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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-030-L
)
 Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
HAD ON WEDNESDAY, SEPTEMBER 4, 2013
MOTION HEARING
BEFORE THE HONORABLE SAM A. LINDSAY, JUDGE PRESIDING

A P P E A R A N C E S

MS. CANDINA S. HEATH
U.S. Attorney's Office
Department of Justice
1100 Commerce Street
Third Floor
Dallas, TX 75242-1699
candina.heath@usdoj.gov
(214)659-8600

COUNSEL FOR THE GOVERNMENT

MR. CHARLES SWIFT
Swift & McDonald, PC
1809 Seventh Avenue
Suite 1108
Seattle, WA 98101

1 APPEARANCES CONTINUED -

2 MR. AHMED GHAPPOUR
3 Civil Rights Clinic
4 University of Texas School of Law
5 727 Dean Keeton Street
6 Austin, TX 78705
7 (415)505-5083
8 aghappour@gmail.com

9
10 MS. MARLO P. CADEDDU
11 Law Office of Marlo P. Cadeddu
12 Suite 700
13 Dallas, TX 75204
14 (214)220-9000
15 cadeddulaw@sbcglobal.net

16
17
18
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21
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25
COUNSEL FOR THE DEFENDANT BARRETT LANCASTER BROWN

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

3 THE COURT: We are here on the government's
4 motion whereby it has requested the Court enter an order
5 limiting pre-trial discussion concerning this case
6 against Mr. Brown. Is the government ready to proceed?

7 MS. HEATH: Yes, Your Honor.

8 THE COURT: Thank you, Ms. Heath. Is the
9 defense ready?

10 MR. SWIFT: Mr. Brown is not present. Mr. Brown
11 is coming forth.

12 THE COURT: Ms. Heath, the way I understand it
13 you are requesting the Court or the trial participants to
14 refrain from making any statement to the members of the
15 television, radio, newspaper, magazine, internet
16 including but not limited to bloggers or any other media
17 organization, any statements about this case other than
18 those matters of public record; is that the essence of
19 your request to the Court?

20 MS. HEATH: Yes, Your Honor.

21 THE COURT: All right, do you plan to put on
22 evidence or call any witnesses?

23 MS. HEATH: Yes, Your Honor, the government
24 plans to call Special Agent Robert Smith to talk about
25 some of the media that has already been generated, media

1 that the government's position has been harmful to the
2 Defendant and the ability for the Defendant and the
3 government to have a fair trial in this case.

4 THE COURT: Is the government also contending
5 that there has been substantial pre-trial publicity
6 concerning this case or these cases against Mr. Brown?

7 MS. HEATH: Yes, Your Honor.

8 THE COURT: And you also intend to submit
9 evidence of that; is that correct?

10 MS. HEATH: That is correct, Your Honor.

11 THE COURT: All right, call your first witness.

12 MS. HEATH: Your Honor, the government calls
13 Robert Smith.

14 **ROBERT SMITH,**

15 having been first duly sworn to tell the truth, the whole
16 truth, and nothing but the truth, testified as follows:

17 THE COURT: Please be seated. You may proceed,
18 Ms. Heath.

19 MS. HEATH: Thank you, Your Honor.

20 **D I R E C T E X A M I N A T I O N**

21 Q. (BY MS. HEATH) Please state your name.

22 A. My name is Robert Smith.

23 Q. How are you employed?

24 A. I am employed -- I am employed as agent of the FBI.

25 Q. Are you case agent or one of the case agents in the

1 case against Barrett Brown?

2 A. Yes, ma'am.

3 Q. Now, with regard to the issue of publicity, have you
4 over the past couple of weeks and definitely during the
5 investigation become aware of the publicity that has
6 occurred in the case of Barrett Brown?

7 A. Yes, ma'am.

8 Q. Barrett Brown is currently in custody; is that
9 correct?

10 A. Yes, ma'am.

11 Q. And while in custody, he has made phone calls from
12 the Mansfield Jail?

13 A. Yes, ma'am.

14 Q. Have you had an opportunity to review recordings of
15 those calls that were received from the Mansfield Jail?

16 A. Yes, ma'am.

17 Q. Now, you identified certain calls that were related
18 to potential publicity on the case; is that correct?

19 A. Yes, ma'am.

20 Q. Did you cause those calls or selected calls to be put
21 on a particular CD for the purposes of this hearing?

22 A. Yes, ma'am.

23 Q. Also, have you had an opportunity to review the
24 internet for any sort of audio or video types of
25 publicity in different media or internet outlets talking

1 about the Barrett Brown case?

2 A. Yes, ma'am.

3 Q. Did you have an opportunity to put some of those
4 audio and videos on a DVD?

5 A. Yes, ma'am.

6 MS. HEATH: Your Honor, may I approach the
7 witness?

8 THE COURT: You may.

9 Q. (BY MS. HEATH) Let me show you Government's Exhibit
10 Nos. 1 and 2 and ask you if 1 contains the phone calls
11 from jail and 2 contains the audio and videos that you
12 selected or was selected from the internet based upon
13 publicity for the Barrett Brown case?

14 A. Yes, ma'am.

15 MS. HEATH: Your Honor, the government would
16 offer Government's Exhibit No. 1, Government's Exhibit
17 No. 2 in this case for purposes of the hearing. Although
18 the government does not intend to play it, it may be
19 helpful if the Court is going to defer its ruling to
20 review some of the evidence that is presented during the
21 trial.

22 THE COURT: Any objection from the defense?

23 MR. SWIFT: Without objection.

24 THE COURT: Government's Exhibit Nos. 1 and 2 are
25 admitted into evidence for purposes of this hearing.

1 Q. (BY MS. HEATH) Now, based upon your review of the
2 calls and some of the publicity that has come out either
3 on the internet or in media whether it be mainstream
4 media or social media, have you been able to identify a
5 number of individuals who have been in contact with Brown
6 or his legal staff or people close to Brown to be able to
7 write these articles?

8 A. Yes, ma'am.

9 Q. Who are some of the individuals that we will be
10 talking about so we can get a list of the individuals in
11 advance?

12 A. Some of the names are Kevin Gallagher, Lauren
13 Pespisa, Patrick McGuire, Glenn Greenwald, Jenna
14 Wrightman, Ed Pilkington, Vivian Wiseman, Sue Crabtree,
15 Tim Rogers, Michael Hastings, Karen McCutchin, Greg
16 Housh, and that would be extent.

17 Q. And as you were calling out the list you were
18 flipping through a lengthy document, what exactly is the
19 document you have in front of you?

20 A. This document is a summary of notes pertaining to the
21 calls and particularly the calls.

22 MS. HEATH: And Your Honor for purposes of the
23 hearing, the government will be referring to this
24 document, but it is not going to be offered in
25 evidence. The defense does have a copy since it is notes

1 prepared by the witness and people under the witness's
2 supervision. I do have an extra copy if the Court wishes
3 of this document, although, all it is is the notes of the
4 agent.

5 THE COURT: So what are you using it for to
6 refresh his memory or for demonstrative purposes or what?

7 MS. HEATH: It is not for demonstrative
8 purposes. It will be to refresh his memory and just to
9 refer to because instead of playing the calls themselves,
10 he is going to be summarizing some of the calls for the
11 purposes of this hearing.

12 THE COURT: All right, any objection from the
13 defense for use of exhibit, Mr. Swift?

14 MR. SWIFT: No objection, sir.

15 THE COURT: All right, sir. All right, you may
16 proceed, Ms. Heath.

17 MS. HEATH: Yes, Your Honor.

18 Q. (BY MS. HEATH) Now, first, prior to getting into
19 the actual calls, what other items other than the calls
20 and some of the publicity did you review in order to
21 prepare for your testimony today?

22 A. Some of the other items include web pages, Twitter
23 account publishing, numerous articles some of those in
24 print, some of those on the internet.

25 Q. With regard to the jail calls, did you also review

1 the visitation logs?

2 A. I did.

3 Q. Now, Barrett Brown was arrested in September of 2012;
4 is that correct?

5 A. That's correct.

6 Q. Now, prior to his arrest, was Barrett Brown using the
7 media or assisting the media in presenting things with
8 regard to his position with Anonymous?

9 A. Yes, on multiple occasions, he had done interviews
10 with media, members of the media regarding activities of
11 Anonymous. He identified himself on occasion as a
12 spokesperson for Anonymous.

13 Q. Once he was arrested, has that activity continued as
14 far as what you have seen?

15 A. Interaction with the media has continued.

16 Q. In fact, let me show you --

17 MS. HEATH: May I approach the witness, Your
18 Honor?

19 THE COURT: You may.

20 Q. (BY MS. HEATH) Let me show you Government's Exhibit
21 No. 10. I believe you have a book with you.

22 A. Yes, ma'am.

23 Q. If you would look through Government's Exhibit No.
24 10, and this is just after Mr. Brown's arrest in
25 September of 2012. Did Mr. Brown require that the author

1 at D Magazine Tim Rogers publish one of his letters from
2 jail in order to then be able to conduct an interview
3 with Barrett Brown?

4 A. Yes, ma'am; that's correct.

5 Q. Did Mr. Tim Rogers abide by the request of Barrett
6 Brown or the demand of Barrett Brown to publish a letter
7 prior to being able to talk to Barrett Brown from jail?

