

US Governments Argument Against Barrett Brown “Should Chill Journalists to the Bone”

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Journalist and activist Barrett Brown appeared in a Federal Court in Dallas, Texas on Tuesday. Brown was brought before Judge Sam Lindsay wearing the stereotypical orange jumpsuit. He only spoke a few times throughout the eight hour proceedings. Aside from looking up occasionally to listen to testimony, Brown’s focus was on his pen and notepad. The avid writer scribbled away, determined to tell his next story.

His family and nearly 30 supporters from around the country were in attendance. As the judge noted, 102 letters of support were sent from the United States, Australia, France, Sweden, Germany, Sweden, the UK, and India.

Brown has been an activist, and a journalist. His articles and blogs have been featured in numerous publications including the [Guardian](#), [Vanity Fair](#), and the [Huffington Post](#). He has been behind bars for over two years for charges stemming from his reporting on the hacking of the servers of HB Gary Federal and [Stratfor](#) by the decentralized hacker collective Anonymous.

The exact charges Barrett Brown faces are (1) transmitting a threat in interstate commerce (2) accessory after the fact in the unauthorized access to a protected computer and (3) interference with the execution of a search warrant and aid and abet. (*Brown has since apologized for the threat and admitted it was a mistake caused under duress*)

The second charge comes from Brown offering to be a mediator for hacker Jeremy Hammond following the hack of Strafor. Brown also attempted to hide computers which contained journalistic sources.

Since Brown had already signed the plea deal the sentencing hearing was expected to be short. However, early in the hearing the government’s team introduced 61 exhibits including hundreds of pages of chat logs and emails. The government forced Brown’s defense to decide to allow the documents without question or object to them slowing down the proceedings and possibly frustrating the judge. The judge would give the defense a 30 minute recess to view the documents and return with any objections.

The defense objected to 11 exhibits for lack of relevance. The government told Judge Lindsay that the documents showed Brown identifying targets of the hacks, and established his role in Anonymous. The Judge agreed with the government and allowed all 61 exhibits to be entered into the record. The prosecution called FBI Agent Robert Smith to the witness stand as they spent the next two and a half hours going through the exhibits one by one.

Federal prosecutor Candina Heath repeatedly had Smith read transcripts of chats that

Barrett Brown had been involved. Using his own words against him, often taken out of context, the prosecution spent the afternoon describing Brown as a “agitator”, “propagandist”, “strategist”, and “spokesman” for Anonymous. In one chat Brown discussed splitting Project Pm into two groups. One would be the “legal” faction and the other, lead by Brown, would do more radical activities.

The prosecutions goal was to muddy the waters, and convince the judge that Barrett was neither a political prisoner, or a journalist, but instead a dangerous mind intent on creating havoc. The truth seems to lie somewhere in the middle. Some of the quotes the prosecution used include:

“Anonymous has become powerful and I am close to everyone involved.”

“People will die because of the things we do.”

“I am always happy to recruit.”

“I have been Anon for 5-6 years.”

“We’re the most effective process for smashing those foundations that need smashing.”

“My goal is absolute dramatic reform of governments.”

“When we take down sites the press pays attention.”

The court listened to an interview Brown did with NBC where he detailed the work of hacktivists as a “guerrilla cyber-war.” Late in the evening we would hear from the defenses only witness, Quinn Norton. Norton is a journalist who has extensively chronicled the Anonymous movement. She would describe many of Barrett’s statement as not welcome or appreciated by members of Anonymous. He had been “kicked” at least once from an Internet Relay Chat.

Apparently there was not a consensus on Brown speaking in the media about Anonymous’ activities. Quinn was attempting to illustrate to the judge that Barrett Brown had not been an official member of the hacker collective. One of the reasons is because the culture does not operate with a static set of members or defined roles. It is a fluid process by which everyone can become any part of the revolution.

Hacking skills are a requisite for being deeply involved in Operations (Ops). These are skills that Barrett Brown did not have. So while some of Anonymous appreciated the media coverage and words Brown was writing, others were uninterested and downright angry at his self aggrandizing actions. When the defense questioned Smith on the topic he said he was aware that hackers were angry at Brown.

Heath also asked Smith to read chats pertaining to Barrett Brown’s role as a journalist. Or, as she would have it a “psuedo-journalist.” Smith read several chats where Brown does refer to himself as a “former journalist.” Despite these comments from Brown he continues to write. He pens a column for [D Magazine](#), and has also released a [book](#). Again, the governments arguments hinged on the idea the Barrett Brown was a former journalist who left that world to lead a global cyber war against corrupt governments. Or something like

that.

The remainder of the prosecutions arguments were about the stolen credit card information and whether or not Brown could be directly linked to the use of that information. This was perhaps the most surprising element of the sentencing hearing. Despite Barrett Brown having no direct connection to the Stratfor hack, he was facing a century in prison for [sharing a link to the leaked documents with a chat room](#). Jeremy Hammond would later [receive ten years for that leak](#).

