule them, put out information about them
9 that would lessen them in the public esteem, and so the
10 threats that he makes that I wanted to address in that
11 part of the over the top to the FBI of things that I have
12 not gone into, if people come, I will shoot them, et
13 cetera.

14 While it could be taken credible, need to be looked
15 at in the context -- in the context of the internet and
16 in the context of these type of conversations when
17 weighing -- we pled guilty, but on weighing the severity
18 of the threat.

19 THE COURT: Well, let me ask you this. When were
20 the threats made? September 12, 2012?

21 MR. SWIFT: That's correct, Your Honor.

22 THE COURT: What had taken place before then?

23 MR. SWIFT: Well, during the period of time his
24 mother -- what had happened was he was under
25 investigation from March on. During that period of time,

1 Judge, he began --

2 THE COURT: That is my precise point, that he was
3 under investigation, and he made these threats. Whether
4 he made them out of anger. He made threats. There was
5 an investigation going on.

6 All right, so it appears that he was upset about
7 prior activities, prior incidents. He made threats, and
8 there was some strong language used regarding Special
9 Agent Smith, his children, and even what he would do if
10 any FBI agents or government officials came to where he
11 lived. I don't think there is any mistake as to what was
12 said.

13 MR. SWIFT: No, Your Honor, there is not.

14 THE COURT: So what I am saying is we need to
15 put those threats in the proper context, and so I don't
16 know that your analogy about Deflategate was necessarily
17 on point. Here we have an ongoing investigation and
18 based upon my review of the record, these threats came
19 after the other two offenses were committed.

20 MR. SWIFT: That's correct.

21 THE COURT: And there were other things going on
22 to with his mother and all of that. The whole
23 obstruction of justice charge was that there were
24 computers hidden or tried to be hidden from the FBI.

25 So I am saying, that was a culmination of a lot of

1 activity or interaction between him and the government.
2 I just want make certain we put everything in the proper
3 context.

4 MR. SWIFT: Yes, Your Honor. The other thing I
5 would add is you skipped over clearly the threats the
6 things he becomes upset about and pushes him over the
7 edge and one that brings it a little more back to an
8 immediate stimulus was that his mother was going to be
9 arrested and charged for what basically is his conduct in
10 all of this, that she has been brought into this, and
11 that has an extraordinary effect.

12 I think that all of us can relate to because family,
13 you know, I have often said you can say anything you want
14 about me, but I have a problem with you saying something
15 about my mom. I think that is a generation of which we
16 understand and grow up and that is common part. It
17 doesn't excuse -- it doesn't say that I hit -- it doesn't
18 say those things, but it does give a reason beyond simply
19 I am trying to stop them from investigating me.

20 He had been under investigation for a long time. He
21 broke. He broke, and he ranted, and he raved, and he
22 said all of these things, and we agree that a reasonable
23 person could take them seriously, and that under those
24 circumstances they constituted a threat. However, the
25 Court is still left with the fact that it is a rant and a

1 rave.

2 It is atypical that he breaks at the end of it to
3 ask yourself what additional punishment should be
4 warranted for that beyond 30 months? By either running a
5 sentence -- there are several ways the Court could do it,
6 but really it comes down to what additional punishment
7 should be warranted in this case for those threats.

8 Our argument to Your Honor is that at no means
9 should it be -- we believe that it is reasonable to say
10 that the 30 months covers all, but if the Court disagrees
11 and says that there needs be -- we look at it by saying
12 that sentencing at the max for the major offense gets us
13 there.

14 If the Court doesn't believe that is a reasonable
15 sentence, when we look at those is somewhere in the
16 neighborhood and sentences -- somewhere around 12 months
17 additional time and -- no more than 12 months additional
18 time for those threats.

19 We would also look at the Court -- in rehabilitating
20 of Mr. Brown. One of the things that I think should be
21 clear to the Court is he had been under investigation for
22 a very long time.

23 Mr. Brown is an extraordinary talented person as a
24 writer. You heard from the letters and all of those
25 parties.

1 One of the things that we want to accomplish is to
2 rehabilitate Mr. Brown. It is a voice we want to hear
3 from. As a society, as a writer, he is a benefit.

4 He may not always be in agreement with society, but
5 those type of voices are the ones that have made America
6 stronger over time, but it is also clear if Mr. Brown
7 continues to utilize narcotics, that not only will he
8 shorten his own life, he will cut short his voice and he
9 is likely to make similar mistakes.

10 It should not be lost on the Court on your part
11 during this period of time Mr. Brown has abused narcotics
12 from an early age and this had significant effects both
13 when Mr. Brown was committing the offenses and I dare say
14 that probably had significant effects in pushing him from
15 that line of journalist to something else, but also when
16 he tried to go off the narcotics abruptly it was wild
17 personality swings and those types of things. Therefore,
18 we believe it is very important that Mr. Brown get
19 treatment for his narcotics addiction when he comes out.

20 Although, he has been in a forcible sober state, we
21 would recommend that the Court use part of its time and
22 in fact even in the threats time and additional probation
23 time to mandate treatment. Mr. Brown parents are able to
24 afford it and will afford it. We have offered that
25 evidence to the Court.

1 This isn't a pipe dream. It can happen and the
2 Court can use part of its power by mandating this under
3 probation and holding a sentence over Mr. Brown's head as
4 part of that.

5 We think that that will do a significant benefit not
6 only for Mr. Brown, but society and here in this case
7 safe the taxpayers money.

8 The last part that I think you need to keep in mind,
9 Your Honor, when putting down a sentence and this is from
10 all the letters that you have received is we want to make
11 sure whatever you do we don't overkill.

12 Journalists and others are very concerned. You've
13 heard from journalists. You have heard from members of
14 the public. You've heard from professors. You've heard
15 from sociologists, from a wide group of people, and they
16 are concerned.

17 To give but one example that significantly changed
18 the sentence, two months for a link. There is great
19 concern for Mr. Brown's case. He did not plead guilty to
20 it, but his sentence is being arguably enhanced under the
21 government.

22 If I as a journalist send a link with thousands and
23 thousands and thousands of documents in it from one of
24 these parts, and I post it, I may be potentially liable
25 unless I can't post or send anything in the digital age

1 without knowing exactly what is in it.