8 A. Yes, this appears to be a letter from jail.

9 Q. Is that an indication of Barrett Brown in some
10 respects controlling the media?

11 A. Yes.

12 MS. HEATH: Your Honor, the government would
13 offer Government's Exhibit No. 10.

14 THE COURT: Any objection?

15 MR. SWIFT: Without objection.

16 THE COURT: Government's Exhibit No. 10 is
17 admitted for purposes of this hearing.

18 Q. (BY MS. HEATH) Let's move forward to 2013, and if you
19 would look at Government's Exhibit No. 11. What is
20 Government's Exhibit No. 11?

21 A. This is an article that was published Who, What, Why,
22 at WhoWhatWhy.com.

23 Q. Who was the author in this?

24 A. Christian Stork.

25 Q. Basically, overall, what does this article discuss?

1 A. The title of the article is the Saga of Barrett Brown
2 and War and Secrecy, and it discusses Barrett Brown's
3 role with this group.

4 Q. And when you were reviewing the calls from jail, was
5 this article one of the articles discussed?

6 A. Yes, there was a call on February 23, 2013, in which
7 Brown discusses a call with Kevin Gallagher. Brown in
8 particular liked the content of this particular article.
9 He indicated that the article was being proliferated
10 widely and was generally liked. In some ways he
11 commented it was too deferential and makes a better case
12 for him than exists.

13 Q. That was Brown that was too deferential?

14 A. Correct.

15 MS. HEATH: Your Honor, the government would
16 offer Government's Exhibit No. 11.

17 THE COURT: Any objection?

18 MR. SWIFT: No objection.

19 THE COURT: Government's Exhibit No. 11 is
20 admitted for purposes of this hearing.

21 Q. (BY MS. HEATH) When was the next call or describe the
22 next call where Barrett Brown is talking about press or
23 publicity matters?

24 A. The next call we have identified is another call with
25 Kevin Gallagher on March 6, 2012. In this call, Brown is

1 discussing with Kevin about Kevin and Lauren Pespisa
2 meeting with Glenn Greenwald.

3 Q. Who is Glenn Greenwald?

4 A. Glenn Greenwald is a blogger with The Guardian.

5 Q. Who is Lauren Pespisa?

6 A. Lauren is with his previous work with Anonymous.

7 Q. What else did they discuss during that conversation?

8 A. So Mr. Gallagher is talking to Brown about
9 Greenwald's interest in the case and indicates that
10 Greenwald wants to kind of exploit the Swartz events and
11 tie them to the Brown case.

12 Q. What were the Swartz events?

13 A. I believe this is reference to Aaron Swartz who was
14 charged in Boston related to computer intrusion
15 activities. He ultimately committed suicide and that is
16 the events that they are trying to capitalize on.

17 Q. Trying to connect that with the Barrett Brown case?

18 A. Correct.

19 Q. What else did they discuss during that conversation?

20 A. Mr. Gallagher tells him you are not a too sympathetic
21 character. There are ways you can appear more
22 sympathetic than Hammond did. Brown agrees with that
23 position, but he also directs Kevin to have Greenwald
24 take a look at the Who What Why article that was
25 previously mentioned.

1 Q. That was Government's Exhibit No. 11; is that
2 correct?

3 A. The Who, What, Why article?

4 Q. Yes.

5 A. That's correct.

6 Q. What else did they discuss during that conversation?

7 A. Mr. Gallagher instructs Brown to call the publisher
8 of a Vice article.

9 THE COURT: I am going to instruct the witness
10 and also Counsel to refer to the Defendant as Mr. Brown.

11 MS. HEATH: Yes, Your Honor.

12 THE COURT: That is a two-way street. So we are
13 going to show courtesy to everybody in the courtroom.
14 Nobody is to be referred to by his or her first name.

15 MS. HEATH: Yes, Your Honor.

16 THE WITNESS: I certainly apologize to Mr. Brown
17 for referring to the notes. Mr. Gallagher refers to
18 Mr. Brown calling the publisher -- I am sorry -- the
19 author of a Vice article by Patrick McGuire.

20 Q. (BY MS. HEATH) Was there a conversation during this
21 call back in March 6, 2013, regarding the coming on as
22 his attorney, Mr. Ghappour?

23 A. In a call Mr. Ghappour is mentioned as possibly
24 coming on to be his attorney, and they mention that him
25 coming on the coming Sunday to kick everything off

1 related to his involvement in the case. Brown at this
2 point feels that -- Mr. Brown at this point feels that he
3 is -- Mr. Ghappour is committed to his case.

4 Q. And in this conversation on March 6 of 2013, they
5 discuss the Vice article and a Patrick McGuire; is that
6 correct?

7 A. That's correct.

8 Q. If you would look at Government's Exhibit No. 15; is
9 that the Vice article that eventually is published that
10 they are discussing or appears to be?

11 A. I believe that this is the article that is
12 forthcoming.

13 MS. HEATH: Your Honor, we would offer
14 Government's Exhibit No. 15.

15 THE COURT: Any objection?

16 MR. SWIFT: No objection.

17 THE COURT: Government's Exhibit No. 15 is
18 admitted for purposes of this hearing.

19 Q. (BY MS. HEATH) In fact, that very same day, did
20 Mr. Brown call Patrick McGuire, the author at Vice?

21 A. Yes, that's correct. He called him shortly after the
22 call we are discussing.

23 Q. What is the title of the article, Government's
24 Exhibit No. 15?

25 A. The title of the article is We Spoke to Barrett Brown

1 From Prison.

2 Q. And in this article, is there a question and answer
3 or does the article appear to be in question answer form
4 to Mr. Brown?

5 A. That's correct.

6 Q. What types of questions and answers are being offered
7 in that article?

8 A. Some of the questions are, for example, a lot of
9 people say you are the spokesperson for Anonymous, what
10 do you say to that? You did call yourself Cobra
11 Commander at one point. What do you think of your
12 100-year sentence? Why aren't you worried? Did you send
13 that link out? Okay -- so sort of a leading question, so
14 you didn't specifically say this is a credit card file.

15 Q. And are those things that are directly related to the
16 accusations in the indictments?

17 A. Yes, ma'am, they are.

18 Q. What is the next pertinent call that you identified?

19 A. On March 10, there is a series of calls from
20 Mr. Brown to Mr. Greenwald.

21 Q. And again, who is Mr. Greenwald?

22 A. Mr. Greenwald is associated with The Guardian.

23 Q. In these calls, what did Mr. Brown and Mr. Greenwald
24 discuss?

25 A. Mr. Greenwald introduces the call that he has spoken

1 to a couple of people in Amherst. In particular, he
2 talks about wanting to write an article about Mr. Brown.
3 He says the purpose of the article is to help Mr. Brown
4 by writing -- from the perspective of Aaron Swartz to
5 help him raise funds for his defense. During the call,
6 there is some additional discussion between Mr. Greenwald
7 and Mr. Brown in which Brown appears to make some
8 admissions to Mr. Greenwald basically saying that the
9 Stratfor thing is really the only sticking point to the
10 plea agreement for him.

11 Q. Now, with regard to the Stratfor, what is the
12 specific allegations in the indictment related to
13 Stratfor?

14 A. There's generally two allegations there. One
15 allegation is that he downloaded and possessed more than
16 5,000 credit cards with intent to defraud. The second
17 allegation is that he propagated those credit cards to
18 other individuals also with intent to defraud.

19 Q. Basically, he transferred the credit card information
20 to another person?

21 A. Correct.

22 Q. Now, in this call, does Mr. Brown identify what he
23 actually posted or trafficked in in this case?

24 A. He said that he posted the link to Stratfor e-mails.

25 Q. Stratfor e-mails?

1 A. Correct; Stratfor-related e-mails.

2 Q. Is that what he perceived is the evidence in this
3 case?

4 A. Yes.

5 Q. Is this an accurate or inaccurate statement in this
6 case?

7 MR. SWIFT: Objection.

8 THE WITNESS: I believe it is.

9 MR. SWIFT: Calls for speculation.

10 THE COURT: I will sustain the objection to the
11 question as asked.

12 Q. (BY MS. HEATH) Now, with regard to the link in
13 question and being discussed in this particular e-mail --
14 I am sorry -- in this particular telephone conversation
15 have you had an opportunity in evidence to review the
16 link that Mr. Brown downloaded and then posted and
17 shared?

18 A. Yes.

19 Q. Did it contain any e-mails?

20 MR. GHAPPOUR: Objection, Your Honor. You don't
21 download a link. It is a question that can't be
22 answered.

23 THE COURT: Let me say this procedurally. One
24 attorney makes objections per side. We are not going to
25 go back and forth between three different attorneys. So

1 decide among yourselves who is going to be making
2 objections for the defense as to this witness. Now, so
3 what is your legal objection?

4 MR. SWIFT: We withdraw the objection, sir.

5 THE COURT: All right, the objection has been
6 withdrawn so the matter is moot. You may proceed,
7 Ms. Heath.

8 Q. (BY MS. HEATH) Did you find any e-mails in that link?

9 A. I did not find any content of e-mails. I did find
10 e-mail addresses.

11 Q. The link contained what?

12 MR. SWIFT: Objection; relevance.

13 THE COURT: What is your response, Ms. Heath?

14 MS. HEATH: Your Honor, part of what the
15 government's position is that pre-trial publicity will be
16 harmful to the Defendant and his case for a variety of
17 reasons in selecting the jurors and in calling the
18 witnesses if they have an opportunity to see the media
19 barrage of information that is false about the evidence
20 or that even discusses the evidence or discusses evidence
21 that may be deemed inadmissible that that is prejudicial
22 to a fair trial in this case.

