UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 15-1815

Caption [use short title]

Motion for: leave to file an oversized brief and to file this motion out of time

United States

v.

Ross Ulbricht

Set forth below precise, complete statement of relief sought:

This motion requests leave to file an oversized brief pursuant to Local Rule 27(g), and to file this motion out of time

MOVING PARTY: Ross Ulbricht

☐ Plaintiff ☐ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY: United States of America

MOVING ATTORNEY: Joshua L. Dratel

OPPOSING ATTORNEY: Michael A. Levy; Serrin A. Turner

[name of attorney, with firm, address, phone number and e-mail]

Joshua L. Dratel, JOSHUA L. DRATEL, PC
29 Broadway, Suite 1412, New York, New York 10006
(212) 732 - 0707; jdratel@joshuadratel.com

Michael A. Levy/Serrin A. Turner, United States Attorneys Office, SDNY
1 St. Andrews Plaza, New York, New York 10007
(212) 637 - 2346/1946; michael.levy@usdoj.gov/serrin.turner@usdoj.gov

Court-Judge/Agency appealed from:

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☐ Opposed ☑ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:
/s/ Joshua L. Dratel **Date:** January 12, 2016

Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA	:	Docket No. 15-1815
- v. -	:	
ROSS ULBRICHT,	:	DECLARATION OF JOSHUA L. DRATEL IN SUPPORT OF MOTION FOR LEAVE TO FILE AN OVERSIZED BRIEF AND TO FILE THIS MOTION OUT OF TIME
Defendant-Appellant.	:	

JOSHUA L. DRATEL, pursuant to 28 U.S.C. §1746, hereby declares under penalty of perjury:

1. I am an attorney, and I make this declaration in support of Defendant-Appellant Ross Ulbricht's motion for leave to file the accompanying oversized brief (which has been filed concurrent with this motion) pursuant to Local Rule 27(g), and to file this motion out of time. For the reasons set forth below, it is respectfully submitted that the oversized brief is necessary to cover the important and novel issues presented in Mr. Ulbricht's appeal, particularly in light of the extensive pretrial, trial, sentencing, and post-trial record litigation this case has generated.

2. The trial in this case lasted four weeks and involved a very complex set of facts and legal issues that were briefed in great detail. In some respects, this was the first prosecution of its kind: of the alleged proprietor of a web site, the Silk Road, that operated on the anonymous TOR internet network and accepted only bitcoin, an electronic currency, as payment, and allowed vendors to sell whatever products they wished to purvey. The discovery included five terabytes of data, and the government introduced hundreds of exhibits at trial.

3. The investigation executed 14 separate warrants or orders for a variety of searches and electronic monitoring (via pen registers and trap and trace devices that captured internet routing information). This appeal involves challenges to several of those searches because the warrants at issue lacked particularity and because the pen register and trap and trace devices should have required a warrant because the captured content, because they monitored Mr. Ulbricht's activities in his own home, because they sought prospective, rather than merely historical data, and because they were used to track Mr. Ulbricht's location.

4. Extensive pretrial litigation was also devoted to the admissibility of the investigation, and evidence related thereto, of the corruption of a DEA Agent directly involved in the Silk Road investigation, and which related directly to that participation. That litigation was renewed after trial when that former DEA Agent was formally charged, and when disclosure was made to the defense for the first time that a second law enforcement agent, from the Treasury Department, also committed crimes in the course of the Silk Road investigation.

5. The trial also created continued and complicated litigation involving evidentiary issues that arose, including the District Court's curtailment of cross-examination of government witnesses, its preclusion of two defense expert witnesses, and its exclusion of an exculpatory statement that constituted a statement against penal interest by an unavailable declarant.

6. The novel circumstances of this case presented a unique set of factual and legal issues. All of these issues are fact-intensive and fact-specific. Also, many of the legal issues evolved over the course of the case, and were the subject of successive briefing and court opinions. That evolution needs to be traced in some depth in order to permit adequate understanding of each issue's context within the case as a whole.

7. In addition, Mr. Ulbricht, 30 years old at the time of his conviction, received a life sentence after voluminous briefing on contested factual issues not charged, but which the government presented in the sentencing context, and upon which the District Court ultimately relied.

8. There are also a considerable number of subheadings, which are designed to enhance readability, coherence, and understanding of this complex and factually dense case, but nevertheless have unavoidably increased the word count (and page length) of the Brief.

9. As a result, an oversized brief is necessary to present these issues adequately, and in a manner that can sufficiently assist the Court in understanding the factual context, as well as the legal landscape of these rare but complex issues in a case in which the defendant received a life sentence. The Brief is 30,908 words. I have endeavored to edit and delete as much as possible without sacrificing the essential merits of these multiple and layered arguments. I have also when possible streamlined certain issues, summarized facts when possible, and not repeated facts or law when or if mentioned previously in another Point in the Brief. The full draft was at least 30% longer, and that was after certain issues and sub-issues were dropped from the final product.

10. The points that remain are essential to the appeal, and to providing the Court with the context, both factually and legally, that is necessary to present Mr. Ulbricht's appeal effectively. As a result, in my professional judgment, I cannot shorten the Brief any further without doing genuine and serious damage to Mr. Ulbricht's appeal. There are simply too many essential elements to this mammoth case, and too much at stake for Mr. Ulbricht.

11. This motion is being made out of time because, as noted above, I have taken most seriously the task of editing the Brief as much as possible. As a result, I have held on to the Brief

longer than I would have otherwise in order to continue trimming it this past week. I did not want to submit with this motion on a Brief that I could not, in good faith, attest was the product of the best editing effort I could muster.

12. Accordingly, this motion for an oversized Brief is submitted out of time. For all the reasons set forth above, it is respectfully requested that the Court grant leave to file the oversized Brief submitted herewith, it is respectfully requested that the Court grant this application in its entirety, and grant Mr. Ulbricht leave to file the accompanying oversized Brief, and to make this motion out of time, and for any other such relief as this Court deems just and proper.

WHEREFORE, it is respectfully requested that the Court grant this application in its entirety, and grant Mr. Ulbricht leave to file the accompanying oversized Brief, and to make this motion out of time, and for any other such relief as this Court deems just and proper.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. 28 U.S.C. §1746. January 12, 2016.

/s/ Joshua L. Dratel
JOSHUA L. DRATEL

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of January, two thousand and sixteen.

United States of America,

Appellee,

v.

Ross William Ulbricht, AKA Dread Pirate Roberts, AKA Silk Road, AKA Sealed Defendant 1, AKA DPR,

Defendant - Appellant.

ORDER

Docket No. 15-1815

Appellant Ross Ulbricht, through counsel, moves for leave to file an oversized brief and to file this motion out of time.

IT IS HEREBY ORDERED that the motion is GRANTED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

15-1815-CR

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

ROSS WILLIAM ULBRICHT, AKA DREAD PIRATE ROBERTS, AKA SILK ROAD, AKA SEALED DEFENDANT 1, AKA DPR,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York (New York City)

BRIEF FOR DEFENDANT-APPELLANT

JOSHUA L. DRATEL, P.C.
Attorneys for Defendant-Appellant
29 Broadway, Suite 1412
New York, New York 10006
212-732-0707

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JURISDICTIONAL STATEMENT

The District Court's jurisdiction is based on 18 U.S.C. §3231. This Court's jurisdiction is based on 28 U.S.C. §1291 and 18 U.S.C. §3742(a). This appeal is from an Order of Judgment entered June 1, 2015, by the Honorable Katherine B. Forrest, United States District Judge, Southern District of New York, following defendant-appellant Ross Ulbricht's conviction after trial on seven counts charged against him in Indictment 14 Cr. 68 (KBF). A150.[1] A timely Notice of Appeal was filed June 4, 2015. A1554. Ulbricht is appealing a final order of the Court regarding his conviction and sentence. A1545.

STATEMENT OF THE ISSUES

I. Whether the Court abused its discretion in precluding Ulbricht's use at trial of evidence of an investigating agent's corruption directly related to the investigation and operation of the website the defendant allegedly operated, and whether the government withheld exculpatory information, regarding that corruption.

II. Whether the Court abused its discretion in curtailing the defense's cross-examination of government witnesses with respect to the defense theories of the case.

[1] "A" refers to the Appendix filed herewith. "S" refers to the Sealed Appendix. "T" refers to citations to the trial transcripts.

III. Whether the Court abused its discretion in precluding the testimony of two defense experts.

IV. Whether the Court erred in excluding a statement by an unavailable witness, which qualified for admission under either Rule 803(4), Fed.R.Evid. (admission against penal interest) or Rule 807, Fed.R.Evid. (residual exception).

V. Whether the Court's evidentiary errors, even if insufficient individually to warrant vacating Ulbricht's conviction, constituted cumulative error.

VI. Whether the Court erred in denying Ulbricht's motions to suppress:

A. evidence from his laptop and social media accounts because the warrants to search those materials lacked any particularity.

B. evidence obtained via pen register and trap and trace devices that tracked Ulbricht's internet activity and location because they were implemented without a warrant.

VII. Whether the sentence of life imprisonment imposed upon Ulbricht was procedurally and/or substantively unreasonable.

SUMMARY OF THE ARGUMENT

This Brief on Appeal is filed on behalf of defendant-appellant Ross Ulbricht, who, after a four-week jury trial, was convicted on seven counts and subsequently sentenced to life without parole. The charges alleged that Ulbricht operated a website, the Silk Road, on which vendors offered for sale a wide variety of merchandise including controlled substances, computer hacking software, and false identification documents. The exclusive method of payment on the site, which existed on the TOR network on the Internet and provided anonymity for those operating, selling, and purchasing on Silk Road, was through Bitcoin, an electronic payment system also providing anonymity for participants in any transaction on Silk Road.

This appeal presents three categories of issues: (1) those that occurred at trial; (2) those related to the Court's denial of Ulbricht's motions to suppress certain evidence; and (3) those that occurred at sentencing. As detailed below, those errors, correspondingly, (1) constituted an abuse of discretion and denied Ulbricht his Fifth and Sixth Amendment rights to Due Process, a fair trial, and to present a defense; (2) violated his Fourth Amendment rights to be protected against unreasonable search and seizure, and (3) constituted an abuse of discretion and denial of Ulbricht's Fifth Amendment Due Process rights with respect to sentencing.

At trial, the Court's evidentiary rulings precluded a valid defense by excluding material exculpatory evidence of critical law enforcement corruption by two agents in the investigation itself, unreasonably curtailing cross-examination – including *post hoc* excision of questions and answers from the record – as well as precluding testimony of two experts proffered by the defense, and a crucial statement by a cooperating witness who did not testify, but which was against the penal interest of the declarant and exculpatory for Ulbricht.

The defense's principal elements were that:

(a) Ulbricht was *not* Dread Pirate Roberts ("DPR"), the alias adopted by the operator and administrator of the Silk Road website, and that, as government investigators and persons directly involved with the site concluded, there were multiple DPR's over the course of Silk Road's existence;

(b) that DPR framed Ulbricht, who had initially conceived of and constructed the Silk Road site, but had divested himself of it early on (as he had informed a friend who testified as a government witness); and,

(c) that vulnerabilities inherent to the internet and digital data, such as fabrication and manipulation of files and metadata, and hacking,

rendered much of the evidence against Ulbricht inauthentic, unattributable to him, and/or ultimately unreliable.

Yet the Court's rulings, covered in POINTs I, II, III and IV, prevented the defense from presenting salient facts to the jury with respect to each of those issues by precluding:

(1) evidence that a Drug Enforcement Administration Special Agent, Carl M. Force, had engaged in corruption in his investigation of Silk Road, which included his and another corrupt agent's (whose misconduct was not disclosed to the defense until *after* trial) infiltration of the internal operations of Silk Road's website and communications and financial platforms;

(2) evidence pointing to an alternative perpetrator, Mark Karpeles, whom the government was actively investigating with respect to Silk Road until Ulbricht's arrest;

(3) evidence that DPR was paying someone claiming to be involved in law enforcement (and who after trial was confirmed to be Force) for information regarding the status and progress of the government's investigation of Silk Road;

(4) evidence that over time there was more than one DPR;

(5) evidence that a Silk Road administrator had reason to believe that the person acting as DPR (whom he had never met) in September 2013 was *not* the DPR who had hired him earlier that year; and

(6) evidence that the integrity of communications and information transmitted over the internet is suspect without firsthand corroboration of the source and accuracy.

In a case in which that lack of integrity of digital information, created and transmitted on an anonymous untraceable internet network, was of paramount importance, and in which the government did not produce a single witness to testify firsthand that Ulbricht authored any of the communications attributable to DPR, and which was permeated by corruption of two law enforcement agents participating in the investigation, the restrictions on cross-examination, and preclusion of expert witnesses offered to overcome those restrictions, eviscerated Ulbricht's defense and denied him a fair trial.

Also, as set forth in POINT V, even if those errors do not suffice individually to compel reversal of Ulbricht's convictions, they constitute cumulative error.

In addition, as detailed in POINT VI, the Court's denial of Ulbricht's suppression motion was erroneous in two respects: (1) the warrants for the search of his laptop, Facebook and Gmail accounts lacked *any* particularity; and

(2) the pen register and trap and trace devices implemented required a warrant because they tracked Ulbricht's internet activity and location, intruded into his conduct within his residence, and sought prospective, rather than historical, information.

Ultimately, Ulbricht was sentenced to life imprisonment. In so doing, as set forth in POINT VII, the Court committed both procedural and substantive error. The former involved attributing to Ulbricht several alleged overdose deaths based on an undefined and unprecedented legal standard, and then applying that standard to rely on accusations (rather than the uncontroverted report of the defense's expert forensic pathologist) that did not meet even the preponderance of evidence standard. The latter error involved imposing a demonstrably unreasonable sentence that "shocks the conscience" or at very least "stirs" it – the most severe available, reserved for a tiny fraction of the worst offenders, upon a defendant who, even if guilty, did not himself sell any drugs but merely created a neutral internet commercial platform that enabled others to do so.

Accordingly, it is respectfully submitted that Ulbricht's convictions should be vacated and a new trial ordered, particular evidence against him suppressed, or, in the alternative, the matter should be remanded for re-sentencing before a different judge.

STATEMENT OF THE CASE

Ulbricht was arrested October 1, 2013, in San Francisco, California, pursuant to a Criminal Complaint charging him with a narcotics trafficking conspiracy, in violation of 21 U.S.C. §846, a computer hacking conspiracy, in violation of 18 U.S.C. §1030 (a)(2), and a money laundering conspiracy, in violation of 18 U.S.C. §1956(h). A48.

The Superseding Indictment charged Ulbricht with devising and operating Silk Road, an "underground website" allegedly "designed to enable users across the world to buy and sell illegal drugs and other illicit goods and services anonymously and outside the reach of law enforcement." A150. Ulbricht is alleged to have owned and operated the site "with the assistance of various paid employees who he managed and supervised" from in or about January 2011 through in or about October 2013, when Silk Road was shut down by law enforcement. A150-51.

According to the Indictment, during the period that the Silk Road website was operational it "emerged as the most sophisticated and extensive criminal marketplace on the Internet" and was "used by several thousand drug dealers and unlawful vendors to distribute hundreds of kilograms of illegal drugs and other illicit goods and services to well over a hundred thousand buyers worldwide." *Id.*

The website is also alleged to have been used "to launder hundreds of millions of dollars from these illegal transactions." *Id.* The Indictment further alleges Ulbricht "reaped commissions worth tens of millions of dollars" from the sales conducted on the website, and he "solicit[ed] the murder-for-hire of several individuals he believed posed a threat" to Silk Road in order to "protect his criminal enterprise and the illegal proceeds it generated." A151.

A. *The Charges*

Ulbricht was initially indicted February 4, 2014, A87, and a Superseding Indictment was returned August 21, 2014. A150. The Superseding Indictment charged Ulbricht with: Distribution and Possession with Intent to Distribute Controlled Substances and Aiding and Abetting such Distribution and Possession with Intent to Distribute, in violation of 21 U.S.C. §§812, 841(a)(1) and (b)(1)(A), and 18 U.S.C. §2 (Count One); Distribution of Narcotics By Means of the Internet and Aiding and Abetting Such Activity, in violation of 21 U.S.C. §§812, 841(h) and (b)(1)(A) (Count Two); Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances, in violation of 21 U.S.C. §846 (Count Three); Continuing Criminal Enterprise, in violation of 21 U.S.C. §848(a) (Count Four); Conspiracy to Commit and Aid and Abet Computer Hacking, in violation of 18 U.S.C. §1030(b) (Count Five); Conspiracy to Traffic and to Aid and Abet Trafficking in Fraudulent Identification Documents, in violation of 18 U.S.C.

§1028(f) (Count Six); and a Money Laundering Conspiracy, in violation of 18 U.S.C. §1956(h). *Id*.

The Superseding Indictment also included forfeiture allegations pursuant to 18 U.S.C. §§981 & 982, 21 U.S.C. §853, and 28 U.S.C. §2461. A163-65. Ulbricht pleaded not guilty to the charges.

B. *Pretrial Motions*

Ulbricht filed pretrial motions March 28, 2014, seeking dismissal of all charges. *See* Docket #21. The Court issued an Order July 9, 2014, denying those motions in their entirety. A99.

Ulbricht filed additional pretrial motions August 1, 2014, to suppress certain evidence, for a Bill of Particulars, for discovery, and to strike surplusage from the Indictment. The suppression motions sought, *inter alia*, to suppress evidence obtained via unlimited searches of Ulbricht's laptop and Gmail and Facebook accounts on the grounds they violated the Fourth Amendment because the warrants lacked the requisite particularity; the searches were the fruit of unlawful pen register and trap and trace Orders used to obtain internet router identifying information regarding Ulbricht's laptop, location, and internet activity. *See* Docket #48.

The Court denied those motions by Order dated October 10, 2014, A176, on the grounds that (1) the Court had "no idea" whether Ulbricht had an expectation

of privacy in his laptop, and Facebook and Gmail accounts, but regardless the warrants for these accounts were lawful in that they were not general warrants and were supported by probable cause; and (2) "the type of information sought in Pen-Trap orders 1, 2, 3, 4, and 5 was entirely appropriate for that type of order" and "[t]he Pen-Trap Orders do not seek the content of internet communications in any directly relevant sense." A201, 203-04.

C. *Disclosure of Force's Corruption During the Investigation*

Approximately a month prior to trial, December 1, 2014, the government disclosed to defense counsel a November 21, 2014, letter to the Court regarding an "ongoing federal grand jury investigation" by the U.S. Attorney's Office for the Northern District of California, in conjunction with the Public Integrity Section of the Criminal Division of the Department of Justice, into former Drug Enforcement Administration ("DEA") Special Agent Carl Force, a matter under seal pursuant to Court Order and Rule 6(e), Fed.R.Crim.P. A649. The letter disclosed that "[i]n 2012 and 2013, SA Force was involved as an undercover agent in an investigation of Silk Road conducted by the U.S. Attorney's Office for the District of Maryland." A649.

The Court conducted a sealed hearing December 15, 2014, regarding the sealed December 1, 2014, disclosure to defense counsel regarding the grand jury investigation of Force, and the government's application to preclude the defense

from disclosing the investigation of Force to any third party, or using it at trial. A224. Defense counsel moved for unsealing and disclosure of all information regarding the government's investigation of Force. A238; Docket#114 & #227-1.

The government submitted a supplemental letter December 17, 2014, regarding the sealed proceeding as to Force, and the Court's endorsement of that letter requested defense counsel submit a list of particularized discovery requests regarding the investigation of Force to the Court by the following morning. A662. Defense counsel submitted this list to the Court, by letter, December 18, 2014. A669-72.

In a December 22, 2014, Sealed Memorandum and Decision, the Court denied Ulbricht's motions to unseal the government's November 21 2014, letter, and for discovery regarding the Force investigation. A675-76. The Court also stated that in regard to defense counsel's ability to use information from the November 21, 2014, letter at trial, it would "over the course of the trial, entertain specific requests to use information from the November 21, 2014 Letter on cross-examination" and "if, during the course of the trial, the Government opens the door to specific information or facts develop which render particularized disclosure of facts or documents relevant, the Court will entertain a renewed application at that time." A700.

In light of the Court's December 22, 2014, Opinion, defense counsel submitted a letter December 30, 2014, requesting an adjournment of Ulbricht's trial until after the conclusion of the investigation – by that time already eight months old – into Force's misconduct. A701. The government opposed defense counsel's request and the Court denied the adjournment request that same day. A704-06.

D. *The Trial*

Ulbricht's trial commenced January 13, 2015, in the Southern District of New York. The government's theory of prosecution, described **ante**, was that Ulbricht created Silk Road and operated it throughout its existence until his arrest, and did so intentionally, and conspired, to facilitate the sale of drugs and other illicit materials (hacking software and false identification documents) by vendors and purchasers using the site, charging a commission for each transaction paid in bitcoin.

The defense theory was that while Ulbricht, at the time 26 years old, had devised Silk Road as a free-market economic experiment – as he told his friend, government witness Richard Bates, *see* **post** – he had, as he informed Bates later, divested himself of interest in Silk Road shortly after its inception. The defense also posited that Ulbricht was not DPR, who first appeared after Ulbricht left Silk Road, that there were multiple persons successively acting as Dread Pirate Roberts

(much like the character of that name in the movie *The Princess Bride*), and that the DPR in 2013, who purchased and was leaked information about the government's investigation of Silk Road, framed Ulbricht to absorb the consequences.

Also encompassed within the defense theory was evidence that the government's investigation of DPR and Silk Road had been flawed, impairing its ability to apprehend and prosecute a specific alternative perpetrator, Mark Karpeles, the focus of the investigation for a considerable period of time. In addition, with pressure mounting toward the end of 2013 – because the government had access to Silk Road's computer servers overseas since July 2013, but permitted the site to continue operating while investigating the identity of DPR – the government seized on Ulbricht as DPR, thereby letting the alternative perpetrator escape justice and leave Ulbricht as the wrongfully prosecuted culprit.

The government's first witness, Chicago-based Homeland Security Investigations ("HSI") Special Agent Jared Der-Yeghiayan, who initiated an investigation of Silk Road based on intercepted mail packages from overseas arriving through Chicago. T.76-77. During SA Der-Yeghiayan cross-examination, he testified regarding an alternate perpetrator. A336. Although the government did not object to this testimony at the time elicited, and only did so subsequently at sidebar, and even though the Court had ruled at sidebar

January 15, 2015, that the testimony was appropriate, when trial reconvened January 20, 2015, the Court reversed its opinion, and directed the government to identify the testimony (during cross-examination) that it proposed to strike. A409-11; A441-43.

The government submitted those strikes to defense counsel during the lunch break January 20, 2015, and the Court endorsed them following the break, refusing to permit defense counsel even a brief adjournment to reconstruct its cross-examination to cover the stricken pieces in an alternative fashion. A334; A466-73.

Following SA Der-Yeghiayan's testimony, several other law enforcement agents involved in the Silk Road investigation at various stages, including FBI Computer Specialist Thomas Kiernan, testified regarding technical and forensic computer matters, and through these witnesses the government admitted Ulbricht's laptop and items from its hard drive. A492, 494-95. However, when defense counsel attempted to cross-examine these witnesses as to related computer issues, the Court repeatedly curtailed or flatly denied the cross, even stating at one point in the jury's presence, "[y]ou can put somebody else on the stand to do that[,]" thus improperly placing the burden on the defense. A506.

Yet, when defense counsel sought to call two experts during the defense case, Dr. Steven Bellovin and Andreas Antonopoulos, to respond to testimony

presented by the government's computer and forensics agents, and by former FBI Special Agent Ilhwan Yum, who testified as a lay witness but conducted a complex analysis – provided to the defense mid-trial only days prior to his testimony – of thousands of transactions regarding dozens of bitcoin wallets located on the Silk Road server and on Ulbricht's laptop, s*ee e,g.,* A532, the Court ultimately issued an Order & Opinion February 1, 2015, precluding the defense experts' testimony. A362; A380; A385.

The government also called Ulbricht's former friend, Richard Bates, who testified under a non-prosecution agreement. T.1096-97. Bates testified he provided Ulbricht with programming assistance in late 2010 and 2011, including assistance with the Silk Road website. T.1103, 1128. Bates also testified that Ulbricht told Bates, November 11, 2011, that he had sold the Silk Road website. T.1138-39.

As part of its case, the defense moved to admit a statement made to prosecutors by Andrew Jones, who had been a Silk Road administrator, was cooperating with the government, and had been a proposed government witness (until mid-trial). Jones's lawyer stated Jones would invoke his Fifth Amendment right against self-incrimination if called to testify. A563-65; A395.

The statement, detailed **post**, in POINT IV, supported the defense theory that there had been multiple persons acting as DPR, and the identity of DPR had changed in September 2013, shortly before Ulbricht's arrest.

The Court, however, denied the defense's application to admit Jones's statement as a statement against penal interest under Rule 804(3), Fed.R.Evid, or the residual exception in Rule 807, Fed.R.Evid. A581-83, 589.

E. ***The Charge and Verdict***

The government rested the afternoon of February 2, 2015, and the defense moved for a judgment of acquittal on all seven counts pursuant to Rule 29, Fed.R.Crim.P. T.2023. Those motions were denied. T.2029. The defense began presentation of its case the afternoon of February 2, 2015, and rested the next afternoon of February 3, 2015. T.2001; 2126. Closing argument occurred that afternoon. T.2126.

The Court charged the jury the morning of February 4, 2015, and the jury began deliberating February 4, 2015, at 11:55 a..m. T.2329. The Court received a note from the jury foreperson at 3:23 p.m, that afternoon, announcing the jury had "reached a verdict." T.2334. Ulbricht was found guilty on all counts. T.2334-37.

F. *Post-Trial Motions and Further Disclosure Regarding Corruption In the Investigation*

Ulbricht filed motions March 6, 2015, for a new trial pursuant to Rule 33, Fed.R.Crim.P. *See* Docket #224. After those motions were filed, on March 25, 2015, seven weeks after trial concluded in this case, the government filed criminal charges against Force and another participant in the Silk Road investigation, former Secret Service Special Agent Shaun Bridges, in the Northern District of California. The government filed a letter March 30, 2015, notifying the Court that the Complaint regarding the corruption investigation into these two agents, both of whom had conducted illegal activity during the course of their investigation into DPR and the Silk Road website, had been unsealed. *See* Docket #226. This was the first time the defense (or the Court) was informed there was a second corrupt agent involved in the Silk Road investigation.

Ulbricht filed a Reply April 16, 2015, and included motions related to the government's inadequate and untimely disclosure of the investigations of Force and Bridges. *See* Docket #233; A722. The Court issued an Opinion and Order April 27, 2015, denying Ulbricht's Rule 33 motions in their entirety. A876.

G. *Sentencing*

Prior to Ulbricht's sentencing, in March and April 2015 the government provided defense counsel and the Probation Office with reports of six overdose

deaths for inclusion in the Pre-Sentence Report, which the government claimed resulted from drugs sold on the Silk Road website, and which it believed were relevant conduct that could be taken into account at sentencing. *See* Pre-Sentence Report ("PSR"), ¶¶61-86.

Ulbricht submitted a report from an expert forensic pathologist, Dr. Mark Taff, contesting the government's claims that the deaths were causally related to drugs sold on Silk Road, and, asserting, as a result, the alleged overdose deaths should not have been a factor at sentencing. A903; S437.

Ulbricht's sentencing submission, including 99 letters submitted on Ulbricht's behalf, sought a sentence well "below the applicable advisory Guidelines range." A973.

At sentencing May 29, 2015, the Court ruled the overdose deaths had been properly included in the Pre-Sentence Report, and were related conduct relevant to Ulbricht's conviction. A1472. Ulbricht was sentenced "on Counts Two and Four . . . to a period of life imprisonment to run concurrently[,]" and on "Count Five . . . to five years' imprisonment to run concurrently; on Count Six . . . to 15 years' imprisonment also concurrent; and for money laundering in Count Seven, . . . to 20 years, also concurrent." A1540.

The Judgment against Ulbricht was filed June 1, 2015, and Ulbricht filed his Notice of Appeal of his sentence and conviction June 4, 2015. A1554.

ARGUMENT

POINT I

THE COURT ABUSED ITS DISCRETION AND DENIED ULBRICHT HIS FIFTH AND SIXTH AMENDMENT RIGHTS TO DUE PROCESS, THE RIGHT TO PRESENT A DEFENSE, AND A FAIR TRIAL BY (A) PRECLUDING THE DEFENSE FROM USING AT TRIAL THE EVIDENCE RELATING TO DEA SPECIAL AGENT CARL FORCE'S CORRUPTION; (B) REFUSING TO ORDER THE GOVERNMENT TO PROVIDE ADDITIONAL DISCOVERY AND *BRADY* MATERIAL REGARDING CORRUPTION; AND (C) DENYING ULBRICHT'S MOTION FOR A NEW TRIAL BASED ON ADDITIONAL POST-TRIAL DISCLOSURES REGARDING FORCE AND ANOTHER CORRUPT LAW ENFORCEMENT AGENT INVOLVED IN THE SILK ROAD INVESTIGATION

As set forth **ante**, at 11-13, in December 2014, approximately one month prior to trial the government informed the defense that former DEA Special Agent Carl Force ("Force") was under investigation – and had been formally for approximately eight months – for corrupt activity directly related to his participation in the investigation of the Silk Road and Dread Pirate Roberts ("DPR"). A650. Indeed, Force, as a member of the Baltimore Task Force, had allegedly engaged DPR in computer chats that resulted in a murder-for-hire plot targeting a former Silk Road employee.

The government moved to preclude the defense's use of that information at trial based on the secrecy of the grand jury investigation of Force, and because the government claimed Force's investigation of Silk Road was wholly independent of

the case against Ulbricht - alleged to be DPR - prosecuted in the Southern District of New York. A663.

The Court granted the government's application. A673. The Court also denied Ulbricht's motion for discovery and, subsequently, to adjourn the trial until after the investigation of Force was complete. A675; A706. In addition, at the government's urging, during trial the Court altered its pretrial ruling and denied the defense use of information and discovery that even the government in its pretrial application (and the Court in deciding it) had agreed could be utilized at trial.

As detailed below, the Court abused its discretion, and denied Ulbricht his Fifth and Sixth Amendment rights to Due Process, a fair trial, and to prepare and present a defense, because the serial preclusion was based on faulty premises, due in large part to the government's deliberate and calculated failure to provide either the Court or the defense salient and material facts, including:

(a) contrary to the government's representations to the Court, there was not any need to keep the grand jury investigation secret from its target, as Force was already fully aware of it, and it was nearly, if not entirely, complete by the time trial in this case began;

(b) Force was not the only corrupt federal law enforcement agent involved in the Silk Road investigation, as a Treasury Special Agent, Shaun Bridges, was also under investigation for conduct in concert

with, related to, and similar to Force's (and had also been interviewed, and therefore cognizant of the investigation, prior to December 2014) – yet the government never mentioned or alluded to Bridges *at all* in its pretrial disclosures;

(c) contrary to the government's claim, Force's (and Bridges's) corruption was not independent of the SDNY prosecution. Rather, as demonstrated by a trove of internal law enforcement memoranda and communications produced after the Court had decided the Force issue, pursuant to 18 U.S.C. §3500 ("3500 material"), the Silk Road investigation was a coordinated, interrelated, interdependent effort by several federal districts ultimately directed and controlled by SDNY, thereby rendering the information about Force (and Bridges) relevant, exculpatory, and material; and

(d) Force's (and Bridges's) misconduct was not limited to that revealed by the government pretrial, but rather, as established by the Criminal Complaint filed against Force and Bridges a mere seven weeks after the verdict in this case, encompassed far more.

The extent of Force's knowledge of the investigation of him, the involvement of Bridges, and the broader scope of Force's (and Bridges's) misconduct, in relation to this case, as well as the trajectory of the investigation,

were not known to the defense until *after* trial – indeed, until *after* post-trial motions for new trial pursuant to Rule 33, Fed.R.Crim.P., were filed (although the information was included in the Reply). In fact, the full nature of Force's and Bridges's misconduct has yet to be disclosed, as the government quickly reached plea agreements with both, resolving their cases without any additional disclosure to the public or the defense herein. *See United States v. Bridges*, No. CR 15-319 (RS) (N.D. Cal.), Docket#49 & #65.

Thus, in denying Ulbricht's post-trial Rule 33 motion based on the Force and Bridges corruption and the government's knowing failure to make full disclosure prior to trial, the Court further abused its discretion. As a result, Ulbricht's convictions should be vacated, and a new trial ordered.

A. *The Government's Eve-of-Trial Disclosure of Force's Corruption*

In its November 21, 2014, letter to the Court, subsequently provided to defense counsel December 3, 2014, the government disclosed its ongoing investigation of Force. A649.[2] According to the government's letter, the investigation had thus far revealed that Force used his position as a DEA agent for self-gain by leaking investigative information to the operator of Silk Road in

[2] The government's letter, along with a series of other correspondence and exhibits related to the issue, was not unsealed until the government formally charged Force (and Bridges) seven weeks after trial in this case. *See* Docket#226.

exchange for payment, and hijacking a cooperating witness's Silk Road account to obtain $350,000 in Bitcoins.

In its November 21, 2014, letter, the government informed the Court that Force "is the undercover agent whom Ulbricht allegedly hired to arrange the murder-for-hire, as described in that indictment[,]" and that Force "is now being investigated by USAO-San Francisco for, among other things, leaking information about USAO-Baltimore's investigation to Ulbricht in exchange for payment, and otherwise corruptly obtaining proceeds from the Silk Road website and converting them to his personal use." A649.

The government's letter added that "USAO San Francisco first began investigation into SA Force in the Spring of 2014[.]" A650. Yet the information about the investigation was not disclosed to the defense in this case until December 3, 2014, essentially one month prior to trial. The government also claimed that it "does not believe that the ongoing investigation of SA Force is in any way exculpatory as to Ulbricht or otherwise material to his defense[,]" but disclosed the information "in an abundance of caution[.]" A649.

Furthermore, while the government asserted that Force "played no role" in SDNY's investigation of Silk Road, the government admitted that SDNY "has been assisting USAO-San Francisco with its investigation, by sharing relevant evidence collected from this Office's investigation of Silk Road, including

evidence from the server used to host the Silk Road website (the 'Silk Road Server') and evidence from Ulbricht's laptop computer." A649-50.

In response, the defense submitted, in addition to sealed submissions, at S434 & A669, two sealed *ex parte* letters setting forth the defense theories, and the relationship of Force's misconduct to them and to various items produced in discovery (including some not referred to by the government in its November 21, 2014, letter).[3] The defense moved to unseal the government's November 21, 2014, letter, so the defense could perform a complete investigation, and to use at trial.

At a sealed December 15, 2014, pretrial conference, the government claimed that the grand jury investigation of Force was active, not complete, and in some respects was still in its "early steps." A227. Also, the government contended it did not "know the full extent" of Force's misconduct, but continued to "connect[] the dots" – which it had been doing for almost eight months (and continued to do) while keeping the defense in the dark. A252.

Yet the government sought to preclude the defense from launching any inquiry designed to find out the full extent of Force's misconduct in relation to the Silk Road investigation. As the Court remarked during the December 15, 2014,

[3] Those *ex parte* letters have not been unsealed or provided to the government because, *inter alia*, Ulbricht still faces charges in the District of Maryland. *See* Docket#281 & #283. Of course, those letters can be made available to the Court upon request.

pretrial conference, the government's disclosure was functionally the same as no disclosure at all since the defense could not use it, A248 – and even that was just a small fraction of what the government knew about Force's (and Bridges's) misconduct.

Also, regarding the need for continued secrecy of the investigation, the government, in a December 12, 2014, letter to the Court, maintained that "Force is aware that he is under investigation insofar as he has been interviewed in connection with the grand jury investigation. He is not, however, aware of the full range of the misconduct for which he is being investigated." A659; Docket #227-1, at 68 ("prosecutors believe that disclosure of materials taken from the case file would threaten to reveal the full scope of the investigation and might cause Force (as well as other potential subjects, co-conspirators, or aiders and abettors) to flee, destroy evidence, conceal proceeds of misconduct and criminal activity, or intimidate witnesses").

Ulbricht also submitted a detailed discovery request demanding additional disclosure with respect to Force's misconduct. A669. The Court directed the defense to prioritize its requests, A672, which the defense did.

The Court then denied all of the defense's discovery requests, and granted the government's application to preclude the defense from investigating Force's misconduct, or exploring it at trial. A673. In so doing, the Court held that

Ulbricht had not demonstrated a "particularized need" sufficient to outweigh the need for continued secrecy of the grand jury investigation. A687, 691-96. The Court added that "to the extent there is any information revealed or developed during the Force Investigation that is material and potentially exculpatory, the Government must disclose such information to the defense." A699.

In response, Ulbricht moved for adjournment of the trial until the government had completed its grand jury investigation of Force, and the full nature of his alleged misconduct was known and available to Ulbricht's defense. A701.[4] The Court denied that motion as well. A706.

B. *The Court's Further Preclusion at Trial of Evidence the Pretrial Rulings Had Permitted the Defense to Use*

During the December 15, 2014, pretrial conference, the Assistant United States Attorney, when asked by the Court to define the parameters of the prohibition imposed on the defense by Rule 6(e), Fed.R.Crim.P., answered, "What they can't reveal is that [Force] is under a grand jury investigation. . . . It's just a matter that he's being investigated for [certain activities]." A249.

The AUSA added that

> [s]o in terms of what [Rule] 6(e) prohibits, we think it prohibits them eliciting somehow that he's under a grand jury investigation. That's the basic point. I mean, that's

[4] In its opinion precluding evidence of Force's misconduct, the Court acknowledged that "it is clear that precisely what Force did (or did not do) remains unknown." A675.

> what 6(e) requires be kept secret while the investigation is pending. They still have many facts in their possession. They've had them in their possession long ago.

Id. *See also* A253 ("all that is evidence that has been produced in discovery and they are free to use it the same way that they would use other evidence").[5]

At trial, however, the government successfully moved to expand the proscription to include those very facts, thereby preventing the defense from using documents and information in cross-examination, or from introducing them as part of the defense case. For example, the government successfully prevented the defense from cross-examining witnesses with respect to the electronic communications between DPR and Silk Road user DeathFromAbove, who represented himself to be a person with inside information about federal law enforcement's investigation of Silk Road, which he was offering to sell to DPR.

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[5] During the December 15, 2014, pretrial conference, the Court commented on the government's inconsistent and expansive position with respect to the scope of the Rule 6(e) proscription it sought. In response to the AUSA's remark that the "point is, we're not trying to say certain witnesses, certain evidence is off limits. It's the fact that this is a grand jury investigation. That's what they're prohibited from disclosing[,]" the Court replied

> [w]ell, I hear what you're saying. And it's like ships passing in the night. *Because on the one hand it's the content of the investigation*. And what you're suggesting is it's really not the content, it's the fact of.

A.252-53(emphasis added).

A575. Some of those communications had been included in the government's initial Exhibit list circulated a month prior to trial.

Shortly before the government rested, it revealed in a February 1, 2015, letter, that

> it appears that "DeathFromAbove," was controlled by former Special Agent Force, based on information that was recently obtained from USAO-San Francisco regarding their ongoing grand jury investigation into Force. Following the defendant's first attempt to seek to use Defense Exhibit E [containing communications between DPR and DeathFromAbove] with Special Agent DerYeghiayan, the Government consulted with the lead Assistant U.S. Attorney handling the Force investigation, who provided evidence that Force controlled the "DeathFromAbove" account and sent the messages to Dread Pirate Roberts.

A710.

Yet the government, in its earlier submissions, and in prior sidebars, had never identified the DeathFromAbove username/account as being controlled by Force (and therefore its use at trial was not precluded by the Court's pretrial ruling). The government's letter demonstrates that during trial it used the cross-examination of Homeland Security Investigations Special Agent Jared Der-Yeghiayan to continue its investigation of Force, and to generate further *Brady* material, but *without disclosing it to the defense until the eve of the defense case itself.* Rather, as discussed **post**, at 49, the government successfully, albeit impermissibly, shoehorned that information into the Court's pretrial restrictions on

the defense's ability to explore what had been provided in discovery *and even included in the government's initial Exhibit List*. A575.

Thus, at trial the government and Court foreclosed an entire additional category of information, vital to the defense, that the pretrial ruling had left available to Ulbricht. That compounded the initial abuse of discretion manifested in the preclusion of the Force misconduct generally, and constituted a separate abuse of discretion that effectively ambushed the defense.

1. *The Post-Trial Revelation of Bridges's Corruption, and the Additional Post-Trial Disclosures of Force's Misconduct*

Just seven weeks after trial concluded in this case, following Ulbricht's filing of his initial papers in support of his Rule 33 motion, the government formally charged both Force and Bridges in a Criminal Complaint ("the Force/Bridges Complaint") in the Northern District of California. That Complaint also revealed information that was not previously disclosed by the government. Obviously, the most dramatic aspect was the involvement of a second federal law enforcement agent, SA Bridges, in the corrupting of the Silk Road investigation. However, there were other revelations that appeared for the first time in the Force Complaint, but which should have been disclosed to Ulbricht's counsel earlier, and even before trial.

The Force/Bridges Complaint was unsealed March 30, 2015 (while the verdict herein was returned February 4, 2015). A Department of Justice Press Release, March 30, 2015, "Former Federal Agents Charged With Bitcoin Money Laundering and Wire Fraud," available at <http://www.justice.gov/opa/pr/former-federal-agents-charged-bitcoin-money-laundering-and-wire-fraud>, summarized the Force/Bridge's Complaint's allegations against Force as follows:

> Force used fake online personas, and engaged in complex Bitcoin transactions to steal from the government and the targets of the investigation. Specifically, Force allegedly solicited and received digital currency as part of the investigation, but failed to report his receipt of the funds, and instead transferred the currency to his personal account. In one such transaction, Force allegedly sold information about the government's investigation to the target of the investigation.

As the Force/Bridges Complaint itself notes, "[i]n late January 2013, members of the Baltimore Silk Road Task Force, to include BRIDGES and FORCE, gained access to a Silk Road administrator account as a result of the arrest of a former Silk Road employee." S453.

According to the Force/Bridge's Complaint, Force "created certain fictitious personas" S451, and used those phony personas to "seek monetary payment, offering in exchange not to provide the government certain information." *Id.* Force also created fictional characters, such as "Kevin," a supposed law

enforcement insider who was providing information to Nob (who was Force, in his authorized undercover role, masquerading as a drug dealer), which Nob in turn was corruptly providing to DPR. S462.

Also, Force "stole and converted to his own personal use a sizable amount of bitcoins that DPR sent to Force . . ." S452. Bridges also illegally acquired Bitcoin from the Silk Road website, through an account law enforcement believed Bridges "controlled and/or had access with others to" and which "appears to have initiated sizeable bitcoin thefts," and assisted Force in his illegal endeavors. S489-97.

In describing Force's assumption of the screen name DeathFromAbove, discussed **ante**, at 30, which Force used alternately in an attempt to extort DPR and/or to provide inside law enforcement information to DPR, the Force/Bridge's Complaint concludes that Force was the source of certain information in the "LE_counterintel" file found on Ulbricht's laptop because the excerpts in that file "contain information that came from a person or persons inside law enforcement, in part because of their substance and in part because of their use of certain terminology and acronyms that are not widely known by the public." S460.

As a result, in assessing Force's activities as DeathFromAbove, the Force Complaint posits that such misconduct "demonstrates that FORCE had a history of: (1) creating fictitious personas that he did not memorialize in his official

reports or apprise his superiors at the DEA or the prosecutor of; (2) soliciting payments from DPR; (3) providing law-enforcement sensitive information to outside individuals when the disclosure of such information was not authorized and not memorialized in any official report." S474.

The Force/Bridges Complaint also erased any doubt that the investigation of Force and Bridges was already fully known to them when, in December 2014, the government cited secrecy in precluding Ulbricht from using the information at his trial. For example, Force resigned from the DEA May 4, 2014, "shortly after law enforcement began the current investigation." S455, 483. Days later, May 8, 2014, Force wired $235,000 to an offshore account in Panama, with the Force/Bridge's Complaint noting that he did so "presumably after learning of the government's investigation and after he had resigned[.]" S487.

In fact, Force even voluntarily submitted to an interview by law enforcement that his lawyer suggested. S488. That meeting occurred May 30, 2014, *id.*, a full six months before the defense herein was notified of Force's misconduct. Similarly, Bridges was interviewed (with counsel) by law enforcement more than once, including November 13, 2014, eight days before the government wrote the Court in this case seeking to preclude the defense's use of such information, ostensibly in order to preserve its secrecy. S495-96.

Thus, the investigation of Bridges, too, was already fully underway by Fall 2014, and his misconduct, was known by then as well (as demonstrated by the contents of the interviews of him). Bridges's relevance to this case is beyond obvious: as the Force/Bridge's Complaint attests, Bridges "had been assigned to the Secret Service's Electronic Crimes Task Force." S488. Also, Bridges's "specialty was in computer forensics and anonymity software derived from TOR." *Id*. Bridges was also "the Task Force's subject matter expert in Bitcoin." *Id*. Both elements were distinctive features of Silk Road, and the subject of extensive testimony by government witnesses at trial.

Beyond Bridge's particular expertise, firmly in the wheelhouse of multiple critical aspects of this case (computer forensics, TOR, and Bitcoin), Bridges placed himself firmly in the middle of important factual issues, such as his serving as the affiant for the seizure of Mark Karpeles's accounts at a Bitcoin exchange firm (Dwolla) in May 2013. S489.[6] As set forth **ante**, he also controlled an account that "initiated sizeable bitcoin thefts" from the Silk Road website. S491.

In addition, Bridges clearly worked in concert with Force. S491, 493. Thus, Force was assisted in his illegal, unauthorized infiltration and manipulation of the Silk Road website by a computer forensics agent with expertise in

[6] Karpeles's relevance to this case, as well as to Force's misconduct, is detailed **post**, at 65 (POINT II).

anonymity and Bitcoin. Yet none of this information of the site's contamination was disclosed to the defense herein until the filing of the Force/Bridges Complaint.

Force's deposits totaled at least approximately $757,000 "for the roughly year long period beginning April 2013 through May 2014." S455-56 (footnote omitted). Nor does that include other deposits made afterward. S456. Any deposits made in the first half of 2014 would of course have occurred *after* Ulbricht had been arrested (October 1, 2013), begging the question of the source of those funds.

The Force/Bridges Complaint also divulged additional misconduct by Force, shedding light on his capacity for fraud, deception, forgery, abuse of his government authority and access – including predatory and retaliatory conduct and false accusations against innocent persons – and inventing complex, layered cover stories to conceal his misdeeds.

For instance, the Force/Bridges Complaint, S477-78, in a section entitled "FORCE's Unlawful Seizure of R.P.'s Funds," details Force's series of attempts to convert the contents of an account held by "R.P.," which efforts included abuse of various criminal law enforcement privileges and false accusations against "R.P." to justify seizure of the account.

Force also misused subpoenas and in effect committed forgery by using his supervisor's stamp. S477, 481-83; S452 (Force "used his supervisor's signature

stamp, without authorization, on an official U.S. Department of Justice subpoena and sent the subpoena to a payments company, Venmo, directing the company to unfreeze his own personal account"). He also improperly performed queries in law enforcement criminal databases. S475.

Moreover, Force "'papered up' the seizure of the digital currency portion of" one of his victim's accounts "in such a way that he may have thought he would be covered in the event anyone ever asked any questions" about his conduct." S480; S481 (Force's documentation was an "attempt to give himself plausible deniability by memorializing the digital currency seizure . . .").

The detail in the Force/Bridges Complaint was, of course, tellingly absent from the government's description of Force's corruption in its November 21, 2014, letter in this case, as was *any* mention of Bridges, or their knowledge of the investigation(s). A649. Thus, to a significant degree the extent, and in some respects the nature, of Force's misconduct – as well as Bridges's participation altogether – was hidden by the government from the defense (and the Court) in this case until after trial.

C. *The Court Abused Its Discretion In Precluding Ulbricht from Utilizing at Trial Information Related to Force's Corruption*

As detailed below, the Court abused its discretion in five separate respects with respect to its preclusion of the information and documents related to Force's corruption:

(1) in refusing to permit Ulbricht to use the information and documents at trial, or even to investigate them further;

(2) in denying Ulbricht's discovery demands with respect to Force, which would have compelled the government to disclose additional information about Force's corruption – and that of Bridges altogether – that was not revealed until after trial;

(3) in denying Ulbricht's request for adjournment of the trial until after the grand jury investigation of Force - at that point underway for more than eight months already - was complete;

(4) in expanding its ruling at trial by prohibiting use of evidence that the Court's pretrial ruling had expressly permitted Ulbricht to present; and

(5) in denying Ulbricht's post-trial Rule 33 motion based on the post-trial disclosures of details of Force's (and Bridges's) misconduct.

In many respects, the Court's error was in large part the consequence of the government's purposeful failure, in its extraordinarily circumscribed pretrial account, to disclose material information about Force's corruption, and about Bridges's corruption at all, until *after* trial.

Contrary to the government's claims and the Court's decision, the evidence of Force's (and Bridges's) corruption was both material and exculpatory. Moreover, the Due Process right to *Brady* material [*Brady v. Maryland*, 373 U.S. 83 (963)] requires that it be used effectively, a principle that certainly establishes a compelling and particularized need to modify any protective order, including any issued pursuant to Rule 6(e), Fed.R.Crim.P., to permit a defense investigation, as well as use of admissible evidence at trial. *See e.g., Martindell v. Int'l Tel. & Tel. Corp*., 594 F.2d 291, 296 (2d Cir. 1979); *see also Dennis v. United States*, 384 U.S. 855, 868 (1966).

Indeed, the government claimed it could not discern any exculpatory character in the information it provided in its November 21, 2014, letter, but disclosed the Force investigation "in an abundance of caution." This, of course, begs the question: "abundance of caution" with respect to *what*? The answer is obvious: with respect to the government's constitutional obligation to disclose exculpatory evidence. Transparently, the government's nomenclature simply

sought to avoid denominating the obvious: that the Force disclosures constituted exculpatory information.

1. *There Was Not Sufficient Need to Maintain Secrecy of the Investigation of Force and Bridges to Ulbricht's Detriment In This Case*

As a threshold matter, the Force/Bridges Complaint reveals that the government's pretrial application in this case to keep secret the investigation of Force (or even Bridges, the investigation of whom the government concealed altogether in this case), and the information derived therein, was without foundation. While the government acknowledged pretrial that Force had been interviewed, it did not disclose there were *two* interviews or, as evident from the Force/Bridges Complaint, that those interviews provided Force extensive knowledge about the investigation. S.478-81, 483-88. Also, by the time of trial in this case, the grand jury presentation regarding Force had already occurred, A660, and the charges were imminent, as demonstrated by their issuance only seven weeks after the verdict in this case.

In addition, the government inexcusably waited eight months before informing the defense of the misconduct by Force – and never did prior to trial with respect to Bridges. As the Complaint notes, the government opened its investigation of Force May 2, 2014. S495. Two days later, DoJ's Public Integrity Section opened an official investigation of him. *Id*.

Nor were there any facts in the Force/Bridges Complaint that were not entirely established well before the government notified the defense in this case, much less before trial herein. The last misconduct by either Force or Bridges allegedly occurred in mid-2014.

2. *The Record Demonstrates That Silk Road Investigations Were Coordinated and Combined*

The government's repeated insistence that the SDNY's investigation was "independent" of that in which Force and Bridges were involved is demonstrably repudiated by the record *created by the government's investigators and prosecutors themselves*. That record establishes that all of the federal investigations of Silk Road were coordinated and, for practical purposes, and for determining relevance to this case, combined.

By any conception of "independence," these investigations do not qualify. Rather, they were decidedly *inter*dependent because,

- the agents conducting the investigation were in continued contact with each other regarding the status of the investigation;
- supervisory law enforcement officials coordinated the investigations;
- each investigation made its fruits available to the other, and used that information from the companion investigation(s);

- information was entered in law enforcement databases to which all federal law enforcement enjoyed access;
- the investigations sought information about and from the same targets at the same time; and
- ultimately, SDNY was able to dictate the distribution of federal charges in the case for *all* of the districts involved in the coordinated investigations.

The 3500 material produced for SA Der-Yeghiayan serves as a catalogue of the interaction and linkage of the various investigations of the Silk Road website. For example, a report by SA Der-Yeghiayan regarding his investigation, notes that in October 2012, "*HSI Baltimore* office provided SA Der-Yeghiayan with a file containing *all of the Undercover (UC) chats made between a UC agent and DPR*." A828. Those were *Force*'s chats with DPR.

Similarly, in a May 22, 2013, e-mail to Lisa M. Noel, an HSI intelligence analyst with HSI Baltimore (and part of that Silk Road Task Force), SA Der-Yeghiayan wrote that "[w]e would like to examine some of the language, usage, diction, etc. with the new U/C chats from Nob." A747. Again, "Nob" *was Force*.

Thus, at the outset of his investigation – which the government cannot claim was "independent" of the case against Ulbricht – SA Der-Yeghiayan was provided

with the principal product of the Baltimore investigation, *generated by Force himself*. Nor was there any attenuation of that direct connection; nor did the government even attempt to establish any.

Other e-mails and reports authored by SA Der-Yeghiayan describe the continued contacts between Baltimore and Chicago, which evolved into the SDNY investigation and prosecution. In a May 15, 2013, e-mail, SA Der-Yeghiayan wrote that "[i]n early August 2012, HSI Chicago notified HSI Baltimore of the connection made [between Mark Karpeles and Silk Road] and stated that Karpeles was a target of HSI Chicago's investigation." A748. Also, "HSI Baltimore was provided a copy of the HSI Chicago's ROI [Report of Investigation] that highlighted all the facts of the connection." *Id.*

In that same e-mail, SA Der-Yeghiayan memorialized the following interaction:

> HSI Chicago contacted HSI Baltimore and they confirmed that they shared all of HSI Chicago's information on KARPELES with members of their task force. HSI Chicago discovered that their IRS Agent, DEA Agent and SS Agent all inputted KARPELES into their individual investigations as a target and a potential administrator of the Silk Road based on HSI Chicago's ROI/information.

Id.

Subsequently, in an undated report, A843, SA Der-Yeghiayan provided a lengthy chronology detailing the continued intersection of the Silk Road

investigations throughout 2013, and which was digested in Ulbricht's Rule 33 Reply, at A748-56. Another, (seven-page) report from SA Der-Yeghiayan regarding various investigations into Silk Road further recounts their interlocking character (also digested in Ulbricht's Rule 33 motion). A846.

Among the entries in SA Der-Yeghiayan chronology were the following:

- HSI Chicago and HSI Baltimore conducted another conference call July 9, 2013, about the Silk Road investigation. A852. During that call, neither the HSI Baltimore agents nor the D.Md. AUSA on the call mentioned – despite a question from SA Der-Yeghiayan whether there were any new developments – that another D.Md. AUSA had scheduled a meeting with Karpeles's attorneys. *Id*. That meeting occurred July 11, 2013. *Id*. During the meeting, Karpeles's attorney "randomly brought up the Silk Road and stated that their client was willing to tell them who [Karpeles] suspects is currently running the website in order to relieve their client of any potential charges for [18 U.S.C. §1960]." *Id*. Also, the D.Md. AUSA "proceeds to set up a meeting with [Karpeles] overseas." *Id*. HSI Chicago did not learn of the July 11, 2013, meeting with Karpeles's attorneys until July 16, 2013. *Id*. Subsequently, one of the D.Md. AUSA's informed SA Der-Yeghiayan that the other D.Md. AUSA "continued to negotiate

with [Karpeles's] attorneys" – despite SA Der-Yeghiayan's objections – and has changed the meeting location to Guam [] later on in August. *Id*.;

- July 12, 2013, there was a "coordination meeting with HSI Chicago, HSI Baltimore, *FBI New York* and multiple DoJ [Department of Justice] attorneys and CCSIP attorneys[.]" S852. At that "coordination meeting, "HSI Chicago mentioned [Karpeles] as their main target." *Id*.;

A month later, in August 2013, SA Der-Yeghiayan swore to an affidavit, *composed by the SDNY AUSA*, in support of the SDNY search warrant application for Karpeles's e-mail accounts. Again, in light of this overwhelming evidence, any claim of "independence" is contradicted by the government's own documents and is therefore untenable.[7]

Nor was Force's investigation into Silk Road transitory or superficial in any respect. It began in February 2012, S470, and generated dozens of DEA-6 reports of his (authorized) undercover activities investigating the Silk Road website (and which were produced as discovery herein).

[7] A separate question the defense asked, and which still merits an answer, is whether any evidence related to Nob or Flush (both accounts controlled by Force) was introduced in the grand jury that indicted Ulbricht.

In fact, as the Force/Bridges Complaint points out, information-sharing, and its impact relevant to this case, continued through the summer of 2013: "by late July 2013, the Baltimore Silk Road Task Force had been made aware that the FBI was seeking to obtain an image of the Silk Road server, and therefore FORCE may have had reason to fear that any communications between himself and DPR would be accessible to the FBI in the event the FBI was successful in imaging the server." S465-66.[8]

Even the government contradicts its naked claim of "independence." In explaining its realization (after the defense attempted to introduce certain documents provided in discovery) that DeathFromAbove was among Force's aliases, see **ante** at 30, the government states in its response to Ulbricht's Rule 33 Motion, that "former SA Force had access to law enforcement reports filed by SA Der-Yeghiayan, including reports concerning his suspicions regarding Anand Athavale, which was likely the source of the information leaked by Force through

[8] That would also ostensibly have provided DPR, via Force as Nob (or French Maid, or DeathFromAbove, or perhaps some other incarnation of his and/or Bridges's) with advance notice of the FBI's imaging of Silk Road's servers – consistent with the defense's position that DPR purchased and/or was provided with information that permitted him to formulate and implement – with Force's (and perhaps Bridges's) assistance – an escape plan that also incriminated Ulbricht falsely. In that context, Force also learned at least days in advance that law enforcement intended to make an arrest of DPR in late September 2013, thereby giving him ample time to warn DPR. S466. Yet Ulbricht did not assume any additional security protocols, but instead violated even the most fundamental security precepts in multiple ways.

the 'DeathFromAbove' account." Response to Rule 33 Motion, at 14 n.4, Dkt#230.

Ultimately, the investigations were not only interrelated and interdependent, but their outcomes were dictated by SDNY, as SA Der-Yeghiayan reported in a September 20, 2013, e-mail to an HSI colleague. A854.

Thus, in light of all of the evidence set forth above, the interdependence and continuing relationship among the investigations, including that in which Force and Bridges participated, is indisputable.

3. *The Information Regarding the Investigation of Force and Bridges Is Relevant to This Case Regardless Whether the Investigations Were Independent*

Even assuming *arguendo* the SDNY investigation was "independent" from the District of Maryland investigation, the information and material regarding Force and Bridges was, *as evidenced by the government's own strategy in preparing for trial herein*, as well as other objective indicia, plainly relevant to this case.

a. *The Government's Initial Exhibit List*

The government's initial Exhibit List was provided December 3, 2014 – two days *after* the government's November 21, 2014, letter to the Court setting forth information regarding the investigation of Force was disclosed to the defense. It contained at least 14 Government Exhibits directly relevant to Force, including in

his undercover capacity as "nob," and/or his unauthorized Silk Road user name "french maid," and/or to the account assigned to the user name "Flush."

Those Exhibits included GX 220, GX 225, GX 227, GX 229A, GX 229B, GX 241, GX 243, GX 250, GX 252, GX 275, GX 127D, GX 223, GX 240B, & GX 242. A434.

The government's transparently tactical removal of those proposed Exhibits from its presentation at trial does not eliminate their relevance, but merely reflects the government's recognition that they undermined the government's claim that Force's corruption was unrelated to the charges against Ulbricht, and his defenses thereto. Also, earlier, as part of discovery, the government had produced Force's DEA-6 reports, which further demonstrates the *government's* belief – prior to discovering his misconduct – that Force's investigative activities were relevant and connected to the SDNY prosecution.

b. *The Importance of the First Half of 2013 Regarding the Evidence At Trial*

The relevance of the misconduct committed by Force and Bridges is also apparent from the time frame in which it is believed to have commenced and occurred – the first half of 2013. That period was critical in the context of the creation and collection of evidence used against Ulbricht at trial, and the defense's response to it.

A partial timeline of relevant events during that span – described only by information possessed by the defense at the time of trial (and not including reference to Force or Bridges misconduct) is set forth in Ulbricht's Rule 33 Reply. A722.

D. *The Court Abused Its Discretion By Deviating From Its Pretrial Ruling and Precluding Evidence That It Had Determined Would Be Admissible*

In foreclosing the defense's use of any information or materials relating to Force and his misconduct, the government exceeded the boundaries set by the Court in its pretrial rulings on the issue, and the Court permitted the government to do so. While the embargo was supposed to cover only the information and materials generated as part of the ongoing grand jury investigation of Force, at trial in this case the government converted that into a ban on the defense's use of information and documents provided as part of discovery, which the defense had been expressly permitted to utilize at trial.

Yet the communications between DeathFromAbove and DPR were *not* mentioned in the government's November 21, 2014, letter to the Court, did not mention Force at all, and did not disclose that he was under a grand jury investigation. Also, the government's reaction at trial to the defense's efforts to introduce those communications (as Defense Exhibit E, A874), memorialized in the government's February 1, 2015, letter to the Court, A707, made it clear that the

government had not made the connection between Force and DeathFromAbove until the defense sought to introduce DX E. *See* Docket#230, at 24 n.10.

Nevertheless, at trial, the Court improperly permitted the government to use the grand jury investigation of Force as a sword to preclude far more than the mere fact that Force was under investigation, employing that excuse to stymie the defense and its attempts to introduce evidence not covered by the Court's pretrial rulings.

Ultimately, the government was permitted – improperly yet repeatedly – to use its bogus rationale for precluding information about Force's (and Bridges's) corruption as both a sword and shield.[9] As a result, Ulbricht's ability to present his defense, and his Fifth and Sixth Amendment rights incorporated therein, were gravely impaired, and he was denied a fair trial.

[9] The government seized full advantage of the situation. For instance, during summation, the AUSA disputed Ulbricht's defense theory, arguing that "[t]here were no little elves that put all of that evidence on the defendant's computer." T.2166. Yet, as it turns out – and which the AUSA knew all along – there were indeed *two* "little elves" – law enforcement agents investigating the Silk Road website – operating secretly, illegally, corruptly, and brazenly even inside the Silk Road website itself.

E. *The Court Abused Its Discretion In Denying Ulbricht's Motion for a New Trial Based on the Government's Failure to Make Complete and Accurate Pretrial Disclosure Regarding Law Enforcement Corruption In the Government's Investigation*

The issuance of the Force/Bridges Complaint just seven weeks after trial in this case confirmed that the government had deliberately withheld from the defense and the Court a substantial volume of critical exculpatory information and material with respect to Force's corruption, and information about Bridges's corruption entirely. Indeed, the Force/Bridges Complaint indicates that even now the government has not provided a complete account of Force's and Bridges's misconduct.

In light of the government's failure to fulfill its constitutional obligation pursuant to *Brady* – in terms of both the disclosure itself, as well as the timing of the limited disclosure the government did make – the Court abused its discretion in denying Ulbricht's Rule 33 motion for a new trial.

1. *The Principles Applicable to Exculpatory Material and Information*

a. *General Principles Governing the Government's* Brady *Disclosure Obligations*

As this Court explained most recently in *United States v. Certified Environmental Services, Inc.*, 753 F.3d 72 (2d Cir. 2014), "[u]nder *Brady* and its progeny, 'the Government has a constitutional duty to disclose favorable evidence

to the accused where such evidence is material either to guilt or to punishment.' *Id*., at 91, *quoting United States v. Coppa*, 267 F.3d 132, 139 (2d Cir. 2001).

In that context,

> [t]here are three components of a true *Brady* violation: (1) The evidence at issue must be favorable to the accused, either because it is exculpatory or because it is impeaching; (2) that evidence must have been suppressed by the [Government], either willfully or inadvertently; and (3) prejudice must have ensued. *United States v. Jackson,* 345 F.3d 59, 71 (2d Cir. 2003), *quoting Strickler v. Greene,* 527 U.S. 263, 281-82 (1999).

753 F.3d at 91. *See also*, *Thomas*, 981 F.Supp.2d at 238, *citing United States v. Coppa*, 267 F.3d at 140 and *Moore v. Illinois,* 408 U.S. 786, 794-95 (1972).

Regarding the prong by which *Brady* material is defined, in *Certified Environmental Services* the Second Circuit pointed out that

> "evidence is material within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different, such that the failure to disclose undermine[s] confidence in the verdict. *Cone v. Bell,* 556 U.S. 449, 469-70 (2009), *quoting*, *Kyles v. Whitley,* 514 U.S. 419, 435 (1995).

753 F.3d at 91.

The standard for the inquiry regarding prejudice, as the Supreme Court explicated in *Kyles v. Whitley*, asks not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its

absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. 514 U.S. at 434. *See also Lambert v. Beard*, 537 Fed.Appx. 78, 87 (3d Cir. 2013), *after remand by, Wetzel v. Lambert*, __ U.S. __, 132 S. Ct. 1195 (2012), *vacating and remanding*, 633 F.3d 126 (3d Cir. 2011).

As the Court in *Kyles* noted, "a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal . . . [M]ateriality is a reasonable probability of a different result, and the adjective is important." 514 U.S. at 434 (internal citations omitted). *See also, Thomas* 981 F.Supp.2d at 242-43.

A reasonable probability of a different outcome "is not a sufficiency of evidence test," and thus, does not require that the "evidence would have rendered the evidence as a whole insufficient to support a conviction." *United States v. Payne*, 63 F.3d 1200, 1209 (2d Cir. 1995), *quoting, Kyles*, 514 U.S. at 435.

Rather, evidence must be disclosed if it "could reasonably [have been] taken to put the whole case in such a different light as to undermine confidence in the verdict." *Coppa*, 267 F.3d at 139, *quoting Kyles v. Whitley*, 514 U.S. 419, 435 (1995).

As this Court has held, even when evidence may be both inculpatory and exculpatory, its disclosure is not thus precluded under *Brady*. *See United States v.*

Mahaffy, 693 F.3d 113, 130 (2d Cir. 2012) ("[t]he fact that the government is able to argue that portions of the transcripts were consistent with the prosecution's theory fails to lessen the exculpatory force" of the remaining parts); *see also United States v. Rivas*, 377 F.3d 195, 199-200 (2d Cir. 2004); *United States v. Thomas*, 981 F.Supp.2d 229, 233 (S.D.N.Y. 2013) ("[w]hen *Brady* material is withheld, the Government's case is 'much stronger, and the defense case much weaker, than the full facts would have suggested'"), *citing Kyles v. Whitley*, 514 U.S. 419, 429 (1995).

In that context, even when exculpatory evidence is disclosed, a *Brady* violation can still occur if the disclosure is untimely. As the Court in *Thomas* stated, "[e]vidence is suppressed when the prosecutor does not disclose it 'in time for its effective use at trial.' 981 F.Supp.2d at 239, *quoting Coppa*, 267 F.3d at 135 (internal citations omitted), *and citing, United States v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1998).

The Court in *Certified Environmental Services* elaborated that

> [t]his aspect of *Brady* affects not only what the Government is obligated to disclose, but when it is required to do so. Temporally, the timing of a disclosure required by *Brady* is . . . dependent upon the anticipated remedy for a violation of the obligation to disclose: the prosecutor must disclose . . . exculpatory and impeachment information no later than the point at which a reasonable probability will exist that the

> outcome would have been different if an earlier disclosure had been made.

753 F.3d at 92, *quoting Coppa,* 267 F.3d at 142.

Courts have also encouraged prosecutors to err on the side of disclosure for reasons of prudence as well as fairness. As the Court in *Cone v. Bell* cautioned, "[a]s we have often observed, the prudent prosecutor will err on the side of transparency, resolving doubtful questions in favor of disclosure." 556 U.S. at 470, *citing Kyles,* 514 U.S., at 439; *Bagley*, 473 U.S. 667, 711, n. 4 (Stevens, J., *dissenting*); *United States v. Agurs*, 427 U.S. 97, 108 (1976). *See also, United States v. Van Brandy,* 726 F.2d 548, 552 (9th Cir. 1984) ([W]here doubt exists as to the usefulness of evidence, [the prosecutor] should resolve such doubts in favor of full disclosure . . .).

As the Court in *Thomas* recognized, questions about the reliability of [ ] exculpatory information are judgment calls for [a defendant] and his counsel, not the Government; 'to allow otherwise would be to appoint the fox as henhouse guard.' 981 F.Supp.2d at 241, *quoting DiSimone v. Phillips,* 461 F.3d 181, 195 (2d Cir. 2006).

Thus, in contemplating whether and when to disclose, "[t]he government must bear in mind, however, that it has the 'affirmative duty to resolve doubtful questions in favor of disclosure,' and that 'if the sword of Damocles is hanging

over the head of one of the two parties, it is hanging over the head of the [government].' *United States v. Hsia*, 24 F.Supp.2d 14, 30 (D.D.C. 1998), *quoting United States v. Blackley*, 986 F.Supp. 600, 607 (D.D.C. 1997) (internal quotations omitted).

Here, though, when *Brady* becomes an issue in the pretrial context, disclosure has a broader context. Thus, when the "exculpatory character harmonize[s] with the theory of the defense case" failure to disclose that evidence constitutes a *Brady* violation. *Id*., *quoting, United State v. Triumph Capital Grp.*, 544 F.3d 149, 164 (2d Cir. 2008). That harmony with defense theories here was detailed pretrial, during trial, and in the Rule 33 motion.

Also, the timeliness requirement incorporated in the *Brady* disclosure obligation compels disclosure of materially favorable evidence in sufficient time to permit the defense the opportunity to use it effectively before trial. *Coppa*, 267 F.3d at 142 (whether the disclosure is made in a timely fashion depends on the "sufficiency, under the circumstances, of the defense's opportunity to use the evidence when disclosure is made"); *see also United States v. Solomonyan*, 451 F.Supp.2d 626, 644-645 (S.D.N.Y. 2006).

Thus, implicit in the government's *Brady* obligation is the requirement that the defense is able to use the materially favorable evidence, even if only to uncover additional exculpatory evidence. *See e.g. United States v. Gil*, 297 F.3d 93, 104

(2d Cir. 2002) (materially favorable evidence, even if not admissible itself, must be disclosed pursuant to *Brady* if it "could lead to admissible evidence"). Indeed, in *Gil*, the inclusion of critical exculpatory (and impeachment) information in boxes of documents produced pursuant to 18 U.S.C. §3500 the weekend prior to trial was deemed insufficient notice. *Id.*, at 106-07.

Consequently, although there are interests in maintaining grand jury secrecy that exist while an investigation is ongoing, unsealing was necessary here because evidence of Force's misconduct was exculpatory, and thus *Brady* material, the use of which was necessary to avoid "a possible injustice." *See generally Douglas Oil Co. Of California v. Petrol Stops Northwest*, 441 U.S. 211 (1979) (requiring a showing that "material [sought] is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed"). Certainly the right to pre-trial access to *Brady* material presents a particularized and/or compelling need for its unsealing. *See e.g. United States v. Youngblood*, 379 F.2d 365, 367 (2d Cir. 1967); *see also Dennis*, 384 U.S. at 868-70 ("disclosure, rather than suppression, of relevant materials ordinarily promotes the proper administration of criminal justice").

Moreover, delaying disclosure until it is contemporaneous with production of 3500 material does not absolve the government of its responsibility to disclose

exculpatory material and information in time for the defense's effective use at trial. As the Court in *Hsia* recognized, "the existence of a duty to disclose witness statements at trial pursuant to the Jencks Act, 18 U.S.C. §3500, does not eviscerate the government's *Brady* obligation to disclose witness statements well in advance of trial if portions of those statements also fall under *Brady*." 24 F.Supp.2d at 29, *citing, United States v. Tarantino,* 846 F.2d 1384, 1414 n. 11 (D.C. Cir. 1988).

As the Court in *Hsia* pointed out, "[t]his is important because the government is required to disclose *Brady* material in sufficient time for the defendant to 'use the favorable material effectively in the preparation and presentation of its case,' *United States v. Pollack,* 534 F.2d 964, 973 (D.C. Cir. 1976), while Jencks material is not required to be disclosed until after the witness has testified." 24 F.Supp.2d at 29. *See also Thomas,* 981 F.Supp.2d at 241 ("[t]he Government's argument conflates its Jencks Act and *Brady* obligations. While those responsibilities overlap at times, they are distinct legal concepts. The Jencks Act is concerned with discovery to be produced by the Government. *Brady* is concerned with fairness").

The Court in *Thomas* further recognized a reactive defense maneuver "after a late *Brady* disclosure is no substitute for thoughtful preparation and a considered strategy. *Brady* material must be provided to a defendant 'in time for its *effective* use at trial.' 981 F.Supp.2d at 242, *quoting, Coppa,* 267 F.3d at 135 (emphasis

supplied by Court in *Thomas*), *and citing, Grant v. Alldredge,* 498 F.2d 376, 382 (2d Cir.1974) (refusing to infer from the failure of defense counsel, when surprised at trial, to seek time to gather other information on [the suppressed witness], that defense counsel would have by-passed the opportunity had the prosecutor apprised him of the [evidence] at a time when the defense was in a reasonable pre-trial position to evaluate carefully all the implications of that information).

As this Court explained in *Leka v. Portuondo*, 257 F.3d 89 (2d Cir.2001), "[t]he opportunity for use under *Brady* is the opportunity for a responsible lawyer to use the information with some degree of calculation and forethought. *Id*., at 101-03. *See also, Thomas*, 981 F.Supp.2d at 240; *St. Germain v. United States*, Nos. 03 cv 8006 (CM), 99 cr 339 (CM), 2004 WL 1171403, at *18 (S.D.N.Y. May 11, 2004) (defense strategies are largely formed prior to trial . . . and the necessary predicate is that the strategies selected were chosen after careful consideration of all constitutionally-compelled disclosure).

Consequently, as this Court realized in *Leka*,

> [w]hen such a disclosure is first made on the eve of trial, or when trial is under way, the opportunity to use it may be impaired. The defense may be unable to divert resources from other initiatives and obligations that are or may seem more pressing. And the defense may be unable to assimilate the information into its case.

257 F.3d at 101, *citing, United States v. Washington,* 294 F.Supp.2d 246, 250 (D. Conn. 2003) (government's failure to disclose evidence impeaching the central witness until after the first day of trial prejudiced defendant because the late disclosure prevented defense counsel from investigating and planning overall trial strategy).[10]

b. *The Manner of the Government's* Brady *Disclosure Obligations*

In *Thomas*, the Court also emphasized "the importance of the manner of the Government's disclosure." 981 F.Supp.2d at 240, *citing Gil,* 297 F.3d at 93 (labeling *Brady* evidence as 3500 material and producing it as part of a large 3500 production on the eve of trial constitutes suppression), and *United States v. Breit,* 767 F.2d 1084, 1090 n. 4 (4th Cir. 1985) (government may not discharge its *Brady* obligation merely by tendering a witness without providing any indication that the witness's testimony may be helpful to defense).

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[10] Indeed, even in *Certified Environmental Services,* in which this Court did not find a *Brady* violation because, *inter alia,* the notes at issue "were at best marginally helpful to the defense[,]" 753 F.3d at 93, and the undisclosed reference in the notes "was not inconsistent with [the prior] testimony[,]" *id.*, the Court nevertheless added that

> [t]his is not to suggest, however, that the prosecutors did nothing wrong in failing to disclose [the] handwritten notes along with the typewritten summaries. To begin with, we see no reason – and the Government offers none – why the prosecutors here could not and should not have acted in favor of disclosing the *Brady* material earlier.

Id., quoting United States v. Rittweger, 524 F.3d 171, 182 (2d Cir.2008).

In that context, "the Government cannot hide *Brady* material as an exculpatory needle in a haystack of discovery materials." 981 F.Supp.2d at 239, *citing United States v. Skilling*, 554 F.3d 529, 577 (5th Cir. 2009), *aff'd in part and vacated in part on other grounds*, 561 U.S. 358 (2010) (suggesting that *Brady* violations related to voluminous open file discovery depend on what the government does in addition to allowing access to a voluminous open file). *See also Hsia*, 24 F.Supp.2d at 29-30 ([g]overnment cannot meet its *Brady* obligations by providing . . . 600,000 documents and then claiming that [the defendant] should have been able to find the exculpatory information).

2. *The Government Failed to Make Timely Production of Exculpatory Material*

Thus, the Court should have granted Ulbricht's Rule 33 motion because the government failed to produce exculpatory material in a timely fashion that would have permitted the defense effective use of the material and information at trial.

Moreover, while the government's intent is not required for a *Brady* violation, here the government's concealment was willful and calculated. It provided but the tip of the iceberg of information it possessed regarding Force, and none regarding Bridges. That constituted material non-disclosure that was only aggravated by the government's manipulation of the time frame to delay the formal charging of Force and Bridges until after Ulbricht's trial had concluded.

In that regard, within the 5,000 pages of 3500 material for the government's first witness, SA Jared Der-Yeghiayan, produced less than two weeks prior to trial and after the Court had precluded any defense reference to the Force investigation and misconduct – and, in some instances, 30 months after the information was memorialized by SA Der-Yeghiayan (and in most instances, close to or more than two years after) – resided a substantial volume of exculpatory material and information. That information was directly relevant not only to the government's claim that Force's investigative activities and misconduct were independent of the SDNY prosecution, but also to Ulbricht's defense that he was not DPR.

Ulbricht's Rule 33 motion included a catalog of the 3500 material that is exculpatory, and which was not disclosed prior to the onslaught of 3500 material serially produced in the weeks before trial. A643. As that list demonstrates, 70 separate documents (some consisting of multiple pages) in the 3500 material contained exculpatory material and information that was not provided to the defense at a time in which it could be used effectively at trial.

Nor can it be disputed that the information about an alternate perpetrator, discussed further **post**, constituted *Brady* material. *See Leka v. Portuondo*, 257 F.3d at 99 (*Brady* material is of a kind that would suggest to any prosecutor that the defense would want to know about it). *See also, Thomas* 981 F.Supp.2d at 238-39. Indeed, in *Lambert v. Beard*, 537 Fed.Appx. 78, 81-82 (3d Cir. 2013), the

nondisclosure related to notes reflecting that "unbeknownst to either the defense or the jury at the time, [a critical government witness] had in fact supplied police with another perpetrator"). *See also Cone v. Bell*, 556 U.S. at 471 (undisclosed investigative reports containing information consistent with defense theory were deemed *Brady* material).

Here, as well, the cumulative effect of the untimely disclosure amplified its impact and the prejudice suffered by Ulbricht as a result. *See Cone v. Bell*, 556 U.S. at 475 ("[i]t is possible that the suppressed evidence, viewed cumulatively, may have persuaded the jury" not to impose the death sentence on the defendant) (footnote omitted); *id*., at 471 ("both the quantity and the quality of the suppressed evidence lends support to" the defendant's position).

Judge Alex Kozinski, in dissenting from the denial of a petition for rehearing, declared that "[t]here is an epidemic of *Brady* violations abroad in the land[,] and "[o]nly judges can put a stop to it." *United States v. Olsen*, 737 F.3d 625, 626 (9th Cir. 2013), *denying reh'g*, (Kozinski, J., *dissenting*). *See also id*., at 631 ("*Brady* violations have reached epidemic proportions in recent years, and the federal and state reporters bear testament to this unsettling trend").

As a result, in prescribing a solution, Judge Kozinski urged the courts to "send prosecutors a clear message: Betray *Brady*, give short shrift to *Giglio*, and you will lose your ill-gotten conviction." *Id*., at 633.

Accordingly, in addition to the initial pretrial and trial errors, the Court abused its discretion in denying Ulbricht's Rule 33 motion for a new trial based on the government's failure to disclose exculpatory material and information and/or to do so in a timely manner that would have permitted the defense to make use of it.

POINT II

THE COURT ABUSED ITS DISCRETION BY CURTAILING CROSS-EXAMINATION AND THE DEFENSE THEORY AT TRIAL

A. *HSI SA Jared Der Yeghiayan*

During cross-examination of the government's first and principal witness, SA Der-Yeghiayan – through whom the government introduced a substantial volume of Exhibits from the Silk Road website and the parameters of the government's investigation (from intercepting drugs shipped from overseas vendors to U.S. customers, to Silk Road chats, forum posts, and administrative functions) – the government began to object to inquiries about the investigation generally, in particular with respect to Mark Karpeles, on whom SA Der-Yeghiayan had focused and developed a significant amount of information by the Fall of 2013.

The Court's initial reaction was that the subject matter of the cross-examination was "highly relevant[,]" A406, and that it went to SA Der-Yeghiayan's "state of mind." A407. The Court added that the inquiry was

"in the heartland of the defense[,]" *id*., and was not hearsay because it was not being offered for the truth. A411.

The Court added "I don't think it's irrelevant because if he pursued a target of this conduct and it wasn't the defendant, I think that's directly relevant to the defendant's theory of the case." A416. *See also* A412; *id*., at A416 ("[t]hey're trying to raise a reasonable doubt as to whether or not the defendant is the real DPR").

At that juncture, the Court adjourned for the weekend, and invited letters from both sides. Monday morning the Court performed a complete about-face, ruling that the cross-examination was not proper for purposes of raising the prospect of an alternative perpetrator, or to challenge the competency of the investigation. A420-441.

The Court invited the government to submit a list of questions and answers to be stricken, and granted the strikes proposed. A441-443; A466-471. The Court refused to afford defense counsel any time to review the stricken sections to determine whether the cross-examination could be reconstructed through questions the Court would permit. A471-73.

Regarding the alternative perpetrator, the Court found the defense had not established a "direct connection" between Mark Karpeles and the charged offenses – essentially imposing on the defense the obligation to prove that Karpeles was

DPR. A423-30. The Court ignored the other purpose of the questioning: to expose the defects in the investigation that allowed Karpeles to escape prosecution, and instead turned attention to Ulbricht (which, in turn, also implicated Force's and Bridges's corruption). The Court also ruled that the cross-examination would be curtailed because the government's redirect would be constrained ("you can't have one side, one-hand clapping"). A428.

However, the alternative perpetrator line of inquiry should have been permitted to continue, and the prior testimony not stricken because it was consistent with the case law on alternate perpetrators, in some instances not hearsay at all, and in other respects admissible under Rules 807 and 403, Fed.R.Evid.

1. *In Curtailing and Striking Cross Examination of SA Der-Yeghiayan, the Court Improperly Concluded There Was No Nexus Between the Alternative Perpetrator and the Specific Offenses*

Here, case law supports Ulbricht's right to ask SA Der-Yeghiayan further questions about alternative perpetrators, including Karpeles. The cases cited by the Court and the government, to the extent they support the broad principles asserted by the government, apply when it is the *defendant*, and not an alternative perpetrator, who is protected by constitutional as well as evidentiary rules, and in which – unlike herein – there was not any nexus between the alternative perpetrator and the specific offenses alleged.

a. *Relevant Case Law Regarding An Alternate Perpetrator*

Pointing to an alternative perpetrator is a defense endorsed by the Supreme Court and other courts time and again, and the defense was utilizing evidence to that effect consistent with the rules of evidence and Ulbricht's constitutional right to present a defense (which sometimes supersedes the technical limits of those evidentiary rules). *See, e.g., Kyles v. Whitley*, 514 U.S. 419, 449 n. 19, 453; *Boyette v. LeFevre*, 246 F.3d 76, 91 (2d Cir. 2001).

Indeed, as set forth in *Wade v. Mantello*, 333 F.3d 51, 57 (2d Cir. 2003) "the [Supreme] Court has observed on more than one occasion, ''at a minimum, ...criminal defendants have the right . . . to put before a jury evidence that might influence the determination of guilt.'' *Id., quoting, Taylor v. Illinois*, 484 U.S. 400,

408 (1988) (*quoting, Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987)). In that regard, "[t]he Constitution protects a criminal defendant from the arbitrary exclusion of material evidence, and evidence establishing third-party culpability is material." *Wade*, 333 F. 3d at 58.[11]

In addition, the Court placed too high a burden on the defense with respect to evidence of an alternative perpetrator. In each of the cases the government cited and the Court relied upon, there was a failure to establish the necessary nexus between the alleged third-party perpetrator and the crime charged. *See Wade v. Mantello*, 333 F. 3d at 61 (testimony in murder case that third-party was involved in unrelated shoot-out with victim *weeks earlier*, was properly excluded at trial because "[w]eighed against the limited probative value of the proffered testimony were dangers that the jury could have been misled or confused by the testimony") (emphasis added); *DiBenedetto v. Hall*, 272 F.3d 1, 7-8 (1st Cir. 2001) (absent "evidence [of] a connection between the other perpetrators and the crime, not mere speculation on the part of the defendant," Court excluded evidence in murder trial related to *another* murder, meant to establish that "third party culprits, not [the defendant] and his co-defendant, were guilty"); *People of Territory of Guam v.*

[11]*See also Mendez v. Artuz*, 303 F.3d 411, 413 (2d Cir. 2002) (noting materiality of evidence of an "alternative culprit"); *United States v. Manning*, 56 F.3d 1188, 1198 (9th Cir. 1995) (same); *Bowen v. Maynard*, 799 F.2d 593, 600–601, 610–613 (10th Cir.) (same); *United States v. Stifel*, 594 F.Supp. at 1541 (same).

Ignacio, 10 F. 3d 608, 615 (9th Cir. 1993) (trial court did not abuse its discretion by excluding evidence of third-party's suicide as evidence of third-party culpability where defendant had not provided "substantial evidence connecting [third-party] to the crime charged") (internal quotation omitted); *Andrews v. Stegall*, 11 Fed.Appx. 394, 396 (6th Cir. 2001) (distinguishing defendant's claim of third party culpability in murder case involving "a vague threat [by third party] . . . made some unknown time before the murder, to the victim's stepson," where "[the third-party] was not shown to have been anywhere near the scene of the crime, and was not available to testify," from *Chambers* [,410 U.S. at 300-301,] in which there was substantial evidence directly connecting the third-party with the offense"); *United States v. Diaz*, 176 F.3d 52, 82 (2d Cir. 1999) (trial court properly excluded evidence of *another* crime – prison records showing that the murder victim had assaulted a third-party while in prison more than a year prior – in order to suggest motive on the part of a third party in the charged crime, because, standing alone, it would be "creative conjecturing" and the evidence "speculative"); *United States v. Wade*, 512 Fed.Appx. 11, 14 (2d Cir. 2013) ("the district court reasonably excluded . . . testimony about [a third party's] arrest because . . . [the third party's] December 3, 2009 sale of drugs from a mailbox was not temporally or physically linked to the May 11, 2009 drug and firearm seizures from [the defendant's girlfriend's] apartment that were contemporaneous with [the defendant's] arrest

and . . . [the] testimony [therefore] presented a risk of juror confusion and extended litigation of a collateral matter").

b. *The Requisite Nexus Was Established By the Government Itself Through Its Direct Examination of SA Der-Yeghiayan*

In this case, though, *the government itself*, in the person of SA Der-Yeghiayan and others, provided the requisite nexus between the alternate perpetrator and specific offenses here, via an analysis of documentary and other materials, and the defense, via cross-examination, was simply cataloguing the bases for that nexus. Ultimately, the Court's position and government's argument was about the *weight* of the evidence, which of course was for the jury to determine.

Moreover, here, parts of the defense mirrored to a significant extent that endorsed in *Kyles v. Whitley*, in which the defense alleged the defendant had been framed by an informant "for the purposes of shifting suspicion away from himself" for the offense charged against the defendant. 514 U.S. at 429.

This case also replicates circumstances in other cases in which this Court reversed convictions because alternative perpetrator evidence was excluded. *See Alvarez v. Ercole*, 763 F.3d 223 (2d Cir. 2014) (conviction reversed because defense counsel not permitted to cross-examine detective about police report containing information about the alternative suspect); *Cotto v. Herbert*, 331 F.3d

217, 229 (2d Cir. 2003) ("[b]y prohibiting [defense counsel] from questioning Detective Alfred about the [police report], the trial court allowed the jury to get the impression that the defense had nothing other than rhetoric to contradict the prosecutor's statement in summation that the NYPD's investigation into [the charged] murder was 'thorough'"), *citing Davis v. Washington*, 415 U.S. 308, 318 (1974) .

Thus, here the evidence regarding an alternative perpetrator is directly related to the offenses alleged, and is neither collateral nor speculative. Again, the weight of such evidence, which ultimately is the government's primary concern throughout its letter, is a matter for the jury to determine. *Stifel*, 594 F.Supp. at 1541.

2. *The Court Also Erred by Disregarding the Untimeliness of the Government's Objections, Failing to Acknowledge That Cross Examination of SA Der-Yeghiayan Was Relevant to Another Proper Defense Ulbricht Was Presenting, and Improperly Considering Issues Regarding the Government's Possible Redirect*

In addition, the government's objections were untimely. The government provided 5,000 pages of material pursuant to 18 U.S.C. §3500 for SA Der-Yeghiayan, a substantial portion of which was devoted to government's investigation of Karpeles. It is inconceivable that the government did not anticipate the line of cross-examination. Yet it did not make a motion *in limine*,

did not object to defense counsel's opening, nor during a significant portion of the cross-examination of SA Der-Yeghiayan.

Further, as noted **ante**, the questioning of SA Der-Yeghiayan was relevant to another proper defense Ulbricht was presenting – that of the conduct of the government's investigation – which the Court did not address. *See United States v. Blake*, 107 F.3d 651, 653 (8th Cir. 1997).[12]

The Court also abused its discretion in focusing on issues regarding the government's possible redirect. That simply was not a proper consideration, and therefore "cannot be located within the range of permissible decisions." *United States v. Figueroa*, 548 F.3d 222, 226 (2d Cir. 2008).

3. *The Court Abused Its Discretion by Precluding the Defense From Eliciting from SA Der-Yeghiayan that Karpeles Attempted to Exchange Immunity for the Identity of DPR*

Still another area of cross-examination of SA Der-Yeghiayan that the Court precluded with its ruling was eliciting from SA Der-Yeghiayan that he was told by AUSA's that Karpeles's lawyers had offered to provide the name of the person

[12] In that context, due to the government's precipitous seizure of one of Karpeles's accounts in May 2013, Karpeles had notice that he was under investigation in some respect, thereby giving him ample time to cover his own tracks – a danger SA Der-Yeghiayan himself warned of in protesting not only the seizure, but also any further negotiations with Karpeles. Again, such a defense is recognized as valid and appropriate. *See Kyles v. Whitley*, 514 U.S. at 442 n. 13 (if defense had possessed the undisclosed material, "the defense could have attacked the investigation as shoddy"); *id*., at 445-46; *Bowen v. Maynard*, 799 F.3d 593, 613 (10th Cir. 1986) ("[a] common trial tactic of defense lawyers is to discredit the caliber of the investigation . . ."); *Cotto v. Herbert*, 331 F.3d 217, 229 (2d Cir. 2003).

Karpeles – who controlled the world's primary bitcoin exchange – suspected of being DPR if the government would forego charges against Karpeles for operating unlicensed money exchanging operations. A432-433; A341.

As a threshold matter, the government's letter seeking to prohibit that inquiry (A307), verified precisely what defense counsel sought to elicit from SA Der-Yeghiayan about the offer on cross-examination, and which was conveyed in July 2013 by Karpeles's lawyer to the government: in return for immunity from prosecution by the U.S., Karpeles offered to provide a name of someone he suspected was operating Silk Road. A311. Nowhere in its letter did the government challenge the accuracy of that account. In fact, the government *confirmed* it.

As the Court noted, the initial offer from Karpeles's attorney was not hearsay, as it was not being offered for the truth of the matter. A405-410. However, the exchanges between AUSA's and SA Der-Yeghiayan, while hearsay, qualified for admission under Rule 807, Fed.R.Evid., particularly in light of the government's failure to challenge their accuracy. Thus, the analysis for purposes of Rule 807had been satisfied.

Furthermore, "exceptional circumstances" warranted application of Rule 807 here. Karpeles is a French citizen living in Japan. His lawyers have not been identified; nor have the AUSA's who relayed the statement to SA Der-Yeghiayan.

See, e.g., Muncie Aviation Corporation v. Party Doll Fleet, Inc., 519 F.2d 1178, 1182-83 (5th Cir. 1975) (difficulty in finding witnesses justified admission); *Limone v. United States*, 497 F.Supp.2d `43, `62-63 (D. Mass. 2007). *Cf. Parsons v. Honeywell Incorporated*, 929 F.2d 901, 907-08 (2d Cir. 1991) (statement not admissible because declarant available as a witness).

The circumstances also easily meet the indicia of reliability and trustworthiness requirements found to satisfy the Rule [and/or its predecessors, Rule 803(24) and Rule 804(b)(5)]. For example, in *Steinberg v. Obstetrics-Gynecological & Fertility Group, P.C.*, 260 F.Supp.2d 492 (D.Conn. 2003), the Court concluded that the description of the status of a case by one attorney to another (assuming control of the case) possessed sufficient indicia of reliability and lack of motive to misrepresent. *Id.*, at 496. *See also United States v. Dumeisi*, 424 F.3d 566, 576-77 (7th Cir. 2005) (relying on the declarants' "duty to accurately record their own activities"); *United States v. Bailey*, 581 F.2d 341, 349 (3d Cir. 1978) ("consideration should be given to factors bearing on the reliability of the reporting of the hearsay by the witness"); *Muncie Aviation Corporation v. Party Doll Fleet, Inc.*, 519 F.2d 1178, 1182-83 (5th Cir. 1975) (trustworthiness established because published by government without any motive not to tell the truth or be inaccurate); *United States v. Iaconetti*, 406 F.Supp. 554, 559 (E.D.N.Y. 1976) (admitting statement because it was testified to by a person

with whom it was "appropriate and even necessary [for the declarant] to communicate").

Moreover, the rules of evidence were not designed to curtail a defendant's constitutional rights, as implicated here (with respect to confrontation and the right to present a defense), and as the Supreme Court declared in *Chambers v. Mississippi*, 410 U.S. 284 (1973), "where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice." *Id*., at 302.

Thus, the offer by Karpeles's lawyer was admissible pursuant to Rule 807. Concerns expressed by the Court regarding "context" and meaning of the offer are unpersuasive, and address merely the weight that should be accorded the statement – contentions appropriately directed to the jury. *See Stifel*, 594 F.Supp. 1525, 1541 (N.D. Ohio 1984) ("[t]he identity of the bomb sender was a question for the jury, and defendant should have been apprised of evidence showing that someone other than himself had equal motive, access to materials, and other surrounding circumstances implicating him as the guilty party"). *See also Kyles v. Whitley*, 514 U.S. at 451 (prosecution's factual arguments about the implications of exculpatory evidence "confuses the weight of the evidence with its favorable tendency, . . .").

B. ***FBI Computer Specialist Thomas Kiernan***

At the time of his testimony, Agent Thomas Kiernan had been with the FBI for 23 years and held the position of computer scientist. A491. Through Agent Kiernan's testimony, the government introduced the entire contents of Ulbricht's laptop. A492. During his direct testimony, select documents from Ulbricht's hard drive were admitted in evidence and read to the jury. *See e.g.*, A494, 495. Agent Kiernan also testified about the operation of Torchat, a computer program installed on Ulbricht's laptop at the time of his arrest, which was the vehicle for many internet chats introduced by the government, and in which the government claimed Ulbricht was a participant. A493.

During cross-examination, however, defense counsel was precluded from asking a number of questions directly relevant to material elicited from Agent Kiernan on direct. For example, Agent Kiernan testified about a test of the Torchat program he conducted to establish that files recovered from Ulbricht's laptop were structured in the same way as files Agent Kiernan generated on his own computer. The relevant portion of Agent Kiernan's testimony is as follows:

Q. Have you personally ever used Tor chat?

A. I have.

Q. Have you tested Tor chat?

A. I have.

Q. Have you saved the logs of Tor chats on your own computer?

A. I have.

T.889.

The defense should have been permitted to ask Agent Kiernan whether his Torchat program experiment was running on the same, "kernel version" as that on Ulbricht's laptop which would have established that Agent Kiernan's conclusions were flawed, but was denied the opportunity. A503. The defense was also precluded from asking questions related to the security of BitTorrent, T.1054, and about a particular PHP script admitted as Defense Ex. J that was recovered from Ulbricht's laptop, both clearly within the scope of direct, and thus, fair game.[13] A498.

C. *The Court's Rulings Which Curtailed the Cross Examinations of SA Der-Yeghiayan and Agent Kiernan Constituted an Abuse of Discretion*

As this Court has instructed, "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *United States v. Crowley*, 318 F.3d 401,

[13] BitTorrent is an internet file sharing program which creates an extraordinary vulnerability to internet intrusion by hackers when open. During direct of Agent Kiernan, a photo of Mr. Ulbricht's laptop screen at the time of arrest was introduced, which established that the BitTorrent program was indeed open, thereby jeopardizing the security of the information on Ulbricht's laptop.

417 (2d Cir. 2003), *cert. denied*, 540 U.S. 894 (2003), *citing*, *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). An appellate court will reverse the district court's decision to restrict cross-examination "only when th[e] broad discretion [of the district court] is abused." *Figueroa*, 548 F.3d at 226, *citing*, *Crowley*, 318 F.3d at 417.

The district court abuses its discretion "when (1) its decision rests on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding, or (2) its decision – though not necessarily the product of a legal error or a clearly erroneous factual finding – cannot be located within the range of permissible decisions." *Figueroa*, 548 F.3d at 226 (citations and footnotes omitted); *see also Koon v. United States*, 518 U.S. 81, 100 (1996).

Such error is not harmless unless appellate court finds "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained[.]" *Chapman v. California*, 386 U.S. 18, 24 (1967).

Accordingly, the Court abused its discretion in curtailing the cross-examinations of SA Der-Yeghiayan and Agent Kiernan.

POINT III

THE COURT ABUSED ITS DISCRETION IN PRECLUDING TWO DEFENSE EXPERTS

During the defense case, the Court precluded two defense experts, Dr. Steven Bellovin, and Andreas Antonopoulos. The two experts were necessary to rebut: (1) portions of the government's case that the defense was precluded from confronting on cross-examination; and (2) the testimony of Ilhwan Yum, involving a lengthy spreadsheet of thousands of bitcoin transactions and a complex analysis of bitcoin wallets located on the Silk Road servers and Ulbricht's laptop, notice of which was provided to the defense only days prior.

Dr. Bellovin's testimony would have addressed a number of technical computer and internet-related issues which the defense was prevented from addressing during cross-examination. Those matters included general principles of internet security and vulnerabilities; PHP computer programming; forensic memory analysis; general issues related to linux-based operating systems; and principles of public key cryptography. Each of these issues was significantly implicated in the testimony of government witnesses, as well as in the evidence related to the government's forensic examination and analysis of Ulbricht's laptop.

Antonopoulos's testimony would have explained to the jury a number of technically complex and abstract concepts involving bitcoin, and countered certain

aspects of Yum's testimony, particularly the massive spreadsheet accompanying his testimony.

Yum's direct testimony involved technically complex concepts related to bitcoin and computer forensics, including the extraction of several bitcoin wallet files from Ulbricht's laptop and the Silk Road computer servers. It featured a comparative analysis of bitcoin addresses from wallets located on the Silk Road Marketplace server and Ulbricht's laptop. A532. He also explained – in some instances, incorrectly (*i.e.*, his definition of a "hot wallet," A555-556) – concepts related to bitcoin in a manner consistent with the government's theory of the case.

Antonopoulos's testimony was critical to the jury's full understanding of complex concepts related to bitcoin, and to highlight defects in Yum's forensic analysis of bitcoin addresses. Furthermore, his testimony would have defined principles of ownership, control, and access related to bitcoin and bitcoin wallets, in counterpoint to the flawed conclusions in Yum's testimony, as well as Yum's inaccurate definitions of important terminology and descriptions of bitcoin mechanics.

By precluding the defense experts, who would have countered the complex testimony regarding bitcoin presented by the government, the government witnesses' testimony essentially went unchallenged, and Ulbricht was denied his Fifth and Sixth Amendment rights to present a defense.

A. *The Court's Decision Precluding the Two Defense Experts*

The Court's principal stated reason for precluding both defense experts was non-compliance with Rule 16, Fed.R.Crim.P., *i.e.*, the timing of defense disclosure and the level of detail describing the experts' anticipated testimony. A362-379.

Yet, as detailed below, the Court's rigid application of the Rule 16 disclosure requirements, and its imposition of the most extreme sanction available – preclusion altogether – contravened case law and paid insufficient heed to Ulbricht's Sixth Amendment rights, as set forth **post**. The ruling further ignored the particular circumstances in this case, namely that the defense was attempting to address issues that had become apparent only during trial.

Thus, the Court's decision was entirely asymmetrical – while the government was able to elicit testimony for which cross-examination was precluded, and include complex, lengthy summary exhibits created mid-trial, the defense was not permitted to confront them at all.

Regarding the preclusion of Dr. Bellovin's testimony, the Court held that defense counsel's letter regarding the subject of his testimony failed to describe sufficiently his opinions and proposed topics to be covered. A374-75. However, the defense's letter disclosing Dr. Bellovin's proposed testimony contained detailed reasons why each subject area of his testimony was required to respond to areas the defense was precluded from exploring on cross-examination, or to meet

specific government arguments, or to augment the defense theories. A385. In fact, much of Dr. Bellovin's testimony was necessitated by testimony the government elicited on direct of its technical computer witnesses in areas that the defense was precluded from examining on cross. A388-89.

The Court's reasons for precluding Antonopoulos's testimony were similarly in conflict with the record. While the Court stated, ". . . what analysis Antonopoulos performed and the methodology are unknown[,]" (A368), the defense's letter to the Court sufficiently outlined those subjects, and noted that further details awaited Antonopoulos's disembarkation from his trans-Atlantic flight to New York. Counsel also made a subsequent detailed oral proffer, but to no avail. T.1845-1851.

The Court ruled that it would be essentially unfair to make the government prepare to cross-examine expert witnesses on short notice. A369. Yet the Court's characterization of the defense strategy as "trial by ambush," A368, was, in fact, the exact opposite of how events unfolded at trial.

Indeed, many of the exhibits introduced during Yum's testimony were first revealed to the defense mid-trial, only three days before their introduction through Yum as a witness. Many in the 600 series – including GX 620, a 63-page spreadsheet including and analyzing thousands of bitcoin transactions – were first turned over January 28, 2015, more than two weeks into trial, and two days prior to

Yum's testimony. Nor were they contained in any previous Exhibit list; indeed, as former Special Agent Yum testified, he had, at the prosecutors' direction, commenced and completed the spreadsheet and the analysis *only after the trial had begun*.

The defense had not even been made aware of any bitcoin wallet analysis, let alone provided with related exhibits, until 10:17 p.m. the night of January 25, 2015, when a 3MB Excel spreadsheet containing the wallet analysis conducted by Yum was provided to defense counsel. *See* Rule 33 Motion, at 14 (Docket#224). At that time the government notified defense counsel that the government intended to produce the spreadsheet as 3500 material, and was in the process of preparing a series of summary exhibits, based on the spreadsheet, to be introduced during Yum's testimony. *Id*, at 15.[14]

Furthermore, in contrast to the inflexible standard imposed on Ulbricht, the government was permitted to elicit Yum's testimony, which included the voluminous spreadsheet and an extraordinarily complex analysis of millions of bitcoin addresses and sophisticated computer software. The defense sought to call Antonopoulos for the purpose of countering the testimony of Yum, who admitted on cross that 60% of the work on the spreadsheet and analysis had been performed

[14] A disk containing the documents that would ultimately become GX 650 and 651 was also first provided to defense counsel the night of January 25, 2015.

by a colleague with a doctorate in cryptology, who the government did not call as a witness at trial. A553.

When defense counsel asked for a brief adjournment so that a proper cross-examination could be prepared on the materials underlying Yum's testimony, the Court refused. Thus, it was the defense that was subject to "trial by ambush." A551.

B. *The Court Abused Its Discretion In Precluding the Two Defense Experts*

It is well established that precluding an expert witness constitutes reversible error if the proposed expert's testimony was critical to the defendant's case and could have produced a different outcome at trial. *See e.g. Crane v. Kentucky*, 476 U.S. 683, 690 (1986) ("Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense") (internal quotations marks and citations omitted); *Chambers v. Mississippi*, 410 U.S. 284, 302-03 (1932) (exclusion of evidence "amounts to constitutional error if it deprives the defendant of a fundamentally fair trial"). Whether exclusion of witness testimony constitutes reversible error rests on whether the omitted testimony "creates a reasonable doubt that did not otherwise exist." *United States v. Agurs*, 427 U.S. 97, 112 (1976).

In addition, trial courts have broad discretion in fashioning a remedy for failures to comply with Rule 16. Fed. R. Crim. P. Rule 16; *United States v.*

Chavez, 549 F.3d 119, 129 (2d Cir. 2008); *United States v. Thai*, 29 F.3d 785, 804 (2d Cir. 1994). The trial court's decisions in its choice of remedy is reviewed under the abuse of discretion standard, and is reversible error if it causes "substantial prejudice." *Thai*, 29 F.3d at 804; *see also Zerega Ave. Realty Corp. v. Hornbeck Offshore Transp., LLC*, 571 F.3d 206, 213 (2d Cir. 2009).

Although trial courts are afforded deference in sanctioning of parties that do not comply with procedural rules, courts have noted that preclusion of evidence is an extreme remedy. *Hein v. Cuprum, S.A., De C.V.*, 53 Fed.Appx. 134, 137 (2d Cir. 2002) (commending trial judge for "appropriately us[ing] his discretion to steer a middle course between the *extreme* remedy of exclusion and the possibility of unfair prejudice to the plaintiff") (emphasis added); *Thai*, 29 F.3d at 806 (finding that "extreme sanction" of striking testimony from the record, is "the most severe remedy a court can impose short of declaring a mistrial") (quoting *United States v. Rodriguez*, 765 F.2d 1546, 1557 (11th Cir. 1985) (internal quotes omitted)).

In determining when the trial court's decision to preclude a witness constituted an abuse of discretion, four factors are considered:

> (1) the party's explanation for the failure to comply with the discovery order; (2) the importance of the testimony of the precluded witness; (3) the prejudice suffered by the opposing party as a result of having to

> prepare to meet the new testimony; and (4) the possibility of a continuance.

Zerega Ave. Realty Corp., 571 F.3d at 213.

Applying these four factors to the facts at hand, even assuming non-compliance with procedural rules, the Court's reliance on the extreme remedy of preclusion was an abuse of discretion.

As set forth above, the testimony of Dr. Bellovin became necessary during the course of trial because the defense was precluded from cross-examining Agent Kiernan on a number of subjects well within the scope of his direct examination. *See* **ante**, at 77. These subjects included the impact of certain lines of PHP computer code; the security implications of BitTorrent software on Ulbricht's laptop; and the general operation of linux-based operating systems (also present on the laptop).

Antonopoulos's testimony was necessary to counter Yum's testimony, which involved a huge spreadsheet and complex analysis of a large number of bitcoin transactions provided to the defense mere days before his testimony. The two experts' testimony was critical given the curtailment of cross-examination of Agent Kiernan and the complexity of Yum's testimony involving bitcoin forensics, as well as the timing of its production.

Additionally, the government, fully aware of the subjects the defense experts intended to cover through numerous sidebar discussions and letters to the Court, failed to articulate specific prejudice that would have resulted if the expert testimony had been admitted – particularly if the government were granted a continuance (to which the defense would have consented).

For example, in *United States v. Onumonu*, 967 F.2d 782, 784 (2d Cir. 1992), the defense to a charge of knowingly importing heroin into the United States, was that the defendant believed he was smuggling diamonds, and therefore lacked the requisite knowledge and intent. *Id.* Defendant proffered a gemologist's expert testimony on issues including the feasibility of smuggling diamonds by swallowing them, and their value. *Id.* at 785.

In *Onumonu*, this Court held that the refusal to allow the expert testimony was reversible error because "[a]t the end of the case, all [the defendant] had been able to present was his own belief about diamonds." *Id.* at 789. Furthermore, "[a] major thrust of the prosecutor's summation was that Onumonu's story was 'ludicrous,' with the government arguing that no one would smuggle diamonds in this fashion." *Id.*[15]

[15] As a result of the preclusion of the experts, the government was granted similar license during closing argument in this case. T.2154.

This Court found in *Onumonu* that the exclusion of the expert testimony was not harmless error because the defendant was deprived of "fair opportunity to present his case to the jury" and the exclusion may have had a "substantial effect on the jury's verdict." *Id.*; *see also United States v. McBride*, 786 F.2d 45, 49-50 (2d Cir. 1986) (reversing the defendant's conviction because the testimony of a psychiatrist – the only witness the defendant sought to present and who would have testified to the defendant's mental capabilities at the time of the crime – was excluded, despite being "critical to [the] defense").

Similarly, in *United States v. Dwyer*, 539 F.2d 924 (2d Cir. 1976), this Court reversed the exclusion of the defense's expert psychiatric testimony related to the role of mental disease or defect in criminal responsibility. *Dwyer*, 539 F.2d at 927.

Given that the defendant had admitted the criminal conduct alleged, expert testimony supporting the assertion that defendant suffered from mental disease or defect was "vital." *Id.* Therefore, the expert opinion would have "added to the lay testimony already before the jury" and possibly "produced a different verdict." *Id.* at 927-28. This Court reasoned that because the probative value of the evidence proffered was so great, it should not have been excluded "in the absence of a showing of unfair prejudice." *Id.* at 928 (citing *United States v. Mejia*, 529 F.2d 995, 996 (9th Cir. 1975)).

In a case with very similar facts to *Onumonu*, the defendant, charged with importing heroin, presented the defense that he believed he was smuggling gold dust. *United States v. Diallo*, 40 F.3d 31, 33-34 (2d Cir. 1994). The defendant was precluded from presenting the testimony of a commodities consultant regarding the profitability of smuggling gold dust into the country, and on general statistics of trading of precious metals. *Id.* at 34.

In *Diallo*, because the "critical fact in issue" was whether or not the defendant "actually knew" what he was smuggling, the exclusion of the expert's testimony deprived the defendant of a fair opportunity to present his case to the jury, as it left him with only his own testimony to support his defense. *Id.* at 35 (quoting *Onumonu*, 967 F.2d at 789). Depriving the defendant of this fair opportunity had a "substantial effect on the jury's verdict," and was therefore found *not* to be harmless. *Diallo*, 40 F.3d at 35 (quoting *Onumonu*, 967 F.2d at 789).

Particularly analogous to this case was the inequitable nature of the preclusion of the defense expert in *Diallo*, because, as this Court pointed out, the government was permitted in *Diallo* to call its own expert – a DEA agent – to establish an economic motive for the defendant to have smuggled heroin and the defense expert would have testified to the economic advantages of smuggling gold dust. 40 F.3d at 35.

In the final paragraph of its opinion, this Court found that "[h]aving allowed the government to call as an expert a DEA agent, who was surely *no more qualified* as an expert in heroin than [the defense's expert witness] was in gold, the district court should have accorded the defendant the same right." *Id.* (emphasis added). As this Court concluded, "[t]urnabout is fair play, even in the federal court." *Id.*

Accordingly, the preclusion of two defense experts at trial herein denied Ulbricht his Fifth and Sixth Amendment rights to present a defense. While the government was permitted to present testimony regarding extremely complicated processes outside the ken of the average juror, Ulbricht was denied the vital opportunity to challenge that testimony and evidence, some of which was generated and provided only mid-trial shortly before its admission, and therefore, the Court's preclusion of the two defense experts was an abuse of discretion. Accordingly, Ulbricht's convictions should be vacated, and a new trial ordered.

POINT IV

THE COURT ABUSED ITS DISCRETION IN PRECLUDING ADMISSION OF ANDREW JONES'S STATEMENT AGAINST PENAL INTEREST PURSUANT TO RULE 804(3)(b), FED.R.EVID., AND/OR RULE 807, FED.R.EVID.

A. *Pretrial Disclosure of Andrew Jones's Exculpatory Statement*

Just two weeks before trial commenced, the government wrote defense counsel December 29, 2014, to inform of a statement made by Andrew Jones, a/k/a "inigo," an administrator of the Silk Road site for a period in 2013 until its closure, and a cooperating government witness (charged in a separate indictment):

> [a]t some point in or about August or September 2013, Jones tried to authenticate that the Silk Road user "Dread Pirate Roberts" whom he was talking to at the time (via Pidgin chat) was the same person with whom he had been communicating in the past with this username. Previously, in or about October 2012, Jones and "Dread Pirate Roberts" had agreed upon a "handshake" to use for authentication, in which Jones would provide a certain prompt and "Dread Pirate Roberts" would provide a certain response. When, during the 2013 chat in question, Jones provided what he believed to be the designated prompt, "Dread Pirate Roberts" was unable to provide the response Jones thought they had agreed on. However, later in the chat, Jones asked "Dread Pirate Roberts" to validate himself by specifying the first job that "Dread Pirate Roberts" assigned to him (running the "DPR Book Club"), which "Dread Pirate Roberts" was able to do.

A398.

That statement substantially buttressed the defense theory that there was more than one DPR, that DPR's identity changed over time, and that there was a change very close in time to Ulbricht's arrest – all supporting Ulbricht's defense that he had been framed by the genuine DPR.

B. *The Trial Proceedings*

While Jones was included in the government's witness list, the government indicated during trial it would not call him. A563. As a result, the defense indicated its wish to call him, but Jones's lawyer informed defense counsel that Jones would not testify, and would instead assert his Fifth Amendment privilege. A1856.

Although the government initially agreed to stipulate to Jones's statement, the night before the defense sought to finalize and introduce the stipulation the government reneged at 11:00 p.m. (even though it had, in return for the agreement to stipulate, extracted a significant concession from the defense earlier that evening). A564. Consequently, the defense moved for admission of Jones's statement as a statement against penal interest pursuant to Rule 803(4), Fed.R.Evid., or in the interests of justice pursuant to Rule 807, Fed.R.Evid. (the "residual exception"). A564. Ulbricht also moved for the statement's admission pursuant to the Fifth Amendment's Due Process guarantee. *See Chambers v. Mississippi*, 410 U.S. 284, 302 (1973).

The Court denied the application to introduce Jones's statement, concluding it was not against penal interest because made while Jones was cooperating with the government, it was not sufficiently corroborated, and did not possess sufficient indicia of trustworthiness. A581-583.

C. *The Court Abused Its Discretion In Precluding Admission of Jones's Statement Under Either Rule 804(3)(b) or Rule 807*

Jones's unavailability was established during the colloquy with the Court, A587-88, during which defense counsel relayed a conversation with Jones's attorney confirming that Jones would be asserting his Fifth Amendment privilege. *United States v. Chan*, 184 F.Supp.2d 337, 341 (S.D.N.Y. 2002) ("[a] witness need not be physically brought into court to assert the privilege; the . . . representation that the pleading defendants' lawyers had been contacted and . . . stated that his client would assert the Fifth Amendment privilege is sufficient"), *citing*, *United States v. Williams*, 927 F.2d 95, 98–99 (2d Cir. 1991).

Regarding Jones's statement, the Court found it was not against his penal interest, because he "was under a cooperation agreement at the time" the statement was made. A589. Although the Court relied on unspecified "case law," *id.*, this Court, in fact, "frequently refrain[s] from articulating the limits of the 'against penal interest' requirement and instead decide[s] cases based on the corroboration

requirement[.]" *United States v. Camacho*, 163 F.Supp.2d 287, 299 n.10 (S.D.N.Y. 2001) (collecting cases).

Here, Jones's cooperation did *not* affect his statement's character against his penal interest. Cooperation agreements do not provide immunity, and regarding an offense involving nationwide, and even worldwide, illegal internet activity, prosecutions could very well occur in multiple jurisdictions. In that context, of crucial importance is that the agreements explicitly binds only the signing parties, leaving cooperators exposed to prosecution for crimes confessed over the course of cooperation in any other jurisdiction (including states). *See United States v. Fuller*, 149 F.Supp.2d 17, 22-23 (S.D.N.Y. 2001) (cooperator's agreement with state prosecutor did not bar federal prosecution nor prohibit use of cooperator's statements in federal prosecution, as agreement "is not the equivalent of an 'immunity order,' . . . binding on both the State and Federal Government").

Consequently, a cooperation agreement does not erase Fifth Amendment protections. Indeed, if it did, Jones's invocation of the privilege at trial – a common occurrence for witnesses, including those who have cooperated but are not called at trial, and who have pleaded guilty but are awaiting sentencing – would not have been valid. If his Fifth Amendment privilege survived his cooperation agreement, certainly his subsequent incriminating statements were contrary to his penal interest.

In addition, even with respect to the prosecuting office that signs the agreement, the formal written terms of cooperation provide only conditional protection against subsequent prosecution. If at any point the prosecuting office determines a cooperator has been untruthful or provided incomplete information, or has committed an additional crime (even if not prosecuted), the prohibition on prosecution by that office is void. *See United States v. Ming He*, 94 F.3d 782, 790 (2d Cir. 1996) ("government was in a position to impose grave penalties" if it determined that information was "incomplete or dishonest," meaning that "a breach by defendant amounted to a waiver of [his] Fifth Amendment privilege against self-incrimination").

In addition, cooperation agreements explicitly state that all information provided is available to the Court at sentencing, and may be considered as either relevant or other conduct when calculating the appropriate Guidelines range and the applicability of departures. For the same reason that the Fifth Amendment privilege against self-incrimination survives a guilty plea, in that subsequent statements can still adversely affect sentencing exposure, statements made subject to a cooperation agreement are against penal interest. *See Mitchell v. United States*, 526 U.S. 314, 326 (1999) ("[w]here the sentence has not yet been imposed a defendant may have a legitimate fear of adverse consequences from further

testimony"). Undoubtedly then, statements made during cooperation may certainly be against the declarant's penal interest.

The Court's further assessment of Jones's statement – that "the chat itself independently and in itself doesn't carry any particular penal impact" – improperly fails to consider the context of the statement, which implicates Jones in a worldwide criminal conspiracy. *See Williamson v. United States*, 512 U.S. 594, 603-04 (1994) ("whether a statement is self-inculpatory or not can only be determined by viewing it in context . . . [e]ven statements that are on their face neutral may actually be against the declarant's interest").

Also, regarding corroboration of the reliability of both the statement and the declarant, the Court concluded it was not "aware of [anything] that indicates the trustworthiness" of the statements. However, cooperation agreements provide a compelling, even overwhelming, motivation for candor because the limited immunity granted is entirely dependent on honest and complete disclosure. *See United States v. Certified Envtl. Servs., Inc.*, 753 F.3d 72, 85-86 (2d Cir. 2014) ("cooperation agreements generally contain so-called truth-telling provisions, which set out promises to testify truthfully as well as penalties for failure to do so, such as prosecution for perjury and reinstatement of any charges dropped pursuant to the deal") (internal quotations omitted).

Moreover, in its December 29, 2014, letter informing the defense of Jones's statement, the government provided more than sufficient corroboration. While the government was "unaware of any extant record of the 2013 chat described by Jones . . . [t]here is a record of an October 2012 chat between [DPR] and Jones discussing a 'handshake' in the file labeled "mbsobzvkhwx4hmjt" on the defendant's computer . . . provided to the defense in discovery." A398.

Thus, Jones's statement was more than adequately corroborated for purposes of both Rule 803(4) and Rule 807 (requiring "equivalent circumstantial guarantees of trustworthiness"). For that reason, and because the government chose mid-trial not to call a cooperating witness who asserted his Fifth Amendment privilege, thereby depriving the defense of his testimony, and further, at the last moment refused to fulfill an agreement to stipulate, admission of Jones's statement also satisfied the "interests of justice" criterion of Rule 807(C), as well as the Fifth Amendment Due Process guarantee, consistent with *Chambers*.

In denying admission of Jones's statement, the Court further decimated Ulbricht's defense just as it did with respect to the evidentiary rulings set forth **ante** in POINTs I, II, and III. Accordingly, Jones's statement should have been admitted pursuant to Rule 803(4) and/or Rule 807, and the Court abused its discretion in excluding it.

POINT V

THE COURT'S ERRONEOUS EVIDENTIARY RULINGS CONSTITUTED CUMULATIVE ERROR THAT DEPRIVED ULBRICHT OF DUE PROCESS AND A FAIR TRIAL

While each of the series of evidentiary trial errors set forth above individually are sufficient to warrant vacating Ulbricht's convictions and granting him a new trial, cumulatively they require it. In combination, they served to prevent Ulbricht from presenting any meaningful defense to the charges, and permitted the government to argue that the defense theory was unsupported by facts.

The concept of cumulative error is well established. As this Court noted in *United States v. Al-Moayad*, 545 F.3d 139 (2d Cir. 2008), "[t]he Supreme Court has repeatedly recognized that the cumulative effect of a trial court's errors, even if they are harmless when considered singly, may amount to a violation of due process requiring reversal of a conviction." *United States v. Al-Moayad*, 545 F.3d 139, 178 (2d Cir. 2008), *citing, Taylor v. Kentucky*, 436 U.S. 478, 487 n. 15 (1978), and *Chambers v. Mississippi*, 410 U.S. 284, 302-03 (1973).

Similarly, the "'cumulative unfairness' doctrine is also firmly embedded" in this Circuit. *Id*., *citing, United States v. Guglielmini*, 384 F.2d 602, 607 (2d Cir. 1967) (determining that, singly, the errors at trial would not require reversal, but that "occurring at the same trial, the total effect of the errors . . . found . . . cast

such a serious doubt on the fairness of the trial that the convictions must be reversed").

Accordingly, the substantial accumulation of errors, as set forth **post** and **ante**, requires reversal here.

POINT VI

THE UNLIMITED SEARCHES AND SEIZURE OF ULBRICHT'S ENTIRE LAPTOP AND GMAIL AND FACEBOOK ACCOUNTS VIOLATED THE FOURTH AMENDMENT BECAUSE THEY CONSTITUTED THE FRUIT OF (A) A WARRANT THAT LACKED ANY PARTICULARITY; AND (B) UNLAWFUL AND WARRANTLESS PEN REGISTER AND TRAP AND TRACE ORDERS

A. *The Search of Ulbricht's Laptop and Gmail and Facebook Accounts Violated the Fourth Amendment Because the Warrant Authorizing the Search Lacked Any Particularity*

As noted **ante**, Ulbricht moved prior to trial to suppress evidence recovered from his laptop seized from him at the time of his arrest, and his Facebook and Gmail accounts. *See* Docket#46. The search of Ulbricht's laptop violated the Fourth Amendment because the warrant authorizing the search lacked *any* particularity, but instead expressly and purposefully sought a search without any limiting principle.

1. *The Unlimited Scope of the Warrants At Issue*

The warrants here represent the antithesis of "particularity" not only in execution, but also in design, language, and purpose. For example, the warrant for

the laptop sought, and received, authorization to search for the following (with only the most patently offending paragraphs cited herein):

> 44. The SUBJECT COMPUTER is also likely to contain evidence concerning ULBRICHT relevant to the investigation of the SUBJECT OFFENSES, including evidence relevant to corroborating the identification of ULBRICHT as the Silk Road user "Dread Pirate Roberts," including but not limited to:
>
> a. any communications or writings by Ulbricht, which may reflect linguistic patterns or idiosyncracies associated with “Dread Pirate Roberts”[] or political/economic views associated with “Dread Pirate Roberts” *(e.g.*, views associated with the Mises Institute);
>
> c. any evidence concerning Ulbricht's travel or patterns of movement, to allow comparison with patterns of online activity of “Dread Pirate Roberts” and any information known about his location at particular times
>
> h. any other evidence implicating ULBRICHT in the SUBJECT OFFENSES.

S248-49(footnote omitted).

The deliberate intention to review *everything* was further manifest from Attachment B to the warrant, which included authority to search the laptop for

> 2. Any evidence concerning ROSS WILLIAM ULBRICHT relevant to the investigation of the SUBJECT OFFENSES, including but not limited to:
>
> a. any communications or writings by ULBRICHT;
>
> c. any evidence concerning ULBRICHT'S travel or patterns of movement;

S252-53.

Moreover, the warrants for Ulbricht's gmail and Facebook accounts were similarly without boundaries. S311; S383. Thus, the entirety of Ulbricht's private "papers," and more (*i.e.*, his internet history, political or other associations) were expressly targeted by the government.

2. *The Court's Rationale for Denying Ulbricht's Motion to Suppress*

In denying Ulbricht's suppression motions, the Court held that the warrants for the laptop and the social media accounts were lawful because they were not general warrants and were supported by probable cause, and that pen register and trap and devices did not require a warrant because "the type of information sought in Pen-Trap orders 1, 2, 3, 4, and 5 was entirely appropriate for that type of order" and "[t]he Pen-Trap Orders do not seek the content of internet communications in any directly relevant sense." A201, 203-04.

3. *The Overriding Importance of the Particularity Requirement*

The critical importance of the particularity requirement in preserving Fourth Amendment rights and protections in the digital age has recently been recognized by this court. In *United States v. Galpin*, 720 F.3d 436 (2d Cir. 2013), the Court observed that

> [w]here, as here, the property to be searched is a computer hard drive, the particularity requirement assumes even greater importance. As numerous courts and commentators have observed, advances in

> technology and the centrality of computers in the lives of average people have rendered the computer hard drive akin to a residence in terms of the scope and quantity of private information it may contain.

Id., at 447, citing, United States v. Payton, 573 F.3d 859, 861 62 (9th Cir.2009) ([t]here is no question that computers are capable of storing immense amounts of information and often contain a great deal of private information. Searches of computers therefore often involve a degree of intrusiveness much greater in quantity, if not different in kind, from searches of other containers) (other citation omitted) (footnote omitted). *See also United States v. Otero*, 563 F.3d 1127, 1132 (10th Cir. 2009); Orin S. Kerr, *Searches and Seizures in a Digital World,* 119 Harv. L.Rev. 531, 569 (2005).

Indeed, last Fall the Court *en banc* considered the rehearing of the panel's opinion in *Ganias*. *United States v. Ganias*, 755 F.3d 125, 134 (2d Cir. 2014), *reh'g en banc granted*, 791 F.3d 290 (2d Cir. 2015). While the specific issue relative to particularity is distinct herein – not retention and subsequent searching, as in *Ganias*, but rather the absence of any particularity in the warrant – the Court's *en banc* consideration nevertheless underscores the importance of the particularity requirement, especially in the context of computers and digital evidence.

In fact, in *Ganias* and *Galpin* this Court has twice reversed convictions and suppressed evidence because of violations of the particularity requirement. In

Ganias, the panel noted that the particularity requirement makes general searches . . . impossible because it prevents the seizure of one thing under a warrant describing another. 755 F.3d at 135, *quoting*, *Galpin*, 720 F.3d at 446 (*quoting Marron v. United States*, 275 U.S. 192, 196 (1927)) (internal quotation marks omitted). That principle restricts the government's ability to remove all of an individual's papers for later examination because it is generally unconstitutional to seize any item not described in the warrant. *See Horton v. California*, 496 U.S. 128, 140 (1990).

4. *The Warrants At Issue Are Devoid of Particularity*

Nor is the protest here directed at the initial seizure of a hard drive by imaging it for off-site review. The panel opinion in *Ganias* has already noted that such a procedure is "constitutionally permissible." 755 F.3d at 135. Rather, it is the lack of any limiting standards or procedures during that review. Indeed, the language cited above from the applications and warrants manifests the opposite intent: a detailed review of every piece of digital information.

In the digital/computer context, the panel in *Ganias* recognized that "computer files may contain intimate details regarding an individual's thoughts, beliefs, and lifestyle, and they should be similarly guarded against unwarranted Government intrusion. If anything, even greater protection is warranted." *Id.*, at 135, *citing* Kerr, *Searches and Seizures in a Digital World*, 119 Harv. L.Rev. at

569 (explaining that computers have become the equivalent of postal services, playgrounds, jukeboxes, dating services, movie theaters, daily planners, shopping malls, personal secretaries, virtual diaries, and more).

Ganias followed *Galpin*, which explained that the purpose of the particularity requirement "is to minimize the discretion of the executing officer . . ." 720 F.3d at 446 n.5, and pointed out that "[m]indful of that purpose, . . . other Circuits have held that even warrants that identify catchall statutory provisions, like the mail fraud or conspiracy statutes, may fail to comply with this aspect of the particularization requirement." *Id., citing United States v. Leary*, 846 F.2d 592, 594 (10th Cir.1988) (warrant authorizing search of export company's business records for violation of the Arms Export Control Act, 22 U.S.C. §2778, and the Export Administration Act of 1979, 50 U.S.C. App. §2410, held overbroad); *Voss v. Bergsgaard*, 774 F.2d 402 (10th Cir. 1985) (warrant specifying 18 U.S.C. §371, the general federal conspiracy statute, held overbroad); *United States v. Roche*, 614 F.2d 6, 8 (1st Cir. 1980) (concluding that a limitation of a search to evidence relating to a violation of 18 U.S.C. §1341, the general mail fraud statute, provides no limitation at all).

Also, here the language of the governing statutes is not sufficiently precise to provide sufficient particularity; indeed, general statutes such 21 U.S.C. §841 and §848 are so broad and general that they exacerbate the problem. *See, e.g., United*

States v. Maxwell, 920 F.2d 1028, 1033 (D.C. Cir. 1990) (fraud); *United States v. Holzman*, 871 1496, 1509 (9th Cir. 1989) (fraud); *United States v. Fucillo*, 808 F.2d 173, 176-77 (1st Cir. 1987). *See also United States v. George*, 975 F.2d 72, 76 (2d Cir. 1992). Regardless, the terms of the warrants imposed no limitation at all on the parameters of the searches.

In *Galpin*, the Court recounted that it has "emphasized that 'a failure to describe the items to be seized with as much particularity as the circumstances reasonably allow offends the Fourth Amendment because there is no assurance that the permitted invasion of a suspect's privacy and property are no more than absolutely necessary.' 720 F.3d at 446, *quoting*, *United States v. George*, 975 F.2d 72, 76 (2d Cir. 1992). *See also United States v. Vilar*, 2007 WL 1075041, at *22-24 (S.D.N.Y. Apr. 4, 2007) (suppression granted because warrant, *inter alia*, included an omnibus provision permitting seizure of "all corporate records").

In language particularly germane here, the Court in *Galpin* cautioned that "[t]he potential for privacy violations occasioned by an unbridled, exploratory search of a hard drive is enormous[,]" and that "[t]his threat is compounded by the nature of digital storage." 720 F.3d at 446-47.[16] *See also United States v.*

[16] This Circuit has thus far declined to impose the type of search protocols enumerated by Judge Kozinski in his concurring opinion in *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1176 (9th Cir. 2010) (en banc) (per curiam). However, the Court in *Galpin* recognized "'a serious risk that every warrant for electronic information will become, in effect, a general warrant, rendering the Fourth Amendment irrelevant[,]'" and that "[t]his threat demands

Abrams, 615 F.3d 541, 543 (1st Cir. 1980) (warrant failed to satisfy particularity requirement because language was so amorphous that agents' discretion was unfettered).

In that context, the Court in *Galpin* instructed that upon remand "the district court's review of the plain view issue should take into account the degree, if any, to which digital search protocols target information outside the scope of the valid portion of the warrant. To the extent such search methods are used, the plain view exception is not available." 720 F.3d at 451.

Here, again, no such limiting principles were instituted at all, and the warrants inverted the analysis in a manner that dissolves Fourth Amendment protections. Rather than require the government to establish probable cause in advance of reviewing categories of electronic data, they would license the government to examine *every* file to assure that probable cause to seize it did *not* exist. Any more dramatic or patent example of the "rummaging" could not be envisioned, yet that is what the government has done in this case with respect to Ulbricht's laptop and Gmail and Facebook accounts.[17]

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a heightened sensitivity to the particularity requirement in the context of digital searches." 720 F.3d at 447-48, *quoting Comprehensive Drug Testing*, 621 F.3d at 1176, and citing *United States v. Burgess*, 576 F.3d 1078, 1091 (10th Cir. 2009) (If the warrant is read to allow a search of all computer records without description or limitation it would not meet the Fourth Amendment's particularity requirement").

[17] *See also* Kathleen Ridolfi, Tiffany M. Joslyn, and Todd H. Fries, *Material Indifference: How Courts Are Impeding Fair Disclosure In Criminal Cases*, National

Nor do the warrants here permit mere "perusal" to determine relevance, as in *United States v. Mannino*, 635 F.2d 110, 115 (2d Cir. 1980) (quoting, *United States v. Ochs*, 595 F.2d 1247, 1257 n. 8 (2d Cir. 1979)), or seek merely a "cursory" review for purposes of determining relevance, as in *Andersen v. Maryland*, 427 U.S. 463, 482 n. 11, 96 S.Ct. 2737, 49 L.Ed.2d 627 (1976) ([i]n searches for papers, it is certain that some innocuous documents will be examined, at least cursorily, in order to determine whether they are, in fact, among those papers authorized to be seized).

Indeed, the government announced in the applications that it intended to perform various detailed analyses of the entirety of Ulbricht's communications and digital history. That guaranteed that *every* piece of digital information would be subject to a detailed search in the absence of any probable cause to search any specific piece of electronically stored information.

Nor is the principle that a warrant can seek and seize "mere evidence" availing to the government with respect to these warrants. *See Warden v. Hayden*, 387 U.S. 294 (1967). *Warden* involved a discrete set of physical objects – clothing and weapons directly related to the offense charged – that were easily

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Association of Criminal Defense Lawyers and The Veritas Initiative (Santa Clara University School of Law), November 17, 2014, at 12, available at <http://www.nacdl.org/discovery reform/materialindifference/> ("[e]ven if every nook and cranny of a digital device could *theoretically* contain evidence covered by the warrant, it does not mean that every nook and cranny may *reasonably* contain such evidence") (emphasis in original).

identifiable, not a fishing expedition into the entirety of someone's communications and research history.

Also, in *Warden* the Court cautioned that "[t]here must, of course, be a nexus – automatically provided in the case of fruits, instrumentalities or contraband – between the item to be seized and criminal behavior," in addition to the particularity requirement. 387 U.S. at 300, 309-10.

Regarding the social media accounts, in *In the Matter of the Search of Information Associated with [Redacted] @mac.comthat is Stored at Premises Controlled by Apple, Inc.*, 13 F.Supp.3d 157 (D.D.C. August 8, 2014), involving a warrant for certain emails, the Court emphasized that the particularity requirement "ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." *Id.*, at 163.

In *Apple*, the warrant was sufficiently particularized because it "[specified] in the attachments to its application the particular e-mails to be seized[,]" *id.*, at 164, and also included a precise temporal limitation. *Id.*, at 161. No such restrictions on the agents' discretion existed here, though. *See United States v. Zemlyansky*, 945 F.Supp.2d 438, 457-60 (S.D.N.Y. 2013) (warrant invalid because, *inter alia*, it did not sufficiently particularize and failed to impose any temporal limitation on the items to be searched).

Here, because the warrants to search Ulbricht's laptop, as well as his Gmail and Facebook accounts, expressly – even deliberately – fail to adhere to the Fourth Amendment's particularity requirement, it is respectfully submitted that all evidence seized and/or searched pursuant to those warrants, and all the fruits therefrom, should be suppressed.

The Court also questioned whether Ulbricht possessed a "legally established" personal privacy interest in the laptop and the Google and Facebook accounts without a declaration of his possessory interest in the laptop and the Google and Facebook accounts. A183. However, not only did the government not contest Ulbricht's standing with respect to those searches, but the Court failed to cite any case law for that interpretation. Ulbricht was in possession of the laptop at the time of his arrest and there was no factual dispute as to his possession of either the laptop, or the Facebook or Google accounts.

B. *The Pen Register and Trap and Trace Orders Were Unlawful and Violated the Fourth Amendment Because They Required a Warrant and Also Failed to Adhere to Statutory Limitations*

The Pen Register and Trap and Trace Orders used in this case were implemented by court order and not by a warrant based on probable cause, and consequently, for the reasons set forth below, they violated the Fourth Amendment as well as the statutory framework under which they were obtained. Accordingly, all evidence acquired as a result of the Pen Registers and Trap and Trace devices, and their fruits, should have been suppressed, and the Court's decision denying Ulbricht's motion was erroneous.

1. *The Pen Register and Trap and Trace Orders Were Unlawful Because They Required a Warrant*

The pen register and trap and trace Orders ("pen-trap") at issue herein essentially requested the following:

> this Court has, upon the application of the United States of America, entered an Order authorizing agents of the Secret Service to direct COMCAST to install a trap and trace device to identify the source Internet protocol ("IP") address of any Internet communications directed to, and a pen register to determine the destination IP address of any Internet communications originating from, the following Internet user account controlled by COMCAST (the "TARGET ACCOUNT"), along with the date, time, duration, and port of transmission, but not the contents, of such communications (the "Requested Pen-Trap"), in connection with a criminal investigation.

S67.[18]

The pen-trap devices were used on routers, IP addresses, and MAC addresses.[19] *See, e.g.*, S127. Each of the Orders were for 60 days, although the full range of surveillance under the pen-trap orders lasted approximately two weeks. The applications also claimed the pen-trap devices did not capture "content." S85.

While ostensibly a pen-trap reveals only identifying information, these pen-traps had an ulterior purpose: to track Ulbricht's internet activity and his physical location, in an effort to connect him with access to the administrative section of the Silk Road Servers at particular times on particular dates. S245-46.

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[18] According to the applications for the pen-trap Orders,

> [a] "pen register" is "a device or process which records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted." 18 U.S.C. § 3127(3). A "trap and trace device" is defined as "a device or process which captures the incoming electronic or other impulses which identify the originating number or other dialing, routing, addressing, and signaling information reasonably likely to identify the source of a wire or electronic communication." 18 U.S.C. § 3127(4).

S73.

[19] According to the applications for the pen-trap Orders, "[e]very device on the Internet is identified by a unique number called and Internet Protocol ('IP') address. This number is used to route information between devices, for example, between two computers. Two computers must know each other's IP addresses to exchange even the smallest amount of information." S128-29. A MAC address is "a unique identifier that is hard-coded into a computer that can be used to physically identify the computer (similar to a vehicle identification number of a car)." S129-30.

That purpose extends well beyond that permissible for a pen-trap, and, because the devices were used absent a warrant based on probable cause, violates the Fourth Amendment as well as express statutory provisions.

a. Smith v. Maryland *Does Not Control the Issue Herein*

In *Smith v. Maryland*, 442 U.S. 735 (1979), the Supreme Court held that a telephone subscriber does not have an expectation of privacy in the numbers he or she dials because the subscriber knows full well that the telephone company keeps records of that information (which the subscriber has at least tacitly "knowingly" provided to that third party). However, the pen-traps in this investigation are not the same as those at issue in *Smith* and, as a result, *Smith* should not control the outcome herein.

For example, in *Smith*, the Court noted in support of its reasoning that a pen register "does not indicate whether calls are actually completed." *Id*., at 736 n. 1, *quoting United States v. New York Tel. Co.*, 434 U.S. 159, 161 n. 1 (1977). *See also id*., at 741 ("law enforcement . . . could not even determine from a pen register whether a communication existed"). Also, the Court cited that "[n]either the purport of any communication between the caller and recipient of the call, their identities, nor whether the call was even completed is disclosed by pen registers." 442 U.S. at 741, *quoting, United States v. New York Tel. Co.*, 434 U.S. at 167.

Here, the pen-traps were implemented to do exactly what, "[g]iven a pen register's limited capabilities . . ." 442 U.S. at 742, the Supreme Court said the device could *not* constitutionally do, and thus insulated pen-traps from constituting an invasion of private communications. The pen-traps here were sought to confirm the laptop's connection to the Internet at specific times and dates, their duration, and the laptop's physical location when it logged on and off.

