

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

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

_____ )		
In the Matter of:	)	
	)	
FACEBOOK ACCOUNT DISRUPTJ20,	)	CSWSLD 660
FACEBOOK ACCOUNT LACYMACAULEY,	)	CSWSLD 659
FACEBOOK ACCOUNT LEGBA.CARREFOUR,	)	CSWSLD 658
	)	
_____ )		

Washington, D.C.  
Friday,  
October 13, 2017

The above entitled action came on regularly for hearing in the Superior Court of the District of Columbia, before the Honorable ROBERT E. MORIN, Associate Judge, in courtroom number 315, commencing at the hour of 2:18 p.m.

THIS TRANSCRIPT REPRESENTS THE WORK PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS REPORTED, AND IS NOT TO BE DISSEMINATED OR DISTRIBUTED.

APPEARANCES:

On Behalf of the Government:  
John W. Borchert  
Office of the United States Attorney  
555 4th Street NW  
Washington, D.C. 20530

On Behalf of Facebook:  
John K. Roche  
Perkins Coie  
700 13th Street NW, Suite 600  
Washington, D.C. 20005

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

APPEARANCES: (continued)

On Behalf of Account Holders/Proposed Intervenors:  
Scott M. Michelman and Arthur B. Spitzer  
American Civil Liberties Union  
4301 Connecticut Avenue NW, Suite 434  
Washington, D.C. 20008

On Behalf of Public Citizen Litigation Group/  
Proposed Doe Intervenors  
Paul Alan Levy  
1600 20th Street NW  
Washington, D.C. 20009

1 P R O C E E D I N G S

2  
3 THE CLERK: From Your Honor's status hearing  
4 calendar, In the Matter of Facebook Account DisruptJ20, 2017  
5 CSWSLD 660; In the Matter of Facebook Account LacyMacauley,  
6 2017 CSWSLD 659; In the Matter of Facebook Account  
7 Legba.Carrefour, 2017 CSWSLD 658.

8 Parties, state your names.

9 MR. MICHELMAN: Scott Michelman, ACLU of the  
10 District of Columbia for the account holders/proposed  
11 intervenors.

12 MR. LEVY: And Paul Alan Levy for the proposed Doe  
13 intervenors.

14 MR. ROCHE: John Roche from Perkins Coie on behalf  
15 of Facebook.

16 MR. BORCHERT: And John Borchert for the  
17 government.

18 THE COURT: Okay. Maybe I'll hear from you, Mr.  
19 Borchert, and see where we are.

20 MR. BORCHERT: I think there are two motions that  
21 are ripe at this point. There's our motion to compel as to  
22 Facebook, and there's the separate motion to intervene  
23 that's been filed by the account holders that we filed our  
24 opposition to.

25 THE COURT: Uh-huh. Okay.

1 MR. BORCHERT: Correct. Correct.

2 THE COURT: All right. I'll hear from you.

3 MR. BORCHERT: Your Honor, on the motion to compel  
4 as to Facebook, our position there, I know we've argued it  
5 before, Your Honor, but I'll be brief. Facebook really has  
6 no legal basis at this point for refusing to comply with the  
7 search warrant. They do not object to the -- they haven't  
8 objected to the search warrant itself on grounds of  
9 overbreadth or that it's unduly burdensome. Their only  
10 concern was with the non-disclosure order which has now been  
11 vacated.

12 So at this point, Your Honor, it's the  
13 government's position that Facebook should comply with the  
14 Court's order and produce the materials required by the  
15 search warrant to the government.

16 THE COURT: Okay.

17 MR. BORCHERT: There is also the separate motion  
18 to intervene that's not necessarily my motion -- well, it's  
19 not our motion, but it's the motion that's been filed by the  
20 account holders. We've briefed that also, Your Honor.

21 In short, it's the government's position that  
22 there is no right to bring a pre-enforcement challenge to  
23 a search warrant. The clearest authority on that is the  
24 Supreme Court's decision in 2006 in *Grubbs*. We provided the  
25 Court with an opinion from the Eastern District of Wisconsin

1 which follows *Grubbs* and concludes that there is no pre-  
2 enforcement right to challenge a search warrant.

3 THE COURT: I understand that. Can I ask you some  
4 questions?

5 Do any of the positions of the account holders or  
6 the other intervenors, potential intervenors, inform the  
7 Court about whether or not there are other privacy interests  
8 involved that the Court should take into account and when  
9 the government executes its search warrant? Have you given  
10 thought to that? What would be your position on that?

11 MR. BORCHERT: Yes, Your Honor. I think it's  
12 worthwhile to distinguish between the three separate search  
13 warrants.

14 THE COURT: So we have two individual accounts and  
15 one --

16 MR. BORCHERT: Correct.

17 THE COURT: -- page.

18 MR. BORCHERT: And one that's a page.

19 As to the two individual accounts, Your Honor,  
20 both of those search warrants are directly focused at those  
21 two individual accounts for a 90-day time period. The items  
22 that are to be seized from those accounts are specified in  
23 the search warrant. The information that's being requested  
24 is precisely the same type of information that Facebook  
25 routinely provides in response to government requests.

1           THE COURT:  But, for example, I understand --  
2   look, I accept for the purpose of our argument that your  
3   request for a search warrant has been reviewed by an  
4   independent judicial officer who has found probable cause,  
5   and that these accounts may have evidence of criminal  
6   activity.  So that has been determined by another  
7   independent judicial officer.  But now that we have other  
8   individuals who are claiming an interest in some of the  
9   information -- because in many ways, as I understand it, the  
10  account can be accessed and it's not just the communications  
11  of an individual.  It could be communications of third  
12  parties, not even between that individual.  And so I'm ----

13           MR. BORCHERT:  No, I think I see the Court's  
14  point.

15           THE COURT:  Let me finish, and then you can  
16  respond.

17           MR. BORCHERT:  Sure.

18           THE COURT:  It appears based on at least the  
19  proffer you're going to be gaining information which may not  
20  even involve the account holders, communications in which  
21  they were not involved, as I understand it.

22           MR. BORCHERT:  Correct.  Yes, Your Honor.  And I  
23  think that is, based on the declaration that was filed by  
24  Amelia Talarico in connection with search warrant 660, I  
25  agree with the Court on that.  Certainly it appears that

1 DisruptJ20, according to the proffer that's been given to  
2 the Court, that Facebook page was a moderated discussion  
3 board. And, Your Honor, that definitely takes on a  
4 different flavor than the other two search warrants which  
5 deal with individual accounts.

6 THE COURT: So maybe I'll work back from that.  
7 Can we deal with the page.

8 MR. BORCHERT: Yes.

9 THE COURT: And what is your proposal with regard  
10 to ----

11 MR. BORCHERT: Your Honor, we're amenable to  
12 having minimization procedures --

13 THE COURT: You are. Okay.

14 MR. BORCHERT: -- similar to those that the Court  
15 I know has recently imposed in *DreamHost*, if that's what the  
16 Court would like. I'm not sure what Facebook would be able  
17 to provide or how Facebook would be able to provide the  
18 information to us.

19 THE COURT: Well, I'll inquire.

20 MR. BORCHERT: But to the extent that there is  
21 anonymous speech there that's not related to criminal  
22 activity, as to the information that would be given to us  
23 on that warrant, that minimization would seem appropriate.

24 THE COURT: Okay. Thank you.

25 So, in essence, the minimization aspects of the

1 order that I issued in DreamHost, you would be anticipating  
2 the Court issuing similar ----

3 MR. BORCHERT: Yes, Your Honor.

4 THE COURT: Is there anything different, from your  
5 point of view?

6 MR. BORCHERT: No, Your Honor. It seems to us  
7 that the Facebook page functions much the same way. It's a  
8 space for speech.

9 THE COURT: Okay.

10 MR. BORCHERT: And to the extent it's possible to  
11 redact the identities of persons who are engaging in speech,  
12 we would be happy to then, with the Court's approval, create  
13 search protocols, submit those to the Court, and provide the  
14 Court with an itemization of what is seized and destroy what  
15 we would not be taking.

16 THE COURT: Thank you. I appreciate that. And  
17 I'll get that from Mr. Roche. Maybe I can ask you now, Mr.  
18 Roche, are you in a position to indicate whether Facebook  
19 has the ----

20 MR. ROCHE: My understanding, Your Honor, is that  
21 it would require manual redaction, so our primary concern  
22 would just be that we have sufficient time to do it  
23 correctly. We're eager to work with the Court and the  
24 parties to protect these folks' privacy and their right to  
25 engage in political speech. I just want to make sure that



1 we have adequate time to conduct that redaction.

2 THE COURT: Time aside, have you reviewed the  
3 order I issued in *DreamHost*?

4 MR. ROCHE: I have seen that order, Your Honor.

5 THE COURT: So you're familiar with the protocol  
6 in that?

7 MR. ROCHE: Yes, sir.

8 THE COURT: Other than the time, do you see any  
9 obstacles to Facebook with regard to the page search  
10 warrant, following the similar?

11 MR. ROCHE: Other than ensuring that we have  
12 adequate time, I think it's something we could accomplish.

13 THE COURT: Okay. That's good to know. Thank  
14 you.

15 So can we talk about now the two remaining search  
16 warrants, the account holders.

17 MR. MICHELMAN: Your Honor, if I may, on behalf of  
18 the account holders, if I could be clear, just to clarify  
19 what's being proposed here with respect to the DisruptJ20  
20 page, it would be minimization procedures directed at the  
21 individuals who communicated with that page as not only  
22 likers, but for any other reason; for instance, to  
23 participate in events or meetings. So everyone would be  
24 anonymized?

