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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
)
BARRETT LANCASTER BROWN,)
)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
HAD ON TUESDAY, DECEMBER 16, 2014
SENTENCING HEARING

BEFORE THE HONORABLE SAM A. LINDSAY, JUDGE PRESIDING

A P P E A R A N C E S

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

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

*****SEALED BENCH CONFERENCE*****

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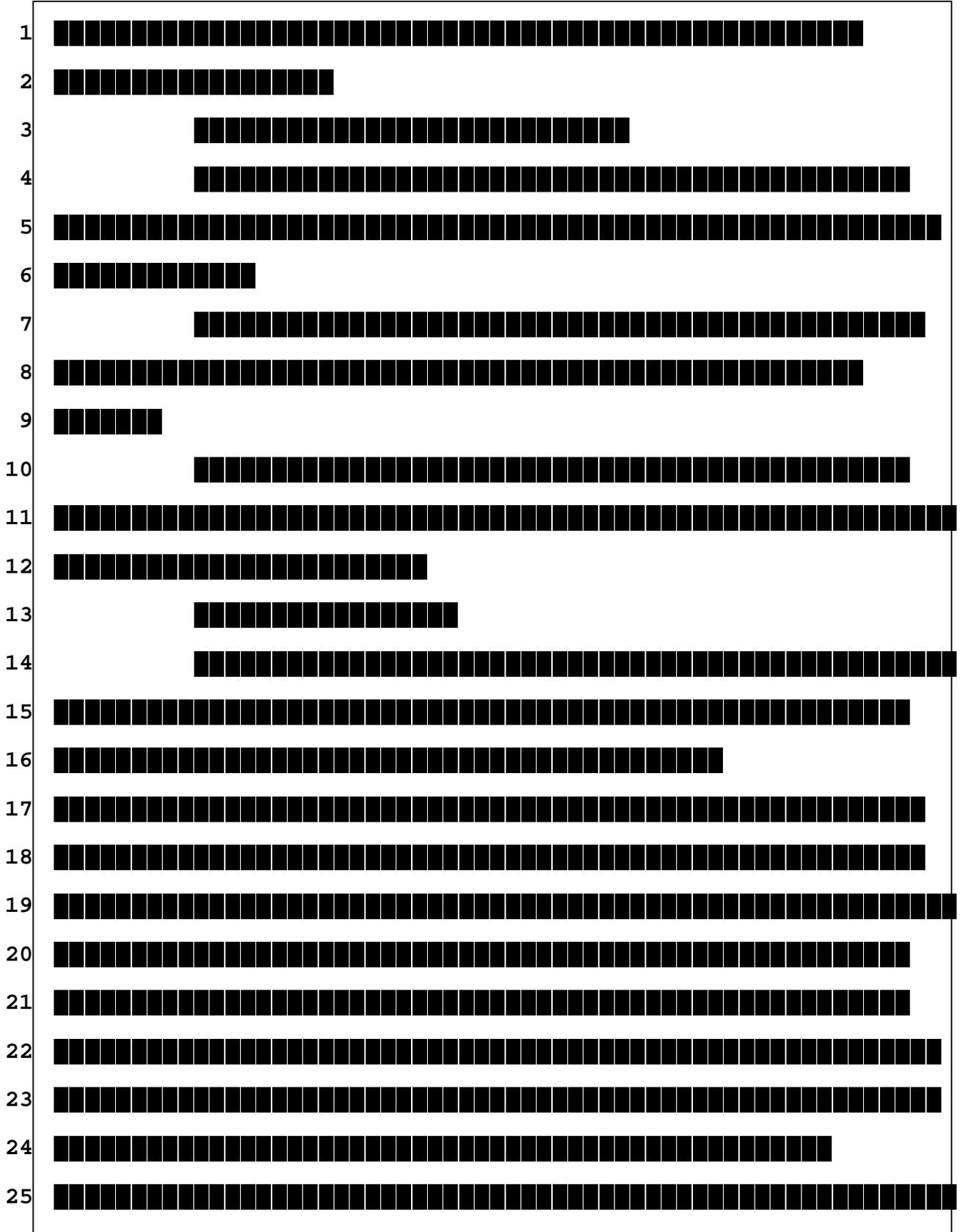
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8 *****END OF SEALED BENCH CONFERENCE NO. 1*****

9 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN

10 COURT, WITH ALL PARTIES AND COUNSEL PRESENT.)

11 THE COURT: Okay, all right, we are going to be

12 in recess for ten minutes.

13 Mr. Price and Mr. Marshal, bring out Mr. Brown,

14 please.

15 THE COURT SECURITY OFFICER: All rise.

16 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT,

17 WITH ALL PARTIES AND COUNSEL PRESENT.)

18 THE COURT: I understand that Counsel has

19 requested a bench conference; is that correct?

20 MS. CAEDDU: Correct, Your Honor.

21 THE COURT: All right, please approach.

22 *****SEALED BENCH CONFERENCE NO. 2*****

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23 *****END OF SEALED BENCH CONFERENCE NO. 2*****

24 (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT,

25 WITH ALL PARTIES AND COUNSEL PRESENT.)

1 THE COURT: This is United States versus Barrett
2 Lancaster Brown case number 3:12-CR-317-L and
3 3:12-CR-413-L. Who is representing the government?

4 MS. HEATH: Candy Heath for the government, Your
5 Honor.

6 THE COURT: Thank you, Ms. Heath. Who is
7 representing Mr. Brown?

8 MS. CADEDDU: Marlo Cadeddu for Mr. Brown.

9 MR. SWIFT: Charles Swift for Mr. Brown.

10 MR. GHAPPOUR: Ahmed Ghappour for Mr. Brown.

11 THE COURT: All right, thank you, Ms. Cadeddu,
12 Mr. Swift, and Mr. Ghappour.

13 Sir, are you Barrett Lancaster Brown?

14 THE DEFENDANT BROWN: Yes, Your Honor.

15 THE COURT: Mr. Brown, do you know why you are
16 here today?

17 THE DEFENDANT BROWN: Yes, Your Honor.

18 THE COURT: Why is that, sir?

19 THE DEFENDANT BROWN: I have been charged in a
20 number of statutes, and although the government has
21 dropped a number of them, some still remain, I am to be
22 sentenced today.

23 THE COURT: That is correct. You are to be
24 sentenced to today. Are you prepared to proceed?

25 THE DEFENDANT BROWN: Yes, Your Honor.

1 THE COURT: All right, you may be seated.

2 With respect to this matter, the Court has before it
3 the Pre-sentence Report, the Government's Notice of No
4 Objections to the Pre-sentence Report, Objections to the
5 Pre-sentence Report by Defendant, the Addendum to the
6 Pre-sentence Report, Objections to the Addendum by the
7 Defendant, the Government's Response to the Defense's
8 Objections to the Pre-sentence Report and its Notice of
9 No Objections to the Addendum, Defendant Barrett Brown's
10 Sentencing Memorandum and exhibits, attached to this
11 memorandum are charts prepared by Mr. Brown's Counsel
12 that sets forth letters that they have received from
13 interested persons, friends, and family regarding
14 Mr. Brown's case.

15 I think the chart shows some -- I believe 102
16 letters; some of them are attached. There is a selected
17 sample of those letters attached to the document. The
18 letters come from family members, his mother and father,
19 aunt and uncle, cousins. There are letters coming from
20 several different countries including Germany, Australia,
21 United Kingdom, Switzerland, Sweden, Turkey, India, and,
22 of course, from individuals in the United States and the
23 Dallas area.

24 Also, the Court has a impact statement from Combined
25 Services, Incorporated regarding the financial loss

1 suffered caused by the attacked from Anonymous, an impact
2 statement from the law firm of Puckett and Faraj
3 regarding the closure of the law firm and financial loss
4 resulting in -- resulting from attack by Anonymous. Then
5 the Court has before it the psychological evaluation of
6 Mr. Brown performed by Dr. Randall Rattan.

7 Are there other written documents that the Court
8 should have received but has not received concerning this
9 matter?

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

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

12 THE COURT: All right, Ms. Cadeddu, have you had
13 sufficient time to discuss and read the pre-sentence
14 report and the pre-sentence with your client Mr. Brown?

15 MS. CADEDDU: Yes, Your Honor, we have.

16 THE COURT: Mr. Brown, have you had sufficient
17 time to read and discuss the pre-sentence report --

18 THE DEFENDANT BROWN: Yes, Your Honor.

19 THE COURT: -- and the addendum to the
20 pre-sentence report with your Counsel?

21 THE DEFENDANT BROWN: Yes, Your Honor.

22 THE COURT: Thank you. There are a number of
23 objections to the pre-sentence report. Based upon the
24 Court's discussion with Counsel and in light of the
25 Court's review of the record in this case as well as the

1 positions by the parties, the Court believes that it can
2 cut to the chase on several objections or at least the
3 major objections or some of the major objections, I
4 should say.

5 One major objection lodged by the defense is the
6 correct intended loss amount, and just for the record,
7 the probation officer finds the loss amount to be
8 \$3,670,884.45. While there is evidence in the record to
9 support this figure, the Court notices that in the plea
10 agreement the parties have agreed or at least the Court's
11 understanding that the loss amount falls between \$400,000
12 and one million dollars.

13 It is the Court's understanding that the government
14 is not opposed to that amount and the defense is not
15 opposed to that amount. I do not wish to put words in
16 anyone's mouth, but has the Court correctly stated the
17 conference held at the bench earlier?

18 MS. CAEDDU: Yes, Your Honor, from the defense's
19 perspective.

20 MS. HEATH: Yes, Your Honor, from the
21 government.

22 THE COURT: All right, just so it is clear as
23 stated before, there is evidence to support -- there is
24 some support for the position stated by the probation
25 officer. However, in light of the plea agreement reached

1 by the parties and as the parties are aware, this is an
2 11C1.1(b) plea agreement, and the parties have agreed
3 that the appropriate sentencing guideline range for loss
4 amount for the loss related to the violation of Title 18
5 United States Code Section 3 is more than \$400,000, but
6 less than one million dollars. So what does that mean;
7 what is the bottom line? The bottom line is that instead
8 of an 18-level enhancement, the Court would add a
9 14-level enhancement to the base offense level.

10 Any question as to the ruling of the Court?

11 MS. CAEDDU: No, Your Honor.

12 MS. HEATH: No, Your Honor.

13 THE COURT: The Court having decided that the 14
14 levels is the appropriate amount of enhancement to the
15 base offense level based upon the language in the plea
16 agreement, particularly, paragraph 5 of the plea
17 agreement, any remaining objections made as to the loss
18 amount are moot.

19 There is also an objection regarding relevant
20 conduct, and I think we should proceed to that issue at
21 this time. As the Court stated at the bench conference,
22 the burden on this issue is on the government and
23 Ms. Heath, do you have any witnesses to call as to the
24 relevant conduct issue?

25 MS. HEATH: Yes, Your Honor.

1 THE COURT: All right, call your first witness
2 please.

3 MS. HEATH: The government calls Special Agent
4 Robert Smith.

5 ROBERT SMITH,

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

8 THE COURT: You may proceed, Ms. Heath.

9 D I R E C T E X A M I N A T I O N

10 Q. (BY MS. HEATH) Please state your name and how you are
11 employed.

12 A. My name is Robert Smith. I am employed as an agent
13 of the FBI.

14 Q. Were you one of the case agents on the Barrett
15 Lancaster Brown investigation?

16 A. Yes, ma'am, I was.

17 Q. With regard to that investigation were search
18 warrants executed and computers taken from Barrett
19 Brown's house and from his mother's house?

20 A. That's correct.

21 Q. With regard to the evidence in this case, does a lot
22 of the evidence come from those computers?

23 A. Yes, a good portion of the evidence comes from those
24 computers.

25 Q. With regard to computer evidence, could you give a

1 very brief background on your ability to review computer
2 data?

3 A. Well, my background is in computer science. I have
4 been an agent for about twelve years now working mostly
5 cyber crimes during that period, so I have extensive
6 experience with reviewing digital evidence in that
7 context, in particular, computers related to the ones we
8 are talking about in this case.

9 Q. And did we in preparation for this hearing mark a
10 number of exhibits which came from computers basically
11 either e-mails or IRC chats or screen shots of Pastebin
12 or screen shots from other websites found on Mr. Barrett
13 Brown's computer?

14 A. Yes, and also from the internet.

15 Q. Now, with regard to investigating Barrett Brown, when
16 did you get involved in this investigation?

17 A. I became involved with the investigation here in
18 Dallas in January or early February of 2012.

19 Q. And the basis for your investigation came from what
20 course of conduct?

21 A. There was a video that was on Russia TV that was
22 brought to my attention which appeared to have an
23 individual being interviewed by Russia TV to describe
24 attacks that were going on, some of those were related to
25 Mega Upload, others were related to attacks on the White

1 House.

2 Q. When you say "Mega Upload," what is that?

3 A. My understanding it was a file sharing website.

4 Q. And the attacks on Mega Upload and attacks on the
5 White House, who was claiming responsibility?

6 A. His name is Barrett Brown.

7 Q. And Barrett Brown was being interviewed as to his own
8 involvement or as to what organization?

9 A. Well, he was speaking about the group Anonymous and
10 these attacks that were going on.

11 Q. Did the media at that time represent Barrett Brown as
12 a spokesperson for Anonymous?

13 A. I think in this video he actually was interviewed is
14 my recollection, yes.

15 Q. Now, with regard to that particular newscast, was it
16 determined that Mr. Brown was admitting to involvement
17 and participation in certain attacks or with Anonymous in
18 dealing with the data that was stolen from the attacks?

19 A. What struck me about this particular video was that
20 the newsperson actually stopped him at one point and
21 actually sort of admonished him he appeared to be
22 involved in criminal activity and asked if he wanted to
23 admit that on the show, and then she continued on with
24 the interview.

25 Q. As the course of your investigation you indicated

1 that you obtained things from the internet. Were these
2 other interviews of Mr. Barrett Brown by other media
3 sources?

4 A. Yes, ma'am.

5 Q. And was one of them the NBC Nightly News?

6 A. That's correct.

7 Q. And approximately when was that interview done?

8 A. My understanding is that interview was done on or
9 about March of 2011.

10 Q. With regard to your knowledge of what intrusions were
11 occurring that were being claimed by Anonymous, what was
12 happening around that time?

13 A. Earlier in February of 2011, there had been intrusion
14 into a company that was claiming to have information
15 related to participants in Anonymous, and they were
16 suspected of being -- getting that information to law
17 enforcement. There were attacks subsequent to that is my
18 understanding and that company had a service compromise,
19 emails taken over, some of the principals had their
20 accounts taken over and the like is my understanding.

21 Q. That particular company -- I am afraid we will have
22 to distinguish between different companies. Was that
23 HBGary Federal?

24 A. Yes.

25 Q. And did that company ultimately close down based upon

1 some of the attacks?

2 A. It is my understanding HBGary Federal ceased
3 operation.

4 Q. Now, when you were reviewing the computers for
5 Barrett Brown, did you find involvement in any part of
6 that intrusion and/or the after effects?

7 A. I did.

8 Q. What type of things did you find with regard to
9 regarding the attacks?

10 A. I found a number of artifacts. Some of those were
11 chat conversations, for example.

12 Q. When you say "artifacts," what do you mean?

13 A. Files on the computer, chat logs. I found IRC chat
14 logs including private messages between the account
15 associated with Mr. Brown and individuals such as Topiary
16 where they are discussing as the attacks are on going.
17 There are conversations -- there is a conversation where
18 they talk about -- Topiary talks about tweeting a message
19 or here, watch this and tweets a message using one of the
20 victim accounts. There is a screen shot of that message
21 on the computer.

22 There is a point where Mr. Brown appears to give
23 advice to Topiary. At the end of that conversation my
24 recollection is he talks about hiding laptops.

25 MS. HEATH: Your Honor, at this time I am going

1 to offer into evidence Government's Exhibit Nos. 1
2 through 61, absent Exhibit No. 10 and number 42, I
3 believe. We had a couple of duplicates, so I had to pull
4 some exhibits. Actually, it's 40, so Government's
5 Exhibit No. 1 through 61 absent Number 10 and Number 42,
6 and these are what the agent referred to as the exhibits
7 we put together for the case which came from the
8 computers and/or the internet related to Barrett Brown.
9 A copy has been given to the defense.

10 THE COURT: Any objection, Mr. Swift?

11 MR. SWIFT: Yes, Your Honor, because it is a
12 blanket -- although, it is not a blanket objection as to
13 relevance to many of the exhibits, I am not sure what
14 they show toward the issues in -- at issue from the
15 probation report, and so I would ask the government to
16 set out for each document that it believes is relevant
17 rather than blanketly submitting them. Unfortunately, I
18 received them this morning, and there is about -- after I
19 came to Court -- there is about 500 pages, and I have not
20 had an opportunity. I can't attest that I agree to the
21 relevance.

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

23 MS. HEATH: These documents were from evidence
24 previously provided in discovery to the defense. I mean
25 I can go through them one by one, I thought in abundance

1 of facilitating the hearing, I would offer them in bulk.

2 THE COURT: Any further reply, Mr. Swift?

3 MR. SWIFT: Yes, Your Honor, why they do appear
4 to be documents we previously received, we received
5 hundreds of thousands of documents off of this computer.
6 Many of which I don't believe are relevant to the
7 particular issues here. I would ask that rather than
8 blanketly -- I do not believe because a document was
9 seized off Mr. Brown's computer it is necessary to
10 sentencing. That is the proposition that the government
11 puts forth: I seized these documents off of Mr. Brown's
12 computer, therefore they are relevant. I believe that a
13 little more foundation needs to be set other than that.

14 THE COURT: Anything final, Ms. Heath, as to your
15 request for admission of these documents?

16 MS. HEATH: I can ask the agent a couple more
17 questions regarding the documents.

18 THE COURT: All right, let's see about laying
19 more of a predicate, and we will go from there and see if
20 Mr. Swift renews his objection or the predicate satisfies
21 his concerns.

22 Q. (BY MS. HEATH) With regard to these documents, Agent
23 Smith, do they deal with e-mails and/or IRC chats
24 regarding Project PM, one of the entities that is
25 attributed to Barrett Brown?

1 A. Yes, they do.

2 Q. Do the e-mails and chats also refer to occasions when
3 Mr. Brown refers to himself as the spokesman or
4 unofficial spokesperson for Anonymous?

5 A. Yes, they do.

6 Q. Are there e-mails and chats where Mr. Brown is
7 referring to himself as a former journalist or
8 psuedo-journalist, but not currently a journalist during
9 the periods of time from 2011 and early 2012?

10 A. Yes.

11 Q. Are there e-mails and IRC chats with regard to
12 Mr. Brown explaining what his role in Anonymous and/or
13 any of the smaller groups such as being a strategist,
14 theorist, targeting individuals, things like that?

15 A. Yes.

16 Q. Are there chats and e-mails regarding Mr. Barrett
17 recruiting individuals with Anonymous and/or Project PM?

18 A. Yes, I think there are.

19 Q. And also and all this is related to the relevant
20 conduct. Are there also chats and IRC discussions
21 concerning Mr. Brown's acquisition of and requesting of
22 credit card information and other personal identifiers of
23 individuals?

24 A. Yes, there are.

25 Q. With regard to the few items you got from the

1 internet, was one of them the NBC Nightly News?

2 A. Yes, ma'am, it was one of the items.

3 Q. And that was a video of Mr. Brown's interview?

4 A. Correct.

5 Q. Did it also include some Pastebin or other screen
6 shots from the internet related to references to those
7 screen shots in either Twitter accounts or e-mails or the
8 IRC chat?

9 A. My recollection is they did have screen shots that
10 showed links to content and such.

11 MS. HEATH: Your Honor, again, the government
12 would offer Government's Exhibit Nos. 1 through I believe
13 I said -- actually, it is 61 -- I am sorry --
14 Government's Exhibit Nos. 1 through 62 absent number 10
15 and absent number 42.

16 THE COURT: All right, any objection,
17 Mr. Swift?

18 MR. SWIFT: My objection stands I think they need
19 to be laid individually.

20 THE COURT: All right, we can do it the hard
21 way. Let's move forward. Counsel approach the bench.

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

24 THE COURT: Okay, Mr. Swift, Ms. Heath went over
25 five different areas concerning the e-mails and chats.

1 MR. SWIFT: Yes.

2 THE COURT: From the Court's perspective it
3 seems relevant to the issues in this case and issues of
4 sentencing.

5 Now, are there documents, Ms. Heath, in this
6 collection, Exhibits 1 through 62, less Exhibits 10 and
7 42 that do not pertain to those topics that you asked
8 Agent Smith about?

9 MS. HEATH: Full e-mails may contain discussions
10 about other things, but what we are focused on in the
11 e-mail will be those statements that we refer to. We
12 have the complete e-mail, but we would only be
13 referencing those statements that I referenced such as
14 the e-mail that may be five pages long we are referring
15 to one page of it. We can always redact if the Court
16 deems necessary. For completeness, I included the entire
17 e-mail.

18 THE COURT: Here is the problem. We can do a
19 blow-by-blow account exhibit for exhibit, but we will be
20 here for two or three weeks doing that. Is that the
21 approach that defense wants? Now, I will agree with you,
22 Mr. Swift, that it needs to relate to what is relevant in
23 this case, and I thought she was making an attempt to
24 narrow the information to those five or six areas in
25 which she inquired. That is all I am interested in. I

1 am not interested in the stuff beyond that.

2 MR. SWIFT: The difficulty, Your Honor, if I
3 agree to the entrance, then I am not objecting. I have
4 not gone through all of them. I am not -- I just over
5 time my version of what is relevant and the government's
6 version of what is relevant is sometimes different, and I
7 can suggest perhaps a 20-minute recess. I need time to
8 read these. I could do it on the fly if they are handing
9 it down, but I have 51 documents I am supposed to agree
10 to and that is almost malpractice with 51 documents. I
11 have not read all of them, but I agree to admissibility.
12 How could I do that? I understand the Court's position.
13 I am just put in a position. In my entire practice, I
14 have never had 51 documents blanketly admitted as
15 exhibits, 1 through 51 that I received on that morning as
16 opposed to single exhibits.

17 THE COURT: Well, I have allowed it under the
18 condition that the parties have discussed them and they
19 have come to some agreement. I have preadmitted exhibits
20 more than that.

21 MR. SWIFT: Yes, I have too, but I have not done
22 that in this case. I have not done that.

23 THE COURT: All right, so the question then is
24 this. As stated before, we can do at this time hard way,
25 the difficult way, or we can do it exhibit by exhibit.

1 MR. SWIFT: I probably can read faster. Could I
2 have a 20-minute break to see if I have specific
3 objections? Otherwise, I am stuck with a blanket and I
4 don't want to waste the Court's time and when comes down
5 to it, I had two objections out of 51, but I can't on the
6 fly do this and go through them. I am sorry, Your Honor,
7 I think that is the best way I have.

8 THE COURT: Are you talking about a 20- or
9 30-minute break to review those?

10 MR. SWIFT: Right. I will go through and see if
11 we have objections, and I will be able to articulate
12 them.

13 THE COURT: You are talking about 30 minutes to
14 review those, then that is probably more productive or
15 more efficient than introducing each exhibit one by one.
16 Now, if you are going to have 30 minutes and we still
17 have objections as to all exhibits, then no purpose is
18 served.

19 MR. SWIFT: No, after the 20 minutes is over, I
20 will articulate specific objections to documents. In
21 other words I will -- I will be objecting to 15, 17, I am
22 guessing, 22, 37, and 40 based upon these grounds or
23 based upon relevance and if the government wants to lay a
24 foundation they lay a foundation for those five, and I
25 have agreed to everything else.

1 What I am asking is time to read through it and see
2 if I can't do exactly what we normally do in a pre-trial
3 come to an agreement on them. One would expect because
4 they do have clients. I don't know whether the
5 government is going, and I know the Court's view on
6 relevance in this, that I will probably be able to agree
7 to the vast majority, but I do not know that until I read
8 them.

9 THE COURT: I guess the other question I have for
10 you, Ms. Heath, is this. Are any of those exhibits
11 cumulative or unnecessary? I mean I know what you are
12 trying to establish, but you have made your point with
13 three or four exhibits. Is it necessary to add four or
14 five more of the same nature? I am asking you. I am not
15 telling you how to try your case. Sometimes, there is
16 overkill by both sides. Once a point is established,
17 they are sort of piling on, so --

18 MS. HEATH: Obviously, if the documents are
19 admitted, the Court can go over them at its leisure. At
20 some point later today if it wants to do that and we can
21 address.

22 THE COURT: I hope to finish this hearing
23 today. I was told it was going to last three hours. I
24 am beginning to question that now.

25 MS. HEATH: Right.

1 THE COURT: I do have a busy docket tomorrow.

2 MS. HEATH: What I meant was yes, there may be a
3 need to only go through certain of the documents, I mean
4 -- they may be the same issue, but related to different
5 companies that were victimized but the same issue.

6 THE COURT: Okay, let's do this. Okay, let's do
7 this. Let's take a 30-minute break. Let me tell Counsel
8 for both sides this. Are there any other exhibits?
9 Let's get them in the open now.

10 MS. HEATH: That's it.

11 THE COURT: Does the defense have any?

12 MR. SWIFT: I will have to see.

13 THE COURT: Are you going to have any exhibits?

14 MR. SWIFT: We are going to have testimony, and
15 we potentially could have IRC chats.

16 THE COURT: A couple of what?

17 MR. SWIFT: IRC chats. They may be in here. I
18 don't know.

19 THE COURT: All right, let's do this then. Let's
20 take a 30-minute recess, and you and Ms. Heath get
21 together and see which exhibits there can be an agreement
22 on, and we can move forward on like that. If there is
23 objection to specific exhibits, we will take them up at
24 the time. What I want you to do is see how many you can
25 agree on. If there is an objection, the Court will deal

1 with it.

2 MS. HEATH: Yes, Your Honor.

3 MR. SWIFT: Yes, Your Honor.

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

6 THE COURT: All right, based upon bench
7 conference, the Court is going to allow a 30-minute break
8 for Defense Counsel to review those exhibits. There are
9 some 52 exhibits, less two. It is really a total of 50
10 exhibits. The Court agrees that Defense Counsel needs
11 time to look at those exhibits.

12 The Court instructs Counsel after he has reviewed
13 those exhibits to confer with the government's Counsel,
14 Ms. Heath, and see how much agreement can be reached with
15 respect to those exhibits. We will be in recess for 30
16 minutes.

17 THE COURT SECURITY OFFICER: All rise.

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: All right, Counsel, has there been
22 any agreement reached as to the exhibits in question?

23 MS. HEATH: Your Honor, let me clarify for the
24 record. I think I misspoke earlier. It would be
25 Government's Exhibit No. 1 through 61, and 61 is actually

1 the video absent number 10 and absent 44. I had the
2 wrong numbers there.

3 THE COURT: Earlier you said 10 and 42, but it
4 should be Exhibit No. 10 and No. 44?

5 MS. HEATH: Correct.

6 THE COURT: We are talking about Government's
7 Exhibit Nos. 1 through 61, except for Exhibits 10 and 44;
8 is that correct?

9 MS. HEATH: Yes, Your Honor.

10 THE COURT: All right, Mr. Swift.

11 MR. SWIFT: I have objections. The government
12 did not indicate that it agreed to redact these
13 documents, so I am going to state for the record my
14 objections. I can object now.

15 THE COURT: Do you have objections to all of the
16 exhibits?

17 MR. SWIFT: No.

18 THE COURT: Tell me which ones to which there is
19 no objection first.

20 MR. SWIFT: There is no objection through Exhibit
21 No. 33.

22 THE COURT: All right, so 1 through 32 there is
23 no objection; is that correct?

24 MR. SWIFT: Yes.

25 THE COURT: For purposes of this hearing

1 Government's Exhibits 1 through 32 are admitted with no
2 objection. Tell me which other exhibits there is no
3 objection.

4 MR. SWIFT: There is no objection to Government's
5 Exhibit No. 35, Government's Exhibit No. 36. There is
6 objection --

7 THE COURT: No. Go through all the ones there is
8 no objection, and we will deal with the others.

9 MR. SWIFT: Yes, Your Honor, there is no
10 objection to Government's Exhibit Nos. 46 through 61.

11 THE COURT: All right, just so the record is
12 clear there is no objection to Government's Exhibit No. 1
13 through 32 which have been admitted. There is no
14 objection -- did you include 33 or not?

15 MR. SWIFT: I object to 33.

16 THE COURT: There is no objection to
17 Government's Exhibit No. 1 through 32 which have been
18 admitted. There is no objection to Government's Exhibit
19 No. 35, 36, and 46 through 61. Did I state that
20 correctly, Mr. Swift?

21 MR. SWIFT: You did, Your Honor.

22 THE COURT: All right, that being the case,
23 Government's Exhibit Nos. 34, 35, 36, and 46 through 61,
24 those exhibits are admitted into evidence along with
25 those previously stated by the Court which include

1 Government's Exhibit No. 1 through 32.

2 All right, just one minute, please. All right there
3 is an objection by the defense to Government's Exhibit
4 No. 33. What is your objection, Mr. Swift?

5 MR. SWIFT: Relevance. If we take a look at
6 Government's Exhibit No. 33, the subject is Shell Oil.
7 If Your Honor takes a look at the text, it includes Shell
8 Oil. I am in no way understanding that Shell Oil is the
9 victim in this case, that they were hacked or in any way
10 does the PSR suggest such a part.