2 THE COURT: Well, I really think it is a bit
3 more than that. And I do not want to recap the evidence
4 and the paragraphs that I talked about, the testimony
5 from the agent, and the exhibits and all of that, but you
6 have to consider the totality of the conduct.

7 When I consider the totality of the conduct, I ruled
8 the way I did because I think that he was more involved
9 than what he wants me to believe, and I am not basing
10 that on argument, I am basing that on a collection of
11 documents and some testimony.

12 You look -- oh, by the way, I am drawing reasonable
13 inferences from that testimony and from that
14 documentation, and you are doing your job. You are
15 supposed to minimize his conduct. That is why he has all
16 these smart lawyers, but I have to look down through the
17 water and see if there are any fish. I have to see what
18 the real issue is. And all I am saying is his
19 involvement in posting that link is more than what it
20 appears or what the defense wants the Court to think.

21 There is a lot of evidence surrounding that, and you
22 read the PSR. You look at those exhibits, and in my
23 mind, there is no question that it is more than just a
24 mere posting of a link.

25 You get a view of that evidence and consider that

1 testimony. All I have to say is he was more involved
2 than he wants the Court to believe and I think that is
3 more than adequately supported by the record, and I did
4 not go into each particular fact because we will be here
5 until tomorrow. But if the Fifth Circuit wants to review
6 it, I think the Fifth Circuit will be convinced that he
7 was more involved than what I am being led to believe at
8 this moment. So I guess what I am saying is what took
9 place is not going to chill any First Amendment
10 expression by journalists.

11 As I stated earlier, -- well, that is on something
12 else, but I will stand by my statement that what the
13 Court is doing with respect to that is not going to chill
14 any First Amendment expression by any journalist because
15 it was more than just the mere posting. It goes to his
16 involvement with others who were involved in this same
17 activity. That is why I found that that was relevant
18 conduct, and that conduct was foreseeable. You may
19 proceed.

20 MR. SWIFT: Yes, Your Honor. Well, I don't
21 disagree. Again, I agree with the Court that Mr. Brown
22 crossed a line in that part. What I think and one might
23 take from Ms. Quinn's testimony and others is how close
24 it can be to crossing a line, and what I am concerned
25 about is the chilling of journalists and what they are

1 concerned about is at this line. If the sentence for
2 crossing a line is extreme, then the effect will be that
3 others will not get close to the line and it is in this
4 area that I am concerned.

5 I think the Court should consider deterrence.
6 Obviously, the Court has given a significant thought to
7 it, but I said the reasons others are concerned, many
8 have written to the Court, et cetera, out of concern is
9 that there is a concern of that chilling factor and a
10 recognition of the value for the work Mr. Brown has
11 done. At the end, as I said to Your Honor, this -- the
12 defense -- adding all that up on his level of involvement
13 sits there and says, okay, still that would take him for
14 this crime to a maximum of 30 months for the accessory
15 after the fact and putting out what Congress has passed,
16 and our argument is that a maximum on an accessory after
17 the fact certainly addresses both of the facts that Your
18 Honor has put out and without overdoing the concerns that
19 have been put out.

20 As I said, I believe we argue that a sentence -- if
21 Your Honor believes that it is necessary running an
22 additional sentence consecutively on 18 months -- excuse
23 me for 12 months, for 12 months on the threats charge,
24 more than accomplishes what is adequate there when taking
25 into effect all of the 3555 factors and not awarding a

1 sentence that is greater than necessary. Thank you, Your
2 Honor, unless have you questions of which I am happy to
3 answer.

4 THE COURT: Not at this time. I may have some
5 later on.

6 MR. SWIFT: Thank you.

7 THE COURT: Thank you, Mr. Swift. All right,
8 Mr. Brown, you may address me at this time and present
9 any information that you would like in mitigation of your
10 sentence. In other words, if there is something that you
11 would like to tell the Court before the Court imposes
12 sentence, you may do so at this time.

13 THE DEFENDANT BROWN: Yes, Your Honor.

14 THE COURT: Approach the lectern.

15 THE DEFENDANT BROWN: Good morning.

16 MS. CADEDDU: He can't hear very well, Your
17 Honor.

18 THE DEFENDANT BROWN: The allocution I give is
19 going to be different from the sort that usually includes
20 a sentencing hearing because this is an unusual case
21 touching upon unusual issues. It is also a very public
22 case, not just in the sense that it has involved closely
23 by the public, but also in the sense that it has
24 implications to the public, and even in the sense that
25 the public has played a major role because, of course,

1 the great majority of the funds for my defense were
2 donated by the public. So now I have three duties I must
3 carry out. I must express my regret, but I also must
4 express my gratitude.

5 I also have to take this opportunity to ensure that
6 the public understands what has been at stake in this
7 case and why it has proceeded in the way that it has.
8 Because, of course, the public didn't simply pay for my
9 defense through its donations paid for my prosecution for
10 their tax dollar and the public has a right to know what
11 it is paying for, and Your Honor has a need to know the
12 implication of what he is ruling on today.

13 First, I will speak to regret like nearly all
14 federal defendants, I hope convince Your Honor that I
15 sincerely regret some of the things that I have done. I
16 don't think anyone doubts that I regret quite a bit about
17 my life including some of the things that have brought me
18 here today.

19 Your Honor has the sentencing responsibility
20 statements that my employers provided to you. Every word
21 of that was sincere. The videos were idiotic, and
22 although I made them in a manic state brought on by a
23 sudden withdrawal from Paxil and Suboxone and stress
24 brought on due to threats to prosecute my mother as well
25 as revelations that have now circulated in the press

1 regarding misconduct by a certain company approaching the
2 FBI in this investigation, that still means those YouTube
3 footage talking nonsense about the FBI not taking me
4 alive and all of that.

5 Likewise, I didn't have the right to hide my files
6 from the FBI during a lawful investigation. And I would
7 have had a better chance of protecting my contacts in
8 foreign countries if I pursued the matters in the court
9 after the raid rather than stupidly trying to hide in the
10 kitchen cabinet as my mother and I did in regard to
11 relating to the effort to redact sensitive matter after
12 the Stratfor hack.

