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**IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE DEPARTMENT
SALT LAKE COUNTY, STATE OF UTAH**

In re:

Utah House of Representatives
Special Investigative Committee
Subpoena of Softwise, Inc.,
Dated October 4, 2013

**MEMORANDUM IN SUPPORT OF
THE MOTION OF THE SPECIAL
INVESTIGATIVE COMMITTEE
UNDER § 36-14-5 TO COMPEL
OBEDIENCE TO A SUBPOENA
ISSUED TO SOFTWISE, INC. AND IN
OPPOSITION TO MOTION TO
QUASH**

Civil No. 130907548

Judge: Su Chon

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PRELIMINARY STATEMENT

This combined motion and opposition is brought by the Special Investigative Committee of the Utah House of Representatives (the “Special Committee” or “Committee”), which the House convened in July of this year to conduct an inquiry into allegations of improper conduct by Attorney General John Swallow. On November 21, 2013, Attorney General Swallow resigned from office effective at 12:01 a.m. on December 3, 2013. That resignation does not, however, affect the Special Committee’s duty under its authorizing resolution to investigate and to report to the House findings of fact about the matters investigated and the need, if any, for legislation, including legislation that might seek to avoid similar situations in the future.

In conducting its inquiry, the Special Committee has considered it necessary to subpoena certain documents from Softwise, Inc. (“Softwise”), a Provo-based firm specializing in providing software systems to support payday lenders, internet lenders, check-cashing firms, and other financial services businesses. The Committee’s subpoena provided a deadline of October 21, 2013. To date, Softwise has not produced even a single document in response. On November 7, two days after the Committee publicly authorized its counsel to seek a judicial order compelling compliance, Softwise finally moved to quash the subpoena. The Committee now responds to that motion and, in addition, cross-moves for an order compelling compliance with the subpoena.

The Committee has authority to issue, and if necessary seek this Court’s assistance to enforce, subpoenas for relevant information directed to recalcitrant parties like Softwise. The legitimacy of legislative investigations, and the attendant legislative power to obtain evidence, is a bedrock principle of representative government, as old as the Nation itself. Unlike ordinary

discovery disputes arising between private parties, here one branch of government seeks assistance from its constitutional co-equal in exercising a core legislative function: the power to investigate. Although the statute authorizing legislative subpoenas does not provide a completely unfettered power to compel, the “unreasonable or oppressive” standard is narrow. Absent exceptionally compelling circumstances, this Court should defer to the legislative branch in the exercise of its constitutional function.

The Court need not, however, simply rely on that worthy principle of deference. Here, there is a clear basis in the public record establishing the need for and relevance of the documents under subpoena. Before becoming Deputy Attorney General in December 2009, Mr. Swallow was employed by Softwise, and was registered with the State as the company’s lobbyist. Even after assuming his government position, he continued to receive payments from Softwise’s principal. Those payments, and the circumstances surrounding them, are at the core of one set of public allegations against Attorney General Swallow, and remain a part of the Committee’s investigation. The discovery of a major loss of emails and other electronic data from Attorney General Swallow’s various personal and official electronic devices has made the Committee’s need to seek relevant evidence from other sources like Softwise even more acute.

The Court should reject Softwise’s unprecedented proposals to either quash the Committee’s subpoena or to bind the legislature with a judicially enforced protective order. The Committee is mindful that there is value in protecting information of a legitimately confidential nature from unnecessary public disclosure. The court should nevertheless defer to the legislative branch’s determination as to the appropriate balance between the needs of a serious

investigation of the State’s chief legal officer and the protection properly afforded business or personal information. Before Softwise initiated this litigation, the Committee offered very generous stipulated terms to Softwise under which it could comply with the subpoena yet protect its interests in confidentiality. Softwise’s flat rejection of that approach raises the question whether its asserted confidentiality concerns are truly motivating its reluctance to cooperate. Notwithstanding Softwise’s contumacious behavior, the Committee is still prepared to enter into that stipulation. The Court should order Softwise to comply with the subpoena.

FACTUAL BACKGROUND

A. The Formation of the Special Committee by the Utah House of Representatives

1. Shortly after he was sworn into office on January 7, 2013, Attorney General Swallow became the subject of public allegations of potential illegal, improper, or unethical conduct.

2. On July 3, 2013, the Utah House of Representatives passed a resolution creating the Special Committee and instructed it to investigate allegations of alleged wrongdoing by Attorney General Swallow and other matters.¹

3. The Special Committee is specifically charged with “investigat[ing] allegations against the current attorney general,” investigating “matters related to the current attorney

¹ H.R. 9001 (enacting House Rule HR3-1-202).

general that arise as part of the investigation,” and “report[ing] to the House findings of fact about the matters investigated and the need, if any, for legislation.”²

4. The investigation encompasses allegations of wrongdoing dating to the time Attorney General Swallow joined the Office as Chief Deputy Attorney General in December 2009.³

B. The Relationship of Softwise to the Matter Under Investigation.

5. On or about January 12, 2013, the Salt Lake Tribune published allegations by Jeremy Johnson that Attorney General Swallow and Richard M. Rawle, a director of Softwise, were involved in an attempted bribe of U.S. Senator Harry Reid to assist Jeremy Johnson’s company, I Works, Inc. (“I Works”). Johnson alleged that Attorney General Swallow “brokered a deal” between Johnson and Rawle to get Senator Reid to halt an investigation of I Works by the Federal Trade Commission.

6. Rawle, the Softwise director, died on December 8, 2012.

7. The Salt Lake Tribune also published a sworn declaration of Rawle, dated December 5, 2012, in which Rawle alleged that Attorney General Swallow introduced Johnson to Rawle for Rawle’s “lobby contacts” and not for the purpose of attempting to bribe Senator Reid. In the declaration, Rawle alleged that Rawle, through an entity called RMR Consulting, LLC, paid \$23,500 to P-Solutions, LLC (a family entity affiliated with Attorney General

² HR3-1-202(7).

³ HR3-1-202(8)(a).

Swallow), as compensation for consulting work. Rawle's declaration alleged that the compensation was unrelated to Attorney General Swallow's introduction of Johnson to Rawle.

8. In connection with Johnson's allegations, a transcript of a recorded April 30, 2012 conversation between Johnson and Attorney General Swallow was publicly released. In the transcript, Johnson stated that Attorney General Swallow had sent an email from a Softwise email address to Johnson regarding money that would go to Senator Reid. Attorney General Swallow and Johnson discussed that "Richard" was at Softwise, and Johnson stated in the transcript that "Richard" would therefore have the email "housed" there.⁴

9. The Committee has confirmed that Attorney General Swallow was previously employed by Softwise, and at some point between July 2007 and January 2010, was registered as a lobbyist for Softwise. In that context, he worked with Rawle immediately before joining the Office of the Attorney General as Chief Deputy Attorney General and maintained a Softwise email account during his tenure as a Softwise employee.

10. The Special Committee further has reason to believe that Attorney General Swallow continued to use an email account maintained for him by Softwise after he became a full-time employee of the Attorney General's office.

11. The Special Committee believes that Softwise is in possession of additional documents, including email communications, that are relevant to the Special Committee's investigation.

C. The October 4, 2013 Softwise Subpoena

⁴ See Transcript of Swallow/Krispy Kreme Meeting at 32, 47, attached as Ex. A.

12. The Special Committee issued a subpoena to Softwise on October 4, 2013 which required Softwise to produce all responsive documents by October 21, 2013.

13. The subpoena seeks communications between Attorney General Swallow, former Softwise director Rawle, and Softwise personnel on the one hand, and certain identified persons and entities on the other. The Special Committee has reason to believe that all of these individuals, through Softwise email accounts, communicated about matters relevant to the allegations of misconduct being investigated by the Special Committee.

14. To narrow the scope of documents requested, the Special Committee seeks under the subpoena only those communications with certain individuals and entities who communicated or who may have communicated with Attorney General Swallow, Richard M. Rawle or other Softwise personnel regarding matters related to the allegations of misconduct by Attorney General Swallow being investigated by the Special Committee. Specifically, and according to public sources:

- a. Jeremy Johnson has alleged that Attorney General Swallow was involved in an attempted bribe of United States Senator Harry Reid to assist Johnson's company, I Works.⁵
- b. Jay Brown, the law firm Brown, Brown & Premsrirut, Tim Rupli, and/or the firm T.R. Rupli & Associates, have allegedly been retained through Rawle to assist I Works.⁶
- c. Marc Sessions Jenson has alleged that Attorney General Swallow was involved in attempts to extort Jenson.⁷

⁵ See Tom Harvey & Robert Gehrke, *Indicted businessman: Utah A.G. Tied to Alleged Scheme*, Salt Lake Tribune, Jan. 12, 2013.

⁶ See Robert Gehrke, *Money Trail in John Swallow Saga Leads to Friend of Sen. Harry Reid*, Salt Lake Tribune, Jan. 28, 2013.

- d. Tim Lawson and Rob Stahura allegedly have information or were involved in the claims regarding Attorney General Swallow's role in attempts to extort Jensen.⁸
- e. Jason Powers has advised Attorney General Swallow's campaign and has specific knowledge of Attorney General Swallow's fundraising efforts and allegations of improper campaign activities by Attorney General Swallow.⁹
- f. Aaron Christner and Ryan Jensen are business partners who may also have knowledge of alleged improper campaign activities by Attorney General Swallow.¹⁰
- g. Allen Young, Tyler Young, and Drew Downs are or have been involved with Chaparral Limestone and Cement Company, LLC, a project for which Attorney General Swallow allegedly provided consulting services while in office but was paid by RMR Consulting LLC,¹¹ an entity related to Rawle. The payments to the Attorney General were initially through funds provided by Johnson.¹²
- h. Dennis Ickes and David Colvin are or have been involved with Attorney General Swallow and Chaparral Limestone and Cement Company, LLC, the company for which Attorney General Swallow allegedly consulted while an employee of the Attorney General's Office, during the relevant time period.¹³

15. Based on these and other facts, the Special Committee believes that all of the requested communications are relevant and pertinent to its investigation.

D. Softwise's Response to the October 4, 2013 Subpoena

⁷ See Robert Gehrke, *Shurtleff, Swallow Lived it up on my Dime, Says Convicted Fraudster*, Salt Lake Tribune, May 8, 2013.

⁸ See Dennis Romboy, *Did A.G. John Swallow Play a Role in Accused Scammer's Plea Deal?*, June 12, 2013; see also Robert Gehrke, *Shurtleff, Swallow Lived it up on my Dime, Says Convicted Fraudster*, Salt Lake Tribune, May 8, 2013.

⁹ See Robert Gehrke, *Swallow Suggested Cash in Exchange for Protection, Sources Say*, Feb. 12, 2013.

¹⁰ See Eric S. Peterson, *Campaign Confidential: AG Candidate Talks Of Taking Over Consumer Protection*, City Weekly, May 31, 2012.

¹¹ See Robert Gehrke, *Money Trail in John Swallow Saga Leads to Friend of Sen. Harry Reid*, Salt Lake Tribune, Jan. 28, 2013.

¹² See Robert Gehrke, *Attorney: Swallow's Fee Was for Consulting*, Salt Lake Tribune, Jan. 17, 2013.

¹³ See *id.*

16. The Special Committee's October 4, 2013 subpoena demanded the production of documents by October 21, 2013.

17. Instead of producing documents, counsel for Softwise requested additional terms for its compliance with the subpoena and, beginning on October 10, 2013, counsel for the Special Committee and Softwise negotiated in good faith over these proposed additional terms.

18. Softwise did not produce any materials, whether subject to their stated confidentiality concerns or not, by October 21, 2013 as required by the subpoena. It did not seek an extension or tolling agreement or move to quash or otherwise seek relief before October 21, 2013.

19. As an accommodation during negotiations, counsel for the Special Committee proposed that Softwise "(i) produce all materials in its possession that are responsive to the Subpoena and that do not raise confidentiality concerns, and (ii) make available for review at [Softwise's counsel's] office otherwise responsive materials that Softwise believes raise confidentiality concerns so we can determine if those materials are, in fact, material to the investigation."¹⁴ As part of that proposal, the Special Committee offered to stipulate in writing that it would not take possession of assertedly confidential documents in the absence of an agreement or a subsequent court ruling.¹⁵

¹⁴ Letter from Samidh Guha to Samuel Alba (Oct. 28, 2013), attached as Ex. B.

¹⁵ *See id.*

20. Softwise rejected the Committee's proposed accommodation. Shortly thereafter, counsel for the Special Committee confirmed in writing that Softwise was in default, having failed to produce any materials pursuant to the subpoena requirements by the return date.¹⁶

21. On November 5, 2013, the Special Committee held a public hearing to discuss the state of the investigation with its counsel and lead investigator.

22. During the hearing, the Special Committee was advised that significant swaths of potentially responsive data in the possession of Attorney General Swallow or the Attorney General's Office were missing from various electronic devices maintained by him and the Office. The absence of email and other responsive data that had been in the possession of Attorney General Swallow or the Attorney General's Office significantly increases the importance of the Committee being able to access the records of other individuals who may have communicated regarding the matters under investigation.

23. At the hearing, the Special Committee was advised that Softwise was in default on the legislative subpoena issued to it and in fact had not produced any materials or sought judicial or other relief from its obligations under the subpoena. The Special Committee passed unanimously a motion instructing its counsel to seek judicial intervention to compel Softwise's compliance with the subpoena.

24. On November 7, 2013, two days after the Special Committee's public hearing, Softwise moved this Court to quash or, in the alternative, for entry of a protective order.

¹⁶ *See id.*

25. To date, Softwise has failed to produce a single document in response to the subpoena.

STATUTORY BACKGROUND

To enable the Special Committee to address fully the serious allegations made against Attorney General Swallow, Utah Governor Gary Herbert on July 12, 2013 called the Utah Legislature into special session to consider amendments to portions of the Utah Code governing legislative investigations, and certain other matters.¹⁷ During the special session, the Legislature adopted, and the Governor signed into law, amendments to the statutory provisions governing the issuance of subpoenas by the legislature. *See* Utah Code. Ann. §§ 36-14-1 *et seq.*¹⁸

Under these longstanding provisions, as recently amended, the Chair of the Special Committee is authorized to issue legislative subpoenas, *see* Utah Code Ann. § 36-14-2(1)(g), and in so doing may “administer an oath or affirmation” and “take evidence,” *id.* § 36-14-2(2). The Special Committee may subpoena either live testimony or the production of documents and electronically stored information. *See id.* § 36-14-3. A valid subpoena must contain the name of the legislative body or office on whose behalf the subpoena is issued; include the signature of the authorized issuer; and command the person or entity to whom the subpoena is addressed (i) to appear and testify, (ii) to produce documents and electronically stored information, or (iii) both. *See id.*

¹⁷ *See* Press Release, Governor Calls Special Legislative Session (July 12, 2013), *available at* www.utah.gov/governor/news_media/article.html?article=9117.