11 THE COURT: Ms. Heath, what is the relevance?

12 MS. HEATH: Your Honor, actually, all but one of
13 the items that he is objecting to are Barrett Brown
14 targeting potential victims. In this case, he does say
15 in an e-mail from him to another person, he identifies a
16 target for an attack which would go to relevant conduct
17 which includes Mr. Brown's role in the offense.

18 MR. SWIFT: Our contention is this one actually
19 goes to targeting in a sense of arguing for op-ed,
20 e-mails, or that sort of thing, that such a person should
21 be castigated. I don't believe it sets out anything.
22 They are not an appropriate victim.

23 THE COURT: Ms. Heath, expand on your argument
24 as to relevant conduct.

25 MS. HEATH: Your Honor, with regard to relevant

1 conduct, it is important to see what Mr. Brown's role was
2 in the offenses related to the instant offense to which
3 he pled guilty. In this case, Mr. Brown as one of his
4 roles in Anonymous was helping to target entities,
5 corporations, individuals for the attention of Anonymous,
6 which generally involved some sort of hacking, DDOS
7 attacks, doxing, posting public information, or posting
8 private information in a public forum, and so the
9 Exhibits 33, 34, 37 through 43 which the defense is
10 objecting to, those all go to targeting various targets
11 on behalf of Anonymous.

12 MR. SWIFT: Your Honor, Mr. Brown has pled and
13 being sentenced for accessory after the fact in this
14 case. The accessory after the fact has for its potential
15 relevant victims of the actual crime. That is what is
16 before the Court, the relevant conduct.

17 None of these parties were ever victims. None of
18 these parties relate to prove any fact at issue. It is
19 not relevant.

20 THE COURT: All right, just one minute.

21 (PAUSE IN PROCEEDINGS.)

22 THE COURT: Okay, Mr. Swift, are 34 through 37
23 the same?

24 MR. SWIFT: The same objection, identifies as no
25 relevance as to identified victim, no relevance to anyone

1 who has ever been identified as a victim. I try --

2 THE COURT: Well, is the relevance for other
3 reasons or not? I mean, for example, let's look at
4 Exhibit No. 33. I know there are some objections as to
5 relevance made generally to the pre-sentence report. I
6 think one objection is that the defense stated that the
7 pre-sentence report overstated Mr. Brown's role with
8 respect to Anonymous, but Exhibit No. 33 says -- excuse
9 me -- not 33, 34 talks about my Anon Group, quote,
10 unquote.

11 I tell you what I am going to do with respect to
12 these exhibits. I think there is perhaps some degree of
13 relevance. I think really the objection may be more as
14 to the weight of the evidence as opposed to the
15 relevance, and even if it does not relate to the victims,
16 I think it is relevant to Mr. Brown's involvement with
17 Anonymous.

18 The Court is going to overrule the objections made
19 by the Defense with respect to Exhibits 33, 34, 37
20 through 46. Let's move forward.

21 Q. (BY MS. HEATH) Agent Smith, let's go ahead and jump
22 right into these exhibits. Exhibit No. 1, if you could
23 look at that, page 2, in the middle of the page, this is
24 an e-mail from Barrett Brown; is that correct?

25 A. Yes, ma'am.

1 Q. And in this he is talking about his Project PM?

2 A. Yes, ma'am.

3 Q. What is Project PM?

4 A. Project PM was a group I understand that he founded
5 that was an associated group with Anonymous.

6 Q. Was there a time Project PM split into two separate
7 groups?

8 A. Yes, that is correct, around the time of this e-mail
9 that occurred.

10 Q. And in this e-mail, if you could read the paragraph
11 talking about splitting into two entities from Barrett
12 Brown, that one paragraph?

13 A. Starting with "Clark?"

14 Q. Yes.

15 A. "Clark, it's about time for Project PM to split into
16 two entities, one which I will continue to lead, and one
17 with those who would prefer to stay out of the war that I
18 have been prepping for over the last year. Obviously,
19 Scott is left, and Campbell is getting uncomfortable and
20 I want our plans to continue. I would like for you to
21 take over the legal faction in quotations or ask Campbell
22 or someone else to do so."

23 Q. If you could go to Exhibit No. 2, is this a chat also
24 discussing dividing Project PM into two factions?

25 A. Yes.

1 Q. You go to the middle, who is "me" in the chat?

2 A. This chat is from the point of view of Barrett Brown,
3 Barrett Brown's account.

4 Q. So the me is Barrett Brown?

5 A. Correct.

6 Q. In the section starting me, I have split Project PM,
7 could you read the three lines by "Me," by Barrett Brown?

8 A. Yes. "I have split Project PM into two organizations
9 one will be led by Campbell Vertesi and will continue the
10 other projects. The other will continue with me and will
11 be involved in revolutionary activities in conjunction
12 with people from Anonymous."

13 Q. Go down to the next four "Mes," starting with it
14 means various and read those.

15 A. Okay. "It means various nonviolent activities that
16 violate the laws of various dictatorships such as those
17 in Egypt where we took down government websites as well
18 as in the U.S. See HBGary Federal. Check the news."

19 Q. And HBGary Federal is the entity that you talked
20 about earlier that actually closed down because of
21 attacks by Anonymous?

22 A. That's correct.

23 Q. If you would go to page 2 of Government's Exhibit No.
24 2 at the very top and read two lines starting with
25 Anonymous has become.

1 A. "Anonymous has become rather powerful, and I am close
2 to everyone involved."

3 Q. And if you go down to Me, people will, and read that
4 line.

5 A. People will die?

6 Q. Yes.

7 A. "People will die because of what we are going to do."

8 Q. And further down, suffice it to say.

9 A. "Suffice it to say, we are capable of all kinds of
10 things now."

11 Q. If you go to page 3 on Government's Exhibit No. 2, a
12 little further than half way down the page, Me, at any
13 rate; please read those three lines.

14 A. "At any rate, the other Project PM, the quote,
15 unquote, legal faction is safe, does everything openly.
16 I am no longer associated with it."

17 Q. If you could go down to the very bottom of the page
18 where the person he is talking asks him a question. Could
19 you read the question and then his answer?

20 A. "If you don't mind me asking, was there a divisive
21 reason as to why you are no longer associated with PM or
22 you just couldn't resist the allure of being part of this
23 transnational revolution." He replies, "Oh, I split it
24 into two the other day because several people are nervous
25 about associating with Anon at this time, and in order to

1 protect them, as well as the scientists, this is the best
2 option."

3 Q. And then if you turn to the next page, the last page,
4 Government's Exhibit No. 2, the very last line by "Me" is
5 he's indicating that he was happy to recruit.

6 A. I am sorry. What?

7 Q. The very last line by Barrett Brown.

8 A. "Always happy to try to recruit."

9 Q. If we could go to Government's Exhibit No. 3, and
10 again, this is during the time of Project PM splitting;
11 is that correct?

12 A. Yes.

13 Q. And this is an e-mail from Barrett Brown. If you
14 could please read the first two sentences in the e-mail?

15 A. "Howdy. As some of you know, due to my having taken
16 a more central role in Anonymous in the past few months,
17 I am splitting Project PM into two different groups. One
18 will continue with my myself, a group of PM folks, and
19 Anonymous will continue pursuing project aid for Africa
20 and the Middle East. We will also carry on with things
21 like HBGary, and for those who are uncomfortable with
22 these newer projects for any reason can work with
23 Campbell Vertesi, Clark Robinson, and a number of PM
24 folks, as well as whomever else joins them as recruiting
25 continues."

1 Q. If you go to Government's Exhibit No. 4 is this a
2 chat between Barrett Brown and another person?
3 A. It is.
4 Q. In the beginning of the chat, does Barrett Brown post
5 an article in Forbes?
6 A. Yes.
7 Q. And the article in Forbes according to the link is
8 titled what?
9 A. The link ends with "Anonymous Hackers Target Alleged
10 WikiLeaks Bradley Manning's Jailers."
11 Q. At this point was Bradley Manning in custody?
12 A. Yes, he was.
13 Q. Were there issues that you observed in Mr. Brown's
14 communication where he or other people were contesting
15 the conditions that Bradley Manning was held?
16 A. I think he was not happy with the conditions of his
17 confinement.
18 Q. In the middle of this chat, there is a reference to
19 Isikoff. Could you read those two sentences?
20 A. Yes. Starting with Isikoff?
21 Q. Yes.
22 A. "Isikoff came down with camera crews to interview me
23 last week. The segment will appear on NBC properties
24 soon, also I'm probably going to be hit by the feds."
25 Q. And then the next two lines by Me, by Barrett Brown.

1 A. "I have been Anon for five, six years, came out two
2 months ago. I have got a plan."

3 Q. Later on, does Mr. Brown indicate what Project PM's
4 relationships to Anonymous is?

5 A. So in response to that question, Mr. Brown answers
6 it's laundered people for Anonymous among other things.

7 Q. And this was Project PM?

8 A. Correct.

9 Q. Now, with regard to the NBC Nightly News, was that an
10 interview given by Mr. Barrett Brown?

11 A. Yes.

12 Q. Was it in his apartment in the Dallas area?

13 A. Yes.

14 MS. HEATH: The government would request to play
15 this video. It's only a three-minute video.

16 THE COURT: All right.

17 (THEREUPON, THE VIDEOTAPE WAS PLAYED IN OPEN COURT.)

18 MS. HEATH: There is a video that goes with it.

19 (THEREUPON, THE VIDEOTAPE WAS PLAYED IN OPEN COURT.)

20 MS. HEATH: Your Honor, I will come back to
21 this, close it and restart it, and we will come back to
22 this.

23 THE COURT: All right.

24 Q. (BY MS. HEATH) Going to Exhibit No. 5, this is an
25 e-mail from Barrett Brown, and just read the first

1 sentence?

2 A. "Barrett Brown here. Anonymous spokesman and
3 strategist, et cetera."

4 Q. And if we can go to page -- go to Exhibit No. 6,
5 another e-mail from Barrett Brown. What is his -- the
6 very first line in the e-mail?

7 A. It says, "yes, I am also a strategist and legal
8 organizer. I don't hack, though."

9 Q. Was that in response to a question, can we refer to
10 you as the informal spokesman for Anonymous?

11 A. Yes.

12 Q. Further down in the e-mail, does he give a
13 chronological account of what website takedowns have
14 occurred?

15 A. Yes, he lists several sites.

16 Q. And there are 1, 2, 3, 4, 5, 6, 7 sites listed there?

17 A. Yes.

18 Q. If we could go to Government's Exhibit No. 7. This
19 e-mail is titled Barron Barr Anonymous. If you could
20 read the first half of the line that begins the e-mail.

21 A. I am sort of -- let me start over. "I am sort of
22 spokesman/strategist for Anonymous."

23 Q. Go down to the second sentence, happen to come
24 across.

25 A. "I happen to come across your e-mail address while

1 going through the e-mails we acquired from HBGary during
2 our investigation and during their surveillance of our
3 movements, and I wanted to get in touch to see if you
4 might be interested in talking about what has been
5 happening during the community and our people."

6 MS. HEATH: I believe we have Government's
7 Exhibit No. 61 ready to go.

8 (THEREUPON, THE TAPE WAS PLAYED IN OPEN COURT.)

9 Q. (BY MS. HEATH) With regard to the HBGary reference,
10 there is some additional documents that come across a
11 little later that has the HBGary reference; is that
12 correct?

13 A. Yes.

14 Q. Let me go back to Government's Exhibit No. 8 where
15 Barrett Brown says he is the informal strategist and
16 spokesperson for Anonymous?

17 A. Yes.

18 Q. Exhibit No. 9 is a chat; is that correct?

19 A. Yes.

20 Q. And in there he is identifying himself as one of the
21 informal spokesman and strategist; is that correct, in
22 the middle of the page?

23 A. Yes.

24 Q. And then further down right after a response by the
25 person he is talking to, he states, and we are the most

1 effective, if you could read that line.

2 A. I am sorry?

3 Q. And we are the most effective process.

4 A. Is it on the same page?

5 Q. Government's Exhibit No. 9, half way down?

6 A. And we are the most effective process by which to
7 smash the institutions that need smashed.

8 Q. Go to Government's Exhibit No. 11. Was that
9 discussing taking down the Algerian websites?

10 A. Yes.

11 Q. And then Barrett Brown also indicates that he is
12 helping to direct and service spokespersons for the
13 Anonymous OPs; is that correct?

14 A. Yes.

15 Q. When things are referred to as OPs, what is that?

16 A. I understand that to be an operation.

17 Q. Is that how many of the target or focuses of action
18 are titled like OP HBGary?

19 A. Yes.

20 Q. Government's Exhibit No. 12, does this indicate that
21 Mr. Brown in his own words as a former journalist who
22 serves as advisor to the Anonymous movement?

23 A. Yes.

24 Q. Government's Exhibit No. 13, does he indicate he is a
25 pseudo journalist and activist attached to Anonymous?

1 A. Yes.

2 Q. That he is a former journalist who currently serves
3 as sort of a strategist, theorist, and spokesman for
4 Anonymous?

5 A. Yes.

6 Q. Government's Exhibit No. 15, does Mr. Brown in this
7 e-mail state in his own words that I am sort of a
8 pseudo-journalist, formerly a real journalist, and does
9 he indicate that he left that life to be with Anonymous?

10 A. Yes.

11 Q. Further down in the paragraph, he starts my goal is
12 absolute dramatic reform; do you see that?

13 A. In the first paragraph?

14 Q. Yes.

15 A. Yes.

16 Q. Could you read that?

17 A. "Absolute dramatic reform of governments starting
18 with the most oppressive as well as rooting out of
19 corruption at high levels here in the U.S. I come from a
20 -- I come from a military family, but did not serve. I
21 consider Anonymous to be the world's most ethical and
22 effective army, increasingly so anyway, and it is the
23 only thing I've ever felt proud of being a part of
24 because from what I have seen from those with the
25 influence to move it in its current direction."

1 Q. And further down on the second paragraph where it
2 starts right smack in the middle of the second paragraph,
3 note that neither I, could you please read the two
4 sentences there?

5 A. I am sorry. "Note that neither I nor anyone else can
6 really speak for Anon, though. It is simply that some of
7 us are more active and make our cases better and thereby
8 convince others to join in certain tasks."

9 Q. Could you read the next sentence, please?

10 A. "We are an ebb and flow of relationships, a sort of
11 process at war with those institutions that we consider
12 to be dangerous."

13 Q. If we go to Exhibit No. 16, is that a short e-mail
14 from Barrett Brown again where he is saying he's a former
15 journalist and currently serves as an operative for the
16 Anonymous collective?

17 A. Yes.

18 Q. Government's Exhibit No. 17, Barrett Brown states he
19 is a former journalist currently working with Anonymous
20 collective?

21 A. Yes.

22 Q. Government's Exhibit Nos. 18 and 19 both saying that
23 Barrett Brown is a former journalist; is that correct?

24 A. Yes.

25 Q. And 18 actually states he is a current agitator?

1 A. Yes.

2 Q. In the first sentence of Mr. Brown's communication,
3 does he say that "we've effectively gained control of
4 Anonymous?"

5 A. Yes.

6 Q. "And will keep control until such time as it is
7 reformed."

8 A. Yes.

9 Q. And then his last sentence prior to his links, "we're
10 in even firmer control than yesterday."

11 A. Yes.

12 Q. Government's Exhibit No. 21, does Mr. Barrett Brown
13 say he is heavily involved in strategy and media and
14 running legal defense?

15 A. Yes.

16 Q. He has much more control now?

17 A. Yes.

18 Q. Government's Exhibit No. 22, the second sentence,
19 "Anonymous needs to be run properly, and I am the only
20 one who can ensure that this happens at the moment."

21 A. Yes.

22 Q. Government's Exhibit No. 23, in the first sentence,
23 Mr. Brown states that he serves as an advisor to
24 Anonymous?

25 A. Yes.

1 Q. Government's Exhibit No. 24, does he indicate he sort
2 of serves as strategist, IRL troll, and theorist?

3 A. Yes.

4 Q. And that is for Anonymous; is that correct?

5 A. Yes.

6 Q. Then Government's Exhibit No. 25, does Mr. Brown
7 state in his own words, I am sort of a forward engineer
8 for Anonymous and a former journalist?

9 A. Yes.

10 Q. Now, Government's Exhibit No. 26, does this appear to
11 be an interview in writing through the e-mail?

12 A. It does.

13 Q. And Mr. Brown is answering questions; is that
14 correct?

15 A. That's correct.

16 Q. The first question is asking if the Church of
17 Scientology was Anon's first public target; is that
18 correct?

19 A. That is the question.

20 Q. What was Mr. Brown's response?

21 A. He said it was not our first public target. Hal
22 Turner was hit before Scientology.

23 Q. And then in the question number 2, he is asked if he
24 is a self-described anarchist, but would Anonymous ever
25 define itself that way. What was his answer to that?

1 A. His response was, "Anonymous doesn't like to define
2 itself and my anarchism is my own" is the whole sentence.

3 Q. Question number 4, which is on page 2 of Exhibit
4 No. 26, he is asked about botnet. What is "botnet?"

5 A. A botnet is a collection of computers that can be
6 centrally controlled.

7 Q. Are botnets involuntarily taken over or voluntarily
8 taken over or both?

9 A. I would have to say both.

10 Q. And in this question he is asked about to clarify a
11 statement that he had made previous that voluntary
12 botnets were used for DDOS attacks; is that correct?

13 A. Yes.

14 Q. What does he respond?

15 A. Yes, voluntary zombies.

16 Q. What is his final word in this e-mail interview?

17 A. "Anonymous is a process at war with a system."

18 Q. Government's Exhibit No. 27, does he indicate that
19 Anonymous is not comprised of hackers, but he merely used
20 hackers?

21 A. Yes.

22 Q. Government's Exhibit No. 28, would you please read
23 the first two sentences of Mr. Barrett Brown's own words
24 in this e-mail?

25 A. "Well, when we take down the site, the press pays

1 attention, and thus read our manifestos or come to us
2 asking us why we did it. Then we explain what misconduct
3 our targets engaged in and that is subsequently printed."

4 Q. And again, this is seemingly an e-mail with questions
5 and answers; is that correct?

6 A. Yes.

7 Q. Go to page 2 in the middle of the page. Mr. Brown
8 starts, my role in Anonymous. Can you please read that
9 sentence?

10 A. "My role in Anonymous is unusual in so much as I was
11 involved in the culture from 2006 on in various
12 capacities and at some point began writing about it in my
13 capacity as a journalist while also still participating
14 to some degree."

15 Q. Later, he indicates I think the next sentence or two
16 down, "I join the Anon OPs server under my own name when
17 OpTunisia began."

18 A. Yes.

19 Q. What is the Anon Ops server?

20 A. I understand it's an IRC server associated with
21 coordination of operations.

22 Q. Were there many different channels or servers used
23 for the Anonymous participants to communicate with one
24 another?

25 A. There were several servers and several channels.

1 Q. Were some of the channels identified as the
2 operations that they were discussing?

3 A. Yes.

4 Q. Like Op Tunisia, they may be discussing Op Tunisia?

5 A. Yes.

6 Q. Further down in that paragraph in Government's
7 Exhibit No. 28 on the second page he says I was also
8 involved in the HBGary Operation; did you see that?

9 A. Yes.

10 Q. Could you read that sentence?

11 A. I was involved in the HBGary Operation in a couple of
12 capacities most notably by reporting a conversation with
13 Aaron Barr which I ran an op-ed I did for The Guardian.

14 Q. If you could turn to page 3 of Government's Exhibit
15 No. 28, the next page towards the bottom of the page he
16 is asked about using DDOS. What is DDOS?

17 A. Distribute, denial of service.

18 Q. What exactly is that?

19 A. The technique for overwhelming the resources of a
20 target.

21 Q. What does Mr. Brown say about DDOS?

22 A. DDOS will always have its place in our arsenal,
23 particularly, because its successful attack gives us a
24 chance to explain why we are attacking to begin with thus
25 we are able to bring attention to the targets of our

1 conduct.

2 Q. What is the next sentence there?

3 A. I do think the attacks on Visa, et al, brought
4 attention to the cynical decision from customers donating
5 to WikiLeaks.

6 Q. Was Visa attacked at some point in 2011?

7 A. It is my understanding they were attacked. I am not
8 sure of the exact time of that attack.

9 Q. Go to Government's Exhibit No. 29 and start on the
10 second page. Mr. Brown indicates that he is not the
11 leader of Anonymous; is that correct?

12 A. Yes.

13 Q. But he does go on to explain what his function is in
14 this e-mail. What did he say?

15 A. He says my function is equivalent to that of a
16 propagandist, strategist, and theorist. My influence
17 over the movement is up for debate and is at any rate
18 fluid.

19 Q. That last paragraph on that same page, does he
20 indicate how long he had been involved in the Anonymous
21 culture?

22 A. Six years.

23 Q. Does he indicate how long he has been an anarchist in
24 that last paragraph that last line?

25 A. Since his early teen years.

1 MR. SWIFT: Objection; relevance, anarchist?

2 THE COURT: You objected to the question because
3 the exhibit has been admitted. What are you objecting
4 to?

5 MR. SWIFT: I am objecting to question and
6 anarchist. There may be something in the documents that
7 are marginally relevant. I don't understand what
8 anarchist has to do with number of victims or trading in
9 credit card technology secrets that makes a fact more
10 probable. It is however prejudicial.

11 THE COURT: Well, we are not in a jury trial and,
12 frankly speaking, insofar as sentencing, I don't know if
13 it is relevant to my determination. What I am looking
14 for to be quite honest with you is looking for relevant
15 conduct, and I am looking for things like victims, and I
16 will tell you this, Mr. Swift, I do not plan to consider
17 that in my sentencing, so we will move on.

18 MR. SWIFT: Yes, Your Honor.

19 Q. (BY MS. HEATH) We can go to page 3, Government's
20 Exhibit No. 29, the second paragraph down is Mr. Brown's
21 statement, participants within Anonymous have committed
22 crimes?

23 A. I am sorry. Which page are you on?

24 Q. Page 3 of Government's Exhibit No. 29, second
25 paragraph that starts "gray hat."

1 A. Okay.

2 Q. Participants within Anonymous have committed crimes.

3 A. Yes.

4 Q. Next line, we target those who themselves have done
5 wrong?

6 A. Yes.

7 Q. Further down in the middle of the pages, currently,
8 we are investigating several issues related to the
9 intelligence community; do you see that?

10 A. Yes.

11 Q. If we could go to the last page of Government's
12 Exhibit No. 29, first full paragraph, Mr. Brown indicates
13 a voluntary botnet was used for DDOS attacks?

14 A. Yes.

15 Q. What is Mr. Brown's final line in the general
16 question, do you have anything else you would like to
17 share? You can skip over the obscenities.

18 A. "Yes. Booz Allen Hamilton and certain other parties
19 have no blanking idea how hard they are about to get hit
20 from several directions."

21 Q. Government's Exhibit No. 30, does it appear to be an
22 e-mail from Barrett Brown to a number of people with the
23 extension at qorvis.com?

24 A. Yes.

25 Q. In this, is Barrett Brown asking if any of them would

1 like to speak to him off the record about Qorvis'
2 operations?

3 A. Yes, he is asking if they would like to speak to him
4 to avoid being personally targeted.

5 Q. And does he indicate that Anonymous is getting ready
6 or I am getting ready to launch via Anonymous and my own
7 organization, a massive anti-PR campaign?

8 A. Yes.

9 Q. Government's Exhibit No. 31 is a chat with O; is that
10 correct?

11 A. Yes.

12 Q. And who is O?

13 A. I understand O to be the alias of Jeremy Hammond.

14 THE COURT: To be a what?

15 THE WITNESS: To be an alias Jeremy Hammond.

16 Q. (BY MS. HEATH) Is that the individual with whom
17 Barrett Brown has pled guilty to being an accessory after
18 the fact to Mr. Hammond's activities?

19 A. Yes.

20 Q. And those activities related to Stratfor at that
21 time?

22 A. That's correct.

23 Q. With regard to Mr. Brown's conversation with O, what
24 is Mr. Brown telling O in this chat?

25 A. He is telling O that this company Qorvis has

1 vulnerabilities.

2 Q. He says Qorvis has v-u-l-n-s? What does v-u-l-n-s?

3 A. Vulnerabilities.

4 Q. What is vulnerability?

5 A. My understanding is that he is referencing faults in
6 the software on the computer systems that could
7 potentially be exploited.

8 Q. Is he asking if there is another member that he
9 identifies as Elche capable of handling it?

10 A. Yes, he asked that question.

11 Q. Does O inquire about the vulnerability?

12 A. Yes, he inquires about the nature of the
13 vulnerability.

14 Q. Does Barrett Brown tell him about the nature of the
15 vulnerability?

16 A. Yes.

17 Q. Do they leave this conversation to follow up on it
18 later?

19 A. Well, I think there is some concern about talking
20 about live vulnerabilities in this conversation, yes.

21 Q. What is said about that?

22 A. He admonishes Mr. Brown and suggested that he start
23 using SSL.

24 Q. What is SSL?

25 A. Secure Sockets Layer encryption for the connection.

1 Q. So basically, he is not wanting to talk without
2 Mr. Brown using a secure communication format?

3 A. Yes.

4 Q. Government's Exhibit No. 32, the subject line is
5 possible Shell Oil Op; is that correct?

6 A. Yes.

7 Q. And in Government's Exhibit No. 32 in the first
8 paragraph he describes in the middle, I am hoping to keep
9 Project PM viable; do you see that?

10 A. Yes.

11 Q. Could you read that to the end of that one paragraph?

12 A. "I am hoping to keep Project PM viable as a means of
13 at least keeping some media focus on the cyber-industrial
14 complex and all that, and like a number of other people,
15 I'm not entirely ready to give up on Anonymous just yet,
16 but realistically, I think the way forward is with
17 smaller groups established with some degree of operating
18 procedures and intent, established by its founder."

19 Q. Exhibit No. 33, is this a follow-up on the same
20 concept that Shell Oil would be a better target?

21 A. Yes.

22 Q. And Government's Exhibit No. 34 another e-mail from
23 Barrett Brown. Would you please read this one line
24 e-mail?

25 A. "Not sure if you know what we did, but my Anon group

1 helped the Tunisian revolution, and I've now enlisted a
2 bunch of people to continue."

3 Q. And he includes a link; is that correct?

4 A. Yes.

5 Q. Government's Exhibit No. 35 is a chat; is that
6 correct?

7 A. That's correct.

8 Q. In this particular chat, if you go down halfway
9 through there, he is talking about an individual, about
10 how to target; is that correct?

11 A. Yes.

12 Q. What is the individual he is talking about, what do
13 they say about targeting?

14 A. It says, "Pick one target who is targeting Anonymous
15 and crush them. Have people in Britain crush American
16 targets and the reverse."

17 Q. What is Barrett Brown's response to that?

18 A. He says, "We just did. HBGary Federal and all
19 execs. Booz Allen Hamilton might be next." He went on,
20 "they only tell me when I need to know."

21 Q. Then go to Government's Exhibit No. 36. The question
22 asked of Mr. Brown in this e-mail, Was Combined Systems
23 attack this morning an Anonymous attack? Looking for
24 confirmation. What was Mr. Brown's response?

25 A. He confirms that it was an Anonymous attack and

1 occurred last night.

2 Q. And in this particular e-mail is follow up from an
3 e-mail regarding Puckett and Faraj; is that correct?

4 A. Yes.

5 Q. And, basically the remainder of the e-mail what does
6 that involve?

7 A. It is an e-mail from Puckett and Faraj.

8 Q. An example that was stolen from Puckett and Faraj?

9 A. Yes.

10 Q. And is Puckett and Faraj a law firm?

11 A. Yes.

12 Q. Did they basically fail after all these e-mails were
13 disclosed?

14 A. Yes, after this intrusion, they went out of business.

15 Q. How about Exhibit No. 37, subject is Red Team; what
16 does Barrett Brown say in the very first line?

17 A. "Yes, going to destroy a lot of lives starting with
18 Palantir, its execs and employees. This will be done in
19 accordance with my expanded policy of retaliation."

20 Q. Further down, he talks about I prefer shock and awe
21 surprise recorded phone calls. Did Mr. Brown as part of
22 his involvement with the follow up on these intrusions
23 and hacks, did he make phone calls to some of the
24 employees at the companies?

25 A. He did on several occasions.

1 Q. Have you had an opportunity to listen to any of the
2 recordings of those calls?

3 A. I have.

4 Q. Were those recordings found on Mr. Brown's computers?

5 A. Yes.

6 Q. And in general, what were the calls to the employees
7 about?

8 A. Well, they varied depending on who he was calling. I
9 am not sure which one you are asking about, but in
10 general he would represent the group that was responsible
11 for the intrusion. He would sometimes make threats and
12 sometimes he would invite them to confront the group.
13 Sometimes he would offer to assist with an interaction
14 with the group.

15 Q. So there were varied reasons depending on who the
16 person was what their relationship was to the company
17 whether or not they were still employed by the company;
18 is that correct?

19 A. Yes.

20 Q. Let me go to Government's Exhibit No. 38. He is
21 talking to an individual here who asked him to dox some
22 people; is that correct?

23 A. Yes.

24 Q. Is he inquiring of Barrett Brown who to dox?

25 A. He is looking for direction on who to dox.

1 Q. What does Barrett Brown respond?

2 A. He says, "Okay, do DEA. Some people already looking
3 into it a bit, and I'm not sure what they found yet, but
4 I think a surprise attack will spark significant
5 discussion, et cetera, and be productive."

6 Q. Does he indicate what he needs?

7 A. "We need pics of head DEA people."

8 Q. And do they discuss where they can post those pics?

9 A. He suggests a pad.

10 Q. What is a pad?

11 A. An online document.

12 Q. Government's Exhibit No. 39, in this e-mail, Barrett
13 Brown in the second sentence discusses that he just did
14 something to a friend of a certain ally. Could you read
15 that line and explain what that meant, for those and
16 other reasons?