13 I explained to Your Honor in my statements that I do
14 not want to be a hypocrite. If I criticized the
15 government for breaking the law, and then break the law
16 myself in an effort to reveal their wrongdoing, I should
17 expect to be punished just as I caused the criminal act
18 of the government link of HPGary and Palton to be
19 punished.

20 When we start fighting crimes by any means
21 necessary, we become guilty of the same gynocracy as law
22 enforcement agencies throughout history that break the
23 rules to get the villains and so become villains
24 themselves.

25 I am going to say a few more words about regrets in a

1 moment, but for now I am going to get to an unusual part
2 of the allocution. I am going to make a few criticisms
3 of the man in which the government pursued this case.
4 Normally, this sort of thing is left to one's lawyers
5 because if you do otherwise, you run the risk of the
6 defendant seeming combative rather than contrite.

7 I think Your Honor understands that one can regret
8 the unjust things that one has done while also being
9 concerned about the unjust things that have been done to
10 him and which thus might be done to others.

11 Based upon certain statements that Your Honor has
12 made as well as the one particular ruling, I have cause
13 to believe that Your Honor will understand that perhaps
14 even sympathize with the unusual responsibility I have
15 today which makes it necessary that I point out some
16 things very briefly.

17 I do so with respect to Your Honor, but I also do it
18 for selfish reasons. I want to make absolute certain
19 that Your Honor is made aware that the picture the
20 government has painted for you of me is a false one.
21 Even aside from the several First Amendment issues that
22 have already been wildly discussed as a result of this
23 case, there is also the matter of the dozens of people
24 around the world who have contributed to my think tank
25 Project PM by writing for a public website Echelon2.org.

1 Quite incredibly, the government has declared these
2 contributors, some of them journalists to be criminals
3 and participants in a criminal conspiracy. As such, the
4 government has sought from this Court a subpoena by which
5 to obtain the identities of all of my contributors. Your
6 Honor denied that motion last year, and I am very
7 grateful to Your Honor for having done so.

8 Unfortunately, the government thereafter went around
9 Your Honor and sought to obtain these records by other
10 means. Now, those dozens of people who have given their
11 time and expertise for which have been held as
12 journalists or advocacy groups as a crucial enterprise
13 are now at risk of being indicted under the same sort of
14 spurious charges that I was facing not long ago when the
15 government exposed me to decades of prison times for
16 copying and pasting a link to a publicly available file
17 that other journalists were also linking too without
18 being prosecuted for it.

19 They are now resorted to arguing because I managed to
20 determine after downloading the file that it did not
21 contain the millions of e-mails I was expecting that it
22 necessary follows that I must have therefore known before
23 downloading the file that it contained no e-mails at all.
24 This not only fails to make sense. It fails to make
25 sense on several different levels.

1 The fact that the government has still asked you to
2 punish me for that link is proof that any more were
3 needed that those of advocates against government secrecy
4 are to be pursued without regard for the rule of law or
5 even common decency.

6 Your Honor, I understand this is my sentencing
7 hearing and not an inquiry to the government's conduct.
8 This is not a place to go into the government's
9 demonstrable errors and contradictions to be found in the
10 government's documentation and the testimony given by the
11 government. But it would hypocritical of me to attest to
12 the government's conduct and not provide Your Honor with
13 at least one example here in addition to the examples
14 ascertained by our previous filings.

15 I would do so very briefly. September 13, 2012,
16 bond hearing, held Magistrate Judge Stickney's court the
17 day after my arrest, Special Agent Allyn Lynd took the
18 stand and claimed under oath that in reviewing my laptops
19 he found discussions in which I admit to having engaged
20 in, quote swatting, unquote, which he referred to as
21 quote, violent conduct, unquote.

22 Your Honor may not be familiar with the term
23 "swatting" as Mr. Lynd described it at the hearing, it
24 is, quote, where they try to place a false 911 call to
25 the residence of an individual in order to endanger that

1 individual, unquote. He went on to elaborate at length
2 about this presenting it as the key reason why I should
3 not receive bond.

4 Your Honor will have noted that this has never come
5 up again. That is because Mr. Lynd's claims were
6 entirely untrue, but that did not stop him from making
7 them, any more than it stopped him from planning at that
8 hearing that I have lived in the Middle East, a region I
9 have never had the pleasure of visiting.

10 Your Honor, this is one example from a single
11 hearing -- I could have picked others, if Your Honor can
12 extrapolate, Your Honor can get a sense how much value to
13 be placed on the rest of the government's testimony in
14 this case including that which pertains to the linking
15 issue.

16 Likewise, Your Honor can probably understand the
17 concerns I have about what my contributors might be
18 subjected to by the government if this sort of behavior
19 proves effective today.

20 Naturally, I hope Your Honor will keep this in mind
21 and I hope other districts and this judge as well because
22 again that remains a great concern that my associates
23 will be next to be indicted.

24 I tried to protect my contributors, Your Honor, and
25 I try to protect the public's right to link to source

1 materials without being subjected to misuse of the
2 statute.

3 Last year when the government offered me a plea
4 bargain, whereby I could plead to one of the 11 fraud
5 charges related to linking and told me it was final, I
6 turned it down. To have accepted that plea with a
7 two-year sentence would have been convenient for me.
8 Your Honor will note that I actually did eventually plead
9 to an accessory charge with potentially more prison time,
10 but it would have been wrong.

11 Even aside from the obvious fact that I did not
12 commit fraud and thus couldn't sign onto any such thing
13 to do so would have also caused a dangerous precedent.
14 It would have endangered my colleagues each of whom would
15 now have been depicted as a former associate of a
16 convicted fraudster and given the government particularly
17 the FBI one more tool by which to persecute journalists
18 and activists who they deem are dangerous or undesirable,
19 just as they did in the early 70's and late 60's.

20 Journalists are especially vulnerable right now, Your
21 Honor, they will become more so when the FBI starts
22 making false claims about them.

23 In response to our motion to dismiss the charges for
24 obstruction of justice based upon the hiding of laptops,
25 the government claimed that those laptops contained

1 evidence of a plot I orchestrated to attack the kingdom
2 of Bahrain on the orders of Amber Lyon. Your Honor,
3 Amber Lyon is a journalist and former CNN reporter who I
4 do know and respect, but I can assure Your Honor I am not
5 in the habit of attacking foreign state anarchies on her
6 behalf.