¹⁸ Title 36, Chapter 14, “Legislative Subpoena Powers,” was enacted in 1989. 1989 Utah Laws 438-439. Even before that statute was enacted, and routinely since 1989, legislative entities have issued subpoenas to obtain information necessary for the Legislature to fulfill its constitutional functions, and those subpoenas have generally been complied with.

A person or entity who fails to comply with a legislative subpoena issued by the Special Committee may be held in contempt of the Legislature, and is also subject to court-imposed sanctions. *See* Utah Code Ann. § 36-14-5(2). “When the subject of a legislative subpoena disobeys or fails to comply with the legislative subpoena,” the Special Committee is authorized to “file a motion for an order to compel obedience to the subpoena with the district court,” *id.* 36-14-5(2)(a)(i), and the Court then has authority to “order the person named in the subpoena to comply with the subpoena,” *id.* § 36-14-5(2)(b)(ii). “[T]he court shall expedite the hearing and decision on the motion” to compel obedience with a legislative subpoena. *Id.* § 36-14-5(2)(b).

In addition, the target of a legislative subpoena may “petition a district court to quash or modify the subpoena at or before the time specified in the subpoena for compliance[.]” Utah Code § 36-14-5(3)(a). The court may modify or quash a subpoena if it “is unreasonable or oppressive[.]” *Id.* § 36-14-5(3)(c). The Special Committee may respond to a motion to quash with a motion to compel, for contempt, or for other relief. *See id.* § 36-14-5(3)(b). Any party aggrieved by a decision of a court related to a motion to quash “may appeal that action directly to the Utah Supreme Court.” *Id.* § 36-14-5(5).

ARGUMENT

The refusal by Softwise to comply with a lawful and reasonable legislative subpoena gravely impedes the ability of the Special Committee to fulfill its important mandate to investigate allegations of misconduct against Attorney General John Swallow. The Special Committee has broad authority to subpoena the communications in question, and its subpoena – which is authorized by statute, issued for a concededly valid legislative purpose, and relevant to

the issues the Committee is investigating – is neither unreasonable nor oppressive. This is particularly true since Softwise has represented that it has already collected and reviewed all responsive materials, meaning that Softwise’s compliance entails merely transferring the reviewed materials to the Special Committee. The Committee has offered, and is still willing to enter into, a stipulation that provides adequate protection to any valid confidentiality concerns. Accordingly, this Court should compel Softwise’s full compliance with the terms of the Special Committee’s October 4 subpoena.

A. The Utah Legislature Has Long Possessed Broad Powers to Investigate Allegations Of Official Misconduct By State Officials Through Compulsory Process

1. The Legislature’s inherent investigatory powers.

It is a fundamental and undisputed principle of constitutional law that “the power to investigate is inherent in the power to make laws.” *Eastland v. U. S. Servicemen’s Fund*, 421 U.S. 491, 504 (1975); *see McGrain v. Daugherty*, 273 U.S. 135, 174-76 (1927) (investigation is “a necessary and appropriate attribute of the power to legislate”). Since before the Nation’s founding, such “[i]nvestigations, whether by standing or special committees, [have been] an established part of representative government.” *Tenney v. Brandhove*, 341 U.S. 367, 377-78 (1951). This power, which belongs to State legislatures as well as to Congress, *see McGrain*, 273 U.S. at 161, stems from the basic principle that “[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.” *McGrain*, 273 U.S. at 175; *see* Norman J. Singer & J.D. Shambie, 1 Sutherland Statutory Construction § 12:1 (7th ed. 2008) (“Sutherland”).

The legislature’s investigatory power, moreover, “is broad,” *Watkins v. United States*, 354 U.S. 178, 187 (1957), extending to any subject over which constitutional legislation “could be had,” *id.* 177-78; *see* 1 Sutherland § 12:5 (“Because of the wide range of legislative powers, *** it would be difficult to show that a particular demand for information is beyond the legislature’s power.”). This power takes on heightened importance when the legislature is investigating Executive Branch misconduct. *See Watkins*, 354 U.S. at 187 (recognizing “the danger to effective and honest conduct of the Government if the legislature’s power to probe corruption in the executive branch were unduly hampered”). Coupled with this broad power, moreover, is the ability of the legislature to seek evidence from those who possess it – including, when necessary, through compulsory process. *See Eastland*, 421 U.S. at 504-505 (“The issuance of a subpoena pursuant to an authorized investigation is similarly an indispensable ingredient of lawmaking[.]”). “The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.” *Barenblatt v. United States*, 360 U.S. 109, 111-112 (1959).

To be sure, the investigatory power, though broad, is not “unlimited[;] [i]ts boundaries are defined by its source.” *Eastland*, 421 U.S. at 505. The Utah legislative subpoena statute itself, for example, provides that a court may modify or quash a legislative subpoena if it finds it to be “unreasonable or oppressive.” Utah Code Ann. 36-14-4(3)(c). But, against the backdrop of the legislature’s longstanding and inherent authority to investigate, and considering fundamental separation-of-powers principles, the role of the judiciary in reviewing legislative subpoenas, including under the “unreasonable or oppressive” standard, is necessarily “narrow.”

Eastland, 421 U.S. at 506; *see Hutcheson v. United States*, 369 U.S. 599, 618-619 (1962) (courts should not decide whether a “congressional committee should be deemed to have acquired sufficient information for its legislative purposes”).

2. *The Special Committee’s investigatory judgment should be respected.*

Although no court in this State has yet construed the scope of the legislative investigatory power or analyzed the meaning of “unreasonable or oppressive” in the legislative subpoena statute, Utah Code Ann. § 36-14-5(3)(c), courts in other jurisdictions generally defer to the legislative branch when they evaluate legislative subpoenas, testing only whether they were statutorily authorized, issued for a valid legislative purpose, and reasonably pertinent to the focus of the inquiry. *See Wilkinson v. United States*, 365 U.S. 399, 409 (1961); *Hutcheson*, 369 U.S. at 618-619; *see also, e.g., Connecticut Indem. Co. v. Superior Court*, 23 Cal. 4th 807, 813-14 (2000); *Garner v. Cherberg*, 111 Wash. 2d 811, 817-18 (1988); *State ex rel. Joint Comm. of Gov’t & Fin. of W. Virginia Legislature v. Bonar*, 159 W. Va. 416, 422 (1976).

The Utah courts should adopt a similarly deferential standard. The Supreme Court has in the past specifically “decline[d] to interfere with or second-guess the action of the House of Representatives” where it was acting within its constitutional authority. *State v. Evans*, 735 P.2d 29, 32 (Utah 1987) (rejecting challenge as to qualifications of House members). Moreover, the Utah Constitution embodies a particularly potent separation-of-powers principle, *see Utah Const. Art. V, § 1*, which “requir[es] courts to defer to relevant legislative determinations” and thereby “respect the legislature’s important role in our constitutional system of government.” *Spackman ex rel. Spackman v. Bd. of Educ. of Box Elder Cnty. Sch. Dist.*, 16 P.3d 533, 539 (Utah 2000).

Indeed, Utah courts have observed that “[h]armonious cooperation among the three branches of government [is] fundamental to our system of government.” *Jones v. Utah Bd. of Pardons & Parole*, 94 P.3d 283, 288 (Utah 2004) (citation omitted).

Accordingly, the question whether a legislative subpoena is “unreasonable or oppressive,” Utah Code Ann. § 36-14-5(3)(c), is properly interpreted as incorporating the limited judicial review consistently employed in federal and other state courts – namely, reviewing only whether the subpoena was authorized, valid, and pertinent.

**B. Softwise Should Be Ordered to Obey The Special Committee’s Subpoena,
Which Is Authorized, Valid, Pertinent, and Reasonable**

The subpoena in question falls comfortably within the Special Committee’s constitutional and statutory authority and should be enforced under Utah Code § 36-14-5(2)(b)(ii).

In considering whether to compel production, the Court should be aware of two important considerations. First, pursuant to the House’s request, the Committee has undertaken a rigorous examination of the serious allegations against Attorney General Swallow, and the legislature has authorized the Committee to identify information that it needs to serve the public interest with respect to those allegations. The Court should give great weight to the Committee’s investigative decisions. Second, the importance of this and other subpoenas for documents issued by the Committee is magnified given the significant data losses claimed by Attorney General Swallow and his Office. While it may be impossible to recreate fully the events relevant to the allegations against Attorney General Swallow given the loss of potentially critical correspondence and documents from several of his computers and electronic devices during the

relevant time period, the Committee must be permitted to attempt to recreate the missing information where possible through third-party subpoenas. Allowing Softwise to shirk its responsibilities to comply with lawful process with regard to the investigation threatens great harm to the Committee's ability to probe the allegations surrounding Attorney General Swallow.

With these considerations in mind, the Court should compel Softwise to obey the subpoena, and also deny Softwise's Motion to Quash, because the subpoena is (i) authorized, (ii) valid, (iii) relevant to the Committee's investigation, and (iv) otherwise reasonable.

1. The subpoena is authorized by statute.

The subpoena issued to Softwise was "authorized by ordinance or similar enactment[.]" *Connecticut Indem. Co.*, 23 Cal. 4th at 813. The Utah legislature and its committees are vested with "legislative investigatory powers" to "issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, other tangible things, and testimony[.]" Utah Code Ann. § 36-12-19. The Special Committee was specifically and validly created to investigate certain issues related to Attorney General Swallow, House R. 3-1-202, and the Chair of the Special Committee is one of the persons specifically authorized by Utah law to issue such subpoenas, *see* Utah Code Ann. 36-14-2(g). Because the Special Committee and its investigatory methods are properly authorized under Utah law, no more is required. *E.g.*, *Connecticut Indem.*, 23 Cal. 4th at 814 (parties did not contest authorization element where resolution "clearly establishes the necessary authority for the city council's investigation").¹⁹

¹⁹ Contrary to Softwise's suggestion, the exercise of the subpoena power by the Special Committee rather than the full legislature fully accords with Utah law and longstanding conceptions of the legislative investigatory power. *Cf.* Mot. 10. For one thing, it is long accepted that "the subpoena power may be exercised by a committee

2. *The subpoena is for a valid legislative purpose.*

The Committee is also “pursuing a valid legislative purpose.” *Wilkinson v. United States*, 365 U.S. at 409 (1961). The subject of the investigation is “one on which legislation could be had,” *McGrain*, 273 U.S. at 177-178, and indeed, the Special Committee’s authorizing resolution specifically contemplates the enactment of future laws based on the information gleaned during this investigation, *see* House R.3-1-202 (Special Committee charged with investigating misconduct allegations and to report on “the need, if any, for legislation”). As such, Softwise is correct to concede that the legislature’s investigatory purpose is a valid one. *See* Mot 11 (Softwise “accepts that the investigation of a sitting official” such as Attorney General Swallow “may constitute a valid legislative purpose”).

3. *The subpoena is relevant to the Committee’s investigation.*

Finally, the information that this particular subpoena seeks is highly relevant and pertinent to the Committee’s investigation. Given the Special Committee’s broad powers to investigate within its authorized domain, the only question is whether its request “reasonably could be said to be ‘pertinent to the question under inquiry.’” *Braden v. United States*, 365 U.S. 431, 436-37 (1961); *see also Ward v. Peabody*, 405 N.E.2d 973, 978 (Mass. 1980) (warning against “testing relevance” with “too rigid or exacting an approach [that] might unduly trammel the [legislative] Commission’s enterprise” in investigating). This approach is appropriate here –

acting, as here, on behalf of one of the” legislative houses alone. *Eastland*, 421 U.S. at 505. For another, the legislative subpoena statute amended this summer explicitly gives the subpoena power to, among others, “a chair of a special investigative committee[.]” Utah Code Ann. § 36-14-1(g); *see id.* 36-12-19 (noting that Legislature’s “legislative investigatory powers” may be exercised by “either house or any committee thereof”). Far from “standing alone” (Mot. 1), then, the Special Committee is exercising a power specifically, recently, and validly assigned to it through ordinary constitutional procedures.

not only because of the separation-of-powers concerns discussed above, but also because this is a pending investigation into allegations of misconduct by a statewide official. *Cf. Matter of Criminal Investigation, 7th Dist. Court No. CS-1*, 754 P.2d 633, 644 (Utah 1988).

The subpoena seeks three categories of communications. The first are those involving Attorney General Swallow himself – namely, “All communications between John Swallow, through any Softwise, Inc. email account associated with him,” and a list of specified individuals who are related to the matters under investigation.

The second and third categories are those between the same list of specified individuals on the one hand, and Richard Rawle and other Softwise personnel on the other. Softwise contends that these materials are “entirely unrelated to General Swallow,” Mot. 12, and thus “not relevant to or within the scope of the of the Special Committee’s investigative authority[.]” (Mot. 12). But Softwise’s blanket characterization of the request cannot be credited. On the contrary, public sources reveal these communications to be plainly pertinent to both “allegations of misconduct against the current attorney general,” Utah House R.3-1-202(1), as well as “matters related to the current attorney general that arise as part of the investigation,” Utah House R.3-1-202(2). The Special Committee has reason to believe that the individuals in question who communicated with Rawle or other Softwise personnel all corresponded regarding issues related to allegations of misconduct involving Attorney General Swallow, and thus lie at the center of the Special Committee’s inquiry.