23 The government is trying to establish that the media
24 and the actual words from Mr. Brown from jail to the
25 media have been promoting and manipulating the media to

1 present a different view of the facts and what the facts
2 actually are. That will be highly prejudicial.

3 MR. SWIFT: To the extent that the facts of the
4 case are relevant and it is my position that it is not to
5 the facts, but to prevent this from happening now if the
6 government would like to have the trial now in here in an
7 open court which everything will be recorded and
8 presented, a couple points, one, this isn't an expert
9 witness. I don't believe that he is qualified to testify
10 as to what is in a link. There is insufficient
11 foundation for what is in the link, we are now moving to
12 the merit phase of the trial. I will stipulate that some
13 of this Mr. Brown's answers address merits questions, but
14 beyond that, I am not sure what the relevance here is
15 because the test is not whether it is accurate or
16 inaccurate, the test is whether it is doing undue
17 publicity, so I stand on relevance in the end. Thank
18 you.

19 THE COURT: Any further reply, Ms. Heath?

20 MS. HEATH: Other than the fact that any
21 evidence showing that the defense and Mr. Brown have
22 caused publicity to be generated, whether that publicity
23 is truthful information about the evidence or false
24 information about the evidence, the fact that they are
25 discussing the evidence and even providing false

1 information which in the government's opinion is worse
2 because the government can't correct that information,
3 nor should it try to correct that information.

4 THE COURT: The objection is overruled.

5 Q. (BY MS. HEATH) What was in the link?

6 A. The link was a reference to a file that was
7 subsequently downloaded and opened on the computer.

8 Q. And the link contained what type of data in general?

9 A. The link to the file that was downloaded contained
10 what appeared to be subscriber information related to
11 Stratfor names, addresses, credit card numbers,
12 validation codes associated with credit card numbers,
13 passwords associated with e-mail accounts that would be
14 used to authenticate.

15 Q. And no contents of e-mail?

16 A. No contents of e-mail.

17 Q. In the conversation between Mr. Brown and
18 Mr. Greenwald, what else was discussed with regard to
19 publicity in this case?

20 A. So related to the conversation between Mr. Greenwald
21 and Mr. Brown, there was discussion about Mr. Brown's
22 role in these activities for the article. In particular,
23 Mr. Greenwald wanted to know if Mr. Brown considered that
24 he was a journalist while he was doing these activities.
25 Mr. Brown actually replied to him that he would concede

1 that he was involved as a participant in Anonymous.

2 Q. If you would look to Government's Exhibit No. 21 -- I
3 am sorry -- Government's Exhibit No. 13, and what is
4 Government's Exhibit No. 13?

5 A. I am sorry. Wrong page. Exhibit No. 13 is an from
6 The Guardian called The Persecution of Barrett Brown and
7 How to Fight It. The subtitle is The Journalist and
8 Anonymous Activist is Targeted as Part of Broad Effort to
9 Deter and Punish Internet Freedom Activism.

10 Q. When was this article published? I believe it is on
11 right underneath Mr. Greenwald's name.

12 A. 21st of March 2013.

13 Q. When was the conversation -- the series of
14 conversations that Mr. Brown had with Mr. Greenwald from
15 jail?

16 A. These conversations with Mr. Greenwald occurred on
17 March 10, 2013.

18 MS. HEATH: Your Honor, the government would
19 offer Government's Exhibit No. 13.

20 THE COURT: Any objection?

21 MR. SWIFT: No objection.

22 THE COURT: Government's Exhibit No. 13 is
23 admitted for purposes of this hearing.

24 Q. (BY MS. HEATH) Let me refer you to Government's
25 Exhibit No. 46. What is Government's Exhibit No. 46?

1 A. This is a tweet.

2 Q. And a tweet is a means of communication on Twitter?

3 A. Using the Twitter.com it is a message from that
4 system.

5 Q. Whose account or whose Twitter account would this
6 have come from?

7 A. It is Ahmed Ghappour.

8 Q. You can find Twitter postings on line; is that
9 correct?

10 A. Yes.

11 Q. With regard to Mr. Ghappour, did he retweet a
12 particular tweet from somebody else?

13 A. Yes, this is a retweet of a post by someone else.

14 Q. Now, at the bottom or underneath the picture, does it
15 have the same line or same article that you just
16 discussed in Government's Exhibit No. 13?

17 A. Yes, it does.

18 Q. In fact, a picture is the same as the picture in the
19 article?

20 A. Yes.

21 Q. When you tweet or use Twitter, can you post links to
22 articles or videos?

23 A. Yes.

24 Q. And does this appear to be a posting to the link of
25 this particular article from Mr. Ghappour's Twitter

1 account?

2 A. It is.

3 MS. HEATH: Your Honor, the government would
4 offer Government's Exhibit No. 46 into evidence.

5 THE COURT: Any objection?

6 MR. SWIFT: No objection.

7 THE COURT: What was your response? No
8 objection?

9 MR. SWIFT: No objection.

10 THE COURT: Government's Exhibit No. 46 is
11 admitted into evidence for purposes of this hearing.

12 Q. (BY MS. HEATH) What was the next pertinent call that
13 you identified between Mr. Brown and the other person?

14 A. The next call that I have is between Mr. Kevin
15 Gallagher and Mr. Brown on March 23rd.

16 Q. What did Mr. Gallagher and Mr. Brown discuss?

17 A. In the call they are discussing -- Mr. Gallagher
18 appears along with Mr. Stork the author of the Who, What,
19 Why article and the author of The Guardian article we
20 just discussed. They were participating in a panel
21 interview on the TV show Al Jazeera.

22 Q. What is Al Jazeera?

23 A. My understanding it is a TV network.

24 Q. What did they discuss about the Al Jazeera or network
25 or show?

1 A. Mr. Brown indicates that he believe that
2 Mr. Greenwald must have been impressed with Mr. Gallagher
3 in order to invite him to participate on this widely
4 distributed interview. In particular, they are talking
5 about the number of the aspects of the case that we are
6 discussing here.

7 Q. What type of aspects did they discuss?

8 A. Really along the same lines of the articles that we
9 have talked about so far in terms of the situation
10 regarding the charges against Mr. Brown.

11 Q. Now, did Mr. Gallagher, you mentioned that
12 Mr. Gallagher wrote an article for The Guardian; is that
13 correct?

14 A. Yes, Mr. Gallagher did write an article for The
15 Guardian.

16 Q. Would this have been around the same period of time
17 as this conversation, and let me refer to you
18 Government's Exhibit No. 12.

19 A. On March 20, 2003, Mr. Gallagher posted on a blog How
20 Barrett Brown went from Anonymous PR to Federal Target.
21 We are talking about this call which is actually with
22 Kevin Gallagher.

23 Q. I am sorry?

24 A. Kevin Gallagher did publish an article later on as
25 well.

1 Q. Now, you mentioned --

2 THE COURT: Let me ask a question for
3 clarification purposes. With respect to Government's
4 Exhibit No. 46, when was that tweeted from Mr. Ghappour's
5 Twitter account.

6 Q. (BY MS. HEATH) Look at the bottom of Government's
7 Exhibit No. 46. Is there a date?

8 A. 18th of July of 2013 is the date.

9 Q. Now, you mentioned a Rollingstone person Jenna
10 Wrightman. Did Mr. Brown talk with Ms. Wrightman?

11 A. The call we are discussing right now, Mr. Gallagher
12 actually provided the contact information for
13 Ms. Wrightman, and subsequently to answer your question,
14 ma'am, there was a call between Mr. Brown and
15 Ms. Wrightman.

16 Q. And did those calls occur or did the call to
17 Ms. Jenna Wrightman occur within a few days of Mr. Kevin
18 Gallagher providing her contact information to Mr. Brown?

19 A. Yes, ma'am, it appears it was two days later.

20 Q. And did Mr. Kevin Gallagher indicate that
21 Ms. Wrightman wanted to do a story on Mr. Brown?

22 A. Yes, ma'am.

23 Q. What was the conversation between Mr. Brown and
24 Ms. Wrightman at Rollingstone?

25 A. She identified herself as a contributing editor at

1 Rollingstone Magazine. In particular, Mr. Brown wanted
2 to be sure that she was aware of the Greenwald piece we
3 previously mentioned, and the Who, What, Why piece we
4 previously mentioned. She said she was aware of both of
5 those.

6 Q. What is the date on this particular call?

7 A. This call was March 25, 2013.

8 Q. And we will talk about it a little later.

9 Ultimately, did the Rollingstone write an article about
10 Mr. Barrett Brown?

11 A. Yes, ma'am.

12 Q. Would that have been in August of 2013?

13 A. I believe within the last couple weeks.

14 Q. What is the next significant call that you
15 identified?

16 A. The next call was on March 26th between Mr. Brown and
17 Mr. Kevin Gallagher. In this call, the call occurs
18 around the time that Karen McCutchin pled guilty in the
19 Northern District. In this call, Mr. Brown indicates
20 that he wants that to be publicized. Mr. Gallagher
21 mentions that Mr. Greenwald knows about the guilty plea
22 as does he refers to them as Patrick, Ryan, and
23 Christian.