17 A. I am sorry. What was the question?

18 Q. If you could read the line and explain what he is
19 referencing here?

20 A. "For those and other reasons, a friend and I just did
21 this to a certain ex-ally of mine." And it has a domain
22 line and URL relative, and it says "Barrett Brown
23 discusses attack on that site."

24 Q. And the site, who was operating that particular site
25 or what was that site's reference meaning?

1 A. I am sorry. There are two sites here. Which one are
2 you asking about?

3 Q. The -- well, I will come back to it because the next
4 one actually goes to it. If we could go to Government's
5 Exhibit No. 40.

6 A. Yes.

7 Q. Please read the first two lines -- actually, the
8 first three sentences by Mr. Brown?

9 A. The first three sentences?

10 Q. Correct.

11 A. "These haven't been hacking operations, but rather
12 doxxing/intel gathering operations. Quantico too."
13 There is a link to piratenpad.de/master. Also, an Anon
14 hacker hit Charles -- sorry -- victim of the site. This
15 was in retaliation for some things explained partially
16 here, and there is a URL.

17 Q. And this person of Little Green Footballs, was this
18 -- was this a personal attack?

19 A. I think it was a form of retaliation.

20 Q. What occurred that he retaliated?

21 A. My recollection is that there were a number of
22 issues, but one of those was there was discussion about
23 referring to the law enforcement of Mr. Brown.

24 Q. Government's Exhibit No. 41, this refers to the
25 Bradley Manning, is that correct, as far as the deadline

1 given?

2 A. Yes, it is.

3 Q. And if you could read the first paragraph?

4 A. "Yes, they have missed the deadline and our
5 retribution against those responsible within the military
6 will go forward at the appropriate time, which will come
7 soon enough. In the meanwhile, we have expanded our
8 probe of defense and intel contractors to include Booz
9 Allen Hamilton and other targets."

10 Q. Government's Exhibit No. 42, Government's Exhibit No.
11 42 deals with or is titled report U.S. Progressives
12 Endorse Anarchist Violence at London Budget Protests. In
13 this e-mail, Mr. Brown is talking about black block.
14 What is "black block?"

15 A. Actually, black block is a technique involving
16 individuals who are dressed in black that are basically
17 asserting violent acts.

18 Q. Could this be during a protest of some sort?

19 A. Yes.

20 Q. And is Mr. Brown describing a video concerning a
21 Black Block tactic?

22 A. Yes, the question is if there is a black block, and
23 he says, there certainly is.

24 Q. If we could go to Government's Exhibit No. 43. Was
25 this a document taken from Mr. Brown's computer?

1 A. Yes.

2 Q. And overall, what is this document?

3 A. This is a plan targeting a member of Congress.

4 Q. Does it set out some key points and planned
5 activities with regard to engaging in some sort of
6 conduct?

7 A. Yes.

8 Q. If we could go to Government's Exhibit No. 45. Does
9 this appear to be recruiting an individual to work within
10 Anonymous and Project PM or Project Panther Moderns?

11 A. Including Project Panther Moderns.

12 Q. If we could go to Government's Exhibit No. 46. Is
13 this a chat with an individual known as Topiary?

14 A. It is.

15 Q. Who is Topiary?

16 A. I understand him to be a British citizen Jake Davis.

17 Q. Jake Davis, was he prosecuted?

18 A. He was.

19 Q. Did he plead guilty?

20 A. He was convicted.

21 Q. I'm sorry?

22 A. He either pled guilty or was convicted.

23 Q. Now, with regard to the conversation with Topiary,
24 what is Mr. Brown and Topiary discussing?

25 A. They are discussing the HBGary hack, in particular

1 related sites, and in the conversation Topiary says allow
2 me to tweet something you will enjoy. One second, and
3 then he provides a link to the Twitter account for the
4 president of HBGary.

5 Q. During the attack of HBGary, were they able to take
6 over the Twitter account of Mr. Barr?

7 A. That is my understanding they did.

8 Q. So this would have been an example of taking over the
9 account; is that correct?

10 A. Yes.

11 Q. What do they then discuss after Mr. Brown responds to
12 the post?

13 A. Topiary tells or explains to him more targets coming
14 down and Barrett Brown says I know. Was told or --
15 already told the press, and Topiary says they are going
16 to release 126,000 of the e-mails, and Mr. Brown says I
17 know. I haven't told details to press yet. Just showed
18 them root. Can't say anything unless feds come to me.

19 Q. And with regard to Mr. Brown's conversation, does he
20 indicate some action he needs to take at the bottom of
21 this chat?

22 A. Yes, so at the end, he says, "Guess I'll start hiding
23 laptops."

24 Q. Government's Exhibit No. 47, does this refer to the
25 HBGary takedown?

1 A. Yes, it does. It describes what actions were taken
2 against HPGary's website.

3 Q. And this is Barrett Brown discussing it?

4 A. Yes.

5 Q. What does he say in that first portion of the e-mail?

6 A. He says, "Also Anon has taken down HBGary's website,
7 acquired 60,000 e-mails, destroyed backup files, acquired
8 Barr's Twitter and more. Barr is currently in
9 irc.anonops.ru pleading with us."

10 Q. If you could go to page 2 of Government's Exhibit No.
11 47 in the middle of the page, the bottom last sentence on
12 that paragraph, "That, too, would be a secret op." Do
13 you see that?

14 A. Yes.

15 Q. Could you read that sentence?

16 A. Starting with "that too?"

17 Q. Yes.

18 A. "That, too, would be a secret op run out of Project
19 PM until such time as our cover is blown, at which point
20 Anonymous will be thrown at them. I expect those
21 operations to begin in two weeks."

22 Q. What operations is he speaking of there, if you can
23 tell?

24 A. I think he is talking about Horchan.

25 Q. Go to Government's Exhibit No. 48 which is a very,

1 very long exhibit. Basically what is Government's
2 Exhibit No. 48? We won't go all the way through this.
3 A. What was the question?
4 Q. What is Government's Exhibit No. 48?
5 A. This is an IRC log of a channel called Op HBGary,
6 February 6, 2011.
7 Q. And is it overseas?
8 A. It is.
9 Q. With regard to the individuals in the Op HBGary
10 discussion, is Mr. Barrett Brown in here?
11 A. Yes.
12 Q. In fact, did this come from Mr. Brown's computer?
13 A. Yes.
14 Q. And with regard to Mr. Brown, who else is in here
15 related to Anonymous or any of the subgroups of
16 Anonymous?
17 A. Topiary, Sabu, TFlow, Nopants, Q. How many of these
18 do you want me to read, ma'am?
19 Q. With regard to the very beginning, the first couple
20 of pages, is Mr. Barr the victim of an HBGary attack or
21 one of the victims of an HBGary attack? Is he actually
22 conversing with people in Anonymous or people in this
23 room?
24 A. Yes, he is.
25 Q. And without going to the specifics, what basically is

1 happening in this discussion with Mr. Barr?

2 A. My recollection is that they are actually confronting
3 him over the document that they think he is going to give
4 to them.

5 Q. So HBGary -- if you could explain a little background
6 what HBGary did that Anonymous was upset about.

7 A. My understanding is that they produced a document
8 regarding Anonymous and some of the participants.

9 Q. HBGary did?

10 A. HBGary did.

11 Q. And some of the information in that document was not
12 correct according to -- what he complains of?

13 A. According to -- yes.

14 Q. Now, at this point in time, have they hacked into
15 HBGary?

16 A. I think, yes.

17 Q. And they are -- have they told Mr. Barr throughout
18 this conversation that they have -- they are basically
19 attacking him?

20 A. Yes, they basically explained why they are attacking
21 him.

22 Q. Okay, we are going to go to the next document. We
23 may come back to this one a little later. Government's
24 Exhibit No. 49 is another chat session between Barrett
25 Brown and another person?

1 A. Correct.

2 Q. To compare this particular chat with Government's
3 Exhibit No. 48, Government's Exhibit No. 48 was a large
4 room chat; is that correct?

5 A. Yes, it had multiple participants.

6 Q. Some of these chats we looked at are chats between
7 Barrett Brown and O, and Barrett Brown and these
8 individuals, these are private chats; is that correct?

9 A. That's correct.

10 Q. In this particular chat, what is the topic of
11 conversation, Government's Exhibit No. 49?

12 A. This is a conversation between an individual who
13 approaches Brown and says he has 262,000 credit cards,
14 and he is asking what he can do with them.

15 Q. Does Brown give him any advice as to what to do with
16 the credit cards?

17 A. He does. In any case, it depends on the status of
18 them to an extent. You can use them for charities. If
19 it becomes known that they were used for that, there
20 would be chargebacks, and you would have to give the
21 money back. Another option is donating to a good cause,
22 something involving a revolt abroad where they are not
23 going to refund the people like some charities do. For
24 instance, it might be a fund for Greek anarchists or
25 Syrian revolutionaries that don't give an expletive

1 whether or not the money was stolen because they've got
2 more on their plate.

3 Q. And then further down Barrett Brown says the key it
4 seems?

5 A. "The key, it seems, to get the money to the best
6 place where it would be the most effective and who won't
7 give it back." And he gives a couple of references and
8 says, "You might want to talk to the head of the IRC.
9 They've faced the same problem."

10 Q. This is regarding stolen credit cards that were
11 stolen through a hack; is that correct?

12 A. Yes, that is the implication.

13 Q. Government's Exhibit No. 50 is another chat. Is this
14 a private chat again between Mr. Hammond and Barrett
15 Brown?

16 A. I understand it is.

17 Q. And in this case Mr. Hammond is using the nickname
18 Burn?

19 A. Yes.

20 Q. What is the topic of conversation in this chat?

21 A. Burn is saying he saw a company on the list which I
22 understand it to be the website Echelon 2, and he said I
23 passed some leads, and then he gives some accounts
24 basically for individuals that companies that are
25 associated with that list and includes the e-mails, the

1 log in, the e-mails IDs, the password, and in some cases
2 include credit card numbers. Then there is some
3 discussion about whether this has been released
4 previously or if these people know if their accounts --
5 their information was been compromised, and Burn makes it
6 clear that it has not been released and he basically
7 asked Mr. Brown if he will release this information and
8 Mr. Brown says he won't release it. It's best not to
9 notify the firms what we have. And he says, these people
10 wouldn't know their passwords were compromised, and Burn
11 says no. And Barrett Brown says word.

12 Q. That is on page 2; is that correct?

13 A. That is on page 2, yes.

14 Q. Okay.

15 A. He then proceeds to give a few more, including credit
16 card numbers.

17 Q. With regard to the very beginning of this
18 Government's Exhibit No. 50 chat, it mentions Echelon 2;
19 is that correct?

20 A. It references, let me find it here. He says, "on
21 that list."

22 Q. Okay.

23 A. I understand that list to be from Echelon 2.

24 Q. What is Echelon 2 as it relates to Project PM?

25 A. I understand that is the WikiLeaks site that they

1 were interested in investigating.

2 Q. Project PM is the entity and Echelon would be the
3 website where the entity would allow its individuals to
4 communicate with one another; is that correct or post
5 things?

6 A. To post information.

7 Q. Government's Exhibit No. 51 is this another chat that
8 is a private chat?

9 A. It is.

10 Q. With regard to this particular chat, what is the
11 substance of this conversation?

12 A. This is a chat that occurred in early March 2011. It
13 appears to be with an individual using the name K, and
14 there is quite a bit of information here when they are
15 talking backgrounds and their experience with Anonymous
16 and predecessor organizations.

17 Then on approximately page 3, it says we are
18 concentrating on three. I have several people probing to
19 see if we can get e-mails. I want to do a surprise
20 attack. I can get into most systems. Because if you can
21 get in, and K interrupts, if you want information on
22 people, just ask. Barrett Brown says, I will love you
23 forever; yes. I want info on DEA employees as much as
24 you can get. If you get into their e-mail, I have credit
25 cards for most U.S. government officials. And his

1 response, even better, and then a couple more
2 explanations, yes.

3 Q. Does K then post some information to prove that he
4 has this data?

5 A. Yes, he posts a credit card information for a
6 government employee and a password.

7 Q. Does Barrett Brown go on after that to again talk
8 about getting FBI or DEA information -- at 10:15?

9 A. Right, so he says then Barrett says he actually likes
10 this, this company, and he says -- K says I have for DHS,
11 NSA, FBI, NCC, and FBI. And Barrett says, oh, I see,
12 FBI, I'd love those, but DEA is something I am especially
13 interested in.

14 Q. If we could go to Government's Exhibit No. 52. Is
15 this another private chat with O?

16 A. It is.

17 Q. And with regard to this chart, what are they saying?

18 A. First part of this, Mr. Brown is speaking with O, and
19 O tells him he gave a compromised site to an individual
20 who is working with Project PM. And O says he has got
21 too many other targets lined up to really make me any
22 moves on it. There's passwords on all their domains and
23 may yield some interesting stuff. He says "shit"
24 actually. I don't think I will be able to ride on that
25 target I was talking about yesterday. I don't want to

1 rush a job when it is incomplete. This target is worth
2 waiting to see if I can get the emails.

3 Q. Further down on 21:41, do they identify another
4 potential target?

5 A. Then they continue on, and O asks Mr. Brown real
6 quick you finally saw the evidence the Combined Systems
7 rumors are around the net, and Mr. Brown says Combined
8 Systems, let me okay. And
9 O asked, keep that target quiet obviously. Mr. Brown
10 says bingo. These types of tear gas canisters from
11 Combined Systems, Inc., of Jamestown, PA also have been
12 linked to killing of Bahraini protestors, and he says
13 indeed. He goes on.

14 Q. At the bottom of the page, do we talk about what's
15 going to happen?

16 A. Yes, and O says, yes, almost ready, keep quiet, no
17 hints. Mr. Brown asks, are you going to deface the site
18 too? And a few minutes later, O says, okay, it's defaced
19 and lists several sites with the Combined Systems.

20 Q. Did they discuss anything that O has found on the
21 hack at this point at 23:05?

22 A. Yes, he says, I think that is a decent client list
23 since they moved to a new server host a month or two ago,
24 and the e-mail third party professional worked on this in
25 the past and with one another, and I'm hoping someone

1 would double, but it never did. I dumped the spools of
2 both of those in the web developer.

3 Q. What does that line mean?

4 A. I take that to mean he dumped the mail spools in that
5 web server.

6 Q. That would be the way they get the e-mail accounts;
7 is that correct?

8 A. Yes, the contents, yes.

9 Q. And is there is a reference at the bottom by O. What
10 is that?

11 A. This is another site I mentioned previously. I
12 understand it was a compromised site also attributed to
13 Mr. Hamilton.

14 Q. Now, this was on February 13, 2012; is that correct?

15 A. Yes.

16 Q. Also on February 13, 2012, if you go to Government's
17 Exhibit No. 54, we are going to skip over 53.

18 Government's Exhibit No. 54, Mr. Brown is in another room
19 talking at the same time; is that correct?

20 A. Yes.

21 Q. He is simultaneously boxing up?

22 A. Yes.

23 Q. So he has one conversation going with O and other
24 conversations with others?

25 A. Yes, that is correct.

1 Q. In boxes does -- what -- how does he come into the
2 room and what does he do?

3 A. Are you asking about the beginning?

4 Q. Yes.

5 A. He posts a Pastebin link.

6 Q. And with regard to -- what does he start discussing
7 at that point?

8 A. I am looking for it.

9 Q. Let me refer you to page 5 of Government's Exhibit
10 No. 54, does Mr. Barrett Brown start talking about the
11 anniversary of the Bahrain protests?

12 A. Yes, 14:28 is the beginning of the Bahrain protest.

13 Q. Go to the bottom of page 6. Mr. Brown posts a link
14 and what is he referencing there, the link is
15 policemc.gov.bh?

16 A. He posts a URL to a website that appears to be
17 associated with Bahrain, and he asks, "So, this can't be
18 used?"

19 Q. And then there is a question from one of the
20 participants to Barrett Brown, RFI SQLI, that is at the
21 top of page 7. What does that mean?

22 A. This is a query to see if the site is functional and
23 he says doesn't look like it unless you have 0day.

24 Q. So they are discussing whether or not that particular
25 site can be used?

1 A. Compromised.

2 Q. Compromised. Back down at 15:44, the last reference
3 at 15:44 indicates that he is going to get a list of
4 Bahrain government sites; is that correct?

5 A. Yes.

6 Q. Are the other individuals still talking about
7 different ways to compromise the site?

8 A. Yes, they are talking about places to check for more
9 vulnerabilities.

10 Q. And at bottom of page 8, does Barrett Brown again ask
11 about policemc.gov.bh?

12 A. He says can we get the DDOS again, and he gives the
13 reference to the domain.

14 Q. And on page 9, what are they discussing about DDOSing
15 those sites or attacking the sites?

16 A. He asks if the site is vulnerable initially, and he
17 asks what can be done, and one of the people who runs
18 every site in the country that they can find with no
19 luck.

20 Q. So they are not having any luck on any of these
21 sites; is that correct?

22 A. Yes.

23 Q. Mr. Brown changes his target. What does he now
24 state?

25 A. He suggests Qorvis.

1 Q. How does that discussion go in general?

2 A. He gets a positive response to do that. He posts the
3 domain name for it, for Qorvis.

4 Q. Then if we go to the same Government's Exhibit No.
5 54, but page 10, has Barrett Brown starting at 18:06
6 listing different links to sites?

7 A. I am sorry. What time did you say?

8 Q. Page 10, 18:06.

9 A. He posts the Qorvis site. He posts the
10 policemc.gov.bh. He posts the pastebin.com, and the
11 Twitter link and he is basically providing, that he was
12 attacking Bahrain and Qorvis.

13 Q. Further down on Government's Exhibit No. 11, are they
14 still discussing different attacks?

15 THE COURT: You mean page 11?

16 MS. HEATH: I am sorry. Page 11. Thank you,
17 Your Honor.

18 Q. (BY MS. HEATH) Government's Exhibit No. 54, page 11.

19 A. Yes, and justification for attacking them.

20 Q. Turn to page 12, and at 20:27, Barrett is asked
21 should we resurrect Bahrain, and what is Barrett Brown's
22 response?

23 A. Absolutely.

24 Q. Does he give a reason why they should do that?

25 A. Because tomorrow is the anniversary of the protest.

1 Q. Does he indicate what the purpose of the attacks
2 would be?

3 A. They wanted to distract the cyber cops, so they
4 won't be able to concentrate on a local.

5 Q. That would be local concentration in that country?

6 A. In Bahrain, yes.

7 Q. And further down on page 12, Barrett Brown again
8 mentions Qorvis; is that correct?

9 A. Yes, mentions Qorvis and indicates the firm assisting
10 Bahrain.

11 Q. On page 13 at the top, does Barrett Brown inquire as
12 to anybody wants to join them in their 24-hour
13 OpBahrain?

14 A. Yes, it is the goal for it, and that is ask for
15 participation.

16 Q. If we could skip to page 15 at 22:37 Barrett Brown
17 posts something in Twitter; is that correct?

18 A. Yes, he posts a link to his Twitter account called a
19 tweet.

20 Q. And this is Barrett Brown LOL?

21 A. Yes, Barrett Brown LOL.

22 Q. Going back, keeping that place, he posts a Twitter.
23 If we could go to Government's Exhibit No. 53 at the very
24 first section, is that that link in Twitter?

25 A. That is the same status ID.

1 Q. And what does that Twitter -- what is that Twitter
2 message?

3 A. The text was selling tear gas to the hashtag Bahrain
4 regime, been disrupted. It has been linked to --

5 Q. That is happening at the same time as he is in the
6 chat; is that correct?

7 A. Yes, yes.

8 Q. And then right under there is an individual who goes
9 by Black Blocc; do you see that?

10 A. Yes.

11 Q. What is he saying there with regard to an attack?

12 A. He says, "Okay, I lied on the hack log just a little
13 bit. I didn't RM-RF yet, but I have my finger on the
14 trigger."

15 Q. What is does "RN-RF" mean?

16 A. A unique system that is forced deletions, basically
17 wipes the file system out.

18 Q. So once -- basically for a lay person, once he pushes
19 the button everything is wiped?

20 A. Yes, wipes everything.

21 Q. What does Black Blocc say?

22 A. It says, I have my finger on the trigger, waited just
23 long enough so it can be mirrored on Zone H.

24 Q. What is Zone H?

25 A. Zone H is a site that people often use defacements.

1 Q. If we could go to Government's Exhibit No. --
2 Government's Exhibit No. 59, is that an example of a
3 Zone H screen shot?

4 A. Sorry?

5 Q. It should be your second to last piece of paper
6 actually?

7 A. Okay. Yes, it is.

8 Q. This is a website where what happens?

9 A. So, when a site is added it basically makes a copy of
10 the site at that time to archive it. It is attributed to
11 a particular account. In this case the account was
12 AntiSec.

13 Q. And this was the screen shot for AntiSec Zone H
14 accounts; is that correct?

15 A. Yes.

16 Q. All these actions here would be hacks attributed to
17 AntiSec?

18 A. Yes, they notified --

19 Q. The ones that we were just discussing, that appeared
20 on Zone H; is that correct?

21 A. Yes, that's correct.

22 Q. And that is what Mr. Black Blocc or the person that
23 went by the nickname Black Blocc waited long enough so it
24 could be mirrored on Zone H?

25 A. Yes.

1 Q. If we could go back to Government's Exhibit No. 54 in
2 the very last page of that exhibit, Exhibit No. -- page
3 16. Does Black Blocc apparently push the button to erase
4 the site?

5 A. Yes, there is a line that says,
6 dd if=/dev/zero of=/dev/hdal, which I take that to mean
7 it is copying zeros on the disk drive.

8 Q. So wiping it, basically it is copying zeros to
9 everything on that drive?

10 A. The next line says kaboom, and it has less than sign,
11 three.

12 Q. Is that referencing like a heart?

13 A. Like a heart.

14 Q. And Barrett puts a pastebin a little while after that
15 link; is that correct?

16 A. Yes, pastebin.

17 Q. Now, Government's Exhibit No. 56 and 55, what are
18 these in general?

19 A. 55 is a -- the IRC chat that we just discussed.

20 Q. That was the last one that Barrett Brown posted links
21 that we just discussed?

22 A. Yes, and it has Project PM, and it's basically
23 describing motivation for targeting companies including
24 Qorvis.

25 Q. And then what is Exhibit No. 56?

1 A. 56 is the text from Zone H of the defacement, and it
2 starts off with AntiSec. Anonymous, AntiSec, solidarity,
3 and there is sort of a manifesto here that basically just
4 describes why Combined Systems was defaced and RM'd by
5 Anonymous on the anniversary of the Bahrain uprising.

6 Q. And then finally we did look at Government's Exhibit
7 No. 59 which was a screen shot from Zone H. There is
8 Government's Exhibit No. 57 and 58. Are those other
9 screen shots from Zone H?

10 A. 58 is a screen shot. 59 and 60 are all screen shots.

11 Q. And Government's Exhibit No. 60 is a screen shot of
12 what?

13 A. That is a screen shot showing a portion of the
14 defacement. That was archived on Combined Systems at the
15 combinedsystems.com.

16 Q. There is more than just the listing of it?

17 A. Yes, this tells the site, the type of operating
18 system, the type of the web server, when it was
19 archived. This is actually scrolled to show our RM-RF,
20 and it says, "Black Bloc Attack."

21 Q. Now, with regard to the exhibits that we have looked
22 at and talked about, Mr. Barrett Brown -- what would your
23 testimony be with regard -- what entities is Mr. Brown
24 associating himself with or claiming to be associated
25 with, with regard to the Anonymous group?

1 A. Well, he certainly associated himself with Project
2 PM, with Anonymous. He is associated with individuals in
3 the AntiSec and LulzSec.

4 Q. How is it that the evidence that you found in
5 Mr. Brown's computer and other evidence in this case
6 associated him with AntiSec and LulzSec?

7 A. Well, for example this attack associates these two
8 things together. Mr. Brown was talking to O also using
9 the name Black Blocc during this defacement. If you look
10 at the defacement page, it associates all these things
11 together as well. Mr. Brown was then making statements
12 about this, justifying why it was done.

13 MS. HEATH: Your Honor, if I may have one
14 moment.

15 THE COURT: You may.

16 (PAUSE IN PROCEEDINGS.)

17 Q. (BY MS. HEATH) Now, with regard to these operations
18 and activities that Mr. Brown was discussing, he did not
19 engage in these by himself?

20 A. No.

21 Q. From the evidence, were these jointly undertaken
22 activities?

23 A. Yes.

24 Q. And did he and others agree with him or agree with
25 each other to engage in these activities?

1 A. Yes.

2 Q. Now, with regard to the stolen data that is taken
3 from these activities, what is Mr. Brown's role in
4 dealing with the stolen data?

5 A. Well, one of the things he did, was he organized the
6 data and went through the data. From that he could
7 develop additional targeting opportunities for the group
8 to go after.

9 Q. Would he on occasion post the personal information
10 obtained through the hack or publish or make it
11 available?

12 A. I would say he was working with the information
13 publicly that was involved with the hack.

14 Q. Now, when you also previously indicated with regard
15 to that information that he would make telephone calls
16 and talk to some of the individuals?

17 A. Yes.

18 Q. Is there anything else that you can think of that
19 Mr. Brown did with regard to the information that was
20 stolen during these intrusions?

21 A. Well, some of the things he did so, for example, when
22 he got passwords, there are chats that imply strongly
23 that he was trying to utilize those passwords to access
24 accounts.

25 Q. And he attempted to access those accounts?

1 A. The chats imply certainly he was trying to figure out
2 where he would go to try to log into one of the accounts
3 he had a password for.

4 MS. HEATH: Your Honor, we pass the witness.

5 THE COURT: All right at this time we are going
6 to take our lunch break. It is almost 12:30. We are
7 going to recess for an hour. Before we break, Counsel
8 let me see you at the bench.

9 (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH,
10 WITH ALL COUNSEL PRESENT.)

11 THE COURT: I take it this is your only witness.

12 MS. HEATH: Yes, that is it.

13 THE COURT: How long will you take for
14 cross-examination, Mr. Swift?

15 MR. SWIFT: Round figure, maybe 30 or 15 depends
16 on what the witness does, and I anticipate a rebuttal
17 witness on a lot of this subject area to be direct 30 to
18 40 minutes.

19 THE COURT: I will let you know now, if you don't
20 get through today, I cannot continue this tomorrow. I
21 have something that came up. The way you are going, we
22 are not going to get through today.

23 MR. SWIFT: I understand.

24 THE COURT: You need to advise the parties they
25 may have to come back because I have something set. I am

1 going to be in a hearing all day tomorrow and several
2 motions and several individuals, so if we do not get
3 through today, we will not be able to set it tomorrow.
4 We will have to reset it for some other time. That may
5 inconvenience a number of people. I want you to let your
6 people know if they were coming from the defense, and if
7 they were coming from the government.

8 MR. SWIFT: Yes, sir.

9 MS. CADEDDU: Thank you, Your Honor.

10 MS. HEATH: Yes, Your Honor.

11 THE COURT: All right.

12 THE COURT SECURITY OFFICER: All rise.

13 (A RECESS WAS HAD, AFTER WHICH THE FOLLOWING
14 PROCEEDINGS WERE HAD IN OPEN COURT, WITH ALL PARTIES AND
15 COUNSEL PRESENT.)

16 THE COURT: All right, Counsel approach the
17 bench.

18 (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH,
19 WITH ALL COUNSEL PRESENT.)

20 THE COURT: Given the pace of this hearing and
21 what the Court has to consider, I just do not see how
22 there is going to be any way possible that we can finish
23 today, and the Court can consider all of this testimony
24 along with the exhibits.

25 I have looked at some of the exhibits. I am not

1 sure what is left to come, so this is what I am going to
2 propose to the parties. I propose we take all of the
3 evidence today. I can hear your arguments as to the
4 issues that remain. I will study that, and we come back
5 and do the actual sentencing sometime in January.

6 MS. CADEDDU: We are hopeful that we can get
7 finished today.

8 THE COURT: Ms. Cadeddu, I tried to start off
9 giving the parties a chance and what happens is I am
10 generous and liberal to the parties, and they back the
11 Court in a corner. The Court has a lot to digest. There
12 is going to be cross-examination of Agent Smith. There
13 is probably going to be redirect and recross.

14 Then there is going to be a witness from the defense,
15 and that is probably going to take anywhere -- between
16 cross-examination and direct and redirect and recross,
17 probably an hour-and-a-half, and then we have other
18 issues. I don't want anyone saying on appeal if the case
19 is appealed that the Court did not give adequate
20 consideration to the issues. Frankly speaking, I want to
21 read the transcript, and that will not be ready for a few
22 days.

23 MS. CADEDDU: So the Court -- I didn't mean
24 interrupt.

25 THE COURT: No, go ahead.

1 MS. CADEDDU: We will finish with the evidence
2 today because our witness is from Europe.

3 THE COURT: Yes, you will finish with the
4 evidence today. We will take as long -- we will go as
5 long as necessary to finish the evidence today and the
6 argument. We will see where we get, but the evidentiary
7 portion of this hearing will conclude today, but the
8 actual sentencing and the Court's rulings will come at
9 some subsequent time.

10 While I have you here at the bench, the dates that I
11 am looking at Tuesday, -- not Tuesday -- okay, Wednesday,
12 January 21st, in the afternoon, any time on the 22nd of
13 January, or any time on the 23rd of January. The 22nd is
14 a Thursday, and the 23rd is a Friday. Those days are
15 open right now or at least I can move things around.