As one example, Attorney General Swallow has publicly described the payment by Rawle’s RMR Consulting, LLC to a trust created by Attorney General Swallow as being related

to certain non-legal consulting work he performed in his private capacity while he was employed as Chief Deputy Attorney General. He further has publicly stated that the consulting work was in connection with the possible construction of a cement production facility involving Chaparral Limestone and Cement Company, LLC. The Special Committee has reason to believe that Dennis Ickes and David Colvin were related to this project. Such communications easily fall within the standard of ‘reasonable pertinence’ to allegations of misconduct involving Attorney General Swallow. *See Braden*, 365 U.S. at 436-437.

4. *The subpoena is neither oppressive nor unreasonable.*

As a fallback argument, Softwise contends that the subpoena is “unreasonable or oppressive” as a general matter. Those arguments cannot be credited.

First, Softwise argues that the Court should employ a heightened standard in evaluating legislative subpoenas by pointing to ostensibly “instructive” (Mot. 12) cases interpreting the “unreasonable or oppressive” standard set forth in Federal Rule of Criminal Procedure 17(c)(2). But that Rule governs subpoenas issued by *all* parties during *all* federal criminal proceedings, not just the government during the investigatory phase; indeed, most of the cases Softwise cites discuss trial subpoenas issued by criminal defendants.²⁰ Accordingly, those cases say nothing about the scope of the subpoena power that is a necessary adjunct to the legislature’s constitutional authority. If anything, cases interpreting Rule 17(c)(2) in the context of ongoing government investigations (instead of at trial) suggest that Softwise faces a much higher bar:

²⁰ *See, e.g., United States v. Mendinueta-Ibarro*, 12 CR 379 VM, 2013 WL 3871392 (S.D.N.Y. July 18, 2013); *United States v. Lansing*, 2:08-CR-558 TS, 2009 WL 321575 (D. Utah Feb. 9, 2009); *United States v. Hoeffner*, 254 F.R.D. 302, 304 (S.D. Tex. 2008); *United States v. Corbett*, 4:07-CR-435CAS, 2008 WL 2095740 (E.D. Mo. May 16, 2008).

“[W]here, as here, a subpoena is challenged on relevancy grounds, the motion to quash must be denied unless the district court determines that there is *no reasonable possibility* that the category of materials the Government seeks will produce information relevant to the general subject of the” investigation. *United States v. R. Enterprises, Inc.*, 498 U.S. 292, 301 (1991) (emphasis added).

Second, Softwise raises various confidentiality concerns. But, the Special Committee has already conveyed to Softwise that it has no interest in communications subject to the attorney-client privilege, or in purely personal matters unrelated to the Attorney General, health information, or true trade secrets. The Special Committee had extended to Softwise the offer of entering into a joint stipulation, and is still prepared to do so, that provides extraordinary protection for any legitimately confidential information. Under the Committee’s offered procedure, initially Softwise would only be required to produce all non-privileged, non-confidential responsive documents plus redacted versions of those documents it contends include confidential information, while also allowing the Special Committee to inspect (but not immediately take possession of) any assertedly confidential materials at Softwise’s offices. Softwise would also be required to produce a privilege log in lieu of producing any communication that Softwise asserts is subject to attorney-client privilege. If, upon inspection, the Special Committee determines production of some or all of the assertedly confidential documents is necessary, and Softwise continues to refuse to produce them, the then-narrowed matter can be presented at that time for judicial resolution. Any legitimate confidentiality

concerns would thus be fully protected, and should not provide any basis to excuse Softwise from complying with the subpoena.²¹

Finally, Softwise raises First Amendment privacy and free speech burdens in the abstract. Yet similar “[a]ttempts to escape the obligation to divulge information requested in [a legislative] investigation based on a First Amendment claim of a protected liberty have been generally unsuccessful.” Sutherland § 12:5 (citing cases). Softwise’s cited cases suggest as much, involving situations where government action threatens to intrude far more deeply on protected free speech and privacy rights than the commonplace business communications requested here. *See Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 546 (1963) (committee barred from demanding membership records of local NAACP chapter to root out communists); *Does v. 2TheMart.com Inc.*, 140 F.Supp.2d 1088, 1095 (W.D. Wash. 2001) (civil litigant not required to disclose identity of anonymous internet users in response to court-issued subpoena requested by private party).

²¹ This course offers several practical advantages. First, it promotes efficiency and the production of relevant non-privileged, non-confidential materials in a circumstance in which Softwise has yet to produce a single document to the Committee. Second, it protects any legitimate confidentiality interests that Softwise asserts, and which the Committee remains willing to accommodate. Third, this course will impose no additional burdens on Softwise, because it has already collected and reviewed the subpoenaed material. Finally, the procedure the Special Committee proposes is far preferable to a protective order for both the Court and the parties. Issuing a protective order would embroil this Court in ongoing supervision over the Special Committee’s access to and use of investigative materials. Although courts may “routinely” issue protective orders in the context of ordinary civil litigation, Mot. 20-21, this case is far from “ordinary,” involving as it does an ongoing investigation into the State’s highest law-enforcement officer, and issues related to the separation-of-powers and the scope of the legislature’s constitutional prerogatives. Because the legislature is a co-equal branch of government, its exercise of its investigative authority cannot constitutionally be subject to the type of management that Softwise urges.

These procedures will also eliminate the unlikely possibility of “media leaks.” Softwise suggests, citing only unspecified “anecdotal evidence,” that “members of the Special Committee or the investigative team have leaked to the media documents produced in the course of discovery.” Mot. 14-15 (deriding such leaks as “standard government practice in providing ‘anonymous’ information to the public”). Softwise’s contention is wrong and irresponsible, and it has no proof that it is true.

Similarly, Softwise fails to demonstrate that the subpoena in this case would run afoul of the constitutional “reasonableness” requirement under the Fourth Amendment to the U.S. Constitution, given that the subpoena is lawful for all the reasons explained above, and a third party indisputably “can be compelled to turn over *** records when served with a lawful subpoena” like this one. *State v. Thompson*, 810 P.2d 415, 418 (Utah 1991). In any event, Softwise’s entire argument is wholly insufficient as raised, considering that it argues these points entirely in the abstract without having produced or proffered a single potentially problematic document for the Court’s inspection. *See State v. Mooney*, 98 P.3d 420, 428 (Utah 2004) (rejecting constitutional arguments as “speculative and remote”); *Boyle v. Nat’l Union Fire Ins. Co.*, 866 P.2d 595, 598 (Utah Ct. App. 1993) (courts correct to refrain from adjudication where “it could only speculate as to what the facts may be” due to “the hypothetical nature” of claim).

CONCLUSION

The Court should enter the relief requested herein and compel Softwise to comply with the subpoena immediately, and deny Softwise's Motion to Quash.

DATED this 22nd day of November, 2013.

Respectfully submitted,

/s/ John L. Fellows

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CERTIFICATE OF SERVICE

I certify that on November 22nd, 2013, true and correct copies of the foregoing memorandum of law and the accompanying proposed order and declaration of John L. Fellows were served on the following by U.S. mail and electronic mail:

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EXHIBIT A

SWALLOW/KRISPY KREME MEETING

1 JEREMY JOHNSON: Hey. Geez, what a pain in the ass.
2 How are you?
3 JOHN SWALLOW: Good. How are you, man?
4 JEREMY JOHNSON: I mean, they moved the exit up further
5 so I was just kind of moseying along not paying, you know --
6 JOHN SWALLOW: I know it. They do that. Anything
7 else? If you were you on the wrong side --
8 JEREMY JOHNSON: Yeah.
9 JOHN SWALLOW: -- you can't get over.
10 JEREMY JOHNSON: And then you go down, you know, the
11 next exit's the one where you go to the airport.
12 JOHN SWALLOW: Right.
13 JEREMY JOHNSON: I get off there, I make this whole
14 windy loop thing around, and I can't get back on the
15 freeway.
16 JOHN SWALLOW: Well, have a seat. How are you then?
17 JEREMY JOHNSON: What's that?
18 JOHN SWALLOW: How are you?
19 JEREMY JOHNSON: Good, actually, to be honest with you.
20 I mean, as far as me personally, my family and everything,
21 I -- I'm in great shape. Um, you know, I feel like as far
22 as my case is going, I feel like Ward got kind of sucked
23 into this by the FTC, you know. He charged me with one
24 count a year ago. He can't go to court. So every time we
25 got a hearing it's Judge, I'm having some evidentiary

1 problems, you know, we need to continue this, and so I don't
2 know. You know, he told -- when I got arrested he told
3 Travis Marker, he says, you know, we'll have a trial in 90
4 days because he got fed this whole line from the FTC oh, we
5 promise, don't arrest him, we'll give you all the evidence
6 and everything else and so.

7 I just -- I just -- I -- I feel like, um, I feel
8 like that where my case is is that the government -- I feel
9 like that the government is, um, at least the DOJ here, is
10 in a position where they've already made the charge and
11 they've made the claims and everything else, and what are
12 they going to do now. Do you know what I'm saying? So.

13 JOHN SWALLOW: What are they going to do to you?

14 JEREMY JOHNSON: Yeah, you know. What are you going to
15 do? Drop the charge? Oh, sorry we ruined your life and --

16 JOHN SWALLOW: Yeah.

17 JEREMY JOHNSON: -- said all this stuff in the
18 newspaper, you know. So I don't know.

19 JOHN SWALLOW: I don't either.

20 JEREMY JOHNSON: What would you do if you were me?

21 JOHN SWALLOW: You got to defend yourself.

22 JEREMY JOHNSON: Well, that's what I keep trying -- I
23 been trying -- keep trying to get a trial and they keep
24 delaying it, you know. So, I mean, there's only one reason
25 the government delays the trial, you know. You're the

1 Attorney General's Office. What happens when -- what is --
2 what is a reason? You guys don't delay trials. You get the
3 evidence, you make the arrest, and you go to trial.

4 JOHN SWALLOW: Yeah.

5 JEREMY JOHNSON: So when you're delaying a trial, that
6 only means one thing.

7 JOHN SWALLOW: I don't understand. I don't understand.

8 JEREMY JOHNSON: Um, okay. I talked to Scott. I think
9 he's going to have to have at least 175. But I think what
10 we've gotta explain to Richard is he, you know, I don't know
11 how Richard looks at this, but there was noth -- nothing
12 happened. We got promised the world and got zero in return.

13 JOHN SWALLOW: That's what I wanted to straighten out
14 with you, because I thought I was right that I know you and
15 I had a meeting with Richard, but what I -- the only meeting
16 I was ever in with you and Richard was when we were talking
17 about your (inaudible) opportunity. When I found out,
18 because I called Richard and he said --

19 JEREMY JOHNSON: Just -- just since we talked?

20 JOHN SWALLOW: He said -- yeah. He said that
21 Whittingham guy was there when I met with Jeremy about this
22 FTC matter. And, Jeremy, I've never met Whittingham because
23 I didn't think I was involved in that meeting. I just want
24 you to know between us --

25 JEREMY JOHNSON: Whittingham? Brady Whittingham?

1 JOHN SWALLOW: Brady Whittingham was there and I wasn't
2 there. I don't -- I don't even know Brady Whittingham.
3 JEREMY JOHNSON: Have you looked through your e-mails?
4 JOHN SWALLOW: No.
5 JEREMY JOHNSON: You've sent me an e-mail about it.
6 I'm telling you you were --
7 JOHN SWALLOW: I would like to see it because I do not
8 remember ever having a meeting where I --
9 JEREMY JOHNSON: I thought I gave it to you.
10 JOHN SWALLOW: -- sat down with you guys.
11 JEREMY JOHNSON: I thought I gave it to you, Jason.
12 Maybe I didn't.
13 JOHN SWALLOW: I don't know.
14 JEREMY JOHNSON: I'll -- I'll give it to him if you
15 want.
16 JOHN SWALLOW: Okay.
17 JEREMY JOHNSON: Um --
18 JOHN SWALLOW: Because I don't remember that meeting.
19 And -- and all I remember was I was asked to make sure that
20 you knew that they couldn't promise any results. And I
21 think what happened was -- and I don't know. See, you said
22 you had another meeting where they did, but I wasn't there.
23 So I just want you to know --
24 JEREMY JOHNSON: John, this is not going to match up
25 with what the e-mails are.

1 JOHN SWALLOW: The what?

2 JEREMY JOHNSON: The e-mails.

3 JOHN SWALLOW: Well, that's fine. I'll look at the
4 e-mails, but I --

5 JEREMY JOHNSON: Um, okay. Part -- the reason that
6 Scott's so pissed off is that the money that we gave Richard
7 was all the money we had for our attorneys, and you assured
8 me this is what we needed to do to get the issue taken care
9 of. And so --

10 JOHN SWALLOW: See that's where -- that's where -- as a
11 friend, I want you to understand that I thought that if
12 anybody could do it, these guys could.

13 JEREMY JOHNSON: I -- I -- yes.

14 JOHN SWALLOW: But I didn't know for sure anything
15 could be done.

16 JEREMY JOHNSON: No. I understand. And you didn't
17 say -- you didn't say, Jeremy, you know, this is a
18 guarantee, but it was -- like, this is how I had to -- I
19 reiterated the conversation, I don't know if it was by
20 e-mail or phone or whatever, to Scott, I haven't talked
21 about these details --

22 JOHN SWALLOW: Right.

23 JEREMY JOHNSON: -- that this is -- this is what we
24 need to do, I talked to John, and I'm telling you this is
25 the best route for you to get this resolved. Here nor

1 there. Here nor there.

2 JOHN SWALLOW: Right.

3 JEREMY JOHNSON: The issue is -- is the main thing
4 though that for 300,000 --

5 JOHN SWALLOW: I don't know how much it is.

6 JEREMY JOHNSON: It was \$250,000 or 300,000. Nothing
7 happened. Like, literally. There was no meeting, there was
8 no nothing. And if you try and talk to Richard he hangs up
9 the phone. And so I'm like -- and so Scott's just, you
10 know, that's his home.

11 JOHN SWALLOW: Right.

12 JEREMY JOHNSON: He's fried.

13 JOHN SWALLOW: Right.

14 JEREMY JOHNSON: And I'm -- my frustration is -- is --
15 is not geared towards you. I -- I feel like Richard took us
16 to the cleaners. But the problem with Scott is that --

17 JOHN SWALLOW: Yeah. Scott's upset.

18 JEREMY JOHNSON: Yeah. And he's mostly mad at you.

19 JOHN SWALLOW: Yeah.

20 JEREMY JOHNSON: And he wanted to sue you. And the
21 only reason he didn't is I'm like, dude, the only reason you
22 haven't got the same problems as I do is got John. Now, you
23 never said that and I -- I -- I made that lie up to -- to
24 Scott because I thought it was the best thing to do at the
25 time. After talking with Jason I -- that was what I felt

1 what we should do. And it worked and he's fine. Right now
2 he's not all stirred up, there's no issues, there's no
3 nothing.