7 I think it is unjust to use this court to throw off
8 that sort of Ms. Lyon in a public filing as they did if
9 they are not prepared to back it up, and they are not
10 prepared to back it up. But that won't stop the kingdom
11 Bahrain from repeating this assertion and perhaps in
12 keeping Ms. Lyon out of the country because she has
13 indeed reported on the Bahrain monarchy's violent
14 crackdowns on pro-democracy protests in that country and
15 she has done so from that country. And if she ever
16 returns to that country to continue that important work,
17 she will now be subject to arrest on the grounds of the
18 United States Department of Justice itself has explicitly
19 accused of orchestrating an attack on that country's
20 government.

21 Your Honor, this is extraordinary. This is really
22 extraordinary. Ms. Lyon isn't the only journalist who
23 has been made less secure legally by this prosecution.
24 Every journalist in the United States has put at risk by
25 the novel and sometimes radical claims that the

1 government has advance particularly in the sentencing
2 process.

3 The government now asserts I am not a journalist and
4 thus unable to claim the First Amendment protections
5 guaranteed to those engaged in information gathering
6 activity.

7 Your Honor, I have not denied that I'm involved in
8 Anonymous. I never denied that. That means different
9 things at different times in different situations, and I
10 will ask you to not rely on certain information in the
11 PSR and certain claims made previously by the
12 government. This government asserts that I am not a
13 journalist and that seems to be the issue because they
14 made this several times.

15 Your Honor, I have been employed as a journalist for
16 much of my adult life. I have written for dozens of
17 magazines and newspapers, and I am the author of two
18 published and critically-acclaimed books that's
19 nonfiction. Your Honor has received letters from editors
20 who have published my journalistic work as well as
21 award-winning journalist Rick Greenwald who notes they
22 have used that work in their own articles. If I am not
23 a journalist, Your Honor, then there are many, many
24 people in this country who are also not journalists
25 without even realizing it, and thus at risk as I am.

1 Your Honor, it would be one thing if the government
2 were putting the standard by which a journalist can be
3 defined. They have not put forth such a standard. Their
4 assertion rests on the fact that despite having referred
5 to myself as a journalist hundreds of times, I at one
6 period rejected that term, much in the same way that
7 someone running for office might reject the term
8 politician.

9 Now, the government has introduce a new standard
10 whereby anyone who once denied being a particular thing,
11 is no longer that thing in a legal sense, that at least
12 would be a firm and noble criteria even if problematic in
13 several cases, but that is not what the government is
14 doing in this case.

15 Consider, for instance, I have denied being the
16 spokesperson for Anonymous hundreds of time both public
17 and private ever sense the press begin calling me that in
18 the beginning of 2011. On a couple of occasions when I
19 contacted executives of contracting firms like Booz Allen
20 Hamilton in the wake of reservations that they have been
21 spying on my associates and I for reasons that we were
22 naturally quite anxious to ascertain, I did indeed
23 pretend to be an actual official spokesperson for
24 Anonymous because I wanted to encourage those particular
25 people to talk to me and they did.

1 Of course, I explained this many, many times, and the
2 government itself knows this even if they have since
3 claimed otherwise. In that September 13th criminal
4 complaint filed against me, the FBI itself acknowledges
5 that I do not claim any official role with Anonymous.
6 Likewise in last month's hearing, the prosecutor slipped
7 and referred to me as a journalist even after having
8 previously found it necessary to deny me that title. But
9 there you have it. Deny being a spokesperson for
10 Anonymous hundreds times, and spokesperson for
11 Anonymous. Deny being a journalist once or twice, and
12 you are not a journalist.

13 What conclusion can one draw from this sort of
14 reasoning other than that you are whatever the FBI finds
15 convenient for you to be at any given time. This is not
16 the rule of law, Your Honor. It is the rule of law
17 enforcement and it is very, very dangerous.

18 Your Honor, I am asking you to give me a time served
19 sentence of 30 months because to do otherwise I believe
20 would have effect of rewarding this sort of reckless
21 behavior on the part of the government. I have been
22 punished for my reckless behavior. I acknowledge my
23 reckless behavior.

24 There is a great deal about my life, Your Honor, that
25 drug use, poor decisions, unfairness to my opponents,

1 crossing the line multiple times with Anonymous that I
2 have never denied ever. But I am asking for that
3 particular sentence today because again as my lawyer
4 argued and acknowledged based upon the guidelines has
5 pointed out that was what the actual facts of the case
6 perceived upon, and the public to the extent that it has
7 made a voice heard through letters and donations and
8 op-eds in major newspapers also believes the
9 circumstances warrant at.

10 I would ask that the government believes the facts
11 warrant my release today because look at all the lies
12 they would have to tell to keep me in prison. I thank
13 you for your indulgence, Your Honor.

14 I want conclude by thanking everywhere who has
15 supported my defense over the past few years. I need to
16 single out one person in particular who is here today,
17 Kevin Gallagher who contributed to my Project PM group
18 and who stepped up immediately after my arrest to build
19 up a citizens initiative group to raise money for my the
20 defense and spread the word by what was at stake in this
21 case.

22 The two and a half years of my incarceration, Kevin
23 has literally spent the bulk of his free time working to
24 give me my life back. He is one of the extraordinary
25 people who has given of himself to make possible this

1 great and beautiful movement of ours. This movement will
2 protect activists and journalists from secretive and
3 secret retaliation by powerful corporate actors with ties
4 to the state and the FBI in particular.

5 Your Honor, Kevin Gallagher is not a relative of mind
6 or childhood friend. This is only third time I have been
7 in the same room with him. Nonetheless, he has dedicated
8 two years of his life to ensure that I have the best
9 possible lawyers on this case and to ensure that the
10 press understood what was at stake here.

11 Your Honor, he even set up something on Amazon where
12 I could ask for books on particular subjects and
13 supporters could buy them and have them sent to me, and
14 he spoke to my mother several times a week.

15 During that early period when I was facing over
16 hundred years worth of charges and wasn't clear whether
17 or not I would ever be coming home, he would offer
18 support and reassurance to her, an effort that I will
19 never be able to repay. He knows how much I regret the
20 pain and heartbreak that my family has suffered during
21 this ordeal.