16 Is there a preference for a Thursday or Friday?

17 MR. SWIFT: I have to retrieve my calendar, sir.

18 THE COURT: Sure. Mr. Ghappour, do you have a
19 preference?

20 MS. HEATH: Any of those days are open for me,
21 but the calendar -- I don't have a calendar. It is back
22 in my office.

23 MR. GHAPPOUR: Your Honor, I will be in Brussels
24 for a conference that I agreed to, but I am sure that
25 Mr. Brown would waive my presence, and since it is just

1 the issue of the sentence, I don't think that it should
2 further delay your decision.

3 THE COURT: All right, thank you.

4 MS. CADEDDU: I am sorry, Your Honor, Tuesday --
5 Wednesday?

6 THE COURT: Wednesday in the afternoon is
7 available.

8 MS. CADEDDU: That is fine with me.

9 THE COURT: Thursday all day, Friday all day.

10 MS. CADEDDU: Any of those is fine with me.

11 THE COURT: Mr. Ghappour, you cannot meet any of
12 those days?

13 MR. GHAPPOUR: I will be -- that week is out for
14 me, but I actually would defer to my co-counsel on
15 presence, and I can ask Mr. Brown right now if he would
16 be happy to waive my presence. Should I do that?

17 THE COURT: Yes.

18 MR. SWIFT: Your Honor, I have no preference. I
19 have a memo due on one of the dates, but that's it.

20 THE COURT: All right, Ms. Heath, you say you are
21 okay on that date.

22 MS. HEATH: I am okay on any of those days.

23 THE COURT: Ms. Stewart, I will leave it to
24 you. Okay, Thursday is the 22nd of January, 2015, and I
25 want to hear back from Mr. Ghappour.

1 MS. HEATH: With regard to the exhibits that the
2 government has offered and the Court has admitted, we
3 would like to offer a redacted version for purposes of
4 publication, but not disclose for public consumption.
5 Some of the data in there contain things such as personal
6 identifiers of individuals, and I can go through and get
7 those for the Court by tomorrow, and the defense's
8 agreement as to what should be redacted because the Court
9 has requirements on what should be redacted as far as
10 documents.

11 MR. SWIFT: I agree that some portions of the
12 documents should be redacted.

13 MS. HEATH: We should be able to agree on that.

14 MR. SWIFT: We can agree on that.

15 THE COURT: I will let the parties work on that,
16 just so it is clear, none of those documents are to be
17 made public.

18 Mr. Ghappour, what did Mr. Brown say?

19 MR. GHAPPOUR: Mr. Brown waives my presence on
20 any day that you pick.

21 MS. CADEDDU: We can certainly put that on the
22 record.

23 THE COURT: All right, I will. Thank you.

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

1 THE COURT: The Court has conducted a bench
2 conference with Counsel for both sides in this case.
3 There are matters of importance here. It is set for the
4 benefit of the parties as well as those individuals
5 attending. Given the pace of this hearing and the amount
6 of testimony that has taken place and the Court
7 anticipates taking place today, the Court does not expect
8 to sentence Mr. Brown today.

9 There are a number of exhibits that have been
10 introduced. Special Agent Smith has to be
11 cross-examined, and there is probably some redirect and
12 recross. It is my understanding that the defense will
13 have a rebuttal witness. That will take sometime. The
14 Court has to hear all of that testimony. The Court also
15 would like to read the transcript to make certain that it
16 fully understands and takes into account the evidence
17 that the parties have presented.

18 There will probably be further arguments made by
19 Counsel concerning various issues, and to make a long
20 story short, given what has to be done, the Court is
21 going to in all probability run out of time.

22 Moreover, the Court does not wish to rush the
23 sentencing. As the Court stated earlier, it desires to
24 review the transcript of this hearing before it imposes
25 any sentence on Mr. Brown. The Court will take all the

1 evidence today and may hear argument from Counsel on
2 their various points, but as I stated before, the
3 sentencing will not take place today.

4 The Court has consulted with Counsel for the
5 government and Counsel for the defense, and the Court
6 hereby will continue this sentencing hearing after today
7 to January 22, 2015, at 9:00 a.m. I will get as far as
8 we can today, but the actual sentencing will take place
9 on January 22, 2015.

10 It has been brought to my attention, Mr. Brown, that
11 Mr. Ghappour, one of your Counsel will be out of the
12 country. He will be in Brussels, and the question I have
13 for you, sir, do you waive his presence being here?

14 THE DEFENDANT BROWN: Yes, Your Honor.

15 THE COURT: And you are telling the Court that
16 you accept the fact that Mr. Swift and Mr. Cadeddu are
17 certainly capable of handling your case.

18 THE DEFENDANT BROWN: Absolutely, Your Honor.

19 THE COURT: All right, very well. For those of
20 you who are attending this case, the Court also provides
21 information so that you can plan the rest of your day and
22 also know when the actual sentencing in this case will
23 take place. All right, having said that, we had just
24 finished direct examination.

25 Special Agent Smith, we are ready for

1 cross-examination. Agent Smith, I would ask you to keep
2 your voice up. I want to make certain I hear you and the
3 court reporter hears what you say.

4 THE WITNESS: Yes, sir; thank you.

5 MR. SWIFT: Thank you, sir.

6 C R O S S E X A M I N A T I O N

7 Q. (BY MR. SWIFT) Agent Smith, I would like to start by
8 talking about the hacks that are at issue in the
9 pre-sentencing report. Have you reviewed the
10 pre-sentencing report?

11 A. Yes.

12 Q. In the pre-sentencing report, we identify four hacks
13 primarily at issue, those being HBGary or HBGary Federal
14 Incorporated, Strategic Forces or Stratfor, Combined
15 Systems, Incorporated, and Puckett and Kirby; is that
16 correct?

17 A. No.

18 Q. Puckett and Faraj?

19 A. Puckett and Faraj, Strategic Forecasting.

20 Q. Stratfor. Let's start talking about the HBGary. Were
21 you involved in the investigation of that computer
22 intrusion?

23 A. I was not directly involved in that investigation.

24 Q. Based upon your status in this investigation, do you
25 know who were the people who conducted the intrusion?

1 A. This investigation really didn't have visibility into
2 the intrusion, so I don't think I could answer that
3 question.

4 Q. You don't know -- well, let me ask you, do you have
5 knowledge on whether an individual known as Sabu
6 conducted that?

7 A. I know that Sabu was involved from Mr. Brown's
8 computer.

9 Q. Was Mr. Sabu one of the principal persons who
10 conducted the intrusions?

11 A. It is my understanding that he may have been
12 involved. I don't know precisely who did the intrusion,
13 sir.

14 Q. How about Topiary?

15 A. From Mr. Brown's computer, it looks like he was
16 compromising the Twitter account.

17 Q. How about Kayla?

18 A. My understanding Kayla was involved. As to which
19 role, I don't know.

20 Q. And Tflow?

21 A. Again, I understand Tflow was involved, but as to the
22 specifics, I don't understand.

23 Q. So you don't know who actually conducted the
24 intrusion?

25 A. Aside from the chat that we spoke about today

1 involving the Twitter account, that is the extent that I
2 reviewed for this case.

3 Q. That is the extent. You don't know whether Mr. Brown
4 played any role in selecting HBGary, do you?

5 A. My understanding is that he was involved with writing
6 a document the day prior sort of admitting defeat to
7 HBGary.

8 Q. Let me ask this: Do you have familiarity with
9 computer intrusions in general?

10 A. Yes.

11 Q. Do those intrusions generally take place over a
12 period of time?

13 A. Define a period of time.

14 Q. One day -- let's say a day to a week?

15 A. Computer intrusions can happen very rapidly.

16 Q. Do they often occur over a period of time however,
17 where Anonymous is concerned?

18 A. They may occur over a period of time.

19 Q. In other words, we gain intrusion?

20 A. Sure.

21 Q. We learn what we have, and then we prepare to
22 broadcast it?

23 A. That's one set of things that could occur.

24 Q. Do you know whether that was the system that was used
25 in the HBGary intrusion?

1 A. What I understand is that they compromised the
2 servers, and they determined that they had access to mail
3 spools and other documents and they took those.

4 Q. Who is "they?"

5 A. The individuals who were responsible for the
6 intrusion.

7 Q. Do you have any knowledge that Mr. Brown was one of
8 those persons?

9 A. My understanding is that from the chat that we
10 discussed that he was involved with that. I know that he
11 made phone calls to the individuals as the intrusion was
12 happening, calling them to --

13 Q. Did he participate in the intrusion? Was he one of
14 the hackers who gained access?

15 A. To the extent that he was speaking to Topiary as
16 Topiary was conducting the intrusion, yes, I would say he
17 was involved and providing advice.

18 Q. Were you aware that other reporters spoke to the
19 intruders?

20 A. What I am speaking of is a private discussion. It
21 was not an overt discussion where someone was speaking to
22 the media. It was private information that was shared
23 between people to be co-conspirators.

24 Q. Were you aware that reporters spoke to individuals in
25 these hacks in private discussions while they were on

1 going?

2 A. I would not be aware of any specific discussions that
3 I could bring to point.

4 Q. And you don't know when the intrusion began?

5 A. My understanding is the intrusion occurred on or
6 about February 5, February 6.

7 Q. Do you know why HBGary was targeted?

8 A. My understanding is because of a report that they
9 reportedly were going to give to law enforcement, and
10 this was retaliation for cooperation with law
11 enforcement.

12 Q. By an article that they published in a newspaper that
13 Mr. Barr stated?

14 A. By reviewing the chat logs and conversations,
15 listening to that.

16 Q. Well, Mr. Barr stated in a newspaper report that he
17 had information that he had been able to provide who the
18 members of Anonymous were, determine who the principal
19 members of Anonymous were; correct?

20 A. I think that is true, yes.

21 Q. And thereafter some of the members of Anonymous or
22 persons purporting to be members of Anonymous targeting
23 him; is that correct?

24 A. That's my understanding, yes.

25 Q. Is there any showing that Mr. Brown played a role in

1 selecting him after that?

2 A. Well, he called him up.

3 Q. Certainly after the hack had been started.

4 A. Right. He called him up. He called him into the IRC
5 channel where the people were responsible for this
6 intrusion were wanting to confront him.

7 Q. And you testified that HBGary Federal failed after
8 the intrusion?

9 A. Yes.

10 Q. Wasn't that because during the intrusion, documents
11 were uncovered that were made public to wide sources that
12 indicated that HBGary Federal had proposed contracts with
13 the Chamber of Commerce for instance to spy on or
14 discredit public information groups including WikiLeaks
15 and other public information groups, and that created
16 quite a controversy for them?

17 MS. HEATH: Your Honor, we would object to the
18 relevance as to what the victims were doing in this
19 case. Their system was hacked. This is going to what
20 Mr. Brown's role in the actual activities in criminal
21 conduct was.

22 MR. SWIFT: It is relevant, Your Honor. Part of
23 that role is publicizing documents, and as a reporter
24 these were documents with interest.

25 THE COURT: I will carry the objection, and when

1 I review the transcript, if the Court determines that it
2 is irrelevant, the Court will simply ignore it. If the
3 Court considers it relevant, the Court will take it into
4 consideration at the sentencing phase. Do you need to
5 reask the question or was the question answered?

6 MR. SWIFT: He did not answer the question.

7 THE WITNESS: Repeat the question.

8 Q. (BY MR. SWIFT) Isn't it true that HBGary's failure to
9 take steps principally from the publication of documents
10 indicating that contracts to or proposing contracts to
11 the U.S. Chamber of Commerce and other organizations to
12 discredit sites such as WikiLeaks or other public
13 interest groups as part of an anti-information strategy?

14 A. I don't know that I could address the exact reason
15 why the company failed. I think certainly as we see
16 today companies that have intrusions and have their
17 documents publicly displayed suffer harm. The extent of
18 that harm may cause them to lose business. For example,
19 if you are a security company and you are compromised,
20 that could be a profound impact on your business just by
21 the perception on the face of the security company being
22 compromised.

23 Q. The parent company did not fail?

24 A. My understanding is they sold the assets of that
25 company.

1 Q. They were bought later?

2 A. The assets were sold.

3 Q. Let's talk about the Strategic Forces. Now, did you
4 participate in the investigation of the Strategic Forces
5 in -- computer intrusion or hack?

6 A. You mean Strategic Forecasting.

7 Q. Strategic Forecasting, Stratfor?

8 A. I was not directly involved in that investigation.

9 Q. Well, we are here on an accessory after the fact on
10 that investigation?

11 A. That's true.

12 Q. You would agree that that investigation is
13 particularly relevant?

14 A. I think it is definitely one example of Mr. Brown's
15 activity where he was looking for information. It is
16 relevant in that sense. At one point, Mr. Brown
17 articulated Strategic Forecasting as being akin to France
18 and World War II. You have to land in France, invade
19 Germany. Mr. Brown was very interested in the customers
20 for Strategic Forecasting. They were consumers of
21 intelligence and viewed them as potential targets.

22 Q. Let's talk about how Strategic Forecasting was
23 targeted. Now, Strategic Forecasting was targeted by the
24 AntiSec group; is that correct?

25 A. It was my understanding that they were AntiSec.

1 Q. In the AntiSec group were members -- and you
2 mentioned another group, the LulzSec -- LulzSec Group,
3 and these were subgroups that did not involve all of
4 Anonymous; correct?

5 A. I think that is true, yes.

6 Q. In fact, small groups of hackers?

7 A. Yes.

8 Q. And that group included Jeremy Hammond?

9 A. Which group?

10 Q. The AntiSec Group?

11 A. I understand that he was involved in AntiSec.

12 Q. It also included Sabu?

13 A. Yes.

14 Q. Now, Sabu is also known as I believe it is Monsignor
15 excuse me -- one second -- Hector Monsignor?

16 A. Hector Monsignor.

17 Q. Prior to the Stratfor he had been arrested by the
18 FBI; is that correct?

19 A. Yes.

20 Q. So he was now under the control of the FBI?

21 A. My understanding he was cooperating with the FBI at
22 that point.

23 Q. And his role inside the AntiSec group was to
24 determine or collect target vulnerabilities?

25 A. I am not sure what his role was in AntiSec to be

1 honest.

2 Q. What are target vulnerabilities?

3 A. What are?

4 Q. Yes.

5 A. We were talking about vulnerabilities earlier. Is
6 that what you are asking about?

7 Q. Yes.

8 A. For example, if there is a particular target that you
9 are looking to execute a computer intrusion on, it is
10 important to know what kind of vulnerability that target
11 has. It could be software vulnerabilities. It could be
12 password vulnerabilities. It could be database
13 vulnerabilities. So I would take that to mean the whole
14 set of possible ways.

15 Q. You would agree with me with your knowledge of
16 computers, cyber crimes, et cetera, that you have to have
17 both the desire and the target has to be vulnerable to be
18 a method of intrusion that is available to those seeking
19 to intrude?

20 A. Yes.

21 Q. So the person who is determining the target
22 vulnerabilities has significant control over who is
23 selected?

24 A. I don't think I could answer the question. I don't
25 know. I would take it to mean the -- in the sense that

1 that is a site vulnerability when you are talking target
2 vulnerabilities. I think you are talking specific
3 targeting of some of the examples we looked at before
4 where a target is being selected for exploitation. You
5 identify the vulnerability. You have exploited for it,
6 and you are trying to motivate someone to target that
7 site.

8 Q. All right, so the first part comes it has to at least
9 in Anonymous' operations has to be vulnerable?

10 A. Right.

11 Q. And inside the AntiSec Group, you don't know whether
12 Monsignor or Sabu was the person collecting that?

13 A. I don't recall.

14 Q. Do you know whether he set up the IRC channel where
15 he controlled persons to submit vulnerabilities?

16 A. I don't.

17 Q. Do you know how Stratfor was selected by the hackers?

18 A. I do not.

19 Q. Do you know how long the Stratfor hack -- Strategic
20 Forces hack was going on?

21 A. It is my understanding it was compromised in early
22 December of 2011.

23 Q. Do you know whether Mr. Brown had any knowledge of
24 that?

25 A. Of what?

1 Q. That it was compromised when it was.

2 A. I don't know if he knew when it was first
3 compromised.

4 Q. Do you have any information whether Mr. Brown was
5 informed before it was targeted?

6 A. No, sir.

7 Q. Now, you did conduct a computer forensic examination
8 of all of his computers?

9 A. Not of all of his computers.

10 Q. The computers that you seized?

11 A. The computers from his mother's house.

12 Q. And in conducting those computer forensics, you were
13 able to find a lot of documents including documents
14 related to Strategic Forces?

15 A. Strategic Forecasting.

16 Q. And you were able to find ICR chats?

17 A. IRC chats.

18 Q. You weren't able to find any that related to Stratfor
19 where he would have gotten information in early December,
20 were you?

21 A. He first became aware of it on I guess December
22 23rd. I think was the date.

23 Q. That is the information you had.

24 A. That is the information I have from looking at his
25 computers, yes.

- 1 Q. It had been ongoing for quite sometime at that time?
- 2 A. I guess a couple weeks, yes.
- 3 Q. Now, let's talk about Puckett and Faraj. Who was
- 4 that hack conducted by?
- 5 A. My understanding that was conducted by a person with
- 6 the user name O.
- 7 Q. By who?
- 8 A. O.
- 9 Q. Oh, O. Does O also go towards Jerry Hammond?
- 10 A. I think that is an alias of Jeremy Hammond.
- 11 Q. Jeremy went by a lot of screen names?
- 12 A. I understand he had a lot of screen names.
- 13 Q. Do you know if anyone assisted him?
- 14 A. Mr. Brown was discussing the hack while Mr. Hammond
- 15 was actually still accessing compromised computers at
- 16 that firm.
- 17 Q. Did Mr. Brown assist him in accessing the computers?
- 18 A. Well, to the extent Mr. Hammond asked him not to
- 19 reveal that this was on going because he was still
- 20 exploiting the target, he provided that level of
- 21 assistance.
- 22 Q. Were you aware that other journalists were asked
- 23 similar questions as part of providing them information
- 24 about hacks?
- 25 A. I am sorry. Could you rephrase the question?

1 Q. Were you aware that other journalists also were
2 required or agreed not to share information about an
3 ongoing hack prior to its publication?

4 A. I am not aware of other journalists in this
5 particular case.

6 Q. And in the Combined Systems, the same thing, did
7 Mr. Brown have access to Combined Systems?

8 A. So again, he was speaking to this person using the
9 name O, Jerry Hammond, who was accessing the systems. As
10 he was speaking to Mr. Brown, Mr. Brown made suggestions
11 as we discussed, the ideas for defacing the site.

12 Q. Did he make suggestions or did he ask a question?

13 A. He asked a question.

14 Q. He asked a question?

15 A. Yes, sir.

16 Q. Now, let's go back. After the HBGary hack, were you
17 -- did you review ICR chat logs between Mr. Brown and
18 some of the hackers including K?

19 A. I am sorry. Could you repeat the question?

20 Q. Did you review ICR chat logs between Topiary and K or
21 Kayla regarding his publicity?

22 A. You mean private messages between the two of them?

23 Q. Or ICR chats?

24 A. So like IRC?

25 Q. In this channel or another channel?

1 A. Regarding?

2 Q. Regarding what Mr. Brown was doing in the media?

3 A. Perhaps. I can't recall any activities.

4 MR. SWIFT: What is the next exhibit? I don't
5 think we have any.

6 THE COURT: You don't have any, so I think we
7 start with 1. All right, just one minute.

8 (PAUSE IN PROCEEDINGS.)

9 THE COURT: All right, Mr. Swift, you may
10 proceed.

11 MR. SWIFT: If I may approach, I will hand it up
12 to the Court first, what we have marked as Defense
13 Exhibit No. 1 is an excerpt including chats from
14 Gabriella Coleman's quote by Anonymous which deals with
15 chats or IRC log and chat conversation that occurred
16 between Mr. Brown and several of the hackers right after
17 HBGary. It is relevant to the implication that he was
18 accepted as the spokesman for the persons who were
19 conducting these hacks.

20 THE COURT: Any objection, Ms. Heath?

21 MS. HEATH: Your Honor, we object unless it can
22 be qualified as coming from Mr. Brown's computer. I
23 imagine some of the chats may have come from his
24 computer. We wouldn't have any objection to those
25 specific chats, but the excerpt from a book, we would

1 object to that. That is not relevant what somebody
2 else's opinion and twist on things was. We prefer to go
3 to Mr. Barrett Brown's own words.

4 MR. SWIFT: For sentencing purposes, Your Honor,
5 media, book publications, all of those things are
6 relevant, sufficient foundation, newspaper articles were,
7 in fact, cited in the probation report. Gabriella
8 Coleman is the foremost anthropologist on the Anonymous
9 movement and wrote specifically about this period of
10 time. We can lay additional foundation with our witness
11 for this transcript, but I would not give this witness an
12 opportunity.

13 THE COURT: Let me say this so the parties can
14 know where the Court is going. I think both the
15 government and the defense are going way too far, much
16 further than necessary on all of these exhibits, and so
17 that we don't slow up this hearing, I am going carry the
18 objection, but I will tell both the government and the
19 defense, when I read the transcript and review everything
20 and if these documents even those that I have admitted
21 have no relevance to what the Court needs to do, I am
22 going to simply ignore them, and it seems to me that what
23 is happening is each side wants to get the last word.

24 This is not a jury trial. I know the media folk are
25 out there, and I know what is going on. I wasn't born

1 yesterday. I do have questions about this document, that
2 is, Defense Exhibit No. 1, but I am going to allow it at
3 this time. If I find that it does not help or assist the
4 Court in making its decision, it will be ignored.

5 MR. SWIFT: Yes, sir.

6 THE COURT: It is admitted with that caveat from
7 the Court. Did you need this back, Mr. Swift?

8 MR. SWIFT: Yes, I do, Your Honor.

9 THE COURT: All right, Ms. Stewart will return it
10 to you.

11 Q. (BY MR. SWIFT) I want you to take a look at that. In
12 your investigation of this case, take a moment to review
13 Defense Exhibit No. 1.

14 A. Okay.

15 Q. Were you aware some of the hackers were angry with
16 Mr. Brown for his statements to the media?

17 A. Are we talking about Strafor?

18 Q. For the HBGary attack.

19 A. I am not familiar with the things in here. I could
20 not authenticate this for you.

21 Q. You weren't aware of their anger toward him?

22 A. I'm sorry?

23 Q. You weren't aware of their anger toward him for
24 making the statements?

25 A. Yes, I was aware that there were people who were

1 upset with him for taking credit, if that is what you are
2 after, for that word.

3 Q. That they were angry, they didn't consider him a
4 strategist, and they thought he was aggrandizing himself?

5 A. It was perhaps viewed as a power grab.

6 Q. And these were some of the people who actually did
7 it?

8 A. I'm sorry?

9 Q. These were some of the people who actually
10 participated.

11 A. I am not sure who would have been upset with him.

12 Q. And the e-mails that you described him as stating
13 several different roles, a strategist, a
14 pseudo-journalist, a propagandist, and a troll.

15 A. Those were words that he used to describe himself,
16 yes.

17 Q. Pseudo-journalists, did he use that? Was he still
18 using that term at the time the Stratfor hack occurred?

19 A. I would not be able to tell you off the top of my
20 head.

21 Q. Again, referring to himself as a journalist?

22 A. Again, for the time of these specific comments, I
23 wouldn't be able to answer off the top of my head.

24 Q. Did he have a book deal?

25 A. My understanding he did have a book deal.

1 Q. To publish about Anonymous?

2 A. Yes, there was a book deal related to Anonymous.

3 Q. What is troll?

4 A. What is a troll? As a verb?

5 Q. When one refers to themselves in this context as a
6 troll, what are they referring to themselves as?

7 A. Someone who takes actions to elicit response from
8 others.

9 Q. Does that include lying about their roles or
10 abilities?

11 A. I don't know that there are boundaries to trolling.

12 Q. Mr. Brown admits at points that he is a troll?

13 A. He did in that document, yes.

14 Q. Let's take a look at a statement. I am taking over
15 Anonymous or I have taken over Anonymous. Is that a
16 troll statement?

17 A. Well, it depends on the context. I think statements
18 made private to people to gain their confidence or to
19 gain respect from them to be taken seriously, I would not
20 characterize that as a troll.

21 Q. Is there any evidence that he had taken over
22 Anonymous, that he could guide it?

23 A. Well, some of the things we discussed was selecting
24 targets, trying to make arguments why certain targets
25 should be attacked, that is a mechanism for control when

1 you are dealing with a group.

2 Q. Would these -- although Mr. Brown certainly after the
3 fact was an apologist for many things or propaganda that
4 Anonymous did. Prior to HBGary being targeted, prior to
5 the operation starting, do you have any information --

6 THE COURT: Just to put things in context, we
7 are speaking in general terms. When you say prior to,
8 let's start giving dates.

9 MR. SWIFT: Okay.

10 THE COURT: Put it in context since there has
11 been a lot of statements about after the fact and this
12 and that. If you are going to pinpoint something, let's
13 give a date at least the month and the year that we are
14 talking about, if not a precise date.

15 MR. SWIFT: One moment.

16 Q. (BY MR. SWIFT) HBGary, that operation, do you know
17 that operation began on February 2, 2011?

18 A. I was not aware of that.

19 Q. When do you believe that it began?

20 A. From the chats I can see, Mr. Brown's involvement
21 specifically was around February 5, February 6, somewhere
22 in that time frame.

23 THE COURT: Of what year?

24 THE WITNESS: Of 2011, sir.

25 THE COURT: All right.

1 Q. (BY MR. SWIFT) Just in February of 2011?

2 A. Are we speaking when it began?

3 Q. Yes.

4 A. IRC's involvement beginning substantively with regard
5 to the intrusion and that sort of thing around that time.

6 Q. And Stratfor began in early 2011; is that correct?

7 A. Yes.

8 Q. And did you have any -- you don't know the date upon
9 which HBGary actually started; is that correct?

10 A. What I can say from Mr. Brown's computers I can see
11 that he became involved with the intrusion in the time
12 frame in February 5, February 6, 2011, more or less.

13 Q. What I am driving at is you would agree a strategist
14 needs to pick the target in advance?

15 A. There were multiple targets. When you look at the
16 process that is going on here, there are multiple threads
17 to the process, and each of these threads represents a
18 different target in the state of development, if you
19 will. Some of the targets may be emotional. Some of
20 them may have vulnerability scans, the one we talked
21 about earlier where Mr. Brown had a vulnerability scan,
22 so he determined that it was possibly vulnerable. He had
23 developed a rationale to justify the attack and began to
24 try to generate interest with people who could actually
25 get to the next level which is exploit.

1 Q. I understand. So there is evidence of him in some
2 place late in the game actually presenting something like
3 that. Well, what I am asking is, is there any evidence
4 like that for HBGary that prior to the initiation of the
5 hack, Mr. Brown made a suggestion and that they had
6 influence upon the actual hackers?

7 A. It is my understanding he was involved prior to the
8 hack with writing the documents which was sort of
9 admitting defeat to HBGary.

10 Q. Prior --

11 A. A mocking document, if you will.

12 Q. Those occurred prior to the -- prior to initiation?

13 A. Prior to the interactions that I can see on his
14 computer, yes.

15 Q. Well, those were the interactions with Mr. Barr who
16 has already been hacked; correct?

17 A. Those were prior to September 5, September 6.

18 Q. Mr. Barr had been hacked at that point; had he not?

19 A. My understanding was it was approximately September
20 6th that the hack occurred. I would have to refer back
21 to the notes to be specific on that.

22 THE COURT: Okay, what year are we talking
23 about?

24 THE WITNESS: 2011.

25 Q. (BY MR. SWIFT) That Mr. Barr was hacked at that time?

1 A. Yes.

2 Q. And is there any evidence that prior to the
3 initiation of the Stratfor hack that Mr. Brown selected
4 Stratfor?

5 A. I am not aware of that.

6 Q. Okay, is there any evidence that prior to the
7 selection of Puckett and Faraj that he had selected that
8 as a target?

9 A. Well, during the development of, for example,
10 Combined Systems which was a similar hack, he was
11 actually involved with making the determination whether
12 it should be damaged or not.

13 Q. Well, in that involvement, was he asking have you
14 defaced it?

15 A. Or even more than that, is it a worthy target, should
16 it be harmed.

17 Q. But the intrusion had already occurred?

18 A. The actual damage to the intrusion at the site had
19 not occurred.

20 Q. With regard to Puckett and Faraj.

21 A. With regard to Puckett and Faraj, I am not sure if he
22 was actually available before the targeting of that
23 particular site.

24 Q. He certainly was a propagandist; was he not?

25 A. He claimed to be a propagandist.

1 Q. The record was replete with him making apologetic or
2 justifiable statements for the Anonymous movement on --
3 in the news media multiple sources?

4 A. I think that he definitely would comment on
5 intrusions and seek to explain why the intrusions
6 occurred. He would include the messaging that he wanted
7 to include with those announcements.

8 Q. Did Mr. Brown have any skills as a hacker?

9 A. I would say that he had developing skills as a
10 hacker. So, for example, he was aware of the concept of
11 vulnerabilities. He had discussions about mapping
12 infrastructure. He was past an exploit at one point and
13 was able to find somebody who he thought could take
14 advantage of that exploit. It appears they were able to
15 do that. So I think he understood sort of the elements
16 and process of an intrusion, and how to go about it.
17 Certainly, he understood how to take on the back end and
18 take the fruits of an intrusion, to then develop that and
19 develop additional targets, and I think part of that was
20 the interesting things like shopping carts where you get
21 user IDs and passwords, this sort of thing because he
22 understood it is an interprocess.