25 THE COURT: Yes.

1 MR. MICHELMAN: Or is it just with respect to  
2 individuals who have liked the page?

3 THE COURT: Yes. Thank you. All identifiers.

4 MR. MICHELMAN: Okay.

5 THE COURT: At least that was the intent of the  
6 *DreamHost* order.

7 Can we get to the other account holders, Mr.  
8 Borchert.

9 MR. BORCHERT: Yes, Your Honor.

10 THE COURT: If this was just an email account,  
11 then you have communications between the account holder and  
12 people with whom they're communicating. My understanding is  
13 these Facebook accounts can involve a number of different  
14 aspects in addition to direct communications that may  
15 implicate other third-party interests. And I'm just asking  
16 you -- I understand your position.

17 MR. BORCHERT: Right.

18 THE COURT: You want it executed. But have you  
19 given thought to the expansive nature of some of these  
20 Facebook accounts, what's contained in them, and whether or  
21 not ----

22 MR. BORCHERT: A search of the Facebook account,  
23 Your Honor, can be done fairly quickly. We're really  
24 looking for evidence of one particular criminal activity.  
25 I know there's concerns expressed in the declarations that

1 there would be a lot of information that's given over, but  
2 that happens any time that there's a search warrant done on  
3 a Facebook account.

4 THE COURT: Yeah, I'm not particularly concerned  
5 about what's happened before. I'm dealing with this case --

6 MR. BORCHERT: Right.

7 THE COURT: -- since I do have positions taken  
8 with regard to the sensitivities in these accounts. I'm  
9 trying to understand -- I can understand your request with  
10 regard to direct communications between the account holder  
11 and other individuals.

12 MR. BORCHERT: Correct. And then communications  
13 from other individuals back to the account holder, whether  
14 it's in terms of a post or a link or a like. Those would be  
15 coming back.

16 THE COURT: So explain to me the likes. Why would  
17 you need that? As I understand it, the likes is just  
18 clicking on an icon with a thumbs up or something like that.

19 MR. BORCHERT: Right. It may in the abstract seem  
20 of slight probative value, but depending upon the type of  
21 the post, it can be very probative of criminal intent.

22 THE COURT: So that's what I was asking you.  
23 Correct. It would depend on the post and whether the post  
24 was covered by the warrant. Correct?

25 MR. BORCHERT: Correct.

1 THE COURT: Are you interested in likes that are  
2 not associated with evidence covered by the warrant?

3 MR. BORCHERT: No, Your Honor. If it's a cat  
4 picture, we're not interested.

5 THE COURT: I'm trying to understand. My reaction  
6 to that, and I appreciate your response, is isn't there some  
7 way for the Court to consider that you get the information  
8 which you consider to be covered by the warrant before you  
9 get this ancillary information about who posted and who  
10 liked?

11 Do you understand what I'm saying?

12 MR. BORCHERT: I'm not sure if that's technically  
13 feasible.

14 THE COURT: Okay. Our goal is to have technology  
15 help us here. We're in a new world, and we may be able to  
16 have technology assist us in the execution of these  
17 warrants.

18 MR. BORCHERT: Very well.

19 THE COURT: One of the concerns I've had is when  
20 you look in the past, because courts have not had, for  
21 whatever reason, arguments made with regard to whether or  
22 not electronic data that is interrelated between arguably  
23 criminal activity and other electronic data, courts in the  
24 past have given law enforcement all the data, have you go  
25 through it, and then select out what is covered by the

1 warrant. But it does appear to me at least, based on what  
2 we've been involved in in other litigation, that there are  
3 technological capabilities of some of the internet service  
4 providers to segregate some of this data out, to allow the  
5 government first to determine what is responsive to the  
6 warrant, and then, if it's responsive, make additional  
7 inquiries.

8 MR. BORCHERT: Your Honor, if that's the approach  
9 the Court would like us to take with respect to this, I  
10 think we're amenable to that.

11 THE COURT: Oh, you are.

12 MR. BORCHERT: If there's a way that it can be  
13 done, I don't think we would object to that. It saves us  
14 the time of having to go through a lot of stuff or receive  
15 things that we don't need. I just don't know if it's  
16 technically possible.

17 THE COURT: Okay. Let me turn to Mr. Roche.

18 MR. ROCHE: Yes, Your Honor. I am, frankly, not  
19 certain what their capabilities are in terms of ----

20 THE COURT: This is Facebook. I mean ----

21 MR. ROCHE: As Your Honor knows, the typical  
22 procedures that the provider itself does not go through --  
23 they can search by date range, and that's typically how  
24 things are narrowed.

25 THE COURT: Correct.

1           MR. ROCHE: So what they're reasonably capable of  
2 doing other than that, I think it's worth a discussion with  
3 all the interested parties about what might be possible.  
4 That discussion hasn't taken place before now. But I think  
5 it's something worth exploring, for sure.

6           THE COURT: Well, in essence, it would be -- I  
7 want to make sure that the government understands because  
8 this is what the Court is thinking -- it would be applica-  
9 tion of the *DreamHost* protocols to these accounts.

10          MR. BORCHERT: I'm not sure I see the Court's --  
11 that's not how I was understanding the Court on 658 and 659.

12          THE COURT: Okay. So that's what I want to  
13 discuss with you.

14          MR. BORCHERT: Okay.

15          THE COURT: So what was your understanding of what  
16 you just agreed to?

17          MR. BORCHERT: Let me explain. On 660 we've  
18 agreed to DreamHost-style protocols.

19          THE COURT: We got that.

20          MR. BORCHERT: On 658 and 659, if it is  
21 technically possible for Facebook to weed out the things  
22 that we don't need, I'm comfortable with that.

23          THE COURT: But how would they know what you don't  
24 need unless you present them or the Court or somebody with  
25 your search protocol?

1 MR. BORCHERT: Right. I agree. That's why I  
2 don't think it's technically possible.

3 THE COURT: I'm asking you what do you think you  
4 agreed to when you said ----

5 MR. BORCHERT: Right. That maybe what they would  
6 do is give us all the posts without the likes, and then once  
7 we've identified all of the posts that we care about on 658  
8 and 659, then they would give us the likes.

9 THE COURT: I got it.

10 MR. BORCHERT: I'm fine with that approach. But  
11 I don't think there's any point to imposing minimization  
12 procedures on communications that are done through the  
13 accounts on 658 and 659.

14 THE COURT: Direct communications.

15 MR. BORCHERT: Direct communications.

16 THE COURT: Are you talking about communications  
17 between the account holder and somebody else?

18 MR. BORCHERT: Correct.

19 THE COURT: Or only those communications?

20 MR. BORCHERT: Correct.

21 THE COURT: Not communications --

22 MR. BORCHERT: Correct.

23 THE COURT: -- by third parties, between third  
24 parties.

25 MR. BORCHERT: Correct. Those will not -- 658 and

1 659, once produced to us, and -- Facebook will correct me if  
2 I'm wrong -- they will not include any unrelated third-party  
3 communications.

4 THE COURT: Okay.

5 MR. BORCHERT: 658 and 659 should only be  
6 communications between --

7 THE COURT: The account holder.

8 MR. BORCHERT: -- the account holder and third  
9 persons.

10 MR. MICHELMAN: Your Honor, could the account  
11 holders be heard at this point?

12 THE COURT: I'm not going to not talk to you; I'm  
13 just trying to get their position first. I'm spending some  
14 time with the government to try to understand their position.

15 Okay. So what about groups?

16 MR. BORCHERT: In terms of groups that a person  
17 belongs to, if they want to give us -- I guess it would be  
18 -- this is on 658 and 659?

19 THE COURT: I'm only talking about 658.

20 MR. BORCHERT: I guess the groups there, I'm not  
21 sure I would see the concern with those.

22 THE COURT: Okay. Let's just assume there's a  
23 concern.

24 MR. BORCHERT: Okay.

25 THE COURT: Okay.



1 MR. BORCHERT: Then we would be amenable, if  
2 Facebook can do it, to just providing us with the names and  
3 the number of group members. And if on the basis of that  
4 information we believe there's a reason to get the identi-  
5 ties of the rest of the group members, we'll go back to  
6 them.

7 THE COURT: Okay. What about photos?

8 MR. BORCHERT: Photos, I think, are difficult to  
9 come up with a limitation on. But I think that once we've  
10 imposed the limitation of a date range of 90 days, that  
11 really limits the universe of potential photos that a person  
12 would have in their Facebook account.

13 THE COURT: Okay. What about friends?

14 MR. BORCHERT: The friends list, a friending is  
15 essentially a communication between the account holder and  
16 another person. It's a communication that we have a  
17 connection, the two of us. I don't need to necessarily  
18 see -- I don't think the friend list has much value. But  
19 if Facebook can remove that, we're fine with that.

20 THE COURT: Okay. What about comments?

21 MR. BORCHERT: Comments by the account holders on  
22 658 and 659, we would need ----

23 THE COURT: Again, I'm not talking about the  
24 account holders and third persons. Comments.

25 MR. BORCHERT: Comments by those persons, again,

1 I think the date range limitation is an effective way of  
2 minimizing on those.

3 THE COURT: And what about the identification of  
4 third-party individuals who are not in communication with  
5 the account holder?

6 MR. BORCHERT: Again, I don't know -- I don't  
7 believe that third parties who are not in communication with  
8 the account holders would end up on the account holder's  
9 Facebook page. I might not understand it right. Maybe  
10 Facebook will correct me if I have that wrong.