In *Smith*, the Court further based its decision on the fact that pen registers were "routinely used by telephone companies 'for the purpose of checking billing operations, detecting fraud, and preventing violations of law.'" 442 U.S. at 742, *quoting*, *New York Tel. Co.*, at 174-75. *See also, id*. (also "to check for a defective dial, or to check for overbilling") (citation omitted) (internal quotation marks omitted).

Again, the Internet provides an entirely different technical and privacy environment than a telephone circuit, particularly one in 1979. As explained by Julian Sanchez (Research Fellow at the Cato Institute and contributing editor at *Reason* magazine),

> the Internet functions quite differently from the traditional circuit-switched telephone network. On the phone network, a binary distinction between "content" and "metadata" works well enough: The "content" is what you say to the person on the other end of the call, and the "metadata" is the information you send to the phone company so they can complete the call. But the

> Internet is more complicated. On the Open Systems Connections model familiar to most techies, an Internet communication can be conceptualized as consisting of many distinct "layers," and a single layer may simultaneously be "content" relative to the layer below it and "metadata" relative to the layer above it.
>
> * * *
>
> The crucial point here is that the detailed "metadata" for a particular Internet communication, past the IP layer, typically wouldn't be processed or stored by the ISP in the way that phone numbers and other call data is stored by the phone company. From the ISP's perspective, all of that stuff is content.
>
> * * *
>
> Either way, the acquisition of "metadata" other than IP addresses from an ISP or off the backbone is pretty clearly dissimilar from the collection of call data at issue in *Smith* in every important respect. It is not information conveyed to the Internet provider for the purpose of routing the communication; it is routing information conveyed through the provider just like any other content. Nor is it information the Internet provider would otherwise normally retain for routine business purposes. Again, relative to the ISP, it's all just content.

Julian Sanchez, "Are Internet Backbone Pen Registers Constitutional?" *Just Security*, September 23, 2013, available at <http://justsecurity.org/1042/internet-backbone-pen-registers-constitutional/>.

Courts have reached the same conclusion with respect to certain internet information that is captured by a pen-trap, particularly that employed here. For

example, in *United States v. Forrester*, 512 F.3d 500 (9th Cir. 2007), the Court postulated that

> [s]urveillance techniques that enable the government to determine not only the IP addresses that a person accesses but also the uniform resource locators (URL) of the pages visited might be more constitutionally problematic. A URL, unlike an IP address, identifies the particular document within a website that a person views and thus reveals much more information about the person's Internet activity. For instance, a surveillance technique that captures IP addresses would show only that a person visited the New York Times' website at http://www.nytimes.com, whereas a technique that captures URLs would also divulge the particular articles the person viewed. ([I]f the user then enters a search phrase [in the Google search engine], that search phrase would appear in the URL after the first forward slash. This would reveal content . . . .).

Id., at 510 n. 6. *See also, In re U.S. for an Order Authorizing the Use of a Pen Register and Trap on [xxx] Internet Service Account/User Name [xxxxxxx@xxx.com]*, 396 F.Supp.2d 45, 49 (D. Mass 2005) ("[a] user may visit the Google site. . . . [I]f the user then enters a search phrase, that search phrase would appear in the URL after the first forward slash. This would reveal content . . . . The substance and meaning of the communication is that the user is conducting a search for information on a particular topic") (internal quotation marks omitted).

Indeed, even senior government intelligence officials concede that metadata *is* content. *See, e.g.*, Spencer Ackerman, "NSA Review Panel Casts Doubt On

Bulk Data Collection Claims," *The Guardian*, January 14, 2014, available at <http://www.theguardian.com/world/2014/jan/14/nsa-review-panel-senate-phone-data-terrorism> (quoting former Deputy CIA Director Mike Morrell's testimony before the Senate Judiciary Committee that "[t]here is quite a bit of content in metadata").

That a privacy expectation in metadata is recognized by society as reasonable is reinforced by the fact that, "in today's technologically based word, it is virtually impossible for an ordinary citizen to avoid creating metadata about himself on a regular basis simply by conducting his ordinary affairs[.]" *ACLU v. Clapper*, 785 F.3d 787, 794 (2d Cir. 2015); *see Klayman v. Obama*, 957 F.Supp.2d 1, 35-36 (D.D.C. 2013), *vacated and remanded on other grounds*, 800 F.3d 559 (D.C. Cir. 2015), *on remand*, No. CV 13-851 (RJL), 2015 WL 6873127 (D.D.C. Nov. 9, 2015) ("the ubiquity of phones has dramatically altered the *quantity* of information that is now available and, *more importantly*, what that information can tell the government about people's lives. . . . it is . . . likely that these trends have resulted in a *greater* expectation of privacy and a recognition that society views that expectation as reasonable") (emphasis in original). *See also Clapper*, 785 F.3d 794 ("[t]he more metadata the government collects and analyzes, . . . the greater the capacity for such metadata to reveal ever more private and previously unascertainable information about individuals").

Similarly, even more recently, in *United States v. Graham*, 796 F.3d 332 (4th Cir. 2015), *reh'g en banc granted*, 2015 WL 6531272 (4th Cir. Oct. 28, 2015), the Fourth Circuit, responding to the government's argument that a third party's possession (and even ownership) of the defendant's cell site location information ("CSLI"), eliminated a defendant's reasonable expectation of privacy, rejected the argument that precedents like *Smith* and *United States v. Miller*, 425 U.S. 435 (1976), "categorically exclude third-party records from Fourth Amendment protection." *Id*., at 354.

The Court in *Graham* explained that

> [e]xamination of a person's historical CSLI (cell site location information) can enable the government to trace the movements of the cellphone and its user across public and private spaces and thereby discover the private activities and personal habits of the user. *Cellphone users have an objectively reasonable expectation of privacy in this information*. Its inspection by the government, therefore, requires a warrant, unless an established exception to the warrant requirement applies.

Id., at 345 (emphasis added). *But see United States v. Davis*, 785 F.3d 498 (11th Cir. 2015) (*en banc*).[20]

As the Court in *Graham* declared, "[w]e cannot accept the proposition that cell phone users volunteer to convey their location information simply by choosing

[20] In *Graham*, the Court nevertheless declined to suppress because the law enforcement agents had relied in good faith on orders (rather than warrants) issued pursuant to the Stored Communications Act (28 U.S.C. §2703).

to activate and use their cell phones and to carry the devices on their person." *Id*. at 356. *See also Clapper*, 785 F.3d at 822-23 ("rules that permit the government to obtain records and other information that consumers have shared with businesses without a warrant seem much more threatening as the extent of such information grows"); *In re Application of the U.S. for an Order Authorizing the Release of Historical Cell-Site Info*., 809 F.Supp.2d 113, 127 (E.D.N.Y.2011) ("[t]he fiction that the vast majority of the American population consents to warrantless government access to the records of a significant share of their movements by 'choosing' to carry a cell phone must be rejected").

More explicitly, Justice Sotomayor, in concurring in *United States v. Jones*, 132 S. Ct. 945 (2012) (Sotomayor, J., concurring), challenged the continued vitality of the third-party records doctrine underlying *Smith*:

> [m]ore fundamentally, it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties. *See, e.g.*, *Smith* [*v. Maryland*], 442 U.S. [735], 742 [(1979)]; *United States v. Miller*, 425 U.S. 435, 443 (1976). This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks.
>
> * * *
>
> I for one doubt that people would accept without complaint the warrantless disclosure to the Government

> of a list of every Web site they had visited in the last week, or month, or year.

Jones, 132 S. Ct. at 957 (Sotomayor, J., concurring).

Accordingly, *Smith*, which describes a primitive methodology that bears little, if any, resemblance to what the pen-trap devices accomplished in this case, does not control the issue herein, and the information obtained here through warrantless pen-traps is protected under the Fourth Amendment, and falls within the warrant requirement.

b. *The Pen-Trap Devices In This Case Required a Warrant Because They Captured Information About Ulbricht's Activities In His Home*

The pen-trap devices in this case required a warrant because they captured information about Ulbricht's activity within his residence. The devices act as a tracking device notifying law enforcement when a target is at home, and revealing when and how the target uses his computer at home. Thus, law enforcement was able to monitor Ulbricht's internet activity while in his home.

That places pen-trap devices in this case squarely within the jurisprudence of cases such as *United States v. Karo*, 468 U.S. 705 (1984) and *Kyllo v. United States*, 533 U.S. 27 (2001). In *Karo*, a beeper was used to track the movements of a chemical container to a home, and law enforcement continued to monitor the beeper inside the home. The Court found that intrusion "violate[d] the Fourth

Amendment rights of those who have a justifiable interest in the privacy of the residence" because it "reveal[ed] a critical fact about the interior of the premises . . . that [the government] could not have otherwise obtained without a warrant: that a particular article is actually located at a particular time in the private residence and is in the possession of the person or persons whose residence is being watched." 468 U.S. at 715.[21]

Similarly, in *Kyllo v. United States*, 533 U.S. 27 (2001), the Court again found that the use of technology to reveal information about activity inside a private residence constituted a search under the Fourth Amendment. The Court emphasized that "[w]here . . . the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant." *Id*., at 40. *See also, Florida v. Jardines*, __ U.S. __, 133 S. Ct. 1409 (2013).

In *Graham*, the Fourth Circuit employed precisely that analogy: "[l]ike the searches challenged in *Karo* and *Kyllo*, examination of historical CSLI can allow

[21] In *Karo*, the Court explained that "private residences are places in which the individual normally expects privacy free of governmental intrusion not authorized by a warrant, and that expectation is plainly one that society is prepared to recognize as justifiable." 468 U.S. at 714. *See also id.*, at 716 ("[i]ndiscriminate monitoring of property that has been withdrawn from public view would present far too serious a threat to privacy interests in the home to escape entirely some sort of Fourth Amendment oversight"); *Graham*, 796 F.3d at 346, *reh'g en banc granted*, 2015 WL 6531272 (4th Cir. Oct. 28, 2015).

the government to place an individual and her personal property – specifically, her cell phone – at the person's home and other private locations at specific points in time." 796 F.3d at 346, *reh'g en banc granted*, 2015 WL 6531272 (4th Cir. Oct. 28, 2015); *State v. Earls*, 214 N.J. 564, 642 (2013); *Commonwealth v. Augustine*, 467 Mass. 230, 252-53 (2014).

c. *The Pen-Trap Devices In This Case Required a Warrant and/or Violated the Operative Statute Because They Captured Prospective Data and Information*

Another reason the pen-trap devices in this case required a warrant, and/or violated the operative statute, §3127, is because four such orders sought and obtained *prospective* data and information about Ulbricht's internet activity. *See, e.g.*, S66; S77; S92; S124.

While there has been a split among courts regarding the propriety of warrantless acquisition of prospective locating information, there is ample authority – even a likely majority – for the position that prospective information cannot be obtained absent probable cause (while the §3127 orders require only the lower standard of relevance). *Compare, e.g., In re Order Authorizing Prospective and Continuous Release of Cell Site Location Records*, 31 F.Supp.3d 889 (S.D. Tex. 2014); *In re Application of the United States for an Order Authorizing the Use of a Pen Register With Caller Identification Device Cell Site Location Authority on a Cellular Telephone*, 2009 WL 159187 (S.D.N.Y. Jan.13, 2009)

(denying application for prospective CSLI); *In re Application of the United States for an Order Directing a Provider of Electronic Communication Service to Disclose Records to the Government*, 534 F.Supp.2d 585 (W.D.Pa. 2008) (same); *In re Application of the United States for an Order Authorizing the Installation and Use of a Pen Register Device*, 497 F.Supp.2d 301 (D.P.R. 2007) (same) *with In re Application of the United States for an Order for Disclosure of Telecommunications Records and Authorizing the Use of a Pen Register and Trap and Trace*, 405 F.Supp.2d 435 (S.D.N.Y. 2005) (because location data is imprecise it does not necessarily implicate private space; third party doctrine applies to CSLI); *In re Application of the United States for an Order for Prospective Cell Site Location Information on a Certain Cellular Telephone*, 460 F.Supp.2d 448 (S.D.N.Y. 2006); *In re Application of the United States for an Order Authorizing the Use of a Pen Register and a Trap and Trace Device on Wireless Telephone Bearing Telephone Number [Redacted], Subscribed to [Redacted], Service by [Redacted]*, No. 08 MC 0595(JO), 2008 WL 5255815 (E.D.N.Y. Dec.16, 2008).[22]

2. *The Pen Register and Trap and Trace Devices Used In This Case Were Unlawful Because They Exceeded Statutory Authority*

Moreover, the use of the pen-trap devices to establish Ulbricht's internet activity in conjunction with his physical location is the functional equivalent of

[22] The cited cases represent a sampling of decisions on both sides of the issue.

geo-locating, which could violate the Communications Assistance for Law Enforcement Act ("CALEA"), which provides at 47 U.S.C. §1002(a), in the context of requiring telecommunications carriers to make their equipment accessible for government electronic surveillance, the following caveat: "with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in 18 U.S.C. §3127), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number[.]"

Here, the pen-trap Orders were "hybrids," procured through a combination of authorities – §3127 as well as 18 U.S.C. §2703(d) of the Stored Communications Act ("SCA") – and were not authorized exclusively pursuant to §3127. However, that resort to the SCA constitutes mere semantics, and violates the spirit of CALEA, which was designed to foreclose real-time locating (as opposed to the SCA, which targets historical stored information).

Indeed, such "hybrids" have been disfavored by a number of courts. *See, e.g.*, *In re Application*, 396 F.Supp.2d 747 (S.D. Tex. 2005); *In re Application of U.S. for Order*, 497 F.Supp.2d 301, 302 (D. Puerto Rico 2007) (rejecting application by government for "orders under 18 U.S.C. §§2703 and 3122, . . . for the installation and use of pen register and trap and trace devices, Enhanced Caller

ID special calling features, and the capture of limited geographic or cell site information, all for a period of sixty days from the date of the order"). *See also In re Application*, 2006 WL 1876847 (N.D. Ind. July 5, 2006); *In re Authorizing the Use of a Pen Register*, 384 F.Supp.2d 562, 564 *on reconsideration sub nom. In re Application of the U.S. for an Order (1) Authorizing the Use of a Pen Register & a Trap & Trace Device*, 396 F.Supp.2d 294 (E.D.N.Y. 2005) (initial case holds cell site location information which the government seeks "*is* information that a pen register or trap and trace device does, by definition, provide, but it is *not* information that the government may lawfully obtain absent a showing of probable cause"); *In re Applications of U.S. for Orders Authorizing Disclosure of Cell Cite Info.*, 05-403, 2005 WL 3658531 (D.D.C. Oct. 26, 2005) (stating that Magistrate Judges will not "grant applications for orders authorizing the disclosure of cell site information pursuant to 18 U.S.C. § 2703, 18 U.S.C. §§ 3122 and 3123, or both" absent new authority and ordering any such applications to be returned to the attorneys).

Also, courts have been unreceptive to applications for pen-traps used for the purpose of ascertaining location. *See In re U.S. for an Order: (1) Authorizing Installation & Use of Pen Register & Trap & Trace Device; (2) Authorizing Release of Subscriber & Other Info.*; (3) *Authorizing Disclosure of Location-Based Servs.*No. 07-128, 2007 WL 3342243 (S.D. Tex. Nov. 7, 2007) (AUSA

"request[ed] an Order authorizing the [DEA] to require the [cell phone] Provider to disclose location-based data that will *assist law enforcement in determining the location of the Target Device*[,]" (emphasis added), prompting Court to conclude that "[t]he information that the Government seeks clearly attempts to identify the exact location of the Target Device (and presumably the person holding the Target Device), and thus requires a finding of probable cause"); *In re U.S. For an Order Authorizing the Disclosure of Prospective Cell Site Info.*, 412 F.Supp.2d 947, 958 (E.D. Wisc. 2006), *aff'd*, 06-MISC-004, 2006 WL 2871743 (E.D. Wis. Oct. 6, 2006) (disagreeing with a prior SDNY case, *In re Application of the United States of America for an Order for Disclosure of Telecommunications Records and Authorizing the Use of a Pen Register and Trap and Trace*, 405 F.Supp.2d 435 (S.D.N.Y.2005), that a pen-trap with some other authority like the SCA could be sufficient to allow for geo-locating, and stating that "[t]he bottom line is that the array of statutes invoked by the issues in this case, *i.e.*, the Pen/Trap Statute, the SCA, and CALEA present much more a legislative collage than a legislative mosaic. If Congress intended to allow prospective cell site information to be obtained by means of the combined authority of the SCA and the Pen/Trap Statute, such intent is not at all apparent from the statutes themselves.").[23]

[23] In addition, the applications for the pen-traps in this case did not reveal to the issuing magistrate judges the true purpose – attempting to ascertain Ulbricht's internet activity in conjunction with his physical location and administrative interaction on the Silk Road Servers –

POINT VII

THE LIFE SENTENCE IMPOSED ON ULBRICHT WAS PROCEDURALLY AND SUBSTANTIVELY UNREASONABLE

A. *The Life Sentence Was Procedurally Unreasonable*

The life sentence the Court imposed on Ulbricht, including the consideration of six alleged overdose deaths as a factor at sentencing, was procedurally unreasonable and thereby violated Ulbricht's Fifth Amendment right to Due Process.

There were two facets to the Court's procedural error: (1) the Court erred in fashioning a legal standard, not apparently based on any procedural rule or precedent, "that the deaths, in some way, related to Silk Road," A1472, which required some undefined level of relationship between a criminal defendant and the harm (here, six deaths) in order to attribute that harm to the defendant as relevant conduct at sentencing; and (2) even if that vague standard was procedurally reasonable, the Court abused its discretion when it based its sentence, in part, on "clearly erroneous facts" – the six alleged overdose deaths that the government speculated were the result of drugs purchased on Silk Road, and which the Court found by a preponderance of the evidence were, "in some way, related to Silk Road" and therefore relevant to Ulbricht's conviction and sentence. A1472. *See*

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beyond the rudimentary certification that the information sought was relevant to a criminal investigation of Ulbricht. *See, e.g.*, S75, at ¶ 10.

also United States v. Figueroa, 647 F.3d 466, 469 (2d Cir. 2011), *quoting*, *United States v. Cavera*, 550 F.3d 180, 187 (2d Cir. 2008) (*en banc*) (stating "[w]e review a criminal sentence for 'unreasonableness,' which 'amounts to review for abuse of discretion'"); *United States v. DeSilva*, 613 F.3d 352, 356 (2d Cir. 2010) (holding that "[p]rocedural error includes, among other things, selecting a sentence based on clearly erroneous facts").

Accordingly, Ulbricht's life sentence should be vacated and he should be remanded to a different judge for resentencing without the alleged overdose deaths as a factor at sentencing.

1. *The Court Erred In Considering the Alleged Overdose Deaths Based on An Entirely Subjective, Undefined, and Unprecedented Standard*

At sentencing, the Court determined there was sufficient factual basis to consider as related conduct relevant to Ulbricht's sentencing, six alleged overdose deaths the government claimed resulted from drugs sold through Silk Road. A1472. Ulbricht opposed consideration of those accusations, and submitted a report by defense expert, Mark L. Taff, M.D., a Board-certified forensic pathologist, that concluded the information was utterly insufficient to attribute any of the deaths to drugs purchased from vendors on Silk Road. A904. The government did not present any rebuttal to Dr. Taff's report.

Prior to making its determination, the Court stated that "[a]ny factual determinations would be based on the standards set forth in a vast number of cases in the Second Circuit which indicate that such findings are made at sentencing proceedings or in connection with sentencing proceedings by a preponderance of the evidence." A1457. The Court then concluded that "[t]he question as to whether this information [the six alleged overdose deaths] is properly included in the PSR is whether the Court finds, by a preponderance of the evidence that the deaths, in some way, related to Silk Road. And they do." A1472.

Yet, while "preponderance of the evidence" is the established standard *of proof* for evaluating whether a disputed allegation should be included in the PSR.

the *legal* standard employed by the Court here– "that the deaths, in some way, related to Silk Road"– is not based on *any* established or cited precedent or procedural rule. Nor was it defined, or connected to any objective yardstick, but rather, was hopelessly vague.

As a result, the Court's invented standard does not meet the standard of procedural reasonableness, as it creates an entirely vague and subjective basis that defies meaningful consistency or review.

2. *The Court Improperly Relied on the Alleged Overdose Deaths Purportedly Attributable to the Silk Road Site Without Sufficient or Reliable Proof*

Moreover, even assuming *arguendo* the validity of the standard employed by the Court, the Court nonetheless abused its discretion and violated Ulbricht's Fifth Amendment right to Due Process at sentencing by relying on information regarding the alleged overdose deaths that, according to Dr. Taff's review of that information, was neither reliable nor accurate.

a. *The Relevant Case Law*

It is well-settled that "because sentencing is a critical stage in a criminal proceeding a convicted defendant standing before a sentencing judge still remains wrapped in his right to procedural due process . . . and may question the procedure leading to the imposition of his sentence. " *United States v. Lee*, 818 F.2d 1052,

1055 (2d Cir. 1987), *citing*, *Mempa v. Rhay*, 389 U.S. 128 (1967); *Gardner v. Florida*, 430 U.S. 349, 358 (1977) (plurality opinion).

This Court has held that "[a]lthough the sentencing court has discretion to consider a wide range of information in arriving at an appropriate sentence, a defendant may not be sentenced on the basis of materially-untrue statements, or on misinformation or misreading of court records." *United States v. Prescott*, 920 F.2d 139, 143 (2d Cir. 1990), *citing Townsend v. Burke*, 334 U.S. 736, 741 (1948); *United States v. Tucker*, 404 U.S. 443, 446 (1972)) (internal quotations and citations omitted); *see also United States v. Lee*, 818 F.2d 1052, 1055 (2d Cir. 1987).

In order to ensure that a defendant's right to due process at sentencing is meaningful, "a sentencing court must assure itself that the information upon which it relies when fixing sentence is reliable and accurate." *Prescott*, 920 F.2d at 143, *citing*, *United States v. Pugliese*, 805 F.2d 1117, 1124 (2d Cir. 1986); *see also United States v. Fatico*, 458 F.Supp. 388, 397-398 (E.D.N.Y. 1978), *aff'd in part rev'd in part*, 603 F.2d 1053 (2d Cir. 1979), *citing*, *United States v. Malcolm*, 432 F.2d 809, 816 (2d Cir. 1970). Accordingly, the government shoulders the burden of demonstrating the reliability and accuracy of those facts alleged. *United States v. Fatico*, 603 F.2d 1053, 1057 (2d Cir. 1979).

b. ***The Court Improperly Relied on "Erroneous Facts" In Considering the Alleged Overdose Deaths That the Defense Expert Forensic Pathologist Concluded Was Incomplete, Unreliable, and Inaccurate***

At Ulbricht's sentencing the Court abused its discretion when it relied on information regarding the alleged overdose deaths that it knew, from Dr. Taff's Expert Report, was incomplete and unreliable.

Indeed, though the Court posited that the "question is whether there is a connection between the purchase of the drugs on Silk Road and the death . . . and whether the ingestion of those drugs may be reasonably associated with those deaths" and that it "c[ould] make such findings by a preponderance of the evidence and c[ould] make reasonable inferences," the Court also admitted that Dr. Taff had identified in his Final Report serious deficiencies in those allegations, and serious impediments to relying on them. A1476; S437.

The Court acknowledged that for each of the six deaths Dr. Taff "finds in each instance information is missing regarding at least one stage of the six-stage process." A1475. The Court also noted the unreliability of the alleged overdose death evidence, referring to statements by Dr. Taff that "in some cases no autopsy was performed and there was no cause of death that could be reliably be determined[,]" that "without certain pieces of information [that were missing from the evidence presented], it is impossible for a medical examiner to render

certain types of opinions and . . . . that what are deemed overdoses may be death by suicide or other causes." A1476.

Likewise, the Court noted that based on the quality of the information presented, Dr. Taff had "opine[d] that he is unable to render opinions to a reasonable degree of medical certainty as to the cause, manner and time of death with each of the decedents except for [one]." A1476.

Yet the Court summarily dismissed these deficiencies in the information as beside the point, claiming that "Dr. Taff is asking a question which this Court does not need answered," despite receiving no contrary evidence or expert analysis from any other source. A1476. In fact, Dr. Taff's analysis establishes not only that the information was unreliable, but also that the Court's finding that the information established a "connection between the purchase of the drugs on Silk Road and the death[s]" and that "ingestion of those drugs may be reasonably associated with those deaths[]" was materially inaccurate. A1476.

In his Final Report, Dr. Taff made clear the full range of problems with the government's information, stating not only that he was "unable to render opinions to a reasonable degree of forensic medical certainty in 5 of 6 cases regarding cause, manner and time of death as well as several other forensic issues typically addressed by medical examiners investigating drug-related deaths" but also that his inability to render such opinions was due to "a) paucity of information; b)

confusing interpretations, selective/partial/incomplete diagnoses; c) omissions; and d) inability to inspect original death investigation and autopsy reports and primary autopsy evidence." S445.

Indeed, even the one death on which Dr. Taff was able to provide an opinion, he "disagreed with the official version of [the] cause of death" because "[i]n [his] opinion, the . . . forensic team failed to factor in the presence of other drugs and a pre-existing heart condition into . . . cause of death." A445-46. Further, Dr. Taff noted that the fact that the decedent's "manner of death was classified as an accident . . . indicates that local authorities had insufficient evidence to criminally charge another person for contributing to or directly causing [the] death." *Id*., at A446.

Ultimately, "[u]nder the clearly erroneous standard of review . . . the question for the reviewing court is . . . whether, on the entire record, it is left with the definite and firm conviction that a mistake has been committed." *Sherwin-Williams Co. v. New York State Teamsters Conference Pension and Retirement Fund*, 969 F.Supp. 465, 472-473 (N.D. Oh. 1997), *citing Zenith Radio Corp. v. Hazeltine Research, Inc*., 395 U.S. 100 (1969).

Here, given that even the Court acknowledged the shortcomings of the overdose death allegations, including that certain critical information *was missing*, the Court clearly erred by nonetheless relying on the unreliable accusations.

Accordingly, Ulbricht's sentence should be vacated, and the matter remanded for re-sentencing by a different judge untainted by the incurably prejudicial but unsubstantiated and unreliable allegations upon which the Court relied.

B. *The Life Sentence Was Substantively Unreasonable*

In assessing the substantive reasonableness of a sentence, the Court looks not only to whether "the trial court's decision can[] be located within the range of permissible decisions," but also "may consider whether a factor relied on by a sentencing court can bear the weight assigned to it . . . under the totality of circumstances in the case." *United States v. Cavera*, 550 F.3d 180, 189 - 191 (2d Cir. 2008) (internal quotations omitted).

However, while significant deference is afforded the district court's reasoning and ultimate conclusion with respect to sentence, "several courts, including [this one] have cautioned against converting review for substantive reasonableness into a 'rubber stamp.'" *United States v. Rigas*, 583 F.3d 108, 122 (2d Cir. 2009) (collecting cases); *see also United States v. Rattoballi*, 452 F.3d 127, 137 (2d Cir. 2006) ("[t]o the extent that the district court relied upon the history and characteristics of the defendant . . . , on this record, those considerations are neither sufficiently compelling nor present to the degree necessary to support the sentence imposed . . . [and] unjustified reliance upon any one factor is a symptom of an unreasonable sentence").

In particular, "[t]he closer a sentence comes to the boundary of the substantively reasonable, the more attentive will (and should) . . . procedural scrutiny be." *United States v. Ingram*, 721 F.3d 35, 45 (2d Cir. 2013) (Calabresi, J., concurring); *see also United States v. Aldeen*, 792 F.3d 247, 255-56 (2d Cir. 2015), as amended (July 22, 2015) (remanded "for a fuller record" because "even if [the defendant's] sentence does not *shock* the conscience, it at the very least stirs the conscience"), *citing*, *United States v. Ahuja*, 936 F.2d 85, 89 (2d Cir.1991) ("in cases where . . . the sentence imposed by the district court strains the bounds of reasonableness, remand for resentencing may well be warranted").

Falling squarely in the category of sentences that must be scrutinized carefully, and which certainly stir, if not shock the conscience, is the life sentence imposed here, if only because a life sentence is extremely rare in the federal system. *See e.g.* Glenn R. Schmitt & Hyun J. Konfrst, *Life Sentences in the Federal System*, United States Sentencing Commission (February 2015) (presenting collected national statistics on life sentences imposed in 2013, and noting as of January 2015, only 2.5% of all sentenced federal offenders are serving life sentences), available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf>.

Of all federal offenders sentenced in 2013, only 153 (about 0.19%) were sentenced to life in prison, not including those who received such a lengthy sentence as to be serving a "de facto" life sentence. *See Life Sentences Report*, at 1. Of this minuscule percentage of offenders, only 17 (about 0.02% of all offenders) were subject to a Guidelines range in which life was *not* the minimum sentence prescribed. *See id.*, at 9. Specifically with respect to drug trafficking cases, the number of offenders sentenced to life drops from 153 to only 64 defendants (about 0.08% of all federal offenders and less than 0.33% of all drug trafficking defendants). *See id.*, at 4.

Here, the life sentence was substantively unreasonable for several reasons. The Court ignored the 99 letters on Ulbricht's behalf that apprised the Court of the positive contributions Ulbricht has made, and could make in the future if given a reasonable sentence, ignored the expertise of the forensic pathologist, and ignored the empirical and other academic and practical research presented in Ulbricht's sentencing submission, although some of that research was about Silk Road specifically, and its harm reduction effects on the drug culture. A904-910, 916-18, 929, 946, 951; A1006. Yet the Court instead defaulted to the outdated and now-failed narrative that more incarceration is the solution, which courts, politicians, and policy-makers have affirmatively abandoned. A1029-36; A1522-28. The Court relied on unsubstantiated, unquantifiable factors that

necessarily created an unwarranted – and unfair and unreasonable – disparity on a number of levels based on factors that render Ulbricht's sentence unique in its unreasonableness.

The Court's consideration of the alleged overdose deaths was substantively unreasonable as well as procedurally erroneous. In addition to ignoring the expert forensic pathologist, the Court penalized Ulbricht in a manner that even those who *sell* illegal drugs are not. The Court did not cite a single case – despite the defense's challenge to the government – in which even those who manage large tangible drug organizations are sentenced based on overdose deaths that are not part of the charges, much less any as tenuous and attenuated as those here.

Indeed, in *United States v. Peter Nash*, 13 Cr. 950 (TPG), the Honorable Thomas P. Griesa sentenced the defendant, Peter Nash, a/k/a Samesamebutdifferent, a forum moderator and one-time administrator on Silk Road during a time when Silk Road experienced its highest volume of sales, to "time served" – essentially a 14-month sentence. *See* Judgment, Docket#36, *United States v. Peter Nash*, 13 Cr. 950 (TPG). *See* Government's Sentencing Submission, ("Nash Sentencing Memo"), Docket#35, *United States v. Peter Nash*, 13 Cr. 950 (TPG), at 4, 7-8.

Nash pleaded guilty to conspiracy to sell drugs in an amount that made him subject to a ten-year mandatory minimum sentence pursuant to 21 U.S.C.

§841(b)(1)(A). *See* Nash Sentencing Memo, at 4. As a result, his base offense level was 36, just like Ulbricht's. *See id*., at 5. *See also* PSR, ¶94. Yet even with multiple downward adjustments for his minor role and his safety valve proffer, Nash's adjusted Guidelines range was still 121-151 months. *See* Nash Sentencing Memo, at 5.

The government did not seek any enhancement for Nash for the deaths cited here, although Nash was involved with the site during a period in which five of the six deaths occurred. *See* Nash Sentencing Memo, at 4 & n.1. In fact, Nash's PSR clearly noted the drug-related deaths, as the government, in its submission, remarked that Nash involved himself with the Silk Road site with full knowledge of its activities and "with predictably harmful (and in some cases deadly) consequences, as the PSR makes clear." *Id*., at 10.[24] Yet the Court summarily dismissed that sentence – imposed by a jurist with among the longest current active tenures.

[24] Two vendors on Silk Road who were the actual sellers of heroin and other drugs – one the leading seller on Silk Road and the other the largest cocaine seller on the site – have been sentenced and were also spared any liability for overdose deaths. In fact, their sentences were ten years and five years' imprisonment. Although they cooperated with the government, the disparity between their sentences and Ulbricht's cannot be rationalized by that factor alone. *See* James Cook, "The Biggest Drug Dealer on Silk Road Has Been Sentenced to 10 Years In Prison," *Business Insider*, May 29, 2015, available at <http://www.businessinsider.com/silk-road-drug-dealer-supertrips-sentenced-to-10-years-in-prison-2015-5?r=UK&IR=T>; Patrick Howell O'Neill, "The Dark Net's Cocaine King Just Got 5 Years Behind Bars," *The Daily Dot*, March 19, 2015, available at <http://bit.ly/1EyGMoN> <http://www.dailydot.com/crime/steven-sadler-silk-road-five-years-prison/>.

In addition to that dramatic disparity, Ulbricht did not sell drugs. Even assuming his guilt (for purposes of sentencing) he created an internet platform that enabled others to do so, and thus, the proper analogy would be to a landlord who knowingly leases space and collects rent and utility payments from tenants whom he knows sell drugs from the premises (and even whom he markets to). There is a federal statute punishing that conduct – 21 U.S.C. §856, the "crack house" law – and the maximum sentence is 20 years' imprisonment.

The Court also created an overwhelming disparity by its reliance on "general deterrence," which it said "plays a particularly important role" in this case, in part because the Court claimed it was unprecedented. A1532-33. Yet the Court again, without any contrary authority, dismissed all of the literature and studies presented to it on the subject – that general deterrence is illusory and should not be a factor, much less used as a basis for a life sentence. A1533.

Moreover, even if general deterrence were a proper factor in this case, it did not in any way justify a life sentence, but instead created a grotesque disparity. The Court did not provide any standard, or formula, and did not provide any gradation that would make a life sentence, as opposed to a term of years, appropriate or reasonable.

For instance, at what point does additional imprisonment for purposes of general deterrence lose its effectiveness, and become "greater than necessary"?

Why would a 20-year sentence not provide sufficient deterrence? The Court failed to perform any of that analysis. *See United States v. Kim*, 896 F.2d 678, 685 (2d Cir. 1990).

Nor are the Court's assumptions at sentencing about general deterrence borne out by either reality or empirical research. The illusory nature of general deterrence clearly holds true for internet drug sales, given that they skyrocketed after Ulbricht's arrest and even after his conviction. A1027-29. Again, even if there were some deterrent effect, the Court failed to provide any basis for a life sentence as *necessary*. Resort to general deterrence without any confining principles – some standard, some comparative analysis – guarantees that it will create disparity that is immeasurable and inequitable.

In this case, it was also unconscionable. The life sentence imposed on 30-year old Ross Ulbricht "shocks the conscience" – or at the very least "stirs it" – and is therefore substantively unreasonable. Accordingly, Ulbricht should be resentenced before a different judge to avoid the irremediable taint from the improper factors the Court considered.

Conclusion

Accordingly, for all the reasons set forth above, it is respectfully submitted that Ulbricht's conviction should be vacated, and/or evidence derived from invalid warrants and pen trap orders should be suppressed, and/or Ulbricht should be remanded for resentencing before a different judge.

Dated: 12 January 2016
New York, New York

Respectfully submitted,

/S/ Joshua L. Dratel
JOSHUA L. DRATEL
JOSHUA L. DRATEL, P.C.
29 Broadway, Suite 1412
New York, New York 10006
(212) 732-0707

Attorneys for Defendant Ross Ulbricht

– Of Counsel –

Joshua L. Dratel
Lindsay A. Lewis
Whitney G. Schlimbach
Joshua J. Horowitz

CERTIFICATE OF COMPLIANCE WITH FRAP 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 30,182 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14 point font.

Respectfully submitted,

/S/ Joshua L. Dratel

JOSHUA L. DRATEL
JOSHUA L. DRATEL, P.C.
29 Broadway, Suite 1412
New York, New York 10006
(212) 732-0707

Attorneys for Defendant Ross Ulbricht

SPECIAL APPENDIX

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Page

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA
v.
Ross William Ulbricht

JUDGMENT IN A CRIMINAL CASE

Case Number: S1 14-cr-00068-KBF-1

USM Number: 18870-111

Joshua Dratel
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) 2,4,5,6,7 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:841A=CD.F	AIDING AND ABETTING DISTRIBUTION OF DRUGS OVE	10/31/2013	2
21:848.F	CONTINUING CRIMINAL ENTERPRISE	10/31/2013	4
18:1030A.F	COMPUTER HACKING CONSPIRACY	10/31/2013	5

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☑ Count(s) UNDERLYING ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Counts One (1) and Three (3) are vacated by the Court.

5/29/2015
Date of Imposition of Judgment

K. B. Forrest
Signature of Judge

Katherine B. Forrest, USDJ
Name and Title of Judge

6/1/15
Date

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: JUN 01 2015

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 1A

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18:1028A.F	FRAUD WITH IDENTIFICATION DOCUMENTS	10/31/2013	6
18:1956-4999.F	MONEY LAUNDERING CONSPIRACY	10/31/2013	7

AO 245B (Rev. 09/11) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently.

☑ The court makes the following recommendations to the Bureau of Prisons:

PLEASE SEE ADDITIONAL IMPRISONMENT TERMS PAGE FOR RECOMMENDATIONS.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 2A — Imprisonment

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

ADDITIONAL IMPRISONMENT TERMS

It is respectfully recommended that the defendant be designated to FCI Petersburg I in Virginia in the event that the Bureau of Prisons waive the public safety factor with regard to sentence length. However, if the Bureau of Prisons is not inclined to waive the public safety factor, it is respectfully recommended that the defendant be designated to USP Tuscon, in Arizona, or, as a second choice, USP Coleman II, in Florida.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 3 — Supervised Release

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☑ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 3A — Supervised Release

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall submit his computer, person and place of residence to searched as deemed appropriate by the Probation Department.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 500.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 5A — Criminal Monetary Penalties

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

Forfeiture in the amount of $183,961,921.00 is Ordered.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 500.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Criminal Notice of Appeal - Form A

NOTICE OF APPEAL

United States District Court

Southern District of New York

Caption:

United States v.

Ross William Ulbricht

Docket No.: 14 Cr. 68 (KBF)

Honorable Katherine B. Forrest
(District Court Judge)

Notice is hereby given that Ross William Ulbricht appeals to the United States Court of Appeals for the Second Circuit from the judgment [✓], other [✓] and Preliminary Order of Forfeiture/Money Judgment (specify)

entered in this action on June 1, 2015 (date).

This appeal concerns: Conviction only [ ] Sentence only [ ] Conviction & Sentence [✓] Other [ ]

Defendant found guilty by plea [ ] trial [✓] N/A [ ]

Offense occurred after November 1, 1987? Yes [✓] No [ ] N/A [ ]

Date of sentence: May 29, 2015 N/A [ ]

Bail/Jail Disposition: Committed [✓] Not committed [ ] N/A [ ]

Appellant is represented by counsel? Yes [✓] No [ ] If yes, provide the following information:

Defendant's Counsel: Law Offices of Joshua L. Dratel, P.C.

Counsel's Address: 29 Broadway, Suite 1412
New York, New York 10006

Counsel's Phone: (212)732-0707

Assistant U.S. Attorney: Serrin Turner

AUSA's Address: United States Attorney's Office, Southern District of New York
One Saint Andrews Plaza, New York, New York 10007

AUSA's Phone: 212-637-1946

Signature

15-1815-CR

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

ROSS WILLIAM ULBRICHT, AKA DREAD PIRATE ROBERTS, AKA SILK ROAD, AKA SEALED DEFENDANT 1, AKA DPR,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York (New York City)

APPENDIX
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MICHAEL A. LEVY
SERRIN A. TURNER
ASSISTANT UNITED STATES ATTORNEYS
UNITED STATES ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK
Attorneys for Appellee
1 Saint Andrew's Plaza
New York, New York 10007
212-637-2346

JOSHUA L. DRATEL, P.C.
Attorneys for Defendant-Appellant
29 Broadway, Suite 1412
New York, New York 10006
212-732-0707

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CLOSED,APPEAL,ECF,PRIOR

U.S. District Court
Southern District of New York (Foley Square)
CRIMINAL DOCKET FOR CASE #: 1:14-cr-00068-KBF-1

Case title: USA v. Ulbricht
Magistrate judge case number: 1:13-mj-02328-UA

Date Filed: 02/04/2014
Date Terminated: 06/01/2015

Assigned to: Judge Katherine B. Forrest

Defendant (1)

Ross William Ulbricht
TERMINATED: 06/01/2015
also known as
Dread Pirate Roberts
TERMINATED: 06/01/2015
also known as
Silk Road
TERMINATED: 06/01/2015
also known as
Sealed Defendant 1
TERMINATED: 06/01/2015
also known as
DPR
TERMINATED: 06/01/2015

represented by **Joshua Lewis Dratel**
Law Offices of Joshua L. Dratel, P.C.
29 Broadway, Suite 1412
New York, NY 10006
(212) 732-0707
Fax: (212) 571-6341
Email: jdratel@joshuadratel.com
ATTORNEY TO BE NOTICED
Designation: Retained

Joshua Jacob Horowitz
Tech Law Ny
225 Broadway
New York, NY 10007
(212)-203-9011
Email: joshua.horowitz@techlawny.com
ATTORNEY TO BE NOTICED
Designation: Retained

Lindsay Anne Lewis
Law Offices of Joshua Dratel, P.C(2 Wall St.)
2 Wall Street, 3rd Floor
New York, NY 10005
(212)-732-3141
Fax: (212)-571-3792
Email: llewis@joshuadratel.com
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

Disposition

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term

21:841A=CD.F AIDING AND ABETTING DISTRIBUTION OF DRUGS OVER INTERNET (2s)	of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.
21:848.F CONTINUING CRIMINAL ENTERPRISE (4s)	The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.
18:1030A.F COMPUTER HACKING CONSPIRACY (5s)	The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.
18:1028A.F FRAUD WITH	The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently;

IDENTIFICATION DOCUMENTS (6s)	Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.
18:1956-4999.F MONEY LAUNDERING CONSPIRACY (7s)	The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.

Highest Offense Level (Opening)

Felony

Terminated Counts	**Disposition**
21:846=CD.F DRUG TRAFFICKING CONSPIRACY (1)	Count is dismissed on the motion of the United States.
21:841G=CI.F DRUG TRAFFICKING (1s)	Count is dismissed on the motion of the United States.
21:848.F CONTINUING CRIMINAL ENTERPRISE (2)	Count is dismissed on the motion of the United States.
18:1030B.F COMPUTER HACKING CONSPIRACY (3)	Count is dismissed on the motion of the United States.
21:846=CD.F DRUG TRAFFICKING CONSPIRACY (3s)	Count is dismissed on the motion of the United States.
18:1956-6801.F MONEY LAUNDERING (DRUG TRAFFICKING CONSPIRACY) (4)	Count is dismissed on the motion of the United States.

Highest Offense Level (Terminated)

Felony

Complaints

21:846=CD.F CONSPIRACY TO DISTRIBUTE CONTROLLED SUBSTANCE, 18:1030A.F FRAUD ACTIVITY CONNECTED WITH COMPUTERS, , 18:1956-4999.F MONEY LAUNDERING- FRAUD, OTHER

Disposition

Plaintiff

USA

represented by **Serrin Andrew Turner**
U.S. Attorney's Office, SDNY
(Chambers Street)
86 Chambers Street
New York, NY 10007
(212)-637-2701
Fax: (212)-637-2686
Email: serrin.turner@usdoj.gov
ATTORNEY TO BE NOTICED

Timothy Turner Howard
U.S. Attorney's Office, SDNY
One St. Andrew's Plaza
New York, NY 10007
(212) 637-2308
Fax: (212) 637-2387
Email: timothy.howard@usdoj.gov
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/27/2013		SEALED ORAL ORDER as to Sealed Defendant 1. (Signed by Magistrate Judge Frank Maas on 9/27/2013)(dif) [1:13-mj-02328-UA] (Entered: 10/22/2013)
09/27/2013	1	COMPLAINT as to Sealed Defendant 1 (1). In Violation of 21 U.S.C. 846, 18 U.S.C. 1030 & 1956 (Signed by Magistrate Judge Frank Maas) (dif) [1:13-mj-02328-UA] (Entered: 10/22/2013)
10/01/2013		Arrest of Ross William Ulbright in the United States District Court - Northern District of California. (dif) [1:13-mj-02328-UA] (Entered: 10/22/2013)
10/18/2013	3	Rule 5(c)(3) Documents Received as to Ross William Ulbright from the United States District Court - Northern District of California. (dif) [1:13-mj-02328-UA] (Entered: 10/22/2013)

11/05/2013		Arrest of Ross William Ulbright. (dif) [1:13-mj-02328-UA] (Entered: 11/06/2013)
11/06/2013	4	NOTICE OF ATTORNEY APPEARANCE: Retained Attorney Joshua Lewis Dratel appearing for Ross William Ulbright. (dif) [1:13-mj-02328-UA] (Entered: 11/06/2013)
11/06/2013		Minute Entry for proceedings held before Magistrate Judge Ronald L. Ellis: Initial Appearance as to Ross William Ulbright held on 11/6/2013., Deft Appears with Retained Attorney Joshua Dratel and AUSA Serrin Turner for the government. Detention Hearing Scheduled for 11/21/13 at 11:00 AM; (Preliminary Hearing set for 12/6/2013 at 10:00 AM before Judge Unassigned.) (dif) [1:13-mj-02328-UA] (Entered: 11/06/2013)
11/21/2013		Minute Entry for proceedings held before Magistrate Judge Kevin Nathaniel Fox: Detention Hearing as to Ross William Ulbright held on 11/21/2013. Deft Appears with Retained Attorney Joshua Dratel and AUSA Serrin Turner for the government. Detention. The Defendant Did Not Overcome The Presumption That There Are No Conditions That Can Be Fashioned to Permit Him To Be At Liberty While The Criminal Action is Pending. Clear and Convincing Evid That The Defendant Sought To Have Several Persons Murdered Was Presented To The Court Which Demonstrate The Defendant Presents As A Danger To The Community. In Addition Considerable Un-Rebutted Evid Was Presented That The Defendant Has The Resources To Flee and Previously Acquired Many False Identification Documents That Would Permit Him to Flee. Furthermore He Has Used an Alias Previously. (dif) [1:13-mj-02328-UA] (Entered: 11/21/2013)
11/22/2013	5	SEALED DOCUMENTS FILED as to Ross William Ulbright.. (Signed by Magistrate Judge Kevin Nathaniel Fox on 11/22/2013)(dif) [1:13-mj-02328-UA] (Entered: 11/26/2013)
11/22/2013	6	LETTER as to Ross William Ulbright addressed to Magistrate Judge Kevin Nathaniel Fox from Joshua Dratel, Esq dated 11/19/2013 re: USA v Ross William Ulbright, 13 Mag 2328.. (Signed by Magistrate Judge Kevin Nathaniel Fox on 11/22/2013) (Docket and File(dif) [1:13-mj-02328-UA] (Entered: 11/26/2013)
11/22/2013	7	LETTER as to Ross William Ulbright addressed to Magistrate Judge Kevin Nathaniel Fox from Joshua Dratel, Esq dated 11/20/2013 re: USA v Ross William Ulbright, 13 Mag 2328.. (Signed by Magistrate Judge Kevin Nathaniel Fox on 11/22/2013) (Docket and File)(dif) [1:13-mj-02328-UA] (Entered: 11/26/2013)
11/22/2013	8	LETTER as to Ross William Ulbright addressed to Magistrate Judge Kevin Nathaniel Fox from AUSA Serrin Turner dated 11/20/2013 re: USA v Ross William Ulbright, 13 Mag 2328.. (Signed by Magistrate Judge Kevin Nathaniel Fox on 11/22/2013) (Docket and File)(dif) Modified on 12/4/2013 (jm). [1:13-mj-02328-UA] (Entered: 11/26/2013)
12/06/2013	9	AFFIRMATION of Serrin Turner in Support by USA as to Ross William Ulbright, the government is requesting a 30-day continuance until 1/6/14.(jbo) [1:13-mj-02328-UA] (Entered: 12/09/2013)
12/06/2013	10	ORDER TO CONTINUE IN THE INTEREST OF JUSTICE as to Ross William Ulbright. Time excluded from 12/6/13 until 1/6/14. (Signed by Magistrate Judge James C. Francis on 12/6/13)(jbo) [1:13-mj-02328-UA] (Entered: 12/09/2013)

01/06/2014	11	AFFIRMATION of AUSA Serrin Turner in Support by USA as to Ross William Ulbright, the Government is requesting a 30 continuance until 2/4/2014. (ajc) [1:13-mj-02328-UA] (Entered: 01/07/2014)
01/06/2014		ORDER TO CONTINUE IN THE INTEREST OF JUSTICE as to Ross William Ulbright re: 10 Order to Continue - Interest of Justice. Time excluded from 1/6/2014 until 2/4/2014. Follows oral order of 1/6/2014. (Signed by Magistrate Judge Sarah Netburn on 1/6/2014) (ajc) [1:13-mj-02328-UA] (Entered: 01/07/2014)
02/04/2014		Case Designated ECF as to Ross William Ulbright. (jbo) (Entered: 02/04/2014)
02/04/2014	12	INDICTMENT FILED as to Ross William Ulbricht (1) count(s) 1, 2, 3, 4. (jbo) (Entered: 02/04/2014)
02/07/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest:Arraignment as to Ross William Ulbricht (1) Count 1,2,3,4Ross William Ulbricht (1) Count 1,2,3,4 held on 2/7/2014., Plea entered by Ross William Ulbricht (1) Count 1,2,3,4Ross William Ulbricht (1) Count 1,2,3,4 Not Guilty. Defendant present with attorneys Joshua Dratel and Lindsay Lewis. AUSA Serrin Turner present. Special Agent Ilh Wan Yum and Special Agent Gary Alfred present. Court Reporter present. Defendant arraigned on the Indictment and enters a plea of not guilty. Order to follow. Defendant remand continued. (jp) (Entered: 02/10/2014)
02/10/2014	13	ORDER as to Ross William Ulbricht (Discovery due by 2/27/2014., Motions due by 3/10/2014., Replies due by 3/31/2014., Responses due by 3/24/2014, Jury Trial set for 11/3/2014 at 09:00 AM before Judge Katherine B. Forrest., Status Conference set for 4/30/2014 at 01:00 PM before Judge Katherine B. Forrest.) Time excluded from 2/7/14 until 4/30/14. Not later than 2113/2014, defense counsel shall provide the Government with hard drives of sufficient storage size so that the Government can copy the electronic discovery and turn it over to the defendant. Not later than 2/27/2014, the Government shall provide to the defendant the above electronic discovery. Non electronic discovery shall be provided to the defendant not later than 2/20/2014. All discovery is to be completed not later than 2/27/2014. Motions relating to the Indictment are to be filed not later than 3/10/2014. Responses are due not later than 3/24/2014. Replies, if any, are due 3/31/2014. Trial is scheduled to commence on 11/3/2014, at 9:00 a.m. Six weeks have been allocated at this time. A final pretrial conference will be held on 10/28/2014, at 1:00 p.m. Upon application of the Government and consented to by defendant, and as set forth on the record, time pursuant to 18 U.S.C. 3161 (h)(7)(A) of the Speedy Trial Act, is hereby excluded from 2/7/2014, to 4130/2014. The Court finds the ends of justice are served by such an exclusion and that these ends outweigh the interests of the public and defendant in a speedy trial (Signed by Judge Katherine B. Forrest on 2/10/14)(jw) (Entered: 02/10/2014)
02/24/2014	14	PROTECTIVE ORDER as to Ross William Ulbricht...regarding procedures to be followed that shall govern the handling of confidential material.... (Signed by Judge Katherine B. Forrest on 2/24/14)(jw) (Entered: 02/24/2014)
02/24/2014	15	SEALED DOCUMENT placed in vault. (nm) (Entered: 02/24/2014)
02/25/2014	16	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 2/25/2014 re: To request that the discovery

		deadline set by the Court in this matter for February 27, 2014 be extended by 12 days until March 11, 2014.ENDORSEMENT: SO ORDERED (Discovery due by 3/11/2014.) (Signed by Judge Katherine B. Forrest on 2/25/14)(jw) (Entered: 02/25/2014)
03/10/2014	17	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Attorney Joshua L. Dratel dated March 7, 2014 re: For the reasons set forth in this letter, counsel requested that the Court grant a ten-day extension until Thursday, March 20, 2014, for the filing of the Defendant's Pre-Trial Motions. Assistant United States Attorney Serrin Turner has informed me that the government consents to this request as long as the government's time to respond is extended until April 10, 2014, which includes an additional week beyond the mere adjustment of the motion schedule because AUSA Turner will not be available the week of March 24th. ENDORSEMENT: Application granted. Dates adjusted as set forth above. (Signed by Judge Katherine B. Forrest on 3/7/2014)(bw) (Entered: 03/10/2014)
03/19/2014	18	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 3/19/14 re: For the reasons set forth below, it is respectfully requested that the Court grant an additional eight-day extension until Friday, March 28, 2014, for the filing of the Defendant's Pretrial Motions. Assistant United States Attorney Serrin Turner has informed me that the government consents to this request as long as a corresponding extension, until April 18, 2014, is provided for the government..ENDORSEMENT: Application Granted. SO ORDERED. (Signed by Judge Katherine B. Forrest on 3/19/14)(jw) (Entered: 03/19/2014)
03/28/2014	19	FIRST MOTION to Dismiss *Challenging the Face of the Indictment*. Document filed by Ross William Ulbricht. (Dratel, Joshua) (Entered: 03/28/2014)
03/28/2014	20	DECLARATION of Joshua L. Dratel, Esq. in Support as to Ross William Ulbricht re: 19 FIRST MOTION to Dismiss *Challenging the Face of the Indictment*.. (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2)(Dratel, Joshua) (Entered: 03/28/2014)
03/29/2014	21	MEMORANDUM in Support by Ross William Ulbricht re 19 FIRST MOTION to Dismiss *Challenging the Face of the Indictment*.. (Dratel, Joshua) (Entered: 03/29/2014)
03/31/2014	22	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 3/28/14 re: The Government therefore respectfully requests that the Court extend the time for the Government to file any superseding indictment by 60 days, i.e., until May 30, 2014..ENDORSEMENT: Application granted (Signed by Judge Katherine B. Forrest on 3/31/14)(jw) (Entered: 03/31/2014)
04/10/2014	23	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Conference held on 2/7/14 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Eve Giniger, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/5/2014. Redacted Transcript Deadline set for 5/15/2014. Release of Transcript Restriction set for 7/14/2014. (Rodriguez, Somari) (Entered:

		04/10/2014)
04/10/2014	24	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Conference proceeding held on 2/7/14 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Rodriguez, Somari) (Entered: 04/10/2014)
04/16/2014	25	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 4/16/14 re: The Government requests that the briefing schedule for the motion to dismiss be extended.ENDORSEMENT: Application granted. (I did not use the Govt's proposed order because it has the Court's signature line of a page by itself -- causing certain concerns) (Defendant Replies due by 5/5/2014., Government Responses due by 4/28/2014) (Signed by Judge Katherine B. Forrest on 4/16/14)(jw) (Entered: 04/16/2014)
04/28/2014	26	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re 19 FIRST MOTION to Dismiss *Challenging the Face of the Indictment*.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Turner, Serrin) (Entered: 04/28/2014)
04/29/2014	27	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 4/25/2014 re: For the reasons stated in this letter, defense counsel writes to request an adjournment of the pretrial conference scheduled for February 19, 2014. ENDORSEMENT: Adjourned to 6/2/2014 at 2:00 p.m. (Signed by Judge Katherine B. Forrest on 4/28/2014)(dnd) . (Entered: 04/29/2014)
05/09/2014	28	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Attorney Joshua L. Dratel dated May 9, 2014 re: submitted to request an extension until May 23, 2014, for the filing of Mr. Ulbricht's Reply to the Government's Response to the Defendant's Pre-Trial Motions challenging the face of the Indictment. This adjustment in the briefingschedule will not impact the next pre-trial conference in this case, which is currently scheduled for June 2, 2014, at 2 p.m., and at which time the motions will be fully briefed. ENDORSEMENT: Application granted. (Signed by Judge Katherine B. Forrest on 5/9/2014)(bw) (Entered: 05/12/2014)
05/22/2014	29	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 22, 2014 re: Extension of Time for File of Reply (Dratel, Joshua) (Entered: 05/22/2014)
05/22/2014	30	NOTICE OF ATTORNEY APPEARANCE Timothy Turner Howard appearing for USA. (Howard, Timothy) (Entered: 05/22/2014)
05/23/2014	31	MEMO ENDORSEMENT as to Ross William Ulbricht on re: 29 Letter filed by Ross William Ulbricht. ENDORSEMENT: ORDERED: Application Granted. (Signed by Judge Katherine B. Forrest on 5/23/2014)(ft) (Entered: 05/23/2014)
05/23/2014		Set/Reset Deadlines/Hearings as to Ross William Ulbricht: Replies due by 5/27/2014. (ft) (Entered: 05/23/2014)

05/27/2014	32	REPLY MEMORANDUM OF LAW in Support as to Ross William Ulbricht re: 19 FIRST MOTION to Dismiss *Challenging the Face of the Indictment*. . (Dratel, Joshua) (Entered: 05/27/2014)
06/02/2014	33	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 5/30/14 re: The Government is continuing to investigate other charges against the defendant and requires additional time to pursue its investigation before determining whether to seek a superseding indictment. The Government therefore respectfully requests that the Court extend the time for the Government to file any superseding indictment by 30 additional days, i.e., until June 30, 2014. The Government does not anticipate that any further extension will be needed after June 30, 2014. The Government submits that this schedule will still afford the defense ample time to review any additional discovery and prepare for trial, which is set to begin on November 4, 2014.ENDORSEMENT: SO ORDERED. (Signed by Judge Katherine B. Forrest on 6/2/14)(jw) (Entered: 06/02/2014)
06/02/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest:Status Conference as to Ross William Ulbricht held on 6/2/2014. Defendant present with attorneys Joshua Dratel and Lindsay Lewis. AUSAs Serrin Turner and Tim Howard present. Conference held. Order to follow. Detention continued. (jp) (Entered: 06/02/2014)
06/03/2014	34	ORDER as to Ross William Ulbricht (Motions due by 7/15/2014., Replies due by 8/27/2014., Responses due by 8/15/2014, Status Conference set for 9/5/2014 at 12:00 PM before Judge Katherine B. Forrest.) The Court hereby ORDERS the parties to comply with the following schedule for the remainder of this litigation: Dispositive motions shall be filed by July 15, 2014; oppositions are due August 15, 2014, and replies, if any, shall be filed by August 27, 2014; The parties shall together determine the date by which trial exhibits are to be exchanged to allow adequate time for objections to be interposed (if a date cannot be agreed upon, the Court will set one at the next status conference); The parties shall confer as to whether they believe juror questionnaires would be helpful in this case. They shall submit a joint letter setting forth their views on this topic by August 1, 2014 (if they believe questionnaires would be helpful, the August 1 letter should contain a proposed date for submission of a draft to the Court); A status conference shall occur on September 5, 2014 at 12:00 p.m. Rule 404(b) motions shall be submitted by October 3, 2014; Motions in Limine shall be submitted by October 17, 2014; oppositions are due October 24, 2014. 3500 material shall be submitted not later than October 31, 2014; and A final pretrial conference shall occur on October 29, 2014 at 2:00 p.m. (the Court has reserved three hours). (Signed by Judge Katherine B. Forrest on 6/3/14)(jw) (Entered: 06/03/2014)
06/26/2014	35	MOTION To Intervene Solely For The Purpose right To Access Judicial Proceeding Records. Document filed by Intervenors. (dnd) (Entered: 06/26/2014)
06/27/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest: Conference as to Ross William Ulbricht held on 6/27/2014. Defendant waives his appearance. Counsel for defendant, Joshua Dratel and Lindsay Lewis present. AUSAs Serrin Turner and Tim Howard present. Court Reporter present. Conference held. (jp) (Entered: 06/27/2014)
06/27/2014	36	Waiver of Appearance as to Ross William Ulbricht. I have spoken with my

		attorney, Joshua L. Dratel, Esq., and he has advised me of thenature of the June 27, 2014, Court conference scheduled in the above-captioned matter. I hereby knowingly waive my right to appear in person June 27, 2014, at 2:30 p.m., before the Honorable Katherine B. Forrest, United States District Judge for the Southern District of New York, at the United States Courthouse located at 500 Pearl Street, New York, in the above-captioned matter. I authorize my attorneys Joshua L. Dratel, Esq., and Lindsay A. Lewis, Esq., to appear on my behalf at that conference. (jw) (Entered: 06/27/2014)
06/27/2014	37	ORDER as to Ross William Ulbricht. On June 27, 2014, a status conference was held in the above-referenced matter. (Mr. Ulbricht was not in attendance; he waived his right to appear in person. That waiver has been filed electronically.) As was discussed, the Court hereby ORDERS the following: -The parties shall submit a letter (jointly, if possible) that sets forth the status of Mr. Ulbricht' s access to discovery by the close of business on July 7, 2014. In particular, the letter shall set forth the number of hours Mr. Ulbricht requested to view the electronic discovery and the number of hours he actually had such access from June 28, 2014 through July 6, 2014. -Defendant's counsel shall notify the Court no later than the close of business on July 2, 2014 if Mr. Ulbricht has not yet received access to the hard drives. -The schedule has been adjusted as follows: defendant shall file any dispositive motion by July 29, 2014; the Government's response is due by August 26, 2014; and the reply, if any, shall be filed by September 12, 2014. Separately, the Court notes that on June 26, 2014, it received a letter motion from four incarcerated individuals seeking permission to intervene in this action (the letter is included herein). Because there is no provision that allows for such intervention in criminal actions, the Court DENIES the request.(See Footnote 1). SO ORDERED. (Signed by Judge Katherine B. Forrest on 6/27/2014) [*** FOOTNOTE 1: The Court notes that as a matter of policy and practice, the proceedings that occur and the submissions that are made in this matter are, generally speaking, publicly available - it is an open courtroom and a public docket. ***] (bw) (Entered: 06/30/2014)
07/02/2014	38	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Conference held on 6/2/14 before Judge Katherine B. Forrest. Court Reporter/Transcriber: William Richards, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/28/2014. Redacted Transcript Deadline set for 8/7/2014. Release of Transcript Restriction set for 10/3/2014. (Rodriguez, Somari) (Entered: 07/02/2014)
07/02/2014	39	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Conference proceeding held on 6/2/14 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Rodriguez, Somari) (Entered: 07/02/2014)
07/07/2014	40	ORDER as to Ross William Ulbricht. On July 3, 2014, the Court sent the attached letter via email to Nicole McFarland, Senior Staff Attorney at the Metropolitan

		Detention Center. (Signed by Judge Katherine B. Forrest on 7/7/14)(jw) (Entered: 07/07/2014)
07/08/2014	41	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Timothy T. Howard dated 7/7/2014 re: Status Update. ENDORSEMENT: Ordered: Post to docket. (Signed by Judge Katherine B. Forrest on 7/8/2014)(ft) (Entered: 07/08/2014)
07/09/2014	42	OPINION AND ORDER #104494: as to Ross William Ulbricht re: 19 FIRST MOTION to Dismiss *Challenging the Face of the Indictment*. filed by Ross William Ulbricht. For the reasons set forth on this Opinion and Order, the defendant's motion to dismiss is DENIED in its entirety. The clerk of the Court is directed to terminate the motion at ECFNo. 19. (Signed by Judge Katherine B. Forrest on 7/9/2014)(jp) Modified on 7/11/2014 (ca). (Entered: 07/09/2014)
07/15/2014	43	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 7/14/2014 re: Status Update. ENDORSEMENT: Ordered: Post to docket. (Signed by Judge Katherine B. Forrest on 7/14/2014)(ft) (Entered: 07/15/2014)
07/25/2014	44	ENDORSED LETTER: As to Ross William Ulbricht addressed to Magistrate Judge Kevin Nathaniel Fox from Joshua L. Dratel dated 7/24/2014 re: Defense counsel writes to request a two day extension until July 31, 2014 to file the defendant's motions. ENDORSEMENT: Application Granted. SO ORDERED. (Signed by Magistrate Judge Kevin Nathaniel Fox on 7/25/2014)(dnd) (Entered: 07/25/2014)
07/31/2014	45	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 7/30/2014 re: Extension of Time to File Motion. ENDORSEMENT: Ordered: Application granted. (Motions due by 8/1/2014.) (Signed by Judge Katherine B. Forrest on 7/31/2014)(ft) (Entered: 07/31/2014)
08/01/2014	46	MOTION to Suppress *Certain Evidence*., MOTION for Discovery ., MOTION for Bill of Particulars . Document filed by Ross William Ulbricht. (Dratel, Joshua) (Entered: 08/01/2014)
08/01/2014	47	DECLARATION of Joshua L. Dratel in Support as to Ross William Ulbricht re: 46 MOTION to Suppress *Certain Evidence*. MOTION for Discovery . MOTION for Bill of Particulars .. (Dratel, Joshua) (Entered: 08/01/2014)
08/01/2014	48	MEMORANDUM in Support by Ross William Ulbricht re 46 MOTION to Suppress *Certain Evidence*. MOTION for Discovery . MOTION for Bill of Particulars .. (Dratel, Joshua) (Entered: 08/01/2014)
08/04/2014	49	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated August 4, 2014 re: Juror Questionnaire (Dratel, Joshua) (Entered: 08/04/2014)
08/05/2014	50	ORDER as to Ross William Ulbricht. The Court has received defendant's application for an extension of time to subject a proposed juror questionnaire and accompanying letter motion. Without taking a position on the ultimately utility, if any, of a juror questionnaire in this action, the Court hereby GRANTS defendant's request. The Government is ORDERED to respond to any submission by

		defendant not later than September 5, 2014 at 8:30 a.m. SO ORDERED. (Signed by Judge Katherine B. Forrest on 8/5/2014)(bw) (Entered: 08/05/2014)
08/08/2014	51	NOTICE OF ATTORNEY APPEARANCE: Lindsay Anne Lewis appearing for Ross William Ulbricht. Appearance Type: Retained. (Lewis, Lindsay) (Entered: 08/08/2014)
08/21/2014	52	(S1) SUPERSEDING INDICTMENT FILED as to Ross William Ulbricht (1) count(s) 1s, 2s, 3s, 4s, 5s, 6s, 7s. (jbo) (Entered: 08/21/2014)
08/22/2014	53	LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated August 22, 2014 re: Respectfully Requesting that the Court Order the Use of a Juror Questionnaire . Document filed by Ross William Ulbricht. (Attachments: # 1 Exhibit Defendant's Proposed Questionnaire)(Dratel, Joshua) (Entered: 08/22/2014)
08/29/2014	54	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 8/29/2014 re: On August 1, 2014, the defendant filed a 90-page suppression motion. The Governments opposition is presently due today, August 29, 2014... the Government respectfully requests that the briefing schedule for the motion to dismiss be extended by one week, as follows: Governments opposition due: September 5, 2014. Defendants reply due: September 23, 2014. ENDORSEMENT: Application Granted. SO ORDERED. (Signed by Judge Katherine B. Forrest on 8/29/2014)(dnd) (Entered: 08/29/2014)
09/03/2014	55	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated September 3, 2014 re: Update To the Court on the Discovery Review Process (Dratel, Joshua) (Entered: 09/03/2014)
09/05/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest:Arraignment as to Ross William Ulbricht (1) Count 1s,2s,3s,4s,5s,6s,7sRoss William Ulbricht (1) Count 1s,2s,3s,4s,5s,6s,7s held on 9/5/2014., Plea entered by Ross William Ulbricht (1) Count 1s,2s,3s,4s,5s,6s,7sRoss William Ulbricht (1) Count 1s,2s,3s,4s,5s,6s,7s Not Guilty. Defendant present with attorneys Joshua Dratel, Lindsay Lewis, and Joshua Horowitz. AUSA Serrin Turner present. Court Reporter present. Defendant arraigned on the Superseding Indictment and enters a plea of not guilty to all counts. Order to follow. Pretrial detention continued. (jp). (Entered: 09/05/2014)
09/05/2014	56	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re 46 MOTION to Suppress *Certain Evidence*. MOTION for Discovery . MOTION for Bill of Particulars .. (Turner, Serrin) (Entered: 09/05/2014)
09/05/2014	57	DECLARATION of Christopher Tarbell in Opposition by USA as to Ross William Ulbricht re: 46 MOTION to Suppress *Certain Evidence*. MOTION for Discovery . MOTION for Bill of Particulars .. (Turner, Serrin) (Entered: 09/05/2014)
09/08/2014	58	ORDER as to Ross William Ulbricht (Motions due by 9/26/2014., Replies due by 9/23/2014., Responses due by 9/9/2014, Status Conference set for 10/17/2014 at 11:00 AM before Judge Katherine B. Forrest.) The Government shall submit a response to defendant's submission regarding a proposed juror questionnaire not later than Tuesday, September 9, 2014. Any motion by defendant regarding additional counts in the Superseding Indictment shall be made by letter not later

		than Friday, September 26, 2014. The Government shall respond as soon as practicable, but not later than Tuesday, September 30, 2014. The government shall provide a proposed exhibit list to defendant not later than Tuesday, October 21, 2014. Defendant shall provide a proposed exhibit list to the Government not later than Friday, October 24, 2014, indicating any objections to the Government's exhibits. Parties shall submit final pretrial materials by Friday, October 31, 2014. Those materials include (a) trial witness lists; (b) joint proposed voir dire; (c) joint proposed requests to charge, and verdict form; (d) exhibit lists; (e) objections to proposed exhibits; and (f) a list of stipulations. The final pretrial conference is now scheduled to occur on Wednesday November 5, 2014 at 2:00pm. The parties shall set aside three hours. The trial is now scheduled to commence Monday, November 10, 2014. (Signed by Judge Katherine B. Forrest on 9/8/14)(jw) (Entered: 09/08/2014)
09/08/2014	59	NOTICE OF ATTORNEY APPEARANCE: Joshua Jacob Horowitz appearing for Ross William Ulbricht. Appearance Type: Retained. (Horowitz, Joshua) (Entered: 09/08/2014)
09/09/2014	60	LETTER RESPONSE in Opposition by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Serrin Turner dated 09/09/2014 re: 53 LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated August 22, 2014 re: Respectfully Requesting that the Court Order the Use of a Juror Questionnaire .. (Turner, Serrin) (Entered: 09/09/2014)
09/15/2014	61	MEMO ENDORSEMENT granting 53 LETTER MOTION Respectfully Requesting that the Court Order the Use of a Juror Questionnaire as to Ross William Ulbricht (1). ENDORSEMENT: Ordered: Defendant's application for a questionnaire is granted. However, the Court does not all of defendant's questions and will put out a revised questionnaire and schedule for use of such shortly. (Signed by Judge Katherine B. Forrest on 9/15/2014) (ft) (Entered: 09/15/2014)
09/16/2014	62	ORDER as to Ross William Ulbricht. In accordance with the Court's Order on September 15, 2014 granting the use of a juror questionnaire (ECF No. 61), defendant shall provide by Friday, September 19, 2014 one Excel spreadsheet (using a template similar to that employed in United States v. Mostafa) with columns corresponding to those questions the Court has indicated it is considering including. The Court plans to finalize the juror questionnaire by Friday, September 26, 2014. The process shall be as follows: Potential jurors will be given the questionnaire on Wednesday, November 5, 2014. 2. It is anticipated that the parties will have access to the questionnaires by 1:00 p.m. on that day. 3. The parties shall agree as between themselves which side shall take the laboring oar of filling in the spreadsheet based on juror responses. Both sides must agree that the Excel spreadsheet properly reflects the questionnaire responses. The parties shall then confer and present the Court with a list of jointly agreed strikes as well as a list of non-agreed requested strikes not later thanThursday, November 6, 2014 at 7:00p.m. (The Court must call prospective jurors who do not need to appear.). The Court shall review all agreed cause-strikes and those proposed by one side but not agreed by the other. The Court may determine that it is appropriate to strike one or more of these (or other) potential jurors. The Court will then separate the remaining jurors into two waves: the first wave will be those jurors who do not have potential or likely cause issues, and the second wave will be all others. The

		Court intends to proceed with voir dire initially using the first wave of potential jurors. The second wave ofpotential jurors shall only be called to the courtroom if necessary. (Signed by Judge Katherine B. Forrest on 9/16/14)(jw) (Entered: 09/16/2014)
09/16/2014	63	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re 46 MOTION to Suppress *Certain Evidence*. MOTION for Discovery . MOTION for Bill of Particulars .. *(Supplemental Memorandum)* (Turner, Serrin) (Entered: 09/16/2014)
09/19/2014	64	ORDER as to Ross William Ulbricht. The Court has attached Version 1 of the juror questionnaire spreadsheet. The parties shall submit additional questions (not already proposed) and changes by Wednesday September 24, 2014. The Government shall provide its summary of the case by Wednesday, October 8, 2014. SO ORDERED. (Signed by Judge Katherine B. Forrest on 9/19/2014)(bw) (Entered: 09/22/2014)
09/22/2014	65	SEALED DOCUMENT placed in vault. (mps) (Entered: 09/22/2014)
09/22/2014	66	SEALED DOCUMENT placed in vault. (mps) (Entered: 09/22/2014)
09/23/2014	67	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated September 23, 2014 re: Request for an Extension of Time for Filing Mr. Ulbrict's Reply motion (Dratel, Joshua) (Entered: 09/23/2014)
09/24/2014	68	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 9/23/2014 re: This letter is in regard to the Reply papers on behalf of defendant Ross Ulbricht, whom I represent, and that are due today, September 23, 2014. For the reasons set forth below, it is respectfully requested that the due date be adjourned until September 30, 2014. It is also respectfully requested that the due date for the motions challenging the Superseding Indictment be extended from this Friday, September 26, 2014, until next Thursday, October 2, 2014. ENDORSEMENT: Application Granted. SO ORDERED. (Signed by Judge Katherine B. Forrest on 9/24/2014)(dnd) (Entered: 09/24/2014)
10/01/2014	69	REPLY MEMORANDUM OF LAW in Support as to Ross William Ulbricht re: 46 MOTION to Suppress *Certain Evidence*. MOTION for Discovery . MOTION for Bill of Particulars . . (Dratel, Joshua) (Entered: 10/01/2014)
10/01/2014	70	DECLARATION of Joshua J. Horowitz, Esq. in Support as to Ross William Ulbricht re: 46 MOTION to Suppress *Certain Evidence*. MOTION for Discovery . MOTION for Bill of Particulars .. (Attachments: # 1 Exhibit Government's March 21, 2014, Discovery Production Letter, # 2 Exhibit Mtime and Sites-Enabled Directory For Item 1 of March 21, 2014, Discovery Production, # 3 Exhibit Defense Counsel's September 17, 2014, Letter Demand for Discovery, # 4 Exhibit Government's September 23, 2014 Reponse to Defense Counsel's September 17, 2014, Letter, # 5 Exhibit Nginx Logs, Attachment 1 to the Government's September 23, 2014, Letter, # 6 Exhibit Full Text of live-ssl Configuration File, # 7 Exhibit Full Text of phpmyadmin Configuration File, # 8 Exhibit phpmyadmin Login Page, # 9 Exhibit Silk Road Login Page, # 10 Exhibit Example of Wireshark Packet Capture, # 11 Exhibit Screenshot of Wireshark Exit Prompt) (Dratel, Joshua) (Entered: 10/01/2014)

10/02/2014	71	MOTION to Dismiss *Counts One through Four of hte Superseding Indictment.*, SUPPLEMENTAL MOTION for Bill of Particulars *as to the New Charges and Allegations Contained in the Superseding Indictment*. Document filed by Ross William Ulbricht. (Lewis, Lindsay) (Entered: 10/02/2014)
10/02/2014	72	MEMORANDUM in Support by Ross William Ulbricht re 71 MOTION to Dismiss *Counts One through Four of hte Superseding Indictment.*SUPPLEMENTAL MOTION for Bill of Particulars *as to the New Charges and Allegations Contained in the Superseding Indictment.*. (Lewis, Lindsay) (Entered: 10/02/2014)
10/03/2014	73	ORDER as to Ross William Ulbricht. Defendant has submitted a declaration from Joshua Horowitz in support of his motion and request for an evidentiary hearing.If the Government has any response to the factual statements (and/or relevance of the factual statements) asserted therein, it should file such response by C.O.B., October 6, 2014 (if possible). (Signed by Judge Katherine B. Forrest on 10/3/14) (jw) (Entered: 10/03/2014)
10/03/2014	74	ORDER as to Ross William Ulbricht. Defendant has submitted a motion dismissing Counts One through Four of the Superseding Indictment and a motion directing the Government to produce the requested Bill of Particulars. The Government shall respond to these motions not later than Tuesday, October 7, 2014. SO ORDERED. (Signed by Judge Katherine B. Forrest on 10/3/2014)(bw) (Entered: 10/03/2014)
10/06/2014	75	RESPONSE in Opposition by USA as to Ross William Ulbricht re: 46 MOTION to Suppress *Certain Evidence*. MOTION for Discovery . MOTION for Bill of Particulars .. *(Response to Declaration of Joshua Horowitz)* (Turner, Serrin) (Entered: 10/06/2014)
10/07/2014	76	ORDER as to Ross William Ulbricht: The Court has not received a declaration or affidavit from defendant Ross Ulbricht, demonstrating that he had a subjective expectation of privacy in any of the items seized and as to which his suppression motion relates. The Court has read his counsel's argument as to the order in which they assert that decisions should be made. The potential rationale for not submitting a declaration or affidavit may, however, be different for the servers located in premises operated by third parties, versus the wireless router located on Montgomery Street, the laptop, the Gmail and Facebook accounts. The Court will give Mr. Ulbricht one final opportunity to submit a declaration or affidavit in support of his motion (which would of course need to have sufficient specificity to establish a subjective expectation of privacy in items to which it relates). However, given that the defendant has had quite a long time already to make such a submission, if he now decides to submit one, the Court must be so notified by 5pm today (October 7) that one shall be forthcoming by tomorrow, and to specify the particular items it will cover. (Signed by Judge Katherine B. Forrest on 10/7/2014)(jp) (Entered: 10/07/2014)
10/07/2014	77	ORDER: As to Ross William Ulbricht. The Court has not received a declaration or affidavit from defendant Ross Ulbricht, demonstrating that he had a subjective expectation of privacy in any of the items seized and as to which his suppression motion relates. The Court has read his counsel's argument as to the order in which they assert that decisions should be made. The potential rationale for not

		submitting a declaration or affidavit may, however, be different for the servers located in premises operated by third parties, versus the wireless router located on Montgomery Street, the laptop, the Gmail and Facebook accounts. The Court will give Mr. Ulbricht one final opportunity to submit a declaration or affidavit in support of his motion (which would of course need to have sufficient specificity to establish a subjective expectation of privacy in items to which it relates). However, given that the defendant has had quite a long time already to make such a submission, if he now decides to submit one, the Court must be so notified by 5pm today (October 7) that one shall be forthcoming by tomorrow, and to specify the particular items it will cover. SO ORDERED. (Signed by Judge Katherine B. Forrest on 10/7/2014)(dnd) (Entered: 10/07/2014)
10/07/2014	78	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Conference held on 9/5/2014 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Kristen Carannante, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/31/2014. Redacted Transcript Deadline set for 11/10/2014. Release of Transcript Restriction set for 1/8/2015. (McGuirk, Kelly) (Entered: 10/07/2014)
10/07/2014	79	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Conference proceeding held on 9/5/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 10/07/2014)
10/07/2014	80	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated October 7, 2014 re: the Court's October 7, 2014, Order (Lewis, Lindsay) (Entered: 10/07/2014)
10/07/2014	81	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis dated 10/7/2014 re: Accordingly, it is respectfully requested that defense counsel be pem1itted to respond to the Court's Order after Mr. Dratel's trial is concluded.ENDORSEMENT: The Court intends to rule on the suppression motion before Thurs. -- since you represent Mr. Ulbricht, perhaps you should meet with him. Ultimately, I assume you folks have considered the various issues relating to the declaration as an accommodation, the Court is providing you a last clear chance. (Signed by Judge Katherine B. Forrest on 10/7/14)(jw) (Entered: 10/07/2014)
10/07/2014	82	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re 71 MOTION to Dismiss *Counts One through Four of hte Superseding Indictment*.SUPPLEMENTAL MOTION for Bill of Particulars *as to the New Charges and Allegations Contained in the Superseding Indictment*.. (Turner, Serrin) (Entered: 10/07/2014)
10/07/2014	83	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated October 7, 2014 re: the government's October 6, 2014, filing and the Court's October 7, 2014, Order (Lewis, Lindsay) (Entered: 10/07/2014)

10/08/2014	84	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 10/7/14 re: This letter is submitted on behalf of defendant Ross Ulbricht, in response to the government's October 6, 2014, filing pursuant to the Court's October 3, 2014, Order inviting the government to respond to the factual statements contained in the Declaration of Joshua J. Horowitz, Esq..ENDORSEMENT: Does the Government agree that no declaration is required is this case with regard to establishing Ulbricht's privacy interest in his Facebook, GMAIL accounts, and laptop? (Could you let me know today " yes" or "no" will do.) (Signed by Judge Katherine B. Forrest on 10/8/14) (jw) (Entered: 10/08/2014)
10/08/2014	85	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Serrin Turner dated 10/08/2014 re: Defendant's Motion to Suppress Document filed by USA. (Turner, Serrin) (Entered: 10/08/2014)
10/08/2014	86	ORDER as to Ross William Ulbricht. Understanding that Mr. Dratel is currently on trial, the Court would like the parties to meet and confer, and inform the Court as soon as practicable, but in any event, not later than C.O.B., October 13, 2014 on the following: 1. What is the best estimate of the total trial duration -- real estimate -- including both direct and cross of witnesses. 2. Will the trial likely run into the Christmas holidays? 3. If it does seem that we will run into the holidays, without in any way suggesting the trial will be delayed, what is the soonest after January 1, 2015, the parties would be able to try the case? SO ORDERED. (Signed by Judge Katherine B. Forrest on 10/8/2014)(bw) (Entered: 10/08/2014)
10/08/2014	87	**FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU** - Proposed Voir Dire Questions by USA as to Ross William Ulbricht. (Attachments: # 1 proposed case summary)(Turner, Serrin) Modified on 10/9/2014 (ka). (Entered: 10/08/2014)
10/09/2014		**NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Serrin Andrew Turner as to Ross William Ulbricht: to RE-FILE Document 87 Proposed Voir Dire Questions. Use the document type Letter found under the document list Other Documents. (ka)** (Entered: 10/09/2014)
10/09/2014	88	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Serrin Turner dated 10/08/2014 re: Proposed Case Summary for Voir Dire Document filed by USA. (Attachments: # 1 Proposed Case Summary)(Turner, Serrin) (Entered: 10/09/2014)
10/10/2014	89	OPINION AND ORDER #104893 as to Ross William Ulbricht re: 46 MOTION to Suppress *Certain Evidence*. MOTION for Discovery . MOTION for Bill of Particulars . filed by Ross William Ulbricht: For the reasons set forth above, defendant's motion to suppress, for a bill of particulars and to strike surplusage is DENIED. The Clerk of Court is directed to close the motion at ECF No. 46. (Signed by Judge Katherine B. Forrest on 10/10/2014)(jp) Modified on 10/16/2014 (ca). (Entered: 10/10/2014)
10/15/2014	90	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L.. Dratel dated October 13, 2014 re: This letter is submitted on behalf of defendant Ross Ulbricht in conjunction with a corresponding letter submitted today by the government in response to the

		questions posed in the Court's October 8, 2014, Order. This letter is being transmitted via electronic mail to the Court, but can filed via ECF if the Court wishes.ENDORSEMENT: Trial adjourned to January 5, 2015. We will discuss other dates and logistics of jury selection at the conference on Friday (10/17/14) (Signed by Judge Katherine B. Forrest on 10/15/14)(jw) (Entered: 10/15/2014)
10/15/2014	91	SEALED DOCUMENT placed in vault. (rz) (Entered: 10/15/2014)
10/16/2014	92	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner and Timothy Howard dated 10/8/2014 re: Please find attached a proposed summary of the case to be used in connection with voir dire at trial..ENDORSEMENT: Defendant shall provide any proposed modifications to the summary attached no later than 10/23/14. (Signed by Judge Katherine B. Forrest on 10/16/14)(jw) (Entered: 10/16/2014)
10/17/2014	93	ORDER as to Ross William Ulbricht (Motions due by 12/3/2014., Responses due by 12/10/2014, Pretrial Conference set for 12/17/2014 at 02:00 PM before Judge Katherine B. Forrest.) The Government shall provide a proposed exhibit list to defendant not later than Monday, December 1, 2014 at 4:00 p.m. Defendant shall provide a proposed exhibit list to the Government not later than Friday, December 5, 2014 at 4:00 p.m., indicating any objections to the Government's exhibits and setting forth any known exhibits defendant intends to offer. Parties shall file any motions in limine by Wednesday, December 3, 2014; opposition briefs are due by Wednesday, December 10, 2014; no replies. Parties shall submit final pretrial materials by Wednesday, December 10, 2014. Those materials include (a) trial witness lists, in approximate order, with names and expected duration of direct examination; (b) joint proposed voir dire (taking into account the juror questionnaire); (c) joint proposed requests to charge; (d) joint proposed verdict form; (e) exhibit lists; (f) objections to proposed exhibits; and (g) a list of stipulations. The final pretrial conference is now scheduled to occur on Wednesday December 17, 2014 at 2:00 p.m. The parties shall set aside three hours. The juror questionnaire shall be filled out by the potential jurors the weeks of December 22 and 29, 2014. 3500 materials for non-cooperating witnesses shall be submitted by Monday, December 29, 2014. 3500 materials for all other witnesses shall be submitted by Friday, January 2, 2015. Upon receipt from the Jury Department, the Government shall work with defense counsel to copy/scan the questionnaires, fill out the juror questionnaire summary spreadsheet, and confer on joint strikes. Not later than Friday, January 2, 2015 at 10:00 a.m., the parties shall file the spreadsheet in both hard copy and electronic format (Excel) and a letter containing (1) jointly agreed-upon strikes; (2) proposed but not agreed-upon strikes. The trial shall commence on Monday, January 5, 2015. (Signed by Judge Katherine B. Forrest on 10/17/14)(jw) (Entered: 10/20/2014)
10/17/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest:Status Conference as to Ross William Ulbricht held on 10/17/2014. Defendant present with attys Joshua Dratel, Lindsay Lewis, and Joshua Horowitz. AUSAs Serrin Turner and Tim Howard present. Court Reporter present. Conference held. Order to follow. Remand continued. (jp) (Entered: 10/20/2014)
10/24/2014	94	OPINION & ORDER #104931: as to (14-Cr-68-01) Ross William Ulbricht. On February 4, 2014, a federal grand jury returned Indictment 14 Cr. 68 (the "Original Indictment"), charging Ross Ulbricht ("defendant" or "Ulbricht") on

		four counts---all stemming from the creation, administration, and operations of an online marketplace known as "Silk Road." (ECF No. 12 ("Orig. Ind.").) On March 28, 2014, Ulbricht moved to dismiss the Original Indictment in its entirety. (ECF No. 19.) That motion became fully briefed on May 27, 2014 (ECF No. 32), and on July 9, 2014, the Court denied the motion (ECF No. 42). On August 21, 2014, the Government filed Superseding Indictment S1 14 Cr. 68 (KBF) (the "Superseding Indictment") containing three additional charges. (ECF No. 52 ("Sup. Ind.").) Ulbricht's trial is scheduled to begin on January 5, 2015. Pending before the Court is defendant's motion to dismiss Counts One through Four of the Superseding Indictment, for a bill of particulars, and "for any such other and further relief... which to the Court seems just and proper." (ECF No. 71.) For the reasons set forth below, the motion is DENIED....[See this Opinion And Order]... IV. CONCLUSION: For the reasons set forth above, defendant's motion is DENIED. The Clerk of the Court is directed to terminate the motion at ECF No. 71. SO ORDERED. (Signed by Judge Katherine B. Forrest on 10/24/2014)(bw) Modified on 11/4/2014 (ca). (Entered: 10/24/2014)
11/04/2014	95	SEALED DOCUMENT placed in vault. (nm) (Entered: 11/04/2014)
11/18/2014	96	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Serrin Turner dated November 17, 2014 re: The Government respectfully requests that the deadline for the Government's disclosure of trial exhibits be extended by two days to December 3, 2014, and that the deadline for defense exhibits be correspondingly extended by two days to December 9, 2014. ENDORSEMENT: Application granted. (Signed by Judge Katherine B. Forrest on 11/18/2014)(bw) (Entered: 11/18/2014)
11/25/2014	97	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Conference held on 10/17/14 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sonya Ketter Huggins, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/19/2014. Redacted Transcript Deadline set for 12/29/2014. Release of Transcript Restriction set for 2/26/2015. (Rodriguez, Somari) (Entered: 11/25/2014)
11/25/2014	98	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Conference proceeding held on 10/17/14 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Rodriguez, Somari) (Entered: 11/25/2014)
12/01/2014	99	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/01/2014)
12/01/2014	100	ORDER as to Ross William Ulbricht. The Court has conferred with the Jury Department to implement a process for calling potential jurors to be given the juror questionnaire. The process shall be as follows: Potential jurors will be given the questionnaire on Monday, December 29, 2014. It is anticipated that the parties will have access to the questionnaires by 1:00 p.m. on that day. The parties shall agree as between themselves which side shall take the laboring oar of filling in the spreadsheet based on juror responses. Both sides must agree that the Excel

		spreadsheet properly reflects the questionnaire responses. The parties shall then confer and present the Court with a list of jointly agreed strikes as well as a list of non-agreed requested strikes not later than Thursday, January 1, 2015 at 5:00p.m. (The Court must call prospective jurors who do not need to appear.) The Court shall review all agreed cause- strikes and those proposed by one side but not agreed by the other. The Court may determine that it is appropriate to strike one or more of these (or other) potential jurors. The Court will then separate the remaining jurors into two waves: the first wave will be those jurors who do not have potential or likely cause issues, and the second wave will be all others. The Court intends to proceed with voir dire initially using the first wave of potential jurors. The second wave of potential jurors shall only be called to the courtroom if necessary. (Signed by Judge Katherine B. Forrest on 12/1/2014)(jw) (Entered: 12/01/2014)
12/01/2014	101	ORDER as to Ross William Ulbricht. The Court hereby notifies the parties that it intends to provide the enclosed Juror Questionnaire to the Clerk's Office on December 4, 2014. If either party has concerns, it should let the Court know not later than December 3, 2014. (Signed by Judge Katherine B. Forrest on 12/1/2014)(jw) (Entered: 12/01/2014)
12/03/2014	102	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 12/3/2014 re: Court's proposed jury questionnaire Document filed by USA. (Howard, Timothy) (Entered: 12/03/2014)
12/03/2014	103	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 12/3/2014 re: This letter is submitted on behalf of defendant Ross Ulbricht in response to the Court's December 1, 2014, Order requesting that the parties convey any concerns with the existing questionnaire to the Court by today, December 3, 2014. This letter is being transmitted via electronic mail to the Court, but can filed via ECF if the Court wishes. ENDORSEMENT: Does the Government object to the changes noted in PP 1-5 above? Please inform the court by 5:00 p.m. 12/4/2014. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/3/2014)(dnd) (Entered: 12/03/2014)
12/04/2014	104	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/04/2014)
12/05/2014	105	ORDER as to Ross William Ulbricht. Attached as Exhibit A is the juror questionnaire, as provided to the Jury Department. SO ORDERED (Signed by Judge Katherine B. Forrest on 12/5/14)(jw) (Entered: 12/05/2014)
12/05/2014	106	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Attorney Joshua L. Dratel dated December 5, 2014 re: This letter is submitted on behalf of defendant Ross Ulbricht, and respectfully requests that the Court permit the motions in limine, the deadline for which the Court graciously extended until Monday, December 8, 2014, to be filed Tuesday, December 9, 2014, while leaving the time for any replies - due December 12, 2014 - unchanged. ENDORSEMENT: SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/5/2014)(bw) (Entered: 12/08/2014)
12/09/2014	107	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSAs Timothy T. Howard / Serrin Turner, dated December 9, 2014 re: On October 17, 2014, the Court ordered that the parties submit final

		pretrial materials by Wednesday, December 10, 2014, to include trial witness lists. The Government submits this letter to respectfully request leave from the Court to redact the names of cooperating witnesses from the list of Government witnesses. ENDORSEMENT: Defendant to respond to the instant letter request as soon as practicable (not later than 12/11 at 10am). (Signed by Judge Katherine B. Forrest on 12/9/2014)(bw) (Entered: 12/09/2014)
12/09/2014	108	MOTION in Limine - *Government's Pretrial Motions in Limine*. Document filed by USA as to Ross William Ulbricht. (Howard, Timothy) (Entered: 12/09/2014)
12/10/2014	110	ENDORSED LETTER as to Ross William Ulbricht addressed to Forrest Chambers from Lindsay Lewis dated 12/10/14 re: Motion in Limine & Objections to Government Exhibits...ENDORSEMENT...Post to docket. Redacted versions of all docs, which can be filed possibly in such form should be. File redacted versions by COB today. (Signed by Judge Katherine B. Forrest on 12/10/14)(jw) (Entered: 12/10/2014)
12/10/2014	111	ORDER as to Ross William Ulbricht (Status Conference set for 12/15/2014 at 10:00 AM before Judge Katherine B. Forrest.) One of the issues defendant raises in his motion in limine relates to a currently non-public matter. To discuss and resolve this issue requires receipt of the Government's response, and a conference dedicated to that issue. Accordingly, the Court has set a conference for Monday, December 15, 2014 at 10:00a.m. for this purpose. In advance of that conference, the parties shall confer regarding whether (1) the Courtroom should be sealed, or (2) the matter can/should be taken up in the robing room. The parties shall inform the Court not later than C.O.B. Friday, December 12, 2014, as to their views regarding the same. (Signed by Judge Katherine B. Forrest on 12/10/14)(jw) (Entered: 12/10/2014)
12/10/2014	112	FIRST MOTION in Limine *to Preclude Certain Evidence and Proposed Government Exhibits*. Document filed by Ross William Ulbricht. (Dratel, Joshua) (Entered: 12/10/2014)
12/10/2014	113	DECLARATION of Joshua L. Dratel in Support as to Ross William Ulbricht re: 112 FIRST MOTION in Limine *to Preclude Certain Evidence and Proposed Government Exhibits*.. (Dratel, Joshua) (Entered: 12/10/2014)
12/10/2014	114	MEMORANDUM in Support by Ross William Ulbricht re 112 FIRST MOTION in Limine *to Preclude Certain Evidence and Proposed Government Exhibits*.. (Dratel, Joshua) (Entered: 12/10/2014)
12/10/2014	115	**FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU -** Proposed Voir Dire Questions by Ross William Ulbricht. (Dratel, Joshua) Modified on 12/10/2014 (ka). (Entered: 12/10/2014)
12/10/2014		**NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Joshua Lewis Dratel as to Ross William Ulbricht: to RE-FILE Document 115 Proposed Voir Dire Questions. Use the document type Letter found under the document list Other Documents. (ka)** (Entered: 12/10/2014)
12/10/2014	116	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated December 10, 2014 re: Defendant's Proposed Voir

		Dire (Lewis, Lindsay) (Entered: 12/10/2014)
12/10/2014	117	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSAs Serrin Turner and Tim Howard dated 12/10/2014 re: Pre-trial Order Document filed by USA. (Turner, Serrin) (Entered: 12/10/2014)
12/10/2014	118	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 12/10/2014 re: This letter is submitted on behalf of defendant Ross Ulbricht, in regard to the Joint Proposed Request to Charge, due today, December 10, 2014. We are currently finishing our redlining of the governments proposed Request to Charge. After consulting with the government, two options exist: we can either send the redlined version of the Request to Charge to the court tonight, or we can send it to the government to see if there are any additional areas in which we are able to reach agreement. ENDORSEMENT: Submit tonight to the Government. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/10/2014)(dnd) (Entered: 12/11/2014)
12/10/2014		***DELETED DOCUMENT. Deleted document number 109 Endorsed Letter, as to Ross William Ulbricht. The document was incorrectly filed in this case. (dnd) (Entered: 12/18/2014)
12/11/2014	119	MEMO ENDORSEMENT as to Ross William Ulbricht on E-Mail sent to Joseph Pecorino of Judge Forrest's Chambers from Attorney Lindsay Lewis on 12/10/2014 7:45PM re: Attached please find a letter to the Court in opposition to the government's December 9, 2014, letter requesting leave from the Court to redact the names of the cooperating witnesses from the list of government witnesses. ENDORSEMENT: All letters and filings with the Court must be filed via ECF unless there is some truly important reason not to. If something cannot be filed publicly, then it must be filed in redacted form simultaneously on within the same business day. (Signed by Judge Katherine B. Forrest on 12/11/2014)(bw) (Entered: 12/11/2014)
12/11/2014	120	MEMORANDUM DECISION & ORDER as to Ross William Ulbricht. Ross Ulbricht ("defendant" or "Ulbricht") is charged with a variety of crimes relating to his alleged design, administration, and operation of an online marketplace known as "Silk Road." (ECF No. 52.) Trial is scheduled to commence on January 5, 2015. Before the Court is the Government's request for leave to redact the names of cooperating witnesses from the list of witnesses provided as part of the Government's final pretrial materials. (ECF No. 107.) The Government has agreed to provide the identities of such witnesses on January 2, 2015. According to theGovernment, disclosure on that date will provide at least ten days' notice regarding the witnesses' identities prior to their testimony at trial. Defendant has opposed this application. (ECF No. 119.). The Government has represented that it will provide the identities of thecooperating witnesses on January 2, 2015, and it has disclosed the identities of itsfirst two witnesses, both of whom are multi-day witnesses. The Court weighsdefendant's need to prepare for trial against the Government's proffered reason for withholding the identities of its cooperating witnesses until January 2, 2015. And while the Court currently has no view as to the merit of the Government's contention regarding defendant's alleged solicitations of murders-for-hire, it is in no position to find that they are baseless or that witnesses who are known to be preparing to testify against defendant would not be at risk of some retaliatory act. While defendant has limited access to

		the outside world, that has been true of many defendants in many cases who have creatively managed around such limitations. (Signed by Judge Katherine B. Forrest on 12/11/14)(jw) (Entered: 12/11/2014)
12/11/2014	121	**FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU -** Request To Charge by USA as to Ross William Ulbricht. (Attachments: # 1 Joint RTCs (redline))(Turner, Serrin) Modified on 12/12/2014 (ka). (Entered: 12/11/2014)
12/12/2014	122	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Government dated 12/12/2014 re: Joint Proposed Verdict Form Document filed by USA. (Attachments: # 1 Joint Proposed Verdict Form - Redline)(Turner, Serrin) (Entered: 12/12/2014)
12/12/2014	123	**FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU -** Request To Charge by USA as to Ross William Ulbricht. (Attachments: # 1 Joint RTCs - revised redline)(Turner, Serrin) Modified on 12/12/2014 (ka). (Entered: 12/12/2014)
12/12/2014		**NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Serrin Andrew Turner as to Ross William Ulbricht: to RE-FILE Document 121 Request to Charge. Use the document type Letter found under the document list Other Documents.***NOTE: Proposed Jury Instructions must be filed individually. Use event code Proposed Jury Instructions located under Trial Documents. (ka)** (Entered: 12/12/2014)
12/12/2014		**NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Serrin Andrew Turner as to Ross William Ulbricht: to RE-FILE Document 123 Request to Charge. Use the document type Letter found under the document list Other Documents.***NOTE: Proposed Jury Instructions must be filed individually. Use event code Proposed Jury Instructions located under Trial Documents. (ka)** (Entered: 12/12/2014)
12/12/2014	124	ORDER as to Ross William Ulbricht. It is hereby ORDERED that in advance of, but to be discussed at the final pretrial conference, the parties shall confer on a list of terms likely to arise and determine whether there is any likelihood of stipulations to definitions. In prior trials involving complex matters, the Court has requested the parties to confer on definitions of terms and a handout has sometimes been provided to the jury with those terms. A witness in the ordinary course has then explained the terms. The Court has allowed the jury to retain the handout at their seats throughout the trial. Among the types of terminology the parties will want to consider including in such a "glossary" are the following: Online chats, Application(s), Log, Browser, Tor, IP address, Servers, Server side, Bitcoin, bitcoin process: ledger, bitcoin value, PIN, PTH, Codebase, Configuration files, Controllers, Support controllers, Administrator, administrative/administrator privileges, Path, Scripting language. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/12/2014)(ft) (Entered: 12/12/2014)
12/12/2014	125	CORRECTED MEMORANDUM DECISION & ORDER as to Ross William Ulbricht. Ross Ulbricht ("defendant" or "Ulbricht") is charged with a variety of crimes relating to his alleged design, administration, and operation of an online

		marketplace known as "Silk Road." (ECF No. 52.) Trial is scheduled to commence on January 5, 2015. Before the Court is the Government's request for leave to redact the names of cooperating witnesses from the list of witnesses provided as part of the Government's final pretrial materials. (ECF No. 107.) The Government has agreed to provide the identities of such witnesses on January 2, 2015. According to the Government, disclosure on that date will provide at least ten days' notice regarding the witnesses' identities prior to their testimony at trial. Defendant has opposed this application. (ECF No. 119.) The Government has represented that it will provide the identities of the cooperating witnesses on January 2, 2015, and it has disclosed the identities of its first two witnesses, both of whom are multi-day witnesses. The Court weighs defendant's need to prepare for trial against the Government's proffered reason for withholding the identities of its cooperating witnesses until January 2, 2015. And while the Court currently has no view as to the merit of the Government's contention regarding defendant's alleged solicitations of murders-for-hire, it is in no position to find that they are baseless or that witnesses who are known to be preparing to testify against defendant would not be at risk of some retaliatory act. While defendant has limited access to the outside world, that has been true of many defendants in many cases who have creatively managed around such limitations. Disclosure on January 2, 2015 is sufficient. (Signed by Judge Katherine B. Forrest on 12/12/2014)(ft) (Entered: 12/12/2014)
12/12/2014	126	MEMORANDUM in Opposition by Ross William Ulbricht re 108 MOTION in Limine - *Government's Pretrial Motions in Limine.*. (Dratel, Joshua) (Entered: 12/12/2014)
12/12/2014	127	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re 112 FIRST MOTION in Limine *to Preclude Certain Evidence and Proposed Government Exhibits*.. (Howard, Timothy) (Entered: 12/12/2014)
12/15/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest: Conference as to Ross William Ulbricht held on 12/15/2014. Defendant present with attys Joshua Dratel, Lindsay Lewis, and Joshua Horowitz. AUSAs Serrin Turner and TImothy Howard present. Court Reporter present. Conference held. Detention continued. (jp) (Entered: 12/15/2014)
12/15/2014	128	ORDER as to Ross William Ulbricht. The Court has made several minor non-substantive edits to the juror questionnaire. The revised version, as provided to the Jury Department, is attached as Exhibit A. The Court will email the parties a revised version of the Excel spreadsheet, which the parties shall fill in and provide to the Court as set forth in the Court's December 1, 2014 order. (ECF No. 100.) SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/15/2014)(dnd) (Entered: 12/15/2014)
12/16/2014	129	ORDER as to Ross William Ulbricht. Further to the Court's questions and concerns as expressed on the record on December 15, the court needs to further understand the government's legal theory as to the following: 1. Does the government contend that the defendant was the hub in a hub and spoke conspiracy -- or would the government characterize his alleged position otherwise? 2. If the defendant is alleged to be at the center of the conspiracy as a hub or occupying a position akin to a hub, does the government agree that it must prove the existence of a rim to connect the various co-conspirators to each other? If not, please

		provide case law support for the government's position. 3. Does the government contend that all sellers of all types of drugs during the entire conspiracy timeframe were part of a single conspiracy? If so, please provide case law support. 4. What does "mutual dependence" mean as a matter of law and what must the government prove to demonstrate this? Put another way, apart from asserting mutual dependence, must the government show that a seller of LSD on day one of the launch was mutually dependent on a seller of heroin on day 250? 5. How does mutual dependence work when buyers and sellers are targeting particular drugs only? (That is, why does a seller of LSD care about the vibrancy of the marketplace for heroin? What type of proof could establish any necessary inference?) The court would like to have the government's responses before or at the final pre-trial conference. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/16/2014)(bw) (Entered: 12/16/2014)
12/16/2014	130	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 12/16/2014 re: Court's Order Regarding List of Defined Terms Document filed by USA. (Howard, Timothy) (Entered: 12/16/2014)
12/17/2014	131	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 12/17/2014 re: 129 Order,,,,,, re: Response to the Court's December 16 Order . Document filed by USA as to Ross William Ulbricht. (Turner, Serrin) (Entered: 12/17/2014)
12/17/2014	132	MEMO ENDORSEMENT as to Ross William Ulbricht on re: 130 Letter filed by USA. ENDORSEMENT: Ordered: Fine. I just want us to discuss the concept at the FPTC today. I don;t need the stip. before 12/30. (Signed by Judge Katherine B. Forrest on 12/17/2014)(ft) (Entered: 12/17/2014)
12/17/2014		Minute Entry for proceedings held before Judge Katherine B. Forrest: FinalPretrial Conference as to Ross William Ulbricht held on 12/17/2014. Defendant present with attys Joshua Dratel, Lindsay Lewis, and Joshua Horowitz. AUSAs Serrin Turner and Timothy Howard present. Court Reporter present. Conference held. Detention continued. (jp) (Entered: 12/18/2014)
12/18/2014	133	ENDORSED LETTER as to Ross William Ulbricht addressed to Forrest NYSD Chambers from NYSD Help Desk dated 12/10/2014 re: Letter received from attorney Joshua Dratel to have document number 109 removed from docket. Document was inadvertently filed on the CM/ECF system, and should have instead been filed under seal. ENDORSEMENT: ECF No. 109 to be removed from the public docket. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/17/2014)(dnd) (Entered: 12/18/2014)
12/19/2014	134	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 12/19/2014 re: Request for One-Week Adjournment of Trial . Document filed by USA as to Ross William Ulbricht. (Turner, Serrin) (Entered: 12/19/2014)
12/19/2014	135	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/19/2014)
12/19/2014	136	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/19/2014)
12/19/2014	137	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/19/2014)

12/19/2014	138	SEALED DOCUMENT placed in vault. (nm) (Entered: 12/19/2014)
12/19/2014	139	ORDER as to Ross William Ulbricht. Potential jurors will be given the questionnaire on Monday, January 5, 2015. It is anticipated that the parties will have access to the questionnaires by 3:00 p.m. on that day. The parties shall agree as between themselves which side shall take the laboring oar of filling in the spreadsheet based on juror responses. Both sides must agree that the Excel spreadsheet properly reflects the questionnaire responses. The parties shall then confer and present the Court with a list of jointly agreed strikes as well as a list of non-agreed requested strikes not later than Thursday, January 8, 2015 at 5:00 p.m. (The Court must call prospective jurors who do not need to appear.) The Court shall review all agreed cause-strikes and those proposed by one side but not agreed by the other. The Court may determine that it is appropriate to strike one or more of these (or other) potential jurors. The Court will then separate the remaining jurors into two waves: the first wave will be those jurors who do not have potential or likely cause issues, and the second wave will be all others. The Court intends to proceed with voir dire initially using the first wave of potential jurors. The second wave of potential jurors shall only be called to the courtroom if necessary. The updated juror questionnaire (reflecting the change in trial start date) is attached. SO ORDERED. (Signed by Judge Katherine B. Forrest on 12/19/2014)(ft) (Entered: 12/19/2014)
12/19/2014	140	MEMO ENDORSEMENT as to Ross William Ulbricht on re: 134 LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 12/19/2014 re: Request for One-Week Adjournment of Trial filed by USA. ENDORSEMENT: ORDERED: Application Granted. Trial adjourned to Tuesday, January 13, 2015, at 9:00 am. Order re jury selection process to follow. (Jury Trial set for 1/13/2015 at 09:00 AM before Judge Katherine B. Forrest.) (Signed by Judge Katherine B. Forrest on 12/19/2014)(ft) Modified on 12/19/2014 (ft). (Entered: 12/19/2014)
12/29/2014	141	SEALED DOCUMENT placed in vault. (rz) (Entered: 12/29/2014)
01/07/2015	142	OPINION & ORDER as to Ross William Ulbricht. Defendant's motion to preclude certain evidence regarding Silk Road product listings and transactions is DENIED, subject to the ruling in subpart F. Defendant's motions to preclude evidence of defendant's murder-for-hire solicitations and to strike references to such solicitations as surplusage are DENIED. The Government's corresponding motion to allow the murder-for-hire evidence is GRANTED. Defendant's motion to preclude certain Government exhibits as insufficiently authenticated is DENIED. Defendant can renew this motion as to any particular exhibit when it is offered at trial. Defendant's motion to preclude evidence that he ordered fraudulent identification documents from Silk Road is DENIED. The Government's corresponding motion to allow this evidence is GRANTED. Defendant's motion to preclude a variety of government exhibits not covered by the other motions in limine is GRANTED in part and DENIED in part. The specific rulings are set forth above. DENIED. The Government's motions to preclude argument and evidenceregarding (1) any potential consequences of conviction, and (2) defendant's political views or other excuses is DENIED as moot. The Clerk of Court is directed to terminate the motions at ECF Nos. 108 and 112. (Signed by Judge Katherine B. Forrest on 1/7/2015)(ft) (Entered: 01/07/2015)

01/08/2015	143	SEALED DOCUMENT placed in vault. (rz) (Entered: 01/08/2015)
01/09/2015	144	ORDER as to Ross William Ulbricht. The Court has reviewed the list of strikes to which both parties have consented. The Court agrees, and hereby strikes the following prospective jurors: 3, 9, 13, 18, 22, 24, 25, 34, 35, 36, 40, 42, 44, 47, 48, 54, 57, 67, 68, 69, 71, 72, 74, 76, 78, 79, 80, 82, 83, 84, 88, 94, 95, 96, 99, 100, 103, 105, 108, 109, 125, 126, 128, 129, 131, 132, 133, 142, 145, 147, 149, 150, 151, 161, 172, 174, 177, 179, 182. Based on its review of the questionnaires, the Court also strikes the following prospective jurors: 6, 7, 8, 14, 16, 20, 31, 37, 39, 45, 46, 56, 58, 60, 62, 64, 86, 91, 117, 118, 120,122, 123, 130, 139, 144, 148, 152, 157, 158, 160, 167, 183. The parties shall provide the Court with printed copies of all filled-out juror questionnaires, marked with each jurors number, as soon as is practicable, but not later than Saturday, January 10, 2015. (Signed by Judge Katherine B. Forrest on 1/9/15)(jw) (Entered: 01/09/2015)
01/09/2015	145	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Conference held on 12/17/2014 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Andrew Walker, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/2/2015. Redacted Transcript Deadline set for 2/12/2015. Release of Transcript Restriction set for 4/13/2015. (McGuirk, Kelly) (Entered: 01/09/2015)
01/09/2015	146	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Conference proceeding held on 12/17/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 01/09/2015)
01/09/2015	147	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated January 9, 2015 re: the reading of internet communications during trial (Dratel, Joshua) (Entered: 01/09/2015)
01/12/2015	148	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serkin Turner dated 10/13/2014 re: The Government respectfully submits this letter in response to the Court's order dated October 8, 2014. ENDORSEMENT: Ordered: Post to docket. (Signed by Judge Katherine B. Forrest on 1/12/2015)(ft) (Entered: 01/12/2015)
01/12/2015	149	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay Lewis dated 1/8/2015 re: As per the Court's September 16, 2014, Order, attached please find (1) the Excel spreadsheet prepared from the juror questionnaire submitted on behalf of Mr. Ulbricht in the above-captioned case; and (2) s a cover letter explaining the contents of the spreadsheet. ENDORSEMENT: Ordered: Post to docket. (Signed by Judge Katherine B. Forrest on 1/12/2015)(ft) (Entered: 01/12/2015)
01/12/2015	150	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serkin Turner dated 8/21/2014 re: The Government respectfully

		requests that the defendant's arraignment on the Superseding Indictment be scheduled for the same time as the upcoming pretrial conference presently scheduled for September 5, 2014, at 12:00 p.m. ENDORSEMENT: Ordered: Post to docket. Dealt with in ordinary course. (Signed by Judge Katherine B. Forrest on 1/12/2015)(ft) (Entered: 01/12/2015)
01/12/2015	151	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/13/2015)
01/12/2015	152	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/13/2015)
01/12/2015	153	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/13/2015)
01/13/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Voir Dire held and Jury Trial begun on 1/13/2015 as to Ross William Ulbricht. (jp) (Entered: 02/05/2015)
01/14/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/14/2015. (jp) (Entered: 02/05/2015)
01/15/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/15/2015. (jp) (Entered: 02/05/2015)
01/19/2015	154	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/19/2015 re: Striking/Preclusion of Testimony . Document filed by USA as to Ross William Ulbricht. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Turner, Serrin) (Entered: 01/19/2015)
01/19/2015	155	LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated January 19, 2015 re: 154 LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/19/2015 re: Striking/Preclusion of Testimony . re: the governments January 19, 2015, letter seeking preclusion of certain questioning of Homeland Security Investigations Special Agent Jared Der-Yeghiayan . Document filed by Ross William Ulbricht. (Lewis, Lindsay) (Entered: 01/19/2015)
01/20/2015	156	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 1/19/15 re: About twenty minutes ago, while eating dinner, I broke a tooth. Obviously, I would very much like to get to the dentist as quickly as possible but of course there's the ongoing trial. I'm confident I could get in to see my dentist tomorrow morning at 9 a.m. but don't know anything beyond that. I also don't know how I would feel in the morning. If anyone (including AUSA's) sees this e-mail tonight, please let me know everyone's position on how to proceed..ENDORSEMENT: It is too late to have the jury stay home so they will be here. Go to the dentist and let us know ASAP what your schedule/status is. (Signed by Judge Katherine B. Forrest on 1/20/15) (jw) (Entered: 01/20/2015)
01/20/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/20/2015. (jp) (Entered: 02/05/2015)
01/21/2015	157	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 1/20/15 re: Please find attached highlighted excerpts of SA Der-Yeghiayan's testimony that the Government respectfully

		requests be stricken from the record in accordance with the Court's ruling from this morning...ENDORSEMENT...Post to docket. (Signed by Judge Katherine B. Forrest on 1/21/15)(jw) (Entered: 01/21/2015)
01/21/2015	158	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/21/2015)
01/21/2015	159	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/21/2015)
01/21/2015	160	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/21/2015)
01/21/2015	161	SEALED DOCUMENT placed in vault. (nm) (Entered: 01/21/2015)
01/21/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/21/2015. (jp) (Entered: 02/05/2015)
01/22/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/22/2015. (jp) (Entered: 02/05/2015)
01/23/2015	162	ORDER as to Ross William Ulbricht. Attached to this Order are draft jury instructions. The Court will separately e-mail a Word version of these instructions to the parties. The parties shall submit any proposed revisions to the instructions not later than Monday evening, January 26, 2015. The Court will hold the first charging conference on Tuesday, January 27, 2015, at 9 a.m. (Signed by Judge Katherine B. Forrest on 1/23/2015)(bw) (Entered: 01/23/2015)
01/26/2015	163	ENDORSED LETTER as to Ross William Ulbricht on E-Mail addressed to Judge Forrest's Chambers from AUSA Serrin Turner dated 1/22/2015 08:40 AM re: Please see the attached letter concerning the admissibility of the statement from the Complaint that was raised yesterday morning. The Government will plan to file the letter later today on ECF. Also attached is a relevant case. ENDORSEMENT: Post to docket. (Signed by Judge Katherine B. Forrest on 1/23/2015)(bw) (Entered: 01/26/2015)
01/26/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/26/2015. (jp) (Entered: 02/05/2015)
01/28/2015	164	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/28/2015 re: 162 Order, Set Deadlines/Hearings,, re: Modification of Jury Charges . Document filed by USA as to Ross William Ulbricht. (Turner, Serrin) (Entered: 01/28/2015)
01/28/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/28/2015. (jp) (Entered: 02/05/2015)
01/29/2015	165	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/29/2015 re: Preclusion of Expert Testimony . Document filed by USA as to Ross William Ulbricht. (Attachments: # 1 Exhibit A)(Turner, Serrin) (Entered: 01/29/2015)
01/29/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 1/29/2015. (jp) (Entered: 02/05/2015)
01/30/2015	166	ORDER as to Ross William Ulbricht. Any party wishing to submit additional materials regarding the jury instructions shall do so not later than 5 p.m. today, January 30, 2015. This applies to all proposed changes except those that cannot be reasonably anticipated because the evidentiary record has not yet been closed. SO

		ORDERED. (Signed by Judge Katherine B. Forrest on 1/30/2015)(ft) (Entered: 01/30/2015)
01/30/2015	167	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 1/30/2015 re: Requests to Charge and Defense Exhibits Document filed by USA. (Howard, Timothy) (Entered: 01/30/2015)
01/30/2015	168	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated January 30, 2015 re: Requests to Charge (Dratel, Joshua) (Entered: 01/30/2015)
01/30/2015	169	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 01/30/2015 re: Defense Letter re: Requests to Charge Document filed by USA. (Turner, Serrin) (Entered: 01/30/2015)
01/31/2015	170	LETTER MOTION addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 1/31/2015 re: Motion to Preclude Expert Testimony of Dr. Steven M. Bellovin . Document filed by USA as to Ross William Ulbricht. (Attachments: # 1 Exhibit A)(Howard, Timothy) (Entered: 01/31/2015)
01/31/2015	171	**FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU** - LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated January 31, 2015 re: 165 LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/29/2015 re: Preclusion of Expert Testimony . re: To Permit the Expert Testimony of Defense Witness Andreas Antonopoulos . Document filed by Ross William Ulbricht. (Dratel, Joshua) Modified on 2/3/2015 (ka). (Entered: 01/31/2015)
01/31/2015	178	OPINION & ORDER as to Ross William Ulbricht. Any further submissions regarding defendants proposed expert witness Andreas M. Antonopoulos shall be submitted not later than 2:00 p.m. today, January 31, 2015. Any other motions regarding experts must be received by 4:00 p.m. today, January 31, 2015. Any response to any such new motions shall be submitted not later than 12:00 p.m. tomorrow, February 1, 2015. SO ORDERED. (Signed by Judge Katherine B. Forrest on 1/31/2015)(ft) (Entered: 02/05/2015)
01/31/2015		Set/Reset Deadlines/Hearings as to Ross William Ulbricht: Motions due by 1/31/2015. Responses due by 2/2/2015. (ft) (Entered: 02/05/2015)
01/31/2015	179	ORDER as to Ross William Ulbricht. The defense shall disclose any exhibits it proposes to use with experts or otherwise to the Government not later than 5 p.m. today, January 31, 2015. SO ORDERED. (Signed by Judge Katherine B. Forrest on 1/31/2015)(ft) (Entered: 02/05/2015)
01/31/2015	180	OPINION & ORDER as to Ross William Ulbricht. The Court is unclear as to whether there is an additional expert who has been disclosed. Any additional expert would have to have been disclosed before nowif such a disclosure has not been made by now, it is untimely and shall not be allowed. All exhibits relating to defense witnesses shall be made not later than 10:00 p.m. this evening, January 31, 2015. SO ORDERED. (Signed by Judge Katherine B. Forrest on 1/31/2015) (ft) (Entered: 02/05/2015)
01/31/2015	181	OPINION & ORDER as to Ross William Ulbricht. The Court has just learned that

		on January 30, 2015, defendant noticed an additional expert witness, Mr. Steven M. Bellovin. The Government has moved to preclude Bellovin from testifying. (ECF No. 70.) Defendant shall respond to the Government's motion to preclude Bellovin's testimony not later than Sunday, February 1, 2015 at 9:00 a.m. Today's 10:00 p.m. deadline for defendant's response to the Government's motion to preclude the testimony of Andreas M. Antonopoulos (ECF No. 165) remains in place. SO ORDERED. (Responses due by 2/1/2015) (Signed by Judge Katherine B. Forrest on 1/31/2015)(ft) (Entered: 02/05/2015)
02/01/2015	172	**FILING ERROR - WRONG EVENT TYPE SELECTED FROM MENU** - LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated February 1, 2015 re: 170 LETTER MOTION addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 1/31/2015 re: Motion to Preclude Expert Testimony of Dr. Steven M. Bellovin . re: To Admit the Expert Testimony of Defense Witness Dr. Steven Bellovin . Document filed by Ross William Ulbricht. (Dratel, Joshua) Modified on 2/3/2015 (ka). (Entered: 02/01/2015)
02/01/2015	173	OPINION & ORDER as to Ross William Ulbricht. Lawyers and clients make tactical decisions. The Court cannot always understand why certain decisions are made, nor need it. But when tactical decisions run contrary to established rules and case law, the Court's duty is clear. The Court is duty-bound to apply the law as it exists, not as any party wishes it to be....[See this Opinion & Order]... Why did the defense choose to proceed as it has? This Court cannot know.Perhaps a tactical choice not to show the defenses hand; perhaps to try andaccumulate appeal points; perhaps something else. In any event, the outcome ofthese choices is that the Court hereby GRANTS the Government's motions topreclude the testimony of both experts. (ECF Nos. 165, 170.)...[See this Opinion & Order]... II. CONCLUSION: For the reasons set forth above, the Government's motions to preclude are GRANTED. The Clerk of Court is directed to close the motions at ECF Nos. 165 and 170. SO ORDERED. (Signed by Judge Katherine B. Forrest on 2/1/2015)(bw) (Entered: 02/02/2015)
02/02/2015	174	OPINION & ORDER as to (14-Cr-68-1) Ross William Ulbricht. Pending before the Court are several applications by the parties to modify the proposed jury instructions circulated by the Court on January 23, 2015. (ECF No. 162.) This Opinion & Order sets forth the Court's determinations as to several proposed modifications.(See Footnote 1 on page 1 of this Opinion & Order)....[See Opinion & Order]... The Clerk of Court is directed to terminate the motion at ECF No. 164. SO ORDERED. (Signed by Judge Katherine B. Forrest on 2/2/2015)(bw) (Entered: 02/02/2015)
02/02/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 2/2/2015. (jp) (Entered: 02/05/2015)
02/03/2015		**NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Joshua Lewis Dratel as to Ross William Ulbricht: to RE-FILE Document 172 LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated February 1, 2015 re: 170 LETTER MOTION addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 1/31/2015 re: Motion to Preclude Ex. Use the document type Response to Motion found under the document list**

		Replies, Opposition and Supporting Documents. (ka) (Entered: 02/03/2015)
02/03/2015		**NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Joshua Lewis Dratel as to Ross William Ulbricht: to RE-FILE Document 171 LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated January 31, 2015 re: 165 LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/29/2015 re: Preclusion of Expert Testimo. Use the document type Response to Motion found under the document list Replies, Opposition and Supporting Documents. (ka)** (Entered: 02/03/2015)
02/03/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held on 2/3/2015. (jp) (Entered: 02/05/2015)
02/04/2015	175	LETTER RESPONSE to Motion by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated January 31, 2015 re: 165 LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 01/29/2015 re: Preclusion of Expert Testimony .. (Dratel, Joshua) (Entered: 02/04/2015)
02/04/2015	176	LETTER RESPONSE to Motion by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated February 1, 2015 re: 170 LETTER MOTION addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 1/31/2015 re: Motion to Preclude Expert Testimony of Dr. Steven M. Bellovin .. (Dratel, Joshua) (Entered: 02/04/2015)
02/04/2015	177	ORDER as to Ross William Ulbricht. Attached are the jury instructions as delivered on February 4, 2015. SO ORDERED. (Signed by Judge Katherine B. Forrest on 2/4/2015)(bw) (Entered: 02/04/2015)
02/04/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest:Jury Trial as to Ross William Ulbricht held and concluded on 2/4/2015. (jp) (Entered: 02/05/2015)
02/05/2015	182	Jury Note docketed as Court Exhibit 1 as to Ross William Ulbricht filed. (jp) (Entered: 02/05/2015)
02/05/2015	183	JURY VERDICT as to Ross William Ulbricht (1) Guilty on Count 1s,2s,3s,4s,5s,6s,7s. (jp) (Entered: 02/05/2015)
02/05/2015	184	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner dated 2/2/2015 re: Statement by Andrew Jones. ENDORSEMENT: Ordered: Post to Docket. (Signed by Judge Katherine B. Forrest on 2/5/2015)(ft) (Entered: 02/05/2015)
02/05/2015	185	ORDER as to Ross William Ulbricht. Attached to this order as Exhibit A is the resume of Steven M. Bellovin, which was submitted by the Government in connection with their motion to preclude him from testifying as an expert. (ECF No. 170.). SO ORDERED. (Signed by Judge Katherine B. Forrest on 2/5/2015)(ft) (Entered: 02/05/2015)
02/05/2015	186	MEMO ENDORSEMENT on DEFENDANT'S SUPPLEMENTAL REQUESTS TO CHARGE as to Ross William Ulbricht. ENDORSEMENT: Ordered: Post to docket. All handwriting is the Court's. (Signed by Judge Katherine B. Forrest on 2/5/2015)(ft) (Entered: 02/05/2015)

02/06/2015	187	ORDER as to Ross William Ulbricht. This Order recites and, where necessary, attaches the various drafts and requests in connection with the jury instructions. 1. The parties' initial joint requests to charge, filed on December 12, 2014, are at ECF No. 123. 2. The draft jury charge provided to the parties on January 23, 2015, is at ECF No. 162. 3. The blackline draft jury charge provided to the Court by the parties on January 27, 2015 is attached as Exhibit A. This blackline reflects the parties' proposed edits to the January 23, 2015 draft jury charge. Appended to the blackline is a list specifying who made each change. 4. The draft jury charge provided to the parties on February 1, 2015 is attached as Exhibit B. 5. Defendant's Supplemental Requests to Charge and proposed jury instruction with respect to character evidence, both submitted to the Court on February 2, 2015, are attached as Exhibit C. 6. The jury charge as delivered is at ECF No. 177.(See Footnote 1 on page 2 of Order). 7. The verdict form provided to the jury is attached as Exhibit D. SO ORDERED. (Signed by Judge Katherine B. Forrest on 2/6/2015)(bw) (Entered: 02/06/2015)
02/06/2015	188	ORDER as to Ross William Ulbricht. The Court requires that post-trial motions be fully briefed one (1) month prior to sentencing, which is currently scheduled for May 15, 2015, at 10:00 a.m. The parties are directed to confer and not later than February 10, 2015, submit to the Court a schedule in which to accomplish the above. In the absence of a proposed schedule from the parties, the Court will set one (Signed by Judge Katherine B. Forrest on 2/6/15)(jw) (Entered: 02/06/2015)
02/06/2015	189	ENDORSED LETTER as to Ross William Ulbricht re: You have reputation evidence about the defendant's character trait for peacefulness and non-violence. You should consider character evidence together with and in the same way as all the other evidence in the case..ENDORSEMENT: Requested by defendant. Post to docket. (Signed by Judge Katherine B. Forrest on 2/6/15)(jw) (Entered: 02/06/2015)
02/09/2015	190	**FILING ERROR - DEFICIENT DOCKET ENTRY - SIGNATURE ERROR** - LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated January 31, 2015 re: Extension for Time for Filing of Response to the government's motion to preclude expert testimony and for the production of defense exhibits to the government (Lewis, Lindsay) Modified on 2/10/2015 (ka). (Entered: 02/09/2015)
02/09/2015	191	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 02/09/2015 re: briefing schedule for post-trial motions Document filed by USA. (Turner, Serrin) (Entered: 02/09/2015)
02/10/2015		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Lindsay Anne Lewis as to Ross William Ulbricht: to RE-FILE Document 190 Letter. ERROR(S): Attorney s/signature missing from document. (ka) (Entered: 02/10/2015)
02/10/2015	192	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated January 31, 2015 re: Extension for Time for Filing of Response to the government's motion to preclude expert testimony and for the production of defense exhibits to the government (Lewis, Lindsay) (Entered: 02/10/2015)
02/10/2015	193	MEMO ENDORSEMENT as to Ross William Ulbricht on re: 191 Letter filed by

		USA. ENDORSEMENT: Ordered: The Government's schedule is adopted. Briefing shall be: defense motions: March 6, 2015, Gov't response: April 3, 2015, defense reply: April 15, 2015. (Signed by Judge Katherine B. Forrest on 2/10/2015)(ft) (Entered: 02/10/2015)
02/10/2015		Set/Reset Deadlines/Hearings as to Ross William Ulbricht: Motions due by 3/6/2015. Replies due by 4/15/2015. Responses due by 4/3/2015. (ft) (Entered: 02/10/2015)
02/18/2015	194	SEALED DOCUMENT placed in vault. (mps) (Entered: 02/18/2015)
02/20/2015	195	SEALED DOCUMENT placed in vault. (mps) (Entered: 02/20/2015)
02/25/2015	196	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/13/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	197	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/13/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	198	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/14/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	199	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/14/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	200	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/15/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Vincent Bologna, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for

		4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	201	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/15/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	202	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/20/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	203	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/20/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	204	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/21/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Vincent Bologna, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	205	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/21/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	206	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/22/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)

02/25/2015	207	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/22/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	208	TRANSCRIPT of Proceedings as to Ross William Ulbricht held on 1/22/2015 corrected trial before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	209	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/22/2015 corrected trial has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	210	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/26/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	211	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/26/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	212	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/29/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)

02/25/2015	213	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/29/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	214	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 1/28/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Vincent Bologna, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	215	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 1/28/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	216	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 2/2/15 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	217	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 2/2/15 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	218	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 2/3/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	219	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht.