22 A few weeks ago, Kevin got a job to be with the Press
23 Foundation one of the world's most widely-respected
24 advocacy organizations, and according to the government,
25 he is also a member of a criminal organization because

1 like other journalists and activists across the world, he
2 has been a contributor to Project PM, and the government
3 has determined Project PM to be criminal enterprise.

4 I think the government is wrong about Kevin, Your
5 Honor, but that is not why I brought him up. I am glad
6 for this opportunity to express my gratitude to him in a
7 public setting, there are some gifts for which
8 conventional gratitude is indeed insufficient payment.
9 One can only respond to such gifts by working to become
10 the sort of person that actually deserves to receive
11 them. I thank you will have to suffice as I am not
12 bringing him up here merely to thank, instead I am using
13 him in my defense. Your Honor, this very noble person,
14 this truly exemplary citizen who takes his citizenship
15 seriously rather than taking it for granted, knows pretty
16 much everything there is to know about me, my life, my
17 past, my work from the things I have done and things I
18 left undone to the things I should not have done at all,
19 and he has given himself over to the cause of freeing me
20 today. He is the exact sort of person I try to recruit
21 with crucial work we do with Project PM. I am so proud
22 to have someone like him doing so much more.

23 Your Honor, the last thing I will say in my own
24 defense is that so many people like Kevin Gallagher
25 worked on my behalf. Having now said all the things I

1 need to say, I respectfully submit to Your Honor's
2 decision.

3 THE COURT: All right, thank you, Mr. Brown.

4 All right, Ms. Heath, would the government like to be
5 heard?

6 THE COURT: Excuse me. Anything further from
7 the defense?

8 MS. CAEDDU: No, Your Honor.

9 THE COURT: Thank you, Ms. Cadeddu.

10 Ms. Heath, would the government like to be heard?

11 MS. HEATH: Yes, Your Honor.

12 THE COURT: All right, you may proceed.

13 MS. HEATH: Your Honor, in this case the
14 government did not prosecute Mr. Brown for political
15 reasons for being a pseudo-former journalist or current
16 journalist or to stifle his First Amendment rights or
17 anybody's First Amendment rights. The government's
18 investigation of Mr. Brown was based entirely on own
19 admissions of engaging and repeatedly committing criminal
20 acts such as participating and facilitating hacking of
21 secure networks of corporations, targeting corporations
22 and individuals for attack, extorting individuals,
23 possessing and disseminating stolen data such as personal
24 identifying information and credit card information.

25 The government's arrest of Mr. Brown was based on

1 the fact that he began the series of threats. He started
2 out soon after the searches and began doxing the agent to
3 find out who the agent was and where the agent lived.
4 Then for a couple weeks before his arrest, those threats
5 escalated to the point of threatening to shoot, showing
6 himself shooting videos on YouTube, and giving an
7 ultimatum to the agent. I bring this up, Your Honor
8 because the Defense wishes to explain away Mr. Brown's
9 conduct based upon poor judgment, drug use, intoxication,
10 desire to protect his work product, or the desire to
11 protect his mother, pretext of being a journalist, his
12 desire to reclaim property that was seized by the FBI
13 when, in fact, this is a good example of Mr. Brown, and
14 Mr. Brown's character. Mr. Brown's character are the
15 characteristics of the offender are one of the 3553
16 factors that this Court can take into consideration.

17 So the entirety of Mr. Brown's involvement in this
18 case, the threats, the obstruction, assisting individuals
19 engaged in hacking, disseminating personal identifying
20 information, and credit card information, extorting
21 individuals, all of the relevant conduct goes to what
22 type of character Mr. Brown has.

23 In this case the claims that he has as far as poor
24 judgment or drug problems, these issues have been with
25 Mr. Brown apparently for his entire adult life, and there

1 is no indication that this was anything out of the
2 normality for Mr. Brown's activities.

3 Respect for the law is another characteristic that
4 the Court can take into consideration for 3553, and the
5 government would contend that the character of the
6 Defendant in this case and the actions that he has
7 engaged in by himself and with other individuals has
8 shown through the relevant conduct shows that there is
9 very little respect for the law as can be seen from his
10 allocution. There is very little respect for abiding by
11 the law, following the law.

12 The government would contend that with regard to
13 activities engaged in by Mr. Brown in his association
14 with Anonymous members that retaliation was a way of
15 life. If you did not like something somebody did,
16 something a corporation did, you would retaliate, so very
17 much being vigilantes going outside the law to do their
18 own manner of finding justice, so there has been no
19 showing that Mr. Brown has any respect for the law, so
20 the sentence in this case must show that an individual
21 should have respect for the law and should acknowledge
22 the seriousness of the offense.

23 Mr. Brown benefited greatly from the plea agreement
24 that he was allowed to enter into in this case. The
25 government offered him and has always been offering him

1 the ability to plead to one count from each indictment.
2 In this case, the plea agreement reached capped
3 Mr. Brown's exposure at 8 and a half years.

4 As can be seen from the pre-sentence report,
5 Mr. Brown could have faced up to 235 months for the
6 entirety of his conduct, had the remaining counts in the
7 indictment gone to trial, so Mr. Brown benefited greatly
8 by this particular plea agreement. The government would
9 contend that the top of the plea agreement, the 8 and a
10 half years is actually the most appropriate sentence for
11 Mr. Brown in this case and appropriate pursuant to the
12 3553 factors. However, acknowledging that the guidelines
13 is a guide that the Court can use in order to impose a
14 sentence, the government understands that the top of the
15 guidelines in this case is merely 63 months. Therefore,
16 the government would request that the Court sentence
17 Mr. Brown based upon the guidelines recommendations as
18 well as the 3553 factors to at least the 63 months that
19 the guidelines allow itself Court to sentence, and the
20 government does and this the Court is not bound by the
21 guidelines, but in this case since there has been no
22 notice by the Court that it intends to go above the
23 guidelines range the government understands that the
24 sentence may very well be just the 63 months which the
25 guideline range recommends.

1 THE COURT: All right, thank you, Ms. Heath.

2 All right, we are going to take a 30-minute break.
3 We will reconvene at 12:45, and at the time the Court
4 will impose sentence.

5 THE COURT SECURITY OFFICER: All rise.

6 (A RECESS WAS HAD.)