11 THE COURT: Okay. And are you asking for stuff  
12 like news feeds and stuff like that?

13 MR. BORCHERT: Yes, Your Honor. I think that's in  
14 the list.

15 THE COURT: Right. I guess one of my concerns is,  
16 as I understand attachment B, you're asking for all records,  
17 all communications. And it wasn't, at least by its terms,  
18 limited to the account holders. But that's your intent.

19 MR. BORCHERT: Yes, Your Honor.

20 THE COURT: And can I just turn back to Mr. Roche.

21 MR. ROCHE: Yes, sir.

22 THE COURT: Do you know whether there are any  
23 technical limitations on removing some of this stuff?

24 MR. ROCHE: Your Honor, I don't know. To my  
25 knowledge, it's not been done before. So I'd have to talk

1 to them about what they're capable of doing. In terms of  
2 whether third-party communications would be visible on  
3 someone's Facebook page -- for example, if you go to mine,  
4 see what my friends have posted, and those communications  
5 are there whether I reply to them or not. So in a sense  
6 they're communicating with me, but they're really communi-  
7 cating to everybody.

8 So it's a little unclear to me what the government  
9 means when it says things like they don't want purely third-  
10 party communications, with those sorts of posts, even if the  
11 account holders haven't commented or in some way replied to  
12 them be swept up here.

13 THE COURT: Because, as I understand it, those  
14 comments can be posted without any invitation by the account  
15 holder.

16 MR. ROCHE: Correct.

17 THE COURT: And in that sense it would be in many  
18 ways other than what may be a general invitation of  
19 friending at the beginning; the comments are not solicited  
20 by account holders. Individual comments.

21 Do you understand that, Mr. Borchert?

22 MR. BORCHERT: Yes, Your Honor. And I guess I  
23 don't see the difference necessarily between what Mr. Roche  
24 is describing and a person who receives an email message  
25 that was also sent to 20 other people. That's still a

1 communication that's received, and if you were doing a  
2 search warrant of the email account, it would be in the  
3 email account.

4 THE COURT: I see what you're saying.

5 MR. BORCHERT: I mean, Facebook's style is it's  
6 a news feed, but it's essentially the same. It's just a  
7 communication from another person.

8 THE COURT: Without a reply.

9 MR. BORCHERT: Without a reply. Correct.

10 THE COURT: Okay. Anything else?

11 MR. BORCHERT: Your Honor, I can address -- well,  
12 it's not my motion -- the motion to intervene.

13 THE COURT: Well, I'm going to hear from them, and  
14 then I'll hear from you.

15 MR. BORCHERT: Very well, Your Honor.

16 THE COURT: But can I ask you about the photos. I  
17 guess I don't want to disclose the contents of the affidavit  
18 in support of the warrant. But you had a specific purpose  
19 in the affidavit for the photos, which I'm going to ask you  
20 to review, because if, for example, the search is executed  
21 and nothing is obtained as a result of the search, I guess  
22 I would have to have an explanation of why you would need  
23 to have photos independent of that.

24 MR. BORCHERT: If the search was executed.

25 THE COURT: I'm asking you to look at that.

1 MR. BORCHERT: I will. Very well.

2 THE COURT: Because the intervenors, as you know,  
3 the application and affidavit in support of the warrant is  
4 not distributed to people at this time, and so they don't  
5 have the benefit of it.

6 Okay.

7 MR. MICHELMAN: Thank you, Your Honor. And I  
8 apologize if it seems like I was a little jumpy to  
9 participate, but I think that actually illustrates why it's  
10 very important that my clients be allowed to intervene  
11 formally in these proceedings. Because as Mr. Borchert and  
12 Mr. Roche discuss what might be possible and how the  
13 government's interest relates to that, it's very important  
14 that the account holders and their interests be held as  
15 well.

16 And my concern in particular here is that in  
17 parsing out the various categories of communications in 658  
18 and 659 by type of communication -- is it a photo, is it a  
19 message, is it a comment -- what I think is missing from  
20 there is a nexus -- an essential nexus, in our view -- to  
21 the basis for the government's search and seizure to begin  
22 with, which is probable cause.

23 So my concern then is, if Mr. Roche and the  
24 government want all the communications between the account  
25 holders and other individuals, well, which communications?

1 That's a lot of communications, as detailed in their  
2 affidavit, some of which are going to be about personal  
3 matters, some of which are going to be about other events  
4 they planned on other days, other causes, with other people  
5 involved, that had nothing to do with the government's  
6 investigation of events on January 20th. So that's my sort  
7 of overriding substantive concern with the direction of the  
8 conversation so far.

9 But I think it illustrates the importance of  
10 formal intervention here. Now, the government cites the  
11 *Grubbs* case, but as we pointed out in our papers, that is  
12 the most general edicta, saying that in general it is true  
13 that there's a neutral magistrate at the beginning and  
14 there's a suppression remedy possible at the end. But it  
15 in no way speaks to the situation before us, which is where  
16 the evidence is preserved electronically, and there is an  
17 electronic search of the breadth that we have here, and  
18 there are both private and political associational materials  
19 at issue should there be an opportunity for the intervenors  
20 to come in and participate in the proceedings.

21 Now, we cited you a couple cases where courts  
22 allowed that; they cited you a couple cases where they  
23 haven't.

24 THE COURT: Well, the cases you cite, the courts  
25 allowed and then denied, as I understand, the relief

1 requested.

2 MR. MICHELMAN: But those are two separate  
3 questions.

4 THE COURT: No, but are you aware of any court  
5 that has allowed intervention and then somehow disturbed the  
6 finding of probable cause?

7 MR. MICHELMAN: I believe the *Tattered Cover* case  
8 did impose limits in the search warrant, or did suggest that  
9 those were appropriate, although I'd have to go back and  
10 look at the exact posture. That was a Colorado case. But  
11 it's true that there are not a lot of cases discussing the  
12 situation. What I think is a better analogy is to look at  
13 what happens in the subpoena context. Now, the government  
14 has argued up and down the levels of the federal court  
15 system that an SCA warrant, electronic warrant is equivalent  
16 to a subpoena.

17 THE COURT: A warrant or an order? There's three  
18 types of SCA, Security Communication Act, orders.

19 MR. ROCHE: Right. They were arguing in the  
20 context of a search warrant. They were saying specifically  
21 with respect to search warrants in the Microsoft matter that  
22 it was like a subpoena. And that's what the District Court  
23 here in D.C. found as well in the case cited in our reply.

24 So we think just as it's perfectly feasible for  
25 those subpoenas to be intervened and to be moved to quash by

1 the third parties, who are the real parties in interest, it  
2 is perfectly feasible for us to come forward here. Because  
3 if my clients have no opportunity to participate in this  
4 process, to make their motion to quash, to assert their  
5 interests, to explain what's in their accounts and why the  
6 government's request is too broad, they're not going to have  
7 that opportunity again. They're not charged with any crime.  
8 So at this point they have no suppression opportunity  
9 available to them.

10 A civil action is most certainly foreclosed by  
11 absolute or qualified immunity. And as courts have held in  
12 contexts like the *Perlman* case and in the context of *Brown*  
13 motions authorized by the Court of Appeals here, looking for  
14 information about a crime victim's medical records, the  
15 third parties should have the opportunity to participate  
16 when their records are at stake and cannot be made to rely  
17 on the custodian of the information.

18 So I think as an initial matter we feel strongly  
19 that our intervention is necessary and that we not be merely  
20 interested bystanders, amici kibitzers to these proceedings.

21 The other matter, of course, is appeal. Because  
22 Facebook and the government might come up with a solution  
23 that works for them. But if it doesn't work for the account  
24 holders, then the account holders don't have the right to  
25 say, wait a second, this is our information, these are our



1 demonstrations, these are our organizing contexts, these are  
2 our groups that we belong to, our discussions with our  
3 romantic partners, our medical information and psychiatric  
4 information. So those interests are very important.

5 THE COURT: I appreciate that. Could you indicate  
6 the privacy settings on each of the accounts? It was a  
7 little unclear from your proffer. What exactly were the  
8 privacy settings?

9 MR. MICHELMAN: So certain material in each of the  
10 accounts is open to the public.

11 THE COURT: Okay.

12 MR. MICHELMAN: But certain is not.

13 THE COURT: And what is open to the public?

14 MR. MICHELMAN: There are posts that are open to  
15 the public, but the declarations cover is information that  
16 is not open to the public.

17 THE COURT: Can we just go back to the public  
18 information.

19 MR. MICHELMAN: Having not reviewed -- honestly,  
20 Your Honor, we were mostly focused on ascertaining the  
21 private information that we would reveal.

22 THE COURT: No, I understand that, but obviously  
23 we have to get into details a little because these are sort  
24 of, I don't want to call them mixed use accounts, but some  
25 of the information, as I understand it, is public.

1 MR. MICHELMAN: And the government can have that  
2 information anyway. And we're not here claiming privacy  
3 interest in information that's been shared with the world.

4 THE COURT: Okay. So is there some way for you  
5 to indicate what portions of the Facebook account are public  
6 and what is not?

7 MR. MICHELMAN: My clients would be -- so if a  
8 supplemental declaration would be most appropriate, my  
9 clients would be glad to be more specific about what's out  
10 in the open. But honestly, Your Honor, we're not asking for  
11 protection of material that the government can see anyway.  
12 They don't need a warrant to see that. They can just log  
13 on.