23 Q. Did you find any evidence that Mr. Brown personally
24 used those passwords to enter any place?

25 A. Well, there is one chat. I think it was September 6,

1 2011, a chat with Burn, where there are passwords
2 provided. In that chat it appears they are trying to
3 figure out how -- where to use the password, where to use
4 the --

5 Q. Is there any evidence --

6 THE COURT: Okay, let -- this has been going on
7 for sometime. Let him finish answering the question
8 before you cut him off because otherwise the transcript
9 will be incomplete.

10 MR. SWIFT: Yes, Your Honor.

11 THE COURT: Do not cut him off unless you wish to
12 make an objection.

13 MR. SWIFT: Yes, Your Honor.

14 Q. (BY MR. SWIFT) Is there any evidence that he actually
15 utilized those passwords on his computer, that Mr. Brown
16 actually entered into any of those sites?

17 A. Aside from the conversation, no.

18 Q. There is no evidence?

19 A. No.

20 Q. Has Mr. Hammond -- well, I am going to go back.

21 Topiary was convicted you testified?

22 A. That is my understanding he was convicted.

23 Q. From the HBGary hack?

24 A. I am not sure exactly what his guilty plea was
25 related to or conviction was related to. So as I sit

1 here, I couldn't answer that question.

2 Q. Are you aware he received two years?

3 A. I am aware that he received on the order of two
4 years; yes.

5 Q. Sabu was convicted including his participation --

6 MS. HEATH: Again, Your Honor, we object to the
7 relevance as to relevant conduct of Barrett Brown.

8 THE COURT: I think we may be going to is
9 something I read as to perhaps the need for the Court to
10 avoid unwarranted sentencing disparities with persons of
11 similar conduct. I know I saw something like that in one
12 of their filings. It may have relevance to that
13 regard. To that extent, I think it has relevance and the
14 Court will overrule it.

15 Now, if the agent does not know what these
16 individuals received, all he has to say is he does not
17 know.

18 Q. (BY MR. SWIFT) Are you aware of what Mr. Sabu or
19 Mr. Monsignor received?

20 A. I don't know exactly. I have a general idea.

21 Q. What was the general idea?

22 A. Something -- time served.

23 Q. Now --

24 MR. SWIFT: One moment, Your Honor.

25 THE COURT: All right.

1 MR. SWIFT: I am coming to the end.

2 (PAUSE IN PROCEEDINGS.)

3 Q. (BY MR. SWIFT) The article that you referred to on
4 HBGary, during that period that Mr. Brown -- that was a
5 satirical article, wasn't it?

6 A. It perhaps could be viewed as satirical or a taunt.

7 Q. Stephen Colbert did the same thing, didn't he?

8 MS. HEATH: Your Honor, again, we would object
9 to the relevance.

10 MR. SWIFT: It's going towards whether that
11 constitutes strategy-making fun of someone.

12 THE COURT: Just a minute. Just a minute. Just a
13 minute. Go ahead, Ms. Heath.

14 MS. HEATH: We just object to the relevance of
15 other journalism or other authors' statements with regard
16 to some unknown topic.

17 MR. SWIFT: It had to do with Mr. Barr's claims
18 that he had compromised Anonymous, and the implication to
19 this Court is Mr. Brown writes this satirical article
20 that makes him the strategist and the overall architect.

21 MS. HEATH: Your Honor, we object to testimony
22 from Counsel.

23 THE COURT: I would sustain that objection. The
24 question or inquiry as to Stephen Colbert, the Court is
25 going to sustain that objection. I think we are getting

1 far field.

2 Q. (BY MR. SWIFT) Doxing. What is "doxing?"

3 A. Doxing is publishing information about an individual.

4 Q. Is doxing going on Google seeing what I can find out
5 about somebody?

6 A. Doxing would lead up to the ability to do that, so it
7 is the doxing is the initial publication of that
8 information.

9 Q. Go to Google, maybe public records, sort of stuff TMZ
10 does?

11 A. Sort of stuff who does?

12 Q. The channel TMZ?

13 A. I don't know if they do that or not.

14 Q. Other journalistic organizations find mugshots,
15 pictures that aren't flattering on the web, all kinds of
16 information that is out there?

17 A. Certainly, there is public information on the web,
18 and then there is private information.

19 Q. So doxing includes private information?

20 A. Date of birth, social security numbers.

21 Q. If that is on the web, it is publicly available; is
22 it not?

23 A. Normally, that would not be publicly available.

24 Q. How does someone dox somebody?

25 A. There are techniques for doing that they have to get

1 access to the information somehow and publish it.

2 Q. Meaning publishing something out there in the public?

3 A. It ends up in the public, yes.

4 MR. SWIFT: No further questions.

5 THE COURT: All right, thank you, Mr. Swift.

6 Redirect, Ms. Heath.

7 MS. HEATH: Yes, Your Honor.

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

9 Q. (BY MS. HEATH) Agent Smith, you were asked a lot
10 about different conversations Mr. Brown had. Did you
11 determine from your investigation and from some of the
12 exhibits that were presented earlier in some cases
13 Mr. Brown has public conversations and sometimes has
14 private conversations?

15 A. Absolutely.

16 Q. And did you determine whether there were times when
17 Mr. Brown intended to keep his conversations private or
18 covert?

19 A. Yes, I think in a general sense looking at, for
20 example, Project PM, it had activities that were publicly
21 facing. There were people that were involved with those
22 activities that appeared to be legitimate, and at the
23 same time there was a set of covert activities that were
24 going on, for example, some of the private messages, some
25 of the e-mail conversations that we looked at where there

1 activities that aren't generally known occurring in that
2 space. In particular, that is where the criminal
3 activity occurred was it was a more private space.

4 Q. And did you find times where Mr. Brown would make a
5 certain representation in private to somebody and make
6 perhaps the opposite assertion in a public conversation?

7 A. Certainly.

8 Q. Would there be times in the private conversation he
9 would discuss something, but totally admit or deny that
10 those occasions existed in a public conversation?

11 A. I think there are examples of that.

12 Q. Now, just to clarify the record, I think I asked
13 about doing the forensics you reviewed.

14 A. I reviewed the computers.

15 Q. And during this period of time, we have shown some
16 exhibits where Mr. Brown is stating that he is not a
17 journalist any more, he left the journalistic life in
18 2011 or at least during that period of time to act with
19 Anonymous or possibly was a pseudo-journalist. When
20 Mr. Brown was communicating with these individuals, was
21 he communicating from what you could tell as a source of
22 information or trying to gather information from other
23 people?

24 A. With the journalists?

25 Q. Correct.

1 A. He was being interviewed by journalists to provide
2 information to them for their stories.

3 Q. So not only was he interviewed online in interviews
4 as we saw with that one video, he was also interviewed in
5 e-mails or in chats?

6 A. Yes.

7 Q. You were asked about some of Mr. Brown's conspirators
8 with regard to some other hacks and what sentences they
9 got. At this time you are not here to tell the judge
10 what was the underlying offenses to which they were
11 convicted, what the maximum sentences were, or what facts
12 were presented to the judge whether or not those
13 individuals --

14 THE COURT: Ms. Heath, let's reask that
15 question. You have asked about four or five questions in
16 one.

17 MS. HEATH: Yes, Your Honor.

18 Q. (BY MS. HEATH) With regard to Barrett Brown's
19 co-conspirators --

20 MR. SWIFT: Objection; facts not in evidence,
21 not established that it was conspiracy. He was not
22 charged with a conspiracy on his part.

23 THE COURT: I would sustain the objection
24 insofar as a conspiracy is concerned, but you opened the
25 door Mr. Swift when you brought those other individuals

1 up, and I will allow her to explore that line of
2 questioning. I sustain the objection as to the word
3 conspiracy or conspiratorial conduct. The objection is
4 well taken. As far as the subject matter, the objection
5 is overruled because as the Court stated, you did open
6 the door on that issue.

7 MS. HEATH: Your Honor, if I may -- I will
8 reword the question.

9 Q. (BY MS. HEATH) The individuals that you were asked
10 about as far as the sentences they received, were these
11 individuals that were involved in jointly undertaken
12 activities with Barrett Brown?

13 A. Certainly, they were all participating in the channel
14 with HBGary. Mr. Brown was bringing people in for them
15 to talk to those people and in some cases threaten them.
16 Mr. Brown made suggestions to some of these people. For
17 example, he in a private message to Sabu at the time of
18 HBGary suggested that Sabu require that HBGary make a
19 donation to Bradley Manning in exchange for relief in the
20 situation, as an example.

21 Q. They would stop any further hacking or destruction if
22 HBGary would make a donation for Mr. Barr?

23 A. It wasn't clear what relief they would give, but
24 planting the suggestion requiring payment to
25 Mr. Manning's defense in exchange for some benefit.

1 Q. So these individuals worked together with Mr. Brown
2 on occasion for various goals that they set?

3 A. Yes.

4 Q. Now, with regard to the sentences they received, do
5 you have any information regarding what the individuals
6 were actually charged with?

7 A. I am not familiar with what they are charged with or
8 the situation regarding their convictions. I am aware to
9 the point that, for example, the British were handled in
10 British courts. To the best of my knowledge, they have
11 not been addressed in the United States Court system for
12 crimes that may have been committed here. It is my
13 understanding that Mr. Monsignor was sentenced and his
14 sentence was adjusted relative to his cooperation.

15 Q. With regard to cooperation, you don't know the
16 details of the cooperation that was presented to the
17 Court for any of these individual sentences?

18 A. Just from what I read in the media. I understand it
19 was recommended that he provided extensive cooperation.

20 Q. And you don't know what other evidence would have
21 been presented to the judge to come up with whatever
22 sentences they came up with?

23 A. No.

24 Q. Now, you were asked often about whether Mr. Brown was
25 actually involved in the hack. Is there more to a hack

1 and intrusion than the initial execution of whatever
2 malware is entered to cause the vulnerability to be
3 exploited?

4 A. As I stated before, I think you can look at sort of
5 the phases of the hack starting with HBGary. Mr. Brown
6 was involved as far as I can see not so much with the
7 technical aspects of the hack, but with dealing with the
8 information with providing, for example, advice on how to
9 proceed with the intrusion. At one point, he actually
10 decided he needed to hide his laptop from one of the
11 conversations related to his conversations. Some of the
12 other examples we talked about, for example,
13 vulnerability scans it is clear he progressed in
14 understanding of hacking being able to obtain
15 vulnerability scans, find people and describe what the
16 vulnerability scan meant to find somebody who might have
17 the capability to find and exploit to take advantage of
18 those vulnerabilities.

19 Q. Specifically, with regard to the Stratfor hack which
20 is the item or the activity that Mr. Brown pled guilty
21 to, what was Mr. Brown's role with regard to the ongoing
22 hack of Stratfor?

23 A. Well, he became aware and at the time he became
24 aware, he started making statements about that intrusion,
25 and he was admonished by the people involved with the

1 intrusion in particular Jerry Hammond telling him it was
2 ongoing, and he was going to mess it up. So as a result
3 he basically didn't make any further comments about the
4 intrusion at that point, and they were going to continue
5 with what they were doing.

6 Q. Did he obtain any of the stolen data from that?

7 A. He did get the stolen data we talked about, the
8 credit cards in this case that came from Stratfor, the
9 account information including the account names, the user
10 name, the name of the person, the hash password.

11 It is my understanding all of those passwords were
12 subsequently cracked. What I mean by that is hash
13 passwords, that is, passwords stored in a hash are
14 encrypted, one way encryption. There are techniques for
15 guessing what those passwords may be and given this
16 information in the public domain, then set out trying to
17 crack these passwords. The problem -- the big problem
18 with that, and we see this much today where these
19 accounts that -- these accounts people have, they tend to
20 use the same password in multiple places, so this creates
21 vulnerabilities in many places.

22 MR. SWIFT: I object to the answer as (A)
23 nonresponsive and (B) the witness previously testified
24 that Mr. Brown had no knowledge prior to the start of the
25 hack.

1 THE COURT: The last part of the objection would
2 go --

3 MR. SWIFT: He also testified --

4 THE COURT: Excuse me. When I am talking, do
5 not interrupt me, sir. If you have something else to
6 say, the Court will allow you to say it. Let me go ahead
7 and make my initial ruling as to the testimony that you
8 are considering is inconsistent. That goes more to the
9 weight, and the Court will review that, and I do agree
10 with you the question has been answered, and at some
11 point Agent Smith has become narrative, so I do sustain
12 the objection.

13 Is there another objection that you would like to
14 make?

15 MR. SWIFT: I also object because he was not the
16 case agent for the Stratfor hack or have personal
17 knowledge to testify regarding how the Stratfor hack was
18 conducted.

19 THE COURT: I am going to overrule that because
20 this is a sentencing hearing and Rule 1101 of the Federal
21 Rules of Evidence, one of the exclusions is that the
22 Federal Rules of Evidence do not apply at sentencing.
23 The test is whether or not the information has sufficient
24 indicia of reliability, therefore, what is normally
25 excluded during the course of a trial may be received by

1 the Court at a hearing if it has sufficient indicia of
2 reliability. In other words, hearsay unless it falls
3 within the hearsay exception is if it has sufficient
4 indicia of reliability. That aspect of your objection is
5 overruled. Let's move forward.

6 Q. (BY MS. HEATH) Further, with regard to the Stratfor
7 hack and Mr. Brown's involvement, you indicated he got
8 some of the stolen property; correct?

9 A. Correct.

10 Q. Does that include both the credit card information
11 that you were explaining and personal identifiers as well
12 as e-mails later?

13 A. Well, e-mail addresses in this file. I also found
14 customer lists related to Stratfor on the computer.

15 Q. And with regard to the credit card information, what
16 information or what volume of information did he receive?

17 A. Approximately 5000 that were in that file.

18 Q. And only the B and Cs?

19 A. People? I believe it was definitely B and Cs,
20 something like that.

21 Q. With regard to that group of credit card holders,
22 were you able to determine what credit cards had been
23 used after Mr. Brown made those -- made that information
24 public?

25 A. So I filtered the list extensively to take out

1 expired cards, cards that didn't have authentication
2 codes and got it down to just the set of cards that had
3 all the information related to being able to use it from
4 the period after Mr. Brown came to possess it.

5 Q. And how many credit cards were actually used?

6 A. It was on the order of a hundred more or less. I
7 don't recall the exact number, total losses about \$18,000
8 on those accounts.

9 Q. \$18,000, 100 to 113 cards?

10 A. Something on that order.

11 Q. And you are not saying Mr. Brown used these cards?

12 A. No, I am not saying that.

13 Q. And from the evidence that you reviewed earlier today
14 and the e-mails or chats, were there occasions Mr. Brown
15 would give advice to people on how to use credit cards?

16 A. Certainly. The example we discussed before which
17 occurred after Stratfor, that conversation where he is
18 explaining the ins and outs of exploiting credit cards.

19 MS. HEATH: Your Honor, we pass the witness.

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

21 Recross, Mr. Swift.

22 **RE C R O S S E X A M I N A T I O N**

23 Q. (BY MR. SWIFT) Let's go back to the credit cards.

24 You said Mr. Brown made them public. How do you do so?

25 A. I said he obtained credit cards we were discussing.

1 Q. You said that Mr. Brown made credit card information
2 public that was utilized.

3 A. He certainly downloaded the cards on his computer.
4 He transferred a link to the cards --

5 Q. Okay, the link?

6 A. Yes, okay.

7 Q. That link existed to an already existing public site;
8 did it not?

9 A. Yes, it was on a site at that point.

10 Q. So all the credit card numbers are already out in the
11 public?

12 A. Uh-huh.

13 Q. Okay.

14 THE COURT: Is that a yes?

15 THE WITNESS: Yes, sir; that's correct.

16 Q. (BY MR. SWIFT) All the credit card numbers are in the
17 public.

18 A. That's correct.

19 Q. They are available to the general public.

20 A. Yes.

21 Q. Mr. Brown pasted the link in Project PM that went to
22 that document.

23 A. Yes.

24 Q. Did he identify it as credit cards here?

25 A. He did not identify it when he pasted it in Project

1 PM as I recall.

2 Q. Right after he received that document, he actually on
3 the IRC chat asked what was that; is that correct?

4 A. They had been identified previously in the channel as
5 being five thousand cards. He did ask that question.

6 Q. He asked it after he received it?

7 A. He did ask after he received it.

8 Q. When he got the document, the implication is he
9 didn't know what was in it?

10 A. He asked for clarification of what was in it.

11 Q. There is no -- there is no evidence that he ever used
12 any of those credit cards?

13 A. No, sir.

14 Q. And you say --

15 THE COURT: What was your answer on that?

16 THE WITNESS: I said no, sir.

17 THE COURT: So your testimony is there is no
18 evidence that Mr. Brown ever used any of those credit
19 cards?

20 THE WITNESS: That is correct, sir.

21 THE COURT: All right.

22 Q. (BY MR. SWIFT) There is no evidence in part that
23 based upon his transfer someone was able to get access to
24 it who would not otherwise have it, in other words, his
25 posting of a link?

1 A. I think what we are talking about here is he knew
2 about it beforehand that there were accounts being
3 compromised.

4 Q. That is not who we are talking about. I will
5 rephrase the question.

6 A. Okay.

7 Q. Okay, Mr. Brown posted a link. That link if I
8 clicked on it would lead me to credit cards.

9 A. That's correct.

10 Q. Is there evidence that anyone gained access to those
11 credit cards by clicking that link?

12 A. I could not tell you that is the case.

13 Q. So there is no evidence that any of the charges to
14 those credit cards were made by someone utilizing the
15 path that Mr. Brown had provided?

16 A. That's correct.

17 Q. Now, when were the charges on those credit cards
18 made?

19 A. It -- at various times following the point in time in
20 which Mr. Brown became aware of the intrusion.

21 Q. Following the point where he became aware of the
22 intrusion.

23 A. Yes.

24 Q. Let's go -- when -- what is the earliest date on any
25 of the credit cards that was charged?

1 A. For fraudulent transactions?

2 Q. Yes.

3 A. I don't have the list in front of me, but I would
4 expect it would be something along the order of December
5 23, 2011.

6 Q. What is the latest date?

7 A. I do not know what the latest date was.

8 Q. Mr. Brown became aware sometime on December 23rd that
9 there was a hack going on?

10 A. That's my recollection.

11 Q. Did he have any knowledge at that point that they
12 were credit cards?

13 A. I don't know that he knew they were credit cards at
14 that point.

15 Q. So the credit cards and the \$18,000 that you just
16 testified about --

17 A. Uh-huh.

18 Q. -- had already started to be charged before he had
19 any knowledge?

20 A. I think that is true, yes.

21 Q. And you can't say when the last charge on them was
22 made?

23 A. No.

24 Q. And many of the credit cards were expired or
25 unavailable and couldn't actually be used?

1 A. Right, because I think because the intrusion was
2 detected earlier, there may have been some steps taken to
3 mitigate the losses on the accounts. Some of the
4 accounts had been canceled, for example.

5 Q. In fact, the FBI was aware of the ongoing intrusion;
6 correct?

7 A. I think they took steps to mitigate this, yes.

8 Q. So based upon that -- many of the credit cards had
9 been no -- were no longer valid?

10 A. Yes, by the time that Mr. Brown gained access, yes,
11 that is true.

12 Q. Out of the total of 5,550, how many had the FBI
13 rendered moot?

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

15 MR. SWIFT: I don't have any further questions.

16 THE COURT: All right, thank you, Mr. Swift.

17 MS. HEATH: Your Honor, if I may ask a few
18 clarifying questions just on the credit cards.

19 THE COURT: All right, this will be the last
20 round. Usually, I allow direct, cross, redirect, and
21 recross. I will allow one other round as to the credit
22 cards, and if Mr. Swift has any follow-up questions, I
23 will allow him to ask his questions. You may proceed.

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

25 Q. (BY MS. HEATH) As to the 113 cards which had \$18,000

1 in loss, that information was provided to probation,
2 those cards were only used after Mr. Brown posted the
3 link.

4 THE COURT: Okay, this is a crucial question.
5 Rephrase that question.

6 Q. (BY MS. HEATH) When was -- you explained briefly how
7 you determined or narrowed it down to 113 cards. What
8 were the parameters of those 113 cards that you focused
9 on?

10 A. Right. They were sufficiently complete to enable a
11 charge on the account, and they were having fraudulent
12 activity after Mr. Brown possessed them and transferred
13 the link.

14 Q. Okay, it was after he had them and made them public?

15 A. Correct.

16 Q. Now, a lot of other cards have previously been used
17 which is what I think the defense was asking you about;
18 is that correct?

19 A. Yes, there was fraud on these accounts before that
20 date.

21 Q. In fact, what is the figure that has been determined
22 or the entirety of the loss attributed to those cards?

23 A. It was a large number, \$700,000 or a million dollars
24 somewhere in that range.

25 Q. You narrowed it down to the \$18,000 of fraudulent

1 charges on 113 cards that Mr. Brown had received and made
2 public?

3 A. Yes.

4 MS. HEATH: Your Honor, we pass the witness.

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

6 R E C R O S S E X A M I N A T I O N

7 Q. (BY MR. SWIFT) Let me understand two things. First,
8 all of those cards when Mr. Brown received them were
9 already public; correct?

10 A. They were on his site on the internet, so yes.

11 Q. But they were already on another public internet
12 site.

13 A. That is correct.

14 Q. So I didn't need to go to Mr. Brown to get those
15 credit cards?

16 A. You had to know where to find him.

17 Q. Lots of people were watching, weren't they?

18 A. I don't know.

19 Q. You have no information because Mr. Brown published a
20 link to them that anybody could access them?

21 A. No. Well, let me clarify. There was somebody on the
22 channel when he published it who acknowledged that he had
23 posted that. Actually, I don't recall the exact language
24 in the channel at that time, but the person who was in
25 there actually recognized that it was something of value,

1 and I think the response was something along the lines
2 of, you know, Merry Christmas indicating it had value. I
3 would have to look at the exact language to be specific.

4 Q. Were you able to trace and see whether they went to
5 that point?

6 A. I can't tell you that they downloaded from that
7 link. They acknowledged the posting to the link with
8 sort of a positive affirmation.

9 Q. Last point. Mr. Brown prior to -- he asked the
10 question what was in that after he posted the link; did
11 he not?

12 A. I am not sure as I sit here. That may be possible.

13 Q. And you said that the \$18,000, that started somewhere
14 on the -- used through the 23rd?

15 A. From the time -- so from the time he possessed these
16 cards forward to the point in which we determined we
17 asked the question about the fraud. It could be there
18 was fraud subsequent to that. It could be there is still
19 fraud in the accounts. I can't tell you when it ends or
20 if it ever ends.

21 Q. And you can't tell whether the people who were
22 charging it after him had already possessed it and had
23 been charging it for sometime, using those credit cards?

24 A. I am sorry. I didn't catch your question.

25 Q. Did you eliminate -- can you tell that the persons

1 who were making the charges on those cards whether they
2 held them before Mr. Brown possessed them?

3 A. There may have been fraud in those accounts before
4 Mr. Brown possessed some of them. It is possible.

5 MR. SWIFT: No further questions.

6 THE COURT: Okay, just one minute. Let me
7 review some notes I have here.

8 (PAUSE IN PROCEEDINGS.)

9 THE COURT: I take it this last line of questions
10 goes to the number of victims; is that correct?

11 MS. HEATH: Yes, Your Honor.

12 THE COURT: And it would go to an enhancement.
13 What is the government's position as to what level of
14 enhancement is appropriate?

15 MS. HEATH: Your Honor, the latest decision or
16 recommendation by probation is something that would be
17 very obtainable with the evidence that is here. The
18 government could tell the Court that there are over 250
19 victims because each and every individual in these
20 companies whose e-mail was taken and the people who had
21 been called and individual companies and then, of course,
22 Mr. Brown threatening law enforcement in general and
23 threatening the agent and told him as well as the credit
24 cards, but in abundance of caution the government would
25 say that the appropriate amount is between 50 and 250. I

1 think that is the range, isn't it? 50 to 250?

2 THE COURT: Well, the two-level enhancement for
3 10 or more; four levels for 50 or more; and six levels
4 for over 250, that is my understanding of what the law
5 is.

6 MS. HEATH: The government would say it is very
7 appropriate to do the over 50, but under 250.

8 THE COURT: Agent Smith, you may step down.

9 THE WITNESS: Thank you, sir.

10 (WITNESS EXCUSED.)

11 THE COURT: Okay, let's go ahead and take that
12 issue up now.

13 Ms. Cadeddu, were you going to say something?

14 MS. CADEDDU: Your Honor, I was going to say
15 since I am handling the guidelines, that is something I
16 am fully prepared to address as soon as we are done with
17 the testimony.

18 THE COURT: I believe we are. Any further
19 testimony by either side on any issue?

20 MR. SWIFT: We have our witness that we wanted to
21 call, Your Honor.

22 THE COURT: Is it relating to this enhancement or
23 not?

24 MR. SWIFT: It is related to all of the relevant
25 conduct regarding strategist.

1 THE COURT: No. Is it related to the victims?
2 That is what we are on right now.

3 MR. SWIFT: No, Your Honor.

4 THE COURT: All right, then let's hold off on
5 that witness. I will take that witness up after we
6 discuss this issue concerning the number of victims.

7 Ms. Heath, since there has been an objection by the
8 defense, the government has the burden on that. Is there
9 any further argument that you would like to make in that
10 regard?

11 MS. HEATH: Your Honor, simply as -- would you
12 like me at the podium or the table?

13 THE COURT: You can talk from the table. Talk
14 loudly enough so I can hear you and Ms. Crawford can hear
15 you.

16 MS. HEATH: Yes, Your Honor, with regard to the
17 number of victims, as I said I think the evidence would
18 support a finding of more than 250 in that the
19 individuals who were affected by the hacks that Mr. Brown
20 was participating in includes the companies themselves.

21 THE COURT: That would be three companies; is
22 that correct?

23 MS. HEATH: No, Your Honor.

24 THE COURT: What are you talking about?

25 MS. HEATH: We have HBGary, Special Forces,

1 Strategic Forecasting, Combined Systems, Puckett and
2 Faraj, and additional noncompany victims, the individuals
3 whose site was taken down.

4 THE COURT: All right, I thought the latest
5 position of the government was that there were 113
6 victims.

7 MS. HEATH: There are 113 people's credit cards
8 who were published by Mr. Brown whose cards were
9 fraudulently used. That is where we come up with 50 and
10 250.

11 THE COURT: What evidence do you have to
12 establish that there were 113 identifiable victims as
13 opposed to credit card accounts?

14 MS. HEATH: Those credit card accounts come from
15 identifiable victims. The agent indicated that he went
16 through to determine that there was an active card, that
17 those cards were cards within the grouping of cards that
18 Mr. Brown received, and that he then made public to his
19 Project PM, his group of individuals. The 113, each of
20 them had a credit card holder that was named, their
21 addresses were given, e-mail accounts, passwords, credit
22 card information, thousands of CVV or similar
23 identifiers, and the different banks or the credit card
24 companies had received reports of fraud from those credit
25 card holders, so we confirmed all of those with those

1 113.

2 THE COURT: All right. Okay, Ms. Heath, are you
3 familiar with the Fifth Circuit decision in United States
4 vs. Onenese, which is found 542 F.App'x 427?

5 MS. HEATH: Not right offhand, Your Honor. I am
6 sure I have read it.

7 THE COURT: I am raising the issue because it has
8 come up in another case that the Court has had with the
9 government when you talk about a number of victims. The
10 Fifth Circuit has made it clear that when you are talking
11 about in this context a means of identification, that
12 means that an individual's identification must actually
13 be used for that individual to count as a victim.

14 MS. HEATH: Yes, Your Honor.

15 THE COURT: We are not talking about possession
16 or transfer.

17 MS. HEATH: Yes, Your Honor.

18 THE COURT: We are talking about something that
19 is actually used, and the Fifth Circuit points out that
20 the word "used" is contrasted with the term possessed.
21 In that particular case, the government took the position
22 that an orange notebook found in this individual's
23 apartment supported the 50-victims sentencing
24 enhancement, and that particular notebook to which the
25 government contained birth dates, social security

1 numbers, and addresses of approximately one hundred
2 people, and the Fifth Circuit held in that case as
3 follows, "We find that it was clear error to rely on the
4 government's argument that the orange notebook indicates
5 that there were more than 250 victims. There is simply
6 little to no evidence in the record suggesting that the
7 defendants victimized all the people listed in the
8 notebook."

9 Now, the Court went on to say, "The government in
10 its brief to the Court mentioned only 19 victims by
11 name." And the Court further said, "If the government
12 cannot point to 50 identifiable victims who were, in
13 fact, defrauded or whose identities were used, it should
14 have conceded as much."

15 Does the Court have the names of 50 or more
16 identifiable victims whose cards were actually used or
17 who were defrauded?

18 MS. HEATH: Yes, Your Honor. I don't have them
19 here at this moment, but yes, we went through the 5,500
20 cardholder accounts that Mr. Brown received. From those
21 we identified 113 by name. In fact, many of those have
22 been contacted because they would have been witnesses had
23 we gone to trial. Many of them were named in the
24 original indictment because we had contacted them and
25 confirmed their loss.

1 Of that 113 -- of that 113 are known credit card
2 holders whose cards were used fraudulently after the time
3 Mr. Brown had them in his possession and made them
4 public. They were fraudulently used. It is confirmed by
5 the credit card company and by the card holders to whom
6 we have talked and I can supplement in a brief. I can
7 provide the names of the card holders and their accounts.