Those charges were later dropped when Brown signed the plea deal. However, the prosecution was able to bring the dismissed charges to the forefront in an attempt to sway the judges ruling towards the maximum sentence. Brown's own defense noted that this was a perfectly acceptable and legal practice but felt the government had previously been unable to make its case on the hyperlink charge and was not attempting to recharge him.

In September of 2013, one of Brown's attorneys Ahmed Ghappour talked to [Rolling Stone](#) about the situation.

“He copy-pasted a publicly available link containing publicly available data that he was researching in his capacity as a journalist. The charges require twisting the relevant statutes beyond recognition and have serious implications for journalists as well as academics. Who's allowed to look at document dumps?”

In order to make this point stick the government had to prove that Brown knowingly shared stolen information and establish evidence that his sharing of the link directly lead to credit card information being stolen. The government stated there were 113 victims of fraudulent activity directly attributed to Barrett Brown's actions. There was much back and forth about whether or not the prosecutors could clearly define victims directly wronged by Brown.

The defense compared what he did to an individual sending a picture of a stolen car to friends. They argued merely pointing at a stolen vehicle is not the same as stealing it for a joy ride or damaging the vehicle. Heath disagreed, stating that **“once the stolen information hits the public domain anyone who traffics in it is committing a crime.”**

Marlo Cadeddu, a member of Brown's defense team, told the judge that allowing the argument to stand would have “serious implications for journalist.” She also stated the actions **“should chill journalists and researchers to the bone.”**

Judge Lindsay was obviously annoyed throughout the day but allowed the exhibits and arguments to stand. The judge told both sides that they seemed to be missing the whole point of the hearing, and he was doubtful of the relevance of the submitted documents. He admonished the defense and the prosecution for trying to “get the last word in” and attempting to “get a leg up” on the other.

Two other interesting aspects of the hearing were discussions on Anarchism and trolling.

Anarchism was mentioned twice while going through the chat logs. When questioned on whether Anonymous was an Anarchist hive Brown answered, “Anon does not like to define itself and my Anarchism is my own.” Another more contentious point came during exhibit 29 when the prosecution attempted to use Brown's words against him. The government

attempted to use his political philosophy as an example of criminal behavior. The defense objected to the questioning as prejudicial and the judge agreed.

During Quinn Norton's testimony she discussed how trolling is part of the Anonymous culture. Trolling refers to any Internet user behavior that is meant to intentionally anger or frustrate someone else in order to provoke a response. This includes making exaggerated claims to the media in an attempt to get a fake or outrageous story reported. The defense attempted to illustrate that Brown's statements of being a leader of Anonymous could not be taken at face value.

It's important to remember that the entire time Barrett has been incarcerated the federal government has sought to suppress details related to the case. In September 2013, Judge Lindsay accepted a motion for a gag order related to the case. Brown and his attorneys would be barred from talking to the public about the proceedings. The gag order remained in place for 8 months until Brown's team signed a plea agreement in April.

Once the gag order ended, [unsealed court documents](#) revealed the prosecution's fears that Brown's media connections would paint the government in an unfavorable light. Prosecutors argued that silencing Brown's attorney's was necessary to protect the jury, and Barrett himself, from being tainted by media portrayal of the case.<

Another telling part of the unsealed documents relates to media connections Brown maintained. Ms. Heath told the court that after listening to recorded phone calls made from the county jail between Barrett Brown and Kevin Gallagher she worried more articles would be written about the case. Gallagher is the head of Free Barrett Brown. The prosecution discussed conversations between Brown and Gallagher where the two discuss journalists who had been in contact with Brown regarding writing about the case. The documents mention [Michael Hastings](#), [Janet Reitman of Rolling Stone](#) (listed as Jenna Wrightman), and [Glenn Greenwald](#).

The secrecy was in full view during the sentencing hearing as well. Judge Lindsay reminded the defense and the prosecution that many of the documents related to the case were under public seal and would remain so. He made it clear anyone caught leaking information to the press would face his wrath.

Barrett Brown will return to the federal courtroom again on January 22, 2015. Judge Lindsay said he would take the time to review all the documents and make his decision in January. He also said he would not be accepting any more documents or testimony on that day.

When the judge renders his verdict we will find out whether Barrett Brown will finally be allowed to go home, or if he will face more time behind bars. If the judge's verdict is based on arguments that Brown committed a crime by posting a hyperlink there will be disastrous repercussions to journalists, activists and researchers across the country. We must do what we can to bring attention to Barrett Brown's situation, as well as the many others who are facing imprisonment for shining a light into the darkness in which government thrives.

Sentencing for imprisoned journalist delayed (again) until January 22, 2015.

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