14 THE COURT: Correct. But some of it may be  
15 covered by the warrant, and if it's not in dispute, then I  
16 don't have to resolve it -- correct -- if you're not  
17 opposing it?

18 MR. MICHELMAN: That's right. We are not opposing  
19 the warrants to the extent they ask for information that  
20 would be accessible to anyone on the internet.

21 THE COURT: No, I appreciate that.

22 MR. MICHELMAN: I'm sorry. Maybe I'm misunder-  
23 standing.

24 THE COURT: It's not clear from your declarations  
25 what is accessible and what is not.

1 MR. MICHELMAN: I think -- so the ----

2 THE COURT: I'm not asking you to answer it on  
3 your feet if you don't have a specific answer.

4 MR. MICHELMAN: I cannot say -- I have not  
5 reviewed the material that is accessible. What I can  
6 indicate based on our review and my clients' declarations is  
7 that there is material not accessible to the public that is  
8 only available to Ms. Macauley and Mr. Carrefour's Facebook  
9 friends who are individual one-to-one messages that they  
10 communicated with particular other people about a variety of  
11 topics there, including everything from intimate and very  
12 personal communications to political communications about,  
13 for instance, how to vote or where to show up for a  
14 demonstration.

15 THE COURT: I've actually read your pleadings.  
16 I appreciate all that. To me, this is a little complicated  
17 because of the mixed use of these Facebook accounts. Some  
18 are public, some are private. Some of it you're, as I  
19 understand it, you're not going to be opposing the warrant  
20 even if you're allowed to intervene. But I need clarity  
21 from your point of view as to those matters.

22 MR. MICHELMAN: So from our point of view, the  
23 line we would draw on public and private material is that  
24 very line; public versus private. So give away the public  
25 material. But as to the private material, that is where we

1 feel the warrants are overbroad.

2 THE COURT: I'm asking for your settings. I'm  
3 asking you to supplement your declarations with specific  
4 information about the settings as to each of the ----

5 Is your friends list public; do you know?

6 MR. MICHELMAN: With respect to one of them, I  
7 don't believe it is. On my feet I would not be able to ----

8 THE COURT: No, but that's what I would like you  
9 to go through; that exercise.

10 MR. MICHELMAN: That I can do.

11 THE COURT: Because if, for example, your friend's  
12 list is public, maybe we don't have as much discussion about  
13 that as to other aspects.

14 MR. MICHELMAN: Right. And that's something that  
15 we would be glad to supplement for the Court. But I think  
16 the first threshold question is, are we properly before the  
17 Court. I know Your Honor was able to sort of defer that  
18 question in the DreamHost matter, not necessarily ruling on  
19 intervention, although obviously and appropriately, from our  
20 perspective, taking the intervenors' interests somewhat into  
21 account.

22 We, however, think it's very important that we be  
23 allowed to formally intervene, to challenge these warrants,  
24 so that we can both continue to participate formally in  
25 these proceedings ----

1 THE COURT: When you say challenge the warrants,  
2 are you challenging the scope of the warrants or the  
3 issuance of the warrants?

4 MR. MICHELMAN: We are challenging the issuance.  
5 We believe their overbreadth requires them to be quashed.  
6 We ask you to narrow them by subject matter, not type of  
7 communications. When I hear Mr. Borchert talk about  
8 one-to-one communications, that could be one-to-one  
9 communications about lots of things. If the government  
10 has probable cause to believe that there are one-to-one  
11 communications about specific activity it's investigating  
12 on January 20th, then it's the subject matter of the  
13 communications that provides the relevant limitation, not  
14 the fact that it was two people communicating.

15 THE COURT: Correct. But how would you determine  
16 the subject matter of the communication unless you looked at  
17 the communication?

18 MR. MICHELMAN: Absolutely, Your Honor. That's  
19 why we suggest that an appropriate narrowing of the search  
20 warrant is to permit a special master, or Your Honor, if  
21 Your Honor is willing to take on the task, to do the  
22 segregation.

23 THE COURT: You can try another alternative.

24 MR. MICHELMAN: I didn't want to leave Your Honor  
25 out of the process. But appointing a special master with,

1 be it a retired judicial officer or an attorney with  
2 significant expertise in electronically stored information,  
3 to go through and do the type of segregation that the  
4 government envisions. Except when the government does it,  
5 the government already has gotten all the information.

6 THE COURT: The difficulty with that is a master  
7 wouldn't necessarily know the nuances of a particular  
8 criminal investigation. What may appear to be an innocuous  
9 email may, based on your knowledge of the investigation,  
10 take on import. That's the difficulty I see with that.

11 MR. MICHELMAN: Right. Well, I think as one of  
12 our authorities mentioned, the Vermont search warrant case,  
13 the government wouldn't be cut out of the process. The  
14 government could provide training, confidential material  
15 under seal to the master and say this is what we're looking  
16 for. The government could show the master, this is what we  
17 want to do. But because the master is a neutral officer,  
18 the master would say, yes, I am looking for this only, I am  
19 not looking for the personal stuff, I'm not looking for the  
20 dance party at Vice President Pence's house, I'm looking for  
21 January 20th related material. And that's something the  
22 government would have the opportunity to participate in so  
23 that the master could be effective in that role and address  
24 that concern.

25 THE COURT: Okay.

1           MR. MICHELMAN: I think the other alternative that  
2 might work in terms of the subject matter is to acquire a  
3 first round; to narrow the warrant by requiring a first  
4 round to use key words and to use search criteria, as Your  
5 Honor required in *DreamHost*. If Your Honor approved the  
6 search protocol, it's true it might not produce all that the  
7 government could possibly want. But if those key words,  
8 those search terms were related to the government's invest-  
9 igation and Your Honor approved it, then they could get the  
10 information that was targeted to their probable cause, and  
11 if that caused them to recognize, oh, there was a criminal  
12 conspirator here who used the word I Day instead of  
13 DisruptJ20 in order to indicate some sort of criminal plan,  
14 then obviously that would provide the basis for further  
15 warrant as the Court envisioned in the 15 email addresses  
16 case from Alabama that we cited in our paper.

17           So there are lots of ways that this could proceed  
18 in a narrow fashion, either through the use of a master or  
19 key words that would enable the government to take a very  
20 limited first cut, and then come back for more if it  
21 actually had probable cause for more.

22           THE COURT: Right. That's just *DreamHost* imposed  
23 in all those accounts. Correct?

24           MR. MICHELMAN: Right. And *DreamHost*, I think,  
25 provides a reasonable model with the understanding in the

1 key modification that the -- in *DreamHost* it was about  
2 identity. The concern was are all these third parties whose  
3 names we don't know and who communicated anonymously with  
4 the website, are those people going to be revealed. Here we  
5 know who the people are. And the issue is content.

6 THE COURT: We may not know who Mr. Levy's clients are.

7 MR. MICHELMAN: We don't know who Mr. Levy's  
8 clients are. And I don't want to foreclose additional  
9 safeguards for Mr. Levy's clients. But as far as my clients  
10 are concerned, all we need protection for is their content;  
11 not just the identity.

12 So unlike in the *DreamHost* matter, I think instead  
13 of requiring a redacted data set, that it would be appro-  
14 priate at the start to require the government to come  
15 forward with search protocols that it could then say to  
16 Facebook, give us data in accordance with these search  
17 protocols that would be tied to their actual showing of  
18 probable cause, rather than what they've gone for here,  
19 which is let's get the whole account, let's get the whole  
20 account and see what we can find. And that's too broad  
21 under the Fourth Amendment. That is in the nature of a  
22 general warrant. That's why these are problematic, and  
23 that's why it's imperative both that the Court permit their  
24 intervention and either quash or narrow the warrants to  
25 protect their privacy and their First Amendment interests.



1           THE COURT: Some courts have addressed the concern  
2 or given the analogy that executing a search warrant on a  
3 home, looking for criminal evidence, officers obviously are  
4 going through a lot of documents, a lot of information,  
5 looking for evidence. And they look to see whether it's  
6 covered by the warrant. If it isn't, they obviously don't  
7 seize it. How is that different in that sense?

8           MR. MICHELMAN: It's different in a few ways, Your  
9 Honor. I think first it's a difference in volume. The  
10 volume of information that is stored on a Facebook account,  
11 it's a diary, it's a calendar, it's a journal, it's a video  
12 archive, it's a photo album. It's not just your filing  
13 cabinet.

14           THE COURT: Yeah, but it can be those things. Is  
15 it those things in this matter?

16           MR. MICHELMAN: It is those things. And I think  
17 our declarations speak to -- certainly speak to photos,  
18 certainly speak to private communications, issues concerning  
19 who was at what events. Many of those functions are  
20 implicated here that wouldn't be implicated in a filing  
21 cabinet.

22           Number two, the difference in what happens in a  
23 physical search and what happens in an electronic search is  
24 limited by the practicality of the situation. If you send  
25 a team of officers into a house, even into the filing

1 cabinets, to turn the thing over in search of documents  
2 related to some kind of conspiracy or some kind of criminal  
3 plan, they're going to go in there, and they're going to  
4 look and leave. And even this Court's rules require  
5 generally that that happens during daylight hours. So  
6 there's a limit on how much of a fine-toothed comb they can  
7 use in going over that information. So they're not going  
8 to linger on information that's not relevant to their  
9 investigation.