24 Q. Did Mr. Gallagher indicate that any other person
25 wanted to write any article on Mr. Brown?

1 A. Kevin Gallagher mentions that Patrick McGuire is
2 going to produce an article about the phone interviews
3 that Mr. Brown has done with him.

4 Q. And is that the Government's Exhibit No. 13 that we
5 previously mentioned?

6 A. No, I don't think it is.

7 Q. Was there an additional article by Mr. McGuire?

8 A. I am sorry. I have 13 as the Glenn Greenwald
9 article.

10 Q. I am sorry. Let me refer you to Government's Exhibit
11 No. 15 which I believe we have mentioned. Is that the
12 article that they are discussing from Patrick McGuire?

13 A. I believe this would be the article, yes.

14 Q. What is the next telephone conversation that you
15 identify regarding the press?

16 A. On April 3, there is a call from Mr. Brown to
17 Mr. Kevin Gallagher.

18 Q. And what does Mr. Brown and Mr. Gallagher discuss
19 regarding the press?

20 A. Mr. Gallagher provides Mr. Brown with telephone
21 numbers for Ed Pilkington and Vivian Wiseman identified
22 as The Washington Post.

23 Q. Was there discussions about arranging interviews?

24 A. Yes, there are discussions about interviews, and
25 Mr. Gallagher expresses that he would like to go through

1 Mr. Ghappour to arrange an interview at the Mansfield
2 prison.

3 Q. Did Mr. Brown indicate any desire to use the media?

4 A. Mr. Brown also indicated that Mr. Tim Rogers would be
5 of interest to the publicity for this. He provides the
6 contact information, and Mr. Brown indicates that he
7 would like to keep a local media spotlight.

8 Q. Did Mr. Brown follow up on any of the numbers
9 provided to him by Mr. Gallagher?

10 A. I believe that there were subsequent calls both with
11 Pilkington and also with Ms. Wiseman.

12 Q. Was the call to Mr. Pilkington on the very same day?

13 A. Yes, ma'am it was.

14 Q. In the conversation between Mr. Brown and
15 Mr. Pilkington what was discussed?

16 A. Mr. Pilkington indicated that he would like to
17 interview Brown in prison and Mr. Brown indicates there
18 is another party who is trying to make a documentary.
19 One of the suggestions Mr. Brown makes to facilitate the
20 interview is Mr. Pilkington represents himself to be,
21 quote, unquote, a civilian to get in. To do that,
22 Mr. Pilkington indicates he would like to do it above
23 board.

24 Q. Instead of coming to the jail as a member of the
25 press or the media, Mr. Brown suggests that

1 Mr. Pilkington come as civilian, as a friend?

2 A. Yes, ma'am.

3 Q. Was there any discussion about further coordination
4 of a meeting or interview between Mr. Pilkington and
5 Mr. Brown?

6 A. Mr. Pilkington indicates that he will coordinate
7 further with Mr. Kevin Gallagher.

8 Q. Now, the other number provided by Mr. Brown was
9 Ms. Vivian Wiseman, and again who is Ms. Vivian Wiseman?

10 A. My understanding is Ms. Wiseman is a person doing
11 documentaries and also she does writing on the internet.

12 Q. Did Mr. Brown contact Ms. Vivian Wiseman?

13 A. Yes, he did.

14 Q. Was there a series of calls to Ms. Vivian Wiseman?

15 A. Yes, ma'am.

16 Q. What did -- what did the calls consist of between
17 Mr. Brown and Ms. Wiseman regarding publicity or press?

18 A. Well, Mr. Brown understood that she had an interest
19 in making a documentary of him.

20 Q. Did they have a discussion?

21 A. My understanding relate to Mr. Brown's Project PM.

22 Q. Is Project PM a topic or subject related to the
23 accusations in this case?

24 A. Yes, ma'am.

25 Q. Was there any discussion about whether or not

1 Ms. Vivian Wiseman had been talking to Mr. Brown's
2 attorneys prior to Mr. Brown calling her?

3 A. Yes, she had previously been in contact with
4 Mr. Ghappour regarding the content of the discussion, and
5 she was instructed not to talk about anything
6 substantive.

7 Q. From -- there were approximately six calls over two
8 days between Mr. Brown and Ms. Wiseman; is that correct?

9 A. Approximately 6 or 7 calls.

10 Q. And during these calls, did you have an opportunity
11 to listen to all of these calls?

12 A. I listened to many, if not all of these calls.

13 Q. With regard to what they discussed, did they get into
14 substantive matters regarding as it would relate to the
15 charges in this case?

16 A. Yes.

17 Q. Now, did they also discuss other conduct which
18 Mr. Brown may have some criminal exposure but for which
19 he is not yet charged?

20 A. Yes.

21 MR. SWIFT: Objection; relevance.

22 THE COURT: What is the relevance, Ms. Heath?

23 MS. HEATH: Your Honor, any time the press and
24 media regardless of what their intentions are, when the
25 press and media identify other areas where a defendant

1 has been involved in criminal matters, that highly
2 prejudices the Defendant in the case and affects the
3 ability to have a fair trial such as when the media talks
4 about Mr. Brown's drug use, drug abuse, his other conduct
5 in receiving data from other hacked materials by
6 Anonymous members, anything the Defendant discusses that
7 then goes out to the media prejudices his case when
8 jurors or witnesses hear about other criminal activities
9 that may not be admissible in the trial.

10 MR. SWIFT: Your Honor, we are about to do that,
11 put it on the public record. This is an open hearing and
12 the press is very much present if we are going to go into
13 this I would request to approach and potentially seal it
14 since our concern is to protect Mr. Brown's fair trial by
15 now talking about all of these things that weren't
16 published in the media, in the media.

17 THE COURT: Well, you know, I guess it depends on
18 whose ox is being gored and the government and the
19 defense need to play by the same rules. It does seem to
20 be some irony in all of this. You wanted to approach the
21 bench. We can approach the bench.

22 (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH,
23 WITH ALL COUNSEL PRESENT.)

24 MR. SWIFT: I would like to proffer as to where
25 we are going to go on the uncharged.

1 THE COURT: If you are going to talk that loud,
2 what is the purpose having a bench conference. Everybody
3 in here and some members of the press can hear you.

4 MR. SWIFT: I will keep my voice down.

5 THE COURT: I assume they are writing. I don't
6 think they are school children taking assignments. Keep
7 your voice down. This will pick up right here, and you
8 can tell me what you need to tell me.

9 MS. HEATH: Your Honor, it is not the
10 government's intent to go into any detail. That is the
11 question I was asking him. Was there discussion.

12 THE COURT: Lower your voice.

13 MS. HEATH: There was a discussion on the
14 conversation about other criminal conduct of the
15 Defendant. I wasn't going to go into detail about what
16 those were.

17 THE COURT: Well, but you didn't stop him. He
18 could have said yes and that could have been the end of
19 it. He started describing it, though. Why didn't you
20 cut him off? He started describing what the discussions
21 were.

22 MS. HEATH: I don't think he got into any
23 detail.

24 MR. SWIFT: Because I objected.

25 THE COURT: Maybe it was on another one. My

1 apologies, but really I am concerned as to how long this
2 hearing is going to take. It seems to me the issue is
3 whether or not there has been substantial amount of
4 pre-trial publicity and extrajudicial comments or
5 commentary made that will undermine a fair trial.

6 MS. HEATH: Yes.

7 THE COURT: That is the issue, and I don't know
8 how much more you have of this witness or how many other
9 witnesses you have to call, but it seems to me that we
10 are going to be here for a while.

11 MS. HEATH: This is the only witness the
12 prosecution intends to call, Your Honor. In addition to
13 the amount of press, the government through these calls
14 are trying to show how Mr. Brown and the defense
15 attorneys have encouraged and presented information to
16 the public and the press which is an essential issue as
17 to whether or not this Court should enjoin them from
18 talking to the press and other pre-trial publicity.

19 THE COURT: Let me ask this question. Since we
20 are here, it seems to me out of fairness that both sides
21 would want to limit pre-trial publicity. Why have not
22 the parties been able to come to some type of agreement
23 on this?

24 MR. SWIFT: We were never consulted.

25 THE COURT: Okay, if -- I heard what you said,

1 Mr. Swift. If the goal is to have a fair and impartial
2 trial, reducing the amount of possible prejudice to both
3 sides, then why cannot there be an agreed order
4 concerning extrajudicial comments similar to that that
5 was entered into the Hill case or other cases. I have
6 had cases whereby the parties have reached an agreement
7 on pre-trial publicity, and, you know, the parties can
8 submit something to the Court. The Court can look at it
9 and make modifications necessary let the parties see it
10 again and we can move on. It just seems to me I don't
11 know why we are taking a lot of time to do something that
12 both sides ought to be doing anyway, that is, limiting
13 the amount of pre-trial publicity.

14 MS. HEATH: Your Honor, as far as consulting
15 with the defense, the government has extensively
16 consulted regarding the protective orders. The defense
17 ultimately agreed to some protective orders. The concern
18 that the government has is that on May 1st when these
19 attorneys officially came on board, they were asked by
20 Magistrate Judge Stickney whether or not they intended or
21 that he hoped that they would not be intending to try
22 this matter in the press and they said we are not. Since
23 then, there has been very --

24 MR. SWIFT: Your Honor --

25 THE COURT: Let her finish and you can respond.

1 MS. HEATH: There have been several instances in
2 which the agent will get into where Mr. Brown has
3 continued to talk to the press as well as the defense
4 continuing to solicit the press.