		Notice is hereby given that an official transcript of a Trial proceeding held on 2/3/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	220	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Trial held on 2/4/15 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Vincent Bologna, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/23/2015. Redacted Transcript Deadline set for 4/2/2015. Release of Transcript Restriction set for 5/29/2015. (McGuirk, Kelly) (Entered: 02/25/2015)
02/25/2015	221	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Trial proceeding held on 2/4/15 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/25/2015)
03/06/2015	222	MOTION for New Trial *Pursuant to Rule 33, Fed.R.Crim.P.*. Document filed by Ross William Ulbricht. (Dratel, Joshua) (Entered: 03/06/2015)
03/06/2015	223	DECLARATION of Joshua L. Dratel in Support as to Ross William Ulbricht re: 222 MOTION for New Trial *Pursuant to Rule 33, Fed.R.Crim.P...* (Attachments: # 1 Exhibit 3500 Material Chart, # 2 Exhibit Government Exhibit Chart, # 3 Exhibit 1/8/15 Email)(Dratel, Joshua) (Entered: 03/06/2015)
03/06/2015	224	MEMORANDUM in Support by Ross William Ulbricht re 222 MOTION for New Trial *Pursuant to Rule 33, Fed.R.Crim.P...* (Dratel, Joshua) (Entered: 03/06/2015)
03/13/2015	225	SEALED DOCUMENT placed in vault. (mps) (Entered: 03/13/2015)
03/30/2015	226	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Serrin Turner and Timothy T. Howard dated 3/30/2015 re: The Government writes respectfully to inform the Court that the complaint attached hereto as Exhibit A, which concerns a corruption investigation conducted by the U.S. Attorneys Office for the Northern District of California (NDCA), was unsealed today..ENDORSEMENT: SO ORDERED. (Signed by Judge Katherine B. Forrest on 3/30/2015)(jw) (Entered: 03/31/2015)
03/31/2015	227	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 03/31/2015 re: Sealed Filings Document filed by USA. (Attachments: # 1 Sealed Filings)(Turner, Serrin) (Entered: 03/31/2015)
03/31/2015	228	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 03/31/2015 re: unsealing of trial transcripts Document filed by USA. (Turner, Serrin) (Entered: 03/31/2015)

03/31/2015	229	MEMO ENDORSEMENT as to Ross William Ulbricht on re: 228 LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government (by AUSA Serrin Turner / Timothy T. Howard) dated 03/31/2015 re: unsealing of trial transcripts. Yesterday, at the request of the Government, the Court ordered the unsealing of certain sealed filings relating to a corruption investigation by the U.S. Attorney's Office for the Northern District of California (the "NDCA Investigation"). For the same reasons underlying its original request, the Government additionally requests that any courtroom transcripts that were previously scaled due to the existence of the NDCA Investigation now be unsealed. The defense consents to this request. The transcripts at issue include: the sealed portion of the pre-trial conference held on December 15, 2014; and the sealed portions of the trial transcripts, to include: pages 118-19 (January 13, 2015); pages 594-614 (January 20, 2015); pages 1440-42 (January 28, 2015); and pages 2084-97 (February 3, 2015). ENDORSEMENT: SO ORDERED. (Signed by Judge Katherine B. Forrest on 3/31/2015)(bw) (Entered: 04/01/2015)
04/01/2015		Transmission to Sealed Records Clerk: as to Ross William Ulbricht. Transmitted re: 229 Memo Endorsement, to the Sealed Records Clerk for the unsealing of document. (bw) (Entered: 04/01/2015)
04/03/2015	230	MEMORANDUM in Opposition by USA as to Ross William Ulbricht re 222 MOTION for New Trial *Pursuant to Rule 33, Fed.R.Crim.P...* (Attachments: # 1 Exhibit A)(Turner, Serrin) (Entered: 04/03/2015)
04/15/2015	231	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis dated 4/15/2015 re: Adjournment of Reply. ENDORSEMENT: Ordered: Application granted. (Replies due by 4/16/2015.) (Signed by Judge Katherine B. Forrest on 4/15/2015)(ft) (Entered: 04/15/2015)
04/16/2015	232	REPLY MEMORANDUM OF LAW in Support as to Ross William Ulbricht re: 222 MOTION for New Trial *Pursuant to Rule 33, Fed.R.Crim.P.. .* (Attachments: # 1 Exhibit 1: 5/29/13 Email, # 2 Exhibit 2: 8/15/13 Email, # 3 Exhibit 3: Athavale Report 1, # 4 Exhibit 4: Athavale Report 2, # 5 Exhibit 5: Undated Report, # 6 Exhibit 6: Silk Road Investigation Report, # 7 Exhibit 7: 9/20/13 Emails, # 8 Exhibit 8: Defense Exhibit C, # 9 Exhibit 9: Defense Exhibit E) (Dratel, Joshua) (Entered: 04/16/2015)
04/17/2015	233	ORDER as to Ross William Ulbricht. The Government shall notify the Court as soon as practicable as to whether any victims intend to speak at Mr. Ulbricts sentencing; and, if so, the number and the likely duration. The Government shall update the Court on an ongoing basis until the sentencing. (Signed by Judge Katherine B. Forrest on 4/17/2015)(jw) (Entered: 04/17/2015)
04/17/2015	234	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 04/17/2015 re: Sentencing Document filed by USA. (Turner, Serrin) (Entered: 04/17/2015)
04/24/2015	235	LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated April 24, 2015 re: Sentencing Adjournment . Document filed by Ross William Ulbricht. (Dratel, Joshua) (Entered: 04/24/2015)
04/24/2015	236	MEMO ENDORSEMENT granting 235 LETTER MOTION Adjournment of Sentencing as to Ross William Ulbricht (1). ENDORSEMENT: Ordered: The

		Government shall provide the Court with its view as to the request not later than 4/28/15. (Signed by Judge Katherine B. Forrest on 4/24/2015) (ft) (Entered: 04/24/2015)
04/27/2015	237	OPINION & ORDER denying 222 Motion for New Trial as to Ross William Ulbricht (1). For the reasons set forth above, Ulbricht's motion for a new trial is DENIED. The Clerk of Court is directed to terminate the motion at ECF No. 222. SO ORDERED. (Signed by Judge Katherine B. Forrest on 4/27/2015) (ft) (Entered: 04/27/2015)
04/28/2015	238	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from AUSA Timothy T. Howard dated 04/28/2015 re: Defendant's Request for an Adjournment of Sentencing Document filed by USA. (Howard, Timothy) (Entered: 04/28/2015)
04/28/2015	239	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 4/24/15 re: Reschedule Sentencing...ENDORSEMENT: The Court shall have a Fatico Hearing on May 22 at 9am. Defendant shall inform the Court and the Government not later than May 15. The matters as to which the hearing is requested; defendant shall provide any evidence is support of his position and a list of witnesses also by May 15. The sentencing is adjourned only until 5/29/15 at 1pm., as to Ross William Ulbricht(Fatico Hearing set for 5/22/2015 at 09:00 AM before Judge Katherine B. Forrest., Sentencing set for 5/29/2015 at 01:00 PM before Judge Katherine B. Forrest.) (Signed by Judge Katherine B. Forrest on 4/28/15)(jw) (Entered: 04/28/2015)
05/15/2015	240	Sentencing Letter by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 15, 2015 re: the Matters to Which the Fatico Hearing is Addressed and the Evidence in Support of Mr. Ulbricht's Position. (Dratel, Joshua) (Entered: 05/15/2015)
05/15/2015	241	LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 15, 2015 re: the Matters to Which the Fatico Hearing is Addressed and the Evidence in Support of Mr. Ulbricht's Position . Document filed by Ross William Ulbricht. (Lewis, Lindsay) (Entered: 05/15/2015)
05/15/2015	242	DECLARATION of Lindsay A. Lewis, Esq. in Support as to Ross William Ulbricht re: 241 LETTER MOTION addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 15, 2015 re: the Matters to Which the Fatico Hearing is Addressed and the Evidence in Support of Mr. Ulbricht's Position .. (Attachments: # 1 Exhibit 1--Bingham Article: Single Case Study, # 2 Exhibit 2-- Bingham Article: Study of User Experiences, # 3 Exhibit 3-- Bingham Article: Responsible Vendors, # 4 Exhibit 4- Ask a Drug Expert Physician SR Forum Thread, # 5 Exhibit 5-- Dr. X Private Msgs, # 6 Exhibit 6-- Weekly Report ro DPR of Thread Topics, # 7 Exhibit 7-- Msgs Btwn DPR and Dr. X, # 8 Exhibit 8-- Barratt Article: Use of SR, # 9 Exhibit 9-- Ralston Article: End of SR, # 10 Exhibit 10-- Ralston Article: SR Was Better, Safer, # 11 Exhibit 11-- Declaration of Tim Bingham, # 12 Exhibit 12-- Declaration of Dr. Fernando Caudevilla (Dr. X), # 13 Exhibit 13 -- Declaration of Dr. Monica Barratt, # 14 Exhibit 14-- Declaration of Meghan Ralston, # 15 Exhibit 15 -- Curriculum Vitae for Dr. Mark Taff, # 16 Exhibit 16-- List of Documentary Evidence Provided to Dr. Taff) (Lewis, Lindsay) (Entered: 05/15/2015)

05/18/2015	243	ORDER as to Ross William Ulbricht. Please respond by C.O.B. 5/19/2015 or sooner to the following: 1. Does the Government request a Fatico hearing on the facts proffered by the defendant? -- Will the Government be offering any responsive factual materials on those topics? 2. The Court assumes the parties understand that even if they waive a Fatico hearing, the Court will make any necessary findings of fact based on the evidence before it as to matters relevant to sentencing. 3. The Court would like information within five (5) days the parties may have as to whether Silk Road transactions typically involved personal use quantities or resale quantities of narcotics. SO ORDERED: (Signed by Judge Katherine B. Forrest on 5/18/2015)(bw) (Entered: 05/18/2015)
05/18/2015	244	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated May 18, 2015 re: Fatico hearing Document filed by USA. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Turner, Serrin) (Entered: 05/18/2015)
05/19/2015	245	ORDER as to Ross William Ulbricht. The parties are advised that the Court shall review a number of sources cited in the articles submitted by the defense and, to the extent appropriate, refer to them. Among those is Not an Ebay for Drugs: The Cryptomarket Silk Road as a Paradigm Shifting Criminal Innovation by Judith Aldridge and David Dcary-Htu. (Signed by Judge Katherine B. Forrest on 5/19/15)(jw) (Entered: 05/19/2015)
05/19/2015	246	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis dated 5/18/2015 re: Fatico Letter. ENDORSEMENT: Ordered: Post on Docket. (Signed by Judge Katherine B. Forrest on Lindsay A. Lewis)(ft) (Entered: 05/19/2015)
05/19/2015	247	ORDER as to Ross William Ulbricht. As neither side is seeking a Fatico hearing in this matter, the hearing currently scheduled for Friday, May 22, 2015, at 9:00 a.m. is adjourned. Sentencing is scheduled for Friday, May 29, 2015, at 1:00 p.m. Sentencing submissions from the defendant are due May 22, 2015. Government submissions are due May 26, 2015. SO ORDERED. (Brief due by 5/22/2015, Responses due by 5/26/2015, Sentencing set for 5/29/2015 at 01:00 PM before Judge Katherine B. Forrest.) (Signed by Judge Katherine B. Forrest on 5/19/2015) (ft) (Entered: 05/19/2015)
05/19/2015	248	ORDER as to Ross William Ulbricht. The Government has indicated that it has access to a computer with a searchable copy of the Silk Road website. On May 20, 2015, at 4:40 p.m., the Court will hold a conference in Chambers to view the website and run various searches. If defense counsel believe that defendant's presence is necessary, they shall make appropriate arrangements. SO ORDERED. (Status Conference set for 5/20/2015 at 04:40 PM before Judge Katherine B. Forrest.) (Signed by Judge Katherine B. Forrest on 5/19/2015)(ft) (Entered: 05/19/2015)
05/20/2015	249	ORDER as to Ross William Ulbricht. The Court has been reviewing the mitigation materials provided by defendant and has several questions. (*** See this Order complete text. ***). (Signed by Judge Katherine B. Forrest on 5/20/2015)(bw) (Entered: 05/20/2015)
05/20/2015	250	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Timothy T. Howard dated 5/19/2015 re: Please find a copy of the article

		requested. (ft) (Entered: 05/20/2015)
05/26/2015	252	Sentencing Letter by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 22, 2015 re: CORRECTED Sentencing Letter on Behalf of Ross Ulbricht. (Attachments: # 1 Exhibit 1-- Letter of Ross Ulbricht, # 2 Exhibit 2-- Letters on Behalf of Ross Ulbricht (Part 1), # 3 Exhibit 2-- Letters on Behalf Of Ross Ulbricht (Part 2), # 4 Exhibit 2--Letters on Behalf Of Ross Ulbricht (Part 3), # 5 Exhibit 2--Letters on Behalf Of Ross Ulbricht (Part 4), # 6 Exhibit 2--Letters on Behalf Of Ross Ulbricht (Part 5), # 7 Exhibit 3-- Email Re Dr X, # 8 Exhibit 4 -- Photos of Mr. Ulbricht With Family and Friends)(Dratel, Joshua) (Entered: 05/26/2015)
05/26/2015	253	ORDER as to Ross William Ulbricht. Do defense counsel have, and can they allow the Court to temporarily borrow, the following book in hard copy: Jonathan P. Caulkins et al., Rand Drug Policy Research Center, Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers Money? (1997). This book is cited at page 54 of defendants sentencing submission. SO ORDERED. (Signed by Judge Katherine B. Forrest on 5/26/2015)(ft) (Entered: 05/26/2015)
05/26/2015	255	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 5/26/2015 re: Removal of #251. ENDORSEMENT: So ordered. Dkt. #251 to be removed (& replaced). (Signed by Judge Katherine B. Forrest on 5/26/2015)(ft) (Entered: 05/26/2015)
05/26/2015	256	SENTENCING SUBMISSION by USA as to Ross William Ulbricht. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Turner, Serrin) (Entered: 05/26/2015)
05/26/2015		*****DELETED DOCUMENT. Deleted document number 254, as to Ross William Ulbricht. The document was incorrectly filed in this case. (jp)** (Entered: 05/26/2015)
05/26/2015	257	Sentencing Letter by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 05/26/2015 re: Victim Impact Letters. (Attachments: # 1 victim letter from father of Bryan B, # 2 victim letter from sister of Bryan B, # 3 victim letter from mother of Preston B, # 4 victim letter from father of Preston B, # 5 victim letter from mother of Jacob L)(Turner, Serrin) (Entered: 05/26/2015)
05/27/2015	258	ORDER as to Ross William Ulbricht: The parties are advised that the Court is considering whether any of Counts 1 to 4 are duplicative for sentencing purposes and whether Congress intended separate punishments for each. See, e.g., Rutledge v. United States, 517 U.S. 292 (1996) (even concurrent sentences may create issues). In particular, the Court is considering whether Counts 1 and 2, which are based on the same conduct, are duplicative for sentencing purposes, and whether Counts 3 and 4 are. If the parties have views on this issue, they should provide their views in writing not later than May 28, 2015 at noon. (Signed by Judge Katherine B. Forrest on 5/27/2015)(jp) (Entered: 05/27/2015)
05/27/2015	259	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 05/27/2015 re: Lesser Included Offenses to Be Dismissed at Sentencing Document filed by USA. (Turner, Serrin) (Entered:

		05/27/2015)
05/27/2015		As requested in the Government's submission, dated May 18, 2015, the DVD-ROM accompanying the submission will be filed under seal. (jp) (Entered: 05/27/2015)
05/27/2015	260	Sentencing Letter by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated May 27, 2015 re: questions posed in the Court's May 20, 2015, Order regarding the mitigation materials relevant to Mr. Ulbricht's sentencing. (Attachments: # 1 Exhibit 1-- Additional Weekly Reports to DPR, # 2 Exhibit 2-- Buyer Questionnaire, # 3 Exhibit 3-- Vendor Questionnaire, # 4 Exhibit 4-- Dr. X Thread Excerpts)(Lewis, Lindsay) (Entered: 05/27/2015)
05/28/2015	261	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 28, 2015 re: whether certain Counts in the Superseding Indictment are duplicative for sentencing purposes (Dratel, Joshua) (Entered: 05/28/2015)
05/28/2015	262	LETTER by USA as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from the Government dated 05/28/2015 re: Proposed Order of Forfeiture Document filed by USA. (Attachments: # 1 Text of Proposed Order)(Turner, Serrin) (Entered: 05/28/2015)
05/28/2015	263	Sentencing Letter by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 28, 2015 re: Reply to the Government's Sentencing Letter. (Attachments: # 1 Exhibit 5 -- Letter of Michael Van Praagh, # 2 Exhibit 6 -- Letter of Joseph Ernst, # 3 Exhibit 7 -- Dr. Mark L. Taff Formal Report)(Lewis, Lindsay) (Entered: 05/28/2015)
05/28/2015	264	REDACTION byRoss William Ulbricht to 263 Letter - Sentencing, filed by Ross William Ulbricht (Dratel, Joshua) (Entered: 05/28/2015)
05/28/2015	265	Sentencing Letter by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel, Esq. dated May 28, 2015 re: Additional Letter in Support of Ross Ulbricht from Elizabeth Oden. (Attachments: # 1 Exhibit Letter of Elizabeth Oden)(Dratel, Joshua) (Entered: 05/28/2015)
05/28/2015	267	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 5/28/2015 re: Removal of Exhibit #7 to Docket #263. ENDORSEMENT: ORDERED. Application granted. (Signed by Judge Katherine B. Forrest on 5/28/2015)(ft) (Entered: 05/29/2015)
05/29/2015	266	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated May 29, 2015 re: Torchat Logs referenced in Mr. Ulbricht's reply to the government's sentencing letter (Attachments: # 1 Exhibit 1 -- Excerpt from Torchat Log gx5of53tpzvvjwbn, # 2 Exhibit 2--Excepts from Torchat Log "tv32")(Lewis, Lindsay) (Entered: 05/29/2015)
05/29/2015	268	LETTER by Ross William Ulbricht addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated May 29, 2015 re: Correction Regarding the Requested Designation Recommendation by the Court to the Bureau of Prisons (Lewis, Lindsay) (Entered: 05/29/2015)
06/01/2015		Minute Entry for proceedings held before Judge Katherine B. Forrest: Sentencing

		held on 6/1/2015 for Ross William Ulbricht (1) Count 2s,4s,5s,6s,7s. (ajc) (Entered: 06/01/2015)
06/01/2015		DISMISSAL OF COUNTS on Government Motion as to Ross William Ulbricht (1) Count 1,1s,2,3,3s,4. (ajc) (Entered: 06/01/2015)
06/01/2015	269	JUDGMENT as to Ross William Ulbricht (1), Count(s) 1, 1s, 2, 3, 3s, 4, Count is dismissed on the motion of the United States. Count(s) 2s, The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of. For a Count(s) 4s, The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. The court makes the following recommendations to the Bureau of Prisons: PLEASE SEE ADDITIONAL IMPRISONMENT TERMS PAGE FOR RECOMMENDATIONS. ADDITIONAL IMPRISONMENT TERMS; It is respectfully recommended that the defendant be designated to FCI Petersburg I in Virginia in the event that the Bureau of Prisons waive the public safety factor with regard to sentence length. However, if the Bureau of Prisons is not inclined to waive the public safety factor, it is respectfully recommended that the defendant be designated to USP Tuscon, in Arizona, or, as a second choice, USP Coleman II, in Florida. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.; Count(s) 5s, The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently. Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to runconcurrently. ADDITIONAL SUPERVISED RELEASE TERMS; The defendant shall submit his computer, person and place of residence to searched as deemed appropriate by the Probation Department. The defendant must pay the total criminal monetary penalties, $500 special assessment, lump sum payment of $500 due immediately, balance due. ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES; Forfeiture in the amount of $183,961,921.00 is Ordered. (Signed by Judge Katherine B. Forrest on 6/1/15)(ajc) (Entered: 06/01/2015)
06/02/2015	270	MOTION for an Order, pursuant to Rule 38(b)(2), Fed.R.Crim.P., recommending that Mr. Ulbricht's custody be retained at the Metropolitan Correctional Center in New York City pending his direct appeal . Document filed by Ross William Ulbricht. (Lewis, Lindsay) (Entered: 06/02/2015)
06/02/2015	271	DECLARATION of Lindsay A. Lewis, Esq. in Support as to Ross William Ulbricht re: 270 MOTION for an Order, pursuant to Rule 38(b)(2), Fed.R.Crim.P., recommending that Mr. Ulbricht's custody be retained at the Metropolitan Correctional Center in New York City pending his direct appeal .. (Attachments: # 1 Exhibit 1-- Judgment)(Lewis, Lindsay) (Entered: 06/02/2015)

06/03/2015	272	ORDER granting 270 Motion, Custody Location as to Ross William Ulbricht (1). SO ORDERED. New York, New York June 3, 2015, KATHERINE B. FORREST, United States District Judge. (Signed by Judge Katherine B. Forrest on 6/3/15) (ajc) (Entered: 06/03/2015)
06/03/2015	273	PRELIMINARY ORDER OF FORFEITURE/MONEY JUDGMENT as to Ross William Ulbricht. NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREEDTHAT:1. As a result of the offenses charged in Counts Onethrough Seven of the Indictment, to which the defendant wasfound guilty, a money judgment in the amount of $183,961,921 inUnited States currency (the "Money Judgment") shall be enteredagainst the defendant, representing (a) proceeds obtained as aresult of, and property used or intended to be used in anymanner or part to commit or to facilitate the commission of, oneor more of the offenses alleged in Counts One through Four ofthe Indictment; (b) proceeds obtained directly or indirectly asa result of the offenses alleged in Counts Five and Six of theIndictment; and (c) property involved in the offense alleged inCount Seven of the Indictment, or property traceable to suchproperty. Pursuant to Rule 32. 2(b)(4) of the Federal Rulesof Criminal Procedure, upon entry of this Preliminary Order ofForfeiture/Money Judgment, this Preliminary Order ofForfeiture/Money Judgment is final as to the defendant, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," and shall be deemed part of the sentence of the defendant, and shall be included in the judgment of conviction therewith. (Signed by Judge Katherine B. Forrest on 6/3/2015)(jw) (Entered: 06/03/2015)
06/04/2015	274	NOTICE OF APPEAL by Ross William Ulbricht from 269 Judgment, 273 Preliminary Order for Forfeiture of Property. Filing fee $ 505.00, receipt number 465401127234. (nd) (Entered: 06/04/2015)
06/04/2015		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Ross William Ulbricht to US Court of Appeals re: 274 Notice of Appeal - Final Judgment. (nd) (Entered: 06/04/2015)
06/04/2015		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Ross William Ulbricht re: 274 Notice of Appeal - Final Judgment were transmitted to the U.S. Court of Appeals. (nd) (Entered: 06/04/2015)
06/05/2015	275	SEALED DOCUMENT placed in vault. (nm) (Entered: 06/05/2015)
06/05/2015	276	SEALED DOCUMENT placed in vault. (nm) (Entered: 06/05/2015)
06/10/2015		Payment of Special Assessment $500 from Ross William Ulbricht in the amount of $500. Date Received: 6/10/2015. (ew) (Entered: 06/10/2015)
06/30/2015	277	TRANSCRIPT of Proceedings as to Ross William Ulbricht re: Sentence held on 5/29/2015 before Judge Katherine B. Forrest. Court Reporter/Transcriber: Pamela Utter, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/24/2015. Redacted Transcript Deadline set for 8/3/2015. Release of Transcript Restriction set for 10/1/2015. (McGuirk, Kelly) (Entered: 06/30/2015)

06/30/2015	278	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Ross William Ulbricht. Notice is hereby given that an official transcript of a Sentence proceeding held on 5/29/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 06/30/2015)
07/28/2015	279	SEALED DOCUMENT placed in vault. (rz) (Entered: 07/28/2015)
08/31/2015	280	LETTER MOTION addressed to Judge Katherine B. Forrest from the Government dated 08/31/2015 re: Corrections to Transcript and Unsealing of Certain Materials . Document filed by USA as to Ross William Ulbricht. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Turner, Serrin) (Entered: 08/31/2015)
09/02/2015	281	LETTER MOTION addressed to Judge Katherine B. Forrest from Lindsay A. Lewis, Esq. dated September 2, 2015 re: opposing the government's request to unseal the redacted portions of the Courts December 22, 2014, Memorandum Opinion and the two ex parte letters from Mr. Ulbrichts counsel referenced in the Opinion . Document filed by Ross William Ulbricht. (Lewis, Lindsay) (Entered: 09/02/2015)
09/04/2015	282	ENDORSED LETTER as to Ross William Ulbricht addressed to Judge Katherine B. Forrest from Joshua L. Dratel dated 9/2/2015 re: Reschedule Telephonic conference....ENDORSEMENT: Conference adjourned to 9/16/2015 at 5:15pm. Answer/response to complaint extended to 9/21/15(Answer/ Responses due by 9/21/2015, Telephone Conference set for 9/16/2015 at 05:15 PM before Judge Katherine B. Forrest.) (Signed by Judge Katherine B. Forrest on 9/3/2015)(jw) (Entered: 09/04/2015)
09/11/2015	283	ORDER terminating 280 LETTER MOTION as to Ross William Ulbricht (1); terminating 281 LETTER MOTION as to Ross William Ulbricht (1). The Court has reviewed the Governments letter motion dated August 31, 2015 and defendants letter in opposition dated September 2, 2015. As to the requested corrections to the transcript, the Court notes that there arepage and line number discrepancies and typographical errors in the proposedcorrections. The parties shall make the appropriate changes and submit a new version to the Court. The Clerk of Court is directed to terminate the motions at ECF No. 280 and 281. (Signed by Judge Katherine B. Forrest on 9/11/15) (jw) (Entered: 09/11/2015)
10/05/2015	284	SEALED DOCUMENT placed in vault. (mps) (Entered: 10/05/2015)
10/07/2015	285	ORDER as to Ross William Ulbricht. The Court notes that there are page and line number differences between the transcripts that the Court has and the ones that the U.S. Attorneys Office has. The parties shall work with the Court Reporters to make the appropriate changes on the attached pages; such changes are allowed (Signed by Judge Katherine B. Forrest on 10/7/2015)(jw) (Entered: 10/07/2015)
10/07/2015	286	MEMO ENDORSEMENT as to Ross William Ulbricht on E-Mail addressed to Chambers of Judge Katherine B. Forrest from AUSA Serrin Turner dated 10/5/2015 05:32 PM re: Proposed revised corrections. Pursuant to discussions with chambers, I am attaching a revised version of the Government's proposed corrections to the Ulbricht trial transcript. Changes to the original version (which

		are slight) are reflected in red. If there are any additional revisions to the corrections that chambers believes should be made, please let me know and I can make them before filing the revised corrections on ECF. ENDORSEMENT: Post to docket. (Signed by Judge Katherine B. Forrest on 10/7/2015)(bw) (Entered: 10/07/2015)

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13 MAG 2328

Approved: _____
Serrin Turner
Assistant United States Attorney

Before: HONORABLE FRANK MAAS
United States Magistrate Judge
Southern District of New York

UNITED STATES OF AMERICA

- v. -

ROSS WILLIAM ULBRICHT,
a/k/a "Dread Pirate Roberts,"
a/k/a "DPR,"
a/k/a "Silk Road,"

Defendant.

SEALED COMPLAINT

Violations of
21 U.S.C. § 846;
18 U.S.C. §§ 1030 & 1956

COUNTY OF OFFENSE:
NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

Christopher Tarbell, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE
(Narcotics Trafficking Conspiracy)

1. From in or about January 2011, up to and including in or about September 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did distribute and possess with the intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

3. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a

"DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did deliver, distribute, and dispense controlled substances by means of the Internet, in a manner not authorized by law, and aid and abet such activity, in violation of Title 21, United States Code, Section 841(h).

4. The controlled substances involved in the offense included, among others, 1 kilogram and more of mixtures and substances containing a detectable amount of heroin, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, 10 grams and more of mixtures and substances containing a detectable amount of lysergic acid diethylamide (LSD), and 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, in violation of Title 21, United States Code, Sections 812, 841(a)(1), and 841(b)(1)(A).

Overt Acts

5. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. From in or about January 2011, up to and including in or about September 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, owned and operated an underground website, known as "Silk Road," that provided a platform for drug dealers around the world to sell a wide variety of controlled substances via the Internet.

b. On or about March 29, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, in connection with operating the Silk Road website, solicited a Silk Road user to execute a murder-for-hire of another Silk Road user, who was threatening to release the identities of thousands of users of the site.

(Title 21, United States Code, Section 846.)

COUNT TWO
(Computer Hacking Conspiracy)

6. From in or about January 2011, up to and including in or about September 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate

Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit computer hacking offenses in violation of Title 18, United States Code, Section 1030(a)(2).

7. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did intentionally access computers without authorization, and thereby would and did obtain information from protected computers, for purposes of commercial advantage and private financial gain, and in furtherance of criminal and tortious acts in violation of the Constitution and the laws of the United States, in violation of Title 18, United States Code, Section 1030(a)(2).

Overt Acts

8. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. From in or about January 2011, up to and including in or about September 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, owned and operated an underground website, known as "Silk Road," providing a platform facilitating the sale of illicit goods and services, including malicious software designed for computer hacking, such as password stealers, keyloggers, and remote access tools.

COUNT THREE
(Money Laundering Conspiracy)

9. From in or about January 2011, up to and including in or about September 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i).

10. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking and computer hacking, in violation of Title 21, United States Code, Section 841, and Title 18, United States Code, Section 1030, respectively, with the intent to promote the carrying on of such specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

11. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking and computer hacking, in violation of Title 21, United States Code, Section 841, and Title 18, United States Code, Section 1030, respectively, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

Overt Acts

12. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. From in or about January 2011, up to and including in or about September 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, owned and operated an underground website, known as "Silk Road," providing a platform facilitating the sale of controlled substances and malicious software, among other illicit goods and services, and further facilitating the laundering of proceeds from such sales, through the use of a

payment system based on Bitcoins, an anonymous form of digital currency.

b. At some point during the time period from January 2011 to September 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, added a Bitcoin "tumbler" to the Silk Road payment system to further ensure that illegal transactions conducted on the site could not be traced to individual users.

(Title 18, United States Code, Section 1956(h).)

* * *

The bases for my knowledge and for the foregoing charges are, in part, as follows:

13. I have been a Special Agent with the FBI for approximately five years. I am currently assigned to a cybercrime squad within the FBI's New York Field Office. I have been personally involved in the investigation of this matter, along with agents of the Drug Enforcement Administration, the Internal Revenue Service, and Homeland Security Investigations. This affidavit is based upon my investigation, my conversations with other law enforcement agents, and my examination of reports, records, and other evidence. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

OVERVIEW

14. As detailed below, from in or about January 2011, up to and including in or about September 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, has owned and operated an underground website known as "Silk Road." Throughout that time, the Silk Road website has served as a sprawling black-market bazaar, where illegal drugs and other illicit goods and services have been regularly bought and sold by the site's users.

15. In creating Silk Road, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, deliberately set out to establish an online criminal

marketplace outside the reach of law enforcement or governmental regulation. ULBRICHT has sought to achieve this end by anonymizing activity on Silk Road in two ways. First, ULBRICHT has operated Silk Road on what is known as "The Onion Router" or "Tor" network ("Tor"), a special network on the Internet designed to make it practically impossible to physically locate the computers hosting or accessing websites on the network. Second, ULBRICHT has required all transactions on Silk Road to be paid with "Bitcoins," an electronic currency designed to be as anonymous as cash.

16. Based on my training and experience, Silk Road has emerged as the most sophisticated and extensive criminal marketplace on the Internet today. The site has sought to make conducting illegal transactions on the Internet as easy and frictionless as shopping online at mainstream e-commerce websites. The Government's investigation has revealed that, during its two-and-a-half years in operation, Silk Road has been used by several thousand drug dealers and other unlawful vendors to distribute hundreds of kilograms of illegal drugs and other illicit goods and services to well over a hundred thousand buyers, and to launder hundreds of millions of dollars deriving from these unlawful transactions. All told, the site has generated sales revenue totaling over 9.5 million Bitcoins and collected commissions from these sales totaling over 600,000 Bitcoins. Although the value of Bitcoins has varied significantly during the site's lifetime, these figures are roughly equivalent today to approximately $1.2 billion in sales and approximately $80 million in commissions.

17. ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, has controlled and overseen all aspects of Silk Road. ULBRICHT has maintained the computer infrastructure and programming code underlying the Silk Road website; he has determined vendor and customer policies, including deciding what can be sold on the site; he has managed a small staff of online administrators who have assisted with the day-to-day operation of the site; and he alone has controlled the massive profits generated from the operation of the business. ULBRICHT has assumed these roles fully aware of the illegal nature of his enterprise. He has sought throughout to ensure the anonymity of the drug dealers and other illegal vendors operating on Silk Road, as well as to conceal his own identity as the owner and operator of the site. Moreover, ULBRICHT has been willing to pursue violent means to maintain his control of the website and the illegal proceeds it generates for him.

BACKGROUND ON SILK ROAD

Design of the Silk Road Website and the Tor Network

18. In the course of this investigation, I have gained extensive familiarity with the Silk Road website through various means, including undercover activity on the website by myself and other law enforcement agents, as well as forensic analysis of computer servers used to operate the Silk Road website that have been located and imaged during the investigation. Based on my familiarity with the Silk Road website, I know the following about the site's design:

a. The Silk Road website provides a sales platform that allows vendors and buyers who are users of the site to conduct transactions online. The basic user interface resembles those of well-known online marketplaces.

b. However, unlike mainstream e-commerce websites, Silk Road is only accessible on the Tor network. Based on my training and experience, I know the following about Tor:

i. Tor is a special network of computers on the Internet, distributed around the world, that is designed to conceal the true IP addresses of the computers on the network, and, thereby, the identities of the network's users.[1]

ii. Although Tor has known legitimate uses, it also is known to be used by cybercriminals seeking to anonymize their online activity.

iii. Every communication sent through Tor is bounced through numerous relays within the network, and wrapped in numerous layers of encryption, such that it is practically impossible to trace the communication back to its true originating IP address.

iv. Tor likewise enables websites to operate on the network in a way that conceals the true IP addresses of the computer servers hosting the websites. Such "hidden services" operating on Tor have complex web addresses, generated by a

[1] Every computer device on the Internet has an Internet protocol or "IP" address assigned to it, which is used to route Internet traffic to or from the device. A device's IP address can be used to determine its physical location and, thereby, its user.

computer algorithm, ending in ".onion." For example, the address for the Silk Road website is currently "silkroadvb5piz3r.onion."

v. Websites with such ".onion" addresses can be accessed only using Tor browser software. However, such software can be easily downloaded for free on the Internet.

c. In order to access the Silk Road website, a user need only download Tor browser software onto his computer, and then type in Silk Road's ".onion" address into the user's Tor browser. Silk Road's ".onion" address can be found in various online forums and other websites on the ordinary Internet.

d. Upon being directed to the Silk Road website, a user is presented with a black screen containing a prompt for a username and password, as well as a link that says "click here to join." No further explanation about the site is given. Based on my training and experience, such cryptic login screens are often used by criminal websites in order to restrict access to users who already know about the illegal activity on the site (typically through word of mouth on Internet forums) and deliberately seek to enter.

e. Upon clicking the link on the Silk Road login screen to join the site, the user is prompted to create a username and password, and to identify the country where he is located. No other information is requested, and the country-location information entered by the user is not subject to any type of verification.

f. After entering a username and password, the user is then directed to Silk Road's homepage, a sample printout of which, printed on September 23, 2013, is attached hereto as Exhibit A.

g. At the top left corner of the homepage is a logo for the site, labeled "Silk Road anonymous market."

h. On the left side of the screen is a list titled "Shop by Category," which contains links to the various categories of items for sale on the site.

i. In the center of the screen is a collection of photographs reflecting a sample of the current listings on the site.

j. At the top of the screen is a link labeled "messages," which the user can click on to access Silk Road's "private message" system. This system allows users to send messages to one another through the site, similar to e-mails.

k. At the bottom right of the screen is a link labeled "community forums," which leads to an online forum where Silk Road users can post messages to "discussion threads" concerning various topics related to the site (the "Silk Road forum").

l. Also at the bottom right of the screen is a link labeled "wiki," which leads to a collection of "frequently asked questions" and other forms of guidance for site users (the "Silk Road wiki").

m. The bottom right of the screen also contains a third link labeled "customer service," which leads to a customer support page where users can "open a support ticket" and contact an "administrator," who, the page says, "will take care of you personally."

n. Clicking on any of the links to items for sale on the site brings up a webpage containing the details of the listing, including a description of the item, the price of the item, the username of the vendor selling it, and "reviews" of the vendor's "product" posted by previous customers. An example of such a listing is attached hereto as Exhibit B.

o. To buy an item listed, the user can simply click the link in the listing labeled "add to cart." The user is then prompted to supply a shipping address and to confirm the placement of the order.

p. Once the order is placed, it is processed through Silk Road's Bitcoin-based payment system, described further below.

Illegal Goods and Services Sold on the Silk Road Website

19. Based on my familiarity with the Silk Road website, I know the following about the illegal nature of the goods and services sold on the site:

a. The illegal nature of the items sold on Silk Road is readily apparent to any user browsing through its offerings. The vast majority of the goods for sale consist of illegal drugs of nearly every variety, which are openly advertised on the site

as such and are immediately and prominently visible on the site's home page.

b. As of September 23, 2013, there were nearly 13,000 listings for controlled substances on the website, listed under the categories "Cannabis," "Dissociatives," "Ecstasy," "Intoxicants," "Opioids," "Precursors," "Prescription," "Psychedelics," and "Stimulants," among others. Clicking on the link for a particular listing brings up a picture and description of the drugs being offered for sale, such as "HIGH QUALITY #4 HEROIN ALL ROCK" or "5gr UNCUT Crystal Cocaine!!"

c. The narcotics sold on the site tend to be sold in individual-use quantities, although some vendors sell in bulk. The offerings for sale on the site at any single time amount to multi-kilogram quantities of heroin, cocaine, and methamphetamine, as well as distribution quantities of other controlled substances, such as LSD.

d. In addition to illegal narcotics, other illicit goods and services are openly sold on Silk Road as well. For example, as of September 23, 2013:

i. There were 159 listings on the site under the category "Services." Most concerned computer-hacking services: for example, one listing was by a vendor offering to hack into Facebook, Twitter, and other social networking accounts of the customer's choosing, so that "You can Read, Write, Upload, Delete, View All Personal Info"; another listing offered tutorials on "22 different methods" for hacking ATM machines. Other listings offered services that were likewise criminal in nature. For example, one listing was for a "HUGE Blackmarket Contact List," described as a list of "connects" for "services" such as "Anonymous Bank Accounts," "Counterfeit Bills (CAD/GBP/EUR/USD)," "Firearms + Ammunition," "Stolen Info (CC [credit card], Paypal)," and "Hitmen (10+ countries)."

ii. There were 801 listings under the category "Digital goods," including offerings for pirated media content, hacked accounts at various online services such as Amazon and Netflix, and more malicious software. For example, one listing, titled "HUGE Hacking Pack **150+ HACKING TOOLS & PROGRAMS**," described the item being sold as a "hacking pack loaded with keyloggers, RATs, banking trojans, and other various malware."[2]

[2] A "keylogger" is a type of malicious software designed to monitor the keystrokes input into an infected computer and to transmit this data back to the hacker. A "RAT," or "remote

iii. There were 169 listings under the category "Forgeries," placed by vendors offering to produce fake driver's licenses, passports, Social Security cards, utility bills, credit card statements, car insurance records, and other forms of identity documents.

e. Not only are the goods and services offered on Silk Road overwhelmingly illegal on their face, but the illicit nature of the commerce conducted through the website is candidly recognized in the Silk Road wiki and the Silk Road forum. For example:

i. The Silk Road wiki contains a "Seller's Guide" and "Buyer's Guide" containing extensive guidance for users on how to conduct transactions on the site without being caught by law enforcement. The "Seller's Guide," for instance, instructs vendors to "vacuum seal" packages containing narcotics, in order to avoid detection by "canine or electronic sniffers." Meanwhile, the "Buyer's Guide" instructs buyers to "[u]se a different address" from the user's own address to receive shipment of any item ordered through the site, "such as a friend's house or P.O. box," from which the user can then "transport [the item] discreetly to its final destination."

ii. The Silk Road forum likewise contains extensive guidance on how to evade law enforcement, posted by users of the site themselves. For example, in a section of the forum labeled "Security - Tor, Bitcoin, cryptography, anonymity, security, etc.," there are numerous postings by users offering advice to other users on how they should configure their computers so as to avoid leaving any trace on their systems of their activity on Silk Road.

20. Since November of 2011, law enforcement agents participating in this investigation have made over 100 individual undercover purchases of controlled substances from Silk Road vendors, including purchases made from, and substances shipped to, the Southern District of New York. The substances purchased in these undercover transactions have been various Schedule I and II drugs, including ecstasy, cocaine, heroin, LSD, and others. Samples of these purchases have been laboratory-tested and have typically shown high purity levels of

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access tool," is a type of malicious software designed to allow a hacker to remotely access and control an infected computer. A "banking Trojan" is a type of malicious software designed to steal an infected user's bank-account login credentials.

the drug the item was advertised to be on Silk Road. Based on the postal markings on the packages in which the drugs arrived, these purchases appear to have been filled by vendors located in over ten different countries, including the United States. Agents have also made undercover purchases of hacking services on Silk Road, including purchases of malicious software such as password stealers and remote access tools.

Silk Road's Bitcoin-Based Payment System

21. Based on my familiarity with the Silk Road website, I know the following concerning the payment system used to process purchases made through the site:

a. The only form of payment accepted on Silk Road is Bitcoins.

b. Based on my training and experience, I know the following about Bitcoins:

i. Bitcoins are an anonymous, decentralized form of electronic currency, existing entirely on the Internet and not in any physical form. The currency is not issued by any government, bank, or company, but rather is generated and controlled automatically through computer software operating on a "peer-to-peer" network. Bitcoin transactions are processed collectively by the computers composing the network.

ii. To acquire Bitcoins in the first instance, a user typically must purchase them from a Bitcoin "exchanger." In return for a commission, Bitcoin exchangers accept payments of currency in some conventional form (cash, wire transfer, etc.) and exchange the money for a corresponding number of Bitcoins, based on a fluctuating exchange rate. Exchangers also accept payments of Bitcoin and exchange the Bitcoins back for conventional currency, again, charging a commission for the service.

iii. Once a user acquires Bitcoins from an exchanger, the Bitcoins are kept in a "wallet" associated with a Bitcoin "address," designated by a complex string of letters and numbers. (The "address" is analogous to the account number for a bank account, while the "wallet" is analogous to a bank safe where the money in the account is physically stored.) Once a Bitcoin user funds his wallet, the user can then use Bitcoins in the wallet to conduct financial transactions, by transferring Bitcoins from his Bitcoin address to the Bitcoin address of another user, over the Internet.

iv. All Bitcoin transactions are recorded on a public ledger known as the "Blockchain," stored on the peer-to-peer network on which the Bitcoin system operates. The Blockchain serves to prevent a user from spending the same Bitcoins more than once. However, the Blockchain only reflects the movement of funds between anonymous Bitcoin addresses and therefore cannot by itself be used to determine the identities of the persons involved in the transactions. Only if one knows the identities associated with each Bitcoin address involved in a set of transactions is it possible to meaningfully trace funds through the system.

v. Bitcoins are not illegal in and of themselves and have known legitimate uses. However, Bitcoins are also known to be used by cybercriminals for money-laundering purposes, given the ease with which they can be used to move money anonymously.

c. Silk Road's payment system essentially consists of a Bitcoin "bank" internal to the site, where every user must hold an account in order to conduct transactions on the site.

d. Specifically, every user on Silk Road has a Silk Road Bitcoin address, or multiple addresses, associated with the user's Silk Road account. These addresses are stored on wallets maintained on servers controlled by Silk Road.

e. In order to make purchases on the site, the user must first obtain Bitcoins (typically from a Bitcoin exchanger) and send them to a Bitcoin address associated with the user's Silk Road account.

f. After thus funding his account, the user can then make purchases from Silk Road vendors. When the user purchases an item on Silk Road, the Bitcoins needed for the purchase are held in escrow (in a wallet maintained by Silk Road) pending completion of the transaction.

g. Once the transaction is complete, the user's Bitcoins are transferred to the Silk Road Bitcoin address of the vendor involved in the transaction. The vendor can then withdraw Bitcoins from the vendor's Silk Road Bitcoin address, by sending them to a different Bitcoin address, outside Silk Road, such as the address of a Bitcoin exchanger who can cash out the Bitcoins for real currency.

h. Silk Road charges a commission for every transaction conducted by its users. The commission rate varies, generally between 8 to 15 percent, depending on the size of the sale, i.e., the larger the sale, the lower the commission.

i. Silk Road uses a so-called "tumbler" to process Bitcoin transactions in a manner designed to frustrate the tracking of individual transactions through the Blockchain. According to the Silk Road wiki, Silk Road's tumbler "sends all payments through a complex, semi-random series of dummy transactions, . . . making it nearly impossible to link your payment with any coins leaving the site." In other words, if a buyer makes a payment on Silk Road, the tumbler obscures any link between the buyer's Bitcoin address and the vendor's Bitcoin address where the Bitcoins end up - making it fruitless to use the Blockchain to follow the money trail involved in the transaction, even if the buyer's and vendor's Bitcoin addresses are both known. Based on my training and experience, the only function served by such "tumblers" is to assist with the laundering of criminal proceeds.

Volume of Business Activity
Reflected on Silk Road Servers

22. During the course of this investigation, the FBI has located a number of computer servers, both in the United States and in multiple foreign countries, associated with the operation of Silk Road. In particular, the FBI has located in a certain foreign country the server used to host Silk Road's website (the "Silk Road Web Server"). Pursuant to a Mutual Legal Assistance Treaty request, an image of the Silk Road Web Server was made on or about July 23, 2013, and produced thereafter to the FBI. From personally participating in the forensic analysis of the image of the Silk Road Web Server, I have confirmed that Silk Road hosts a large volume of user activity and processes a huge number of financial transactions on a daily basis. For example:

a. As of July 23, 2013, there were approximately 957,079 registered user accounts reflected on the server.[3] This does not necessarily equal the number of actual users of the

[3] According to the country-location information provided by these users upon registering, 30 percent represented they were from the United States, 27 percent chose to be "undeclared," and the remainder claimed to hail from countries across the globe, including, in descending order of prevalence, the United Kingdom, Australia, Germany, Canada, Sweden, France, Russia, Italy, and the Netherlands.

website, since nothing prevents a user from creating multiple accounts. However, based on my training and experience, this volume of user accounts indicates that the site has been visited by hundreds of thousands of unique users.

b. During the 60-day period from May 24, 2013 to July 23, 2013, there were approximately 1,217,218 communications sent between Silk Road users through Silk Road's private-message system. Based on my training and experience, this volume of private messages reflects a large and highly active user base.

c. From February 6, 2011 to July 23, 2013, there were approximately 1,229,465 transactions completed on the site, involving 146,946 unique buyer accounts, and 3,877 unique vendor accounts. The total revenue generated from these sales was 9,519,664 Bitcoins, and the total commissions collected by Silk Road from the sales amounted to 614,305 Bitcoins. These figures are equivalent to roughly $1.2 billion in revenue and $79.8 million in commissions, at current Bitcoin exchange rates, although the value of Bitcoins has fluctuated greatly during the time period at issue.

d. The computer code used to run the Silk Road website reflects the use of certain Bitcoin wallets in the operation of Silk Road's escrow system. The balances in these wallets (obtained from another Silk Road-associated server located in the investigation) show hundreds of thousands of dollars passing in and out of the escrow system on a regular basis, as in the following sample of balances associated with the wallets taken over a two-day time period:

Date/Time	Total Bitcoins	Approx. USD
9/14/2013 6:00 UTC	18205.50649	$2,548,770.91
9/14/2013 12:00 UTC	17420.92877	$2,438,930.03
9/14/2013 18:00 UTC	17088.67959	$2,358,237.79
9/15/2013 0:00 UTC	13950.06159	$1,911,158.44
9/15/2013 6:00 UTC	16143.52567	$2,195,519.49
9/15/2013 12:00 UTC	15955.46307	$2,217,809.37
9/15/2013 18:00 UTC	16069.43546	$2,233,651.53

Based on my training and experience, this flow of funds reflects a brisk business being conducted within Silk Road's illegal marketplace, with users regularly adding funds to their accounts and vendors regularly cashing out.

BACKGROUND ON "DREAD PIRATE ROBERTS," OWNER AND OPERATOR OF SILK ROAD

23. Based on my knowledge of the Silk Road website, I am familiar with an administrator of the site who goes by the username "Dread Pirate Roberts," commonly referred to by Silk Road users as "DPR" (hereafter, "DPR"). Based on my review of DPR's communications on the Silk Road website, as described more fully below, it is clear that DPR is the owner and operator of Silk Road and has been ultimately responsible for running the criminal enterprise it represents. DPR has controlled every aspect of Silk Road's operation, including: the server infrastructure and programming code underlying its website; the user policies governing, among other things, what can be sold on the site; the administrative staff responsible for customer support and other day-to-day functions; and the profits generated as commissions from vendor sales. Moreover, DPR's communications reveal that he has taken it upon himself to police threats to the site from scammers and extortionists, and has demonstrated a willingness to use violence in doing so.

Control of Server Infrastructure

24. Based on my familiarity with the Silk Road forum, I know that DPR has an account on the forum, and that his postings from the account reflect his control of the servers and computer code used to run the Silk Road website. Specifically, from reviewing DPR's postings to the forum from this account, I know the following:

a. The Silk Road forum, in its current form, was created on or about June 18, 2011. DPR's first posting to the forum was made the same day. At that time, DPR's username on the forum was simply "Silk Road." His June 18 posting apologized for a recent service outage, explaining that the forum had been changed and that now "[w]e have it running on a separate server." The message thanked users for their patience and was signed "Silk Road Staff."

b. DPR continued posting messages to the forum under the username "Silk Road" until early February 2012, when he changed his name to "Dread Pirate Roberts." Specifically, in or about early February, 2012, DPR posted the following message from his forum account, still associated with the username "Silk Road" at the time:

> Who is Silk Road? Some call me SR, SR admin or just Silk Road. But isn't that confusing? I am Silk Road,

> the market, the person, the enterprise, everything. But Silk Road has matured and I need an identity separate from the site and the enterprise of which I am now only a part. I need a name.

On February 5, 2012, DPR announced, from this same account, "drum roll please..... my new name is: Dread Pirate Roberts." Thereafter, the username associated with the account changed from "Silk Road" to "Dread Pirate Roberts." The moniker is an apparent reference to a fictional character from the movie "The Princess Bride."

c. Throughout the period from June 18, 2011 to the present, DPR's postings from his Silk Road forum account, under both the username "Silk Road" and the username "Dread Pirate Roberts," make clear that he has controlled the technical infrastructure underlying Silk Road's operation. Among other things, DPR has regularly used the forum to post information concerning service problems with the Silk Road website and his efforts to resolve such problems. For example:

i. On or about February 13, 2012, DPR posted a message on the forum in response to problems users were having withdrawing Bitcoins from their Silk Road accounts. DPR acknowledged the problem and explained what was being done to fix it: "[W]e are still having problems. I am going to roll back the withdrawal system to a configuration known to work and re-evaluate the whole thing. . . . I'll keep this thread updated with progress." In an update posted the next morning, DPR stated: "We are looking at up to 24 more hours until withdrawals can start flowing again. . . . Really sorry, but I think we'll be good to go after this." Later in the day, DPR provided a further update: "Withdrawals are now flowing again. Thank you everyone for your patience throughout this process." Based on my training and experience, these postings and others like them, announcing service changes to the Silk Road website prior to their implementation, show that DPR has been responsible for these changes and has controlled the server infrastructure necessary to make them.

ii. On or about December 1, 2011, DPR announced that he had changed the .onion address for the Silk Road website, stating: "Silk Road now resides at a new, more easily remembered url [i.e., URL address]. Please update your bookmarks and memorize it: silkroadvb5piz3r.onion." One user responded to the posting to suggest that DPR "leave the old addy [address] pointing at the site for a week or two as well so folks get used to it." DPR responded, "I wanted to do that, but

it conflicts with the site code :(" Based on my training and experience, this posting reflects that DPR himself has been responsible for programming the computer code underlying the Silk Road website.

iii. On or about October 19, 2011, DPR posted a message concerning an outage of the Silk Road website, explaining: "We are having to rebuild the site from a backup." DPR assured the site's users: "There was no security breach or anything to worry about that lead [sic] to this situation. We lease server space in different locations around the globe through unaware 3rd parties. We do this to hide the identities of those that run Silk Road in the event of a security breach in one of the servers. Unfortunately this means we have to deal with some unreliable people . . . ." In an update posted two days later, on October 21, 2011, DPR stated: "The light at the end of the tunnel is getting bigger! We have a full capacity server online and are in the process of configuring it." The next day, October 22, 2011, DPR posted another update, stating: "The site just went live. The new server is more powerful and secure than the one we were on before the outage and is leased through a much more professional proxy, so I have high hopes that it will last us a long time." Based on my training and experience, these postings evidence that DPR has been responsible for leasing and maintaining the computer servers used to operate the Silk Road website. Moreover, based on my training and experience, DPR's references to leasing servers through third-party "proxies" in order to "hide the identities of those that run Silk Road" reflect his awareness of the illegal nature of the Silk Road enterprise.

Control of Site Policy

25. DPR has used the Silk Road forum to announce not only technical updates to the Silk Road website, but also changes to Silk Road customer policies - evidencing that he has been the one who sets those policies. For example:

a. On January 9, 2012, DPR posted a message titled, "State of the Road Address," in which he announced, among other things, a change to Silk Road's commission rate: whereas Silk Road had previously charged a "flat commission rate," DPR explained that the site now planned to "charge a higher amount for low priced items and a lower amount for high priced items." The next day, after many users complained about the change, DPR posted a reply, stating: "Whether you like it or not, I am the captain of this ship. You are here voluntarily and if you don't

like the rules of the game, or you don't trust your captain, you can get off the boat."

b. On August 5, 2011, DPR posted a message titled, "forgeries," stating: "We are happy to announce a new category in the marketplace called Forgeries. In this category, you will find offers for forged, government issued documents including fake ids and passports. This category comes with some restrictions, however. Sellers may not list forgeries of any privately issued documents such as diplomas/certifications, tickets or receipts. Also, listings for counterfeit currency are still not allowed in the money section." This posting evidences that DPR has controlled the types of goods and services allowed to be sold on Silk Road, and that he knowingly has permitted the sale of illegal items, such as fraudulent identity documents, on the site.

c. On February 27, 2012, DPR posted a message announcing "a new feature called Stealth Mode," targeted at the site's "superstar vendor[s]" who consider themselves at particular "risk of becoming a target for law enforcement." The posting explained that the listings of a vendor operating in "stealth mode" would not be visible to users searching or browsing the site. Instead, only users who already knew the specific address of the vendor's page on Silk Road would be able to access the vendor's listings, by traveling to the vendor's page directly. This posting again evidences not only that DPR has been aware that the vendors on Silk Road are engaged in illicit trade, but also that he has specifically designed the site to facilitate such trade.

Management of Administrative Staff

26. The communications recovered from the Silk Road Web Server also show that DPR manages a small staff of administrators who assist with the day-to-day operation of the site. Based on my familiarity with these administrators' forum postings and private messages, I know that they have been responsible for monitoring user activity on Silk Road for problems, responding to customer service inquiries, and resolving disputes between buyers and vendors. Moreover, forensic analysis of the Silk Road Web Server confirms that these administrators have special permission settings associated with their Silk Road accounts, allowing them to take various administrative actions on the Silk Road marketplace, such as closing user accounts, removing user postings, reversing transactions, or resetting passwords.

27. From reviewing DPR's private-message communications with these administrators, I know that DPR has functioned as their supervisor and that the administrators have reported to and taken instructions from DPR on a regular basis. For example, the communications show the administrators regularly asking DPR for guidance on how to respond to particular user inquiries or how to handle particular problems that have arisen on the site. The communications also include "weekly reports" sent to DPR by the administrators, summarizing actions they have taken with respect to particular vendors and customers over the course of the week, and listing any important issues requiring DPR's attention. DPR's communications also reflect the administrators routinely checking in with him concerning their work schedule, asking him in advance for permission to take leave, and otherwise addressing him as employees would an employer. One of the administrators, for example, has specifically referred to DPR as "boss" and "captain" in communicating with him.

28. Further, I have reviewed the account pages of these administrators, recovered from the Silk Road Web Server, which reflect the history of their Bitcoin transactions on the site. Their transaction histories reflect that they have received regular weekly payments of Bitcoins, equivalent to $1,000 to $2,000 per week, on average. The payments have been sent to them from a Silk Road account labeled "admin," indicating that the payments have been compensation for their services as administrators. Moreover, from reviewing the administrators' private messages, I know that, after receiving such payments, the administrators sometimes have sent messages to DPR thanking him for the money.

Control over Silk Road Sales Proceeds

29. The contents of the Silk Road Web Server include DPR's own user account page, which reflects, among other things, his history of Bitcoin transactions on the site. DPR's transaction history indicates that he receives a continuous flow of Bitcoins into his Silk Road account. For example, on July 21, 2013 alone, DPR received approximately 3,237 separate transfers of Bitcoins into his account, totaling approximately $19,459. Virtually all of these transactions are labeled "commission" in the "notes" appearing next to them, indicating that the money represents commissions from Silk Road sales. DPR's account page further displays the total amount of Bitcoins deposited in his Silk Road account, which, as of July 23, 2013, equaled more than $3.4 million. Based on analysis of the Silk Road Web Server,

this was, by far, the largest account balance held by any Silk Road user at the time.

DPR's Willingness to Use Violence to Protect His Interests in Silk Road

30. DPR's private communications recovered from the Silk Road Web Server further reveal that DPR has acted as a law unto himself in deciding how to deal with problems affecting Silk Road, and that he has been willing to pursue violent means when he deems that the problem calls for it.

31. For example, DPR's private-message communications from March and April 2013 reveal at least one occasion when DPR solicited a murder-for-hire of a certain Silk Road user, who was attempting to extort money from DPR at the time, based on a threat to release the identities of thousands of Silk Road users. Specifically, the messages reveal the following:

a. Beginning on March 13, 2013, a Silk Road vendor known as "FriendlyChemist" began sending threats to DPR through Silk Road's private message system. In these messages, FriendlyChemist stated that he had a long list of real names and addresses of Silk Road vendors and customers that he had obtained from hacking into the computer of another, larger Silk Road vendor. FriendlyChemist threatened to publish the information on the Internet unless DPR gave him $500,000, which FriendlyChemist indicated he needed to pay off his narcotics suppliers.

b. In one message to DPR dated March 14, 2013, FriendlyChemist elaborated on the consequences for Silk Road if he followed through on this threat:

> what do u . . . think will happen if thousands of usernames, ordr amounts, addresses get leaked? all those people will leave sr [Silk Road] and be scared to use it again. those vendors will all be busted and all there customers will be exposed too and never go back to sr.

c. On March 15, 2013, FriendlyChemist provided DPR a sample of the usernames, addresses, and order information he intended to leak. Also, as proof that he had obtained the data from the vendor whose computer he claimed to have hacked, FriendlyChemist supplied the vendor's username and password on Silk Road so that DPR could verify it.

d. On March 20, 2013, DPR wrote to FriendlyChemist, stating: "Have your suppliers contact me here so I can work something out with them."

e. On March 25, 2013, a Silk Road user named "redandwhite" contacted DPR, stating: "I was asked to contact you. We are the people friendlychemist owes money to. . . . What did you want to talk to us about?"

f. On March 26, 2013, DPR wrote to redandwhite, stating, "Just to be clear, I do not owe him any money. . . . I'm not entirely sure what the best action to take is, but I wanted to be in communication with you to see if we can come to a conclusion that works for everyone. FriendlyChemist aside, we should talk about how we can do business. Obviously you have access to illicit substances in quantity, and are having issues with bad distributors. If you don't already sell here on Silk Road, I'd like you to consider becoming a vendor."

g. Later on March 26, 2013, redandwhite responded: "If you can get FriendlyChemist to meet up with us, or pay us his debt then I'm sure I would be able to get people in our group to give this online side of the business a try."

h. On March 27, 2013, DPR wrote back: "In my eyes, FriendlyChemist is a liability and I wouldn't mind if he was executed . . . . I'm not sure how much you already know about the guy, but I have the following info and am waiting on getting his address." DPR provided a name for FriendlyChemist and stated that he lived in White Rock, British Columbia, Canada, with "Wife + 3 kids." DPR added: "Let me know if it would be helpful to have his full address."

i. Meanwhile, after not hearing anything back from DPR since March 20, 2013, FriendlyChemist sent a message to DPR on March 29, 2013, stating: "u leave me no choice i want 500k usd withn 72hrs or i am going to post all the info i have. . . . i hate to do this but i need the money or im going to release it all. over 5000 user details and about 2 dozen vender identities. wats it going to be?"

j. Several hours later on March 29, 2013, DPR sent a message to "redandwhite," stating that "FriendlyChemist" is "causing me problems," and adding: "I would like to put a bounty on his head if it's not too much trouble for you. What would be an adequate amount to motivate you to find him? Necessities

like this do happen from time to time for a person in my position."

k. After redandwhite asked DPR what sort of problem FriendlyChemist was causing him, DPR responded, in a message dated March 30, 2013: "[H]e is threatening to expose the identities of thousands of my clients that he was able to acquire . . . . [T]his kind of behavior is unforgivable to me. Especially here on Silk Road, anonymity is sacrosanct." As to the murder-for-hire job he was soliciting, DPR commented that "[i]t doesn't have to be clean."

l. Later that same day, redandwhite sent DPR a message quoting him a price of $150,000 to $300,000 "depending on how you want it done" - "clean" or "non-clean."

m. On March 31, 2013, DPR responded: "Don't want to be a pain here, but the price seems high. Not long ago, I had a clean hit done for $80k. Are the prices you quoted the best you can do? I would like this done asap as he is talking about releasing the info on Monday."

n. Through further messages exchanged on March 31, 2013, DPR and redandwhite agreed upon a price of 1,670 Bitcoins - approximately $150,000 - for the job. In DPR's message confirming the deal, DPR included a transaction record reflecting the transfer of 1,670 Bitcoins to a certain Bitcoin address.

o. Several hours later on March 31, 2013, redandwhite wrote back: "I received the payment. . . . We know where he is. He'll be grabbed tonight. I'll update you."

p. Approximately 24 hours later, redandwhite updated DPR, stating: "Your problem has been taken care of. . . . Rest easy though, because he won't be blackmailing anyone again. Ever."

q. Subsequent messages reflect that, at DPR's request, redandwhite sent DPR a picture of the victim after the job was done, with random numbers written on a piece of paper next to the victim that DPR had supplied. On April 5, 2013, DPR wrote redandwhite: "I've received the picture and deleted it. Thank you again for your swift action."

32. Although I believe the foregoing exchange demonstrates DPR's intention to solicit a murder-for-hire, I have spoken with

Canadian law enforcement authorities, who have no record of there being any Canadian resident with the name DPR passed to redandwhite as the target of the solicited murder-for-hire. Nor do they have any record of a homicide occurring in White Rock, British Columbia on or about March 31, 2013.

Identification of "Dread Pirate Roberts" as ROSS WILLIAM ULBRICHT, the Defendant

33. As described in detail below, DPR has been identified through this investigation as ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant. According to ULBRICHT's profile on "linkedin.com" ("LinkedIn"), a professional networking website where members can post information about their work backgrounds and interests, ULBRICHT, 29 years old, graduated from the University of Texas with a Bachelor of Science degree in Physics in 2006. From 2006 to 2010, he attended graduate school at the University of Pennsylvania School of Materials Science and Engineering. However, ULBRICHT states in his LinkedIn profile that, after this time in graduate school, his "goals" subsequently "shifted." ULBRICHT elaborates, obliquely, that he has since focused on "creating an economic simulation" designed to "give people a first-hand experience of what it would be like to live in a world without the systemic use of force" by "institutions and governments." Based on the evidence below, I believe that this "economic simulation" referred to by ULBRICHT is Silk Road.

34. First, I have spoken with another agent involved in this investigation ("Agent-1"), who has conducted an extensive search of the Internet in an attempt to determine how and when the Silk Road website was initially publicized among Internet users. The earliest such publicity found by Agent-1 is a posting dated January 27, 2011, on an online forum hosted at www.shroomery.org, an informational website catering to users of "magic mushrooms" ("Shroomery"). The posting, titled "anonymous market online?," was made by a user identified only by his username, "altoid." The posting stated as follows:

> I came across this website called Silk Road. It's a Tor hidden service that claims to allow you to buy and sell anything online anonymously. I'm thinking of buying off it, but wanted to see if anyone here had heard of it and could recommend it. I found it through silkroad420.wordpress.com, which, if you have a tor browser, directs you to the real site at http://tydgccykixpbu6uz.onion. Let me know what you think...

This was the only message ever posted on the Shroomery forum by "altoid," indicating, based on my training and experience, that he had joined the forum solely to post this message.

35. In the Shroomery posting, "altoid" stated that he "found out" about Silk Road through "silkroad420.wordpress.com," where he stated that Tor users could be redirected to Silk Road on Tor. The address "silkroad420.wordpress.com" is an account on a blogging site known as "Wordpress." According to records obtained from Wordpress, the "silkroad420" account was created on January 23, 2011 - only four days before the posting by "altoid" on the Shroomery blog. (The account was created anonymously by someone who, based on the IP address they used, was using a Tor connection to access the Internet.)

36. After the Shroomery posting made on January 27, 2011, the next reference to Silk Road on the Internet found by Agent-1 is a posting made two days later, on January 29, 2011, at "bitcointalk.org," an online discussion forum relating to Bitcoins ("Bitcoin Talk"). This posting, too, was made by someone using the username "altoid." The posting appeared in a long-running discussion thread started by other Bitcoin Talk users, concerning the possibility of operating a Bitcoin-based "heroin store." In his posting, "altoid" stated:

> What an awesome thread! You guys have a ton of great ideas. Has anyone seen Silk Road yet? It's kind of like an anonymous amazon.com. I don't think they have heroin on there, but they are selling other stuff. They basically use bitcoin and tor to broker anonymous transactions. It's at http://tydgccykixpbu6uz.onion. Those not familiar with Tor can go to silkroad420.wordpress.com for instructions on how to access the .onion site.
>
> Let me know what you guys think

37. Based on my training and experience, the two postings created by "altoid" on Shroomery and Bitcoin Talk appear to be attempts to generate interest in the site. The fact that "altoid" posted similar messages about the site on two very different discussion forums, two days apart, indicates that "altoid" was visiting various discussion forums around this time where Silk Road might be of interest and seeking to publicize the site among the forum users - which, based on my training and experience, is a common online marketing tactic for new

websites. Moreover, the fact that "altoid" ended both messages with "Let me know what you guys think" indicates that "altoid" was not merely interested in sharing his own experience with Silk Road but wanted to collect feedback from other users, again, consistent with an effort to market and improve the site.

38. From further reviewing the Bitcoin Talk forum, Agent-1 located another posting on the forum by "altoid," made on October 11, 2011, approximately eight months after his posting about Silk Road. In this later posting, made in a separate and unrelated discussion thread, "altoid" stated that he was looking for an "IT pro in the Bitcoin community" to hire in connection with "a venture backed Bitcoin startup company." The posting directed interested users to send their responses to "rossulbricht at gmail dot com" - indicating that "altoid" uses the e-mail address "rossulbricht@gmail.com" (the "Ulbricht Gmail Account").

39. According to subscriber records obtained from Google, the Ulbricht Gmail Account is registered to a "Ross Ulbricht." The records indicate that Ulbricht has an account at Google+, a Google-based social networking service. From visiting Ulbricht's publicly accessible profile on Google+, I know that Ulbrict's Google+ profile includes a picture of him, which matches a picture of the LinkedIn profile for "Ross Ulbricht" referenced above in paragraph 33.

40. From visiting Ulbricht's Google+ page, I also know that it contains links to a specific website that DPR has regularly cited in his forum postings. Specifically:

a. Ulbricht's Google+ profile includes a list of Ulbricht's favorite YouTube videos, which includes a number of videos originating from "mises.org," the website of an entity dubbed the "Mises Institute." According to its website, the "Mises Institute" considers itself the "world center of the Austrian School of economics." The website allows visitors to sign up for user accounts on the site and to create a user profile. Through visiting a publicly accessible archived version of the site, I have found a user profile for a "Ross Ulbricht" on the site, which contains a picture of the user that matches the picture of "Ross Ulbricht" appearing on his Google+ profile and LinkedIn profile.

b. Based on my familiarity with DPR's postings on the Silk Road forum, I know that DPR's user "signature" in the forum includes a link to the "Mises Institute" website (one of only two links included in his signature). Moreover, in certain

forum postings, DPR has cited the "Austrian Economic theory" and the works of Ludwig von Mises and Murray Rothbard - economists closely associated with the "Mises Institute" - as providing the philosophical underpinnings for Silk Road.

41. The investigation has also uncovered evidence that, in early June 2013, Ulbricht was residing in San Francisco, California, near an Internet café from which someone logged into a server used to administer the Silk Road website on June 3, 2013. Specifically:

a. I have reviewed records obtained from Google containing logs of the IP addresses used to log into the Ulbricht Gmail Account from January 13, 2013 to June 20, 2013. The IP logs show the account being regularly accessed throughout this time period from a certain Comcast IP address. According to records obtained from Comcast, this IP address was assigned at the time of these logins to a certain address located on Hickory Street in San Francisco, California. The address is associated with another individual whom I know to be a friend of Ulbricht in San Francisco (the "Friend"), whom Ulbricht went to live with when he moved to San Francisco in or about September 2012, according to a video posted on YouTube in which they both appear and make statements to that effect.

b. Based on my review of DPR's private-message communications recovered from the Silk Road Web Server, I know that DPR has regularly specified the Pacific time zone when referring to the time. For example, in one private message, dated April 18, 2013, DPR told another Silk Road user, "It's nearly 4pm PST. I need to run some errands." Based on my training and experience, I believe this tendency indicates that DPR is located in the Pacific time zone - which, of course, is the time zone for San Francisco, California.

c. Further, based on forensic analysis of the Silk Road Web Server, I know that the server includes computer code that was once used to restrict administrative access to the server, so that only a user logging into the server from a particular IP address, specified in the code, could access it. Based on my training and experience, and my familiarity with how server access is commonly configured, I believe this IP address was for a virtual private network server ("VPN Server") - essentially a secure gateway through which DPR could remotely login to the Silk Road Web Server from his own computer. The IP address for the VPN Server resolves to a server hosted by a certain server-hosting company, from which I have subpoenaed

records concerning the VPN Server. The records show that the contents of the VPN Server were erased by the customer leasing it.[4] However, the records reflect the IP address the customer used to access the VPN Server during the last login to the server, which was on June 3, 2013. This IP address is a Comcast address that, according to records subpoenaed from Comcast, resolves to an Internet café on Laguna Street in San Francisco, California. This café is located less than 500 feet away from the Friend's address on Hickory Street regularly used by Ulbricht to log in to the Ulbricht Gmail Account - including at various times on June 3, 2013, according to Google records.

d. Based on my training and experience, this evidence places the administrator of Silk Road, that is, DPR, in the same approximate geographic location, on the same day, as Ulbricht.

42. The investigation has also uncovered evidence that, by July 2013, Ulbricht had moved to a different San Francisco address, where he was shipped a package containing multiple counterfeit identification documents, at the same time that DPR is known to have been seeking such documents on Silk Road. Specifically:

a. From reviewing an investigative report obtained from U.S. Customs and Border Protection ("CBP"), I have learned the following:

i. On or about July 10, 2013, CBP intercepted a package from the mail inbound from Canada as part of a routine border search. The package was found to contain nine counterfeit identity documents. Each of the counterfeit identification documents was in a different name yet all

[4] The code containing the IP address for the VPN Server is "commented out" on the Silk Road Web Server, meaning that it was no longer active as of July 23, 2013, when the image of the server was made. From reviewing DPR's private-message communications recovered from the Silk Road Web Server, I know that, on May 24, 2013, a Silk Road user sent him a private message warning him that "some sort of external IP address" was "leaking" from the site, and listed the IP address of the VPN Server. Based on my training and experience, I believe that in light of this warning DPR deactivated the code containing the VPN Server IP Address, deleted the contents of the VPN Server, and changed the way he accessed the Silk Road Web Server thereafter.

contained a photograph of the same person. The package was directed to an address located on 15th Street in San Francisco, California (the "15th Street Address").

ii. On or about July 26, 2013, agents from Homeland Security Investigations ("HSI") visited the 15th Street Address to investigate further. Agents found a residence there, where they encountered ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, who matched the photographs on the counterfeit identification documents in the package.

iii. The agents showed ULBRICHT a photo of one of the seized counterfeit identity documents, which was a California driver's license bearing ULBRICHT's photo and true date of birth, but bearing a name other than his. ULBRICHT generally refused to answer any questions pertaining to the purchase of this or other counterfeit identity documents. However, ULBRICHT volunteered that "hypothetically" anyone could go onto a website named "Silk Road" on "Tor" and purchase any drugs or fake identity documents the person wanted.

iv. ULBRICHT provided the agents with his true government-issued Texas driver's license. He explained that he sublet a room at the 15th Street Address for $1,000 in monthly rent, which he paid in cash. ULBRICHT stated that there were two other housemates currently residing with him in the house, both of whom knew him by the fake name "Josh."

v. The agents also spoke with one of ULBRICHT's housemates at the address, who stated that ULBRICHT, whom he knew as "Josh," was always home in his room on the computer.

b. Based on my review of DPR's private messages recovered from the Silk Road Web Server, I know that, in June and July 2013, DPR had several communications with other Silk Road users in which he expressed interest in acquiring fake identity documents. For example:

i. In one exchange of messages, dated July 8, 2013, DPR told another Silk Road user that he "needed a fake ID" that he intended to use to "rent servers," explaining that he was "building up my stock of servers." Based on my training and experience, I know that server-hosting companies often require customers to provide some form of identity documents in order to validate who they are. Accordingly, I believe that DPR was seeking fake identity documents that he could use to rent servers under false identities.

ii. In another exchange of messages, dated June 1, 2013, DPR and another Silk Road user – "redandwhite," the same user with whom DPR solicited the murder-for-hire described above – agreed to communicate at a certain time on an Internet chat service, with DPR telling redandwhite, "I have something to discuss with you." Four days later, on June 5, 2013, DPR sent redandwhite a message stating, "hey, just wanted to find out where you are with the dummy ID idea." Redandwhite responded, "I have ran it by my worker and he is working on it."

43. Finally, the investigation has uncovered evidence implicating Ulbricht in running a Tor hidden service, and linking Ulbricht to certain programming code and a certain encryption key found on the Silk Road Web Server. Specifically:

a. Based on my training and experience, I know that the website "stackoverflow.com" ("Stack Overflow") is a website used by computer programmers to post questions about programming problems and to receive suggested solutions from other programmers. According to records obtained from Stack Overflow:

i. On March 5, 2012, a user established an account on Stack Overflow with the username "Ross Ulbricht." Ulbricht provided the Ulbricht Gmail Account as his e-mail address as part of his registration information.

ii. On March 16, 2012, at approximately 8:39 p.m. PDT, Ulbricht posted a message on the site, titled, "How can I connect to a Tor hidden service using curl in php?" Based on my training and experience, I know that "PHP" refers to a programming language used for web servers and "curl" refers to a set of programming commands that can be used in the language. In the contents of the message, Ulbricht quoted twelve lines of computer code involving "curl" commands that he stated he was using "to connect to a Tor hidden service using . . . php," but he reported the code was generating an error. Based on my training and experience, Ulbricht's posting reflects that he was writing a customized computer code designed for a web server operating a Tor hidden service, such as Silk Road.

iii. When a user posts a message on Stack Overflow, the user's username appears along with the post. However, less than one minute after posting the message described in the previous paragraph, Ulbricht changed his username at Stack Overflow from "Ross Ulbricht" to "frosty." Based on my training and experience, I know that criminals seeking to hide their identity online will often use

pseudonymous usernames to conceal their identity. Thus, given the timing, I believe that Ulbricht changed his username to "frosty" in order to conceal his association with the message he had posted one minute before, given that the posting was accessible to anyone on the Internet and implicated him in operating a Tor hidden service.

iv. Several weeks later, Ulbricht changed his registration e-mail on file with Stack Overflow as well, from the Ulbricht Gmail Account to "frosty@frosty.com." According to centralops.net, a publicly available e-mail address lookup service, "frosty@frosty.com" is not a valid e-mail address. Again, based on my training and experience, I know that criminals seeking to hide their identity online will often use fictitious e-mail addresses in subscribing to online accounts. Thus, I believe Ulbricht changed his e-mail address on file with Stack Overflow to a fictitious e-mail address in an attempt to eliminate any connection between his true e-mail address and his posting reflecting his operation of a hidden Tor service.

b. Based on forensic analysis of the Silk Road Web Server, I know that the computer code on the Silk Road Web Server includes a customized PHP script based on "curl" that is functionally very similar to the computer code described in Ulbricht's posting on Stack Overflow, and includes several lines of code that are identical to lines of code quoted in the posting. Based on my training and experience, it appears that the code on the Silk Road Web Server is a revised version of the code described in Ulbricht's posting (which Ulbricht stated in his posting he was seeking to fix given that it was generating an error).

c. Further, again, based on forensic analysis of the Silk Road Web Server, I know the following:

i. As of July 23, 2013, the Silk Road Web Server was configured to allow the administrator of the site, that is, DPR, to log in to the server without the need for a password, so long as the administrator logged in from a computer trusted by the server.

ii. Specifically, based on my training and experience, I know that this configuration involves the use of key-based secure shell ("SSH") logins. To set up this configuration, the administrator must generate a pair of encryption keys - a "public" key stored on the server, and a "private" key stored on the computer he logs into the server from. Once these keys are created, the server can recognize the

administrator's computer based on the link between the administrator's private key and the corresponding public key stored on the server.

iii. Based on my training and experience, I know that SSH encryption keys consist of long strings of text. Different SSH programs generate public keys in different ways, but they all generate public keys in a similar format, with the text string always ending with text in the format "[user]@[computer]." The computer in this substring represents the name of the computer that created the public key, and the user represents the username of the user who created it. For example, if someone creates an SSH key pair using a computer named "MyComputer," while logged into the computer as a user named "John," the public key generated as a result will end with the substring "John@MyComputer."

iv. I have examined the SSH public encryption key stored on the Silk Road Web Server that is used to authenticate administrative logins to the server. The key ends with the substring "frosty@frosty." Based on my training and experience, this means that the administrator of Silk Road has a computer named "frosty," on which he maintains a user account also named "frosty," which he uses to log in to the Silk Road Web Server. Based on my training and experience, I know that computer users often use the same username for different types of accounts. Thus, I believe, particularly given the other ties between "Ross Ulbricht" and "DPR" described above, that the Stack Overflow user "Ross Ulbricht," who changed his username to "frosty" and his e-mail address to "frosty@frosty.com," is the same person as the administrator of Silk Road, that is, DPR, who logs into the Silk Road Web Server from a computer named "frosty," on which he maintains a user account named "frosty."

44. I have obtained from the Texas Department of Motor Vehicles a copy of the driver's license of ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, bearing the same number as the driver's license that ULBRICHT showed to HSI agents during the July 26, 2013 interview described above. The photograph on the license depicts the same person appearing in the photographs of "Ross Ulbricht" on his profiles at Google+, the "Mises Institute," and LinkedIn described above.

45. Accordingly, I believe that the owner and operator of Silk Road is ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant.

WHEREFORE, I respectfully request that an arrest warrant be issued for ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and that he be arrested and imprisoned or bailed, as the case may be.

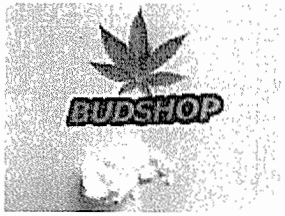
Christopher Tarbell
Special Agent
Federal Bureau of Investigation

Sworn to before me this
27th day of September 2013

HON. FRANK MAAS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

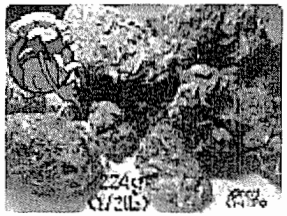
EXHIBIT A

Shop by Category



1g High Quality Cocaine

Ƀ0.8956



HYDROPONIC BUD 224g(1/2lb) BULK BUY -

Ƀ17.1880

5 liters GBL, 99.99% pure

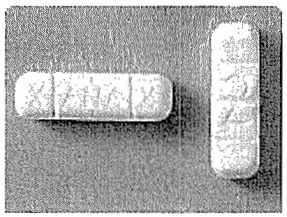
Ƀ9.9474

1g 3-FA / crystalline powder

Ƀ0.1863

25i-NBOMe (hcl) 50mg

Ƀ0.2794

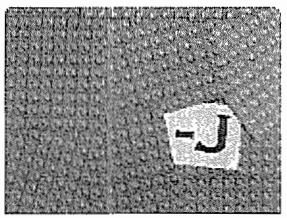


10 Xanax 2mg bar's --USA stock--

Ƀ0.3425

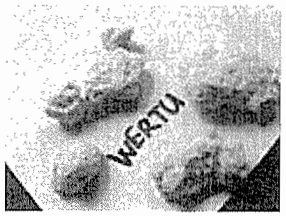
1.0 g Amphetamine Paste HQ German Lab

Ƀ0.1057



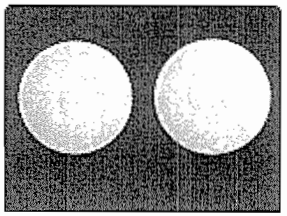
25 LSD Blotters (United Kingdom)

Ƀ1.4835



5G FLINSTONE MEPHEDRONE, Yabba Dabba

Ƀ0.7761



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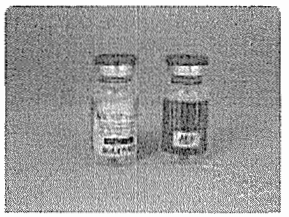
Ƀ0.8522



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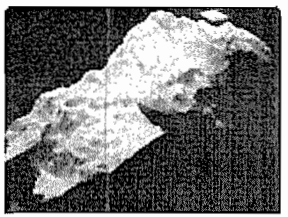
Ƀ0.8522



Custom Listing 50g HQ Pure Cocaine

Ƀ40.7900

From the forum

- Buyer ratings discussion
- Feedback system changes
- HOW TO: Run your own relay and help the Tor network!
- Ask a drug expert physician about drugs and health
- Winning the war on drugs
- New display currencies
- Try Tails for a more secure OS

EXHIBIT B

Silk Road
anonymous market

messages 0 orders 0 account ฿0.0000

Search Go

a few words from the Dread Pirate Roberts

Hi, [redacted] *logout*

Shop by **Category**

HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY

฿1.7198

add to cart bookmark discuss *0* report

Item info:

seller	gotsitall 5.0
ships from	United States of America
ships to	United States of America
category	Heroin

postage options:
COMBINE SHIPPING NC ?

Description

-NEW BATCH 9/15/13 HIGH QUALITY # 4 HEROIN - THIS IS THE USUAL STUFF THAT I NORMALLY HAVE THAT IS WHY THE PRICE HAS GONE DOWN, LAST BATCH WAS THE KILLER FIRE H AND THAT HAS ENDED, I REPEAT THIS NEW BATCH IS THE NORMAL STUFF I USUALLY HAVE.

-THIS IS A MONDAY SHIPPING TUESDAY DELIVERY+ LISTING

-ALL ROCK

-NO POWDER

VACUUM SEALED

-STEALTH SHIPPING

-199$/GRAM

-6 PM UTC CUTOFF TIME IF U ORDER AFTER YOUR ORDER WILL BE SHIPPED NEXT DAY.

----INSURANCE 12.00$-----
- BECAUSE OF CERTAIN PEOPLE GIVING ME PROBLEMS WITH SOME ORDERS I AM NOW OFFERING INSURANCE TO COVER YOUR PACKAGE IN THE EVENT THAT SOMETHING LISTED BELOW HAPPENS, INSURANCE WILL COVER EVERYTHING THAT HAPPENS AFTER I SHIP YOUR PACKAGE OUT, IF YOU DO NOT PURCHASE INSURANCE I WILL NOT RESHIP YOUR PACKAGE. INSURANCE WILL COVER EVERTHING ONLY WHAT IS LISTED BELOW

-PACKAGE DID NOT RECIEVE ITS FIRST SCAN (LOST PACKAGE)
-PACKAGE WAS LOST IN THE MAIL (LOST AFTER INITIAL SCAN)
-PACKAGE WAS DAMAGED
-PACKAGE WAS MISSING CONTENT

-I TAKE A PICTURE OF EVERY PACKAGE MORE THEN 2 GRAMS SO JUST REMEMBER THAT BEFORE U CLAIM A MISSING CONTENT CLAIM I WILL MATCH WHAT U SAY TOWARD THE PICTURE I TAKE.
-PLEASE REMEMBER TO PURCHASE INSURANCE AS A PRECAUTION IF SOMETHING HAPPENED TO YOUR PACKAGE BECAUSE I WILL NOT RESHIP ANYTHING IF U DID NOT PURCHASE INSURANCE

-PGP KEY

-----BEGIN PGP PUBLIC KEY BLOCK-----

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-----END PGP PUBLIC KEY BLOCK-----

Reviews:

sort by: weight go ?

themanwhocan

orders spent vendors
100+ Ƀ100+ 10+

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY qty: 1 price: Ƀ1+ 2d 14h old 5 of 5

next day delivery made it the next day. was in transit shortly after i ordered. product is the same stuff as in picture and came in big chunks. Quality is superb, deffinitly worth the high price to get a more pure product which makes it more cost effective. best stuff ive seen in awhile. its the real deal too non of that fent bullshit. just snorted a small bump and my pain is greatly reduced. thanks alot gotsitall ill be back!

Cobia

orders spent vendors
10+ Ƀ100+ 10+

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY qty: 2 price: Ƀ1+ 3d 18h old 5 of 5

As others have made abundantly clear, gotsitall is an all around stand up guy. He has AMAZING products at more than reasonable prices and his customer support is some of the best I have ever encountered, I was missing some product, and he was just helpful and respectful the entire time, without the typical defensive anger most vendors would display any time there is any mention that product is missing. Through our discussions I was able to figure out what exactly went wrong (Sketchy asshole junky FOAF), and gotsitall was sympathetic and supportive thorough the whole process, even trying figure out how to help me to avoid withdrawal.

TL;DR:
Product 7/5 Awesome Dope (Best domestic stuff I've seen in a while)
Customer Suppoprt/Attitude: 10/5 Just amazing.
Shipping 6/5 Ordered Express Friday at 4pm. Order arrived Monday at 10am.
Stealth 5/5 Nothing lacking here, sealed to be smell/detection proof, wrapped to look like standard mail.

alias hidden

stats: (hidden)

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY 1m 7d old 5 of 5

horrible shipping time! but decent product and it was heavy. despite the b.s shitty shipping i will give 5/5 i feel it is a 5/5

alias hidden

stats: (hidden)

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY 1m 4d old 5 of 5

leaving a 5/5 cuz GIA has never done me wrong so i dont want 1 hick up to reflect his legitimacy because he is the man but my last order was a bit weak for GIA's reputation, had to snort almost triple the amount of this new stuff to get where i was with the old. the product wasnt all rocks like stated(half powder half small rock)vendor didnt even address the fact that i was unhappy with my order but w.e this isnt walmart i guess. Either way GIA always come through and even when the product isnt his best its still probly top 2 of anything else on SR

alias hidden

stats: (hidden)

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY 1m 9d old 5 of 5

Three cheers for GIA. Best vendor on SR! Got my product fast, at a killer price, with great customer service. A++++

A Frend

orders spent vendors

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY qty: 2 price: Ƀ1+ 3d 19h old 5 of 5

Yeah!! ALL chunks off the brick as stated, definitely the GOODS, didn't start the day off

10+ Ƀ100+ 10+

with it for the most accurate strength rating, but a very small shot cut through the fog admirably, dissolved completely in cool water, weight was on point or maybe 50mg. over, and delivery was speedy - what more could you ask, aside from quantity discounts?
Thanks and praises be upon you!

alias hidden
stats: (hidden)

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY 1m 4d old 5 of 5

Great vendor, there was a mix up with the order but gotsitall took care of everything and fixed the situation. Will order again.

AKMedSupply2013
orders spent vendors
10+ Ƀ100+ 10+

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY 15d 18h old unrated

qty: 1 price: Ƀ1+
5/5 everytime!! Perfect stealth and perfect dope to match.Got product in less than 24 hours! Thanks again

radioheadfan5
orders spent vendors
100+ Ƀ100+ 10+

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY qty: 2 price: Ƀ1+ 10d 17h old 5 of 5

Very fast shipping, great stealth, awesome product. You can't do better then GiA!

alias hidden
stats: (hidden)

review for: HIGH QUALITY #4 HEROIN ALL ROCK DIRECTLY FROM KEY 1m 11d old 5 of 5

on point. as always

1 2 3 > Last ›

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE FORREST

ORIGINAL

- - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA

- v. -

ROSS WILLIAM ULBRICHT,
a/k/a "Dread Pirate Roberts,"
a/k/a "DPR,"
a/k/a "Silk Road,"

Defendant.

- - - - - - - - - - - - - - - - - - - x

INDICTMENT

14 Cr. 68

COUNT ONE
(Narcotics Trafficking Conspiracy)

The Grand Jury charges:

BACKGROUND

1. In or about January 2011, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, created an underground website known as "Silk Road," designed to enable users across the world to buy and sell illegal drugs and other illicit goods and services anonymously and outside the reach of law enforcement.

2. From in our about January 2011 through in or about October 2013, when the Silk Road website was shut down by law enforcement authorities, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, owned and operated Silk Road. During that time, Silk Road emerged as the most sophisticated and extensive criminal

marketplace on the Internet. The website was used by several thousand drug dealers and other unlawful vendors to distribute hundreds of kilograms of illegal drugs and other illicit goods and services to well over a hundred thousand buyers worldwide, and to launder hundreds of millions of dollars deriving from these unlawful transactions.

3. ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, controlled all aspects of Silk Road, with the assistance of various paid employees whom he managed and supervised. Through his ownership and operation of Silk Road, ULBRICHT reaped commissions worth tens of millions of dollars, generated from the illicit sales conducted through the site.

4. In seeking to protect his criminal enterprise and the illegal proceeds it generated, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, pursued violent means, including soliciting the murder-for-hire of several individuals he believed posed a threat to that enterprise.

STATUTORY ALLEGATIONS

5. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known

and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

6. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did distribute and possess with the intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

7. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did deliver, distribute, and dispense controlled substances by means of the Internet, in a manner not authorized by law, and aid and abet such activity, in violation of Title 21, United States Code, Section 841(h).

8. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, would and did knowingly and intentionally use a communication facility in committing and in causing and facilitating the commission of acts constituting a felony under Title 21, United States Code, Sections 841, 846, 952, 960, and 963, in violation of Title 21, United States Code, Section 843(b).

9. The controlled substances that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, conspired to distribute and possess with the intent to distribute included, among others, 1 kilogram and more of mixtures and substances containing a detectable amount of heroin, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, 10 grams and more of mixtures and substances containing a detectable amount of lysergic acid diethylamide (LSD), and 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, in violation of Title 21, United States Code, Sections 812, 841(a)(1), and 841(b)(1)(A).

Overt Acts

10. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about January 2011, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, created the Silk Road website, providing a platform for drug dealers around the world to sell a wide variety of controlled substances via the Internet.

b. On or about March 29, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, in connection with operating the Silk Road website, solicited a Silk Road user to execute a murder-for-hire of another Silk Road user, who was threatening to release the identities of thousands of users of the site.

c. On or about October 1, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, logged on as a site administrator to the web server hosting the Silk Road website.

(Title 21, United States Code, Section 846.)

COUNT TWO
(Continuing Criminal Enterprise)

The Grand Jury further charges:

11. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

12. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, engaged in a continuing criminal enterprise, in that he knowingly and intentionally violated Title 21, United States Code, Sections 841, 843 and 846, which violations were part of a continuing series of violations of the Controlled Substances Act, Title 21,

United States Code, Section 801, et seq., undertaken by ULBRICHT, in concert with at least five other persons with respect to whom ULBRICHT occupied a position of organizer, a supervisory position, and a position of management, and from which such continuing series of violations ULBRICHT obtained substantial income and resources.

(Title 21, United States Code, Section 848(a).)

COUNT THREE
(Computer Hacking Conspiracy)

The Grand Jury further charges:

13. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

14. In addition to providing a platform for the purchase and sale of illegal narcotics, the Silk Road website also provided a platform for the purchase and sale of malicious software designed for computer hacking, such as password stealers, keyloggers, and remote access tools. While in operation, the Silk Road website regularly offered hundreds of listings for such products.

STATUTORY ALLEGATIONS

15. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known

and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit computer hacking in violation of Title 18, United States Code, Section 1030(a)(2).

16. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did intentionally access computers without authorization, and thereby would and did obtain information from protected computers, for purposes of commercial advantage and private financial gain, and in furtherance of criminal and tortious acts in violation of the Constitution and the laws of the United States, in violation of Title 18, United States Code, Section 1030(a)(2).

(Title 18, United States Code, Section 1030(b).)

COUNT FOUR
(Money Laundering Conspiracy)

The Grand Jury further charges:

17. The allegations contained in paragraphs 1 through 4 and paragraph 14 of this Indictment are repeated and realleged as if fully set forth herein.

18. ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, designed Silk Road to include a Bitcoin-based payment system that served to facilitate the illegal commerce conducted on the site, including

by concealing the identities and locations of the users transmitting and receiving funds through the site.

STATUTORY ALLEGATIONS

19. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i).

20. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking and computer hacking, in violation of Title 21, United States Code, Section 846, and Title 18, United States Code, Section 1030, respectively, with the intent to promote the carrying on

of such specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

21. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking and computer hacking, in violation of Title 21, United States Code, Section 846, and Title 18, United States Code, Section 1030, respectively, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

(Title 18, United States Code, Section 1956(h).)

FORFEITURE ALLEGATIONS

22. As a result of committing the controlled substance offenses alleged in Counts One and Two of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United

States, pursuant to Title 21, United States Code, Section 853, any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as a result of the offense and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the offenses.

23. As a result of committing the computer hacking offense alleged in Count Three of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(B), any property constituting, or derived from, proceeds obtained directly or indirectly as a result of the offense.

24. As a result of committing the money laundering offense alleged in Count Four of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any property, real or personal, involved in the offense, or any property traceable to such property.

Substitute Asset Provision

25. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third person;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b) and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the above-described forfeitable property.

(Title 18, United States Code, Sections 981 and 982,
Title 21, United States Code, Section 853;
Title 28, United States Code, Section 2461.)

FOREPERSON

PREET BHARARA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

ROSS WILLIAM ULBRICHT,
a/k/a "Dread Pirate Roberts,"
a/k/a "DPR,"
a/k/a "Silk Road,"

Defendant.

INDICTMENT

14 Cr.

(21 U.S.C. § 846, 848(a);
18 U.S.C. §§ 1030(b) & 1956(h))

Foreperson.

PREET BHARARA
United States Attorney.

2/4/14 - Filed Indictment
cc. Case assigned to Judge Forrest
Judge Kevin N. Fox
USMJ.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v-	:	14-cr-68 (KBF)
ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road,"	:	OPINION & ORDER
Defendant.	:	

KATHERINE B. FORREST, District Judge:

On February 4, 2014, a Grand Jury sitting in the Southern District of New York returned Indictment 14 Cr. 68, charging Ross Ulbricht ("the defendant" or "Ulbricht") on four counts for participation in a narcotics trafficking conspiracy (Count One), a continuing criminal enterprise ("CCE") (Count Two), a computer hacking conspiracy (Count Three), and a money laundering conspiracy (Count Four). (Indictment, ECF No. 12.) Pending before the Court is the defendant's motion to dismiss all counts. (ECF No. 19.) For the reasons set forth below, the Court DENIES the motion in its entirety.[1]

The Government alleges that Ulbricht engaged in narcotics trafficking, computer hacking, and money laundering conspiracies by designing, launching, and administering a website called Silk Road ("Silk Road") as an online marketplace for illicit goods and services. These allegations raise novel issues as they relate to the Internet and the defendant's role in the purported conspiracies.

[1] This Opinion & Order addresses various issues both as background informing its decision herein and to preview for the parties a number of issues that are relevant to the trial of this matter.

A conspiracy claim is premised on an agreement between two or more people to achieve an unlawful end. The Government alleges that by designing, launching, and administering Silk Road, Ulbricht conspired with narcotics traffickers and hackers to buy and sell illegal narcotics and malicious computer software and to launder the proceeds using Bitcoin. There is no allegation that Ulbricht conspired with anyone prior to his launch of Silk Road. Rather, the allegations revolve around the numerous transactions that occurred on the site following its launch.

The Government alleges that Silk Road was designed to operate like eBay: a seller would electronically post a good or service for sale; a buyer would electronically purchase the item; the seller would then ship or otherwise provide to the buyer the purchased item; the buyer would provide feedback; and the site operator (i.e., Ulbricht) would receive a portion of the seller's revenue as a commission. Ulbricht, as the alleged site designer, made the site available only to those using Tor, software and a network that allows for anonymous, untraceable Internet browsing; he allowed payment only via Bitcoin, an anonymous and untraceable form of payment.

Following the launch of Silk Road, the site was available to sellers and buyers for transactions. Thousands of transactions allegedly occurred over the course of nearly three years – sellers posted goods when available; buyers purchased goods when desired. As website administrator, Ulbricht may have had some direct contact with some users of the site, and none with most. This online marketplace thus allowed the alleged designer and operator (Ulbricht) to be

anywhere in the world with an Internet connection (he was apprehended in California), the sellers and buyers to be anywhere, the activities to occur independently from one another on different days and at different times, and the transactions to occur anonymously.

A number of legal questions arise from conspiracy claims premised on this framework. In sum, they address whether the conduct alleged here can serve as the basis of a criminal conspiracy – and, if so, when, how, and with whom.

Question One: Can there be a legally cognizable "agreement" between Ulbricht and one or more coconspirators to engage in narcotics trafficking, computer hacking, and money laundering by virtue of his and their conduct in relation to Silk Road? If so, what is the difference between what Ulbricht is alleged to have done and the conduct of designers and administrators of legitimate online marketplaces through which illegal transactions may nevertheless occur?

Question Two: As a matter of law, who are Ulbricht's alleged coconspirators and potential coconspirators? That is, whose "minds" can have "met" with Ulbricht's in a conspiratorial agreement? What sort of conspiratorial structure frames the allegations: one large, single conspiracy or multiple smaller ones?

Question Three: As a matter of law, when could any particular agreement have occurred between Ulbricht and his alleged coconspirators? Need each coconspirator's mind have met simultaneously with Ulbricht's? With the minds of the other coconspirators? That is, if Ulbricht launched Silk Road on Day 1, can he be said, as a matter of law, to have entered into an agreement with the user who

joins on Day 300? Did Ulbricht, simply by designing and launching Silk Road, make an enduring showing of intent?

Question Four: As a matter of law, is it legally necessary, or factually possible, to pinpoint how the agreement between Ulbricht and his coconspirators was made? In this regard, does the law recognize a conspiratorial agreement effected by an end user interacting with computer software, or do two human minds need to be simultaneously involved at the moment of agreement?

Question Five: If Ulbricht was merely the facilitator of simple buy-sell transactions, does the "buyer-seller" rule apply, which in certain circumstances would preclude a finding of a criminal conspiracy?

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The defendant also raises the following additional arguments with respect to Counts One, Two, and Three: the rule of lenity, the doctrine of constitutional avoidance, the void-for-vagueness doctrine, constitutionally defective over-breadth, and a civil immunity statute for online service providers. The Court refers to these collectively as the "Kitchen Sink" arguments. While this is a case of first impression as to the charged conduct, the fact that the alleged conduct constitutes cognizable crimes requires no legal contortion and is not surprising. These arguments do not preclude criminal charges.

With regard to Count Two, the defendant alleges that, as a matter of law, his conduct cannot constitute participation in a CCE (under the so-called "kingpin" statute). The defendant argues that the Indictment fails to allege that he had the

requisite managerial authority in the conspiracy and that the Indictment fails to allege a sufficient "continuing series" of predicate violations. The Court disagrees and finds that the allegations in the Indictment are sufficient.

With regard to Count Three, the defendant contends that the allegations in the Indictment are insufficient to support the type of conduct covered by a computer hacking conspiracy. The defendant confuses the requirement for establishing the violation of the underlying offense with the requirements for establishing a conspiracy to commit the underlying offense; he finds ambiguity where there is none. The Government alleges a legally cognizable claim in Count Three.

Finally, with respect to Count Four, the defendant alleges that he cannot have engaged in money laundering because all transactions occurred through the use of Bitcoin and thus there was therefore no legally cognizable "financial transaction." The Court disagrees. Bitcoins carry value – that is their purpose and function – and act as a medium of exchange. Bitcoins may be exchanged for legal tender, be it U.S. dollars, Euros, or some other currency. Accordingly, this argument fails.

I. THE INDICTMENT

Rule 7(c)(1) of the Federal Rules of Criminal Procedure provides that an indictment "must be a plain, concise, and definite written statement of the essential facts constituting the offense charged." Fed. R. Crim. P. 7(c). It need not contain any other matter not necessary to such statement. Id. ("A count may allege that the

means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means.").

An indictment must inform the defendant of the crime with which he has been charged. United States v. Doe, 297 F.3d 76, 87 (2d Cir. 2002). "By informing the defendant of the charges he faces, the indictment protects the defendant from double jeopardy and allows the defendant to prepare his defense." Id.; United States v. Dhinsa, 243 F.3d 635, 667 (2d Cir. 2001). Rule 7(c) is intended to "eliminate prolix indictments," United States v. Carrier, 672 F.2d 300, 303 (2d Cir. 1982), and "secure simplicity in procedure." United States v. Debrow, 346 U.S. 374, 376 (1953). The Second Circuit has "consistently upheld indictments that do little more than track the language of the statute charged and state the time and place (in approximate terms) of the alleged crime." United States v. Walsh, 194 F.3d 37, 44 (2d Cir. 1999) (internal quotation marks and citation omitted); see also United States v. Cohen, 518 F.2d 727, 733 (2d Cir. 1975).

Nevertheless, "[a] criminal defendant is entitled to an indictment that states the essential elements of the charge against him." United States v. Pirro, 212 F.3d 86, 91 (2d Cir. 2000). "[F]or an indictment to fulfill the functions of notifying the defendant of the charges against him and of assuring that he is tried on the matters considered by the grand jury, the indictment must state some fact specific enough to describe a particular criminal act, rather than a type of crime." Id. at 93.

"An indictment must be read to include facts which are necessarily implied by the specific allegations made." United States v. Stavroulakis, 952 F.2d 686, 693

(2d Cir. 1992) (internal quotation marks and citations omitted). "[C]ommon sense and reason prevail over technicalities." United States v. Sabbeth, 262 F.3d 207, 218 (2d Cir. 2001) ("[A]n indictment need not be perfect."). While an indictment must give a defendant "sufficient notice of the core of criminality to be proven against him," United States v. Pagan, 721 F.2d 24, 27 (2d Cir. 1983) (citation omitted), the "'core of criminality' of an offense involves the essence of the crime, in general terms," and not "the particulars of how a defendant effected the crime." United States v. D'Amelio, 683 F.3d 412, 418 (2d Cir. 2012) (citation omitted).

As with all motions to dismiss an indictment, the Court accepts as true the allegations set forth in the charging instrument for purposes of determining the sufficiency of the charges. See United States v. Sampson, 371 U.S. 75, 78-79 (1962); United States v. Goldberg, 756 F.2d 949, 950 (2d Cir. 1985).

The Indictment here alleges that Ulbricht designed, created, operated, and owned Silk Road, "the most sophisticated and extensive criminal marketplace on the Internet." (Ind. ¶¶ 1-3.) Silk Road operated using Tor, software and a network that enables users to access the Internet anonymously – it keeps users' unique identifying Internet Protocol ("IP") addresses obscured, preventing surveillance or tracking. All purchases occurred on Silk Road using Bitcoin, an anonymous online currency.

Silk Road allegedly functioned as designed – tens of thousands of buyers and sellers are alleged to have entered into transactions using the site, violating numerous criminal laws. Over time, thousands of kilograms of heroin and cocaine

were allegedly bought and sold, as if the purchases were occurring on eBay or any other similar website.

Count One charges that, from in or about January 2011 up to and including October 2013, the defendant engaged in a narcotics trafficking conspiracy. To wit, "the defendant . . . designed [Silk Road] to enable users across the world to buy and sell illegal drugs and other illicit goods and services anonymously and outside the reach of law enforcement." (Ind. ¶ 1.) The defendant allegedly "controlled all aspects of Silk Road, with the assistance of various paid employees whom he managed and supervised." (Ind. ¶ 3.) "It was part and object of the conspiracy" that the defendant and others "would and did deliver, distribute, and dispense controlled substances by means of the Internet" and "did aid and abet such activity" in violation of the law. (Ind. ¶ 7.) The controlled substances allegedly included heroin, cocaine, and lysergic acid diethylamide ("LSD"). (Ind. ¶ 9.) The defendant allegedly "reaped commissions worth tens of millions of dollars, generated from the illicit sales conducted through the site." (Ind. ¶ 3.) According to the Indictment, the defendant "pursued violent means, including soliciting the murder-for-hire of several individuals he believed posed a threat to that enterprise." (Ind. ¶ 4.)

Count Two depends on the conduct in Count One. Count Two alleges that Ulbricht's conduct amounted, over time, to his position as a "kingpin" in a continuing criminal enterprise (again, "CCE"). (Ind. ¶ 12.) Ulbricht is alleged to have engaged in a "continuing series of violations" in concert "with at least five other persons with respect to whom Ulbricht occupied a position of organizer, a

supervisory position, and a position of management, and from which . . . Ulbricht obtained substantial income and resources." (Id.)

Count Three charges that Ulbricht also designed Silk Road as "a platform for the purchase and sale of malicious software designed for computer hacking, such as password stealers, keyloggers, and remote access tools." (Ind. ¶ 14.) "While in operation, the Silk Road website regularly offered hundreds of listings for such products." (Id.) The object of this conspiracy was to "intentionally access computers without authorization, and thereby [to] obtain information from protected computers, for purposes of commercial advantage and financial gain." (Ind. ¶ 16.)

Count Four alleges that Ulbricht "designed Silk Road to include a Bitcoin-based payment system that served to facilitate the illegal commerce conducted on the site, including by concealing the identities and locations of the users transmitting and receiving funds through the site." (Ind. ¶ 18.) "[K]nowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity," Ulbricht and others would and did conduct financial transactions with the proceeds of specified unlawful activity, "knowing that the transactions were designed . . . to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds." (Ind. ¶ 21.)

II. THE LAW OF CONSPIRACY

A. Elements of a Conspiracy

"The essence of the crime of conspiracy . . . is the agreement to commit one or more unlawful acts." United States v. Praddy, 725 F.3d 147, 153 (2d Cir. 2013)

(emphasis in original) (citation omitted); see also Ianelli v. United States, 420 U.S. 770, 777 (1975) ("Conspiracy is an inchoate offense, the essence of which is an agreement to commit an unlawful act."); United States v. Falcone, 311 U.S. 205, 210 (1940); United States v. Beech-Nut Nutrition Corp., 871 F.2d 1181, 1191 (2d Cir. 1989) ("The gist of conspiracy is, of course, agreement."); United States v. Rosenblatt, 554 F.2d 36, 38 (2d Cir. 1977). Put differently, a conspiracy is the "'combination of minds for an unlawful purpose.'" Smith v. United States, – U.S. – , 133 S.Ct. 714, 719 (2013) (quoting United States v. Hirsch, 100 U.S. 33, 34 (1879)).[2]

1. Agreement

A meeting of the minds is required in order for there to be an agreement. Krulewich v. United States, 336 U.S. 440, 447-48 (1949) (Jackson, J. concurring); Rosenblatt, 554 F.2d at 38. Two people have to engage in the "act of agreeing" in order for this requirement to be met. Rosenblatt, 554 F.2d at 38 (internal quotation marks and citation omitted). The conspirators must agree to the object, or unlawful end, of the conspiracy. Id. While the coconspirators need not agree to every detail, they must agree to the "essential nature" of the plan. Blumenthal v. United States, 332 U.S. 539, 557 (1947); Praddy, 725 F.3d at 153 (internal quotation marks and

[2] There is no overt act requirement to establish a violation of a drug conspiracy prosecuted under 21 U.S.C. § 846. See United States v. Shabani, 513 U.S. 10, 11 (1994); United States v. Anderson, 747 F.3d 51, 60 n.7 (2d Cir. 2014). Similarly, a conviction for conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h) does not require proof of an overt act in furtherance of the conspiracy. Whitfield v. United States, 543 U.S. 209, 219 (2005).

citations omitted); United States v. Geibel, 369 F.3d 682, 689 (2d Cir. 2004) (internal quotation marks and citations omitted); Rosenblatt, 554 F.2d at 38.[3]

"It is not necessary to prove that the defendant expressly agreed with other conspirators on a course of action; it is enough, rather, to show that the parties had a tacit understanding to carry out the prohibited conduct." Anderson, 747 F.3d at 61 (internal quotation marks, alteration, and citation omitted). However, "a defendant's mere presence at the scene of a crime, his general knowledge of criminal activity, or his simple association with others engaged in a crime are not, in themselves, sufficient to prove the defendant's criminal liability for conspiracy." Id. (citations omitted).

2. Object of the Conspiracy

To be convicted of a conspiracy, a defendant must know what "'kind of criminal conduct was in fact contemplated.'" Rosenblatt, 554 F.2d at 38 (quoting United States v. Gallishaw, 428 F.2d 760, 763 n.1 (2d Cir. 1970)). That is, the defendant has to know what the "object" of the conspiracy he joined was. A "general agreement to engage in unspecified criminal conduct is insufficient to identify the essential nature of the conspiratorial plan." Rosenblatt, 544 F.2d at 39. Indeed, "[t]he government must prove that the defendant agreed to commit a particular offense and not merely a vague agreement to do something wrong." United States v. Salameh, 152 F.3d 88, 151 (2d Cir. 1998) (citation and internal quotation marks omitted) (emphasis in original). That said, "[t]he government need not show that

[3] In Rosenblatt, the Second Circuit overturned a conspiracy conviction on the basis that while two individuals agreed to commit offenses against the United States, they did not agree to commit the same offenses and therefore were not conspirators. 554 F.2d at 40.

the defendant knew all of the details of the conspiracy, so long as he knew its general nature and extent." United States v. Huezo, 546 F.3d 174, 180 (2d Cir. 2008) (citation and internal quotation marks omitted).[4]

3. Participation

The crime of conspiracy requires that a defendant both know the object of the crime and that he knowingly and intentionally join the conspiracy. United States v. Torres, 604 F.3d 58, 66 (2d Cir. 2010). The requisite knowledge can be proven through circumstantial evidence. Id.

The quantum of proof necessary at trial to sustain a finding of knowledge varies. "A defendant's knowing and willing participation in a conspiracy may be inferred from, for example, [his] presence at critical stages of the conspiracy that could not be explained by happenstance, . . . a lack of surprise when discussing the conspiracy with others, . . . [or] evidence that the defendant participated in conversations directly related to the substance of the conspiracy; possessed items important to the conspiracy; or received or expected to receive a share of the profits from the conspiracy." United States v. Aleskerova, 300 F.3d 286, 293 (2d Cir. 2002) (citations omitted). Indeed, under the appropriate circumstances, "[a] defendant's participation in a single transaction can suffice to sustain a charge of knowing

[4] A defendant may also be found culpable under the conscious avoidance doctrine. Under such circumstances, a crime's "knowledge element is established if the factfinder is persuaded that the defendant consciously avoided learning [a given] fact while aware of a high probability of its existence, unless the factfinder is persuaded that the defendant actually believed the contrary." United States v. Finkelstein, 229 F.3d 90, 95 (2d Cir. 2000). "The rationale for imputing knowledge in such circumstances is that one who deliberately avoided knowing the wrongful nature of his conduct is as culpable as one who knew." Id.

participation in an existing conspiracy." United States v. Zabare, 871 F.2d 282, 287 (2d Cir. 1989); see also United States v. Murray, 618 F.2d 892, 903 (2d Cir. 1980).

B. Types of Conspiracies

Conspiracies come in myriad shapes and sizes: from a small conspiracy involving two people to achieve a limited end to a large one involving numerous participants and with an expansive scope. Similarly, a defendant may participate in a single conspiracy or multiple conspiracies. Most questions as to size and number are left to trial. Here, the Court addresses these issues only insofar as they inform whether and how the Government might ultimately prove the conspiracies alleged in the Indictment.

"Whether the government has proven the existence of the conspiracy charged in the indictment and each defendant's membership in it, or, instead, has proven several independent conspiracies is a question of fact for a properly instructed jury." United States v. Johansen, 56 F.3d 347, 350 (2d Cir. 1995); see also United States v. Barret, 824 F. Supp. 2d 419, 445 (E.D.N.Y. 2011) (citing cases); United States v. Ohle, 678 F. Supp. 2d 215, 222 (S.D.N.Y. 2010); United States v. Rajaratnam, 736 F. Supp. 2d 683 (S.D.N.Y. 2010) (citing cases). Where an indictment charges a single conspiracy and the evidence later shows multiple conspiracies, the court will only set aside a jury's guilty verdict due to the variance if the defendant can show "substantial prejudice, i.e. that the evidence proving the conspiracies in which the defendant did not participate prejudiced the case against him in the conspiracy in which he was a party." Johansen, 56 F.3d at 351 (emphasis in original).

1. Overview of Single Conspiracies

"[A]cts that could be charged as separate counts of an indictment may instead be charged in a single count if those acts could be characterized as part of a single continuing scheme." United States v. Aracri, 968 F.2d 1512, 1518 (2d Cir. 1992) (internal quotation marks and citations omitted). In determining whether a single conspiracy involving many people exists, the question is whether there is a "mutual dependence" among the participants. Geibel, 369 F.3d at 692 (citation omitted); United States v. Williams, 205 F.3d 23, 33 (2d Cir. 2000). The Government must show that each alleged member of the conspiracy agreed to participate "'in what he knew to be a collective venture directed towards a common goal.'" United States v. Eppolito, 543 F.3d 25, 47 (2d Cir. 2008) (quoting United States v. Berger, 224 F.3d 107, 114 (2d Cir. 2000)); see also Geibel, 369 F.3d at 692 (explaining that when two participants do not mutually benefit from the other's participation, a finding of a single conspiracy is less likely).

A "'single conspiracy is not transformed into multiple conspiracies merely by virtue of the fact that it may involve two or more spheres or phases of operation, so long as there is sufficient proof of mutual dependence and assistance.'" Geibel, 369 F.3d at 689 (quoting Berger, 224 F.3d at 114-15). Neither changing membership nor different time periods of participation by various coconspirators precludes the existence of a single conspiracy, "especially where the activity of a single person was 'central to the involvement of all.'" Eppolito, 543 F.3d at 48 (quoting United States v. Langford, 990 F.2d 65, 70 (2d Cir. 1993) (citations omitted)); United States v.

Jones, 482 F.3d 60, 72 (2d Cir. 2006) ("Changes in membership, differences in time periods, and/or shifting emphases in the location of operations do not necessarily require a finding of more than one conspiracy.").

The Second Circuit has outlined three "hypothetical avenues" for establishing a single conspiracy:

> 1. The scope of the agreement was broad enough to include activities by or for persons other than the small group of core conspirators;
> 2. The coconspirators reasonably foresaw, "as a necessary or natural consequence of the unlawful agreement," the participation of others; or
> 3. "Actual awareness" of the participation of others.

Geibel, 369 F.3d at 690 (citing United States v. McDermott, 245 F.3d 133, 137-38 (2d Cir. 2001); United States v. Carpenter, 791 F.2d 1024, 1036 (2d Cir. 1986)). Alternatively, a jury may find a single conspiracy provided "'(1) that the scope of the criminal enterprise proven fits the pattern of the single conspiracy alleged in the indictment, and (2) that the defendant participated in the alleged enterprise with a consciousness as to its general nature and extent.'" Eppolito, 543 F.3d at 48 (quoting United States v. Rosa, 11 F.3d 315, 340 (2d Cir. 1993) (internal citation omitted)).

2. Types of Single Conspiracies

Courts often conceptualize single conspiracies using either a "chain" or a "hub-and-spoke" metaphor. United States v. Borelli, 336 F.2d 376, 383 (2d Cir. 1964).

a) Chain conspiracies

A chain conspiracy refers to a situation in which there are numerous conspiring individuals, each of whom has a role in a "chain" that serves the conspiracy's object. For example, in a narcotics conspiracy, a chain may be comprised of producers, exporters, wholesalers, middlemen, and dealers. The success of each "link" in the chain depends on the success of the others, even though each individual conspirator may play a role that is separated by great distance and time from the other individuals involved. Id.; United States v. Mallah, 503 F.2d 971, 984 (2d Cir. 1974); United States v. Agueci, 310 F.2d 817, 826 (2d Cir. 1962).[5]

For a chain conspiracy to exist, the ultimate purpose of the conspiracy must be to place the "forbidden commodity into the hands of the ultimate purchaser." Agueci, 310 F.2d at 826 (citation omitted). This form of conspiracy "is dictated by a division of labor at the various functional levels." Id. In Agueci, the Second Circuit found that "the mere fact that certain members of the conspiracy deal recurrently with only one or two other conspiracy members does not exclude a finding that they were bound by a single conspiracy." Id. "An individual associating himself with a 'chain' conspiracy knows that it has a 'scope' and that for its success it requires an organization wider than may be disclosed by [one's] personal participation." Id. at 827. That is, to support a chain conspiracy, a participant must know that combined efforts are required. Id.

[5] The extreme ends of such a conspiracy – for instance, numerous narcotics dealers who each obtain the narcotics they sell from a single wholesaler or middleman – may have elements of a hub-and-spoke conspiracy. Borelli, 336 F.2d at 383.

b) Hub-and-spoke conspiracies

In a hub-and-spoke (or "wheel") conspiracy, one person typically acts as a central point while others act as "spokes" by virtue of their agreement with the central actor. See Kotteakos v. United States, 328 U.S. 750, 754-55 (1946). Put another way, in a hub-and-spoke conspiracy, "members of a 'core' group deal with a number of contacts who are analogized to the spokes of a wheel and are connected with each other only through the core conspirators." United States v. Manarite, 448 F.2d 583, 589 (2d Cir. 1971).

To prove a single conspiracy in such a situation, the Government must show that there was a "rim" around the spokes, such that the "spokes" became coconspirators with each other. To do so, the Government must prove that "each defendant . . . participated in the conspiracy with the common goal or purpose of the other defendants." United States v. Taggert, No. 09 Cr. 984 (BSJ), 2010 WL 532530, at *1 (S.D.N.Y. Feb. 11, 2010) (internal quotation marks and citation omitted).

In the absence of such a "rim," the spokes are acting independently with the hub; while there may in fact be multiple separate conspiracies, there cannot be a single conspiracy. See Zabare, 871 F.2d at 287-88; see also Dickson v. Microsoft Corp., 309 F.3d 193, 203 (4th Cir. 2002) ("A rimless wheel conspiracy is one in which various defendants enter into separate agreements with a common defendant, but where the defendants have no connection with one another, other

than the common defendant's involvement in each transaction." (citing Kotteakos, 328 U.S. at 755)).

C. The Buyer-Seller Exception

Of course, not all narcotics transactions occur within a conspiracy. A conspiracy to distribute narcotics does not arise between a buyer and seller simply because they engage in a narcotics transaction. That is, the mere purchase and sale of drugs does not, without more, amount to a conspiracy to distribute narcotics. See, e.g., United States v. Parker, 554 F.3d 230, 234 (2d Cir. 2009) (explaining that the buyer-seller rule is a narrow one). "[I]n the typical buy-sell scenario, which involves a casual sale of small quantities of drugs, there is no evidence that the parties were aware of, or agreed to participate in, a larger conspiracy." United States v. Hawkins, 547 F.3d 66, 71-72 (2d Cir. 2008) (citations omitted); see also United States v. Mims, 92 F.3d 461, 465 (7th Cir. 1996) (clarifying that "a buyer-seller relationship alone is insufficient prove a conspiracy"); United States v. Medina, 944 F.2d 60, 65 (2d Cir. 1991); United States v. Valencia, 226 F. Supp. 2d 503, 510-11 (S.D.N.Y. 2002) (Chin, J.). "It is sometimes said that the buyer's agreement to buy from the seller and the seller's agreement to sell to the buyer cannot 'be the conspiracy to distribute, for it has no separate criminal object.'" Parker, 554 F.3d at 235 (quoting United States v. Wexler, 522 F.3d 194, 208 (2d Cir. 2008) (internal alterations omitted)).

When wholesale quantities are involved, however, the participants may be presumed to know that they are involved in a venture, the scope of which is larger

than the particular role of any individual. Murray, 618 F.2d at 902; see also Valencia, 226 F. Supp. 2d at 510-11.

D. The Role of Middlemen

In some cases involving narcotics trafficking, defendants are alleged to have acted as middlemen. Middlemen may be found to have conspired with a buyer, a seller, or both. United States v. Bey, 725 F.3d 643, 649 (7th Cir. 2013). "Evidence that the middleman had a clear stake in the seller's sales is typically sufficient to permit the jury to infer the existence of an agreement with the seller." Id. at 650; United States v. Colon, 549 F.3d 565, 568-70 (7th Cir. 2008) (citations omitted). There is no legal doctrine that defines a middleman as having a lesser role than other conspiracy members. Indeed, there is no legal reason why someone characterized as a middleman cannot be a powerful, motivating force behind a conspiracy.

III. DISCUSSION OF CONSPIRATORIAL AGREEMENT

The Indictment alleges that Ulbricht designed Silk Road specifically to enable users to anonymously sell and purchase narcotics and malicious software and to launder the resulting proceeds. On this motion to dismiss, the Court's task is a narrow one – it is not concerned with whether the Government will have sufficient evidence to meet its burden of proof as to each element of the charged conspiracies at trial. Instead, the Court is concerned solely with whether the nature of the alleged conduct, if proven, legally constitutes the crimes charged, and

whether the defendant has had sufficient notice of the illegality of such conduct. See D'Amelio, 683 F.3d at 418; Pagan, 721 F.2d at 27.

The defendant argues that Counts One and Three in the Indictment are legally insufficient for failure to allege a cognizable conspiratorial agreement. (Def.'s Reply at 2-3.) He does not make the same argument with regard to Count Four, but certain aspects of the issue apply to that Count as well.

The Court has set forth five questions that concern the potential existence of a conspiratorial agreement in this case. Each question is now taken up in turn.

> Question One: Can there be a legally cognizable "agreement" between Ulbricht and one or more coconspirators to engage in narcotics trafficking, computer hacking, and money laundering by virtue of his and their conduct in relation to Silk Road? If so, what is the difference between what Ulbricht is alleged to have done and the conduct of designers and administrators of legitimate online marketplaces through which illegal transactions may nevertheless occur?

The "gist" of a conspiracy charge is that the minds of two or more people met – that they agreed in some manner to achieve an unlawful end. For the reasons explained below, the design and operation of Silk Road can result in a legally cognizable conspiracy.

According to the Indictment, Ulbricht purposefully and intentionally designed, created, and operated Silk Road to facilitate unlawful transactions. Silk Road was nothing more than code unless and until third parties agreed to use it. When third parties engaged in unlawful narcotics transactions on the site, however, Ulbricht's design and operation gave rise to potential conspiratorial conduct. The subsequent sale and purchase of unlawful narcotics and software on Silk Road may,

as a matter of law, constitute circumstantial evidence of an agreement to engage in such unlawful conduct. See United States v. Svoboda, 347 F.3d 471, 477 (2d Cir. 2003) ("A conspiracy need not be shown by proof of an explicit agreement but can be established by showing that the parties have a tacit understanding to carry out the prohibited conduct.") (internal quotation marks and citation omitted); United States v. Miranda-Ortiz, 926 F.2d 172, 176 (2d Cir. 1991) ("The defendant's participation in a single transaction can, on an appropriate record, suffice to sustain a charge of knowing participation in an existing conspiracy.") (citations omitted); United States v. Roldan-Zapata, 916 F.2d 795, 803 (2d Cir. 1990) (affirming the conviction of a defendant based on his admitted "involvement in narcotics dealing and [ ] a pattern of trafficking," combined with other circumstantial evidence). Additionally, the Indictment charges that Ulbricht obtained significant monetary benefit in the form of commissions in exchange for the services he provided via Silk Road. He had the capacity to shut down the site at any point; he did not do so. The defendant allegedly used violence in order to protect the site and the proceeds it generated.

Ulbricht argues that his conduct was merely as a facilitator – just like eBay, Amazon, or similar websites.[6] Even were the Court to accept this characterization of the Indictment, there is no legal prohibition against such criminal conspiracy charges provided that the defendant possesses (as the Indictment alleges here) the requisite intent to join with others in unlawful activity.

[6] While the defendant refers to Amazon and eBay as similar, there are certain important factual differences between them. For instance, Amazon has warehouses which may fulfill certain orders. Silk Road is not alleged to have ever possessed products for fulfillment.

Moreover, in this case, the charges in the Indictment go further than Ulbricht acknowledges. The Indictment alleges that Ulbricht engaged in conduct that makes Silk Road different from other websites that provide a platform for individual buyers and sellers to connect and engage in transactions: Silk Road was specifically and intentionally designed for the purpose of facilitating unlawful transactions. The Indictment does not allege that Ulbricht is criminally liable simply because he is alleged to have launched a website that was – unknown to and unplanned by him – used for illicit transactions. If that were ultimately the case, he would lack the mens rea for criminal liability. Rather, Ulbricht is alleged to have knowingly and intentionally constructed and operated an expansive black market for selling and purchasing narcotics and malicious software and for laundering money. This separates Ulbricht's alleged conduct from the mass of others whose websites may – without their planning or expectation – be used for unlawful purposes.

It is certainly true that the principles set forth in this Opinion would apply to other third parties that engaged in conduct similar to that alleged here; but it is also true that the essential elements for (by way of example) a narcotics conspiracy would be absent if a website operator did not intend to join with another to distribute (for instance) narcotics. Thus, administrators of an eBay-like site who intend for buyers and sellers to engage in lawful transactions are unlikely to have the necessary intent to be conspirators.

> Question Two: As a matter of law, who are Ulbricht's alleged coconspirators and potential coconspirators? That is, whose "minds" can have "met" with Ulbricht's in a conspiratorial agreement? What sort of conspiratorial structure frames the allegations: one large single conspiracy or multiple small conspiracies?

The Indictment charges a single conspiracy in each of Counts One, Three, and Four. Ulbricht's alleged coconspirators are "several thousand drug dealers and other unlawful vendors." (Ind. ¶ 2.) If these individuals possessed the requisite intent, there is no legal reason they could not be members of the conspiracies charged in the Indictment.

A more complicated question is whether any or all of Ulbricht's coconspirators also conspired with each other, so as to create a potentially vast single conspiracy. In this regard, the Government may argue that the conspiracy was a "chain" conspiracy or that it was a "hub-and-spoke" conspiracy (in which case it would be necessary for the Government to prove the existence of a "rim"). Each approach has its own complexities regarding the (largely anonymous) inter-conspirator relationships on the Internet. While this is not an issue the Government need address at this stage, see D'Amelio, 683 F.3d at 418; Pagan, 721 F.2d at 27, it will be relevant as the proof comes in at trial.

Of course, ultimately, the form of the conspiracy is not as important as a determination that at least one other person joined in the alleged conspiratorial agreement with Ulbricht. With respect to the narcotics conspiracy charge, to prove that the drug types and quantities alleged in the Indictment were the objects of a conspiracy Ulbricht knowingly and intentionally joined, the Government will have

to prove either a single such conspiratorial agreement or an aggregation of conspiracies.[7] While, as explained, proof of participants' intent could involve numerous complexities, these are issues for trial and not for this stage.

> Question Three: As a matter of law, when could any particular agreement have occurred between Ulbricht and his alleged coconspirators? Need each coconspirator's mind have met simultaneously with Ulbricht's? With the minds of other coconspirators? That is, if Ulbricht launched Silk Road on Day 1, can he be said, as a matter of law, to have entered into an agreement with the user who joins on Day 300? Did Ulbricht, simply by designing and launching Silk Road, make an enduring showing of intent?

The issue here is one of temporal proximity. For the sake of illustration, assume that Ulbricht launched Silk Road on Day 1. A narcotics trafficker posted illegal drugs on the site on Day 2 and another posted on Day 300. Does the Day 2 trafficker enter into a conspiratorial agreement with Ulbricht on Day 2 and the Day 300 trafficker on Day 300? More importantly, can Ulbricht have agreed to a conspiracy on Day 1 with an alleged coconspirator who, at that time, had not even contemplated engaging in an unlawful transaction, and determined to do so only on, for example, Day 300?[8]

One way of thinking about this issue is to look to the basic contract principles of offer and acceptance. On Day 1, according to the Indictment, Ulbricht "offers" to work with others to traffic illegal narcotics, engage in computer hacking, and launder money. He makes this offer by creating and launching a website specifically designed and intended for such unlawful purposes. Ulbricht's continued

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[7] There are additional complexities when other factors such as differences in types of drugs, temporal proximity, and the roles of coconspirators are taken into account. These too are questions for trial.
[8] As suggested in connection with Question One, another question is whether the Day 2 and the Day 300 trafficker could ever enter into a conspiracy with each other.

operation of the site evinces an enduring intent to be bound with those who "accept" his offer and utilize the site for its intended purpose. It is as though the defendant allegedly posted a sign on a (worldwide) bulletin board that said: "I have created an anonymous, untraceable way to traffic narcotics, unlawfully access computers, and launder money. You can use the platform as much as you would like, provided you pay me a percentage of your profits and adhere to my other terms of service." Each time someone "signs up" and agrees to Ulbricht's standing offer, it is possible that, as a matter of law, he or she may become a coconspirator.

To put this another way, the fact that Ulbricht's active participation may occur at a different point in time from the agreement by his coconspirator(s) does not render the conspiracy charges legally defective. Courts have long recognized that members of a conspiracy may be well removed from one another in time. See, e.g., Borelli, 336 F.3d at 383-84. The law has similarly recognized that coconspirators need not have been present at the outset of a conspiracy in order to be found criminally responsible; they may join at some later point. See, e.g., id.; United States v. Nersesian, 824 F.2d 1294, 1303 (2d Cir. 1987). A lapse in time – in particular in a narcotics chain conspiracy, where a manufacturer creates a substance months prior to a wholesale or retailer selling it, not knowing (and perhaps never knowing) who, precisely, will ultimately distribute it – does not ipso facto render the alleged conspiracy defective as a matter of law. Similarly, the law long ago accepted that coconspirators may not know each other's identity. Blumenthal, 332 U.S. at 557-58. The alleged conduct here is another step along

this established path. The common law anticipates and accepts application to new fact patterns.

> Question Four: As a matter of law, is it legally necessary, or factually possible, to pinpoint how the agreement between Ulbricht and his coconspirators was made? In this regard, does the law recognize a conspiratorial agreement effected by an end user interacting with computer software, or do two human minds need to be simultaneously involved at the moment of agreement?

Another issue raised by this case is whether a conspiratorial agreement may be effected through what are primarily automated, pre-programmed processes. This is not a situation in which Ulbricht is alleged to have himself approved or had a hand in each individual transaction that occurred on Silk Road during the nearly three-year period covered by the Indictment. Instead, he wrote (or had others write) certain code that automated the transaction. Yet, as a legal matter, this automation does not preclude the formation of a conspiratorial agreement. Indeed, whether an agreement occurs electronically or otherwise is of no particular legal relevance.

It is well-established that the act of agreeing, or having a meeting of the minds, may be proven through circumstantial evidence. United States v. Rodriguez, 394 F.3d 539, 544 (2d Cir. 2004). There is no requirement that any words be exchanged at all in this regard, so long as the coconspirators have taken knowing and intentional actions to work together in some mutually dependent way to achieve the unlawful object. See Diaz, 176 F.3d at 97. In this regard, "how" any agreement between two coconspirators may be proven at trial depends solely on the evidence presented. See Anderson, 747 F.3d at 61. Though automation may enable

a particular transaction to take place, it is the individuals behind the transaction that take the necessary affirmative steps to utilize that automation. It is quite clear, for example, that if there were an automated telephone line that offered others the opportunity to gather together to engage in narcotics trafficking by pressing "1," this would surely be powerful evidence of the button-pusher's agreement to enter the conspiracy. Automation is effected through a human design; here, Ulbricht is alleged to have been the designer of Silk Road, and as a matter of law, that is sufficient.[9]

> Question Five: If Ulbricht was merely the facilitator of simple buy-sell transactions, does the "buyer-seller" rule apply, which in certain circumstances would preclude a finding of a criminal conspiracy?

Ulbricht is not alleged to have been a buyer or seller of narcotics or malicious software. Following the design and launch of Silk Road, his role is alleged to have been that of an intermediary. While it will be for the Government to prove the defendant's specific role vis-à-vis his alleged coconspirators at trial, one issue that may arise is whether the participation of an intermediary could itself (all other factors remaining the same) eliminate the applicability of the "buyer-seller" rule to a given narcotics transaction involving a small quantities bought and sold on the site. In other words, can mere buyers and sellers of small quantities of narcotics –

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[9] Acceptance of the terms of service, the payment of commissions, placing Bitcoins in escrow, and other intervening steps involved in the transactions that allegedly occurred on Silk Road could, in this regard, perhaps constitute evidence that Silk Road users entered into an unlawful conspiracy with Ulbricht (and others). It will be for the Government to prove which conduct in fact occurred, and how, at trial. See, e.g., United States v. Lorenzo, 534 F.3d 153, 161 (2d Cir. 2008) (noting that "a defendant's knowing agreement to join a conspiracy must, more often than not, be proven through circumstantial evidence" and there are "cases where the circumstantial evidence considered in the aggregate demonstrates a pattern of behavior from which a rational jury could infer knowing participation") (internal quotation marks and citations omitted).

who might not otherwise legally be coconspirators if the transactions occurred in the brick-and-mortar world – become conspirators due to the interposition of a website or website administrator? Plainly, the level of involvement in any transaction by the website would be relevant. And there are certainly instances in which the participation of three participants renders what might otherwise be a simple purchase or sale into a conspiracy. See, e.g., Medina, 944 F.2d at 65. There can be no hard and fast rule that answers this question – its ongoing relevance will depend on how the proof comes in at trial.

IV. OTHER LEGAL ISSUES RAISED WITH REGARD TO COUNT ONE

The defendant argues that while Count One charges him with conspiracy to possess with intent to distribute various controlled substances (i.e., heroin, cocaine, and LSD), Ulbricht is not alleged to have himself been a buyer, seller, or possessor of any of the controlled substances at any point during the conspiracy. (Def.'s Mem. at 9.)[10] And, by alleging only that he designed, launched, and operated a website, the Government has not described the conduct of a coconspirator in a narcotics conspiracy. (Id. at 10.) At most, argues the defendant, the Government has alleged that Ulbricht has acted in a manner akin to that of a landlord, and the law is clear that merely acting as a landlord to drug dealers is itself insufficient to make one a coconspirator in narcotics transactions occurring on the premises. (Id. at 10-13.)

[10] The defendant argues that imposing criminal liability for Ulbricht's alleged conduct would constitute "an unprecedented and extraordinarily expansive theory of vicarious liability." (Def.'s Mem. at 1.) This is incorrect. The Government alleges direct – not indirect – participation in the crimes charged. The law of conspiracy (see supra) has long recognized the many varied roles participants may play.

According to the defendant, the statutory violation that occurs when one "knows" his premises have been or are being used for unlawful activities is either civil forfeiture pursuant to 21 U.S.C. § 881(a)(7) or the "crack house" statute passed by Congress in 1986, 21 U.S.C. § 856. (Id. at 11.) The statute outlaws the knowing operation, management, or leasing of premises where crack cocaine and other illicit drugs are manufactured, distributed, or used. 21 U.S.C. § 856(a). The defendant argues that because Silk Road is, at most, a type of "premise" for the distribution of narcotics, he should have been charged under either §§ 881 or 856, not with a narcotics conspiracy under §§ 841 or 846. (Def.'s Mem. at 12.) Alternatively, the defendant argues that his conduct should be analogized to that of a "steerer" in a drug transaction, not a coconspirator.[11] (Id. at 13.)

The defendant's arguments stem from an incorrect set of assumptions: first, that conduct may constitute only one type of statutory violation or must seek civil forfeiture relief to the exclusion of criminal liability. While the defendant may be chargeable with a violation of the "crack house" statute, he may well be chargeable with other crimes as well. How a defendant is charged is within the discretion of the prosecution. United States v. Batchelder, 442 U.S. 114, 124 (1974); United States v. Stanley, 928 F.2d 575, 580-81 (2d Cir. 1991). Additionally, no legal principle prevents the Government from seeking to impose civil forfeiture along

[11] Conduct demonstrating that an individual merely helps a willing buyer find a willing seller, and is therefore acting as a mere "steerer," is, without more, insufficient to establish a conspiratorial agreement. See United States v. Tyler, 758 F.2d 66, 69 (2d Cir. 1985); United States v. Hysohion, 448 F.2d 343, 347 (2d Cir. 1971). However, when a defendant steers buyers to sellers as part of a continuing business arrangement, or is otherwise the "conduit" for the transaction, criminal liability may attach. See, e.g., United States v. Vargas-Nunez, 115 F. App'x 494, 495-96 (2d Cir. 2004) (discussing defendant's purported role as a "steerer" in the sentencing context); United States v. Esadaille, 769 F.2d 104, 108-09 (2d Cir. 1985).

with criminal liability – and it is done all the time. Here, in addition to criminal conspiracy, the Government has separately sought civil forfeiture under 18 U.S.C. § 982(a)(1)(A), see Case No. 13-cv-6919 (JPO), as well as in the Indictment itself. (Ind. ¶¶ 22-24.)

Nor is the Government limited to charging a violation of the "crack house" statute simply because facilities (whether electronic or physical) are alleged to be at issue. It may well be that the Government could have charged such a violation – but that does not mean it is necessarily limited to that. When conduct allows for multiple charges – as is alleged here – a court does not second guess which charge is chosen. See Stanley, 928 F.2d at 581.

In this case, the Government has alleged that more is in play than the conduct which is encompassed by the "crack house" statute, or in the context of a non-conspiratorial "steerer." The Government has alleged that the defendant set up a platform for illicit drug transactions designed with the specific needs of his buyers and sellers in mind. Thus, Ulbricht's alleged conduct is not analogous to an individual who merely steers buyers to sellers; rather, he has provided the marketing mechanism, the procedures for the sale, and facilities for the actual exchange. He is alleged to know that his facilities would be used for illicit purposes and, in fact, that he designed and operated them for that purpose. In this regard, he is alleged to have "intentionally and knowingly" "combine[d], conspire[d], confederate[d], and agree[d]" with others to violate United States criminal law. (Ind. ¶ 5.) Ulbricht's alleged conduct is more akin to a builder who designs a house

complete with secret entrances and exits and specially designed traps to stash drugs and money; this is not an ordinary dwelling, but a drug dealer's "dream house."

The defendant argues that Count One must be dismissed because he is not alleged to have distributed or possessed any controlled substance. No such allegation is required. The law of conspiracy recognizes that members of a conspiracy may serve different roles. See United States v. Santos, 541 F.3d 63, 72 (2d Cir. 2008); United States v. Garcia-Torres, 280 F.3d 1, 4 (1st Cir. 2002) ("[A] drug conspiracy may involve ancillary functions (e.g., accounting, communications, strong-arm enforcement), and one who joined with drug dealers to perform one of those functions could be deemed a drug conspirator."); United States v. Burgos, 94 F.3d 849, 859 (4th Cir. 1996) (explaining that "a variety of conduct, apart from selling narcotics, can constitute participation in a conspiracy sufficient to sustain a conviction"). There are numerous examples of participants in narcotics conspiracies who did not themselves intend physically to possess or distribute narcotics; an individual may have been a middleman, the protective muscle, the lookout, a decoy, a person with information or contacts, etc. – in any event, the individual may nonetheless be found to be part of the conspiratorial enterprise. See, e.g., United States v. Pitre, 960 F.2d 1112, 1121-22 (2d Cir. 1992) (affirming conviction of defendant where evidence revealed that defendant was acting as a lookout and was carrying a beeper to facilitate narcotics transactions); United States v. Barnes, 604 F.2d 121, 161 (2d Cir. 1979) (explaining that defendant's "actions as a 'middleman'

in three transactions . . . constituted sufficient evidence of knowledgeable participation in the operations of the conspiracy with an expectation of benefiting from them").

Finally, Ulbricht expresses surprise that the Government states in its opposition brief that by operating Silk Road, Ulbricht "entered into a joint venture with thousands of drug dealers around the world to distribute drugs online." (Gov't Opp'n at 9.) This characterization of the defendant's alleged conduct is substantively no different than the allegation in the Indictment that several thousand drug dealers and hundreds of thousands of buyers used the site. (Ind. ¶ 2.) However, the fact that such an allegation falls within a reasonable reading of the Indictment is a separate question from whether the Government will in fact be able to prove one joint venture or single conspiracy at trial. As noted above, proving that thousands of dealers were in a single joint venture together with each other as well as with Ulbricht presents numerous challenges due to temporal and other considerations.

Count One adequately alleges both the elements of a narcotics conspiracy as well as the conduct alleged underlying the charges; the defendant is sufficiently on notice of the charges against him so as to preclude later issues of double jeopardy.

V. OTHER LEGAL ISSUES RAISED WITH REGARD TO COUNT TWO

Count Two alleges that the defendant's conduct amounted to participation in a CCE in violation of 21 U.S.C. § 848(a). As an initial matter, a "continuing criminal enterprise" requires a determination that a provision of the Controlled

Substances Act has been violated. Ulbricht's liability under this provision is therefore premised on a conviction on Count One, the narcotics conspiracy. Next, the trier of fact will need to determine if the violation of the Controlled Substances Act (that is, the narcotics conspiracy) was one of a series of such violations. 21 U.S.C. § 848(c). The law has defined "a series" as constituting at least three violations. See United States v. Flaharty, 295 F.3d 182, 197 (2d Cir. 2002) (explaining that the Second Circuit has "interpreted 'a continuing series' to mean at least three felony drug violations committed over a definite period of time") (citation omitted).

Finally, Ulbricht must have undertaken this series of violations in concert with five or more persons with respect to whom he occupied a position of organizer, supervisor, or manager, and he must have obtained substantial income or resources from such conduct. 21 U.S.C. § 848(c).

Ulbricht argues (1) that the Indictment fails to allege sufficiently that he occupied the requisite position vis-à-vis five persons, and that, in this regard, the Government has failed to allege (and could not allege) that he acted in concert with the buyers and sellers on the site; and (2) that the Indictment fails to enumerate a predicate series of violations. (Def.'s Mem. at 13.) Ulbricht is correct that Count Two does not explicitly identify the five individuals whom he is alleged to have organized, managed, or supervised. He similarly is correct that the Government has not specified the dates, times, or transaction details of the "series" of violations. Nonetheless, the allegations of the Indictment are sufficient. Paragraphs 11 and 12

recite the necessary statutory language to charge a continuing criminal enterprise; and the allegations set forth in Paragraphs 1 through 4 (which are incorporated by reference into Count Two) set forth necessary factual detail.

The law is clear that the Indictment should be read to incorporate those facts that while not explicitly stated, are implicit in the existing allegations. United States v. Silverman, 430 F.2d 106, 111 (2d Cir. 1970). In terms of the facts alleged, here the Indictment asserts that "several thousand drug dealers" and "well over a hundred thousand buyers worldwide" used the site. (Ind. ¶ 2.) With the "assistance of various paid employees whom he managed and supervised" (Ind. ¶ 3), Ulbricht is alleged to have controlled all aspects of Silk Road.

From these facts, the Government argues that by owning, operating, and controlling all aspects of the operation of the site (Ind. ¶¶ 2-3), Ulbricht occupied the necessary position as organizer, manager, or supervisor of the "vendors selling drugs on the site." (Gov't Opp'n at 15.) Ulbricht is alleged not only to have designed the online structure which enabled and allowed transactions, but, in controlling all aspects of its operations, to have set the rules the vendors and buyers had to follow, policed accounts for rule violations, determined commission rates, and taken commissions on every transaction. In addition, Ulbricht allegedly oversaw the efforts of others who assisted him in the administration and operation of the site. Thus, the Government contends that it has set forth sufficient allegations of Ulbricht's occupying the requisite position as organizer, manager, or supervisor. This Court agrees.

The "continuing criminal enterprise" statute is broadly worded – and broadly intends to encompass those who are leaders of a criminal enterprise which engages in a series of violations of the narcotics laws. See United States v. Scarpa, 913 F.2d 993, 1007 (2d Cir. 1990) (explaining that the operative words in the statute – "organize," "manage," and "supervise" – should be given their ordinary, everyday meanings) (citation omitted). That is precisely what the Government has alleged here. The statute does not require that Ulbricht have had a particular form of contact with each of the five or more individuals that he purportedly organized, managed, or supervised. United States v. Cruz, 785 F.2d 399, 407 (2d Cir. 1986); see also United States v. Joyner, 201 F.3d 61, 71 (2d Cir. 2000) (affirming a conviction where a defendant sold to otherwise independent resellers but required them, inter alia, to obtain permission from him to discount their prices and sell in certain locations so that he could monitor their activity).

Here, Ulbricht also argues that he cannot have had the requisite role with respect to individuals who merely assisted him with administering the site. (Def.'s Mem. at 15.) This, however, is a question of fact, not law. Whether those who assisted Ulbricht had the requisite mental state to be acting "in concert" with him is a factual inquiry. If those who assisted Ulbricht had the requisite state of mind, there is no legal reason why they could not constitute the necessary group of "five or more."

Ulbricht argues that he cannot separately have had the requisite position vis-à-vis the buyers and sellers, as they are referred to as having "used" the site, and

not, for instance, as employees. (Ind. ¶ 2).[12] In this regard, the defendant argues that, at most, his alleged conduct amounted to his being a conduit or facilitator for those engaging in illegal activity. This is, again, a factual argument cast as a legal one. There is no legal reason why one who designs, launches, and operates a website or any facility for the specific purpose of facilitating narcotics transactions that he knows will occur, and acts as the rule-maker of the site – determining the terms and conditions pursuant to which the sellers are allowed to sell and the buyers are allowed to buy, taking disciplinary actions to protect that enterprise (allegedly including murder-for-hire on more than one occasion) – could not be found to occupy the requisite position. See Cruz, 785 F.2d at 407 (no distinction between salaried employees and independent contractors). In this regard, the allegations amount to Ulbricht acting as a sort of "godfather" – determining the territory, the actions which may be undertaken, and the commissions he will retain; disciplining others to stay in line; and generally casting himself as a leader – and not a service provider. Again, whether the Government can prove the facts alleged is not a question at this stage of the proceedings.

Ulbricht also argues that Count Two fails to allege the specific series of continuing violations. The Indictment does allege thousands of separate transactions. (Ind. ¶ 2.) The type of specificity the defendant urges is not required. Flaharty, 295 F.3d at 197 (granular particularity not required). The Government need not enumerate the specific who, when, or where of the series in the

[12] Ulbricht also argues that he cannot have engaged in a CCE merely by aiding and abetting drug dealers. This is not, however, the Government's allegation. The Government contends that Ulbricht was the leader of a vast criminal enterprise.

Indictment; it is enough that it is clear from the face of the Indictment that he is alleged to have engaged in a continuing series of narcotics conspiracies punishable under 21 U.S.C. §§ 841, 843, 846. (Ind. ¶ 12). See United States v. Simmons, 923 F.2d 934, 952 (2d Cir. 1991).

VI. OTHER LEGAL ISSUES RAISED WITH REGARD TO COUNT THREE

The defendant argues that the allegations in the Indictment are insufficient to support the type of conduct covered by a computer hacking conspiracy in 18 U.S.C. § 1030 (the "Computer Fraud and Abuse Act"). (Def.'s Mem. at 21.) According to the defendant, the allegations are "only that the Silk Road website 'provided a platform for the [exchange] of malicious software.'" (Id. (quoting a portion of the Indictment at ¶¶ 15-16).)

The Indictment in fact alleges more. It alleges that "Silk Road . . . provided a platform for the purchase and sale of malicious software designed for computer hacking, such as password stealers, keyloggers, and remote access tools. While in operation, the Silk Road website regularly offered hundreds of listings for such products." (Ind. ¶ 14.) It also alleges that the defendant conspired with others to "intentionally access computers without authorization, and thereby would and did obtain information from protected computers, for commercial advantage and private financial gain." (Ind. ¶ 16.)

The defendant correctly states that to establish a violation of 18 U.S.C. §1030(a)(2)(C) requires "proof that the defendant intentionally accessed information from a protected computer." United States v. Willis, 476 F.3d 1121, 1125 (10th Cir.