8 THE COURT: I do not have that right now. It
9 can be filed. I do not have that right now, and I think
10 the Fifth Circuit was clear that you had to have
11 identifiable victims and not necessarily credit card
12 numbers because what the Fifth Circuit said was the way
13 you identify them is through name, date of birth, social
14 security number, those kind of things.

15 MS. HEATH: Yes, Your Honor. We have the
16 names. We have addresses, and we have phone numbers or
17 e-mail addresses. Of course, we have the credit card
18 numbers. We have the credit card companies who have
19 verified that those cards were valid at the time and that
20 they suffered fraud, and they were real individuals.

21 As I said we have talked to some. I can provide a
22 full name. I would want those names to be kept under
23 seal with the Court because they would be victims and
24 that information should not be made public.

25 THE COURT: I mentioned they should be filed

1 under seal. The next question would to be the defense,
2 does the defense have that information?

3 MS. HEATH: Yes, Your Honor.

4 MR. SWIFT: No, we do not.

5 MS. HEATH: We provided that spread sheet, the
6 Excel Spreadsheet.

7 MR. SWIFT: 19 people, not 113.

8 MS. CADEDDU: I have seen a lot of documents in
9 this case, Your Honor. I can't swear that I have seen
10 it. I don't recall a document with 119 names on it.

11 MS. HEATH: It would have -- it is around that
12 number. It should be a spreadsheet with the verified
13 losses from the different credit card companies because
14 remember we were going back earlier than you needed that
15 information.

16 MS. CADEDDU: I can't swear to the Court I have
17 not seen it, but I don't recall it off the top of my
18 head.

19 THE COURT: Let me ask this question,
20 Ms. Cadeddu. Since you are handling the guidelines, if
21 what Ms. Heath is saying is correct, why would not the
22 government have carried its burden? What she has
23 represented to the Court is that she can produce to the
24 Court or she has a document that shows more than 100
25 people whose names are connected with specific credit

1 card numbers. In other words, she has identifiable
2 victims which is what the Fifth Circuit requires.

3 If that information exists, then tell me why the four
4 level enhancement would not apply.

5 MS. CADEDDU: Yes, Your Honor, certainly. That
6 is because we are skipping some earlier steps that we
7 have to go through here that are required. The question
8 here actually is before that victim enhancement can even
9 be applied. The guidelines say that there must be a
10 determination of whether the offense involved the
11 production or trafficking of any unauthorized access
12 device, so the offense itself has to involve the
13 production or the trafficking of that unauthorized access
14 device. And before we can say that the offense itself
15 involved -- we are talking here about the offense that
16 Mr. Brown was convicted of, so the question here is one
17 of whether the government has made this generalized
18 argument about relevant conduct.

19 What we have to keep in mind is the offense conduct
20 is accessory after the fact to the unauthorized access of
21 protected computer. There are rules, special rules that
22 apply in the guidelines for factual findings or for the
23 application of relevant conduct, rules in accessory after
24 the fact case, and we completely skipped over that
25 requirement.

1 Guidelines Section 1B1.3 says we cannot add a
2 special offense characteristic unless the defendant knew
3 or have reason to know that the relevant conduct being
4 assessed there with the special offense characteristics
5 actually took place.

6 The evidence here, the only evidence in the record is
7 that Mr. Brown when he posted the link did not know what
8 was behind it. We have the IRC chat log actually
9 excerpted in our sentencing memo for the Court's
10 reference, but there is also a real causation issue
11 here. The government keeps saying Mr. Brown had
12 possession of the credit cards and then made them
13 public.

14 Mr. Brown linked to a public site. He posted a link
15 to a site that was public. The credit cards were already
16 public when he received that information. So the
17 government, that is, a misrepresentation to say that
18 these losses occurred only after he made this information
19 public. The information was already in the public
20 domain. So what the government is seeking to do here, in
21 fact, is to assess liability for Mr. Brown for linking to
22 information that was already in the public domain and
23 that has real serious problematic repercussions for
24 journalists, for researchers, for all kinds of people who
25 link to information, and so I would say that the

1 government has not met its burden under 1B1.3 to meet the
2 special requirements that are necessary in order to
3 assess a special offense characteristic. We have thought
4 even that the government can't prove that it is an
5 offense involving the trafficking of an unauthorized
6 access device in the first instance. Then the question
7 is whether it has provided information about the names
8 and identifiers of the victims is irrelevant.

9 Moreover, if the government has not proved that the
10 offense involves the production or trafficking of an
11 unauthorized access device, we contend is true here, then
12 the two-point enhancement for trafficking in an
13 unauthorized access device is similarly impermissible.
14 So what I would say is we skipped that internal step and
15 went straight to the question whether the government
16 provided appropriate identifying information. I don't
17 believe that the government can meet the requirement of
18 1B1.3 and prove that this relevant conduct is even
19 attributable to Mr. Brown, so that would be the essence
20 of my argument.

21 THE COURT: All right, thank you, Ms. Cadeddu.
22 Ms. Heath, what is the government's response or reply, I
23 should say?

24 MS. HEATH: Yes, Your Honor, part of the United
25 States Sentencing Guidelines 1B1.3 also provides the

1 Defendant is accountable for all reasonable foreseeable
2 acts and omissions and acts of others in the jointly
3 undertaken activity. I think from the evidence presented
4 today, it is apparent that Mr. Brown was involved in
5 jointly undertaken criminal activity with other
6 individuals.

7 With regards specifically to these 113, if that is the
8 actual number -- with regard to those --

9 THE COURT: Connect the dots for me. I do not
10 want general statement. I want you to connect the dots
11 and show how he is linked to this. So that -- convince
12 the Court that he is linked to this and do so by
13 connecting the dots with as much as specificity as you
14 can as opposed to a general statement.

15 MS. HEATH: Yes, Your Honor, with regard to
16 Mr. Brown, he was aware that the Stratfor hack was
17 occurring. He was told while it was occurring there
18 would be credit cards and e-mails. He knew that before
19 he got the credit cards. When he received the link, he
20 downloaded into his computer the 5,550 or whatever that
21 number was all the Bs and Cs in the credit cards. He
22 downloaded that into his computer. He has it in his
23 possession on his computer. It is not on some site
24 somewhere, but that is where the link came from, from a
25 site.

1 He took the link from a more public chat room, IRC
2 channel, to his own group, the Project PM IRC channel for
3 those individuals to do with what they want. From the
4 information provided to the Court today, it is reasonably
5 foreseeable to Mr. Brown that these credit cards in
6 Stratfor which had already been abused to the tune of
7 hundreds of thousands of dollars before he even probably
8 transferred them or trafficked in them to his Project PM
9 site is reasonably foreseeable that people would continue
10 to use them.

11 We have evidence that Mr. Brown gives advice to
12 individuals on how to use credit cards, give them to
13 charities, but give them to charities overseas. Don't
14 give them to charities where they have to charge back.
15 The 113 comes from the actual credit card holders that we
16 can identify that suffered fraudulent use after the point
17 in time when Mr. Brown trafficked in them or transferred
18 them to his Project PM, transferred the link to his
19 Project PM site.

20 We do have the identifiable victims by name,
21 address, telephone number, e-mail address. We have the
22 identifiable credit card number with CVV. We made sure
23 they had the CVV. We made sure they were active accounts
24 and had been defrauded pursuant to either the credit
25 cardholder telling us and filing a fraudulent report with

1 the credit card company or the credit card company
2 confirming the fraudulent use.

3 THE COURT: All right, have you responded to all
4 of Ms. Cadeddu's argument?

5 MS. HEATH: Yes, Your Honor, if the Court
6 desires both sides, I am sure we would be willing to
7 brief this issue.

8 THE COURT: I don't think I need any further
9 briefing. I just need pinpoint argument.

10 MS. CADEDDU: May I reply, Your Honor?

11 THE COURT: Just one second, Ms. Cadeddu.

12 MS. CADEDDU: Of course.

13 THE COURT: Ms. Heath, there were a couple
14 arguments made by Ms. Cadeddu, maybe you addressed them
15 and maybe I missed them, but one argument that the
16 defense is making is that it is unfair to assess
17 liability against Mr. Brown for something that was
18 already quote, unquote, in the public domain and this is
19 a reference to the credit cards. Did you address that
20 issue?

21 MS. HEATH: Yes, Your Honor, once an item such
22 as a credit card is stolen, it remains a stolen item. It
23 doesn't matter how many hands it falls into as long as
24 the individual knows they are dealing with stolen
25 merchandise. It would be the same as taking -- somebody

1 stealing your car and leaving it on a corner. The next
2 person steals it further and somebody else steals it
3 again. It is stolen property. So the government's
4 position is that regardless of whether or not it had been
5 made public by somebody else, that somebody else did the
6 same thing Mr. Brown did. Mr. Brown took material, data,
7 credit card information that he understood to be stolen
8 and purposefully trafficked in it to another location for
9 other people to use.

10 There is no reason why he would need the credit card
11 information for any legitimate means. He took it for the
12 purposes as could be shown before to -- as can be shown
13 before where he was encouraging people to use the credit
14 card information and asking for credit card information
15 in other chats.

16 THE COURT: The other argument made by
17 Ms. Cadeddu or one of the other arguments was certain,
18 special requirements had to be met when you are talking
19 about trafficking of an unauthorized access device. Has
20 the government responded to her argument in this regard?

21 MS. HEATH: I believe that went to -- I believe
22 it went to the possession of the actual stolen data.

23 THE COURT: I want make certain you addressed
24 it, because the parties have already done one round of
25 written briefing, and I am giving the parties an

1 opportunity to address the argument. I am not going to
2 allow further briefing on this. I am giving the parties
3 the opportunity now to tell me what they have to say on
4 any particular point because when we come back in January
5 there will be rulings by the Court and there will be
6 sentencing.

7 MS. HEATH: Yes, Your Honor.

8 THE COURT: Unless there is something unforeseen,
9 there will be no further evidentiary matters considered
10 by Court in January. Now, let me ask you this. There
11 seems to be some dispute with respect to the information
12 concerning the 113 victims or so. If that information
13 has not been provided to the defense, it needs to be
14 provided to the defense within the next week -- within
15 the next seven days, so they can look at that
16 information, and we will not have a delay regarding that
17 issue when we come back for sentencing on the 22nd of
18 January.

19 MS. HEATH: Yes, Your Honor.

20 THE COURT: As stated before, let me make clear
21 to the parties, that information is under seal. It is
22 not to be in the public domain. It is not to be released
23 to the media. I don't want anybody on any side getting
24 cute with the Court or getting smug with the Court and
25 finding a way to get it into the public domain. If that

1 happens, it may not be a pleasant day for the person who
2 does it.

3 I have no further questions at this time, Ms. Heath,
4 unless you have something else you want add.

5 MS. HEATH: No, Your Honor.

6 THE COURT: All right, you wanted to reply,
7 Ms. Cadeddu.

8 MS. CAEDDU: I do, Your Honor. Okay, there are
9 a couple of issues here. First, I know it was not in the
10 initial argument, but I would like to address the stolen
11 car analogy. She says stolen property is stolen property
12 and remains stolen property. This case is -- let's take
13 the stolen car analogy. A group stole a car and went and
14 parked it in a public place, and Mr. Brown posted a link
15 and said go look at this public place; there is a stolen
16 car there. Look at it for a lot of purposes that have
17 nothing to do with credit cards, and I am going to talk
18 about what he actually said in a second, but this is not
19 a case where Mr. Brown went and got the car where it was
20 and drove it around, used it at all. It is a case where
21 he pointed to a location in a public place, and that I
22 think is why it is such a problem to hold him accountable
23 for trafficking in this case.

24 The government's argument here is one that really
25 should chill the bones of every journalist and every

1 researcher who is operating now because the government's
2 argument is by linking to data that contains credit card
3 information whether or not you know it is there and
4 whether or not that information is already in the public
5 domain, you are trafficking in credit card and cannot be
6 held accountable for it. And even if as in this case
7 there are charges filed, a motion to dismiss filed for
8 failure to state an offense which is not ruled on before
9 the government voluntarily dismissed all of those
10 counts.

11 I understand and know as we all do that a court can
12 sentence based upon dismissed counts, but we see that in
13 cases where, for example, it is a drug case and the
14 government dismisses some of the counts and takes a plea
15 as to one count and dismisses the other counts.

16 This is not that kind of the case. What we are
17 talking about is the government could not make its case
18 on dismissed counts and seeking to hold him accountable
19 for them after the fact in a way that will create
20 enormous problems and enormous uncertainties for
21 journalists and researchers around the country and around
22 the world going forward.

23 So I am really, I am very, very concerned about
24 this. The other representation that the government made
25 I think is problematic is Mr. Brown took this so that the

1 credit card information could be used. There is no
2 evidence in the record of that. The only evidence that
3 is in the record about the purpose for which -- the
4 purpose Mr. Brown had for this information is the IRC
5 chat log that I would refer the Court to and this is on
6 pages 10 and 11 of our sentencing memorandum. It is
7 actually an excerpt. What you can see in this -- I am
8 not going to go through the entire chat, but what you can
9 see here is that Mr. Brown -- there is a progression of
10 chats and linked to the Stratfor data is posted by a user
11 on Anon Op's channel which is a public channel, and
12 Mr. Brown takes that link and reposts in Project PM IRC
13 and goes back and he asks, what exactly is in that
14 download.

15 So you know, the government says with no evidentiary
16 support, you can't just say he knew there were credit
17 cards in there. The government talked about a lot of
18 credit card information. Agent Smith talked about that
19 and Mr. Brown's comments on that that all involved
20 different intrusions that all happened after the Stratfor
21 hack. There is absolutely no information or data in the
22 record as it stands right now that Mr. Brown knew that
23 there were credit cards -- knew there was credit card
24 information in this download and the evidence is to the
25 contrary because he, in fact, if the Court can see it, he

1 asks what is in this download, so the problem with this
2 whole argument here is that the government is seeking to
3 hold Mr. Brown accountable for -- for trafficking in
4 credit card information, for posting a link to a public
5 website that had already been public before he even knew
6 there was an intrusion and holding him accountable. The
7 only evidence in the record is he did not know what was
8 in the link that he published.

9 THE COURT: All right, so you are saying he did
10 not know, and the government is saying he is aware.

11 MS. HEATH: The evidence in the record -- the
12 only evidence the government has is an assertion that he
13 knew.

14 THE COURT: I am going to ask the government
15 about that just as soon as you finish the argument.

16 MS. CADEDDU: I am sure, Your Honor. I would
17 point the Court on page 10 to the log where Barrett Brown
18 links to that or posts that link on his Project PM
19 channel and says here, BLB, what exactly is in that
20 download. And actually that brings up a good point which
21 is the person who responds says it is the BNC list of all
22 clients that had CC info stored, name, address, and info
23 attached to the company, five thousand entries, and
24 Barrett Brown said, seriously; appreciate this greatly.
25 This could potentially advance our investigation by

1 years, and another user says what is the exact data
2 supposed to be for; what is the long game. And Barrett
3 Brown says the e-mails will reveal a breakthrough about
4 a lot of important subjects including specific info by
5 state and other institutions issues that don't receive
6 sufficient information or sufficient intention. It will
7 be analyzed for info or relevance to several fundamental
8 issues that we have been looking into since February
9 which involved mass surveillance, cutting edge
10 disinfotech, et cetera.

11 So it's clear, clear as day from this chat that
12 Mr. Brown's interest in this information is not for
13 credit card information. What his interest is in order
14 to crowd source an evaluation of the e-mails and evaluate
15 what the company had been doing that he believed was
16 improper. It was an investigative purpose. He is an
17 investigative journalist, has always been, and so I just
18 feel like this is really very problematic for researchers
19 and journalists.

20 THE COURT: All right, thank you, Ms. Cadeddu.

21 MS. CAEDDU: Thank you, Your Honor.

22 THE COURT: All right, Ms. Heath, I want to hone
23 in on one point that Ms. Cadeddu has argued, and her
24 position is that the government lacks the evidence on
25 this area of inquiry. Her position is that the

1 government says that Mr. Brown knew or was aware if there
2 was credit card information in the download.

3 Now, and this is for both sides, I have a problem
4 with the words he is aware or he knew unless there are
5 underlying facts to support that because those statements
6 are conclusions.

7 So the question I would ask you, Ms. Heath, is this:
8 What is the specific information from the government's
9 point of view or set forth in the record that Mr. Brown
10 knew there was credit card information in the download?
11 I don't want a statement that he was aware. I want you
12 to say, Judge, here are specific facts or here are facts
13 from which you can reasonably infer that he was aware.

14 MS. HEATH: Yes, Your Honor. In the chat that
15 Ms. Cadeddu is referring that shows up on page 10 of
16 their objections -- I am sorry, their sentencing
17 memorandum, if you go back a little further. Don't
18 selectively start at that location. The content
19 discussed as five thousand cards. The link that
20 Mr. Barrett Brown actually posts is
21 STRATFOR_FULL_B.TX.GZ. Mr. Brown got the Bs and Cs of
22 the credit cards, so this Stratfor, underscore, full,
23 underscore B, but prior to where they start with their
24 chat there is a reference to the five thousand cards.

25 This transaction occurred in December 2011. The

1 government Exhibit No. 50 prepared at the sentencing
2 hearing is a discussion with the very same Mr. Hammond
3 that was involved in the Stratfor hack. Government's
4 Exhibit No. 50, Mr. Hammond and Mr. Brown are discussing
5 getting credit card information from other locations. In
6 fact, in that particular conversation, Mr. Hammond is
7 providing Mr. Brown with credit card information,
8 personal identifiers for a lot of people in this actual
9 chat.

10 Then there is some discussion where other evidence
11 that the government has been provided today in its
12 exhibits where Mr. Brown is specifically asking for
13 credit card information and are receiving credit card
14 information from other people, and/or giving advice to
15 somebody who has stolen credit cards as to what to do
16 with them. So there is more than sufficient evidence to
17 show that Mr. Brown is very open to receiving credit card
18 information, that he has received credit card information
19 in the past. It was on his computer that he discussed
20 getting credit card information from the hacks, and this
21 is the actual chat prior to where the defendant states in
22 their sentencing memorandum with the five thousand cards
23 then Mr. Brown receives the link of the full V-Protects.

24 He asks what is in it, and they clarify. It is not
25 all the cards. It is the Bs and Cs, lists of all clients

1 that have credit card information stored, name, address,
2 credit card information, and company.

3 Mr. Brown responds seriously, appreciate this greatly.
4 This could potentially advance our investigation by
5 years. So he is acknowledging that he received it, that
6 this is good stuff and advancing our investigation, and
7 he has posted it in his Project PM site that we now from
8 prior evidence here today was split into two factions,
9 one the legitimate faction and one the -- the criminal
10 faction or the faction that would be committing crimes in
11 furtherance of their objectives.

12 That is the evidence that the government has from
13 the exhibits presented here today in the sentencing as
14 well as representation that this chat prior to where it
15 starts indicates five thousand cards, and Mr. Brown it's
16 is very clear that Mr. Brown knows he is getting cards.
17 He is clarifying what card he is getting, so I don't
18 think there is any mistake in that.

19 Ms. Cadeddu references that later he talks about
20 having gotten, talks about e-mails, that is when he is
21 asked what is in the future, so what exactly is this data
22 heist supposed to be. What is the long game? That is
23 when he talks about getting the e-mails. This particular
24 conversation early on is talking about the credit card.
25 Later they are going to get the e-mails.

1 It is very clear that Mr. Brown understands what
2 credit cards he is getting. He is just clarifying which
3 ones. He got the Bs and Cs.

4 THE COURT: All right, thank you. All right, we
5 have been in here about two hours. It is time to take a
6 break. We are going to take a 20-minute break.

7 Mr. Swift, you said you have a witness?

8 MR. SWIFT: I do, and she is from out of area.
9 It would be extraordinarily difficult for her to come
10 back.

11 THE COURT: We will take up that witness --

12 MR. SWIFT: Thank you.

13 THE COURT: -- so she will not have to make
14 another trip here. All right, we will be in recess for
15 twenty minutes.

16 THE COURT SECURITY OFFICER: All rise.

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

20 THE COURT: All right, sir, to expedite things
21 you have a witness?

22 MR. SWIFT: Yes, Your Honor, I do.

23 THE COURT: Go ahead and call that witness.

24 MR. SWIFT: I don't think the government is here,
25 Your Honor.

1 THE COURT: I am sorry. I didn't notice
2 Ms. Heath was not here. Mr. Johnson, I am going to go
3 sign a couple of orders. When Ms. Heath comes in, come
4 get me.

5 (A RECESS WAS HAD, AFTER WHICH THE FOLLOWING
6 PROCEEDINGS WERE HAD IN OPEN COURT, WITH ALL PARTIES AND
7 COUNSEL PRESENT.)

8 THE COURT: All right, Mr. Swift call your
9 witness, please.

10 MR. SWIFT: We call to the stand Ms. Quinn
11 Norton.

12 THE COURT: Ma'am, raise your right hand,
13 please.

14 QUINN NORTON,
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.

18 All right, Mr. Swift, you may proceed.

19 MR. SWIFT: 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 MR. SWIFT) Ms. Norton, how are you currently
22 employed?

23 A. I am a journalist.

24 Q. What area of interest of the world do you cover?

25 A. I have a number of beats. What I'm most well known

1 for is hacker culture, computer security, and internet
2 culture including Anonymous.

3 Q. When did you start covering Anonymous?

4 A. I began researching them in 2010 and didn't begin
5 writing about them until 2011.

6 Q. Who have you written for?

7 A. I have written for The Atlantic, Wired, New
8 International, and other publications, but my primary
9 long-term coverage was for Wired Magazine.

10 Q. In writing about Anonymous, how did you do that?

11 A. It was a somewhat complicated process. It is not
12 very much like traditional journalism. Your sources are
13 anonymous to you. You have to gain the trust of a
14 community that is both secretive and have security
15 issues, and also you are not going to be able to do any
16 of the normal kind of fact checking things over titles,
17 and so forth. So how I did it was I went to the places
18 where they were, I got to know various people, I
19 established trust.

20 I already knew a lot about the culture because it
21 came from a culture that I have been studying for twenty
22 years. I was able to kind of use the culture to insert
23 myself into the situation.

24 Q. Did you work with anyone else initially?

25 A. Yes.

1 Q. Who was that?

2 A. I have been a friend and a colleague of Biella
3 Coleman since the early 2000s.

4 Q. Who is Ms. Coleman?

5 A. Gabriella Coleman is the Wolf Chair of Technology at
6 McGill University in Montreal. She is the leading
7 anthropologist on Anonymous, and prior to that she worked
8 on Freedom Open Source. We had an overlap for many
9 years.

10 Q. As part of your journalism, were you present -- well,
11 first can you explain to the Court what an IRC chat or
12 IRC channel is?

13 A. IRC has been around since the early 90's. It is a
14 server upon which many simultaneous conversations take
15 place, thousands of them, in fact, take place, and also
16 people can private message each other, and anyone can set
17 up one of these servers and make it available to the
18 public. Anonymous had set up quite a few and also had
19 channels on longstanding ones like FNET which has been
20 around -- I first learned of FNET in 1994 -- so these
21 are longstanding forms of communication well worked out.

22 Q. So you might call them online meeting places?

23 A. You could -- you could call them that.

24 Q. An online square or meeting room that you go to?

25 A. They are kind of the internet contemporary version of

1 the 70's coffee house. They are places where all sorts
2 of people, all sorts of levels of sophistication, class,
3 culture can meet in common. They have that in common.
4 They have that quality of meeting at a coffee house.

5 Q. Now, does Anonymous -- first, can you explain to the
6 Court what Anonymous is?

7 A. Oh, Anonymous is a culture, a collective that kind of
8 gathers around certain values, but has very little
9 necessarily in common with that. When I use a metaphor,
10 I often say being from Anonymous is like being from
11 California. There's definitely things -- I say that
12 because I am from California -- there are definitely
13 things that are common to those people, but there is very
14 little you can say universal about them.

15 Anonymous spans many nations. It spans many
16 languages. It spans many political affiliations, but one
17 of the common threads that ties everyone in Anonymous
18 together is a belief in free speech and anticensorship.

19 Q. When they talk about relevance here -- rather than
20 Anonymous or hacking activities --

21 A. Uh-uh.

22 Q. Were you familiar with those activities?

23 A. I was.

24 Q. Let's start with during your journalism, were you
25 aware of or were you able to observe things about the

1 HBGary hack?

2 A. I did observe part of the HBGary hack. I was lurking
3 in the channel. Lurking is kind of like the internet
4 culture term for listening.

5 Q. Which channel?

6 A. It obviously varies now, but the first one was the OP
7 Ferry Channel and a couple more. I can't recall the
8 names now where people were discussing the hacking
9 ongoing.

10 Q. So I want to distinguish there is -- what is an
11 operational channel?

12 A. So -- this gets -- channels can slide in and out of
13 being operational depending on how people are using the
14 channel at the time. Again, these are as you say spaces
15 or meeting points, and a meeting point can turn into a
16 very serious meeting or casual meeting, and Anonymous --
17 it can slide back and forth between them, an operational
18 channel in this case. I vary specifically because of the
19 nature of my coverage didn't want to be in the secret
20 channels where people were actually planning the next
21 part of intrusion, but there's other layers of that.
22 There are layers of operational channels where people are
23 theorizing or chatting or joking all the way down to
24 people who are coordinating some kind of illegal attack
25 or in many cases coordinating an intense civil operation

1 that isn't illegal.

2 Q. Okay, so there were several channels for the HBGary
3 chats?

4 A. Yes.

5 Q. Are you familiar with the one that has been offered
6 by the government? That channel?

7 A. There is -- I think there is Op HBGary and HQ.

8 Q. HQ?

9 A. I am familiar with HQ. I was not in HQ.

10 Q. Was HQ an operational channel?

11 A. Probably, but I would have to speculate.

12 Q. Were you aware of Mr. -- of the hackers? Do you know
13 which hackers were primarily responsible for the HBGary?

14 A. I do.

15 Q. Who were they?

16 MS. HEATH: If we can get clarification of what
17 she is basing this knowledge on.

18 MR. SWIFT: I am happy to lay a little more
19 foundation.

20 THE COURT: I agree. Lay a predicate question.

21 MR. SWIFT: Yes.

22 Q. (BY MR. SWIFT) Before answering who they are, how did
23 you learn who the hackers were?

24 A. Initially, I learned probably from consulting with
25 Ms. Coleman. I also have interviewed two of them

1 subsequent to their release from prison, and I also
2 worked a bit with and read the materials from those who
3 did the technical coverage of it.

4 Q. By technical coverage, what do you mean by that?

5 A. That went through the specifics on how -- we have not
6 gotten into this here, but went into the specifics on how
7 that hack worked.

8 Q. How they were able to access it, went through the
9 logs they keep when they are working on them?

10 A. That one was partly logs, but a lot was done with
11 social engineering techniques, and some of it was done
12 with Rainbow Tables which doesn't require logging a lot
13 of steps where one ends up in a hack log which is a
14 document I would review or ask an expert to help me
15 review to continue step-by-step sequence of events.
16 HBGary didn't have a normal hack log, but other hacks
17 like Stratfor did.

18 Q. Based upon interviews of participants and based upon
19 your --

20 A. -- based upon core documents about Sabu as well --

21 THE COURT: Okay, let him finish his question.

22 THE WITNESS: Sorry.

23 Q. (BY MR. SWIFT) Based upon your interviews of
24 participants, based on review of materials that were
25 later available regarding it, and based upon your review

1 of court documents, do you have a strong belief as to who
2 participated?

3 A. Yes.

4 MR. SWIFT: Is there still an objection to her
5 answering that given that we are not in the hearsay rules
6 as Your Honor has pointed out?

7 THE COURT: Well, what I said was hearsay is not
8 necessarily excluded as long as it has sufficient indicia
9 of reliability.

10 MR. SWIFT: I would have to -- is there an
11 objection?

12 THE COURT: Well, let me ask the question.
13 Ms. Heath, any further objection or are you renewing your
14 objection?

15 MS. HEATH: Yes, Your Honor, we will renew the
16 objection and of course, going to relevance at this
17 point, going into details as to how the hack happened or
18 other individuals who are also involved in the hack. I
19 think that has that has already come out. It is also
20 repetitious of evidence that has already been presented.

21 MR. SWIFT: Actually, it is not repetitious of
22 any evidence. The agent said he didn't know.

23 THE COURT: I am going to allow it at this
24 time. I will carry the objection. As I stated before,
25 if the Court finds it necessary or helpful to its

1 decision-making process as far as sentencing is concerned
2 it will consider the evidence. If the Court does not
3 deem it helpful, in other words, if the information does
4 not assist the Court in coming to a conclusion as to
5 sentencing, then the Court will disregard it. You may
6 answer the question.

7 Q. (BY MR. SWIFT) Who was involved?

8 A. Topiary or Jake Davis, TFlow, and Sabu for sure.

9 Q. Who are these? Topiary is Jake Davis. Who is TFlow?

10 A. Mustafa -- I am very bad with last names. I know
11 him.

12 Q. Who do you understand is Sabu?

13 A. Hector Monsignor.

14 Q. Anyone else?

15 A. Those are the ones I know for sure. Possibly.

16 Q. Was Mr. Brown part of the hack?

17 A. To my knowledge, no.

18 Q. Mr. Brown made a lot of statements in the media about
19 the hack afterwards?

20 A. Yes.

21 Q. Did some of the hackers take objection to that?

22 A. Yes.

23 Q. How did they do so?

24 A. They talked through the channel when he was around
25 and when he wasn't. May I kind of widely answer that?

1 Q. Yes.

2 A. Mr. Brown often spoke to the media after hacks and
3 this was always a contentious issue. He was often seen
4 as taking credit for things he had no part in.