5 THE COURT: Let me just say this, if this is
6 going to work, it has to be a two-way street. Both sides
7 have to abide by it. We have to get the parameters what
8 is going to be in the order and both sides have to agree
9 to abide by it. Frankly speaking, neither side can be
10 cute with its approach or interpretation of an agreed
11 order.

12 MR. SWIFT: Your Honor.

13 THE COURT: Yes, sir.

14 MR. SWIFT: Three things make it a little more
15 difficult. First off, I made two comments to the press,
16 one on this hearing on the extension which was on another
17 matter. The second was entered. Mr. Ghappour retweeted
18 something made -- something tweeted by The Guardian and
19 the Rollingsstone. That is all. All that being said, I
20 would love not to have to talk to the press because they
21 call all the time and I make no comments. That is fine.
22 My problems are two. A lot of what is going on Kevin
23 Gallagher who hired me on behalf of Mr. Brown set up a
24 defense fund. I have no control over him. I am not
25 going to control him. He comes to me and asks me whether

1 particulars as far as legal pleadings are true or not. I
2 say yes or no on that. Now, I can stop talking to
3 Gallagher and let him raise money anyway he wants. I
4 don't know how that helps or hurts, but I can do that. I
5 have no problem with that, but I can't silence a citizen
6 who is not part of the defense team who is not part of
7 any part and couldn't be. My second concern in this is
8 that Mr. Brown owns -- is a journalist.

9 THE COURT: Is a what?

10 MR. SWIFT: Is a journalist. He continues to
11 publish things and actually put in book reviews. He has
12 published op-eds. He is publishing a book. He has an
13 extraordinary first amendment right. While I am not a
14 literary agent or publicist, I want to make sure that his
15 First Amendment rights to speak on unrelated matters are
16 protected. After that, I don't have a problem.

17 THE COURT: Okay, but here is the deal. Here is
18 the deal. We are talking about this case. We are not
19 talking about his rights as a journalist. I do not see
20 those things coming into conflict. We are talking about
21 this case.

22 MR. SWIFT: Right.

23 THE COURT: And whether he is a journalist or
24 not, the Court if it determines that there is substantial
25 pre-trial publicity and there is a substantially

1 likelihood that prejudice will undermine a fair trial,
2 the Court can impose a limitation on extrajudicial
3 statements. The Fifth Circuit has made that clear. The
4 Supreme Court has made that clear.

5 MR. SWIFT: I don't disagree, Your Honor.

6 THE COURT: The point is this. It is one thing
7 for Mr. Brown to talk about other matters. It is quite
8 another thing to talk about what is going on in this case
9 insofar as things are not matters of public record. Now,
10 in the Hill case, I think Judge Lynn ruled the parties
11 could discuss without elaboration matters that were of
12 public record or something of that sort. I don't know if
13 I entered an order. I don't know if I use the word
14 discuss because discuss is a broad term. I would use the
15 word "mention" because that is restrictive. I think the
16 word "discuss," but what we are talking about is the
17 participants in this case. I have lawyers, the
18 defendant, and the government, and frankly speaking, when
19 you say participants, I don't know -- I don't know why
20 that would not also include witnesses.

21 MR. SWIFT: Mr. Gallagher is not a witness in
22 this case.

23 THE COURT: Well, okay.

24 MR. SWIFT: He is a supporter.

25 THE COURT: We are talking about participants in

1 this case.

2 MR. SWIFT: Yes.

3 THE COURT: I don't understand why any
4 participant would want to take the chance of jeopardizing
5 his or her position as to the issues in this case. Now,
6 that having been said, I will come back to what I stated
7 earlier. I do not know why there cannot be an agreement
8 reached between the parties.

9 What I am saying is let's go from this point
10 forward. Let's forget what's happened. Let's go
11 forward. This is how we are going to be covered. Let's
12 not bring up what anybody has said to the press. Let's
13 go forward. This is how this case is going to be
14 covered. Tell me what is wrong with that.

15 MR. SWIFT: The defense has no objections as long
16 as it does not include Mr. Gallagher. He is not a
17 participant or a party. I can't bind him and I don't
18 want to promise that I can.

19 THE COURT: No, I am not saying that you can, but
20 at the same time --

21 MR. SWIFT: I can tell my client not to talk to
22 him any more.

23 THE COURT: Well, that may be the case. But what
24 I am saying is how do I say this. You cannot be a party
25 -- you or anybody else cannot be a party to

1 Mr. Gallagher's actions. That is what I am saying. You
2 cannot be in concert with him. That is true. You cannot
3 control what he says. I wouldn't dare try to put that
4 against you, but at the same time, you cannot be a party
5 or you cannot be acting in concert with him. That is all
6 I would say in that regard.

7 If you are acting in concert with him, then you have
8 crossed the line. I am not trying to tell you that you
9 have to control him. The point is, is what I said
10 earlier. I don't want any party doing something cute to
11 try to circumvent or frustrate the Court's order if there
12 is one entered.

13 MR. SWIFT: I understand, sir.

14 THE COURT: Now, is there a reason why we cannot
15 enter an order regarding pre-trial publicity? Obviously,
16 there has been a lot of pre-trial publicity. Look here,
17 I can take judicial notice you have at least twelve
18 people of the press attending this hearing. That tells
19 me there is a lot of media attention in this case, and as
20 I stated before, I think I can make a reasonable
21 inference that those attending are not from some school
22 completing some class assignment. They are here from the
23 press. In fact, the Court security has already told me
24 that most of them are from the press.

25 MR. SWIFT: Yes, sir. One difficulty I have not

1 addressed is most of the publicity on my client has been
2 negative, far more negative than positive. Now, the
3 remedy is we will keep the status quo. I will remind you
4 when we do voir dire and all of that that my client sits
5 in this point in time with the vast majority of the
6 publicity against him being highly negative and highly
7 prejudicial and the government is not. I understand
8 that, but one --

9 THE COURT: That is why we want to limit it now.
10 I mean -- there has been publicity out there. There
11 has -- it is impossible to limit all publicity, negative
12 publicity. That is one thing about voir dire. We will
13 go over that. We will ask the prospective jurors what
14 they have heard about this case, when they have heard it,
15 and whether or not it will effect their ability to be
16 fair and impartial. We are going to go through all of
17 that. But at the same time, there is no point in our
18 adding fuel to the fire. We cannot unring the bell.
19 What is out there is out there. But I will tell you what
20 we can do as party participants, we can limit what goes
21 forward hence forth.

22 MR. SWIFT: Okay, I am fine with applying simply
23 talk about what is in the matter of public record. I am
24 fine with that.

25 MS. HEATH: The government would say the public

1 record as far as the Court's docket sheet because
2 obviously all of these articles are already out in the
3 public.

4 THE COURT: You are talking about things that are
5 a matter of public record, not things in the public
6 domain. We are talking about things in the Court record.

7 MS. HEATH: Yes, sir.

8 THE COURT: For example, we are talking about
9 things that have been filed with the Court by the
10 parties, things that have been submitted, you know, as
11 part of the public -- the Court's record or orders issued
12 by the Court. That is what I am talking about.

13 MR. SWIFT: I understand that. That is what I
14 said. Of record, that is what I meant. I didn't mean
15 public domain.

16 THE COURT: One thing I found out, Mr. Swift, we
17 have to close all loop holes as judges. As judges we
18 have to make certain we close all loop holes. Sometimes,
19 frankly speaking, there are unintended consequences and
20 despite having a bunch of bright legal minds, sometimes
21 we just overlook things or fail to take things into
22 consideration. Yes, sir.

23 MR. GHAPPOUR: Your Honor, as far as Twitter or
24 retweeting an article, retweeting an article without
25 making comment, I have over 5,000 in my Twitter. I

1 cannot do that indefinitely.

2 THE COURT: I didn't want to get into that, but
3 that article on July 18, 2013, I mean, that has your
4 fingerprints all over it. The fact that it is retweeted
5 or original tweet, that is a statement by you.

6 MR. GHAPPOUR: Your Honor.

7 THE COURT: That needs to be avoided.

8 MR. GHAPPOUR: I want more clarification. On my
9 Twitter profile for the past two years I have had a
10 disclaimer. Is retweeting something I would add?

11 THE COURT: Let me ask you question. If I look
12 on Exhibit No. 13.

13 MR. GHAPPOUR: 46.

14 THE COURT: 46. If I look on Exhibit No. 46, I
15 didn't see anything on there about a disclaimer.

16 MR. GHAPPOUR: Because they didn't show you my
17 profile page.

18 THE COURT: Okay, but look, here is the deal.
19 That is out there, and you see that. The reasonable
20 inference is that that is a comment by you whether it is
21 an original tweet or retweet.

22 MR. GHAPPOUR: Your Honor, I need to distinguish
23 that from posting an article one of your cases on your
24 own web page. It is not an endorsement. I teach law
25 school. I tweet about cyber security 24 hours a day in

1 addition to national security. I want to clarify.