2007). However, the defendant incorrectly extends this to the requirements for sufficiently alleging a computer hacking conspiracy. At this stage, such a claim requires not proof – as the defendant argues (see Def.'s Mem. at 22) – but rather, only allegations that the defendant agreed with another to "(1) intentionally access[] a computer, (2) without authorization . . . (3) and thereby obtain[] information." Willis, 476 F.3d at 1125. As with any conspiracy, the actual success or failure of the venture is irrelevant. See United States v. Perry, 643 F.2d 38, 46 (2d Cir. 1981) ("It is unnecessary to show that the conspiracy actually aided any particular sale of heroin since a conspiracy can be found though its object has not been achieved.").

It is, of course, axiomatic – as set forth at length above – that to charge a conspiracy the Government must allege that two or more people agreed to achieve an unlawful end. See Stavroulakis, 952 F.2d at 690. Each conspirator must knowingly and intentionally enter the conspiracy, Torres, 604 F.3d at 66, though it is common for coconspirators to have different roles. See, e.g., United States v. Sanchez, 925 F. Supp. 1004, 1013 (S.D.N.Y. 1996) ("There are many roles in a conspiracy.").

The defendant argues that the Government's charge must fail as it relies upon a concept of "transferred intent" – that is, that Ulbricht himself is not alleged to have had the intent to obtain unauthorized access, but only to have conspired with another who did. (Def.'s Reply at 13.) According to Ulbricht, he could not know the buyer's intent. (Id.)

As an initial matter, the law of conspiracy does not require that both participants intend to access a computer – but they must both intend that one of them will. Questions as to how the Government will prove its case as to the buyer's intent are reserved for trial.[13]

Ulbricht also argues that the statutory term "access without authorization" is undefined. (Def.'s Mem. at 39-41 (discussing § 1030(a)(2)(C).) Describing the 1996 amendments to the statute and the addition of the term "any" to unauthorized access of computers over the Internet, the defendant argues that the "ubiquitous use of computers, smartphones, tablets, or any other Internet-enabled device in today's world" places special emphasis on the meaning of the word "authorization" and may criminalize a broad amount of routine Internet activity. (Id. at 41.) The Government counters this argument only in a footnote. (Gov't Opp'n at 31 n.10.)

The defendant's argument is misplaced, or at least premature. The term "authorization" has a plain and ordinary meaning and requires no special construction. That the statute may implicate a broad swath of conduct is an issue for Congress. Whether this issue has any special significance can only be determined at trial. That is, whether Ulbricht's and his coconspirators' alleged conduct falls into the suggested grey area must await the Government's proof.

[13] The defendant's arguments that potentially lawful uses of malicious software also fail. There are numerous examples of lawful products put to unlawful use, resulting in criminal liability. See, e.g., United States v. Zambrano, 776 F.2d 1091, 1092, 1096 (2d Cir. 1985); United States v. Orozco-Prada, 732 F.2d 1076, 1080 (2d Cir. 1984); Perry, 643 F.2d at 44.

VII. THE "KITCHEN SINK" ARGUMENTS

Ulbricht also alleges that since his alleged conduct in Counts One, Two, and Three has never before been found to constitute the crimes charged, a variety of legal principles preclude criminal liability. Those principles include the rule of lenity, the doctrine of constitutional avoidance, void-for-vagueness, and overbreadth. In addition, the defendant argues that the presence of a civil immunity statute for online providers indicates congressional "support for a free-wheeling [I]nternet, including one in which providers or users of interactive computer services can operate without fear of civil liability for the content posted by others." (Def.'s Mem. at 28.) These arguments do not preclude the criminal charges here.

As an initial matter, as set forth above, the conduct charged fits within existing law. It is certainly true that case law to date has not been applied to the type of conduct that forms the basis for the Government's charges[14] – but that is not fatal. Throughout the history of the common law system there have been times when laws are applied to new scenarios. At each new stage there were undoubtedly those who questioned the flexibility of the law. But when the principles underlying a law are consistent and clear, they may accommodate new fact patterns. See Williams v. Taylor, 529 U.S. 362, 384-85 (2000) (Opinion of Stevens, J.) ("[R]ules of law often develop incrementally as earlier decisions are applied to new factual situations."); see also, e.g., ABC, Inc. v. Aereo, Inc., – U.S. – , 2014 WL 2864485, at

[14] The Government argues that a conspiracy and CCE have previously been charged in the context of online marketplaces. (Gov't Mem. at 30.) Those cases have entirely different facts from those alleged here.

*10 (2014) (applying copyright laws customarily imposed upon cable companies to a new type of distributor). The fact that a particular defendant is the first to be prosecuted for novel conduct under a pre-existing statutory scheme does not ipso facto mean that the statute is ambiguous or vague or that he has been deprived of constitutionally appropriate notice.

The defendant's Kitchen Sink arguments are also premised on a view of his alleged conduct as being sufficiently common – i.e., that he is doing nothing more than that done by other designers and operators of online marketplaces – that he could not have known or been on notice of its illegality.

The Court disagrees. Again, on a motion to dismiss an indictment, the Court accepts as true the Government's allegations; whether and how those allegations can be proven is not a question for this stage in the proceedings.

A. The Rule of Lenity and the Doctrine of Constitutional Avoidance

The defendant's arguments with respect to the rule of lenity and the doctrine of constitutional avoidance are based on the incorrect premise that the statutes under which he has been charged in Counts One, Two, and Three are ambiguous when applied to his alleged conduct.

The rule of lenity provides that when a criminal statute is susceptible to two different interpretations – one more and one less favorable to the defendant – "leniency" requires that the court read it in the manner more favorable. See Rewis v. United States, 401 U.S. 808, 812 (1971); United States v. Ford, 435 F.3d 204, 211 (2d Cir. 2006) (explaining that "restraint must be exercised in determining the

breadth of conduct prohibited by a federal criminal statute out of concerns regarding both the prerogatives of Congress and the need to give fair warning to those whose conduct is affected").

The rule of lenity is a principle of statutory construction: it comes into play only if and when there is ambiguity. United States v. Litchfield, 986 F.2d 21, 22 (2d Cir. 1993). It should not be viewed as a general principle requiring that clear statutes be applied in a lenient manner. Callanan v. United States, 364 U.S. 587, 596 (1961) (explaining that the rule of lenity, "as is true of any guide to statutory construction, only serves as an aid for resolving an ambiguity; it is not to be used to beget one").

In Skilling v. United States, 561 U.S. 358 (2010), the Court addressed the type of conduct encompassed by the ambiguous term "honest services." The Court reiterated the principle that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity," and refused to agree with the Government's broad interpretation of the statute. Id. at 410. Instead, the Court limited its coverage to bribery and kickback schemes. Id. at 412. The Court noted that if "Congress desires to go further . . . it must speak more clearly than it has." Id. at 411.

Here, with regard to Counts One and Two, the defendant does not allege that a word or phrase in a statute requires construction or is susceptible to more than

one interpretation.[15] Instead, he argues that even if the elements of, for instance, a narcotics conspiracy are well known, his particular conduct in designing and operating the website does not clearly fall within what the statute is intended to cover. The Court disagrees.

Sections 841 and 846 are intended to cover conduct in which two or more people conspire to distribute or possess with the intent to distribute narcotics. If the Government can prove at trial that Ulbricht has the requisite intent, then these statutory provisions clearly prohibit his conduct. These statutory provisions do not, for instance, require that only one type of communication method be used between coconspirators (for instance, cellular telephone versus the Internet); they do not prescribe what the various roles of coconspirators must be or are limited to; and they have been applied in the past to individuals alleged to be middlemen in drug transactions. See generally Pitre, 960 F.2d at 1121-23. Here, there is no statutory ambiguity and thus no basis for application of the rule of lenity.

The doctrine of constitutional avoidance provides that when a "statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [a court's] duty is to accept the latter." United States ex rel. Attorney General v. Del. & Hudson Co., 213 U.S. 366, 408 (1909); see also Jones v. United States, 526 U.S. 227, 239-40 (1999); Triestman v. United States, 124 F.3d 361, 377 (2d Cir. 1997).

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[15] As discussed supra, the defendant does argue ambiguity with regard to aspects of § 1030; as the Court has stated, whether that alleged ambiguity (or really, breadth) plays any role here is a question for trial.

This doctrine is inapplicable for the same reason as the rule of lenity: there is no ambiguity; the Court is not struggling with dueling interpretations as to whether the alleged conduct, if proven, would be covered. Thus, there are no grave constitutional issues on either side of this question.

B. Void-for-Vagueness and Constitutional Overbreadth

The defendant also argues that the statutes, as applied to his conduct in particular, are void on the basis that they are either unconstitutionally vague or overbroad. (Def.'s Mem. at 32-38.) The Court disagrees.

The void-for-vagueness doctrine is inapplicable. It addresses concerns regarding (1) fair notice and (2) arbitrary and discriminatory prosecutions. Skilling, 561 U.S. at 412 (citation omitted). To avoid a vagueness challenge, a statute must define a criminal offense in a manner that ordinary people must understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. Id. at 402-03. The question, in short, is whether an ordinary person would know that engaging in the challenged conduct could give rise to the type of criminal liability charged.

The Government argues that this prosecution is not particularly novel. "[B]oth the narcotics conspiracy statute and continuing criminal enterprise statute have specifically been applied in a previous prosecution of defendants involved in operating online marketplaces for illegal drugs." (Gov't Opp'n at 30.) "[T]he computer hacking statute has previously been applied to persons involved in providing online services used by others to distribute malicious software." (Id.) The

citations by the Government in support of these assertions are, however, merely to indictments. (Id.) And neither case has yet resulted in a published decision which could reasonably have provided notice to the defendant, or which demonstrates an ineffectual legal challenge.

As the Supreme Court has recognized, however, "due process requirements are not designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited." United States v. Lanier, 520 U.S. 259, 271 (1997) (internal quotation marks and citations omitted). Here, the charged conduct is not merely designing some benign marketplace for bath towels. The conduct is alleged to be specific and intentional conduct to join with narcotics traffickers or computer hackers to help them sell illegal drugs or hack into computers, and to be involved in enforcing rules (including using murder-for-hire) regarding such sales and taking commissions. No person of ordinary intelligence could believe that such conduct is somehow legal. Indeed, no reasonable person could assume that such conduct is in any way equivalent to designing and running eBay, for example. There is nothing vague about the application of the statute to the conduct charged.

Ulbricht also argues that his alleged conduct also constitutes protected free speech and that the imposition of criminal liability would be overbroad as applied. (Def.'s Mem. at 35-38.) This argument stems from an incorrect premise as to the nature of the criminal charges here.

The defendant does not explain how such conduct could amount to protected speech; even if this Court were to agree that such conduct has a speech element, the law is clear that speech which is part of a crime is not somehow immunized. See United States v. Rahman, 189 F.3d 88, 116-17 (2d Cir. 1999). For instance, no one would doubt that a bank robber's statement to a teller – "This is a stick up" – is not protected speech.

The thrust of the defendant's overbreadth argument appears to be similar to his vagueness, constitutional avoidance, and rule of lenity claims. All are premised in part on the incorrect view that the challenged conduct occurs on a regular basis by many people, that therefore enforcing these criminal statutes as to Ulbricht amounts to arbitrary enforcement and that the umbrella or tent of the statutes would be stretched beyond reason in order to encompass the alleged conduct.

For all of the reasons set forth above, this is incorrect.

C. Civil Immunity for Online Service Providers

The defendant argues that the existence of a civil statute for certain types of immunity for online service providers expresses a congressional intent to immunize conduct akin to that in which Ulbricht is alleged to have engaged. This Court disagrees. Even a quick reading of the statute makes it clear that it is not intended to apply to the type of intentional and criminal acts alleged to have occurred here. See 47 U.S.C. § 230. It is inapplicable.

VIII. COUNT FOUR

Count Four charges the defendant with participation in a money laundering conspiracy in violation of 18 U.S.C. § 1956(h). (Ind. ¶¶ 17-21.) The Government has alleged the requisite statutory elements. (See Ind. ¶ 19.) First, the Government has alleged that a conspiracy existed between the defendant and one or more others, the object of which was to engage in money laundering. In paragraph 20, the Indictment recites the specific elements required for money laundering:

> It was a part and an object of the conspiracy that . . . the defendant, and others known and unknown, . . . knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking and computer hacking . . . with the intent to promote the carrying on of such unspecified unlawful activity . . . .

(Ind. ¶ 20.) The defendant argues that the factual allegation that Bitcoins constituted the exclusive "payment system that served to facilitate [] illegal commerce" on Silk Road cannot constitute the requisite "financial transaction." (Def.'s Mem. at 3, 45.) The Court disagrees.

As an initial matter, an allegation that Bitcoins are used as a payment system is insufficient in and of itself to state a claim for money laundering. The fact that Bitcoins allow for anonymous transactions does not ipso facto mean that those transactions relate to unlawful activities. The anonymity by itself is not a crime. Rather, Bitcoins are alleged here to be the medium of exchange – just as dollars or Euros could be – in financial transactions relating to the unlawful activities of

narcotics trafficking and computer hacking. It is the system of payment designed specifically to shield the proceeds from third party discovery of their unlawful origin that forms the unlawful basis of the money laundering charge.

The money laundering statute defines a "financial transaction" as involving, inter alia, "the movement of funds by wire or other means, or [ ] involving one or more monetary instruments, [ ] or involving the transfer of title to any real property, vehicle, vessel, or aircraft." 18 U.S.C. § 1956(c)(4). The term "monetary instrument" is defined as the coin or currency of a country, personal checks, bank checks, and money orders, or investment securities or negotiable instruments. 18 U.S.C. § 1956(c)(5).

The defendant argues that because Bitcoins are not monetary instruments, transactions involving Bitcoins cannot form the basis for a money laundering conspiracy. He notes that the IRS has announced that it treats virtual currency as property and not as currency. (Def.'s Mem. at 46-47 (citing I.R.S. Notice 2014-21, http://www.irs.gov/pub/irs-drop/n-14-21.pdf, and U.S. Dep't of Treasury, Fin. Crimes Enforcement Network ("FinCEN"), "Guidance, Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," March 18, 2013, http://www.fincen.gov/statutes_regs/ guidance/html/FIN-2013-G001.html).) The defendant argues that virtual currencies have some but not all of the attributes of currencies of national governments and that virtual currencies do not have legal tender status. (See id. at 45-46.) In fact, neither the IRS nor FinCEN purport to amend the money laundering statute (nor could they). In any event, neither the

IRS nor FinCEN has addressed the question of whether a "financial transaction" can occur with Bitcoins. This Court refers back to the money laundering statute itself and case law interpreting the statute.

It is clear from a plain reading of the statute that "financial transaction" is broadly defined. See United States v. Blackman, 904 F.2d 1250, 1257 (8th Cir. 1950) (citation omitted). It captures all movements of "funds" by any means, or monetary instruments. "Funds" is not defined in the statute and is therefore given its ordinary meaning. See Taniguchi v. Kan Pacific Saipan, Ltd., – U.S. – , 132 S.Ct. 1997, 2002 (2012) (citation omitted). "Funds" are defined as "money, often money for a specific purpose." See Cambridge Dictionaries Online, http://dictionary.cambridge.org/us/dictionary/american-english/funds?q=funds (last visited July 3, 2014). "Money" is an object used to buy things.

Put simply, "funds" can be used to pay for things in the colloquial sense. Bitcoins can be either used directly to pay for certain things or can act as a medium of exchange and be converted into a currency which can pay for things. See Bitcoin, https://bitcoin.org/en (last visited July 3, 2014); 8 Things You Can Buy With Bitcoins Right Now, CNN Money, http://money.cnn.com/gallery/technology/2013/11/25/buy-with-bitcoin/ (last visited July 3, 2014). Indeed, the only value for Bitcoin lies in its ability to pay for things – it is digital and has no earthly form; it cannot be put on a shelf and looked at or collected in a nice display case. Its form is digital – bits and bytes that together constitute something of value. And they may be bought and sold using legal tender. See How to Use Bitcoin, https://bitcoin.org/en/getting-

started (last visited July 3, 2014). Sellers using Silk Road are not alleged to have given their narcotics and malicious software away for free – they are alleged to have sold them.[16]

The money laundering statute is broad enough to encompass use of Bitcoins in financial transactions. Any other reading would – in light of Bitcoins' sole raison d'etre – be nonsensical. Congress intended to prevent criminals from finding ways to wash the proceeds of criminal activity by transferring proceeds to other similar or different items that store significant value. With respect to this case, the Government has alleged that Bitcoins have a value which may be expressed in dollars. (Ind. ¶ 3 (alleging that Ulbricht "reaped commissions worth tens of millions of dollars, generated from the illicit sales conducted through the site").)

There is no doubt that if a narcotics transaction was paid for in cash, which was later exchanged for gold, and then converted back to cash, that would constitute a money laundering transaction. See, e.g., United States v. Day, 700 F.3d 713, 718 (4th Cir. 2012).

One can money launder using Bitcoin. The defendant's motion as to Count Four is therefore denied.

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[16] Recently, the U.S. Government auctioned off nearly 30,000 Bitcoins as part of a civil forfeiture proceeding related to Silk Road. See Sydney Ember, After Bitcoin Auction, Winning Bidders Remain Elusive, N.Y. Times Dealbook (June 30, 2014 6:59 P.M.), http://dealbook.nytimes.com/2014/06/30/after-bitcoin-auction-winning-bidders-remain-elusive/?_php=true&_type=blogs&_r=0.

IX. CONCLUSION

For the reasons set forth above, the defendant's motion to dismiss is DENIED in its entirety. The clerk of the Court is directed to terminate the motion at ECF No. 19.

SO ORDERED.

Dated: New York, New York
July 9, 2014

K B. Forrest

KATHERINE B. FORREST
United States District Judge

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
- v. -	SUPERSEDING INDICTMENT
ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road,"	S1 14 Cr. 68 (KBF)
Defendant.	

COUNT ONE
(Narcotics Trafficking)

The Grand Jury charges:

BACKGROUND

1. In or about January 2011, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, created an underground website known as "Silk Road," designed to enable users across the world to buy and sell illegal drugs and other illicit goods and services anonymously and outside the reach of law enforcement.

2. From in or about January 2011 through in or about October 2013, when the Silk Road website was shut down by law enforcement authorities, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, owned and operated Silk Road. During that time, Silk Road emerged as the most sophisticated and extensive criminal

marketplace on the Internet. The website was used by several thousand drug dealers and other unlawful vendors to distribute hundreds of kilograms of illegal drugs and other illicit goods and services to well over a hundred thousand buyers worldwide, and to launder hundreds of millions of dollars derived from these unlawful transactions.

3. ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, controlled all aspects of Silk Road, with the assistance of various paid employees whom he managed and supervised. Through his ownership and operation of Silk Road, ULBRICHT reaped commissions worth tens of millions of dollars, generated from the illicit sales conducted through the site.

4. In seeking to protect his criminal enterprise and the illegal proceeds it generated, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, pursued violent means, including soliciting the murder-for-hire of several individuals he believed posed a threat to that enterprise.

STATUTORY ALLEGATIONS

5. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, distributed and

possessed with the intent to distribute controlled substances, and aided and abetted such distribution and possession with the intent to distribute, in violation of Title 21, United States Code, Section 841(a)(1).

6. The controlled substances involved in the offense included, among others, 1 kilogram and more of mixtures and substances containing a detectable amount of heroin, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, 10 grams and more of mixtures and substances containing a detectable amount of lysergic acid diethylamide (LSD), and 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, all in violation of Title 21, United States Code, Section 841(b)(1)(A).

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); and Title 18, United States Code, Section 2.)

COUNT TWO

(Distribution of Narcotics by Means of the Internet)

The Grand Jury further charges:

7. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

8. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts,"

a/k/a "DPR," a/k/a "Silk Road," the defendant, delivered, distributed, and dispensed controlled substances by means of the Internet, in a manner not authorized by law, and aided and abetted such activity, in violation of Title 21, United States Code, Section 841(h).

9. The controlled substances involved in the offense included, among others, 1 kilogram and more of mixtures and substances containing a detectable amount of heroin, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, 10 grams and more of mixtures and substances containing a detectable amount of lysergic acid diethylamide (LSD), and 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, all in violation of Title 21, United States Code, Section 841(b)(1)(A).

(Title 21, United States Code, Sections 812, 841(h) and 841(b)(1)(A).)

COUNT THREE
(Narcotics Trafficking Conspiracy)

The Grand Jury further charges:

10. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

11. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and

elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

12. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did distribute and possess with the intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

13. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did deliver, distribute, and dispense controlled substances by means of the Internet, in a manner not authorized by law, and aid and abet such activity, in violation of Title 21, United States Code, Section 841(h).

14. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, would and did knowingly and intentionally use a communication facility in committing and in causing and facilitating the commission of acts constituting a felony under Title 21, United States Code, Sections 841, 846,

952, 960, and 963, in violation of Title 21, United States Code, Section 843(b).

15. The controlled substances that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, conspired to distribute and possess with the intent to distribute, and to deliver, distribute, and dispense by means of the Internet, in a manner not authorized by law, and to aid and abet such activity, included, among others, 1 kilogram and more of mixtures and substances containing a detectable amount of heroin, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, 10 grams and more of mixtures and substances containing a detectable amount of lysergic acid diethylamide (LSD), and 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, all in violation of Title 21, United States Code, Sections 841(b)(1)(A) and 841(h).

Overt Acts

16. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about January 2011, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road,"

the defendant, created the Silk Road website, providing a platform for drug dealers around the world to sell a wide variety of controlled substances via the Internet.

b. On or about March 31, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, in connection with operating the Silk Road website, paid a Silk Road user ("User-1") approximately $150,000 to murder another Silk Road user ("User-2") who was threatening to release the identities of thousands of users of the site.

c. On or about April 8, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, in connection with operating the Silk Road website, paid User-1 approximately $500,000 to murder four additional persons, whom ULBRICHT believed were associated with User-2.

d. On or about October 1, 2013, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, logged on as a site administrator to the web server hosting the Silk Road website.

(Title 21, United States Code, Section 846.)

COUNT FOUR
(Continuing Criminal Enterprise)

The Grand Jury further charges:

17. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

18. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, engaged in a continuing criminal enterprise, in that he knowingly and intentionally violated Title 21, United States Code, Sections 841, 843 and 846, which violations were part of a continuing series of violations of the Controlled Substances Act, Title 21, United States Code, Section 801, et seq., undertaken by ULBRICHT, in concert with at least five other persons with respect to whom ULBRICHT occupied a position of organizer, a supervisory position, and a position of management, and from which such continuing series of violations ULBRICHT obtained substantial income and resources.

(Title 21, United States Code, Section 848(a).)

COUNT FIVE

(Conspiracy to Commit and Aid and Abet Computer Hacking)

The Grand Jury further charges:

19. The allegations contained in paragraphs 1 through 4 of this Indictment are repeated and realleged as if fully set forth herein.

20. In addition to providing a platform for the purchase and sale of illegal narcotics, the Silk Road website also provided a platform for the purchase and sale of computer-hacking services and malicious software designed for computer hacking, such as password stealers, keyloggers, and remote access tools. While in operation, the Silk Road website regularly offered hundreds of listings for such services and software.

STATUTORY ALLEGATIONS

21. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit computer hacking, and to aid and abet the same, in violation of Title 18, United States Code, Sections 1030(a)(2) and 2.

22. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a

"DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did intentionally access computers without authorization, and thereby would and did obtain information from protected computers, for purposes of commercial advantage and private financial gain, and in furtherance of criminal and tortious acts in violation of the Constitution and the laws of the United States, and would and did aid and abet such unauthorized access, in violation of Title 18, United States Code, Sections 1030(a)(2) and 2.

(Title 18, United States Code, Section 1030(b).)

COUNT SIX

(Conspiracy to Traffic in Fraudulent Identification Documents)

The Grand Jury further charges:

23. The allegations contained in paragraphs 1 through 4 and paragraph 20 of this Indictment are repeated and realleged as if fully set forth herein.

24. In addition to providing a platform for the purchase and sale of illegal narcotics and computer-hacking services and software, the Silk Road website also provided a platform for the purchase and sale of fraudulent identification documents, such as fake driver's licenses and passports. While in operation, the Silk Road website regularly offered hundreds of listings for such products.

STATUTORY ALLEGATIONS

25. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to traffic in fraudulent identification documents, and to aid and abet the same, in violation of Title 18, United States Code, Sections 1028(a)(2).

26. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, would and did knowingly transfer, in and affecting interstate and foreign commerce, false identification documents and authentication features, knowing that such documents and features were produced without lawful authority, including driver's licenses, personal identification cards, and documents that appeared to be issued by and under the authority of the United States, and would and did aid and abet such transfers, in violation of Title 18, United States Code, Sections 1028(a)(2) and 2.

(Title 18, United States Code, Section 1028(f).)

COUNT SEVEN
(Money Laundering Conspiracy)

The Grand Jury further charges:

27. The allegations contained in paragraphs 1 through 4 and paragraphs 20 and 24 of this Indictment are repeated and realleged as if fully set forth herein.

28. ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, designed Silk Road to include a Bitcoin-based payment system that served to facilitate the illegal commerce conducted on the site, including by concealing the identities and locations of the users transmitting and receiving funds through the site.

STATUTORY ALLEGATIONS

29. From in or about January 2011, up to and including in or about October 2013, in the Southern District of New York and elsewhere, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to commit money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i).

30. It was a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and

foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking, computer hacking, and identification document fraud, in violation of Title 21, United States Code, Section 846, and Title 18, United States Code, Sections 1030 and 1028, respectively, with the intent to promote the carrying on of such specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

31. It was further a part and an object of the conspiracy that ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, and others known and unknown, in offenses involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented proceeds of some form of unlawful activity, would and did conduct and attempt to conduct such financial transactions, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking, computer hacking, and identification document fraud, in violation of Title 21, United States Code, Section 846, and Title 18, United States Code, Sections 1030 and 1028, respectively, knowing that the transactions were designed in

whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

(Title 18, United States Code, Section 1956(h).)

FORFEITURE ALLEGATIONS

32. As a result of committing the controlled substance offenses alleged in Counts One through Four of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United States, pursuant to Title 21, United States Code, Section 853, any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as a result of the offenses and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the offenses.

33. As a result of committing the computer hacking and identification fraud offenses alleged in Counts Five and Six of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(B), any property constituting, or derived from, proceeds obtained directly or indirectly as a result of the offenses.

34. As a result of committing the money laundering offense alleged in Count Seven of this Indictment, ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road," the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any property, real or personal, involved in the offense, or any property traceable to such property.

Substitute Asset Provision

35. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third person;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b) and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property

of the defendant up to the value of the above-described forfeitable property.

(Title 18, United States Code, Sections 981 and 982,
Title 21, United States Code, Section 853;
Title 28, United States Code, Section 2461.)

FOREPERSON

PREET BHARARA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

ROSS WILLIAM ULBRICHT,
a/k/a "Dread Pirate Roberts,"
a/k/a "DPR,"
a/k/a "Silk Road,"

Defendant.

INDICTMENT

S1 14 Cr. 68 (KBF)

(21 U.S.C. §§ 812, 841(a)(1),
841(b)(1)(A), 841(h), 846, & 848(a);
18 U.S.C. §§ 1030(b), 1028(f),
1956(h) & 2)

PREET BHARARA

Foreperson. United States Attorney.

8/21/14. Filed Superseding Indictment
Judge Gorenstein
USMJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v-	:	14-cr-68 (KBF)
ROSS WILLIAM ULBRICHT, a/k/a "Dred Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road,"	:	ORDER
Defendant.	:	

KATHERINE B. FORREST, District Judge:

The Court has not received a declaration or affidavit from defendant Ross Ulbricht, demonstrating that he had a subjective expectation of privacy in any of the items seized and as to which his suppression motion relates. The Court has read his counsel's argument as to the order in which they assert that decisions should be made. The potential rationale for not submitting a declaration or affidavit may, however, be different for the servers located in premises operated by third parties, versus the wireless router located on Montgomery Street, the laptop, the Gmail and Facebook accounts.

The Court will give Mr. Ulbricht one final opportunity to submit a declaration or affidavit in support of his motion (which would of course need to have sufficient specificity to establish a subjective expectation of privacy in items to which it relates). However, given that the defendant has had quite a long time already to make such a submission, if he now decides to submit one, the Court must

be so notified by 5pm today (October 7) that one shall be forthcoming by tomorrow, and to specify the particular items it will cover.

SO ORDERED.

Dated: New York, New York
October 7, 2014

KATHERINE B. FORREST
United States District Judge

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION

29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

October 7, 2014

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted on behalf of defendant Ross Ulbricht, in response to the government's October 6, 2014, filing pursuant to the Court's October 3, 2014, Order inviting the government to respond to the factual statements contained in the Declaration of Joshua J. Horowitz, Esq.

In response to the Court's Order, however, the government chose not to address Mr. Horowitz's Declaration, but instead to file a surreply arguing issues completely unrelated to Mr. Horowitz's Declaration, *i.e.*, standing, the *Auernheimer* case.[1] Thus, the technical analysis and

[1] In response to the one issue from Mr. Horowitz's Declaration the government does address, millions of web servers worldwide run "phpmyadmin" to administrate MySQL databases. The fact that "phpmyadmin" was installed on the Silk Road Server, and thus that the Server was using a MySQL database, does not in any way suggest, let alone corroborate, illicit activity taking place on that Server.

Moreover, the government is incorrect even in its basic premise as to how "phpmyadmin" operates: "php" is a server-scripting language, not a database, contrary to what the government suggests in its response. It apparently confuses "php" with MySQL, which *is* a

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conclusions in the Horowitz Declaration remain uncontroverted.

The government's position appears to be that it can engage in criminal conduct with impunity in its pursuit of investigative objectives, and not be held accountable therefor. Yet the exclusionary rule was designed to address that very dangerous, and legally and constitutionally insupportable, attitude. For example, as the Supreme Court acknowledged in *Herring v. United States,* 555 U.S. 135, 144 (2008), "the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *See also id.* ("to trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system"); *United States v. Calandra*, 414 U.S. 338, 348 (1974) (the exclusionary rule is "a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect").

In addition, the government's attempt to distinguish its position in *United States v. Auernheimer*, No. 13-1816 (3d Cir.), is unavailing. The government did not limit its broad construction of 18 U.SC. §1030 to someone who impersonates a unique authorized user. In fact, the quotes from the government's Brief on Appeal in *Auernheimer* demonstrate the expansiveness of the government's interpretation of §1030, which was not confined to the facts of that case. Indeed, it was the government's insistence on the breadth of §1030 that generated amicus briefs on Auernheimer's behalf in the Third Circuit.

Thus, the government posits two standards of behavior: one for private citizens, who must adhere to a strict standard of conduct construed by the government, and the other for the government, which, with its elastic ability to effect electronic intrusion, can deliberately, cavalierly, and unrepentantly transgress those same standards. Yet neither law nor the Constitution permits rank government lawlessness without consequences.

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database.

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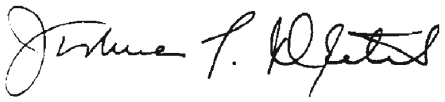
JOSHUA L. DRATEL, P.C.

Also, regarding the Court's October 7, 2014, Order, Mr. Ulbricht rests on his papers already submitted.[2]

Respectfully submitted,



Joshua L. Dratel

JLD/lal

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

[2] For purposes of clarity, since the government has not challenged Mr. Ulbricht's expectation of privacy in his laptop, Google or Facebook accounts – for which his expectation of privacy is manifest – there does not appear to be an issue with respect to these categories. If the Court requires a declaration from Mr. Ulbricht with respect to these three items it would be forthcoming, but neither the Court's October 7, 2014, Order nor the government's papers would seem to make it necessary.

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION
29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
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JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

October 7, 2014

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted on behalf of defendant Ross Ulbricht, in response to the government's October 6, 2014, filing pursuant to the Court's October 3, 2014, Order inviting the government to respond to the factual statements contained in the Declaration of Joshua J. Horowitz, Esq.

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---

database.

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.

Also, regarding the Court's October 7, 2014, Order, Mr. Ulbricht rests on his papers already submitted.[2]

Respectfully submitted,

Joshua L. Dratel

JLD/lal

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

Ordered
Does the Government agree that no declaration is required in this case with regard to establishing Ulbricht's privacy interest in his Facebook, gmail accounts and laptop? (Could you let me know today -- "yes" or "no" will do.)
10/8/14 K. B. Forrest USDJ

[2] For purposes of clarity, since the government has not challenged Mr. Ulbricht's expectation of privacy in his laptop, Google or Facebook accounts – for which his expectation of privacy is manifest – there does not appear to be an issue with respect to these categories. If the Court requires a declaration from Mr. Ulbricht with respect to these three items it would be forthcoming, but neither the Court's October 7, 2014, Order nor the government's papers would seem to make it necessary.

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

October 8, 2014

By ECF
Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

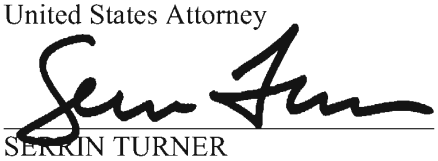
Re: *United States v. Ross William Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

Given defense counsel's representation that the defendant would proffer a declaration attesting to his expectation of privacy in his laptop, email, and Facebook accounts if the Court so required, and given that the declaration would likely be uncontested by the Government since Ulbricht's expectation of privacy in these items seems clear, the Government is willing to stipulate, in the interest of efficiently resolving the defendant's motion, that the defendant has standing to move to suppress these items. However, for the reasons set forth in the Government's memorandum in opposition, the motion is meritless.

Respectfully,

PREET BHARARA
United States Attorney

By: 
SERRIN TURNER
TIMOTHY HOWARD
Assistant United States Attorneys
Southern District of New York

cc: Joshua Dratel, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v-	:	14-cr-68 (KBF)
ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road,"	:	OPINION & ORDER
Defendant.	:	

KATHERINE B. FORREST, District Judge:

On February 4, 2014, Ross Ulbricht ("defendant" or "Ulbricht") was indicted on four counts. (ECF No. 12.) On September 5, 2014, he was arraigned on superseding indictment S1 14 Cr. 68 (KBF) (the "Indictment"). The Indictment charges Ulbricht with the following crimes: Narcotics Trafficking (Count One), Distribution of Narcotics by Means of the Internet (Count Two), Narcotics Trafficking Conspiracy (Count Three), Continuing Criminal Enterprise ("CCE") (Count Four), Conspiracy to Commit and Aid and Abet Computer Hacking (Count Five), Conspiracy to Traffic in Fraudulent Identification Documents (Count Six), and Money Laundering Conspiracy (Count Seven). (ECF No. 52 ("Ind.").) Ulbricht's trial is scheduled to commence on November 10, 2014.

Before this Court is defendant's motion to suppress virtually all evidence in the case, for a bill of particulars, and to strike surplusage. (ECF No. 46.) For the reasons set forth below, the motion is DENIED.

I. BACKGROUND

A. Allegations against Ulbricht

Ulbricht is charged with seven separate crimes—all involving the creation, design, administration and operations of an online marketplace known as "Silk Road." The Government alleges that Ulbricht created Silk Road (Ind. ¶ 1) and that he has been in control of all aspects of its administration and operations (Ind. ¶ 3). The Government's charges against Ulbricht are premised upon a claim that through Silk Road, defendant enabled and facilitated anonymous transactions in a variety of illicit goods and services including, inter alia, narcotics, fake identification documents, and materials used to hack computers, and that he conspired, participated directly in, or aided and abetted others in substantive crimes.

Silk Road is alleged to have operated on the Tor network ("Tor"). (Declaration of Christopher Tarbell ¶¶ 4-5, ECF No. 57 ("Tarbell Decl.").) The Tor network is designed to conceal the Internet Protocol ("IP") addresses of the computers operating on it, "including servers hosting websites on Tor, such as Silk Road." (Tarbell Decl. ¶ 4.) The Government alleges that Silk Road also supported anonymity through its reliance on "Bitcoin" as a method of payment.[1] (Ind. ¶ 28.) The use of Bitcoins concealed the identities and locations of users transmitting and receiving funds. (Ind. ¶ 28.) The Government alleges that over the period of time it was up and running, Silk Road was used by several thousand drug dealers and well over one hundred thousand buyers worldwide to purchase illegal narcotics and

[1] Bitcoin is the name of an encrypted online currency. It is managed through a private network and not through any Government, central bank or formal financial institution. The Government does not allege that the use of Bitcoin itself is illegal.

illicit goods, and that it was also used to launder hundreds of millions of dollars derived from these transactions. (Ind. ¶ 2.) Ulbricht himself is alleged to have made commissions worth tens of millions of dollars from these sales. (Ind. ¶ 3.)

B. The Investigation of Ulbricht

The instant motion is primarily concerned with whether the Government's methods for investigating Ulbricht violated his Fourth Amendment right to be free from unreasonable searches and seizures. Importantly, while the Government alleges that Ulbricht and Silk Road are one and the same, Ulbricht has not conceded that he created Silk Road, or that he administered or oversaw its operations, or even that he used or accessed it at all. Ulbricht has not submitted a declaration or affidavit attesting to any personal privacy interest that he may have in any of the items searched and/or seized and as to which his motion is directed. Ulbricht's lawyer has, however, argued that his "expectation of privacy in his laptop, Google or Facebook accounts" is "manifest" (ECF No. 83 at 2 n.2), and the Government has stipulated to his "expectation of privacy" in those (ECF No. 85).[2]

The Government's investigation involved, inter alia, the imaging and subsequent search of a server located in Iceland (the "Icelandic server") in July 2013. Based in large part on the results of information learned from the Icelandic server, the Government then obtained various court orders for pen-registers and trap and trace devices (the "Pen-Trap Orders"), and warrants to seize and then

[2] On October 7, 2014, the Court issued an order in which it provided the defendant a "final opportunity" to submit a declaration or affidavit establishing some privacy interest in the items searched and/or seized. (ECF Nos. 76-77.) By letter dated October 7, 2014, his lawyer responded that "Mr. Ulbricht rests on his papers already submitted." (ECF No. 83.)

search a number of other servers located within the United States, as well as a laptop associated with Ulbricht and his Facebook and Gmail accounts. In total, the Government obtained 14 warrants and court orders over the course of its investigation. (Declaration of Joshau L. Dratel ¶ 3(a)-(n), ECF No. 47 ("Dratel Decl.").) Those warrants and orders are as follows:

Warrant No. 1: Windstream "JTan" server #1 (Pennsylvania) (9/9/13);

Warrant No. 2: Windstream "JTan" server #2 (Pennsylvania) (9/9/13);

Warrant No. 3: Voxility server (California) (9/19/13);

Warrant No. 4: Windstream servers assigned host numbers 418, 420 and 421 (Pennsylvania) (10/1/13);

Warrant No. 5: Voxility server with IP addresses 109.163.234.40 and 109.163.234.37 (California) (10/1/13);

Warrant No. 6: Samsung laptop with MAC address 88-53-2E-9C-81-96 (California) (10/1/13);

Warrant No. 7: Premises at 235 Monterey Boulevard (California) (10/1/13);

Warrant No. 8: The Facebook account associated with username "rossulbricht" (California) (10/8/13);

Warrant No. 9: The Gmail account rossulbricht@gmail.com (10/8/13);

Pen-Trap Order No. 1: To Comcast re IP address 67.170.232.207 (9/16/13);

Pen-Trap Order No. 2: To Comcast re IP address 67.169.90.28 (9/19/2013);

Pen-Trap Order No. 3: Re the wireless router with IP address 67.169.90.28 located at 235 Monterey Boulevard (California) (9/20/13);

Pen-Trap Order No. 4: Re certain computer devices associated with MAC addresses including 88-53-2E-9C-81-96, (9/20/13); and

Pen-Trap Order No. 5: Re the wireless router with IP address 67.169.90.28 located at 235 Monterey Boulevard (California) (9/19/13).

According to defendant, virtually all of the Government's evidence stems from the initial search of the Icelandic server in July 2013, which occurred before any of the above warrants issued.[3] The vast bulk of defendant's submission is concerned with raising questions regarding how the Government obtained the information that led it to the Icelandic server. One of defendant's lawyers, Joshua Horowitz, has some technical training, and he asserts that the Government's explanation of the methods it used is implausible. (See Declaration of Joshua J. Horowitz ¶¶ 4-8, 17-51, ECF No. 70 ("Horowitz Decl.").) Defendant insists that this Court must therefore hold an evidentiary hearing to determine whether the methods the Government asserted it used and that led it to the Icelandic server were in fact its actual methods or not. (See Memorandum of Law in Support of Defendant Ross Ulbricht's Pre-Trial Motions to Suppress Evidence, Order Production of Discovery, for a Bill of Particulars, and to Strike Surplusage at 28-34, ECF No. 48 ("Def.'s Br."); Reply Memorandum of Law in Support of Defendant Ross Ulbricht's Pre-Trial Motions to Suppress Evidence, Order Production of Discovery, for a Bill of Particulars, and to Strike Surplusage at 4-8, ECF No. 69 ("Def.'s Reply Br.").) Defendant argues that if that search of the Icelandic server was only possible

[3] U.S. law enforcement began working with law enforcement in Iceland on this investigation as early as February 2013. A server—later determined to no longer be in primary use—was imaged in the spring or early summer of 2013 ("Icelandic Server #1"). Ulbricht asserts that the process leading to the imaging of the server may also have been constitutionally infirm. But Icelandic Server #1 is in all events irrelevant, as the Government has represented that it does not intend to use any evidence obtained from that server.

because of a preceding constitutionally infirm investigation, then all subsequent warrants and court orders based on that search constitute fruits of the poisonous tree and must be suppressed.

In addition, defendant also asserts that the warrants relating specifically to the servers located in Pennsylvania (nos. 1, 2 and 4) as well as the warrants relating to Ulbricht's laptop, Facebook and Gmail accounts (nos. 6, 8 and 9) are unconstitutional general warrants; and finally that the Pen-Trap Orders were unlawful because a warrant was required and they failed to include appropriate minimization procedures. Defendant has retained experienced counsel who certainly understand Fourth Amendment jurisprudence. It has long been established—indeed, it is a point as to which there can be no dispute—that (1) the Fourth Amendment protects the constitutional right of an individual to be free from unreasonable searches and seizures; (2) the rights conferred by the Fourth Amendment may not be vicariously asserted; and (3) the Fourth Amendment does not confer any general right available to anyone impacted by an investigation to pursue potentially or actually unlawful law enforcement techniques. The only exception to that is extremely narrow: when law enforcement techniques are so egregious (defined as actions such as torture, not simply unlawful conduct) as to violate the Fifth Amendment, a court may suppress the evidence.

Defendant has not asserted a violation of the Fifth Amendment—nor could he. Defendant has, however, brought what he must certainly understand is a fatally deficient motion to suppress. He has failed to take the one step he needed to

take to allow the Court to consider his substantive claims regarding the investigation: he has failed to submit anything establishing that he has a personal privacy interest in the Icelandic server or any of the other items imaged and/or searched and/or seized. Without this, he is in no different position than any third party would be vis-à-vis those items, and vis-à-vis the investigation that led U.S. law enforcement officers to Iceland in the first place.

There is no doubt that since defendant was indicted and charged with seven serious crimes resulting from that initial investigation and the searches that followed it, he has a "personal interest" in the Icelandic server in a colloquial sense. But longstanding Supreme Court precedent draws a stark difference between that sort of interest and what the law recognizes as necessary to establish a personal Fourth Amendment right in an object or place. To establish the latter, defendant must show that he has a personal privacy interest in the object (e.g., a server) or premises searched, not just that the search of the specific object or premises led to his arrest. Were this or any other court to ignore this requirement in the course of suppressing evidence, the court would undoubtedly have committed clear error.

Further, defendant could have established such a personal privacy interest by submitting a sworn statement that could not be offered against him at trial as evidence of his guilt (though it could be used to impeach him should he take the witness stand). Yet he has chosen not to do so.

In short, despite defendant's assertions and the potential issues he and his counsel raise regarding the investigation that led to the Icelandic server, he has not

provided the Court with the minimal legal basis necessary to pursue these assertions. Thus, the declaration submitted by Joshua J. Horowitz, Esq. (ECF No. 70) along with all the arguments regarding the investigation and the warrants based on it are not properly before this Court. The only arguments that this Court must consider as a substantive matter are those concerning property and accounts as to which defendant has an arguable and cognizable (though itself not legally established) personal privacy interest: the laptop, the Gmail account, and the Facebook account.[4]

II. SEARCHES AND SEIZURES

A. The Fourth Amendment

Ulbricht's motion to suppress evidence is premised upon an assertion that the Government has, or may have, engaged in one or more unreasonable searches and seizures in violation of the Fourth Amendment of the U.S. Constitution. The Fourth Amendment protects the people against unreasonable searches and seizures. U.S. Const. amend. IV. "Ever since its inception, the rule excluding evidence seized in violation of the Fourth Amendment has been recognized as a principal mode of discouraging lawless police conduct." Terry v. Ohio, 392 U.S. 1, 12 (1968). In the absence of a warrant or the applicability of an exception, law enforcement does not have a general right to enter one's home, rifle through drawers, and take what might be found therein. See, e.g., United States v. Jenkins, 876 F.2d 1085, 1088 (2d Cir. 1989).

[4] For reasons the Court does not understand, Ulbricht chose not to submit a declaration claiming any personal privacy interest and expectation of privacy in the search of 235 Monterey Boulevard or the wireless router located at those premises.

Evidence seized in violation of the Fourth Amendment is subject to exclusion at trial—hence, references to "the exclusionary rule" in Fourth Amendment jurisprudence. See, e.g., Terry, 392 U.S. at 13. Exclusion ensures judicial integrity and protects courts from being made a party to "lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasion." Id. Direct and indirect evidence may be subject to preclusion: all evidence that flows directly or indirectly from unlawfully seized evidence is considered "fruit of the poisonous tree." Wong Sun v. United States, 371 U.S. 471, 484-85 (1963) (the exclusionary rule of the Fourth Amendment extends to indirect evidence as well as direct evidence).

"[T]he Fourth Amendment protects people, not places." Katz v. United States, 389 U.S. 347, 351 (1967). In Katz, petitioner sought to suppress evidence of his end of a telephone call, obtained by the FBI after it placed a listening device on a public telephone booth. Id. at 348-50. The Supreme Court defined the issue not as one regarding whether a particular physical space was a constitutionally protected area, or whether physical penetration of a protected area was required for a Fourth Amendment violation. Id. at 350-51. This is important for this Court's consideration here of Ulbricht's claims. The Supreme Court in Katz then stated that the Fourth Amendment cannot be translated into a general constitutional "right to privacy," nor does it cover some nebulous group of "constitutionally protected area[s]." Id. A person's general right to privacy—his right to be let alone by other people—is, like the protection of his property and his very life, left largely

to the law of the individual states. Id. Thus, "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." Id.

1. Foreign searches and seizures.

The law has long been clear that the protections of the Fourth Amendment do not extend to searches conducted outside the United States by foreign law enforcement authorities. See, e.g., United States v. Lee, 723 F.3d 134, 139 (2d Cir. 2013) ("[T]he Fourth Amendment's exclusionary rule, which requires that evidence seized in violation of the Fourth Amendment must be suppressed, generally does not apply to evidence obtained by searches abroad conducted by foreign officials."); United States v. Busic, 592 F.2d 13, 23 (2d Cir. 1978) ("[T]he Fourth Amendment and its exclusionary rule do not apply to the law enforcement activities of foreign authorities acting in their own country."); accord United States v. Peterson, 812 F.2d 486, 490 (9th Cir. 1987).

An exception to this rule is when foreign law enforcement authorities become agents of U.S. law enforcement officials. See Lee, 723 F.3d at 140 (constitutional requirements may attach "where the conduct of foreign law enforcement officials rendered them agents, or virtual agents, of United States law enforcement officials" (quoting United States v. Maturo, 982 F.2d 57, 61 (2d Cir. 1992))). If, for instance, U.S. law enforcement was able to and did command and control the efforts of foreign law enforcement, an agency relationship might be found. United States v. Getto, 729 F.3d 221, 224 (2d Cir. 2013) (holding that "ongoing collaboration between an American law enforcement agency and its foreign counterpart in the course of

parallel investigations does not—without American control, direction, or an intent to evade the Constitution—give rise to a relationship sufficient to apply the exclusionary rule to evidence obtained abroad by foreign law enforcement"). The foreign searches must, however, be "reasonable." In re Terrorist Bombings of U.S. Embassies in E. Africa, 552 F.3d 157, 167 (2d Cir. 2008) (holding that "foreign searches of U.S. citizens conducted by U.S. agents are subject only to the Fourth Amendment's requirement of reasonableness").[5] As the Supreme Court has explained:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

Bell v. Wolfish, 441 U.S. 520, 559 (1979).

2. Personal privacy interest.

Supreme Court precedent, binding on this and all courts in this land, establishes that the "capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the [Fourth] Amendment has a legitimate expectation of privacy in the invaded place." Rakas v. Illinois, 439 U.S. 128, 143 (1978); see also United States v. Watson, 404 F.3d 163, 166 (2d Cir. 2005) (affirming denial of a suppression motion on the basis that the

[5] It is unclear whether foreign searches of objects or premises in which only non-citizens have a privacy interest are subject to the Fourth Amendment's reasonableness requirement. See United States v. Bin Laden, 126 F. Supp. 2d 264, 276 (S.D.N.Y. 2000) (collecting cases).

defendant had failed to show an expectation of privacy). This principle derives from the Supreme Court's holding in Katz v. United States, in which the Court found that while common law trespass had long governed Fourth Amendment analysis, the capacity to claim the protection of the Fourth Amendment depended first and foremost on a personal expectation of privacy in the invaded place. 389 U.S. at 352-53. The Court found that even though petitioner was located in a public telephone booth when the search occurred, "the Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied . . . and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment." Id. at 353.

The law therefore leaves no doubt that Fourth Amendment rights are based on a personal, subjective expectation of privacy; they are rights of a person, not rights of a "thing"—whether that thing be a server, a car, or a building. If a person—a human—cannot establish a cognizable personal expectation of privacy in the place or thing searched, there is no Fourth Amendment issue and no reason to undertake a Fourth Amendment analysis.

How, then, is one's interest in a place or thing established? It must be established by a declaration or other affirmative statement of the person seeking to vindicate his or her personal Fourth Amendment interest in the thing or place searched. See, e.g., United States v. Smith, 621 F.2d 483, 487 (2d Cir. 1980) (defendants had no legitimate expectation of privacy in trunk of car where they did not assert ownership of car, knowledge of trunk's contents, or access to trunk);

United States v. Montoya-Echevarria, 892 F. Supp. 104, 106 (1995) ("The law is clear that the burden on the defendant to establish [Fourth Amendment] standing is met only by sworn evidence, in the form of affidavit or testimony, from the defendant or someone with personal knowledge."); United States v. Ruggiero, 824 F. Supp. 379 (S.D.N.Y. 1993) ("It is well established that in order to challenge a search, a defendant must submit an affidavit from someone with personal knowledge demonstrating sufficient facts to show that he had a legally cognizable privacy interest in the searched premises at the time of the search."). The Supreme Court has also established that the defendant—not the Government—bears the burden of proving that he has a legitimate expectation of privacy. Rawlings v. Kentucky, 448 U.S. 98, 104 (1980); see also Watson, 404 F.3d at 166.

The requirement that one must have a personal expectation of privacy at the time of the search in the thing or place searched is not novel and has been repeatedly litigated. One can easily see why: even if one did not have an expectation of privacy at the time of the search, the search might lead to inculpatory evidence. At that point, the now-defendant might certainly desire that the thing or place searched had been left alone.

In Rakas, the Supreme Court reviewed the question of whether passengers in a vehicle that was searched could move to suppress the evidence obtained thereby. 439 U.S. at 130-32. In that case, the police received a report of a robbery and the description of a getaway car. Id. at 130. Shortly thereafter, an officer stopped and searched a vehicle matching that description. Id. The search revealed ammunition

and a firearm. Id. Petitioners had been passengers in the vehicle and were arrested following the search. Id. Neither the car nor the evidence seized belonged to them. Id. at 131. They moved to suppress the evidence on the basis that the search violated their rights under the Fourth Amendment. Id. at 130-31.

The question before the Court was presented as whether petitioners had "standing" to bring the suppression motion. Id. at 131-32. Petitioners urged the Court to relax or broaden the rule of standing so that any criminal defendant at whom a search was "directed" would have standing to challenge the legality of the search. Id. at 132. The Court recognized that prior case law (including Jones v. United States, 362 U.S. 257 (1960)) had discussed the concept of standing as whether the individual challenging the search had been the "victim" of the search. Petitioners in Rakas urged the Court to broaden the "victim" concept to a "target theory" of standing for Fourth Amendment purposes. Id. at 132-33. The Supreme Court declined to do so, reiterating that the law has long been clear that Fourth Amendment rights were personal rights which may not be vicariously asserted. Id. at 133-34. The Court recited numerous instances over time in which courts had rejected defendants' assertions that they were aggrieved by unconstitutional searches of third parties' premises or objects. Id. at 134 (collecting cases). "A person who has been aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." Id. "[I]t is proper to permit only defendants whose Fourth Amendment rights have been

violated to benefit from the rule's protections." Id. The Court stated, "[c]onferring standing to raise vicarious Fourth Amendment claims would necessarily mean a more widespread invocation of the exclusionary rule during criminal trials." Id. at 137. The Court further reasoned that "[e]ach time the exclusionary rule is applied it exacts a substantial social cost for the vindication of Fourth Amendment rights," in that "[r]elevant and reliable evidence is kept from the trier of fact and the search for truth at trial is deflected." Id.

The Court also concluded that whether a defendant has the right to challenge a search and seizure is best analyzed under "substantive Fourth Amendment doctrine," and not standing, though the inquiry ought to be the same under either. Id. at 139.

Rakas and the case law on which it is based and which has followed it thus require this Court to ask whether a defendant who is challenging a search or seizure has established a sufficient personal privacy interest in the premises or property at issue. A defendant may make such a showing by asserting that he owned or leased the premises (for example, the leasing of a server would count) or had dominion or control over them. Watson, 404 F.3d at 166; United States v. Villegas, 899 F.2d 1324, 1333 (2d Cir. 1990). Indeed, to a limited extent, yet to be defined by the courts, an authorized user of a premises might have a sufficient expectation of privacy. See Rakas, 439 U.S. at 142-43 ("[A] person can have a legally sufficient interest in a place other than his own home so that the Fourth Amendment protects him from unreasonable governmental intrusion into that

place."). Factual claims made in an affirmation by defendant's counsel may be an insufficient basis upon which to challenge a search if they are made without personal knowledge or are otherwise insufficiently probative. See Watson, 404 F.3d at 166-67.

There are limited situations—"extreme case[s]," United States v. Rahman, 189 F.3d 88, 131 (2d Cir. 1999) (per curiam)—in which a government practice might be "so outrageous that due process principles would absolutely bar the [G]overnment from invoking judicial processes to obtain a conviction . . . ." United States v. Russell, 411 U.S. 423, 431-32 (1973); see also United States v. Christie, 624 F.3d 558 (3d Cir. 2010) ("The pertinent question is whether the government's conduct was so outrageous or shocking that it amounted to a due process violation."); Czernicki v. United States, 270 F. Supp. 2d 391, 394-95 (S.D.N.Y. 2003). However, only conduct that "shocks the conscience" amounts to a due process violation in this context. Rahman, 189 F.3d at 131 (quoting Rochin v. California, 342 U.S. 165, 172 (1952)).

Defendant cites U.S. v. Gelbard, 408 U.S. 41 (1972), and United States v. Ghailani, 743 F. Supp. 2d 261 (S.D.N.Y. 2010), for the proposition that "a defendant is entitled to know whether a Government's investigation was predicated on illegal government conduct, and [obtain] relief therefrom." (Def.'s Reply Br. at 7.) That is only so to the extent that the issues concern a defendant's personal Fourth Amendment rights, or if "extreme conduct" is involved. Unlawful conduct alone is not enough. See, e.g., United States v. Payner, 447 U.S. 727, 729-31 (1980). In

Ghailani, the issue concerned whether the court would allow testimony from a cooperating witness who had been tortured. 743 F. Supp. 2d at 267. The court ruled that it would not, id. at 287-88, but importantly, Ghailani was "not a Fourth Amendment search and seizure case," id. at 285.

A defendant seeking both to establish an interest in items seized, and to put the Government to its proof of establishing a connection, is protected to the extent that any declaration or affidavit he submits may not be offered against him at trial. Simmons v. United States, 390 U.S. 377, 393-94 (1968) ("[W]hen a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection."). This does not insulate the defendant from all risk, however. His statement may nonetheless be used to impeach him should he take the witness stand in his own defense and, at that time, open the door to the statement. United States v. Jaswal, 47 F.3d 539, 543 (2d Cir. 1995); United States v. Beltran-Gutierrez, 19 F.3d 1287, 1291 (9th Cir. 1994). (Of course, perjury in a declaration or on the stand is never permitted; so there are reasons to expect consistency.) It is certainly true, therefore, that the requirement of a statement of a personal privacy interest in an item seized requires a defendant to make choices.[6]

[6] The order of proof at trial is known in advance: the Government bears the burden of proof, which means the Government goes first. If, after the Government rests, it has failed to present sufficient evidence, the defendant can move pursuant to Rule 29 of the Federal Rules of Criminal Procedure for a judgment of acquittal. Ulbricht would not take the witness stand (if at all) until those prior steps had occurred, and so the impeachment, if any, of Ulbricht with a statement setting forth a privacy interest in the Icelandic server would not occur until that point. (The Court recognizes that trial strategy is often cemented during open statements.)

Simply asserting a personal privacy interest in a premises or an object does not—even when a warrantless search has occurred—require a finding of a Fourth Amendment violation. A court asks a second question: whether society is willing to recognize that this expectation is, in turn, reasonable. California v. Ciraolo, 476 U.S. 207, 211 (1986); Katz, 389 U.S. at 360. For instance, that an individual has taken measures to restrict third-party viewing of his activities in a space that he owns or leases does not necessarily mean that that privacy interest is one society is prepared to recognize as reasonable. See Ciraolo, 476 U.S. at 209-10, 215 (finding no Fourth Amendment violation when aerial photographs had been taken above a property whose owner had taken fairly extensive measures to shield from view); see also Oliver v. United States, 466 U.S. 170, 182-84 (1984) (placement of "No Trespassing" signs on secluded property does not create legitimate privacy interest in marijuana fields).

Assuming a cognizable privacy interest, the court can then turn to whether the search was lawful.[7]

3. Warrants.

Searches not incident to arrest or exigent circumstances are generally based on a warrant. Kentucky v. King, 131 S. Ct. 1849, 1856 (2011). The Warrant Clause of the Fourth Amendment provides that "no Warrants shall issue, but upon

[7] In the absence of a cognizable privacy interest, the Court has no basis to proceed with a suppression motion, and therefore no basis on which to hold an evidentiary hearing. Evidentiary hearings are only necessary when a defendant makes a sufficient offer of proof with respect to his allegation that a false statement was made knowingly and intentionally, or with reckless disregard for the truth, by an affiant in a warrant affidavit, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no evidentiary hearing is required. Franks v. Delaware, 438 U.S. 154, 171 (1978).

probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. An application for a warrant must state under penalty of perjury facts supporting probable cause. See U.S. Const. amend. IV (warrant may not issue unless supported by probable cause, supported by "oath or affirmation"). A magistrate judge then reviews the warrant, determines whether the showing of probable cause and particularity is sufficient, and if so, signs it. See United States v. George, 975 F.2d 72, 76 (2d Cir. 1992) ("The particularity requirement prevents this sort of privacy invasion and reduces the breadth of the search to that which a detached and neutral magistrate has determined is supported by probable cause."). A magistrate judge's review is based on the totality of the circumstances. Illinois v. Gates, 462 U.S. 213, 238-39 (1983). In later reviewing such determination on a motion to suppress, the reviewing court is to give the magistrate judge's review a high degree of deference. See id. at 236 ("A magistrate's 'determination of probable cause should be paid great deference by reviewing courts.'" (quoting Spinelli v. United States, 393 U.S. 410, 419 (1969), abrogated on other grounds by Gates, 462 U.S. 213))).

In addition to its probable cause requirement, the Warrant Clause contains a prohibition against "general warrants." Andresen v. Maryland, 427 U.S. 463, 480 (1976). "'The problem (posed by a general warrant) is not that of intrusion Per se, but of a general, exploratory rummaging in a person's belongings . . . (the Fourth Amendment addresses the problem) by requiring a 'particular description' of the

things to be seized.'" Id. at 480 (quoting Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971)). General warrants are therefore prohibited; the particularity requirement is to ensure that nothing is left to the discretion of the officer when a warrant is being executed—if the item is described as among those to be seized, it may be seized. See Andresen, at 480; see also Stanford v. Texas, 379 U.S. 476, 485 (1965).

B. The Riley, Jones, and Kyllo Cases

Defendant refers to the decisions in Riley v. California, 134 S. Ct. 2473 (2014), United States v. Jones, 132 S. Ct. 945 (2012), and Kyllo v. United States, 533 U.S. 27 (2001), as supportive of his motions to suppress and as responding to the "essential privacy imperatives of the digital age." (Def.'s Reply Br. at 1, 13, 19, 21-28; see also Def.'s Br. at 3, 13-15, 17-19, 22-28, 42, 45-49, 59.) These cases do not help defendant on this motion. They are consistent, not inconsistent, with the above longstanding Fourth Amendment principles.

Riley concerned the search of data on a seized cell phone. The lawfulness of the seizure of the object itself —the cell phone—was not contested. The subsequent search of the data on the cell phone was. In Riley, the defendant was stopped for a traffic violation which resulted in his arrest on weapons charges. 134 S. Ct. at 2480. A cell phone was seized as a result of a lawful search of Riley's person incident to his arrest. Id. The arresting officer reviewed the contents of the cell phone without a warrant, and another officer conducted a subsequent and further review of those contents. Id. at 2480-81. The Supreme Court articulated the issue before it as how the requirement of "the reasonableness of a warrantless search

incident to a lawful arrest" applies to "modern cell phones." Id. at 2482, 2484. The Court acknowledged that the rationale of prior cases dealing with searches incident to arrest involving physical objects (such as those typically found on an arrestee's person) did not have as much force in the digital context. A "search of the information on a cell phone bears little resemblance to the type of brief, physical search considered in [United States v. Robinson, 414 U.S. 218 (1973)]." Id. at 2485. Because the data on a cell phone are generally far more extensive than the contents of physical objects and do not present the same type of safety issues, the Court determined that warrants are generally required to search the contents of cell phones. Id. at 2485-86. The Court based its decision both on the potential breadth of the information a cell phone might contain, as well as on the fact that digital data generally cannot be used as a weapon or to cause immediate physical danger. Id. Nothing in the Court's opinion in Riley suggests any departure from any of the principles regarding the need to establish a personal privacy interest, as discussed above, and as is obvious, the opinion says nothing concerning searches by foreign law enforcement officers outside the United States.

Jones concerned the warrantless attachment of a Global-Positioning-System ("GPS") tracking device to a Jeep vehicle and the subsequent monitoring of the movements of that vehicle. 132 S. Ct. at 948. The Supreme Court examined the question of whether the physical placement of the GPS device constituted a search within the meaning of the Fourth Amendment and found that it did. There, the Supreme Court returned to age-old concepts of physical trespass and the Fourth

Amendment. See id. at 949-54. In this context, the physical attachment of the device was found to unreasonably intrude on the defendant's reasonable expectation of privacy and, "[b]y attaching to the device to the Jeep, officers encroached on a protected area." Id. at 952. The Court acknowledged that more nuanced cases—such as situations involving the transmission of electronic signals without trespass—were different from the case then at hand and would be subject to analysis under the factors set forth in Katz. Id. at 953. Jones neither alters nor extends Fourth Amendment law in light of the digital era. Indeed, the majority opinion looks more to the past than it does to the future.

In Kyllo, the Supreme Court did find that relatively new technology—thermal imaging used on the exterior of a private residence, and which provided information as to what was occurring in that private residence—constituted a search for purposes of the Fourth Amendment. Kyllo, 533 U.S. at 40. The thermal imaging was performed from the exterior of the house and occurred over a span of just a few minutes. Id. at 29-30. Based upon the information obtained, the investigating agent drew the conclusion that the residence functioned in part as a grow-house for marijuana. Id. at 30. There, too, the Court applied longstanding principles of law to find that the defendant had a reasonable expectation of privacy in his residence—the sanctity of which has long been the concern of Fourth Amendment jurisprudence. Id. at 34-40. The Court held that "[w]here, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the

surveillance is a 'search' and is presumptively unreasonable without a warrant." Id. at 40.

C. Discussion

Here, the Government obtained nine warrants and five pen-trap orders. Ulbricht argues that all of the warrants and orders suffer from one overarching infirmity: they are based on the cursory recitation of an "investigation" that was only possible as the result of the search that led to the authorities to Iceland. Ulbricht argues that how that search was conducted is unknown, and that if it was conducted in an unlawful manner, then all of the warrants are constitutionally defective.[8]

Ulbricht's motion is largely, therefore, directed at an investigation and search of objects (servers) and premises in which he has carefully avoided establishing a personal privacy interest. As the above principles make clear, just because the investigation eventually led to his arrest on criminal charges does not ipso facto give him a privacy interest in any Silk Road servers. Katz, 389 U.S. at 351 ("[T]he Fourth Amendment protects people, not places.").

As the Court has set forth above, Ulbricht was provided ample opportunity to establish such an interest—including an additional and specific request by this

[8] Ulbricht also argues that the magistrate judges who received the warrant applications failed appropriately to inquire into how the preliminary investigation was conducted. (Def.'s Br. at 36-37.) For all of the reasons discussed throughout this opinion, he has not established a personal privacy interest that would allow him to pursue this argument. Nevertheless, even if this Court were to perform a substantive review of the merits it would find that there is no deficiency. This Court is to give a receiving magistrate's determination of probable cause a high degree of deference. See Gates, 462 U.S. at 236. It is apparent from the face of the affidavit in support of Warrant No. 1—which contains a handwritten addition by the affiant and the initials of the reviewing magistrate—that the application was carefully reviewed and probable cause established.

Court on October 7, 2014. (ECF Nos. 76-77.) He elected to "rest[] on his papers." (ECF No. 83.) This is either because he in fact has no personal privacy interest in the Icelandic server, or because he has made a tactical decision not to reveal that he does.

The requirement to establish a personal privacy interest might appear to place Ulbricht in a catch-22: if the Government must prove any connection between himself and Silk Road, requiring him to concede such a connection to establish his standing the searches and seizures at issue could be perceived as unfair. But as Ulbricht surely knows, this is not the first court, nor is he the first defendant, to raise such an issue. See, e.g., Payner, 447 U.S. 727. In Payner, the Government obtained evidence against a defendant based on a "flagrantly illegal search of a [third party's] briefcase." Id. at 729. The Supreme Court referenced having decided Rakas the prior term, reaffirming the "established rule that a court may not exclude evidence under the Fourth Amendment unless it finds that an unlawful seizure violated the defendant's own constitutional rights." Id. at 731 (collecting cases). "And the defendant's Fourth Amendment rights are violated only when the challenged conduct invaded his legitimate expectation of privacy rather than that of a third party." Id. (emphasis in original) (citing, inter alia, Rakas, 439 U.S. at 143.)

While the district court and the circuit court in Payner recognized this rule, they directly stated that a federal court should use its supervisory power to suppress evidence tainted by gross illegalities that did not infringe the defendant's constitutional rights. Id. at 733. The Supreme Court disagreed—and found that

the extension of the supervisory power would "enable federal courts to exercise a standardless discretion in their application of the exclusionary rule to enforce the Fourth Amendment." Id. at 733. The Supreme Court reiterated that it did not condone lawless behavior—but nor did lawless behavior command "the exclusion of evidence in every case of illegality." Id. at 734. "Our cases have consistently recognized that unbending application of the exclusionary sanction to enforce ideals of government rectitude would impede unacceptably the truth-finding functions of the judge and jury." Id. The Court concluded that "the supervisory power does not authorize a federal court to suppress otherwise admissible evidence on the ground that it was seized unlawfully from a third party not before the court." Id. at 735.

Ulbricht and other defendants seeking to both establish an interest in items seized, and put the Government to its proof of establishing a connection, are protected to the extent that any declaration or affidavit may not be offered against the defendant at trial. See Simmons, 390 U.S. at 393-94 (a defendant's sworn statements offered in support of a motion to suppress may not thereafter be admitted against him at trial on the issue of guilt unless defendant does not object). This does not insulate the defendant from all risk, however. His statement may nonetheless be used to impeach the defendant should he take the witness stand in his own defense and, at that time, open the door to the statement on direct. United States v. Jaswal, 47 F.3d 539, 543 (2d Cir. 1995); United States v. Beltran-Gutierrez, 19 F.3d 1287, 1291 (9th Cir. 1994). It is certainly true, therefore, that the requirement of a statement of a personal privacy interest in an item seized

requires a defendant to make hard choices. One choice is to establish an interest if such exists to enable a court to take up important issues. That could not or was not done here.

Here, the Court does not know whether Ulbricht made a tactical choice because he is—as they say—between a rock and a hard place, or because he truly has no personal privacy interest in the servers at issue.

It is clear, however, that this Court may not proceed with a Fourth Amendment analysis in the absence of the requisite interest. If a third party leased a server on which the Government unlawfully intruded in the investigation that led to the Icelandic server, under Katz, Rakas, Payner, and a host of other case law, that is no basis for an assertion by Ulbricht that his Fourth Amendment rights were violated. Thus, whatever methods used—lawful or unlawful—are beyond this Court's purview. Payner, 447 U.S. at 735. Ulbricht therefore has no basis to challenge as violations of his Fourth Amendment rights: (1) the investigation that preceded and led to the Icelandic server, (2) the imaging and search of the Icelandic server, and (3) Warrant Nos. 1, 2, 3, 4, 5, and 7.[9]

Ulbricht has not proffered a statement that he had a personal expectation of privacy in the laptop (Warrant No. 6), Facebook (Warrant No. 8) or Gmail accounts (Warrant No. 9). While his lawyer stated that his privacy interest in the accounts and his laptop is "manifest" (ECF No. 83 at 2 n.2), the law has long held that

[9] Ulbricht has also argued that Warrant Nos. 1, 2, 3, 4, 5, and 7 are unlawful "general warrants." (See Def.'s Reply Br. at 3.) For the same reasons that he lacks a sufficient Fourth Amendment interest to challenge the investigatory technique that underlies the probable cause recited in the warrants, so too he lacks a sufficient interest as to this argument.

statements submitted by attorneys that are merely conclusory or that do not allege personal knowledge on the part of the attorney are insufficient to create an issue of fact. See United States v. Motley, 130 Fed. App'x 508, 510 (2d Cir. 2005) (summary order) (citing Lipton v. Nature Co., 71 F.3d 464, 469 (2d Cir. 1995); United States v. Gillette, 383 F.2d 843, 848-49 (2d Cir. 1967). While the Court may assume based on his attorney's statement and the Government's stated intention not to contest that position that these accounts and the laptop belong to Ulbricht, that does not necessarily mean that he has a reasonable expectation of privacy as to their respective contents. There are, of course, many ways in which users may set up the privacy settings or password protection for their Facebook and Gmail accounts, as well as access to their laptops—and these settings and protections are relevant to a Katz analysis. See United States v. Meregildo, 883 F. Supp. 2d 523, 525 (S.D.N.Y. 2012) ("When a social media user disseminates his postings and information to the public, they are not protected by the Fourth Amendment. However, postings using more secure privacy settings reflect the user's intent to preserve information as private and may be constitutionally protected." (citations omitted)). It is also possible for more than one individual to have access to a single shared Facebook or Gmail account. It also seems likely that many of Ulbricht's emails were to individuals other than himself, which could defeat an expectation of privacy in them. See United States v. Lifshitz, 369 F.3d 173, 190 (2d Cir. 2004) (explaining that emailers generally lose a legitimate expectation of privacy in an email that has already reached its recipient (citing Guest v. Leis, 255 F.3d 325, 333 (6th Cir.

2001))).[10] The Court has no idea whether Ulbricht had a reasonable subjective expectation that all aspects of his Facebook and Gmail accounts would be private, or none. The Court has no idea whether his laptop was password protected or not. And that makes a difference. The Court cannot just assume a subjective expectation of privacy.[11]

In any event, the warrants relating to these three items were lawful. As the Court has set forth above, Ulbricht cannot challenge the initial investigation that led to the Icelandic server. Information obtained from the search of that server led law enforcement to other servers within the United States (as to which Ulbricht similarly has no demonstrated privacy interest), and the information gathered as a result of those searches undoubtedly found its way into the probable cause analysis for Warrant Nos. 6, 8 and 9. That probable cause supported Warrants 6, 8 and 9 was well and solidly established—even without the deference this Court must give to the reviewing magistrate judge. See Gates, 462 U.S. at 236; United States v. Martin, 426 F.3d 68, 73 (2d Cir. 2005) (courts must afford a presumption of validity to the affidavits supporting a search warrant); United States v. Carpenter, 341 F.3d

[10] The Court does not here decide that Ulbricht could never have an expectation of privacy in an email he sent to a third party.

[11] It is particularly inappropriate to do so in light of published user terms for both Gmail accounts and Facebook which indicate that under certain circumstances the accounts may be turned over, without notice, to law enforcement. See Privacy Policy, Google, http://www.google.com/policies/privacy/ (last modified Mar. 31, 2014) ("Your domain administrator may be able to . . . receive your account information in order to satisfy applicable law, regulation, legal process or enforceable government request. . . . We will share personal information with companies, organizations or individuals outside of Google if we have a good-faith belief that . . . the information is reasonably necessary to: meet any applicable law, regulation, legal process, or enforceable governmental request."); Information for Law Enforcement Authorities, Facebook, https://www.facebook.com/safety/groups/law/guidelines/ (last visited October 9, 2014) (explaining that under certain circumstances Facebook may provide a user's information to law enforcement authorities without notice to the user).

666, 670 (8th Cir. 2003) ("[S]uppression remains an appropriate remedy where 'the issuing magistrate wholly abandoned his judicial role.'" (quoting United States v. Leon, 468 U.S. 897, 923 (1984))). Thus, the warrants do not suffer from any probable cause deficiency.

Nor are these general warrants. A general warrant is one that lacks particularity as to the item to be seized or as to what should be searched. George, 975 F.2d at 75. Here, they were specific as to both. The warrants identified the laptop and the accounts by name. There was no lack of specificity as to the items to be seized. Thus, the entirety of the laptop and data on the hard drive of that laptop was seized, along with the entirety of the accounts.

The warrants were also specific, however, as to what type of evidence should be searched for. Each of the warrants listed specific categories of items, including evidence of aliases, evidence concerning attempts to obtain fake identification, writings which can be used as stylistic comparisons for other "anonymous" writings, evidence concerning Ulbricht's travel patterns or movement, communications with co-conspirators regarding specified offenses, evidence concerning Bitcoin in connection with the specified offenses, and other evidence relating to the specified offenses. (See Dratel Decl. exs. 11, 13, 14.)

It is certainly true that in order to search for the specified items, the Warrants sought to seize the entirety of the laptop, the Facebook account, and the Gmail account. But this does not transform the warrants into general warrants. Indeed, it is important not to confuse the separate concepts of the seizure of an

item—which were quite specifically identified but which were seized in their entirety—with the search itself. The search is plainly related to the specific evidence sought. It has long been perfectly appropriate to search the entirety of a premises or object as to which a warrant has issued based on probable cause, for specific evidence as enumerated in the warrant, which is then to be seized. For instance, warrants have long allowed searching a house high and low for narcotics—indeed, it is rare that drug dealers point out the hidden trap in the basemen—or reviewing an entire file cabinet to find files that serve as evidence of money laundering activity, which might be intermingled with files documenting lawful and irrelevant activity. This case simply involves the digital equivalent of seizing the entirety of a car to search for weapons located within it, where the probable cause for the search is based on a possible weapons offense.

In In the Matter of a Warrant for All Content and Other Information Associated with the Email Account at xxxxx@Gmail.com Maintained at the Premises Controlled by Google, Inc., No. 14 Mag. 309, 2014 WL 3583529 (S.D.N.Y. Aug. 7, 2014) ("Gmail"), Magistrate Judge Gorenstein comprehensively reviewed the current state of the law in this area. In that case, the Government sought a warrant in connection with an investigation to allow it to search the entirety of a Gmail account for specified evidence of a crime, as to which sufficient probable cause had been demonstrated. Id. at *1. The warrant did not contain a particular search protocol and did not limit the amount of time the Government could take to review the information Google would provide in response to the warrant. Id. The

warrant also did not provide for later destruction of the material. Id. The court reviewed Fourth Amendment principles with a particular focus on the requirement that courts assess the "reasonableness" of a search. Id. at *2. The court noted that courts in Washington, D.C. and Kansas had denied applications seeking warrants for entire email accounts, at least without protocols in place. Id. at *3. The court found that under long established precedent, when officers executing warrants went, for instance, to a home or office, and were authorized to seize particular types of documents, they generally were required to look into the places where any and all documents were stored; there was no practice and certainly no requirement that people universally applied to the organization of their documents to assist in quick and direct location of responsive documents should they ever be the subject of a warrant. That was not real life. Some latitude for searches had to be allowed; this was particularly true with regard to electronic evidence would could be even more voluminous and undifferentiated than paper documents. See id. at *5.

Judge Gorenstein applied these principles to the warrant before him and determined that because it specified the particular crimes as to which evidence was sought—and as to which probable cause had been established—it was not overbroad. Id. at *7. He noted that the Federal Rules of Criminal Procedure had been amended in 2009 to provide for a procedure in which a warrant could authorize the seizure of electronic storage media or the seizure or copying of electronically stored information—and that unless the warrant otherwise requires it, a later review of the media or information is allowed. Id. at *6 (citing Fed. R.

Crim. P. 41(e)(2)(B)). The decision also noted the Second Circuit's ruling in United States v. Ganias, 755 F.3d 125 (2d Cir. 2014), in which the Second Circuit held that while wholesale removal of all tangible papers from a premises was not generally acceptable, electronic media posed a different set of issues. Gmail, 2014 WL 3583529, at *6. In Ganias, the Court stated that "[i]n light of the significant burdens on-site review would place on both the individual and the Government, the creation of mirror images for offsite review is constitutionally permissible . . . ." 755 F.3d at 135.

This Court agrees entirely with Judge Gorenstein's rationale. Warrants 6, 8 and 9 are substantially similar to the warrant before Judge Gorenstein, and similarly have the necessary particularity.[12]

III. PEN-TRAP ORDERS

Defendant argues that the Pen-Trap Orders were deficient for two reasons: (1) the information obtained through the Pen-Trap Orders should have been the

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[12] Even if this Court were to find that the magistrate judges who issued the warrants erred by approving the clauses to which Ulbricht objects as overly broad, the application of the exclusionary rule here would still be inappropriate, as the law enforcement agents who executed the searches and seizures at issue were entitled to rely in good faith upon the magistrate judges' probable cause determinations, and the warrant applications here were not so "lacking in indicia of probable cause" nor so "facially deficient" that reliance upon the warrant was "entirely unreasonable." Id. at 921-23 (quotation omitted).

The Court further notes that while it is certainly true that there circumstances under which a warrant that authorizes a seizure of "any communications or writings" in the email account of a defendant would be overbroad, it is also true that a magistrate judge's review of a warrant application must be based on the totality of the circumstances. Gates, 462 U.S. at 238-39. Here, these circumstances included many steps taken by members of the alleged conspiracy to maintain their anonymity while creating, designing, administering, operating, and using the Silk Road website, and they included the use of idiosyncratic linguistic patterns by the website's administrator. Given the high degree of deference that this Court must afford the review of the magistrate judge, see id. at 236, it is not this Court's place to second-guess their decision that the warrants were not overly broad in the context of a case where anonymity and the usage of idiosyncratic linguistic patterns are key issues.

subject of a warrant application, and (2) the orders failed to include appropriate minimization procedures. Both arguments are meritless.

The law is clear—and there is truly no room for debate—that the type of information sought in Pen-Trap orders 1, 2, 3, 4, and 5 was entirely appropriate for that type of order.[13] See 18 U.S.C. §§ 3121 et seq. In Smith v. Maryland, 442 U.S. 735 (1979), the Supreme Court found that the use of a pen-register did not constitute a search for Fourth Amendment purposes, id. at 745-46. To the extent Ulbricht wants to make novel Fourth Amendment arguments with regard to the Pen-Trap Orders,[14] he has not established the requisite privacy interest (as discussed at length above) to do so. The Court will therefore not consider those arguments.

Ulbricht's minimization argument is similarly off-base. Minimization refers to protocols and is used in the wiretap context to prevent investigators from listening to conversations irrelevant to their investigation. See 28 U.S.C. § 2518 (wiretaps must be conducted "in such a way as to minimize the interception of communications not otherwise subject to interception"). Minimization is directed at content. See United States v. Rizzo, 491 F.2d 215, 216 n.3 (2d Cir. 1974) (federal

[13] The information related to the IP addresses of individual packets of data sent to and from a particular IP address. The content of the communications was not requested. Pen-trap devices have frequently been used to obtain precisely that which was sought here. Before the Internet became widely used, pen-trap devices were used to obtain information regarding the telephone numbers associated with incoming and outgoing telephone calls. Smith v. Maryland, 442 U.S. 735 (1979).

[14] Defendant argues that the scope of information that can be gleaned from Internet routing information "allows for a profile of an individual's activity far more concrete and comprehensive" that what the telephone numbers associated with a telephone call would reveal. (Def.'s Reply Br. at 25.) He urges that as a result, Smith v. Maryland—which occurred in the context of landline telephones—is inapposite. This Court cannot consider that argument in light of the lack of a demonstrated privacy interest.

minimization laws do not apply "to mere interception of what telephone numbers are called, as opposed to the interception of the contents of the conversations"). The Pen-Trap Orders do not seek the content of internet communications in any directly relevant sense.

IV. BILL OF PARTICULARS

Defendant moves for an order requiring the Government to provide a bill of particulars. (Def.'s Br. at 65-79.) Defendant argues that in the absence of additional factual detail not contained in the Indictment, he will be unable to prepare his defense and will have an insufficient basis to make double jeopardy challenges to potential future charges. (Id. at 65.) Defendant argues that the volume of discovery weighs in favor of a bill of particulars. (Id. at 65-66.)

Rule 7(f) of the Federal Rules of Criminal Procedure provides that a court may direct the Government to file a bill of particulars. Fed. R. Crim. P. 7(f). However, a bill of particulars is required "only where the charges of the indictment are so general that they do not advise the defendant of the specific acts of which he is accused." United States v. Walsh, 194 F.3d 37, 47 (2d Cir. 1999) (quoting United States v. Torres, 901 F.2d 205, 234 (2d Cir. 1990)).

A bill of particulars is also unnecessary when the Government has produced materials in discovery concerning the witnesses and other evidence. See id. ("[A] bill of particulars is not necessary where the government has made sufficient disclosures concerning its evidence and witnesses by other means.") In Torres, the Second Circuit affirmed the district court's denial of a bill of particulars in part because the defendants were provided with considerable evidentiary detail outside

of the indictment. 901 F.2d at 233-34; see also United States v. Panza, 750 F.2d 1141, 1148 (2d Cir. 1984). Thus, in determining whether to order a bill of particulars, a court must examine the totality of the information available to defendant, both through the indictment and through pre-trial discovery. United States v. Bin Laden, 92 F. Supp. 2d 225, 233 (S.D.N.Y. 2000). The purpose of the bill of particulars is to avoid prejudicial surprise at trial and give defendant sufficient information to meet the charges against him. Id. (citing Torres, 901 F.2d at 234).

In Bin Laden, the court granted the defendants' motion for a bill of particulars. Id. at 227. There, however, the indictment charged 15 named defendants with 267 discrete criminal offenses, it charged certain defendants with 229 counts of murder, it covered a period of nearly ten years, and it alleged 144 overt acts in various countries. Id. at 227-28. The court noted that the "geographical scope of the conspiracies charged in the indictment is unusually vast." Id.

There is no provision in the Federal Rules of Criminal Procedure for the type of broad, sweeping discovery Ulbricht seeks here. Neither the nature of this indictment or the produced discovery calls for a departure from these general rules. That this case has a high profile does not mean that it requires special treatment. Moreover, there can be no doubt that the Indictment here is specific enough to advise Ulbricht of the acts of which he is accused, namely creating, designing, administering and operating the Silk Road website, which allegedly served as an

online one-stop-shop for narcotics, fake identification documents, and materials used to hack computers, and which was specifically designed to rely on Bitcoin, a method of payment designed to conceal the identities and locations of users transmitting and receiving funds. This case is unlike Bin Laden, which concerned hundreds of offenses associated with over one hundred alleged actions committed in far corners of the globe—it concerns a single defendant who is alleged to have run a single and clearly identified website. Further, the Court has gone to considerable lengths to ensure that Ulbricht has access to evidentiary detail outside of the Indictment, including ensuring that a laptop preloaded with certain discovery materials was provided to Ulbricht for use at the Metropolitan Detention Center ("MDC") and particular accommodations regarding the length of time he can routinely access the information. (ECF No. 40.) A bill of particulars is wholly unnecessary to avoid prejudicially surprising Ulbricht at trial.

V. SURPLUSAGE

Rule 7(d) of the Federal Rules of Criminal Procedure provides that, upon a motion by defendant, a court may strike extraneous matter or surplusage from an indictment. Fed. R. Crim. P. 7(d). However, "'[m]otions to strike surplusage from an indictment will be granted only where the challenged allegations are not relevant to the crime charged and are inflammatory or prejudicial.'" United States v. Mulder, 273 F.3d 91, 99 (2d Cir. 2001) (quoting United States v. Scarpa, 913 F.2d 993, 1013 (2d Cir. 1990)).

Courts have held that statements providing background are relevant and need not be struck. Id. at 99-100 (in action charging extortion relating to labor

coalitions, upholding district court's decision not to strike background on tactics and purposes of labor coalitions).

The surplasage issues defendant has raised relating largely to the murder for hire assertions need not be fully addressed at this time. Courts in this district routinely await the presentation of the Government's evidence at trial before ruling on a motion to strike surplusage. See, e.g., Scarpa, 913 F.2d at 1012; United States v. Persico, 621 F. Supp. 842, 861 (S.D.N.Y. 1985); United States v. Ahmed, No. 10 CR. 131(PKC), 2011 WL 5041456, at *3 (S.D.N.Y. Oct. 21, 2011).

In Ahmed, the defendant's motion to strike surplusage related to background information regarding civil and sectarian violence in Somalia and the anti-American animus of Al Shabaab, which was designated by the Secretary of State as a "foreign terrorist organization." Ahmed, 2011 WL 5041456, at *1-2. The court held that it would await presentation of the Government's evidence at trial, and stated further that the Government would have some latitude to "demonstrat[e] the nexus between defendant's conduct and American interests, as well as the background of others who are members of the charged conspiracies." Id. at *3. The Court noted that denial of the motion without prejudice to renew might also allow the parties to reach a pre-trial stipulation, as had occurred in United States v. Yousef, No. S3 08 Cr. 1213(JFK), 2011 WL 2899244 (S.D.N.Y. June 30, 2011). Ahmed, 2011 WL 5041456, at *3. Here, as in Ahmed, the Court will await the Government's presentation at trial.

VI. CONCLUSION

For the reasons set forth above, defendant's motion to suppress, for a bill of particulars and to strike surplusage is DENIED.

The Clerk of Court is directed to close the motion at ECF No. 46.

SO ORDERED.

Dated: New York, New York
October 10, 2014

K B. F

KATHERINE B. FORREST
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v-	:	14-cr-68 (KBF)
ROSS WILLIAM ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road,"	:	OPINION & ORDER
Defendant.	:	

KATHERINE B. FORREST, District Judge:

On February 4, 2014, a federal grand jury returned Indictment 14 Cr. 68 (the "Original Indictment"), charging Ross Ulbricht ("defendant" or "Ulbricht") on four counts—all stemming from the creation, administration, and operations of an online marketplace known as "Silk Road." (ECF No. 12 ("Orig. Ind.").) On March 28, 2014, Ulbricht moved to dismiss the Original Indictment in its entirety. (ECF No. 19.) That motion became fully briefed on May 27, 2014 (ECF No. 32), and on July 9, 2014, the Court denied the motion (ECF No. 42). On August 21, 2014, the Government filed Superseding Indictment S1 14 Cr. 68 (KBF) (the "Superseding Indictment") containing three additional charges. (ECF No. 52 ("Sup. Ind.").) Ulbricht's trial is scheduled to begin on January 5, 2015.

Pending before the Court is defendant's motion to dismiss Counts One through Four of the Superseding Indictment, for a bill of particulars, and "for any such other and further relief . . . which to the Court seems just and proper." (ECF No. 71.) For the reasons set forth below, the motion is DENIED.

I. THE INDICTMENTS[1]

The Original Indictment charged Ulbricht with four crimes: Narcotics Trafficking Conspiracy (Count One), Continuing Criminal Enterprise ("CCE") (Count Two), Computer Hacking Conspiracy (Count Three), and Money Laundering Conspiracy (Count Four). (Orig. Ind. ¶¶ 1-21.)

The Superseding Indictment, filed on August 21, 2014, charges Ulbricht with seven crimes: Narcotics Trafficking (Count One), Distribution of Narcotics by Means of the Internet (Count Two), Narcotics Trafficking Conspiracy (Count Three), Continuing Criminal Enterprise (Count Four), Conspiracy to Commit and Aid and Abet Computer Hacking (Count Five), Conspiracy to Traffic in Fraudulent Identification Documents (Count Six), and Money Laundering Conspiracy (Count Seven). (Sup. Ind. ¶¶ 1-31.) The Superseding Indictment differs from the Original Indictment in the following three respects:

1. The Superseding Indictment contains three new charges (Counts One, Two, and Six).
2. Counts One, Two, Three, Five, and Six of the Superseding Indictment include an allegation that Ulbricht aided and abetted the commission of the charged crime. (Sup. Ind. ¶¶ 5, 8, 13, 15, 21, 22, 25, 26.)
3. Count Three of the Superseding Indictment alleges that Ulbricht paid a Silk Road user ("User-1") approximately $150,000 to murder another Silk Road user ("User-2") who was threatening to release the identities

[1] The Court assumes familiarity with the facts of this case, and recites only those relevant to this motion.

of users of the site, and approximately $500,000 to murder four additional persons believed to be associated with User-2. (Id. ¶ 16(b), (c).)

On October 2, 2014, Ulbricht filed a motion to dismiss Counts One through Four of the Superseding Indictment, for a bill of particulars, and "for any such other and further relief . . . which to the Court seems just and proper." (ECF No. 71.) That motion is the subject of this Opinion & Order.

II. LEGAL STANDARDS

A. Sufficiency of an Indictment

Rule 7(c)(1) of the Federal Rules of Criminal Procedure provides that an indictment "must be a plain, concise, and definite written statement of the essential facts constituting the offense charged." Fed. R. Crim. P. 7(c)(1). "[A]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." Hamling v. United States, 418 U.S. 87, 117 (1974) (citations omitted); see also United States v. De La Pava, 268 F.3d 157, 162 (2d Cir. 2001) ("An indictment must sufficiently inform the defendant of the charges against him and provide enough detail so that he may plead double jeopardy in a future prosecution based on the same set of events." (citation omitted)). "[A] facially valid indictment returned by a duly constituted grand jury" will, absent unusual circumstances, suffice "to call for a trial on the merits of the charges set forth therein." United States v. Bodmer,

342 F. Supp. 2d 176, 179 (S.D.N.Y. 2004) (citing Costello v. United States, 350 U.S. 359, 363 (1956)).

B. Aiding and Abetting

The law has long provided that aiders and abettors are punishable as principals. See 18 U.S.C. § 2(a) ("Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."). 18 U.S.C. § 2(a), the statute criminalizing aiding and abetting, "abolishe[d] the distinction between principals and accessories and [made] them all principals." Standefer v. United States, 447 U.S. 10, 19 (1980) (alterations in original) (quoting Hammer v. United States, 271 U.S. 620, 628 (1926)) (internal quotation marks omitted); see also id. (recounting the legislative history of § 2). As the Second Circuit has explained,

> 18 U.S.C. § 2 abolished the differentials in punishment between an accessory before the fact and a principal. Under common law an aider and abettor had to be present at the site of the crime. An accessory before the fact is one who, though absent, procures, counsels or commands another to commit an unlawful act. 18 U.S.C. § 2(a) combines these two classifications, making each such defendant equally as guilty as the principal.

United States v. Molina, 581 F.2d 56, 61 n.8 (2d Cir. 1978). Aiding and abetting an offense "does not constitute a discrete criminal offense but only serves as a more particularized way of identifying 'persons involved.'" United States v. Smith, 198 F.3d 377, 383 (2d Cir. 1999) (quoting United States v. Oates, 560 F.2d 45, 54 (2d Cir. 1977)) (internal quotation marks omitted). "In fact, 'when a person is charged with aiding and abetting the commission of a substantive offense, the "crime charged" is . . . the substantive offense itself.'" Id. (quoting Oates, 560 F.2d at 55).

Because "aiding and abetting is not a separate offense," it "may be charged in the same count as a substantive crime." Novak v. United States, No. CV-07-4361(DGT), 2009 WL 982429, at *4 (E.D.N.Y. Apr. 13, 2009); cf. United States v. Droms, 566 F.2d 361, 363 (2d Cir. 1977) (explaining that a single count may allege that "an offense has been committed in a multiplicity of ways").[2]

III. DISCUSSION

C. Motion to Dismiss Counts One through Four of the Superseding Indictment

In moving to dismiss Counts One through Four of the Superseding Indictment (the "narcotics counts"), Ulbricht does not dispute that the Superseding Indictment informs him of the charges against him and provides sufficient detail to enable him to plead double jeopardy in a future prosecution. See De La Pava, 268 F.3d at 162. Rather, Ulbricht seeks to dismiss the narcotics counts on the ground that these counts rest on inconsistent theories of liability. Specifically, Ulbricht argues that by charging him "on the basis that he was either a drug 'kingpin,' as alleged in Count Four . . . or merely aiding and abetting others in violating narcotics laws, which the government presents as a theory of liability for the offenses charged in Counts One, Two and Three," "the government has crossed [the] lines of judicial fairness by presenting irreconcilably inconsistent theories regarding Mr. Ulbricht's alleged commission of the offenses charged in Counts One through Four, and thus

[2] For this reason, an indictment charging aiding and abetting in the same count as a substantive offense is not duplicitous. See United States v. Aracri, 968 F.2d 1512, 1518 (2d Cir. 1992) ("An indictment is duplicitous if it joins two or more distinct crimes in a single count." (emphasis added) (citation omitted)).

violating his Fifth Amendment right to due process." (Memorandum of Law in Support of Defendant Ross Ulbricht's Pre-Trial Motions Aimed at the Superseding Indictment at 3-4, ECF No. 72 ("Def.'s Mem.").) In addition, Ulbricht argues that in presenting these inconsistent theories, "the prosecution shirks it[s] 'Special Responsibilities' mandated by the ABA Model Rules and New York State Rules of Professional Conduct." (Id. at 1.) These arguments are without merit.

The Superseding Indictment does not advance any legally inconsistent theories of liability. In particular, the CCE charge in Count Four is consistent with the aiding-and-abetting allegations relating to the crimes set forth in Counts One through Three. Ulbricht's assertion that a "mere aider and abettor" cannot be a "drug 'kingpin'"[3] (Def.'s Mem. at 9) is incorrect. The law does not distinguish between principals and aiders and abettors. See Standefer, 447 U.S. at 19. One who aids and abets a federal narcotics crime is "equally as guilty as the principal" who commits it, Molina, 581 F.2d at 61, and equally susceptible to CCE liability. The law is clear that "that aiding and abetting the violation of federal narcotics laws may serve as a predicate offense in support of a CCE conviction." United States v. Joyner, 313 F.3d 40, 47 (2d Cir. 2002) (collecting cases); see also United States v. Aiello, 864 F.2d 257, 264 (2d Cir. 1988) ("We do not read our earlier opinions to shield kingpins from CCE liability solely because they are convicted as aiders and abettors rather than as principals with regard to the predicate crimes. We therefore hold that a drug felony violation based upon aiding and abetting may

[3] The CCE statute is sometimes referred to as the "kingpin" statute.

qualify as a 'series' predicate where, as here, the aider and abettor is a kingpin.").[4] Therefore, as long as the remaining elements of CCE liability are alleged—that is, as long as it is alleged that a defendant aids and abets as part of a "continuing series" of federal narcotics offenses, undertaken in concert with at least five other people whom the defendant organizes, supervises, or otherwise manages, and from which he derives substantive income or resources, see Aiello, 864 F.2d at 263-64; 21 U.S.C. § 848—the Government has satisfied its pleading obligations. The Government has not "shirked" any special responsibilities (see Def.'s Mem. at 1) by alleging the Ulbricht is such a defendant, and Ulbricht does not cite any authority to the contrary.

Ulbricht's premise appears to be that an indictment cannot allege alternative theories of liability. This is incorrect. "An indictment is not defective simply because it charges a defendant with alternative offenses." Whitfield v. Ricks, No. 01 Civ. 11398 LAK, 2006 WL 3030883, at *12 (S.D.N.Y. Oct. 24, 2006).[5] In fact, the Government not only may charge a defendant based on alternative theories of liability, it may present those alternative theories to a jury. See United States v. Masotto, 73 F.3d 1233, 1241 (2d Cir. 1996) ("When the jury is properly instructed on two alternative theories of liability, as here, we must affirm when the evidence is sufficient under either of the theories." (citing, inter alia, Griffin v. United States, 502 U.S. 46 (1991))). It is not uncommon to charge aiding and abetting and

[4] Whether aiding and abetting a violation of federal narcotics laws may serve as a predicate offense in support of a CCE conviction—the question presented here—is an issue distinct from whether one may be convicted under the CCE statute for aiding and abetting a kingpin. The Second Circuit has answered the latter question "no." See Aiello, 864 F.2d at 264.

[5] Whitfield was a habeas corpus case, but this proposition is true more generally.

principal liability as alternative theories. See, e.g., Rosemond v. United States, 134 S. Ct. 1240, 1243-44, (2014); United States v. Fitzgerald, 542 F. App'x 30, 34 (2d Cir. 2013); United States v. Huezo, 546 F.3d 174, 179 (2d Cir. 2008); United States v. Frampton, 382 F.3d 213, 224 (2d Cir. 2004). The Second Circuit has even suggested that, when that happens, a verdict is valid if some jurors convicted on a theory of principal liability while others convicted based on an aiding-and-abetting theory. See United States v. Ferguson, 676 F.3d 260, 279 (2d Cir. 2011); United States v. Peterson, 768 F.2d 64, 67 (2d Cir. 1985).[6] Therefore, it is entirely proper for the Superseding Indictment to include counts alleging principal and aider-and-abettor-liability as alternative theories of liability.

Ulbricht claims that "the doctrine that a prosecutor's advancement of inconsistent irreconcilable theories denies due process has been endorsed by multiple circuits and jurisdictions." (Def.'s Mem. at 6.) His citations are inapposite. In the cases he cites, the Government pursued two factually irreconcilable positions to convict two different defendants of the same crime. See, e.g., Stumpf v. Mitchell, 367 F.3d 594, 611 (6th Cir. 2004) ("[S]everal of our sister circuits have found, or implied, that the use of inconsistent, irreconcilable theories to secure convictions against more than one defendant in prosecutions for the same crime violates the due process clause."), rev'd in part, vacated in part sub nom., Bradshaw v. Stumpf, 545 U.S. 175 (2005); In re Sakarias, 106 P.3d 931, 941-42 (Cal. 2005)

[6] In fact, Ferguson extended this principle even further. See Ferguson, 676 F.3d at 279 ("Nothing limits the Peterson analysis to principal versus aiding-and-abetting liability. The four theories[,principal, aiding and abetting, willfully causing, and Pinkerton,] are compatible—they are zones on a continuum of awareness, all of which support criminal liability.").

("[F]undamental fairness does not permit the People, without a good faith justification, to attribute to two defendants, in separate trials, a criminal act only one defendant could have committed."); see also Thompson v. Calderon, 120 F.3d 1045, 1058 (9th Cir. 1997), rev'd, 523 U.S. 538 (1998); Smith v. Groose, 205 F.3d 1045, 1054 (8th Cir. 2000); Drake v. Kemp, 762 F.2d 1449, 1478 (11th Cir. 1985) (Clark, J., concurring). The circumstances here are quite different: here, one defendant is charged with several different narcotics offenses. Contrary to Ulbricht's contention, there is nothing improper about a prosecutor seeking "multiple convictions against a single defendant in a single trial." (Def.'s Mem. at 10.)

Accordingly, Ulbricht's motion to dismiss Counts One through Four is DENIED.

D. Request for a Bill of Particulars and Other Relief

Ulbricht seeks a bill of particulars with respect to the Superseding Indictment based on the same arguments made in support of his request for a bill of particulars with respect to the Original Indictment. For the reasons set forth in the Court's Opinion & Order dated October 10, 2014 (ECF No. 89), Ulbricht's request for a bill of particulars is DENIED. The Superseding Indictment, coupled with the Complaint and discovery produced in this case, are sufficient to put Ulbricht on notice of the charges against him and to enable him to prepare a defense.

IV. CONCLUSION

For the reasons set forth above, defendant's motion is DENIED. The Clerk of the Court is directed to terminate the motion at ECF No. 71.

SO ORDERED.

Dated: New York, New York
October 24, 2014

KATHERINE B. FORREST
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 14-cr-68 (KBF)

ROSS WILLIAM ULBRICHT,

Defendant.

----------x

New York, N.Y.
December 15, 2014
(Sealed Excerpt)

Before:

HON. KATHERINE B. FORREST

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: TIMOTHY T. HOWARD, ESQ.
SERRIN A. TURNER, ESQ.

JOSHUA DRATEL, ESQ.
LINDSAY LEWIS, ESQ.
Attorneys for Defendant
Law Offices of Joshua Dratel, P.C
-and-
JOSHUA HOROWITZ, ESQ.
Attorneys for Defendant
Tech Law Ny

Also Present: Nicholas Evert
Molly Rosen
Paralegals, U.S. Attorney's Office

All right, folks. So I reviewed the letters. Here is one of the issues that I think we're confronting, which is, when the government presented the letter, it presented it in terms of, you didn't really need to, but in an abundance of caution you were going to make a disclosure. And there are a number of times when what I'm going to refer to generically as *Brady*-type disclosures are made and they're not necessarily even really *Brady* disclosures because they are not necessarily material or exculpatory but, in an abundance of caution, the government just wants to get certain things out there. That happens with relative frequency. Here of course we have the unusual situation where this could never be that kind of disclosure because the defendant isn't able to use the information. So in order to obtain the protection of an "even if" *Brady* disclosure, the defendant would have to be able to utilize the information in some manner. Otherwise, it's as if he never told them, because his hands are completely tied. So one issue is, I just want to make sure that nobody has any case law. I've looked extensively on sealed disclosures like this where the defendant can't even use the name or any of the pieces, as opposed to a portion which is sealed, which happens, with more frequency, and that therefore I think we need to go on to -- we're going to have to grapple with the *Brady* issue, I think, right now. Because if he can't use it, then we've got to be sure that the defendant is protected, and that there is

no basis for use that's -- and he has asserted that it is -- there is an ex -- you know, he has asserted he would like to have it unsealed because he would like to use it. And you folks have seen that letter. And I want to be careful, Mr. Dratel, not to disclose things in the ex parte letter. I must say I think you're going to need to say a little more in order to get this discussion going.

But first, Mr. Howard, let me just ask you, do you think it is not possible, from the government's point of view, to disclose not the letter, which had lots of detail, but the following facts: Carl Force, who was involved in the Silk Road investigation, who utilized the user name Nob, is under investigation by the DOJ or however you want to phrase that, *inter alia* with regard to his role in investigating Silk Road. That, I think, would give the defendant an ability to use the information, to use that information, and to conduct whatever investigation he deems appropriate. But from your letter this morning, I understand that there is lots of sensitivity, even around perhaps even that.

MR. HOWARD: Yes, your Honor. The public disclosure of even the fact of the investigation would incur great damage to the San Francisco investigation. We have consulted directly with them. This would be a very high-profile investigation. And we are concerned about flight, dissipation of assets, and destruction of evidence at this point. And that's what San

Francisco affirmed to us very strongly.

THE COURT: Why don't you give me a sense as to whether -- you said Mr. Carl Force does know he's under investigation. He knows he's a target.

MR. HOWARD: Yes, your Honor, he is aware because he was interviewed. But the scope of the investigation, he is not familiar with that. He does not know what the government or the grand jury is looking at. It's an active investigation in its early steps.

I think what we need to focus on is, there is really no basis, based on what the government is presented at trial, that this could be exculpatory. Because the only place where Nob is referenced at all is with respect to the first murder for hire. And the fact is it's irrelevant whether or not he stole the bitcoins. The question is, what did Mr. Ulbricht think from his point of view.

THE COURT: Tell me -- and this is what I didn't get from the various submissions -- as I understand it, Nob, acting as Nob, was not supposed to have administrative privileges. He was supposed to be just pretending to be a user of the site and then engaged in additional conduct.

MR. HOWARD: That is correct, your Honor.

THE COURT: But he obtained administrative privileges as part of his what I'm going to call going rogue.

MR. HOWARD: That is actually under investigation at

this point. We're not able to confirm that. All we know is that San Francisco and the grand jury is looking into that. But I think the point we were trying to make in our opposition is that, let's assume that that investigation reveals that in fact those allegations are accurate and that he obtained the access of Flush, that he got his user credentials, and he used those credentials to steal bitcoins from the site.

THE COURT: Could he have used those credentials to have faked any other conduct of Flush, or could he have used those credentials to have faked any conduct by Cimon? I don't know how you pronounce his name, C-i-m-o-n.

MR. HOWARD: He had access to his account. Cimon, Cimon, was TorChat. Those weren't communications that occurred over the website. That was over a different facility, using TorChat communications, that were recovered from Mr. Ulbricht's computer.

THE COURT: No. I understand. What I'm trying to figure out is the extent to which this could -- which I think is part of the defendant's position -- unravel if it turns out that -- I mean, just tell me if it's possible or not -- could Nob, this fellow, if he did obtain some inside ability to use the site, does it throw into doubt all the evidence relating to that particular murder for hire?

MR. HOWARD: Your Honor, we believe that it does not. We have independent evidence, in terms of TorChat

communications that did not occur over the Silk Road servers, over the Silk Road messaging system -- a separate system, in which he spoke with two other employees, other co-conspirators, Inigo and Cimon, regarding --

THE COURT: "He" being Mr. Ulbricht?

MR. HOWARD: Yes, your Honor.

THE COURT: But do you know that Inigo and Cimon were not Nob, and they could not have been Nob? Do you know, is there enough that you would be able to show, that would satisfy that Cimon and Inigo are not aliases for Nob? He wasn't acting in multiple capacities?

MR. HOWARD: We would show that they were two separate people, your Honor.

THE COURT: All right. So the government's, as I understand it from the letter, the government's position is that you're not going to introduce any evidence directly from or between Nob and Mr. Ulbricht. The references to Nob would be -- the only way Nob is even going to enter the case is by references in the context of Inigo and Cimon and Mr. Ulbricht's separate communications. Is that right?

MR. HOWARD: That is correct, your Honor. Even though they are highly incriminated in the conversation with Nob over TorChat and the private message system, we're taking a step away from those chats involving Nob, given the ongoing grand jury investigation, and focusing solely on the communications

he had with others about the murder for hire. It would be also interesting to note that with respect to Cimon, there is not only, in the chats directly that were excerpted as an exhibit to our opposition, but previously, Cimon and Mr. Ulbricht talked about whether or not Nob is actually an undercover officer. It's speaking against Nob. He speaks against Nob's purpose. So they're not the same person. They are two different people.

MR. TURNER: Can I just add one point on this thought, your Honor? This is not an issue where Nob is supposed to have hacked into Flush's account, hacked into the site, anything like this. This is an undercover agent who arrested this person who actually controlled a Flush account and then got consent to take it over, to some extent. And that's how he would control it. So he wouldn't have had access to other people's accounts.

THE COURT: No, but I understand that he apparently went rogue, and when he went rogue, he apparently did certain things that caused another user's account to act in a certain way, as I understand it, potentially taking bitcoins and moving them out of one account and into other.

MR. TURNER: Still, your Honor, that's with respect to the Flush account. That was the user's account, the user that he arrested. That user happened to be an administrator. So that user had extra privileges that a normal user would not

have.

THE COURT: Right. So could Nob, once he took over -- and maybe the chronology is the answer here, I don't know what the chronology is -- but when Nob became Flush, whatever consents and agreements with people he had, when he became Flush, did he obtain Flush's administrative privileges?

MR. TURNER: Yes. But those would have been limited administrative privileges.

THE COURT: Could he have faked being somebody else?

MR. TURNER: No, you can't do that. No. And, as Mr. Howard said, in terms of the chat to Cimon, that didn't occur on the Silk Road system. That occurred on a whole separate TorChat that's not associated with Mr. Ulbricht, not controlled by Mr. Ulbricht. There were TorChat e-mail services, that were TorChat services. It's completely different. That would be like saying, you know, you had taken somebody's AOL account and now all of a sudden you could create Gmail accounts. It is a completely different system.

THE COURT: All right. Mr. Dratel.

MR. DRATEL: Your Honor, first we object to that letter being filed ex parte. The Court's order did not suggest that it be ex parte. I think certainly the questions --

THE COURT: Hold on. Which letter?

MR. DRATEL: The letter that the Court received today, that was submitted ex parte. I don't have that.

THE COURT: Did I say anything that treads upon that? I had not focused on the fact that it was ex parte.

MR. DRATEL: I think --

THE COURT: Hold on. Let me see -- you have not seen the government's letter today?

MR. DRATEL: No.

THE COURT: Mr. Howard and Mr. Turner, have I -- stop me if I'm about to do something that's going to be a problem. Have I said anything today that's a problem? Because I was not focused on the distinction.

MR. HOWARD: You have not, your Honor.

THE COURT: All right. So, Mr. Dratel, it didn't form -- it wasn't so important that it formed the basis of all of my comments. I had not yet realized --

MR. DRATEL: They may just be not remembering, or just --

THE COURT: Oh, your letter was ex parte.

MR. DRATEL: No, no, no. The Court has already said, in answer to one of the questions in the letter, that we haven't seen it. So regardless of what the government says, it has informed the Court, in terms of what we're discussing today. The answer to the question, the answer to question 2.

THE COURT: Let me see whether or not -- yes.

MR. DRATEL: The answer to question 2.

THE COURT: Yes. Government has actually --

MR. DRATEL: I didn't know that until the Court said it.

THE COURT: Well, the government has also confirmed it today.

MR. DRATEL: Well, because the Court mentioned it to them. You know.

THE COURT: All right. Let me just ask Mr. Howard, Mr. Turner if you have a copy of your letter right there?

MR. HOWARD: Yes, your Honor.

THE COURT: Are there pieces of it which can be shown to defense counsel in light of the fact that the other, November 21st letter was also shown?

MR. HOWARD: If you can just give us a minute, your Honor?

THE COURT: Sure, yes.

(Government counsel confer)

MR. HOWARD: Your Honor, at the current stage, based on our consultation with the U.S. Attorney's Office in San Francisco, we believe that the parsed letter could be disclosed under seal in this proceeding at this time. But what we would ask not be disclosed would be paragraph 1, which references certain witnesses that have appeared before the grand -- that have been part of the investigation, and paragraph 4.

THE COURT: All right.

MR. HOWARD: But in terms of the reasons that perhaps

would inure that were addressed more generally in the other paragraphs, we believe that those may be disclosed.

THE COURT: All right. And so can you summarize for Mr. Dratel, and then provide afterwards an exact copy of the letter, but can you summarize for the defense the information which you believe can be disclosed, under seal, in the context of today's hearing?

MR. HOWARD: Yes, your Honor. I'll just read the paragraphs. Paragraph 2 says that "Carl Force is aware that he's under investigation insofar as he has been interviewed in connection with the grand jury investigation. He is not, however, aware of the full range of misconduct for which he is being investigated."

Paragraph 3 reads as follows: "USAO San Francisco briefs that the ongoing grand jury investigation would be harmed by public disclosure of the investigation at this time for the following reasons."

"(a) As noted before, although Carl Force is aware that he is under investigation, he is not aware of the full range of misconduct that is the subject of the investigation. Public disclosure of the full scope of the investigation could threaten the integrity of the investigation, as it might cause Mr. Force or any potential subjects, co-conspirators, or aiders and abettors to flee, destroy evidence, conceal proceeds of misconduct and criminal activity, or intimidate witnesses."

"(d) Based on the significant level of media attention that the allegations against Carl Force would likely generate, there is a serious risk that media report could influence the information or testimony provided by witnesses, bias grand jury members, or otherwise impact the integrity of the investigative process.

"(c) The grand jury investigation is ongoing and the scope of any charges the government may end up pursuing against Carl Force is not yet known. Disclosure of the investigation at this juncture would risk publicly airing suspicion or allegations of wrongdoing that may not ultimately be charged due to lack of evidence.

And paragraph 5 reads, "At present, for the reasons set forth above in answer no. 3, the government does not believe there are any facts that could be released regarding Mr. Force's conduct that may be revealed without jeopardizing the grand jury investigation."

THE COURT: All right. My deputy has redacted paragraphs 1 and 4, and if it meets with the government's approval, we could hand that in written form to Mr. Dratel.

Let's go on. Mr. Dratel, I interrupted you because I wanted to resolve that issue to the extent we were able to.

Mr. Dratel is being handed a redacted copy of that letter, with paragraphs 1 and 4 redacted.

MR. DRATEL: Thank you, your Honor.

So the Court, to some extent, has recognized a problem in this sense. We have information -- the government doesn't know the full scope of what it's going to learn in the course of its investigation of Mr. Force. But we're not permitted to pursue it ourselves. That is unfair. That is a huge problem under *Brady*, under the Sixth Amendment in terms of counsel, the effective of assistance of counsel. It's a huge problem. What they're saying is, this is off limits. So even though at the end of the day -- I think right now we have enough. But I'm just focusing on what they have said --

THE COURT: He's speaking about, in terms of the exculpatory nature of the conduct, what could be material and exculpatory about this? Just give me -- I've given you my hypotheticals. Apparently mine don't meet the way the world would work. What is it that could be material and exculpatory?

MR. DRATEL: Well, I'm not going to reveal that here with the government. I put it ex parte for a specific reason. I'm very, very disciplined about not giving the government an opportunity to do something it doesn't have the right to.

THE COURT: I understand. But let me tell you my conundrum, OK --

MR. DRATEL: And we have more, your Honor.

THE COURT: -- I cannot test -- I have on the one hand the government, who is making a very vigorous argument that there would be prejudice if there was disclosure of the facts

that are the subject of this hearing. And I take that very seriously. And I don't know any more than they tell me about that. Then I have what you're saying, which they may or may not agree with factually. And I want to -- in other words, I don't know whether or not --

MR. DRATEL: Factually? I mean, but they don't think it's exculpatory at all. So what's the difference in what they think about what we put to the Court? They acknowledge it, they give it because it is exculpatory, and this is the way *Brady* material is provided by the government, except in capital cases if it's a statutory mitigating factor. They don't say, hey, this is *Brady*. They say, oh, this is Rule 16 but we're not saying what it is. It's *Brady*. And the fact is that at the end of the day, when this investigation is concluded and this guy is indicted and it all comes out and it's all exculpatory and material and relevant to this case and we weren't able to use it, that's not fair.

THE COURT: Maybe --

MR. DRATEL: It's not just about now. By the way, they can't say, we're going to put in this whole transaction with Nob but you can't touch Nob, Nob is off limits. That's not fair. That's not the way the system works. He's in play. That's number one.

Number two is, you have all these other screen names, you have French Maid, you have Al Pacino, you have Albert

Pacino. You have all the Pacino derivatives. You have more than that. There may be more. We believe there may be more screen names that he used, accounts that he took over. And this administrative-privilege thing, the government doesn't know what the extent was. And they have told you they're at the beginning of stages of their investigation. But it's off limits to us and we can't use it, in a trial that's supposed to start in three weeks. They can't have it both ways. I want the information. If I can't get the information, we should at least wait until the grand jury investigation is over so I can use it. I want it. They can't keep it from me and then have a grand jury investigation, that has gone on for nine months, and then say, oh, yeah, you can't use it but -- what are we going to do? Delay the trial. I mean, that's their choice. It's not mine. It's theirs. We need this.

THE COURT: Let me ask you -- I need to know a bit about the chronology, and I also want to be very careful not to reveal strategic items. But I don't think the chronology gets into that. Can the government tell me when, approximately, Nob first engaged with the defendant in the acts which resulted in the murder-for-hire solicitation allegedly?

MR. DRATEL: Dread Pirate Roberts, your Honor?

THE COURT: For hire. This is all about allegations. I don't know. They'll prove whatever they're going to prove. But that's the allegation. So what's the chronology, and then

when did he allege -- what is the earliest that you could tell me that this individual had access to the administrative aspects, whatever limitations there were on them, of the Flush world? That chronology may help me a lot.

MR. HOWARD: Your Honor, this would be the chronology. As we set forth in the November 21st letter on page 3, when -- which was disclosed to the defense -- Mr. Green was arrested by Special Agent Force and other agents on January 17th. At this point Nob was already engaged in communications with Mr. Ulbricht about other matters unrelated to the murder for hire. If you look at Exhibit A, which was filed under seal in conjunction with the motion to suppress -- sorry -- the motion in limine filed by defense, on January 26th, about nine days later, is when Inigo, over TorChat, again, a separate communication system that then was provided by the Silk Road site, information the defendant, or Dread Pirate Roberts, that they had identified the fact that 350,000 in bitcoins had been withdrawn from the site through the Flush account. Later that day, approximately six hours later, is the first time over TorChat at which the defendant and Nob start discussing this theft of bitcoins. And this is where the defendant informs Nob about the theft and gives him a copy of the scanned photo ID that the defendant had for Flush, otherwise known as Curtis Green, so that he could be identified. At that point, that's when the conversation starts about how to deal with the

situation, how to deal with Green, that ultimately escalates into the murder for hire solicited by the defendant.

THE COURT: Green was arrested, you said, on January 17th. When did the administrative privileges, so far as you know, when did the special agent obtain those?

MR. HOWARD: Right. Your Honor, it would have happened sometime after that. If proven --

THE COURT: Before the 26th, do you think?

MR. HOWARD: That's correct, your Honor. And let's just also make sure we're clear, that he didn't receive root administrator privileges. He didn't have privileges to do anything on the site. He only had privileges to do what Flush was able to do on the site. In that way, Flush or whoever was controlling the account reset vendor passwords in order to make withdrawals from those vendor accounts.

THE COURT: And what was the list of what Flush could do?

MR. HOWARD: At this point I don't think we can give you a list. But he had the ability, I believe, to review customer disputes. He had the ability to reset passwords, which is how -- and PIN numbers -- which is how he was able to access the funds held by certain vendors and withdraw them.

THE COURT: And if he could reset passwords and PIN numbers, just -- I don't know enough about the way this technology, or any technology works, to understand the answer

to the question. Could he have utilized their accounts to have sent messages through any of the messaging facilities?

MR. HOWARD: We would have to look into that. If -- hold on.

Your Honor, we would have to check into that. However, the fact is that the evidence that we were looking to use, again, was -- were not communications that occurred over the Silk Road site. So Flush would not have had access, or whoever was controlling Flush, would not have access to the TorChat accounts of Cimon, who was already -- and Inigo, who were already engaged for months over the same channel and communications with the defendant. And those were recovered directly from his laptop, who was seized at the time of his arrest.

THE COURT: Would he have been able to reset any user account or password, so far as you know? There may be limitations that you don't yet know about. But so far as you're aware, could he have reset any user name and password on the Silk Road account?

MR. HOWARD: Certainly it appeared in terms of vendors and buyers. Beyond that we don't believe he had authority. But that's something we would have to confirm and look at. We do know from the evidence, from the communications the defendant had, that he had the ability to reset vendor accounts.

THE COURT: All right. How much of the government's evidence at trial, putting aside the Nob murder-for-hire event, how much of your evidence at trial -- and I can go back and look, I've got it loaded on my machine -- but of your trial exhibits, just give me a sense, because you'll be more familiar with the dates than I am -- will postdate January 17th? How much of your affirmative evidence?

MR. HOWARD: Your Honor, there is evidence of transactions that occurred after that date. There is evidence from the defendant's arrest himself, from the commuter that he possessed at the time of his arrest, and stuff recovered from that. There are communications that were recovered from the Silk Road server between the defendant and other co-conspirators that occurred after that date.

It appears that there was only a very small window of time in which this was occurring. Inigo, in the chats, does indicate to the defendant that he reset Flush's access and password after he realizes -- as he realized this was happening, as the theft was ongoing. So the period of time in which force would have had access to the Flush account was fairly limited.

MR. TURNER: Your Honor, could I add one more thought to that?

THE COURT: Yes.

MR. TURNER: If the allegation, essentially, is that

this undercover agent took over the account of DPR and was running the site, then basically what that would come down to is it would affect any private messages from the Silk Road marketplace that were from DPR. We actually plan to use very few of those private messages. The bulk of the statements of alleged defendant will be from his own computer, the TorChat messages from his own computer, and his forum posts, which were not part of the Silk Road marketplace server. That was a separate server. And moreover, the forum posts that DPR posted were PGP-signed. So that means you have to have DPR's private key to sign those messages. And that was not something you would get off the Silk Road computer. That was in fact found on Ulbricht's laptop computer. But just by taking over his account, which we have absolutely no evidence occurred, by taking over his private message account on the Silk Road marketplace server, you could have no control over what DPR said on the Silk Road forum server.

So if the defense theory is, this undercover agent was controlling Silk Road and putting all sorts of things into DPR's mouth, then you're talking about a very small number of messages, private messages, that the government is actually planning on introducing at trial.

THE COURT: Do you need them?

MR. TURNER: We would certainly like to use them, your Honor. I actually am not even certain that they postdate

January 2013. We'll have to look at it.

THE COURT: Could you go back and perhaps -- you might have it in a database of some sort that would be sortable -- and just give me a list of exhibit numbers so I've got them? I may have them in the pile that you've given me, of the exhibit numbers which postdate January 17th? Just so I can get a sense of --

MR. TURNER: The exhibit numbers, sure.

THE COURT: Yes, the exhibit numbers that relate in any way to materials from the Silk Road server.

MR. TURNER: Silk Road marketplace server, which is where the private message system resided.

THE COURT: Versus the Silk Road --

MR. TURNER: Silk Road forum server. That's where the bulk of the evidence is.

THE COURT: Whatever Flush had access to.

MR. TURNER: That would be the marketplace server, if we're talking about resetting passwords.

THE COURT: I'm just trying to figure out, just trying to get a lay of the land.

MR. DRATEL: That's their opinion.

THE COURT: No, I understand. I'm going to give you a chance to respond. Hold on a second. Mr. Howard stood up. And then we're going to have a chance to respond.

MR. HOWARD: I just wanted to discuss the prior point.

It's January 26, 2013 at about 3:30 in the morning when Inigo starts telling the defendant about the fact that -- the detective -- the fact that the Flush account was being used to steal bitcoins. On page 2 of the excerpts we have provided as Exhibit A, Inigo, at 10:58 a.m., which is about ten minutes after the defendant started interacting with Nob about this issue, he indicates that he stopped the theft by resetting the password to Flush's account. And as soon as that happened, no more bitcoins were being stolen. So at that point, whoever was controlling the Flush account, whether it be Flush or whether the investigation ultimately reveals that it was Force at the time, that stopped as of 10:58 a.m. on January 26, 2013.

THE COURT: Let me ask you, are you going to have the Inigo person, is that person somebody who you know the human identity of?

MR. HOWARD: Yes. In fact Inigo has been fully identified and he has been charged in a separate indictment in this district.

THE COURT: All right. And he was charged in connection with some of that conduct?

MR. HOWARD: With his role as an administrator, an employee of Mr. Ulbricht on Silk Road.

THE COURT: All right. How about Cimon, whoever the person's name is, Cimon?

MR. HOWARD: He has not at this point been charged.

There is a continuing investigation into that investigation.

THE COURT: All right. Now, Mr. Dratel.

MR. DRATEL: All of these murder-for-hire allegations are at issue here because they were on private messages. The second episode, the red-and-white episode, is a private message.

And also, we're talking about the government's theory. I am not bound by the government's theory. That's what a trial is about. Just because they don't want to think of it in terms of what his -- is capable in terms of the defense, they don't even know what their investigation is going to uncover at the end of the day with Mr. Force. So I can't subpoena Mr. Force to testify, which is a Sixth Amendment right that Mr. Ulbricht has, which is basically being compromised here, because I can't subpoena him.

THE COURT: The question, the preliminary question, is whether or not Mr. Force could have any material exculpatory evidence. Because as you understand, the kind of --

MR. DRATEL: It's actually beyond that, though, because he's relevant. We could identify about 15 or 16 government exhibits that talk about him directly, that involve him directly. And whether, as Nob or as Al Pacino or -- so -- and there's stuff that, it's not a government exhibit. But we can use it. And there's a ton of stuff that he's relevant to. I have a right to call him. What you're saying now, or what

the government is saying now, I don't have a right to call him, because they have a grand jury investigation. And I understand that. But they can't have it both ways. We have to have a fair trial that's not confined to the government's theory and the government's sense of what's possible, because they don't know.

And I don't know why we waited to the eve of trial for this to begin with. I don't know what the status of the investigation is in terms of, temporally, whether they're going to finish in a month? two months? as soon as this trial is over? It's not fair. They can't do that. And there is a solution. You know, I --

THE COURT: Well, there are several solutions.

MR. DRATEL: Yes. I'm saying, yes, there are several solutions. But to say that the government is in charge of my investigation is not fair. And not only is in charge. I can't even investigate at all. It's bad enough that they are in charge of it solely. I can't even do it. It's an impossible situation to try a case in, where this guy is all over this case, in many different ways. Not just as Nob. As Al Pacino. As French Maid. There's a lot going on here. And to airbrush him out because he's under investigation, fine. Finish the investigation. Or let us have it.

THE COURT: Mr. Howard.

MR. HOWARD: Your Honor, I think the fact is, the

disclosure that we did provide in the November 21st letter was extremely extensive regarding what we were able to disclose about what the U.S. Attorney's Office in San Francisco is currently aware of. We've discussed it at length with them, if there's any other allegations they're looking into with respect to Nob. And at this point they don't have that information. They don't have anything -- as far as it intersects our case, it's with respect to these $350,000 of bitcoins.

THE COURT: But, Mr. Howard, the point that I think we're struggling with is, while you disclosed it, they can't use it.

MR. HOWARD: Yes.

THE COURT: And so it's as if the disclosure never occurred. Because in fact it's even more frustrating, because they have information that's been put in their pocket, if you will, so that government can say you disclosed it, but they can't use any of it, that includes the most basic information, which is just Carl Force under investigation.

MR. HOWARD: Your Honor, first of all, we're not saying that it can't use anything. If they want it use the Nob chats to prove, to show something --

THE COURT: No, but they could not go out and try to talk to Carl Force, because they can't use that -- they know that Carl Force is under investigation. And if they did talk to Carl Force -- presumably his lawyer anyway would tell them

not to talk to him, but that's a different issue, right. But they can't conduct -- they can't take any action in response to your November 21st letter at all. Right?

MR. TURNER: Your Honor, no, that's not the case.

THE COURT: So what -- tell me what they can do.

MR. TURNER: Let's just be clear. We released Carl Force's undercover reports to them long ago. They could have reached out to him as a witness and talked to him long ago. They can still do so today. What they can't reveal is that he is under a grand jury investigation. They know, for example, about the $350,000 in bitcoins. They could ask him about that. They know about the chats at issue. They can look those up in the Silk Road server. But what they can't do -- and it's really hearsay anyway -- they can't just ask somebody, is this guy under investigation. Any answer that they solicit, A, how is that relevant? It's not a proven fact that he actually did these things. It's just a matter that he's being investigated for them.

THE COURT: So tell me -- and I don't understand exactly what you've disclosed and haven't disclosed about what you've mentioned in terms of the Carl Force investigative reports. Tell me what information the government has disclosed in some manner which can be used about Carl Force. You may have just recited all of it. Is there any more?

MR. TURNER: Just to be clear, when we're talking

about "can be used," it's a question of, does 6(e) prohibit it, and is it in their possession? Then there is the next question; is it relevant to anything. So in terms of what 6(e) prohibits, we think it prohibits them eliciting somehow that he's under a grand jury investigation. That's the basic point. I mean, that's what 6(e) requires be kept secret while the investigation is pending. They still have many facts in their possession. They've had them in their possession long ago. Now they have the additional fact --

THE COURT: They have the fact that he went broke.

MR. TURNER: That's what I keep getting concerned about. It is not a fact. It is a matter under investigation. And in terms of eliciting that, I don't know what they expect to do. Are they going to have an investigator investigating this guy? That is not admissible evidence.

THE COURT: No, I hear your point. It's no not, oh, there was an investigator who went rogue. That in and of itself is not, I think, the point. It's whether or not -- it actually, I think, is, you folks were saying, you, Mr. Turner, were saying before, what if, in the context of having gone rogue, he did things which, at that point in time, and later, you don't know and/or they don't know, but it could impact on what you are alleging the defendant did. What if the defendant -- I think part of the issue is -- and I don't know either, in terms of what is possible -- but the defendant may

not have done certain things because you've got an investigator who is inside the system doing certain things instead.

MR. TURNER: I think that characterization is badly overdrawn. But in terms of what this investigator had access to, again, we've provided the undercover reports. The undercover reports say that he took over this person's account, that Flush provided his log-in credentials, and that gave him access to that account.

THE COURT: Are those --

MR. TURNER: Those reports were produced, again, to the defense long ago, because all of those reports have statements of the defendant.

THE COURT: Can you produce them to me?

MR. TURNER: Absolutely, your Honor.

THE COURT: All right. Then give those to me so I can understand what the scope is in my fact pattern.

MR. TURNER: If they wanted to bring that out, putting aside its relevance, if they want to bring that out, theoretically I guess they could call Carl Force to the stand and ask him whether he took over the account. They could call Curtis Green to the stand, ask him whether Agent Force took over the account, and establish that, by doing so, he gained certain administrative access, which was limited, by the way, but he gained certain administrative access to the Silk Road marketplace at the time that these chats occurred. Agent Force

obviously might invoke his Fifth Amendment privilege. I have no idea.

But point is, we're not trying to say certain witnesses, certain evidence is off limits. It's the fact that this is a grand jury investigation. That's what they're prohibited from disclosing. I don't know how they would elicit that in the form of admissible evidence in any event. But that's what we're saying can't be disclosed. So I don't think we're really tying their hands in any way here.

THE COURT: Well, I hear what you're saying. And it's like ships passing in the night. Because on the one hand it's the content of the investigation. And what you're suggesting is it's really not the content, it's the fact of.

Mr. Dratel.

MR. DRATEL: The reports don't say this is a guy who then stole 350,000. Besides which, we don't know what the full extent of his conduct or misconduct is, because they're still investigating it. And we're not in a position, because we don't have access to all that information, and it's grand jury information, we're going to be hamstrung, we're going to be fighting this fight, with hands tied behind our backs, with respect to this guy. So, in other words, none of the facts in the letter are sealed now. Is that what the government is saying? None of the facts. Other than the fact he's under investigation by the grand jury. I can pursue every one of

those facts in a public manner.

MR. TURNER: So, a couple things, your Honor. First of all --

MR. DRATEL: This is an easy one. It's yes or no, to me.

MR. TURNER: And that's unclear. Because if we're talking about, for example, chats that appear in the Silk Road server, we're already given to them those chats. If we're talking about reports that this man filed where he said he got these log-in credentials for the Flush account, already produced that. It's under a protective order, as is all of the discovery in the case, so we have to have discussions about what can be revealed. But, in terms of there being facts that are off limits, all that is evidence that has been produced in discovery and they are free to use it the same way that they would use other evidence. But it's a different matter just to have allegations publicly aired that a U.S. Attorney's Office somewhere suspects that this person did something, or an investigator suspects they did something. The underlying facts have been made clear, have been spelled out in the letter, have been in the defendant's possession really all this time. We just connected the dots based on the investigation.

MR. DRATEL: What facts? What facts? The hundred thousand dollars that he got from DPR was where in the discovery? The fact that he's Al Pacino and the fact that he's

these other people, where is that in the discovery? No. Is that out there now in the public that I can use? No. We're not getting that. This is tactical at this point. This is completely tactical. It's designed to keep this information from our use at a trial that's going to come in three weeks, so that they can then publicize it two months down the road, when they indict this guy, and we are prohibited from using it in defense, when it's -- it's just a violation. The underlying material is *Brady* material and we should have that as well.

MR. TURNER: Just to make clear, your Honor, there is no evidence specifically that this man, Carl Force, received a hundred thousand dollars based on leaking information. What we have available are chats under the name French Maid, where it appears, based on evidence obtained from Ulbricht's computer, which it had the whole time, that resulted in Ulbricht paying him a hundred thousand dollars for this information. That's what it says in the log chat -- or, excuse me -- in a log file on Mr. Ulbricht's computer, "paid French Maid a hundred thousand dollars." That's how we know. And then what we did, what we did in the letter is explain some of the reasons why Carl Force might be this user. But it's not like you have a proven fact or a formal charge or something like that. We've laid out the evidence that the grand jury investigation has uncovered. We're not hiding the ball here.

Again, the whole -- it's all irrelevant. The murder

for hire is being used to show that this defendant had a certain criminal state of mind. He had knowledge that he was running a criminal enterprise, and an intent to control others in that criminal enterprise.

THE COURT: What if the court, to get around this, Mr. Turner, what if the Court was to preclude the government from using any evidence after January 17, 2013? What does that do to your case?

MR. TURNER: That would definitely cause problems for our case, your Honor. For example, if you're talking about the totals of drug transactions that occurred, a lot of those drug transactions occurred after January 2013. That was the busiest year of the site. The defendant was arrested after January 2013. There's lots of evidence on his computer that postdates that date. There is absolutely no evidence that --

THE COURT: How about the murder for hire? How about the Nob-related murder for hire? There are six, right?

MR. TURNER: There are six.

THE COURT: What is that one -- just tell me, I want to understand how it impacts -- if that one, if every one having to do with Nob was -- and I think Mr. Dratel had a response to this, as he previewed before, but just tell me the impact.

MR. TURNER: The impact of that would be much more limited, your Honor. It still would be useful for the

government to explain sort of the full story of the murders for hire. But the remaining five murders are relatively separate, and they have all been gone into. The first murder for hire does show him trying to discipline an employee specifically. So it shows his control over his employees relevant to the continuing enterprise charge. The remaining five have to do with a user who was trying to blackmail him. It's still relevant because it shows that he was going to leak information out, the identities of users, and he was trying to prevent that, and retaliating against them for having done so. So they're relevant, but they are relevant in different ways.

Again, I just think in order to establish -- in order to find the government really should not be able to use that Nob evidence is just pure conjecture and speculation that somehow this undercover agent took control of the Silk Road website, notwithstanding all of the evidence we got from the computer at the time of his arrest, where Mr. Ulbricht logged in as the mastermind of Silk Road, logged in as Dread Pirate Roberts, had the Dread Pirate Roberts private key in his computer. I mean, there are troves of evidence on his computer establishing his identity as the DPR. So for them just to say, oh, there's this -- you know, somehow this man took control and put all sorts of words into DPR's mouth, that's a very speculative basis to strike that evidence which we think is relevant.

MR. DRATEL: Obviously we think it goes to more than that? We've set forth to the Court we have additional materials involved that we're comparing as we go through government exhibits and other materials going back, looking at things, because this has opened up a whole new avenue of review for us, because it's obfuscation really to say that we knew anything about what we're talking about today until November 21. Because all of that, that's in there, is new, and that's why it's in the letter, because the government knew it was new.

THE COURT: All right. Does the government object to the fact that the defendant, through counsel, has submitted to the government a letter ex parte --

MR. DRATEL: To the Court.

THE COURT: To the Court -- ex parte a letter which describes his trial strategy relevant to this issue? Because I need to consider this. And you haven't said one way or the other whether or not that's a problem for you.

MR. HOWARD: Your Honor, I guess the trouble that we have is, on the one hand, we have no issues theoretically with the defense disclosing certain evidence ex parte to your Honor regarding the trial strategy. We're in a position where we can't effectively respond to any hypothetical arguments regarding how this material could be both material and exculpatory. We've set forth our position, how we do not believe it can be, though without even a shred of that we

cannot effectively respond.

THE COURT: I understand.

MR. DRATEL: But, your Honor, you also -- the standard is not materially exculpatory. That's for disclosure. For the purpose of allowing us to use material and keeping it secret, it's not that. I don't have to -- you know, if I want to put on a witness, I don't have to prove that he's material and exculpatory. I just have to prove it's relevant. I just have to establish relevance.

THE COURT: I think the issue is whether or not the disclosure of the information in the November 21st letter needs to be made, needed to have been made in the first instance.

MR. DRATEL: I understand there are two levels. I'm just saying there are two different levels. I understand that.

THE COURT: All right. I have to go back and think about this, again. And I can't promise you I won't need to talk about it again. If I do, it will be part of the final pretrial. I'll do it in a segment that can be carved out.

Yes.

MR. DRATEL: Just one other issue that, while we're still sealed, I would like to address -- and I think the government will understand why I want to do it in a sealed context -- is, and I'm sure the Court is aware that, on the Internet, issues about threats against the Court. And I just want to know, because I know how those issues are handled in

the context of security, whether there is anything that the defense should know with respect to what the Court has been informed that could have an impact on the Court, on the case, in that regard. It's really because it would be derelict of me not to do so simply because it's something -- we're all human beings and we need to know where we stand.

And let me just also say that I don't know whether the Court has been informed, but I've been informed by the government, the government knows Mr. Ulbricht had nothing to do with that, really isn't connected to that. So it's a court issue.

THE COURT: In any event, let me just say that I personally have treated these reports as nothing more than a lot of people who take issue with rulings of mine. 50 percent of the people often, those who don't obtain the result they want, you know, they often have issues. And I have had other cases that have been high-profile cases in the past where there are supporters of individuals or groups, sometimes groups, and people state their opinion on the Internet and say things on the Internet that are ill advised. I have not personally learned of any information that should in any way, Mr. Dratel, cause you to be concerned about the Court's state of mind or whether or not the Court has any view as to any connection of any participant in this case on any side, any issue that's relevant, and actually, I think personally the answer is no.

MR. DRATEL: Thank you, your Honor.

THE COURT: All right. So I really -- that's over and done with.

MR. DRATEL: My practice as well.

THE COURT: All right. Now, I'm going to think about this particular issue that we've been discussing in terms of the November 21st letter more, obviously. I'm hamstrung a little bit because you each are disclosing some things but not others. But I'll figure it out. And we will come back -- we're on for Wednesday?

MR. DRATEL: At 2.

THE COURT: At 2 o'clock. And I will, unless you hear from me, I'll see you folks then.

Anything else that you would like to raise?

We will now end the sealed portion of this transcript.

THE COURT: Counsel, is there anything else that you folks would like to raise with me at this time?

MR. TURNER: Could I have one moment, your Honor?

THE COURT: Yes.

(Government counsel confer)

MR. TURNER: Can we just go back to the sealed, for a moment, your Honor?

THE COURT: Sure, yes.

MR. TURNER: I guess what would be helpful to the government in this whole discussion is what testimony and what

exhibit do they want to use with respect to Carl Force? That would make the discussion much more concrete, because, as I've said, the underlying evidence has been in their hands for months. I understand that they didn't see these issues, and, again, it's not like we knew them months ago either. But we have connected the dots between those pieces of evidence. It would just be helpful to know what they want to introduce at trial and how they plan to introduce it. And then we can have a reasoned, concrete discussion about how it is or is not relevant.