10 Here, however, there are no limits at all. So  
11 once the government gets the material ----

12 THE COURT: Well, the Court could put limits on  
13 it.

14 MR. MICHELMAN: Well, that's what we're  
15 encouraging Your Honor to do. But as the warrants are  
16 written, they require disclosure of all contents for a  
17 period of 90 days. That means the entire universe of  
18 communications that my clients have engaged in on whatever  
19 subject. And then the government gets to go through them  
20 essentially at its leisure, in whatever level of detail,  
21 reading whatever it wants, learning things about other  
22 people, learning things about protests that it's not even  
23 investigating in connection with January 20th. And that  
24 has a chilling effect. Because then people when they use  
25 Facebook to organize -- and many people, as we know, are

1 using social media like Facebook and Twitter to organize, to  
2 come together, to associate for political purposes -- they  
3 know that that information is now going to be vulnerable  
4 because the government, based on its one investigation over  
5 here can now sweep in an entire cache of information and  
6 learn, in this case, frankly, who its political opponents  
7 are.

8 The bigger context of this case here is that you  
9 have an administration investigating the political activity  
10 of the people who are protesting that administration. And  
11 that is very chilling in terms of people's willingness to  
12 use the internet and the tools that they have.

13 THE COURT: I don't mean to correct you, but the  
14 warrant is an investigation into alleged criminal activity.  
15 That's what was approved.

16 MR. MICHELMAN: Yes, Your Honor. And I think the  
17 difficulty is -- so attachment B of the warrant says we're  
18 going to do two things here. It says first in part one we  
19 are going to have to disclose by Facebook basically every-  
20 thing; the posts, the activity logs, the profile informa-  
21 tion, status updates, news feeds, status updates, links to  
22 videos, photos, web content, notes, wall postings, friends  
23 lists. You get the idea. Personal messages, searches,  
24 deleted information. All electronic communications and  
25 messages. That's in part one. That's what's disclosed.

1           Now, two is what information the government  
2 intends to, quote, seize. That's the information it really  
3 says it's looking for. And I don't mean to cast aspersions.  
4 It may only be looking for that information. And that is  
5 the information that is related to the offense conduct on  
6 January 20th. The problem is, en route to getting that  
7 offense conduct material in part two, they've required the  
8 disclosure -- that is, they've already swept in the entire  
9 contents of the account -- regardless of relevance to  
10 January 20.

11           So I think the disconnect and the difficulty for  
12 us is part one is divorced from the government's investiga-  
13 tion and its probable cause showing -- which, of course, we  
14 haven't been able to see or evaluate -- with respect to the  
15 information in two. If it had just said we want Facebook to  
16 disclose the information in part two, we don't want anything  
17 else, just the information in part two, then that would be  
18 much more particularized, that would be much more focused  
19 on the government's interest. It's the broad disclosure of  
20 everything that really raises these chilling dangers, these  
21 dangers that people who are coming together for political  
22 purpose, not just to protest one person's inauguration, all  
23 kinds of causes that my clients are involved in.

24           THE COURT: Right. But the investigation is into  
25 criminal offenses. I don't have any information that it's

1 an investigation into what you describe as political  
2 opponents.

3 MR. MICHELMAN: Right. And that's why the  
4 production that is required should match the government's  
5 investigation.

6 THE COURT: Right.

7 MR. MICHELMAN: And the question is how best to do  
8 that. And I think it's going all the way back to the idea  
9 of general warrants, and this general exploratory rummaging.  
10 Framers of the Fourth Amendment were not crazy about the  
11 idea that we'll just let the government go in, it knows what  
12 it's looking for, it's got its investigation, and it will  
13 just focus on the stuff it needs.

14 THE COURT: Well, with all due respect, the  
15 framers weren't anticipating Facebook, I don't think.

16 MR. MICHELMAN: No, they weren't, but that's where  
17 this Court comes in, in translating those concerns.

18 THE COURT: I appreciate that. I'm still  
19 struggling with the practicalities of giving the government  
20 its right to execute a warrant that was approved by a  
21 judicial officer to look for information and evidence of a  
22 crime that a neutral judicial officer has determined there's  
23 probable cause to believe is contained within this account.  
24 And I'm not sure, your special master aside -- let's put  
25 that to the side and assume the Court feels that working

1 through a special master necessarily is going to leave the  
2 government with gaps in its investigation. Specialized  
3 knowledge that the government has in mounting its  
4 investigation. And that's why I'm concerned about a special  
5 master.

6 What is being proposed beyond that to address your  
7 concerns?

8 MR. MICHELMAN: So ----

9 THE COURT: I have your note that you want to send  
10 the search protocols directly to Facebook, have them execute  
11 the protocols, and if the government needs more information,  
12 make an addendum.

13 MR. MICHELMAN: I think that would be a workable  
14 solution that would be very much in line with Your Honor's  
15 ruling in *DreamHost*. But I should mention, too, that there  
16 are other -- I see the writing on the wall with the special  
17 master. There are other safeguards that various courts have  
18 proposed in the Vermont case, in the CDT case. One of them,  
19 for instance, is a filter team or a privilege team within  
20 the government who are walled off from the investigation.  
21 I think our preference would be the first option we were  
22 discussing, with the search protocols, where a search  
23 protocol could be given to Facebook, or even could be  
24 approved by Your Honor and executed by the government if  
25 that, for some reason, was unworkable through Facebook. A

1 search protocol that was approved by Your Honor with the  
2 data unable to be accessed except by a walled-off privilege  
3 team would be far superior still than this generalized  
4 disclosure of everything in their accounts.

5 So there are a number of safeguards here, and I  
6 think it's important that the Court choose one that really  
7 respects the significant intrusion into both personally  
8 private and protected First Amendment type communications,  
9 as my clients have detailed in their affidavits. So either  
10 a search protocol approved by the Court and sent to Facebook  
11 or a search protocol approved by the Court and executed by a  
12 walled-off privilege team within the government would be,  
13 though obviously not our preferred remedy, certainly far  
14 superior than allowing the warrants.

15 THE COURT: But either way, even if it was what  
16 you described as a privilege team or a taint team, it's  
17 still being reviewed by the government. That's why I don't  
18 understand how that addresses your concern.

19 MR. MICHELMAN: It's not our preferred, not our  
20 preferred way to go. And the reason why is the one you just  
21 said. I think, again, we would prefer the search protocol  
22 be directed to Facebook so that the warrant would say to  
23 Facebook, provide the materials within these parameters --  
24 and those parameters would obviously be approved by Your  
25 Honor -- to relate to the January 20th investigation. There

1 would be some probable cause; there would be a nexus; it  
2 wouldn't be a general fishing expedition. That would be far  
3 superior. And I guess what I'm saying is, if for some  
4 reason the technological capacity isn't there for Facebook  
5 to do that, at least it would be better than nothing for the  
6 government to use a privilege team as opposed to the very  
7 investigators who are now prosecuting individuals in this  
8 investigation for crime.

9 But, again, our proposed solution --

10 THE COURT: I got it.

11 MR. MICHELMAN: -- if special master is off the  
12 table, is the search protocol.

13 THE COURT: I got it. Thank you.

14 Mr. Roche, are you able to respond to that?

15 MR. ROCHE: Your Honor, I'm not, actually, with  
16 any specificity. Typically the only narrowing that's done  
17 on the search provider's end --

18 THE COURT: Is the dates.

19 MR. ROCHE: -- is date range.

20 THE COURT: Could you consult with your client and  
21 file a supplemental memorandum with the Court as to what  
22 you're able to do. For example, if the Court were to order  
23 that the search protocol go directly to Facebook, I can  
24 understand your client being reluctant to be an agent of the  
25 government. So it may have some concerns in that regard.



1 But if that is something they're able or willing to do,  
2 could you inform the Court as to your client's position on  
3 that.

4 MR. ROCHE: Certainly, Your Honor.

5 THE COURT: Thank you. I didn't mean to cut you  
6 off.

7 Mr. Levy.

8 MR. LEVY: So as I understand what's happened  
9 before me, the list of people who simply liked the  
10 DisruptJ20 Facebook page is no longer sought -- is that  
11 correct -- and that the government is limiting its request  
12 for likers to likers of specific posts that are determined  
13 to be -- I think that's what I heard, but I'm not sure.

14 THE COURT: That's what I heard.

15 MR. BORCHERT: That's not what you heard.

16 MR. LEVY: Okay.

17 MR. BORCHERT: On 660 we'll use the *DreamHost*  
18 minimization protocols.

19 MR. LEVY: Okay. Then my argument is as follows.  
20 I think it's similar to the arguments we made in *DreamHost*.  
21 First Amendment protects the right to like the inauguration  
22 protest page. It protects the right to establish a Facebook  
23 connection with political activists, even if those political  
24 activists later, even years later in the case of some of my  
25 clients, become the protesters' media contacts, and to do so

1 without government surveillance.

2 THE COURT: I appreciate that. Do you have any  
3 information, your knowledge based on your clients, whether  
4 so-called liking of this account, was that a public act or  
5 was it subject ----

6 MR. LEVY: Well, liking, I believe -- I don't have  
7 it for my clients -- my understanding of what happens when  
8 you like a particular page is that there's a list of likers.

9 THE COURT: No, I understand. I've received a  
10 tutorial on that. I'm trying to understand based on privacy  
11 settings. As I understand it, some of the likes can be  
12 public. And as I understand the other intervenors, they're  
13 not challenging public display of information.

14 MR. LEVY: I think that likers whose liking is  
15 available to the government is available to the government.  
16 And there's no more privacy interest. But on the other  
17 hand, they don't need a warrant to get it.