2 THE COURT: I want to be honest with you.

3 MR. GHAPPOUR: You don't like it.

4 THE COURT: That dog will not hunt.

5 MR. SWIFT: I'm sorry?

6 THE COURT: That dog will not hunt.

7 MR. GHAPPOUR: I want to be clear.

8 THE COURT: I understand your position, but it
9 doesn't carry the day for me.

10 MR. GHAPPOUR: Okay.

11 THE COURT: Well, just hold on a minute.

12 (PAUSE IN PROCEEDINGS.)

13 THE COURT: You say you are not the author of The
14 Persecution of Barrett Brown.

15 MR. GHAPPOUR: Your Honor --

16 THE COURT: Which to me already puts the case in
17 a certain light that you think it is unjustified, it is
18 unfair, and he is being unfairly prosecuted. It already
19 has a severe negative connotation and even fighting.

20 MR. GHAPPOUR: Your Honor.

21 THE COURT: Yes, sir.

22 MR. GHAPPOUR: Two points on that. First
23 instance, that article was written before I ever entered
24 the case. The second point is Mr. --

25 THE COURT: Wasn't it retweeted?

1 MR. GHAPPOUR: Yes.

2 THE COURT: What date is on the retweet?
3 Remember I asked that question.

4 MR. GHAPPOUR: Yes, sir.

5 THE COURT: I know sometimes you think the Court
6 is asleep, but the Court asks questions for specific
7 reasons. That is why I asked that question so there
8 would be no question about the date. That was a specific
9 reason why I went back later on. Sometime later after
10 Ms. Heath had moved on and started asking different
11 questions I went back and asked that because I did not
12 want any misunderstanding in my mind as to when this was
13 retweeted. I saw the date, but I want it to be verified,
14 that is why I asked the witness that. Now, you talk
15 about July 18, 2013, that is less than two months from
16 where we are now. That is very recent.

17 MR. GHAPPOUR: Okay, Your Honor, so I am clear I
18 will not retweet articles about the case. Just so I am
19 clear, so I don't want to -- I don't want you to call me
20 in two months. That is the whole thing. I want to be at
21 your pleasure.

22 THE COURT: That is what I am saying. If
23 retweeting is going to cause you to violate an agreed
24 order that is going to be a problem --

25 MR. GHAPPOUR: Okay.

1 THE COURT: -- then you cannot retweet.

2 MR. GHAPPOUR: Okay.

3 THE COURT: What I am trying to do is get the
4 ground rules and as stated before, and I will emphasize
5 this again. It seems to me that this type of order
6 protects both sides. Now, as Mr. Swift pointed out on
7 voir dire, we are going to have to expose some quote,
8 unquote, dirty laundry because I will have to know and
9 the parties will have to know whether or not prospective
10 jurors can be fair in light of what they have heard about
11 the case.

12 Now, I don't know how much mainstream media has been
13 involved. I think I saw a couple of articles in The
14 Morning News. I happen to look at Channel 5, and it was
15 on Channel 5 this morning. The morning News Channel 8.

16 MR. SWIFT: They are getting more and more in the
17 mainstream as of this afternoon. This hearing put it in
18 the mainstream.

19 THE COURT: Yes, you have at least twelve people
20 from the press. All right, so where do we go from here
21 Counsel?

22 MR. SWIFT: I think -- why don't we take a
23 15-minute recess. I don't want to waste the Court's
24 time. My suggestion is a 15-minute recess. Ms. Heath
25 and I can see what we can hammer out. If we can't, then

1 we are back in here. If we can, then we are done. Does
2 that make sense, Your Honor?

3 THE COURT: It does. I would suggest that you
4 probably look at something that was similar to what was
5 done in the Hill case.

6 MR. SWIFT: I don't have it on me, but I wrote it
7 down and will it to pull it up immediately.

8 THE COURT: Basically, really it is just it is
9 just sort of limited what the participants and when I say
10 participants, I am talking about the Defendant, the
11 lawyers, the witnesses, and obviously, if you know
12 somebody is going to be a witness, that person shouldn't
13 be talking about the case. And if you don't know whether
14 somebody is going to be a witness, that is a horse of a
15 different color.

16 MR. SWIFT: Yes, sir.

17 THE COURT: Let's take a 20-minute recess.

18 (A RECESS WAS HAD, AFTER WHICH THE FOLLOWING
19 PROCEEDINGS WERE HAD IN OPEN COURT, WITH ALL PARTIES AND
20 COUNSEL PRESENT.)

21 THE COURT: In light of the discussion at the
22 bench, the Court is going to be in recess for 20 minutes.

23 THE COURT SECURITY OFFICER: All rise.

24 THE COURT: All right, Counsel, approach the
25 bench, please.

1 (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH,
2 WITH ALL COUNSEL PRESENT.)

3 MR. SWIFT: I don't think we agree. I had two
4 additional parts that I wanted in it that I have not
5 heard -- I told them to the government. They deal
6 with -- the first one deals with what is prohibited and
7 making statements or otherwise publishing topics not
8 related on the counts in which he stands indicted.
9 Mr. Brown is cautioned to consult with Counsel prior to
10 making any statements to the media or publishing
11 materials --

12 THE COURT: Keep your voice down.

13 MR. SWIFT: -- or publishing materials to avoid
14 the violation of this order. That is one. And two,
15 prohibits the parties or further cautioned the Free
16 Barrett Brown Limited should be considered to be a member
17 of the media for the purposes of making statements
18 regarding this case. The Defendant and the attorneys are
19 otherwise permitted to discuss without limitation the
20 financial -- the financial-related clause and related to
21 this case and Free Barrett Brown Limited fundraising
22 efforts on his behalf.

23 This is our finances. We have to talk to them about
24 what things are going to cost going forward, but we will
25 treat them as the media for any facts regarding the

1 case. That is the best I can do on Mr. Gallagher. I
2 can't control him. Beyond that, he is not a
3 representative for us.

4 THE COURT: Well, Ms. Heath?

5 MS. HEATH: I agree with the wording in the
6 order as amended by the Court. Paragraph -- I think it
7 is paragraph, -- I am sorry -- thank you. Paragraph 3,
8 there is a modification of the U.S. versus Hill order
9 that was done during trial which is a little stronger on
10 the ramifications of the parties violating the Texas
11 Disciplinary Rules of Conduct, and we request the first
12 two paragraphs of the last -- I am sorry -- the first two
13 sentences of the last paragraph of that be modified to
14 fit this case. It is a little stronger than that. As
15 far as the amendments here, the government has no
16 objections to their publishing items if he is truly a
17 journalist that are not related in any way directly or
18 indirectly to this case, but we would request that they
19 go through Counsel first to approve as to what is
20 published, so Counsel can have some control on what is
21 going to the press.

22 THE COURT: Is that this one right here?

23 MS. HEATH: I believe so.

24 THE COURT: You say not directly related.

25 MS. HEATH: I say directly or indirectly related

1 to the issues in this case.

2 THE COURT: That concerns me. Then we are
3 getting into a question is something indirectly related,
4 then the next thing y'all are going to be before me
5 again. The purpose here is to close the loopholes now.

6 MR. SWIFT: Your Honor, my client has a First
7 Amendment right. We are about to shut that down.

8 THE COURT: I am not shutting his right down.
9 He has no business talking about this case. Let me just
10 say this. I can tell you right now based upon -- I can
11 tell you right now that other than telling him not to
12 talk about this case whether he is a journalist or a
13 defendant is not in my estimation violative of the
14 Constitution. I don't know how it violates any parts of
15 the Constitution. If there is something unrelated to
16 this case and he wants to speak out as a journalist, he
17 is free to do so. You are going to have to convince me
18 how that prohibition violates the First Amendment or any
19 other provision of the Constitution.

20 MR. SWIFT: Your Honor, I am not saying that
21 part. They are not directly related. When it gets to
22 indirectly related, for instance, my client wrote an
23 article criticizing Nelson -- I think --

24 THE COURT: Criticizing.

25 MR. SWIFT: -- the Thomas Friedman opinion. It

1 is the government's opinion that is related to his case.
2 Now, Thomas Friedman has not written about his case or
3 has not done anything on his case, but it is a national
4 issue, so he wrote an op-ed saying Mr. Friedman, and we
5 get to that and that is why we say directly related.

6 THE COURT: You know, to be honest I think both
7 sides are trying to get as much as they can, and I think
8 neither side wants to give an inch. One side is
9 concerned that the other side is going to get a one up.
10 I really think -- and I think both sides know what is
11 meant by this order. I think there is an attempt to push
12 the envelope. I really do.

13 MS. HEATH: Your Honor, the government agrees
14 with the Court and thinks that this order is sufficient
15 and advises the parties what are and what are not their
16 responsibilities.

17 MR. SWIFT: Okay, here is my concern. My concern
18 is that Mr. Brown has been publishing for years on issues
19 of internet security and Cyber-Intelligence Complex and
20 intelligence issues, and he was publishing on those
21 issues long before he was indicted. The concern I have
22 is if he continues to publish on those issues, are those
23 -- I mean -- the Stratfor hack, he was publishing on the
24 Stratfor hack long before he was indicted for this. Does
25 that mean that he won't be allowed to publish anything or

1 make any comments about these types of issues? He is an
2 activist and a journalist who discusses -- whose main
3 area of interest is these cyber security issues, so we
4 just don't want to be in a position of not really knowing
5 what it is that the order covers.