4 The thing I'm worried about is the money that paid
5 Richard came from Scott. Eventually, whether I go in and
6 talk to this lady or not, I think they're going to figure it
7 out, if they haven't already, and they're going to track
8 down Scott and say what's -- what's this -- what's this
9 money for and he's going to say --

10 JOHN SWALLOW: He's going to say John told me --

11 JEREMY JOHNSON: John Swallow said we had to send this
12 in. That's the way we get our issue -- FTC issues resolved.
13 Okay. The only reason he would say that is that even now he
14 feels like you got us into this and now we got screwed.
15 You're doing nothing to help us -- him get his money back.
16 And so, to me, if -- if Richard would just give back most of
17 his money, you know, a significant portion that makes a
18 difference to him.

19 JOHN SWALLOW: I think Richard --

20 JEREMY JOHNSON: -- he's got no reason to talk.

21 JOHN SWALLOW: I think Richard gave a small, not all.

22 JEREMY JOHNSON: To who? That person should give it
23 back. I mean, all these people -- I would not in a million
24 years want to have anything to do with any of that money at
25 this point.

1 JOHN SWALLOW: There are lobby groups.

2 JEREMY JOHNSON: What lobby groups? I don't think so.
3 Because I was told it was -- well, you know, exactly what I
4 was told. I just -- the way I'm seeing it, here's the
5 thing. I picture myself where I was. I'm just like you.
6 And I'm like I'm not guilty of shit. So I'm not doing
7 anything, I'm not selling. I'm not doing anything.

8 JOHN SWALLOW: Right.

9 JEREMY JOHNSON: And you see what's happened to me.
10 And I'm telling you they can paint the exact same picture
11 with you, probably even better because you're a politician,
12 exactly. They would love to roast a public official even
13 more than me. Probably the the only one they'd would like
14 to roast more than me is a public official.

15 JOHN SWALLOW: Is a what?

16 JEREMY JOHNSON: A public official.

17 JOHN SWALLOW: Right.

18 JEREMY JOHNSON: And so my point is if I could rewind
19 time and put myself back then, do you know what I'm saying,
20 I would have done things a lot differently.

21 JOHN SWALLOW: Right.

22 JEREMY JOHNSON: I don't know if it's the right thing
23 for me to go in and talk to him or if it's not. I don't
24 know. And the -- and the problem that I'm having is my
25 attorney's pounding on me to give him all this information.

1 I haven't told him shit. He doesn't even know who you are.
2 He's got -- he's seen e-mails from the -- the FBI where
3 they've redacted all the peoples' information. So he wants
4 me to go figure it out. Well, I'm pretty damn sure they're
5 e-mails -- what's that?

6 JOHN SWALLOW: It's gotta be me.

7 JEREMY JOHNSON: That's what I'm saying. And so
8 he's -- he's pissed right now at me because I was supposed
9 to meet with him today and I was supposed to have gone
10 through all these e-mails and figured it out. I'm like,
11 dude, there's thousands of e-mails. I haven't figured it
12 out yet. He's like how many public officials do you deal
13 with. I'm like I don't -- I don't know.

14 I want Scott -- okay. Here's the thing. Without
15 Scott, without me worrying about Scott, I feel a lot more
16 secure in whatever it is. Whatever I go in. If I go in and
17 say something or -- you know what I'm saying? I don't -- I
18 don't say something and then Scott says the exact opposite
19 and I look like I'm just trying to hinder their
20 investigation or whatever. I don't think it's a crime for
21 you to tell us that you --

22 JOHN SWALLOW: I don't feel like it's a crime at all.

23 JEREMY JOHNSON: That's right. It's not a crime for
24 you to tell us, you know, this -- this -- giving this money
25 might help our situation. So my thought is yeah, it's true.

1 John hooked us up with --

2 JOHN SWALLOW: With Richard.

3 JEREMY JOHNSON: -- with Richard and we thought this
4 was going to solve our FTC issues. I think they think that
5 somehow you got money from this. That's why I was asking
6 you about RMR Consulting. And so obviously I, you know, if
7 you haven't got any money from RMR Consulting.

8 JOHN SWALLOW: I haven't either.

9 JEREMY JOHNSON: I sure as hell didn't give you any. I
10 don't think that's going to be an issue. And I -- I think
11 my -- when I say that, I say check out the money I guess,
12 you know, because I didn't give him any and I don't know
13 what RMR is. That's just who they told me to make the check
14 out to.

15 JOHN SWALLOW: Right.

16 JEREMY JOHNSON: And if they go in there and look up
17 RMR, I'm sure they have ways of tracing all other wires in
18 and out. As long as I don't go to you, I don't think -- I
19 think that could potentially hopefully end it for you and
20 you know what I'm saying? And even if I do talk to them,
21 I'm gonna say look, Richard promised this. Richard said
22 we're going to pay some, one of Reid's guys and it was just
23 a big scam. And so in my mind I'm like okay, what is a
24 potential criminal charge. Well, it's probably a wire fraud
25 charge, you know, or I don't know. I mean, I don't know

1 what all the charges could be, but.

2 JOHN SWALLOW: Yeah.

3 JEREMY JOHNSON: But if you take someone's money, you
4 have 'em wire it and it was a fraudulent thing, I mean,
5 unless he legitimately sent it to a lobbyist which I think
6 we both know he damn well didn't.

7 JOHN SWALLOW: I have to disagree with that.

8 JEREMY JOHNSON: You think he really sent it to a lobby
9 group?

10 JOHN SWALLOW: I do.

11 JEREMY JOHNSON: Because when we pounded him trying to
12 get who it was, he wouldn't tell us.

13 JOHN SWALLOW: I don't know if he was trying to pay
14 that group or what, but I believe he was.

15 JEREMY JOHNSON: Well --

16 JOHN SWALLOW: I just want you to know. You asked me.
17 I mean, I haven't seen him for --

18 JEREMY JOHNSON: I -- I know what you're saying. Okay.

19 JOHN SWALLOW: -- situation.

20 JEREMY JOHNSON: Here's the only thing I'm thinking
21 though.

22 JOHN SWALLOW: Yeah.

23 JEREMY JOHNSON: Because I said -- when we called and
24 said okay, what's going on, you know, that's what he said.
25 He said I engaged a lobby group. Wow. I'm like who is it.

1 I'm going to be in DC. I want to sit down with them and
2 strategize about what we're going to do here. And he's like
3 well, you know what kind of a lobby group I'm talking about.
4 This is a conversation two, whenever, two years ago.

5 JOHN SWALLOW: Yeah.

6 JEREMY JOHNSON: And so that makes me believe that he
7 didn't really give it to a lobby group.

8 JOHN SWALLOW: I don't know.

9 JEREMY JOHNSON: And the problem that's going to happen
10 is you can have Scott telling 'em yeah, Swallow's the one
11 that got us into this, the money goes to RMR, RMR goes to
12 who the hell knows where, some dude connected to Reid, and
13 they'll just put everybody in it.

14 JOHN SWALLOW: Yeah. I just don't know 175. I think
15 he'd have to take it out of his own pocket.

16 JEREMY JOHNSON: Did you talk to them?

17 JOHN SWALLOW: Yeah. I don't know how much he has,
18 yeah.

19 JEREMY JOHNSON: What did he say?

20 JOHN SWALLOW: He said so that's -- he said that's
21 interesting. I think he would consider something. I told
22 him before he'd do something. I just didn't know how much.

23 JEREMY JOHNSON: I think -- I think --

24 JOHN SWALLOW: I was -- I was hoping you'd come back
25 and say something less than that.

1 JEREMY JOHNSON: Well --

2 JOHN SWALLOW: Because that makes me think okay, that
3 (inaudible) you know.

4 JEREMY JOHNSON: I don't think -- if you didn't give me
5 any money, he shouldn't get any. I think it's whoever got
6 that money that didn't do a damn thing.

7 JOHN SWALLOW: Yeah.

8 JEREMY JOHNSON: They should say oh, this is going to
9 be a bad situation for me, I better give it back.

10 JOHN SWALLOW: See, I don't even know what -- I don't
11 even know what RMR is (inaudible).

12 JEREMY JOHNSON: I think it was just set up for
13 probably just to get that check. I mean, I don't know, but
14 my -- my attorney said the government thinks this was just a
15 shell corporation set up for your -- some deal you had, and
16 I think they -- think -- they have the e-mail -- I think
17 they have the e-mail about the poker processing and --

18 JOHN SWALLOW: What e-mail is that?

19 JEREMY JOHNSON: You sent me -- I gave it -- didn't
20 Powers give you any of the stuff I gave him?

21 JOHN SWALLOW: No.

22 JEREMY JOHNSON: This is why I won't -- this is why I
23 don't want to meet with Powers. So I sit down and meet with
24 Powers in St. George and I says hey, I'm worried that --
25 remember how you were telling me your opponent said they had

1 some e-mail or --

2 JOHN SWALLOW: What e-mail did I give you? You're
3 lawyer sent me the e-mail --

4 JEREMY JOHNSON: No, no, no. You sent me an e-mail
5 that said we're okay to process poker.

6 JOHN SWALLOW: No, I didn't.

7 JEREMY JOHNSON: I'll show it to you.

8 JOHN SWALLOW: I want to see it.

9 JEREMY JOHNSON: I'll show it to you. I gave it to
10 Powers. And so Powers -- and that's what Powers said.
11 Powers told me, he's like John said he never said he's --
12 John told me he told you it's not legal. I'm like dude. I
13 said okay, hang on a second. I went on my computer and I
14 dug through for ten minutes and I printed it out and gave it
15 to him. And I'm like I'm not trying to -- this is the
16 problem with Powers is I don't want to discredit.

17 JOHN SWALLOW: Yeah.

18 JEREMY JOHNSON: Do you know what I'm saying? I don't
19 want to discredit. I don't want --

20 JOHN SWALLOW: I said it's okay to process poker?

21 JEREMY JOHNSON: Yeah.

22 JOHN SWALLOW: In Utah?

23 JEREMY JOHNSON: Yes. And -- and, John, it is -- it is
24 legal.

25 JOHN SWALLOW: No, it's not.

1 JEREMY JOHNSON: There's -- there is no law in Utah
2 that says you cannot process --

3 JOHN SWALLOW: A game with any --

4 JEREMY JOHNSON: -- skilled -- skilled game
5 transactions.

6 JOHN SWALLOW: Any -- with any factor, with any part of
7 a game of chance.

8 JEREMY JOHNSON: You're talking about playing it.
9 Processing it is a different thing. There is no law about
10 processing. And you didn't say it was legal to play it.
11 Your -- your -- I think I said really research the law.
12 I'll show you -- and this is what I'm --

13 JOHN SWALLOW: All right.

14 JEREMY JOHNSON: Okay. This is what I'm really worried
15 about. You don't remember a lot of these e-mails because
16 I'm telling you I know you sent me e-mails talking about the
17 deal with Richard and the money. So I don't want to go in
18 there and be like no, huh-uh. I want to --

19 JOHN SWALLOW: I want to -- I want to analyze texts and
20 e-mails.

21 JEREMY JOHNSON: Okay. I don't have any texts, but I
22 have -- absolutely. I was just given the hard drive. The
23 government took all of our servers. They took all of our
24 e-mail. I don't have any of that shit. The only thing I
25 had was a few that I downloaded onto my Outlook.

1 JOHN SWALLOW: Right.

2 JEREMY JOHNSON: You know, before, but I didn't have
3 them all. I have them all now. So my attorney gave me,
4 he's like you need to go through all these damn e-mails, you
5 know, on the hard drive, 10,000 whatever it is, and I need
6 to see any e-mail of you talking to any politician. And I
7 didn't even know what the hell they're after here, you know.
8 So I'm like uh. But when he mentioned RMR Consulting, I go
9 type into an iWork's ledger that I have, thankfully, and
10 guess what it is.

11 JOHN SWALLOW: (Inaudible.)

12 JEREMY JOHNSON: No. It's this Richard thing.

13 JOHN SWALLOW: Richard?

14 JEREMY JOHNSON: And so he's like well, I talked to --
15 I had talked to my attorney about this poker thing, and so
16 he says the government thinks that this might be tied to the
17 poker processing or something, you sending money to an
18 official to get permission to process poker. Well, there's
19 no way that's going to come out. No matter how hard they
20 try, they're not going to be able to make a case for that.

21 JOHN SWALLOW: For what? Poker processing?

22 JEREMY JOHNSON: Right. That I paid you to send me an
23 e-mail saying that it was okay.

24 JOHN SWALLOW: No.

25 JEREMY JOHNSON: Because, number one, that payment was

1 made a long time ago. Number two, the payment never went to
2 you. You know what I'm saying?

3 JOHN SWALLOW: I do.

4 JEREMY JOHNSON: It went to RMR.

5 JOHN SWALLOW: Oh, yeah. Yeah, I know.

6 JEREMY JOHNSON: It went to try and -- Richard was
7 going to get -- Reid's guy, was going to Reid to go in
8 and --

9 JOHN SWALLOW: All -- that was all designed to get a
10 lobby group hired to take care, try to take care of your
11 deal. So when -- when I look at my involvement? Jeremy,
12 when I look at my involvement, I go there's -- I could even
13 be paid for something like that. There's nothing wrong with
14 that. As long as I'm not interfering with a government
15 agency as a government official, there's nothing wrong with
16 me being involved in it. The only thing I can't do is to
17 practice law.

18 JEREMY JOHNSON: Why? You're a lawyer, aren't you?

19 JOHN SWALLOW: Yeah, but I --

20 JEREMY JOHNSON: Oh. Because you work for the
21 government.

22 JOHN SWALLOW: That's what I'm saying. That's all -- I
23 don't have anything to do with the federal government. I
24 don't -- there's nothing wrong with anything that I've done
25 criminally. Now, politically I go whoa.