7 THE COURT SECURITY OFFICER: All rise.

8 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT, WITH
9 ALL PARTIES AND COUNSEL PRESENT.)

10 THE COURT: Ms. Foster, let me see you a minute
11 at the bench.

12 (AN OFF-THE-RECORD DISCUSSION WAS HAD WITH THE
13 PROBATION OFFICER AT THE BENCH.)

14 THE COURT: All right, Ms. Heath.

15 MS. HEATH: Yes, Your Honor. Over the break, I
16 was reminded that the guidelines Section 3D1.4
17 determining the combined offense level on grouping, that
18 it appears that one additional level should be added to
19 the offense level in that the offense would be greater or
20 the most serious group would count as one level, and then
21 the threat count is one -- is about six levels less than
22 the serious group, so that would be a half level, or a
23 half unit, so one and a half units would require the
24 inclusion of one additional level in the offense level.

25 As a second point, I just wanted to state that I

1 believe I inferred that the Court could not go above the
2 63 months or the top of the guidelines which IS another
3 offense level is added, that would be 71 without notice,
4 but that would only be if the Court were departing on
5 some other factors other than what has been brought up in
6 the pleadings today and in the prior hearing and the
7 hearing today, and that is pursuant to Sentencing
8 Guidelines Section 6A1.4. I just wanted to clarify that,
9 Your Honor.

10 THE COURT: Okay, you said a mouthful there. You
11 said it increases the guidelines, the offense level by
12 1. Is that what you said?

13 MS. HEATH: Correct, Your Honor.

14 THE COURT: All right, so the Court has made a
15 determination earlier of --

16 MS. HEATH: 23.

17 THE COURT: 23 right, and a criminal history
18 category that gives a guideline range of 51 to 63 months,
19 and you are saying now the level should be 24.

20 MS. HEATH: Correct, Your Honor, according to
21 the guidelines calculation.

22 THE COURT: Which would yield a range of 57 to
23 71; is that correct?

24 MS. HEATH: That is correct.

25 THE COURT: What section are you citing?

1 MS. HEATH: That would be guidelines Section
2 3D1.4.

3 THE COURT: Ms. Cadeddu, any response?

4 MS. CADEDDU: Well, no, Your Honor. I am not
5 sure that I fully understand the Court's articulation of
6 how the counts were grouped earlier, so you know, the
7 grouping rules are what they are, and -- and I hate to
8 ask the Court to go back on its calculation, but I wasn't
9 exactly sure how the Court had grouped those counts after
10 resolving both sets of objections.

11 THE COURT: All right, Ms. Foster, can I see you
12 a minute.

13 (AN OFF-THE-RECORD DISCUSSION WAS HAD WITH THE
14 PROBATION OFFICER.)

15 THE COURT: In light of what the Court has done
16 previously, the Court is going to leave the guideline
17 calculation as previously determined, that is, the range
18 of 23 criminal history, category II. With an offense
19 level of 23, criminal history category II, that leaves
20 the range at 51 to 63.

21 Is there any reason why sentence cannot be lawfully
22 imposed at this point?

23 MS. CADEDDU: No, Your Honor.

24 MS. HEATH: No, Your Honor.

25 MS. CADEDDU: No, Your Honor.

1 THE COURT: All right, Mr. Brown, would you and
2 Counsel approach the lectern.

3 The Court has determined that the advisory guideline
4 range is 51 to 63 months. The Court has also considered
5 the statutory factors under Title 18 United States Code
6 Section 3553(a)(1) through (7).

7 The Court has considered all of the exhibits that
8 have been admitted during the course of this
9 hearing. The Court has also considered the arguments of
10 Counsel, that is, Counsel for the government and Counsel
11 for the defense.

12 The Court has heard from one person, Mr. Tim
13 Rodgers. The Court has also heard from Mr. Barrett Brown
14 the Defendant, and when the Court has said it has
15 considered all of the information and evidence in this
16 case, that also relates to the numerous letters that the
17 Court has received earlier on behalf of Mr. Brown.

18 In considering the guidelines and the statutory
19 factors, the Court believes the sentence is fair, just,
20 and reasonable under the circumstances of this case, in
21 particular, the Court believes that that range is just,
22 fair, and reasonable because of the charge with respect
23 to the internet threats.

24 The Court has already indicated that those threats
25 are serious. The Court has also indicated that what a

1 threat can do with respect to a person in the performance
2 of his or her duties. Perhaps if the threats were not
3 involved in these offenses, the Court might well consider
4 that a sentence below the guidelines would be reasonable,
5 but based upon the threats and the threats are explicit
6 and when you put those together and you follow the
7 sequence of events that were taking place, certainly,
8 those threats are something that the Court has to take
9 seriously and address and all of this is done in
10 conjunction with the factors under paragraph (a)(2) of
11 Section 3553, and those are factors that relate to the
12 seriousness of the offense, protection of the public,
13 just punishment, deterrence of further criminal conduct.
14 When I talk about that, I am not just talking about
15 criminal conduct on the part of Mr. Brown, but others who
16 may be inclined to make threats to public officials in
17 the performance of their duties.

18 I have heard statements made about Mr. Brown's mental
19 state. The problem with that is when threats are made
20 and made over a period of time in relationship to an
21 investigation that is going on, they have to be taken
22 seriously. Threats cannot be taken lightly, and
23 notwithstanding the mental state or drug use by
24 Mr. Brown, the Court believes that he, Mr. Brown, was
25 fully aware of the nature of the threats and what he was

1 doing. Yes, there is one video that indicates that he
2 tries to minimize the threat by saying he is not going to
3 kill the agent, but he is going to make his life
4 difficult, he is going to focus in on his kids, and there
5 are further statements made if the FBI or any government
6 officials try to come to his house or apartment, he is
7 ready for them.

8 There is talk about how good a marksman he is and so
9 forth, and when you combine all of that, it would make
10 any reasonable person believe that those threats are
11 quite real. Accordingly, they have to be addressed by
12 the Court.

13 The judgment of the Court is as follows: The
14 judgment of the Court with respect to Count 1 in case
15 number 3:12-CR-317-L, is that Mr. Barrett Lancaster Brown
16 be committed to the custody of the Federal Bureau of
17 Prisons for a term of 48 months.

