

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| UNITED STATES OF AMERICA | § | |
| | § | |
| v. | § | Criminal Action No. H-09-342 |
| | § | |
| ROBERT ALLEN STANFORD, | § | |
| LAURA PENDERGEST-HOLT, | § | |
| GILBERTO LOPEZ, MARK | § | |
| KUHRT, <i>and</i> LEROY KING | § | |

ORDER

On June 18, 2009, a federal grand jury in the Southern District of Texas returned a twenty-one count indictment against Defendants Robert Allen Stanford, Laura Pendergest-Holt, Gilberto Lopez, Mark Kuhrt, and Leroy King (“Defendants”). The indictment alleges the Defendants, in controlling Stanford Financial Group and its affiliated companies including Stanford International Bank, Ltd., conspired to commit and did commit mail fraud and wire fraud, conspired to commit securities fraud and money laundering, and conspired to obstruct and did obstruct a Securities Exchange Commission investigation. Defendant Robert Allen Stanford’s jury trial in this case is set to commence January 24, 2011.¹

Additionally, two civil cases related to the actions giving rise to the criminal case are pending—*Securities and Exchange Commission v. Stanford International*

¹On June 23, 2010, the Court granted Defendant Laura Pendergest-Holt’s motion for severance, joined by Defendants Gilberto Lopez and Mark Kuhrt. They will jointly proceed to trial following Defendant Robert Allen Stanford’s trial.

Bank, Ltd., et al.; Case No. 3-09-CV-298-N, filed on February 17, 2009 in the United States District Court for the Northern District of Texas, Dallas Division (the “SEC Action”) and *Laura Pendergest-Holt v. Certain Underwriters at Lloyd’s of London*, Case No. 4:09-CV-3712 filed on November 17, 2009 in the United States District Court for the Southern District of Texas, Houston Division (the “Declaratory Action”). In the former, the SEC alleges Defendants orchestrated a multi-billion dollar Ponzi scheme in which they, *inter alia*, conspired to deceive investors and sold sham certificates of deposit. *Sec. & Exch. Comm’n v. Stanford Int’l Bank, Ltd., et al.*, No. 3:09-CV-298 (N.D. Tex. filed Feb. 17, 2009). In the latter, Laura Pendergest-Holt, Robert Allen Stanford, Gilberto Lopez, and Mark Kuhrt brought a declaratory judgment action against Certain Underwriters at Lloyd’s of London (“Certain Underwriters”) and Arch Specialty Insurance Company seeking an order directing Certain Underwriters to pay their defense costs in both the SEC Action and this case. *Laura Pendergest-Holt, et al. v. Certain Underwriters at Lloyd’s of London, et al.*, No. 4:09-CV-3712 (S.D. Tex. filed Nov. 17, 2009).

The Court takes judicial notice that these cases have received extensive media coverage—locally, nationally, and internationally—which the Court does not foresee subsiding.² *See United States v. Brown*, 218 F.3d 415, 423, 431–32 (5th Cir. 2000)

²*See, e.g.*, Laurel Brubacker Calkins and Andrews M. Harris, *Undisclosed Stanford Loans Prove Fraud, Examiner Says*, BLOOMBERG (Aug. 26, 2010),

(affirming the trial court's denial of a motion to modify or vacate a gag order directed at trial participants in part because of the possible prejudicial effect of extrajudicial statements made by trial participants where two related cases were concurrently pending). The Court also takes judicial notice that some of the trial participants have demonstrated a willingness to "try this case in the press."³ See *Brown*, 218 F.3d at 423, 439. Such heightened publicity surrounding these proceedings potentially poses a significant danger to providing a fair trial by impartial jurors. See *Pennekamp v. Florida*, 328 U.S. 331, 357–58 (1946). The Court has an affirmative duty to take