1 JEREMY JOHNSON: And -- and here's the thing I'm
2 saying --

3 JOHN SWALLOW: (Inaudible.)

4 JEREMY JOHNSON: This is the only thing -- this is my
5 only -- this is the only thing I worry about. There's
6 nothing wrong with giving somebody a free trial to a product
7 and then billing them with their permission later either.

8 JOHN SWALLOW: I know. But I do.

9 JEREMY JOHNSON: It's just -- it's what it looks
10 like --

11 JOHN SWALLOW: (Inaudible.)

12 JEREMY JOHNSON: Well, I --

13 JOHN SWALLOW: (Inaudible.)

14 JEREMY JOHNSON: I want you to be too or I wouldn't be
15 here, I assure you.

16 JOHN SWALLOW: I --

17 JEREMY JOHNSON: So there's no way Richard's going to
18 give up?

19 JOHN SWALLOW: Well 175? He has 20. I don't know if
20 it's true. He's told me he's given -- he gave most of that
21 money to the guy in Nevada and the guy back in Washington,
22 two guys. So I go okay, so other than the Richard issue
23 he's in it for \$175,000? He goes well, there's not that
24 much left, if there's any left. And then --

25 JEREMY JOHNSON: I think Richard needs to go to those

1 guys and say look, this is going to end badly because
2 there's now an investigation about it.

3 JOHN SWALLOW: Scott -- does Scott really do anything
4 less than 175? I mean (inaudible).

5 JEREMY JOHNSON: I -- I -- let me tell you. Okay.

6 JOHN SWALLOW: I didn't even know if I --

7 JEREMY JOHNSON: He -- he agreed to take 150. I put 25
8 in there because I'm broke as shit too. So at the very
9 worst case scenario I'm telling you 150, but it helps me a
10 hell of a lot if it's 175.

11 JOHN SWALLOW: All right.

12 JEREMY JOHNSON: But I'm telling you I had -- I had
13 to --

14 JOHN SWALLOW: I would take anything.

15 JEREMY JOHNSON: I know you would. I had to work very
16 hard to even get him to take -- to take that.

17 JOHN SWALLOW: (Inaudible.) You gave him 200?

18 JEREMY JOHNSON: 250. So he's already cutting a
19 hundred thousand off of what --

20 JOHN SWALLOW: You gave 50 and he gave 250?

21 JEREMY JOHNSON: That's right.

22 JOHN SWALLOW: It was a total of --

23 JEREMY JOHNSON: Well, it was a total of 250. Or maybe
24 it was a total of 300. I don't remember.

25 JOHN SWALLOW: I don't either.

1 JEREMY JOHNSON: Either he gave 250 and I gave 50 or he
2 gave 200 and I gave 50.

3 JOHN SWALLOW: But I want to make sure this is not
4 sounding like I'm trying to buy this piece.

5 JEREMY JOHNSON: I -- I -- I understand. I just --
6 yeah. Yeah. I -- I think it should be more that it's the
7 right thing to do for the guy that's losing his house. It's
8 the right thing to do. You put money to a thing that didn't
9 work out and he should get at least some of it back and you
10 tried to talk Richard into doing that.

11 JOHN SWALLOW: Yeah.

12 JEREMY JOHNSON: I'll get those e-mails if you want.
13 Okay. So what do I tell my friggin attorney now?

14 JOHN SWALLOW: What's it going to do for you?

15 JEREMY JOHNSON: Well, it's not going to do anything
16 for me. I mean, he says -- what -- what he's telling me is
17 he says dude, you got -- you got an issue here where it's
18 like you're -- you're bribing -- you guys are trying to
19 bribe a United States senator to help you get rid of
20 charges, he says. So for you, Jeremy, what you need to be
21 thinking about is getting immunity from that.

22 JOHN SWALLOW: I don't -- I don't know if that's true.
23 I think you may have a wrong idea. I don't know what the
24 arrangement is, but I think -- I think that they have
25 lobbyists that they pay on retainer.

1 JEREMY JOHNSON: Well, if that's where the money went,
2 that will certainly help the case. But if didn't, you know
3 damn well it's not going to come out good.

4 JOHN SWALLOW: Yeah. I'm not -- but I'm not going to
5 play with fire.

6 JEREMY JOHNSON: Because I -- I -- I read -- when I
7 gave -- when I gave -- I thought I gave all these to Powers.
8 I pulled off a couple of e-mails. I swear --

9 JOHN SWALLOW: Gave them to Powers?

10 JEREMY JOHNSON: I thought I did.

11 JOHN SWALLOW: Okay.

12 JEREMY JOHNSON: Call him if he has them.

13 JOHN SWALLOW: Yeah.

14 JEREMY JOHNSON: If he has them, then I don't want to
15 give them to you again; but if he doesn't, I will give --
16 I'll give you, I'll print off what I can find and give you a
17 copy, but I know there's one in there from you to me saying
18 about Senator Reid's guy.

19 JOHN SWALLOW: Really?

20 JEREMY JOHNSON: Yeah. Because I read it. I'm like
21 uuh, God.

22 JOHN SWALLOW: Really?

23 JEREMY JOHNSON: It's just I -- I realize --

24 JOHN SWALLOW: I will. I'd like to see them. It's
25 been two years.

1 JEREMY JOHNSON: I -- I -- it -- and the problem is I
2 swear there's one in there, the one that's talking about
3 after our meeting.

4 JOHN SWALLOW: Talking about. Will you find it for me?

5 JEREMY JOHNSON: Yes. So in the meeting, you know,
6 thankfully your e-mail doesn't say any of the things that we
7 talked about in the meeting, but in the meeting --

8 JOHN SWALLOW: What meeting? Which meeting?

9 JEREMY JOHNSON: With Richard. I'm telling you you
10 were there. You talked about it in your e-mail. I'll get
11 you the e-mail.

12 JOHN SWALLOW: Yeah, I want to -- I want to see it
13 because --

14 JEREMY JOHNSON: But you were at the meeting.

15 JOHN SWALLOW: -- I remember it differently. Not
16 conveniently differently; just differently.

17 JEREMY JOHNSON: I bring -- I would not take Brady
18 Whittingham to that. I'm telling you that the meeting
19 switched. Brady went to the -- Brady went to the check one.

20 JOHN SWALLOW: Okay.

21 JEREMY JOHNSON: And -- and me and you went to the one
22 about Reid. I'll tell you some things about it if you want.

23 JOHN SWALLOW: Sure.

24 JEREMY JOHNSON: If you want. It might remind you.
25 But, um, this is what helped sell me on the whole thing why

1 it would work is that Richard, you know, when Obama was
2 running for office, he was saying all these things about how
3 he's going to clamp down on --

4 JOHN SWALLOW: Now, Obama ran in '08.

5 JEREMY JOHNSON: That's right. And he was --

6 JOHN SWALLOW: -- in '10.

7 JEREMY JOHNSON: What?

8 JOHN SWALLOW: Obama ran in '08 and our meeting was in
9 '10.

10 JEREMY JOHNSON: That's right. Okay.

11 JOHN SWALLOW: Two years later.

12 JEREMY JOHNSON: Yeah, 2010. And so what Richard is
13 like look, do you remember when Obama was running he was
14 saying he was gonna, you know, clamp down on the abusive pay
15 day lender practices. I'm like actually, I kind of do
16 remember that. He says have you noticed nothing's happened.
17 He says you know why? Because who's the guy he listens to
18 more than anyone is Reid. And so he says we have a
19 connection with Reid and Reid got in Obama's ear and got him
20 to put that off for now and I --

21 JOHN SWALLOW: They have to do it legally through
22 lobbyists.

23 JEREMY JOHNSON: I understand. I'm not saying --

24 JOHN SWALLOW: Okay. I just want you to know --

25 JEREMY JOHNSON: And -- and he -- he was telling me a

1 situation where Reid asked for someone in the company to pay
2 some guy 20 grand a month and the guy did -- well, what I
3 didn't tell you, and I didn't tell Richard, is that I
4 already knew Reid is on the take because I met him at the --
5 with the poker companies. And so I don't know how much of
6 the details you know about this, but I'm going to tell you.
7 It's good information to know.

8 JOHN SWALLOW: Oh, wait. I want to make sure I don't
9 miss the governor's phone call. I may have already missed
10 him.

11 JEREMY JOHNSON: Don't miss his phone call for cryin'
12 out loud. Did you miss it?

13 JOHN SWALLOW: It's okay.

14 JEREMY JOHNSON: So after this meeting the poker guys
15 had me write out -- get a special check from a bank check so
16 it doesn't get traced from their account and give it to some
17 company that I've never heard of before, and we transferred
18 half a billion dollars of their money. They never asked me
19 to do anything like this except this one time. This is
20 right after our meeting with Reid. So I transfer a million
21 dollars to some weird company, one-time deal, that's it.
22 And guess what happens the next week. Reid introduces a
23 bill to make online poker legal. So to me everything
24 Richard's saying --

25 JOHN SWALLOW: Rings true?

1 JEREMY JOHNSON: -- makes sense. And you can go and
2 verify that he actually did introduce that bill.

3 JOHN SWALLOW: The only thing for me is I just don't --
4 I'm -- I'm not that close to Richard.

5 JEREMY JOHNSON: I -- I know you're not, and I know
6 you're not in the mix here.

7 JOHN SWALLOW: Yeah.

8 JEREMY JOHNSON: Do you know what I'm saying? I
9 understand that. But what I am worried about is I think I
10 can carve you out of it pretty good and still talk to these
11 guys and make everyone happy. Richard, I assume they'll go
12 to him and say we won't press charges against you, but we
13 need to know the deal. But Scott's the wild card because in
14 Scott's mind --

15 JOHN SWALLOW: Well, why would you talk to them anyway?
16 What's in it for you? Are they going to pay your bill?
17 Have you talked to them? Your lawyer must think that
18 there's a deal there.

19 JEREMY JOHNSON: Yeah, he definitely does. I don't
20 need -- I don't -- I don't need a deal on my case for mail
21 fraud. I mean, if they could charge me or have -- go to
22 trial, they would have done it and I know it. And every --
23 and even the judge knows it. In every hearing it's
24 blatantly obvious they have no case.

25 JOHN SWALLOW: Okay.

1 JEREMY JOHNSON: So what likely is going to happen is
2 I'm going to settle with the FTC, agree not to sue 'em, let
3 'em keep everything they've got, which is everything I have,
4 and I think the criminal thing quietly goes away. That's
5 the path that we're going down. I don't know if my attorney
6 is freaked out that I'm going to get some new political
7 corruption charge or if he just wants to take a short cut
8 and have me go in and help them and, you know, it's
9 guaranteed gone away. I don't know.

10 I -- and here's the thing, dude. I was supposed
11 to meet with him today, and so he's pissed off because I've
12 been -- I complained that I don't feel like he does anything
13 on my case. And now he's pounding my ass and I'm like
14 putting him off like crazy and I'm just making excuses and
15 everything else and I -- I think he's kind of excited about
16 helping the government, God knows why, but he's already met
17 with this lady, so. And, shit, I brought -- I have notes in
18 my car that I took from talking to him on the phone. Do you
19 want me to go get 'em?

20 JOHN SWALLOW: I have an idea where they're going.

21 JEREMY JOHNSON: Okay.

22 JOHN SWALLOW: So, very interesting. I -- I feel badly
23 that (inaudible). I'd like to help them all.

24 JEREMY JOHNSON: Okay. Well, see what you can do.

25 I'll -- I'll have a charger for that other phone. I feel

1 better about calling me on the one --

2 JOHN SWALLOW: I don't know (inaudible).

3 JEREMY JOHNSON: Well, go to Wal-Mart and get a \$20
4 phone. I researched everywhere. You can't trace these
5 things because they're not in anyone's name. They're just
6 pay with a credit card or whatever and -- I don't -- I don't
7 know, I didn't want to -- I -- I -- I have no idea if there
8 really is even a payment investigation on me. I'm pretty
9 sure, but I haven't -- haven't confirmed it.

10 JOHN SWALLOW: (Inaudible) politician?

11 JEREMY JOHNSON: Well, I had, I mean, it's, I mean, I
12 had contact with Reid.

13 JOHN SWALLOW: I mean, RMR, that's Richard.

14 JEREMY JOHNSON: Yeah. RMR is Richard. That's right.

15 JOHN SWALLOW: To me that's --

16 JEREMY JOHNSON: Yeah, it is. It is. It is. And
17 they're mentioning stuff about an e-mail, a poker e-mail. I
18 know exactly what e-mail they're talking about. And
19 here's --

20 JOHN SWALLOW: I'd like to see that e-mail.

21 JEREMY JOHNSON: I will give you that e-mail. I'm
22 telling you you're not wrong in the e-mail. You're honestly
23 not.

24 JOHN SWALLOW: When -- when is the date of that e-mail?

25 JEREMY JOHNSON: It was sometime after I talked to you

1 and I gave you those legal opinions. I think all you did is
2 you looked at legal opinion and then you looked at Utah
3 State law, and guess what? There just doesn't -- there is
4 no law on processing poker.

5 JOHN SWALLOW: Right.

6 JEREMY JOHNSON: It's playing.

7 JOHN SWALLOW: Did I say poker, gambling?

8 JEREMY JOHNSON: No, you did not say that. It was
9 strictly the processing of the transactions which is legal
10 under Utah because you just don't want to address it.

11 JOHN SWALLOW: Yeah.

12 JEREMY JOHNSON: You know, if there was 50 banks here
13 processing online gambling, maybe they would make a law and
14 address that, but I'm telling you I'm pretty sure -- I don't
15 think they can make any issue of it unless I paid you to say
16 that, which I didn't, and there's absolutely no evidence of
17 it. So I -- I think part of me.

18 JOHN SWALLOW: Do they know about the houseboat?

19 JEREMY JOHNSON: What's that?

20 JOHN SWALLOW: Do they know about the houseboat?

21 JEREMY JOHNSON: No. Nobody does. I --

22 JOHN SWALLOW: Is there any paper trail on that?

23 JEREMY JOHNSON: What?

24 JOHN SWALLOW: Is there a paper trail in that area?

25 JEREMY JOHNSON: There's no paper trail on the

1 houseboat, nobody knows about it.