MR. DRATEL: We'll consider what we can reveal, your Honor, in that regard.

THE COURT: All right. That would be helpful. The sooner the better.

(End of sealed excerpt)

APPENDIX CONTINUED
IN FOLLOWING VOLUME

15-1815-CR

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

ROSS WILLIAM ULBRICHT, AKA DREAD PIRATE ROBERTS, AKA SILK ROAD, AKA SEALED DEFENDANT 1, AKA DPR,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York (New York City)

APPENDIX
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MICHAEL A. LEVY
SERRIN A. TURNER
ASSISTANT UNITED STATES ATTORNEYS
UNITED STATES ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK
Attorneys for Appellee
1 Saint Andrew's Plaza
New York, New York 10007
212-637-2346

JOSHUA L. DRATEL, P.C.
Attorneys for Defendant-Appellant
29 Broadway, Suite 1412
New York, New York 10006
212-732-0707

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v-	:	14-cr-68 (KBF)
ROSS WILLIAM ULBRICHT, a/k/a "Dred Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road,"	:	OPINION & ORDER
Defendant.	:	

KATHERINE B. FORREST, District Judge:

On February 4, 2014, a federal grand jury returned Indictment 14 Cr. 68 (the "Original Indictment") against Ross Ulbricht ("defendant" or "Ulbricht"). (ECF No. 12.) On August 21, 2014, the Government filed Superseding Indictment S1 14 Cr. 68 (KBF) (the "Superseding Indictment"), charging Ulbricht with seven crimes: Narcotics Trafficking (Count One), Distribution of Narcotics by Means of the Internet (Count Two), Narcotics Trafficking Conspiracy (Count Three), Continuing Criminal Enterprise (Count Four), Conspiracy to Commit and Aid and Abet Computer Hacking (Count Five), Conspiracy to Traffic in Fraudulent Identification Documents (Count Six), and Money Laundering Conspiracy (Count Seven). (ECF No. 52.)

The charges in the Superseding Indictment stem from the Government's allegation that Ulbricht designed, launched, and supervised the administration of Silk Road—a sprawling online marketplace for illicit goods and services—under the username "Dread Pirate Roberts" ("DPR"). According to the Government, Ulbricht

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was Dread Pirate Roberts, and controlled every aspect of Silk Road, including the server infrastructure and programming code, the administrative staff responsible for assisting with the site's day-to-day operation, and the profits generated from sales. The Government further alleges that Ulbricht was willing to resort to violence to protect Silk Road. Trial is scheduled to begin on January 13, 2015.

On December 9 and 10, 2014, the parties filed motions in limine. (ECF Nos. 108, 112.) The Court orally ruled on the motions at the final pretrial conference ("FPTC") held on December 17, 2014. The Court stated at the FPTC that it would issue a fuller, written opinion in a separate order. This is that order.

I. THE MOTIONS IN LIMINE[1]

This Opinion & Order addresses the followings motions in limine[2]:

A. Defendant's motion to preclude certain evidence regarding Silk Road product listings and transactions, including evidence of narcotics seizures at Chicago O'Hare Airport and evidence of undercover narcotics buys in Chicago and New York;

B. Defendant's motion to preclude, and the Government's motion to allow, evidence that Ulbricht solicited six murders-for-hire, and defendant's renewed motion to strike the murder-for-hire allegations from the Superseding Indictment as surplusage;

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[1] The Government, as is typical in motions in limine, loosely uses the term "admit" throughout its brief in connection with certain motions. (See, e.g., Government's Motions in Limine ("Gov't Mem.") at 20 ("EVIDENCE OF SOLICITATIONS FOR MURDERS FOR HIRE SHOULD BE ADMITTED."), ECF No. 108.) In this pre-trial context, the Court construes "admit" to mean "not preclude." That is, granting one of the Government's motions in limine allows the Government to proceed to offer the evidence at trial. The Court is not, of course, "admitting" anything as trial has not yet commenced. The Court's rulings here deal only with certain issues and not with whether a proper foundation has been or could be laid as to any piece of evidence.

[2] The Court has addressed one of defendant's motions in limine—discussed at POINT V of defendant's brief (ECF No. 114)—in a separate Sealed Memorandum & Decision dated December 22, 2014.

C. Defendant's motion to preclude certain Government exhibits as insufficiently authenticated;

D. Defendant's motion to preclude, and the Government's motion to allow, evidence that Ulbricht ordered fraudulent identification documents from Silk Road;

E. Defendant's motion to preclude a variety of government exhibits not covered by his other motions in limine;

F. The Government's motion to allow evidence regarding illicit or otherwise criminally oriented goods and services sold on Silk Road not specifically referenced in the Superseding Indictment; and

G. The Government's motion to preclude argument or evidence regarding (a) any potential consequences of conviction, and (b) defendant's political views or other excuses.

II. BACKGROUND[3]

A. The Murder-for-Hire Evidence

The Government intends to offer evidence that Ulbricht solicited six murders-for-hire as part of his efforts to protect Silk Road and his interests therein. (Government's Motions in Limine ("Gov't Mem.") at 6, ECF No. 108.) The Government is prepared to stipulate that (1) Ulbricht solicited the first murder-for-hire from an undercover Drug Enforcement Administration ("DEA") agent and, accordingly, no actual murder occurred, and (2) the Government is not currently aware of any evidence that the remaining murders-for-hire were carried out. (Id. at 6 n.1.)

[3] The Court assumes familiarity with the facts underlying this action. This section sets forth only those facts that are relevant to the motions in limine.

1. Murder-for-Hire Solicitation No. 1

The Government intends to offer evidence that, in January 2013, as part of his efforts to protect Silk Road and his interests therein, Ulbricht solicited the murder-for-hire of a former Silk Road employee (the "Employee"), whom Ulbricht suspected of stealing approximately $350,000 worth of bitcoins from Silk Road. (Id. at 6.) This evidence allegedly consists of records of online conversations between Ulbricht[4] and two alleged coconspirators ("CC-1" and "CC-2"), as well as testimony from a cooperating witness. (Id. at 7.)

The Government contends that chat records recovered from Ulbricht's laptop will show as follows: In mid-January 2013, Ulbricht discussed with CC-1 that the Employee had gone missing and that approximately $350,000 in bitcoins had been stolen from Silk Road. (Id. at 6.) On January 26, 2013, CC-1 informed Ulbricht that he had determined that the Employee was responsible for the theft of bitcoins from various vendor accounts. (Id.) Later that day, Ulbricht told CC-1 that he knew the identity of the Employee, that the Employee had been arrested on narcotics charges, and that he (Ulbricht) had arranged for "muscle" to "get to [the Employee] quickly." (Id.) CC-1 assured Ulbricht that "you always have me at your disposal if you locate him and need someone to go handle it." (Id.) Ulbricht responded, "thanks. I want to kick his ass myself, but let's leave it to the pros." (Id.)

[4] The Government contends that Ulbricht participated in these online conversations; the Court therefore uses defendant's name when discussing this evidence. However, the Court notes that this issue is subject to proof at trial. Defendant has not conceded that he is DPR or that he participated in any of the subject conversations.

The next day, Ulbricht told another coconspirator, CC-2, about the theft. (Id.) Ulbricht expressed surprise that the Employee had stolen from him given that he had a copy of the Employee's driver's license. (Id. at 6-7.) Later in the conversation, Ulbricht and CC-2 discussed the possibility that the Employee was cooperating with law enforcement, and CC-2 remarked:

> [A]s a side note, at what point in time do we decide that we've had enough of someone[']s shit, and terminate them? Like, does impersonating a vendor to rip off a mid-level drug lord, using our rep and system; follows up by stealing from our vendors and clients and breeding fear and mis-trust, does that come close in your opinion.

(Id. at 7.) Ulbricht responded, "terminate? execute?" and later stated, "I would have no problem wasting this guy." (Id.) CC-2 responded that he could take care of it, and stated that he would have been surprised if Ulbricht "balked at taking the step, of bluntly, killing [the Employee] for fucking up just a wee bit too badly." (Id.) Later that day, Ulbricht told CC-2 that he had solicited someone to track down the Employee. (Id.)

On February 5, 2013, Ulbricht reported to CC-2 that the Employee was captured and interrogated about the stolen bitcoins. (Id.) A few hours later, Ulbricht told CC-2 that the Employee had been executed. (See id.) On February 23, 2013, Ulbricht reported to CC-1 that he had successfully arranged the Employee's capture and execution. (Id.)

2. Murder-for-Hire Solicitation No. 2

The Government also intends to offer evidence that, in March and April 2013, Ulbricht, acting as DPR, solicited the murder-for-hire of a Silk Road vendor with

the username "FriendlyChemist," who was attempting to extort DPR. (Id. at 8.) This evidence consists of messages recovered from the Silk Road messaging system, files recovered from Ulbricht's laptop, and proof that a Silk Road user was paid 1,670 bitcoins to murder FriendlyChemist. (Id. at 11.)

The alleged extortion began on March 13, 2013. (See id. at 8.) In messages sent over the Silk Road messaging system, FriendlyChemist threatened to publish a list of real names and addresses of Silk Road vendors and customers unless DPR paid him $500,000. (Id.) FriendlyChemist claimed that he had obtained the list from hacking into the computer of another Silk Road vendor. (Id.) He indicated that he needed the $500,000 to pay off his narcotics supplier. (Id.) In one message, FriendlyChemist wrote to DPR:

> what do u . . . think will happen if thousands of usernames, ordr amounts, addresses get leaked? all those people will leave sr and be scared to use it again. those vendors will all be busted and all there customers will be exposed too and never go back to sr.

(Id.) Later, FriendlyChemist provided to DPR a sample of the identifying information that he claimed to possess.[5] (Id.)

On March 25, 2013, user "redandwhite" sent a message to DPR revealing that he was the supplier to whom FriendlyChemist owed money. (Id.) On March 27, 2013, DPR sent the following message to redandwhite:

> In my eyes, FriendlyChemist is a liability and I wouldn't mind if he was executed . . . I'm not sure how much you already know about the guy, but I have the following info and am waiting on getting his address.

[5] The context of these communications could lead a rational juror to conclude that they are related to narcotics vendors.

(Id.) DPR listed FriendlyChemist's name and indicated that he lived in White Rock, British Columbia, Canada, with "Wife + 3 kids." (Id. at 9.)

Meanwhile, FriendlyChemist's threats continued. On March 29, 2013, FriendlyChemist sent a message to DPR, stating:

> u leave me no choice I want 500k usd withn 72hrs or i am going to post all the info i have. . . . i hate to do this but i need the money or im going to release it all. over 5000 user details and about 2 dozen vender identities. wats it going to be?"

(Id.) Several hours later, DPR sent a message to redandwhite confirming that he wanted FriendlyChemist to be murdered and asking how much redandwhite wanted to be paid for the job. (Id.) After redandwhite asked what problem FriendlyChemist was causing, DPR responded, in a message dated March 30, 2013:

> [H]e is threatening to expose the identities of thousands of my clients that he was able to acquire . . . . [T]his kind of behavior is unforgivable to me. Especially here on Silk Road, anonymity is sacrosanct.

(Id.) DPR also commented that the murder "doesn't have to be clean." (Id.) Later that day, redandwhite responded with a quoted price of $150,000 to $300,000 "depending on how you want it done"—"clean" or "non-clean." (Id.) The next day, DPR objected to the price: "Don't want to be a pain here, but the price seems high. Not long ago, I had a clean hit done for $80k. Are the prices you quoted the best you can do?" (Id.)

Through further messages exchanged on March 31, 2013, DPR and redandwhite agreed upon a price of 1,670 bitcoins (approximately $150,000) for the murder-for-hire. (Id. at 9-10.) DPR provided a transaction record confirming the

transfer of the bitcoins, and redandwhite confirmed receipt of payment. (Id. at 10.) Approximately 24 hours later, redandwhite sent an update to DPR, stating, "[Y]our problem has been taken care of. . . . Rest easy though, because he won't be blackmailing anyone again. Ever." (Id.) At DPR's request, redandwhite sent DPR a picture of the victim after the job was done. (Id.) Next to the victim was a piece of paper with random numbers that DPR had supplied. (Id.) On April 5, 2013, DPR wrote to redandwhite, "I've received the picture and deleted it. Thank you again for your swift action." (Id.)

According to the Government, evidence recovered from Ulbricht's personal laptop corresponds to the information in the messages retrieved from the Silk Road messaging system. Specifically, agents recovered from the laptop a file labeled "log," in which Ulbricht allegedly recorded his actions in operating Silk Road between March 20, 2013 and September 30, 2013. (Id.) The Government contends that the log includes numerous references to a murder-for-hire, including:

- March 28, 2013: "being blackmailed with user info. talking with large distributor (hell's angels)";
- March 29, 2013: "commissioned hit on blackmailer with angels";
- April 1, 2013: "got word that blackmailer was executed"; and
- April 4, 2013: "received visual confirmation of blackmailers execution."

(Id.) This timeline corresponds to that of DPR's solicitation of the murder-for-hire of FriendlyChemist as described above.

3. Murder-for-Hire Solicitations Nos. 3–6

Finally, the Government intends to offer evidence that, in April 2013, Ulbricht, acting as DPR, solicited redandwhite to carry out the murders-for-hire of four other individuals associated with FriendlyChemist. (Id. at 11.) The Government's evidence allegedly consists of messages recovered from the Silk Road messaging system, as well records recovered from Ulbricht's laptop. (Id. at 13.) The Government also intends to demonstrate that DPR paid redandwhite 3,000 bitcoins for the four additional murders-for-hire. (Id.)

According to the Government, messages recovered from the Silk Road messaging system will show as follows: Around the same time that redandwhite informed DPR that FriendlyChemist had been executed, he also told DPR that his workers had questioned FriendlyChemist and that FriendlyChemist "spilled everything he knew." (Id. at 11.) In particular, redandwhite indicated that FriendlyChemist had identified "tony76" as a Silk Road user who participated in the blackmail scheme and who had been involved in running scams on Silk Road "for a couple of years." (Id.) During the conversation, redandwhite revealed tony76's identity to DPR and stated that tony76 lived in Surrey, British Columbia, Canada. (Id.)

On April 5, 2013, DPR wrote to redandwhite, "I would like to go after [tony26]. . . . If he is our man, then he likely has substantial assets to be recovered. Perhaps we can hold him and question him?" (Id. at 12.) redandwhite responded that he would send people to "do some recon" and report back. (Id.) The next day,

on April 6, 2013, redandwhite informed DPR that tony26 was a drug dealer who "works/lives with 3 other people and they all sell product together." (Id.) The following conversation ensued:

> redandwhite: Do you want to deal with this . . . guy, or do you want me to put the team on standby?
>
> DPR: I am confident enough that it is him to move forward. Can we round up all 4 of them, separate them, and get them to out each other and give up their stolen money?
>
> redandwhite: As for getting all 4, it would be possible but they would have to get them all at once so that one does not get away.
>
> DPR: Ok, let's just hit [tony26] and leave it at that. Try to recover the funds, but if not, then not.

(Id.)

On April 8, 2013, redandwhite offered to "hit [tony26] only" for $150,000 "just like last time." (Id.) However, redandwhite cautioned DPR that if they murdered only tony26, then they would be unable to "do [the hit] at their place because there are always at least a few of them there. . . . So we wouldn't be able to recover any of his things." (Id.) redandwhite further stated that he would "prefer to do all 4" in order to have a "chance of recovering any potential product/money he may have," adding, "Anything recovered would be split 50/50 with you." (Id.) redandwhite quoted a price of "500k USD" to do "all 4." (Id. at 12-13). Later that day, DPR responded, "hmm . . . ok, I'll defer to your better judgment and hope we can recover some assets from them." (Id. at 13.) DPR confirmed that he had sent a payment of 3,000 bitcoins (approximately $500,000) to redandwhite's designated Bitcoin address. (Id.)

The Government contends that information recovered from Ulbricht's laptop corresponds to the evidence recovered from the Silk Road messaging system. According to the Government, chat logs from the laptop indicate that, on April 3, 2013, Ulbricht informed CC-2 that (1) he (Ulbricht) previously had been blackmailed by an individual who threatened to reveal addresses of Silk Road vendors and customers, (2) he had paid a member of the Hell's Angels "to hunt down the blackmailer," and (3) he learned that tony76 was involved in the blackmail scheme. (Id. at 11-12.) Ulbricht's log file allegedly contains entries further confirming his involvement in soliciting the murders-for-hire of tony26 and his three associates:

- April 6, 2013: "gave angels go ahead to find tony76";
- April 8, 2013: "sent payment to angels for hit on tony76 and his 3 associates."

(Id. at 13.)

B. The Fraudulent Identification Evidence

The Government intends to offer evidence that Ulbricht attempted to procure fraudulent identification documents from Silk Road in 2013. (Gov't Mem. at 4.)

The Government contends that it will prove the following facts at trial: On June 10, 2013, a Silk Road user "shefoundme" sent a message on the Silk Road messaging system to a vendor named "KingOfClubs," indicating that shefoundme wanted to order "a few of your highest quality IDs." (Id. at 5.) In subsequent messages, shefoundme ordered nine counterfeit identification documents from New

York, Florida, Texas, Colorado, California, South Carolina, Canada, the United Kingdom, and Australia for $1,650 in U.S. currency. (Id.)

On July 5, 2013, KingOfClubs confirmed that he had mailed the package with the fraudulent identification documents and that it would be delivered to shefoundme the following week. (Id.) On July 18, 2013, after shefoundme complained that the package had not arrived, KingOfClubs provided a U.S. Postal Service ("USPS") tracking number to shefoundme. (Id.) shefoundme responded that the USPS website indicated that the package was "inbound out of customs on the 10th." (Id.)

On July 10, 2013—the same day that shefoundme's package was "inbound out of customs"—federal agents with U.S. Customs and Border Protection ("CPB") intercepted a package from Canada as part of a routine border search. (See id. at 4.) The package contained nine counterfeit identification documents, each of which featured a different name and address but all of which contained a photograph of the same person, allegedly Ulbricht—some with facial hair and others without. (See id.; GX 402.) The licenses stated that they were issued by New York, Florida, Texas, Colorado, California, South Carolina, Canada, the United Kingdom, and Australia—the same jurisdictions that shefoundme had ordered from KingOfClubs. (See Gov't Mem. at 4.)

On or about July 26, 2013, an agent with Homeland Security Investigations ("Agent-1") performed a controlled delivery of the counterfeit driver's licenses to the address on the package. (See id.) Agent-1 encountered Ulbricht at that address.

(See id.) The Government expects Agent-1 to testify that Ulbricht produced his true government-issued Texas driver's license during this encounter, and stated, in sum and substance, that (1) "hypothetically" anyone could go onto a website called "Silk Road" and purchase any drugs or fake identity documents that he or she desired, and (2) he lived at the residence to which the delivered package was addressed under the alias "Josh." (Id.)[6]

III. APPLICABLE LEGAL PRINCIPLES

A. Standard on a Motion In Limine

"The purpose of an in limine motion is 'to aid the trial process by enabling the Court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial.'" Palmieri v. Defaria, 88 F.3d 136, 141 (2d Cir. 1996) (quoting Banque Hypothecaire Du Canton De Geneve v. Union Mines, Inc., 652 F. Supp. 1400, 1401 (D. Md. 1987)); see also Highland Capital Mgmt., L.P., v. Schneider, 551 F. Supp. 2d 173, 176 (S.D.N.Y. 2008). "The trial court should exclude evidence on a motion in limine only when the evidence is clearly inadmissible on all potential grounds." United States v. Ozsusamlar, 428 F. Supp. 2d 161, 164-65 (S.D.N.Y. 2006) (citations omitted).

[6] The Government also intends to offer evidence that Ulbricht leased servers under false identities. (Id. at 5.) According to the Government, a Court-authorized search of Ulbricht's laptop revealed a spreadsheet listing IP addresses and descriptions of various Silk Road–related servers along with approximately 21 false identities under which each of the servers was leased and registered. (Id.) It is not clear that any of those 21 identities are the same as the identities in the nine fraudulent identification documents discussed herein.

In limine rulings occur pre-trial, and that fact has significance. The evidence at trial may come in differently than anticipated, altering the solidity of the proffered basis for a pre-trial ruling. The Court therefore invites parties who believe that the factual record as developed at trial supports a revised ruling to bring such an application in a timely manner.

B. Relevant Evidence

Rule 401 defines relevant evidence as that which "has any tendency to make a fact more or less probable than it would be without the evidence," so long as "the fact is of consequence in determining the action." Fed. R. Evid. 401; see also Old Chief v. United States, 519 U.S. 172, 178 (1997). "The fact to which the evidence is directed need not be in dispute." Old Chief, 519 U.S. at 179 (quoting Fed. R. Evid. 401 advisory committee's note) (internal quotation mark omitted).

To be relevant, evidence need not constitute conclusive proof of a fact in issue, but only have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." McKoy v. North Carolina, 494 U.S. 433, 440 (1990) (quoting New Jersey v. T.L.O., 469 U.S. 325, 345 (1985)) (internal quotation marks omitted); see also United States v. Abu-Jihaad, 630 F.3d 102, 132 (2d Cir. 2010).

C. "Other Act" Evidence

"It is well established that evidence of uncharged criminal activity is not considered 'other crimes' evidence under Fed. R. Evid. 404(b) if it arose out of the same transaction or series of transactions as the charged offense, if it is inextricably intertwined with the evidence regarding the charged offense, or if it is necessary to

complete the story of the crime on trial." United States v. Gonzalez, 110 F.3d 936, 942 (2d Cir. 1997) (quoting United States v. Towne, 870 F.2d 880, 886 (2d Cir. 1989)) (alterations and internal quotation marks omitted); United States v. Kassir, No. 04 Cr. 356(JFK), 2009 WL 976821, at *2 (S.D.N.Y. Apr. 9, 2009). Such evidence is direct evidence of a crime. See Kassir, 2009 WL 976821, at *2. A Rule 404(b) analysis is, however, prudent where it is not manifestly clear that the evidence in question is proof of the charged crime. Id.

Rule 404(b) provides:

> (1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
>
> (2) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. . . .

Fed. R. Evid. 404(b). "Extrinsic acts evidence may be critical to the establishment of the truth as to a disputed issue, especially when that issue involves the actor's state of mind and the only means of ascertaining that mental state is by drawing inferences from conduct." Huddleston v. United States, 485 U.S. 681, 685 (1988).

The Second Circuit evaluates 404(b) evidence under an inclusionary approach that allows evidence for any purpose other than to show a defendant's criminal propensity. United States v. McCallum, 584 F.3d 471, 475 (2d Cir. 2009); see also United States v. Paulino, 445 F.3d 211, 221 (2d Cir. 2006). Courts therefore may allow evidence of other acts by the defendant if the evidence is relevant to an issue at trial other than the defendant's character and if the risk of unfair prejudice does

not substantially outweigh the probative value of the evidence. United States v. Morrison, 153 F.3d 34, 57 (2d Cir. 1998); see also United States v. Garcia, 291 F.3d 127, 136 (2d Cir. 2002). This inclusionary approach does not, however, invite the Government "to offer, carte blanche, any prior act of the defendant in the same category of crime." McCallum, 584 F.3d at 475 (quoting Garcia, 291 F.3d at 137).

In considering the admissibility of evidence pursuant to Rule 404(b), a court must consider the following:

- Is the evidence offered for a proper purpose—that is, does it go to something other than the defendant's character or criminal propensity?
- Is the evidence relevant?
- Is the probative value of the evidence substantially outweighed by the danger of unfair prejudice?
- Has the court administered an appropriate limiting instruction?

McCallum, 584 F.3d at 475 (citation omitted).

It is well established that proving identity qualifies as a "proper purpose." See, e.g., United States v. Gubelman, 571 F.2d 1252, 1254 (2d Cir. 1978) ("[T]he record shows that appellant sufficiently raised the issue of mistaken identity at trial to justify the admission of bad acts evidence relevant to that issue." (citations omitted)).

Also among the "proper purposes" for presenting evidence of extrinsic acts are to prove knowledge and intent. See United States v. Teague, 93 F.3d 81, 84 (2d Cir. 1996); United States v. Caputo, 808 F.2d 963, 968 (2d Cir. 1987). "Where a defendant claims that his conduct has an innocent explanation, prior act evidence is

generally admissible to prove that the defendant acted with the state of mind necessary to commit the offense charged." United States v. Zackson, 12 F.3d 1178, 1182 (2d Cir. 1993) (citation omitted).

Another "legitimate purpose for presenting evidence of extrinsic acts is to explain how a criminal relationship developed; this sort of proof furnishes admissible background information in a conspiracy case" and can assist the jury in understanding the relationship of trust between the coconspirators. United States v. Pipola, 83 F.3d 556, 566 (2d Cir. 1996) (citations omitted); see also United States v. Rosa, 11 F.3d 315, 334 (2d Cir. 1993).

Completing the story of the crimes is also a legitimate use of "other act" evidence. See United States v. Inserra, 34 F.3d 83, 89 (2d Cir. 1994) ("[E]vidence of other bad acts may be admitted to provide the jury with the complete story of the crimes charged by demonstrating the context of certain events relevant to the charged offense.").

Once the Government has proffered a proper purpose for "other act" evidence, the Court must then determine whether the other act is in fact probative of the crimes charged. In this regard, the Government must identify a similarity or connection between the other act and an element of a charged offense. See United States v. Brand, 467 F.3d 179, 197 (2d Cir. 2006). To be relevant, the other act must be sufficiently similar to the conduct at issue to permit the jury reasonably to draw an inference from the act that the state of mind of the actor is as the proponent of the evidence asserts. United States v. Curley, 639 F.3d 50, 57 (2d Cir.

2011); see also United States v. Peterson, 808 F.2d 969, 974 (2d Cir. 1987). The court abuses its discretion if the "chain of inferences" necessary to connect the other act with the charged crime is "unduly long." Curley, 639 F.3d at 57. While the duration of elapsed time between two events can detract from the probative value of the prior event, see Garcia, 291 F.3d at 138, "temporal remoteness of . . . acts does not preclude their relevancy," Curley, 639 F.3d at 59.

It is, however, improper to receive evidence ostensibly as probative of knowledge and intent when it is in reality "propensity evidence in sheep's clothing." McCallum, 584 F.3d at 477. The Government may not use Rule 404(b) to "parade past the jury a litany of potentially prejudicial similar acts that have been established or connected to the defendant only by unsubstantiated innuendo." Huddleston, 485 U.S. at 689. Under Rule 404(b), other act evidence is only admissible if it is relevant, and it is only relevant "if the jury can reasonably conclude that the act occurred and that the defendant was the actor." Id.

D. Rule 403

Rule 403 authorizes the exclusion of relevant evidence when "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403; see also Old Chief, 519 U.S. at 180. "[W]hat counts as the Rule 403 'probative value' of an item of evidence, as distinct from its Rule 401 'relevance,' may be calculated by comparing evidentiary alternatives." Old Chief, 519 U.S. at 184. "If an alternative were found

to have substantially the same or greater probative value but a lower danger of unfair prejudice, sound judicial discretion would discount the value of the item first offered and exclude it if its discounted probative value were substantially outweighed by unfairly prejudicial risk." Id. at 182-83. In making this assessment, a court should take into consideration the "offering party's need for evidentiary richness and narrative integrity in presenting a case." Id. at 183.

Rule 403 is concerned with "some adverse effect . . . beyond tending to prove the fact or issue that justified its admission into evidence." United States v. Gelzer, 50 F.3d 1133, 1139 (2d Cir. 1995) (quoting United States v. Figueroa, 618 F.2d 934, 943 (2d Cir. 1980)) (internal quotation marks omitted).

Several courts have found that "other act" evidence is not unfairly prejudicial where it is not "any more sensational or disturbing than the crimes" with which the defendant has been charged. United States v. Roldan-Zapata, 916 F.2d 795, 804 (2d Cir. 1990); see also Curley, 639 F.3d at 59 (finding that the district court did not err in finding that the probative value of prior acts of domestic violence with similar characteristics to the charged conduct outweighed the potential prejudicial effect when the prior acts were no more sensational than the charged conduct); Abu-Jihaad, 630 F.3d at 132-33 (finding that conversations referencing uncharged support of jihad were "no more inflammatory than the charges alleged in the indictment," id. at 133); United States v. Mercado, 573 F.3d 138, 142 (2d Cir. 2009) (upholding a Rule 403 determination where the challenged evidence was "not especially worse or shocking than the transactions charged" and where the district

court instructed the jury as to what inferences could properly be drawn from such evidence).

IV. DISCUSSION

A. Defendant's Motion to Preclude Certain Evidence Regarding Silk Road Product Listings and Transactions

Defendant has moved to preclude certain evidence of Silk Road transactions, including evidence of narcotics seizures at Chicago O'Hare Airport and undercover buys of narcotics from Silk Road in Chicago and New York. (See Memorandum of Law in Support of Defendant Ross Ulbricht's Motions In Limine ("Def. Mem.") at 3-8, ECF No. 114.) Defendant also has moved to preclude evidence of various Silk Road product listings. (See id.) The challenged exhibits include, inter alia, photographs of contraband allegedly seized in Chicago, screenshots of Silk Road webpages allegedly showing narcotics and other contraband for sale (e.g., "BROWN HEROIN No3 0.2 GRAM!!" for 0.45 bitcoins in GX 103A), and summary charts allegedly listing undercover purchases of narcotics in Chicago and New York.

Defendant's principal argument in support of this motion is that the buy-sell transactions among Silk Road's users at most gave rise to a multitude of discrete conspiracies, rather than the "enormous, anonymous, and essentially unlimited conspiracy" (Def. Mem. at 3) charged in the Superseding Indictment. Defendant contends that, as a result, evidence of these numerous, separate transactions necessarily implicates only buy-sell relationships and not conspiratorial behavior. Thus, according to defendant, the evidence is irrelevant to the conspiracy charge. In addition, he argues that in any event it constitutes inadmissible hearsay.

Defendant also argues that admission of such evidence (much of which is not facially tied to New York) can only tend to prove crimes committed outside of this district, rendering venue improper. Based on this chain of logic, defendant argues that if venue is improper, allowing this evidence would similarly be improper. Finally, defendant argues that the evidence should be precluded under Rule 403.

The Government responds that defendant's attempt to preclude evidence on the basis of his view as to the adequacy of the Government's conspiracy charge simply disregards his previously denied motion to dismiss the Original Indictment. (See Memorandum of Law in Opposition to the Defendant's Motions In Limine ("Gov't Opp.") at 3, ECF No. 127.) Defendant's argument also fundamentally elides that most of the narcotics charges against defendant are for his direct participation in substantive crimes.

Discussion

The Court agrees with the Government and DENIES defendant's motion as to the narcotics-related evidence.[7] Defendant is charged with four separate counts of narcotics-related offenses, three of which are substantive charges and only one of which is a conspiracy charge: Narcotics Trafficking (Count One), Distribution of Narcotics by Means of the Internet (Count Two), Narcotics Trafficking Conspiracy (Count Three), and Continuing Criminal Enterprise (Count Four). Plainly, to the extent the Government can tie the evidence to one of the three substantive counts,

[7] To the extent that some of the evidence challenged through this motion falls within the scope of the Government's motion to allow evidence of uncharged contraband, the Court's ruling on that motion, set forth in subpart F below, applies here.

defendant's conspiracy arguments are inapposite. However, at this stage, the Court additionally finds the evidence relevant to the Government's theory of the narcotics conspiracy. In all events, Rule 403 does not require preclusion.

The evidence plainly is relevant to the substantive narcotics charges in Counts One, Two, and Four. Counts One and Two charge defendant with distributing or aiding and abetting the distribution of narcotics (Count One) and doing so by means of the Internet (Count Two). Count Four charges defendant with engaging in a continuing criminal enterprise, which requires the Government to prove, inter alia, that he committed a Title 21 drug felony violation as part of a "continuing series" of Title 21 drug violations. See United States v. Aiello, 864 F.2d 257, 263-64 (2d Cir. 1988). Each of these substantive charges is premised on the allegation that Silk Road was an online platform for the distribution of narcotics. Evidence of seizures and undercover purchases of narcotics in New York and Chicago, as well as evidence of narcotics product listings on Silk Road, is therefore highly probative and relevant.

The challenged evidence is also relevant to Count Three, charging defendant with participating in a narcotics trafficking conspiracy. The Government's theory is that defendant sat atop an overarching single conspiracy, which included all vendors who sold any type of narcotics on Silk Road at any time.[8] Under this theory, any and all vendors who sold the narcotics seized or purchased in Chicago

[8] At the FPTC, the Government clarified that the charged narcotics conspiracy is not alleged to have included vendors who sold criminally oriented merchandise other than narcotics.

and New York, and all those (if different) who listed and advertised narcotics on Silk Road, were Ulbricht's coconspirators.[9] Evidence of narcotics seizures and undercover purchases in New York and Chicago, as well as evidence of narcotics product listings on Silk Road, is relevant to the existence of the charged conspiracy.[10]

Do the product labels constitute inadmissible hearsay? No. It is certainly true that the narcotics-related product listings contain labels—such as "BROWN HEROIN" in GX 103A—suggesting that the drugs sold on Silk Road were, in fact, real narcotics. Thus, images showing such written statements would be offered for the truth. However, these images fall within the coconspirator exception under Rule 801(d)(2)(E) of the Federal Rules of Evidence.

The Court has considered defendant's arguments that if evidence is admitted under the coconspirator exception, and the conspiracy charge is later dismissed as overly broad, the entire trial would be irreparably infected. This argument misconstrues the law relating to the elements necessary to make an appropriate

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[9] The Court has previously expressed its concerns with the breadth of the Government's conspiracy theory. However, the Government may nonetheless seek to prove such a conspiracy, and the jury will decide whether or not the Government's evidence is sufficient. See United States v. Maldonado-Rivera, 922 F.2d 934, 962 (2d Cir. 1990) ("[W]here the proof is susceptible to the inference that there was more than one conspiracy, the question of whether one or more than one conspiracy has been established is a question of fact for a properly instructed jury." (citations omitted)); United States v. Gambino, 809 F. Supp. 1061, 1079 (S.D.N.Y. 1992) ("It is axiomatic that, in a criminal case, a defendant may not challenge a facially valid indictment prior to trial for insufficient evidence. Instead, a defendant must await a Rule 29 proceeding or the jury's verdict before he may argue evidentiary insufficiency." (citations omitted)).

[10] Defendant's venue objection is meritless at this stage. In a conspiracy prosecution, "venue may lie in any district in which the conspiracy was formed or in any district in which a conspirator committed an overt act in furtherance of the criminal scheme." United States v. Rommy, 506 F.3d 108, 119 (2d Cir. 2007) (citations omitted). It will be up to the Government to prove venue by a preponderance of the evidence. See id.

showing under Rule 801(d)(2)(E). In sum, evidence may be admitted pursuant to the coconspirator exception whether or not the conspiracy which such evidence is alleged to be in furtherance of is the charged conspiracy; and such rulings may survive even if the defendant is acquitted of the charged conspiracy.

The governing legal principles are as follows: in order to admit a statement under Rule 801(d)(2)(E), this Court must find by a preponderance of the evidence "(1) that there was a conspiracy, (2) that its members included the declarant and the party against whom the statement is offered, and (3) that the statement was made both (a) during the course of and (b) in furtherance of the conspiracy." United States v. Tracy, 12 F.3d 1186, 1196 (2d Cir. 1993) (citations omitted); see also Bourjaily v. United States, 483 U.S. 171, 176 (1987) (holding that a "preponderance of the evidence" standard applies). "[S]tatements proffered as coconspirator statements may be admitted in evidence on a conditional basis, subject to the later submission of the necessary evidence of those four prerequisites." Tracy, 12 F.3d at 1199 (citations omitted). In this case, that ruling awaits a specific proffer at trial.

The standard for a judicial determination that the elements to allow admission pursuant to the coconspirator exception are met is lower than that for a criminal conviction. Courts repeatedly have found that even an acquittal on a conspiracy count "does not destroy the admissibility of the declarations of co-conspirators on the substantive charge." United States v. Clark, 613 F.2d 391, 403 (2d Cir. 1979) (citation omitted).

The law also has long provided that "[t]he conspiracy between the declarant and the defendant need not be identical to any conspiracy that is specifically charged in the indictment." United States v. Gigante, 166 F.3d 75, 82 (2d Cir. 1999); see also United States v. Russo, 302 F.3d 37, 45 (2d Cir. 2002). In fact, the Second Circuit has held that it is not even necessary that the Government charge a conspiracy to take advantage of Rule 801(d)(2)(E). United States v. DeVillio, 983 F.2d 1185, 1193 (2d Cir. 1993). Thus, in proving the existence of a conspiracy for purposes of Rule 801(d)(2)(E) in this case, the Government is not limited to the overarching conspiracy charged in Count Three; for example, proof of multiple small conspiracies may suffice for purposes of Rule 801(d)(2)(E).

Having found that the challenged evidence is relevant, the Court turns to Rule 403. Preclusion is not warranted under Rule 403. The probative value of the evidence substantially outweighs any danger of unfair prejudice. As discussed, the evidence is highly probative of the charged narcotics offenses. Defendant points to "the sheer volume of evidence of illegal transactions by Silk Road users" (Def. Mem. at 7), but a criminal defendant is not entitled to preclude evidence simply because it is incriminating and there is a lot of it. "All evidence which tends to prove guilt could be characterized as prejudicial," but "[o]nly unduly prejudicial evidence should be excluded under Fed. R. Evid. 403." United States v. Del Rosario, No. S1 12 Cr. 81(KBF), 2012 WL 2354245, at *3 (S.D.N.Y. June 14, 2012) (citation omitted); see also Gelzer, 50 F.3d at 1139 ("The prejudice that Rule 403 is concerned with

involves 'some adverse effect . . . beyond tending to prove the fact or issue that justified its admission into evidence.'" (quoting Figueroa, 618 F.2d at 943)).

Accordingly, defendant's motion to preclude certain evidence regarding Silk Road product listings and transactions is DENIED.

B. The Murder-for-Hire Motions

The Government has affirmatively moved to allow the murder-for-hire evidence. Defendant has moved to preclude all evidence of Ulbricht's murder-for-hire solicitations. Defendant also has moved to strike as surplusage references to these solicitations in the Superseding Indictment.

The Government argues that evidence of Ulbricht's solicitations of six murders-for-hire is admissible as direct evidence of the crimes charged in the Superseding Indictment. In particular, the Government argues that Ulbricht solicited the murders-for-hire in furtherance of the charged offenses—in order to protect his criminal enterprise from theft, extortion, and threats of exposure to law enforcement. According to the Government, Ulbricht's resort to violence is akin to that of a "traditional drug dealer on the street who uses violence to protect his corner or turf from rival dealers, or to prevent informants from cooperating with law enforcement." (Gov't Mem. at 21.) Alternatively, the Government argues that the murder-for-hire evidence is admissible under Rule 404(b) to prove Ulbricht's criminal knowledge and intent, as well as his identity as DPR.

In contrast, defendant argues that the murder-for-hire solicitations must be precluded as irrelevant to the charged offenses, and not admissible even as

background information because they are wholly unrelated to any of the charged offenses, which are limited to nonviolent crimes. According to defendant, "[t]he government's acknowledgment that there is not any evidence that any murders, or even violence of any kind, occurred . . . reinforces the lack of relevance of the murder for hire allegations." (Def. Mem. at 12.) Defendant further argues that even if the murder-for-hire evidence is relevant, the Court should preclude it under Rule 403.

Discussion

For the reasons set forth below, the Court finds that the murder-for-hire evidence is relevant to the charged offenses, and would in any event be separately admissible under Rule 404(b) to prove Ulbricht's identity as DPR. Finally, Rule 403 does not require preclusion.

The murder-for-hire evidence is directly relevant to proving the elements of the narcotics offenses. First, the context of each of the alleged solicitations involves narcotics dealers, rendering the evidence probative of defendant's participation in the charged offenses. Ulbricht's alleged solicitations of the murders-for-hire revolved around narcotics and protecting Silk Road. The Government seeks to offer evidence that FriendlyChemist, a Silk Road user, was extorting DPR to pay off his narcotics supplier, and that Ulbricht solicited the supplier—another Silk Road user—to execute FriendlyChemist in order to protect the security and anonymity of Silk Road. The Government also seeks to show that DPR solicited the same supplier to execute tony26 and his three associates at least in part to recover

"potential product/money." The supplier told Ulbricht that tony26 was a drug dealer who lived and "s[old] product" with the three associates. These statements are all probative of the existence of the unlawful conspiracy alleged by the Government.[11]

Further, the evidence has additional relevance to the CCE charge in Count Four. One of the elements of the CCE offense is that defendant occupied "a position of organizer, a supervisory position, or any other position of management." Aiello, 864 F.2d at 264. Evidence that Ulbricht solicited murders-for-hire of individuals who threatened Silk Road is relevant to show Ulbricht's supervisory role in the criminal enterprise—that he protected the criminal enterprise of which he was the leader. The first alleged murder-for-hire solicitation is particularly probative in this regard because the target was a Silk Road employee. Ulbricht suspected an employee of stealing approximately $350,000 worth of bitcoins from vendor accounts, and his alleged response—to solicit another Silk Road user to murder the Employee—shows that he occupied a central managerial role in the criminal enterprise. Evidence that Ulbricht expressed surprise that the Employee stole from

[11] It is well established that where "the indictment contains a conspiracy charge, 'uncharged acts may be admissible as direct evidence of the conspiracy itself.'" United States v. Diaz, 176 F.3d 52, 79 (2d Cir. 1999) (quoting United States v. Miller, 116 F.3d 641, 682 (2d Cir. 1997)) (internal quotation marks omitted); see also United States v. Lopez, 572 F. App'x 1, 3 (2d Cir. 2014) (affirming the district court's decision to allow evidence of an uncharged murder as direct evidence of the existence of a conspiracy); United States v. Thai, 29 F.3d 785, 812 (2d Cir. 1994) (finding no error in the admission of evidence of a robbery that was not alleged in the indictment because the robbery, and the defendant's participation in that robbery, "were plainly acts in furtherance of the RICO conspiracy"). In particular, acts of violence may be admissible as overt acts in furtherance of a drug distribution conspiracy. See United States v. Estrada, 320 F.3d 173, 183 (2d Cir. 2003) (noting that "the use of violence to secure the organization's drug turf" and "carrying and using firearms to enforce its control over the drug market" are overt acts of a narcotics conspiracy (internal quotation mark omitted)).

him because he had the Employee's driver's license (obtained in connection with the Employee's work on Silk Road) is further proof that Ulbricht was at the top of the Silk Road hierarchy.[12]

Finally, the murder-for-hire evidence is separately admissible under Rule 404(b) to show identity—that Ulbricht was DPR. The Government contends that chats and other records recovered from Ulbricht's personal laptop correspond to DPR's communications about the murders-for-hire on the Silk Road messaging system. This connection is probative of identity.

The evidence of the first solicitation allegedly consists of records of online messages between Ulbricht and two other individuals, CC1 and CC2. In these messages, Ulbricht allegedly discussed with CC-1 and CC-2 that the Employee was responsible for the theft of $350,000 worth of bitcoins from vendor accounts; that he was arrested on narcotics charges; that he may be cooperating with law enforcement; and that Ulbricht solicited someone to murder him. These messages were allegedly recovered from Ulbricht's personal laptop and are probative of whether Ulbricht was DPR—the leader of Silk Road who took measures to protect the criminal enterprise from threats.

In addition, DPR's conversations on the Silk Road messaging system about FriendlyChemist allegedly correspond to entries in a log file recovered from

[12] Defendant emphasizes that there is no evidence that any of the murders-for-hire were carried out, but this fact is inapposite because it does not undermine the evidence that Ulbricht, acting as DPR, was willing to resort to extremely harsh, violent measures to protect his criminal enterprise. The Government has agreed to stipulate that it has no evidence of any actual murders, effectively eliminating any danger that the jury would improperly assume that the murders were carried out.

Ulbricht's laptop. For example, on March 27, 2013, after FriendlyChemist had threatened to publish a list of real names and addresses of Silk Road vendors and customers unless DPR paid him $500,000, DPR wrote to redandwite, "In my eyes, FriendlyChemist is a liability and I wouldn't mind if he was executed." An entry dated March 28, 2013 in Ulbricht's log appears to refer to the extortion and DPR's communication with redandwhite: "being blackmailed with user info. talking with large distributor (hell's angels)." The next day, when DPR and redandwhite discussed redandwhite's fee for murdering FriendlyChemist, Ulbricht allegedly wrote in his log, "commissioned hit on blackmailer with angels." Then, in early April, when redandwhite sent DPR a message confirming that FriendlyChemist "won't be blackmailing anyone again" and later sent DPR a picture of an allegedly dead victim, Ulbricht updated his log with the following entries: "got word that blackmailer was executed" and, later, "received visual confirmation of blackmailers execution." The correlation between DPR's messages and entries in Ulbricht's personal log is probative of whether Ulbricht and DPR were one and the same.

Finally, evidence of the solicitations of the murders-for-hire of tony26 and his three associates is also highly probative of identity. Around the time that redandwhite told DPR that tony76 participated in FriendlyChemist's blackmail scheme, Ulbricht allegedly told CC-2—in chats recovered from Ulbricht's laptop—that (1) he had been blackmailed by an individual who threatened to reveal addresses of Silk Road vendors and customers, (2) he had paid a member of the Hell's Angels "to hunt down the blackmailer," and (3) he learned that tony76 was

involved in the blackmail scheme. Then, on April 6, 2013, the same day that DPR wrote to redandwhite "Ok, let's just hit [tony26]," Ulbricht allegedly updated his log with "gave angels go ahead to find tony76." Two days later, on April 8, 2013, when DPR confirmed that he had sent a payment of 3,000 bitcoins to murder tony76 and his three associates, Ulbricht allegedly wrote in his log, "sent payment to angels for hit on tony76 and his 3 associates."

Exclusion of the murder-for-hire evidence is not warranted under Rule 403. Since "drug trafficking is often attended by violence," United States v. Sureff, 15 F.3d 225, 228-29 (2d Cir. 1994), courts in this Circuit repeatedly have declined to preclude evidence of violence in narcotics cases. See United States v. Viserto, 596 F.2d 531, 537 (2d Cir. 1979) ("We have recognized that handguns are tools of the narcotic trade, and that possible prejudice does not outweigh the relevance."); United States v. King, 165 F.3d 15 (2d Cir. 1998) (holding that the district court did not abuse its discretion in admitting two handguns because "[e]xperience on the trial and appellate benches has taught that substantial dealers in narcotics keep firearms on their premises as tools of the trade" (citation and internal quotation marks omitted)).

Here, the probative value of the murder-for-hire evidence is not substantially outweighed by the dangers of unfair prejudice, confusing the issues, or wasting time. To be sure, the evidence is prejudicial to Ulbricht, and it does inject an element of violence into the case. However, the prejudicial effect is reduced by the Government's stipulation that no actual murders were carried out. Moreover,

prejudice alone cannot warrant exclusion because, as explained above, all incriminating evidence is prejudicial to a criminal defendant. See Del Rosario, 2012 WL 2354245, at *3. The inquiry, rather, is whether the murder-for-hire evidence is unfairly prejudicial and whether the danger of unfair prejudice substantially outweighs the probative value of the evidence.

As explained above, the murder-for-hire evidence is probative both as evidence of the charged offenses and to prove Ulbricht's identity as DPR—a key disputed issue in this case. In addition, the charges in this case are extremely serious: Ulbricht is charged not with participating in a run-of-the-mill drug distribution conspiracy, but with designing and operating an online criminal enterprise of enormous scope, worldwide reach, and capacity to generate tens of millions of dollars in commissions. Evidence that defendant sought to protect this sprawling enterprise by soliciting murders-for-hire is, in this overall context, not unduly prejudicial. Any danger of unfair prejudice is outweighed by the substantial probative value of the evidence. See United States v. Matera, 489 F.3d 115, 121 (2d Cir. 2007) ("When a defendant engages in a criminal enterprise which involves very serious crimes, there is a likelihood that evidence proving the existence of the enterprise through its acts will involve a considerable degree of prejudice. Nonetheless, the evidence may be of important probative value in proving the enterprise." (citation omitted)).

Accordingly, defendants' motions to preclude the murder-for-hire evidence and to strike references to the murder-for-hire solicitations from the Superseding

Indictment are DENIED. The Government's corresponding motion regarding the murder-for-hire evidence is GRANTED.

C. Defendant's Motion to Preclude Exhibits as Insufficiently Authenticated

Defendant has moved to preclude certain Government exhibits as insufficiently authenticated under Fed. R. Evid. 901 and the Second Circuit's decision in United States v. Vayner, 769 F.3d 125 (2d Cir. 2014). (See Def. Mem. at 16-20.) Defendant argues that these exhibits—including screenshots of various websites, Silk Road forum posts, private Internet messages and chats, files recovered from Ulbricht's laptop, etc.—are "electronic in nature" and "cannot be verified as being what they purport to be, or by whom." (Id. at 20.) The Government asserts that Vayner is inapplicable and that in all events the motion is premature. This Court agrees.

In Vayner, the defendant was indicted for transferring a false identification document. 769 F.3d at 127. One of the issues in the case was whether the e-mail address from which the document was sent—azmadeuz@gmail.com—belonged to the defendant. See id. at 127-28. To corroborate a cooperator's testimony that the e-mail address belonged to the defendant, the Government offered into evidence a printout of a webpage, which it claimed was the defendant's profile page from a Russian social networking site akin to Facebook. (See id.) The printout contained the defendant's name and picture, and listed "Azmadeuz" as the defendant's address on Skype. (Id. at 128.) The district court admitted the printout over the

defendant's objection that the page had not been properly authenticated under Rule 901. (Id.)

The Second Circuit held that the district court abused its discretion in admitting the printout because "[t]he government did not provide a sufficient basis on which to conclude that the proffered printout was what the government claimed it to be—[the defendant's] profile page." Id. at 131. The Second Circuit explained that the printout was helpful to the Government's case only if the defendant authored it, and the mere existence of a webpage with the defendant's name and photograph did not "permit a reasonable conclusion that this page was created by the defendant or on his behalf." Id. at 132. The panel noted that while "the contents or 'distinctive characteristics' of a document can sometimes alone provide circumstantial evidence sufficient for authentication," the information on the printout was known to the cooperator and likely others, some of whom may have had a motive to fabricate the webpage. Id. (citation omitted).

Vayner is not a blanket prohibition on the admissibility of electronic communications. As the Second Circuit observed, "[e]vidence may be authenticated in many ways" and "the 'type and quantum' of evidence necessary to authenticate a web page will always depend on context." Vayner, 769 F.3d at 133. The Second Circuit also expressed skepticism that authentication of evidence derived from the Internet required "greater scrutiny" than authentication of any other record. Id. at 131 n.5. Whether the Government can meet Rule 901's authentication standard

with respect to the challenged exhibits is a question best answered at trial. There simply is no basis to prejudge the Government's ability to meet that standard.

D. The Fraudulent Identification Evidence Motions

Defendant has moved to preclude evidence that Ulbricht ordered fraudulent identification documents from Silk Road on the basis that the Government has not or cannot meet the standard to show "consciousness of guilt" necessary to argue that it is proof of flight. However, defendant's briefing on this issue fails to address the existence of Count Six charging defendant with a conspiracy to traffic in fraudulent identification documents. The Government has affirmatively moved to allow this evidence as direct evidence of Count Six and additionally as evidence of "consciousness of guilt."

The fraudulent identification evidence is admissible as direct evidence that Ulbricht knowingly and intentionally participated in a conspiracy to traffic in fraudulent identification documents, as charged in Count Six of the Superseding Indictment. Specifically, evidence that Ulbricht purchased counterfeit driver's licenses from Silk Road is relevant to show that Silk Road had the capability to facilitate sales of fraudulent identification documents and that Ulbricht knowingly and intentionally exploited that capability—i.e., that the conspiracy charged in Count Six existed and included Ulbricht as a member. The jury may infer from the evidence that Ulbricht's purchase was his "sampling the goods." Ulbricht's statement during the controlled delivery that "hypothetically" anyone could go onto the Silk Road website and purchase any fake identity documents that he or she

desired is further evidence of the existence of a conspiracy to traffic in such documents.[13]

The Court also finds that exclusion under Rule 403 is not warranted because the probative value of the fraudulent identification evidence is not substantially outweighed by any danger of unfair prejudice. Evidence that Ulbricht purchased counterfeit driver's licenses from Silk Road has substantial probative value as direct evidence of the charged conspiracy to traffic in fraudulent identification documents, and it is plainly not unduly prejudicial given the allegations in Count Six.

Accordingly, defendant's motion to preclude the fraudulent identification evidence is DENIED, and the Government's corresponding motion to allow such evidence is GRANTED.

E. Defendant's Motion to Preclude Miscellaneous Government Exhibits

Defendant has objected to a number of the Government's proposed exhibits.

First, defendant objects to exhibits GX 107, 125A through O, 126A through D, 127B and C, 130, 240A through D, 241 through 243, 252, 254, 255, 258, 259, 270, 276A through F, 277A through D, 278, 281, 301 through 335, 501A through C, 700,

[13] The Court is not prepared to rule at this juncture whether the fraudulent identification evidence is also admissible as "flight" evidence demonstrating consciousness of guilt. "[I]t is today universally conceded that the fact of an accused's flight, escape from custody, resistance to arrest, concealment, assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself." United States v. Steele, 390 F. App'x 6, 12 n.2 (2d Cir. 2010) (quoting United States v. Myers, 550 F.2d 1036, 1049 (5th Cir. 1977)) (internal quotation marks omitted); see also United States v. Wilson, 11 F.3d 346, 353 (2d Cir. 1993) ("[T]he use of false identification is relevant and admissible to show consciousness of guilt." (citing United States v. Morales, 577 F.2d 769, 772 (2d Cir. 1978))). However, "[w]hile it is well-settled that flight can, in some circumstances, evidence consciousness of guilt, a satisfactory factual predicate must exist before such evidence may properly be admitted." Steele, 390 F. App'x at 11. Whether such a factual predicate exists in this case is a question best answered at trial.

and 803 as inadmissible hearsay. The Government has provided its responses to these hearsay objections in an exhibit chart filed with the Court on December 10, 2014. The Court will rule on these objections as necessary at trial.

Second, defendant objects to various photographs of narcotics seizures in Chicago and screenshots of the Silk Road website (GX 100A through 103) as lacking a foundation because the exhibits do not contain dates. This motion is DENIED as premature. Defendant may raise these objections at trial after the Government has laid a foundation and offered these exhibits in evidence, as appropriate.

Third, defendant objects to a number of exhibits—GX 100A through 104A, 126C, 225, 295E, 501C, 801, 801A, 802, and 802A—on the ground that they only provide evidence of a unilateral conspiracy because one of the participants is a law enforcement agent, or is operating under the direction of law enforcement, and therefore could not have formed criminal intent. This motion is DENIED. The Government's proposed use of these documents is not limited to the conspiracy charge. The exhibits are separately relevant to the substantive narcotics charges in Counts One, Two, and Four because they are probative of what Silk Road was and how it operated. In addition, as explained above, the Government intends to prove that Ulbricht was the leader of a single overarching narcotics conspiracy, which included all vendors who sold narcotics on Silk Road. Evidence of undercover purchases and seizures from Silk Road is probative of the existence of such a conspiracy because it shows that Silk Road operated as a marketplace for narcotics. Further, statements of defendant and his coconspirators to third parties, including

law enforcement agents, made in furtherance of the conspiracy are admissible against defendant even if the third parties are not members of the conspiracy. In re Terrorist Bombings of U.S. Embassies in E. Africa, 552 F.3d 93, 139 (2d Cir. 2008) ("Though [Rule 801(d)(2)(E)] requires that both the declarant and the party against whom the statement is offered be members of the conspiracy, there is no requirement that the person to whom the statement is made also be a member." (quoting United States v. Beech-Nut Nutrition Corp., 871 F.2d 1181, 1199 (2d Cir. 1989)) (internal quotation marks omitted)).

Fourth, defendant objects to product listings on Silk Road, and a companion website called The Armory, offering books, manuals, and "How To" guides regarding criminal activity (GX 116G, 116H, 116I, and 291C). Defendant argues that selling these materials on Silk Road is protected First Amendment activity. Defendant's motion is GRANTED as to these materials for the reasons set forth in subpart F below. The books and manuals in these exhibits are irrelevant to any of the charged offenses and, even if they were, any marginal probative value is substantially outweighed by the danger of unfair prejudice to defendant. The challenged exhibits—featuring books with titles such as "Silent but Deadly" and "Homemade C-4: A Recipe for Survival"—unnecessarily inject elements of violence and explosive devices that are not otherwise part of this case.

Defendant similarly objects to a manual recovered from his laptop (GX 271) on First Amendment grounds. The Government argued at the FPTC that this manual—entitled The Construction & Operation of Clandestine Drug Laboratories,

Second Edition—is relevant to the charges in Counts One and Three because it supports the Government's theory that defendant clandestinely grew magic mushrooms in order to get Silk Road off the ground. The First Amendment is not a proper basis for this objection: acts of speech may always be used as probative of participation in criminal activity. For instance, if a defendant states, "I did it," that statement would not be precluded on First Amendment grounds. Nevertheless, the admissibility of this manual will be determined at trial, after the Government lays a foundation.

Fifth, defendant objects to exhibits containing online chats in which defendant and coconspirators allegedly discuss potential criminal exposure for their activities on Silk Road (GX 226 and 230). Defendant argues that these exhibits are unduly prejudicial because they can be interpreted as providing instructions on the law and could thus confuse and mislead the jury. This motion is DENIED. The conversations in GX 226 and 230 are highly probative of defendant's participation in the charged conspiracies and knowledge of the illegal nature of Silk Road. Any potential prejudice from admitting these conversations can be cured by the Court's instructions.

Finally, defendant objects to exhibits relating to uncharged contraband sold on Silk Road (GX 116G, 116H, 116I, 228A, 228B, 229A, 230, 276A through F, and 227A through D). Defendant argues that these exhibits are irrelevant to the charged offenses. This motion is GRANTED for the reasons set forth in subpart F below.

F. Government's Motion to Allow Evidence of Criminally Oriented Goods and Services Not Specifically Referenced in the Superseding Indictment

The Government has moved to allow evidence that Silk Road was a marketplace not only for narcotics, computer hacking tools, and counterfeit identity documents—the contraband referenced in the Superseding Indictment—but also for other goods and services of interest to criminals, such as weapons, counterfeit commercial merchandise, and pirated copies of copyrighted books. (See Gov't Mem. at 13-14.) The Government also seeks to introduce evidence of The Armory—a companion website that Ulbricht allegedly set up to facilitate the sale of guns. (Id. at 14.)

The Government argues that evidence of uncharged contraband is "inexorably intertwined with the charged conduct and necessary to complete the story of the crimes charged." (Id. at 25.) In the alternative, the Government argues that this evidence is admissible under Rule 404(b) as probative of Ulbricht's knowledge and criminal intent. Defendant counters that evidence of contraband not referenced in the Superseding Indictment is irrelevant. This Court agrees.

The Court disagrees with the Government that this evidence is "inexorably intertwined" with the charged offenses or "necessary to complete the story." The charged offenses are limited to three types of contraband—narcotics, computer hacking materials, and fraudulent identification documents. Evidence that other contraband—such as weapons and pirated copies of copyrighted books—was also sold on Silk Road is unrelated to, much less "inextricably intertwined" with the

charged offenses. It is also not necessary to "complete the story": the charges in the Superseding Indictment suffice to present a story of a sprawling online marketplace where criminals all over the world could purchase a wide variety of contraband—all kinds of illegal narcotics, computer hacking tools, and fraudulent identification documents—anonymously.

The Williams case cited by defendant is persuasive in this regard. In Williams, one of the defendants, Jackson, was charged with possessing a firearm as a convicted felon in violation of 18 U.S.C. § 922(g)(1). United States v. Williams, 585 F.3d 703, 705 (2d Cir. 2009). The Government's version of the facts was as follows: "the police responded to a report of a shooting in the building; they approached a group of people outside the building; Jackson fled; Officer Jordan saw a gun in Jackson's pocket; the police later apprehended Jackson; and an officer found the gun near where Jackson had run." Id. at 707. In addition to this evidence, the district court admitted evidence that Jackson had been present in the apartment where the shooting occurred and where police later found a cache of weapons and other contraband. See id. at 706. The Government argued, as the Government does here, that this evidence "completed the narrative and was 'inextricably intertwined with proof of the charged offense,'" id. at 708, but the Second Circuit held that admitting this evidence was an abuse of discretion:

> We disagree that the contraband evidence was relevant as background to the crime. The physical evidence from the apartment was not particularly helpful to explain the crime. The Government's version of the facts was simple and complete . . . . The Government did not need the contraband to explain why the police were at the building, why Officer Jordan pursued Jackson, why Jackson was arrested, or why

> Jackson was charged with possessing a firearm. Failing to detail the contents of the apartment would not have left any gaps in the Government's case, nor have left the jury wondering about missing pieces of the story. We think the evidence more likely confused the jury than assisted its understanding of the case.

Id. at 707-08 (citation omitted).

In this case, too, evidence that contraband such as counterfeit belts was sold on Silk Road is not particularly helpful to explain the charges against defendant, all of which center around narcotics, computer hacking tools, and fraudulent identification documents. Nor does precluding this evidence leave any gaps in the Government's case: as explained above, evidence of the charged offenses suffices to paint a compelling and self-contained story of Silk Road as a sprawling criminal enterprise.

Evidence of uncharged contraband is also not probative of Ulbricht's knowledge and intent. The Government argues that evidence that Ulbricht was responsible for setting the policies governing which goods and services could be sold on Silk Road demonstrates that he knew about the illegal nature of the enterprise. (Gov't Mem. at 26.) That may be true, but the Government can present this evidence without referencing any uncharged contraband. That is, this ruling does not preclude the Government from presenting evidence that Ulbricht authored a policy that specifically allowed vendors to sell narcotics, computer hacking tools, and fraudulent identification documents on Silk Road.

Evidence of uncharged contraband also presents hearsay problems. At the FPTC, the Government has conceded that the charged narcotics conspiracy does not

include vendors who sold merchandise other than narcotics. As a result, any label or product listing suggesting that the merchandise is counterfeit or otherwise illegal—e.g., "Fake Ray ban RB2140 Sunglasses" in GX 116C—is inadmissible hearsay in the absence of an applicable exception. Thus, to prove that the various products were indeed counterfeit or illegal likely would require a mini-trial within the trial.[14]

Even if evidence of uncharged contraband were relevant, the Court would preclude it under Rule 403 because any marginal probative value of this evidence is substantially outweighed by the dangers of unfair prejudice, confusing the issues, and wasting time. In particular, evidence that firearms and other weapons were sold on Silk Road and The Armory is unduly prejudicial to defendant because it unnecessarily injects elements of violence and guns into this case. In addition, introducing evidence of uncharged contraband may mislead the jury and lead it to convict defendant for uncharged conduct. Finally, allowing such evidence may lead to a mini-trial on collateral issues, such as whether or not the Gucci belts sold on Silk Road were counterfeit.

Accordingly, the Government's motion to allow evidence of uncharged contraband is DENIED.[15]

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[14] While the Government is not limited to the charged conspiracies in proving the elements of the coconspirator exception, it must allege facts supporting the existence of a conspiracy between defendant and any vendor who sold uncharged contraband. The Government has not done so here, and the Court will not allow evidence on this collateral issue at trial.

[15] As discussed at the FPTC, the admissibility of any exhibits featuring currency will be determined at trial, after the Government lays a foundation for those exhibits. The exhibits will be precluded if offered to show that counterfeit currency was sold on Silk Road but may be allowed if offered to prove money laundering.

G. Government's Motion to Preclude Argument or Evidence Regarding Potential Consequences of Conviction and Defendant's Political Views

The Government has moved to preclude argument and evidence on (1) the potential consequences of defendant's conviction, and (2) defendant's political views or other excuses for his conduct. (See Gov't Mem. at 27-29.)

The defense has assured the Court that it is "well aware of the limits on appropriate argument, and does not intend to argue the issue of Mr. Ulbricht's potential punishment before the jury." (Memorandum of Law in Opposition to Government's Motions In Limine at 17, ECF No. 126.) The defense also has represented that it will not make any arguments regarding jury nullification. (Id.) This motion is therefore DENIED as moot.

V. CONCLUSION

A. Defendant's motion to preclude certain evidence regarding Silk Road product listings and transactions is DENIED, subject to the ruling in subpart F.

B. Defendant's motions to preclude evidence of defendant's murder-for-hire solicitations and to strike references to such solicitations as surplusage are DENIED. The Government's corresponding motion to allow the murder-for-hire evidence is GRANTED.

C. Defendant's motion to preclude certain Government exhibits as insufficiently authenticated is DENIED. Defendant can renew this motion as to any particular exhibit when it is offered at trial.

D. Defendant's motion to preclude evidence that he ordered fraudulent identification documents from Silk Road is DENIED. The Government's corresponding motion to allow this evidence is GRANTED.

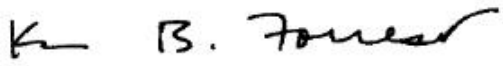
E. Defendant's motion to preclude a variety of government exhibits not covered by the other motions in limine is GRANTED in part and DENIED in part. The specific rulings are set forth above.

F. The Government's motion to allow evidence of uncharged contraband is DENIED.

G. The Government's motions to preclude argument and evidence regarding (1) any potential consequences of conviction, and (2) defendant's political views or other excuses is DENIED as moot.

The Clerk of Court is directed to terminate the motions at ECF Nos. 108 and 112.

Dated: New York, New York
January 7, 2015



KATHERINE B. FORREST
United States District Judge

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 19, 2015

By ECF
Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

The Government respectfully submits this letter brief to address the admissibility of testimony the defense elicited on Thursday and seeks to continue eliciting from Special Agent ("SA") Jared Der-Yeghiayan concerning Mark Karpeles, formerly the owner of the Bitcoin exchange known as "MtGox," whom the defense apparently seeks to argue was the true operator of Silk Road. As set forth below, this line of questioning is impermissible on several grounds.

First, the line of questioning is improper insofar as it is focused on SA Der-Yeghiayan's state of mind during his investigation. That is, the defense seeks to have SA Der-Yeghiayan explain why he *believed* during an earlier period in time that there was reason to suspect Mr. Karpeles was involved in operating Silk Road. SA Der-Yeghiayan's beliefs are not evidence. Just as SA Der-Yeghiayan could not have testified on direct examination about his current belief that the defendant is guilty of the crimes charged and the reasons why he holds that belief, he cannot now be asked to testify on cross-examination about his previous beliefs that others were implicated in the crime or the reasons for those beliefs. Indeed, an agent's beliefs often rest on hearsay, hunches, or other information that is not in itself admissible. The defense cannot circumvent the evidentiary rules prohibiting the admission of such information by having the agent testify about what he believed at various points during the investigation or why he believed it.

Second, the defense should also be precluded from inquiring into discussions between Mr. Karpeles (through his counsel) and an Assistant U.S. Attorney from the District of Maryland concerning the possibility of Mr. Karpeles proffering information he believed could help authorities in their investigation of Silk Road. SA Der-Yeghiayan was not involved in and has no first-hand knowledge of those discussions; and the residual hearsay exception, which is meant to apply only in exceptional circumstances, does not provide a basis for SA Der-Yeghiayan to

testify about them. The statements the defense seeks to elicit from SA Der-Yeghiayan on this issue do not bear circumstantial guarantees of trustworthiness, nor would admitting them serve the interests of justice. Indeed, the defense seeks to use these statements for an improper purpose – to falsely suggest to the jury that Mr. Karpeles had inside knowledge about Silk Road, or sought to obtain immunity from prosecution for involvement in Silk Road, when neither suggestion is true.

Finally, to the extent the defense seeks to elicit testimony from SA Der-Yeghiayan concerning Mr. Karpeles that does not either consist of agent belief or inadmissible hearsay, the Court should allow such testimony only if the defense can show it is more probative than prejudicial. The Second Circuit has made clear that courts have an important gatekeeping role where a defendant seeks to introduce evidence of an "alternative perpetrator," as such evidence poses serious risks of confusing and misleading the jury. In keeping with that gatekeeping role, courts allow such evidence only if the defense can proffer a substantial, direct connection – as opposed to a mere basis for suspicion – linking the "alternative perpetrator" to the crime charged. As explained below, the connections the defense seeks to draw between Mr. Karpeles and the Silk Road website are, based on what the Government ultimately learned through its investigation, neither direct nor substantial. Accordingly, the Court should carefully evaluate the probative value of any evidence the defense seeks to introduce concerning Mr. Karpeles and exclude such evidence if its probative value is outweighed by its potential prejudicial effect.

Factual Background

A. SA Der-Yeghiayan's Investigation of Mark Karpeles

As SA Der-Yeghiayan testified during direct examination, his investigation of Silk Road spanned approximately two years. During that time, before certain information about the defendant was brought to his attention by IRS Special Agent Gary Alford on or about September 10, 2013, SA Der-Yeghiayan looked into several other individuals whom he thought potentially were involved in operating Silk Road.

One of the individuals SA Der-Yeghiayan considered was Mark Karpeles. Mr. Karpeles was, at the time in question, the owner of a company based in Japan known as "MtGox" – one of the largest Bitcoin exchanges then in operation on the Internet. SA Der-Yeghiayan's suspicion of Mr. Karpeles was based primarily on the fact that, from February 2011 to February 2012, the website "silkroadmarket.org" was hosted on a server controlled by Mr. Karpeles. The "silkroadmarket.org" website was a simple website on the ordinary Internet that provided instructions on how to get to the real Silk Road on Tor. (*See* Ex. A.) SA Der-Yeghiayan looked up the "silkroadmarket.org" website on "who.is" (a public database discussed during SA Der-Yeghiayan's testimony on direct), which revealed that the website resolved to a server controlled by a certain company that SA Der-Yeghiayan traced to Mr. Karpeles.

Two other considerations led SA Der-Yeghiayan to suspect that Mr. Karpeles might be involved in Silk Road. First, SA Der-Yeghiayan believed Mr. Karpeles had a motive for operating Silk Road – to generate a demand for Bitcoins (which were needed to make purchases on Silk Road), which would in turn drive customers to MtGox. Second, SA Der-Yeghiayan

noticed that certain websites he believed to be associated with Mr. Karpeles were created with certain software that was also used to create certain portions of the Silk Road website. Based on this evidence, in mid-August 2013, SA Der-Yeghiayan obtained a search warrant for certain email accounts used by Mark Karpeles so that he could review them for any evidence corroborating his suspicions.

No such evidence was found. Instead, the evidence showed that the principal basis for having suspected Mr. Karpeles prior to obtaining the search warrant did not, in fact, establish a connection between Mr. Karepeles and Silk Road. In particular, the evidence showed that, besides operating Mt. Gox, Mr. Karpeles also ran a webhosting service known as "Kalyhost" (also known as "AutoVPS.net"), which accepted Bitcoins among other forms of payment. Like any webhosting service, such as "Amazon Web Services" or "GoDaddy.com," Kalyhost leased server space to its customers for them to use in setting up their own websites. The "silkroadmarket.org" website belonged to a Kalyhost *customer*, as evidenced, for example, by an email from the customer found in the email account for Mr. Karpeles' webhosting company, seeking assistance with a customer-support question. (*See* Ex. B)).[1]

The Kalyhost customer associated with the "silkroadmarket.org" website, the investigation ultimately revealed, was the *defendant*. As reflected in the "who.is" information for the "silkroadmarket.org" website, the name of the website was registered by someone using the name "Richard Page." (*See* Ex. C). Based on an examination of the defendant's laptop subsequent to his arrest, that name is known to be an alias used by the defendant. Specifically, a file recovered from the defendant's computer, within a folder marked "aliaces" [sic], reflects the name "Richard Page," along with a false address included in the contact information used to register the "silkroadmarket.org" domain name. (*See* Ex. D). The file further reflects that the information was used to rent a server from "kalyhost." (*Id.*).

The fact that the defendant used Mr. Karpeles' webhosting service to host the "silkroadmarket.org" website turned out to be the *only* connection SA Der-Yeghiayan ever found between the website and Mr. Karpeles. And the results of the search warrant effectively eliminated the significance of that connection. There was no evidence that Mr. Karpeles himself created or maintained the "silkroadmarket.org" website. Again, Mr. Karpeles controlled numerous servers, which he leased to a multitude of different customers who used Kalyhost as their webhosting provider; thus, the fact that the "silkroadmarket.org" website was hosted on a server Mr. Karpeles controlled does not imply he was responsible for its content.[2] And of course SA Der-Yeghiayan never found that Mr. Karpeles had any connection whatsoever to the servers operating the actual Silk Road website on Tor.

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[1] That the operator of "silkroadmarket.org" chose to use Kalyhost to host the website is not surprising. The fact that Kalyhost accepted Bitcoins as payment made it an attractive webhosting provider for customers who wished to set up a website without having to provide identifying information in making payment.

[2] SA Der-Yeghiayan indicated as much during cross-examination. *See* Tr. 492:14-16 ("Q:… He [Mr. Karpeles] had a lot of domain names and things like that within his control? A: He *hosted* a lot of websites, yes.") (emphasis added).

Once the search warrant results were obtained, and it became clear that the principal basis for SA Der-Yeghiayan's suspicion – namely, the connection between Mr. Karpeles's webhosting service and the "silkroadmarket.org" website – lacked significance, the import of the other bases for SA Der-Yeghiayan's suspicions likewise appeared insignificant. Standing alone, those other bases do not substantially implicate Mr. Karpeles in operating Silk Road. First, although SA Der-Yeghiayan suspected Mr. Karpeles of having a motive to operate Silk Road because Mr. Karpeles ran one of the largest Bitcoin exchanges in operation at the time, any operator of a Bitcoin exchange would have had a similar theoretical motive for operating Silk Road, and of course the motive for operating Silk Road was not limited to those operating Bitcoin exchanges. Second, as for the software commonalities observed by SA Der-Yeghiayan, the software in question was publicly available and widely used. Thus, SA Der-Yeghiayan had noted that a website registered to Mr. Karpeles had a "wiki" page on it (*i.e.*, an FAQ page) that was created using the same version of "wiki" software – "Mediawiki" – used to create the "wiki" page on the Silk Road website. However, Mediawiki is free, publicly available software that anyone can download.[3] Similarly, SA Der-Yeghiayan also noticed that a discussion forum known as "bitcointalk.org" – which SA Der-Yeghiayan believed, based on information from a "confidential informant," was operated by Mr. Karpeles – was created using the same discussion forum software, known as "Simple Machines," used to create the Silk Road discussion forum. However, again, "Simple Machines" is publicly available software that can be downloaded for free on the Internet.[4] (Moreover, SA Der-Yeghiayan did not develop any direct evidence that Mr. Karpeles in fact operated the "bitcointalk.org" website.) Thus, at most, this evidence shows that Mr. Karpeles used two pieces of widely available software that also happened to be used to create portions of the Silk Road website.

In short, the evidence obtained pursuant to the search warrant for Mr. Karpeles's emails, as well as the Government's investigation of the defendant, revealed no evidence that Mr. Karpeles had anything to do with operating the Silk Road website.

B. USAO-Baltimore's Efforts to Interview Mr. Karpeles in July 2013

Separately from SA Der-Yeghiayan's investigation of Mr. Karpeles, in May 2013, an agent with the Baltimore office of Homeland Security Investigations obtained a warrant to seize certain U.S.-based financial accounts associated with Mr. Karpeles' Bitcoin exchange company, MtGox, as was widely reported in the press at the time. The seizure warrant was issued pursuant to an affidavit alleging that MtGox was a money transmitting business doing business within the United States, and that Mr. Karpeles had failed to properly register the company as such with federal authorities, in violation of Title 18, United States Code, Section 1960. The same agent was also involved in an investigation of Silk Road being conducted by the U.S. Attorney's Office for the District of Maryland ("USAO-Baltimore").

SA Der-Yeghiayan learned from others involved in USAO-Baltimore's Silk Road investigation that, following the seizure of the MtGox accounts, they were seeking to interview Mr. Karpeles to determine whether he had any information concerning the operator of Silk Road.

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[3] *See* https://www.mediawiki.org.

[4] *See* http://www.simplemachines.org.

(According to what SA Der-Yeghiayan had been told, the investigators did not suspect Mr. Karpeles himself of operating Silk Road, but sought any tips he might have as the operator of a large Bitcoin exchange, through which Silk Road proceeds could have passed.) In particular, according to a memo prepared by SA Der-Yeghiayan, SA Der-Yeghiayan was told in July 2013 by an AUSA in USAO-Baltimore ("AUSA-1"), that another AUSA from his office ("AUSA-2") had spoken with an attorney for Mr. Karpeles, who had told AUSA-2 that his client was willing to provide information concerning someone whom he suspected might be operating Silk Road, in exchange for immunity from any potential charges being pursued against Mr. Karpeles for operating an unlicensed money transmitting business. SA Der-Yeghiayan subsequently learned from AUSA-1 that AUSA-2 was attempting to set up a meeting in Guam with Mr. Karpeles (who resides in Japan).

However, the meeting never materialized. SA Der-Yeghiayan was never told what specific information Mr. Karpeles had available to provide concerning Silk Road or what the provenance of it was.

C. Information Provided to USAO-SDNY by Mr. Karpeles Following Ulbricht's Arrest

Several days after the defendant's arrest on October 1, 2013, which was publicly disclosed the following day, the U.S. Attorney's Office for the Southern District of New York ("USAO-SDNY") was contacted by Mr. Karpeles' attorney. The attorney offered to forward records associated with a certain suspicious MtGox account that he stated he had previously sent to AUSA-2 in USAO-Baltimore. The attorney stated that MtGox had also found a different account, in the defendant's own name, which the attorney said he could supply records for as well.

Mr. Karpeles' attorney subsequently forwarded via email the information he had previously sent to AUSA-2 concerning the account MtGox deemed suspicious. (*See* Ex. E). As reflected in the email, the attorney explained that the forwarded information was "not information about the account in Ulbricht's name, which MtGox only identified as of interest after the Ulbricht indictment [*i.e.*, arrest]." (*Id.* (emphasis in original)). The forwarded information related instead to a MtGox account as to which "MtGox ha[d] suspicions may be associated with the largest bitcoin wallet that is perceived by some in the bitcoin community to be associated with Silk Road." (*Id.*) (Bitcoin users had long speculated about Bitcoin "wallets" or "addresses" connected to the Silk Road website, based on analyses of the Blockchain.[5] Thus, it appeared the MtGox account in question had transactions involving these addresses.)

The email from Mr. Karpeles' attorney further explained that there was other suspicious activity connected to the account. The account was initially opened by someone using the email address "davidmaisano@inbox.com," but later, when the customer was required to validate his

[5] *See, e.g.*, Forbes Magazine, *Follow The Bitcoins: How We Got Busted Buying Drugs On Silk Road's Black Market*, Sep. 5, 2013, *available at* http://www.forbes.com/sites/andygreenberg/2013/09/05/follow-the-bitcoins-how-we-got-busted-buying-drugs-on-silk-roads-black-market (discussing research paper identifying hundreds of thousands of Bitcoin addresses determined by the author to be linked to Silk Road).

identity, he did so using documents that reflected a different name from the one on the email account. Moreover, the user deposited a large number of bitcoins into the account, which he converted to nearly $2 million in U.S. dollars, but the user never withdrew the funds off of MtGox's system to an external bank account. Eventually, the money was converted back to Bitcoins and transferred out of MtGox. However, after the transfer, the user contacted MtGox saying that he could not access the account, claiming it had been "hacked." After MtGox told the user that it appeared his credentials had previously been changed pursuant to a valid user request, the customer did not inquire further or, as far as MtGox was aware, report the hack to law enforcement, despite the large amount of funds removed from the account.

After receiving the records for the account, investigators working with USAO-SDNY's investigation of Silk Road were able to tie the "davidmasiano@inbox.com" MtGox account to the defendant through various means. For example, MtGox records showed the account being consistently accessed through IP addresses that traced back to the defendant. Moreover, transactional records from the account were included as attachments to certain emails recovered from the defendant's Gmail account, which was searched pursuant to a search warrant.

Discussion

A. The Defense Should Be Precluded from Questioning SA Der-Yeghiayan About His Past Beliefs Concerning Mark Karpeles, Which Are Not Themselves Evidence

As the defense has now made clear, the defense seeks to elicit certain testimony from SA Der-Yeghiayan in an attempt to argue that Mark Karpeles was the true operator of the Silk Road website. However, the defense's questioning thus far has focused almost exclusively on SA Der-Yeghiayan's past *beliefs* concerning Mr. Karpeles, rather than any actual facts as to which SA Der-Yeghiayan has first-hand knowledge. For example, the defense has sought to elicit, or has indicated an intention to elicit, testimony from SA Der-Yeghiayan that: (1) he at one time *believed* Mr. Karpeles was involved in operating Silk Road; (2) he at one time *believed* there was probable cause to obtain a search warrant on Mr. Karpeles' email account; and (3) he at one time *believed* that a description of the "Dread Pirate Roberts" in a Forbes Magazine article "sound[ed]" like Mr. Karpeles. None of this testimony is competent evidence. To the extent such testimony has been elicited already, it should be stricken from the record, and the defense should be precluded from pursuing similar lines of questioning going forward.

As the Second Circuit has repeatedly made clear, "[t]he agent's state of mind as the investigation progressed is ordinarily of little or no relevance to the question of the defendant's guilt." *United States v. Johnson*, 529 F.3d 493, 501 (2d Cir. 2008); *Ryan v. Miller*, 303 F.3d 231, 252-53 (2d Cir. 2002); *United States v. Reyes*, 18 F.3d 65, 70-72 (2d Cir. 1994). For this very reason, the Government cannot prove *its* case by having the investigating agent "testify to his belief that the defendant is guilty," or explain the "story of the investigation and how it progressed from suspicion to certitude." *Johnson*, 529 F.3d at 499, 501. Nor is such testimony rendered permissible if the agent attempts to explain the basis for his belief in the defendant's guilt, by summarizing, even at a general level, what led him to his conclusion. Indeed, the Second Circuit has emphasized that it only makes matters worse for an agent to give, for example, the "imprecise assurance that his belief is based on 'information from other people,

actual physical evidence, and verification through interviewing the people who are involved." *Id.* at 499 (internal quotation marks omitted); *see also United States v. Garcia*, 413 F.3d 201, 211 (2d Cir. 2005) (finding it was "error to allow law enforcement witnesses to express opinions as to the defendant's culpability based on the totality of information gathered in the course of their investigations"); *United States v. Dukagjini*, 326 F.3d 45, 54 (2d Cir. 2003) (expressing concerns about case agents offering "sweeping conclusions about [the defendant's] activities").

The same principles apply equally to the defense. Just as the Government cannot prove its case by eliciting testimony from an agent that he believes the defendant to be guilty, the defense cannot prove its case by eliciting testimony from an agent that he at one time believed someone else was involved in the crime. An agent's beliefs about the evidence, whether favorable or unfavorable to the defendant, are simply irrelevant to what the evidence actually *is*. Moreover, an agent's beliefs about the evidence are typically the product of various sources of information, many of which may not constitute admissible evidence by themselves. Thus, allowing testimony concerning those beliefs has the effect of introducing conclusions that rest on inadmissible foundations. As one court has put it, in commenting on the impropriety of the defense cross-examining an agent concerning his decision to close the investigation of the defendant at one point due to lack of evidence:

> Whether the evidence is adequate is solely an issue for the jury, and the agent does not have any expertise, any more than anyone off the street, that would render his personal beliefs about such evidence helpful to the jury. An agent's belief about whether the evidence was sufficient a year or two before the defendant was indicted, when the agent decided to close the case, would be even more irrelevant, if something that is irrelevant can be more irrelevant. Moreover, delving into an agent's thoughts about the adequacy of the evidence is fraught with landmines. Not only does it involve delving into such soft evidence as the subjective thoughts of the agent, it also opens up the possibility of the introduction of such unreliable evidence as unsubstantiated leads and hearsay, which are the mainstay of an ongoing investigation but not the mainstay of a trial.

United States v. Carmichael, 373 F. Supp. 2d 1293, 1297 (M.D. Ala. 2005); *see also United States v. Demosthene*, 334 F. Supp. 2d 378, 380 (S.D.N.Y. 2004) ("[A]ny attempt by [the defendant] to dissect an individual law enforcement agent's state of mind during the course of the investigation, or to belabor the details of the investigation's chronological development, would be irrelevant to the central question of [the defendant's] guilt or innocence, and as such, is inadmissible.").

Similarly, here, the fact that SA Der-Yeghiayan suspected for a time that Mr. Karpeles possibly was involved in operating Silk Road is not itself evidence that Mr. Karpeles actually was involved in operating Silk Road. By the same token, SA Der-Yeghiayan's belief at one point that there was probable cause to search certain email accounts used by Mr. Karpeles is, again, not itself evidence inculpating Mr. Karpeles (or exculpating the defendant). Indeed, a law enforcement agent, like any other witness, may not "present testimony in the form of legal conclusions." *United States v. Articles of Banned Hazardous Substances Consisting of an Undetermined Number of Cans of Rainbow Foam Paint*, 34 F.3d 91, 96 (2d Cir. 1994); *accord Densberger v. United Techs. Corp.*, 297 F.3d 66, 74 (2d Cir. 2002); *cf. Rizzo v. Edison Inc.*, 419

F. Supp. 2d 338, 348 (W.D.N.Y. 2005) ("[T]he issue of whether or not probable cause . . . exists is a legal determination that is not properly the subject of expert opinion testimony.")

Nor is it proper for SA Der-Yeghiayan to testify at a general level about what types of evidence he *thought* provided probable cause for a search warrant on Mr. Karpeles' email accounts. Again, it would have been clearly impermissible for SA Der-Yeghiayan to testify on direct that he presently believes the defendant is guilty, and even more impermissible for him to have given "imprecise assurances" that this belief is based on various categories of evidence, such as evidence found on the defendant's computer, evidence found in his apartment, statements of witnesses, and so forth. *Johnson*, 529 F.3d at 499. By the same token, it would be equally impermissible for the defense to elicit "imprecise assurances" from SA Der-Yeghiayan on cross-examination that there were various categories of evidence that he believed justified his obtaining a search warrant on Mr. Karpeles' email account.

Indeed, such testimony would seriously prejudice the Government, by giving the false impression to the jury that there was a substantial body of evidence pointing to Mr. Karpeles as the operator of Silk Road, when, based on what was ultimately learned, there is no such substantial evidence. The primary evidence relied upon in SA Der-Yeghiayan's search warrant application – the link between the "silkroadmarket.org" website and Mr. Karpeles – turned out to lack significance, as the website was simply hosted on a server controlled by Mr. Karpeles' webhosting company. Moreover, some of the evidence relied upon by SA Der-Yeghiayan was hearsay, such as the information SA Der-Yeghiayan received from a "confidential informant" that Mr. Karpeles operated the "bitcointalk.org" discussion forum. The defense cannot paper over these evidentiary defects by simply having SA Der-Yeghiayan testify that his search warrant application rested on various types of evidence at a general level. Such testimony would mislead the jury about the quantity, quality, and admissibility of that evidence.

Similarly, the defense should also be precluded from questioning SA Der-Yeghiayan about an email he sent in mid-August 2013 expressing his belief that a description of the "Dread Pirate Roberts" appearing in an online magazine article "sound[ed] very much like MK [Mark Karpeles]." As an initial matter, the article itself is clearly hearsay and cannot be introduced through SA Der-Yeghiayan's testimony. The article in question purported to be an interview of the "Dread Pirate Roberts," and in it the reporter relayed that the "Dread Pirate Roberts" stated that he had bought out the previous owner of Silk Road after first gaining his trust by identifying a flaw in the site's hardware that could be used to steal Bitcoins from the site. The defense, it is clear, is seeking to offer this statement for its truth. The defense seeks to establish (a) that the "Dread Pirate Roberts" *did* buy out the previous owner of Silk Road after initially identifying a Bitcoin-related flaw in the site and (b) that Mark Karpeles sounded to SA Der-Yeghiayan like someone who could fit this description. The latter proposition is irrelevant unless the defense is seeking to establish the truth of the former.

However, the statement of "Dread Pirate Roberts" reported in the article is clearly hearsay; indeed, it is double-hearsay. The statement was initially made by the "Dread Pirate Roberts," and was then reported by a journalist. There is of course no reason to assume the reliability of the reported statement of the "Dread Pirate Roberts"; indeed, in the Government's view, it is a self-serving statement of the defendant himself. *See United States v. Marin*, 669

F.2d 73, 84 (2d. Cir. 1982) ("When the defendant seeks to introduce his own prior statement for the truth of the matter asserted, it is hearsay, and it is not admissible."); *Hubrecht v. Artuz*, No. 05 Civ. 5861 (RJH), 2008 WL 216315, at *15 (S.D.N.Y. Jan. 24, 2008) ("[S]elf-serving statements by a criminal defendant are routinely excluded as inadmissible hearsay."). Moreover, the admission of the statement would be doubly improper given that it was filtered through a reporter. *See F.T.C. v. Medical Billers Network, Inc*., 543 F. Supp. 2d 283, 305 (S.D.N.Y. 2008) (characterizing statements in online magazine article as "rank hearsay").

But even putting the issue of hearsay aside, whether SA Der-Yeghiayan believed at one time that the description of "Dread Pirate Roberts" in the article resembled Mr. Karpeles in some manner is irrelevant. If the defendant seeks to prove that Mr. Karpeles has extensive expertise in Bitcoin such that he was qualified to identify a Bitcoin-related flaw in Silk Road's system, then the defendant must do so through direct proof of that fact. Whether SA Der-Yeghiayan believed at a certain time, or even believes now, that Mr. Karpeles has such expertise is irrelevant and inadmissible – just as it would have been irrelevant and inadmissible for SA Der-Yeghiayan to have testified on direct that he believes the defendant has the expertise necessary to run Silk Road.

Accordingly, the defense should be precluded generally from eliciting testimony from SA Der-Yeghiayan concerning his beliefs about any evidence concerning Mr. Karpeles, or about any other subject, for that matter.

B. The Defense Should Be Precluded from Questioning SA Der-Yeghiayan Concerning Mark Karpeles' Offer to Provide Information to Law Enforcement Authorities

For several reasons, the defendant should also be precluded from questioning SA Der-Yeghiayan concerning Mr. Karpeles' offer to provide information to USAO-Baltimore in exchange for immunity from being prosecuted for operating an unlicensed money transmitting business.

First, such testimony would consist of multiple layers of inadmissible hearsay. It is apparent that the defendant seeks to elicit the testimony in order to prove the (false) proposition that Mr. Karpeles had inside information about Silk Road, indicating that he must have been involved in operating the site. The chain of hearsay through which the defendant seeks to introduce in support of this proposition is as follows: SA Der-Yeghiayan heard from AUSA-1, who in turn heard from AUSA-2, that AUSA-2 had spoken with Mr. Karpeles' attorney (who impliedly had spoken with Mr. Karpeles), and that the attorney stated, on behalf of his client, that his client had information about Silk Road that he was willing to supply to law enforcement authorities in exchange for some form of immunity. The chain thus involves *quadruple* hearsay: Mr. Karpeles' implied statement to his attorney that he was willing to talk in exchange for immunity, which his attorney communicated to AUSA-2, who communicated it in turn to AUSA-1, who communicated it in turn to SA Der-Yeghiayan.

There is no basis for this compound hearsay to be admitted into evidence. In particular, the residual hearsay exception of Rule 807 affords no basis to do so. That exception allows a statement not covered by the hearsay exceptions of Rule 803 to be admitted only if: "(1) the

statement has equivalent circumstantial guarantees of trustworthiness; (2) it is offered as evidence of a material fact; (3) it is more probative on the point for which it is offered than other evidence that the proponent can obtain through reasonable efforts; and (4) admitting it will serve the purposes of these rules and the interests of justice." As the Second Circuit and courts within this district have repeatedly noted, the residual hearsay exception is meant to "be used very rarely, and only in exceptional circumstances." *Parsons v. Honeywell, Inc*., 929 F.2d 901, 907 (2d Cir. 1991) (internal quotation marks omitted); *see also, e.g.*, *United States v. DeVillio*, 983 F.2d 1185, 1190 (2d Cir. 1993) (residual hearsay exception is "applied in the rarest of cases"); *Lakah v. UBS AG*, 996 F. Supp. 2d 250, 257 (S.D.N.Y. 2014) (same); *United States v. Mejia*, 948 F. Supp. 2d 311, 316 (S.D.N.Y. 2013) (same).

There are no "exceptional circumstances" that would make it appropriate to invoke the residual hearsay exception here. To the contrary, the quadruple-hearsay at issue – in essence, Mr. Karpeles' statement that he was willing to exchange information about Silk Road for some form of immunity – clearly fails to meet the thresholds of Rule 807. First, the statement does not have strong circumstantial guarantees of trustworthiness; it can easily be misconstrued and taken out of context – precisely as the defendant seeks to take it out of context here. Specifically, it is not clear from the statement, as it was reported to SA Der-Yeghiayan, what type of information Mr. Karpeles had available to provide, or where he got it from. In fact, Mr. Karpeles merely had information about a suspicious MtGox account tied to Bitcoin addresses that some believed were associated with Silk Road; and he was merely seeking immunity from being prosecuted for operating an unlicensed money transmitting business in the wake of the seizure of MtGox's U.S.-based financial accounts two months earlier. Thus, were the defense to elicit from SA Der-Yeghiayan his vague, fourth-hand understanding of the statement – that Mr. Karpeles was willing to provide information about Silk Road in exchange for immunity – the jury would be left with a highly misleading impression that the defense is clearly seeking to foster: that Mr. Karpeles had information about Silk Road as an *insider* and was seeking immunity from being prosecuted for involvement in operating the site.

Second, the quadruple-hearsay at issue is not evidence of a material fact. The fact that Mr. Karpeles was willing to provide information to authorities concerning Silk Road is not evidence that he was involved in operating Silk Road, as the true circumstances of Mr. Karpeles' offer (which may not have been known to SA Der-Yeghiayan) make clear. Likewise, the fact that Mr. Karpeles sought immunity of some kind is not evidence that he was involved in operating Silk Road. Again, the immunity he sought concerned potential prosecution for operating an unlicensed money transmitting business, not prosecution for operating Silk Road.

Third, admitting hearsay testimony concerning Mr. Karpeles' offer to talk to authorities would not serve "the interests of justice." It is abundantly clear that the defendant's objective in eliciting this testimony is to falsely implicate Mr. Karpeles in the operation of Silk Road. Were the Court to allow this hearsay testimony, the Government would be unable to fully correct this misimpression on redirect, given the limitations of SA Der-Yeghiayan's knowledge about the issue. SA Der-Yeghiayan was not involved, for example, in the exchanges between USAO-SDNY and the attorney for Mr. Karpeles, in which the attorney made clear that the information Mr. Karpeles had to offer came simply from his operation of MtGox, as opposed to any involvement in Silk Road. Hence the Government cannot elicit the facts known from these

exchanges through SA Der-Yeghiayan. The hearsay rule exists to prevent precisely this sort of situation: the elicitation of a statement from a witness who heard it indirectly from others and who therefore is not in a position to testify about the underlying context in which it was made.

In short, the residual hearsay exception, which is intended to be very narrow in scope, affords no basis to allow SA Der-Yeghiayan to testify about discussions in which he was not involved, and had limited, fourth-hand knowledge, concerning Mr. Karpeles' apparent willingness to provide information to law enforcement authorities in connection with Silk Road.

C. Any Evidence the Defense Seeks to Elicit Concerning Mark Karpeles Should Be Carefully Scrutinized Under Rule 403

To the extent the defense seeks to elicit any testimony from SA Der-Yeghiayan concerning Mr. Karpeles other than agent belief or hearsay – which has been the bulk of the elicited testimony so far – the Court still must ensure that the probative value of the testimony is sufficient to outweigh any potential prejudicial effect. Where a defendant seeks to offer evidence that an "alternative perpetrator" committed the crime charged, a court must be especially careful to guard against the danger of unfair prejudice under Rule 403, for "[t]he potential for speculation into theories of third-party culpability to open the door to tangential testimony raises serious concerns." *Wade v. Mantello*, 333 F.3d 51, 61 (2d Cir. 2003). As the Second Circuit explained in *Wade*:

> In the course of weighing probative value and adverse dangers, courts must be sensitive to the special problems presented by 'alternative perpetrator' evidence. Although there is no doubt that a defendant has a right to attempt to establish his innocence by showing that someone else did the crime, a defendant still must show that his proffered evidence on the alleged alternative perpetrator is sufficient, on its own or in combination with other evidence in the record, to show a nexus between the crime charged and the asserted "alternative perpetrator." It is not sufficient for a defendant merely to offer up unsupported speculation that another person may have done the crime. Such speculative blaming intensifies the grave risk of jury confusion, and it invites the jury to render its findings based on emotion or prejudice.

Id. at 61-62 (quoting *United States v. McVeigh*, 153 F.3d 1166, 1191 (10th Cir. 1998) (citation omitted)); *see also DiBenedetto v. Hall*, 272 F.3d 1, 8 (1st Cir. 2001) ("Evidence that tends to prove a person other than the defendant committed a crime is relevant, but there must be evidence that there is a connection between the other perpetrators and the crime, not mere speculation on the part of the defendant."); *People of Territory of Guam v. Ignacio*, 10 F.3d 608, 615 (9th Cir. 1993) ("Evidence of third-party culpability is not admissible if it simply affords a possible ground of suspicion against such person; rather, it must be coupled with substantial evidence tending to directly connect that person with the actual commission of the offense."); *Andrews v. Stegall*, 11 Fed. Appx. 394, 396 (6th Cir. 2001) ("Generally, evidence of third party culpability is not admissible unless there is substantial evidence directly connecting that person with the offense.").

Accordingly, where evidence sought to be introduced by the defendant fails to establish a direct, substantial connection between the alleged third-party perpetrator and the crime charged, the evidence should be excluded under Rule 403. In *Wade*, for example, the defendant sought to introduce evidence that the victim of the charged murder in the case was a member of a gang who had previously participated in a shoot-out with a third-party – who the defendant alleged was the real murderer. 333 F.3d at 54-55. Notwithstanding that this evidence established a motive for the third-party to have committed the crime, and even possibly the opportunity to do so, the Second Circuit held that the evidence was properly excluded, because no evidence specifically linked the third-party to the murder. *Id.* at 60-61. Allowing the evidence, the Second Circuit found, would have "invite[d] testimony that was both distracting and inflammatory" and "posed a danger of turning attention away from issues of [defendant's] culpability." *Id.* at 61; *see also United States v. Diaz*, 176 F.3d 52, 82 (2d Cir. 1999) (finding that claim that murder victim had assaulted inmate while in jail, which suggested motive on the part of a third party, "was creative conjecturing and the court properly exercised its discretion in excluding such speculative evidence").

Likewise, in a different Second Circuit case (also involving a party named Wade), the Second Circuit upheld the exclusion of "alternative perpetrator" evidence that the defendant sought to elicit during cross-examination of a police officer testifying for the prosecution. *United States v. Wade*, 512 Fed. Appx. 11 (2d Cir. 2013). Specifically, the defendant sought to elicit testimony from the police officer concerning the arrest of a third-party who had been caught dealings drugs in the same apartment building where the defendant's girlfriend lived – in whose apartment drugs alleged to have been the defendant's were seized. *Id.* at 14. Although the defendant argued that the arrest of the third-party established the possibility that the drugs seized in the defendant's girlfriend's apartment belonged to the third-party rather than the defendant, the Second Circuit found that the arrest of the third-party was not sufficiently linked to the seizure of drugs from the girlfriend's apartment to make the theory plausible, and that allowing the police officer to testify concerning the arrest therefore "presented a risk of juror confusion and extended litigation of a collateral matter." *Id.* (citing *United States v. Aboumoussallem*, 726 F.2d 906, 912 (2d Cir. 1984) (upholding exclusion of defense-proffered testimony to avoid a "trial within a trial")).

For similar reasons, the Court should carefully scrutinize any "alternative perpetrator" evidence the defense seeks to introduce in this case through SA Der-Yeghiayan. As explained, although SA Der-Yeghiayan at one time believed that Mr. Karpeles may have been involved in Silk Road, the connections he drew between Mr. Karpeles and Silk Road evaporated in the light of subsequent investigative discoveries. In order to introduce evidence that Mr. Karpeles was the "alternative perpetrator" in this case, the defense must offer evidence of a direct and substantial connection between Mr. Karpeles and Silk Road based on *actual fact* – rather than on the incomplete impression of the evidence SA Der-Yeghiayan had at a past point in the investigation. As the record currently stands, the defense has failed to offer a *bona fide* connection between Mr. Karpeles and Silk Road. Absent a competent proffer of such a connection, the Court should exclude such "alternative perpetrator" evidence, as it threatens to "invite[s] testimony that [is] both distracting and inflammatory" and "pose[s] a danger of turning attention away from issues of [defendant's] culpability." *Wade v. Mantello*, 333 F.3d at 61.

Conclusion

For the reasons above, the Government respectfully requests that the Court: (1) strike any testimony elicited from SA Der-Yeghiayan concerning his beliefs about Mark Karpeles and preclude the defense from pursuing such questioning further; (2) preclude the defense from questioning SA Der-Yeghiayan concerning his understanding of Mr. Karpeles' offer to provide information concerning Silk Road to law enforcement authorities; and (3) carefully evaluate under Rule 403 any evidence the defense seeks to offer concerning Mr. Karpeles other than agent belief and hearsay.

Respectfully,

PREET BHARARA
United States Attorney

By: _____
SERRIN TURNER
TIMOTHY HOWARD
Assistant United States Attorneys
Southern District of New York

cc: Joshua Dratel, Esq.

Silk Road

anonymous marketplace

This is not the Silk Road, but you are close...

The Silk Road is an anonymous online market. Current offerings include Marijuana, Hash, Shrooms, LSD, Ecstacy, DMT, Mescaline, and more. The site uses the **Tor anonymity network**, which anonymizes all traffic to and from the site, so no one can find out who you are or who runs Silk Road. For money, we use **Bitcoin**, an anonymous digital currency.

Accessing the site is easy:

1. Download and install the **Tor browser bundle** (**Click here** for instructions and non-windows users)
2. Open your new Tor browser
3. Go to: **http://ianxz6zefk72ulzz.onion**

Once inside, you will find a homepage that looks something like this:

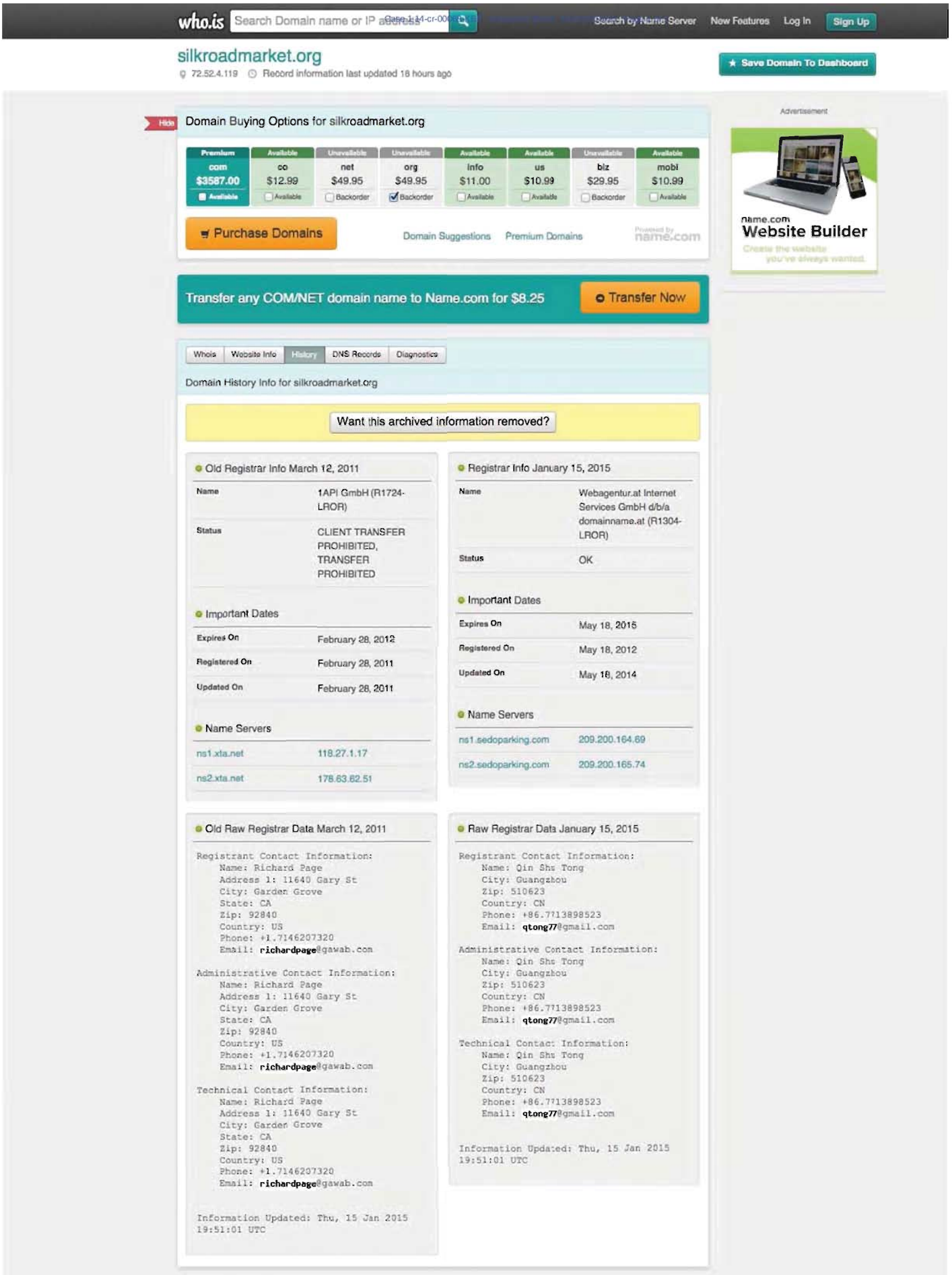
* it takes about a minute for you to make the initial anonymous connection to the site, but afterward you should be able to browse more quickly.

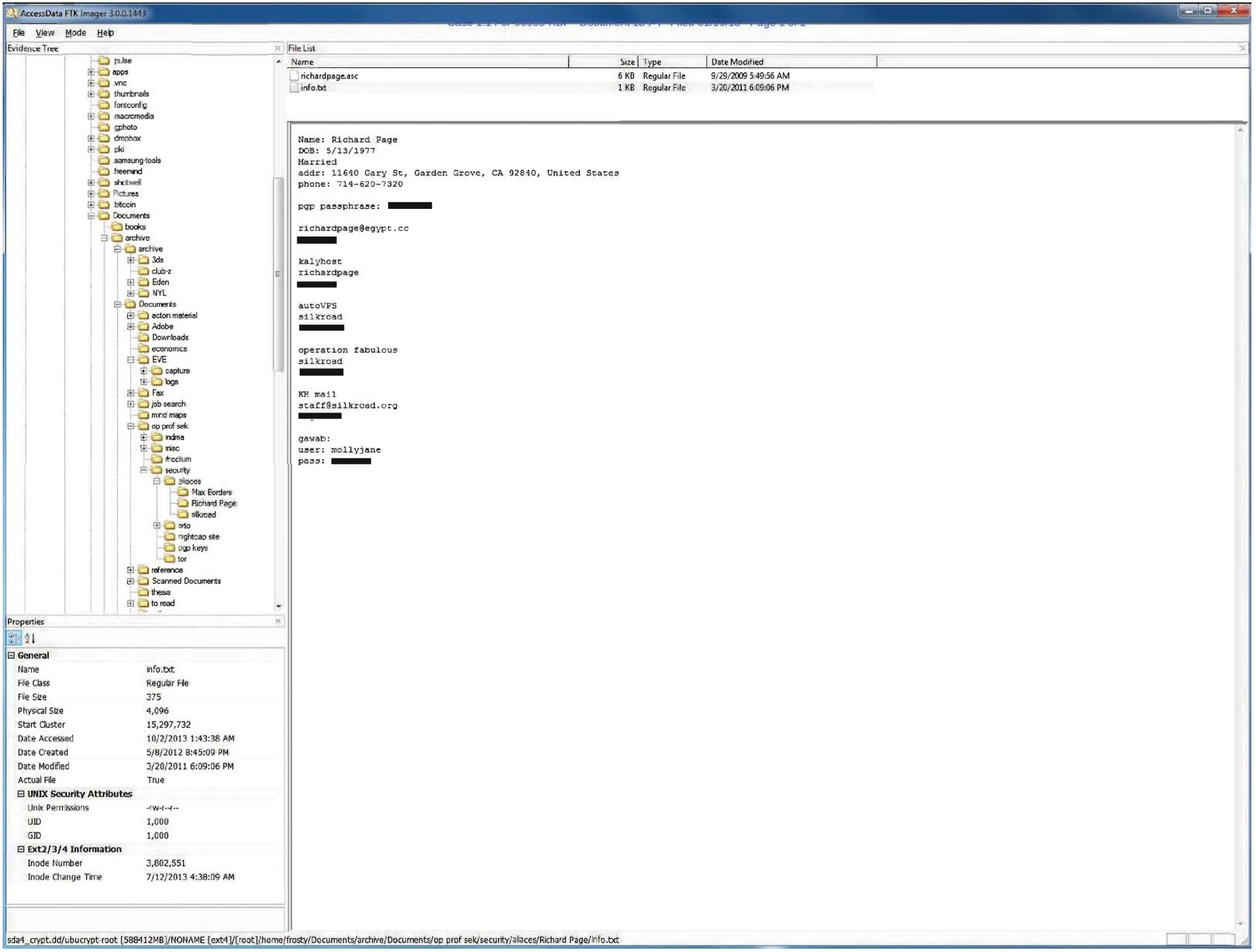
So what are you waiting for? Get Tor and get to Silk Road! We'll see you inside :)

-Silk Road staff

Subject: memory upgrade
From: <staff@silkroadmarket.org>
Date: 3/18/2011 4:47 AM
To: <support@autovps.net>

how do I upgrade my memory for my VPS with autovps?


who.is
Search Domain name or IP address
Search by Name Server
New Features
Log In
Sign Up
silkroadmarket.org
72.52.4.119
Record information last updated 18 hours ago
★ Save Domain To Dashboard
Hide
Domain Buying Options for silkroadmarket.org
Premium com $3587.00 Available
co $12.99 Available
net $49.95 Backorder
org $49.95 Backorder
info $11.00 Available
us $10.99 Available
biz $29.95 Backorder
mobi $10.99 Available
Purchase Domains
Domain Suggestions
Premium Domains
Powered by name.com
Advertisement
name.com
Website Builder
Transfer any COM/NET domain name to Name.com for $8.25
Transfer Now
Whois
Website Info
History
DNS Records
Diagnostics
Domain History Info for silkroadmarket.org
Want this archived information removed?
Old Registrar Info March 12, 2011
Name 1API GmbH (R1724-LROR)
Status CLIENT TRANSFER PROHIBITED, TRANSFER PROHIBITED
Important Dates
Expires On February 28, 2012
Registered On February 28, 2011
Updated On February 28, 2011
Name Servers
ns1.xta.net 118.27.1.17
ns2.xta.net 178.63.62.51
Registrar Info January 15, 2015
Name Webagentur.at Internet Services GmbH d/b/a domainname.at (R1304-LROR)
Status OK
Important Dates
Expires On May 18, 2015
Registered On May 18, 2012
Updated On May 18, 2014
Name Servers
ns1.sedoparking.com 209.200.164.69
ns2.sedoparking.com 209.200.165.74
Old Raw Registrar Data March 12, 2011
Registrant Contact Information:
Name: Richard Page
Address 1: 11640 Gary St
City: Garden Grove
State: CA
Zip: 92840
Country: US
Phone: +1.7146207320
Email: richardpage@gawab.com
Administrative Contact Information:
Name: Richard Page
Address 1: 11640 Gary St
City: Garden Grove
State: CA
Zip: 92840
Country: US
Phone: +1.7146207320
Email: richardpage@gawab.com
Technical Contact Information:
Name: Richard Page
Address 1: 11640 Gary St
City: Garden Grove
State: CA
Zip: 92840
Country: US
Phone: +1.7146207320
Email: richardpage@gawab.com
Information Updated: Thu, 15 Jan 2015 19:51:01 UTC
Raw Registrar Data January 15, 2015
Registrant Contact Information:
Name: Qin Shu Tong
City: Guangzhou
Zip: 510623
Country: CN
Phone: +86.7713898523
Email: qtong77@gmail.com
Administrative Contact Information:
Name: Qin Shu Tong
City: Guangzhou
Zip: 510623
Country: CN
Phone: +86.7713898523
Email: qtong77@gmail.com
Technical Contact Information:
Name: Qin Shu Tong
City: Guangzhou
Zip: 510623
Country: CN
Phone: +86.7713898523
Email: qtong77@gmail.com
Information Updated: Thu, 15 Jan 2015 19:51:01 UTC



Turner, Serrin (USANYS)

From: [redacted], Scott H <[redacted]>
Sent: Tuesday, October 15, 2013 11:42 AM
To: Turner, Serrin (USANYS)
Subject: FW: MtGox – F.R.C.P. Rule 11(f) / F.R.E. 410 Communication - Bradley Information
Attachments: Bradley - customer service dialogue.pdf; Bradley account verification materials.pdf

Serrin,

As discussed, I am forwarding you the materials I provided to [redacted] regarding an account that may have been related to a bitcoin wallet of interest to the government. This is not information about the account in Ulbricht's name, which MtGox only identified as of interest after the Ulbricht indictment. Please see the note below.

Scott

From: [redacted], Scott H
Sent: Wednesday, July 24, 2013 9:11 PM
To: [redacted]@usdoj.gov
Subject: MtGox – F.R.C.P. Rule 11(f) / F.R.E. 410 Communication - Bradley Information

[redacted],

This e-mail responds to your request for information relating to an individual that MtGox has suspicions may be associated with the largest bitcoin wallet that is perceived by some in the bitcoin community to be associated with Silk Road. Please find attached verification materials provided by a J[redacted] Bradley. The materials include copies of the following: (i) a copy the Federal Express airbill used to send the materials to MtGox; (ii) a copy of a California Identification Card; (iii) a California Secretary of State Apostille, completed by a notary in Alameda County, for the California Identification Card; (iv) a Comcast bill showing a Chico, California address for Mr. Bradley; and (v) a California Secretary of State Apostille, completed by a notary in Alameda County, for the Comcast bill.

The attached materials were provided by a user for a MtGox account that was originally opened using the e-mail address: davidmaisano@inbox.com. As we described to you during our meeting in Baltimore, it has been possible to open a MtGox account without providing verification materials. Once a user met certain usage thresholds (which, as we described, have changed over time), MtGox required users to verify their identity. The attached materials were provided to MtGox to verify the account opened using the davidmaisano@inbox.com e-mail address. As you are aware, e-mail addresses are not proof of identity, and it is not uncommon for users of the internet to have e-mail addresses that are not their actual names. Once the account was verified, MtGox regarded the account as owned and controlled by J[redacted] Bradley.

The user deposited a large number of bitcoins into the account. The user used the bitcoins to purchase U.S. dollars, but the account was never linked to a bank account to make a withdrawal. The transactional records for the account are too voluminous to provide via e-mail. I'm happy to discuss a method and format to provide the records to you.

In May 2013, the user contacted MtGox to report that the account was "hacked." MtGox informed the user that the e-mail address associated with the account had been changed pursuant to a proper request to change the address. A copy of the exchange with the user regarding the hack is also attached to this e-mail. Following the exchange attached to this e-mail, the user did not communicate further with MtGox, and MtGox is not aware that the user made any report to law enforcement.

Prior to the user contacting MtGox regarding the "hack", the approximately U.S. $1.9 million had been converted to bitcoins. The bitcoins (7393.49 BTC) were transferred to address 1AsUc3Lw1oDmwimWoGeCfBngzziS98FP5V (7393.49 BTC). MtGox is aware that some of these bitcoin were used, and the balance (6393.49 BTC) currently remain at address 1Mh58EcGSMMscgh5qE5u4BVSL9KRd8GzQK. MtGox believes 1000 BTC were sold on exchange btc-e.com.

Please let me know if you have questions.

Scott

[redacted]

Pursuant to requirements related to practice before the Internal Revenue Service, any tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for the purposes of (i) avoiding penalties imposed under the United States Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter.

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Please visit [redacted] for other important information concerning this message.

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION

29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

January 19, 2015

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted in response to the government's January 19, 2015, letter seeking preclusion of certain questioning of Homeland Security Investigations Special Agent Jared Der-Yeghiayan. For the reasons set forth below, as well as those already stated in court, the government's application should be denied in its entirety.

The government's factual arguments only support Mr. Ulbricht's right to ask SA Der-Yeghiayan further questions about alternative perpetrators, including Mark Karpeles, and the cases cited by the government, to the extent they support the broad principles asserted by the government, apply to a very different set of circumstances: those in which it was the *defendant*, and not an alternative perpetrator, who was protected by constitutional as well as evidentiary rules, and in which – unlike herein – there was not any nexus between the alternative perpetrator and the specific offenses alleged here.

In this case, though, *the government itself*, in the person of SA Der-Yeghiayan and others, provided that nexus via an analysis of documentary and other materials, and the defense, via cross-examination, is simply cataloguing the bases for that nexus. Ultimately, the government's argument is about the *weight* of the evidence, which of course is for the jury to determine. As a result, the government's arguments opposing the further questioning of SA Der-Yeghiayan are without merit, and simply an attempt at circumventing Mr. Ulbricht's proffered

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defense.

In addition, the government's objections are untimely. The government provided 5,000 pages of material pursuant to 18 U.S.C. §3500 for SA Der-Yeghiayan, a substantial portion of which was devoted to government's investigation of Mr. Karpeles. It is inconceivable that the government did not anticipate this line of cross-examination. Yet it did not make a motion *in limine*, did not object to defense counsel's opening, and did not object during a significant portion of the cross-examination of SA Der-Yeghiayan.

Pointing to an alternative perpetrator is a defense that has been endorsed by the Supreme Court and other courts time and again, and Mr. Ulbricht's defense is utilizing evidence to that effect consistent with the rules of evidence and Mr. Ulbricht's constitutional right to present a defense (which sometimes supersedes the technical limits of those evidentiary rules). *See, e.g., Kyles v. Whitley*, 514 U.S. 419, 449 n. 19, 453; *Boyette v. LeFevre*, 246 F.3d 76, 91 (2d Cir. 2001).

Indeed, as set forth in *Wade v. Mantello*, 333 F.3d 51, 57 (2d Cir. 2003) "the [Supreme] Court has observed on more than one occasion, ''at a minimum, ... criminal defendants have the right . . . to put before a jury evidence that might influence the determination of guilt.'' *Id., quoting Taylor v. Illinois*, 484 U.S. 400, 408 (1988) (*quoting Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987)). To this end, "[t]he Constitution protects a criminal defendant from the arbitrary exclusion of material evidence, and evidence establishing third-party culpability is material." *Wade*, 333 F. 3d at 58. In addition, the questioning of SA Der-Yeghiayan is relevant to another proper defense Mr. Ulbricht is presenting – that of the conduct of the government's investigation.[1]

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[1] In that context, due to government's precipitous seizure of one of Mr. Karpeles's accounts in May 2013, Mr. Karpeles had notice since that event that he was under investigation in some respect, thereby giving him ample time to cover his own tracks – a danger SA Der-Yeghiayan himself warned of in protesting not only the seizure, but also any further negotiations with Mr. Karpeles. There are also other elements of the conduct of the government's investigation that are relevant to the defense, and which will be developed through SA Der-Yeghiayan and other witnesses. Again, such a defense is recognized as valid and appropriate. *See Kyles v. Whitley*, 514 U.S. at 442 n. 13 (if defense had possessed the undisclosed material, "the defense could have attacked the investigation as shoddy"); *id.*, at 445-46; *Bowen v. Maynard*, 799 F.3d 593, 613 (10th Cir. 1986) ("[a] common trial tactic of defense lawyers is to discredit the caliber of the investigation . . ."); *Cotto v. Herbert*, 331 F.3d 217, 229 (2d Cir. 2003).

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Moreover, to deny Mr. Ulbricht the right to present either defense at this stage, after the defense staked out its defense territory – of which this issue inhabits, as the Court described it, the "heartland" of the defense – would be to deny Mr. Ulbricht his Fifth Amendment right to Due Process, and to a fair trial. Accordingly, as detailed below, for all these reasons the government's application should be denied.

I. *The Offer By Mr. Karpeles's Attorneys to the U.S. Government Is Admissible Under Rule 807, Fed.R.Evid.*

As a threshold matter, the government's letter, at 5, verifies precisely what defense counsel asked SA Der-Yeghiayan about regarding the offer conveyed in July 2013 by Mr. Karpeles's lawyer to the government: that in return for immunity from prosecution by the U.S., Mr. Karpeles offered to provide a name of someone he suspected was operating Silk Road. Nowhere in its letter does the government challenge the accuracy of that account. In fact, the government *confirms* it.[2]

Thus, the analysis for purposes of Rule 807 has been satisfied. The government has now been afforded notice, and has yet to provide any basis for not crediting the version presented in SA Der-Yeghiayan's memorandum. In fact, the absence of any such challenge should be conclusive. Also, the statement is not "quadruple" hearsay. As the Court noted, the initial offer from Mr. Karpeles's attorney was not hearsay, as it was not being offered for the truth of the matter. The exchanges between Assistant United States Attorneys and SA Der-Yeghiayan, while hearsay, qualify for admission under Rule 807, particularly in light of the government's failure to challenge their accuracy.

Also, the "exceptional circumstances" that warrant application of Rule 807 apply here. Mr. Karpeles is a French citizen living in Japan. His lawyers have not been identified; nor have the Assistant United States Attorneys who relayed the statement to SA Der-Yeghiayan. *See, e.g., Muncie Aviation Corporation v. Party Doll Fleet, Inc.*, 519 F.2d 1178, 1182-83 (5th Cir. 1975) (difficulty in finding witnesses justified admission). *Cf. Parsons v. Honeywell Incorporated*, 929 F.2d 901, 907-08 (2d Cir. 1991) (statement not admissible because declarant

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[2] Regarding another statement the defense seeks to elicit (and previewed at sidebar last Thursday), pertaining to SA Der-Yeghiayan's reaction to the August 2013 interview of Dread Pirate Roberts ("DPR") published in *Forbes*, that it "sounds very much like MK," the defense already agreed during Thursday's colloquy that it would not ask SA Der-Yeghiayan about the substance of the interview (because that would at least infer it was being offered for the truth).

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available as a witness).[3]

The circumstances also easily match, if not exceed, the indicia of reliability and trustworthiness found to satisfy the Rule [and/or its predecessors, Rule 803(24) and Rule 804(b)(5)]. For example, in *Steinberg v. Obstetrics-Gynecological & Fertility Group, P.C.*, 260 F. Supp.2d 492 (D.Conn. 2003), the Court concluded that the description of the status of a case by one attorney to another (assuming control of the case) possessed sufficient indicia of reliability and lack of motive to misrepresent. *Id.*, at 496. *See also United States v. Dumeisi*, 424 F.3d 566, 576-77 (7th Cir. 2005) (relying on the declarants' "duty to accurately record their own activities"); *United States v. Bailey*, 581 F.2d 341, 349 (3d Cir. 1978) ("consideration should be given to factors bearing on the reliability of the reporting of the hearsay by the witness"); *Muncie Aviation Corporation v. Party Doll Fleet, Inc.*, 519 F.2d 1178, 1182-83 (5th Cir. 1975) (trustworthiness established because published by government without any motive not to tell the truth or be inaccurate); *United States v. Iaconetti*, 406 F. Supp. 554, 559 (E.D.N.Y. 1976) (admitting statement because it was testified to by a person with whom it was "appropriate and even necessary [for the declarant] to communicate").

Moreover, the rules of evidence were not designed to curtail a defendant's constitutional rights, and the Fifth Amendment Due Process and Sixth Amendment Confrontation rights are implicated herein with respect to this issue. In that context, as the Supreme Court declared in *Chambers v. Mississippi*, 410 U.S. 284 (1973), "where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice." *Id.*, at 302.

Thus, the offer by Mr. Karpeles's lawyer is admissible pursuant to Rule 807. The government's strained arguments regarding "context" and meaning are unpersuasive, and address merely the weight that should be accorded the statement – contentions appropriately directed to the jury. *See Stifel*, 594 F.Supp. 1525, 1541 (N.D.Ohio 1984) ("[t]he identity of the bomb sender was a question for the jury, and defendant should have been apprised of evidence showing that someone other than himself had equal motive, access to materials, and other surrounding circumstances implicating him as the guilty party"). *See also Kyles v. Whitley*, 514 U.S. at 451 (prosecution's factual arguments about the implications of exculpatory evidence "confuses the weight of the evidence with its favorable tendency, . . .").

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[3] In addition, the timing and manner of the government's production, as part of 5,000 pages of material produced (pursuant to 18 U.S.C. §3500) for a single witness (the first witness) within two weeks of trial precludes, for all practical purposes, identifying, locating, and summoning witnesses with respect to the statement.

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II. *The Cross-Examination of SA Der-Yeghiayan Is Not Seeking Inadmissible Testimony*

All of the cases the government cites, at 6-7, in its effort to preclude questioning of SA Der-Yeghiayan with respect to his investigation relate to a very different set of circumstances, in which a law enforcement agent was asked by *the prosecution* about his beliefs and conclusions regarding *the defendant's* guilt. Thus, the government presents apples when the issue is oranges.

Thus, the government cannot convert a doctrine designed to protect defendants from improper testimony into a shield that denies a defendant the right to pursue cross-examination (and, ultimately, a defense) regarding an alternative perpetrator. Also, the government distorts the nature of the cross-examination. SA Der-Yeghiayan was never asked about his opinion regarding Mr. Karpeles's guilt with respect to the Silk Road website, or for legal conclusions. Rather, he was, and would be, asked about certain aspects of his investigation, including sources (as parsed by the Court during Thursday afternoon's sidebar) and what he *did* as a result – including swearing under oath that there was probable cause to believe that a warrant for Mr. Karpeles's e-mails would reveal evidence of criminal conduct.[4]

Here, the government's rationale is so broad it would preclude evidence of another person being *charged* with the same crime, as long as at some point prior to the defendant's trial

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[4] All of the cases the government cites with respect to a witness's "legal conclusions" are outside the criminal context entirely and involve *experts*. *See United States v. Articles of Banned Hazardous Substances Consisting of an Undetermined Number of Cans of Rainbow Foam Paint* ("*Articles of Banned Substances")*, 34 F.3d 91, 96 (2d Cir. 1994) (in the context of review of a summary judgement, in a civil forfeiture case in which claimant's contention that "the test for flammability in the regulations should only be applied to sprays, and not to foam" came solely from "opinion of their expert," the Court held "[i]t is a well-established rule in this Circuit that *experts* are not permitted to present testimony in the form of legal conclusions")(emphasis added); *Densberger v. United Technologies Corporation*, 297 F.3d 66, 74 (2d Cir. 2002) (in context of civil suit, quoting *Articles in Banned Substances* for the "well-established rule in this Circuit that *experts* are not permitted to present testimony in the form of legal conclusions" in case in which *expert* witness offered legal opinion, but nonetheless finding admission of the testimony harmless because "the trial judge properly advised the jury to follow the law, rather than the testimony of any witness") (emphasis added); *Rizzo v. Edison Inc.,* 419 F.Supp. 2d 338, 348 (W.D.N.Y. 2005) (holding"the issue of whether or not probable cause to arrest exists is a legal determination that is not properly the subject of *expert* opinion testimony," in context of summary judgment motion, in case in which plaintiff attempted to submit two expert opinions in support of her argument that her arrest lacked probable cause) (emphasis added).

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the government dropped that prosecution against the other person. In that respect, the government would foreclose an alternative perpetrator defense altogether.

Clearly, though, the defense is recognized as valid. *See Kyles v. Whitley*, 514 U.S. at 449 n. 19, 453. *See also Mendez v. Artuz*, 303 F.3d 411, 413 (2d Cir. 2002) (noting materiality of evidence of an "alternative culprit"); *United States v. Manning*, 56 F.3d 1188, 1198 (9th Cir.1995) (same); *Bowen v. Maynard*, 799 F.2d 593, 600–601, 610–613 (10th Cir.) (same); *United States v. Stifel*, 594 F.Supp. at 1541 (same).

Also, the government, in its letter at 2-4, in dictating a priority with respect to the factors linking Mr. Karpeles to Silk Road, would usurp the jury's role. By attempting to minimize certain factors that remain and suggesting that the silkroad.org issue somehow was SA Der-Yeghiayan's only viable basis for connecting Mr. Karpeles to Silk Road, is simply one view of the evidence. The defense, and the jury, are entitled to view that evidence differently. Again, the question of weight is for the jury.

III. *The Cross-Examination Is Admissible Pursuant to Rule 403, Fed.R.Evid.*

The cases cited by the government for the proposition that evidence of an alternative perpetrator can be precluded all involve accusations about motive and opportunity *un*related to the offense for which the defendant was being tried, and are sufficiently attenuated from the charged conduct.[5] Here, the requisite "nexus" is manifest, as Mr. Karpeles's alleged connection – as corroborated by the government itself through SA Der-Yeghiayan's investigation – is indisputably *to this case*, and the offenses charged herein.

Indeed, each of the cases the government cites fails to establish the necessary nexus between the alleged third-party perpetrator and the crime charged. *See Wade v. Mantello*, 333 F. 3d at 61 (testimony in a murder case that third-party had been involved in a shoot-out with the victim *weeks earlier*, but without any connection to the charged crime, to have been properly excluded at trial as "[w]eighed against the limited probative value of the proffered testimony were dangers that the jury could have been misled or confused by the testimony") (emphasis added); *DiBenedetto v. Hall*, 272 F.3d 1, 7-8 (1st Cir. 2001) (affirming trial court's exclusion of evidence in a murder trial as to *another* murder, for the purpose of establishing that "third party culprits, not [the defendant] and his co-defendant, were guilty" of the charged murder absent "evidence that there is a connection between the other perpetrators and the crime, not mere speculation on the part of the defendant"); *People of Territory of Guam v. Ignacio*, 10 F. 3d 608, 615 (9th Cir. 1993) (trial court did not abuse its discretion by excluding evidence that third-party

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had committed suicide as evidence of third party culpability where defendant had not provided "substantial evidence connecting [third-party] to the crime charged") (internal quotation omitted); *Andrews v. Stegall*, 11 Fed.Appx. 394, 396 (6th Cir. 2001) (distinguishing defendant's claim of third party culpability in a murder case involving "a vague threat [by the third party] that was allegedly made some unknown time before the murder, to the victim's stepson," that "[the third-party] was not shown to have been anywhere near the scene of the crime, and was not available to testify" from *Chambers* [,410 U.S. at 300-301,] in which there was substantial evidence directly connecting the third-party with the offense"); *United States v. Diaz*, 176 F.3d 52, 82 (2d Cir. 1999) (trial court properly excluded evidence of *another* crime – prison records showing that the murder victim had assaulted a third-party while in prison more than a year prior – in order to suggest motive on the part of a third party in the charged crime, because, standing alone, it would be "creative conjecturing" and the evidence "speculative"); *United States v. Wade*, 512 Fed.Appx. 11, 14 (2d Cir. 2013) ("the district court reasonably excluded . . . testimony about [a third party's] arrest because . . . [the third party's] December 3, 2009 sale of drugs from a mailbox was not temporally or physically linked to the May 11, 2009 drug and firearm seizures from [the defendant's girlfriend's] apartment that were contemporaneous with [the defendant's] arrest and . . . [the] testimony [therefore] presented a risk of juror confusion and extended litigation of a collateral matter").

Here, certain parts of the defense herein mirrors to a significant extent that endorsed in *Kyles v. Whitley*, in which the defense alleged that the defendant had been framed by an informant "for the purposes of shifting suspicion away from himself" for the offense with which the defendant had been charged. 514 U.S. at 429.

Also, in addition to Mr. Karpeles, SA Der-Yeghiayan's 3500 material includes detailed information about another suspect he investigated in 2012-2013 – a suspect whose name was provided to DPR in April 2013 via the Silk Road "marketplace"'s private message system, and therefore also had abundant opportunity to evade detection by late September 2013. That suspect's technical expertise and background are relevant, as are certain aspects of that part of SA Der-Yeghiayan's investigation that are directly relevant to the government's investigation of and/or evidence against Mr. Ulbricht, *i.e.*, language analysis, political orientation. Counsel intends to explore that in cross-examination of SA Der-Yeghiayan as well.

Thus, here the evidence regarding an alternative perpetrator is neither collateral nor speculative. It is instead directly related to the offenses alleged against Mr. Ulbricht. Again, the weight of such evidence, which ultimately is the government's primary concern throughout its letter, is a matter for the jury to determine. *Stifel*, 594 F.Supp. at 1541.

For the Court to act as a "gatekeeper" under the circumstances of this case would be contrary to the case law as well as the Fifth Amendment's guarantee of Due Process, as

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preclusion would deny Mr. Ulbricht the right to present a defense, and in turn a fair trial. *See Alvarez v. Ercole*, 763 F.3d 223 (2d Cir. 2014) (conviction reversed because defense counsel not permitted to cross-examine detective about police report containing information about the alternative suspect); *Cotto v. Herbert*, 331 F.3d 217, 229 (2d Cir. 2003) ("[b]y prohibiting [defense counsel] from questioning Detective Alfred about the [police report], the trial court allowed the jury to get the impression that the defense had nothing other than rhetoric to contradict the prosecutor's statement in summation that the NYPD's investigation into [the charged] murder was 'thorough'"), *citing Davis v. Washington*, 415 U.S. 308, 318 (1974) .

Conclusion

Accordingly, for all these reasons, it is respectfully submitted that the government's application to preclude and/or circumscribe the cross-examination of SA Der-Yeghiayan should be denied in its entirety.

Respectfully submitted,

Joshua L. Dratel

JLD/
cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

proposed excerpts of testimony to be stricken
Turner, Serrin (USANYS)
to:
ForrestNYSDChambers@nysd.uscourts.gov, Olga_Z
Joseph_Pecorino@nysd.uscourts.gov
01/20/2015 01:39 PM
Cc:
"Howard, Timothy (USANYS) 1", Joshua Dratel, "Lindsay Lewis (llewis@joshuadratel.com)", Joshua Horowitz
Hide Details
From: "Turner, Serrin (USANYS)" <Serrin.Turner@usdoj.gov>

To: "ForrestNYSDChambers@nysd.uscourts.gov" <ForrestNYSDChambers@nysd.uscourts.gov>, "Olga_Zverovich@nysd.uscourts.gov" <Olga_Zverovich@nysd.uscourts.gov>, "Joseph_Pecorino@nysd.uscourts.gov" <Joseph_Pecorino@nysd.uscourts.gov>

Cc: "Howard, Timothy (USANYS) 1" <Timothy.Howard@usdoj.gov>, Joshua Dratel <JDratel@joshuadratel.com>, "Lindsay Lewis (llewis@joshuadratel.com)" <llewis@joshuadratel.com>, Joshua Horowitz <joshua.horowitz@techlawny.com>

Ordered
Post to docket.
K. B. Forrest
USDJ
1/21/15

1 Attachment

1.20.15 proposed excerpts to be stricken.pdf

Please find attached highlighted excerpts of SA Der-Yeghiayan's testimony that the Government respectfully requests be stricken from the record in accordance with the Court's ruling from this morning. Thank you.

Serrin Turner
Assistant United States Attorney
U.S. Attorney's Office, Southern District of New York
1 St. Andrew's Plaza
New York, New York 10007
Desk: 212-637-1946

Cell: 646-660-4815
Fax: 212-637-2429
Email: serrin.turner@usdoj.gov

**UNITED STATES OF AMERICA, v.
ROSS WILLIAM ULBRICHT,** **January 15, 2015**

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Q. So you wanted to know from Agent Tarbell whether they had physical surveillance because you said that not logging into IRC for over two days is unusual for DPR, right?
A. Yes.
Q. There is also something else. Do you recall that on the 29th, which is two days before, that you noticed someone with a username peaceloveharmony was what you called sitting on DPR's profile for a couple of hours; do you recall that?
A. If I could see something that would help me recollect?
(Pause)
Q. I show you what's marked 3505-00775, and just ask you, again, read from the bottom to the top, essentially.
A. Sure.
(Pause)
I recall this.
Q. Thank you. So there was a period on the 29th of September, 2013, where someone with a username or a screen name peaceloveharmony was what you called sitting on DPR's account?
A. Yeah. There was from the forums, on the Silk Road forums, there is a way to see what users were viewing actively in the forums, and what I mean by "sitting" on an account, they were viewing the profile of Dread Pirate Roberts for an extended period of time.
Q. And so you asked the people on the arrest team as to whether it was any of them, essentially, right?