18 THE COURT: No, I understand that. But do you  
19 know ----

20 MR. LEVY: I cannot speak with respect to my  
21 clients. I can ask for a look.

22 THE COURT: A look for a like?

23 MR. LEVY: Looking for liking?

24 Of course, we haven't seen the search warrant  
25 affidavit as we had the opportunity to do in the *DreamHost*

1 case. We do not know whether the government has shown  
2 probable cause specific to the issue of whether the list of  
3 likers or the list of friends of these Facebook accounts,  
4 particularly people like my clients, who indicated that  
5 they've known Mr. Carrefour and Ms. Macauley for many years  
6 and friended them long before this period. And perhaps I  
7 don't know whether the government's 90-day limitation is  
8 limited to people who friended these individuals within that  
9 90-day period. I suspect not, but perhaps a representation  
10 could be made.

11 THE COURT: Are you preferring your clients are  
12 both friends and liked certain information?

13 MR. LEVY: My clients indicated -- two of the  
14 clients indicated in their affidavits that they have known  
15 either Macauley or Carrefour for years in connection with  
16 their political activities.

17 THE COURT: No, I'm just talking about their  
18 activity in the Facebook accounts. Did they both friend  
19 them and like them or just friend them?

20 MR. LEVY: We have three frienders and one liker.

21 THE COURT: Somebody is going to be reviewing this  
22 transcript and will interpret what all this means.

23 MR. LEVY: Liker, not liquor. One K. But the  
24 knowledge that merely liking a facially lawful overall  
25 Facebook page or friending a political activist who later

1 becomes accused, not of a crime, but simply of having  
2 evidence of crimes, knowing that that's enough to let the  
3 government demand your name is going to have an enormous  
4 chilling effect on political activity on the internet and on  
5 Facebook. And this aspect of the warrant, I would submit,  
6 is comparable to the prosecutor's demand for IP addresses  
7 of visitors to the DisruptJ20.org website. These are only  
8 people who visited the page, looked, indicated liking, or  
9 were friends of these people, and, therefore, as friends,  
10 were able to see but may not have actually seen any  
11 particular post on their page, depending on what they looked  
12 at on Facebook on any one day. The government wants their  
13 names. And that's like the IP addresses.

14 But it's even worse because IP addresses are  
15 generally not identifying. Occasionally they are, and  
16 that's a point we made in the DreamHost case. But,  
17 generally speaking, you need a second order subpoena to  
18 identify who is using a given IP address at a particular  
19 time. Facebook has a real name policy. You can't use  
20 pseudonyms -- you're not supposed to use pseudonyms in  
21 establishing a Facebook account.

22 So once the government gets the Facebook account  
23 name of all the likers, they know who they are. And all the  
24 friends, they know who they are.

25 So we ask the Court to reject the demand for the

1 overall friend list and the overall liker list as out of  
2 hand. Now, certainly using the Court's enhanced two-step  
3 process from the *DreamHost* case would be better than  
4 nothing, but unless the Court has concluded that there's  
5 probable cause to search the overall list of likers or the  
6 overall list of friends, it shouldn't allow the police to  
7 conduct a search in the hope that conducting a search will  
8 give them reason to think that these people have knowledge  
9 of criminal activity. You can't bootstrap into probable  
10 cause by conducting a search of something you didn't have  
11 probable cause to search in the first places.

12 Now, we're dealing with an administration whose  
13 hostility to dissent, willingness to abuse the ordinary  
14 processes of law to disadvantage critics is increasingly  
15 evident. And we have to worry. Orin Kerr, well known  
16 Fourth Amendment blogger, says that prosecutors across the  
17 country are watching this case to see what the Court does.  
18 And we should worry about giving tools to prosecutors to  
19 carry out crusades against dissenters.

20 Now, we have a legitimate prosecution here, to be  
21 sure. But it may well be one that's subject to abuse to  
22 snoop on peaceful opponents. Now, the prosecution might be  
23 overblown. They're prosecuting 230 people over a handful  
24 of incidents of vandalism and violence, which ought to be  
25 prosecuted. It may well be that they feel they have to cast

1 a wide net to come up with evidence to prosecute all 230  
2 people. But that should not be a basis, if you're weighing  
3 the government's interests against the privacy interests of  
4 peaceful protesters, it shouldn't be a basis for demanding  
5 access to the names of 6,000 people who liked the DisruptJ20  
6 page overall or the thousands who are Facebook friends of  
7 either Macauley or Carrefour.

8 Now, I want to make clear the limits of the  
9 argument I'm making. I argue here only that the overall  
10 list of likes and friends is protected from disclosure.  
11 Facebook users can also like particular posts or indeed  
12 particular comments. Now, I assume the probable cause  
13 showing -- I haven't seen it, but I assume the probable  
14 cause showing was that the Facebook accounts would likely  
15 contain either advocacy or planning for or a celebration  
16 afterwards of, or whatever it might be, the riot activity.  
17 So if in searching the accounts the government finds  
18 particular posts or comments that do this or that link to  
19 other internet sources that do that, certainly the argument  
20 for identifying viewers who liked such a hypothetical post  
21 or comment would be a much stronger argument than identify-  
22 ing everybody who liked the overall page or simply friended  
23 Carrefour or Macauley.

24 THE COURT: Just to go back, I think the likes on  
25 the overall page, the government has withdrawn that request.

1 MR. BORCHERT: That's right, Your Honor. If I  
2 wasn't clear about that, I really have very little interest  
3 in the 6,000 people who liked DisruptJ20.

4 THE COURT: Right.

5 MR. BORCHERT: Or in the friend lists of thousands  
6 of people. If Facebook can remove those when they produce  
7 to us, I'm fine with that. And, frankly, that probably  
8 moots your clients' interests.

9 MR. LEVY: Much of the argument.

10 THE COURT: Right.

11 MR. BORCHERT: Okay.

12 MR. LEVY: Let me make clear, the remainder of the  
13 argument, which is I think we make somewhat the same  
14 argument for the Facebook messages sent by friends to the  
15 accounts for the comments posted by others on the accounts.

16 Now, comments, commenters often discuss among each  
17 other, yes, they are posted to the account, they are not  
18 necessarily seen by the account holder. And in my  
19 experience as a Facebook user, there are often very heated  
20 discussions among commenters in which the account holder is  
21 not participating. It's only on the page, it's only on the  
22 news feed. Now, this is a higher level of participation  
23 than you're liking. But giving access to communications by  
24 third parties also poses a higher likelihood of serious  
25 privacy invasions.

1           So the question is what was the probable cause  
2 showing. Was the probable cause showing that these account  
3 holders had evidence of criminal activity, or was there a  
4 probable cause showing that third parties who sent communi-  
5 cations posted comments on these accounts provide evidence  
6 of this? I don't know what it was, but if there was no  
7 probable cause showing with respect to the comments, then  
8 there's no basis for allowing a search. And I would submit  
9 that allowing a search of those comments would fail the  
10 particular exactitude test of *Zurcher*. The government's  
11 argument apparently is that this evidence is commingled with  
12 files for which there is probable cause. That was their  
13 argument in *DreamHost*. But, Your Honor, that commingling  
14 only exists if you order Facebook to produce those files.

15           Now, if you do allow a search of communications  
16 from anonymous third parties, we urge two things. First of  
17 all, you should make sure that the anonymous third parties  
18 have notice, as *DreamHost* eventually gave notice during the  
19 proceedings before you.

20           Now, I represent only three Does. I was able to  
21 contact these Does. They are intervening in the case. But  
22 the Does who sent particular messages or who posted  
23 particular comments are really best able to address the  
24 Court about how their messages are irrelevant to their  
25 prosecutions and how the disclosure would affect them. And



1 you should make sure that there's a notice procedure, as the  
2 D.C. Court of Appeals required in *Solers v. Doe*. It said  
3 that was one of the fundamental parts of the process.

4 In *DreamHost* the argument was, well, the  
5 government often doesn't want to give notice because it  
6 would interfere with their investigation. But the  
7 government here has said they have no objection to giving  
8 those. So that argument doesn't apply here.

9 Second, to the extent you allow a search, you  
10 should certainly employ the enhanced two-step process that  
11 you adopted in *DreamHost*. Now, the government assures you,  
12 and it assured you today they're committed to the First  
13 Amendment and they're only concerned about rioters. I have  
14 the advantage here, unlike Mr. Roche and Mr. Michelman, of  
15 having sat through the *DreamHost* proceedings in which they  
16 said the same things over and over again. But the  
17 government has never acted as if they respect the First  
18 Amendment.

19 Now, this search warrant was obtained in February.  
20 The government did not have the advantage of the lessons in  
21 *DreamHost* in drawing up that search warrant, but they  
22 responded to the ACLU's motion with a narrow, modest  
23 revision of the warrant, they were really concerned about  
24 the First Amendment. They know what you wanted and insisted  
25 that you do in *DreamHost*, what you dragged out of them in

1     *DreamHost*.

2             THE COURT: I just ordered it. I didn't drag out.

3             MR. LEVY: You made clear to Mr. Borchert at  
4 argument what you expected. And he agreed that the  
5 government would do that. They could have easily come into  
6 court today, they could have filed a paper saying implement  
7 *DreamHost*. But they're not even willing to do that with  
8 respect to the individual accounts.

9             So we think they have no basis for asking you to  
10 treat them as if they care a fig about free speech. Rather,  
11 you should proceed on the assumption that they don't. They  
12 came in here with an overbroad warrant. They continue to  
13 demand enforcement of a broad warrant, and your ruling  
14 should reflect a rejection of that tactic. I suggest that  
15 you deny enforcement altogether and tell them to come back  
16 to court with a proper warrant that can then be evaluated.