2 JOHN SWALLOW: There's no e-mail, there's no --

3 JEREMY JOHNSON: No e-mails on the thing and no -- my
4 wife doesn't even know you're on there. You went down there
5 for a weekend, and that's it. Okay. And that's not going
6 to come up, that hasn't come up. The issue I think -- this
7 is what I think they're after. I think they saw an e-mail
8 about hey, it's okay to process poker, they see wires going
9 to this thing, they see Reid introducing a pro-poker bill.
10 You know what I'm saying? And they're -- and they're
11 thinking okay, John Swallow and --

12 JOHN SWALLOW: I've done work for Richard.

13 JEREMY JOHNSON: What's that?

14 JOHN SWALLOW: I did do work for Richard.

15 JEREMY JOHNSON: Oh. You've done work for Richard and
16 he's paid you. Oh. Oh.

17 JOHN SWALLOW: So --

18 JEREMY JOHNSON: Did he pay you out of RMR Consulting?
19 I'd go check that. That will be -- if that's the case, I'd
20 rather just I think -- you need to check that. I need to
21 know that because --

22 JOHN SWALLOW: I worked on a cement plant with him. I
23 worked on a cement plant with him in Nevada. Now they've
24 got some land and some poker deal and doing some limestone
25 for a cement factory. I did some work and consulting on

1 that and be paid me, you know, around that same time. I
2 don't --

3 JEREMY JOHNSON: I -- I don't -- go see where that
4 money came from.

5 JOHN SWALLOW: I don't know who RMR is, you know. I
6 just know --

7 JEREMY JOHNSON: I'd ask Richard. Talk to Richard
8 saying dude, what is RMR, did you ever pay me from it.

9 JOHN SWALLOW: Yeah.

10 JEREMY JOHNSON: Will you please talk to these people.

11 JOHN SWALLOW: He may have. He may have paid me.

12 JEREMY JOHNSON: I'm telling you that's going to be a
13 death nail because that's what -- that's what we paid and it
14 just looks like -- I know it's not that way, but that's
15 exactly what it's going to look like and that's exactly
16 how it's gonna --

17 JOHN SWALLOW: Like in March of '11. Was there an
18 interest in that kind of work?

19 JEREMY JOHNSON: March of '11? This -- this would have
20 been paid -- this was paid --

21 JOHN SWALLOW: Even so -- but even so, let's assume
22 that I put you guys together and let's assume that he paid
23 me quickly all together.

24 JEREMY JOHNSON: Okay.

25 JOHN SWALLOW: Okay. What's wrong with that?

1 JEREMY JOHNSON: The problem with it is the e-mail that
2 you sent.

3 JOHN SWALLOW: What -- what about it?

4 JEREMY JOHNSON: You sent me an e-mail about what this
5 money was going to do and how it was going to go to Reid
6 and --

7 JOHN SWALLOW: I did?

8 JEREMY JOHNSON: Yes. I've seen it.

9 JOHN SWALLOW: Give me the e-mail --

10 JEREMY JOHNSON: Okay.

11 JOHN SWALLOW: -- so I can see it.

12 JEREMY JOHNSON: I'll get it.

13 JOHN SWALLOW: It came from me, not from Richard?

14 JEREMY JOHNSON: It came from you. It came from, John,
15 I think at like something like Softwise or something like
16 that.

17 JOHN SWALLOW: Richard's at Softwise.

18 JEREMY JOHNSON: I promise it came from you, John.
19 I'll get you a copy of it. Don't you have it? Can't you
20 pull up your own --

21 JOHN SWALLOW: It said the money would go right to me?

22 JEREMY JOHNSON: No, no, no, no. It said Reid's guy.
23 I don't remember all the exact details, but it was very -- I
24 saw it and I thought I don't think this is illegal. It
25 looks horrible though.

1 JOHN SWALLOW: Yeah.

2 JEREMY JOHNSON: It looks horrible. And so I gave it
3 to Powers. I swear I gave it to him.

4 JOHN SWALLOW: Okay.

5 JEREMY JOHNSON: But maybe I didn't. Maybe I only gave
6 him the one.

7 JOHN SWALLOW: I'll call him.

8 JEREMY JOHNSON: Find out. If not -- I'm going to go
9 through all them.

10 JOHN SWALLOW: Okay.

11 JEREMY JOHNSON: Here's the other problem I have.
12 There's e-mails -- it's not just those e-mails. There's
13 e-mails from me to Scott and Bryce corroborating on this
14 saying hey, I just talked to Swallow, John Swallow, and I
15 know -- I know you guys are nervous and you feel like we're
16 giving up our money, but we should be giving it to
17 attorneys, but he assured me this is what we gotta do, this
18 is going to fix our problems with the FTC. I'm --

19 JOHN SWALLOW: Wow.

20 JEREMY JOHNSON: I haven't checked, but I'm pretty --

21 JOHN SWALLOW: No wonder they're after me.

22 JEREMY JOHNSON: Well, I don't --

23 JOHN SWALLOW: I mean, it's not your fault.

24 JEREMY JOHNSON: I don't know if --

25 JOHN SWALLOW: I'm just saying.

1 JEREMY JOHNSON: I don't know if there's actually
2 e-mails or if they're calls. I know that that is -- that is
3 why -- because that's why I got Scott to give up his house.
4 He wanted to send it to an attorney, and I'm like dude,
5 these attorneys have dug us a frickin' grave.

6 JOHN SWALLOW: Well, if they -- if the F -- if the FBI
7 thinks what it looks like on paper say, then they're going
8 to come hot after me.

9 JEREMY JOHNSON: Well, maybe that's -- I think very
10 well could be already. That's -- I don't know. Part of me
11 wants to meet with them just for that very fact is to find
12 out what they do know, where they're at, what they're
13 thinking. The truth is I don't -- this is nothing I don't
14 understand too. If you got Reid involved, who gives a shit
15 about you. You're nothing. This is the number one senator
16 in the whole friggin United States.

17 JOHN SWALLOW: Is Reid the politician?

18 JEREMY JOHNSON: It could be. That's what I'm saying.
19 I don't know that it's you. They redacted all the e-mails.
20 My attorney doesn't know. So --

21 JOHN SWALLOW: I'm -- I'm not confident that it's not
22 me they're looking for.

23 JEREMY JOHNSON: I'm not confident it's not you either,
24 but I'm just saying like think of it from a prosecutor's
25 perspective.

1 JOHN SWALLOW: I'm thinking about this too. I'm
2 thinking about this. I just think --

3 JEREMY JOHNSON: And here's another thing. This lady
4 is not under the local people here. She's out of -- her
5 boss is in DC. She's like a wild cowboy. And so in my mind
6 I'm thinking well, what does anyone in DC give a shit about
7 an attorney general in Utah, a potential attorney general in
8 Utah, and --

9 JOHN SWALLOW: She works outside of Utah?

10 JEREMY JOHNSON: She -- she is here in Utah apparently,
11 but her boss is not. That's why Ward and all these guys are
12 on your side. They're not even involved.

13 JOHN SWALLOW: Who is on my side?

14 JEREMY JOHNSON: I'm just saying, you know when I -- I
15 thought it was Ward at first.

16 JOHN SWALLOW: Yeah.

17 JEREMY JOHNSON: I just assumed that because he was my
18 prosecutor and I heard that he wanted to run for AG.

19 JOHN SWALLOW: That's right.

20 JEREMY JOHNSON: So I'm like shit, Ward's trying to
21 drum up some bullshit thing to make Swallow look bad. And
22 you say he's backing me --

23 JOHN SWALLOW: I'm not sure he's backing me any more
24 after this.

25 JEREMY JOHNSON: No. I don't think -- I don't think

1 you understand. I don't think Ward has any freakin' idea
2 about it. I don't think anyone in the -- because in the
3 local office I think if there was something going on, you
4 would have found out when you talked to Barlow or whatever.
5 So here's the thing. What Nathan told me was this lady does
6 not -- her boss is in DC. She's not in the office here.
7 She's her own thing.

8 JOHN SWALLOW: Well, when I talk to her, I'm going to
9 tell her everything. I mean --

10 JEREMY JOHNSON: Who? The lady?

11 JOHN SWALLOW: I would tell her, yeah, my involvement.

12 JEREMY JOHNSON: I think -- she tried to call you too?

13 JOHN SWALLOW: No. No. But I have nothing to hide.

14 JEREMY JOHNSON: But this is my thought though. If
15 you're a prosecutor, who --

16 JOHN SWALLOW: I'm not even a prosecutor.

17 JEREMY JOHNSON: No, no, no. I'm thinking -- I'm
18 thinking not even her --

19 JOHN SWALLOW: Her.

20 JEREMY JOHNSON: Her boss or whatever, right? Whoever
21 her boss is who do you want to nail?

22 JOHN SWALLOW: The big --

23 JEREMY JOHNSON: Senator Reid?

24 JOHN SWALLOW: Yeah.

25 JEREMY JOHNSON: John Swallow? That is not a hard

1 friggin decision.

2 JOHN SWALLOW: Yeah.

3 JEREMY JOHNSON: And there's a lot of people that want
4 to burn Reid. He has tons of enemies. So to me I feel like
5 they want to get information to show that I was putting
6 money to buy Reid, essentially. I mean, but I don't know
7 that.

8 JOHN SWALLOW: Do they know about your issue with
9 the -- with the poker transactions with Harry Reid and
10 stuff?

11 JEREMY JOHNSON: They haven't brought anything. I
12 don't think anybody knows that. Honestly, you're the only
13 person in the world I've even told that to.

14 JOHN SWALLOW: So why would they even be thinking about
15 Harry Reid?

16 JEREMY JOHNSON: Well, because it's -- it's in your
17 e-mails.

18 JOHN SWALLOW: Oh.

19 JEREMY JOHNSON: You're -- you spell it out pretty
20 clearly that the money is going to --

21 JOHN SWALLOW: Really?

22 JEREMY JOHNSON: -- influence Harry Reid. And I just
23 feel like -- I -- I feel like -- I feel like --

24 JOHN SWALLOW: What a curious (inaudible) thing for me
25 to say. Wow.

1 JEREMY JOHNSON: That's what it was John. That's the
2 whole thing. Richard had it all set up. It had been done
3 before. Richard had done it.

4 JOHN SWALLOW: Even Richard's probably going to boast
5 about things that aren't necessarily true. I mean, he may
6 have a guy who tells him that. I mean, people pay lobbyists
7 all the time. You're supposed to have close connections.
8 This is -- this is the business of lobbying. Wow.

9 JEREMY JOHNSON: I'll tell you this.

10 JOHN SWALLOW: Yeah.

11 JEREMY JOHNSON: We had a -- we had a meeting with Reid
12 where he said, this is a private meeting. It was Reid, it
13 was me, it was -- remember John Pappas? Remember him, Poker
14 Players Alliance guy? Remember him?

15 JOHN SWALLOW: Oh, yeah.

16 JEREMY JOHNSON: John Pappas and Ray Bitar are the
17 owner of Full Tilt Poker.

18 JOHN SWALLOW: What's that?

19 JEREMY JOHNSON: Owner of Full Tilt Poker.

20 JOHN SWALLOW: Yeah.

21 JEREMY JOHNSON: And I -- and, John, Senator Reid --
22 this is when he -- it was a tight election with this lady
23 down there.

24 JOHN SWALLOW: Yeah.

25 JEREMY JOHNSON: Real tight.

1 JOHN SWALLOW: Yeah. Sharon (inaudible).

2 JEREMY JOHNSON: And -- and he said look, I've polled
3 my constituents and they don't like online poker, bottom
4 line. It's bad for --

5 JOHN SWALLOW: Yeah.

6 JEREMY JOHNSON: It's bad for jobs here in Las Vegas.
7 But I'm going to back what you guys are doing here, I'm
8 going to introduce a bill for you. And that was basically
9 it, right? Well, I kid you not. A week later -- oh, no,
10 no. Right after that. So Reid leaves with his little
11 entourage. Ray Bittar's buddy that flew over here with him
12 from Ireland, I said how in the hell did you guys get him to
13 do that. And he says let's just say he got a little
14 something in his retirement fund. And I was like okay,
15 that's how it is.

16 Well, I'm not kidding you. A week later they have
17 me, and they're specific, we want a bank check drawn on the
18 bank's general account.

19 JOHN SWALLOW: Wow.

20 JEREMY JOHNSON: For a million dollars to some company,
21 some media thing or something. A cashier's check. This
22 money had better not get traced back to our account under
23 any circumstances. So what do I do? Of course, go into the
24 bank, tell them I need to pull this out of the bank's
25 general reserve which is held in their account. I don't

1 tell the bank what I'm doing. And I didn't know what I was
2 doing. I was like I don't know, you know. I mean, I
3 suspected obviously.

4 So I -- I believe -- this is my belief. I believe
5 Reid genuinely is on the take. I believe he's getting money
6 for deals all over hell because he's got so damn much
7 influence, and I believe they're onto him. And I think in
8 the grand scheme of things you're a little nugget or a
9 little piece in the puzzle, but --

10 JOHN SWALLOW: I hope so. I hope so. I hope I'm not
11 the big fish or anything.

12 JEREMY JOHNSON: I mean, that's the only thing I can
13 think. Why would -- why would Washington, DC have some
14 person to investigate you. It seems to me like it would be
15 an internal thing for the State of Utah to do it. If there
16 was really some concern.

17 JOHN SWALLOW: Yeah. Well, I'll check with Richard and
18 see.

19 JEREMY JOHNSON: Check with Richard. Check on this RMR
20 thing. I don't want to go in there and say -- I want to
21 tell them -- I don't know. Do I say hey, I didn't give him
22 any idea if it's RMR for this purpose.

23 JOHN SWALLOW: Yeah.

24 JEREMY JOHNSON: If John got some --

25 JOHN SWALLOW: Yeah. I think you should. If you

1 could --

2 JEREMY JOHNSON: The problem is if you did get money
3 from RMR, it's just going to -- I think it's better that I
4 just --

5 JOHN SWALLOW: (On phone.)

6 I don't know. I'm not smart enough to speak to
7 that to understand that.

8 JEREMY JOHNSON: I have to think that through.

9 JOHN SWALLOW: But I will -- I will say this, Jeremy.
10 I did consulting work for Richard --

11 JEREMY JOHNSON: Right.

12 JOHN SWALLOW: -- a cement project, and I billed him
13 about \$20,000 over a period of several months for my work in
14 Nevada. My job is to work with Indian Tribes then work with
15 people because there was a lime deposit owned by the Indian
16 tribe, the Paiute tribe there.