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A. If there was anyone else that was monitoring him.
Q. Right. And they said no, that it was not them?
A. Right. The responses I got from the other agents that I was working with said no.
Q. Right. Your conclusion was that it might be law enforcement, some other law enforcement that you were unaware of?
A. I suspected, yes.
Q. But it didn't have to be law enforcement, it could have been anyone?
A. It could have been anyone, yea.
Q. But it was unusual, right; it wasn't typical activity that someone would be monitoring that profile for that extended period of time?
A. I didn't actually watch them for a long time. I was watching his account and watching the forums more vigilantly, actively for the last few days. So that's why I took notice of that.
Q. And you had spent a fair amount of time yourself as law enforcement doing that very thing, right, sort of trolling through that account for periods, right?
A. And watching it, yes.
Q. While you were doing that, were other people doing it at the same time? Do you recall anyone else doing it?
A. Generally me. I believe Special Agent Gary Alford also was

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watching the account on the forums as well.
Q. But he wasn't peaceloveharmony; we don't know who that is?
A. I said it to him and he said no.
Q. I just said, we don't know who peaceloveharmony is?
A. I don't know who peaceloveharmony is.
Q. Now, is it fair to say that the Silk Road site, that users, both vendors and purchasers, were extremely security conscious?
A. A lot of them were, yes.
Q. And there was a lot of talk on the forum about keeping track of law enforcement infiltration or attempts to infiltrate the site?
A. There was discussions about that, yes.
Q. And they actively discussed prior arrests and what happened to people and rumors and all of that kind of stuff?
A. There would be discussions about that regularly on the forums.
Q. Would you say they were very motivated in finding out more about what law enforcement is doing with the Silk Road?
A. There was a lot of discussion. If there was anyone that would ever bring up something that would occur with law enforcement, then they would like to discuss that a lot.
Q. Now, in April of 2012, you believe you had identified some Silk Road bitcoin accounts, correct?
A. That would be correct.
Q. And you were working to further identify the people behind

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them, right?
A. That is correct.
Q. And sometime in the summer, maybe July of 2012, you believed that you had identified the person, right?
A. I believe that I had a good target for it, potentially.
Q. A good target, Mark Karpeles, right?
A. Karpeles and an associate of his.
Q. Right. Ashley Barr, correct?
A. Correct.
Q. Karpeles is K-a-r-p-e-l-e-s.
Mark Karpeles is a French citizen, right?
A. That is correct.
Q. He lives in Japan, right?
A. He does.
Q. He is also the owner of Mt. Gox, correct, the bitcoin exchange?
A. That is correct.
Q. And he bought Mt. Gox I think in 2009?
A. I think it was 2010.
Q. OK. But you thought that -- what you had concluded there was that Karpeles was essentially behind Silk Road but that his associate Ashley Barr was DPR?
A. There was -- Karpeles' English that I could see from his -- the things he would write online did not match the level of English skills that Dread Pirate Roberts possessed. So I

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thought it was someone else close to him, and there was a person that shared some of the same viewpoints that was working for him by the name of Ashley Barr that I suspected.
Q. He was a Canadian, right?
A. He was a Canadian citizen.
Q. And has a degree in computer science, right?
A. He has computer science degrees, yes.
Q. And he is also Karpeles' right-hand man, or was at the time, right?
A. He was.
Q. And so as a result you built up quite a large list of information to lead you to that, right?
A. There is little bits and pieces of evidence that was pointing the investigation towards them, yes.
Q. And -- well, did you say we had built up quite a large list of information to lead us to this?
A. It was, yeah, a lot of little pieces, a list of exhibits. It was a lot of little things that added up to it.
Q. The question is did you not say inside Homeland Security Investigations, HSI, we had built up quite a large list of information to lead us to this?
A. That sounds right.
Q. And you also didn't want anybody reaching out to Karpeles, right?
A. There was other --

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Q. Just let me ask because I will get to that.
A. OK.
Q. I want to get to --
A. Other law enforcement I didn't want reaching out.
Q. Right. You were worried that if someone reached out or did something that Karpeles might find out, it could impair the investigation?
A. Correct.
Q. Right. So -- and in fact, you let people know within law enforcement that Karpeles, he closely monitors everything, all of his websites?
A. That is correct.
Q. And that you thought that a lot of the websites he ran -- and he ran a lot of websites, right? He had a lot of domain names and things like that within his control?
A. He hosted a lot of websites, yes.
Q. So you advised avoiding visiting them since many of them appeared to be fronts and that Karpeles is actively tracking them?
A. That is correct.
Q. So that if someone went on and wasn't sufficiently disguised, then he might recognize it as law enforcement and then again impair the investigation?
A. That is correct.
Q. In fact, in August of 2012 you sent out an email and then

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you realized, as we all do at some point in our lives, that you left out the word "not," right?
A. There might have been an occasion like that.
Q. You had to send a quick email to say not to --
A. Not to, I think, maybe contact --
Q. Right. That was an important facet of the investigation, obviously, is to keep it as confidential and as close as possible as you gathered more information?
A. That is correct.
Q. And at some point because -- withdrawn.
It came to your knowledge that there were other investigations of Silk Road going on around the country, right? Other agencies, other offices, I mean, were investigating Silk Road, right?
A. That is correct.
Q. And you -- when I say "you," HSI, and yourself as a part of HSI, were operating with or working in tandem with the U.S. Attorney's Office in the Northern District of Illinois, right?
A. We were docketed there originally, yes.
Q. You did that in Chicago, right?
A. Right.
Q. So that is where you were running your investigation out of. Those were the assistant U.S. attorneys that you were talking to and keeping them advised of your progress?
A. That is correct.

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Q. And there are obviously other U.S. attorneys offices around the country and other agencies that were not necessarily either aware or in contact with Chicago about what they were doing?
A. There was, yeah, we were doing our best to try to deconflict with other districts.
Q. At some point you learned that Baltimore had an investigation, right?
A. That is correct.
Q. And, actually, you learned that from Agent Alford?
A. No. Baltimore, the HSI agent that originally opened the case and their supervisor came to Chicago originally to talk to us about their investigation and about working together.
Q. It wasn't in August of 2012 that someone from the Organized Crime Task Force told you that Chicago had input the same information about Karpeles as a target as you had?
A. I was notified of that, about Karpeles, later on, but I knew of their investigation long before that, though.
Q. And in January of 2013 you got permission to open up an undercover bank account to try to move money through Mt. Gox, the bitcoin exchanger, just to remind everybody, right? It is the largest bitcoin exchanger, right?
A. It was at the time.
Q. It was at the time.
And other companies owned by Karpeles, right?
A. That is correct.

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Q. And so you got permission to do that?
A. I got permission to open up under our investigation an undercover bank account, yes.
Q. Right. Now, Karpeles is also a computer developer systems administrator, right?
A. That is correct.
Q. Self-proclaimed hacker?
A. That is correct.
Q. Who brags about his hacking in Twitter and other social media.
A. He does.
Q. And he has control over hundreds of websites and companies, or had at the time in 2012/2013?
A. He did have hosting services, yes.
Q. And you believed him to be the mastermind behind keeping Silk Road secure and operating?
A. He had ties to the original silkroadmarket.org website.
Q. But my question is did you not say that you believed him to be the mastermind behind keeping the website secure and operating?
A. He had the credentials to do so, yes.
Q. But did you say that?
A. I would have said that, yes.
Q. And that Ashley Barr was acting as the voice of the website under the name Dread Pirate Roberts?

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A. That's what I suspected, yes.
Q. Now, in April of 2013, Chicago initiated -- when I say "Chicago," HSI Chicago, your office, right -- initiated an undercover purchase from Silk Road using Mt. Gox and another Karpeles company as the bitcoin exchange?
A. Yeah. We did an exchange through two different ways.
Q. Part of the purpose of that was to -- withdrawn.
You also suspected that Karpeles was running an unlicensed money exchange operation, right?
A. I did.
Q. And so this could be a way of establishing jurisdiction to charge him with that in Chicago?
A. Yes, it was.
Q. And in May of 2013, HSI Chicago issued a grand jury subpoena to a company called Dwolla, right, D-w-o-l-l-a?
A. That is correct.
Q. And that is an online payment processing system?
A. Yeah. It's like an online wire transfer company.
Q. It is based in the United States, right?
A. I believe so, yes. It has service in the United States.
Q. It was a way that Mt. Gox used to transfer money essentially in and out of the U.S.?
A. It was one of the ways that they offered to either withdraw or deposit funds.
Q. And bitcoin, right? It was part of the bitcoin exchange

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process that Mt. Gox used?
A. It was used for just the money part of it to withdraw.
Q. And that was -- and the subpoena was with regard to a Karpeles company called -- and I will spell it -- M-u-t-u-m, new word, S-i-g-i-l-l-u-m?
A. Mutum Sigillum.
Q. Right. That was what the subpoena was for, the records for that company, right?
A. Correct.
Q. And the grand jury subpoena keeps the investigation secret and confidential, right?
A. Correct.
Q. Within law enforcement only?
A. Right.
Q. Then you find out the next day, May 10, 2013, that Baltimore had seized the -- how do you pronounce it, the Mutum Sigillum?
A. Mutum Sigillum.
Q. -- Mutum Sigillum that HSI Baltimore had seized $2 million in that company's account, right?
A. They notified me by phone, yeah.
Q. Then it was apparent to Karpeles that the U.S. government had him on its radar, right?
A. That is correct.
Q. This is May of 2013, right?

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A. I believe so, yes.
Q. May 10th.
In fact, there were newspaper articles about it, right?
A. It was a large seizure at the time, yes.
Q. Sorry. More than $3 million was seized.
And it was from Mutum Sigillum's Wells Fargo account, right?
A. Correct.
Q. And you were notified in advance that Baltimore was going to do that?
A. I was told that it had already happened.
Q. Right. And no one even in your office had been notified in advance? When I say "your office," I mean Chicago HSI.
A. No.
Q. And was that money ultimately returned to Mr. Karpeles?
A. I don't know its current state right now.
Q. And you thought that HSI Baltimore should have deferred that seizure because of your criminal investigation of Mr. Karpeles?
A. At the time, yes.
Q. Now, despite that and the fact that Mr. Karpeles was already on notice, to a certain extent, that he was on your -- not your radar but the U.S. radar -- and I am not being critical, I'm just talking about despite that, in terms of the

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chronology, you prepared a draft affidavit of May 29, 2013 for a search warrant for email of Mr. Karpeles, correct?
A. That is correct.
Q. And these search warrants would not be on notice to him, correct? They would just be to the provider, and they would provide the information so that he wouldn't necessarily know, right?
A. No. The provider -- well, he wouldn't know, yes, that the provider --
Q. So you were doing it in a way that would keep it confidential. Baltimore did it in a way where it would be public. You did it in a way that it was confidential, right?
A. Correct.
Q. So in your draft, which was prepared for swearing under oath, right?
A. That is correct.
Q. And you said that Silk Road had been launched in March of 2011, right?
A. Correct.
Q. And that both the marketplace and the online forum were operated by the same administrator?
This was your conclusion?
A. Yeah, that's what I assumed, yes.
Q. And that you had done some -- you talked yesterday about whois.com, w-h-o-i-s.com?

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A. Who.is, yes.
Q. You talked about it yesterday for the purpose of identifying IP addresses or the people behind IP addresses?
A. Correct.
Q. And in your draft affidavit you talked about the whois.com for the Silk Road -- the searches that you had done for the silkroadmarket.org, right?
A. Correct.
Q. And when you said before -- oh, withdrawn.
That the registration was March 1, 2011, and then that only went through April 13, 2011. And then there was a separate registration through March 30th, right, through 2012, I guess, right?
A. There were changes in the hosting administration.
Q. There were changes in the postings, right?
And that there was something called sta.net, a company, right, that was involved in -- well, withdrawn -- that you concluded from your investigation was involved or connected to the silkroadmarket.org?
A. That is correct.
Q. And that was registered to Mutum Sigillum?
A. I believe so, yes, yeah.
Q. Which was Karpeles' company?
A. It was.
Q. And in fact, he was the contact for Mutum Sigillum; it was

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listed to his email address, right?
A. That is correct.
Q. Ands that he was the administrative -- and that he was in administrative control of Mutum Sigillum since he had acquired it in 2010?
A. That is correct.
Q. And in February 11, Karpeles bought Mt. Gox, right? I think -- I apologize before for having the wrong date, but February 11th he bought Mt. Gox?
A. Around February 2011.
Q. If you want to see the draft, I would be happy to have you -- to have it in front of you.
A. If I could, yeah. That would helpful. Thank you.
(Pause)
MR. DRATEL: I apologize but when it printed out, the numbers cut off halfway so sometimes it is hard to tell 8's from 9's. This is 3505-3085 through 3092. Yes.
(Handing)
THE WITNESS: Thank you.
Q. OK. So let's go back to paragraph 18, if you could look at that.
A. OK.
Q. And you trace more of Mr. Karpeles' sort of electronic footprint as either corporate or personal, right?
A. Correct.

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Q. In terms of how you link him through whois.com, other companies, to sta and other companies that are affiliated -- that are connected, through your research and investigation, connected to the silkroadmarket.org?
A. That is correct.
Q. So, in fact, if you look at 19, in February 2011, Mr. Karpeles buys Mt. Gox, right?
A. Sorry, you said 19th?
Q. Yes.
A. It stopped at 18.
Q. What is the last page of that?
A. Page 5.
Q. On the bottom, 35 --
A. Oh, it is cut off. 03 --
Q. It is double-sided.
A. It is still cut off. 03091, 92.
(Pause)
Q. I'm sorry, paragraph 17. I apologize.
A. OK.
Q. Do you have 17 there?
A. I have 17, yes.
Q. So in February 2011 -- so paragraph 17, he buys Mt. Gox in February 2011?
A. That is when it is shown, yes.
Q. That is a month before Silk Road launches, right?

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A. That is correct.
Q. And you note there that Mt. Gox handled perhaps as much as more than 80 percent of all of the bitcoin exchange in the world, right?
A. That is what they advertised, yes.
Q. And that was as of April 2013, right?
A. Yes.
Q. And, excuse me, part of your theory in terms of your investigation was that Silk Road was a device for leveraging the value of bitcoin, right?
A. It appeared so.
Q. Yes. In other words, that if you had cornered the market on bitcoin and could create a site that only used bitcoin and everybody used bitcoin, you would drive the price up?
A. Yes.
Q. And also get business as an exchange?
A. Right.
Q. Now, so based on that, in terms of an affidavit, you were prepared to swear that there was probable cause that Mark Karpeles was intimately involved as the head of Silk Road?
A. From the connections that I listed in the affidavit draft, yes.
Q. But he had already been -- he had already had that seizure of Mutum Sigillum by the time you had drafted this affidavit, right?

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A. Correct.
Q. And he was in Japan?
A. He was in Japan.
Q. Also, around the same time, in May of 2013, you submitted to Dwolla, or subpoenaed from Dwolla, the online payment processing company here in the U.S., information about -- subscriber information for certain accounts that you thought were suspicious and related to Silk Road based on the movement of bitcoin or money in and out of there, right?
A. There was a subpoena issued for that, yes.
Q. And that was because -- well, you thought that there could be vendors or operators that you could find with that information?
A. Yes.
Q. And by "operators," you mean administrators, people who were running the site?
A. Potentially, yes.
Q. And there was large movement of money -- withdrawn. There were large movements of money from Mt. Gox to Dwolla accounts?
A. It showed, yeah, movement of money moving out of Mt. Gox through Dwolla.
Q. And, by the way, on that list I think there were 16 names on that list or 16 accounts, do you recall?
A. I don't. If I could see the --

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Q. Sure.
(Pause)
But do you recall whether or not Mr. Ulbricht's name was on that list of accounts?
A. I don't believe that it was.
Q. And ultimately you created a spreadsheet -- or received a spreadsheet from Dwolla with all of the transactions relating to Mr. Karpeles, is that right?
A. It was all the Mutum Sigillum -- I'm sorry, in the Mutum Sigillum account for Dwolla for all the transactions that they had received and debited, credited and debited.
Q. That is about a thousand pages long, that --
A. It was, yeah, a pretty large return.
Q. And do you recall whether Mr. Ulbricht's name comes up there?
A. It did.
Q. Right. And there are about 20 transactions, right?
A. Roughly or so, yes.
Q. And they are all in the amount of probably like a thousand dollars or around there, some less?
A. Around a thousand dollars. I think one was for like a few hundred dollars.
Q. So nothing large, assuming you mean by "large" more than a thousand dollars, when you are talking about large movements of money, right?

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A. No. There wasn't anything that compared to the other accounts, no.
Q. And those were spread out over a couple of years, right?
A. I believe so, if memory serves me right.
Q. In fact, even after Mr. Ulbricht's arrest you went back and looked at that, right?
A. I did.
Q. Now, you also learned as part of your investigation at some point in the summer of 2013 that Baltimore was trying to work on an interview with Karpeles through his attorneys, right?
A. That is correct.
Q. And they wanted to ask him directly about Silk Road as well as his money business, right?
A. Yes, they wanted to talk to him.
Q. And you advised against that?
A. We requested that they did not.
Q. Right. But they went ahead and met with his lawyers July 11, 2013, right?
A. That sounds about right, yes.
Q. Not with him but with his lawyers?
A. With the lawyers.
Q. And then you say Karpeles' -- withdrawn. Karpeles' attorneys brought up Silk Road, right?
A. That is what I was told.
Q. And they say that he was willing to tell the government who

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he thought was running Silk Road, right?
A. That is correct.
Q. And for that he would get a walk on his charges, right?
A. I don't know what their deal was.
Q. That's what he wanted?
A. I don't know. I don't know what was discussed then.
(Pause)
Q. OK. And during this period after this all occurred -- withdrawn.
So I am going to show you what is marked as 3505-300.
(Pause)
I am just going to bracket a point here. Just read that to yourself and then when you are done let me know.
(Pause)
During this period -- I'm sorry. Let me know when you are finished.
(Pause)
A. OK.
Q. During this period you were upset about the work -- about the investigation that Baltimore was pursuing and how they were pursuing it, correct?
A. I was upset about it, yes.
Q. And you wrote a long memo with a chronology to lay out what had occurred and what the problems you saw were?
A. That is correct.

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Q. And as part of your investigation as part of your preparation and all of that, you learned that Karpeles' lawyers had made this offer that they would tell the government who was behind Silk Road if he would not be prosecuted for the money exchange charges, which, by the way, had not been instituted, right?
A. I'm sorry.
Q. He hadn't been charged yet with any money exchange --
A. It was just the civil forfeiture, the civil seizure of the money.
Q. Right. But in return for not pursuing any potential charges against him, he was willing to give that name up? That was the offer that his lawyers made, that you learned during your investigation?
MR. TURNER: Objection. Foundation.
THE COURT: Certainly you will answer as to what you know. If you had knowledge of that fact or if your memory is refreshed by something and now recollect something, then you may testify to it.
MR. TURNER: Objection. Foundation. Hearsay as well
THE COURT: Why don't you try and rephrase it, Mr. Dratel, and come at it in a different angle.
MR. DRATEL: Sure.
BY MR. DRATEL:
Q. It was crucially important to you at the time to know what

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was going on with respect to other pursuits of Karpeles and what was going on with other agencies investigating or other U.S. Attorney's offices investigating him, right?
A. Yes.
Q. And as part of that you had conversations and read memoranda and were in touch with people who provided to you information about it so that you could pursue your own investigation correctly, right?
A. Be more specific. I am sorry.
Q. Sure. That you wanted to know what was going on with Baltimore, you wanted to know what was going on with the meeting with Karpeles' attorneys, you wanted to know what was out there because you had your own parallel independent investigation of him going on that could be completely wiped out by what Baltimore was doing?
A. Yes. And we had verbal agreements with the attorneys in that district also about that.
Q. And so in the course of this and in pursuing your investigation, you learned that Karpeles' lawyers had made that offer to the government?
MR. TURNER: Objection.
Q. You learned through people either in Baltimore or at HSI in Chicago?
MR. TURNER: Objection. Hearsay.
THE COURT: Sustained.

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MR. DRATEL: I will just say Rule 807.
THE COURT: You know, I think now is a good time to take our mid-afternoon break so that we can take up this evidentiary matter while you folks stretch your legs.
So let's take our mid-afternoon break. We'll come back in about -- probably about 12 minutes. I want to remind you not to talk to each other or anybody else about this case. Thank you.
And you could take a break, too.
THE WITNESS: Thank you, your Honor.
(Continued on next page)

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 29, 2015

By Email
Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

The Government writes respectfully to move to preclude the testimony of Andreas M. Antonopoulos, a purported "expert" noticed by the defense in a letter sent to the Government on January 26, 2015 ("Defense Letter," attached as Ex. A). The subjects of testimony proffered in the notice all are either irrelevant to the case or do not require specialized knowledge, or both. In addition, the expert notice does not identify the opinions to be offered by Mr. Antonopoulos on these subjects, or the bases or reasons for those opinions, and thus does not comply with Rule 16(b)(1)(C). For all these reasons, Mr. Antonopoulos should be precluded from testifying.

Applicable Law

A. Rule 702

Rule 702 of the Federal Rules of Evidence provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

The party that proffers the testimony bears the burden of showing that it is admissible. *See Bourjaily v. United States*, 483 U.S. 171, 172-73 (1987). The District Court's exclusion of

expert testimony will be affirmed unless it constitutes an abuse of discretion. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 142 (1997).

The party seeking admission of expert testimony must demonstrate that the testimony is based on the witness's specialized knowledge. *See United States* v. *Mejia*, 545 F.3d 179, 196 (2d Cir. 2008) (district court erred in allowing expert testimony "about matters that required no specialized knowledge"). Expert testimony is inadmissible when it merely addresses "lay matters which [the trier of fact] is capable of understanding and deciding without the expert's help." *Andrews* v. *Metro N. Commuter R.R. Co.*, 882 F.2d 705, 708 (2d Cir. 1989). The Second Circuit has warned against the "uncontrolled" use of expert testimony that might have the effect of providing "an additional summation by having the expert interpret the evidence." *United States v. Nersesian*, 824 F.2d 1294, 1308 (2d Cir. 1987). A district court must therefore be vigilant to prevent an expert from coming "usurping the jury's function." *Id.*

B. Rules 401 and 403

Rules 401 and 403 of the Federal Rules of Evidence provide that evidence is admissible when it tends to make the existence of any fact that is of consequence more or less probable than it would be without the evidence, but that the evidence may be excluded if its probative value is substantially outweighed by, among other things, the danger of unfair prejudice, confusion of the issues, and misleading the jury. "Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing possible prejudice against probative force under Rule 403 . . . exercises more control over experts than over lay witnesses." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 595 (1993).

C. Rule 16

A defendant must "give to the government a written summary of any testimony that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial." Fed. R. Crim. P. 16(b)(1)(C). "This summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications." *Id.* As the Advisory Committee notes to Rule 16 explain, the disclosure requirement "is intended to minimize surprise that often results from unexpected expert testimony, reduce the need for continuances, and to provide the opponent with a fair opportunity to test the merit of the expert's testimony through focused cross-examination." *United States v. Ferguson*, 3:06 Cr. 137 (CFD), 2007 WL 4539646, at *1 (D. Conn. Dec. 14, 2007) (citation omitted). If a defendant fails to provide disclosures in accordance with Rule 16(b)(1)(C), the district court may exclude the expert's testimony at trial. *United States v. Mahaffy*, No. 05 Cr. 613 (ILG), 2007 WL 1213738, at *2 (E.D.N.Y. Apr. 24, 2007).

Discussion

A. The "Origins" of Bitcoin and the "Various Purposes and Uses" of Bitcoin Are Not Relevant to This Case

According to the Defense Letter, the first two subjects that the defense intends to have Mr. Antonopoulos testify about are "the origins of Bitcoin" and "the various purposes and uses of Bitcoin." Neither topic is relevant to this case. The "origins" and "various purposes and uses" of Bitcoin are no more relevant here than the "origins" or "various purposes and uses" of cash would be relevant in a traditional drug dealing or money laundering case.

Presumably, the defense plans to elicit testimony from Mr. Antonopoulos that Bitcoin has a *legitimate* origin and *legitimate* purposes and uses. However, neither point is in dispute here. None of the Government's witnesses have testified to the effect that Bitcoin is inherently illegitimate; indeed, both Special Agent DerYeghiayan and former Special Agent Yum specifically testified, on direct, that using Bitcoins is not illegal in and of itself. (*See* Tr. 152:11-13 ("Q. And to be clear, is there anything illegal in and of itself about using bitcoins? A. No, there is not.")). Bitcoin is relevant to the case only because it was the sole means of payment on Silk Road and because it was used to launder illegal proceeds from the site. How Bitcoin may be used in other contexts, or what uses it may have been originally conceived for, are simply not at issue here. Moreover, allowing such testimony could confuse the jury into believing that "Bitcoin" is somehow "on trial" in this case and that "expert" testimony concerning its legitimacy somehow cuts against the defendant's guilt. Because this risk of prejudice outweighs any negligible potential probative value, the proffered testimony on these points should be precluded. *See United States v. Stewart*, 433 F.3d 273, 312-13 (2d Cir. 2006) (affirming district court's preclusion of expert testimony concerning the legality of a certain stock trade, given that the testimony was irrelevant to whether the defendant had lied about the trade to investors, which was the subject of the criminal charge); *see also In re Air Crash Disaster at New Orleans, Louisiana*, 795 F.2d 1230, 1233 (5th Cir.1986) (noting that "trial courts must be wary lest the expert become nothing more than an advocate of policy before the jury" and that "the trial judge ought to insist that a proffered expert bring to the jury more than the lawyers can offer in argument").

In any event, the Defense Letter does not even disclose what opinions Mr. Antonopoulos plans to offer concerning the "origins" or "uses" of Bitcoins, or what the bases for these opinions are. It merely lists these subjects as general topics of discussion. The disclosure thus plainly falls short of the requirements of Rule 16(b)(1)(C), and his testimony should be precluded for this reason as well. *See United States v. Valle*, 12 Cr. 847 (PGG), 2013 WL 440687, at *5 (S.D.N.Y. Feb. 2, 2013) ("Merely identifying the general topics about which the expert will testify is insufficient; rather, the summary must reveal the expert's actual opinions."); *see also United States v. Duvall*, 272 F.3d 825, 828 (7th Cir. 2001) ("The Rule requires a summary of the expected testimony, not a list of topics."); *Mahaffy*, 2007 WL 1213738, at *3 (same).

B. The Exchange Value of Bitcoin Is Not a Matter Requiring Specialized Knowledge and the Causes of Fluctuation in That Value Are Not Relevant to This Case

The Defense Letter also indicates the defense intends to have Mr. Antonopoulos testify concerning "the value of Bitcoin over time since its inception, and the cause of various increases and decreases in the value of Bitcoin at certain points in time," as well as "the dollar value of Bitcoins generated through transactions on Silk Road, at various points in time, including at the time or Mr. Ulbricht's arrest." These topics are not proper subjects of expert testimony in this matter.

To the extent the proffered testimony simply concerns the exchange value of Bitcoin at various points in time, such testimony plainly does not require specialized knowledge. The exchange value of Bitcoin is publicly available information that anyone can look up – just like the exchange value of foreign currency, gold, or silver, or the market price of a stock. Indeed, the defense has already successfully offered into evidence a chart, obtained from a publicly accessible website, depicting the exchange value of Bitcoin from 2011 to 2014. (*See* Def. Ex. B; Tr. 455). There is no need for an "expert" to "opine" further on this issue. See *United States v. Rea*, 958 F.2d 1206, 1216 (2d Cir. 1992) (noting that lay opinion testimony is unhelpful where the jury is in as good a position to assess the facts as the testifying witness); *United States v. Castillo*, 924 F.2d 1227, 1232 (2d Cir. 1991) (the district court should not admit testimony that is "directed solely to lay matters which a jury is capable of understanding and deciding without the expert's help").

To the extent the defense seeks for Mr. Antonopoulos to testify concerning the "cause" of fluctuations in the Bitcoin exchange rate, such testimony would be both irrelevant and unreliable. The Bitcoin exchange rate is relevant in this case only insofar as it concerns the dollar value of the funds that moved through Silk Road or that were otherwise involved in any specific transactions at issue in the case. *Why* the exchange rate was what it was on any particular given day has no relevance to any issue in dispute. Moreover, any "expert" opinion on the cause of various movements in the Bitcoin exchange rate would inevitably rest on speculation. The Bitcoin market is highly volatile and unpredictable. There is no generally accepted methodology or set of principles that one can apply to ascertain the reasons for its ups and downs. *Daubert*, 509 U.S. at 592-93 (in order to determine reliability of expert testimony, judge must assess "whether the reasoning or methodology underlying the testimony is scientifically valid"); *Three Crown Ltd. Partnership v. Salomon Bros., Inc*., 906 F.Supp. 876, 894 (S.D.N.Y. 1995) ("When the assumptions made by an expert are not based on fact, the expert's testimony is likely to mislead a jury, and should be excluded by the district court." (quoting *Tyger Const. Co. v. Pensacola Const. Co.*, 29 F.3d 137 (4th Cir. 1994))).

In any event, the Defense Letter does not describe what fluctuations in the Bitcoin exchange value Mr. Antonopolous will testify about, what opinions he will provide concerning those fluctuations, or what the bases for these opinions are. It simply lists the "the cause of various increases and decreases in the value of Bitcoin at certain points in time" as a "subject" on which the witness will testify. Again, this disclosure does not satisfy the requirements of Rule

16(b)(1)(C) and fails to give the Government sufficient notice to prepare for effective cross-examination. The proffered testimony should therefore be precluded.[1]

C. How to Use Bitcoins and How to Track Transactions on the Blockchain Are Not Matters Requiring Specialized Knowledge, and Any More Technical Aspects of the Bitcoin Network Are Not Relevant to This Case

The Defense Letter also states that the defense intends to have Mr. Antonopolous testify concerning "the mechanics of Bitcoin transactions, including explanation of Bitcoin wallets, accounts, exchanges, and the [B]lockchain," "the ability to track transactions and participants in Bitcoin transactions," and "the ability to tie Bitcoins from Silk Road to Mr. Ulbricht." In essence, the proffered testimony amounts to testimony concerning how to use Bitcoins and how to track transactions on the Blockchain, neither of which requires specialized knowledge and both of which have already been explained in the Government's case.

The "mechanics" of Bitcoin transactions to which the Defense Letter refers – "wallets," "accounts," "exchanges," and the "[B]lockchain" – are concepts familiar to any layperson who has ever used Bitcoins and can be explained in lay terms to the jury. Indeed, multiple Government witnesses – including Special Agent DerYeghiayan and former Special Agent Yum – testified concerning these concepts in the Government's case without being qualified as experts. As former Special Agent Yum explained, a "wallet" is a computer file that enables a user to make transfers from his "addresses" (*i.e.*, accounts) on the Bitcoin network. As Special Agent DerYeghiayan explained, "exchanges" are businesses that exchange real currency for Bitcoins and vice-versa. And as both witnesses explained, the "Blockchain" is the public ledger where all Bitcoin transactions are recorded. An "expert" is not needed to explain these concepts any more than an expert is needed to explain how to make an online payment using Paypal or how to execute a stock purchase on E*Trade. *See United States v. Amuso*, 21 F.3d 1251, 1263 (2d Cir.1994) (district court should not admit "expert testimony where the evidence impermissibly mirrors the testimony offered by fact witnesses, or the subject matter of the expert's testimony is not beyond the ken of the average juror"); *LaSalle Bank Nat. Ass'n v. CIBC Inc.*, 08 Civ. 8426 (WHP), 2012 WL 466785 (S.D.N.Y. Feb. 14, 2012) ("[A]n expert witness may not offer testimony which merely rehashes the testimony of percipient witnesses.").

By the same token, expert testimony is not required to explain how to "track" Bitcoin transactions on the Blockchain – including how to identify transactions on the Blockchain reflecting transfers from Bitcoin addresses associated with the Silk Road servers to Bitcoin addresses associated with defendant's laptop. Tracking Bitcoin transactions simply involves looking up a Bitcoin address on the Blockchain and seeing the transfers flowing in or out of it. It

[1] Even if the defense were to provide supplemental information sufficient to provide adequate notice, the Court should hold a *Daubert* hearing to determine whether Mr. Antonopolous's opinions on the causes of fluctuations in the value of Bitcoin are reliable and would be likely to assist the jury, given the facially speculative nature of the subject matter. *See, e.g., Nimely v. City of New York*, 414 F.3d 381, 396-97 (2d Cir. 2005) (holding that district courts have a screening function to evaluate the qualifications of an expert, the reliability of the expert's opinions, and the relevance of the proposed expert testimony).

is conceptually no different from looking at bank account records to check for transfers flowing from ne account to another. Just as an expert is not required to explain that ministerial task – even if automated in some fashion – neither is one required to explain the concept in the context of Bitcoins. *Cf. U.S. v. Baker*, 496 Fed. Appx. 201, 204 n.1 (3d Cir. 2012) (phone company representative's testimony concerning how to read cellphone location records not expert testimony); *John v. Griffen*, No. 13 Civ. 922 (RWS), 2014 WL 866277, at *14 (S.D.N.Y. Mar. 4, 2014) (same). Again, former Special Agent Yum already testified extensively concerning this issue without being qualified as an expert.

While there are, of course, more complicated aspects of Bitcoin concerning the actual software code and cryptographic technologies on which the Bitcoin network is built, these aspects of the system are irrelevant to the case. Just as a person does not need a technical seminar on the computer networks used by banks to understand how wire payments can be sent online or how to read records of the wires after they are sent, the jury in this case does not need an expert to explain the innards of the Bitcoin network in order to understand how transfers of Bitcoins are made or how to look such transfers up on the Blockchain.

In any event, again, the Defense Letter fails to set forth what opinions Mr. Antonopolous will give concerning these subjects or the bases for those opinions. It only lists the subjects themselves. For this reason as well, his testimony on these subjects should be precluded.

D. Bitcoin Speculation and Mining Is Not Relevant to the Case and Expert Testimony on These Subjects Cannot Substitute for Factual Evidence That These Activities Were the Source of the Bitcoins Found on the Defendant's Laptop

Lastly, the Defense Letter states that the defense intends to have Mr. Antonopoulos testify concerning the "concepts of Bitcoin speculating and Bitcoin mining." These "concepts" are not relevant to the case. While the defense has suggested at times that some portion of the Bitcoins on the defendant's laptop could have come from Bitcoin speculation or mining, such a defense requires *factual evidence* that these activities were the source of the Bitcoins on the defendant's laptop. It would be an improper use of expert testimony for Mr. Antonopolous to explain the "concepts" of Bitcoin speculation and mining simply in order to invite the jury to speculate that such activities *could* have been where the defendant's Bitcoins came from.

The Second Circuit's decision in *United States v. Zafar*, 291 F. App'x 425 (2d Cir. 2008), is on point. In that case, the Second Circuit affirmed the district court's exclusion of expert testimony the defense sought to introduce concerning the use of certain stock-selection software found on the defendant's computer in a securities-fraud case. *Id.* at 427. Given "the absence of evidence indicating that defendant had, in fact, used the software for stock trading at the time of the charged crimes," the court found it would have been inappropriate to allow expert testimony on "how [the] stock-selection software worked." *Id.* The Second Circuit explained that the true purpose of the expert testimony appeared *not* to be "to show the jury how the software worked," but rather was "to insinuate what had happened with respect to the relevant stock trades, a subject on which [the expert] was not a competent witness." *Id.* The same is true here: the defense cannot substitute expert testimony about how Bitcoin speculation or mining works for

factual evidence that the defendant actually engaged in these activities – and engaged in them to such an extent that could explain the millions of dollars in Bitcoins recovered from his computer.

Finally, in any event, the Defense Letter again fails to specify what opinions Mr. Antonopolous intends to offer on Bitcoin speculation and mining, or the bases for these opinions. Merely listing these topics as "concepts" on which the witness will opine in some manner does not satisfy the prerequisites of Rule 16(b)(1)(C), and for this reason as well the proffered testimony should be excluded.

Conclusion

For the foregoing reasons, the Government respectfully requests that the proffered testimony of Mr. Antonopolous be precluded in its entirety.

Respectfully,

PREET BHARARA
United States Attorney

By: _____
SERRIN TURNER
TIMOTHY HOWARD
Assistant United States Attorneys
Southern District of New York

cc: Joshua Dratel, Esq.

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION
29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006
—
TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

January 26, 2015

BY ELECTRONIC MAIL

Serrin Turner
Timothy T. Howard
Assistant United States Attorneys
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Re: *United States v. Ross Ulbricht*
14 Cr. 68 (KBF)

Dear Mr. Turner and Mr. Howard:

This letter is submitted on behalf of Ross Ulbricht, providing formal notice, pursuant to Rule 16(b)(1)(C), Fed.R.Crim.P., that the defense plans to call Andreas M. Antonopoulos to provide expert opinion testimony on the following subjects:

1. the origins of Bitcoin;

2. the various purposes and uses of Bitcoin;

3. the mechanics of Bitcoin transactions, including explanation of Bitcoin wallets, accounts, exchanges, and the blockchain;

4. the ability to track transactions and participants in Bitcoin transactions;

5. the value of Bitcoin over time since its inception, and the cause of various increases and decreases in the value of Bitcoin at certain points in time;

6. the concepts of Bitcoin speculating and Bitcoin mining;

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7. the ability to tie Bitcoins from Silk Road to Mr. Ulbricht; and

8. the dollar value of Bitcoins generated through transactions on Silk Road, at various points in time, including at the time or Mr. Ulbricht's arrest.

In addition, Mr. Antonopoulos's Curriculum Vitae is attached hereto.

Very truly yours,

Lindsay A. Lewis

LAL/
Encl.

CURRICULUM VITAE

Andreas Antonopoulos
andreas@antonopoulos.com

EDUCATION

1991-1994 B.Sc. (Hons.) Computer Science. University College London, London, UK.
Project in distributed collaborative computing, X-Windows screen-sharing protocol.

1994-1995 M.Sc. Data Communications Networks & Distributed Systems (DCNDS).
University College London, London, UK. M.Sc.
Project in cross-platform distributed data exchange framework as part of the EU (HANSA ESPRIT) funded project.

EMPLOYMENT HISTORY

2011 – to date RootEleven / Andreas M. Antonopoulos LLC
Founder

Consulting, advisory services in crypto-currencies for startup companies.

2003 – 2011 Nemertes Research, NY/CA
Partner, CIO, Lead Security Analyst

Developed and managed research projects, conducts strategic seminars and advised key clients as the lead analyst in Information Security, Data Center and Cloud Computing. CIO for the firm, managing a diverse cloud infrastructure supporting distributed team. Responsible for HR and legal management. Founding partner and managing director

2002-2003 ThruPoint Inc, NY
Director Security Practice

Directed a team of 70-80 network security, information security and penetration testing engineers, ensuring consistent delivery of consulting and professional services across a global delivery team. Support sales efforts as team lead and promoted standardization of deliverables. Worked on accurately predicting and accounting for work effort, profit margin and project management in sales proposals.

2001 - 2002 Greenwich Technology Partners, NY
Security Practice Lead

I led the North East security practice, covering NY, NJ and CT, supporting sales operations (SME), delivering security advice and services and leading projects, including architecting global secure financial transaction network for SWIFT.

2000 - 2001	Managed Business Network, London, Great Britain, Founder / Consulting and Integration Services
1997-2000	Phaia Limited, London, UK Managing Director / Co-Founder
1997-2000	Learning Tree International, London, UK Instructor - Security, Networking
1995-1997	University College of London, Computer Science Department, London, UK, Research Fellow, ESPRIT-funded interactive media project. External Lecturer Lead Research Fellow, ``Distributed Application Generation',” EPSRC-funded project.
1995-1997	Athena Systems Design Limited, London, Great Britain, Consultant
1993-1995	Odey Asset Management, London, Great Britain IT Manager
1991-1993	IT Consulting
1990-1991	IBM Greece Network Support
1989-1991	Athens Greece Programming BASIC - Private Lessons

TEACHING/RESEARCH

1992-1994	University College London - Computer Lab Assistant
1994-1995	University College London - Teaching Assistant “Internet and E-Commerce”
1995-1997	University College London - Research Fellow “Distributed Systems Lab”
2014-to date	University of Nicosia - Teaching Fellow “M.Sc. Digital Currencies”

PUBLICATIONS

Peer-Reviewed - Framework for Distributed Application Generation, SPEEDUP Volume 11, Number 1, pp.15-17, Scientific Journal, (Jun. 1, 1997)

More than 200 published articles and reports on Security, Data Centers, Cloud Computing and Cryptographic Currencies

PATENTS

System and Method for Securing Virtualized Networks
United States 61/720,343

System and Method for Dynamic Management of Network Device Data
United States 9479P001

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 31, 2015

By Email
Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

The Government writes respectfully to move to preclude the testimony of Steven M. Bellovin, first noticed by the defense as an expert in a letter sent to the Government last night ("Defense Letter," attached as Ex. A).

As set forth below, this expert notice, submitted in the eleventh hour, does not identify the opinions to be offered by Mr. Bellovin, or the bases or reasons for those opinions, and thus does not comply with Rule 16(b)(1)(C). Without that required information, neither the Government nor the Court is in a position to evaluate whether Mr. Bellovin's opinions require specialized knowledge, are based upon facts or data of a type reasonably relied upon by experts, or are the product of reliable principles and methods. Nor is there a basis to evaluate whether Mr. Bellovin's testimony would be relevant and helpful to the jury, or whether the testimony would be improperly unfairly prejudicial under Rule 403. Compounding these deficiencies is the fact that the notice is extraordinarily late, coming on the eve of the defense case, thus leaving no time for the Government to hire its own expert in order to prepare an effective cross-examination and put on a rebuttal case. The defense has no excuse for waiting until this stage of the proceeding to notice an expert, as the defense has had months to plan its affirmative case.

Applicable Law

A. Rule 702

Rule 702 of the Federal Rules of Evidence provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as

> an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

The party that proffers the testimony bears the burden of showing that it is admissible. *See Bourjaily v. United States*, 483 U.S. 171, 172-73 (1987). The District Court's exclusion of expert testimony will be affirmed unless it constitutes an abuse of discretion. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 142 (1997).

A threshold issue is whether the witness is "qualified as an expert" to render the proposed opinion. *See Nimley v. City of New York*, 414 F.3d 381, 396 (2d Cir. 2005). Expert testimony is admissible only if the trial court determines that it is both relevant and reliable. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589-90 (1993); *see Kumho Tire Company, Inc. v. Carmichael*, 526 U.S. 137 (1999). Specifically, in *Daubert*, the Court held that the Federal Rules of Evidence "assign to the trial judge the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." 509 U.S. at 597. "*Daubert* applies to both defense and government experts." *United States v. Yousef*, 327 F.3d 56, 148 (2d Cir. 2003).

In *Joiner*, the Supreme Court explained that "[n]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." 522 U.S. at 146. For example, in *Kumho Tire*, the Court upheld the exclusion of an expert's testimony that a defect caused a tire's tread to separate from the rest of the tire, because the expert's theories could not reliably determine the cause of the separation in the tire at issue. 526 U.S. at 154-55; *see also Amorgianos* v. *Romano Enterprises*, 303 F.3d 256, 267 (2d Cir. 2002) (district court should undertake a rigorous examination of the facts on which the expert relies, the expert's methodology, and the application of that methodology to the facts).

Applying Rule 702, the Court must determine whether the expert's reasoning and methodology underlying his testimony is valid, and whether that reasoning or methodology was applied reliably to the facts, so as to be relevant and helpful to the jury. See *Kumho Tire Co.*, 526 U.S. 137. The fact that an expert may generally possess "specialized knowledge" does not automatically render his opinions in this case reliable. *See SEC v. Lipson*, 46 F. Supp. 2d 758, 761 (N.D. Ill. 1998) (fact that witness is a certified public accountant, generally possessing the "specialized knowledge" to qualify as an expert witness, does not automatically render his opinions reliable).

Expert testimony is inadmissible when it addresses "lay matters which [the trier of fact] is capable of understanding and deciding without the expert's help." *Andrews* v. *Metro N. Commuter R.R. Co.*, 882 F.2d 705, 708 (2d Cir. 1989). In addition, as a general matter, trial courts should exclude expert testimony that "expresses a legal conclusion." *Hygh* v. *Jacobs*, 961 F.2d 359, 363 (2d Cir. 1992)." *Id.* As the Second Circuit explained, "[e]ven if a jury were not misled into adopting a legal conclusion proffered by an expert witness, the testimony would

remain objectionable by communicating a legal standard—explicit or implicit—to the jury." *Id.* at 364. Further, an expert "is not qualified to compete with the judge in the function of instructing the jury." *Id.*

The party seeking admission of expert testimony must demonstrate that the testimony is based on the witness's specialized knowledge. *See United States* v. *Mejia*, 545 F.3d 179, 196 (2d Cir. 2008) (district court erred in allowing expert testimony "about matters that required no specialized knowledge"). Expert testimony is inadmissible when it merely addresses "lay matters which [the trier of fact] is capable of understanding and deciding without the expert's help." *Andrews* v. *Metro N. Commuter R.R. Co.*, 882 F.2d 705, 708 (2d Cir. 1989). The Second Circuit has warned against the "uncontrolled" use of expert testimony that might have the effect of providing "an additional summation by having the expert interpret the evidence." *United States v. Nersesian*, 824 F.2d 1294, 1308 (2d Cir. 1987). A district court must therefore be vigilant to prevent an expert from coming "usurping the jury's function." *Id.*

B. Rule 703

Rule 703 of the Federal Rules of Evidence precludes an expert from disclosing to the jury "[f]acts or data that are otherwise inadmissible" unless the court determines that their probative value substantially outweighs their prejudicial effect, and the facts or data must be "of a type reasonably relied upon by experts in the particular field forming opinions or inferences upon the subject." Experts cannot be used as a substitute to calling witnesses to the events or facts at issue. For example, in *United States v. Zafar*, 291 Fed. Appx. 425, 427 (2d Cir. 2008), the Second Circuit affirmed the district court's exclusion of the defendant's proposed expert testimony about the use of stock-selection software found on the defendant's computer in a securities fraud case. There was no evidence that the defendant actually used that software for stock trading at the time of the charged offenses. *Id.* The Court affirmed the district court's decision, because the defense expert was not trying "to show the jury how the software worked but to insinuate what had happened with respect to the relevant stock trades, a subject on which [the expert] was not a competent witness." *Id.*

C. Rules 401 and 403

Rules 401 and 403 of the Federal Rules of Evidence provide that evidence is admissible when it tends to make the existence of any fact that is of consequence more or less probable than it would be without the evidence, but that the evidence may be excluded if its probative value is substantially outweighed by, among other things, the danger of unfair prejudice, confusion of the issues, and misleading the jury. "Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing possible prejudice against probative force under Rule 403 . . . exercises more control over experts than over lay witnesses." *Daubert,* 509 U.S. at 595.

D. Rule 16

A defendant must "give to the government a written summary of any testimony that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as

evidence at trial." Fed. R. Crim. P. 16(b)(1)(C). "This summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications." *Id.* As the Advisory Committee notes to Rule 16 explain, the disclosure requirement "is intended to minimize surprise that often results from unexpected expert testimony, reduce the need for continuances, and to provide the opponent with a fair opportunity to test the merit of the expert's testimony through focused cross-examination." *United States v. Ferguson*, 3:06 Cr. 137 (CFD), 2007 WL 4539646, at *1 (D. Conn. Dec. 14, 2007) (citation omitted). "If a defendant fails to provide disclosures in accordance with Rule 16(b)(1)(C), the district court may exclude the expert's testimony at trial." *United States* v. *Valle*, No. 12 Cr. 847(PGG), 2013 WL 440687, at *5 (S.D.N.Y. Feb. 2, 2013); *see also United States v. Rajaratnam*, No. 09 Cr. 1184 (RJH), 2011 WL 723530, at *2 (S.D.N.Y. Feb. 25, 2011) (observing that it "is apparent from the face of the text of Rule 16 . . . that the court may impose sanctions where 'a party fails to comply with th[e] rule.'" (quoting Fed. R. Crim. P. 16(d)(2)); *Ferguson*, 2007 WL 4539646, at *1 (same);. . "A court may preclude the testimony as a whole, or any part that it determines was not properly disclosed to the Government." *United States v. Mahaffy*, No. 05 Cr. 613, 2007 WL 1213738, at *2 (E.D.N.Y. Apr. 24, 2007)

Discussion

A. Mr. Bellovin's Testimony Should Be Excluded Because the Expert Notice Fails to Comply with Rule 16(b)(1)(C)

The notice provided by the defendant regarding Mr. Bellovin is vague, open-ended, and plainly insufficient under the Federal Rules of Criminal Procedure, as it merely provides a list of topics the defense seeks for Mr. Bellovin to testify about, without indicating anything regarding the "opinions" plans to offer on those topics, or "the bases and reasons for those opinions." Fed. R. Crim. P. 16(b)(1)(C). The notice simply lists broadly defined areas of testimony, described as: (1) "[g]eneral principles of internet security and vulnerabilities"; (2) "the operation of timestamps in UNIX-based operating systems"; (3) "the import of some lines of PHP code provided to defense counsel in discovery"; (4) "forensic memory analysis"; (5) "general principles of public-key cryptography"; and (6) "general issues related to linux-based operating systems, including security, implications of various linux kernel versions, differing methods of software installation, etc." This notice is insufficient under Rule 16(b)(1)(C), as it is devoid of any specific information regarding the opinions of the expert regarding any of these issues, or the specific types of computer vulnerabilities, PHP code, memory analysis or Linux-related issues that will be discussed and opined upon. *United States v. Valle*, No. 12 Cr. 847 (PGG), 2013 WL 440687, at *5 (S.D.N.Y. Feb. 2, 2013) ("Merely identifying the general topics about which the expert will testify is insufficient; rather, the summary must reveal the expert's *actual opinions*.") (emphasis added) (citing *United States v. Duvall*, 272 F.3d 825, 828 (7th Cir. 2001).

As a practical matter, in order for the Government – and ultimately the Court – to evaluate whether the proposed expert testimony is "the product of reliable principles and methods" pursuant to *Daubert* and its progeny, the defendant is obligated to provide the Government with more than passing references to the types of information the proposed expert reviewed or considered in the course of preparing to testify. *See*, *e.g.*, *Nimely* v. *City of New York,* 414 F.3d 381, 396-97 (2d Cir. 2005) (holding that district courts have a screening function

to evaluate the qualifications of an expert, the reliability of the expert's opinions, and the relevance of the proposed expert testimony); *SEC* v. *Johnson*, 525 F. Supp. 2d 70, 74 (D.D.C. 2007) ("The first prong of *Daubert* requires the trial court to assess the methodology employed by the expert as a means of ensuring evidentiary reliability."). Without proper notice, the Government is not in a position to evaluate and make any challenges to the proffered testimony, and the Court is not in a position to effectively exercise its gatekeeping functions to exclude the testimony to the extent it is improper..

Further, the insufficiency of the expert notice regarding Mr. Bellevin's testimony makes it impossible for the Government to test the merits of the proffered testimony through cross-examination. By waiting until the very last moment and by omitting any specifics regarding the opinions to be rendered, this defense has failed to give the Government any opportunity to perform its own analysis or to seek to obtain its own expert to challenge the opinions of the defense expert. The very purpose of the notice requirements of Rule 16(b)(1)(C) is to ensure that the opposing party is afforded such an opportunity, in the interest of protecting the integrity of the adversarial process.. *See, e.g., United States v. Hoffecker*, 530 F.3d 137, 187 (3d Cir. 2008) (affirming district court's preclusion of defense expert where insufficient Rule 16(b)(1)(C) notice was provided three days before jury selection, holding that "admission of this testimony would have been an affront to the public interests in the 'integrity of the adversary process,' 'the fair and efficient administration of justice,' and 'the truth-determining function of the trial process'") (quoting *Taylor v. United States*, 484 U.S. 400, 414-15 (1988)). Under the circumstances, in the event that Mr. Bellevin's testimony is not precluded, the Government may be forced to request a continuance after he testifies in order to permit an effective response, which is exactly what the notice requirements of Rule 16(b)(1)(C) were designed to prevent. *United States v. Rajaratnam*, No. 09 Cr. 1184 (RJH), 2011 WL 723530, at *3 (S.D.N.Y. Feb. 25, 2011) ("[T]he purpose of reciprocal expert disclosures is to minimize surprise that often results from unexpected expert testimony, reduce the need for continuances, and to provide the opponent with a fair opportunity to test the merit of the expert's testimony through focused cross-examination.") (internal quotation marks and citation omitted); *accord United States* v. *Valle*, 2013 WL 440687, at *5.

There is no possible valid excuse for the defense to have waited until such a late stage of the proceeding to notice an expert. The defense has been fully cognizant of the nature of the charges against him since the defendant's arrest in October 2013, and has had access to images of his seized laptop for almost a year. The incriminatory significance of the files recovered from the defendant's computer has long been known to the defense; and many of these files were included as proposed Government exhibits that were produced to the defendant nearly five weeks before trial. The defendant has had more than ample time to develop a potential expert witness to challenge the reliability of this evidence in some fashion. Indeed, the defense *opened* with the proposition that the files on the defendant's laptop could have somehow been planted. The defense cannot now claim to have suddenly realized that it might have to support this proposition with actual evidence, such as in the form of expert opinion testimony. For this reason alone, Mr. Bellovin's testimony should be precluded.[1] *See, e.g., United States v. Causey*,

[1] Defense counsel has suggested that his need to call expert witnesses has arisen from the fact that he has not been able to elicit evidence required to support the defense theory through the cross-examination of the Government's fact witnesses. *See Tr.* 1836:14-19. But the defense had no basis to assume it would be able to elicit the testimony it wanted from Government

748 F.3d 310, 318-19 (7th Cir. 2014) (finding that district court properly excluded expert testimony, where the defendant did not comply with Rule 16 notice requirements); *United States v. Blair*, 493 Fed. Appx. 38, 53 (11th Cir. 2012) (finding that the district court properly excluded expert testimony where notice was provided by the defendant on the eighth day of trial, without "sufficient justification for his untimeliness"); *United States v. Petrie*, 302 F.3d 1280, 1288 (11th Cir. 2002) (finding that district court properly excluded expert testimony "[a]s a sanction for untimely disclosure" because defendant "waited until Friday afternoon prior to the commencement of trial on Monday . . . to disclose his expert to the government."); *Hoffecker*, 530 F.3d at 187 (finding that district court properly excluded expert testimony when notice was provided by the defendant three days before jury selection); *Mahaffy*, 2007 WL 1213738, at *3 (precluding defense expert witness for which insufficient notice was provided on the day that trial commence, tardiness of notice was "particularly egregious because he has been in possession of the Superseding Indictment for over a year, ample time to determine the topics upon which his expert would testify").

Conclusion

For the foregoing reasons, the Government respectfully requests that the proffered testimony of Mr. Bellevin be precluded in its entirety.

Respectfully,

PREET BHARARA
United States Attorney

By:_____
TIMOTHY T. HOWARD
SERRIN TURNER
Assistant United States Attorneys
Southern District of New York

cc: Joshua Dratel, Esq.

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witnesses – particularly not *opinion* testimony from Government *fact* witnesses, and particularly not testimony outside the scope of their direct examination. In any event, defense counsel has in fact had the opportunity to ask questions of Government fact witnesses regarding many of the topics listed in the defective notice of Mr. Bellovin's testimony. *See, e.g.,* Tr. 628:2-22 (PGP encryption); 632:7-633:5 (PGP encryption); 1070:19-1072-11 (potential computer vulnerabilities); 1095:5-1097:9 (operation of time stamps in UNIX-based operating systems); 1243:14-1250:13 (forensic memory analysis and potential computer vulnerabilities).

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION

29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

January 30, 2015

BY ELECTRONIC MAIL

Serrin Turner
Timothy T. Howard
Assistant United States Attorneys
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Re: *United States v. Ross Ulbricht*
14 Cr. 68 (KBF)

Dear Mr. Turner & Mr. Howard:

This letter is submitted on behalf of Ross Ulbricht, providing formal notice, pursuant to Rule 16(b)(1)(C), Fed. R. Crim. P.,that the defense plans to call Steven M. Bellovin to provide expert testimony on the following subjects:

1. General principles of internet security and vulnerabilities;

2. The operation of timestamps in UNIX-based operating systems;

3. The import of some lines of PHP code provided to defense counsel in discovery;

4. Forensic memory analysis; and

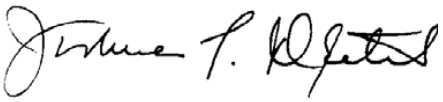
5. General principles of public-key cryptography.

6. General issues related to linux-based operating systems, including security, implications of various linux kernel versions, differing methods of software installation, etc.

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.

Dr. Bellovin's Curriculum Vitae is attached hereto.

Very truly yours,



Joshua L. Dratel

JLD/

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ROSS WILLIAM ULBRICHT,

Defendant.

14-cr-68 (KBF)

OPINION & ORDER

KATHERINE B. FORREST, District Judge:

Lawyers and clients make tactical decisions. The Court cannot always understand why certain decisions are made, nor need it. But when tactical decisions run contrary to established rules and case law, the Court's duty is clear. The Court is duty-bound to apply the law as it exists, not as any party wishes it to be.

There have been numerous instances during the course of this trial—and, indeed, at least one similar issue arose pretrial—in which the defense has made tactical decisions that have carried consequences. Before the trial even began, the defense made a lengthy motion to preclude evidence on the basis of a Fourth Amendment violation—but refused to provide an affidavit or declaration asserting some level of personal interest in the item(s) searched, even when the Court provided a twelfth-hour additional opportunity to do so, making clear the deficiency and inviting a fix. The law was crystal clear—and this Court would have committed error to ignore it—that such an affidavit or declaration attesting to a personal privacy interest was required in light of defendant's positions at that time. The

defense's decision not to submit one is particularly interesting in light of their opening statement in which they conceded that defendant Ulbricht was the creator of Silk Road.

During trial, the defense has made additional tactical decisions that have carried consequences—including choices underlying the two pending motions by the Government to preclude expert witnesses defendant now seeks to call. As background to this motion, it is obvious but worth mentioning that the evidence on which the Government has based its case-in-chief was long ago disclosed to the defense. Indeed, the appropriate disclosures occurred months and months ago. Trial was delayed at the defense's request, and all signs pointed to extensive preparations by the defense to counter the disclosed evidence. That most of the evidence in this case is based on information gleaned from servers and hard drives of the Silk Road website and Ulbricht's own personal computer has been known since the outset; that Silk Road transactions occurred in Bitcoins was known at the outset; that the Silk Road servers contained records of Bitcoin wallets was disclosed in discovery; that defendant Ulbricht's laptop contained its own Bitcoin wallets was disclosed in discovery; that timestamps were included on information on Ulbricht's laptop was disclosed in discovery; that certain PGP keys were used was disclosed in discovery; that a BitTorrent program was downloading a media file at the time of defendant's arrest was disclosed in discovery; and so on.

When asked about the expected duration of any defense case last fall, counsel for Ulbricht indicated that he expected his evidence to consume a week or two of

trial time; it was reasonable to assume that he was preparing whatever case he deemed appropriate to insure that his theory of defense was presented. Of course, he does not bear the burden of proof in this criminal trial—the Government does. But if he has a particular defense theory that requires evidence to support it, he must insure that he has prepared a case to get such evidence in.

Fast forward to the trial itself. As of the start of trial, the defense had failed to disclose its intention to call any expert witness. Proper expert disclosures are not a mere technicality with which compliance may be made or not—they are required by Rule 16 of the Federal Rules of Criminal Procedure. Defense counsel, particularly the learned lead counsel that Ulbricht has retained in this case, Mr. Joshua L. Dratel, Esq., know the rules. These rules are accompanied by an extensive body of case law—from the Supreme Court on down—requiring district courts to comply with the rules, and setting forth clear requirements as to the proper disclosure of expert witnesses and the trial court's role in evaluating whether expert testimony should be allowed or precluded. These cases span decades and are consistent in their holdings. They do not only apply to one side and not the other. There has not been a change of law, and there is no confusion in the law as to the relevant requirements.

Trial started, and trial proceeded. Mr. Dratel included in his opening statement an acknowledgment that defendant created Silk Road; he conceded that defendant ran it for several months; he previewed that there was some sort of "handoff" to others after those few months; and he stated that defendant was then

somehow lured back into Silk Road by unnamed operators—that, in effect, he was framed. He further stated that defendant was a Bitcoin investor and trader. He made a vague reference to what was happening to Bitcoin and the "Bitcoin market" as having some relevance to how events unfolded. All of this was tantalizing. In defense counsel's initial cross-examination he introduced a screenshot from defendant's laptop showing that defendant had been using BitTorrent to download a media file at the time of the arrest. It seemed that the defense would present evidence that supported this story.

As the trial proceeded, there were various interruptions—necessary sidebars, time spent before a trial day began, during a break, or after the Court had released the jury for the day—during which the defense's increasingly plain strategy of trying to put on a case through the Government's witnesses was discussed. On numerous occasions, defense counsel would seek to question a Government witness in a manner clearly beyond the scope of that witness's direct testimony. After displaying some patience, the Government began to object. It had a right to do so. This Court sustained a number of objections as to scope. The Court also reminded defense counsel that if he "complied with the appropriate disclosure requirements," he could call an expert and, of course, he could call his own percipient witnesses. (Tr. at 1064:9-11.) But the tactical choice of the defense was clear: they wanted to use the Government's witnesses as their own. Defense counsel argued that other courts had, in other trials, allowed him to extend the scope in the manner he was attempting here to do. Perhaps. Perhaps not. What other courts may have done in

other trials is of no concern to this Court during this trial. But let it be said that no ruling of this Court in this trial has applied the law in any way that is other than routine and according to longstanding legal principles.

And now to the issue presently before the Court. On January 26, 2015—that is, well into the trial itself—the defense disclosed to the Government its intention to call an expert witness, Andreas M. Antonopoulos. (See ECF No. 165 ex. A.) The notice letter recited Rule 16. The content of the letter listed eight subjects as to which Antonopoulos would testify. Then, on the night of Friday, January 30, 2015, long after defense counsel knew that his cross-examination would be limited to that which the rules allowed, he disclosed another potential expert, Steven M. Bellovin. (ECF No. 170 ex. A.) The letter disclosing Bellovin was similarly bare bones. At the time that the defense made its Bellovin disclosure, the defense had already received the Government's January 29, 2015 motion to preclude Antonopolous on the basis of, inter alia, inadequate disclosure (including the failure to disclose a single opinion or basis therefore). (ECF No. 165.) Thus, the defense made a tactical choice to double-down on the nature of its disclosures.

Both disclosure letters attach curricula vitae. Lacking are any expected opinions, lacking are the bases for such opinions. Lacking is any description of analysis or methodology. Lacking also is any indication that Antonopolous has any expertise in the areas in which he seeks to testify. His resume lists that he has worked as a consultant in crypto-currencies and published unnamed "articles" in that area (not a single publication of the alleged group of "200" is listed, let alone

information sufficient to assess the seriousness or depth of such articles). Of course, not all consultants are experts. In contrast, Bellovin's curriculum vitae suggests that he has considerable expertise in cybersecurity.

The defense's decision to put in such belated and substantially inadequate notices of expert witnesses was a tactical choice. It is clear that the possibility that defendant might want to call one or more expert witnesses was long known. Indeed, as stated, defense counsel opened on a theory that somehow Ulbricht was framed in a manner involving undefined technical processes, and he opened on statements about Bitcoins and fluctuations in their value. Defense counsel had an early focus in cross-examination on BitTorrent running on defendant's computer. Providing deficient notices—failing, as they both do, to provide the basic information that Rule 16 on its face requires—was yet another tactical choice.

There is a deep and consistent body of case law that leaves no doubt such disclosures are inadequate. That body of case law cites the repeated preclusion by trial judges of experts when disclosures have failed to meet the minimum requirements. None of this is novel.

The Government has moved to preclude the testimony of both experts. (ECF Nos. 165, 170.) The defense has submitted two letters in opposition to the motions. (ECF Nos. 171, 172.) The defense's letter as to Antonopoulos—submitted at 9:07 p.m. on January 31, 2015—describes a further summary of Antonopoulos' testimony without in fact disclosing those opinions he intends to offer. The letter indicates that "[i]ndependent defense investigation has uncovered that this number [of

Bitcoins transferred to a wallet on Ulbricht's laptop] is implausible . . . ." (ECF No. 171 at 3.) But what about the transfer is implausible is unknown, and what analysis Antonopoulos performed and the methodology are unknown. In other instances, the letter refers to why Antonopoulos should be allowed to testify (that he would rebut testimony) without indicating how he would testify. The Government's motion made it clear that the defense needed to do more; the law requires that the defense do more; and it has not. A defense preference for trial by ambush is legally unsupportable.

As to Bellovin, the defense letter of February 1, 2015 is remarkable for what it does not say. While suggesting that this Court should provide yet further opportunity for the defense to provide opinions and bases therefore in futuro, the topics and descriptions of the potential testimony in the letter do not tread new ground. The defense opened on the theory of BitTorrent having some role in incriminating evidence finding its way onto Ulbricht's laptop. Bellovin would, apparently, testify as to "the security implications of this practice." (ECF No. 172 at 2.) But what he would say remains unknown. What his analysis is based on apart from ipse dixit is unknown. And of course, the defense could and should long ago have planned and properly disclosed this very testimony. Similarly, the role of timestamps on UNIX-based operating systems was long ago known; the PHP code to which Bellovin would testify was introduced by defendant. Clearly, Bellovin—long before now—could have disclosed opinions and methodology about that code. All of the other topics described in the defense letter of February 1, 2015 were

similarly known—but in any event, even if truly offered for rebuttal, there are no disclosed opinions or disclosed methodology.

The Court has considered, however, whether even in light of the plain deficiencies there is some way of allowing certain testimony. But there are competing considerations:

1. There are still few or no "opinions" and certainly no bases—and the defense knows the Government rests tomorrow. These witnesses are therefore currently "on deck." It would be grossly unfair to disclose opinions now which should have been disclosed long ago, and require the Government to be immediately prepared to respond.
2. There are known issues with a continuance. As counsel are aware—and as has been discussed several times—two of the jurors in the panel of twelve have timing issues. A continuance would potentially result in the dismissal of one or even both jurors. The Court cannot eliminate the defense's tactical decision in this regard.

Why did the defense choose to proceed as it has? This Court cannot know. Perhaps a tactical choice not to show the defense's hand; perhaps to try and accumulate appeal points; perhaps something else. In any event, the outcome of these choices is that the Court hereby GRANTS the Government's motions to preclude the testimony of both experts. (ECF Nos. 165, 170.)

I. FURTHER DISCUSSION OF LEGAL PRINCIPLES

The admissibility of expert testimony is governed by a number of longstanding evidentiary rules, including Federal Rules of Evidence 104 (the Court

must decide preliminary questions as to qualification of a witness and competency of evidence), 403 (the Court may exclude otherwise admissible evidence if its probative value is substantially outweighed by the danger of confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence), 702 (expert testimony may be allowed if specialized knowledge will assist the jury in understanding the evidence or determining a fact in issue, the testimony is based on sufficient facts or data, the testimony is based on reliable principles and methods, and the expert has reliably applied those principles and methods), and 703 (an expert may base an opinion on facts or data that he has been made are of or personally observed; he may base an opinion on inadmissible facts or data such as hearsay to the extent such facts or data are reasonably relied on by experts in the field; but if the facts or data would be inadmissible, then a Rule 403 analysis must be made). Fed. R. Evid. 104, 403, 702-03.

In addition to these rules, the Federal Rules of Criminal Procedure contain certain disclosure requirements for expert witnesses. If a defendant is going to call an expert witness, and the Government requests disclosures (which certainly occurred here), then Rule 16 requires that the defendant must provide a "written summary of any testimony that the defendant intends to use," which "must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications." Fed. R. Crim. P. 16(b)(1)(C).

The Advisory Committee notes to Rule 16 explain that the disclosure requirement "is intended to minimize surprise that often results from unexpected

expert testimony, reduce the need for continuances, and to provide the opponent with a fair opportunity to test the merit of the expert's testimony through focused cross-examination." Fed. R. Crim. P. 16 advisory committee's note to 1993 amendment.

Courts' application of these rules in specific cases has led to the development of a substantial and consistent body of law governing the admissibility of expert testimony. In a criminal case, the first question is whether the appropriate Rule 16 disclosures have been made. A failure to provide timely disclosure can result in preclusion. See, e.g., United States v. Blair, 493 Fed. App'x 38, 53 (11th Cir. 2012) (disclosure on eighth day of trial was untimely and justified preclusion of expert's testimony); United States v. Holmes, 670 F.3d 586, 597-99 (4th Cir. 2012) (disclosure on Friday before Monday start date of trial was untimely and justified preclusion of expert's testimony); United States v. Hoffecker, 530 F.3d 137, 184-87 (3d Cir. 2008) (disclosure three business days before jury selection was untimely and justified preclusion of expert's testimony); United States v. Perry, 524 F.3d 1361, 1371-72 (D.C. Cir. 2008) (disclosure 48 hours before Daubert hearing was untimely and justified preclusion of expert's testimony); United States v. Petrie, 302 F.3d 1280, 1288 (11th Cir. 2002) (disclosure on Friday before Monday start date of trial was untimely and justified preclusion of expert's testimony); United States v. Mahaffy, No. 05 Cr. 613 (ILG), 2007 WL 1213738, at *3 (E.D.N.Y. Apr. 24, 2007) (disclosure the day before trial was untimely and justified precluding expert's testimony); United States v. Wilson, 493 F. Supp. 2d 484, 485-88 (E.D.N.Y. 2006)

(disclosure less than one week before trial was untimely and justified precluding expert's testimony).

Similarly, a failure to provide the required level of detail as to the expert's opinions and the bases, reasons, and sources of those opinions can also lead to preclusion. For instance, preclusion is justified when the expert disclosures merely list general topics about which the expert will testify. E.g., United States v. Concessi, 38 Fed. App'x 866, 868 (4th Cir. 2002); United States v. Valle, No. 12 Cr. 847 (PGG), 2013 WL 440687, at *5 (S.D.N.Y. Feb. 2, 2013); United States v. Ferguson, No. 3:06CR137 (CFD), 2007 WL 4539646, at *1 (D. Conn. Dec. 14, 2007); United States v. Mahaffy, No. 05 Cr. 613 (ILG), 2007 WL 1213738, at *3 (E.D.N.Y. Apr. 24, 2007). Courts have also precluded expert testimony when the Rule 16 disclosures fail to specify the expert's bases, reasons, and sources for their opinions. E.g., Concessi, 38 Fed. App'x at 868; Wilson, 493 F. Supp. 2d at 487; see also United States v. Sturman, No. 96 CR 318, 1998 WL 126066 (S.D.N.Y. Mar. 20, 1998) (a "general description of possible bases" does not meet the requirements of Rule 16(b)(1)(C)).

This is both sensible and fair. It is sensible because without the appropriate detail, a Court cannot possibly assess admissibility, an opposing party cannot prepare a response or for proper cross-examination, and a trial devolves into jungle warfare by ambush. The various rules and the case law interpreting them are designed to avoid that outcome.

Here, the defense made a choice to delay its Rule 16 disclosures until the trial had commenced and then to delay the second by another week. The prejudice of this delay was compounded by the total lack of adherence to the basic prescriptions of the level of content required Rule 16. Rule 16 requires that an expert's opinions and the bases for those opinions be set forth in the disclosures. Again, the rules do not allow trial by ambush.

The lack of any opinions in defense counsel's initial disclosures is a flagrant failure to comply with Rule 16. Defense counsel's letters in opposition to the Government's motion to preclude do not cure this defect. Even though the defense has now set forth at least one opinion (as opposed to a general subject) as to which Antonopoulos will testify, it has not set forth the bases, reasons, and sources with anything close to the requisite specificity—merely asserting that Antonopoulos will provide this opinion based on some unspecified method of analyzing market forces and liquidity, based on data from unspecified sources, does not suffice. As for Bellovin, as the Court discussed above, while the defense's response contains additional high-level description of the testimony, and the Court might be able to guess as to various opinions, it contains no real opinions, no bases for opinions, no analysis, no methodology.

Defense counsel clearly understood what it intended to do with regard to Antonopolous at the outset of the case—certain theories related to his proffered testimony were included in defense counsel's opening. This exposes the lack of timeliness and lack of adequate content of the disclosure as tactical, not

substantive. This is true even with regard to the testimony regarding the evidence supporting an inference that Bitcoins on the Silk Road servers were transferred to Ulbricht's laptop. The defense opened on a theory that the Bitcoins in Ulbricht's possession were from some sort of Bitcoin speculation (and, thus, not connected to Silk Road). It was reasonable to expect that defendant had performed the very comparison the Government then scrambled to perform. That the Government presented the facts of such a comparison is nothing more than meeting a defense argument. It would have been surprising had the Government not done this. Thus, the facts as to what Bitcoins—a highly traceable digital currency—were on the Silk Road servers, and whether there was a factual basis to infer transfer to Ulbricht's laptop, was a door the defense opened at the outset.

With respect to Bellovin, the tactical choice was, in fact, similar. Defense counsel argues that somehow the Court's ruling that he confine his cross-examination to the scope of the direct surprised him. How can that be so? According to counsel, only then, when he was required to follow rules that all lawyers must follow, did he suddenly realize he would need an expert on computers. Simply put, this defies credulity and is an argument without a scintilla of merit. If defense counsel truly planned his trial strategy around his ability to bend the rules and examine witnesses outside of the scope of their direct, then he should have had a "Plan B" that included complying with the rules. Defense counsel took a calculated risk. It has been clear from the outset that this case involves various technologies. If defense counsel had a theory of the case upon which he intended to

rely, and which required the testimony of a witness with technical expertise to explicate, it behooved him to comply with the rules and make the appropriate disclosures. Having failed to do so—for what appear to be tactical reasons—he cannot position his deficiencies as the result of unexpected necessity and ask the Court to disregard rules that apply in every case to all counsel. Had necessity been the true mother of this issue, defense counsel would have been forthcoming with the anticipated opinions and methodology.

But there is more than just a failure to comply with Rule 16 at issue here. The Supreme Court also requires that if expert testimony is proffered, a trial court "must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 589 (1993). This requires that a trial court make a "preliminary assessment of whether the testimony's underlying reasoning or methodology is scientifically valid and . . . can be applied to the facts in issue." Id. at 592-93. When an expert witness fails to identify the objective bases for his opinion, the district court cannot perform a proper assessment; a proffered opinion deficient in this manner fails to meet the basic requirements of the Federal Rules of Evidence. United States v. Rea, 958 F.2d 1206, 1216 (2d Cir. 1992).

Assuming that there is enough detail to assess the opinion in the first instance, the reliability of a proposed expert's testimony is determined based on whether a technique on which it is based is generally accepted in the relevant

community, whether it can be tested, and whether it has been peer reviewed. Daubert, 509 U.S. at 593–94.

This Court cannot make the necessary preliminary inquiry required by longstanding Supreme Court precedent based on the disclosures it has received. It is unable to determine what Antonopoulos' and Bellovin's opinions are and it has received no analytical or learned basis for any opinion. The Court cannot assess whether Antonopolous's views are relevant, within the ambit of what others in the field would accept as reasonable; nor could it do so for Bellovin.

The reliability of testimony is also assessed in light of a witness's qualifications. A trial court must therefore also ask—as a threshold matter—whether the witness is in fact an expert at all in the area in which he intends to testify. Fed. R. Evid 104(a). Whether a proposed expert is qualified is a fact-based inquiry and depends on the nature and depth of their "knowledge, education, experience, or skill with the subject matter of the proffered testimony." See United States v. Tin Yat Chin, 371 F.3d 31, 40 (2d Cir. 2004). Courts have construed the inquiry into an expert's qualifications with an eye toward the "liberal thrust" of the Federal Rules and their general relaxation of traditional barriers to opinion testimony. See Daubert, 509 U.S. at 588–89; In re Rezulin Prods. Liab. Litig., 309 F. Supp. 2d 531, 559 (S.D.N.Y. 2004) ("The Second Circuit has taken a liberal view of the qualification requirements of Rule 702, at least to the extent that a lack of formal training does not necessarily disqualify an expert from testifying if he or she has the equivalent relevant practical experience."). That does not mean, however,

that an inquiry into adequate qualifications is unnecessary or that an expert with inadequate credentials would be allowed to testify.

It should go without saying that in order to assess whether an expert is qualified, a court must have sufficient information both as to the opinions he intends to offer, and then as to his particular knowledge and experience in the relevant areas. Insufficient information as to either prevents this inquiry. The Court lacks sufficient information with respect to Antonopolous, and to a lesser extent, given his qualifications, for Bellovin.

Moreover, the requirement that expert testimony be relevant to a material fact in issue finds its origins in both Rules 401 and 702 of the Federal Rules of Evidence. Preclusion is appropriate when opinions seek to prove something other than a material fact in issue. See United States v. Stewart, 433 F.3d 273, 311-12 (2d Cir. 2006).

Expert testimony is limited to those occasions "where the subject matter of the testimony is beyond the ken of the average juror." United States v. Castillo, 924 F.2d 1227, 1232 (2d Cir. 1991). Expert testimony that seeks to address lay matters, which a jury is capable of understanding without expert help, is not relevant and therefore not admissible. United States v. Jiau, 734 F.3d 147, 154 (2d Cir. 2013). Indeed, a district court errs when it allows an expert to testify as to matters which require no specialized knowledge. United States v. Mejia, 545 F.3d 179, 196 (2d Cir. 2008). Even relevant expert testimony must be precluded if it usurps the

province of the jury to make factual determinations. See United States v. Bilzerian, 926 F.2d 1285, 1294 (2d Cir. 1991).

Antonopoulos' opinion regarding whether Ulbricht could have transferred from Silk Road as many Bitcoins as the Government contends he did would be relevant—but as explained above, the Court will not permit Antonopoulos to testify in light of defense counsel's deficient Rule 16 disclosures as to him, and because the Court cannot properly assess his qualifications. As to any other opinions that would be offered by Antonopoulos, the Court cannot make the required relevance analysis because it has no idea as to what those opinions are. It is not for this Court to engage in speculation—and then, if necessary, to speculate again as to whether Antonopoulos is qualified to offer these opinions. As to Bellovin, the relevance of the summary descriptions as to the topics of his testimony is not in doubt. But undoubted relevance does not trump the need to provide opinions and, particularly here, analytical or methodological bases. Indeed, the very relevance of the high-level descriptions itself supports the importance of requiring compliance with disclosure of methodology—otherwise, the Government would be at a plain and unfair disadvantage in countering such testimony. The rules are designed to prevent this.

Finally, without knowing the opinions and bases therefore, the Court also cannot perform the analysis that it must under Rule 403 which provides for the exclusion of otherwise relevant evidence "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing

the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

II. CONCLUSION

For the reasons set forth above, the Government's motions to preclude are GRANTED. The Clerk of Court is directed to close the motions at ECF Nos. 165 and 170.

SO ORDERED.

Dated: New York, New York
February 1, 2015

KATHERINE B. FORREST
United States District Judge

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION

29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

January 31 2015

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted in response to the government's January 29, 2015, letter seeking preclusion of the expert testimony of proposed defense witness Andreas M. Antonopoulos. For the reasons set forth below, the government's application should be denied in its entirety.

Pursuant to the standards of *Daubert v. Merrell Dow* Pharmaceuticals, Inc., 509 U.S. 579 (1993), as incorporated within Rule 702, Fed.R.Evid., admissibility of expert testimony requires that the testimony proffered be sufficiently reliable and that the topic of the testimony be one that is "beyond the ken of the average juror." *United States v. Tapia-Ortiz*, 23 F.3d 738, 741 (2d Cir. 1994). The range of topics which are more than a "lay matter[] which [the trier of fact] is capable of understanding and deciding without the expert's help," is broad, varied, and sometimes counterintuitive. *See e.g. Tapia-Ortiz*, 23 F.3d 738, 741 (2d Cir. 1994) (permitting expert testimony on the "weight, purity, dosages, and prices of cocaine"); *see also United States v. Noda*, 137 F. App'x 856, 863-64 (6th Cir. 2005) (permitting expert to opine about age of child in pornography).

Indeed, both the relevant case law and the government's arguments only support Mr. Ulbricht's right to call Mr. Antonopoulos as an expert witness to respond to testimony by government witnesses as to Bitcoin, including analysis by government witness former Special

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Agent Illwan Yum of the FBI cyber squad as to the Bitcoins transferred from the Silk Road website to Mr. Ulbricht.

I. *The Origins of Bitcoin and the Various Purposes and Uses of Bitcoin Are Relevant to This Case and Necessary to Bring the Concept of Bitcoin Within the Ken of the Average Juror*

The government argues, at 3 of its letter, that Mr. Antonopoulos should not be permitted to testify as to the origins and uses of Bitcoin because "[t]he 'origins' and 'various purposes and uses' of Bitcoin are no more relevant here than the 'origins' or 'various purposes and uses' of cash would be relevant in a traditional drug dealing or money laundering case." In fact, the opposite is true. Most lay people, and thus most of our jurors, have had bank accounts and are comfortable and familiar with cash transactions. But, Bitcoin is a concept outside the ken of the average juror and most, if not all, of our jurors have never conducted a single Bitcoin transaction. The defense should therefore be permitted to call an expert witness to familiarize the jury with Bitcoin, and to demystify the concept of Bitcoins. To prevent the defense from doing so could cause the jury to convict Mr Ulbricht simply based on their fear of the unknown. At the very least, expert testimony should be permitted to explain a complex and unfamiliar topic that is directly relevant to the charges in this case.

II. *The Exchange Value of Bitcoin Is a Proper Subject of Expert Testimony and Its Fluctuation Over Time Is Directly*

The government claims, at 4 of its letter, that "'the value of Bitcoin over time since its inception, and the cause of various increases and decreases in the value of Bitcoin at certain points in time,' as well as 'the dollar value of Bitcoins generated through transactions on Silk Road, at various points in time, including at the time or Mr. Ulbricht's arrest'" are "not proper subjects of expert testimony in this matter**."**

In fact, the exchange value of bitcoin and causes of fluctuation in that value are proper subjects of expert testimony in that they are directly relevant to this case. Through the testimony of former Special Agent Ilhwan Yum, the government sought to show that a total of over 700,000 bitcoins were transferred from the Silk Road bitcoin wallets to a wallets contained on Mr. Ulbricht's laptop. *See* GX 620. However, the Government seized only 144,000 bitcoins from the wallet contained on Mr. Ulbricht's laptop. *See* Trial Transcript, at 1673.

The testimony of Mr. Antonopoulos will establish that market forces inherent in the Bitcoin market during the relevant time period would have precluded a cash out from the market totaling the difference between the amount the government claims was transferred to Mr. Ulbricht's wallet and the amount actually recovered. Mr. Antonopoulos can testify about the

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liquidity of the bitcoin market and how a withdrawal from the market a fraction of the size of the 540,000 bitcoin discrepancy would have caused drastic fluctuations in the market price of Bitcoin during the relevant time period. This testimony is materially relevant to the defense because the government has asserted that over 700k in bitcoins were transferred to a wallet located on Mr. Ulbricht's laptop, which is suggestive to the jury that Mr. Ulbricht was able to secrete an enormous amount of Bitcoin prior to being arrested. However, this number is contested by the defense and will be attacked through the testimony of Mr. Antonopoulos.

Moreover, expert testimony as to the value of Bitcoin is a proper subject of expert testimony. Indeed, in *United States v. Romano*, 859 F. Supp. 2d 445, 460 (E.D.N.Y. 2012), in addition to permitting the government to submit a valuation chart summarizing coin values (as the defense did here), the government presented expert testimony as to value of coins based on published price guides and newsletters in a money laundering prosecution. Accordingly, the same kind of testimony should be permitted in Mr. Ulbricht's case.

III. *Mr. Antonopoulos Should Be Permitted to Provide Expert Testimony As to the Mechanics of Bitcoin Transactions, the Ability to Track Bitcoin Transactions, and as to the Bitcoins Transferred from Silk Road to Mr. Ulbricht's Laptop*

The government claims, at 5–6 of its letter, that Mr. Ulbricht should be precluded from calling Mr. Antonopoulos to testify as to the ability to track Bitcoin transactions, the "mechanics" of Bitcoin transactions, and seemingly also as to whether the Bitcoins from Silk Road can be tied to Mr. Ulbricht. However, the government has put on purported lay witness testimony through former Special Agent Illwan Yum of the FBI's cyber squad, that the transactions on the Blockchain can be tracked from Silk Road to Mr. Ulbricht. Former SA Yum worked alongside Matthew Edmond, a PhD in cryptology, for more than 100 hours, at a cost of $55,000 to the government, to complete his analysis of the Blockchain and provide his opinion as to the ability to track Bitcoins in this case. His testimony also required the use of complex charts and graphs. Accordingly, the integrity of the bitcoin analysis conducted by former SA Yum is clearly relevant in that it is a material fact at issue in this case. Mr. Ulbricht must be permitted to call an expert witness during the defense case to challenge the Government's assertion, admitted as evidence in GX 620, that over 700,000 bitcoins were transferred to a bitcoin wallet contained on his laptop. Independent defense investigation has uncovered that this number is implausible and the defense, through Mr. Antonopoulos, seeks to dispute this finding.

Indeed, it is well-settled that an expert witness can be called to "assess or critique another expert's substantive testimony." *See Nature's Plus Nordic A/S v. Natural Organics Inc.*, 92 F. Supp.2d 237, 239 (E.D.N.Y. 2013). *See also Stroheim & Romann, Inc. v. Allianz Ins. Co.*, No. 01 CIV. 8236 (LTS), 2003 WL 21980389, at *4 (S.D.N.Y. Aug. 14, 2003) (". . . properly supported expert testimony critiquing another expert's opinion is admissible"), *see also In re*

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Blech Sec. Litig., No. 94 CIV. 7696 (RWS), 2003 WL 1610775, at *20 (S.D.N.Y. Mar. 26, 2003) (courts often permit expert testimony "for the sole purpose of critiquing and thereby helping to explain the work of an expert witness retained by another party"). In fact, the failure of a defense attorney in a criminal trial to put on such rebuttal expert testimony has been deemed to be constitutionally deficient. *See Gerston v. Senkowski*, 299 F.Supp.2d 84, 103-105 (E.D.N.Y. 2004) (holding trial counsel's failure to consult with or call an expert to rebut the government's expert witness on the same issue "is an independent and sufficient indication of deficiency").

In this case, even though Mr. Yum testified as a lay witness, the nature of his testimony was akin to that of an expert witness in that it was complex and dealt with Blockchain transactions that are outside the ken or familiarity of the average juror. He also drew conclusions, based on his assessment of those Blockchain transactions, that go to the ultimate issues in this case. In such circumstances, it is clear, as stated above, that the defense is entitled to call a rebuttal expert witness to address that testimony head on.

Moreover, the "mechanics" of Bitcoin transactions are a necessary element of any Bitcoin tracking analysis, and the defense should be permitted to put on expert testimony regarding such "mechanics" because they are not within the knowledge of the average juror. The government admits as much when it states, at 5, that "[t]he 'mechanics' of Bitcoin transactions to which the Defense Letter refers – 'wallets,' 'accounts,' 'exchanges,' and the "'[B]lockchain' – are concepts familiar to any layperson *who has ever used Bitcoins*." As the Court is well-aware, the vast majority of laypeople, including all of the jurors on this case, have never used Bitcoin. Thus, expert testimony is completely appropriate, and necessary, as to this issue.

Thus, Mr. Antonopoulos should not be precluded from providing relevant and material testimony as to the mechanics of Bitcoin transactions, the ability to track transactions and participants in Bitcoin transactions, and most critically, as to the Bitcoins transferred between Mr. Ulbricht's laptop and the Silk Road Market server wallets.

IV. *Mr. Antonopoulos Should Be Permitted to Provide Expert Testimony On the Subjects of Bitcoin Speculating and Mining*

The government claims, at 6, that the "'concepts of Bitcoin speculating and Bitcoin mining are not relevant to the case" and therefore that such testimony should not be permitted. In support of this position they cite *United States v. Zafar*, No. 06-CR-289JG, 2008 WL 123954 (E.D.N.Y. Jan. 11, 2008). The *Zafar* case is clearly distinguishable from the circumstances of Mr. Ulbricht's case.

In *Zafar*, the Court concluded that because there was no independent evidence that the

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defendant used stock selection software at the time of the crimes charged, expert testimony regarding how the software worked, which could imply to the jury that the defendant chose stocks on the basis of recommendations made by the software, was inappropriate. *Zafar,* No. 06-CR-289JG, 2008 WL 123954, at *2 (E.D.N.Y. Jan. 11, 2008). Given that trial counsel agreed with the Court that the expert would be unable to testify whether the stock-selection software would have led users to choose the stocks at issue in the case, that portion of his testimony related to how the software worked was excluded because it would have been "an impermissible substitute for evidence that the trading activity at issue . . . was the consequence of the use of this software." *Id.* at *2 (E.D.N.Y. Jan. 11, 2008).

Here, the factual link between Bitcoin speculating – a possible source of the Bitcoins on Mr, Ulbricht's laptop and thus relevant to this case – and Mr. Ulbricht has been independently established by the testimony of Richard Bates, who testified that Mr. Ulbricht was engaged in Bitcoin speculating during the relevant time.

Accordingly, Mr. Antonopoulos should be permitted to explain the concepts of Bitcoin mining and speculating to the jury.

Conclusion

Accordingly, for all these reasons, it is respectfully submitted that the government's application to preclude the expert testimony of proposed defense expert Andreas M. Antonopoulos should be denied in its entirety.

Respectfully submitted,

Joshua L. Dratel

JLD/lal

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION

29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

February 1, 2015

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted in response to the government's January 31, 2015, letter seeking preclusion of the expert testimony of proposed defense witness Dr. Steven Bellovin. For the reasons set forth below, the government's application should be denied in its entirety.

I. ***The Expert Notice Provided to the Government Regarding Dr. Bellovin's Testimony Is Sufficient Pursuant to Rule 16 (b)(1)(C), Fed. R. Crim. P., and His Testimony Should Not Be Excluded for Failure to Comply With Rule 16 (b)(1)(C), Fed.R. Crim.P.***

The government claims in its letter, at 4, that the expert notice provided regarding the testimony of Dr. Bellovin is "plainly insufficient under the Federal Rules of Criminal Procedure, as it merely provides a list of topics the defense seeks for Dr. Bellovin to testify about." While the defense disagrees with the characterization of the expert notice as to Dr. Bellovin's testimony, Dr. Bellovin's testimony should regardless not be precluded without an opportunity for defense counsel to provide further specifics as the opinions Dr. Bellovin plans to offer and the bases for those opinions.

Indeed, even if a party is found to have made insufficient disclosures regarding the

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proposed testimony of their expert witness pursuant to Rule 16, it is appropriate for that party to be given the opportunity to correct the insufficiency before the extreme remedy of preclusion of the expert testimony is warranted. *See United States v. Mavashev*, No. 08-CR-902(DLI)(MDG), 2010 WL 234773, at *2 (E.D.N.Y. Jan. 14, 2010) (holding that the "failure to disclose must generally be complete before a court will preclude an expert witness from testifying" and that exclusion of expert was not warranted because "it cannot be asserted that the government has 'made no attempt at all' to comply with Fed.R.Crim.P. 16(a)(1)(G)"). *See also United States v. Healey,* 860 F.Supp.2d 262, 268 (S.D.N.Y. 2012) (citing Court's broad discretion to fashion a remedy, including granting discovery or a continuance).

Nor is the bar for sufficiency particularly high. *See United States v. Lesniewski*, No. 11 CR 1091, 2013 WL 3776235, at *12 (S.D.N.Y. July 12, 2013) (Court found that the "plain language" of the Rule was satisfied when the government disclosed the C.V. of its expert witness, as well as disclosing that its expert witness "was expected to offer opinions based on his training and experience and his review of certain records").

Thus, in an abundance of caution, the defense provides the following additional details regarding Dr. Bellovin's proposed expert testimony, including each subject's relationship to cross-examination that was precluded because it was held to be beyond the scope of direct examination (thereby requiring a defense witness):

1. *General Principles of Internet Security and Vulnerabilities*

On cross-examination, Special Agent Kiernan was asked about the security implications of open ports on a computer connected to the internet. (*See* Tr. at 1071 – 1074). Defense exhibit C-1 provided to the Government is the "settings" file associated with the Bit torrent client that was known to be running on Mr. Ulbricht's computer at the time of his arrest. The file demonstrates that the Bit torrent client was listening on a range of ports and the defense will elicit testimony from Dr. Bellovin as to the security implications of this practice. This is both material and relevant to the defense theory because it calls to question the source of the information recovered from Mr. Ulbricht's laptop.

2. *The Operation of Timestamps in UNIX-based Operating Systems*

One issue that has repeatedly arisen is the question of when certain files on Mr. Ulbricht's laptop were created and/or modified. (*See e.g,* Tr. at 923 "And what was the date that this file was last changed, according to the metadata?"). Special Agent Kiernan admitted on cross-examination that this type of metadata can be edited. There is a factual issue with regard to a statement made by Special Agent Kiernan on cross-examination, in which he testified that the Ext4 version of the file system records creation time for files on the Ubuntu Linux operating

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system. The defense seeks to elicit testimony from Dr. Bellovin with respect to this issue, as well as the fact that timestamps can in UNIX-based operating systems can be edited using the program, "Touch."

3. ***The Import of Certain Lines of PHP Code Produced In Discovery***

The specific lines of code have been provided to the Government as defense exhibits C5 – C8. These lines of PHP code in conjunction with the data provided in defense C9 demonstrate how a user logging into the Silk Road Market server could access the Mastermind page on the server. The defense sought to question Special Agent Kiernan on the PHP code from the server controlling access to the mastermind page but was foreclosed from doing so. (*See* Tr. at 1084). The defense seeks to elicit testimony from Dr. Bellovin on the question of whether an individual logging in on the Dread Pirate Roberts account would automatically be directed to the Mastermind page.

4. ***Forensic Memory Analysis***

During the testimony of Special Agent Beeson, testimony was elicited on cross-examination that Mr. Ulbricht's laptop crashed before a full capture of the system's memory could be captured. (*See* Tr. at 1246). The defense seeks to elicit testimony from Dr. Bellovin regarding information that is stored in RAM on a live system. Such information includes the processes or computer programs that are running on a given system. Such testimony is relevant because it demonstrates that without a full RAM capture, it cannot be determined with any certainty whether or not Mr. Ulbricht's laptop suffered a security breach or was compromised in any way.

5. ***General Issues Related to Linux-based Operating Systems, Including Security, Implications of Various Linux Kernel Versions, and Differing Methods of Software Installation***

Special Agent Kiernan testified on direct examination that the Torchat program automatically assigns the name "myself" in the log files it generates to the person using the computer. (*See* Tr. at 890). This testimony was the result of a test that was run by Special Agent Kiernan on a virtual computer that was setup to mimic Mr. Ulbricht's laptop. On cross-examination, Special Agent Kiernan admitted that he did not know whether the version of the Torchat program he used for his experiment was the same version as the Torchat program on Mr. Ulbricht's laptop. This could lead to a markedly different result.

Nor was the defense permitted to question SA Kiernan as to whether he ensured that he was using the same Linux Kernel version for his experiment as that of Mr. Ulbricht's laptop.

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(*See* Tr. at 1091). Varying kernel versions in the linux operating system can alter the way a system's software and hardware function.

The defense seeks to elicit testimony from Dr. Bellovin as to the varying methods of software installation in linux operating systems, which can change the way a computer program operates. This includes varying kernel versions and software versions. This testimony is material and highly relevant because it challenges the results of SA Kiernan's test regarding the torchat program and its logging function.

6. ***General Principles of Public-key Cryptography***

The defense seeks to elicit testimony from Dr. Bellovin with regard to proper storage methods of private PGP keys on a given system, as well as the ease of transferring private and public keys from one computer user to another. The defense was foreclosed from questioning SA Kiernan about secure storage for private keys on a computer. (*See* Tr. at 1063).

II. *Expert Notice as To Dr. Bellovin Is Also Timely and Appropriate, and The Government Improperly Seeks to Preclude His Testimony On Those Grounds*

The government, in its letter, at 6, and n.1, contends that the defense "has waited until such a late stage of the proceeding to notice an expert" given that the "defendant has had more than ample time to develop a potential expert" and also goes so far as to criticize defense counsel's in-court "suggest[ion]" that "his need to call expert witnesses has arisen from the fact that he has not been able to elicit evidence required to support the defense theory through the cross-examination of the Government's fact witnesses." The government's assertions are entirely unavailing and do not warrant the preclusion of Dr. Bellovin's testimony.

In fact, the defendant has every right to assess the evidence that has come in through the government's case-in-chief before determining whether to consult and call upon an expert witness, and thus it is entirely proper for Mr. Ulbricht to provide expert notice as to Dr. Bellovin's testimony just prior to the close of the government's case when the necessity of the testimony became apparent. *See United States v. Tin Yat Chin*, 476 F.3d 144, 146 (2d Cir. 2007) (government's rebuttal expert was permitted to testify although the prosecution did not disclose its intent to call the expert or anything about his testimony until the day before the defense rested and court permitted defense to have one day continuance to prepare for the rebuttal expert witness).

Indeed, as detailed **ante**, given the limitations placed on Mr. Ulbricht's ability to cross-examine certain witnesses, namely Special Agent Christopher Beeson and Special Agent Thomas Kiernan, as to particular areas relevant to the defense theory, and the lack of opportunity

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to elicit relevant evidence through subsequent government witnesses, it is neither surprising, nor untimely, nor unreasonable for the defense to consult with and to ultimately decide to call Dr. Bellovin at this stage in the trial. *See, e.g., Gersten v. Senkowski*, 426 F.3d 588, 601 (2d Cir. 2005) (finding in context of ineffective of assistance of counsel claim that "defense counsel didn't need to consult with or call expert witnesses to rebut the People's experts who were neutralized by cross-examination").

Nor are the subject matters of Dr. Bellovin's testimony a mystery to the government, or outside the scope of the discovery provided by the government – with which by now it should be sufficiently familiar – and even the government's exhibits at trial. In fact, the government's objections are a problem of its own making: despite an Exhibit deadline of December 3, 2014, the government has throughout the trial (and the period just before trial) added dozens of exhibits, modified scores of others, and deleted dozens as well. The government also added three witnesses and removed one (representing, in effect, a 33% change in its witness list). The moving evidentiary target the government has created throughout trial more than amply justifies the defense's inability to assess the contours of the government's case, and, in turn, the need for a defense expert, until the government's actual case was presented.

Thus, Dr. Bellovin's testimony should be permitted by the Court as appropriate and timely.

Conclusion

Accordingly, for all these reasons, it is respectfully submitted that the government's application to preclude the expert testimony of proposed defense expert Steven Bellovin should be denied in its entirety.

Respectfully submitted,

Joshua L. Dratel

JLD/lal

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ROSS WILLIAM ULBRICHT,

Defendant.

14-cr-68 (KBF)

OPINION & ORDER

KATHERINE B. FORREST, District Judge:

Any further submissions regarding defendant's proposed expert witness Andreas M. Antonopoulos shall be submitted not later than 2:00 p.m. today, January 31, 2015. Any other motions regarding experts must be received by 4:00 p.m. today, January 31, 2015. Any response to any such new motions shall be submitted not later than 12:00 p.m. tomorrow, February 1, 2015.

SO ORDERED.

Dated: New York, New York
January 31, 2015

KATHERINE B. FORREST
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
	:	
-v-	:	
	:	14-cr-68 (KBF)
ROSS WILLIAM ULBRICHT,	:	
a/k/a "Dread Pirate Roberts,"	:	ORDER
a/k/a "DPR,"	:	
a/k/a "Silk Road,"	:	
	:	
Defendant.	:	

KATHERINE B. FORREST, District Judge:

The defense shall disclose any exhibits it proposes to use with experts or otherwise to the Government not later than **5 p.m. today, January 31, 2015**.

SO ORDERED.

Dated: New York, New York
January 31, 2015

K. B. Forrest

KATHERINE B. FORREST
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ROSS WILLIAM ULBRICHT,

Defendant.

14-cr-68 (KBF)

OPINION & ORDER

KATHERINE B. FORREST, District Judge:

At the end of the day on Thursday, January 29, 2015, the Court requested—on the record—that Mr. Dratel provide notice to the Court immediately upon his receipt of the Government's motion to preclude as to when he would be responding to that motion. The Government filed its motion shortly after the day's proceedings concluded. The Court did not receive anything from Mr. Dratel that evening or on Friday, January 30, 2015 discussing timing, nor did the Court receive anything from Mr. Dratel on the morning of Saturday, January 31, 2015.

On Saturday, January 31, 2015, the Court issued an order, which was emailed to counsel at 10:00 a.m., requiring any response by 2:00 p.m.—and only at 2:01 p.m. did the Court hear from Ms. Lewis that religious observance prevented Mr. Dratel from complying with the Court's order. Mr. Dratel should have informed the Court of this issue before—not after—the weekend began. The Court also has a schedule.

The Court intends to decide on the motion to preclude promptly. Accordingly, any legal response to the Government's motion to preclude shall be filed not later

than 8:00 p.m. tonight. That is it. Ms. Lewis's letter mentions "submissions" relating to Antonopolous—the only submission is the legal response to the Government's motion. The Court assumes that defendant is not now, at this late date, considering putting in additional materials relating to Antonopolous.

The Court is unclear as to whether there is an additional expert who has been disclosed. Any additional expert would have to have been disclosed before now—if such a disclosure has not been made by now, it is untimely and shall not be allowed.

All exhibits relating to defense witnesses shall be made **not later than 10:00 p.m.** this evening, January 31, 2015.

SO ORDERED.

Dated: New York, New York
January 31, 2015

KATHERINE B. FORREST
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ROSS WILLIAM ULBRICHT,

Defendant.

14-cr-68 (KBF)

OPINION & ORDER

KATHERINE B. FORREST, District Judge:

The Court has just learned that on January 30, 2015, defendant noticed an additional expert witness, Mr. Steven M. Bellovin. The Government has moved to preclude Bellovin from testifying. (ECF No. 70.) Defendant shall respond to the Government's motion to preclude Bellovin's testimony not later than **Sunday, February 1, 2015** at **9:00 a.m.** Today's 10:00 p.m. deadline for defendant's response to the Government's motion to preclude the testimony of Andreas M. Antonopoulos (ECF No. 165) remains in place.

SO ORDERED.

Dated: New York, New York
January 31, 2015

KATHERINE B. FORREST
United States District Judge

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION
29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL

LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

February 2, 2015

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

2/5/2015 ORDERED
Post on Docket
K. B. Forrest
Katherine B. Forrest, USDJ

Re: *United States v. Ross Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted in regard to the statement by Andrew Jones, a/k/a "inigo" that have been the subject of negotiations with respect to potential stipulation between the parties. Those negotiations have reached an impasse because the government seeks to include in the stipulation conclusions by Mr. Jones that deny Mr. Ulbricht his Sixth Amendment right to confrontation, are inadmissible as Mr. Jones's conclusions, and which the government could have attempted to obtain by calling Mr. Jones, who has pleaded guilty pursuant to a cooperation agreement with the government, as a witness – a decision the government has foregone.

As a result, Mr. Ulbricht moves for admission of the statement under Rule 804(3)(b), Fed.R.Evid., as a statement against penal interest, and/or under Rule 807, Fed.R.Evid. Mr. Ulbricht also moves for the statement's admission pursuant to the Fifth Amendment's Due Process guarantee. *See Chambers v. Mississippi*, 410 U.S. 284, 302 (1973). Mr. Ulbricht also moves for defense witness immunity pursuant to the Fifth and Sixth Amendments.

A "track changes" version of the stipulation is attached, with the changes proposed by Mr. Ulbricht (to the government's version that constituted a revision of the defendant's initial proposal). Mr. Ulbricht's changes are explained (and were communicated to the government) as follows:

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.

(1) in the first change in paragraph 1(c), the defense substituted the language from the government's December 29, 2014, letter, which was contemporaneous with the interview of Mr. Jones (and there being no 3500 material that depicts the conversation in any other manner), and therefore more reliable. A copy of the government's December 29, 2014, letter is attached hereto as well; and

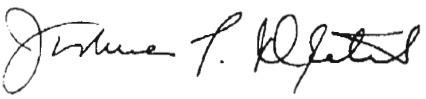
(2) also in that paragraph, the defense deleted the two expressions of "belief" by Jones, both of which present confrontation issues as well as opinion testimony that should be established by stipulation.

In the interests of achieving agreement, the defense also would agree to inclusion of the information about Mr. Jones's guilty plea [in paragraph 1(a)], even though, again, that presents Sixth Amendment confrontation issues.

The government made an intentional and conscious decision, mid-trial, not to call Mr. Jones. The government should not benefit from that decision by gaining admission of information that would compromise Mr. Ulbricht's Sixth Amendment confrontation rights. In order to gain admission of such information, the government should have called Mr. Jones as a witness.

Accordingly, it is respectfully submitted that Mr. Jones's statement should be admitted pursuant to Rule 803(4) and/or Rule 807, or Mr. Jones should be granted defense witness immunity.

Respectfully submitted,



Joshua L. Dratel

JLD/lal

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

December 29, 2014

By E-mail
Joshua L. Dratel, Esq.
2 Wall Street, 3rd Floor
New York, NY 10005

Re: *United States v. Ross William Ulbricht*, 14 Cr. 68 (KBF)

Dear Mr. Dratel:

The Government writes concerning two discovery matters.

First, the Government writes to reiterate its requests for reciprocal discovery from the defense in this matter. In particular:

- Pursuant to Rule 16(b)(1)(A), the Government requests disclosure of any exhibits the defense intends to use in its case-in-chief at trial.

- Pursuant to Rule 16(b)(1)(B), the Government requests disclosure of any results or reports of any scientific test or experiment that the defense intends to use in its case-in-chief at trial or that relates to the testimony of any witness the defense intends to call who prepared any such report.

- Pursuant to Rule 16(b)(1)(C), the Government requests disclosure of a written summary of any expert testimony the defendant intends to use at trial.

- Pursuant to Rule 12.1(a)(2), the Government requests that the defense notify the Government of any intended alibi defense, including any alibi concerning the defendant's whereabouts at the date and time of any communication of "Dread Pirate Roberts" reflected in any the Government's exhibits produced to the defense or any such exhibit the defense intends to use at trial.

Second, although the Government does not believe that the information below is required to be disclosed under either *Brady* or *Giglio*, or their progeny, the Government advises you, in an abundance of caution, of the following information provided by Andrew Michael Jones, a/k/a "Inigo," in a recent witness interview:

> At some point in or about August or September 2013, Jones tried to authenticate that the Silk Road user "Dread Pirate Roberts" whom he was talking to at the time (via Pidgin chat) was the same person with whom he had been communicating in the past with this username. Previously, in or about October 2012, Jones and "Dread Pirate Roberts" had agreed upon a "handshake" to use for authentication, in which Jones would provide a certain prompt and "Dread Pirate Roberts" would provide a certain response. When, during the 2013 chat in question, Jones provided what he believed to be the designated prompt, "Dread Pirate Roberts" was unable to provide the response Jones thought they had agreed on. However, later in the chat, Jones asked "Dread Pirate Roberts" to validate himself by specifying the first job that "Dread Pirate Roberts" assigned to him (running the "DPR Book Club"), which "Dread Pirate Roberts" was able to do.

The Government is unaware of any extant record of the 2013 chat described by Jones. There is a record of an October 2012 chat between the defendant and Jones discussing a "handshake" in the file labeled "mbsobzvkhwx4hmjt" on the defendant's computer, which has already been provided to the defense in discovery.

Sincerely,

PREET BHARARA
United States Attorney

By: _____
Serrin Turner
Assistant United States Attorney

Enclosures

7UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v.-	:	**STIPULATION**
ROSS ULBRICHT, a/k/a "Dread Pirate Roberts," a/k/a "DPR," a/k/a "Silk Road,"	:	S1 14 Cr. 68 (KBF)
Defendant.	:	

IT IS HEREBY STIPULATED AND AGREED by and between the United States of America, by Preet Bharara, United States Attorney for the Southern District of New York, Serrin Turner and Timothy Howard, Assistant United States Attorneys, of counsel, and Ross Ulbricht, by and through his counsel, Joshua Dratel, Esq., as follows:

1. If called as a witness in this matter, ANDREW JONES would testify as follows:

a. JONES worked as a member of the Silk Road support, under the username "Inigo," from in or about October 2012 to in or about October 2013. As a staff member, JONES helped resolve disputes between Silk Road customers and drug dealers and other vendors operating on the site, among other things. On October 2, 2014, JONES pled guilty to conspiring to commit narcotics trafficking in violation of Title 18, United States Code, Section 846, conspiring to commit and to aid and abet computer hacking in violation of Title 18, United States Code, Section 1030(b), conspiring to traffic in fraudulent identification documents in violation of Title 18, United States Code, Section 1028(f), and conspiring to commit money laundering, in violation of Title 18, United States Code, Section 1956(h).

b. Defense Exhibit C-1 is a true and accurate log of a chat that JONES had with "Dread Pirate Roberts" on October 16, 2012, when JONES was initially hired. The log is an excerpt of a file recovered from Mr. Ulbricht's laptop following his arrest (labeled "mbsobzvkhwx4hmjt").

b. During the October 16, 2012 chat, "Dread Pirate Roberts" and JONES (who was using the username "PatHenry" at the time) came up with a potential "handshake" for JONES to use if he was ever unsure he was talking to "Dread Pirate Roberts." "Dread Pirate Roberts" told JONES: "how about 'can you recommend a good book?' and I'll say 'anything by Rothbard.'" JONES responded, "perfect!"

c. Approximately eleven months later after this chat, in or about August or September 2013, JONES tried to authenticate that the Silk Road user "Dread Pirate Roberts" whom he was talking to at the time (via Pidgin chat) was the same person with whom he had been communicating in the past with this username. JONES tried the handshake for the first time, asking "Dread Pirate Roberts" if he could recommend a good book. "Dread Pirate Roberts" did not respond by saying "anything by Rothbard." However, later in the chat, JONES then tried a different way of confirming he was talking to "Dread Pirate Roberts" by asking ~~a question that he believed only "Dread Pirate Roberts" would know the answer to.~~ JONES asked "Dread Pirate Roberts" if he remembered the first job that "Dread Pirate Roberts" assigned to him when he was first hired. "Dread Pirate Roberts" accurately answered that question (running the "DPR Book Club"), satisfying JONES that ~~he was talking to the same person who originally~~ hired him.

The above-referenced Exhibit (DX C-1) and this Stipulation (Defense Exhibit S-1) are admissible as Defense exhibits at trial.

Dated: New York, New York
February___, 2015

PREET BHARARA
United States Attorney
Southern District of New York

By: _____
SERRIN TURNER
TIMOTHY T. HOWARD
Assistant United States Attorneys

_____
JOSHUA L. DRATEL
Counsel for the Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 14 Cr. 68 (KBF)

ROSS WILLIAM ULBRICHT,

Defendant.

----------x

New York, N.Y.
January 14, 2015
9:20 a.m.

Before:

HON. KATHERINE B. FORREST,

District Judge

APPEARANCES

PREET BHARARA,
United States Attorney for the
Southern District of New York
BY: SERRIN A. TURNER
TIMOTHY HOWARD
Assistant United States Attorneys

JOSHUA LEWIS DRATEL
LINDSAY LEWIS
JOSHUA HOROWITZ
Attorneys for Defendant

- also present -

Special Agent Vincent D'Agostino
Molly Rosen, Government Paralegal
Nicholas Evert, Government Paralegal
Sharon Kim, Government Legal Intern

in which case, I just wanted to know that.

MR. TURNER: May I speak to that briefly. The defense is required to give us notice of any expert they plan to use and we have asked for any such notice. None has been given. So if any expert is sprung on us at the last minute, we will object for lack of notice.

THE COURT: I assume you folks are giving each other all of the required notices that are necessary. I had just noted yesterday during the opening that there hadn't been a preview of anything in particular, but nor is the defendant required to do so.

MR. DRATEL: Yes. And we'll provide, as soon as I have a firm intention to call a witness, we will provide it. If it's an expert, we'll do it at the earliest possible rather than at the latest.

THE COURT: Terrific. Thank you. Then, did you, Mr. Dratel, want me to give the jury an instruction on ladies and gentlemen, you'll note that there are objections and there will be objections by counsel for both the government and the defendant from time to time, that's perfectly appropriate, indeed that's expected and that's counsel doing their job and you should draw no inference from the fact of objections or the Court's rulings?

MR. DRATEL: I have written something up but you just covered it.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 14 Cr. 68 (KBF)

ROSS WILLIAM ULBRICHT,

Defendant.

----------x

New York, N.Y.
January 15, 2015
9:19 a.m.

Before:

HON. KATHERINE B. FORREST,

District Judge

APPEARANCES

PREET BHARARA,
United States Attorney for the
Southern District of New York
BY: SERRIN A. TURNER
TIMOTHY HOWARD
Assistant United States Attorneys

JOSHUA LEWIS DRATEL
LINDSAY LEWIS
JOSHUA HOROWITZ
Attorneys for Defendant

- also present -

Special Agent Vincent D'Agostino
Molly Rosen, Government Paralegal
Nicholas Evert, Government Paralegal
Sharon Kim, Government Intern

was going on with respect to other pursuits of Karpeles and what was going on with other agencies investigating or other U.S. Attorney's offices investigating him, right?

A. Yes.

Q. And as part of that you had conversations and read memoranda and were in touch with people who provided to you information about it so that you could pursue your own investigation correctly, right?

A. Be more specific. I am sorry.

Q. Sure. That you wanted to know what was going on with Baltimore, you wanted to know what was going on with the meeting with Karpeles' attorneys, you wanted to know what was out there because you had your own parallel independent investigation of him going on that could be completely wiped out by what Baltimore was doing?

A. Yes. And we had verbal agreements with the attorneys in that district also about that.

Q. And so in the course of this and in pursuing your investigation, you learned that Karpeles' lawyers had made that offer to the government?

MR. TURNER: Objection.

Q. You learned through people either in Baltimore or at HSI in Chicago?

MR. TURNER: Objection. Hearsay.

THE COURT: Sustained.

(At the side bar)

THE COURT: Let me say that I don't want to do this in front of jury. There's no inconsistent statements so the fact it that he's sworn to it doesn't get you for impeachment purposes to ability to put that in.

MR. DRATEL: Right. What I want to do is get the basis for his conclusions of his investigations.

THE COURT: Why don't you ask him?

MR. DRATEL: That's fine. And the government's objection is hearsay, I have no problem that it's not for the truth. It's just for what his investigation collected that led him to have probable cause to believe --

MR. TURNER: But --

THE COURT: What the investigation -- so you would ask him, and tell me, Mr. Turner, what your view is.

MR. TURNER: That sounds like it is being offered for the truth of the matter; he's trying to get out what the probable cause was for the affidavit. He's trying to establish that these are the facts, that show that somebody else, in fact, was running Silk Road, that somebody else is the real operator of the site.

THE COURT: It's obviously, number one, we can all agree it's obviously highly relevant, right, if the lead investigator believed at one point in time in August of 2013 that somebody else might be a candidate, then how he arrived at

how that fellow was a candidate is obviously relevant; and also how he changed his mind if he changed his mind would similarly be relevant. And you could go into that to your heart's content on redirect and Mr. Dratel can bring it out.

MR. TURNER: I think there are two concerns I have, your Honor, one is, I understand if he believed these things, but it's another thing to start citing the evidence that consists of hearsay from a confidential informant. That's core hearsay.

THE COURT: It goes to his state of mind, though.

MR. TURNER: I think it's going to be impossible for the jury to segregate that out. We're bringing out --

THE COURT: I'll give them a limited instruction, but I'm going to allow him to ask what was the basis for his view that somebody else was an appropriate target. That strikes me as in the heartland of the defense.

MR. TURNER: Another problem I have is law enforcement privilege. If we're going to start getting into statements of confidential informants, these are people who have brought information to the government in secrecy.

THE COURT: Here's what we're going to do. We won't have him go into the content of the communications. He can simply list, and why don't you take it carefully?

MR. DRATEL: Okay.

THE COURT: And let's cut him off if he's going to go

into the content of any of those communications. He's just going to give an itemized list of these are the types of things I relied on.

MR. TURNER: Not only the contents but the source, the identity of somebody --

MR. DRATEL: The information --

THE COURT: What I was going to say is, the point that I think it's fair for the defense to bring out is that there was information listing the sources that led the investigator to believe at one point in time that there was probable cause for purposes of a warrant. That I think can be done in a way that does not invoke hearsay, all right. So do it in that way that does not get us into the hearsay problem.

MR. DRATEL: Tell him what information -- can I lead him?

THE COURT: You're on cross.

MR. DRATEL: Yes, right.

THE COURT: You can just say -- why don't you ask him what his conclusion is if he ever reached a conclusion and what the source was to give you an itemized list of the types of information --

MR. DRATEL: But the silkforum.org is important because it's the one that some of the initial --

THE COURT: You can't go into the content of what the bitcoin forum was.

MR. DRATEL: No. To say that he was running it. That's the information they had.

THE COURT: That's definitely -- you're trying to get that in for the truth, right? That is exactly the truth, so you can't do that.

MR. TURNER: We would ask for a strong limiting instruction here, your Honor.

THE COURT: He's saying it's not going to go into the hearsay. I think we can do this in a way that does not suggest hearsay.

MR. TURNER: My concern, is this the defense that the defendant wants to put on, that there was another individual behind it and this is the witness that they're seeking to draw that evidence out of?

THE COURT: Yes.

MR. TURNER: So that is being offered for the truth in terms of the evidence --

THE COURT: No. Let's go through it so we're absolutely clear on what the question is going to be.

The question is going to be did there come a point in your investigation when you formed a basis for believing that there was probable cause for a warrant against Mr. Karpeles? Yes or no?

You got these in mind?

MR. DRATEL: Yes.

THE COURT: Then it's going to be tell me, just by source type, the type of sources that led you to that. They were written information that I had received, it was witnesses. I can lead him through that if you want to, but you can do it.

MR. DRATEL: No. That's okay. If I'm running astray, you'll let me know.

THE COURT: Then what do you want to do next because those are not hearsay so far. The fact that he did reach that conclusion is clearly something that he can testify to.

MR. TURNER: I understand that. I guess my concern there is if he just says something like witnesses, then it makes it sound potentially more significant than it is.

THE COURT: Then you can go back on cross, but that's not hearsay. That's part of a list of items. I can't preclude him from that. I don't think there's a basis to preclude him from that.

MR. TURNER: As long as it's very clear that he's not saying that a witness told me that.

THE COURT: No, no. We're not going to let him go into content. He can't go into the content of the communications.

MR. TURNER: Then I'm not sure what he can draw out of the question. I understand that he can show -- that asking this witness whether he believes someone else was the person in charge of Silk Road is relevant, but beyond that, unless -- I

don't know what the point of going further is unless the defendant is seeking to draw that information out for the truth to show there was credible evidence that somebody else --

THE COURT: Well, he is saying this investigator reached a point of having believing there was probable cause.

MR. TURNER: I'm not even sure how that is relevant, I mean, if it's not being offered for bias --

THE COURT: It's clearly relevant; I have no problem with making a relevance ruling on this.

MR. TURNER: But why, your Honor, unless if it's being offered for truth.

THE COURT: It's being offered for the truth of probable cause. This is not hearsay. None of this we talked about so far is hearsay. There's no statement.

MR. TURNER: Right. My concern, again, is that the effect of the testimony is going to be that there were other sources --

THE COURT: He can always say there were 25 sources and he can always list the type. We don't get a hearsay problem as a matter of law until he goes into the content. I think the government's concern is that by implication, there was content. Of course, there's content in any communication. He when he says he spoke to people, there's necessarily content. He can't say what that content was, but his subsequent action led him to do something one might infer, but

that's way people get around hearsay all the time.

I understand your concern. Let's take it step by step. He clearly gets to ask about the investigator having some belief.

MR. TURNER: I would just, finally, I would note our growing concern that there actually is no legitimate basis here if the defense is not trying to show something like bias or anything else that, but, instead, is trying to prove through this witness the contents of other statements, statements of others, of witnesses that aren't being called in to testify themselves, basically the defense is trying to suggest there's all this evidence out there of the person who is running Silk Road. If that's the case, then the defense can introduce that evidence, but trying to get this witness to testify about that evidence, particularly when it concerns statements of others --

THE COURT: Here's what we're going to do because I think this is in the heartland of exactly what the defense wants to do, and I have to say right now, my view is it seems to be perfectly appropriate that this fellow says he put together an investigation which identified the defendant, he did it in the following way, showing that he may have put together an equally strong investigation to identify somebody else and that's issue: Is this the right guy?

That strikes me as a defense that can be developed

the Silk Road relies on a highly complex system for processing bitcoin strongly suggests that it was designed by someone with extensive technical expertise related to bitcoin, which Karpeles, being the owner and operator of a major bitcoin exchange and bitcoin discussion forum, clearly has.

He also talks a little further about based on training and experience, I believe it is likely that Karpeles has worked with others in establishing and operating the Silk Road website because the postings on the silkroadmarket.org are signed Silk Road staff and written in the plural first person.

Then it points to some investigative stuff. He did some other subpoenas that went out.

THE COURT: There's a bunch of that that you can get at in a way that does not invoke any of the hearsay issues that we're talking about.

MR. DRATEL: That's right. I'm just --

THE COURT: I understand.

MR. DRATEL: But there is one piece of hearsay that I don't think it's hearsay based on my purpose, which is not with respect to the affidavit because I'm trying to go through this so we get all of this out of the way right now.

THE COURT: Yeah.

MR. DRATEL: But a little further on, in the context of sort of DPR and the context of more than one DPR, there was an interview done by a journalist named Andy Greenberg of DPR,

someone claiming to be DPR, in August 2013, right at the same time. And in the interview, DPR says no, I bought the site from -- and I'm not going to go into that, that he bought the site from someone else and all of that, I'm not going to go into the hearsay -- but just the fact that in that interview, the person who claims to be DPR to Andy Greenberg says I'm not the first DPR, there were other DPRs before me. And Special Agent Der-Yeghiayan says in an email that sounds very much like Karpeles. That's what he says, that the person in that interview --

THE COURT: And so your point is that Der-Yeghiayan reads -- that's the Bloomberg article?

MR. DRATEL: Forbes.

THE COURT: So Der-Yeghiayan reads the Forbes article that has this statement in it, and I've actually run across that, and you want to bring out that statement.

MR. DRATEL: His conclusion, his conclusion that sounds very much --

THE COURT: You want to bring out the statement and the conclusion he draws from that?

MR. DRATEL: Right.

THE COURT: Tell me now, give me your argument as to why that's not rank hearsay.

MR. DRATEL: Because it's his conclusion that it sounds like Karpeles based on his investigation. It's not

whether the statement is true that there were other -- it sort of informs his conclusion and it buttresses it.

THE COURT: There's a way of getting at the "sounds" that doesn't bring out the statement, of course, so I need to understand the statement. Because the way to get out the fact that he sounds like Karpeles could be, Did you read the article? Yes. Did it -- let me finish it so the record is clear about the way it could be brought out.

Were there words that were reported to be by DPR? Yes. Did you draw any conclusions? Yes. What was your conclusion? That it sounded like Karpeles.

That doesn't require getting into the statement. So if you're going to get into the statement, tell me why, in terms of your argument, that's not rank hearsay.

MR. DRATEL: You're right. I agree. Playing it out, that's correct.

THE COURT: All right, so you could do it that way.

MR. DRATEL: That's my purpose, not to get into the other stuff that we got into.

THE COURT: So what you'd say is was there a Forbes article? In the Forbes article that you read, did you read it -- did it purport to have an interview with DPR? And did you draw any conclusions from that? Yes. What was your conclusion? X.

MR. DRATEL: Right.

to lay this out in our papers.

I think one is certainly hearsay issues to the extent that basically what the defense is trying to draw out are hearsay assertions that were proffered as support for probable cause in a search warrant affidavit, that's not competent evidence.

THE COURT: He's not going to go into the content of the communications. He would say I have these four types; I took this act.

MR. TURNER: I understand. Then our larger concern is, the witness' act is irrelevant, what this witness did is irrelevant.

THE COURT: I don't think it's irrelevant because if he pursued a target of this conduct and it wasn't the defendant, I think that's directly relevant to the defendant's theory of the case.

MR. TURNER: My point is, your Honor, what the defense is trying to prove here is not simply that this agent pursued another target. The defense is trying to argue that this other target is the real DPR.

THE COURT: They're trying to raise a reasonable doubt as to whether or not the defendant is the real DPR.

MR. TURNER: But that is the assertion they are trying to prove, so that's why the hearsay concerns we have --

THE COURT: How else do you do it?

MR. TURNER: -- are so acute.

The way the defense does it, your Honor, is by relying on competent evidence. So, for example, if they want to point to the fact that the Silk Road forums were based on a certain software that Mark Karpeles also used, that has nothing to do with what the agent did or didn't do or whether a search warrant was sworn out or not. It's a simple fact, and this agent observed that fact and can testify to it.

It's a completely different matter for the defense to say, well, didn't you hear from some confidential informant or hear from some other witness certain information that led you to believe that Mark Karpeles was the person behind it and then go to a judge with a search warrant sworn out? All of that is being offered to try to prove that someone else was running the site and that is clear hearsay being offered for the truth of the matter.

THE COURT: It's an inference. There are certain facts that are being posited to draw inferences.

Here's what I think we should do: We should all get this transcript and read this portion of it that relates to what we have just all gone over. I think that to the extent that there's any question as to whether or not the defense has been building all afternoon a picture that Mr. Karpeles was, in fact, at least arguably a DPR, that I think has come out in spades. I think the jury understands that that's the argument.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 14 Cr. 68 (KBF)

ROSS WILLIAM ULBRICHT,

Defendant.

----------x

New York, N.Y.
January 20, 2015
11:00 a.m.

Before:

HON. KATHERINE B. FORREST,

District Judge

APPEARANCES

PREET BHARARA,
United States Attorney for the
Southern District of New York
BY: SERRIN A. TURNER
TIMOTHY HOWARD
Assistant United States Attorneys

JOSHUA LEWIS DRATEL
LINDSAY LEWIS
JOSHUA HOROWITZ
Attorneys for Defendant

- also present -

Special Agent Vincent D'Agostino
Molly Rosen, Government Paralegal
Nicholas Evert, Government Paralegal
Sharon Kim, Government Intern

THE COURT: I do remember the questioning because I actually had the same thought about it falling into the opening of the door for these other pieces. One of the implications was that really bad things, other kinds of bad things were not offered on the site, for instance, things which, to pick up on a theme I think has been developed, could not harm people; that as we have seen from the signature line of certain chats, the drugs don't jump off the table and harm anyone. So I think by implication since those documents are in, the question of whether or not guns were being sold, I suppose you could argue that they don't jump off the table and hurt someone either, but it's a little further afield. It's potentially opened.

Why don't you tell me whether or not you'd be willing to strike the line? I would do it in a way that is very I think very light, which is you may have heard testimony about other goods and services that were or were not sold on the site. What's relevant to you, ladies and gentlemen, of the jury is the evidence that you have and it's for you to weigh that evidence as to what has been sold on the site.

MR. DRATEL: Can I think about that for a little bit.

THE COURT: Yes. The other issue, was there something else, Mr. Turner?

MR. TURNER: There's a third issue we'd like to raise at side bar.

THE COURT: Right. We have two side bar issues. Then

let me deal with the issue which we have all spent I assume a great deal of time on over the weekend. And as is the case with rulings like this, I have read the cases which you folks have presented me with, for which I thank you, and also did rather exhaustive research on our own to come up with what is the right way to analyze this evidentiary issue. And I'm speaking now about the evidentiary issue left over from Thursday afternoon. I'm going to call it the MK issue for the Mark Karpeles issue, but it also can relate to something more generically described as an alternative perpetrator issue.

I have read the letters submitted by the parties. I have read the cases and I also went back and reviewed the transcript of our prior proceedings. One thing I would note is that the prior transcript did convince me that there were, having now decided how to analyze this issue properly, there were all kinds of things to which the government probably should have -- undoubtedly should have objected earlier and we would have ripened this issue before it had gotten so far down the road. Part of the confusion here is trying to differentiate between similar types of questions when certain questions weren't objected to and then others were objected to. But let's put that issue of whether there would be a waiver to the side for a moment and let me tell you how I analytically put this issue together.

I want to start from the beginning, which I think is

important which is asking ourselves as to any evidentiary ruling what is this case really about. This case is about whether this defendant, Mr. Ross Ulbricht, engaged in the conduct that is charged in the counts in the indictment. So then we get to what is relevant evidence? Relevant evidence is evidence which is probative of a fact in dispute and whether the defendant is Dread Pirate Roberts or was Dread Pirate Roberts at certain points in time but not other points in time is a fact in dispute.

Then we ask what's the relevance more granularly of whether the defendant was Dread Pirate Roberts? And that is because at certain points of time, there are certain pieces of evidence where Dread Pirate Roberts does certain things which the government has presented. If Dread Pirate Roberts at that moment is Mr. Ulbricht, then that leads to one set of possible inferences; if Dread Pirate Roberts at that point in time is not Mr. Ulbricht, then it leads to another.

Now, a question which is, I think, floating around in here through this is whether or not the fact that there might be - and certainly the defense is arguing - another Dread Pirate Roberts, does that exculpate the defendant? Is it exculpatory, and that it may or may not. That will be up to the jury ultimately to decide.

First, the jury will decide whether they believe in the defense theory, which it has a right to pursue as to an

alternative perpetrator, and the alternative perpetrator, the defense alleges, is either "the" Dread Pirate Roberts or became Dread Pirate Roberts and then framed Mr. Ulbricht and turned over his identity to him at some point in time.

Now, only if the evidence relating to the Dread Pirate Roberts at a particular point in time where the reasonable inference can be drawn that it was not the defendant could it be exculpatory; in other words, you could have the defendant be Dread Pirate Roberts at one point in time, have somebody else be Dread Pirate Roberts at another point in time and had to go back to the defendant, that's not exculpatory except for the quantum of whatever the proof is in between.

For instance, if the quantity of drugs, which could be a very relevant issue, takes hold during the period of time that the defendant was not Dread Pirate Roberts, that's one thing. Of course, if the defendant is shown to join a conspiracy for narcotics distribution at any point in time, a defendant is liable for all of the acts going backwards. So as a matter of law, we know this from the *Gonzalez* case, there are oodles of cases from Supreme Court case law that a coconspirator who joins a conspiracy is liable for the acts which occurred prior to that individual joining so long as those acts were reasonably foreseeable to the coconspirator. So whether or not the presence of additional Dread Pirate Roberts helps is a question to be determined first based upon

an analysis as to whether or not there is a second - or even if Mr. Ulbricht is a first - Dread Pirate Roberts.

Now, since Mr. Ulbricht, his counsel conceded in the opening that he started Silk Road, the timing is unclear as to when and whether the defendant allegedly left Silk Road and whether or not there's a point in time when he becomes Dread Pirate Roberts before he hands over I think according to the defense theory the website. And the evidence appears to be from the government that the defendant was found at the time of arrest acting as Dread Pirate Roberts at the time of arrest. Whether that was for that one day or whether it had gone back in time and in fact covered the entire time will be for the jury to determine. So that's sort of the relevance.

Now, the Court looks at relevance broadly as the Second Circuit requires under the rules under 104, but the Court also is mindful of balancing Rule 403, which is whether or not things that require trials within trials end up being unduly confusing, misleading to the jury, and so I have that in mind and I've had that in mind as I have proceeded.

The evidence of third-party culpability and alternative perpetrator is admissible if there's sufficient evidence tieing a particular person or even if it's an unknown person to the offense. That's the *Wade* case, Second Circuit case which you both acknowledged and cited in your papers over the weekend, a 2008 case, but you do need some direct evidence

of connection. That's the other point that the *Wade* case makes clear, because it's very possible to have suspicion as to more than one person and this apparently happens as you folks know all the time, whereas the investigation eventually focuses primarily on one and one is primarily then tried and the other may never be tried.

So the question ultimately boils down to whether this particular defendant did the particular acts which would relate to or amount to Counts One through Seven, not whether somebody else also did those acts at the same time, in effect, duplicating those efforts.

So one issue is what does the defendant have that Mark Karpeles is, in fact, DPR if there's something that we're leading up to versus just trying to get that information out of the government's witness; in other words, whether or not there is going to be other evidence offered. I am mindful of Mr. Dratel's point that the timing of the turning over of the 3500 material makes certain aspects of this more difficult for the defendant because they simply haven't had time to develop all that they would have for Mr. Karpeles, but nevertheless, the defense theory has been known since at some point many months ago. It's been previewed even to the Court. So the fact of another DPR, whether it be Karpeles or somebody else, is certainly something which I assume the defense has developed to this point and, therefore, there may be lots of things which

the defendant, if he has them, would be able to present as direct evidence of that theory. For instance, now, as we all understand, it's the government's burden to show that the defendant is or is not culpable of the offenses charged. The question is whether or not the defendant wants to try to rebut some of that evidence in a particular way, but it's the government's burden in the initial instance.

So, the question is whether or not the defendant has this, for instance, like chats with a third party showing that he's about to turn over the website, soliciting interest in somebody else wanting to take over the website; in fact conveying the private key, something which indicates that there was a moment when it was copied from another computer to a different computer. There might be any variety of ways which those of you who are more technically savvy than I am could use to demonstrate that, but it's the direct evidence of another DPR which is competent evidence.

Now, we used the term competent evidence on Thursday and competent evidence, just to be clear, it needs to both be relevant as a threshold hold matter, which I've already now described, but it also needs to be admissible evidence under the rules and not subject to an exception under the rules. So it's direct evidence of somebody taking over the website, it's also circumstantial of someone taking over a website, so circumstantial evidence where various dots can be placed along

a line and while it's not drawn in between it, a reasonable juror could draw the inference would be competent circumstantial evidence.

It's important, and this is where the difficulty comes in and it's a difficult issue for trial judges everywhere, to distinguish between what is speculation and what is circumstantial. There's a difference between what is circumstantial evidence and what is purely conjectural or purely speculation. There's a lot written by a lot of courts on where an inference becomes conjecture or where an inference is reasonably based on fact.

The point is that the logical inference must itself be based on otherwise admissible evidence; otherwise, it does become conjecture. So there is lots of case law, which we have now all had an opportunity to slow down and read, which indicates that a person's subjective beliefs is simply speculation. There are certain instances where subjective beliefs may be admissible. Those are not pertinent here. That is, for instance, in certain instances not going to an ultimate conclusion of a case where an expert witness can offer certain opinions.

Indeed, lay witnesses can also offer certain opinions, but they can't usurp the fact-finding role of the jury. So let's go back to our umbrella example. It's certainly okay for witnesses to discuss on the witness stand -- this is now the

circumstantial evidence example I raised during the early part with the jury -- I saw individuals enter the courtroom with raincoats, I next saw them enter with umbrellas, I saw that there was water dripping off of the umbrellas. Those are facts which the witness is seeing. The witness can't say I know it's raining or I believe it's raining because that is ultimately for the lawyers to argue from the various facts which are put in as inferences.

So this is where we get to the first part of -- and I'm going to give you folks a list of what's okay and what's not okay, it's not all not okay and it's not all okay -- of Mr. Der-Yeghiayan. What Mr. Der-Yeghiayan thought and believed it's clear to me, having now reviewed the cases very clearly and analyzed from the beginning what is competent evidence and what is incompetent evidence, that his thoughts and beliefs are irrelevant.

I've also gone back through the earlier portion of the transcripts and, in fact, the government stayed away from thoughts and beliefs, but he's been brought into it a lot on cross. The government did not object to numerous, numerous instances where he was asked about his thoughts and beliefs, and I think this led to the confusion.

Let me just give you folks a cite of the *Johnson* case at 529 F.3d 499 at pin cite 501 and also the *Garcia* case, and there are a number of others which stand for this proposition.

This is an especially important proposition when you're talking about an investigator or a special agent because the redirect examination that could lead from this is clearly error and you can't have one side, one-hand clapping.

The clear error is the following: If allowed to say I believed at one point in time that Mark Karpeles was the DPR, and what did you base it on? I based it on the following four sources of information, the redirect becomes, Did there come a point in time when you ceased to believe that? Yes. And who did you become a believer in in terms of their guilt? I believed it was Ross Ulbricht. Can you tell me now why? Yes. Because of the following 27 pieces of information, which then become essentially a summary statement that the government would normally do during its closing arguments. That kind of conclusory summarizing testimony as to drawing inferences for the jury that the jury would be drawing usurps the jury's fact-finding role and is clearly not relevant.

What is relevant is direct knowledge and responses to that direct knowledge. For instance, before I go into probable cause, let me say that it's error for the agent to testify about opinions regarding any person's culpability, particularly clear with respect to the defendant, but the same principles apply to third parties. And that is true under 701 and the *Garcia* case I mentioned is a Second Circuit 2005 case, the *Grinage* case, another Second Circuit case; the *Dukagjini* case,

a Second Circuit case. We're not the first court to have confronted this question. And then also the *Carmichael* case which is a Second Circuit case from 2005 where the Court then talks about the difficulties of opening the door in that kind of case.

Let's talk about probable cause. In terms of probable cause, there have been other instances where individuals have been asked whether or not there was probable cause in their view, and that has been precluded across the board on the basis that it's a legal conclusion; that the concept of probable cause is a legal concept. Is there probable cause to believe a crime has been or is about to be committed? So it asks for an answer to that legal conclusion, and so whether it's put into the form of a statement, "I believe that there's probable cause" or in terms of a physical manifestation of that, "I sought a search warrant implicitly because I believed there was probable cause," that is similarly based upon the legal conclusion.

Now, with all of that said, as we all know, there are a series of cases which are quite clear that the defendant is entitled to present a defense theory. There is a defense theory here that's clear that the defendant is pursuing as to an alternative perpetrator and he is certainly allowed to present competent circumstantial and competent direct evidence supportive of those theories, and I am in no way precluding the

defendant from presenting a witness who may be able to suggest that he or she knew the real Dread Pirate Roberts and it wasn't the defendant or whatever various ways this could be shown.

And there are certain cases that are inapposite to this case but that are supportive of it, of that principle. The *Alvarez v. Ercole* case, in that case, there was a report of another suspect. The issue there was that the lead for the other suspect was never pursued. Here, that's not the issue. There was an investigation that was doing whatever it was doing, and it was remanded on the basis of a habeas petition that they should have allowed it to be inquired into not the truth of whether that other person was guilty or not, but of the adequacy of the investigation.

In the *U.S. v. White* case, which is a 2012 case, in certain instances, that case indicated that the charging decisions could be admissible. There, there were other occupants of a vehicle who were charged with possessing the very firearm that then the defendant was charged with possessing. It's not apposite. And then the *Wade* case we talked about, the *Wade v. Mantello* case is supportive of the Court's view. In terms of the *Arbolaez* is a case that we found which is at 450 F.3d 1283 at 1290, and it's an Eleventh Circuit case, 2006. That's another case talking about probable cause in connection with an investigation being inadmissible hearsay and the statements only allowed -- if they were allowed in, it

would be only for the purpose of showing some amount of truth.

So here are the questions, which, based upon all of these principles of law, appear to the Court to be clearly off limits, and then I'm going to give you the ones which I think are on limits.

Off limits are things such as the following, these questions or reasonable derivatives of these questions: Did you suspect Mark Karpeles? The word "suspect" is a conjectural suspicion. Now, I will say that was asked in spades with no objection by the government earlier on. It was asked two or three times on Friday, but we'll get to what we do in terms of the government's application in its letter to strike, which is somewhat complicated.

But did you suspect Mark Karpeles? There should be no further questioning into that. Did you believe Mark Karpeles was DPR? There should be no further questioning into whether or not this witness believed -- the dots can be drawn, but the belief he needs to stay away from.

Do you suspect Ross Ulbricht? Do you believe Ross Ulbricht was DPR? Similar, the same witness can't do one, he can't do the other. Does he suspect that Mark Karpeles operated Silk Road? Does he suspect? Does he suspect Mark Karpeles did not operate Silk Road? Both of those are equally off limits. Any descriptions of belief that he has are off limits. However, what's not off limits are things like: Did

you see X? Did you do Y? Did you investigate X? Yes. No. Did you see X? Did you see Y in connection with that work?

Now, the interview, this is now the Forbes interview we talked about that on Friday, and that is hearsay, and I don't think there's much of a debate about the content of it being hearsay. Whether or not this particular witness believed it sounded like the man on the moon, it doesn't matter, or that he believed it sounded like Karpeles doesn't matter because that's his subjective belief.

Now, in terms of the offer, the offer to provide, this is the Karpeles offer, through his lawyer through another AUSA etc. to provide law enforcement with information as to who the real DPR was is also not relevant. The offer is the fact of the offer. That's the only point of that, because we know that there was no information. We know that Karpeles did not provide, based upon the government's proffer, he never provided that information. So it's not as if there's some secret name that comes out. So the fact of the offer itself is not relevant to a disputed issue of fact. It is not a disputed issue of fact relevant to this defendant's culpability whether or not an offer was made by somebody else to potentially divulge information. And it's really a way of, I believe, getting out whether or not Karpeles had inside information about Silk Road. If he did, he did, but that's a separate question from whether or not Ross Ulbricht can be tied himself

through competent evidence to Silk Road in the manner the government has been suggesting.

In terms of the 807 and whether or not that gets over hearsay, first of all, I find that the fact of an offer upon analysis and taking it apart as to what each segment is for is irrelevant, but is it probative? Is it more probative than anything else that can be offered? The answer is no. It's really inviting the jury to speculate. And the other issue is that Karpeles was self-interested in making any offer at the time and, therefore, it's unclear whether he actually had any information. So the fact of the offer is suggestive of a fact of real and potentially inferentially reliable information and Karpeles -- there's no indication that he would have provided that.