18 With respect to Count 1 in case number 3:12-CR-413-L,
19 the judgment of the Court is that Mr. Brown be committed
20 to the custody of the Federal Bureau of Prisons for a
21 term of 12 months, and with respect to Count 2 in case
22 number 3:12-CR-413-L, it is the judgment of the Court
23 that Mr. Brown be committed to the custody of the Federal
24 Bureau of Prisons for a term of three months. The Court
25 orders that these sentences run consecutive to each other

1 for a total term of 63 months.

2 The Court also recommends to the Bureau of Prisons
3 that if Mr. Brown is eligible, that he be allowed to
4 participate in the Bureau of Prisons Comprehensive
5 Residential Treatment Program.

6 The Court will impose no fine against Mr. Brown,
7 because the Court determines that he does not have the
8 financial resources or future earning capacity to pay a
9 fine. In addition to the mandatory restitution that will
10 be ordered, the Court does not desire that the imposition
11 of a fine interfere with Mr. Brown's ability to make
12 restitution as the Court will later order. As required
13 by law, the Court orders that Mr. Brown pay a special
14 assessment of \$100 on Count 1, case number 3:12-CR-317-L;
15 \$100 on Count 1 on case no. 3:12-413; and \$25 on Count 2
16 in case number 3:12-CR-413-L for a total special
17 assessment of \$225.

18 With respect to supervised release, the Court orders
19 the term of supervised release as follows: Two years on
20 Count 1 in case number 3:12-CR-317, and one year as to
21 Counts 1 and 2 in case number 3:12-CR-413. These terms
22 of supervised release are to run concurrently with each
23 other.

24 With respect to the terms of supervised release just
25 imposed by the Court, it is ordered that upon Mr. Brown's

1 release from imprisonment he shall comply with the
2 standard conditions contained in the Court's judgment and
3 shall comply with the mandatory special conditions
4 hereafter stated. He shall not commit another federal,
5 state, or local crime. He shall not illegally possess
6 controlled substances. He shall cooperate in the
7 collection of DNA as directed by the probation officer.
8 He shall not possess a firearm, ammunition, destructive
9 device or any dangerous weapon. He shall report in
10 person to the U.S. probation office in the district to
11 which he is released from the custody of the Federal
12 Bureau of Prisons within 72 hours of release. He is to
13 refrain from any unlawful use of controlled substance.
14 He is to submit to one drug test within 15 days of
15 release from imprisonment and two periodic drug tests
16 thereafter as directed by the probation officer.

17 He shall participate in a program either as an
18 inpatient or outpatient approved by the U.S. Probation
19 Office for treatment of narcotic, drug or alcohol
20 dependency which will include testing for the detection
21 of substance use or abuse.

22 He shall abstain from the use of alcohol and all
23 other intoxicants both during and after completion of
24 treatment. He shall contribute to the cost of services
25 rendered, that is, a copayment at the rate of not less

1 than \$50 per month.

2 Mr. Brown shall participate in mental health
3 treatment services as directed by the probation officer
4 until successfully discharged. These services may
5 include medications prescribed by a licensed physician.
6 He shall contribute to the cost of the services rendered,
7 that is, a copayment at that time rate of at least \$50.
8 He is also ordered to provide to the probation officer
9 all requested financial information.

10 With respect to restitution which the Court
11 determines to be mandatory, Mr. Brown is ordered to pay
12 restitution in the amount of \$890,250, payable to the
13 United States District Clerk. Restitution is payable
14 immediately, and any unpaid balance shall be payable
15 during incarceration.

16 Restitution shall be disbursed to Strategic
17 Forecasting Incorporated in the amount of \$815,000;
18 Combined Systems Incorporated, \$30,000; and the law firm
19 of Puckett and Faraj, \$45,250.

20 If upon commencement of the term of supervised
21 release any part of the restitution remains unpaid,
22 Mr. Brown shall make payments on such unpaid balance in
23 monthly installments of not less than ten percent of his
24 gross monthly income or at a rate of not less than \$50 a
25 month, whichever is greater.

1 Payment shall begin no later than 60 days after his
2 release from confinement and continue each month
3 thereafter until the balance is paid in full.

4 In addition, at least 50 percent of receipts received
5 from gifts, tax returns, inheritances, bonuses, lawsuit
6 awards, and any other receipt of money shall be paid
7 toward the unpaid balance within 15 days of receipt.
8 This payment plan shall not effect the ability of the
9 United States to immediately collect payment in full
10 through garnishment, the Treasury Offset Program, the
11 Inmate Financial Responsibility Act, the Federal Debt
12 Collections Procedures Act of 1990, or any other means
13 available under federal or state law.

14 Pursuant to Title 18 United States Code Section
15 3612(f)(3), the Court waives any interest on the amount
16 of restitution because it determines that Mr. Brown is
17 unable to pay interest on the amount of restitution.

18 Further, Mr. Brown shall not be employed by or
19 affiliated with, own, or control or otherwise participate
20 directly or indirectly in any business that involves
21 access to credit information of other persons including
22 but not limited to handling of credit cards, bank check
23 drafts, or other financial documents without the
24 probation officer's prior approval.

25 Also, Mr. Brown shall participate and comply with

1 the requirements of the computer and internet monitoring
2 program, contributing to the cost of monitoring in an
3 amount not to exceed \$40. He shall consent to the
4 probation officer conducting ongoing monitoring of his
5 computer or computers. The monitoring may include the
6 installation of a hardware and/or software system that
7 allows evaluation of computer use. He shall not remove,
8 tamper with, reverse engineer, or circumvent the software
9 in any way.

10 He shall only use authorized computer systems that
11 are compatible with the software and/or hardware used by
12 the computer internet monitoring program.

13 He shall permit the probation officer to conduct a
14 preliminary computer search prior to the installation of
15 such software. At the discretion of the probation
16 officer, monitoring software may be disabled or removed
17 at any time during the term of supervision.

18 Mr. Brown shall submit to periodic unannounced
19 examinations of his computer storage media and other
20 electronic or internet capable devices performed by the
21 probation officer at reasonable times and in a reasonable
22 manner based upon reasonable suspicion of contraband or a
23 violation of supervision. This may include the retrieval
24 and copying of any prohibited data and or the removal of
25 such systems for the purpose of conducting a more

1 thorough inspection.