17             THE COURT: Thank you.

18             MR. BORCHERT: Thanks, Your Honor. If I can just  
19 respond on a few things.

20             First of all, I think that this dialogue has been  
21 helpful, and it certainly has pulled out one key point,  
22 which is that there's a lot of information that Facebook can  
23 produce that was publicly available information that Facebook  
24 has, that it's preserved, that it's ready to produce to us,  
25 and that none of the intervenors object to having provided to

1 us. We'd ask that our motion to compel as to the publicly  
2 available information just be granted now because it seems  
3 like there is no objection on the part of the parties to that  
4 happening.

5 THE COURT: There doesn't appear to be any  
6 objection. I'm not sure there is any. I just asked for the  
7 settings. And nobody appears to know what the settings are.  
8 So presumably I'm going to get supplemental.

9 MR. BORCHERT: There definitely is publicly  
10 available content.

11 THE COURT: Well, why do you need a warrant then?

12 MR. BORCHERT: Your Honor, we have to have it from  
13 Facebook in order to authenticate it and use it at trial.

14 THE COURT: I understand that. But that's  
15 authenticating at trial. Right?

16 MR. BORCHERT: I'm sorry?

17 THE COURT: You're talking about authenticating it  
18 at trial.

19 MR. BORCHERT: Yes, Your Honor.

20 THE COURT: But this is a search warrant prior to  
21 trial. Why do you need it?

22 MR. BORCHERT: Well, there are -- the first trials  
23 of the defendants are set to begin next month, in November.

24 THE COURT: And I'm not arguing with you. The  
25 warrants have been approved. But presumably you could just

1 subpoena that through Facebook at trial. Correct? It's  
2 public.

3 MR. BORCHERT: If I understand the Court's  
4 suggestion, you're suggesting we send a subpoena for the  
5 information that Facebook is already preserving and already  
6 is required to provide to us under a separate court order?

7 THE COURT: No. I think we're getting tangential.  
8 I'm just saying if it's public, it's public.

9 MR. BORCHERT: Correct, Your Honor.

10 THE COURT: If it is. Again, I don't know if any  
11 of this is public. That's what I'm asking the intervenors.

12 MR. BORCHERT: Am I correct that the intervenors  
13 don't object to providing us with public ----

14 THE COURT: Everybody has said that.

15 MR. LEVY: The problem is Mr. Borchert wants an  
16 order so he can have an order. The problem is with the  
17 mechanics.

18 THE COURT: This is not a conversation. You can  
19 order the transcript. I've heard what they said. They say  
20 they're not objecting. If the information is public, that's  
21 not subject to their objection, the warrant. That's as I  
22 understand their position.

23 MR. BORCHERT: And then on all three, 658, 659 and  
24 660, can Facebook provide to us public information --

25 THE COURT: We're going to ask about that.

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

MR. BORCHERT: -- by next week?

THE COURT: I want your position now; then I'm going to go to Mr. Roche.

MR. BORCHERT: Our position is that Facebook should provide that to us immediately. There's no objection to it. Facebook has it. It's preserved it. It should be easily segregable. It should be provided to us now. That's proper.

THE COURT: We got that.

MR. BORCHERT: Your Honor, you had raised the point about photos. And now if we're talking about things that are on the private side of accounts but within the 90-day window --

THE COURT: Uh-huh.

MR. BORCHERT: -- as to photos, another limitation beyond the 90-day limitation would be we could limit it to photos of events that occurred on January 20th.

THE COURT: Okay.

MR. BORCHERT: That's the offense conduct that's described in the search warrant.

THE COURT: And how would that be discerned and by whom?

MR. BORCHERT: Well, I'm not sure if we can discern from the subject matter, but we can certainly have the date. Nothing that occurred on January 20th could have

1       been posted before January 20th. So I think if the date  
2       range is just January 20th through the search warrant on  
3       February 9th for photos, that should limit that universe.

4               THE COURT: Thank you.

5               Mr. Roche, you can do that, as I understand it.  
6       Is that right? The date range on the photos?

7               MR. ROCHE: Yes, sir. I believe so.

8               THE COURT: Thank you.

9               MR. BORCHERT: Okay. I'll make a point, just one  
10      thing I want to call the Court's attention to on the motion  
11      to intervene.

12              THE COURT: Yes.

13              MR. BORCHERT: The *Tattered Cover* case that the  
14      ACLU has cited, I'm sort of -- it's a puzzling case in some  
15      respects, but I don't think it supports the proposition that  
16      they're saying it does, that there is a constitutional right  
17      to challenge a search warrant pre-enforcement. Basically  
18      what the Colorado Supreme Court does in that case is they  
19      explicitly state that under federal law there would not be  
20      such a right, but then rely upon Colorado's own constitution  
21      to provide an even greater level of protection. And they  
22      say at 1056 in the opinion, thus we find the protections  
23      afforded to fundamental expressive rights by federal law --

24              THE COURT: Slow down, please.

25              MR. BORCHERT: -- to be inadequate.

1 Pardon me. Very well, Your Honor.

2 In that light, Your Honor, I'm not sure that  
3 *Tattered Cover* -- there aren't any cases where a pre-  
4 enforcement challenge, pre-execution challenge has been  
5 permitted by the Court on the merits.

6 Final point, Your Honor. I feel like much gets  
7 made of this distinction between when are we calling it a  
8 subpoena and when are we calling it a warrant. And I want  
9 the record to be clear on this. The government has not  
10 taken the position here or in any other federal court that  
11 an SCA warrant is a subpoena. What the government has said  
12 is that it is served like a subpoena, because it is sent to  
13 the recipient of the warrant. And the person who receives  
14 it has to compile some records and give them back to the  
15 government. But that does not mean that it is effectively a  
16 warrant. Obviously a warrant requires a finding of probable  
17 cause, the approval of a magistrate. It's not something  
18 like a subpoena that can just be issued without any sort of  
19 prior court authorization.

20 That's all I have, Your Honor.

21 THE COURT: Can I ask you to address a couple of  
22 matters.

23 MR. BORCHERT: Sure.

24 THE COURT: The suggestion was made that you  
25 submit your search protocol directly to Facebook, assuming

1 they can run that search protocol, and thereafter you can  
2 make supplemental, you know, depending on what you got.

3 What is your position with regard to that?

4 MR. BORCHERT: With regard to that, it seems like  
5 that's a cumbersome process. I'm not sure that it adds  
6 much, because ----

7 THE COURT: Well, it's been suggested by the  
8 intervenors.

9 MR. BORCHERT: Right.

10 THE COURT: And I'm just trying to get your  
11 position about whether or not -- have you had time to think  
12 about that or not?

13 MR. BORCHERT: I know we thought about it in  
14 connection with the *DreamHost* matter. Our position is that  
15 the searches are best done when the government themselves  
16 does the search. Facebook is not the agent. Facebook, they  
17 would then have to provide the witnesses. It's better if  
18 it's the government's witness.

19 THE COURT: Can I ask you this. Do you have in  
20 your mind, the government have in its mind, how it's going  
21 to go about a search? Is it going to be key word or just  
22 some other process, or just a physical search?

23 MR. BORCHERT: It's probably just a physical  
24 front-to-back search. On 658 and 659 --

25 THE COURT: The personal accounts.



1 MR. BORCHERT: -- the personal accounts, that's  
2 just a front-to-back scroll through, find what you need, and  
3 move on. On 660 obviously there's going to be a different  
4 protocol.

5 THE COURT: Okay. So that's what I was asking  
6 you. If you were going to do a fundamental search, you  
7 wouldn't have a front-to-back search. You wouldn't have  
8 search protocols; you'd just have a search, review of the  
9 material.

10 MR. BORCHERT: Correct.

11 THE COURT: Can I ask you one more time to explain  
12 with regard to the individual accounts why you need to look  
13 at them, the likes -- you've limited the photos, but the  
14 likes, the groups -- before you determine that there's any  
15 evidence of criminal activity in the account.

16 MR. BORCHERT: Well ----

17 THE COURT: Do you understand what I mean?  
18 Suppose you go through the accounts and there's no evidence  
19 of criminal activity.

20 MR. BORCHERT: Right.

21 THE COURT: Are you suggesting that the likes and  
22 the groups would be independent evidence of criminal activity?

23 MR. BORCHERT: No. No, Your Honor. I expect  
24 we'll go through the account. Let's say hypothetically we  
25 find a post about how to dress in black bloc for the riot.

1 THE COURT: Correct.

2 MR. BORCHERT: People who like that post, those  
3 likes are then evidence of criminal activity.

4 THE COURT: I don't want to be granular here, but  
5 I guess I have to. Couldn't we contemplate incorporating a  
6 two-step process with regard to the likes and the friends?  
7 In other words, if, for example, you ran across that  
8 comment, then you would be entitled. I think even the  
9 intervenors admit you would be entitled to the people who  
10 liked that comment.

11 Do you understand what I'm saying?

12 MR. BORCHERT: Correct. Could we do it in two  
13 steps. First, identify the posts that are clearly criminal  
14 activity, and then only provide us with the likes for those  
15 posts.

16 THE COURT: Correct.

17 MR. BORCHERT: We could proceed in such a fashion.

18 THE COURT: Okay.

19 MR. BORCHERT: I'm not opposed to us working that  
20 way. Again, I don't know if Facebook can provide the  
21 information that way.

22 THE COURT: Mr. Roche is taking notes. And he's  
23 going to get back to me on everything Facebook can and  
24 cannot do.