17 JEREMY JOHNSON: Yeah.

18 JOHN SWALLOW: They worked with an attorney in Las
19 Vegas and an attorney here in Utah to try to put the deal
20 together with and Indian tribe there.

21 JEREMY JOHNSON: And you only got 20 grand?

22 JOHN SWALLOW: Well, the deal didn't get done. But
23 they still got a lot of limestone they're trying to sell
24 (inaudible). So that's over a period of several months, six
25 months.

1 JEREMY JOHNSON: And it was well after -- I mean, I
2 paid -- I paid --

3 JOHN SWALLOW: It came well after. I think I invoiced
4 them sometime in October of '10.

5 JEREMY JOHNSON: Oh. Of '10?

6 JOHN SWALLOW: Probably. And then invoiced for a very
7 small part and I invoiced them for about \$15,000 in March
8 for that. So I just didn't know anything, who paid me,
9 because I don't keep those checks. And they don't pay me.
10 And so --

11 JEREMY JOHNSON: You know how that works, so. Dude, I
12 don't think I should say a damn thing then. Because
13 anything -- if there's actually money going there, they --
14 that's why they need me. They need me to say what did you
15 expect with this money that was transferred. And as soon as
16 I say well, we were going to get Senator Reid to help us
17 with this problem. If they can trace that money going to
18 you --

19 JOHN SWALLOW: Well, I don't -- I don't think that
20 they -- I don't think -- honestly, at the end of the day I
21 thought -- I thought you were -- you were paying Richard
22 money so that he would lobby. He would use his contacts in
23 DC or Nevada for a lobby on your behalf of the FTC. You
24 know, at the end of the day, as I've looked at this as a
25 friend with you, I thought what really probably happened

1 here, what really caused the thing to not work, in large
2 number, was it took so long to get it started. Because I
3 didn't get started talking until October by the time they
4 really got engaged in December.

5 JEREMY JOHNSON: Wow. Richard knew -- he knew the time
6 line.

7 JOHN SWALLOW: And I should --

8 JEREMY JOHNSON: This is what pisses me off. He knew
9 the time line.

10 JOHN SWALLOW: -- so late now. We don't -- but I know
11 that (inaudible) til January?

12 JEREMY JOHNSON: No. We tried.

13 JOHN SWALLOW: So we talked to Scott, Jeremy. I really
14 believe that Richard did not destroy you.

15 JEREMY JOHNSON: We've been -- we've been through it
16 with Scott. Truthfully, I don't even bring it up any more
17 because --

18 JOHN SWALLOW: Yeah.

19 JEREMY JOHNSON: Right now everything's fine with him.
20 But if the hornet's nest gets kicked again --

21 JOHN SWALLOW: We'll try with him. But I -- I have a
22 sick feeling in my heart that if it's \$175,000 or
23 \$200,000 --

24 JEREMY JOHNSON: He won't do it.

25 JOHN SWALLOW: -- Richard is not that (inaudible).

1 JEREMY JOHNSON: But you -- you --
2 JOHN SWALLOW: -- had \$40,000,000 somewhere. No. I
3 know. Jeremy, I don't --
4 JEREMY JOHNSON: Okay. But here's the thing. You have
5 got to convince -- you gotta tell Richard this is going to
6 be bullshit raining down on his head like he wouldn't
7 believe.
8 JOHN SWALLOW: Uh-huh.
9 JEREMY JOHNSON: It's not worth the money. It's just
10 not worth the money.
11 JOHN SWALLOW: Yeah.
12 JEREMY JOHNSON: I mean.
13 JOHN SWALLOW: If you can get me that e-mail.
14 JEREMY JOHNSON: I will. I will give you the e-mail.
15 JOHN SWALLOW: Because I need to show that e-mail to
16 Richard if you'll just get it for me.
17 JEREMY JOHNSON: All right. I'll get it for you, print
18 it off when I get home. And I've -- I've got to come back
19 up here next week, so.
20 JOHN SWALLOW: I wish you could just (inaudible).
21 JEREMY JOHNSON: Well, that's why go get a friggin
22 Wal-mart phone.
23 JOHN SWALLOW: I know.
24 JEREMY JOHNSON: And so if you find out something, text
25 me, say --

1 JOHN SWALLOW: I don't want you on the stand perjuring
2 yourself. Did you (inaudible).

3 JEREMY JOHNSON: Let me tell you something. The good
4 thing about my situation nobody's getting me on a stand
5 anywhere. I take the Fifth for everything.

6 JOHN SWALLOW: Oh, you do?

7 JEREMY JOHNSON: Yeah. Why would -- I have all the
8 reason in the world. Hi, I am under indictment. They
9 weren't even asked. They had a grand jury convene for a
10 year. They had a hundred people in there.

11 JOHN SWALLOW: That's (inaudible).

12 JEREMY JOHNSON: I know. I know. Get a Wal-Mart
13 phone, text me, say hey, call me when you get a minute.

14 JOHN SWALLOW: Is that the 310 number? Is that 310
15 number you're using?

16 JEREMY JOHNSON: Text the 310 number, and I'll -- if I
17 don't respond, text my other number, say call me when you
18 get a minute and I'll call you on the -- I'll call you on
19 the 310.

20 JOHN SWALLOW: That's the 310 number.

21 JEREMY JOHNSON: What's that?

22 JOHN SWALLOW: (Inaudible.)

23 JEREMY JOHNSON: Dude, let me tell you something.

24 JOHN SWALLOW: You don't have anything to lose.

25 JEREMY JOHNSON: I -- I -- if I -- if I felt like I --

1 I could bury you easy because I could just team up with
2 Scott and say yeah, John got us into this and everything
3 else, piece of cake, I wouldn't be here.

4 JOHN SWALLOW: I know and it means the world to me.
5 When this is done, who knows where I am.

6 JEREMY JOHNSON: I know.

7 JOHN SWALLOW: I may be somewhere else.

8 JEREMY JOHNSON: You'll be the AG and I'm glad for it.

9 JOHN SWALLOW: I don't know --

10 JEREMY JOHNSON: Oh, for sure you will.

11 JOHN SWALLOW: I don't know. At this -- at this
12 point with this stuff hanging over my head?

13 JEREMY JOHNSON: It's not hanging over your head.
14 That's the thing.

15 JOHN SWALLOW: Maybe.

16 JEREMY JOHNSON: Well --

17 JOHN SWALLOW: I don't even know what those guys have
18 the power to do. Do they have the power to go to Richard
19 and get his e-mails?

20 JEREMY JOHNSON: No. Not without -- well, you might
21 tell Richard to delete shit off -- to be wary that there
22 could be an investigation and if there's anything on his
23 server that he doesn't want the government to have to --

24 JOHN SWALLOW: Can't they go to the Internet service
25 provider.

1 JEREMY JOHNSON: No. No. None of that's stored on
2 ISPs.

3 JOHN SWALLOW: What's that?

4 JEREMY JOHNSON: None of that is stored on ISPs. It's
5 all stored on Richard's server. And I -- you know from your
6 e-mail to me, I'm 90 percent sure it came from
7 john@softwise.com which means Richard has it housed.

8 JOHN SWALLOW: Housed somewhere?

9 JEREMY JOHNSON: Something at softwise.com.

10 JOHN SWALLOW: Yeah.

11 JEREMY JOHNSON: Which means Richard -- if that's
12 Richard's company, which I believe it is --

13 JOHN SWALLOW: Yeah.

14 JEREMY JOHNSON: -- he's got it housed somewhere. He
15 can go in and hit Delete. Even Gnote. Nobody stores --
16 nobody stores e-mail. There's too -- there's too much. And
17 the government can't send a subpoena to Gnote give us all
18 the e-mails for this thing.

19 JOHN SWALLOW: I think they can do it.

20 JEREMY JOHNSON: They don't store them. They don't
21 have them. But in my case they have mine because they
22 physically went into the office and grabbed the server.

23 JOHN SWALLOW: I need to see those e-mails.

24 JEREMY JOHNSON: I'll get them. I will get them.

25 JOHN SWALLOW: I want to know what I'm doing.

1 JEREMY JOHNSON: All right. I will get them. Get --
2 get a Wal-Mart phone.

3 JOHN SWALLOW: I can't believe I sent you e-mails.

4 JEREMY JOHNSON: At the time you were helping us.

5 JOHN SWALLOW: I know.

6 JEREMY JOHNSON: I mean --

7 JOHN SWALLOW: I really tried to help.

8 JEREMY JOHNSON: I know. And so I'm not -- believe me.
9 I'm not eager to --

10 JOHN SWALLOW: I don't know where (inaudible), where it
11 came from.

12 JEREMY JOHNSON: Well, I think -- I think it's -- I
13 think it's an important key, because if it happened to come
14 from that same thing, it's a -- it's -- it's bad because all
15 they need from me is for me or Scott to come in and say this
16 money was for this and then it shows it going to you and
17 you're hooked in. And the reality is even if they -- even
18 if they indict you or try and bring you to a trial, they'll
19 probably lose.

20 JOHN SWALLOW: Yeah.

21 JEREMY JOHNSON: But they'll wreck your life in the
22 process.

23 JOHN SWALLOW: I know.

24 JEREMY JOHNSON: They will destroy you. You'll be a
25 pariah just like me, so.

1 JOHN SWALLOW: It's okay.

2 JEREMY JOHNSON: It's not okay. I -- I wouldn't wish
3 this on my worst enemy. I honest to God wouldn't. I'm
4 okay. I'm a strong person and I can handle it and I'll
5 bounce back, but I wouldn't wish this on anyone. It's
6 complete bullshit.

7 JOHN SWALLOW: I'm a lawyer.

8 JEREMY JOHNSON: What's that?

9 JOHN SWALLOW: I'm a lawyer. What else can I do if I
10 can't be a lawyer?

11 JEREMY JOHNSON: I don't know. I think -- look --

12 JOHN SWALLOW: (Inaudible.)

13 JEREMY JOHNSON: I think we're getting to a point now
14 where we're talking about a pretty extreme thing. I don't
15 feel like -- I feel like we're reaching. But I thought that
16 in my case a thousand times that every time it can't get
17 worse, it does. You know, they sued me civilly. Fine. I
18 don't give a damn. I'm off to Costa Rica. I'm going to fly
19 helicopter tours for a living. I live in paradise. Boom,
20 you know. And you saw what they turned that into. Oh, he's
21 trying to flee the country. He's got gold buried
22 everywhere. All right.

23 JOHN SWALLOW: Okay. Thanks.

24 JEREMY JOHNSON: All right. I'll get the e-mails, you
25 talk to Richard, get a Wal-Mart phone and call me.

1 JOHN SWALLOW: I will. (Inaudible) I want to do what's
2 best for you, but I mean, I just --

3 JEREMY JOHNSON: What's --

4 JOHN SWALLOW: I'm just -- I'm really vulnerable.

5 JEREMY JOHNSON: Well, I know, and that's why I'm here.
6 I mean, I -- part of me wants to go talk to them and explain
7 this thing away. What I don't want to do is pull out some
8 e-mail and say what about this.

9 JOHN SWALLOW: Well, at the end of the day, I mean, at
10 the end of the day I felt the FTC was screwing you.

11 JEREMY JOHNSON: That's right.

12 JOHN SWALLOW: I wanted to help you with them.

13 JEREMY JOHNSON: That's right.

14 JOHN SWALLOW: I knew I couldn't do it myself.

15 JEREMY JOHNSON: That's right.

16 JOHN SWALLOW: And so I lined you up with Richard.

17 JEREMY JOHNSON: That's right.

18 JOHN SWALLOW: I thought it would help you. I think
19 what happened to Richard is he thought it would help you.
20 And then -- I'm just telling you what I think.

21 JEREMY JOHNSON: I know.

22 JOHN SWALLOW: And then all hell broke loose in the
23 case.

24 JEREMY JOHNSON: Right. And there's nothing anyone
25 could do.

1 JOHN SWALLOW: And there was nothing anyone could do.

2 JEREMY JOHNSON: Yeah. I don't disagree with that.

3 JOHN SWALLOW: And I do believe my life on it he sent a

4 lot of that money off.

5 JEREMY JOHNSON: He probably did.

6 JOHN SWALLOW: Probably sent it all off.

7 JEREMY JOHNSON: He probably did. I don't -- I

8 wouldn't be concerned about what Richard did with the money.

9 JOHN SWALLOW: Yeah.

10 JEREMY JOHNSON: I would find out for damn sure if you

11 ever got paid from RMR. I think that's important to know,

12 for me at least, because if I go in and say a bunch of stuff

13 about RMR --

14 JOHN SWALLOW: Yeah.

15 JEREMY JOHNSON: -- and what that money was sent for,

16 even though -- even though I know damn well we never paid

17 you anything to hook us up on this Reid deal, that's exactly

18 the picture they'll be able to paint. They will be able to

19 get an indictment, they will flash that out in the news, and

20 it will be a nightmare. It doesn't matter if that's the

21 truth or not.

22 JOHN SWALLOW: Well, then give me some kind of

23 (inaudible).

24 JEREMY JOHNSON: That's what I'm saying.

25 JOHN SWALLOW: Do you think they need you to do that?

1 JEREMY JOHNSON: What?

2 JOHN SWALLOW: Do you think they need you --

3 JEREMY JOHNSON: Yes.

4 JOHN SWALLOW: -- to make that connection?

5 JEREMY JOHNSON: How would they be -- why would they be
6 pounding my lawyer, willing to cut whatever deal to get me
7 to sit down and talk to them about these transactions?
8 There's no other reason. So if they had it, they'd --
9 they'd indict you now. They'd make a huge mess of your
10 life. I don't -- I'm telling you when it comes back to the
11 thing at the end of the day, they give a shit about you. I
12 think they want to -- I think they want Reid. I mean, look
13 at it how much momentum do the Republicans have right now?

14 JOHN SWALLOW: When you got a Democratic president, a
15 Democratic administration, a Democratic Majority Leader, I
16 don't think they want to take their own guy down.