6 THE COURT: That is what we are trying to do. It
7 seems to me you are trying to make it more murky. I am
8 trying to make it more direct and to the point, and I
9 want to have language in there that it is clear and puts
10 all participants or parties on notice of what the Court's
11 parameters are, what is prohibited. I want to make
12 certain that everybody understands that and that a
13 reasonable person can understand the language and the
14 order and what type of conduct or what type of comments
15 are prohibited.

16 Now, when you start using words like indirectly,
17 that just adds to the mix because the first thing I hear
18 is the term not directly, not directly related, then we
19 are going to get a whole can of worms opened and there is
20 going to be a hearing, and we are going to be argued
21 whether it is not directly related to that or not.

22 MR. SWIFT: What does not indirectly related mean
23 or indirectly related?

24 THE COURT: You said not directly related.

25 MR. SWIFT: What we tried to clarify was on the

1 absolute part no comments on the charges against him.

2 THE COURT: Well, to me it is very
3 straightforward. Don't comment on the charges pending --
4 don't comment on any of the charges set forth in the
5 indictment, end of story.

6 MR. GHAPPOUR: That would be fine.

7 MR. SWIFT: That is what we are.

8 THE COURT: You say not directly related to.

9 MR. GHAPPOUR: He is free to write stuff not
10 directly related. The reason that Mr. Swift and
11 Ms. Cadeddu --

12 THE COURT: Why don't you say not related to.

13 MR. GHAPPOUR: Because, Your Honor --

14 THE COURT: We are going in circles.

15 MR. GHAPPOUR: The concern is if the government
16 would set out their position -- their position in their
17 brief is that first op-ed was related, the second op-ed
18 was basically a book review and was entitled Reading
19 Pending Jail. The fact that he is in jail and its title,
20 does that also relate to the case? That is what we are
21 trying to avoid.

22 THE COURT: Let me ask you a question. Let's be
23 realistic. Are you telling me you are so naive you can't
24 tell whether something is related or not related to the
25 issue and the charges set forth in the indictment? Now,

1 come on.

2 MR. GHAPPOUR: Yes.

3 MR. SWIFT: Because the government feels -- we
4 feel they are not. I don't want to be back here.

5 THE COURT: I am not saying I agree with the
6 government.

7 MR. SWIFT: I don't want to be back here.

8 MR. GHAPPOUR: We do want to clarity, Your
9 Honor. So if you can suggest language --

10 THE COURT: I have, but you don't agree with
11 it. What I am saying is what I am suggesting you are
12 putting something in that muddies the water.

13 MR. GHAPPOUR: The proposed language would be --

14 MR. SWIFT: Not related.

15 MR. GHAPPOUR: Not related to the charges in this
16 case.

17 THE COURT: Not related to the counts set forth
18 in the indictment, and if you want to give the case
19 numbers or whatever, that is fine. That is about as
20 clear as I can get.

21 MR. SWIFT: Yes.

22 MR. GHAPPOUR: Related to the counts in the
23 indictment.

24 THE COURT: Okay.

25 MR. GHAPPOUR: I am very sorry. Again, just

1 because I don't want to go -- I don't want to come back.
2 Are we in agreement that this order or this part of the
3 order caused Mr. Brown's first op-ed to be in violation
4 or not in violation? I need to figure that out, so I can
5 advise my client. He wrote the article about
6 Cyber-Intelligence Complex and criticizing the need to --

7 THE COURT: Go ahead.

8 MR. GHAPPOUR: The Thomas Friedman New York
9 Times column saying he was naive or giving him all the
10 stress on the article that he wrote. I am just trying to
11 figure out whether this is something that I tell my
12 client to do because that is all he writes about. Our
13 Exhibit D in our briefing it could have been anything.
14 It is hundreds of --

15 THE COURT: Okay, Ms. Heath, how is that related
16 to the charges set forth in the indictment?

17 MS. HEATH: I would suggest that any time the
18 defendant or the government, the agents, that is then
19 that potentially could be --

20 THE COURT: That is too broad, Ms. Heath. That
21 is too broad.

22 MS. HEATH: I understand.

23 THE COURT: Well, let's see. That's too broad.
24 I mean -- that is a total lockdown. That is too broad.

25 MS. HEATH: I understand that. Related to this

1 case is what we are talking about. The FBI agents are
2 talking about the other witnesses in this case because we
3 know he has public information in the past that that
4 refers to.

5 THE COURT: We are talking about the past. We
6 are talking about henceforth.

7 MS. HEATH: I understand.

8 THE COURT: From henceforth, we are talking
9 specific as to this case.

10 MS. HEATH: Correct.

11 THE COURT: Okay, what we need to clarify and
12 mention specific case numbers, but now, I don't think
13 that I can write an order that would prohibit him from
14 making general criticism not related to this case.

15 MS. HEATH: Correct, I am not asking for that.

16 THE COURT: Okay.

17 MS. HEATH: So --

18 THE COURT: Are we on the same page?

19 MS. HEATH: Yes, Your Honor. I think that is
20 what I said. The government is not opposed to
21 Mr. Barrett Brown writing articles that are not related
22 to this case.

23 MR. GHAPPOUR: I am sorry. Is the government
24 saying -- I don't understand the question I don't think.

25 MS. HEATH: I don't think it matters at this

1 point.

2 MR. GHAPPOUR: I think it matters because I need
3 to advise my client. I need to tell him this was wrong
4 and this is right. I need to know that decision.

5 THE COURT: Okay, let me ask this question.
6 There has been so much going back and forth. Does that
7 op-ed piece discuss any reference to the counts in the
8 three cases?

9 MR. GHAPPOUR: No.

10 MR. SWIFT: No, sir.

11 THE COURT: Then I would ask, Ms. Heath, how does
12 it violate the order? How would it violate this order?

13 MS. HEATH: No, it relates to the case and also
14 relates to the evidence in the case and witnesses in the
15 case, witnesses to include the government. He is
16 critical of the witnesses that will be called. He is
17 critical of the government which has the tone, and I
18 mentioned the tone of the article was problematic. I do
19 not say that the article would violate this rule. I am
20 just saying I mentioned before the tone.

21 MR. GHAPPOUR: Your Honor, the First Amendment
22 is apex when it is protecting criticism of the
23 government. We cannot enter an order precluding
24 Mr. Brown from criticizing the government
25 constitutionally in my view. Nor could we enter an order

1 that includes tone or type of writing. I don't know what
2 to do with that. It is ambiguous, Your Honor. It is
3 completely vague.

4 THE COURT: The only thing I can say on this
5 point is I would have to cross that bridge when we come
6 to it, but preliminarily on what I have heard, I do -- I
7 would not see a violation of what is contained in the
8 order because I think at this point what you are saying,
9 Ms. Heath is too broad. I think it is overly broad, and
10 I really do not think if I put something like that in the
11 order that it would pass constitutional muster.

12 MS. HEATH: I apologize to the
13 Court. The impression I wanted to change the wording was
14 I was asking for the wording to be changed.

15 THE COURT: Okay, let me do this then. Okay, I
16 am going to add this first change to the order, and I am
17 going to keep the language that has been modified here so
18 all the parties know what we are going to do.

19 MR. SWIFT: Yes, sir.

20 MR. GHAPPOUR: Your Honor, can I -- I apologize.

21 THE COURT: You don't have to apologize. Let's
22 get it all on the table. You don't have to apologize.

23 MR. GHAPPOUR: Forgive me and this was my --
24 this was my fault. This one instead of giving Gallagher
25 up here the word violative of this and this here, I guess

1 my only concern is that we are not -- I am sorry, Charlie
2 -- but Kevin Gallagher should we change because without
3 with Mr. Gallagher I don't have because of that. Do you
4 understand what I am trying to get at?

5 THE COURT: Yes, I do.

6 MS. HEATH: I think the contents of this could
7 be addressed by putting a key comment, Counsel could be
8 permitted to talk to Kevin Gallagher regarding the need
9 for finances through the defense.

10 MR. SWIFT: That is Mr. Gallagher. He is not
11 part of the media. He is running a defense fund, but I
12 am treating him as such.

13 MS. HEATH: He has written articles.

14 MR. SWIFT: He has written op-ed on the topics
15 part of they are to make it clear Mr. Gallagher's
16 articles are rewritten by other people in the media and
17 I think he knows that, so I am treating it as such for
18 purposes he is running a defense fund. I don't know if
19 people would consider that the media. He is an advocate
20 in a sense, but he is running a defense fund.

21 MS. HEATH: Counsel would reiterate that I think
22 this can be accomplished by putting an extension on
23 number two, except that Counsel for Mr. Brown can consult
24 with Mr. Gallagher regarding the need for finances or
25 Mr. Brown's defense.

1 THE COURT: Does that accomplish your objective,
2 Mr. Swift?

3 MR. SWIFT: I guess so.

4 THE COURT: All right, write that in there,
5 Ms. Heath.

6 MR. SWIFT: The reason I put it that there is I
7 don't know if a reasonable person would consider
8 Mr. Gallagher a member of the media.

9 MS. HEATH: If this supports being published by
10 outlets on the internet which is mainstream, he is
11 potentially a member of the media.

12 MR. SWIFT: Potentially.

13 MS. HEATH: He is writing articles that are
14 being published.

15 THE COURT: Okay, I think that will take care of
16 it. Let's see what Ms. Heath writes, and you can tell me
17 whether you find that language agreeable.