5 Q. Did some of them take actions with regards to him?

6 A. Yes.

7 Q. What action did they take?

8 MS. HEATH: Your Honor, we object to relevance
9 as to what action the media is taking because they are
10 upset Mr. Brown is taking credit for things.

11 MR. SWIFT: It is the hackers who are taking
12 action in the question.

13 THE COURT: What is the relevance?

14 MR. SWIFT: The relevance goes to the idea
15 Mr. Brown is being charged with these other hacks other
16 than Stratfor, others as relevant conduct. I am trying
17 to set out how much participation Mr. Brown had in what
18 has been deemed as relevant conduct by the government,
19 and I believe I am able to put on some evidence that the
20 conduct is not particularly relevant to what he has pled
21 guilty too. The government is arguing this is a joint
22 criminal enterprise.

23 THE COURT: Okay, Ms. Heath, why would not it be
24 relevant or have some relevance to the issue of relevant
25 conduct?

1 MS. HEATH: The joint criminal enterprise
2 relevant conduct would go to the activities of the
3 individuals in the criminal conduct, the intrusion, the
4 targeting, the taking of the stolen data, that sort of
5 thing. What opinions the individuals have about each
6 other or what their reactions are to statements they make
7 in the media don't go to their actual criminal conduct or
8 involvement in the offense, so it is extraneous to the
9 issue at hand.

10 MR. SWIFT: Your Honor, whether the people who
11 actually conducted the hack consider Mr. Brown's
12 statements taking credit for something I did, he had no
13 part in, and played no role in the strategy or helped is
14 absolutely relevant to whether he has relevant conduct.
15 We have and the Defense will submit in a large portion on
16 much of what is considered relevant conduct for
17 Anonymous, Mr. Brown making statements to the media about
18 things he did not participate in. He did not obtain, he
19 did not strategize, did not play, and yet the government
20 would have him sentenced for these things.

21 The fact that I comment on it does not mean that I
22 should be sentenced for it. We offer evidence from a
23 journalist who was present in the chat room, talked with
24 the conspirators, interviewed them about what happened as
25 to Mr. Brown's participation in any of this. It is

1 absolutely relevant. If we want to talk solely about
2 Stratfor, but we don't talk solely about Stratfor, I
3 could limit it to his participation there because she was
4 also present in that one. But I am trying to set out I
5 have 50 -- 63 e-mails of which I objected to their
6 relevance, and the Court is considering it, so I feel
7 honor bound because I don't know how you are going to
8 consider it to present evidence as to what his actual
9 participation was, his actual knowledge and
10 responsibility for this conduct, and I wish I didn't have
11 to. I would love to be talking about accessory after the
12 fact, but we are here.

13 THE COURT: Well, I guess it depends on whose ox
14 is being gored. It is amazing how one party will object
15 to one party's evidence, and then the other party will
16 use similar evidence, and then there is an objection from
17 the other side.

18 I will tell both of you this. I am going to allow
19 this testimony, but as with this testimony and some
20 presented by the government there is going to be a lot
21 shaved off because I don't think it goes to the central
22 issue that the Court has to decide. I will allow it at
23 this moment. The objection is overruled.

24 Q. (BY MR. SWIFT) What was the attitude of the hackers
25 that have participated or some of the hackers that

1 participated in HBGary? What actions did they take
2 toward Mr. Brown for claiming credit?

3 A. They kicked him out of the chat room, criticized him
4 and kicked him out of the channel.

5 Q. Let's move to Stratfor.

6 A. All right.

7 Q. When did you become aware of the Strategic Forces?

8 A. Forecasting?

9 Q. Forecasting.

10 A. To my recollection late on the 23rd -- actually, can
11 I backtrack that a little bit? I was aware that a hack
12 was ongoing somewhere around December 10th when the
13 LulzSec --

14 THE COURT: December 10th of what year?

15 THE WITNESS: 2011.

16 Q. (BY MR. SWIFT) How did you become aware?

17 A. I was offered an exclusive by the AntiSec hackers,
18 the LulzSec campaign.

19 Q. Which hackers specifically?

20 A. I can say Jeremy Hammond was one of them. I don't
21 save handles for my contacts when I put them in my
22 notes. I just use like 1, 2, 3, et cetera, but in my
23 interviews, I definitely spoke to Jeremy Hammond and
24 spoke to Sabu multiple times.

25 Q. And were they aware that you were reporting it for

1 Wired on this?

2 A. Yes.

3 Q. And they offered you an exclusive?

4 A. Yes.

5 Q. What did an exclusive get you?

6 A. So they offered me first access to the information
7 and the story of how they were doing the hack under what
8 is called an embargo, and I couldn't agree to it
9 immediately. I have to go to my editor and ask them for
10 permission to do this under an embargo which meant we
11 would pick a date, and I would release all my information
12 at that date, but I would hold my information until we
13 got to that date, and it is a common journalistic
14 negotiation under resources, so I was under embargo for
15 Christmas Day.

16 Q. And you didn't know who the target was?

17 A. I didn't know who the target was. I knew there were
18 multiple targets. I knew there was law enforcement focus
19 on the targets, and they kind of gave -- they dropped
20 hints. They gave me things to go look at. They had
21 woven in some of the stuff that they had gotten into and
22 told me to go look frame by frame, part of them trolling
23 me, but that is part of what you do when you cover
24 Anonymous.

25 Q. In other words, they are providing proof?

1 A. They are providing proof, but in a skewed way that
2 they know is going to take a lot of my time. It is kind
3 of providing proof and kind of breaking me.

4 Q. On an Anonymous hack, when it is announced, is that
5 when it happened?

6 A. Rarely.

7 Q. Can it have happened months ago?

8 A. It could have happened years ago. Anywhere from
9 weeks to years in many cases. That is rare. It is
10 usually weeks to months, but -- and where you begin the
11 hack is kind of contentious, do you begin where you
12 establish the vulnerability or do you begin when you
13 start to go into the servers and do things. There are a
14 lot of gray areas in this. Certainly with a large
15 exfiltration usually has to have happened sometime before
16 when I asked the AntiSec when they had hacked Stratfor,
17 they hedged and they said it was less than six months,
18 more than three or four.

19 Q. Three or four?

20 A. Weeks, sorry.

21 Q. Three or four weeks at that point?

22 A. Yeah; yeah.

23 Q. How was this Stratfor hack based upon your reporting
24 and interviewing selected?

25 A. It was actually selected by another group within

1 Anonymous coming along to AntiSec, the vulnerability to
2 AntiSec.

3 Q. Which group was that?

4 A. It was called RevolutionSec. It is not --

5 Q. Did Barrett Brown play any role in that?

6 A. No. RevolutionSec was extremely secretive. They
7 didn't speak to any media.

8 Q. Who did they provide it to?

9 A. I am not sure.

10 Q. What's that?

11 A. I'm not sure if it was Sabu or another member of
12 AntiSec. There was between 60 and 80 members of AntiSec.

13 THE COURT: So your answer is you don't know?

14 THE WITNESS: Yes. I don't know. Thanks.

15 THE COURT: Next question.

16 Q. (BY MR. SWIFT) And so they target it at the time.
17 You said you became aware on December 23rd. How did you
18 become aware of who it was?

19 A. I was -- essentially, they dropped more and more
20 hints. They were dropping hints initially towards what
21 was going to be the Strategic Forces hack, and then a
22 dramatic situation ensued in which they had a schedule.
23 They were saying they had a schedule.

24 THE COURT: Who is "they?"

25 THE WITNESS: The AntiSec sources.

1 THE COURT: All right.

2 THE WITNESS: My sources in the AntiSec who were
3 communicating with me sometimes over IM, sometimes over
4 IRC, so IM is one-on-one that is not server based, and
5 IRC is server based, and initially they were dropping
6 hints to me about the -- not the Stratfor hack, but the
7 Special Forces hack in saying that the big thing was
8 coming -- not Christmas Eve, but New Year's Eve, and then
9 it turned out that everyone got really angry because
10 somebody had told Mr. Brown, and Mr. Brown had began to
11 talk about it, and they had to redo their schedule to
12 release Stratfor first when they had wanted to release it
13 last.

14 Q. So somebody on one of these chat lines told
15 Mr. Brown --

16 A. Uh-huh.

17 Q. -- and he just starts blabbing about it?

18 A. Yes.

19 Q. And then what?

20 A. They came back to me angrily and said we are having
21 to redo the schedule, the first thing that we are hacking
22 is Stratfor.

23 Q. And is that actually that they are hacking or
24 releasing?

25 A. Releasing. My bad.

1 Q. How did they release it?

2 A. They started -- initially they started dumping credit
3 cards into one of the main non-Ops public channels. They
4 dumped a hack log, a few different -- it was really there
5 was a few different people working at this point, so they
6 defaced the site. They dumped a hack log and a group of
7 credit cards which they gave me, and the hack log came
8 slightly after the credit cards.

9 I had been up for like 20 hours at this point, and
10 they made -- well, eventually when they are really making
11 the grand announcement, they put the data somewhere and
12 link to it and take down the page and put up a
13 defacement.

14 MS. HEATH: Your Honor, this is a narrative.

15 THE COURT: I agree.

16 MS. HEATH: Let me -- it is getting far field.

17 MR. SWIFT: I will pin it down. It does go to
18 the credit cards.

19 THE COURT: Well, okay, let's go ahead and cut to
20 the chase.

21 MR. SWIFT: Yes.

22 Q. (BY MR. SWIFT) You said they dumped the credit cards?

23 A. Yes.

24 Q. How did they dump the credit cards?

25 A. They were placed on a public website.

1 Q. Did they place it anywhere else?

2 A. Well, they handed it to me. It was transferred to me
3 via file transfer.

4 Q. They transferred it to you. Do you know if they
5 transferred it to others?

6 A. I don't. It was placed in the public and transferred
7 to me.

8 Q. Why did they transfer it to you?

9 A. As evidence of --

10 MS. HEATH: Your Honor, may we approach the
11 bench for a minute?

12 THE COURT: You may.

13 (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH,
14 WITH ALL COUNSEL PRESENT.)

15 MS. HEATH: Your Honor, in light of her
16 admissions that she is receiving stolen property, I don't
17 know if she has talked with Counsel, and they have
18 allowed her to testify of her own accord. This is an
19 issue. She is admitting to criminal conduct.

20 MR. SWIFT: That is their position. Our position
21 is this is a journalist. When they send you something,
22 it is not.

23 THE COURT: Okay, what are you saying? Are you
24 asking the Court to warn her because -- I mean?

25 MS. HEATH: That is my concern because it is our

1 position.

2 THE COURT: It is a slippery slope for the Court.

3 MS. HEATH: Yes, I know.

4 THE COURT: And has she talked with counsel?

5 MS. HEATH: I don't know.

6 THE COURT: See, here is the problem. If I make
7 a statement like that without more evidence, it has the
8 imprimatur of the Court. I don't want her to be
9 intimidated or chilled by some statement that the Court
10 makes. That is my concern.

11 Now, if there is a legitimate concern that she may
12 be implicating herself in criminal activity, that is of
13 equal concern to the Court. I do not know enough of the
14 facts to make that determination now.

15 MR. GHAPPOUR: Your Honor, if I may, if this is
16 relevant to your decision how we proceed, Ms. Norton
17 actually wrote I believe a cover story for Wired Magazine
18 which is the biggest technology magazine on this hacking
19 using and if you were to read the article, you would --
20 with the journalist test lens for ethics, she would have
21 to verify various points. The only way you can do that
22 and what will come out in the testimony is the only way
23 you can do that is through viewing or receiving the
24 information, et cetera.

25 In addition, Ms. Norton is a security expert. She

1 has been -- she has provided training for our government
2 on --

3 MR. SWIFT: But Your Honor --

4 THE COURT: Stop. The court reporter cannot get
5 everything down if both of you are talking. When you do
6 that, Mr. Swift, Ms. Crawford cannot get it down. I want
7 to make certain that we have a complete record.
8 Ms. Ghappour, you were talking.

9 MR. GHAPPOUR: I am sorry, Your Honor.
10 Ms. Norton is also a security expert and security expert
11 of information and operational security expert. She has
12 been -- she has provided training to our government in
13 that regard, and what we expect her -- what her testimony
14 will also state is that for security experts that it is
15 essential to find out who is the hacking target zone and
16 do the exact same stuff that journalists need to do, and
17 I think Your Honor needs to hear that because they can't
18 be guilty of that.

19 MR. SWIFT: I am going to ask the questions, and
20 if the government wants to cross-examine and take the
21 leading journalist for Wired down, the government can do
22 that.

23 THE COURT: I think what the government is
24 saying, Mr. Swift, is that, and I am not saying this is
25 going to happen that Ms. --

1 MR. SWIFT: -- withdrawing the witness.

2 THE COURT: Okay, now. I have been extremely
3 patient. You have been defiant, and frankly, at times I
4 think you have been disrespectful. I have let it go. I
5 am easy to get along with, but I do not like people to
6 disrespect me.

7 MR. SWIFT: Sorry, Judge.

8 THE COURT: Tell me this. Did you hear me ask
9 you to withdraw the witness?

10 MR. SWIFT: No, Your Honor, I didn't.

11 THE COURT: All right. You can proceed with
12 her. If something comes of it, if she gets in trouble by
13 the questions, that is between you and her because I do
14 not know what is going on. I do think based upon the way
15 she answers the questions, she feels confident about her
16 answers, but I just can't say at this time that she is
17 going to say something that might incriminate her or
18 cause her to be subject to prosecution.

19 I also stated that the Court has to be awfully
20 careful because the Court does not want to stifle
21 testimony or chill testimony because if I get up and make
22 a statement about this, she could very well clam up and
23 say I am not going to testify because of a statement that
24 the Court makes. So I am going to allow you to continue
25 to move forward. I would like the questions to move

1 forward.

2 MR. SWIFT: Thank you, Your Honor, and I
3 apologize.

4 MS. HEATH: We felt obligated to bring that up
5 because she is admitting to criminal conduct, and it
6 concerns the government.

7 MR. GHAPPOUR: Your Honor, I am very sorry. Can
8 I ask a question just in the context of this discussion?
9 Is it -- what I understand that -- what I understand
10 Ms. Heath's assertion just now is that Ms. Norton has
11 admitted to criminal conduct by stating that she received
12 documents that were already in the public domain; is that
13 correct? Just my understanding.

14 MS. HEATH: Yes, she took into her possession
15 stolen credit card information.

16 MR. GHAPPOUR: And I am sorry, Your Honor. I
17 feel like I have got in my possession stolen materials
18 because I am reading article like this on the net. I
19 don't know where to draw the line here in terms of an
20 ethical line because you are right. It is a very
21 important question.

22 THE COURT: Well, the issue has been raised and
23 as I stated before, I do not feel that I have enough
24 information at this time to justify a warning to
25 Ms. Quinn, and I am going to allow the questions to

1 proceed at this time, and if something develops more,
2 specifically, Ms. Heath, that you think it is even
3 closer, then we can revisit the issue.

4 MS. HEATH: Yes, Your Honor.

5 MR. SWIFT: Thank you.

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

8 Q. (BY MR. SWIFT) So, did you also receive the documents
9 that they downloaded?

10 A. They offered them to me, but I didn't actually have a
11 way of taking them. It was many -- it was a really big
12 drop, but they offered them to me on the 24th, and I had
13 to refuse.

14 Q. And were you present on the IRC channels on the 23rd
15 and 24th when Mr. Brown was discussing these things?

16 A. I wasn't present in Project PM at the time, no.

17 Q. Was Mr. Brown on the operational channels for the
18 Strategic Forces?

19 A. The operational channels were not public. I was not
20 in them. I was in a separate channel they had made for
21 me and Ms. Coleman, and I was also on the public
22 channels, but the operational channels were kept secret.
23 I don't believe that Mr. Brown was in them.

24 MS. HEATH: Your Honor, we would object to
25 speculation if she was not there.

1 THE WITNESS: Can I clarify that then? I was
2 asked --

3 MS. HEATH: Your Honor, I object.

4 THE COURT: Wait just a minute. Do you know one
5 way or the other?

6 THE WITNESS: Yes.

7 THE COURT: Do you still maintain the objection,
8 Ms. Heath?

9 MS. HEATH: Yes, Your Honor.

10 THE COURT: Let's do this. Let's start a fresh.
11 Let's reask the question and if the proper predicate is
12 not laid or calls for speculation or conjecture,
13 Ms. Heath, you may renew your objection.

14 MS. HEATH: Thank you, Your Honor.

15 Q. (BY MR. SWIFT) Why did you -- you just testified --
16 or you were indicating that you were on a special
17 channel?

18 A. Yes.

19 Q. There was an operational channel?

20 A. It was a media channel.

21 Q. Media?

22 A. Specifically for talking to me and Ms. Coleman.

23 Q. Okay. Was there -- there would have been an
24 operational channel for conducting the operation?

25 A. Yes.

1 Q. And then there were general channels wherein it was
2 discussed?

3 A. Yes.

4 Q. You stated that Mr. Brown was not in the special
5 channels?

6 A. I asked the AntiSec participants in that whether or
7 not Mr. Brown was involved, and they indicated
8 emphatically that he was not.

9 MS. HEATH: Your Honor, we would object whether
10 he is involved doesn't mean he is not on the channel.
11 She is indicating he was not in the channel. This does
12 not indicate that he wasn't on the channel.

13 MR. SWIFT: Your Honor, -- I would have her
14 testimony -- I will ask expanded questions if we want.

15 THE COURT: All right, let's try one more time.
16 I will sustain the objection.

17 Q. (BY MR. SWIFT) You -- now, you talked to the
18 participants about Mr. Brown's participation?

19 A. Yes.

20 Q. And they stated what?

21 A. And they stated that he was in no way involved.

22 Q. What would that mean?

23 A. And this would mean that he wasn't involved in any
24 place where he could have recorded their conversations
25 about how they were doing the hack.

1 Q. And if he were in the operational channels, could he
2 do that?

3 A. Yes, he was known to log, and that was a
4 controversial point with the AntiSec participants.

5 Q. Let's talk briefly about the impacts. In the
6 security field and in the journalism field, does the
7 issue of compromised credit cards or credit cards on the
8 internet come up a lot?

9 A. Yes.

10 Q. How often?

11 A. For security professionals on a nearly daily basis.

12 Q. Where do they find them?

13 A. Many of them are posted to places like Pastebin,
14 black market websites, some which have public
15 repositories. They are often posted in public and often on
16 repositories that are discovered during the reversing of
17 malware.

18 Q. So you get -- you come into possession as a security
19 professional on these -- all the time?

20 A. And as a media person who covers that field, you also
21 come into possession, but not as often.

22 Q. Had you come into possession on previous occasions?

23 A. Yes.

24 Q. Now, do you conduct training for the United States?

25 A. I have consulted.

1 Q. Who have you consulted with?

2 A. I have consulted with the Office of Director of
3 National Intelligence.

4 MS. HEATH: Again, we would object to the
5 relevance.

6 MR. SWIFT: It's going to the credit cards and
7 what they are used for, Your Honor.

8 MS. HEATH: This is getting far field, Your
9 Honor; relevance.

10 THE COURT: It does seem to get far field unless
11 you are connecting it. Maybe you need to ask more
12 questions and connect it and show the relevance.

13 MR. SWIFT: Yes, Your Honor.

14 Q. (BY MR. SWIFT) In that capacity, do you utilize
15 screen shots or other parts of stolen credit cards to
16 train people?

17 A. I do.

18 Q. Is that common in the profession?

19 A. Yes.

20 Q. The -- was there -- Mr. Brown was described as the
21 strategist for Anonymous. Does Anonymous have a
22 strategist based on your --

23 A. No.

24 Q. Why not?

25 A. Anonymous doesn't have formalized roles quite like

1 that. It is a duocracy. People participate by doing
2 things, and this is either accepted or rejected by a
3 plurality of people that are close. It is very much the
4 opposite of this world. It is nonhierarchical. It is
5 confusing, and anyone who tries to create a persistent
6 role attracts animosity from the group.

7 Q. Next question. He described himself as a
8 propagandist. Is that accurate?

9 A. That would have to be for his own purposes. That
10 wouldn't be a formalized role anywhere. There is a lot
11 of propaganda in Anonymous and many people participated
12 in the process.

13 Q. He described himself as a troll. What is a troll?

14 A. Trolling is a really key point to this culture.
15 Trolling is the process of kind a long extended joke
16 often in the form of a schadenfreude which is about lying
17 and creating -- sometimes lying, sometimes
18 decontextualizing things and creating situations in which
19 people are going to respond usually frustrated or angry
20 ways to the movement of a watching crowd.

21 Q. Was trolling the media a particular virtue of
22 Anonymous?

23 A. Oh, yes.

24 Q. How do you mean by that?

25 A. It was considered --

1 MS. HEATH: Your Honor, we object again;
2 relevance.

3 MR. SWIFT: Many of the --

4 THE COURT: Wait just a minute, Mr. Swift. All
5 right, your objection is relevance. What is your
6 argument, Ms. Heath?

7 MS. HEATH: That trolling whether members of
8 Anonymous trolled the media doesn't get back to what
9 Mr. Brown's relevant conduct is with regard to the
10 intrusions and exfiltration of the stolen data.

11 MR. SWIFT: The government -- may I speak, Your
12 Honor?

13 THE COURT: You may.

14 MR. SWIFT: Government's Exhibit No. 1 through 35
15 universally talk about trolls as strategists speaking to
16 the media, speaking to the media on interest, etc. I am
17 trying to put that in context. Trolling the media and
18 claiming powers that you have is completely in context
19 with the Anonymous culture, and so it is relevant to the
20 Court's understanding of those documents. She is called
21 primarily as a rebuttal witness to evidence that the
22 government has put before this Court.

23 The Court said it is looking through it, but I don't
24 have rulings as to what the Court will consider, so I am
25 putting on evidence as to the value of any one of those

1 statements. This is a counterculture where we cannot
2 take somebody's statement at face value, and the idea
3 that he is strategist or running something is completely
4 acceptable within the culture. Her testimony will be
5 that it is particularly acceptable to do to the media.

6 THE COURT: All right, I will allow it at this
7 point, but let's go ahead and wind this up.

8 MR. SWIFT: Yes, Your Honor.

9 THE COURT: Really, I think we have gotten far
10 field. I think, frankly speaking, both sides have
11 included documentary evidence and testimony that is
12 really of minimal value, if any at all to the Court in
13 deciding the issue that it needs to decide. Once again,
14 it seems like one side is just really trying to get a leg
15 up on the other side. Let's go ahead on.

16 Q. (BY MR. SWIFT) What -- describe briefly trolling with
17 relationship to the media?

18 A. There is an on going culture of trying to get lies
19 printed by major media. There is even whole Ops devoted
20 to trying to troll the media into exaggerated claims on
21 Ops Facebook. That was something that was done
22 repeatedly to convince the media that Anonymous was going
23 to take down Facebook. There was even an Ops Global
24 Blackout where they were going to shut down the internet
25 on March 31st. Amazingly, midnight on March 31st is

1 April's Fool's Day, so that is common cultural game that
2 is played and going to the media trumping up their
3 credentials talking about all the things that you can do,
4 all the governments you can take down. This is a really
5 standard practice, and it was a challenge in my work in
6 that I couldn't just say I know you are lying because I
7 would lose my contacts that way, so I was always
8 determined I could only print what I could prove.

9 Q. Last part, what is doxing?

10 A. Doxing is the revealing of information seen as
11 damaging or revealing about the target.

12 Q. What does that -- what is that -- where does that
13 information come from?

14 A. The majority of doxing is based on publicly available
15 information. There are whole services that kind of
16 search out people's services commercially offered that
17 doxers use to build essentially on dossiers that get also
18 supplemented in a more political sense by certain groups
19 of Anonymous by going through less accessible public
20 record and building again a dossier to release on a group
21 or individual. Some doxing uses on illegally-obtained
22 information. Some of that is illegally obtained by the
23 people doing the doxing, but in most cases is a clever
24 use of public information.

25 MR. SWIFT: No further questions.

1 THE COURT: All right thank you, Mr. Swift.

2 Cross-examination, Ms. Heath.

3 MS. HEATH: Yes, Your Honor.

4 C R O S S E X A M I N A T I O N

5 Q. (BY MS. HEATH) Ms. Norton, I believe we met this
6 morning. Now, you are a journalist?

7 A. Yes.

8 Q. And as a journalist in covering Anonymous, you did
9 not want to meet any of the individuals during the period
10 of time that they were involved in this activity; is that
11 correct?

12 A. I said that I would not use anyone as a source if I
13 knew them, knew their real identity.

14 Q. Didn't you indicate it was your position not to meet
15 with them during the period of time that they were
16 involved in this activity?

17 A. If I was in a situation where I met with them in
18 person for instance at an occupy camp and that was my
19 initial meeting, I would just distance myself from any
20 identifying information, but it was impractical. I would
21 never meet someone that I knew online deliberately if I
22 initially met them at say a protest camp or protest, I
23 couldn't avoid physically meeting them.

24 Q. You purposely wouldn't go and try to meet somebody
25 from Anonymous?

1 A. Right; I would not.

2 Q. And as a journalist, you have to have sort of
3 objective preparation of what you are covering?

4 A. I am specifically in the new school, the new
5 journalism, so it is a -- it is a subjective point of
6 view journalism.

7 Q. What I mean is you are not going to go create the
8 activity and then report on your own activity?

9 A. Not usually.

10 Q. You are reporting on other people's activity?

11 A. Uh-huh.

12 THE COURT: Okay, explain to me one thing. You
13 said "new journalism." What does that encompass?

14 THE WITNESS: So new journalism it was kind of
15 as it was called by Tom Wolf, and it is a subjective
16 point of view journalism where you are involved in what
17 is going on. It is kind of a culturally-embedded
18 journalism, so your journalism experience is part of the
19 story.

20 THE COURT: So would it necessarily be fair,
21 what you would say?

22 THE WITNESS: I think I actually critiqued the
23 objectivity, so I would say it is more fair than
24 objective which does not impose the biases of the human
25 being during the process.

1 THE COURT: You said subjective, but to me that
2 is what -- that is from one point of person's point of
3 view. What is the difference between subjective
4 journalism and objective journalism?

5 THE WITNESS: From my point of view, and again,
6 this a debate in the field. Subjective journalism
7 exposes the biases, and objective journalism attempts to
8 hide or deny biases that are still there.

9 THE COURT: That is a bit oxymoronic, but anyway,
10 move on.

11 Q. (BY MS. HEATH) That would include the biases of the
12 journalist?

13 A. One of the points is to try and expose your own
14 biases.

15 Q. Now, as you were covering Anonymous, you never made
16 any claims that you were the spokesperson?

17 A. No.

18 Q. You never made any claims that you were a strategist?

19 A. No.

20 Q. You didn't make any claims that you are an advisor?

21 A. No.

22 Q. A theorist?

23 A. No.

24 Q. A director of any activities?

25 A. No.

1 Q. You didn't recruit for Anonymous?

2 A. No. I may have accidentally recruited for Anonymous
3 as I think people enjoy my articles.

4 Q. You didn't purposely go out and encourage people to
5 join?

6 A. No.

7 Q. You were not a organizer of any legal teams for
8 Anonymous?

9 A. No.

10 Q. You are not an operative?

11 A. No.

12 Q. You are not an activist in the sense of participating
13 in the activities of Anonymous?

14 A. No.

15 Q. And you didn't help identify targets for Anonymous?

16 A. No.

17 Q. Now, as a person who would be a propagandist for
18 Anonymous or even the trolls for Anonymous is part of the
19 role is to manipulate individuals especially the media?

20 A. Yes.

21 Q. So part of what Anonymous sets out to do is try to
22 manipulate journalists such as yourself?

23 A. Yes.

24 Q. In this case when you are covering Anonymous, you are
25 not in any of the operation rooms or chat rooms?

1 A. Given the roles, the rooms can change, I can suddenly
2 find myself in one. Usually, I would ask to be kicked at
3 that point.

4 Q. Back in 2011, stay with that year, 2011, you were not
5 finding yourself in the operation rooms?

6 A. I found myself in some rooms that had switched to
7 being operational. I made a standing request if they did
8 that, they should kick me. Sometimes that worked,
9 sometimes it didn't, but if I suddenly discovered that
10 they talked about stuff I didn't want to know, I would
11 leave the room.

12 Q. You said kick out the room. That is temporary. That
13 is not a block from the room, just kicked out
14 temporarily. Can you go back on?

15 A. Kicks can go both ways. I was never kicked -- banned
16 kicked.

17 Q. You did indicate that you did not participate in any
18 of the private conversations, private channels?

19 A. I participated in ones that were set up specifically
20 for me.

21 Q. But not with regard to the Anonymous activities and
22 their strategizing, targeting, or working the operations?

23 A. No.

24 Q. Now, in this particular case, you are testifying
25 here, you have not reviewed all of the e-mails that were

1 taken from Mr. Brown's computer?

2 A. No, I have not.

3 Q. You have not reviewed all the chats taken from his
4 computer?

5 A. No.

6 Q. So you are not familiar with what Mr. Brown did or
7 said on a daily basis with the involvement with Anonymous
8 AntiSec, LulzSec, or any of the other organizations like
9 Project PM?

10 A. I am familiar with the other side of that time for
11 the period of time when I was working those stories
12 because I was on pretty continuously with the same people
13 that were conducting those operations.