17 JEREMY JOHNSON: And -- and the tide is changing on
18 that, and who would be the hero? The prosecutor that comes
19 in and exposes this corrupt thing with Reid and Obama. It
20 would be disastrous for the Democrats. Disastrous.

21 JOHN SWALLOW: I think I'm their target.

22 JEREMY JOHNSON: Well, we'll look at the e-mails and
23 you can make that decision.

24 JOHN SWALLOW: I think we should -- I think Richard
25 wasn't about -- that it wasn't about that deal. Gingrich

1 would say --

2 JEREMY JOHNSON: Yeah. And that's what I'm saying.

3 And I would -- and I would say that too, but --

4 JOHN SWALLOW: Don't need that. That still gives

5 that --

6 JEREMY JOHNSON: But they have plenty -- if I say -- if

7 I say I sent money to RMR for this purpose and then they can

8 find out that you got paid from RMR, that's all they need.

9 Doesn't matter what anybody says. They can get an

10 indictment on that I know for a fact. They can get an

11 indictment on something less than that if they want, but

12 they can get an indictment and have an okay case with that.

13 Did you not have any of your e-mails?

14 JOHN SWALLOW: I don't keep my e-mails.

15 JEREMY JOHNSON: Okay. Good. I wish I didn't keep

16 mine either, believe me.

17 JOHN SWALLOW: I've deleted them all after a year.

18 JEREMY JOHNSON: Okay.

19 JOHN SWALLOW: I don't have anything to look at.

20 JEREMY JOHNSON: I would -- I would definitely talk to

21 Richard about that issue.

22 JOHN SWALLOW: Okay. I will.

23 JEREMY JOHNSON: Because he shouldn't keep them either.

24 It's -- it's -- if I ever go in business again, I'll have

25 the thing that deletes my frickin' e-mails every month. You

1 know something though? Do you know what's helping me in my
2 case big time, why they aren't going to court? Because
3 there are no bad e-mails for me. But I know that's what
4 they're trying to build their whole case on, but almost all
5 my e-mails are hey, I don't give a shit about how much we're
6 making. We're doing this right and you know what I'm
7 saying? I'm telling you they're all like that. Even if
8 they have one or two that are a little, you know, not per --
9 not good, not -- not shed light, there's so many that we're
10 clearly trying to do the right thing.

11 JOHN SWALLOW: Yeah.

12 JEREMY JOHNSON: You know.

13 JOHN SWALLOW: I went down there.

14 JEREMY JOHNSON: That's right. And Mark -- hey, by the
15 way, I talked to Mark. He's awesome.

16 JOHN SWALLOW: You know, I thought -- I thought this
17 was about something else. I've been thinking about this. I
18 didn't think it's about RMR.

19 JEREMY JOHNSON: It is. I -- I have it -- I wrote RMR.
20 There's --

21 JOHN SWALLOW: It's the last thing in the world I would
22 have thought.

23 JEREMY JOHNSON: Well, I think it -- I think they might
24 think there's a connection with poker because he asked about
25 it. He says did you pay RMR. Did that somehow have

1 something to do with you getting an e-mail about it's okay
2 to process poker. And I'm like absolutely not, Nathan.
3 He's like are you sure.

4 JOHN SWALLOW: This is your lawyer asking you this?

5 JEREMY JOHNSON: Yeah. He says well, what's this,
6 what's this, what's this. I'm like Nathan, I don't know. I
7 don't even know what these e-mails are. And so I'm supposed
8 to be digging through and meeting with him and going over
9 these e-mails, and he's going to go back, talk to the agent,
10 work out some kind of a sweetheart deal for me, and then I'm
11 supposed to go tell them everything they want to hear.
12 That's what's shaping right now. I'm fine to tell them to
13 go screw themselves.

14 JOHN SWALLOW: Let me tell this. What if you were
15 saying I wouldn't be surprised if John got something out of
16 that, if he did?

17 JEREMY JOHNSON: Well, think about that.

18 JOHN SWALLOW: Okay.

19 JEREMY JOHNSON: Think -- think through all these
20 scenarios. Let me get the e-mails, and let's -- I'll meet
21 you when I come back up here.

22 JOHN SWALLOW: Okay.

23 JEREMY JOHNSON: Think of these scenarios.

24 JOHN SWALLOW: I've been asking myself this one
25 question. If I got a finder, a finder fee (inaudible) --

1 JEREMY JOHNSON: Right.

2 JOHN SWALLOW: -- where does that public official,
3 trying to make a worst case scenario.

4 JEREMY JOHNSON: Sure.

5 JOHN SWALLOW: What -- what laws are broken like this
6 (inaudible) for you to have someone to work with the FTC?

7 JEREMY JOHNSON: I think you need to not focus on the
8 laws that you've broken.

9 JOHN SWALLOW: Right.

10 JEREMY JOHNSON: And focus more --

11 JOHN SWALLOW: Day to day --

12 JEREMY JOHNSON: -- how they can make it look.

13 JOHN SWALLOW: I know. But at the end of the day I
14 don't want to be a felon.

15 JEREMY JOHNSON: You won't. You won't be a felon no
16 matter what. At the end of the day, John, I'll be on the
17 stand testifying that you had plenty of opportunity to get
18 money out of me for favors and you never tried once ever.
19 Ever.

20 JOHN SWALLOW: I hope so. That means all the people I
21 raised money for.

22 JEREMY JOHNSON: That's right.

23 JOHN SWALLOW: I didn't raise the money for me.

24 JEREMY JOHNSON: Between -- and -- and you know I
25 don't -- Carlie Christianson has an ax to grind.

1 JOHN SWALLOW: Against me?

2 JEREMY JOHNSON: I think it's more with Mark, but I
3 don't know. What's her problem?

4 JOHN SWALLOW: I don't know.

5 JEREMY JOHNSON: She started all this bullshit. She
6 started a thing like a long time even before this trying to
7 show that I was trying to -- some investigation about me
8 maybe making improper payments to Mark or something. You
9 know what's funny about that? Neither you or Mark has ever,
10 ever asked me. You help -- you asked me to help raise the
11 money for guys that I like and I support today.

12 JOHN SWALLOW: Governor Herbert.

13 JEREMY JOHNSON: That's right. Governor Herbert, all
14 these good people. You know what Mark asked me money for?
15 Meth Cops Project. You know what I'm saying?

16 JOHN SWALLOW: Yeah.

17 JEREMY JOHNSON: Meth Cops Project. He never asked
18 me -- the money I gave him for his campaign, he didn't even
19 ask me for that. I liked Mark because of the work he did
20 with us on the Lost Boys and that's -- I gave it to him
21 without him ever asking. I think he realized what a nice
22 guy this is, I didn't even ask for this, I didn't have to
23 work for it, he just helped me out.

24 JOHN SWALLOW: Right.

25 JEREMY JOHNSON: And I told Mrs. -- I -- and he knows I

1 was doing good things with the Lost Boys and AED and
2 everything else, so he knows I'm a guy that will support
3 things. You know what he did for me too?

4 JOHN SWALLOW: What did he do?

5 JEREMY JOHNSON: He forgot all about it. One of the
6 girl -- remember that little girl that had -- she couldn't
7 eat?

8 JOHN SWALLOW: Couldn't what?

9 JEREMY JOHNSON: That little girl that couldn't eat.

10 JOHN SWALLOW: Yes. Remember that?

11 JEREMY JOHNSON: Yeah.

12 JOHN SWALLOW: That's what I remember.

13 JEREMY JOHNSON: These are the kind of things that --
14 that -- that we did, and there could have been a thing
15 like -- and I said hey, John, I've got a hundred thousand
16 dollars I'm ready to give this girl right now.

17 JOHN SWALLOW: And I could have said --

18 JEREMY JOHNSON: And you could have said hey, give me
19 20 of that and I'll get I, whatever, ICH to cover it.

20 JOHN SWALLOW: Yeah.

21 JEREMY JOHNSON: Guess what? You -- you made it happen
22 even without -- you didn't ask for a dime. You made it
23 happen with nothing. You were happy to do it.

24 JOHN SWALLOW: I know.

25 JEREMY JOHNSON: And so don't get into a paranoia state

1 because I had this happen to me too where I like second
2 guessed everything I did and your motives. You know your
3 motives and you know your intentions, and you know you're
4 honest and a good person.

5 JOHN SWALLOW: Right.

6 JEREMY JOHNSON: So don't start thinking worse
7 scenario, worst case scenario like I did. I'm just -- I
8 want to make sure that they can't paint a picture.

9 JOHN SWALLOW: Yeah. I'm worried about RMR.

10 JEREMY JOHNSON: I am too and I need to find out. I'm
11 going to get the e-mails, you're going to talk to Richard.
12 Please try and get him to pay the 175.

13 JOHN SWALLOW: I will. I'll do everything I can.

14 JEREMY JOHNSON: It will make my life immensely better.

15 JOHN SWALLOW: Because I think I can get that done. I
16 really do. I think it will be a blessing from him. I don't
17 know I can get 175.

18 JEREMY JOHNSON: You try for 175.

19 JOHN SWALLOW: I will. I'll do my darnedest.

20 JEREMY JOHNSON: And -- and I'm going to be looking for
21 E-mails. I'll get my phone charged, you get a phone, call
22 me, text me on the phone.

23 JOHN SWALLOW: I will.

24 JEREMY JOHNSON: Whatever you -- if you do 175, great.
25 I think it makes a lot of relief on the situation. If it's

1 a less amount tell me what it is, I will do my best.

2 JOHN SWALLOW: Okay. I will.

3 JEREMY JOHNSON: And then I want to -- before I meet
4 with these guys, before I talk to my attorney, I want to sit
5 down and go through these e-mails.

6 JOHN SWALLOW: Okay. And I'm available all week. I'm
7 here.

8 JEREMY JOHNSON: Okay.

9 JOHN SWALLOW: I just want to know somewhere where we
10 can meet.

11 JEREMY JOHNSON: A park, wherever. I don't care.

12 JOHN SWALLOW: Okay.

13 JEREMY JOHNSON: I'm -- I'm -- I'm --

14 JOHN SWALLOW: Do you know who's tailing me? I don't
15 know if Sean Reyes is doing it or -- I don't know --

16 JEREMY JOHNSON: I'm scared to death of our phones. No
17 reason to except for, you know, I had a friend that was in
18 the DEA and I said how do they catch all these freakin'
19 guys. He's like you want to know how. Wire taps. Always.
20 He says if you're ever doing something you don't want the
21 government to hear, don't say it on the phone, don't say
22 send it in an e-mail. Face to face, so.

23 JOHN SWALLOW: That's great. That's why --

24 JEREMY JOHNSON: Okay. Thank you. Sorry. I mean,
25 I --

1 JOHN SWALLOW: Thank you.

2 JEREMY JOHNSON: Okay.

3 JOHN SWALLOW: Thank you.

4 JEREMY JOHNSON: Hang in there. I'm getting doughnuts

5 to take home with me because we don't have one of these in

6 St. George.

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1 **State of Utah**)
 : ss.
2 **County of Salt Lake**)

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4 **REPORTER'S CERTIFICATE**

5 I, Amanda Richards, a certified shorthand reporter
6 for the State of Utah, certify;

7 That the proceedings of the foregoing matter were
8 reported stenographically by me through audio file and were
9 thereafter transcribed into typewritten form by me, and that
10 the foregoing typewritten transcript, as typed by me, is a
11 full, true, and correct record of my stenographic notes so
12 taken.

13 I hereby further certify that I am neither counsel
14 for nor related to any party to said action, nor in anywise
15 interested in the outcome thereof.

16 IN WITNESS WHEREOF, I have hereunto subscribed my
17 name on this 28th day of January 2013.

18
19
20 _____
21 Amanda Richards, CSR
22
23
24
25

EXHIBIT B

Akin Gump

STRAUSS HAUER & FELD LLP

SAMIDH GUHA

1.212.872.1015/fax: 1.212.872.1002
sguha@akingump.com

October 28, 2013

VIA E-MAIL

Samuel Alba
Snow, Christensen & Martineau
555 South Bluff Street
Suite 301
St. George, UT 84770

Re: Softwise Subpoena

Dear Sam:

I am writing in connection with the legislative subpoena (the "Subpoena") dated October 4, 2013 that was issued by the Special Investigative Committee of the Utah House of Representatives (the "Special Committee") and served thereafter upon your client, Softwise, Inc., ("Softwise") on October 7, 2013. The Subpoena called for the production of responsive, non-privileged materials no later than October 21, 2013. To date, your client still has not produced any materials in connection with the Subpoena and therefore is in default of its terms. We intend to advise the Special Committee of your client's default in this matter and of the remedies available to the Special Committee to cure that default.

We initially contacted you on October 10, 2013 to determine when the Special Committee could anticipate receiving materials from your client in response to the Subpoena. In our initial conversations, you indicated that your client had concerns regarding confidentiality due to perceived business sensitivities involving certain responsive documents. In an effort to address your client's concerns, we proposed that your client (i) produce all materials in its possession that are responsive to the Subpoena and that do not raise confidentiality concerns, and (ii) make available for review at your office otherwise responsive materials that Softwise believes raise confidentiality concerns so we can determine if those materials are, in fact, material to our investigation. With respect to this latter group of documents, we provided you with a written stipulation that called for either agreement between the parties or a court ruling if, in fact, the Special Committee sought actual possession of the documents designated by Softwise as confidential.

Thus, our proposed stipulation deferred judicial intervention concerning documents about which Softwise indicated it had confidentiality concerns while the Special Committee reviewed the documents at your office and determined whether they were sufficiently material to merit resort to litigation. Over a period of about a week, we negotiated back and forth over the terms

Samuel Alba
October 28, 2013
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of the proposed stipulation and we even included in it terms that you deemed important to your client.

You have advised us today that your client is unwilling to accept the negotiated stipulation and instead intends to seek a judicial protective order. Given the protections that the Special Committee has offered your client in the form of a stipulation, which include a willingness to defer production of documents that your client deems confidential pending a review to determine whether a disagreement over the documents is even justified, we believe your rush to litigate is unwise.

Sincerely,

A handwritten signature in black ink, appearing to read "Samidh Guha" with a stylized flourish at the end.

Samidh Guha