Now, what would be okay: Any chats on the website that DPR was handing off the website or that Mr. Ulbricht, during the time that he was in charge of Silk Road by his own admission or by his counsel's assertion, was handing off the website; evidence as to whether or not, for instance, Ross Ulbricht, when he was being viewed by law enforcement and they were tailing him, which this information has some information about, he may have limited information, but whether or not Ross Ulbricht was going to work, for instance. Was he going to an office, was he doing something else, does he effectively have an alibi defense? Are there reviews of bank accounts that

reveal information that indicate payroll coming in from a third party? Is there evidence that another account was receiving Silk Road commissions looking at the account numbers and tracing the numbers through?

He can challenge the recollection of the website, challenge the buys, challenge the facts relating to the arrest. He can also seek to introduce evidence that others were tied to the servers; that there were other individuals who were leasing the servers; that Mark Karpeles or somebody else was leasing the servers; that Mark Karpeles did any number of things, X, Y, Z; that Mark Karpeles had a website if he's able to show it through a witness with competent technical evidence that the website had certain aspects of its platform that were replicated in the platform of Silk Road, that would be fair game. There are other questions which were asked which were fairly asked, which is, was Mark Karpeles running MtGox? That's perfectly appropriate. Many of the questions that Mr. Dratel asked were absolutely appropriate and are supportive of the defense theory. The questions that were not appropriate were the ones that strayed into the words "belief" and "conclusion," but where they were simply asking about facts, they are perfectly appropriate.

(Continued on next page)

THE COURT: So what we'll have to do -- and that's the Court's ruling on this. Much of what, as a result, the defendant wanted to go into in terms of exploring the search warrant application is off limits, because the very question that was to be asked, which is what are the four sources of information that you had, X, Y, Z, and then, based on that, what did you do next. Now having reviewed the cases -- and they seem to be clear in this regard -- so long as he is able to present the witness -- the defendant is able to present direct evidence of his own defense of another perpetrator, getting the speculation of a third party, even the investigator, is an improper way to proceed.

So those questions, in that way, are off limits. But the other questions of direct evidence through this witness, who had a lot to do with the Silk Road website, so if he happened to look at all the chats and looked at all the chats of DPR and/or any account associated with this witness, he can be crossed on whether or not there is clear evidence of a handoff. And the jury will then be given the opportunity to draw its inference as to whether there was or was not a handoff. This witness cannot say whether there was or was not a handoff, but he could certainly present evidence in that regard; there is no doubt about that.

What we should do, I think, is there are some questions. I've got a whole bunch of them that are flagged

here. I am happy to hand over my copy of the transcript to counsel for everybody to review. You need to figure out, to the extent anybody wants to go back on certain Q and A's and to the "belief" questions and the "conclusion" questions, which were allowed to go, I don't want to just do a global strike because many of the questions were fine. So the question is going to be which ones do you want to strike and does the government have a view as to how to do this without creating more problems?

So I'm not going to do it when the jury first comes out. I will take it up at another time. And I would like it to be very specific and have you folks confer on it. But when I flagged things, I flagged things which I think are also appropriate. You will see, based upon what I just said, what will jump out as you as unobjected-to questions that, based upon the Court's review of all the case law, I now believe would have had appropriate objections sustained but they were let go. So let's take it step-by-step because I don't want to eliminate things which the defendant elicited fairly, and we have to be careful as we proceed now that we do have a live objection.

All right. Mr. Dratel, I know you don't agree with my ruling, but do you understand the parameters that I have set?

MR. DRATEL: I think so. I have to say, though, that with respect to the offer by the attorney, it is not about --

it is not about whether he actually had information. It is the fact that someone who is under investigation is offering to implicate someone else in return for immunity from all charges that the government could bring against them -- money, business, or whatever. And also, we don't have to prove anything, and all the cases are not about proving --

THE COURT: You don't have to prove anything. But if you want to rebut something through cross-examination, there are limits. This is part of what comes up in the 30 cases which you all cited to me and my own research. You know, of course, there are limits to cross-examination when we start to get too far afield. Because the next question will be, well, what was the outcome of the interview? And this is a witness who doesn't have that.

MR. DRATEL: This is his own question --

THE COURT: No. No. No. The government will have to be able to get that. And it is too far afield. So you can show that there was another perpetrator. I am by no means foreclosing your, you know, your attempt to build that defense theory by showing that your client, or whomever had certain user names, whatever the user names are, handed off administrative capabilities to somebody else to take over that role for some period of time.

MR. DRATEL: But that is not the standard in these other cases, and the reversals and Ercole, Alvarez v. Ercole is

a perfect example and --

THE COURT: Mr. Dratel, I have read those cases, and I believe that they are squarely distinguishable. I mean the Ercole case, as you know, was a very particular kind of case where not only had somebody else been implicated but somebody else had been essentially shown to be likely to be the guy. And they just didn't -- they had the name. They had the phone number, or the contact information. I can't remember how it was. And then they just failed to follow up. It is different.

MR. DRATEL: But it's only different as a matter of degree. If the failure to -- it was the refusal to permit cross-examination as to that issue which was the basis for the reversal. And it was not -- and it is not a question of I have to have a photograph of DPR and it is not Mr. Ulbricht. I can establish it by inference. And just the way the government is establishing its case by inference.

THE COURT: You could certainly establish it by inference, but that is why I want to differentiate between you've got to have some information that Karpeles in fact either had information on DPR or that's reliable, and/or if you are going to build Karpeles up as -- is it your view that Karpeles was not the real DPR, or is it your view that he was the real DPR?

MR. DRATEL: My view is that he could be the real DPR.

THE COURT: Do you have any information, other what

you brought out and what is in the 3500 material, that you can proffer that draws the connection that the Wade case and the other caress say you have to have before we go off on this road?

MR. DRATEL: I can do cross-examination. I'm not required to have a witness who comes up and does that. We have other information about the fact that there are multiple -- just so it is clear what our theory is. Our theory is that Mr. Ulbricht created the website, got out a couple of month later, did not come back in at any point until the very end, was not in at the very end. He was not in a conspiracy, and he was not operating the website. The fact that he had -- what the evidence shows about what was on his laptop, fine, we will explain.

THE COURT: OK.

MR. DRATEL: But --

THE COURT: All of that, of course, you are welcome to explain, and you are certainly welcome to cross-examine this witness. I'll tell you. I feel very comfortable in a careful -- and with the Ercole case, it is a 2014 case. It is an unusual case because it is a reversal of a state court case. There is a remand on habeas. I read it a couple of times. But I'm comfortable. I've also read the Kiley v. White case more than once in the context of this and other cases. I'm comfortable with my ruling.

My question to you right now, so we can get going, is do you understand the parameters of what you can ask?

MR. DRATEL: I think so. But I just need to complete the record just to preserve it, because with respect to Kyles v. Whitley, the Supreme Court case, Beany, the alleged alternative perpetrator, they didn't have proof. They did it all through the police investigation. They didn't have additional witnesses. They had the police.

And this is combined with the police investigation issue. They are inextricable in many respects, and it is not about -- it is not just about whether it was shoddy but it is about other things that I'll get into on cross with this witness that I don't think are objectionable at all because they go to motivations and other things in terms of the investigation. So that's all part of the same piece. And I can build that by inference. I am permitted to do that by cross and by inference.

THE COURT: You are permitted to do that through competence evidence through cross and through inference. The question is going to be what is appropriate for this witness to speak to, and it will be things that he perceived with one of his senses, as witnesses do, as opposed to what he may have held as a belief at one point in time.

MR. DRATEL: I understand that part.

THE COURT: I am not going to let them ask did you

believe Ulbricht did it, tell me. And then, yes, by the way, tell me the 27 reasons why. That would be --

MR. DRATEL: That would be his direct.

THE COURT: That would be his redirect.

MR. DRATEL: I am saying that would be his direct.

THE COURT: No. Well, you are talking about those are inferences versus his conclusions.

All right. So if you have any questions about a particular issue that you want to raise that I am not letting you raise, then present it to me, but otherwise we'll proceed with this. I'm not right now striking any of the testimony that came in. Frankly, a huge amount came in on Thursday. It will be up to really the government's burden to figure out what portions they believe are appropriately struck and then to discuss whether the defense agrees not as to whether or not they agree with the evidentiary ruling but given the Court's parameters, and if the defense does not agree with any of it, then I will just make a ruling.

MR. DRATEL: There is also a waiver aspect of it.

THE COURT: There is a waiver aspect of it. We haven't talked about that or briefed it. That is why I don't want to do that right now. It is complicated because it is interspersed. There are completely unobjectionable pieces interspersed with objectionable. You will be able to say Karpeles was out there. He had the computer expertise. He

owns Mt. Gox. There are going to be certain things that are still going to be, I believe, in the record. We'll have to take a look at how the Q and A's come out ultimately, but there will be facts.

All right. Let's take up the two sidebar issues.

Mr. Turner.

MR. TURNER: Your Honor, I just wanted to make clear.

In terms of -- we can look at the transcript and come up with proposed areas to strike. I just want to be able to do that before redirect, because if certain testimony is not stricken, then we would want to potentially redirect the witness a certain way to cure testimony that did come in.

THE COURT: Can you have some of your colleagues help you with highlighting what you think?

MR. TURNER: Yes, your Honor.

THE COURT: And as little as possible.

MR. TURNER: Yes, your Honor.

THE COURT: I mean, there is one way of doing it which is, ladies and gentlemen, you heard the witness talking about his belief and views and suspicions about an individual. You should disregard those comments because his beliefs and views and suspicions are not relevant. It will be for you to decide. You are going to be presented with the evidence here as to this defendant and anything else that's important for you to consider, and you can decide whether or not that is sufficient

to draw those conclusions yourself.

That would be one way of doing it. And then we would have to, for purposes of later on, determine if we have questions later for the jury to have read back, whether or not some of those pieces are then excised.

MR. TURNER: OK. So we'll take a look -- we'll have somebody on our team take a look at that and see if we can offer specific testimony to excise before redirect.

THE COURT: All right. If I understand it, there are two matters at the sidebar?

MR. TURNER: Yes, your Honor.

(Continued on next page)

THE COURT: OK. All right. What is your issue number two?

MR. TURNER: Your Honor's ruling may resolve this so it may not be necessary to get at it now. But the defense's submission last night in terms of the additional private messages that the defendant talked about introducing that involved another suspect that Agent Der-Yeghiayan looked at, it is becoming clear to the government that the intent of introducing the Mark Karpeles information and information about this other suspect is that information about both suspects was leaked to DPR. In other words, there are chats where from this second suspect information was passed to DPR.

And the implication was, hey, I know who you are. You have to pay me $250,000 if it looks like something that Carl Force would be investigated for. Similarly, the Mark Karpeles, we know that Mr. Force is under investigation for thinking that Mr. Karpeles was interested in talking to authorities, that that fact was leaked to DPR in exchange for an offer of payment. That was the French-maid issue that came up in the course of investigation. So it seems to complement that this is a backdoor attempt to try to inject Carl Force into the case, and that heightens the 403 concerns that we have already raised.

I think that your Honor's ruling probably is going to avoid these issues, but, nonetheless, we wanted to bring that

issue to your Honor's attention so that your Honor was fully informed about the background of our concerns.

THE COURT: Let me find out. Are you planning on doing any of this?

MR. DRATEL: A couple of things. One is in the letter yesterday -- is this sealed or not sealed?

THE COURT: It will be sealed.

MR. DRATEL: I was extremely careful, knowing that it was going on ECF, not to allude to anything that would be about this. But the fact is that what I was talking about in the letter yesterday was an account by a user that they haven't identified as Carl Force. It is a different account. And it is not about Karpeles, it is about the other person, Anad Athavale, and that that name was provided to DPR in April of 2013. This is someone who they were actively investigating at the time.

Karpeles was also part of it. They can't whitewash discovery by bringing in Force. That is their problem that they've created. I am allowed to use what they have given me that is not under seal. None of that stuff is under seal.

THE COURT: To the extent that what you folks are talking about are written documents which show that DPR had leaked to him, from whoever --

MR. DRATEL: And I didn't use the word "leaked." I said provided. He --

THE COURT: He had available to him from some unknown source the fact the government was conducting an investigation pursuing to certain leads, that will be fair game. And I take it there is no reason that you have to tie that in any way to Carl Force.

MR. DRATEL: No.

THE COURT: But the point is that the defense theory is that DPR becomes aware that there is heat and he takes evasive measures.

MR. TURNER: No, your Honor. I mean, that is not how it plays out and we can go over this, and it is going to come out in the questioning.

THE COURT: Is it going to come out with this fellow here, Der-Yeghiayan?

MR. DRATEL: Only -- I will develop the facts of the investigation of this other person -- no beliefs -- just what he learned about this other person through his investigation and what he did in this part of his investigation. Part of it is about to contrast Ulbricht, and it is not just about this person is under investigation. Because he does an entire analysis -- language analysis of that person, very extensive, and they can do one word with Ulbricht. So I want to show that six pages and one word. One word doesn't mean anything. They have six pages of one guy and one word of Ulbricht to make it seem like it is some sort of, aha, some sort of an "aha" moment

that they have one word with Ulbricht that they are going to say ties him to the DPR posts. So in that context, I am going to develop that.

I am going to ask him if he is aware of the private --

THE COURT: Let me ask you. Does Der-Yeghiayan, did he perform that analysis.

MR. DRATEL: Yes. Yes. There is a whole memorandum of it, and he sends it to a college professor. I am not going to ask him what the college professor said. I am going to say, you sent it to a professor?

MR. TURNER: Your Honor, I can fully address the facts.

MR. DRATEL: There is one other aspect of it, just to complete it. I don't want to leave it out.

In terms of the -- I'm going to ask him if he has reviewed the private message system from Silk Road. And if he has, I am going to ask him whether he is familiar with the posts that puts this guy's name in DPR's hands in April of 2013. In other words, that DPR is aware that this person Anad Athavale is on the radar potentially as DPR. And then I would put that post in if he is aware of it.

THE COURT: OK. Mr. Turner.

MR. TURNER: Oh, your Honor, I am preparing to fully explain the facts, just as I did with the Karpeles issue, because this is another issue where there is great potential

for prejudice and no potential to draw any concrete, specific bona fide link between anybody else and DPR.

So to the first issue about language analysis, Agent Der-Yeghiayan is not a linguistic expert. And if you look at the linguistic parallels, it is things like he spelled Anad without a space in it. Basically, what happened is he, as you saw yesterday, DPR's public profile had a link to mises.org on it. Agent Der-Yeghiayan found somebody on mises.org that posted a lot with many posts, and then he noticed similarities that were not that remarkable at the end of the day but he thought they were from him. But this is another example of it puts it in a different light for the defense to ask him you were investigating this guy because you saw all of these parallels instead of just simply putting the parallels before the jury and letting them judge for themselves. That is problem number one.

THE COURT: Hold on. I want to see whether or not what you are suggesting is in part that it is perfectly appropriate for the defendant to put, for instance, the private message in that says his name, Athavale, whatever it was, was potentially a subtarget. And, also, the defendant, Mr. Dratel could use various posts of that individual and ask the witness, "Mr. Der-Yeghiayan, did you in fact analyze these?" "Yes." And then, "Did you find certain -- did you note similarities in the following words?" "Yes."

He can do that, right?

MR. TURNER: No. There are a number of problems.

First, let's just take what's being analyzed. We're talking about the mises posts on a discussion forum. This is the classic Vayner issue. I mean, instead of asking did you see some of this language written by Anad Athavale and then compare it to DPR, first what postings are you talking about? Let's put them before the jury. Where did they come from? The foundation. If that's done, then we are talking about posts on a website, mises.org, that have not been authenticated in any way. We don't know who posts these. All we know is that there are posts on a Web page. We don't even know if --

THE COURT: Hold on.

MR. TURNER: This is an example of sort of glossing over the evidentiary issues with the underlying evidence that Jared -- that Special Agent Der-Yeghiayan relied on in reaching his conclusions. The defense should be focusing on the underlying evidence, not what the agent did or what he thought or that sort of thing.

If the defense theory is there is this individual out there with all these posts on mises.org and it sounds like DPR, they should put those posts before the jury, not through the lens of Special Agent Der-Yeghiayan's analysis but just the posts themselves. If they want to point out the similarities, they can do that themselves. If they want to call a linguistic

expert who has some special expertise to add, they can do that. But special Agent Der-Yeghiayan's opinion about how strong the ties were is irrelevant.

So that is problem number one.

Problem number two is the -- let me just explain what happens when Special Agent Der-Yeghiayan identifies a suspect. He puts it into the system, the Agent's HSI system. Other agents in HSI and DEA can then look at those names. There were competing investigations going on. Chicago is investigating. Baltimore is investigating. So what you have here is the possibility of a Baltimore agent, Carl Force, sees this name pop up as a target of a suspect that Agent Der-Yeghiayan is looking at. Then he sends messages to DPR saying I know who you are. You are Anad Athavale. Then he told him 250,000. Then you have the possibility of this agent taking that name and leaking it to DPR, getting the payment.

Here are the posts at issue. If your Honor wanted to take a moment? You can see. These are two from DPR and its user from above.

THE COURT: Mm-hmm, and --

MR. TURNER: The information goes here. You'll see Dread Pirate Roberts responds, "Leave me alone." If you look at the logs that we found on Mr. Ulbricht's computer, this comes up. He says --

(Pause)

Hold on, your Honor. Here it is. OK.

So in the log on Ulbricht's computer, he says, "Got death threat someone, death from above, claiming to know I was involved with Curtis' disappearance and death" -- this is from the first murder for hire. And then a little while later, after he passes this individual's name, Anad Athavale, he says, "Guy blackmailing, saying he has my id is bogus." OK. So it is not Anad Athavale.

The effect of introducing this, the prejudicial effect is several fold. One is it potentially suggests to the jury that Agent Der-Yeghiayan has messaged DPR with this information about this targeting and he is seeking $250,000. Another is to suggest that Anad Athavale is somehow involved in some -- in the conspiracy somehow, when, again, there is no specific link. This is just hearsay and there is no specific link being drawn based on any competent evidence.

So to introduce all of this -- thirdly, it implicates potentially an ongoing range of the investigation of Carl Force. It fits the pattern that the investigation has already seen.

THE COURT: Let's be clear. The fact of the Grand Jury investigation is not going to come in. Whether or not other evidence disclosed during the course of this case that we're trying now can come in is separate and apart from the Grand Jury investigation. Nobody is going to draw a connection

to the Grand Jury investigation. That is going to be off limits. I think we all understand that.

The question is whether or not this somehow gets taken out of the pile. And I'm still confused about what you want to do with it.

MR. DRATEL: We see that all as a red herring, the posts. It is really about what this agent did, not about the posts. It's about the comparisons that his did in his investigation and the memorandum that he wrote and sending it to a college professor. That's what important in contrasting it with what they did with Mr. Ulbricht.

Now, the second part is --

THE COURT: Let's just take that one piece.

As part of this witness' investigation, he took certain steps where he looked to certain posts and he analyzed and circled language. Is that the "yea," the y-e-a?

MR. DRATEL: No. That is for Mr. Ulbricht.

MR. TURNER: Which we don't plan to introduce.

MR. DRATEL: They are smart.

MR. TURNER: Just as a backup.

THE COURT: So you are not going to do the links, which is particular thing?

MR. TURNER: No, your Honor.

THE COURT: So what are you needing on the direct examination if they are not going to do the linguistic?

MR. DRATEL: Because he did a comparison of this guy with six pages of similarities of language between this guy and DPR. And, you know, this is probably a game timing decision by the government not to put that in now. And I want to put in that in the warrant for Ulbricht they wanted to go after all of his writings to analyze it the same way. It is not about probable cause. It's not this. It is about what they did in their investigation. That if they want to come back with "yeah," that's OK. If I've opened the door to that, that's fine.

But the other issue is with respect to these messages, it is not about whether they are true or not. It is not about -- it is not where they come from. I'm not talking about the truth, but I will stipulate it is not him. I will ask him, if you want. You didn't do that, did you? I don't have any intention. I --

THE COURT: The government is nodding their head, no, that they don't want you to do that.

MR. DRATEL: I have no intention of insinuating in any respect that he is the person who leaked it, but the fact is DPR was given this information. Part of our defense is that DPR had ample time between April of 2013 and, with respect to Karpeles, May of 2013, when his money gets seized, to devise and implement a plan designed to put Mr. Ulbricht in the crosshairs. We don't acknowledge the veracity of that. We do

not acknowledge that that is Mr. Ulbricht's writing.

THE COURT: I understand. In terms of this page, this is the one that you say Mr. Turner has a Vayner issue?

MR. TURNER: No, your Honor.

THE COURT: Are there going to be any of the documents introduced, Mr. Dratel, that are from the mises.org?

MR. DRATEL: No.

MR. TURNER: That's precisely the problem, your Honor, is that it is wrong. It's not permissible to simply ask the witness could you look at a bunch of pages on mises.org and did it sound like the defendant.

THE COURT: You can't ask that.

MR. DRATEL: No. It is postings -- no, not the defendant. No. The posts by this guy Athavale, he took all of his posts on mises.org. He took his posts, and he examined them with respect to DPR. Did an extensive analysis, and sent it to a college professor of English to analyze. I am not asking for the conclusion.

The conclusion, by the way, was that they could very well be the same person, but I am not going to ask that based on the Court's ruling, and it is hearsay, anyway, so I won't ask it. But the point is that it is a comparison. It is the way they went about the investigation that is relevant. It is not the mises.org.

THE COURT: Let me understand that. Hold on.

MR. DRATEL: By the way, mises.org is something they tried to connect the defendant to as well.

THE COURT: I understand. You have mises.org and a series of posts.

MR. DRATEL: Yes. And the guy is also a computer expert and all the other things.

THE COURT: Hold on. Then we have another series of DPR posts. Those posts, the DPR posts, are part and parcel of what Der-Yeghiayan has brought in already?

MR. DRATEL: Correct.

MR. TURNER: No.

MR. DRATEL: It is everything.

MR. TURNER: That is not correct, your Honor. Agent Der-Yeghiayan only brought in public posts of DPR. DPR also had private messages. These came from the server that the FBI seized. Agent Der-Yeghiayan didn't have access to those. He didn't testify about them.

THE COURT: He didn't have access to them?

MR. TURNER: No. He testified about the private messages that DPR sent to him that he has located, and had access to DPR's private messages.

MR. DRATEL: No. He is mixing apples and oranges. I am talking about those. We are talking about Athavale and what he did to compare to Athavale were all the forum posts that he had everything that DPR wrote on the forum.

THE COURT: Let me see if I can get this. Hold it. I am trying to understand it.

So we have the mises.org posts, and we have some forum posts from this AA fellow, right?

MR. DRATEL: Yes.

THE COURT: Those forum posts are in the record? Are they currently in the record?

MR. TURNER: Let me see how to make it clear.

So there are mises memo posts of Anad Athavale. That is the agent's conclusion. In terms of how he knows they go back to Anad Athavale, that raises a Vayner issue. All he sees are posts on a screen that are --

THE COURT: Hold on. So is it the case that the mises.org posts are not tied directly to Anad -- to AA? I'm shortening his name? That the only way they're connected is through the agent's subjective belief?

MR. TURNER: His investigation.

MR. DRATEL: Subjective belief? It is the guy's account.

THE COURT: Mises.org is his account?

MR. DRATEL: Yes.

THE COURT: Did it have his name?

MR. DRATEL: It is his account. He posted it under his account.

MR. TURNER: That's precisely the fact in Vayner, your

Honor.

MR. DRATEL: DPR should go out because it is not necessarily Mr. Ulbricht, it is just DPR. This is what's good for the goose is good for the gander, and it is not about the mises.org posts. It is about what he did in the investigation. It is what he did.

MR. TURNER: OK, your Honor, if I could explain? So what the agent did is irrelevant.

THE COURT: Can you get me Vayner?

MR. TURNER: You could have someone testify off the street: Hey, I found something interesting. I found a bunch of posts on this website. It reminded me of DPR. I could swear it is the same language. That is not evidence.

If what they want to do is to show there was another person who posts a bunch of things on a website and that it matches DPR based on, you know, concrete, very distinctive linguistics, they don't need Agent Der-Yeghiayan to do that. They can properly authenticate the posts as being attributable to someone else, and then they can show to the jury that those posts match the linguistic patterns of DPR. They do not need Agent Der-Yeghiayan to do that, and it is improper to use Agent Der-Yeghiayan to do that because it injects all that he knows from his investigation that may not be admissible by itself. He can't just say, oh, yeah, those are Anad's posts. There has to be proper authentication. The document has to be shown to

the witness. The document has to be properly authenticated by someone from mises.org who can show that there is subscriber information that goes back to someone else.

That's what Vayner stands for. You can't just take a Web page off the Internet and just assume that, oh, yeah, because it says Anad Athavale, that's where it is from.

MR. DRATEL: I'm not looking --

MR. TURNER: This goes back to the point, this whole --

MR. DRATEL: I don't care about the mises.org posts themselves. I only care about what he did with them and his analysis and the investigation and the way the investigation proceeded in a way that ultimately gave DPR knowledge that this guy was -- and, you know -- look, I know the difference between, you know, Vayner and what I'm trying to do. I got sent emails alleging to be from Karpeles on a death threat. I know that I can't authenticate that. There are no headers. I don't know whether it is true or not. So I don't know.

This is he says by himself it was Athavale. The agent satisfied himself. So all of a sudden now we've got a brick wall between what he did and did for two years and cross-examination. Yeah, I could bring somebody on to do it, no reason. That doesn't mean I can't do it through him. Just because I could do it another way doesn't mean I can't do it through their witness. They put him on. They opened all these

things up.

THE COURT: They didn't put him on for purposes of the AA posts, though. If they had, then the work he had done to further investigate the AA posts would be one thing. Here, I've got multiple concerns.

One is it has taken so long for me to even figure out what we are doing that I am concerned about misleading the jury and having this devolve into sort of trials within trials of who did it. As I said before, the real issue here is whether or not this fellow can be tied, and if he can't be tied, then he should be acquitted.

MR. DRATEL: He tied him. He tied him.

THE COURT: What we are talking about now is not whether or not -- the AA posts are not whether or not Ulbricht is tied, it's whether or not AA is tied.

MR. DRATEL: The agent satisfied himself that it was legitimate.

THE COURT: He can pursue multiple suspects. It doesn't matter ultimately.

Let me ask it this way. Is there any other evidence that could be put forward that would indicate that at one point in time DPR received information indicating that law enforcement was on to him?

MR. DRATEL: Yes. It is all over the place.

THE COURT: That is the point you want to make?

MR. DRATEL: Also, this specific person, too. They just want me to be abstract, and then they will say at the end in their rebuttal, oh, there is nobody, there is nobody --

THE COURT: You can put up a witness who can go on to the mises.org website and pull this stuff up.

MR. DRATEL: That is not the issue. It is really overbearing. It is a red herring.

THE COURT: Then you can say that mises.org requires certain kinds of password protection and blah, blah, blah, and this is this guy, and I am an expert in linguistics, or whatever, and I can connect the language as similar, and then it is up to the jury to decide if it is in fact the same person.

MR. DRATEL: But it is not the purpose of cross.

THE COURT: The purpose of the cross is to build up the possibility that another person is DPR. But you're trying to do it by showing a website that we don't know if he has any basis --

MR. DRATEL: He did the investigation.

THE COURT: We are in the "belief" and speculation.

MR. DRATEL: He established that it was legitimate, that those were his posts. I have to go back over the 3500 to look at it, but he didn't just pick it out of the air and say --

THE COURT: None of this AA fellow was brought up on

direct.

MR. DRATEL: I understand.

THE COURT: And it is also outside the scope.

MR. DRATEL: Well, I will call him back --

THE COURT: Give us more time to think about it, then. We will. We'll see how it goes.

MR. DRATEL: It is within the scope of the direct examination.

THE COURT: It is not within the scope of the direct.

MR. DRATEL: The inferences to be drawn from all of this are not exclusively the government's province to define. I get to define them, too, for the jury.

THE COURT: I certainly understand that. Through competent evidence, as I've said, you can put together the dots and then you could argue to your heart's content during closings about what the proper inferences are, and then the jury will either believe you or not.

MR. DRATEL: I would like to prove everything that they can't tie directly to Ross Ulbricht, which is basically their entire evidence, all their DPR. They don't have it coming from his computer. They don't have any of it.

It is completely Vayner. Every DPR post, they don't have any evidence that it's Ross Ulbricht because they don't have anything connected like mises.org. It is the same thing. It's the same principle.

THE COURT: I am going to leave open the possibility that this witness will be called back on the defense case, and there will be an opportunity then to have you brief what you want to bring out for him on direct. It will be your own examination. And we'll cross that bridge when we come to it.

Right now my determination is that it is outside the scope of the direct examination right now because it is dealing with a whole nother issue that we never have gone into. It is also confusing -- certainly confusing to me and I would think the jury -- and potentially misleading, and so for those reasons at this point in time I am not going to allow it on the cross-examination of this witness, but whether or not you can bring it up on a direct that you yourself construct, we'll cross that bridge when we come to it.

MR. DRATEL: Your Honor, the confusion is with DPR, and I am allowed to exploit that. Any confusion that the jury has about who is DPR, that is legitimate. This notion that it is prejudicial is -- of course, all evidence is prejudicial, right? It's not unfairly prejudicial. It is precisely what our defense is and we are allowed to do. And it is not fair to let the government put in a ton of evidence that they cannot connect to Mr. Ulbricht directly, that no one is going to come in and say he wrote that, he wrote that, he wrote that. There is no connection of electronics that is going to show that he wrote it. And then to say that something that he satisfied --

that their agent satisfies himself was the guy, not for the purpose of validating those posts but showing what he did in his investigation. That's all.

And then this guy's name gets provided to DPR. I mean, and, you know -- and, also, the fact that, to the extent it implicates Force, it's only because of a problem that they're making one hundred percent, one hundred percent.

THE COURT: In any event, my ruling is what it is.

So we will proceed in the manner that I suggested, which is at the moment I don't find that this evidence is going to come in for the reasons that I have stated, and whether or not it can come in on the defense case remains to be determined and we'll proceed and look at all the issues.

MR. DRATEL: So about Athavale entirely or about just these posts?

THE COURT: What was described to me was something of simply the mises.org linguistic comparison to AA through the other piece. I don't know that there is any -- that that's the ruling that I make.

And is there anything else?

MR. DRATEL: OK.

MR. TURNER: Your Honor, I just ask that the exact record be placed under seal, that this transcript be placed under seal following the discussion of Mr. Ulbricht talking to his family.

Xf1kdulbs1 S E A L E D

THE COURT: Well, the only issue I have is depending upon what is your view, Mr. Dratel?

MR. DRATEL: Well, the Force thing is implicated throughout, I suspect.

THE COURT: Then it is under seal -- thank you -- the portion following that relates to everything except for the initial portion relating to Mr. Ulbricht's family.

Let's bring out the jury. Can I bring out the jury?

(Continued on next page)

were able to monitor?

THE COURT: I will allow it. Overruled.

A. I believe there was.

On the forums you are asking?

Q. No. Between DPR and Scout on the Silk Road system in one form or another.

A. Later on I learned of that there was discussion between them.

Q. And that was one of the reasons for a falling out between DPR and Scout?

MR. TURNER: Objection. Foundation.

THE COURT: Yes. So that is sustained.

A. That --

THE COURT: No. That was sustained. So he will ask another question.

THE WITNESS: Sorry.

BY MR. DRATEL:

Q. But there was talk between Scout and DPR about whether Mr. Wonderful was law enforcement, correct?

MR. TURNER: Objection. Foundation.

THE COURT: Well, I think that the issue is did you actually review the communications between Scout and Mr. Wonderful?

MR. DRATEL: No, between Scout and DPR, your Honor.

THE COURT: Did you review the communications between

I have received from the government an email that was copied to counsel, all counsel, that has their proposal as to excerpts to be stricken based upon the Court's prior ruling.

Mr. Dratel had mentioned before that the Court had not yet entertained arguments as to waiver, and that is correct, or any other arguments other than rearguing the Court's evidentiary ruling. Also I need to know how soon we're going to have to deal with this when the redirect is likely to begin.

Mr. Dratel, let's take the last question first. How much more on cross do you have of Mr. Der-Yeghiayan?

MR. DRATEL: With the exception of one question that I'll ask the Court, which is whether I'm going to go at all into the second person, I'm not sure whether I'm allowed to go at all into the second alternative suspect, whether that's something --

THE COURT: The main issue that we had dealt with was with the mises.org piece.

MR. DRATEL: Right.

THE COURT: If there are other aspects of it that I'm unaware of, we can take it step by step and see.

MR. DRATEL: So, between an hour, an hour and-a-half I guess.

THE COURT: So probably then, it's likely to be a time for break, but do you want to now preview your waiver argument? I think I understand just with the word "waiver" possibly the

contour of what you're getting at, but I'd like to give you a chance to state it for the record. We can do it at the break if you'd rather not do it right now.

MR. DRATEL: I can do it at the break in a way that -- the waiver is really three parts: One is, they didn't object, and you can't put that genie back this the bottle in any respects. The second is, they're not objectionable in many respects even under the Court's ruling. And the third would be that, you know, it changes the whole nature of how an examination proceeds and that's one of the reasons why you have to object contemporaneously because then you can't go back and reconstruct it in a manner that then undoes things that you could have changed.

So all of that is a factor in the waiver argument and the Court said on Thursday that it was out there already, so, you know, --

THE COURT: The fact that Mark Karpeles exists as a potential individual as to whom there is some evidence that people can draw inferences from, that would not be gone from the case. Even with the government's suggestions, there is lots of evidence in terms of questions that you asked that was perfectly appropriate in that regard.

MR. DRATEL: Yes. And I think all appropriate in the context of -- not only in the context of alternative suspect, but also in the context of the conduct of the investigation,

because at the end of the day, we're going to have a comparison with the investigation of Mr. Ulbricht and the conclusions that were drawn and the investigations of at least two other people and the conclusion that were drawn, and at the end of the day, the only thing that's going to be a factor for the government is something that no one can trust. That's part of the whole defense, and that's part of what these questions are about.

And it's perfectly appropriate to ask an agent and a law enforcement officer about the conduct of his investigation and how it proceeded and even --

THE COURT: I don't want to reargue the evidence.

MR. DRATEL: I know, I'm just saying, the notion that now that there's no waiver when these things come in and is just -- I mean, there has to be some notion of waiver in the context of a trial in the sense of what it means to have a contemporaneous objection and what it means not to have a contemporaneous objection.

THE COURT: Mr. Turner.

MR. TURNER: Your Honor, the trial has gone fast. You wish you had all the law at your fingertips. I think the Court was inclined to think a lot of the testimony was admissible, which after further review is now clearly inadmissible.

It's not too late for the defendant in that we're not past cross. We're still in the middle of cross. If the defense has further inquiry that's admissible that's proper

about Mr. Karpeles, the defense can still pursue that, so there's no prejudice to striking the prior testimony.

And the problem with leaving it in is there's very clear circuit law that if hearsay like that comes in, the curative admissibility doctrine applies and the government can get equivalent hearsay in on redirect. So the government certainly would inquire of Special Agent Der-Yeghiayan in the same fashion that the defense inquired on cross about all the reasons that he now believes the defendant is guilty, and that would certainly be appropriate. And I think that was what your Honor wanted to avoid by striking the testimony that's objectionable that came in on Thursday.

THE COURT: So here is what we're going to do --

MR. DRATEL: Just one other thing.

THE COURT: Yes.

MR. DRATEL: They knew full well what was in the 3500. They cannot -- it cannot be that this was not on the radar for them, then to sit by and let it all come in and then completely eviscerate the defense after the fact is unfair, and that's a waiver.

They knew better than anyone what was in the context of my questions and what was in the context of Agent Der-Yeghiayan's answers.

THE COURT: Mr. Turner.

MR. TURNER: I would say never in a million years

would I have imagined that the defense would be trying to allege that Mark Karpeles framed Dread Pirate Roberts. I don't think that was clear from the opening and that was not apparent to the government until the questioning came in that way. So the government I don't think was put on notice by the opening alone.

THE COURT: My basis for my ruling is not that the government should not have anticipated; that they may well have anticipated it. They should have objected, but they didn't. We are now where we are.

We have had an objection that we have now talked about extensively, and I will strike the testimony that is indicated in the government's email to the Court, but not right now. I say that to you folks so that you can plan the remainder of your cross and the government can plan its redirect as appropriate.

I do not, however, plan to point the jury to the specific Q and A's that I'm striking, unless you folks make arguments that that's what I should do.

My intent, which I intend to do not right now, is to give the jury a general instruction about suspicions and conclusions that the agent reached are struck from the record and then to provide clear indication by line to the court reporter and to everyone here as to what is struck from the record, but I don't think it stands in anyone's interest to

have it be put on to the screen in terms of exactly what's struck from the record. That seems to indicate taking away and giving more weight to it all at the same time. So I think it actually has issues where it compounds the problem.

But we can deal with that, the method, at another time. And when I say another time, it won't be a long time, but in terms of being able to understand what to proceed with right now, people should proceed with that view and to construct the remainder of your cross.

If it goes on longer than you were anticipating, Mr. Dratel, as a result, then I understand.

MR. DRATEL: I don't know that I'm prepared to do it for this reason: First of all, there are facts here and factual answers and factual questions that the government has included that should not be stricken under any circumstances.

THE COURT: I have reviewed them and I do believe that what they indicated they would strike is consistent with my ruling. There are pieces that are around it, and I assume you've got the same shaded portions that I have --

MR. DRATEL: Yes.

THE COURT: -- that are not struck and appropriately so, and that would remain in terms of MtGox and Mark Karpeles. I mean, he's not eliminated from the record. And you'll certainly be able to argue whatever inferences you think you can argue.

MR. DRATEL: But there are other aspects of this that are simply not -- that are factual, such as citizenship, such as the part on page 506 and 507, which is about the conduct of the investigation. It has nothing to do with --

THE COURT: I believe the government has, consistent with my lengthy ruling this morning, cabined the material appropriately. So I'll look at each of the individual Q and A's again, but you should proceed right now as if those pieces are going to be struck from the record.

MR. DRATEL: I'm not sure I can proceed on this level because now I have to go back and reconstruct all this material that was unobjected to. I have to go back and look at parts of the cross that were already finished and done and then reconstruct it. I can go on with my cross right now, but then I'd like a break until tomorrow.

THE COURT: No. I'm done with this issue. If the government had objected timely at the first Q and A, we wouldn't be having this issue right now because it would have been highlighted on the basis of suspicion, conjecture and belief right then as opposed to going on.

MR. DRATEL: And I would have rephrased the question.

THE COURT: I'm saying go back and you can rephrase at the questions right now.

MR. DRATEL: But I need time to look at this. This is seven or eight different pieces.

THE COURT: We have been dealing with the possibility that this very information could be struck since Thursday night.

MR. DRATEL: No. They didn't identify this until 20 minutes ago.

THE COURT: No. It was obvious to me and it should have been obvious to you folks that when we were dealing with an objection about a type of testimony, that one potential result, particularly in light of the government's letter when they made an application to strike, is that certain things would be struck. The only question was what.

And therefore, this should not be a big shock in terms of what's being struck. I'm not suggesting that you should like it or agree with it, but it's how we're going to proceed.

MR. DRATEL: I want the equivalent so that -- I just want it to be equivalent, that's all, so that they can sit on their hands after providing all the 3500 material knowing exactly where the examination is going, they don't have to do that and now on the fly I have to do this. I don't think that's equivalent, your Honor. I'm sorry.

THE COURT: I think we have the way we're going to proceed in mind.

Do we have a full jury?

THE DEPUTY CLERK: We do.

THE COURT: Let's bring out the jury. Let's get

don't know it, you're conjecturing. And let us know that, all right?

THE WITNESS: Okay.

Q. So it's based upon your investigation, correct?

A. Yeah, based upon my investigation, I saw that there was a later on falling out between them, that they weren't as close as I originally thought they were.

Q. But initially, your investigation established that he was a right-hand man to Mr. Karpeles, right?

MR. TURNER: Objection, your Honor.

THE COURT: Sustained.

Q. On the type of information that you would rely on in your investigation, that's the type of information you had establishing that he was Karpeles' right-hand man, correct?

MR. TURNER: Objection; form and foundation.

THE COURT: Sustained.

Let me ask it this way:

Do you have any independent information that this person, Barr, is a right hand or close associate of Mr. Karpeles?

THE WITNESS: I don't.

THE COURT: All right. I take it you never spoke to this associate?

THE WITNESS: I never did, no.

THE COURT: All right. Move on.

(At the side bar)

THE COURT: I don't want to revisit everything we've been through. I know that the defense does not agree with my rulings and so I understand that. What I would like you to do is, you can make a proffer during a break or in a letter as to what you would ask that you understand I'm precluding you from asking so I'll confirm it, so you've got it preserved for appellate purposes.

But right now, my ruling is you can't use this witness about what he's read on the open Internet to confirm that certain kinds of expertise were or were not within the -- were not held by Mr. Barr or Mr. Karpeles.

This witness is reviewing things on LinkedIn and he can't then say he was an expert in Linux. He can't. He can, you know, the most that he can do, and you'd never be able to rely upon it, to state he was an expert --

MR. DRATEL: I'm fine with the notion that everything that's on the Internet is unreliable and that goes for everyone, and that goes for all their evidence, too. And I'm going to move to strike all of their evidence because it's all Internet.

THE COURT: What you need to do is you need to go back, because there's a difference between something appearing on an Internet where we've gone through each of the evidentiary issues, for instance, a page that says brown heroin and

something where we're extrapolating from a LinkedIn page which, by the way, has got all kinds of *Vayner* issues, that he is in fact an expert in Linux. I have no idea who put that there, whether he put that there or somebody else put that there, he being Mr. Barr.

MR. DRATEL: It's not a *Vayner* issue because *Vayner* was about the website itself. The Russian version of Facebook had not been established. If it was Facebook, they would have let it in.

THE COURT: I don't know enough about LinkedIn. I'm not a LinkedIn user myself, so as to the indicia of reliability of who can edit, I don't know whether or not this person is or is not an expert in Linux. I have no idea. You can call Barr and find out what his expertise is. I don't know where this fellow lives.

MR. DRATEL: He's Canadian. I have no subpoena power over him.

THE COURT: I don't know where he's located. If he's in New York City, he can be down the street for all I know.

MR. DRATEL: He's in Japan.

THE COURT: My point is, you can't get that kind of thing in. What other things are we likely to confront so we don't have back and forth that gets heated in front of a jury?

MR. DRATEL: Talking about Karpeles' credentials?

THE COURT: You can get in that there may have been

THE COURT: All right. So I think that you can go on.

BY MR. DRATEL:

Q. Did you swear in an affidavit that "Based on my training and experience, this platform is not widely used by forum administrators?"

A. It was something through the course that I learned --

Q. Did you not swear to that? That is the question. Did you not swear under oath in an affidavit that, based on your training and experience, the Wiki 1.17, the MediaWiki 1.17 version is not commonly used by forum administrators?

A. That was in my affidavit. Yes, I swore to that.

Q. Also, you found that the forum, and a company controlled by Mr. Karpeles, also ran something called simple machine -- I'm sorry, the Silk Road forum, and something called -- and Mutum Sigillum, Mr. Karpeles' company, ran something called Simple Machines, right, the software?

A. It was the bitcoin talk forums and the Silk Road forums both ran on Simple Machines forum software.

Q. And that wasn't common either?

A. That was one that I wasn't familiar with, no.

Q. Now, you investigated Mr. Karpeles' background, correct?

A. I did.

Q. And his professional background, right?

A. I did.

Q. And what kind of sources did you use?

involvement and associations with Silk Road?

MR. TURNER: Objection. Form.

THE COURT: Sustained.

Q. Did you review notes from Mr. Ulbricht's computer?

A. I did.

Q. Did you find any inferences of Mr. Karpeles' involvement and association with Silk Road?

MR. TURNER: Objection. Form. Foundation. Hearsay.

THE COURT: Sustained.

MR. DRATEL: Foundation is --

THE COURT: No, you can do it, but you can't ask him were there any differences. You can show him different things. The jury is the body that will draw inferences. That's the way it is.

BY MR. DRATEL:

Q. Did you find inferences --

THE COURT: I'm not going to allow finding inferences. If you want to ask him about certain facts he saw on the website, you can.

MR. DRATEL: Could we have a sidebar, your Honor?

THE COURT: I am not going to do a sidebar on this one.

BY MR. DRATEL:

Q. When you reviewed Mr. Ulbricht's notes, or what were on -- withdrawn.

MR. TURNER: Objection. It calls for speculation.

THE COURT: Sustained.

Q. If it had been hacked.

THE COURT: No. He is not an expert witness to talk about the evidence of hacking.

Q. You never saw Mr. Karpeles' laptop, correct?

A. No, I've never seen his laptop or computers.

Q. Mr. Karpeles also controls a lot of websites, correct?

A. He was a hosting provider, yes.

Q. And part of the your investigation in terms of trying to keep the integrity of your investigation intact, you advised other agents and other agencies not to go on Karpeles' websites because he tracked them, correct?

MR. TURNER: Objection. Relevance and foundation.

THE COURT: I will allow it.

(Pause)

There is a form issue with the word "integrity." Why don't you re-ask the question in a form that I will allow.

MR. DRATEL: We are beyond that. It is the next question which is about --

THE COURT: No. The question you had was in part of your investigation --

MR. DRATEL: I'm sorry.

Q. So in part of your investigation, in order to keep it confidential, to keep targets from being advised of the fact

BY MR. DRATEL:

Q. And this, again, was in the latter part of 2012, correct, like November 2012?

A. Correct.

Q. And, by the way, Vancouver is in the Pacific Time Zone, right?

A. Yes, it is.

Q. And at some point have you reviewed any private messages on the Silk Road service that existed -- on the Silk Road websites or servers or anything on Silk Road, have you reviewed any private messages that had the name Anand Athavale in them?

MR. TURNER: Objection, your Honor.

THE COURT: Give me one more word.

MR. TURNER: 403.

THE COURT: I will allow this question. You may answer.

A. Looking for his name on the servers?

Q. Have you seen any entries in the universe of Silk Road on the servers that has his name?

A. If there is something to help me recollect my memory?

Q. Private messages. Someone named "deathfromabove"?

MR. TURNER: Objection, your Honor.

THE COURT: Sustained.

MR. DRATEL: He wanted me to help him.

THE COURT: I know. But you are connecting that, the

testify to it, but don't speculate if you weren't given a number.

THE WITNESS: It was given to the Baltimore office.

MR. TURNER: Objection. Foundation.

THE COURT: That is struck since it is not your personal knowledge.

Did you learn of that through a communication with somebody, through an A.U.S.A. in Baltimore?

THE WITNESS: Through the U.S. attorneys.

THE COURT: The fact of it, that he received that information, is OK, but you can't get the truth of the account number if you are not going to connect the dots.

MR. DRATEL: I would move it under 807.

Q. So you were told that by an assistant United States attorney?

MR. TURNER: Objection. Hearsay.

THE COURT: Sustained.

Q. And Karpeles was still under investigation at the time, correct?

THE COURT: Can we get the timeframe.

Q. October 12, 2013, eleven days after Mr. Ulbricht's arrest, right?

A. We were still looking at him for money service business service charges, yes.

Q. Now, going back to Mr. Karpeles, you never saw his laptop,

A. There was discussions that he had where he brought up a possible lead in connections to Bates.

Q. Right. He had certain things in common not only with Mr. Ulbricht but also with DPR?

MR. TURNER: Objection. Again, hearsay.

THE COURT: Sustained.

Q. Some of the things were about his political views, right?

MR. TURNER: Objection.

THE COURT: Sustained.

(Pause)

Q. Did you look into Mr. Bates at all?

A. No, I did not.

Q. Now, before lunch we were talking about bitcoins and the accounts that you had identified -- that Homeland Security had identified as being part of Silk Road, do you remember?

A. Yes.

Q. So in August of 2012, you had identified several bitcoin accounts associated with Silk Road that had the equivalent of over -- talking about bitcoins in terms of value at that time -- of over $5 million dollars, U.S. dollars, right?

A. Yes.

Q. And that that had gone up from May of that year, right? In May -- withdrawn.

In May of that year, there was only about $2 million worth of bitcoins in the account, correct?

September, right?

A. It did.

Q. All the while, the FBI had the image of the servers and the IP address for the servers, right?

A. They did.

Q. So there was a lot of pressure to get to the point to get to the point to take down the site entirely, wasn't there?

A. There was -- there was pressure from our management and from, yeah, from basically our management and from the people that are working with the U.S. Attorney's Office; yes.

Q. And nobody was comfortable with the FBI having all this information and this website selling drugs all over the world continuing to operate, right?

MR. TURNER: Objection; form.

THE COURT: Sustained.

You can ask him a little bit differently as opposed to everybody, your comfort level for everybody.

Q. Were you comfortable with having all this information and the site continuing to run unimpeded?

A. It's not a call for me to make. It's something that it's for the U.S. Attorney's Office to make.

Q. I'm not talking about the call. I'm talking about your comfort level with continuing to let the site operate.

MR. TURNER: Objection; relevance.

THE COURT: Sustained on those grounds.

down the site. If -- especially with like a Tor site, you would have to have ownership of it. You would have to have a key over it. If you don't have full control over it, someone can just pop it back up again on another server somewhere else. And if you don't arrest the person that's running it, then -- there, too, they can just reopen the site again and you let on your hand, you let on your investigation and you didn't really solve anything then at that point.

Q. In fact, Silk Road 2.0 was up and running by early November of 2013, right?

A. Silk Road -- there was a Silk Road 2.0; yes.

Q. And virtually identical service as Silk Road that was operated on those other servers, right?

A. It was very similar to Silk Road 1, yes.

Q. Now, with respect to closing the site down, there was discussion among law enforcement about doing it as early as May or June, right?

A. If there's a document you're referring to to help me recollect.

Q. Sure. It's marked as 3505-3004. I'd ask you to read the highlighted parts. You can read the rest of it if you want, but let me know when you're finished.

A. Okay.

Q. So, you had been told at one point that the FBI said it would take the site down in May or June of 2013, right?

MR. TURNER: Objection; relevance.

THE COURT: Sustained.

Q. Well, the differences in how to proceed between Chicago and Baltimore were so dramatic that there had to be a meeting, right, to try to resolve it?

MR. TURNER: Objection; relevance.

THE COURT: Sustained.

Q. There was a meeting between Chicago and Baltimore about the direction of the investigation and splitting responsibility responsibilities, right?

A. Can you be more specific on a time frame?

Q. Sure. February 2012, February 1, 2012?

A. That was -- the initial meeting that we had I believe with or around about the time -- February, you said 2012?

Q. Yes, uh-huh.

A. I believe that might have been a coordination meeting among multiple agencies.

Q. And Baltimore said at that meeting that it was shutting down Silk Road soon, right?

MR. TURNER: Objection; relevance and hearsay.

MR. DRATEL: Goes to the investigation.

THE COURT: Hold on. Let me think about it. I'll allow a few more of these. I think I know where you're going and it's not offered for the truth, so I'll allow it.

MR. DRATEL: Right.

Q. And another source of difference of opinion was whether or not Baltimore should meet with Mr. Karpeles' lawyers or meet with him?

MR. TURNER: Objection.

THE COURT: Sustained.

Q. You were frustrated a fair amount of the time by these problems, right?

MR. TURNER: Objection; relevance.

THE COURT: Sustained.

Q. Now, you were also worried that the New York office, the law enforcement in New York would somehow tip off the investigation of Silk Road, right?

A. Is there a particular time frame?

Q. Yes. August of 2012?

A. There was multiple -- a lot of things were going on with multiple agencies, there was a long period of time, and in between that at different points in time, different representatives from multiple agencies would contact me and contact us in a variety of ways and it wouldn't always come from just one source within the agency. It would come from other people from different locations.

So there was always concerns based upon what those particular agencies are doing when they're getting involved how far along their investigation is in compared to ours. So there was time periods along the way that we would have -- we would

(At the side bar)

THE COURT: I just wanted to get a sense of the relevance. I have in my mind where I think you could be going, but I also think I may be wrong. Otherwise, I don't see how it's relevant.

MR. DRATEL: It's about the progress of the investigation and the fact that at a certain critical point, once Mr. Ulbricht was on the radar of the Southern District of New York, that everyone else had to fall in line or else they would not be permitted to participate, and that ultimately -- and this is all in the 3500 -- he says to his supervisor or his whoever he is talking to, he says and these -- he's talking about Baltimore -- he said basically unless people do it the way the Southern District wants, that they can whine all they want, but it won't stop SDNY from prosecuting all of them without any of us.

THE COURT: My ruling is that's irrelevant. I had a different version. That's not where I thought you were going.

MR. DRATEL: It is relevant.

THE COURT: It's not relevant. It's not relevant.

MR. DRATEL: Once Mr. Ulbricht came on the radar, everything else was shunt to the side because the Southern District was going to get its way and these people had to --

THE COURT: My ruling is that's not relevant. I had a different version or view.

MR. DRATEL: Which is?

THE COURT: I'm not going to give you your relevance --

MR. DRATEL: Conspiracy theories?

THE COURT: It was about ten questions ago, I thought you were going someplace else, so I allowed this but that's not relevant.

MR. TURNER: There's also a reference to Mark Karpeles to the document shown to him and I'm worried about defense counsel asking questions about how Mark Karpeles was stalling the investigation, how they were going to Mark Karpeles again.

THE COURT: We're going to leave this line of questioning. Thank you.

MR. DRATEL: You said "this line of questioning." I also was going to ask him because subsequently to all of this at the end of the September, he is invited by the Southern District to participate in the arrest of Mr. Ulbricht, it's basically like a largess by the Southern District and he recognizes that a hundred percent.

THE COURT: Also irrelevant.

MR. DRATEL: I think it is.

(Continued on next page)

(In open court; jury present)

BY MR. DRATEL:

Q. Now, with regard to competition -- withdrawn.

With regard to agencies and the arrest of Mr. Ulbricht, afterwards wasn't HSI Chicago concerned about having the HSI banner be on the seizure at some point?

MR. TURNER: Objection; form and relevance.

THE COURT: Sustained.

Q. Now, you spent thousands of hours on Silk Road you said, right?

A. I did.

Q. As a supposed buyer, right: In other words, utilizing buyer accounts, utilizing seller accounts?

A. I did.

Q. As an administrator?

A. I did.

Q. And the first time you heard Ross Ulbricht's name was either September 10 or September 11 of 2013, right?

A. Around that time frame.

Q. You had been investigating the site for two years, right?

A. Yes.

Q. And many of these accounts that you took over were from back of 2012, right, or the ones that you even started, many of them go back to 2012, right?

A. Some of them do, but I mean, if there were accounts taken

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 14 Cr. 68 (KBF)

ROSS WILLIAM ULBRICHT,

Defendant.

----------x

New York, N.Y.
January 21, 2015
9:22 a.m.

Before:

HON. KATHERINE B. FORREST,

District Judge

APPEARANCES

PREET BHARARA,
United States Attorney for the
Southern District of New York
BY: SERRIN A. TURNER
TIMOTHY HOWARD
Assistant United States Attorneys

JOSHUA LEWIS DRATEL
LINDSAY LEWIS
JOSHUA HOROWITZ
Attorneys for Defendant

- also present -

Special Agent Vincent D'Agostino
Molly Rosen, Government Paralegal
Nicholas Evert, Government Paralegal
Sharon Kim, Government Intern

(In open court; jury present)

THE COURT: Mr. Kiernan, I'm going to ask you to remain standing and I'll have my deputy swear you in.

(Witness sworn)

THE COURT: Thank you, Mr. Kiernan. Please be seated, sir.

THE WITNESS: Thank you.

THE COURT: There's water there and I see you have a bottle of water also on the side.

It will be important for you to pull yourself up to the mic. and speak clearly and directly into the mic.

Mr. Howard.

THOMAS KIERNAN,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOWARD:

Q. Good morning.

A. Good morning.

Q. Who do you work for?

A. The FBI, the Federal Bureau of Investigations.

Q. And how long have you worked with the FBI?

A. Twenty-three years.

Q. And what is your position at the FBI?

A. I'm currently a computer scientist with the FBI.

codes that match on this.

MR. HOWARD: The government offers Government Exhibit 500.

MR. DRATEL: Your Honor, I think that has to be subject to connection.

THE COURT: Let me ask, that is the hard drive that you understand was provided to you from Beeson?

THE WITNESS: Correct.

THE COURT: All right.

All right. It is received.

(Government's Exhibit 500 received in evidence)

BY MR. HOWARD:

Q. Now, what did you do after obtaining this hard drive?

A. After obtaining this hard drive, I made a staging copy of it. So what I do is I take the drive from Beeson that has the image on it. I plug this into a write locker, just a device, a piece of hardware that connects to the hard drive. And I take the images that were there and I copied them to a drive, or a NAS drive that I have with me.

Q. So you create a staging -- what is a staging copy?

A. A staging copy. It is a copy that I can work on without working on this one.

Q. And you indicated that you plugged it into a write locker. What is a write locker?

A. A write locker just takes -- makes this so I cannot write

THE COURT: Why don't you ask the same question, Mr. Howard, in terms of "myself." I'm unclear whether it's a name you designate for yourself or whether it's an automatic name given.

Q. Mr. Kiernan, is "myself" something that you choose for yourself as a user of Tor chat, or is it automatically selected to you by the program?

A. The program gives you that user account, the username and the log as "myself."

Q. And the name of the other party in the conversation, is that automatically selected for you?

A. No. You can assign that a name.

Q. Could it be assigned anything the user wants?

A. Yes.

Q. So, for example, if you're chatting with your mother, you can label it "mom" if you want, right?

A. Correct, because the usernames in Tor chat are long, tough-to-read names. You can see, as a matter of fact, from that log file it's the actual name of the user on there. So to make it human-readable, you give it an easier-to-use name like "mom."

Q. So if we could please look at Government Exhibit 222 in your binder, please. Do you recognize what this exhibit is?

A. I do.

Q. What is this exhibit?

A. This is a log file from that Tor chat directory.
Q. This is from the defendant's computer?
A. From the defendant's computer; yes.
Q. And did you extract this file?
A. I did.

MR. HOWARD: The government offers Government Exhibit 222.

MR. DRATEL: No objection.

THE COURT: Received.

(Government's Exhibit 222 received in evidence)

MR. HOWARD: Ms. Rosen, can you please publish Government Exhibit 222, please. Zoom in on the first few lines there.

Q. Is this what a Tor chat log looks like, Mr. Kiernan?
A. It is.
Q. So let me just describe the very top line it says "This log file is not signed and has no cogency of proof."

Are you familiar with what that is?

A. I am.
Q. What is that?
A. That's, again, a default setting when the log file starts getting created, it puts that in there.
Q. So in other words, all Tor chat log files automatically include that at the top, correct?
A. They'll put it in there, yes.

Whose computer was this chat recovered from?

A. The defendant's.

Q. Mr. Kiernan, I want you to take your time and look through what's been marked in your exhibit binder as 222A all the way through 232E, and let me know when you're done. Look at them generally and let me know.

A. I'm sorry. 222A to?

Q. To 232E.

A. Okay.

Q. So do you recognize these exhibits?

A. I do.

Q. What are they?

A. All excerpts from the Tor chat logs that were found in the defendant's computer.

Q. And again, these are not full chat logs. They're excerpts, correct?

A. Correct.

Q. Did you participate in the creation of these exhibits?

A. Yes.

Q. Are they true and accurate excerpts of the entire log files?

A. They are, yes.

Q. Does each also contain the file name of the full log file at the top like Government Exhibit 222B?

A. Yes.

1. Q. Are all the pages in this exhibit various screenshots of files found within that directory used for website files? A. Yes. Q. What is the name of the file that's depicted on the first page? A. About.php. Q. Could you focus on the bottom right-hand corner. A. I can, yes.

MR. HOWARD: Ms. Rosen, why don't we just focus on maybe the top of this. We will see it a little bigger.

Q. So, Mr. Kiernan, there is also -- there is this text here that's inside little brackets. A. Yes. Q. What does that represent? What is that? A. That's actually code within the file. It doesn't get rendered correctly in this viewer. Q. Are you familiar with that kind of code? A. Yes. Q. Can you describe -- can you read or point to on the screen if this file was loaded in a browser, what is the text that would appear? A. Sure. Q. Read it, please. A. "Greetings and welcome to Silk Road." That would be one of

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 14 Cr. 68 (KBF)

ROSS WILLIAM ULBRICHT,

Defendant.

----------x

New York, N.Y.
January 22, 2015
9:10 a.m.

Before:

HON. KATHERINE B. FORREST,

District Judge

APPEARANCES

PREET BHARARA,
United States Attorney for the
Southern District of New York
BY: SERRIN A. TURNER
TIMOTHY HOWARD
Assistant United States Attorneys

JOSHUA LEWIS DRATEL
LINDSAY LEWIS
JOSHUA HOROWITZ
Attorneys for Defendant

- also present -

Special Agent Vincent D'Agostino
Molly Rosen, Government Paralegal
Nicholas Evert, Government Paralegal
Sharon Kim, Legal Intern

(Jury and witness not present)

THE COURT: All right. Ladies and gentlemen, let's all be seated.

I want to find out where you're going, Mr. Dratel, because what you can't do with this witness is -- I've allowed, in response to the government's objection about going beyond the scope, I have allowed you some room, but what you can't do is make him into a generalized computer expert for the defense. You are welcome, of course, if you have complied with the appropriate disclosure requirements, to call your own expert or to call a percipient witness. But the mastermind page came in through the back button series. It was a percipient witness set of testimony, as opposed to generalized how you would enter the username. The username was there, but the coding behind it was not the subject of this witness' testimony.

MR. DRATEL: He testified about php. He testified about the website pages.

This is from the laptop. We are going to establish that with him. And it is from the laptop, and he said he looked at php files. He should just --

THE COURT: You have to stay within the scope of the direct. So the direct is not just because he mentioned php, every php question you can think of that might be helpful to the defense, it is to go after what this witness testified about. The scope of his direct, as you know, determines the

parameters of the cross. And so you are welcome to go anywhere with the cross. But his direct was actually quite narrow. It was here's what I got. Here are the files I extracted.

MR. DRATEL: He put in the entire laptop. That is fair game now.

THE COURT: It is not fair game now.

MR. DRATEL: He can't just ignore it by not asking the witness. He examined the entire laptop.

THE COURT: You can get him, through cross-examination, on any one of the files he testified about. Go after that. But you've got to tie it specifically to the file in the extraction process. The two things he did was extraction, and then this file came out of this directory, which had this folder in it. That's it.

MR. DRATEL: No, but there is more. He puts in a whole document, essentially. If someone puts in a 30-page document and he only testifies about page 2, that doesn't put the other 29 off limits, I mean, on cross if they are part of the same document.

THE COURT: Sometimes it does. It depends. And so just because he's got a laptop that he's authenticated doesn't mean he can be your laptop expert.

Now, to be clear -- to be clear, if you want to call somebody to talk about php, the laptop more generally, BitTorrent more generally, that's the defense case, but this

witness is not your generalized computer witness.

MR. DRATEL: He is not an expert. I'm not making him an expert. He testified, number one, about the mastermind page yesterday. And he testified about the mastermind file on the laptop in the php directories. That makes him fair game for --

THE COURT: That does not make him --

MR. DRATEL: I can't be limited to just -- then I have no cross if all I can do is just talk about what they've talked about. Cross is much further than that.

THE COURT: No. What you can do is talk about whether or not in fact the file that he looked at on the computer was not a php file, it was really something else, whether or not his definition of php was inaccurate. You go dig into anything that he testified about. Whether when he pushed the back button it somehow corrupted the file, changed the file, whether or not he's reading the directory and the file paths correctly.

Let me hear from the government, but I am concerned that this is going to go on far longer than it needs to go because you are trying to make him into a different witness.

MR. DRATEL: He answered the question, no, he can. I just want to now establish that it's in the laptop --

THE COURT: I know, but we are going to be coming back to the same problem again and again.

MR. DRATEL: I don't think so.

THE COURT: Let me hear from the government about your

view.

MR. HOWARD: Your Honor, I think the Court has it absolutely right. That is why we are objecting as to the scope of the cross-examination.

Mr. Kiernan simply testified to the extraction of files from certain locations on the laptop. He did not testify about how the scripts worked, how they operated, or anything of that sort. And it is apparent that Mr. Dratel is trying to go further than the scope of Mr. Kiernan's direct, which was just simply about locating and extracting files from the digital evidence.

MR. DRATEL: He didn't. He went further. He talked yesterday about the purpose of php and --

THE COURT: You can go after -- if his definition of php was wrong and you want to undermine his credibility in terms of his expertise by asking him whether the definition is correct, that is fair game. Absolutely. No doubt about it. That is absolutely impeachment material.

If, however, by merely mentioning the word "php" you are now going to find other kinds of php material which would be helpful to the defense, he's not your witness. You need a different witness, either that the government may later call where you can use it or where you yourself call. But we are going to stay within the scope of the direct or this is going to become a detour and frolic. You need to call a witness to

make the points you want to make if it is beyond the scope. I am not going to allow it to be very far afield.

You know what's within the scope of the direct.

MR. DRATEL: I disagree, your Honor. OK. So --

THE COURT: Well, stay within the scope of the direct. And if you are able to stay within the scope of the direct, then it will be clear to us both that you understand what I'm saying. If you continue to go outside the scope of the direct, I will sustain the government's objections.

The government should continue to object if it believes it is outside the scope of the direct. I wanted to see where this was going. It's going outside the scope. I want to say, for the fifth time I think now, I am by no means suggesting that the defense can't put on evidence it believes is appropriate as to these very topics, as to these very documents, as to these very files, but it's for the defense to do if it's not for the purposes of directly going into the scope of the direct of this witness.

Let's take our own break and then we'll come back.

THE CLERK: All rise.

(Recess)

THE COURT: All right. Let's bring out the jury.

(Continued on next page)

A. Yes.
Q. It is available for free on the Internet, right?
A. Yes.
Q. And both Linux and Ubuntu are perhaps not as popular as Windows but they're popular, right?
MR. HOWARD: Objection.
THE COURT: Sustained.
Q. The Linux kernel is essentially the glue that holds the software and the hardware together, right, for Linux?
MR. HOWARD: The same objection.
THE COURT: Sustained. Stay within the scope of the direct.
MR. DRATEL: Your Honor, this is within the scope.
THE COURT: Sustained.
MR. DRATEL: Can I have another sidebar, please?
THE COURT: No. Move on to your next line of questioning.
BY MR. DRATEL:
Q. So you don't know if the kernel that Mr. Ulbricht had --
THE COURT: Leave "the kernel."
Q. You used a Tor chat -- withdrawn.
You downloaded Tor chat through something called the Debian package, correct, D-e-b-i-a-n?
A. And AppGet, yes.
Q. I missed that last one.

A. The install command is AppGet.
Q. Oh, OK. But that's a preconfigured package that has all of the Tor chat elements in it and you just put it right in on the machine, right?
A. Yes.
Q. OK. But it can also be done in sort of a DIY, do it yourself, where a user can take code and put it in separately. They don't even have to buy the package as a bundle. They can do it on their own with the various components, correct?
MR. HOWARD: Objection. Beyond the scope and foundation.
THE COURT: Sustained.
MR. DRATEL: Your Honor, it's not beyond the scope.
THE COURT: Sustained.
MR. DRATEL: May I be heard?
THE COURT: No. You can be heard on this at the next break. Go on to your next line of questioning.
BY MR. DRATEL:
Q. So in the experiment that you described yesterday, you don't know that the way that you installed Tor chat on your computer and the version of Tor chat was the same as that on Mr. Ulbricht's computer, right?
A. That's right.
(Continued on next page)

BY MR. DRATEL:

Q. So, the experiment that you ran -- withdrawn.

The purpose of a scientific experiment is to try to replicate as much as possible - and frankly completely - all of the elements of one set of events so that you can match them to a second set, right?

MR. HOWARD: Objection.

THE COURT: Sustained.

Q. If an experiment doesn't have the same elements in it to get to a result, it's not a valid experiment, is it?

THE COURT: Why don't you ask it in terms of the experiment he did.

MR. DRATEL: Yes. That's what I'm trying to do.

THE COURT: No. You're saying "if an experiment." Not any generalized experiment. Talk to him about the experiment he did.

MR. DRATEL: That's what I was doing before. That's exactly what I was doing before.

THE COURT: Try again.

Q. In your experiment, Tor chat is an essential element of your experiment, correct?

A. Not essential, but it's -- the download was important to get, yes.

Q. Could you have done it without Tor chat?

A. I needed Tor chat to run -- it wasn't an experiment. I

MR. HOWARD: Objection; foundation.

THE COURT: Overruled. Why don't you just reask the question attached to this.

MR. DRATEL: Sure.

Q. IRL to your knowledge is in real life?

A. In real life; yes.

Q. And in this chat, DA asks Dread Pirate Roberts "IRL or online," right?

A. Yes.

Q. Distinguishing the two things, right?

A. Yes.

Q. Real life from online?

THE COURT: Hold on. He can't testify as to what was meant by these people, but he can say what the word "IRL" means to him.

Q. And Dread Pirate Roberts answers no, just online. My concern is that LE, and that's law enforcement, right?

THE COURT: Hold on. He's not going to interpret what the writers meant. He didn't do it yesterday. He's not going to do it today. You can put somebody else on the stand to do that.

Q. "My concern is that LE will see that DA is a player at Silk Road by your forum presence and then track down who you bought from, and sold to under that name and then find you irl."

Now, that application for the Island of Dominica that

computer, either that day or some other day when he was downloading something else?

A. Not from the whole time period.

Q. Right.

A. But that's a BitTorrent --

Q. But that's a BitTorrent, but the port is open and it gives access to the computer, correct?

A. It gives access to the BitTorrent client.

Q. Right. But people who -- and that means those seven users out there who have it, right, who are connected?

A. That's right.

Q. And as we said before, it could contain all sorts -- that anything you download, can contain all sorts of malware, right, malicious --

A. Possible.

Q. -- malicious software that can be used against the person who is operating the computer, right?

MR. HOWARD: Objection.

THE COURT: Sustained.

MR. DRATEL: I have nothing further.

THE COURT: Thank you.

Anything further, Mr. Howard, like one question?

MR. HOWARD: Yes. It is one question -- two questions, but start with one.

REDIRECT EXAMINATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 14 Cr. 68 (KBF)

ROSS WILLIAM ULBRICHT,

Defendant.

----------x

New York, N.Y.
January 28, 2015
9:35 a.m.

Before:

HON. KATHERINE B. FORREST,

District Judge

APPEARANCES

PREET BHARARA,
United States Attorney for the
Southern District of New York
BY: SERRIN A. TURNER
TIMOTHY HOWARD
Assistant United States Attorneys

JOSHUA LEWIS DRATEL
LINDSAY LEWIS
JOSHUA HOROWITZ
Attorneys for Defendant

- also present -

Special Agent Vincent D'Agostino
Molly Rosen, Government Paralegal
Nicholas Evert, Government Paralegal

THE COURT: Let me ask the government.

MR. TURNER: Your Honor is exactly right. We have been over this territory before. If they want to use evidence in their affirmative case that their LinkedIn page, first of all, is not hearsay and it is properly authenticated and it is somehow relevant to the defendant's case, they can do that. They don't get to do that through this witness.

THE COURT: All right. My ruling stands. OK? So stay within the investigation, stay within the areas of search. But if there are things where you are wondering if they are within that you haven't yet covered, you can ask a question and I will sustain an objection but --

MR. DRATEL: Yes. I need to make a record.

THE COURT: You can make a record at the break. That we can do at the break.

MR. DRATEL: I need to ask the questions.

THE COURT: We can make a record as to various things at the break. But if you want to cover certain things which you think are in a gray area right now, I am not going to preclude you from doing that. But if there are things that you can do other than what you know is going to be objectionable, then let's go ahead and do them now.

MR. DRATEL: I don't know what is objectionable. In my experience, I have in never been so curtailed with cross-examination of an agent who has done a wholesale

investigation of the defendant and then to be only limited to the things that the government wants to put in is just, to me, I will have to get through this and see where we are.

THE COURT: I am comfortable with my rulings despite your experience.

(Continued on next page)

Q. Don't read it. Read it to yourself. I apologize.
A. Okay. Okay.
Q. Does that refresh your recollection that you, in December of 2013, December 30th, 2013, referred to Mr. Ulbricht as the original DPR?
MR. TURNER: Objection; agent belief.
THE COURT: He's asking whether or not he made that statement. You may answer.
A. Yes. I was referring to --
Q. Just "yes" is fine. Thank you.
A. Yes.
Q. And when you did all the -- when you looked for comparisons of things that were happening online versus returns on subpoenas and other things that you could find online such as Google and other -- withdrawn.
When looking at Mr. Ulbricht, you were trying to compare time frames with various things that were going on, either on Google or Facebook -- Gmail, rather, or Facebook and versus other things like chats and things like that, right?
A. Information that was found on the laptop versus information we found from outside.
Q. And you did that a little bit with respect to Richard Bates as well, correct?
MR. TURNER: Objection; beyond the scope.
THE COURT: Sustained.

Q. Did you at one point find evidence that someone who worked at eBay or PayPal was Dread Pirate Roberts?

MR. TURNER: Objection; agent belief.

THE COURT: Sustained.

Q. One of the other purposes of your investigation was about looking at bitcoins, correct?

A. At bitcoins?

Q. Trying to find bitcoin wallets and Silk Road bitcoin?

MR. TURNER: Objection; form and beyond the scope.

THE COURT: Well, I don't understand how it's within the scope. Sustained.

Q. You had access to the Silk Road servers at some point, too, correct?

MR. TURNER: Objection; beyond the scope.

THE COURT: I don't know where this is going. I don't find it within the scope. I can't conceive how it's within the scope. Sustained.

Q. Well, you talked about Government Exhibit 241, correct, on your direct?

A. Can you refresh.

Q. The log?

A. The log.

Q. Yes. In fact, there were other documents -- withdrawn. You had access to the private messages, right, you reviewed private messages on the Silk Road server?

The Task Force began its investigation as a result of an open letter from two United States senators, Chuck Schumer, and another senator asking that Silk Road be shut down, correct?

MR. TURNER: Objection.

THE COURT: Sustained.

MR. DRATEL: Your Honor, this goes to --

THE COURT: It is beyond the scope of this witness' testimony.

MR. DRATEL: It goes to a fundamental part --

THE COURT: It is beyond the scope of this witness' testimony.

BY MR. DRATEL:

Q. You pulled out all the stops on this investigation, correct?

MR. TURNER: Objection. Form and relevance.

THE COURT: Overruled.

Q. This is a high-priority investigation, correct?

A. It was a high-priority investigation, yes.

Q. And one of the things you did was to time it so that when the arrest of Mr. Ulbricht occurred you would be able to also, within a very short frame of time, speak to people who you'd identified as people who knew him, correct?

MR. TURNER: Objection. Beyond the scope.

THE COURT: Sustained.

Q. Now, almost every agency of federal law enforcement was involved in this investigation, correct?
A. That is correct.
Q. And that caused some friction between agencies, right?
MR. TURNER: Objection. Relevancy.
THE COURT: Sustained.
Q. Everybody wanted -- every agency wanted to get credit for this arrest, correct?
MR. TURNER: Objection.
THE COURT: Sustained.
Q. I want to go back to -- so 333A is -- you can put it up for everybody -- that's something that was provided by Google about logins, correct?
A. That is correct.
Q. Now, that was part of a larger subpoena production by Google, correct?
A. This?
Q. Yes.
A. Yes.
Q. And that showed all the login times during a longer period, correct?
A. Yes.
Q. And so you reviewed that, correct?
A. Yes, I did.
Q. And, in fact, there are gaps between login times in certain

15-1815-CR

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

ROSS WILLIAM ULBRICHT, AKA DREAD PIRATE ROBERTS, AKA SILK ROAD, AKA SEALED DEFENDANT 1, AKA DPR,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York (New York City)

APPENDIX
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MICHAEL A. LEVY
SERRIN A. TURNER
ASSISTANT UNITED STATES ATTORNEYS
UNITED STATES ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK
Attorneys for Appellee
1 Saint Andrew's Plaza
New York, New York 10007
212-637-2346

JOSHUA L. DRATEL, P.C.
Attorneys for Defendant-Appellant
29 Broadway, Suite 1412
New York, New York 10006
212-732-0707

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

v. 14 Cr. 68 (KBF)

ROSS WILLIAM ULBRICHT,

Defendant.

----------x

New York, N.Y.
January 29, 2015
9:10 a.m.

Before:

HON. KATHERINE B. FORREST,

District Judge

APPEARANCES

PREET BHARARA,
United States Attorney for the
Southern District of New York
BY: SERRIN A. TURNER
TIMOTHY HOWARD
Assistant United States Attorneys

JOSHUA LEWIS DRATEL
LINDSAY LEWIS
JOSHUA HOROWITZ
Attorneys for Defendant

- also present -

Special Agent Vincent D'Agostino
Molly Rosen, Government Paralegal
Nicholas Evert, Government Paralegal

A. I would say hundreds of bitcoin transactions.
Q. Including the bitcoin transactions you talked about earlier, you seized bitcoins?
A. Correct, for the government seizure of bitcoins as well.
Q. What are bitcoins?
A. Bitcoins are -- it's digital currency. It's money that works online to buy products online or even in real person or paid-for services. It's kind of like cash for the Internet. It's similar to cash in that when people conduct transactions, you don't really see who is doing the transactions, but it's different than cash that every single transaction, the transaction itself, it gets permanently documented on this thing called the block chain. So even though you don't know who made the transactions, you get to see every single transaction that was performed using bitcoins.
Q. Can you explain the block chain a little more fully, please.
A. So block chain, in accounting terms it's similar to a public ledger which means, you know, published financial records of everything that's taking place. So block chain, it's a file that's online on the Internet access and shared and used by all the bitcoin users and what it contains is every single transaction of bitcoins ever since the creation of bitcoins.
Q. Now, can bitcoins be used for legitimate purposes?

A. Yes, they can.

Q. Can they also be used for illegitimate purposes?

A. Of course.

THE COURT: Let me ask about the block chain again.

I'm not clear what information is in the block chain. In other words, I understand from your testimony that you can follow that there has been a transaction, then another transaction, then another transaction and you can follow the transaction history of a particular bitcoin --

THE WITNESS: Right.

THE COURT: -- or a portion of bitcoin.

THE WITNESS: Yes.

THE COURT: What is the information in the block chain?

THE WITNESS: So the information that's contained in the block chain, first of all, you would have the information about the block chain itself, so the size of the current block and the date and the time that block was added to the block chain, so it's constantly growing. I think the current size of the block chain is over 20 gigabytes I think. So it's a considerable size because it contains all the history of bitcoins.

So within the block, there's additional information of every single transaction that was added to that block, so you'll see all the addresses that were used to send the payment

and all the addresses that were used to receive a payment in bitcoins.

THE COURT: IP addresses?

THE WITNESS: There is no direct IP address of who is sending and receiving bitcoins.

THE COURT: So what kind of address is it?

THE WITNESS: I believe you might be able to obtain the IP address of --

THE COURT: Don't speculate. I'm wondering when you use the word "address," what were you referring to, what kind of address.

THE WITNESS: Bitcoin addresses. So it's a long string of alphanumeric value and it works almost like an email address. You need to give somebody your bitcoin address in order for whoever that wants to pay you to make sure they pay you the correct amount of bitcoins to the right person.

So if I were to email Tim, I wouldn't know how to send him an email until Tim gave me his email address. So in the same manner, if I need to send Tim ten bitcoins, there's no way for me to deliver those bitcoins to him unless he gives me his bitcoin address first.

BY MR. HOWARD:

Q. Mr. Yum, let's skip ahead. We'll come back to where we want to go next to show an example of a block chain. Look at Government Exhibit 601, which is in your binder, please.

Do you recognize what this is?
A. Yes, I do.
Q. What is this?
A. It's a screenshot of a popular block chain explorer, blockchain.info. You could obtain information about the block chain and transactions.
Q. Is that website available to the public?
A. Yes.
Q. Were you involved in the preparation of this exhibit?
A. Yes.
Q. Does this exhibit fairly and accurately depict information from the block chain?
A. Yes, it does.
MR. HOWARD: Government offers Government Exhibit 601.
MR. DRATEL: No objection.
THE COURT: Received.
(Government's Exhibit 601 received in evidence)
Q. Mr. Yum, this is something you could pull up in an ordinary Internet processor, correct?
A. Yes.
Q. Let's focus on the top section.
A. So the top section is a high-level summary about that address.
Q. So where is -- do you have your laser pointer up there?
A. Yes, I do.

of the information about her bitcoins.
Q. What else does having the private keys allow you to do with bitcoins?
A. So if you own any bitcoins in any one of these addresses, the corresponding key allows you to spend those bitcoins.
Q. And the wallet is basically just a computer file, correct?
A. Yes. It's a computer file, yeah.
Q. Is Alice able to see all of her own addresses?
A. Yes.
Q. Just to be clear, on this demonstrative that we say BTC Address 1 and down to 5.

How many addresses could a wallet contain?

A. As many as you want. In here for example purposes there's only five addresses listed, but you could create hundreds, thousands of addresses in one wallet file.
Q. Can anyone else other than Alice see all of the addresses in her wallet?
A. Only if they know what the address is, but if you don't have the private key, you can't just guess someone else's address.
Q. To be clear, each those addresses is one of those long, ugly string of numbers and letters, right?
A. Correct.

THE COURT: Where do you get an address?

THE WITNESS: So, the bitcoin program generates a long

string of numbers and that acts as a seed to the private key. And the program again uses that private key to calculate something that is similar to the MD5 hashes and a hash value is represented as a public key which is a lot easier to pass to someone else, although it looks very long and confusing.

THE COURT: All right.

Q. How easy is it to create a new bitcoin address?

A. If you're using a bitcoin program all you have to do is click a button and request the program to create a new bitcoin address.

Q. It will assign a new bitcoin address to you?

A. Yes.

Q. Will it give you the private key necessary to spend the bitcoins in that address?

A. Right. In the background of the program, you'll get a private key and then you'll get the public address that you can freely give out to other people if you want to receive bitcoins to that address.

Q. Could you explain what is depicted on the second slide, please.

A. I'm going to walk you through a simplified demonstration of how a transaction would occur. So, again Alice, she owes Bob ten bitcoins, but just as I said, Alice has no idea where to send the bitcoins to, so she needs to ask Bob for a bitcoin address first.

So Alice wants to send ten bitcoins and she's asking where to send it to. And Bob, in his wallet, he only has two addresses, but as stated before, he could have many more if he wants to. So Bob picks his Bitcoin Address 2, and can we go to the next screen, please, and tells Alice to send ten bitcoins to Address 2.

Alice doesn't really need to worry about where the bitcoins are coming from her wallet. The program handles that in the most efficient manner it could, so once Alice tells her bitcoin program to send ten bitcoins to Bob's Address 2, Alice's program picks Address 1 and Address 4 in her wallet and sends ten bitcoins to Bob's Address 2.

Q. So Alice doesn't have to pick and choose between her own addresses, correct?

A. Right. It's very simple to use.

THE COURT: It could be five out of one address, five out of another or two out of one address, eight out of another, or some other combination of pieces?

THE WITNESS: Correct.

THE COURT: All right.

Q. So what's depicted on the third slide?

A. In our demonstration, there were seven bitcoins in Address 1 that was sent and three bitcoins in Address 4 of Alice's bitcoin that were sent to Bob's Address 2 in the amount of ten bitcoins.

Q. And then what's reflected on the bottom of the slide?
A. So the bottom would be an example of what would be recorded onto the block chain as we saw in the prior block chain info screenshot. So in here, you would see a unique transaction number that identifies this particular transaction and the date and time this transaction was documented onto the block chain.

And in here, again, you see only the two addresses that were used to make this transaction of ten bitcoins that were sent to Bob's Address 2.

Q. So now Bob could get this information off the block chain and see what addresses Alice's wallet used to engage in this transaction, correct?
A. Correct. Bob, he knows his address, so he could easily search his own address and figure out this transaction and note that Alice used these two bitcoin addresses to send Bob ten bitcoins.
Q. Now, would Bob know all of Alice's other bitcoin addresses?
A. No. Address 2, 3 or 5, Bob would have no idea what the -- who those addresses belong to.
Q. And why couldn't he see those?
A. The addresses aren't announced or anything. So unless you directly have a transaction with somebody, you can't really figure out who owns what address.
Q. You need the private keys to see all the rest of the wallet?

A. Right. The only way Bob may be able to see these addresses is if he had the private key in his wallet allowing him to calculate the same private address -- public address.

Q. Now, Mr. Yum, earlier you testified that you seized approximately 20,000 bitcoins from the Iceland bitcoin server, correct?

A. Correct.

Q. Now, apart from that seizure, were you involved in any other seizures of bitcoins in the Silk Road investigation?

A. Yes, I was.

Q. Where were those bitcoins located?

A. The wallet file for the other bitcoins were obtained from the laptop that was seized from the defendant on the day of his arrest.

Q. And how did you get access to that wallet file?

A. So, Mr. Kiernan actually analyzed and reviewed the laptop and he had located the wallet file and copied it onto a thumb drive and handed it over to me.

Q. And what did you do with that wallet file after it was provided to you by Mr. Kiernan?

A. So, I loaded that wallet file onto my bitcoin program instance, and checked the current balance that was contained inside all the addresses inside the wallet file.

Q. And what was the balance?

A. It was approximately 144,000 bitcoins.

Q. And what were those bitcoins worth approximately at the time of the defendant's arrest?
A. So at the time of the arrest, which was prior to when I received that wallet file, it was -- again, using the varying bitcoin price of that day, it would have been anywhere between 16- to $18 million.
Q. Now, what did you do after you determined the balance of the bitcoins that were in the wallet that was in the defendant's computer?
A. I had another bitcoin address that was prepared for the government's seizure, and I transferred all the bitcoins from the defendant's wallet file into the government address.
Q. You said it was an FBI bitcoin wallet, correct?
A. Correct.
Q. Is this the same or different wallet that you used in Iceland to get the bitcoins from the bitcoin server?
A. Different address. I wanted to separate the two so the bitcoins didn't mix.
Q. Was there any balance in the FBI controlled log when you created it?
A. No. It was a newly -- brand new created bitcoin address and since it's never been -- there's never been a transaction conducted using that address, it wouldn't have shown in the block chain, so no one else knew what that address was.
Q. Now, did the wallet file that was provided to you by

Mr. Kiernan from the defendant's laptop contain the private keys for the bitcoin addresses in that wallet?

A. Correct. That would be the most important thing. Without those private keys, I wouldn't have the right to send the bitcoins from the defendant's wallet to the government seizure address.

Q. Did those private keys also allow you to see all of the bitcoin addresses that were located in that wallet?

A. Yes.

Q. Can you please flip in your binder to what's been marked for identification purposes as Government Exhibit 607. Do you recognize what this is?

A. Yes, I do.

Q. And what is this?

A. It's a screenshot of a search engine named duckduckgo, and it's the search result for a bitcoin address starting 1FfmbH, which is the address that I created for the government to seize all of the bitcoins from the defendant's laptop.

Q. And had you previously used this website to obtain public information from the block chain?

A. Yes, I have.

Q. Does this website accurately reflect bitcoin transactions that you've conducted in the past?

A. Yes, it does.

Q. You took this screenshot?

A. Yes.

MR. HOWARD: The government offers Government Exhibit 607.

MR. DRATEL: No objection.

THE COURT: Received.

(Government's Exhibit 607 received in evidence)

Q. Mr. Yum, right up here at the top next to the cute little picture of the duck, there's 1Ff and a long string of characters. What is this?

A. That's the address created for the government.

Q. The bitcoin address?

A. The bitcoin address, yes.

Q. And you were involved in creating that, correct?

A. Yes.

MR. HOWARD: Can we zoom out, please.

Q. Here it says total received, 144,341 and change. What does that number represent?

A. So that's the total amount of bitcoins that was sent to this address above.

Q. And where were they sent from?

A. So that total number is a little higher than the actual amount, but the majority of those were sent from the defendant's laptop -- the wallet file located in the defendant's laptop.

MR. HOWARD: Mr. Evert, could you please publish

Government Exhibit 201L, which is already in evidence.

Q. Have you seen this before? It's on the screen.

A. Yes, I have.

Q. And what is this?

A. It's a summary sheet. It's a picture screenshot of the defendant's laptop when it was seized on the day of his arrest.

Q. So I want to focus here on the fifth line down here. Can we zoom in here. And here it says cold BTC and under that 144,336.4.

How does this number that was on the defendant's computer screen compare to the number of bitcoins that you seized?

A. It matches almost exact to the amount that was seized.

Q. And right above that, there's the word "cold BTC"?

A. Yes.

Q. Are you familiar with the bitcoin term "cold storage"?

A. Yes, I am. It's a term that's commonly used within the bitcoin community and bitcoin users.

Q. What is it used to refer to?

A. It's a way to store your wallet file. So it's important to secure your wallet file because it has all the keys that allows you to spend your bitcoins. So cold storage is -- the most common example is not having your wallet file attached a bitcoin program. So instead of -- that would be hot, so instead of having a hot wallet, you have a cold storage where

Q. Those are two servers that you were actually personally involved in seizing, correct?
A. Yes, when I was still with the government.
Q. Did you find the private keys on those servers for those wallet files?
A. Yes. So I obtained the wallet files, so I had all the private keys that are also inside those wallet files.
Q. So did that allow you to see all of the bitcoin addresses that were associated with those wallets on the Silk Road servers?
A. Yes.
Q. Now, how about the defendant's laptop?
A. So, I took the same approach. I got a forensic image copy of the defendant's laptop and I examined and analyzed the laptop to locate at least three wallet files and extracted all the bitcoin addresses there because I had the private keys that were contained inside those wallet files.

(Continued on next page)

Q. Now, you testified that you examined -- you received certain pieces of evidence from the FBI to perform this analysis, correct?
A. Correct.
Q. So what pieces of evidence did you specifically receive?
A. I got three forensic images -- one of the Philadelphia server, the backup server, one of the Iceland bitcoin server that was seized over in Iceland, and an image of the defendant's laptop, which was seized at the time of his arrest.
Q. So if you could please flip in your binder -- actually, just real fast. After you received copies of those three pieces of evidence, did you do anything to verify that they were true and accurate copies of the original evidence?
A. Of course. I calculated my own MD5 and SHA1 hashes. I calculated those two hash files to make sure my starting point is the same as what was originally copied.
Q. So did you compare those MD5 and SHA1 hash values to the ones that were originally generated for those pieces of evidence?
A. Yes.
Q. What did you discovery?
A. They all matched.
Q. Could you please flip in your binder to what has been marked as Government Exhibit 606, please.
How many pages is this exhibit?

A. Three pages in total.
Q. And what is it?
A. Each one of those pages are a screenshot that I made after I calculated the hash values.
Q. Those are the hash values of each of the three pieces of evidence that you received from the FBI?
A. Correct.
MR. HOWARD: The government offers Government Exhibit 606.
MR. DRATEL: No objection.
THE COURT: Received.
(Government's Exhibit 606 received in evidence)
Q. So each contains an MD5 and a SHA1, correct?
A. Correct.
MR. HOWARD: Just flip through the pages, Mr. Evert.
Q. And all of those values match the values on the various log files we've seen today, correct?
A. Yes, they do.
Q. And also match the log file from the image of the defendant's computer that you received from the FBI?
A. Yes.
Q. The laptop computer?
A. Yes.
Q. Could you please look in your binder to what has been marked for identification purposes as Government Exhibit 609.

Do you recognize this exhibit?
A. Yes, I do.
Q. And what is it?
A. It's a simplified illustration of the work that I did to compare all the addresses that was obtained from Silk Road Marketplace and all the addresses that were obtained from the defendant's laptop.
Q. And would this aid your testimony today?
A. Yes.
MR. HOWARD: The government offers Government Exhibit 609 for demonstrative purposes.
MR. DRATEL: No objection for demonstrative purposes.
THE COURT: 609 is received for demonstrative purposes.
(Government's Exhibit 609 received in evidence)
BY MR. HOWARD:
Q. Could you please explain what your analysis consisted of?
A. Sure. So I examined the forensic copy of the defendant's laptop and carefully went through the files and located three Bitcoin Wallet files. Some of those wallet files may be duplicates or used that one time and then switched over to a different wallet, so there were some duplicates. But at the end I sorted the addresses down to 11,135 unique individual bitcoin addresses.
And this is possible because the wallet file contains

the private key that I was talking about. So without the private key I would not be able to extract all these addresses.
Q. The fact that the private keys were located on the defendant's computer, what does that indicate?
A. It indicates the defendant's laptop, the wallet file, controlled these bitcoin addresses. So these are the only keys that could spend the bitcoins that are in these wallet files.
Q. So the user of the computer could spend the bitcoins in those addresses?
A. Correct. And if we could go to the next page.

So from the other side, those are the two servers -- images of two servers that I obtained, one from the Philadelphia backup server and one from the Iceland Silk Road bitcoin servers. So from those two images, I carefully went through them, examined it, and identified and located 22 Bitcoin Wallet files. Again, some of these might be backups or an address that was used at one point and moved on to another address. So initially I found over 10 million bitcoin addresses. Some of them are duplicates, but I narrowed it down to a little over 2 million unique bitcoin addresses.
Q. Go to the next page, please.
A. So now I have two sets of addresses, a set of over 2 million bitcoins that were found on servers that are related to Silk Road Marketplace. And on the other side I had over 11,000 bitcoin addresses that were recovered from the laptop belonging

to the defendant that was seized at the time of the arrest.

Q. Sorry, how many address? 2,105,527 unique addresses?

A. Yes. The exact number would be 2,105,527 addresses from Silk Road Marketplace and 11,135 bitcoin addresses from the defendant's laptop.

Q. Go to the next page, please.

A. Wait. Actually, can we go back one?

So I could explain using this screen and the next screen, but the analysis that I did, I didn't do any complicated analysis. I wanted to look for the most simple direct link between those two sets of addresses. So I had the addresses from the Silk Road Marketplace and I had the addresses from the defendant's laptop, and I went back to the block chain, which is publicly available and agreed by all the bitcoin users, and identified all the transactions where the money was being sent from Silk Road Marketplace and bitcoins were received to the addresses on the defendant's laptop.

Q. Are these direct one-to-one transactions?

A. Direct one-to-one. It didn't skip over anywhere else. It went straight directly from Silk Road Marketplace directly to the addresses found on the defendant's laptop.

So if you could go to the next screen.

So just to give you an example of the raw information that I had to work with, this is not the entire list but just a portion of addresses from each side. So on the left you see

all the addresses, the public addresses for Silk Road Marketplace, and the unique list had over 2 million bitcoin addresses and I could obtain these because of the private key that was also inside the wallet files.

On the right side you have the laptop addresses in there. These are the unique addresses, over 11,000 bitcoin addresses that were found on the defendant's laptop and. I was able to tell these because the wallet file contains the private keys to generate these public addresses, which also allows the owner of those private keys to spend those bitcoins.

MR. HOWARD: Your Honor, may I approach?

THE COURT: Yes.

Q. So I'm handing you what has been marked for identification purposes as Government Exhibits 650 and 651.

Do you recognize what these are?

A. Yes, I do.

Q. And what are they?

A. Each one of theses discs contain the text file that you saw a portion of just now.

Q. What are in those text files?

A. One of the text files contains all the addresses -- all the unique list of addresses from the Silk Road Marketplace, and the other disc contains all the unique addresses found on the defendant's laptop.

Q. And just to be clear: I gave you two CDs. Which one is

which?

A. Exhibit 650 is the Silk Road Marketplace bitcoins, and Exhibit 651 is all the addresses that were found on the defendant's laptop.

Q. And how do you recognize these CDs?

A. I was involved in the creation of these CDs.

Q. And are your initials on them?

A. Yes. After I created them, I initialed them and dated the CDs.

MR. HOWARD: The government offers Government Exhibits 650 and 651.

MR. DRATEL: No objection.

THE COURT: Received.

(Government's Exhibits 650 and 651 received in evidence)

MR. HOWARD: Your Honor, may I approach?

THE COURT: You may.

MR. HOWARD: So, Mr. Evert, could you please publish Government Exhibit 650. Just bring it up in the text file itself.

Q. So, Mr. Yum, this the list of the two-million-plus unique bitcoin addresses that were recovered from Silk Road-related servers, correct?

A. Correct.

MR. HOWARD: If you can scroll this to show how large

MR. HOWARD: Could you please publish Government Exhibit 610.

Q. So, Mr. Yum, can you please walk us through what this shows?

A. Sure. I guess it is best to start from the middle. So that section is, as you've seen before from the example of blockchain.info, the website where you can look up all the bitcoin transactions, this is a transaction that I identified which had bitcoin addresses from the marketplace making 3,900 bitcoin transactions to a bitcoin address that was found on the defendant's laptop.

So that's the unique transaction ID. It was -- the transaction was made April 3rd, 2013. Again, you see the address starting on 1GarVY. And up top it has a screen capture of the list of the addresses from the marketplace that you had seen previously and a location where that can be found in that list.

On the bottom this has the portion of the list of all the addresses from the defendant's laptop, and you could see that the address found in there, starting "17t6V," matches the received bitcoin address in this transaction.

Q. So this exhibit shows 3,900 bitcoins were sent from an address that was located on Silk Road servers to a bitcoin address that was located on the defendant's laptop?

A. Yes. Exactly.

Q. And that happened on April 3rd, 2013, according to publicly available information on the block chain?
A. Yes.
Q. Now, was this the only transaction that you found linking the bitcoin addresses on the Silk Road servers to the defendant's -- the addresses on the defendant's laptop, or were there others?
A. No. There were almost 4,000 unique transactions from Silk Road Marketplace to the addresses that were found on the defendant's laptop.
Q. So could you please flip in your binder to what's been marked for identification purposes as Government Exhibit 620.
Do you recognize this exhibit?
A. Yes, I do.
Q. And what is this exhibit?
A. This is a list of all the transactions that I was successfully able to identify.
Q. Did you participate in the creation of this exhibit?
A. Yes.
Q. Does this exhibit accurately summarize information from the bitcoin addresses that you found -- that you reviewed from wallets found on the Silk Road servers and the defendant's computer?
A. Yes.
Q. Does this exhibit accurately summarize information that you

retrieved from the block chain regarding bitcoin transactions?
A. Yes.
MR. HOWARD: The government offers Government Exhibit 620.
MR. DRATEL: Objection, your Honor. *Crawford*, foundation, hearsay.
THE COURT: All right. Those objections are overruled. Government Exhibit 620 is received.
(Government's Exhibit 620 received in evidence)
BY MR. HOWARD:
Q. So, Mr. Yum, what was the date range of the transactions that you located?
A. The first transaction occurred in September 24th, 2012, and the latest transaction I was able to identify was August 21st, 2013.
Q. And were the transactions spread across -- the thousands of transactions were spread across that time period?
A. Right. It was spread across almost all of that entire one-year span.
MR. HOWARD: So, Mr. Evert, could you just go to the top, please. Just zoom in on the first few rows.
Q. Could you just describe what is depicted here?
A. So it is a simplified version of all the screenshots that you saw before, prior. So that's -- the first column is there is the time stamp, the time that this transaction was included

onto the block chain. The second column there is the unique transaction ID that you could locate, pinpoint to the exact transaction that's happened. So behind those transactions you would actually see the addresses that are used to send bitcoins to another receiving address, but you could easily also refer to those two transactions by that transaction ID.

And the last column there, that's all the bitcoins that were involved in that transaction that ended up in the wallets found on bitcoin addresses found on the defendant's laptop.

Q. So to be clear, Mr. Yum, you could put that unique transaction number into the block chain on the website to get the addresses that were involved in the transaction?

A. Correct.

Q. And those addresses matched the addresses that you found on the Silk Road servers and the defendant's laptop?

A. Yes.

MR. HOWARD: Can we just scroll to the bottom of the chart.

(Indicating)

MR. HOWARD: This is page 64 of the exhibit. Could you zoom in on the bottom.

Q. And so the total was 700,253.91 bitcoins, is that correct?

A. That's correct.

Q. Now, Mr. Yum, can you please flip in your binder to what's

been marked for identification purposes as Government Exhibit 620C.

What is this?

A. It appears to be a price index from a website coindesk.com. It shows the date and the closing price of the bitcoins in U.S. dollar amount.

Q. According to coindesk?

A. According to coindesk.

Q. Is that information available on a public website?

A. Yes.

Q. Now, is coindesk widely recognized and used by the bitcoin community for bitcoin pricing?

A. Yes, not only bitcoin pricing but other data and news and information about bitcoins.

Q. Now, based on your knowledge of the bitcoin community, would you agree that the reputation of coindesk carries some weight and is recognized as accurate in the community?

A. Yes.

Q. Does this exhibit accurately summarize pricing information for bitcoins from coindesk?

A. Yes, it does.

MR. HOWARD: The government offers Government Exhibit 620C.

MR. DRATEL: No objection.

THE COURT: Received.

(Government's Exhibit 620C received in evidence)

THE COURT: We're going to -- Mr. Howard, in about three minutes we are going to break for lunch.

Q. Can you just briefly explain what is depicted here?

A. So on the left column it has the date of these records. On the right column it has the end-of-the-day closing price of bitcoins, represented in U.S. dollar amounts, for each corresponding date.

Q. Now, could you please flip in your binder to what's been marked for identification purposes as Government Exhibit 620A.

What is this exhibit?

A. It is a summary spreadsheet of the analysis that I conducted.

Q. Did you participate in the creation of this exhibit?

A. Yes.

Q. Does the exhibit accurately summarize information from the bitcoin addresses you reviewed from bitcoin wallets found on the Silk Road servers and on the defendant's computer?

A. Yes, it does.

Q. Does the exhibit accurately summarize information from the block chain regarding bitcoin transactions?

A. Yes.

MR. HOWARD: The government offers Government Exhibit 620A.

MR. DRATEL: Objection. The same grounds, your Honor.

Hearsay, foundation --

THE COURT: All right. Those objections are overruled. Government Exhibit 620A is received.

(Government's Exhibit 620A received in evidence)

MR. HOWARD: Can we zoom in on the top, please.

Q. Mr. Yum, could you please describe what's depicted in this chart?

A. Yes. So it's a monthly summary breakdown of all the transactions that took place between addresses found on Silk Road Marketplace sending bitcoins to the addresses found on the defendant's laptop.

So the span, again, starts from September 2012 all the way down to August 2013. And for each month the second column shows you the number of transactions that were conducted. The third column shows you how many bitcoins in those transactions were sent from Silk Road Marketplace to the addresses found on the defendant's laptop. And the last column is the, I guess, realtime conversion of U.S. dollar amounts for each one of those dates where the transactions were identified.

Q. And did you use the coindesk information to convert to U.S. dollars?

A. Yes.

Q. What do you mean by "realtime" conversion?

A. So I didn't just take one day, let's say -- you were asking me before how much bitcoins were at the time of the arrest. I

didn't use one dollar amount. From the prior exhibit, I took each individual day's closing and matched it to each of the individual day's transactions and correctly calculated how much bitcoins were worth at the time of that transaction.

Q. So this exhibit reflects that there was a total of $13 million worth of transactions at the time that each transaction took place?

A. Yes.

Q. And a total of 700,254 bitcoins received --

A. Correct.

Q. -- from Silk Road servers to the defendant's laptop wallets?

A. Yes.

Q. And 3,760 transactions, correct?

A. Correct.

Q. Could you please take a look at 620B in your binder.

Do you recognize what this is.

A. Yes, I do.

Q. And what is this?

A. It's a pie chart that I created also summarizing an analysis that I did.

Q. Did you participate in the creation of this exhibit?

A. Yes, I did.

Q. Does this exhibit accurately summarize information from the bitcoin addresses you reviewed from wallets found on the Silk

Road servers and the defendant's computer?

A. Yes.

Q. And does it accurately summarize information from the block chain regarding bitcoin transactions?

A. Yes.

MR. HOWARD: The government offers Government Exhibit 620B.

MR. DRATEL: The same objections, your Honor.

THE COURT: All right. Those objections are overruled. 620B is received.

(Government's Exhibit 620B received in evidence)

Q. Mr. Yum, could you please explain what is depicted here?

A. So you see a pie chart in there, and the biggest, red part has the 700,254 bitcoins that I correctly identified coming from Silk Road Marketplace and being transferred to the addresses found on the defendant's laptop.

I didn't stop there. I went back and analyzed all the addresses on the defendant's laptop. And I've also found 89,000 other bitcoins that were sent to the addresses that were found on the defendant's laptop.

So to, I guess, give you a summary of what I just said, the defendant's -- addresses found on the defendant's laptop received a total of almost 790,000 bitcoins, and out of that 88 -- almost 89 percent were bitcoins that were transferred from the Silk Road Marketplace directly to the

defendant's laptop in the amount of 700,254 bitcoins.

Q. When you say "directly," you mean one-to-one transfers, correct?

A. One-to-one transfers.

So that 89,854, it could have came from other sources but it could have also --

MR. DRATEL: Objection.

THE COURT: Sustained.

MR. HOWARD: This might be a natural breaking point, your Honor.

THE COURT: All right. Ladies and gentlemen, we're going to take our lunch break now and come back at 2 o'clock.

I want to remind you all not to talk to each other or anybody else about this case. And, also, if you see any news articles about this case, you are to not read those news articles. Turn away your eyes. All right? I instruct you to do so.

Thank you. We'll see you after lunch.

THE CLERK: All rise as the jury leaves.

(Continued on next page)

(Jury not present)

THE COURT: You may step down. Have lunch until 2 o'clock. I will see you back on the stand at 2.

(Witness not present)

THE COURT: All right, ladies and gentlemen. Let's all be seated.

I wanted to make certain that we addressed the two exhibits and I have one other matter and then whatever else you folks would like to address before we break for lunch ourselves.

There were objections by Mr. Dratel to Government Exhibits 620 and 620A on *Crawford*, which I take it, Mr. Dratel, was because of an argument that we discussed yesterday afternoon of insufficient notice?

MR. DRATEL: No. It is really about the underlying -- in other words, you have a couple of preliminary steps in Mr. Yum's analysis. Then you have an intermediate step and then you have a final step, and we don't know how we get from the intermediate step to the final step.

THE COURT: You can take him through that on cross-examination.

MR. DRATEL: I understand. But there is no foundation for it, and I believe that it is probably something that creates a *Crawford* confrontation issue, similar to other sort of scientific or computerized issues, where something is done

and then someone comes in and presents something that is essentially the work of a computer program and it is not -- you know, it hasn't been verified. You know, I don't know what his relationship is with the program. We don't know any of that. We don't have any underlying stuff as to how it was done. It is not a simple process, and I don't think it was done manually.

THE COURT: Was that the nature of your *Crawford* objection both for 620 and 620A?

MR. DRATEL: Yes, your Honor.

THE COURT: All right. So at this point I don't find there to be any traction to that objection and so it was overruled before. If after cross-examination you have some basis to renew the application, then you can go ahead and do so. See what you want, what you can develop on cross-examination. You are certainly entitled to go into all aspects of how he performed this exercise.

MR. DRATEL: And with respect to the notice, your Honor, my application would be, again, to put off the cross until Monday morning so that we can absorb stuff that we were actually hearing for the first time about a document that has, as you can see now, an extraordinary number of transactions. There is zero backup. Zero anything for it. We have been trying to develop what we can but we still need more time to do that.

THE COURT: When you say that there is zero backup, zero anything, my understanding from our conversation yesterday afternoon was that all of this information, which is the very information at the heart of this case, was produced during discovery.

Mr. Howard.

MR. HOWARD: That's correct. On Sunday night we provided the spreadsheets --

THE COURT: Let's go back first to what was --

MR. DRATEL: The analysis, how the analysis was done.

THE COURT: Mr. Dratel, let me just make sure I have got the facts in order.

Tell me when and what was produced that underlies this analysis during the discovery.

MR. HOWARD: Yes. For almost a year now, the defendant has had access to images of his laptop and the various servers where these log files were contained, including what's been referred to as the Philadelphia backup server and the Iceland bitcoin server. Those images included all of these bitcoin wallets and the private keys for those wallets, which is the same images the witness just talked about. Based on that, all of this information, all of the bitcoin addresses were stored in those wallet files that have been available to the defendant for over a year.

THE COURT: All right. And then, as I understand it

from our conversation just before we all adjourned last night, the analysis that is at 620 and the summary of that, where the comparison was done, that analysis was performed during the course of this trial and was produced on Sunday; is that right?

MR. HOWARD: Yes, you are right, your Honor. And within a couple of hours of actually us receiving the spreadsheets that had all the data in them and, you know, the much more complicated and much more voluminous than the summary charts that we're pushing into evidence, but that was produced promptly to the defense as soon as we had them generated.

THE COURT: All right. Mr. Dratel.

MR. DRATEL: A couple of things. One is they had it, too. So why are we getting this in week three of trial if they had all of this information before as well? Why did they prepare this analysis -- they've only started once the trial started.

THE COURT: Well, as I understand it, this all went back to your opening statement.

MR. DRATEL: Yes. But what I'm saying is to say that we had all the wallets and the addresses is immaterial in the sense that they had it too. If they wanted to put together an exhibit that linked all of that, they should have done it in advance of trial, not -- and they've done it during trial, OK, but I should have the opportunity -- this witness, it took more than a hundred hours to prepare this analysis. I've had it for

maybe 80, not including the time in court and sleeping and doing all the other stuff that needs to be done in this case. So it's really no time at all. This witness took a hundred hours. They got paid $55,000 for this.

THE COURT: Well, the objections are overruled, as I've said. And in terms of timing, we will go into cross-examination right after the government is done with its direct examination with this witness.

The materials that underlie the analysis were produced long ago. Based upon the opening statement and based upon one of the theories of the defense, which is that the defendant was a bitcoin trader and that any bitcoins in his possession were from bitcoin trading, it was reasonable to expect that you yourself had done such an analysis and, therefore, that you had some intention of presenting something that would have shown the opposite. In any event, you've opened the door to it, and we're going to proceed. And the fact that the government adjusted and was able to do so is not something that is particularly problematic or unusual. So that's my ruling on that.

So we'll proceed with cross-examination with this witness after lunch.

MR. DRATEL: Your Honor, what I'm asking for, in functional terms, is a two-and-a-half hour accommodation so that I can prepare a proper cross-examination of this witness.

THE COURT: I have heard your application, and we're going to go directly into the cross-examination of this witness. If you --

MR. DRATEL: Then I am making a notice objection to the entirety of that level of his testimony --

THE COURT: The objection is overruled. I think you've got your position well and truly stated on the record. If you have any additional positions you want to state, you can file it in a letter on the docket.

In terms of hearsay, there is no hearsay issue with these documents, and certainly the foundation was well established for these. So those objections are similarly overruled.

Mr. Howard, would you like to address or fill out the record in any regard yourself?

MR. HOWARD: Yes, your Honor.

The fact is, as you correctly stated, this door was opened by the defense during their opening statement. They made a claim about the source of the bitcoins that were recovered from the defendant's wallet files. In response to that, we performed an analysis with the help of outside consultants. As soon as that analysis was ready, we produced the underlying data to the defense. We produced some summary charts today in court.

It should be noted that there was some time that was

Q. Who was that?
A. It's a colleague of mine.
Q. And what is his name?
A. Mathew Edmond.
Q. And what's his -- what are his credentials?
A. He has a doctorate in cryptology.
Q. What did he do as part of this project?
A. He worked with me to identify the wallets, extract the bitcoin addresses, and compare that to the block chain.
Q. Did he do that actual work?
A. We both did.
Q. So he did some of that work?
A. Yes.
Q. Correct?
How many hours did he put into that?
A. We both worked on it for about a week together, so I think we're a little short of 100 hours. He put in about 60. I put in about 40.
Q. And what were his contributions to Government Exhibit 620 which is the spreadsheet, the large spreadsheet with all of the transactions. Right, isn't that the --
A. Yes.
Q. So what's his contribution to that?
A. He assisted me in obtaining the underlying raw information for that summary.

Q. And how was that exhibit created?
A. That one? I believe I just summarized the Excel file, so that's an Excel spreadsheet. I took all of the raw data and created a summary chart on Excel.
Q. But in terms of the matching, did you use any software to match the transactions?
A. Oh, the actual analysis?
Q. Yes.
A. Yeah, we loaded all the information onto a table and did a query on that table to find the matching transactions.
Q. And what program?
A. I believe the actual matching was done through Python.
Q. And what is Python?
A. Python. It's a scripting language.
Q. Did you have any participation in writing the code for that program?
A. Actual hands-on typing was done by Mr. Edmond, but we both sat down to work out the logic.
Q. But I mean in terms of the program itself, did you create that program?
A. Oh, no. So the reason why we use Python is there's available software called Pie Wallet, which was also found on the defendant's laptop, it's a common Python application that's used to manage bitcoins. So we used commands that are commonly used by all the bitcoin users.

Q. I'm not talking about keys. I'm talking about bitcoins themselves.

Bitcoins themselves, the wallets -- the addresses within the wallets that the bitcoin were in, they were basically in one wallet, correct?

A. The majority came from one wallet.

Q. Right. And that wallet had a bitcoin program running in it, right?

A. Yes, but the program hasn't run since August of 2013, so -- it will be a cold wallet at that point.

Q. But isn't a cold wallet where it's not connected to a program where you can actually take the wallet, put it in a file or in a folder or somewhere else on the computer and extract the program -- extract it from the program so that it can't execute any functions, right?

A. Well, a cold wallet is something that's not online. So if the wallet's last access date was August 2013, it hasn't been online since August 2013; therefore, from August until October, it's a cold wallet because it never went online.

Q. But it still has a program in it, right, and it's still capable of execution?

A. Right, but it didn't execute because it would have updated that last-access date on the wallet.

Q. But if someone doesn't use their wallet, it doesn't mean it's a cold wallet; it can still be a hot wallet. You're just

not using it, right?
A. No, not correct.
MR. TURNER: Objection; asked and answered.
THE COURT: I'll allow it.
A. A hot wallet is a wallet that is currently connected to the Internet.
Q. At that time? At the very time?
A. At the very time.
Q. That's your definition?
A. Yes, it is.
Q. Okay. And how many bitcoin cases did you have before this one?
A. This was a second case I believe.
Q. Now, you talked about identifying servers and identifying bitcoin server, right, and identifying the servers from the Philadelphia servers, right?
A. Right.
Q. You testified about that. What you saw from the code was only an onion address, right? In other words, looking back to find the servers, correct, it wasn't an IP address. It was --
A. I'm sorry. Which address and which server are you referring to?
Q. The server to which the backup data was exported to the jtan -- the Philadelphia server, right?
A. Correct.

Q. From the Iceland server, right?
A. Yes.
Q. Now, what you saw there when you're looking to find that is an onion address, right, an onion url, dot-onion url, correct?
A. I was brought onto the case around that time, and I received an IP address. And my -- the investigative team, before I joined, they were the ones who did the analysis, so I can't speak to what allowed me to receive that IP address, but I received that IP address. Nothing else.
Q. Now, the servers were first -- you went in October to Iceland, correct?
A. Correct.
Q. And to be there at the time of the arrest to shut down the servers, correct?
A. Yes.
Q. And to put the seizure banner up, we saw at Exhibit 600, right?
A. Right.
Q. The government had access to the servers -- the U.S. government had access to the servers in July of 2013, correct?
A. That's what I've been told --
MR. TURNER: Objection; foundation.
THE COURT: Sustained.
Q. Now, isn't it true that a Silk Road user would have communications -- withdrawn.

doing is looking at the movement of bitcoins back and forth, correct, from Silk Road servers, right?
A. Not back and forth. Just one direction from Silk Road to the Ross' laptop.
Q. And you mentioned --
THE COURT: I want to make sure that you don't speak over the witness.
MR. DRATEL: I'm sorry.
Q. But you mentioned that the amount that was in the FBI wallet was actually larger than the amount that was in -- that was transferred from the laptop, right?
A. Yes. So once the transaction -- once the seizure happened, FBI address made it onto the block chain and transaction of that size normally gets noticed by a lot of bitcoin users. So once that happened, the government seizure address was publicly known at that point. And just like -- just like an email, someone could send you an email and you send end up receiving it, whether it's spam or not. So we received a lot of small transactions that also came into the government wallet -- government address.
Q. Bitcoin?
A. Small -- fractions of bitcoins.
Q. But you don't know where they were from necessarily, right, you didn't track them all down?
A. I'm sorry. What was that?

voluminous," again can you split them between the two groups? Are these really for the expert or are they other? Are they for the seven?

MR. DRATEL: I don't think the character/fact witnesses have exhibits necessarily. Maybe one, maybe a couple of things -- it's possible one or two pieces.

THE COURT: In terms of the expert, I take it that you have to have given the proper disclosure in any event to the government and that's all done.

MR. DRATEL: Yes. We have one expert that we're going to disclose probably later tonight based on what happened today.

MR. TURNER: On the expert, we're actually going to move to preclude. We don't believe the notice is sufficient.

THE COURT: Preview for me, is it because you don't think the notice is sufficiently detailed or for some other reason?

MR. TURNER: Three reasons: We don't think that the subject matters of the testimony requires specialized knowledge, we don't think they're relevant to the case and in any event, the expert disclosure does not even provide the opinions that this expert is going to provide. It just lists subject matters, very general topics of discussion and there's very clear law it's not sufficient under Rule 16, so we prepared a submission. We were going to file it with the Court

shortly after we get back.

THE COURT: I'll wait to see it. And that will increase the workload of the defense in terms of needing to respond to it because I'll need to rule on that very quickly on Monday morning. It will be an initial order of business at 9:00 a.m. So let me see when yours comes in. And if you can confer with the defense as to timing on when they can respond and recite that, that would be helpful. If you can't, then Mr. Dratel, if you can let me, as soon as it's filed, have a sense Tuesday the soonest you can get it.

MR. DRATEL: Yes.

THE COURT: Because I don't want to give you a deadline --

MR. DRATEL: Understand. I understand.

THE COURT: But I'd like to be able to read both. What's the topic of the expert?

MR. DRATEL: Bitcoin.And the other expert is the Computers, these computer issues.

THE COURT: Let's deal with these as they come in. I take the heads-up Mr. Turner now. Now, in terms of numbers of -- in terms of exhibits, let's assume for the moment because I want to work on the logistics as well and I just don't know how any of this is going to come out: When is the time frame that you need the exhibits by?

MR. TURNER: I think any expert witness we would need

them sooner rather than later. The fact witnesses, the character witnesses are less of a concern.

I would add this is extremely late for disclosure of another expert witness so we would hope that that disclosure is made very promptly.

THE COURT: Well, if it's coming out of today with Mr. Yum in terms of his analysis, that's one thing and we'll deal with it when we see what the notice is; and you folks, if you've got an issue, you'll raise the issue and the defense will respond.

MR. TURNER: I was speaking of the second expert, the computer issues expert.

THE COURT: He said it was coming out of --

MR. DRATEL: I'm sorry. I may have misspoke. It is coming out of a series of witnesses, some of whom testified I think as late as yesterday, but it also has to do with some of the limitations on cross that have occurred in the last couple of days. So you say we have to call a witness, we'll call a witness.

THE COURT: Well, I said we would take up the application if you're going to call a witness. So if you need to call a witness and you're going to attempt it, it doesn't mean you get around the Rule 16 disclosure requirement. So you'll work with the government, make your disclosures. If the government has a problem with it, they'll raise it with me and

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v. 14 Cr. 68 (KBF)

ROSS WILLIAM ULBRICHT,

Defendant.

----------x

New York, N.Y.
February 2, 2015
9:10 a.m.

Before:

HON. KATHERINE B. FORREST,

District Judge

APPEARANCES

PREET BHARARA,
United States Attorney for the
Southern District of New York
BY: SERRIN A. TURNER
TIMOTHY HOWARD
Assistant United States Attorneys

JOSHUA LEWIS DRATEL
LINDSAY LEWIS
JOSHUA HOROWITZ
Attorneys for Defendant

- also present -

Special Agent Vincent D'Agostino
Molly Rosen, Government Paralegal
Nicholas Evert, Government Paralegal

THE COURT: All right.

MR. DRATEL: As the Court is aware, the government's initial exhibit list and throughout the first half of the trial included Andrew Jones, who has pleaded guilty to his involvement in Silk Road as an administrator under the name of inigo. At some point midway through the trial, the government said they may not call him and then just last week conclusively told us that they would not call him.

When it initially became -- when I was initially informed that he would not be called by the government, I spoke with Mr. Turner about a specific piece of *Brady* material that the government provided. The government doesn't call it *Brady* because they don't call anything *Brady*.

Mr. Turner in a telephone conversation with me and Ms. Lewis said there is no *Brady* material in this case because he believes the defendant is guilty, so that's his view of *Brady*. So the notion that the government understands its *Brady* obligations is not reliable in this case.

So I asked him if he would stipulate to the piece that he knew we were interested in and he said yes, just a matter of language. Then I asked him again when he said that -- when they concluded they would not call Mr. Jones and he agreed again to stipulate. And then over the weekend yesterday I gave them the language of the stipulation which is only what is in their letter with the exception of one sentence which was

removed; it's only what's in their letter. And I got back -- and then I spoke to Mr. Turner at 7:00 last night and he at first resisted unless I met one of his conditions on something completely unrelated that he would not stipulate unless I made met a condition that was completely unrelated. I agreed because this stipulation is that important to his condition. And then at 11:00, he writes me an email saying they're not stipulating.

THE COURT: Why don't you describe to me what the substance of the issue is.

MR. DRATEL: Yes.

THE COURT: Because it sounds like the alternative would be to call Mr. --

MR. DRATEL: Can't call him. He's going to take the Fifth Amendment. I spoke to his lawyer. He's unavailable. So I would move it, by the way, either as a statement against penal interest, 807, defense witness immunity. I'd ask for all those things. This is a case where if ever there was an appropriate case for it, this is it.

So on December 29, 2014, we received a letter from the government and on the second page of the letter it says that in a recent witness interview, Andrew Jones a/k/a inigo said the following, and this is the quote. This is not necessarily a quote from Mr. Jones but this is the government's characterization of what he said.

THE COURT: It's a 302?

MR. DRATEL: No. It's not a 302, but this is a letter from Mr. Turner, signed by Mr. Turner:

At some point in or about August or September 2013, Jones tried to authenticate that the Silk Road user "Dread Pirate Roberts" whom he was talking to at the time (via Pidgin chat) was the same person with whom he had been communicating in the past with this username. Previously in or about October 2012, Jones and "Dread Pirate Roberts" had agreed upon a "handshake" to use for authentication in which Jones would provide a certain prompt and "Dread Pirate Roberts" would provide a certain response. When during the 2013 chat in question Jones provided what he believed to be the designated prompt, "Dread Pirate Roberts" was unable to provide the response Jones thought they had agreed on; however, later in the chat, Jones asked "Dread Pirate Roberts" to validate himself by specifying the first job that "Dread Pirate Roberts" assigned to him (running the 'DPR book club') which "Dread Pirate Roberts" was able to do.

And then that's the block quote, and then the last paragraph is: The government is unaware of any extant record of the 2013 chat described by Jones. There is a record of an October 2012 chat between the defendant and Jones discussing a "handshake" in the file labeled MBSOBZVKHWX4HMJT on the defendant's computer, which has already been provided to the

defense in discovery, and our stipulation would have included that specific chat, which is very short -- I think it's one page basically-- as part of the stipulation.

THE COURT: Mr. Turner, why has the government taken the position it has on the stipulation?

MR. TURNER: First of all, your Honor, I just want to be clear, I never said that we would stipulate. What I said is that we would consider stipulating. And what happened was this disclosure was made over a week and-a-half ago and the defendant did not get proposed language to the government until last night when the government was very, very busy with other things. The language that the defendant proposed for one thing omitted the very last sentence the defense counsel just read, which is, in the government's view, clearly important because the point is that inigo, Mr. Jones, tried a prompt that didn't work but then he tried another prompt that did.

THE COURT: Then you could add that in. That would be the product of a negotiation over the language of the stipulation.

MR. TURNER: The problem that I had is that, like I said, this came at the 11th hour.

THE COURT: Can you look at it this morning as we're proceeding?

MR. TURNER: I can, although it's not my job to draft appropriate language.

THE COURT: No. Mr. Dratel, it sounds like, has done that job. He's drafted language. Why don't you take a look at it and see whether or not there are additions that you could make to it or changes you could suggest that would then make it acceptable to the government.

Only at that point when I've got the two of you having truly joined issue do I want to have to then make a ruling. If you folks are able to agree, then that's obviously the best course.

Will you do that?

MR. TURNER: We will. To make it clear --

THE COURT: I understand you don't want to.

MR. TURNER: No, I just think just quoting what we put in a letter does not provide necessarily sufficient context by itself.

THE COURT: Go back and figure out what the context is that's fair. You folks then negotiate over this. We still have the government's witness on direct and I think Mr. Howard said he's got an hour or two left with that. Then there's cross. So you have some time while you're sitting there maybe to take a look at this.

Mr. Dratel, do you have it in a form written or otherwise that he could look at and fiddle with?

MR. DRATEL: I sent him the stip. I have it here.

THE COURT: In paper copy.

MR. DRATEL: I can give it to him. I can give him my copy. I know what it says. And so we're clear, Mr. Turner's response to me last night was he couldn't consider alternative language and it was too late to do so and he never made a plan or proposal. The reason I took that sentence out -- so we know where we're going, the reason I took that sentence out is because they could have called him to get that. It's a confrontation issue with respect to that. There is a confrontation issue. If there's a completeness issue, that's a different issue, but they never came back with a single sentence that's not in there. Everything else is from the government's letter. This has never been a mystery. We're talking about preparation time. This has never been a mystery as to what we want to do.

THE COURT: I hear your position. So I'm going to ask the government to look at that and see if there are additions or changes which would make it acceptable.

If the answer is after further considering the matter there are not, then we will deal with it in that posture. But if there are further changes or modifications that would make it acceptable, I'd like to know that.

Are there any other matters, Mr. Dratel?

MR. DRATEL: I prepared some supplemental requests to charge, they're very short, based on evidentiary issues. If I have a representation from the government that this is the

THE COURT: Mr. Dratel, do you want to respond to the government's letter on Defense Exhibit E?

MR. DRATEL: The letter is filed under seal, your Honor.

THE COURT: The issue I think can be described as follows. It's I think number one, whether or not the purpose of the document is for the truth and if it's not for the truth, then what other purpose does it serve?

And then there's certainly an issue which we can talk about in open court, in fact, I think we can talk about all of it in open court, except for the one issue that has been under seal throughout the entire case, but everything I think can be referred to other than that. The second point, if it's not offered for the truth, goes to the issue of the *Wade*, what I'll call the *Wade* issue about other perpetrator evidence.

MR. DRATEL: It doesn't go for the truth in the sense of the information in it; it goes for the truth the fact that it was communicated to DPR, which is indisputable in that this particular piece of evidence communicates to DPR the name and profile of the person deathfromabove believes is DPR, and that's what he says the information is.

Now, I don't know if I can go further or not go further in open court, but the fact is, the government has created a situation and now they want to profit from it by precluding evidence and also saying that the other parts we

redacted, we redacted because they won't let us use it. They redacted. They took that part out of the case, so I don't understand how they can possibly have it both ways.

THE COURT: Let's forget about the redactions for a moment. Let's just focus on if the information between these two declarants is offered for the truth, in other words, if you want to offer it for the truth that Anand is the perpetrator --

MR. DRATEL: It's not offered for the truth. It's offered for the fact that DPR was getting information about people who were supposed to be DPR and that these things were coming in. There's a whole law enforcement file that's part and parcel of the whole thing. And one of these people is one of the people who the agent was investigating.

I think it's a fair inference. I think it's a completely fair inference for anyone to draw.

THE COURT: The first part that I want to take is just sort of the hearsay part whether it's for the truth or not for the truth. So if it's not for the truth, in other words, if the defense doesn't intend to say Anand did it, the real DPR was Anand -- if the defense is intending to say the real DPR was Anand, then this is obviously for the truth.

MR. DRATEL: No.

THE COURT: Tell me whether or not you're planning on making --

MR. DRATEL: It's not that; it's that if you're DPR

and you get a name, a specific name, this Anand Athavale and a profile and details, if it's Anand Athavale, if it is, and you're put on notice that it's you, you're going to take steps, so that's not saying that it's him.

THE COURT: That's used for the truth.

MR. DRATEL: No, it's not for the truth; it's the fact that he was informed, it's the fact that DPR was informed. That's indisputable. It's not for the truth of whether it is or not. It's for an inference for the point is that if DPR is informed that it's him, then he's going to take action. And that's not for the truth of the matter of whether it is or not; it's for the purpose of drawing an inference that anyone who -- and also the fact that if DPR is getting information from law enforcement about specific people, he knows the walls are closing in, he's going to take action to implement an escape plan. That is just a fair inference from all of that.

THE COURT: So the theory would be that Anand Athavale understands by virtue of his exchange that investigative sites are trained on him and he takes evasive actions in response thereto.

MR. DRATEL: If it's him. And I'm not going to say it's him. I'm going to say anyone in that situation and even DPR even, if it's not Anand Athavale, DPR is very interested and clued in as to what is going on in the law enforcement community and he is actively security-conscious in a very

substantial way and that's an inference that we're -- it's not even an inference. It's a fact from this.

THE COURT: So what evidentiary basis is there that there was another DPR? And what evidentiary basis is there that the defendant ever handed off Silk Road and then took back Silk Road as a setup that would then demonstrate the existence, by inference at least, of an additional perpetrator?

MR. DRATEL: Well, the evidence that he gave it up is that Richard Bates testified to that. The government's own witness testified to that.

THE COURT: That he told that he had given it up?

MR. DRATEL: Yeah.

THE COURT: What is the evidentiary basis that there was a handoff to anyone else?

MR. DRATEL: Well, that's a series of pieces of evidence.

THE COURT: Such as?

MR. DRATEL: I don't want to sum up before they sum up.

THE COURT: Under the *Wade* case and other case law for the Court, as you know, the Court must undertake an analysis as to whether or not other perpetrator evidence is going to result in inviting jury speculation and there must be a substantial connection between some other potential perpetrator and the facts before the Court. You can't just throw up names and

other possibilities. The courts have long said that that's an inappropriate way to proceed. There's just lots of case law on this point.

We're waiting for two more jurors.

MR. DRATEL: The government -- on Thursday, Agent Shaw showed that there is a second administrative key, the SSH key, that gives someone completely separate from even frosty, assuming that that's Mr. Ulbricht, access to the server. I believe that the Government Exhibit 130 and the thumb drive also are --

THE COURT: The thumb drive found on his night table?

MR. DRATEL: Right.

THE COURT: Why would that possibly result in anything other than incriminating him?

MR. DRATEL: Because why would it be on the thumb drive if it's on a laptop? It's on a thumb drive because that's what was given to him, and that's an inference that the jury is entitled to draw.

THE COURT: That sounds like the difference between an inference and speculation. Let me gather what you believe the evidentiary basis is for another perpetrator. It's Bates that he was told that Ulbricht had given up Silk Road, and it was the second administration key, which is not tied to somebody who was calling themselves -- well --

MR. DRATEL: There were changes in the site throughout

that would indicate that there was a change. You have the origin of DPR in general, the changes in October of 2011, the changes in June of 2011, the changes in January 2012.

THE COURT: You need to come up with something that is a handoff to another person by inference; otherwise --

MR. DRATEL: But Bates said he sold the site and that it was no longer his problem as of 2013. The standard is not that I have to prove it's someone else. The standard --

THE COURT: The standard is you have to show a substantial connection that there is another perpetrator.

MR. DRATEL: No. I think I have to show a substantial connection to this case, not to another perpetrator specifically. That's a burden on the defense that doesn't exist.

THE COURT: It's a substantial connection that that other person is, in fact, the true perpetrator of the crimes charged here.

MR. DRATEL: Well, that's what I was trying to get to in my cross-examination of Agent Der-Yeghiayan. I would have gotten to it also with other witnesses, but I was precluded from cross-examining them on this.

THE COURT: For instance, is there evidence --

MR. DRATEL: The Jones handshake in September 2013, August or September of 2013, the handshake evidence is critical in this. It's not in yet, but it's critical. You talk about

handoff at the end, that's an inference that we're entitled to have.

THE COURT: Let me hear from the government.

MR. HOWARD: I believe the *Wade* case requires more of a substantial connection between the actual alternative perpetrator that they're trying to depict, not just someone else generally. Here the issue is that to the limited extent -- to the extent this has any probative value, it is if exactly as if Mr. Athavale is the alternative perpetrator. There is no evidence which substantially connects him to a theory that he's an alternative perpetrator in this case for the reason we set forth in the letter.

THE COURT: Defense Exhibit E is precluded on the basis that it's hearsay. It is offered for the truth that Anand is the DPR or that Anand is one of potential other DPRs, which makes it for the truth, and I can't find any reason that it would be offered other than for the truth.

The *Harwood* case, 998 F.2d 91 deals with a situation where information which comes in that's irrelevant, unless it's for the truth, is applicable as well as other cases. Let me give you another one. There are legions of cases that are supportive of keeping things out which are coming in for the truth. And based upon everything I have heard, the use of this would be for the truth. Therefore, it makes the statements as between two out-of-court declarants, and you can't just have

two out-of-court declarants, offered for the truth.

Also even if it wasn't offered for truth, you then get into the secondary analysis of the *Wade* standard. The *Wade* standard relies upon the *McVeigh* standard, and it says "In the course of weighing probative value and adverse dangers, courts must be sensitive to the special problems presented by alternative perpetrator evidence. Although there is no doubt that the defendant has a right to attempt to establish his innocence by showing that someone else did the crime, a defendant still must show that his proffer evidence on the alleged alternative perpetrator is sufficient on its own or in combination with other evidence in the record to show a nexus between the crime charged and the asserted alternative perpetrator. It is not sufficient for a defendant merely to offer up unsupported speculation that another person may have done the crime. Such speculative blaming intensifies the grave risk of jury confusion and invites the jury to render its findings based on emotion or prejudice." That's cited in the *Wade* case, Second Circuit, binding on this Court, 333 F.3d 51, pin cite at 61. So that issue is resolved.

How are we doing with the jurors? Still waiting on two.

(Continued on next page)

BY MR. DRATEL:

Q. That is talking about security, correct?

MR. HOWARD: Objection.

THE COURT: Sustained.

He can't talk about what the content means. He can talk about what the content is on the page but he can't interpret the content. So, move on.

MR. DRATEL: Your Honor, this is a witness who put the document in evidence.

THE COURT: He did. He did put it in evidence. He can't interpret what the people meant.

BY MR. DRATEL:

Q. Let's go to April 2nd, 2013 at 20:55, page 24.

A. Okay.

Q. And that entry which is in the middle of the page, if we can blow that up a little bit it says:

"Regarding image metadata, you can strip all of that out and it is a good practice. The upload page is secure, but I would still have access to that metadata."

By the way, this is from Dread Pirate Roberts to redandwhite?

A. Correct.

Q. So:

"Regarding image metadata, you can strip all of that out and it is a good practice. The upload page is secure, but

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 14 Cr. 68 (KBF)

ROSS WILLIAM ULBRICHT,

Defendant.

----------x

New York, N.Y.
February 3, 2015
9:10 a.m.

Before:

HON. KATHERINE B. FORREST,

District Judge

APPEARANCES

PREET BHARARA,
United States Attorney for the
Southern District of New York
BY: SERRIN A. TURNER
TIMOTHY HOWARD
Assistant United States Attorneys

JOSHUA LEWIS DRATEL
LINDSAY LEWIS
JOSHUA HOROWITZ
Attorneys for Defendant

- also present -

Special Agent Vincent D'Agostino
Molly Rosen, Government Paralegal
Nicholas Evert, Government Paralegal

have then taken care of the one, are where we are.

Are there things which you folks would like to raise?

MR. TURNER: No, your Honor. I responded to the inigo issue.

THE COURT: Mr. Dratel, anything from your perspective you would like to raise in addition to those items?

MR. DRATEL: No.

THE COURT: In terms of inigo, I have received the letter from defense counsel. Let me just preview that I think it breaks into analytically into two very separate inquiries though they're related: One is the hearsay issue relating to reading into the record the statement that inigo, a cooperating witness, gave to the government and as recounted in the letter of December 29. So there's the hearsay issue and then there's a separate request for a missing witness charge in the event that the statement is otherwise disallowed. So I think analytically those are related but stand separately.

Mr. Turner, I didn't receive a written response from the government. I knows you folks are busy, but why don't you tell me your views.

MR. TURNER: Sure. As the government sees it, this is sort of another example of the defense assuming they can get in their case through our witnesses. So the defense has known for approximately two weeks that we were not going to call Mr. Jones. They made no effort to contact or subpoena

Mr. Jones until the eve of the defense case. They didn't ask us to immunize him. They made no effort to draft any stipulation even though we told them that we were open to a stipulation until the eve of their case. And now the defense is trying to use the lack of time, which is an issue of their own making, to try to force the government to agree to whatever stipulation language the defense wants, even though it does not include language that is favorable to the government.

Defense counsel had no right to assume that he'd be able to rely on a stipulation to get in facts they want from Mr. Jones. You have to have a witness lined up in case a stipulation falls through. That's why for Alex miller with Stack Overflow, we wanted to get that in through stipulation. We weren't able to work that out. We had Alex Miller ready to testify. They were obliged to do the same thing with Mr. Jones.

Defense counsel is trying to make it out as we engaged in some sort of tactical maneuver by not calling Mr. Jones. We didn't call Mr. Jones because we felt like we no longer needed it for the case. That was our right. That was our call. And the defense was not entitled to rely on our calling a witness during our case and them getting in some fact from Mr. Jones through his testimony on our case.

The confrontation issue that they have tried to raise is ludicrous. This is a stipulation we're talking about. So a

stipulation can present any statements that the witness would be able to testify to. And it would be perfectly appropriate if he were to testify about this conversation he had to explain his understanding of the conversation, to explain his state of mind during the conversation. It happens all the time when you have witnesses testifying about conversations they're having with other people and what's going on, the context of those conversations. That's all we were trying to put in this stipulation and the defense didn't want that in. We think it's necessary to be balanced.

So if they're not amenable to a stipulation, then it's up to them to call the witness. You can't just get in core hearsay because the government won't stipulate to putting information in a stipulation. You can't just take a letter that the government sends, which is not the declarant's statement, that is the government's disclosure, that is the government's characterization, that's not been adopted by the declarant, so you can't just ignore the hearsay rules and just submit a letter.

THE COURT: Let's go to the hearsay rules. As I said, I think this breaks analytically into two pieces, each of which have their own independent evidentiary standards. One is 8043, there's a typo in defense letter but we understood from yesterday what he was referring to, so it's not 803. It's 8043 which is a statement against penal interest, which is an easy

juxtaposition to make, that statement against penal interest, as the Court understands it, requires two parts: It requires subpart A and subpart B. Subpart A requires a statement against penal interest, which typically is a statement made under circumstances which indicate that no person would have made it unless they were telling the truth because it was so contrary to their interest under those circumstances to do so. And it also requires B, which is big letter B, B also requires some independent corroborating evidence as to the trustworthiness and/or reliability.

Why don't you address whether or not, putting aside the circumstances over not reaching the stipulation, whether or not the hearsay statement otherwise meets the standard under 8043.

MR. TURNER: First of all, it's not his statement. It's not like an email that he sent. It's not an affidavit he signed.

THE COURT: No. It's your recitation of his statement.

MR. TURNER: That is hearsay.

THE COURT: I understand we're dealing with hearsay. I'm saying tell me why it doesn't fit within the hearsay exception.

MR. TURNER: The point is, it's not just the declarant's statement; it's somebody else's statement about

what the declarant said, so it's double hearsay.

THE COURT: Lovely.

MR. TURNER: And that's part of the problem. That's a characterization of what this declarant said. It's not the statement itself.

THE COURT: So we go to both pieces of it, okay.

MR. TURNER: Right.

THE COURT: Mr. Turner, I'm trying to cut through because let me be perfectly blunt: I don't think this meets the hearsay standard. I don't think under 8043 this is a statement against penal interest. The reason for that is because the witness at the time was already under a cooperation agreement.