18 MR. SWIFT: I am fine with it, Your Honor.

19 THE COURT: Sir?

20 MR. SWIFT: I am fine with it, sir.

21 THE COURT: All right, okay. All of these
22 orders talk about the defendant, Counsel for the
23 defendant, and Counsel for the government. It talks
24 about employees, representatives or agents of such
25 attorneys; however, it does not talk about witnesses.

1 The case I read from the Fifth Circuit that talks about
2 witnesses, it means trial participants. It means anybody
3 who participates in trial in some capacity. The question
4 I have is this, do we need one distinctly for witnesses
5 or those persons who are reasonably expected to be
6 witnesses in this case? In other words, they are not to
7 talk with the media and discuss the case.

8 MR. SWIFT: I don't think we do.

9 THE COURT: What is that?

10 MR. SWIFT: I don't think we do. We have had no
11 problem with that part of it.

12 THE COURT: Ms. Cadeddu, I wouldn't deliberately
13 torture you.

14 MR. SWIFT: No, I don't. I don't think there is
15 a problem. I don't think it has been a problem. I think
16 the problem is there are tons and tons of coverage, and
17 at this point I don't know what witnesses are. I
18 wouldn't have any idea. I know it is the government's
19 case agent. I know there's a couple that have been
20 pretty good. I know there's more, but that is the
21 government's agent. I don't control her. I don't have
22 anybody right now, and I don't have -- I don't take an
23 issue with any of the government's witnesses doing
24 anything.

25 THE COURT: All right, I will stay away from

1 that for now. One thing I need to include and that is
2 something to the effect that the prohibition regarding
3 extrajudicial statements applies to the reposting of any
4 statements previously made.

5 MR. SWIFT: Yes, sir.

6 MR. GHAPPOUR: Applies.

7 THE COURT: What do you mean?

8 MR. GHAPPOUR: Now, here is the problem, I
9 regularly -- on my own website, I put things to articles
10 that show I am involved in certain cases, so there is a
11 link to an article about the case when I entered an
12 appearance. On Facebook, for example, I posted a link to
13 an article because my friends sometimes find those
14 articles interesting. My Facebook posts are not public.
15 They are private. Does that mean I am -- what does it
16 mean? It is public designation.

17 THE COURT: Are we talking about a comment or
18 statement that violates -- that would violate this
19 order? For example, the statement that was reposted by
20 Mr. Ghappour, to me that statement if it were posted
21 again would violate this order. That is what I am
22 talking about.

23 MR. GHAPPOUR: I mean, I don't think so.

24 THE COURT: Well, I mean --

25 MR. GHAPPOUR: You know, I posted an article that

1 said this is an interesting article about one of my cases
2 and on my web page I have a link to the article that says
3 I entered an appearance. I cannot do that?

4 THE COURT: Well, there again.

5 MR. GHAPPOUR: I just want to know.

6 THE COURT: If you just -- if you just -- merely
7 making a statement that you entered an appearance, that
8 is one thing. But if you are making a statement where
9 you are commenting beyond what is allowed in this order,
10 then that would be a problem.

11 MR. GHAPPOUR: Just to clarify my understanding
12 and my apologies is that we can post an article. We
13 cannot post a comment or statement about an article; is
14 that correct?

15 MR. SWIFT: no, retweeting. You didn't comment.

16 MR. GHAPPOUR: I didn't comment, and then I
17 retweeted.

18 THE COURT: But here is the problem, if you
19 repost a statement and this original statement would
20 violate this order, then that is a problem.

21 MR. GHAPPOUR: I understand.

22 THE COURT: That is to me what the July 18th
23 order does.

24 MR. GHAPPOUR: I see.

25 THE COURT: The July 18th tweet does because even

1 though there was no order at the time --

2 MR. GHAPPOUR: Uh-huh.

3 THE COURT: Okay, if you were to post that again
4 and say on September 9th.

5 MR. GHAPPOUR: That would be a problem.

6 THE COURT: That would be a problem. That is
7 what I am getting to.

8 MR. GHAPPOUR: Just one more. There is another
9 tweet where I basically quote the title of an article and
10 a link to that article. Is that considered violative?
11 If you say yes, I am fine with that, but I need to
12 understand.

13 THE COURT: Y'all are asking the Court for a
14 bunch of hypotheticals. I don't have all the facts and
15 you will say, Judge, you said such and such, but I think
16 it is a bit unfair, although, it is not intended to
17 expect the Court to be able to answer all of these
18 hypotheticals when all the facts have not been
19 developed. The one I give you was a clear case to me.

20 MR. SWIFT: Okay, but the key here is, for
21 example, and I hate to pick on Mr. Ghappour, but this is
22 an example.

23 MR. GHAPPOUR: That is okay. I am used to it.

24 THE COURT: That Exhibit No. 46, the article said
25 the Persecution of Barrett Brown, and here is how to

1 fight it. If that statement was made now that statement
2 would violate the contents of the proposed order.

3 MR. GHAPPOUR: I understand.

4 THE COURT: Now, even though the statement was
5 made earlier and there was no order in place if it were
6 to be reposted at this stage, that is, after the order is
7 entered, then that would be a problem. That is what I am
8 saying.

9 MR. SWIFT: And the comment was made by whom.

10 MR. GHAPPOUR: Someone else and the tweet
11 doesn't contain the statement I guess. I won't tweet
12 about the case that is fine.

13 THE COURT: I thought you retweeted this.

14 MR. GHAPPOUR: No, I retweeted this.

15 MS. HEATH: It says retweet.

16 MR. GHAPPOUR: This is the statement I
17 retweeted. This one right here or the reporter who just
18 retweeted and passwords. Barrett Brown indictment for
19 the press, and then it linked to this aerial so actually
20 what you see Twitter is just the statement not that
21 statement. That is a separate article that was written a
22 while before I entered on the case, and then I made no
23 comment on that.

24 THE COURT: I understand that if somebody sees
25 that, how do they disconnect?

1 MR. GHAPPOUR: On Twitter you don't see that.
2 You only see this. That is my understanding.

3 THE COURT: You don't understand that.

4 MR. GHAPPOUR: That is why there was confusion
5 on my end.

6 THE COURT: You are assuming that everybody is
7 sophisticated as you are and uses a Twitter account.

8 MR. GHAPPOUR: I should just cancel my account.

9 THE COURT: I am not saying that.

10 MR. GHAPPOUR: I don't want to run afoul of Your
11 Honor.

12 THE COURT: But I can see somebody picking this
13 up and saying Mr. Ghappour is being -- you are being
14 technical.

15 MR. GHAPPOUR: Yes, and I know that. I
16 understand where you are going. I will just try to
17 refrain from tweeting as much as possible about the case.

18 I think I understand if the article were
19 whatever is being -- is being retweeted or posted it
20 would violate -- if the underlying article would violate
21 the article, then it is a violation.

22 MR. SWIFT: That is all articles.

23 MR. GHAPPOUR: Right. No tweet or retweeting.

24 MR. SWIFT: Violate.

25 Mr. GHAPPOUR: No, the article where we report

1 that we entered appearances does not violate, or an
2 article about a hearing.

3 THE COURT: Okay, let me ask this question. I
4 will get this worked up. Hold on about 15 or 20 minutes
5 and we will get this worked out. I will put you for the
6 government. Who do I put for Defense Counsel?
7 Mr. Swift?

8 MR. SWIFT: Yes.

9 THE COURT: We will get this drawn up, and I am
10 going to make it applicable to all three cases. All
11 right, I will tell the press that we have reached and
12 agreement, and I will have a draft order in about 20
13 minutes, and we will just sign off and have copies of it.

14 MR. GHAPPOUR: Thank you, sir.

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

17 THE COURT: All right, members of the press, I
18 know you are waiting to hear this. I think we have an
19 agreed order regarding extrajudicial statements. I need
20 to have it typed up. We are going to be in recess for 20
21 minutes. Once I sign it, I will be happy to give a copy
22 to each member of the press. We will be in recess for
23 about 20 minutes.

24 THE COURT SECURITY OFFICER: All rise.

25 (A RECESS WAS HAD, AFTER WHICH THE FOLLOWING

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

3 THE COURT: As the Court state earlier, the
4 parties had agreed to an order regarding the
5 extrajudicial statements, and the Court made certain
6 modifications to the agreed order. That order has now
7 been entered by the Court.

8 The Court coordinator is making copies. She
9 will be in momentarily with the copies for the parties
10 and the press.

11 Is there anything else on this hearing at this time?

12 MS. HEATH: Nothing from the government, Your
13 Honor.

14 MR. SWIFT: Nothing from the defense, sir.

15 THE COURT: All right, the Court will be in
16 recess, and Mr. Swift, did you want a copy of that for
17 your client?

18 MR. SWIFT: I would appreciate that.

19 THE COURT: All right, Mr. Marshal, I am asking
20 that you delay taking Mr. Brown out until my court
21 coordinator comes back in with a copy of that order. She
22 should be in momentarily. All right, the Court is in
23 recess.

24 THE COURT SECURITY OFFICER: All rise.

25 (THE HEARING WAS CONCLUDED AND THE COURT WAS IN RECESS.)

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

S/Charyse C. Crawford 03-25-2014
Signature _____ Date: _____
Charyse C. Crawford, CSR, RPR
United States Court Reporter
Northern District of Texas - Dallas Division