<http://www.bloomberg.com/news/2010-08-26/undisclosed-stanford-loans-prove-fraud-witness-says-in-lloyd-s-trial.html>; Bill McQuillen, Justin Blum, and Laurel Brubaker Calkins, *Allen Stanford Indicted by U.S. in \$7 Billion Scam*, BLOOMBERG, (June 19, 2009) <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aMEDm0Rhcbo>; Graeme Wearden, *Allen Stanford indicted on fraud charges after surrendering to FBI*, THE GUARDIAN, June 19, 2009, <http://www.guardian.co.uk/world/2009/jun/19/allen-stanford-arrested>; Mary Flood, Tom Fowler, and Jennifer Dlouhy, *Stanford among 6 indicted in Ponzi scam*, HOUS. CHRONICLE, June 20, 2009, <http://www.chron.com/dispatch/story.mpl/business/stanford/6487122.html>; Amir Efrati, *Stanford Defense Turns into Legal Circus*, June 5, 2010, <http://online.wsj.com/article/SB10001424052748704080104575286760595101400.html>. See generally *Stanford scandal*, HOUS. CHRONICLE, <http://www.chron.com/business/stanford/> (web log tracking the Stanford cases); *Stanford Financial Group*, N.Y. TIMES, http://topics.nytimes.com/top/news/business/companies/stanford_financial_group/index.html (same); *Allen Stanford*, <http://www.guardian.co.uk/world/allen-stanford> (same).

³Michael Rothfeld, *Texas Prison is Technology Vortex, Allen Stanford Says*, W. ST. J. (Aug. 13, 2010), <http://blogs.wsj.com/law/2010/08/13/texas-prison-is-technology-vortex-allen-stanford-says/>; Mary Flood, *Yet another lawyer wants to enter Stanford case*, HOUS. CHRONICLE, June 3, 2010, <http://www.chron.com/dispatch/story.mpl/business/stanford/7035307.html>; Mary Flood, *Stanford's new lawyer says client has already fired him*, HOUS. CHRONICLE, May 14, 2010, <http://www.chron.com/dispatch/story.mpl/side/7005883.html>.

preventative measures in order to avert prejudicial pretrial publicity. *Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966). The objective of the Court is to institute “those remedial measures that will prevent the prejudice at its inception.” *Brown*, 218 F.3d at 431.

Because the Court finds that there is a substantial likelihood that extrajudicial commentary by trial participants might taint the jury pool and might undermine a fair trial, to which both the Defendants and the public are entitled, and no other available remedy would effectively mitigate the effect of prejudicial publicity, it is necessary to issue this Order, *sua sponte*, as the least restrictive measure to preserve a fair trial. *See Brown*, 218 F.3d at 427–28 (recognizing the “substantial likelihood” standard as applied to restrictions aimed at extrajudicial statements by trial participants); *see also Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 555 (1976) (endorsing proposed measures available to trial judges to mitigate prejudicial effects of pretrial publicity, including prohibiting extrajudicial comments by trial participants but short of applying prior restraints on the press). Accordingly, the Court hereby

ORDERS that from this date until the final disposition in this case: (i) the prosecuting attorneys and any and all members of their respective staffs; (ii) the alleged victims and all other designated or potential witnesses expected to be called by either side; and (iii) the Defendants and their attorneys, and their respective staffs,

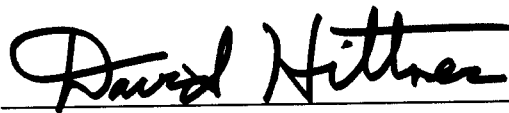
their representatives, and their agents, including publicity agents, shall not give, authorize, or permit any extrajudicial statement to any person associated with any public communications media relating to the trial, the parties, the witnesses, or the issues in this case, which (a) may reasonably be expected or have the potential to interfere with a fair trial or prejudice the Defendants, the prosecutors, or the administration of justice and (b) which is not a matter of public record. Testimony given before the grand jury and tapes or transcripts of tapes made by any of the above parties prior to this trial are not public information. Prejudicial information or statements includes information and statements intended to influence public opinion regarding the merits of this case. The attorneys in this case are ordered to insure that all persons within the categories described in this paragraph who are or may be involved in the attorneys' respective side (whether prosecution or defense) are fully informed of the content of this Order.

Nothing set forth above shall prohibit any of the above persons from the following:

(1) stating, without any elaboration: (a) the general nature of an allegation or defense made in this case; (b) information contained in the public record of this case; (c) scheduling information; (d) any decision made or order issued by the Court, which is a matter of public record;

(2) stating, without any elaboration, the contents or substance of any motion or step in the proceedings, to the extent such motion or step is a matter of public record in this case and any ruling made thereon to the extent that such ruling is a matter of public record.

SIGNED at Houston, Texas, on this 30 day of September, 2010.

A handwritten signature in black ink, appearing to read "David Hittner", written over a horizontal line.

DAVID HITTNER
United States District Judge