25 MR. BORCHERT: And, again, we're only talking

1 about the non-public information.

2 THE COURT: Correct.

3 MR. BORCHERT: And just to be clear, a like in  
4 itself is not evidence of criminal activity. The government  
5 is not saying that.

6 THE COURT: Yeah. By itself.

7 MR. BORCHERT: By itself a like is not. And just  
8 because a person likes a post about a black bloc doesn't  
9 mean that person has committed a crime.

10 THE COURT: Correct. Also, you are or are not  
11 looking for friends?

12 MR. BORCHERT: Well, the overarching case is a  
13 conspiracy case.

14 THE COURT: Correct.

15 MR. BORCHERT: So particular friend groups might  
16 be probative or might be evidence that we would seize.

17 THE COURT: I see.

18 MR. BORCHERT: But we do not have an interest  
19 overall in just obtaining someone's friend list.

20 THE COURT: Is there any way for you to, again, do  
21 a two-step process on the friends or groups?

22 And do you understand what I mean by a two-step?

23 MR. BORCHERT: No, I understand exactly what the  
24 Court means. I'm trying to imagine how we could do it. We  
25 would in the first instance only receive the list of friends

1 -- or pardon me. Not the list of friends. Just the sheer  
2 number of friends. And then we would only receive -- then  
3 once we had identified posts that relate to criminal  
4 activity, then we would get the friends that had liked that  
5 post.

6 THE COURT: Correct.

7 MR. BORCHERT: And those would be the only ways we  
8 would actually get the friends. I think that would work.

9 THE COURT: Okay. That's good to know. Because  
10 that's what essentially Mr. Levy was suggesting. So I  
11 appreciate that.

12 And can I ask you to address the suggestion of a  
13 taint team.

14 MR. BORCHERT: I'm not sure that a taint team is  
15 either necessary or ----

16 THE COURT: A taint team being a separate set of  
17 prosecutors who are not involved in the prosecution of the  
18 case, but could review it as professionals and then turn  
19 over the information to the identified prosecutors in the  
20 case.

21 MR. BORCHERT: Your Honor, I think that having a  
22 type of filter team or a separate search team, I'm not sure  
23 that that -- I'm not sure what comfort that would give.

24 THE COURT: I raised that issue. It's still the  
25 government.

1 MR. BORCHERT: You would still have a team of  
2 prosecutors going through the account. Aside from making  
3 the search cumbersome, I'm not sure what advantage it gains.

4 THE COURT: Okay. Let me just check my notes for  
5 anything else.

6 Mr. Roche, did you get all the variations we  
7 discussed, and you're going to be able to submit to the  
8 Court what Facebook can and cannot do?

9 MR. ROCHE: I believe so, sir.

10 THE COURT: Can you check with the parties to make  
11 sure.

12 MR. ROCHE: Yes. We'll coordinate.

13 THE COURT: And get their lists of requests and  
14 submit what you can and cannot do.

15 MR. ROCHE: Certainly, Your Honor.

16 THE COURT: Anything else?

17 MR. MICHELMAN: Can I just make three brief points  
18 in response. One, about the propriety of intervention and  
19 what cases like *Tattered Cover* show. We're not claiming  
20 that there's a well established rule actually either way,  
21 either that we must be allowed to intervene or that we  
22 cannot be allowed to intervene. The authority just isn't  
23 there for either one. But what *Tattered Cover* and some of  
24 these cases show, even what *DreamHost* showed, is that it is  
25 workable.

1           This is not a situation as the Eastern District of  
2 Wisconsin case cites suggested; that the cops are at the  
3 door, and somebody is barring the door and saying, wait,  
4 wait, wait, I get the opportunity to run to court and hold  
5 up the works while somebody else flushes the drugs down the  
6 toilet or what have you. The information is preserved.  
7 The analogies to *Tattered Cover* and the subpoena process and  
8 to *DreamHost* show that it's workable, and then it's up to  
9 this Court under rule 57 to fashion procedures in the  
10 absence of a rule that best serve the interests of justice.

11           THE COURT: In that regard, are you aware of any  
12 cases that allow for what I describe as a limited inter-  
13 vention? In other words, I'd give you standing to submit  
14 positions and object to what the Court will call its  
15 minimization program, but decline standing with regard to  
16 the challenge of whether or not, for example, there's  
17 probable cause for the warrant. Because that process has  
18 occurred. That would just be redoing that process. And I'm  
19 not inclined to do that.

20           MR. MICHELMAN: I'm not aware of any cases of that  
21 specific type. I think what we're saying here is obviously,  
22 if we're allowed to intervene, our arguments are still only  
23 going to be as persuasive on the merits as they are  
24 supported by law.

25           THE COURT: No, I understand. I was just asking

1 you if you're aware of any court that allowed that.

2 MR. MICHELMAN: I'm not. Two points.

3 MR. LEVY: I think -- I can't cite a case in the  
4 criminal context, but to the extent that the criminal rules  
5 allow the Court to borrow from the civil context, what  
6 you're describing sounds an awful lot like the distinction  
7 between intervention as of right and permissive interven-  
8 tion. And in permissive intervention, in the federal courts  
9 at least -- I don't practice very often in this court --  
10 permissive intervention is often allowed for a limited  
11 purpose.

12 THE COURT: You might want to look at that alter-  
13 native.

14 MR. MICHELMAN: Right. In fact, that is true with  
15 respect to the unsealing of documents. The parties are  
16 allowed to intervene in a matter for the sole purpose of  
17 seeking documents that are under seal or not available to  
18 them, but not making arguments as to the merits of the  
19 action. That's one example, if that's the analogy.

20 THE COURT: And your other two brief points? I  
21 think you said they were going to be brief.

22 MR. ROCHE: Your Honor, if I may, I believe  
23 there's a Third Circuit case, *In Re Search of Electronic*  
24 *Communications*, 802 F.3d 516, that might be relevant to the  
25 issue of ----

1 THE COURT: My law clerk just took that down. So  
2 thank you. We'll look at that.

3 MR. MICHELMAN: Two other brief points, Your  
4 Honor. It seems to me that submitting a search protocol to  
5 Facebook would not make Facebook the agent of the government  
6 any more than submitting a date range to Facebook would make  
7 Facebook the agent of the government. In each case Facebook  
8 would be directed to produce particular information. And  
9 it's not a difference in kind. It's just a difference in  
10 complexity.

11 THE COURT: Exactly. That may be an argument you  
12 want to make to Facebook.

13 MR. MICHELMAN: I don't think there's anything  
14 wrong with it inherently.

15 And my last comment is just to highlight the point  
16 that Mr. Borchert said. Of my client's accounts, 658 and  
17 659, Mr. Carrefour's and Ms. Macauley's accounts, his vision  
18 for the search is what he called a front-to-back search.  
19 That's the opposite of particularity. That is over-breadth.  
20 That is general. That is a fishing expedition. And that is  
21 why we're here today and our chief concern.

22 THE COURT: Any last remarks, Mr. Borchert?

23 MR. BORCHERT: Thank you. If I may, Your Honor,  
24 on the subject of search terms, a point I left out, if we  
25 were to provide a protocol to Facebook, just for the record,



1 that would inherently involve search terms, a list of search  
2 terms. It can be law enforcement sensitive. That's why,  
3 for example, in the *DreamHost* matter we will only be  
4 submitting that under seal and ex parte. We would have the  
5 same considerations with releasing that to Facebook.

6 THE COURT: I was surprised when you said  
7 otherwise because it was different than your position in  
8 *DreamHost*.

9 Any final remarks?

10 MR. LEVY: Thank you, Your Honor.

11 THE COURT: I'll await your memorandum, your  
12 supplemental memorandum on limited intervention, and get the  
13 order out as soon as I can.

14 MR. LEVY: Thank you, Your Honor.

15 MR. BORCHERT: Thank you, Your Honor.

16 THE COURT: And with regard to ----

17 MR. MICHELMAN: Public versus private. So you  
18 want from us limited intervention and public versus private  
19 settings.

20 THE COURT: Settings. That's right.

21 And, Mr. Roche, if, for example, the account  
22 holders indicate that or agree, and if the government should  
23 disagree, I can have a hearing on what's public versus  
24 private, and we may even do a courtroom demonstration.

25 Is there any reason you can't get or segregate the

1 so-called public information to the government?

2 MR. ROCHE: Not that I'm aware of, but that's  
3 something else I'll follow up on.

4 THE COURT: Okay. Can you be in contact with the  
5 government if there are issues with that?

6 MR. ROCHE: Certainly.

7 THE COURT: Thank you very much for your arguments  
8 and pleadings.

9 (Proceedings concluded at 3:46 p.m.)

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

I, SUSAN G. WALKER, an Official Court Reporter in and for the Superior Court of the District of Columbia, hereby certify that at said time and place I reported in my official capacity by means of machine shorthand all testimony adduced and other oral proceedings had *In The Matter of* FACEBOOK ACCOUNT DISRUPTJ20, 2017 CSWSLD 660; FACEBOOK ACCOUNT LACYMACAULEY, 2017 CSWSLD 659; FACEBOOK ACCOUNT LEGBA.CARREFOUR, 2017 CSWSLD 658, in said court on the 13th day of October, 2017.

I further certify that the foregoing pages, 1 through 66, constitute the official transcript of said proceedings, as taken from my shorthand notes, and that it is a correct and accurate record of said proceedings.

WITNESS my hand at Washington, D.C., this 16th day of October, 2017.



---

SUSAN GLENN WALKER, FCRR, RPR  
Official Court Reporter