2 Mr. Brown shall provide written authorization for
3 release of information from his internet service
4 provider. Mr. Brown shall not use any computer other
5 than the one he is authorized to use without prior
6 approval from the probation officer.

7 Further, Mr. Brown shall not use any software
8 program or device designed to hide, alter, or delete
9 records or analogs of his computer use, internet
10 activities, or files stored on his computer.

11 There has not been any motion filed for a
12 preliminary order of forfeiture, is that correct,
13 Ms. Heath?

14 MS. HEATH That is correct, Your Honor. I
15 believe we do have the Defendant's agreement to
16 relinquish certain properties.

17 THE COURT: That is what I am going to get to. I
18 wanted to make certain I didn't overlook anything with
19 respect to a preliminary order of forfeiture.

20 MS. HEATH: No, Your Honor.

21 THE COURT: Mr. Brown, pursuant to your plea
22 agreement which was filed in April of 2014, there is an
23 attachment to that plea agreement. In fact, the
24 attachment is labeled attachment (A). Based upon your
25 plea agreement, you have agreed to relinquish, give up,

1 and waive any legal right, title, or ownership in the
2 property attached to your plea agreement.

3 Are you aware of that list, sir?

4 THE DEFENDANT BROWN: Yes, I have a procedural
5 question though, Your Honor. The copy of the Declaration
6 of Independence they took from me as evidence. Will I
7 get that back?

8 THE COURT: So what are you saying? First of
9 all, let's deal with this. Before we get off track, you
10 asked me about the -- I asked you about the property
11 forfeiture. Let's deal with that first.

12 THE DEFENDANT BROWN: Right.

13 THE COURT: There is an attachment (A) which
14 lists a number of items.

15 THE DEFENDANT BROWN: Right.

16 THE COURT: Now, according to the plea agreement,
17 you agreed to forfeit that property, that is, you would
18 give up any right, title, or claim to any of the items
19 listed on attachment (A) of the exhibit; is that correct?

20 THE DEFENDANT BROWN: Yes, I understand, Your
21 Honor.

22 THE COURT: All right, Ms. Cadeddu, did you have
23 something?

24 MS. CADEDDU: I would say it appears and I would
25 note for the record that 1B1 item 5 is a book,

1 Declaration of Independence. It would appear he has
2 forfeited his Declaration of Independence.

3 THE COURT: All right, I want to make certain we
4 are on the same page.

5 Do you understand in light of your plea agreement,
6 Mr. Brown, all those items listed in attachment (A) to
7 your plea agreement have been forfeited by you to
8 government. That means you have no title, claim, or
9 interest with respect to any of those items listed on
10 attachment (A); do you understand that?

11 THE DEFENDANT BROWN: Yes, Your Honor.

12 THE COURT: And do you understand that this will
13 constitute part your sentence in this case?

14 THE DEFENDANT BROWN: Yes, Your Honor.

15 THE COURT: All right, Ms. Cadeddu or Mr. Swift,
16 is there a request for a particular facility?

17 MS. CAEDDU: Yes, Your Honor, we would request
18 Fort Worth if available, and we understand it is a
19 recommendation only.

20 THE COURT: I want to make certain that is clear
21 on the record. Mr. Brown, your attorney, Ms. Cadeddu has
22 requested that you be allowed to serve your sentence at
23 the facility in Fort Worth.

24 The Court will make that recommendation to the
25 Bureau of Prisons, however, please keep in mind that it

1 is the Bureau of Prisons not the Court that ultimately
2 decides where you serve your sentence.

3 Mr. Brown, based upon the plea agreement, you waive
4 your right of appeal except in limited circumstances
5 pursuant to page 7, paragraph 14. If you decide to
6 appeal this matter, any appeal that you take must be
7 taken within 14 days of my written decision which will
8 probably issue tomorrow. If not, it will issue no later
9 than Monday.

10 If you cannot afford the cost of an appeal, you have
11 the right to ask for permission to proceed in forma
12 pauperis. Also, if you cannot afford an attorney for
13 purposes of appeal, you have the right to request an
14 attorney and one will be provided to represent you.

15 Ms. Heath, are there counts to be dismissed?

16 MS. HEATH: Yes, Your Honor, the government
17 would move this Court to dismiss the remaining counts in
18 cause number 3:12-CR-317-L, to dismiss the original
19 indictment and superseding indictment in cause number
20 3:12-CR-413-L, and the original indictment in cause
21 number 3:13-CR-030-L.

22 THE COURT: All right, let's go through that one
23 more time. First, you said the remaining counts in case
24 no. 3:12-CR-317; is that correct?

25 MS. HEATH: Correct.

1 THE COURT: The motion is granted and the
2 remaining counts in that case are hereby dismissed with
3 prejudice. All right, let's go to the 413.

4 MS. HEATH: The original indictment and
5 superseding indictment as it stands today in
6 3:12-CR-413-L.

7 THE COURT: All right, that motion is granted,
8 and the original indictment and superseding indictment
9 are hereby dismissed with prejudice with respect to case
10 number 3:413.

11 MS. HEATH: Finally, the original indictment in
12 cause number 3:13-CR-030-L.

13 THE COURT: That was 3:13-CR-030?

14 MS. HEATH: Correct.

15 THE COURT: That is granted, and the original
16 indictment in that case is dismissed.

17 Any other matters?

18 MS. HEATH: No, Your Honor.

19 THE COURT: Is there anything further on this
20 case at this time?

21 MS. CADEDDU: No, Your Honor.

22 MR. SWIFT: No, Your Honor.

23 MS. HEATH: Not from the government.

24 THE COURT: All right, Mr. Brown, you are
25 remanded to the custody of the United States Marshal and

1 court is adjourned.

2 THE COURT SECURITY OFFICER: All rise.

3 (THE HEARING WAS CONCLUDED AND THE COURT WAS IN
4 RECESS.)

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1 I certify that the foregoing is a correct transcript
2 from the record of proceedings in the above-entitled
3 matter. I further certify that the transcript fees
4 format comply with those prescribed by the court and the
5 Judicial Conference of the United States.

6 S/Charyse C. Crawford 04-15-2015
7 Signature_____ Date:_____
8 Charyse C. Crawford, CSR, RPR
9 United States Court Reporter
10 Northern District of Texas - Dallas Division
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