14 Q. You were given what information Anonymous wanted to
15 give you?

16 A. Yes, and I make them contextualize it before I am
17 willing to print it.

18 Q. You found in many cases that the Anonymous
19 individuals or the participants in Anonymous, they may
20 have public facing persona that were different from their
21 private personas that they would share with one another?

22 A. I would say that is fairly rare. They were fairly
23 consistent.

24 Q. But you were not in the private chats to see these
25 personas?

1 A. I was in some, not necessarily the ones where they
2 were doing active illegal hacks.

3 Q. Let me put it this way. A chat between two Anonymous
4 members and only two Anonymous members, you would not be
5 in that chat?

6 A. I think the definition of that would be true.

7 Q. In those private chats, you would not know what type
8 of persona they were presenting to each other?

9 A. That is true, but it also tautological.

10 Q. I'm sorry. What?

11 A. Tautological of any human interaction.

12 Q. You were talking about hacks and that there are
13 different layers of a hack. The hack is a general term
14 that includes not only the initial intrusion into
15 whatever system they were accessing, but includes
16 exploiting the vulnerability after they get in, where
17 else they go in the system, what other vulnerabilities
18 they can exploit, exfiltration of the data that is part
19 of the hack when they record it; isn't that correct?

20 A. It depends on who is doing the reporting, those
21 parameters change. It's usually exfiltration, changes,
22 things like that, and initially and subsequently involves
23 what would be included in most definitions of hack.

24 Q. So when we are generally using the term hack, it can
25 include the exfiltration of data such as when the hackers

1 offered you the credit cards which you refused?

2 A. Actually, exfiltration has a very specific meaning
3 there, which is figuring out how to move the data from
4 inside of a network server to an external network server.

5 Q. I understand, but I am talking the exfiltration can
6 be part of the general term hack that you just described;
7 isn't that correct?

8 A. Handing it to me would be the act of exfiltration.

9 Q. Exfiltration -- then that is the dissemination of the
10 stolen data at that point?

11 A. Yeah.

12 Q. But all that can be included what I am trying to say
13 in the general term hack that is used by a lay person
14 used by some members of the media?

15 A. Honestly I would say this is unsettled on whether or
16 not distribution -- whether or not handing something to
17 WikiLeaks is hacking that would probably not be normally
18 how most media professionals who are technically
19 knowledgeable would put that.

20 Q. The reports that are of interest to the public would
21 be that an entity is hacked and "X" is taken from the
22 entity. It doesn't interest the public if they just say,
23 hey, somebody got into our system, but they didn't get
24 anything?

25 A. I dearly hope my reports are expressing to the

1 public, but I would separate out the process of hacking
2 with for instance I wrote a story about what Stratfor did
3 or what was done with Stratfor, and then I wrote a
4 subsequent story about that being transferred to
5 WikiLeaks some weeks later. Those are two separate
6 events, and the second one isn't a hack.

7 Q. I understand there is different terms, intrusion,
8 dissemination. I understand there are different terms
9 that people can use. All I am trying to ask you is that
10 in your experience have not media members and/or just the
11 lay public when they refer to a hack, they are referring
12 to the whole activity?

13 A. I would say not in that Stratfor case, no.

14 Q. No, in general terms, I am saying.

15 A. There's no general terms, so this is terribly
16 unsettled things and things get described all sorts of
17 ways at the point when you say something was handed over
18 to a secure drop or WikiLeaks or something like that I
19 don't actually see that as described as a hack by many
20 people in journalism.

21 Q. None of that could have occurred without the initial
22 intrusion?

23 A. In the case something that was coming from an
24 intrusion, yes.

25 Q. Now, the general purpose from your experience when an

1 intrusion was planned by Anonymous, the intrusion was not
2 to get in the system, but get data from the system?

3 A. Yes.

4 Q. And data could include e-mails?

5 A. I am sorry. Let me correct myself. In some cases
6 the goal was to get data and some cases the goal was to
7 deface the server and they were interested in the data.

8 Q. And data includes e-mails?

9 A. Yes.

10 Q. And data includes documents?

11 A. It can include anything.

12 Q. Data can include accounts from their customers which
13 would include potentially credit card information?

14 A. Yes.

15 Q. Now, you made the statement about security
16 professionals who are investigating hacks. They received
17 on occasion the stolen data?

18 A. Yes.

19 Q. And actually they are investigating the actual
20 intrusion trying to determine how it happened, trying to
21 determine how the data was exfiltrated after that?

22 A. Also the source of the data.

23 Q. And the source of the data, isn't it often that the
24 security professional that's investigating that, the
25 security professional for the particular entities that

1 has been hacked?

2 A. Rarely.

3 Q. Isn't it often that the credit card companies when
4 like a retail hack occurs and credit cards are stolen
5 that the credit cards security professionals are the ones
6 doing the investigation?

7 A. That would be the exception to the rule not the rule.

8 Q. Would you disagree that pretty much most of the law
9 enforcement receives their information from security
10 professionals who are investigating the hacks?

11 A. So -- yes, but the security professionals are not
12 usually from the origin of the company or entity from
13 where it was hacked. That is an exception to the rule,
14 not the rule.

15 Q. In your opinion?

16 A. I mean a lot of it is certs, so a huge amount is the
17 cert network, these groups that exist, a multiplicity
18 around the country, and companies all around the world,
19 and they detect the malware and chasing it down and then
20 contacting the company afterwards.

21 Q. You were talking about how there is no defined roles
22 in Anonymous and Anonymous is a culture. Would you agree
23 that part of the culture of Anonymous is that a person
24 can choose their own role?

25 A. Choose but probably not keep.

1 Q. They can choose how they want to proceed in
2 Anonymous?

3 A. Yes.

4 Q. And they can continue to proceed in that fashion?

5 A. Within a social milieu which is a very heavy level of
6 pressure.

7 Q. And the roles that people choose and are able to
8 continue to pursue may include what they have skills in?

9 A. Yes.

10 Q. So your people that are able to make or find
11 vulnerabilities will be ones that find the
12 vulnerabilities?

13 A. Yes.

14 Q. And the people that are actually exploiting the
15 vulnerabilities may be the ones that find the
16 vulnerabilities?

17 A. Usually they are the same people, but yeah.

18 Q. You see where I am going? People have skills that
19 they bring to Anonymous?

20 A. Yes.

21 Q. And then the culture can --

22 A. Although, the culture has a strong mentorship
23 capacity, so people often switch roles based upon
24 mentorship relationships within Anonymous. You bring one
25 set of skills and learn another inside. It is a

1 sociological participatory culture.

2 Q. A person who may not know how to hack may learn to
3 hack from other people?

4 A. And a person who knows how to hack may learn video
5 editing from someone else.

6 Q. Now, with regard to the chats that Mr. Brown was
7 involved in whether it be a private chat and obvious a
8 private chat with somebody else you are not involved; is
9 that correct?

10 A. Yes.

11 Q. The group IRC chats, you did not necessarily find
12 yourself in a chat with Barrett Brown on a daily basis?

13 A. I would say it was close to daily.

14 Q. And you were going by just Quinn in the chats?

15 A. Quinn, yeah.

16 MS. HEATH: Your Honor, if I may have a moment?

17 THE COURT: You may.

18 (PAUSE IN PROCEEDINGS.)

19 Q. (BY MS. HEATH) How many times have you met Barrett
20 Brown?

21 A. This is my second time.

22 Q. And the first time was in New York?

23 A. No, it was in Boston.

24 Q. In Boston?

25 A. Uh-huh.

1 Q. So you did not meet with him in New York at Greg
2 Housch's house?

3 A. Greg Housch's house is in Boston.

4 Q. In Boston?

5 A. Yes.

6 Q. That is where you met with him?

7 A. Yeah.

8 Q. I believe that was in November 23rd of 2011?

9 A. I don't recall the date.

10 Q. But November of 2011?

11 A. I don't recall the date.

12 Q. Right around Thanksgiving?

13 A. I am not sure.

14 Q. Of 2011.

15 THE COURT: Do you remember the year?

16 THE WITNESS: 2011.

17 Q. (BY MS. HEATH) Prior to the Stratfor hack?

18 A. Yes.

19 Q. Now, you have written a number of articles and you
20 talked at length about how Anonymous picks targets,
21 launches attacks, and takes powerful organizations down.
22 In that, you talk about how 2011 was a very active year
23 for Anonymous?

24 A. Yes.

25 Q. And AntiSec and LulzSec?

1 A. Yeah.

2 Q. And how they were very active in attacking
3 organizations and taking them down?

4 A. Yes.

5 Q. You are not here to tell the Court that these actions
6 we talked about with HBGary or Stratfor or combined
7 systems that they did not occur?

8 A. Of course, they occurred. Combined Systems in 2011.
9 I think it was 2012.

10 Q. 2012? But in 2011, they were very active?

11 A. Yes.

12 Q. And while the majority of the people that are
13 involved in Anonymous are not hackers, there there are a
14 number of hackers; correct?

15 A. Yes.

16 Q. So when someone says I am not a hacker, that's not an
17 unusual thing. There's a number purposes for them to be
18 in Anonymous and not be a hacker?

19 A. That's correct.

20 Q. And were you aware that December 25th and that was
21 2011, and that was the day you said you were going to --

22 A. Publish.

23 Q. Publish the information about the Stratfor hack?

24 A. Yeah.

25 Q. On that very same day that Barrett Brown was in Anon

1 Ops, in that chat room?

2 A. That was a general chat room that many of us were in,
3 yeah.

4 Q. And right when he joined that chat room, a link was
5 posted by somebody by the name of Free M-All and that was
6 the 5,550 credit cards whatever it was for the B and C
7 credit cards?

8 A. Sample credit cards.

9 Q. That is right when Barrett Brown joined the room?

10 A. I don't remember the chat logs exactly, but that
11 sounds plausible.

12 Q. And then the notice from the person who posted, they
13 made a little arrow pointing to the link and said five
14 thousand cards?

15 A. So it was really, really hectic time and Anon Ops is
16 a huge channel, much bigger than any other channel on
17 that server, and it was -- it was literally scrolling
18 like this. It was really hard to tell what what was
19 going on.

20 Q. But you are not specifically remembering that?

21 A. No. It was a very chaotic day.

22 Q. Now, you have had some bad experiences with the
23 government in the past?

24 A. I have.

25 Q. In fact, you were called or subpoenaed to testify in

1 the grand jury, when was that back in 2011?

2 A. Yes, March of 2011.

3 Q. And the government at that time gave you a proffer
4 agreement?

5 A. Not at that time, a few weeks later.

6 Q. And so you were not prosecuted for any involvement
7 whatsoever with regard to what they were investigating at
8 that time?

9 A. No, I was not.

10 Q. And that caused you a lot of problems, caused you a
11 lot of issues; is that correct?

12 A. It certainly made work very difficult.

13 Q. During that period of time, you said you were unable
14 to cover some of the things that were happening with
15 Anonymous?

16 A. Yes.

17 Q. In fact, you said you did not even know about or did
18 not follow when AntiSec went down and LulzSec began?

19 A. Other way around.

20 Q. LulzSec went down, then AntiSec?

21 A. AntiSec was around the time I was able to get back in
22 the game.

23 Q. So there was a period of time you were missing with
24 LulzSec?

25 A. Yes.

1 Q. In fact, you wrote an open letter to the prosecutor
2 in the case complaining about basically how you had been
3 treated?

4 A. I was actually complaining about the judgment of
5 taking that case.

6 Q. With regard to Barrett Brown's case --

7 THE COURT: You said the judgment of taking that
8 case or the judge that was taking that case?

9 THE WITNESS: Judgment -- I never got to a
10 judge.

11 THE COURT: The judgment of taking the case;
12 okay.

13 Q. (BY MS. HEATH) Do you have a Twitter account?

14 A. I do.

15 Q. On your Twitter account, did you post something about
16 your opinion on Barrett Brown on this case?

17 A. I -- I -- probably. I have got over 40,000 tweets on
18 there. I don't remember all of them perfectly to tell
19 you.

20 Q. And I don't have all of them in front of me. I only
21 have the one, and I know in April of 2013, you posted
22 seriously, journalists, it's time to freak out about
23 Barrett Brown. The process on the way to destroying
24 online publishing rights?

25 A. That is absolutely correct.

1 Q. So that is what you posted about this?

2 A. Yes.

3 Q. One of the things you posted?

4 A. The concept that you could be held responsible for a
5 link is incredibly chilling to what I do.

6 Q. And there was discussion about what sentence Barrett
7 Brown would get and you reminded by other people that he
8 also threatened federal law enforcement officers?

9 A. I never particularly considered that relevant to my
10 concerns about this case. That is not something I
11 consider journalism, but being able to analyze
12 information from sources is absolutely vital to
13 definition of journalism, and absolutely vital to what
14 the 21st Century definition of journalism will be.

15 Q. Would you agree with the fact that if somebody
16 commits a crime that if it is proven that they committed
17 a crime that they should be found guilty of the crime and
18 punished for the crime?

19 A. Sure.

20 Q. If somebody pleads guilty to the crime they have
21 admitted to committing the crime?

22 A. I feel at that point it is none of my business. That
23 is between them and the Court.

24 THE COURT: I don't think that is really
25 responsive to the question though.

1 THE WITNESS: I may not have understood the
2 question.

3 THE COURT: I think the question is a yes or no,
4 and you said something like it wasn't any of your
5 business. I don't think it is nonresponsive.

6 THE WITNESS: Okay. Okay, restate the
7 question. I am sorry.

8 THE COURT: Ms. Crawford, could you reread the
9 question.

10 Q. (BY MS. HEATH) I didn't have --

11 THE COURT: I asked Ms. Crawford to reread.

12 (THE REPORTER READ BACK THE LAST QUESTION.)

13 THE WITNESS: Yes.

14 Q. (BY MS. HEATH) Once they have admitted to committing
15 the crime, then they should be sentence for the criminal
16 activity?

17 A. Yes.

18 MR. SWIFT: Objection; relevance. She is not --
19 she has not been called to comment on what sentence
20 should be received. What does this have to do with
21 anything?

22 THE COURT: Well --

23 MR. SWIFT: We are questioning a witness whether
24 she thinks an individual should be punished.

25 THE COURT: You know, I understand that. That is

1 within the purview of the Court. The Court is going to
2 make that decision. That is left to the discretion of
3 the Court based upon the evidence, and the Court will
4 make that decision, and I do think probably the question
5 is irrelevant, but you have asked some too, Mr. Swift, to
6 be quite honest with you.

7 MR. SWIFT: Yes, Your Honor.

8 THE COURT: I have taken the approach let them go
9 ahead and get finished. I know what I am going to do and
10 look at the evidence, and we will let the Fifth Circuit
11 will decide. The Fifth Circuit will decide if I am
12 wrong. That is within the purview of the Court and,
13 frankly speaking, the Court will probably ignore most of
14 this line of questioning.

15 MS. HEATH: Your Honor, we will pass the witness
16 at this time.

17 THE COURT: All right. Thank you, Ms. Heath.
18 Redirect, Mr. Swift.

19 MR. SWIFT: Very briefly really one area that I
20 want go on.

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

22 Q. (BY MR. SWIFT) You talked about how in the IRC
23 channels on the day that the credit card information and
24 all that came down, you described it as streaming. Can
25 you explain further?

1 A. So as each person puts their input into a channel, it
2 scrolls up your screen and if this is two people talking
3 it scrolls at a reasonable rate. If it is channel with
4 50 or 150 or 200 people and they are all trying to talk
5 at once, it is bit like the screens in hacker movies that
6 are normally not realistic. You can't read it. In those
7 cases many people capture that and read it later, but it
8 can be a very chaotic situation and there are people
9 making jokes and people making serious statements and
10 this was a channel with if I recall like 100 people in it
11 or more, so there is a lot of activity at the time.

12 Q. So Mr. Brown when he gives answers on that like thank
13 you so much. This will change our course to credit
14 cards, could be he is not reading things as it is going
15 by so fast?

16 A. I don't know which channel that was on.

17 THE COURT: That would call for speculation.

18 MR. SWIFT: Yes, Your Honor.

19 THE COURT: Unless the proper predicate is laid,
20 move to the next question.

21 Q. (BY MR. SWIFT) Was it common to have three or four
22 different channels open?

23 A. Oh, so it's universal just about.

24 Q. So you could have?

25 A. Yes.

1 Q. Multiple screens open?

2 A. You did. That was standard.

3 Q. Last question. Inside Anonymous was Barrett Brown a
4 high status individual?

5 A. Barrett Brown was a highly known individual, but
6 status is usually based on technical skills, so while his
7 ability to talk to the media is respected by some people
8 and recently by others, he was never able to achieve that
9 kind of pinnacle of status that you get with being able
10 to do technical things.

11 MR. SWIFT: No further questions.

12 THE COURT: All right. Ms. Heath, any recross?

13 MS. HEATH: Your Honor, just actually one
14 question.

15 THE COURT: All right.

16 **R E C R O S S E X A M I N A T I O N**

17 Q. (BY MS. HEATH) You are talking about the chats. If
18 you are logging the chats, they are going to be there; is
19 that correct?

20 A. Yes, although many, many, many pages, almost
21 impossible to review all of that.

22 Q. Is the answer yes?

23 A. Yes.

24 MS. HEATH: No further questions.

25 THE COURT: All right, anything further of this

1 witness?

2 MR. SWIFT: No, Your Honor.

3 THE COURT: All right, ma'am, you may step down.

4 THE WITNESS: Thank you.

5 (WITNESS EXCUSED.)

6 THE COURT: Does that conclude the testimony in
7 this sentencing hearing?

8 MS. HEATH: Your Honor, we would reserve the
9 right to offer the full chat where Mr. Brown first knew
10 about the credit cards, so the Court can have that. I
11 tried to print it out upstairs. It cut off my paper. I
12 need to go reprint it. I would like to offer the full
13 chat for this Court, and I owe the Court the spreadsheet
14 for the credit card information.

15 THE COURT: All right, I am going to do this
16 then. Before I make my statement, Ms. Cadeddu, you
17 sprang up there.

18 MS. CAEDDU: I am sorry. The government --
19 again, we are making statements that Mr. Brown knew and
20 part of the line of questioning with her was argument
21 about why he didn't know. I would like to have a chance
22 to be able to see -- the Court said you don't want to
23 receive any more briefing or anything else, but my
24 concern is I don't want this to be admitted and not have
25 the opportunity to explain it.

1 THE COURT: All right, let's do this then. I
2 will allow you to do that. If the defense has an
3 objection, the objection needs to be made by a week from
4 today. Any reply within five days after that and -- let
5 me say this. How long will it take you to get that
6 information to Ms. Cadeddu?

7 MS. HEATH: The chat is I think 45 pages. It is
8 just a matter of my going that I format the printer and
9 not cut off the end of the line. The spread sheet, I
10 think we can get that fairly quickly maybe in the next
11 twenty minutes.

12 THE COURT: All right, let me do this. You said
13 the chat is 45 pages long, and there is a spreadsheet
14 that we talked about concerning the credit cards, the
15 identifiable victims; is that correct?

16 MS. HEATH: Yes, Your Honor.

17 THE COURT: All right, is there any reason why
18 that cannot be delivered to the defense by noon tomorrow
19 morning?

20 MS. HEATH: None at all, Your Honor.

21 THE COURT: Tomorrow is Wednesday, if there is
22 any objection, Ms. Cadeddu, the defense needs to respond
23 by the close of business Friday, and if the government
24 wants to reply, then it must do so by noon -- let's say
25 close of business on Monday.

1 All right, so what we are going to do is those
2 documents, the 45-page chat and the spreadsheet
3 concerning the identifiable victims must be presented by
4 to the defense by noon tomorrow. Any response or
5 objection to those documents or commentary shall be filed
6 by the defense by the close of business on Friday, and
7 any reply by the government must be by five o'clock on
8 Monday.

9 I have seen enough documents in this case. The
10 response may not exceed seven pages, and any reply must
11 not exceed five pages.

12 MS. CADEDDU: Your Honor, may I ask a clarifying
13 question? We are limited in our response, of course, and
14 I understand and agree to responding to just these two
15 documents. The government will present and we will limit
16 our response to the seven pages, and the government will
17 limit it to I think you said five pages. I want to make
18 sure we are able if explanatory or additional checks that
19 we are able to append those, those that we believe that
20 will put them into context. We will be reasonable. I
21 give you my word.

22 THE COURT: All right, I am not laughing at you,
23 Ms. Cadeddu. That is a term that both sides use. I
24 think that term has sort of lost its meaning. That is a
25 matter of perception. Here is my concern. Counsel for

1 both sides, at some time sooner or later the jig is up.
2 We have got to stop receiving evidence. It is time for
3 the Court to have everything, review that evidence, and
4 make a decision. Bottom line is when this month ends or
5 prior -- prior before this month ends, I want to see all
6 the documentary evidence there is, and when we come back
7 on the 22nd of January, if there is any statements to be
8 made in conjunction with the sentencing the Court will
9 make its ruling.

10 The only argument that will be made from the parties
11 will be that invited by the Court. All I am saying is it
12 is time to get all this documentary evidence out of the
13 way, and it is time to move forward.

14 MS. CADEDDU: Your Honor, may I?

15 THE COURT: Sure.

16 MS. CADEDDU: We have one more issue that we have
17 not presented any argument on, and that is relating to
18 one of our objections and I wasn't sure. We have argued
19 certainly.

20 THE COURT: You are talking about the grouping.

21 MS. CADEDDU: The grouping, yes, sir.

22 THE COURT: I think that I don't know what other
23 additional evidence is needed on that.

24 MS. CADEDDU: No evidence, but we have not had
25 argument on the grouping.

1 THE COURT: Let me ask this. This is one where
2 I may reverse myself. Let's do it like this. You have
3 already made -- you have not made any arguments, but as
4 to grouping, the government has the burden to show that
5 it applies.

6 Okay, Ms. Heath, I will allow you no more than five
7 pages on the grouping argument, and a response, and I
8 don't want anything after that unless I invite it. You
9 have already had one shot at it with the material prior
10 to the sentencing hearing, so if the parties want to
11 address the grouping issue, I will allow each side five
12 pages.

13 I am not going to allow a reply unless I think it is
14 necessary. So what I am telling both sides, you need to
15 anticipate the argument that the other side is going to
16 make and address it. I think you pretty much know what
17 the other side's position is, and please, if you find it,
18 use Fifth Circuit or Supreme Court authority.

19 A long time ago when I was a young attorney, I
20 remember going before Judge Porter, and I couldn't find
21 any authority. No offense to you, Mr. Swift, but all I
22 could find was a district court case out of Washington.
23 I cited it to Judge Porter, and Judge Porter looked at me
24 and said, "Lindsay, is that a district court case?" I
25 said, "yes, sir, it is. It is the only authority I could

1 find."

2 He looked at me and smiled and said, "Well, they
3 don't pay attention to me, and I don't pay any attention
4 to them." So what I am saying is give me Fifth Circuit
5 authority or give me Supreme Court authority or give me
6 something that is binding on the court. The only
7 exception would be if there is nothing on point within
8 the Fifth Circuit or the Supreme Court.

9 Any other questions?

10 MS. CADEDDU: The timing of that, Your Honor.

11 THE COURT: What is that?

12 MS. CADEDDU: The timing of the grouping briefs,
13 when do you want the initial brief, and the response? Or
14 do you want them the same day and on the same day what
15 day? I am a detail girl.

16 THE COURT: I was really thinking about the same
17 day. That is why both sides should know the other sides'
18 respective argument.

19 MS. CADEDDU: That is fine, Your Honor.

20 THE COURT: There's one exception. Out of
21 fairness, now, I do not want either side raising an
22 argument that has not been previously made. If that
23 happens, then the other side is going to say that is not
24 previously made, and I did not anticipate that and
25 therefore I want a chance to reply.

1 So I think that as to the grouping issue, I think a
2 week from today is fine. I will get all of this out in
3 an order. I will get this out in an order the first
4 thing in the morning.

5 MS. CADEDDU: Thank you, Your Honor. One last
6 thing.

7 THE COURT: Sure.

8 MS. CADEDDU: We are still waiting on the motion
9 to unseal the sentencing memorandum which have more
10 relevance to people than it did when we thought we would
11 complete the hearing by today.

12 THE COURT: I don't know what relevance it has as
13 far as the Court is concerned. It is not going to have
14 relevance to the issues that the Court has to decide.
15 What relevance does it have to the issues that the Court
16 has to decide, that is, whether it remains sealed or
17 unsealed?

18 MS. CADEDDU: That is correct. I was pointing
19 out we still have that issue pending, and there is a lot
20 of interest.

21 THE COURT: Well, there is a lot of interest
22 because the interest has been created because the media
23 would not know about the sealed document unless it was
24 revealed to them. The same day that the sentencing
25 memorandum was filed, there was something tweeted and

1 then I get in the motion that there is a request from the
2 media. The only reason there is any request or interest
3 from the media is because somebody tipped them off as to
4 the memorandum being filed.

5 I guess my question is this really as far as the
6 Court is concerned whether the document is released or
7 not really makes no difference as to what the Court has
8 to do. It has no effect on what the Court is going to do
9 whether it is released to the public or not. My only
10 concern would be this. If there is some portions of the
11 sentencing memorandum that include parts of the
12 pre-sentence report which is confidential under seal,
13 then the Court has a concern about that and those
14 portions of the sentencing memorandum must be redacted or
15 deleted before they are made public.

16 MS. CADEDDU: Your Honor, I mean -- the filing of
17 the motion was in response to requests for sentencing
18 materials which journalists know are filed in every case,
19 and I guess I would just say that I think I have
20 discharged my duty to the First Amendment by filing a
21 motion to unseal it, so if journalists -- if the Court
22 wants to rule on at this time the Court can, and if
23 journalists want to themselves take it up with the Court,
24 then I have discharged my duty.

25 THE COURT: Well, what I am saying there has

1 been an issue that has been created unnecessarily as far
2 as the Court is concerned. I have stated my position.
3 Frankly speaking, I thought I made myself clear. I will
4 restate it. To the extent that the motion -- excuse
5 me -- to the extent that the memorandum contains
6 provisions of the pre-sentence report, those provisions
7 must be redacted. The pre-sentence report is under seal,
8 and I am not going to change that. I thought -- I
9 thought the parties pretty much did not object in that
10 respect.

11 MS. CADEDDU: No, we do not, Your Honor.

12 THE COURT: All right, and the other question is
13 this. Can the parties get together and redact those
14 portions of the pre-sentence report -- excuse me -- of
15 the sentencing memorandum that contain excerpts from the
16 pre-sentencing report?

17 MS. CADEDDU: I am confident that we can.

18 THE COURT: Ms. Heath?

19 MS. HEATH: Yes, Your Honor. There is also the
20 issue of some of the attachments contain private
21 information, and I was never really understanding about
22 the attachment because not all the letters that showed up
23 in the chart were provided, so I don't know if my e-mail
24 just failed in that respect, and I didn't get all the
25 letters.

1 MS. CADEDDU: Well, Exhibits B and C, Your Honor,
2 were charts of letters. The first one, B, was a chart of
3 letters from interested parties including journalists, a
4 Nobel prize winner, the people. There was a selection of
5 letters attached to that just because I never -- we never
6 submit every letter that is submitted to the Court
7 especially when you have hundreds because it is
8 overwhelming. We picked a sample from each different
9 category, but they are available if the Court wants to
10 review them all, and Exhibit C is letters, a chart of
11 letters from family and personal friends, and there is a
12 selection of those as well because once again
13 overwhelming. Both of those exhibits were submitted
14 under separate cover to the Court, and they are not filed
15 in the Court's record under seal.

16 The only exhibit to which the motion to unseal would
17 pertain would be A and D which were filed under seal.
18 Both Exhibit D was already redacted of personal
19 information. I don't believe there is any personal
20 information either A or D.

21 THE COURT: All right. Let me make myself
22 clear. Maybe I didn't make myself clear. If portions --
23 if the relevant portions of the sentencing memorandum
24 filed by the defense on behalf of Mr. Brown are redacted,
25 is there any objection to the unsealing of that document?

1 MS. HEATH: No, Your Honor.

2 THE COURT: All right, can the parties get
3 together and redact those portions of the pre-sentence
4 report that are contained in the memorandum and any other
5 confidential information if it included things such as
6 date of birth, driver's license, or social security
7 number. I don't think any of that information is on
8 there, so what I am saying is it seems to me that the
9 parties ought to be able to reach a consensus on that.

10 MS. CADEDDU: I agree.

11 THE COURT: And the Court has no problem
12 unsealing the document. The only thing that I require is
13 that that portion of the sentencing memorandum that
14 includes excerpts of the pre-sentence report must be
15 redacted and the motion to unseal is granted.

16 MS. CADEDDU: We will take care of that, Your
17 Honor.

18 THE COURT: All right, anything else?

19 MS. CADEDDU: Not from the defense, Your Honor.

20 THE COURT: All right, just for everyone in the
21 courtroom, as the Court stated earlier, the actual
22 sentencing will take place on January 22 at 9:00 a.m. and
23 the Court does not intend to take any evidence and the
24 Court will not allow any evidence unless an issue comes
25 up that was totally unforeseeable and was not anticipated

1 with due diligence.

2 There being nothing further, the Court is in recess.
3 Mr. Brown, you are remanded to the custody of the United
4 States Marshal.

5 THE COURT SECURITY OFFICER: All rise.
6 (THE HEARING WAS CONTINUED UNTIL JANUARY 22, 2015, AND
7 THE COURT WAS IN RECESS.)

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

11 *S/Charyse C. Crawford* 04-15-2015
12 Signature_____ Date:_____
13 Charyse C. Crawford, CSR, RPR
 United States Court Reporter
 Northern District of Texas - Dallas Division

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