Under a cooperation agreement, under Second Circuit law, there is clear law that says that you're no longer under criminal penalty for making a particular statement; (B), based upon the representations of the government, there's no corroborating evidence for reliability because there's no chat that ever indicates apparently that this ever happened. There's no indication in the record so far that there is an absence of chats and, therefore, the absence here, there's just nothing to corroborate this as a reliable statement. So I don't think it meets 8043.

Do you disagree with my analysis?

MR. TURNER: We absolutely disagree, and we just also

believe there are further reasons that it doesn't even come under 8043 to start with because it's not this witness' statement. It's the government's statement about what he said.

THE COURT: Why don't you go to the missing witness charge, which I think is analytically separate.

MR. TURNER: Again, this is an issue of the defendant's own making. If they wanted to call this witness, that's something they should have realized right after they learned we weren't going to call him. If they thought he was that important to their case, they should have asked can we immunize him, can we call him. That could have been worked out two weeks ago.

THE COURT: Would you have immunized him or is this sort of an argument that you can make because they didn't ask but you would not in fact have immunized him?

MR. TURNER: No. I'm not representing that at all. I think we would have immunized him. He's under our control and we would not have resisted allowing him to testify. The point is, even a stipulation was not proposed until the eve of the defense case when government counsel was busy preparing for closing, preparing for possible cross of the defendant, preparing for the witnesses that were going to be part of the defense case.

This was sprung on the government on the last minute. It's an issue of the defense's own making and to say that, oh,

now there's an unavailable witness because they don't have time now to scramble and subpoena this witness and work out the immunity issues, it's their fault.

THE COURT: Let me ask you, I thought that Mr. Dratel had information that indicated this witness would take the Fifth if called.

MR. TURNER: Apparently he called his counsel, he didn't call me, he called -- this is just based on what Mr. Dratel said in court, I didn't even talk to counsel for Mr. Jones since then. But I understand that he called counsel for Mr. Jones and counsel said, well, he'd take the Fifth. But defense counsel can still contact the government and see if we would immunize the witness so that he couldn't claim the Fifth Amendment. We never had that discussion. We were never consulted about that.

MR. DRATEL: It's not the government's position to immunize a witness. It's the Court's authority under the statute. The government has never immunized a defense witness, never.

THE COURT: They make an application, which is then so ordered by the Court but typically it's within the prosecutorial discretion as to whether to suggest immunization, so they are related.

MR. DRATEL: That's the most specious argument, the most disingenuous argument I have heard. This is completely

outrageous. By the way, last weekend we were told that Mr. Turner would not agree to anything and would not discuss anything with us, and that's what we were told last week. I'm just -- I want to call Mr. Turner as a witness. We'll eliminate the double hearsay problem. He wrote the letter and signed it. He's disavowing it. This is so disingenuous, so outrageous. A prosecutor has obligations that transcend wanting to win the case at all costs, and this is what we have here.

THE COURT: Let's take these two issues analytically separately; one is the hearsay issue whether we think of it as single hearsay or double hearsay, 8043, whether or not those standards are met.

MR. DRATEL: Yes.

THE COURT: If they're not met, then we are into the world of the missing witness charge. If they are met, then there is some other issues as to whether we can read it in.

MR. DRATEL: Two things: One is, it is a statement against penal interest. He is not sentenced. All of these things can be raised at sentencing. That's why he has a Fifth Amendment privilege is because the statement against penal -- even if he's cooperating, and the truthfulness and the trustworthiness aspect of it, there's a chat that substantiates the first part of it, so that indicates the trustworthiness. They went and found the chat. They didn't have the chat

beforehand. They went and found the chat which substantiated the first part, and he is under an obligation to tell the truth or else he loses his cooperation agreement. Every jury is told that and argued by the government why would -- they're going to argue it here with respect to Mr. Duch. They're going to argue it here with respect to Mr. Bates. They're going to say this guy has an agreement. He would never lie to you. What more trust -- they can't have it both ways.

They continually want it both ways. This is a preposterous argument. I want a page and-a-half stipulation that they don't have time to read. They knew exactly what was in the -- my stipulation is completely what's in the letter. And what I objected to in their stipulation is what they're not entitled to. They could have called the witness if they wanted balance.

THE COURT: Hold on. I want us to pull back and take a deep breath and focus on --

MR. DRATEL: It's just an outrage. That's all. It's an outrage.

THE COURT: I hear what you're saying. I do want us to focus on the evidentiary rules because --

MR. DRATEL: Part of it is fairness. Part of it is *Chambers v. Mississippi*. Part of it is due process. Part of it is they can't do a bait and switch. I called the lawyer. He's on trial, by the way. I called him on the weekend and he

told me he's taking the Fifth.

They never offered -- this immunity is preposterous. You should ask them right now. He's said no, we're not saying we're going to immunize him. Of course not, because they're not going to. This is a bogus argument, bogus, bogus, bogus, and it's coming in a way that is completely disingenuous.

He should be a witness, and it's a problem 100 percent of his making because they had him on the witness list. In the middle of trial, they say he's not testifying. He's the best witness; Mr. Turner wrote the letter. He heard the statement. He was there.

THE COURT: You folks are sufficiently emotional about it. I have the government's statement. I have your letter. I have read your letter. I have also looked at case law. Let me be sure that I understand the chats which do exist versus the chats which don't exist.

As I understand it, the chat which does exist is the October 16, 2012 chat which indicates the "recommend a good book Rothbard" answer, that that chat has been found.

MR. DRATEL: Correct.

THE COURT: I understand that paragraph C, which is really the heart of what we're discussing here, the chat as to whether the key identifying question was asked, that chat has not been found.

MR. DRATEL: Because it was a Pidgin chat, which are

not saved. It's different. It's a different type of chat.

THE COURT: There are some.

MR. DRATEL: Well, not the Pidgin chats, no.

THE COURT: Here, let me just tell you my ruling on the 804(3) issue. On the 804(3) issue, putting aside the double level of hearsay, just assuming that this is a faithful representation of what the witness said, it's an out-of-court statement; without a doubt it's being offered for the truth. It has to meet both provisions of 804(3).

I do not believe that it was against the declarant's penal interest as the case law interprets it because he was under a cooperation agreement at the time. Moreover, the chat itself independently and in itself doesn't carry any particular penal impact; in other words, it's not the equivalent of a statement saying I sold the drugs or the equivalent of saying I did X, Y or Z. It's simply whether or not a particular communication occurred. So it does not meet some of the circumstances that are anticipated under (A).

Under subpart (B), it also needs to be -- and there's an "and" between those subparts -- corroborated by circumstantial evidence clearly indicating its trustworthiness. Its trustworthiness is not whether or not it was said to Mr. Turner. Its trustworthiness is whether or not it ever occurred. There's nothing that I'm aware of that indicates the trustworthiness as to whether or not it ever occurred.

Therefore, it is not a hearsay statement which can come in under 8043.

Under a missing witness charge, I've received the government's now oral response and I've also looked at the defendant's papers. Important in this regard are several Second Circuit cases, which the Court pulled this morning. One is the *Myerson* case, 18 F.3d 153 at pin cite 159; the other is the *Burgess v. U.S.* case, which is a DC circuit case -- the *Myerson* case is a Second Circuit case -- the *Burgess* case is a DC circuit case which is quoted at length in the *Myerson* case favorably. That's at 440 F.2d 226. And then there are a series of other cases. There's the *U.S. v. Torres* case, Second Circuit, 845 F.2d 1165, pin cite 1169 to 70.

In the *Myerson* case where there's a question about a missing witness, the Court is to look at a series of things: One the relation of the parties, not only physical availability, and I think that there are some questions as to whether or not there was in fact true physical availability which would include the immunity issues and everything else, but the Court does note the special relationship between the parties by virtue of the cooperation agreement and that, therefore, there is some further ability by the government to control this witness.

Whether or not that the defense did all that it could have I think is open to question but, frankly, I'm more

persuaded that the government does have control over this witness. That does not end the analysis. That just clears us to the point where we're able to ask the substantive question. The substantive question is whether or not -- and by the way, immunity is only given under extraordinary circumstances and I don't think that immunity here would be extraordinary circumstances.

But putting that aside, the question really is, and I'm quoting from the Second Circuit, "When the court is asked to give the instruction, then a judgment is to be reached as to whether, from all the circumstances, an inference of unfavorable testimony from an absent witness is a natural and reasonable one."

From the *Burgess* case, I'm going to recite a longer paragraph because it gives really the basis for what all of the circuit courts do in this regard and it's the *Burgess* case is widely cited for setting this standard.

"When the court is asked to give the instruction, then a judgment is to be reached as to whether, from all the circumstances, an inference of unfavorable testimony from an absent witness is a natural and reasonable one. In reaching a decision, the court will have in mind that it is not ruling upon an offer of evidence. The missing witness instruction is not evidence, but is concerned with the absence of evidence. While the context in which the question arises may clothe the

missing witness with significance, there is the danger that the instruction permitting an adverse inference may add a fictitious weight to one side or another of the case. When thus an instruction is sought, which, in a sense, creates evidence from the absence of evidence, the court is entitled to reserve to itself the right to reach a judgment as wisely as can be done in all the circumstances."

It is the Court's view having looked at the proffered language, and assuming that the witness, if called, would testify to that language, is that this is not reasonably exculpatory when all things are considered. This witness says he asked a first question. There's no indication that it was not answered -- I guess the only implication is it was not answered. There's no implication that it was answered wrongly. There's no implication as to whether or not multiple things were going on at the same time. Eleven months had passed. A second question was then asked to reveal identity, just as Google does to reveal identity of people all the time where you get three or four different questions to figure out what your first dog's name was, that second question was answered correctly; and therefore, the only reasonable inference to be drawn from this is that the DPR identification was completed. Any other inference would be, in this Court's view, an unreasonable inference, so the inigo issue is resolved. There will be no missing witness instruction on that issue.

MR. DRATEL: Then I'm signing the stipulation that the government proposed.

THE COURT: Go ahead. Do you want to agree to the stipulation?

MR. DRATEL: He already did. He proposed it to me.

MR. TURNER: Let me just consult, your Honor, over the break.

THE COURT: That's fine with me. If you stipulate to facts, that takes it out of the Court's hands, then I have no reason to make an independent evidentiary ruling.

Now, on the jury instructions, we will accept the defense jury instruction on the character evidence with the addition of two sentences from the Sands instruction. Sands for character evidence also includes -- I don't have the exact language right here, but it's essentially, here it is, the testimony is not to be taken by you as the witness' opinion as to whether the defendant is guilty or not guilty, that question is for you alone to determine.

So it will say an independent -- there will be an independent instruction on character: You have reputation evidence about the defendant's character trait for peacefulness and nonviolence. This testimony is not to be taken by you as the witness' opinion as to whether the defendant is guilty or not guilty. That question is for you alone to determine. You should consider character evidence together with and in the

(In the robing room)

THE COURT: All right. So we've got Mr. Turner, Mr. Howard, Mr. D'Agostino, Mr. Dratel, and we are on the record in the robing room.

Mr. Dratel, has your client waived his appearance?

MR. DRATEL: Yes, he has, your Honor.

THE COURT: Thank you.

I have before me Defense Exhibit C and N. As I understand it, as to C, and C only, there is a particular issue which the government wanted to raise in camera. So that is the purpose for having this session.

I have now reviewed this document, but it is a lengthy document with single-spaced text. So let me just say that I get the gist of the document, that somebody is providing or appears to be providing DPR with inside information on to -- with regard to the investigation.

MR. TURNER: Yes, your Honor, the investigation -- I want to state, to be clear for the record, the Baltimore investigation, not New York's investigation.

This is yet another effort to try to inject Carl Force into the case. This Al Pacino or Albert Pacino that has already been disclosed. He is under investigation as being Carl Force. This is utter, rank hearsay. It is hugely prejudicial, because it says all sorts of things about government investigators. It says things about the Mt. Gox

issue that I'm sure the defense will want to highlight and present for the truth, or insinuate for the truth in some manner. That we have no idea whether it is reliable or not. You get into the issue of the alternative perpetrator issue again, that you cannot rely on certainly not inadmissible evidence and certainly not evidence that continues to lack any specific, create reflection of a true alternative perpetrator.

Instead, this is just some guy leaking information that he's getting from God knows where to DPR in order to get into his good graces so he could get money. And it prejudicial. It could be interpreted by the jury in so many prejudicial ways. It could be interpreted to mean that possibly Agent Der-Yeghiayan was the one who leaked this information. There is stuff in here about how federal agents are sloppy, they're greedy, etc., etc., etc., all sorts of prejudicial statements about government investigators.

There are statements about like the sort of person DPR is expected to be, what his profile is. It says in here at one point you are suspected to be 30 to 35 years old, living on the East Coast. I'm sure they are going to try to point to that as now Mr. Ulbricht doesn't fit the profile.

It is ridiculous. It is not competent evidence about anything. This is again trial by ambush. This has only been disclosed to us this morning. And enough is enough. They had time to come up with competent, real evidence of a defense

theory. This is just something to embarrass the government and confuse the jury and it should be denied.

THE COURT: All right. Why do you say -- let's explore the hearsay issue for a moment. Before I get to you, I just want to find out more about your view as to why it is hearsay, Mr. Turner.

MR. TURNER: Why is it hearsay, your Honor?

THE COURT: Yes. I just want you to state for the record. Rather than having me recite the reasons why you might be thinking it is hearsay, why don't you just make a record on the hearsay.

MR. TURNER: Sure. It is a document obtained on his computer that is called "LE Counter Intel," so it appears to be statements by someone providing counterintelligence on law enforcement. And it says things like "From East India Trader on forum." So that is from East India Trader. Then later it indicates that it's from Albert Pacino. So who knows what these statements are, but they are clearly not in-court statements of a testifying witness.

THE COURT: All right. Mr. Dratel.

MR. DRATEL: First, it didn't bother the government at all about what was in there when they designated it as an exhibit. So I don't understand their question about embarrassment and all of these other things. It is a government in the form that I am trying to put it in. So all

of that part is just really not an issue. That is a red herring and a distraction. I'm not --

THE COURT: Let me just understand it. Are you arguing that the government waived any hearsay objection by proffering it?

MR. DRATEL: No. But this question of prejudicial, 403, or all of that stuff is nonsense because it was their exhibit. This is their exhibit after they notified us about Carl Mark Force. This is after that. This is December 5th they gave us -- December 1st they gave us these exhibits. They wrote the Court and us on November 21st about that. So this is after. It nothing to do with Carl Force. Nothing.

It is about -- you know, this is all an attempt by the government to use that whole issue as a shield to keep out defense evidence. The rules I thought were that they could not sanitize what was already in the case. They just couldn't use the stuff that they gave us in that November 21st letter. But this is already in the case. This is on the laptop. They didn't redact it. It is nothing like that. They redacted the other one that they put in, 241. That they did redact, and we object to that, obviously, but we are bound by the rules that the Court stated with respect to the Carl Force issue. So that's a complete red herring.

The second is we are not putting it in for the truth.

We are putting it in because this is what was given to DPR. I opened on this on the basis of the fact that we were going to be able to use what was in the record before November 21, that we would be able to use this material. It goes to two things. It goes to DPR's knowledge about the law enforcement activity that causes him to be careful and cautious and also to be -- to implement an escape plan.

The second part, even separate from that, is the independent value it has to show the security consciousness of DPR about all of these things, and I'm going to contrast that with Mr. Ulbricht's conduct over the entire course of this case -- not the case in terms of the trial but in terms of the evidentiary portion of the case.

And so I believe I have a right to put that in to support that theory.

THE COURT: Let me understand. So you would not use this document in closing in any way to say, you see, here, highlighting, and then state it as fact?

MR. DRATEL: No, I would say this is what DPR was buying. This is what he was learning. This is why he did what he did --

THE COURT: Well, what was he learning suggests that he was learning a fact.

MR. DRATEL: No, but he was learning it -- we don't know -- you know, in other words, he could have thought of it

as a fact. I am not saying this independently, but it goes to the state of mind of the person who is receiving it. I mean, someone who is paying for all of this information and is getting all of this information is -- you know, it's having an impact.

So, I mean, the jury can infer that. I think that is a completely fair inference. And, you know, this is a problem of the government's own making.

THE COURT: Let me just ask you, Mr. Turner, whether there are particular things about the sloppiness of the government investigation or something like that which you think should, and on an isolated basis, be struck?

MR. TURNER: I think it goes a lot farther than that, your Honor.

THE COURT: I know you do.

MR. TURNER: For example, the timeline that was produced yesterday, that appears to be based extensively on this document, you know what's going on with Mr. Wonderful, what's going on with the Mt. Gox account. This is not an issue where an instruction can be relied upon to keep the jurors clear. The defense opened not on the idea that, oh, DPR was security conscious, that there was an alternative perpetrator.

MR. DRATEL: That's not true. I did both.

MR. TURNER: And that there was an alternative perpetrator and they tried to get to Agent Der-Yeghiayan and

Mt. Gox and Mark Karpeles. That I saw on the timeline. They are trying to take the references to Mt. Gox in here and make that suggestion to the jury.

If they want to -- if they are going to try to say, well, it is not for the true, it is just that Dread Pirate Roberts was aware that the government was looking at Mt. Gox, the jury is not going to make that distinction. The defense is going to continue to argue that there was an alternative perpetrator in the form of Mr. Karpeles; that's what this is come in for.

Again, it is rife with stuff that is objectionable.

And, you know, in terms of including it in the Government's Exhibit list, we discovered this long ago. We were gathering exhibits quickly. The fact that it was originally included means knowledge.

Certainly in the context of what we know about the defense case now and the alternative perpetrator theory they plan to present, this is the kind of garbage that they're trying to use to support it, and it's improper and it's extremely prejudicial to the government in the potential that the document has to confuse the jury. An instruction to the jury here is not going to be sufficient given the way they've opened and framed their case throughout. This is the one document that they're going to rely upon. It is the same agent belief issue, by the way. This is agents passing on secondhand

what other agents believed.

MR. DRATEL: It's not going in for the truth.

MR. TURNER: The defense says that, but, your Honor, that is the only -- that is the inevitable way that this document is going to be used.

MR. DRATEL: No,s it's not, number one. And I could make the same argument about all the documents that the government put in that were in for the truth. And we're bound by the rules. It is not coming in for the truth.

The fact is, you know, the government's arguments about the time line on their exhibits, I mean really.

The other thing is with respect to the alternative perpetrator issue, I do intend to argue that in summation based on the inferences in the record. There are inferences in the record. I'm not going to go beyond that. This should be in the record because this is a -- talk about ambush? I mean, they did not redact this document. They didn't start to make an issue of it with respect to Carl Force until today.

And, in fact, deathfromabove -- just so we're clear, on deathfromabove, the government never identified deathfromabove as being Carl Force. They never identified Carl Force as having the deathfromabove account. They only did that when we tried to put in Defense Exhibit E. That is the first time that came up. And in their footnote in their letter of the other day they basically seem to acknowledge that

deathfromabove is another one of Force's aliases, which is more Brady material that we haven't gotten and this investigation continues of him. So they're gathering Brady material as we try the case.

And, you know, I have to move for a mistrial based on that. It is just unconscionable at this point that we have a separate investigation going on where they are gathering Brady material for the defendant and we don't get to see it. It is directly relevant, and we don't get to see it, we don't get to use it. It is directly relevant to the issues in this case. These are documents that DPR has that he is given. So I am going to -- you hear my arguments, your Honor.

THE COURT: I hear your arguments. If that was a new application for a mistrial, then the application is denied. If it was just the old one --

MR. DRATEL: It was a new one.

THE COURT: Then I deny it. There are fewer in this trial applications for a mistrial than in our last trial. I think you were up to five there. You are only up to four now.

MR. TURNER: Your Honor, I would object additionally on the ground that we are hours away from closing. Your Honor set a firm deadline for the production of exhibits. This was not included. This is like 15 pages or so, single-spaced with stuff that is core, core hearsay, rife with accusations about all sorts of things that you would want to cross-examine the

person on. Huge reliability issues.

And the law is not -- the law is clear that there are situations where a jury instruction cannot be counted on to prevent the prejudice that could result from admission of an exhibit or testimony. And this is one of them. This is 15 pages of all sorts of hearsay, all sorts of wild accusations stuff that's being given for profit motive to DPR. No indicia of reliability. And, you know, this is just sort of reading material that, hmmm, this is interesting. Oh, look at this. They were looking into it there is corrupt Postal Service people. Look at this. There's -- I mean, this is so improper and so late --

MR. DRATEL: This is precisely the material that DPR was paying for. That is why it is relevant.

THE COURT: Let me ask whether or not you folks would be able to come to a stipulation right here, right now, to the effect that at X point in time DPR learned that the government was investigating Silk Road and the individuals behind Silk Road?

MR. TURNER: And you could even have a stipulation that there was law enforcement counterintel document on his computer. We would have no objection to that. But reading in all this --

MR. DRATEL: I will have to go through the document and see what is essential here.

THE COURT: But I would suggest that -- I think it's important that the defense be able to present something which indicates one of the legs of their stool, which is that DPR learned, I think it's in the spring of 2013, that law enforcement was investigating Silk Road and attempting to identify DPR. And then on -- was it on the laptop?

MR. TURNER: Yes, your Honor.

THE COURT: On the Ross Ulbricht laptop?

MR. TURNER: Yes.

THE COURT: All right. There was -- do you want that part? Maybe you don't want that part.

MR. DRATEL: Which?

THE COURT: The Ross Ulbricht laptop.

MR. DRATEL: You could say it was found on the laptop. That is good. That is where it was found.

THE COURT: On the Ross Ulbricht laptop there was a document, you can even say a multipage document. And then how would this be characterized setting forth various --

MR. TURNER: Titled "LE counterintel." In other words, "law enforcement counterintelligence."

THE COURT: Which the parties agree means "law enforcement counterintelligence." This document purports to contain a variety of information relating to ongoing law enforcement efforts with respect to Silk Road and DPR.

I think from that, then, Mr. Dratel, you can argue DPR

was on notice as of the spring of 2013. He had indications as to what he thought law enforcement was doing. You can't get it in for the truth, anyway, as to what law enforcement was in fact doing because that would be the hearsay purpose. And you can say it was a multipage document.

MR. DRATEL: Yes. Can I just --

THE COURT: Think about it?

MR. DRATEL: Yes.

THE COURT: Do you want to see my notes?

MR. DRATEL: I have it. The one change I would make is instead of saying "purported," the document does what does, so I would say that it is a document that contains communications to DPR about, then you could say purported criminal investigations or things like that. It is the "purported." I just think the communications are there. They are not purported.

THE COURT: Communications to DPR about a purported variety?

MR. DRATEL: Yes.

MR. TURNER: We would have no objection to that.

THE COURT: Let me just tell you sort of the three paragraphs I have so that is clear.

One. DPR learned in the spring of 2013 that law enforcement was investigating Silk Road and attempting to identify DPR.

Number two. On Ross Ulbricht's laptop there was a multipage document titled "LE Counterintel," which the parties agree means "Law Enforcement Counterintelligence."

Three. This document contains communications to DPR about a purported variety of information relating to ongoing law enforcement efforts with respect to Silk Road and DPR.

MR. TURNER: Maybe a variety of information relating to purported.

MR. DRATEL: That is fine.

THE COURT: A variety of information relating to purported ongoing. OK?

MR. DRATEL: Yes. I just want to go through the document to make sure it captures even in generic terms the full picture of it.

THE COURT: All right. Why don't you -- you've got the document. All right. But that would be the Court's, I think, way of trying to balance the defense interest in having those points but the government's interest in the potentially misleading impact of some of the way in which those are cast.

So let's see if our jurors are here so we can get started. But if I don't hear anything else from you, that would be -- and you can actually just read that as a stipulation, "The parties have agreed that."

MR. DRATEL: OK.

THE COURT: You don't have to -- obviously, that

witness wouldn't get this in.

MR. DRATEL: Right.

THE COURT: So she would then get in N and the Google stuff?

MR. DRATEL: Right.

THE COURT: All right. Terrific.

We are adjourned, and there was a mention of an issue that requires this portion of the transcript to be sealed, at least temporarily, until that is redacted.

All right. Thank you.

(Continued on next page)

/home/frosty/backup/project_references/le_counter_intel.txt

from East India Traitor on forum:

Well this obviously isn't private but i'll share jediknight is your attacker. I realize this will be treated like bullshit as most other info that gets relayed to you, but he is the script writer over at atlantis and brags of his assualt on your psuedo-revolution. I realize you support free market but even at the cost of attacks on your marketplace, you may say yes in public but i know this not to be true in your pirate head. Be sure to read my sig if this helps you otherwise
I want nothing more than for this to continue for as long as possible...soon the other markets will decentralize your profits and
vendors and you can retire...please do not let the dea follow your btc trails as they did in the past watchin your btc pile grow
daily until it was obvious who the owner of the mtgox account was...i know this is a non issue now but im just saying, they have
a quarter million dollar bounty on your head for info and have been here since May 2011.

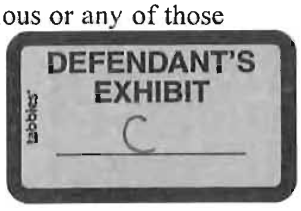
Attacker
SR Forum Profile: http://dkn255hz262ypmii.onion/index.php?action=profile;u=51427

Long story short I just did 6 months federal time in a DRAP program for SR related crimes,
currently living in halfway house very little time to get up to the local library to talk.
DEA visited/visits me twice a month...asks me shit, then they brag about their shit.
Such as the mt gox bullshit a couple months ago, asking if SR members would go for
paid informant work, I sent them on wild goose chases just enough to get them to
come share with me more than they could get from me. I in no way snitched out anyone,
they are currently trying to get into your staff forum mods esp...i suggest they change usernames every month start posts counts back at zero.
I suggest you relocate outside usa...if not already, they are foaming at the mouth which branch of the LE gets credit for your arrest.

blah blah got to run...last person in library have an 7:30pm curfew.
---
yeah it's more detailed
also covered that jediknight info was from an unlogged set of chat sessions so i dont have
links but the atlantis crew runs on the same server as the Silk Road IRC so to make a fake username and buddy up to them is no problem...the younger and smarter they are the more they brag. There's definately more details on the visits from the different visited me...esp trying to track down ovdb vendors and admin.

Please if there's something you have questions about ask and i will tell you what I know...they are pretty forthcoming and brag like any other ego driven personality. Like I said Im still on parole in a halfway house and visit a library to get
this back to you so my dedication to this is obviously a great risk to my freedom again except there is no way ill get a light 6 months federal
Residential Drug Abuse Program my second strike. So please understand I need this info I bring back to you and convey to
be Ultra Top Secret. Burned After Reading scenario.

Wow i never expected that.
Well let's start with the most important issue and I dont expect you to answer this to me but think,
"Who knows your real name in relation to Silk Road?" Admin from OVDB? Eneylsion or Envious or any of those guys?
What about people from the Bitcoin forums?



/home/frosty/backup/project_references/le_counter_intel.txt

"Do you have the servers in your name or a staff members name?" Hopefully these servers are spread out internationally.
Again these are rhetorical questions? I dont wanna know the answers just stuff for you to protect yourself.
Again the BTC block chain is definitely being watched for large transfers or deposit to same address which I assume was solved
long ago.
They know you have multiple btc tumblers and that you dont keep but around 1/3 of SR's btc balance on any given site.
Remember the agent that i spoke with that had been on the investigation started in late april 2011...i asked him and he told me.

The postal inspector asked me shit like why do i think you tell everyone to use USPS instead of private couriers and I told him
and he was pissed and wanted to know how I knew that. Then he wanted the postal workers that use SR in the forums real names..like I have a clue to that.
They expect shit that is unrealistic but I do know there's compromised vendor accounts and looking for the highest up vendors to interrogate.
They are paerticularly hung up on Limetless...they asked me about my money laundring and I of course said I have no idea how to do that cause admitting that gets you 15 years.
They seem to think Limetless laundrers for you, probably cause he has spoken about laundring in the forum opening countless times.
This isnt just a US investigation they ARE collaborating with other governments and international packages can be opened without a warrant. They simply have to have an address
on a postal list and it can be opened as part of the homeland security initative.

Sorry this is all I can cover today, I've go to spilt to get to a meeting at the halfway house...idk if i can hit the library on Friday but they let me go to there on Saturdays to "study law".
I'm trying to get some community service out of the way with the library as well so ill have more time here.

Thank you again and I'll be in touch very soon.

:)
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ok not sure where we left off.
Let me explain my situation a little more.
See I still have contact with these agents, not in person anymore but by phone.
So guess who I talked to yesterday.
They are focusing on the forum and your admin and mods.
In particular Libertas and Samesamebutdifferent who is in my opinion your weakest link.
They dont really know anything about Libertas except he helps on the marketplace with coding...they have his tormail.
Idk what that does for them but they have ssbd's as well.
So i advise you to have them erase their emails and change tormail accounts or better yet not use tormail.
The way they got their tormail mail addresses is by importing their pgp ley and it was on there.
I have a feeling they think Libertas is scout...idk for sure but they have been asking about those three for months.
If by monday you can have them all start new usernames it is in your best interest as well as the community at large.

So you can see I have them in the perfect spot to play spy for Silk Road with the DEA.
Does this interest you?
Let's see what else...they believe that admin fromovdb is your chief code writer or at least the very least works on your staff.
They have envious' return address in montana some how.
They seem to think he might have some connection with you pre SR days...not sure why.

/home/frosty/backup/project_references/le_counter_intel.txt

Several agents question me on a fairly regular basis and are all doing different cases and sharing the info from interrogations.
I know there are things I'm not remembering at this very moment but when they do come to me I shall relay them to you.
If there is anything in particular you want to know if Ive heard about ask.
These guys vary in intelligence quite a bit from person to person...one cant use encryption another has been in the forum since it was on the orignal market.
They asked me if I knew anyone that bought shrooms from you and that if they had a return address for you...like that is even remotelty possible to come up with.
They are looking for every little think said in the forum about personal habits or the mods/admin..you.
Yesterday they told be they believed their was at least 2 ppl using the DPR username or more, which makes sense to me.
One for the forum bs and one for the marketplace.

Is this the type of stuff you are interested in?

As far as I know dont know anything about the shroom sales except you sold them sometime in the first month or couple months.
Mt Gox I was given anything but generalities...such as a huge amount of btc in one account that blew up in the matter of weeks, I'm thinking
they said around the time of the original gawker article...the public invite article.
They seem to be under pressure to get someone of great impoertance toshow a win for the USA on this situation.
And from what i gathered from the dea they were [issed they couldnt login during the dos attacks, so that says they had nothing to do wirth it, like i said anyway
jediknight was in chat bragging about how he had implemented escrow on atlantis in a 24 hour period and that he had plans to divert members from Silk road to Atlantis.
It wouldnt hurt i suspect to have someone look into logging chat on the atlantis channel that ios also non the SR IRC.

O just as i was about to sign out i remembered they asked me if Graham Greene was possibly a moderator or Admin.
I remembewr graham from before the arrest but ive been out of the loop for a couple of months so I really have no idea how much
he got involved in the forum...I know he was one of the more outspoken members that had the best interests of the community in mind
but i told them i didnt know that name.
---
can you give me links to where he is bragging?

what do you know about an mtgox account?

the DEA has a $250k bounty on me? how do you know?

==========

Cause i just did 6 months federal time for your revolution and they bragged about their doings too much upon interrogations.
They would visit me twice a month trying to get info from me..i would lead them on wild goose chases.
Just enough to get more out of them than they me.
They asked about offering the average member this bounty, how many would flip on you ,
they assumed 80% of the members would flip on you, but i know much better your following than them.
I also know that your current members dont have jack on you...but they are trying to talk to nelson you remember nelson right
from database days. He's still locked up.

I will also warn you that your staff is currently being targeted if not already a compromised one. Specifically the forum

members.

They followed an mtgox account that was in excess of some outrageous number of bitcoins, an account that should have had enough
bitcoin to be it's own exchange. They did not release the account username but they are very much obtaining info in manner
possible. I'm trying to warn you. The DEA, ICE, POSTAL INSPECTOR, NSI,FBI,CIA,NSA are itching to get credit for your arrest.

I advise you to relocate yourself from the US and before that have your complete staff change usernames at least once a month and no rolling over posts.

As far as jediknight i do not log chats so I cant link you to anything but that doesnt change the fact.

Like I said I just got back out and am on parole...so to clear up the info i have on jediknight it is at least 6 months old. But he was your denial of service instigator before the members started dos themselves and he and the atlantis crew are your troublemakers
as Im sure you've come to the conclusion yourself. I know without the exact quotes this is meaningless to you but at least I tried to make you
aware of the issues you are currently being annoyed with...and could even become your fall from grace.

Please delete all info as it is for your safety not mine. I want nothing from you and I am not trying to throw psyops at you. I've not always liked the way you ran the community
but I'm no traitor. I respect your progress on this frontier but I worry about your future. Along with the members futures.

If you don't believe me and wanna live in denial go ahead one day you will look back and wished you'd looked further in the rabbit hole.

---

scout's tormail where he is talking to mrwonderul:
username: scoutsr
password: b3l1am0n

Symm's tormail talking to mrwonderful:
symmetry2
bjBTrmPzUBhmN3uH

scout, forum
username: scout
pass: nlNlaGKUb1r6sqYY

StExo has discovered that Dr David DÃ©cary-HÃ©tu is planning to do research on SR for canadian LE
Address: Montreal, Canada
http://ca.linkedin.com/pub/david-d%C3%A9cary-h%C3%A9tu/41/298/702
http://jrc.sagepub.com/content/early/2011/09/20/0022427811420876

/home/frosty/backup/project_references/le_counter_intel.txt

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2119235
E-mail: david.decary-hetu@umontreal.ca

correspondence with alpacino:
silkpirate@tormail.org

This is for YOU only.

Try this (and I'll explain later why). Message your staff/moderators individually and ask "So, feeling wonderful lately? " and then ask "Anything you want to tell me?" Make sure to use the word "wonderful".

Theres an ongoing effort to engage and coerce your staff into giving up some access/insight/internal communications. Last I hear there IS headway on that. The key points are potential greed or intimidation. I believe it was someone @ DHS or CBP who wanted to own it, but ultimately its a DEA gig with a few cooks in the kitchen. Will absolutely request you not ever let on about this, and I'm sure you know how to run your team (and what level of trust to repose), but just know that absolutely there's an ongoing dialogue there with a "mr wonderful". Shocking, huh? Be smart about that.

Know that some of your vendors have been approached for (and have provided for money) buyer information (the idea is to purchase buyer information, which gets dumped and collated into excel). Vendors that get banned are approached via the email addresses they provide on their pages "in the event SR is down, contact here..". Just recently a New York based pill guy sold his entire customer list to what he thought was atlantis. Can find out his handle so you can poke around old private messages if need be. Several uses for databases of buyer information..

Am certain there are not many techies involved. Due to the unconventional nature of this network and technology, not much use for full time "geeks" being sourced & assigned anything more then standard workload. Unless there's some specific technical question/explanation needed

There are a few different working "profiles" on you (can probably get into detail later on how thats culled). The most popular is that you're East Coast , live with family, have either quit your office job or primarily do consulting/contract work from home. Theres other stuff I'd rather not get into, but rest assured anything worthwhile/concrete usually makes the rounds as gossip, and there's no real gossip. If that makes any sense..

There are really tons of useful nuggets that I do have to offer. And what my birdie doesn't know, he can probably find out, but no guarantees on timeframe. Due to the nature of keeping everything properly 'insulated', birdie has to fetch information with proper care. Also please realize the risk I run (and have run)..

Anything you want to ask?

I don't mind you talking my ear off asking questions.. there's a decent amount in my head, and fairly regular amount of chatter that makes it rounds to my ears. But as said, weekends are not optimum for me to poke my nose around as you can imagine the nature of this stuff (despite me being pretty insulated).. being casually brought up with the birdie(s) in anything other then a casual environment could trigger a disastrous chain of events for me. Evenings and weekends are probably when I can be more responsive.

1) That I struggled with myself, and anticipated. Well, I suppose you have no solid way of knowing. But ponder this - I have NO intention of asking YOU anything what so ever. There is not a single thing I have any intention or need to ask you. If this was a play to extract information/data out of you, it would be futile as there is not a single thing I want to know. If you dig around your staff's correspondence (unless already deleted) you will notice I'm right on the money

about "mr wonderful".I would not be privy to such if I was Joe Blow from nowhere. I can also tell you that one of your guys claimed he's been "recycled". That is the *exact* word. I am not sure if thats some internal term or it means he/she was in a different role and put into another one. I can assume it means a moderator or administrator was shifted from a previous role to a similar role. If that term "recycled" means anything to you, then that should at least speak to my legtimacy. Again, you do not have to acknowledge you know what that means. If it makes sense to you, then so be it, and if it doesn't then I can poke around more. I'm confident if you re-examine your staffs behavior and correspondence, it should verify my solid info. I'm not psychic, I'm not on your staff, therefore&

2)If you can come up with a method to verify I'm not, I am open to it as long as I'm able to protect myself to the fullest. I'm hesitant to touch any data, but I can (and do) commit things to memory.
There would be no gain in feeding you false information or lying to you. It would not benefit you in any way and you would realize your time is being wasted and that would be all she wrote. I think you are intelligent enough to parse bullshit from fact. Feeding false information would be the goal of someone intent on disrupting your activities or hoodwinking you. Again, something you would probably be able to verify - maybe half a year ago a guy from podunk Virginia contacted local and was crying about being blackmailed for his personal information by 'anonymous criminals' (Phil something). Middle aged guy who ran a travel agency. Even down to that level pops up on the radar nearby to where the birdie hangs out. Did not take long to assemble the backstory (small time recreational buyer just got blackmailed if you want to call it that by a crooked vendor) and dismiss as utterly irrelevant. I'm sure old private messages or communications can be examined to verify that instance.
How on *earth* would I be privy to that? And to know hard details? These things make the rounds, believe me. I would only provide you with things that could be of utility.

3) In short I admire you and what you've created, I don't think for a minute that helping you out time to time would hurt anyone (might sound hypocritical but it's not), and personal gain.
I don't think you've done anything that warrants resources of the state being delegated to interfere. I call a spade a spade, and JTFs/reports/operational/mindset are all a crock. I don't see anything wrong in what goes on here, and in another less boring life I'd probably have wished I could have been apart of it. Granted I'm technically on the other 'side' on paper (indirectly), but that's a means to eat. I'm not Snowden by any stretch, but I admire that. I've always tossed around the idea that how cool would it be if someone like the birdie would hook you up here and there, but the horror of getting utterly fucked and have my freedom taken would kill any such thoughts. But as I've said.. without being arrogant I know I'm relatively insulated enough by virtue of NOT being that close anymore. I'm a fly on the wall in the grand scheme of things. And more importantly, personal gain. If you're in a position to potentially augment your means & income, wouldn't you? I make a decent living, but I also have responsibilities and material desires. My conscience is clear because I don't feel I'm harming a single living creature. I don't come for free, so theres that motivation.

Worst case scenario I can provide you with insight and philosophy. Best case I can provide you with solid action-items that would unequivically give you a competitive edge.

I'm not trying to sell my utility to you, I'm pretty sure thats a no brainer. But I do think I can deliver..

I think that works. Initial+ weekly. I'm not entirely sure myself on what's fair or not fair.

Initial retainer.. I don't know, 5k too much or is 8k too much? I'll let you decide.
Weekly do you want to do 500? Obviously some weeks there will be nothing major other then chatter, and other weeks there might be extremely useful intel. I think we can just leave it at 500/weekly.

I made an account on your main site: "albertpacino".

Another thing, what I'm doing, despite all precautions (I've thought out all scenarios) could possibly ruin mine and my

family's life if ever discovered. I implore that never utter a word to a soul, a partner, a significant other, even God (if you're religious). I know you take security seriously, and you've demonstrated that, so I know you know where I'm coming from..
And if either of us ever wants to cease communication, then that should be an option and understood as a logistical decision, with no hard feelings.

Let's operate under your terms, and I will get to work tonight on writing up as much as I can RE you'r questions, then you can dissect and pick my brain with followups, then I respond etc.
I just have to be careful to walk a fine line that won't identify me or my location, but I've made a decision and I'm fairly confident in my abilities to satisfy your purposes and cover my ass too.

The only condition I have is that nothing I ever say be used in a manner that can harm anyones safety. Even if actual information is provided for some purposes (a vendor name or location), I would hope that nobody's safety is ever seriously jeopardized. Could not live with that. What you do with information (if involves threatening or anything) is your business, but nobody can actually be harmed.
I don't think you operate that way anyways..

I do have to run to dinner, so will get you get a comprehensive writeup later tonight.

And I do respect what SR stands for. In another life I'd have loved to be part of it. Maybe this is one way to live that fantasy out.

I know that Eileen has a publishing deal and is writing a book around SR, and has had extensive dialogue with everyone from buyers to new vendors to old hats. She claims that she has your blessing and at some point will be (or has) interviewing you of sorts. Also you've made reference to a book or memoir at some point. No matter what, I will make a gentleman's request that a word of this isn't spoken in this lifetime. I've taken many risks and gambles in my life and mostly have been lucky.. but the magnitude of what I'm doing, if uncovered, could put my family in harms way and/or devastate them and no money in the world could justify that. So that's that.

(Some stuff might jump allover the place as it comes to me, so apologies if theres more stream-of-thought and less organization)

Byt virtue of the professional capacity of a birdie I know, I have/had access and in-office/out of office knowledge of local, state and federal initiatives that deal with work tasked to monitor, report on, and coordinate interagency initiatives dealing with

1) Domestic movement of narcotics
2) Movement of narcotics traffic through land/sea/air borders
3) Cyber crime (extortion, child porn, domestic terrorism, credit card fraud, SPAM, password trafficking, counterfeiting of currency, computer intrusion, etc)
4) Financial crimes related to narcotics trafficking/distribution,/profit laundering

Prominent on the radar is Silk Road (amongst other known sites/actors on TOR) and since late 2011 there's been a lackluster yet interagency effort to monitor, disrupt, infiltrate and/or penetrate operations.
The office of the DAAG (Deputy Assistant Attorney General) Computer Crime (at time Jason Weinstein) was the principal in spearheading. This is after Sen. Schumer & party created a hoo-ha. Weinsteins office jumped to take charge and assume oversight.
Under the auspices of the NCIJTF (National Cyber Investigative Joint Task Force which is DOJ), the following fed agencies have a presence when it comes to SR (Stateside)
1) DEA

2) FBI
3) DHS
4) ICE
5) USPIS
6) ATF
7) CBP

That should NOT worry you, because by "presence" I only mean their are active agents and officer level involvement from who's resources are pooled and budgets are shared. On a limb I'll say this, everything having to do with Silk Road (like any other open set of investigations) is on shared drives that almost all can read+write, and there is a shared public Outlook folder where all emails/correspondence pertaining to SR are routed. Everybody (and I mean everybody) from entry level up to the heavens have "read" access. Additionally, people talk a LOT. Loose lips is an understatement and the level of immaturity and juvenile attitude is staggering. There is no such thing as "confidential", and this is a culture where people are numb. You must understand that part of why I'm so confident (in my ability to maintain this relationship) is that nothing is treated as sacred and there are probably 100 people like me who could offer the same level of access. Analysts do collate data and prepare summarizations/status sheets and CC the requisite list/group.. and majority of the time nothing happens. Little to none replies/discussion. This is not SR specific, but does include SR. For example reports related to CP sites/forums or BMR often get the same treatment.. ambivalence. Here is something that will bring a smile to your face.. it is just not in the budgets to aggressively dedicate resources to SR. The way the budgets are allocated are almost certainly political in nature, and the lions share goes to War on Terrorism or "real world" drug activity. That's the cold hard truth. That's not to say that there are no zealots who do have a harden for SR related activity, but that is more focused on suspected real world trafficking. Ironically enough, guys at USPIS do not care in the least about SR. Yes you read that right. They're broke and have no concept of tech savvy.. and frankly, they are not interested. DEA guys often initiate most chatter having to do with SR, yet follow up is minimum and they are too bogged down in pending investigations of subjects whom they have the ability to surveil and/or who's circle they can infiltrate by way of CI's (conf informants).. none of which is possible when dealing with a beast that is virtually immune to real world surveillance. It's not a question of getting warrants to ISPs.. its a question of who/where to begin looking. They're stuck.

At the analyst level, SR forums and the main site are crawled/monitored. Not more then 4 people are tasked with just crawling and mining the forums main site in an observational capacity. These 4 people are also tasked with crawling and mining many other websites and forums on TOR and clear net. So while everything is printed, you can guesstimate the scrutinity level is not extraordinary. That's not to say that others do not actively surf the forums and maintain both buyer and vendor accounts on the main site, they do. But at any given time, there are not more then a handful of people overseeing a crawl. When something deemed highly interesting or important pops up, they will CC the SR mailing list with a description and screenshot with their thoughts. Otherwise, there is a weekly status sheet that gets dumped with the most relevant/interesting/useful occurrences on the forum along with a summary on value/suggested "action items". Everything you post (along with the time stamps) is copied. You are referred to as DPR across the board. Often there is nothing interesting, and if there is there is it would be a bullet point such as "Vendor XYZ (who deals in ABC..) said his packaging methods consist of 123" etc. This is so they seem like they're doing their job as often there is nothing interesting at all taking place on the forum side. When moderators quote you, that is often the bulk of what gets bullet pointed "DPR has instructed us to do such and such".
Now, there have and continue to be attempts to compromise staff accounts (on the forum and main side) by the normal methods of password guessing, but AFAIK none have been successful. There have been successful instances of cloning lookalike accounts which have all been shut down on your side. Of significant focus is attempts to impersonate you and your moderators on not only SR mainsite/forum, but on other TOR sites such as BMR or Atlantis to see if any prior correspondences can be restarted. Nothing there either.

A 'profile' is an outline of a user that contains key points/occurences/assesment regarding their activities. There is not one on every single vendor, but there are on the high volume ones. The goal is to have all user profiles searchable offsite. In vendor profiles are return addresess/packaging method/pictures of the package & contents, replication of their vendor page text, and any other relevant data.
Your profile (no idea who authored) has you as extremely intelligent with a background in IT, between 35 and 55, living on the East Coast, working from home in a contractor/consulting arrangement and living with family. An

assessment like this would be based on your speech, patterns (such as when you log on, when you go idle on the forums), personality,expressed interests, ideology, unique mannerisms (for example your use of the word "ya" instead of "you" sometimes. As in "I'll tell ya" or "would ya believe" .. etc off the top of my head). The assumption is that you are conscious to actively remain off any kind of radar, do not take any drugs, do not live extravagantly.

If you have any partners (I'm not talking about staff), you most certainly are the assumed shot caller and are as anonymous to them as you are to everyone else. Contrary to rumors, it's not stated or assumed that you are not the original brainchild of SR or have ever not been the same person. You are the same you that started the site and have never relinquished ownership. Whether it's all you or you've farmed out responsibilities, it's unclear if the servers are all located in your physical possession or spread out. It's pretty much agreed that you have never been a vendor on the site or tied to any vendor IRL.
You're essentially a ghost. And since you are not a vendor, there is no tangible way to engage you in any compromising scenario. There have been attempts to approach you (can assume under the guise of journalists or researchers) to probably build a repertoire and study your speech, to later on analyze and compare if by some fluke there are any suspected leads on who you are IRL. As of now, I can say with utmost surety there are absolutely none whatsoever. You are as anonymous as you were 1 year ago. There HAVE been concentrated efforts to DoS/DdoS the site and forum to assess your response time and technical acumen. I'm not too savvy regarding this, but on a horizontal scope there have been/are attempts to run exit notes and track traffic across TOR. To what end this has been aimed at SR would be something I would need to poke around about.

Since the assumption is that security of the servers and high level system are handled solely by you, you are overworked and delegate lower level duties to your staff. There is a fixation on some how penetrating or compromising your moderators into giving access. The philosophy is that you are less stoic with your team and interact with them in a more informal fashion, which would provide insight into where you are located geographically and your habits (which could be identifiers). The Mr Wonderful operation (if you want to call it that) is still in progress and revolves around bribing or threatening your team into providing access to a staff account. The benefit would be to not only get closer to you, but to be in a position of trust in the community which could potentially net high volume vendors. A few of your staff have absolutely been in touch with Mr.W and most likely have carried on correspondence with them off-site. Mr. W is being actively maintained by DEA. Nothing major has come from this AFAIK, but tidbits have made the rounds such as there is fear of you and you have or had asked for personal information in the past in order to appoint members of staff. Also that you have "recycled" staff, which is taken to mean that either Cirrus is Scout (who has communicated with Mr W) and Liberatas could be Nomad Bloodbath. SSBD has also communicated with Mr.W. To what extent exactly the nature of their correspondences are, I do not know. I could find out, but it would not be immediate as it has to be handled with tact. If there was a successful breach of any staff account, it would be known and I would tell you. There has not been. Moderators are seen as loyal but weak, susceptible to intimidation and/or bribery. If their anonymity is ever compromised, they would turn. SSBD is assumed to be in the UK, where as Cirrus is assumed to be Midwest Stateside. Inigo UK, Liberatas States.
Assumption is that you also have employees on the main site who are completely unknown who handle maintenance and upkeep. No geographic assumption on any of them. AFA your relationship with vendors it is a rule of thumb that you do not have any special relationship with high volume vendors over other vendors. No vendor is assumed or perceived to be close to you. They will keep trying to open open lines of communication with you under various guises, even as vendors yet the likelihood of you befriending any vendor (real or agent) is nil. Locating you or the servers, although would be a major coup, seems all but impossible so the focus is aimed at netting vendors.

The high-vol vendor operations such as (to just name a few) Nod, NorCalKing, RxKing are all under scrutiny. They've all been purchased from multiple times and general geographic location is assembled. For example it would be known that the Nod operation is NY, NCK is in California, RxK is Southwest US etc. There are also ongoing attempts to befriend the 'biggish' vendors through private message/forum pm/privnote/pgp and take correspondence off-site. This is where off-site deals and 'partnerships' would get cooked up and layers of anonymity be peeled away, leading to more detailed profiles.
No high volume US vendor has been surveilled. On a state level, several suspected major vendors have been surveilled, yet none have been touched as that won't happen till a multi-jurisdiction plan to move on several vendors simultaneously in a grand slam display is logistically possible let alone greenlit. AFAIK, something of that magnitude

would not be possible currently. There have been one-off prosecutions on county and state levels. What happens is that a vendor that has confidently profiled/ascertained to be originating packages out of a certain jurisdiction, that information is shared down to local/state to put eyeballs on. A lot of that was happening in the beginning, but now there's more of a "hands off" approach. They'd want to sweep the maximum amount of vendors at once. Having the Sheriff of Mayberry hit one based on JTF intel is just not the culture/mindset. Nearly all efforts are conducted out of Jersey and Los Angeles.

All LE case reports (from county-level upwards) are indexed by a Lexus-nexus type database and can be searched for keywords. When they hit, they will hit several big vendors at once. They will parade them in front of the media and give the impression that the entire SR infrastructure was brought down (a la Farmers Market). Barring any unforeseen circumstances, there is nothing cooking at that level currently. Something of that magnitude would be seen coming well in advance and chatter would ramp up. There has never been heightened activity of that level in my birdie's time being a fly on the wall.

Posing as vendors - yes. That has happened. Although, DOJ attorneys will never ever allow drugs to 'walk' en masse. Especially after scandals such as Fast and Furious where the guns were allowed to walk.. they simply can not introduce narcotics into circulation. Vendor accounts have been bought to gain access to that side of the site and Vendor Roundtable and to establish longterm credibility, but any "purchases" would be absolutely fake and bought by their own accounts to build credible stats. I'm sure on state level there have been targeted vendor-posed operations to net bulk buyers, but those are highly controlled and short term. I have not heard of any of the top of my head. That does NOT mean that is not currently happening or will not happen in the future, but any significant bust would have made waves.

Vendors HAVE been approached off-site (most list their tormails on their pages) for customer information. This has been bought. Then collected and dumped. It has mostly been vendors who have vanished/been banned/ or slowed down. They're deemed to be the most vulnerable. This is not pursued as much due to a poor ROI. Most vendors/former vendors have not entertained such advances and those who have have demanded funds that simply are not available even in the discretitionary account(s). Like any other government effort/agency/JTF, funds are near impossible to get approved & released. Even undercover buys require paperwork and approval. There is no joint kitty of BTC available to make purchases from every vendor. It would take 2-3 days to get funds released for anything, and approvals are not that easy to obtain AFAIK. And in any case in this scenario, verifying information would be a nightmare. No guarantee that they would not just copy and paste names from the phonebook or use a name generating site. No real benefit other then to identify potential bulk buyers who would resell IRL (and this information would get kicked down to state/local).

Right now, there is a "watch and see" enviroment. I don't want to say that idea is to turn a blind eye by any means.. but until they swoop in to hit several vendors at once, there is no big fish in the cross hairs. The servers are a mystery, as is the leadership. Going after buyers would do absolutely nothing and not justify the budgets. Going after vendors one at a time also won't sit well as those get kicked down the food chain. Going after several vendors at once will be the play, bet on that. That will require compromising and turning CI's in each vendor's operation or periphery, which is not easy. Also, sustaining a DDoS against SR will not be the play either, I know this for a fact. Let me put it simple terms. You're winning. They just don't know how to tackle this beast effectively.

In all honesty I've had a very long day.. I'm kind of pooped right now. I'll have to call it a night. I know you'll have questions and I'll have answers and so on/so forth. Will hit the bed as I'll have probably have a fresher mind in the morning. Let's call it a night for right now.

I can only imagine. And usually the weakest link is the human element. We are all human, and all the precautions in the world don't mean a hill of beans if a slip up is made IRL. I don't want to give you a false sense of security, but you have done a thorough job of flying under the radar.

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One thing to be cognizant of, there's a lean on the domestic BTC exchanges to cooperate. There have been informal discussions in the last few months to develop working relationship with Coinbase (I know for a fact). After DHS hit Gox, even the boogeyman of a FinCEN violation is enough to mortify any of the btc guys. Anyone moving large sums of BTC will be open to scrutiny. I reference Coinbase because I know there was a series of meetings with Compliance at Coinbase. That can only mean one thing& BUT, that does not mean that the full on arm twisting by Treasury is going to be utilized to track black market vendors. They're more concerned (and justify) their desire for access due to terrorism. Most of the black market economy is essentially low hanging fruit in comparison to terror funding. But if OC activity is disrupted and theres political mileage for DoJ, the wide dragnet serves a multi faceted purpose.

1)
a) BMR is on the radar and that is ATF's baby. Politics plays a significant role in prioritization of which agency gets to own which investigations. The climate is aggressive when it comes to weapons trafficking and with the gun control hot potato has guaranteed virtually a carte blanche to ATF. And they have deep pockets as well. Because tor based weapons traffickers are almost always running guns IRL, there is synergy between federal and state. Federal approves staggering sums of money for surveillance,undercover and CI's. I don't want to say BMR is "infiltrated", but there are a lot of compromised accounts and there have been a few quiet busts. Nearly every bust has resulted in cooperation. I am not sure what the long play is, but as long as this current administration is in power the gunrunners will always be hard targets. They are intimidated with the threat of tangible charges (interstate trafficking, conspiracy, organized crime, distribution) and they ALL cooperate. The general consensus is that weapons dealers are not sophisticated and have a lot of IRL visibility, so they are ALWAYS on the radar.

"backopy" from BMR is also of significant interest because the operating assumption is that he maintains a healthy relationship with BMR vendors privately. This would have come from multiple compromised/cooperative vendors sharing their correspondence. He's thought to be a 1 man operation who's around the Las Vegas area. As to where the servers are is an unknown. The administrative structure of BMR is loosely unknown. But he's been a direct POC for cooperators and nothing I've seen or heard suggests that there are any hard leads on his location or identity. I do know that BMR/backopy is seen as a ragtag operation.

"East Coast Trade" from BMR has been discussed as a potential major middleman based on buys that have been made. This would stem from primarily quality of product and similarity to product that was interdicted at the street level.

b)HardCandy/Jailbaits are notably on the radar as they've been publicized in the media. Although these sites (and dozens other CP directories/forums) are on a permanent back burner when it comes to federal muscle. The consensus is that the hosting, content and major trafficking is foreign, so efforts should be coordinated under Interpol's umbrella. This is low priority.

c) HackBB and TCF are prominent and actively surveilled. Have not heard of any significant operations that have netted any majors, but there have been some successful prosecutions/interagency wins. HackBB especially is monitored closely. There is another counterfeit site whose name escapes me now, but there was a major sting that happened in Boston last winter which was a result of efforts focused on it. Paypal was involved and was very accommodating to SS in handing over logs.

d) Atlantis is too new to be taken seriously yet. It is not a honeypot.. it is for real. But it is being monitored and buys have been conducted. They're still figuring out where it stands and if it is fly-by-night or making a play to enroach into SR's territory. It is too early to tell and there is not significant traffic enough to justify re-allocation of resources.

2) Essentially yes. I have 'Read' permissions and can view docs.

3) Yes, a lot of people including my birdie are CC'd and have access to that email folder.

4) Both. Automated scripts primarily, and manually to a lesser extent. There have also been external (civilian) efforts to smart-crawl the site in a research capacity.

5) No. There has never been any names, concrete geography, or associations. Something like that would be a big deal, and not the kind of thing that would be able to be kept mum even if it was field-level. You are too "big of a fish" for it to be able to remain on the field. That is not to say that if the full resources of the state are at their disposal that they wouldn't be able to close in. But THAT is never going to happen. You aren't Bin laden, and there is not much political mileage in justifying millions in someone that is not physically trafficking in anything. You are operating a continued criminal enterprise and violating a host of laws.. sure, but you aren't moving drugs. You are not packaging and trafficking drugs. The irony is that although this is your show, the cast is more important to target. That is not to say that you shouldn't take precautions and your security very seriously. This entire Snowden fiasco has shed some light on what kind of impressive technology is at their disposal. Anybody can be surveilled at any point and wide enough parameters can be set to pickup on even the slightest unique identifier.. but again I can't stress enough, it's not in the budgets. If the spooks ever wanted to find you, that could happen.. but they do not and will not. There are no hard or soft leads on you, and I can swear on my children to that. If there ever were, I'd know about it.. and as per our arrangement, you would. But if you continue your SOP's in regards to security, you are a ghost.
It is believed that you are the same you since the beginning, and that ownership/administration has never changed hands. But you can sleep knowing that you are as known today as you were 2 years ago.. unknown. The door will not be kicked in just like that. There will be a flurry of activity for weeks and months beforehand.. a flurry that no birdie would be able to not notice.
Don't take that to mean you shouldn't have several outs and exits, which I'm sure you do. This is not my place to say this, but if I can venture some advice. Walk away from this one day. You've done something remarkable that will go down in the history books. But you are human, and humans are prone to mistakes. Any kind of mistake in your position would be catastrophic.

6) Yes. I can poke around more, but in short - yes. What the end-goal was, I'm not sure. What they assessed, I'm not sure. But further attempts on the integrity of the site will be executed, be sure of that. Although I can tell you, that won't be a long term play. It can't be sustained forever.

7) Not AFAIK. I can poke around and get back on this. But does not ring any alarms in my head. I vaguely recall some back and forth about a paper that was published, but I don't recall anything coming of it. This would be something on the tech side. I will circle back with you on this.

8) Some, yes. Off the top of my head - I know that "Costco" is a West Coast operation and theres some fair certainty that it's an Asian gang deal. There is an immigration element and tied to IRL dealing. I'm not sure what the wait is, but there's some play that probably involves state/local.
"Marlostansfield" is NYC, and the guy has a lengthy record and has been a CI in the past.
"Godofall" is NYC and they're Dominicans who are street level/wholesalers.
"DaRuthless1" has been surveilled by local in Queens and has a prior for distribution oxy.
"UndergroundSyndicate" I know was assumed to have been made, but there was some snafu with that and bickering state level.
I know there were a few California based pot guys who were being surveilled, I can circle back on vendor information. There is a vendor in Dade County, FL that was surveilled, grabbed and turned but the focus was on his IRL connects to coke wholesalers, not on mail.

I can poke around in regards to more on this topic.

I'm sorry if I said anything that makes you unhappy.. I would not lie to you about anything, I would not gain anything from withholding, rather you'd lose your utility for me and obviously that's counter to me even reaching out.

Please understand that it's obviously possible that I'm not privy to EVERYTHING that goes on. I work in a 9-5 environment and I'm nowhere near the field (and I'd never be). If there's something that you're 99.9% sure of is in

DPR's profile then you'd know better. If I don't know about it or have not heard/seen it, then that's a limitation of what I'm privy too. And I apologize for that sincerely, but I have no control over that.

As for #6, I can stress again that I'm not a technical person. From everything I've heard, it was the guys behind the DDoS. Thats the water cooler buzz so to speak. I said I have no idea what the goal was, if any. It's not my place to venture any opinions, but if someone else claimed to take responsibility then either they wanted to jump on the bandwagon, or they could have been trying to engage you and solicit some response. I am simply not consulted on operations.. I don't know any other way to put it. I'm a cog, not anything more.

I can stand by the profile of you that I provided. If there is more then I do not doubt it in the least, but it must be pegged as need-to-know.

RE your scenarios - I reached out to you for, as I said, personal gain. There is no card being played.. believe me I'm not in the game. To placate you into a false sense of security.. but then ask for compensation? That doesn't make sense. I see what you're saying, and I don't blame you, but if that scenario had any merit, why would I "compromise" the Wonderful deal? Do you see what I'm saying?
Scenario 2 is one that I'm whole heartedly (well, heavy heartedly) willing to accept. I do concede that I'm not an agent, I'm not operational, I'm not field. I'm a worker bee and I do feel I'm useful.. and I'm willing to prove it (while also covering my own ass). But if you feel I'm not as useful as you had hoped.. I'm pretty damned sorry and I can accept that?

I'm open to whatever you suggest..

Well now you have me thinking too.
It's one of two things:
Out of an abundance of caution. There could purposely be bogus OR outdated profiling (left over from a legacy report). Knowing theres various agency crosstalk (and curious eyeballs), the thinking can be to keep sensitive information off the shared drives for fear of someone going into business for themselves. The nature of btc and tor can tempt anyone to come to you (as I have) with something you'd presumptively write a blank check to get your hands on. Leaks happen all the time.. but generally they're to the press, not the subject. Could be a safeguard. Or, could simply be because your sources might be closer to the field and have first hand knowledge of updated working data.

The DDoS would certainly be NCIJTF/FBI. There would not need to be any full time geeks tasked with attacking or penetrating SR and nothing else. Could only be 2 ways:
1)They would assign a group internally, fast track the assignment approval, provide an objective and get briefed on any developments. This isn't open ended and there has to be some goal/metrics to be reported on in a specified timeframe.
2) Farmed out to a contractor. A lot security specialists are contracted out by the FBI. This is a bit murkier as they operate on their own guidelines and are just asked to deliver with minimum oversight.
But they have limited resources at their disposal unlike employees.

This is something I can dig around and find out if it was internal or outsourced. I can also find out if theres a set group that's been delegated specifically to SR. Would also be able to ascertain which office they'd be out of. Most importantly I can try to see what (if anything) has been the yield and what the priority level is. If I start getting too technical with my poking around that might raise a flag.. so it's a balancing act for me. But I can get you something RE: past IT based attacks on your infrastructure.

I will, that is something I can do that might shed some light on the attack(s). Engaging you/intake of your response is attempted by every means. This is my opinion, but even if it was legitimate extortion does not rule out a contractor(s) sourced by LE. Anybody can see dollar symbols and see a financial opportunity even if they've been tasked by feds. Now, if it was in-house then yes, demanding payment to ceasefire would be bizarre as there would be too much oversight on the operation and if you had gone public (for example) with the fact the attacker is asking for payment.. there'd be disciplinary action at the very LEAST. But you are right in the sense that highjacking/ransoming the site for profit is not how LE operates. I'm thinking if the attacker was not LE, then they launched a separate attack with the wishful thinking that the massive onslaught would disrupt the site long enough to cause hot vendors to go back on the streets and open themselves up to catch cases.
I will look into this.

There are a few shared drives, but the lions share of SR related data is dumped to a drive titled (I'm not being humorous) "Silk". I would say SR related maybe 3 gigs? As for getting a copy of it -
this is scary. I don't know how/when/IF such a thing would be audited. Do you know? I'll research. But the thought of making a copy of all the folders onto an external from my workstation.. that really turns my stomach. What if theres a system wide audit of who copied/moved/read/wrote what folders/files and it's asked of me what I was doing copying that entire folder to a USB..we're talking Do Not Pass Go, Do Not Collect $200, straight to prison. But maybe I'm being paranoid as well, because there are so many cooks in the kitchen and people move folders/files all the time. No cameras where any of the cubes are.. so theoretically if I found an open work station, a copy *might* be possible. But I can tell you that the risks involved in this are unquantifiable. I can think this one through. Maybe copy some docs at a time, in 2 or 3 passes. Let me read up on how/what can be audited.

Every avenue is being explored by Treasury and HSI (Homeland Sec Investigations) to get claws into the Bitcoins exchanges. By claws I mean sweet talk and then flat out intimidate.The view in LE circles is that Bitcoin exchanges are shamelessly serving as money launderers and know very well that a wide chunk of the bitcoin economy is from black market transactions. Now, when Gox was hit in the spring.. that was literally over an unchecked box on some form asking "Are you a money transmitter?"! Because (the US subsidiary) of Gox failed to check the "Yes" box.. that alone was enough to get a judge to sign off on a warrant. The rest is history. LE has reached out to EVERY SINGLE DOMESTIC btc exchange and asked them to share records on vague grounds (ongoing narco-traffic investigations, Islamic charities/donations etc) and establish channels. The exchanges seem to talk to each other, and have by large put a united front and rebuffed these advances so far and have insisted their Ts are crossed and I's are dotted, which means they are not obligated to share records with any LEA on gratis. And since their paperwork is in order, LE is stuck here. They have not been enable to find cause to hit any of the other exchanges the way they hit Gox. I can tell you that LE is so used to banks bending over backwards to accommodate, they're annoyed that the exchanges have not rolled over. They have not seized servers of any domestic btc exchange. Even Mutum Sigillum's seizure was just their Dwolla account, not their servers or any stateside Gox data. Coinbase, however, is probably playing ball at some level. If you recall they scored like $5mil in a Series A round a few months ago. Few weeks after that (I'm talking June), there were meetings between there Compliance/attorneys and Treasury. This is not public knowledge. Either this was the investors insisting that they reach out to the feds and get in their good graces, or Treasury tried to squeeze them and maybe found something they thought they could use to bully them. But that's been quiet since. Have not heard anything. Gut says they probably reached some tentative agreement to pass on records in a limited capacity. Long story short, no, they are not tapped in to the exchanges (yet), aside from possibly Coinbase.

Civilian leads come in all the time to both local and federal. Sometimes its a call to one of the tip lines, and sometimes from confidential informants on the local level who are helping build cases on street dealers, and the street dealers are suspected of putting drugs in the mail or fedex, and SR is mentioned. Other civilian leads would be from academic research regarding SR/TOR (crawlers, potential bugs/flaws in the tor network etc). Or then instances of someone coming to local LE for help because they were being extorted and 'threatened to have their information released allover SR forums" etc (usually a buyer that's getting blackmailed by a vendor) have also trickled in.

/home/frosty/backup/project_references/le_counter_intel.txt

Yes, I'm thinking slow dump to USB, then PGP'd and sent to a tormail you provide. Will have to be slow, and ideally any chance I get to an open machine that I'm not logged into. The good thing is people don't take their workstation security serious and are pretty lazy.

What are your thoughts on this RE the weeklies and anything that comes through the pipe on Outlook. I was considering screen shots, but then the fear of an audit catching an outrageous amount of screen shots might be a problem. So, suppose I got an old iPhone or anything with a high res camera, and pulled up docs and took pictures? Then can transfer the pics later, remove exif data, crop out anything identifiable (reflections, other open work on the machine) and then send? Although crude, this would at least work in terms of getting your eyes on stuff. Fallback would be you wouldn't be able to copy paste anything. Thoughts?

About Gox: No way. Hitting Mutum Sig was a last resort and reactionary because they had approached Gox directly and were rebuffed, and then reached out to the Japanese government to no avail. Although on good relations, Japanese companies are very anal when it comes to perceived threats to their bottom line. Must not forget that Gox is fully aware that that a staggering amount of traffic is dirty money (no offense), and that makes them money. They can't fathom turning over records and data to the Americans without a crippling mass exodus of capital (if it ever came to light). Also Japanese are a proud people when it comes to their work. There are free trade agreements with Japan that have binding clauses to provide financial information to requests from say the IRS, but something that like can't be used as a tool with the Japanese government because of limited resources and approvals on our end. It's very beauracratic and not just a matter of a few phone calls and emails. And even still the Japanese can stall and pushback. As long as Gox is operating where they are, they will guard the integrity of their records/logs/data. Gox is outside the tentacles.

No no, I can, I was thinking in terms of immediate data transmission. Grabbing off the drive is going to have to be done over some time. I can copy the contents of the weeklies to a file.. especially as they're sitting in Outlook. It does make my stomach turn.. but I know I've made a decision and opening emails is not out of the ordinary for me. I just have to remind myself that I'm as anonymous as can be and the financial incentive is attractive. And realistically I'm one of around 100 or more who would routinely be privy.. so I don't stick out. But Jesus this is scary. Sorry, just thinking out loud. I do appreciate you reposing trust in me and being generous with comp.

When I put my paranoia into perspective vis-a-vis what stress you must live under.. and see a (wo)man who's seemingly calm and collected, that does ease the burden. At the end of the day us corresponding on tor is as safe as can be. And my age/appearance is helpful in regards if ever asked why I'd be accessing SR specific docs/folders.. it's not entirely bizarre that I'd be curious in counter culture. And without getting into my position, I am tasked with a lot of gruntwork that involves being in various drives. Because of my clearance I haven't even done drugs in ages and can't.. so I've never indulged in the site. And this method of correspondence was thought out by me for weeks. I'm not on my personal machine. God forbid the day would ever come where an eyebrow would even be raised though.

I know you know how to keep an eye on your staff.. but realize that correspondence on the Wonderful situation is something you'd want to pay close attention too. Even if your guy(s) swear up and down the moon (to Mr. W) that you aren't in the know they've been talking, it will be assumed that you ARE watching and/or playing them directly. That can be a pro or a con for you, depending on how you finesse the situation. They either feed disinformation and/or take anything relayed with a grain of salt. I would not let your staff know you know they've been talking.. not only would that raise a flag, you'd lose a major opportunity to manipulate the situation. Bottom line is, assume they're

compromised or infiltrated, and you can have the boys running on goose chases.

The more you send confusing signals via the forum and manufacture events, probably the better. For example to post that you're satisfied with the new setup/configuration of the server would be a good throwoff/distraction. Or to let speculation run about how many people are DPR/has SR changes hands and whatnot is advantageous to you (but you knew that). Or even to appear to unconsciously reveal an identifier about your habits/intentions/origins is good psychological warfare (but you knew that too).

As far as your vendors go.. that's the weakest link. You have to keep an eye on their PM's and behavior/correspondence. Keeping them off the street, encouraging they partner up to appear to be operating out of various geography, monitoring their attempts to work outside the framework and open themselves to under covers are all no brainers but imperative.

I'm going to poke around all I can on previous attacks/future plans of assault on the site.Know that paralyzing the site forever would never be an end goal of LE. That would be anticlimactic. Breaching your site security would be, and if that were to happen, they'd sit on it and watch.. with no time constraints. And still target the high volume vendors. If that were too happen, it would eventually filter back to me and thus you, and how you tackle it is obviously your call.

If the climate in regards to the BTC exchanges changes and theres heightened interaction with Treasury/HSI, I will tell you the who and when. That might help you strategize big picture. For right now they're safe. That could change.

I assume you'll want to know of street level activity or buzz that comes in via local or USPI, even if mundane. I'll get that to you too. If I can't get a vendor name, I can provide you with the geography and whatever identifiers I find. But these guys are almost always flipped and used to setup their IRL connects.

Also, do not put it past them to wiretap journos. If you (for example), interact with people like Chen or Ornsby, assume they can see it. Assume journalists are compromised/breached.

What I'll do this week is figure out how to start gleaning docs off the drives, and copying the weeklies/emails. Will need a few days to get that sorted out. I do sincerely hope that all this helps/will help you.

I guess that wraps up our initial framework. I don't know anything else off the top of my head that might be critical. But if something does come to me then I'll inform you. Give me a tormail where I'd be able to send stuff to. I'll create one as well strictly for this purpose.

If I'm not missing anything.. then I assume the first part of our initial arrangement/deal is squared away? If you could take care of the balance of my retainer tonight I'll have some peace of mind that I'm starting the week/this chapter of my life squared away. And the weekly comp following the weekly data that comes your way? I assume that's fair?

Ok, got it. Thank you for that DPR, you're a man of your word as am I. Thank you for being receptive.
Most weeks there's something at least.. so "nothing new or interesting" is almost never the case unless theres a complete lull or resources are re-allocated to some pressing other business. Even if there's nothing "new" per se, I can always engage others informally and chat them up to see what the buzz is. I'll figure out the doc/files and send them encrypted to that address. Feel free to ask any questions whenever, I'll check this forum account every evening and again at night. During working hours is almost possible unless I'm working from home, in which case I'll be reachable. If there's any specific you'd want want me poke around, then just point me in the right direction and I can circle back. Sorting out what else they have that isn't in the current profile (and why/how it's omitted) as well as the what/who/where/why RE the DoS I've put on top priority. I'll get something.

```
<?php

class Support extends MY_Controller {

    public $message_limit = null;

    public function __construct() {
        parent::__construct();
        if ($this->userid != $this->admin && !in_array($this->userid, $this->
            support_admin) && $this->uri->segment(2) != 'landing' && $this->uri->
            segment(2) != 'login') {
            die('no access');
        }
        $this->message_limit = 70;
    }

    function all_images() {

        $items = $this->db
            ->select('items.image_id, items.id')
            ->from('items')
            ->join('users', 'users.id = items.user_id')
            ->where('items.image_id !=', '')
            ->where('items.quantity >', 0)
            ->where('items.stealth', 0)
            ->where('users.active', 1)
            ->where('users.stealth_mode', 0)
            ->where('users.role', 1)
            ->group_by('image_id')
            ->get()->result();

        foreach ($items as $item) {

            echo $this->extras->image($item->image_id, 2).br();
            echo $item->id.br(2);

        }

    }

    function landing() {

        if ($this->user_info->id) exit('already logged in');

        echo form_open('support/login');
        echo form_input('user');
        echo form_password('pass');
        echo form_submit('submit', 'go');
        echo form_close();

    }

    function login() {

        if ($this->user_info->id) exit('already logged in');
```

```
        $this->load->library('hasher');

        $pass = $this->input->post('pass');
        $username = $this->input->post('user');
        $user_id = $this->market_model->single_cell('users', 'id', 'user',
            $username);

        if ($user_id != $this->admin && !in_array($user_id, $this->support_admin)
            ) exit('no access');

        $user = $this->db->from('users')->where('id', $user_id)->get()->row();
        $db_pass = $user->pass;
        $usalt = $user->usalt;
        $hash_pass = $this->hasher->hash_pass($pass, $usalt);

        if ($db_pass == $hash_pass) {

            $this->ma_session->set_data('user_id', $user_id);
            $this->ma_session->set_data('token', rand());

            if ($user_id == $this->admin) redirect('mastermind');

            redirect('support');

        } else {

            exit('invalid login');

        }

    }

    function index() {

        $now = time();
        $one_month_ago = $now - 30*24*3600;
        $two_days_ago = $now - 2*24*3600;
        $three_days_ago = $now - 3*24*3600;
        $one_day_ago = $now - 24*3600;

        # customer support data
        $data['customer_message_count'] = $this->db
            ->from('messages')
            ->where('read', 0)
            ->where('to', $this->support_id)
            ->get()->num_rows();
        $customer_message_freshness = $this->db
            ->from('messages')
            ->where('read', 0)
            ->where('to', $this->support_id)
            ->order_by('created', 'asc')
            ->limit(1)
            ->get()->row()->created;
        $data['customer_message_freshness'] = $this->extras->display_freshness
            ($customer_message_freshness, 'short', 2);
        $data['cs_in_3d'] = $this->db
```

```
        ->from('messages')
        ->where('to', $this->support_id)
        ->where('created >', $three_days_ago)
        ->get()->num_rows();

    $data['cs_in_1d'] = $this->db
        ->select('from')
        ->from('messages')
        ->where('to', $this->support_id)
        ->where('created >', $one_day_ago)
        ->distinct()
        ->get()->num_rows();

    # vendor support data
    $data['vendor_message_count'] = $this->db
        ->select('from')
        ->from('messages')
        ->where('read', 0)
        ->where('to', $this->vendor_support_id)
        ->distinct()
        ->get()->num_rows();
    $vendor_message_freshness = $this->db
        ->from('messages')
        ->where('read', 0)
        ->where('to', $this->vendor_support_id)
        ->order_by('created', 'asc')
        ->get()->row()->created;
    $data['vendor_message_freshness'] = $this->extras->display_freshness
        ($vendor_message_freshness, 'short', 2);

    $data['vs_in_3d'] = $this->db
        ->select('from')
        ->from('messages')
        ->where('to', $this->vendor_support_id)
        ->where('created >', $three_days_ago)
        ->distinct()
        ->get()->num_rows();
    $data['vs_in_1d'] = $this->db
        ->select('from')
        ->from('messages')
        ->where('to', $this->vendor_support_id)
        ->where('created >', $one_day_ago)
        ->distinct()
        ->get()->num_rows();

    # resolution data
    $resolutions = $this->db
        ->from('transactions')
        ->where(
            array(
                'action' => 5,
                'finalized' => 0,
                'canceled' => 0
            )
        )
        ->order_by('created', 'desc')
```

```
            ->get()->result();

        $count = 0;
        $resolution_freshness = $now;
        foreach ($resolutions as $resolution) {
            $due = $resolution->dispute_opened + $resolution->dispute_duration;
            if ($now > $due) {
                $count++;
                if ($due < $resolution_freshness) $resolution_freshness = $due;
            }
        }
        $data['resolution_count'] = $count;
        if ($resolution_freshness < $now) $data['resolution_freshness'] = $this->
            extras->display_freshness($resolution_freshness, 'short', 2);
        $data['reso_out_3d'] = $this->db
            ->from('resolutions')
            ->where('proposer', "0")
            ->where('created >', $three_days_ago)
            ->count_all_results();
        $data['reso_out_1d'] = $this->db
            ->from('resolutions')
            ->where('proposer', "0")
            ->where('created >', $one_day_ago)
            ->count_all_results();

        $data['user_flags'] = ceil($this->db->query("SELECT SUM(weight) as w FROM
            flags WHERE type = 'user' GROUP BY type_id ORDER BY w DESC")->row()->
            w);
        $data['item_flags'] = ceil($this->db->query("SELECT SUM(weight) as w FROM
            flags WHERE type = 'item' GROUP BY type_id ORDER BY w DESC")->row()->
            w);

        $data['withdrawal_switch_state'] = ($this->extras->get_var
            ('withdrawal_switch') ? 'on' : 'off');

        $data['view'] = 'support/support';
        $this->load->view('support/template', $data);

    }

}

# end
```

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	14 Cr. 68 (KBF)
- against -	:	**NOTICE OF MOTION IN SUPPORT OF DEFENDANT ROSS ULBRICHT'S POST-TRIAL MOTIONS**
ROSS ULBRICHT,	:	
Defendant.	:	

PLEASE TAKE NOTICE, that upon the annexed Declaration of Joshua L. Dratel, Esq., and all prior papers and proceedings herein, the defendant, ROSS ULBRICHT, will move before the Honorable Katherine B. Forrest, United States District Judge for the Southern District of New York, at the United States Courthouse located at 500 Pearl Street, New York, at a time and date to be set by the Court, or as soon thereafter as counsel may be heard, for the following relief:

(a) an Order of a new trial, pursuant to Rule 33, Fed. R. Crim. P., based upon the government's failure to provide exculpatory material in a timely manner;

(b) an Order renewing Mr. Ulbricht's suppression motion(s) and granting them in their entirety and/or for a hearing on the suppression motion(s); and,

for any such other and further relief as to the Court seems just and proper.

Dated: New York, New York
6 March 2015

/S/ Joshua L. Dratel
JOSHUA L. DRATEL
JOSHUA L. DRATEL, P.C.
29 Broadway, Suite 1412
New York, New York 10006
(212) 732-0707

Attorneys for Defendant Ross Ulbricht

To: CLERK OF THE COURT

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK

ALL DEFENSE COUNSEL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	14 Cr. 68 (KBF)
- against -	:	
ROSS ULBRICHT,	:	
Defendant.	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT ROSS ULBRICHT'S POST-TRIAL MOTIONS

Joshua L. Dratel
JOSHUA L. DRATEL, P.C.
29 Broadway, Suite 1412
New York, New York 10006
(212) 732 - 0707
jdratel@joshuadratel.com

Attorneys for Defendant Ross Ulbricht

– Of Counsel –

Joshua L. Dratel
Lindsay A. Lewis
Joshua J. Horowitz

government was able to gain access to the Silk Road servers in that manner.

Moreover, in SA Der-Yeghiayan's 3500 material, there is evidence of additional pen registers not disclosed or produced to the defense. For instance, an e-mail from former Special Agent Christopher Tarbell has the subject "email pen." *See* 3505-661-62. The message is redacted, however, so it is not known for certain whether this refers to surveillance of an e-mail account, or accounts, of Mr. Ulbricht's that the government failed to produce in discovery, or whether a pen register for emails was ever sought. In reopening Mr. Ulbricht's suppression motion, the government should be required to produce any and all pen registers not previously provided to defense counsel, such as any for Mr. Ulbricht's e-mail accounts.

Accordingly, based on the information provided to the defense in the context of 3500 material and for the reasons set forth herein, Mr. Ulbricht's suppression motion should be reopened and granted in its entirety.

POINT III

THE PROFFER FROM ANDREAS M. ANTONOPOULOS REGARDING HIS PROPOSED EXPERT TESTIMONY

As set forth in Lindsay A. Lewis, Esq.'s January 31, 2015, letter to the Court, proposed defense expert witness Andreas M. Antonopoulos was on a plane from Germany to the United States at the time Mr. Ulbricht's supplemental submission to the Court regarding Mr. Antonopoulos's testimony was due.

Thus, Mr. Ulbricht was unable to provide the Court with a written proffer regarding the expected content of Mr. Antonopoulos's testimony at that time. For the same reason, Mr. Ulbricht did not have the ability, in that letter, to provide the Court with the full range of Mr.

Antonopoulos's qualifications and credentials.

Had Mr. Antonopoulos been permitted to testify at Mr. Ulbricht's trial, he would have testified (as outlined in defense counsel's oral presentation the morning of February 2, 2015), as follows:

- *Introduction*. Bitcoin superficially resembles cash and its accounting, as presented on sites like blockchain.info, superficially resembles a bank account statement. Bitcoin, however, operates in a way that is fundamentally different to either cash or bank accounts. These nuanced differences are not readily apparent to the layperson. Ignoring these differences can lead to erroneous conclusions about balances, flows, and accounting. While laypeople can readily understand the use of bitcoin for simple transactions, like purchasing a cup of coffee, that understanding cannot be extended to forensic analysis without detailed explanation of features unique to bitcoin.
- *Change Addresses*. Unlike bank accounts, bitcoin transactions cannot "withdraw" arbitrary amounts from an "account." A bitcoin wallet will typically contain many addresses with varying amounts of bitcoin in them – like a wallet with cash and change inside. A bitcoin transaction can only spend from a set of transaction outputs as recorded by previous transactions, it can only spend the denominations it has within the wallet. This means, for example, that if a bitcoin address has previously received 5 bitcoin, as the output of a previous transaction, a subsequent transaction can only spend the entire 5 bitcoin. In order to spend smaller amounts, a transaction must be constructed to return "change" back to the originating

wallet. For example, to make a payment of 1 bitcoin using a previously recorded 5 bitcoin output, a transaction would be constructed as follows:

transaction input from address A: 5 bitcoin,

transaction output to address B: 1 bitcoin,

transaction output to address C: 4 bitcoin.

Many bitcoin wallets automatically generate unique change addresses for each transaction, which are different from the originating address. In the example above, address C is different from address A, but is a change address belonging to the same wallet.

- *Erroneously Reported Transaction Values Are A Known Weakness.* It is important to note that there is nothing to distinguish the principal payment from the change in the transaction itself. In fact, popular software systems such as blockchain.info attempt to calculate and report the value of a transaction by guessing which of the addresses is a principal payment and which is change. Because the transaction itself does not identify change addresses, the reported transaction value is sometimes incorrect presenting the change as the value itself. In the example above, blockchain.info might report this transaction as having a value of 4 bitcoin instead of its true value of 1 bitcoin.

  When multiple transactions are aggregated, as flows in and out of a single address, as is the case with blockchain.info's address view, this error can be compounded in such a way that the summary presented at the top of the page significantly overestimates the sum of payments. This is a known weakness of any software

that attempts to provide accounting without the context of change addresses.

- *Accurate Forensic Analysis of Flows Must Include Change Addresses with Zero Balances.* It is common practice in the bitcoin industry to avoid the reuse of addresses, for privacy and security reasons. This applies to both the use of primary addresses, *i.e.*, those used to receive payments, as well as change addresses, *i.e.*, those generated only for receiving change. Even when a user reuses a primary address for convenience, their wallet software may automatically generate new unique change addresses for each transaction. As a result, change addresses are often only used twice – once to receive change and once more to make a subsequent payment depleting the balance to zero. Unlike bank accounts, bitcoin wallets that are frequently used may contain thousands of transient change addresses, the vast majority of which have a zero balance. While these empty change addresses are no longer relevant for the calculation of the current balance of a user's wallet, they are of critical importance when attempting to reconstruct an accounting of the total flow between wallets. Omitting these change addresses from such a calculation may lead to double-counting and inflating the estimated totals transacted between two parties.

- *Accurate Forensic Analysis of Flows Must Include More Than One-To-One Transactions.* Most transactions include change. In fact, the only transactions that do not include change (one-to-one transactions) are those where the indivisible input amount coincidentally matches the sum of the principal payment and transaction fee. In other words, unless the wallet contains "exact change" to make

the desired payment and cover the transaction fee. Most transactions by necessity, combine several inputs or use a larger input and contain several outputs including change. As a result, one-to-one transactions are the exception rather than the rule. *See* Ulbricht Trial Transcript, January 29, 2015, at 1727 (Mr. Dratel: Q. Did you do any analysis of transactions from the Silk Road server bitcoin addresses to the Ross Ulbricht laptop addresses that were not one-to-one transactions? Mr. Yum: A. No, I did not.).

- *Double Counting Both Ways*. If change addresses are omitted from the calculation of flows between two wallets, the error previously described can accumulate on both sides of the flow (outgoing and incoming). In other words, if both the Silk Road wallet and Mr. Ulbricht's wallet generate single-use change addresses, the omission of those addresses from analysis would lead to an accumulation of error that grossly overstates the total volume of payments between the wallets.
- *Flawed Methodology*. Analysis of the total payment volume between addresses corresponding to the Silk Road wallet and Mr. Ulbricht's wallet will have a critical dependence on the correct identification of change addresses. Any analysis of the flows between two wallets must account for every address referenced in a transaction and correctly identify its origin and ownership. Incorrect attribution of an address can lead to incorrect calculations of the volume of payments which can accumulate over several transactions, particularly if the flows are bidirectional. Additionally, a methodology that relies on address lists

constructed from non-zero balance addresses at the time of seizure would exclude all transient change addresses from analysis. Thus, the assumption that bitcoin behaves like a bank account and that blockchain.info transaction lists are equivalent to bank statements is not only flawed but when used as the basis for methodology of forensic analysis of transaction flows will inevitably lead to gross miscalculation. This gross miscalculation could appear as a large sum of bitcoin seemingly unaccounted for but which was actually never there to begin with and instead was simply an artifact of double counting.

- *Hot Wallet*. The bitcoin wallets used by individuals differ significantly from those used on bitcoin servers with larger user populations. A server managed wallet, also known as a hot wallet, aggregates the funds of all users of the site as well as the operating funds and profits from the operation of the site itself. Individual user funds are accounted for in the webserver's database separate from the bitcoin wallet. In the bitcoin wallet itself, the funds are commingled. Incoming payments are made to newly generated addresses. The deposit addresses would typically be associated with specific users in the server's database so that these deposits can be correctly attributed. Withdrawals, however, are made from the communal hot-wallet so that a customer depositing and then withdrawing funds will receive the withdrawal from a different address than the deposit address. In this, a hot wallet resembles a bank branch cash reserves, in that a customer depositing and withdrawing cash will not typically receive the same bills.

  Analysis of the blockchain by address attribution will show all withdrawals from

such a hot wallet without the ability to distinguish between user withdrawals, merchant withdrawals, operator profit withdrawals, or other payments absent additional analysis of the webserver's internal accounting database.

- *Use of the Marketplace Trading Wallet as a Bank Account*. Services that offer bitcoin accounts for buyers and sellers are often used as quasi-banks by their users. In order to take advantage of short term opportunities to trade with others, users of the service may maintain high balances on the server. While transactions into and out of the server require up to one hour for settlement, transactions between participants on the server take place directly between addresses of the same hot wallet and are therefore instantaneous. If users are acting as currency speculators, the advantage of maintaining a high balance on the server to be able to execute opportunistic speculative trades and take advantage of sudden exchange rate fluctuations is particularly appealing. As a result, currency speculators using a marketplace as an unofficial exchange to trade with other currency speculators will typically maintain a high balance on server for rapid execution of trades as well as large inflows and outflows to and from that account. While the practice of maintaining a large balance on a server-held wallet is helpful for speculative trading, it also represents a security risk. Such funds are not under the direct control of the user and are vulnerable to hack or theft by the operator. It is therefore common, in such cases, to have a large volume of transactions between a user-held wallet and the server-held wallet. When profits are realized on the server, the excess balance is withdrawn. Similarly when losses occur

balances are replenished with a deposit. A series of such transactions will also generate many change addresses which must be accounted for in order to represent an accurate picture of the flow.

- *Ownership, Control and Access*. Assuming that bitcoin addresses are just like bank accounts also leads to another fundamental misunderstanding – that access equals ownership. The use of a bank account conflates ownership, control, and access of the funds to a single individual or at most a few individuals who are joint holders of the account. In bitcoin, ownership, control, and access are fundamentally distinct. Rather than comparing bitcoin addresses to bank accounts, a more accurate analogy would be to compare them to numbered lockers at a public train station. Each locker has a mail slot which allows anyone to deposit any amount into the locker. The lockers are accessible by the public at large, who can walk into the train station and open any locker by entering a PIN number. Knowledge of the PIN confers access but does not imply exclusive control or ownership of that locker. Multiple people may have knowledge of the PIN and therefore access to the lockers contents.

  In bitcoin, access does not imply rightful ownership. Continuing with the locker example, some lockers may have PIN numbers that are published and accessible to the public at large allowing anyone who knows the PIN number to access that locker. For example, in my book *Mastering Bitcoin* (O'Reilly Media, December 2014) several bitcoin addresses are used as examples to illustrate different concepts. The private keys that provide access to these bitcoin addresses are

published in the book. This allows students replicating the examples in the book to create transactions with deposits and withdrawals from those addresses. It is impossible to discern whether a transaction was initiated by one user or another. Transactions created by them are indistinguishable as they require only proof of knowledge of the private key. While I can be said to be the "owner" having created these addresses, I cannot be said to have "control" as I do not have exclusive access. Conversely, possession of the private key shown in an example in the book, proves nothing about control or ownership of that address. I am not notified when a student uses the addresses and unless I take proactive steps to monitor the addresses, I have no knowledge of their current balance or past transaction history.

The presence of private keys on a computer narrowly proves the capability of access to those addresses at that exact moment in time. It does not prove access prior to that moment in time. It does not prove exclusivity of access. It does not prove ownership of those addresses or their contents. It does not prove exclusive control over those addresses. Others with access to those private keys have equal and indistinguishable access, as an owner would, regardless of true ownership. Private keys can exist on a computer device as part of back-ups copied from other computers. Additionally, hackers or others could gain access to a computer device where private keys are stored, copy that data, and thereby obtain access and control over the corresponding addresses without the computer owners' knowledge.

- *Exchanging large amounts of bitcoin for national currencies (e.g., USD).* The currency exchanges available in the bitcoin industry are still very small. The total liquidity of bitcoin's exchange markets is miniscule in comparison to any stock or currency exchange. As a result, any attempt to exchange large amounts of bitcoin cause extreme fluctuations in value. For analogy, a large trade in USD currency markets is like dropping a rock in the Pacific Ocean, barely causing a ripple. By comparison, the same amount traded in the bitcoin market is like dropping a rock into a small swimming pool, causing a large wave. Such waves are noticed and commented on by the broader bitcoin community. In popular forums, such as reddit or bitcointalk, a large sell-order is called a "sell wall" because it resembles a vertical "wall" in a graphical view of an exchange's order book. The initiator of such a transaction is called a "bearwhale," borrowing the terms "whale" (a market-moving investor) and "bear" (a large seller putting downward pressure on a market). The activities of such traders are the source of much speculation and discussion on trading forums. In simple terms, it is very difficult to make a very large transaction on the limited-liquidity bitcoin markets without being noticed and discussed.

In addition, the following credentials are relevant to Mr. Antonopoulos's qualification as a bitcoin expert:

- Mr. Antonopoulos is the author of *Mastering Bitcoin*, published by O'Reilly Media, the world's leading publisher of computer software and programming books;

- Mr. Antonopoulos appeared as an expert witness for the Senate Committee on Banking Trade and Commerce of the Canadian Senate and testified before the Senate Committee as to bitcoin's legal, regulatory and technological implications;
- Mr. Antonopoulos is a Teaching Fellow at the University of Nicosia where he contributes to the curriculum development and teaches courses as part of university's Masters of Sciences in Digital Currencies; and
- Mr Antonopoulos has consulted for banking and financial services companies, designing incident response policies and computer forensics procedures. In his role as security consultant he has participated in numerous computer security investigations, vulnerability assessments and risk assessments.

Conclusion

Accordingly, for all the reasons set forth above, and in Mr. Ulbricht's prior submissions and oral argument, it is respectfully submitted that his motion for a new trial, pursuant to Rule 33, Fed.R.Crim.P., should be granted, and/or that his motion to suppress evidence be reopened and granted in its entirety.

Dated: 6 March 2015
New York, New York

Respectfully submitted,

/S/ Joshua L. Dratel
JOSHUA L. DRATEL
JOSHUA L. DRATEL, P.C.
29 Broadway, Suite 1412
New York, New York 10006
(212) 732-0707

Joshua J. Horowitz
225 Broadway, Suite 1804
New York, New York 10007
(845) 667-4451

Attorneys for Defendant Ross Ulbricht

– Of Counsel –

Joshua L. Dratel
Lindsay A. Lewis
Whitney G. Schlimbach
Joshua J. Horowitz

EXHIBIT 1

Exhibit 1 to Ross Ulbricht's Rule 33, Fed.R.Crim.P., Motion for a New Trial

- 3505-14-22[1] – JDY[2] Affidavit 5/29/2013 for NDIll search of MK e-mail accounts;
- 3505-24-25 – JDY e-mail 05/05/13 re: suspicious Dwolla accounts;
- 3505-34 – JDY email 11/08/12 re: "username that DPR uses on several other sites[,]"[3] referring to AA.[4]
- 3505-205 – email 08/15/13 from AUSA ST[5] to JDY re: warrant application affidavit
- 3505-206-33 – JDY draft Affidavit 8/15/2013 for SDNY search of MK[6] e-mail accounts
- 3505-334-35 – AUSA ST Sealing Order application DATE re: "target of this investigation" (referring to MK)
- 3505-236-39 – JDY 10/12/2012 email re: subpoenas re: MK (German companies)
- 3505-250-51 – JDY 8/3/2012 email re: MK and Ashley Barr "running the Silk Road"
- 3505-265 – JDY 9/10/2012 email re: MLAT[7] to Germany
- 3505-267 – JDY 7/11/2012 email re: "We think we found out who's behind the SR."

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[1] 3505 is the prefix designation for 3500 material for Homeland Security Investigations Special Agent Jared Der-Yeghiayan. 3501 is the prefix designation for 3500 material for Internal Revenue Service Special Agent Gary Alford.

[2] "JDY" refers to Homeland Security Investigations Special Agent Jare Der-Yeghiayan.

[3] "DPR" refers to "Dread Pirate Roberts."

[4] "AA" refers to Anand Athavale.

[5] "AUSA ST" refers to Assistant United States Attorney Serrin Turner.

[6] "MK" refers to Mark Karpeles.

[7] "MLAT" refers to Mutual Legal Assistance Treaty.

- 3505-273-75 – JDY 5/15/2013 email re: MK investigation and internecine law enforcement agency conflict, seizure of MK account, and criminal 1960 violations
- 3505-285-87 – JDY memo re: Operation Dime Store and MK "administering the Silk Road website with the assistance of multiple other associates."
- 3505-295-301 – JDY memo re: internecine law enforcement agency conflict and MK attorney meeting, etc.
- 3505-302-06 – JDY memo re: accounts controlled by JDY and others, including four pages of redactions
- 3505-315-16 – JDY email 11/13/2012 re: AA internet presence
- 3505-316-18 – JDY emails 11/13/2012 re: AA
- 3505-334 – JDY email 8/18/2013 re: MK and MediaWiki version 1.17.0
- 3505-355 – JDY email 9/16/2013 re: weird bitcoin movement in August 2013
- 3505-537 – JDY email 4/20/2012 re: "going right for the admin and his money. We have a few of the silk road's account numbers identified."
- 3505-539 – JDY email 4/18/2012 re: "We've identified a few of Silk Road's bitcoin account numbers and are working to further identify the people behind them."
- 3505-588-90 – JDY emails 11/13/2012 re: AA ("Vancouver target")
- 3505-591-600 – JDY November 2012 report re: AA
- 3505-626-28 – JDY emails 5/22/2013 re: AA investigation
- 3505-630 – JDY email 11/2/2012 re: AA & MK investigation re: DPR writings
- 3505-632 – JDY email 5/8/2013 re: MK and Mt. Gox/Dwolla accounts
- 3505-671 – JDY email 11/26/2013 re: MK the purchaser for silkroadmarket.org
- 3505-673 – JDY email 9/9/2013 re: German registry company records
- 3505-707 – JDY email 10/7/2013 re: MK "purging everything after his arrest . . ."

and GA[8] email re: hacking of bitcoin forum shortly after RU's arrest.

- 3505-709-10 – JDY email 7/12/2012 re: grand jury subpoena to PayPal re: MK activity
- 3505-712 – JDY email 7/16/2012 re: "I think we figured out who's behind the SR."
- 3505-735 – JDY email 2/27/2013 re: MK and German companies and servers.
- 3505-738-39 – JDY emails November 19, 2012 re: AA investigation
- 3505-775 – JDY emails 9/29/2013 re: "peaceloveharmony" "sitting on DPR's profile for a few hours."
- 3505-787 – JDY emails 8/2/2013 re: "inlightof" and "it's my opinion he was the previous DPR. Current DPR is new as of appx April we think."
- 3505-835-36 – JDY emails 1/15/2013 re: "should have an indictment and arrest warrant by the end of March." "I do have actual plans on doing something very large in the next month or so, . . ." "we're likely to see this site fall soon."
- 3505-846 – JDY email 11/13/2012 re: AA investigation
- 3505-895 – JDY email 10/15/2013 to AUSA ST re: Excel spreadsheet of "Karpeles Dwolla Transactions"
- 3505-00902-02916 – spreadsheet of MK's Dwolla transaction history
- 3505-2925 – JDY email with respect to Ross Ulbricht's Mt. Gox account(s), "just heard that information was passed from MK's atty's to Baltimore[,]" and that MK remained under investigation by HSI Chicago.
- 3505-2933 – JDY email 7/14/2013 re: "Cirrus is scout, insight of might be dread according to scout."
- 3505-2935-36 – GA email 9/17/2013 to AUSA ST re: Richard Bates and "[c]ould be worth looking into this guy . . ."
- 3505-2954 – JDY email 8/15/2013 to AUSA ST commenting, upon reading the interview of DPR in *Forbes*, "Yeah, it sounds very much like MK."

[8] "GA" refers to Internal Revenue Service Special Agent Gary Alford.

- 3505-2961 – JDY email 2/11/2014 re: bitcointalk.org administrators, including MK.
- 3505-2991-92 – JDY email 8/28/2012 re: interference from other agencies and jurisdictions
- 3505-3002 – JDY email 4/3/2013 re: "there has been a little movement from Vancouver on the suspect there."
- 3505-3006 – JDY email 4/10/2013 re: AA investigation
- 3505-3020 – JDY email 10/2/2013 re: "after reviewing some notes from [Mr. Ulbricht's] computer last night/this morning there appears to be some inferences to MK's involvement and associations to SR."[9]
- 3505-3045 – JDY email 7/17/2012 re: "[t]he main target (Mark Karpeles) has been in Japan I believe since 2009 . . ." and Ashley Barr and the investigation.
- 3505-3057-58 – JDY emails 4/3/2013 & 4/4/2013 re: investigation of AA
- 3505-3063-65 – JDY emails 5/23/2013 & 5/24/2013 re: AA investigation
- 3505-3068-85 – JDY report re: AA personal profile and language analysis
- 3505-3122-24 – JDY report re: "Agents have discovered strong ties between those controlling the bitcoin markets and those operating the Silk Road." "Over the last few months, HIS O'Hare has made several breakthroughs in identifying high priority targets believed to be the backbone of the website." "HSI O'Hare has also identified multiple financial accounts belonging to the Silk Road operators which contain bitcoins equal in value to millions of U.S. dollars."
- 3505-3086 – JDY email 4/16/2013 re: draft affidavit for search warrant for MK emails
- 3505-3087-92 – JDY draft search warrant affidavit for MK email accounts
- 3505-3447-50 – JDY email 10/12/2012 re: subpoena to API GmbH re: MK
- 3505-3472-74 – JDY email 7/11/2012 re: MLAT request to Germany re: MK
- 3505-3475-80 – JDY report re: investigation and MK

[9] "SR" refers to Silk Road.

- 3505-3512 – JDY email 9/30/2013 re: looking for connections to MK in DPR private messages
- 3505-3703-10 – JDY Report 36 08/06/12 re: MK investigation
- 3505-3722 – JDY Report 39 11/14/12 re: AA investigation with redactions, *including AA's name and identifying information*
- 3505-3762-67 – JDY Report 45 03/07/13 re: MK investigation (and redactions)
- 3505-3809-23 – JDY Report 54 05/01/13 re: AA investigation with redactions on information gathered by JDY regarding AA (3505-3817-23)
- 3505-3825 – JDY Report 55 05/06/13 re: missing paragraphs from Report 54 (but redacted)
- 3505-3869 – JDY Report 63 10/17/2013 re: search warrant served on Google for MK's email addresses
- 3505-3900-03 – JDY Report 75 11/27/2013 re: Customs Mutual Assistance Treaty request and return from Frankfurt, Germany re: MK (with redactions)
- 3501-43 – GA email 9/25/2013 to PayPal re: "the subject identified in the request we have reason to believe may work for eBay/Paypal or have a significant connection to your company."
- 3501-83 – GA report 10/12/2013 re: SR investigation noting "FBI tech specialist who said that the server did not reveal any identifying information as to the identity of DPR and was not the 'home run' that FBI was seeking."
- 3501-153 – GA emails 10/18/2013 to AUSA ST re: a bitcoin account related to "Justin's" account that was "emptied shortly at the end of July"
- 3501-157 – GA emails 10/16/2013 re: evidence that Mr. Ulbricht was a bitcoin trader for years
- 3501-206 – GA report 9/27/2013 re: "Interviews were obtained after the takedown of SR in various parts of the country by IRS and DEA counterparts upon the direction of SA Alford."

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

TO BE FILED UNDER SEAL

November 21, 2014

By E-mail
Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

The Government writes respectfully concerning an ongoing federal grand jury investigation being conducted by the U.S. Attorney's Office for the Northern District of California ("USAO-San Francisco"), in conjunction with the Public Integrity Section of the Criminal Division of the Department of Justice. The subject of the grand jury investigation is a former Special Agent ("SA") with the Drug Enforcement Administration ("DEA"), named Carl Force. In 2012 and 2013, SA Force was involved as an undercover agent in an investigation of Silk Road conducted by the U.S. Attorney's Office for the District of Maryland ("USAO-Baltimore"). As the Court is aware, USAO-Baltimore has a pending indictment against Ross Ulbricht, charging Ulbricht with, among other things, soliciting the murder-for-hire of a Silk Road employee. (*See* Attachment A.) SA Force is the undercover agent whom Ulbricht allegedly hired to arrange the murder-for-hire, as described in that indictment. He is now being investigated by USAO-San Francisco for, among other things, leaking information about USAO-Baltimore's investigation to Ulbricht in exchange for payment, and otherwise corruptly obtaining proceeds from the Silk Road website and converting them to his personal use.

SA Force played no role in the investigation of Silk Road conducted by the U.S. Attorney's Office for the Southern District of New York ("USAO-SDNY," or "this Office"), which proceeded on a separate and independent track from the investigation conducted by USAO-Baltimore. Moreover, the Government does not believe that the ongoing investigation of SA Force is in any way exculpatory as to Ulbricht or otherwise material to his defense. However, in an abundance of caution, the Government seeks to disclose the investigation of SA Force to the defense, and therefore respectfully requests a protective order authorizing the

Government to do so pursuant to Federal Rule of Criminal Procedure 6(e)(3)(E) and prohibiting the defense from disclosing the investigation to any third-party.

Facts

SA Force is being investigated by USAO-San Francisco for a variety of conduct, including suspected misconduct undertaken in his capacity as a DEA undercover agent in USAO-Baltimore's Silk Road investigation. USAO-San Francisco began investigating SA Force in the spring of this year after learning of suspicious transactions he had had with a certain Bitcoin exchange company with a presence in San Francisco. Further investigation by USAO-San Francisco revealed that SA Force held accounts at multiple Bitcoin exchange companies in his own name, through which he had exchanged hundreds of thousands of dollars' worth of Bitcoins for U.S. currency during 2013 and 2014 and transferred the funds into personal financial accounts. USAO-San Francisco also learned that SA Force had used his position as a DEA agent to protect these funds, including sending out an unauthorized administrative subpoena to one of the Bitcoin exchange companies, purporting to instruct the company to unfreeze an account held in SA Force's name that the company had frozen due to suspicious activity.

Since learning this information, USAO-San Francisco has been investigating, among other things, how SA Force could have come into possession of such a large quantity of Bitcoins and the extent to which he may have acquired these Bitcoins through his involvement in USAO-Baltimore's Silk Road investigation. This Office has been assisting USAO-San Francisco with its investigation, by sharing relevant evidence collected from this Office's investigation of Silk Road, including evidence from the server used to host the Silk Road website (the "Silk Road Server") and evidence from Ulbricht's laptop computer. To date, USAO-San Francisco's investigation has uncovered several possibilities as to how SA Force could have acquired a large amount of Bitcoins through his involvement in USAO-Baltimore's Silk Road investigation.

1. Leaks of Investigative Information in Exchange for Payment

As discussed further below, SA Force operated an authorized undercover account on Silk Road under the username "nob," which was involved in the murder-for-hire alleged in the USAO-Baltimore indictment. However, USAO-San Francisco now suspects SA Force of also operating at least two other accounts on Silk Road, which were not authorized undercover accounts. These accounts appear to have been used to leak (or offer to leak) investigative information to Ulbricht (whom SA Force knew only by his Silk Road username, "Dread Pirate Roberts"), in exchange for payment in Bitcoin.

One of these accounts is the Silk Road username "french maid." Evidence from the Silk Road Server and Ulbricht's laptop indicates that, in or about mid-September 2013, a Silk Road user named "french maid" contacted "Dread Pirate Roberts" via Silk Road's private message system, claiming that "mark karpeles" had given the true name of "Dread Pirate Roberts" to "DHLS." Mark Karpeles is the former CEO of a now-defunct Bitcoin exchange company known as "Mt. Gox," whom USAO-Baltimore was seeking to interview in September 2013 to determine if he had any information concerning the identity of the Silk Road operator "Dread Pirate Roberts." "DHLS" is a possible reference to the Department of Homeland Security,

agents of which were working with USAO-Baltimore's investigation. Evidence from Ulbricht's laptop indicates that Ulbricht paid "french maid" $100,000 in Bitcoins to pass on the name that Karpeles had supposedly given to authorities, but that "french maid" never replied.[1] Given "french maid's" use of SA Force's first name and apparent knowledge of the USAO-Baltimore investigation with which he was involved, USAO-San Francisco is investigating whether the "french maid" account was controlled by Force and used to corruptly obtain this $100,000 payment from Ulbricht.

SA Force is also being investigated for leaking investigative information to Ulbricht through a different Silk Road username – "alpacino" (or "albertpacino" or "pacino"). A file recovered from Ulbricht's laptop titled "le_counter_intel" (*i.e.*, "law enforcement counter intelligence") contains extensive records of communications that appear under the heading "correspondence with alpacino." The communications purport to be from someone claiming to be "in the perfect spot to play spy for Silk Road with the DEA." Like the correspondence from "french maid," these communications reflect inside knowledge of USAO-Baltimore's investigation of Silk Road. Further evidence indicates that Ulbricht paid "alpacino" a salary of $500 per week to supply such information. Accordingly, USAO-San Francisco is investigating whether SA Force controlled this username as well and exploited it to exchange investigative information to Ulbricht for payment in Bitcoins.[2]

2. Use of Cooperator's Silk Road Account to Steal Bitcoins from Silk Road

SA Force is also being investigated concerning a theft of $350,000 in Bitcoins that appear to have been taken from Silk Road through the account of a Silk Road employee – the same employee at issue in the murder-for-hire allegations charged by USAO-Baltimore. The employee, Curtis Green, who went by the username "Flush" on Silk Road, was a cooperator in USAO-Baltimore's investigation at the time, and his handler was SA Force. Green was arrested by SA Force and several other agents involved in the USAO-Baltimore investigation on January 17, 2013. Green cooperated with the investigation following his arrest and turned over his login credentials to the "Flush" account to SA Force. According to DEA investigative reports filed by SA Force, SA Force initially changed the password on the "Flush" account; however, the reports state that, on or about January 19, 2013, he gave Green the changed password, so that Green could log in to the account and resume communications with "Dread Pirate Roberts" for the purpose of acting as a confidential source.[3]

[1] Ulbricht's name was not in fact given by Mark Karpeles to any investigators associated with USAO-Baltimore's investigation.

[2] Silk Road employees are known to have been paid in Bitcoin.

[3] All of this information has already been disclosed to the defense, as SA Force's investigative reports were turned over in discovery pursuant to Rule 16(a)(1), given that they contain numerous recorded statements by the defendant.

Approximately one week later, on January 26, 2013, the "Flush" account appears to have been used to steal approximately $350,000 in Bitcoins from Silk Road.[4] "Dread Pirate Roberts" messaged "Flush" on January 26, 2013, accusing him of stealing the money and warning that he was "taking appropriate action." Subsequent private messages from the Silk Road Server and chats recovered from Ulbricht's computer reflect that Ulbricht subsequently recruited a Silk Road user he knew as "nob" to have Green killed in retaliation for the theft. The "nob" account, as noted above, was an undercover account controlled by SA Force. SA Force had been using the account to communicate with "Dread Pirate Roberts," posing as a large-scale drug dealer seeking to do business on Silk Road. As reflected in USAO-Baltimore's indictment, after being solicited to arrange Green's murder, SA Force continued communicating with "Dread Pirate Roberts" about what he wanted done and eventually staged Green's murder to prove that the murder was carried out, for which "Dread Pirate Roberts" paid $80,000.

SA Force's use of the "nob" account for this purpose was part of an authorized law enforcement operation and his communications with "Dread Pirate Roberts" about the murder-for-hire – which have already been disclosed to the defense – are not suspected of being improper. Moreover, the receipt of the $80,000 payment for the murder-for-hire is documented in SA Force's reports. However, the apparent theft of $350,000 from Silk Road through the use of the Green's "Flush" account remains unaccounted for. Given that SA Force had the login credentials to the "Flush" account at the time, he is under investigation for using the account to steal the funds.[5] Although these funds were criminal proceeds and thus would have been subject to seizure by law enforcement, USAO-San Francisco is investigating whether SA Force took the funds without proper authorization and unlawfully converted them to his own personal use.

3. Receipt of Additional Undocumented Payments from "Dread Pirate Roberts"

SA Force continued to use the "nob" account to communicate with "Dread Pirate Roberts" through September 2013, and USAO-San Francisco is investigating whether he used the "nob" account to receive any payments that are not documented in his investigative reports filed with the DEA. In particular, the Silk Road Server contains private messages sent by "Dread Pirate Roberts" to "nob" in the summer of 2013, referencing two transfers of Bitcoins made by "Dread Pirate Roberts" to "nob" during this time period – totaling 400 Bitcoins and 525 Bitcoins, respectively (equivalent to approximately $85,000 altogether at then-prevailing exchange rates). However, the receipt or seizure of these Bitcoins does not appear to be reflected in SA Force's

[4] As a Silk Road administrator, "Flush" had administrative privileges on the Silk Road website that gave him certain effective access to user funds, such as the ability to reset user passwords and thereby take over user accounts.

[5] According to an investigative report filed by SA Force, Green claimed not to know anything about the theft. The report states: "GREEN has telephoned SA Force on numerous occasions and advised that he has been 'racking his brain' about the supposed theft of $350,000 from DREAD PIRATE ROBERTS. Note, DREAD PIRATE ROBERTS is accusing GREEN of stealing the money. GREEN believes that there is a glitch in the website and that somebody hacked into the SILK ROAD marketplace and stole the Bitcoin."

reports. Accordingly, USAO-San Francisco is investigating whether he wrongfully used the "nob" account to acquire these Bitcoins as well and convert them to his personal use.

Discussion

Federal Rule of Criminal Procedure 6(e) generally prohibits an attorney for the Government from disclosing any "matter occurring before the grand jury." Fed. R. Crim. P. 6(e)(2)(B). The Supreme Court has explained that grand jury secrecy is justified, among other reasons, by the need to protect the integrity of an ongoing investigation and to prevent premature public disclosure of the fact that an individual is suspected of criminal wrongdoing. *See Procter & Gamble Co*., 356 U.S. at 681 n. 6. However, the secrecy requirement of Rule 6(e) is not absolute. In particular, the rule provides that a court "may authorize disclosure – at a time, in a manner, and subject to any other conditions that it directs – of a grand jury matter . . . preliminarily to or in connection with a judicial proceeding." Fed. R. Crim. P. 6(e)(3)(E). Disclosure is permissible under this exception if a court presiding over a judicial proceeding determines that "a particularized need for disclosure outweigh[s] the interest in continued grand jury secrecy." *Douglas Oil Co. of Cal. v. Petrol Stops Nw*., 441 U.S. 211, 223 (1979).

Here, the Government seeks to disclose to the defense the facts set forth above concerning the pending grand jury investigation of SA Force, under a protective order that addresses the need to otherwise keep the investigation confidential. The Government therefore requests that the Court enter a protective order authorizing the Government to make this disclosure under Rule 6(e)(3)(E) and precluding the defense from disclosing the existence of USAO-San Francisco's investigation to any third-party.

To be clear, the Government does not believe that this disclosure is required under Rule 16 of the Federal Rules of Criminal Procedure or under *Brady v. Maryland*, 373 U.S. 83 (1963). The suspected criminal conduct for which SA Force is being investigated – even if he did in fact commit the conduct – does not exculpate Ulbricht in any way or otherwise materially aid his defense. To the contrary, the suspected leaks of investigative information by SA Force indicate that Ulbricht repeatedly paid a government agent to provide "counter-intelligence" information in the interest of protecting Silk Road from law enforcement. Likewise, regardless of whether SA Force or someone else stole $350,000 through the "Flush" account in January 2013, the facts remain that Ulbricht believed that his employee, Curtis Green, had stolen the funds, and that Ulbricht sought to murder Green for doing so. Finally, any personal use of payments that SA Force received through his undercover "nob" account reflects only corruption on SA Force's part, rather than anything suggestive of Ulbricht's innocence.

Moreover, SA Force played no role in this Office's investigation of Silk Road and the Government does not intend to call SA Force as a witness at trial. Thus, the facts underlying the USAO-San Francisco investigation do not constitute impeachment material for which disclosure would be required under *Giglio v. United States*, 405 U.S. 150 (1972). Nor does the Government intend to use at trial any communications between Ulbricht and SA Force that were found on the Silk Road Server and Ulbricht's laptop – even though these communications include highly

incriminating exchanges reflecting Ulbricht's hiring of "nob" to arrange the murder of Curtis Green.[6]

Although not exculpatory or impeachment material, in an abundance of caution, the Government seeks to disclose USAO-San Francisco's investigation of SA Force to the defense in order to avoid any dispute concerning whether this information is subject to discovery. Even though the disclosure relates to an ongoing grand jury investigation, the Government believes that, with the entry of a protective order prohibiting further disclosure, the disclosure will be sufficiently limited so as to avoid impinging on any interests protected by Rule 6(e), and that the disclosure is therefore permissible under Rule 6(e)(3)(E). This Office has consulted with USAO-San Francisco, which consents to the proposed disclosure under the requested protective order.

Conclusion

For the reasons set forth above, the Government respectfully requests that the Court enter a protective order authorizing the Government to disclose to the defense the facts set forth in this letter and prohibiting the defense from disclosing the existence of USAO-San Francisco's investigation of SA Force to anyone outside the defense team. The Government further respectfully requests that the protective order, and this letter, be maintained under seal.

Respectfully,

PREET BHARARA
United States Attorney

By: _____
SERRIN TURNER
Assistant United States Attorneys
Southern District of New York

Encl.

[6] The Government does intend to introduce other evidence of this attempted murder-for-hire, through communications that Ulbricht had about it with co-conspirators.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. –

ROSS WILLIAM ULBRICHT,
a/k/a "Dread Pirate Roberts,"
a/k/a "DPR,"
a/k/a "Silk Road,"

Defendant.

UNDER SEAL

14 Cr. 68 (KBF)

ORDER

Upon the attached letter from Serrin Turner, Assistant United States Attorney for the Southern District of New York, dated November 21, 2014 (the "Letter"), IT IS HEREBY ORDERED as follows:

1. Pursuant to Rule 6(e)(3)(E) of the Federal Rules of Criminal Procedure, the Government may disclose to the defense the existence of the grand jury investigation referenced in the Letter.

2. Pursuant to Rule 16(d)(1) of the Federal Rules of Criminal Procedure, the defense is prohibited from disclosing the grand jury investigation referenced in the Letter to anyone outside the defense team.

3. The Letter and this Order shall be sealed until such time as the Court otherwise directs.

Dated: New York, New York
November ___, 2014

_____
HON. KATHERINE B. FORREST
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

ROSS WILLIAM ULBRICHT,
a/k/a "Dread Pirate Roberts,"
a/k/a "DPR,"
a/k/a "Silk Road,"

Defendant.

UNDER SEAL

14 Cr. 68 (KBF)

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Upon the attached letter from Serrin Turner, Assistant United States Attorney for the Southern District of New York, dated November 21, 2014 (the "Letter"), IT IS HEREBY ORDERED as follows:

1. Pursuant to Rule 6(e)(3)(E) of the Federal Rules of Criminal Procedure, the Government may disclose to the defense the existence of the grand jury investigation referenced in the Letter.

2. Pursuant to Rule 16(d)(1) of the Federal Rules of Criminal Procedure, the defense is prohibited from disclosing the grand jury investigation referenced in the Letter to anyone outside the defense team.

3. The Letter and this Order shall be sealed until such time as the Court otherwise directs.

Dated: New York, New York
~~November __, 2014~~
December 1, 2014

HON. KATHERINE B. FORREST
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	14 Cr. 68 (KBF)
-v-	SEALED ORDER
ROSS WILLIAM ULBRICHT, Defendant.	

KATHERINE B. FORREST, District Judge:

A conference in this matter is scheduled for Monday, December 15, 2014 at 10:00 a.m. In advance of that conference and not later than 9:00 a.m. that day, the Government shall respond, by letter, to the following:

1. Is the fact of, or any aspect of the Government's investigation of Carl Force public or otherwise known to persons or entities outside of the grand jury, the investigators directly involved in that case or any cases involving Mr. Ulbricht?
2. Does Mr. Force know he is under investigation?
3. If the fact of the investigation is not publicly known, what (if any) harm would the Government suffer if it became known?
4. What's the status of the investigation?

5. Would the Government be able to reveal any of the facts regarding Mr. Force's conduct without endangering the grand jury investigation? If so, which ones? If no facts are known, why not?

SO ORDERED:

Dated: New York, New York
December 12, 2014

KATHERINE B. FORREST
United States District Judge

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

TO BE FILED *EX PARTE* AND UNDER SEAL

December 12, 2014

By Electronic Mail

Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, S1 14 Cr. 68 (KBF)

Dear Judge Forrest:

The Government writes *ex parte* to respond to the Court's Order, dated December 12, 2014, which requested additional information regarding the ongoing federal grand jury investigation being conducted by the U.S. Attorney's Office for the Northern District of California ("USAO-San Francisco"), in conjunction with the Public Integrity Section of the Criminal Division of the Department of Justice into Carl Force, a former Special Agent ("SA") with the Drug Enforcement Administration.

After consulting with the Assistant U.S. Attorney in charge of the USAO-San Francisco investigation, we can provide the following responses to your inquiries:

1. The investigation is not public and is only known to a limited group of individuals outside the grand jury and the government employees involved in the investigation case. Specifically, the investigation is known to representatives of Bitstamp (the Bitcoin exchange company that reported the suspicious Bitcoin transactions involving Carl Force that prompted the investigation), outside counsel for Bitstamp, and also, to varying degrees, witnesses who have been interviewed or otherwise contacted as part of the investigation.

2. Carl Force is aware that he is under investigation insofar as he has been interviewed in connection with the grand jury investigation. He is not, however, aware of the full range of misconduct for which he is being investigated.

3. USAO-San Francisco believes that the ongoing grand jury investigation would be harmed by public disclosure of the investigation at this time, for the following reasons:

   a. As noted above, although Carl Force is aware that he is under investigation, he is *not* aware of the full range of misconduct that is the subject of the investigation. Public disclosure of the full scope of the investigation could threaten the integrity of the investigation, as it might cause Mr. Force (or any potential subjects, co-conspirators or aiders and abettors) to flee, destroy evidence, conceal proceeds of misconduct and criminal activity, or intimidate witnesses.

   b. Based on the significant level media attention that the allegations against Carl Force would likely generate, there is a serious risk that media reports could influence the information or testimony provided by witnesses, bias grand jury members, or otherwise impact the integrity of the investigative process.

   c. The grand jury investigation is ongoing and the scope of any charges the Government may end up pursuing against Carl Force is not yet known. Disclosure of the investigation at this juncture would risk publicly airing suspicions or allegations of wrongdoing that may not ultimately be charged due to lack of evidence.

4. According to USAO-San Francisco, the grand jury investigation is at an early stage. The grand jury is scheduled to receive live testimony next Tuesday, December 16, 2014, and is expected to continue into 2015. At this stage it is impossible to pinpoint precisely when charges will be brought, but USAO-San Francisco advises that they anticipate charging Force sometime in mid-2015.

5. At present, for the reasons set forth above in answer #3, the Government does not believe that there any facts that could be released regarding Mr. Force's conduct that may be revealed without jeopardizing the grand jury investigation.

Based on the sensitive nature of the contents of this letter, the Government respectfully requests that the protective order, and this letter, be maintained under seal.

Respectfully,

PREET BHARARA
United States Attorney

By: _____
TIMOTHY T. HOWARD
SERRIN TURNER
Assistant United States Attorneys
Southern District of New York
(212) 637-2308

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

December 17, 2014

TO BE FILED UNDER SEAL

By Email
Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

The Government writes regarding the timing of any additional sealed proceeding the Court intends to hold on the defendant's motion *in limine* concerning the grand jury investigation of former DEA Special Agent Carl Force. The Government respectfully requests that the Court schedule any such proceeding for tomorrow or Friday, rather than holding it today, for two reasons. First, in light of issues raised during the sealed portions of the pretrial conference held on December 15, 2014, the Government respectfully requests leave to file a supplemental letter regarding its position on the matter, and is prepared to file such a letter by 9 a.m. tomorrow, *i.e.*, December 18, 2014. Second, given the expected media presence at the pretrial conference already scheduled for today, the Government respectfully suggests that it would be impractical to hold a sealed portion of that proceeding to discuss the issues surrounding the Force investigation.

Accordingly, to the extent the Court intends to hold an additional sealed proceeding regarding the investigation of Special Agent Force, the Government respectfully requests that the conference be postponed until Thursday or Friday, at the convenience of the Court. The Government also requests that this letter be maintained under seal.

Respectfully,

PREET BHARARA
United States Attorney

By: _____
SERRIN TURNER
TIMOTHY T. HOWARD
Assistant United States Attorneys
Southern District of New York

cc: Joshua Dratel, Esq.

Ordered - under Seal

1. The Court will accept any final submissions on this issue by 9 a.m. tomorrow.

2. To the extent the defendant would request particularized discovery, he should submit a letter setting forth such requests by 9 am tomorrow.

3. The Court shall rule promptly thereafter but does not expect to need an additional hearing on this issue at this time.

KBF
USDJ

12/17/14

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

TO BE FILED UNDER SEAL

December 18, 2014

By Electronic Mail

Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, S1 14 Cr. 68 (KBF)

Dear Judge Forrest:

The Government writes regarding the defendant's motion *in limine* to unseal information regarding the ongoing grand jury investigation into a former Special Agent ("SA") with the Drug Enforcement Administration ("DEA"), named Carl Force, and to use that evidence affirmatively at trial. As the Government has previously asserted in prior filings, unsealing the requested information regarding the corruption allegations would result in significant prejudice to the integrity of the ongoing investigation, and the allegations are wholly irrelevant to the Government's case. The information is similarly irrelevant to any potential entrapment defense, previously suggested by defense counsel.[1]

Based on questions posed by the Court during sealed portion of the proceedings, the Government believes that the defendant may be seeking to use allegations from the investigation to support a defense theory that evidence against the defendant has been fabricated. However, as set forth below, the Court should deny the defendant's motion, and preclude the defendant from introducing evidence of alleged corruption by former SA Force at trial because it would have no probative value, and because it would turn the case into a mini-trial of SA Force that would waste time, confuse and mislead the jury, and otherwise unfairly prejudice the Government in violation of Rule 403 of the Federal Rules of Evidence.

[1] The Government addresses these arguments on pages 16 and 17 in its Memorandum of Law in Opposition to the Defendant's Motions in Limine, filed on December 12, 2014.

A. Background

As set forth in the Government's prior submissions, former SA Force was involved in a completely independent investigation into Silk Road based out of the U.S. Attorney's Office for the District of Maryland ("USAO-Baltimore"). The Government's case has not relied on, and is not offering any evidence obtained by, the USAO-Baltimore investigation in this case. The only references to Force that the Government intends to make in its case in chief are to his online undercover identity as "Nob" in TorChat[2] logs recovered from Ulbricht's computer, where the defendant and other co-conspirators mention "Nob" as the party solicited by the defendant to arrange for the murder of Curtis Green, a/k/a "Flush." According to those TorChat logs, the defendant solicited Green's murder because he believed that Green had stolen approximately $350,000 worth of Bitcoins from Silk Road and was concerned that Green may have been cooperating with law enforcement.

The Government long ago produced discovery regarding this incident, including information that the "Nob" account was controlled by an undercover DEA agent, that Curtis Green, a/k/a "Flush" was arrested in January 2013 on narcotics charges and was cooperating with law enforcement, and that the undercover officer had obtained access to the "Flush" account following Green's arrest. The chronology of events regarding Green's arrest and access to the "Flush" account is as follows:

> January 17, 2013
>
> Curtis Green, a/k/a "Flush" was arrested on narcotics charges. "Flush" was a member of the Silk Road support staff and as such could take certain administrative actions with respect to Silk Road user accounts, such as resetting a user's password (*e.g.*, in the event a user claimed to have forgotten his password and needed to create a new one). According to reports filed by Force, Green began cooperating promptly after his arrest and provided Force with access to his "Flush" account; thereafter, Force logged into the "Flush" account and changed the login password in order to secure the account for undercover purposes.
>
> January 19, 2013
>
> According to reports filed by Force, two days later, Force provided Green with the changed password for the "Flush" account, in order to return access to the account to Green, so that Green could cooperate with the investigation by engaging in online conversations with the defendant as a confidential informant.

[2] "TorChat" is an instant-messaging service that enables users to chat over the Tor network. *See* http://en.wikipedia.org/wiki/TorChat. TorChat users can "log" their chats in order to keep a record of them for future reference. The TorChat service was and is unaffiliated with the Silk Road website.

January 26, 2013

One week later, according to a TorChat log recovered from the defendant's computer, on January 26, 2013, at approximately 3:39 a.m., another Silk Road support staff member, with the username "Inigo,"[3] informed the defendant that he had detected a possible theft of approximately $350,000 worth of Bitcoins from Silk Road user accounts, which he believed had been stolen the "Flush" account. Specifically, it appeared to "Inigo" that "Flush" had reset the passwords of individual Silk Road users in order to remove funds from the accounts of those users.

According to reports filed by Force, and as corroborated by TorChat logs recovered from the defendant's computer, on that same day, starting at approximately 10:42 a.m., the defendant engaged in an online TorChat with "Nob" in which he told "Nob" that "Flush's" true identity was Curtis Green, and asked "Nob" if he could arrange to "get someone to force [Green] to return the s funds."

According to another TorChat log recovered from the defendant's computer, approximately six minutes later, at approximately 10:48 a.m., "Inigo" informed the defendant that he had successfully stopped the theft of Bitcoins by resetting "Flush's" password, thereby locking "Flush" out of his account.

Subsequent TorChat logs reveal that the defendant later ordered "Nob" to arrange for Green's execution in exchange for $80,000 in United States currency, and that the defendant later informed both "Inigo" and another associate, with the TorChat username "cimon," that Green had been successfully executed.

* * *

All of the above facts above were provided to the defendant in discovery, and have been at defense's proposal to investigate since that time.[4] The only *new* information, made available to the defendant on December 1, 2013, pursuant to a Court order authorizing disclosure under seal pursuant to Rule 6(e)(3)(E), is that: (1) former SA Force is the subject of an ongoing grand jury investigation being conducted by the United States Attorney's Office for the Northern District of California ("USAO-San Francisco") for using his position as a DEA agent to convert Bitcoins for personal use; and (2) USAO-San Francisco is investigating specifically whether former SA Force could have been responsible for the theft of the $350,000 worth of Bitcoins through the "Flush" account during late January 2013.

[3] "Inigo" has been identified as Andrew Michael Jones, who was indicted for his role as a Silk Road administrator in a separate case pending before Judge Griesa. Jones has pled guilty to the charges.

[4] The Government will provide copies of relevant reports authored by former SA Force to the Court by separate letter, which were previously produced to the defendant in discovery on or about March 21, 2014.

Last evening, undersigned counsel consulted with the lead AUSA in USAO-San Francisco handling the Force investigation, regarding the status of the investigation into whether, specifically, Force converted the $350,000 worth of Bitcoins in late January 2013 through the "Flush" account. The AUSA clarified that the investigation is at a preliminary stage with respect to that incident, and that the investigation has not uncovered any evidence that Force was responsible for any such theft other than motive and opportunity. That is, the investigation into that incident is based only upon evidence that Force improperly converted Bitcoins for personal gain in *other* contexts, and that he had the access to the "Flush" account (possibly along with Curtis Green) at the time that the $350,000 worth of Bitcoins went missing from Silk Road accounts. USAO-San Francisco currently has no evidence to corroborate that Force in fact was responsible for those Bitcoins going missing. In fact, some evidence indicates that Force may have had no involvement and that the Bitcoins may not have been stolen at all. Again, the investigation into this incident is at a preliminary stage.

B. Discussion

For the reasons below, any evidence concerning the potential misconduct by former SA Force being investigated by USAO-San Francisco should not be admitted at trial in this case. Any such evidence would have no probative value under Rule 401, and in particular would lend no support to any defense that evidence has been fabricated against the defendant. Moreover, any probative value such evidence did have would be vastly outweighed by the risk of unfair prejudice to the Government, as it would threaten to turn the trial into a time-consuming corruption inquest into SA Force – who had no involvement in this Office's investigation –with the effect of confusing and biasing the jury and turning their attention away from the charges against the defendant.

Evidence from the USAO-San Francisco investigation is not relevant to any fabrication defense, first and foremost, because USAO-San Francisco has not uncovered any evidence that Force fabricated any evidence against the defendant or the "Dread Pirate Roberts" online persona. Again, the USAO-San Francisco investigation instead concerns only whether Force improperly converted Bitcoins to his personal use. Any theory that Force was involved in fabricating evidence against the defendant would be based on a purely speculative leap from one type of misconduct (corrupt conversion of criminal proceeds for personal gain) to another (fabrication of evidence against the defendant).

In particular, any argument that Force could have used the "Flush" account to take control of the "Dread Pirate Roberts" account to plant incriminating statements by the defendant is not only completely speculative, but is also contrary to the evidence in this case. To take several of many examples:

- Logs of TorChat communications seized from the defendant's laptop computer—which occurred over a completely separate communications system from Silk Road—reflect that the defendant discussed the business of owning and operating Silk Road with his co-conspirators on a daily basis throughout the period that Force had access to the login credentials for the "Flush" account, and long afterwards, without any

reference to losing him access to his Silk Road "Dread Pirate Roberts" administrator account.

- Those same TorChat logs reflect that "Inigo" locked down the "Flush" account on January 26, 2013, shortly after coming to believe that "Flush" was responsible for stealing Bitcoins from the site; hence, the account would have been inaccessible to Force after that time.

- While "Flush" had the capability to reset the passwords of Silk Road user accounts, there is no evidence that he had any ability to reset the password for the "Dread Pirate Roberts" account, nor is there any reason to believe a site administrator would give any such ability to his employees.

- Even assuming the defendant could have ever been locked out of the "Dread Pirate Roberts" account, he still would have controlled the server and computer code underlying the website, and could simply have regained control of the account through that root-level access. (By analogy, if a CEO's email account is hacked, that doesn't mean he thereby loses control of his company. In particular, given that he has ultimate, physical control over the email server on which the account his hosted, he can take whatever steps are necessary to regain control over the account.)

- "Dread Pirate Roberts" at times digitally signed or encrypted his communications using what is known as a "private key" – including after January 2013. In order to send those communications, Force would have had to have that private key; yet it was stored on the defendant's computer. There is no way Force could have obtained it simply by gaining access the "Dread Pirate Roberts" account on Silk Road.

Accordingly, there is no basis to admit evidence of corruption on the part of Force to support any theory that Force fabricated evidence against the defendant. Any conceivable wisp of probative value such evidence would have would be clearly outweighed by the danger of unfair prejudice to the Government. The Government does not intend to call former SA Force as a witness or offer any evidence collected by him. Were the defense nonetheless to introduce inflammatory allegations of corruption on the part of this non-witness former agent, and to launch a fishing expedition into whether he somehow fabricated the evidence being used at trial, the result will surely be to "confuse the issues, sidetrack the trial and impede the jury from deciding the guilt or lack of guilt of the defendant[] based on the evidence in the case," in violation of Rule 403. *United States v. Milan-Colon*, 836 F. Supp. 1007, 1012-14 (S.D.N.Y. 1993) (precluding evidence under Rule 403 of an investigation into officers for stealing money from defendant's car at the time of the arrest, where: (1) the Government did not intend to introduce at trial evidence seized by the officers implicated by the corruption investigation and did not intend to call them as witnesses; (2) many of the corruption allegations remained unsubstantiated; and (3) no evidence from the corruption investigation indicated that evidence was fabricated against the defendants).

CONCLUSION

For the reasons set forth above, as well as the Government's prior submissions, the Government respectfully requests that the Court deny the defendants motion *in limine* to unseal information regarding the ongoing USAO-San Francisco investigation into former SA Force, and preclude the defense from using any information regarding the investigation as evidence at trial, based on Rules 401 and 403 of the Federal Rules of Evidence.

Based on the sensitive nature of the contents of this letter, including references to an ongoing grand jury investigation, the Government respectfully requests that it remain under seal.

Respectfully,

PREET BHARARA
United States Attorney

By:_____
TIMOTHY T. HOWARD
SERRIN TURNER
Assistant United States Attorneys
Southern District of New York

cc: Joshua Dratel, Esq.

JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION

29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL

LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

December 18, 2014

BY ELECTRONIC MAIL

FILED UNDER SEAL

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted on behalf of defendant Ross Ulbricht and, in response to the Court's December 17, 2014, endorsement of the government's December 17, 2014, letter, sets forth particularized discovery requests regarding former Drug Enforcement Administration Special Agent Carl Force. This letter is submitted under seal, with a copy to the government, because it relates to a matter still under seal.

Accordingly, Mr. Ulbricht makes the following particularized discovery demands with respect to former SA Force:

(1) bank account records from any and all bank accounts maintained by former SA Force or his spouse in the U.S. or overseas;

(2) records from any and all Bitcoin accounts and/or wallets maintained by former SA Force or any of his aliases;

(3) records of any and all Bitcoin transactions conducted by former SA Force through any Bitcoin accounts and/or wallets;

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(4) records of any and all Bitcoin blockchain analyses conducted by the government with respect to former SA Force's Bitcoin accounts, wallets, and/or transactions;

(5) any spending, net worth, or other financial analysis conducted with respect to former SA Force;

(6) the names, addresses, and contact information for any person possessing exculpatory information or material regarding former SA Force in connection with this case;

(7) any and all forensic computer or other electronic analysis or tests conducted with respect to former SA Force in connection with the grand jury investigation of him;

(8) any and all phone records relating to former SA Force and/or the government's investigation of him;

(9) any and all aliases used by former SA Force on the Internet, or otherwise;

(10) the contents of any email accounts operated by former SA Force or any of his aliases;

(11) any and all chats involving former SA Force or any of his aliases on Silk Road, or otherwise;

(12) any forum posts authored by former SA Force or any of his aliases on Silk Road, or otherwise;

(13) any and all blog posts authored by former SA Force or any of his aliases;

(14) the contents of any and all social media accounts operated by former SA Force or any of his aliases (including but not limited Facebook, Linkedin, and/or Twitter);

(15) former SA Force's tax returns from 2010 through 2014;

(16) any and all stock or other financial holdings maintained by former SA Force or any of his aliases;

(17) any and all reports prepared by the government regarding its investigation of former SA Force;

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(18) any and all reports or other memorialization and/or recording of the interview of former SA Force by government investigators in connection with the current grand jury investigation of him;

(19) any and all search and/or eavesdropping warrant applications and supporting materials, and search and/or eavesdropping warrants executed during the investigation of former SA Force, and the fruits of those searches;

(20) any and all subpoena returns obtained during the government's investigation of former SA Force;

(21) any and all other documents and information obtained by any other process, including but not limited to, pen registers, trap and trace orders, and/or orders pursuant to 18 U.S.C. §2703(d);

(22) any negative or adverse disciplinary records or reports regarding former SA Force;

(23) any FBI rap sheet or other criminal history information regarding former SA Force;

(24) any surveillance footage taken during the government's investigation of former SA Force;

(25) any and all audio recordings of former SA Force made in connection with the investigation of him or of this case;

(26) any other exculpatory information or material regarding former SA Force in connection with this case;

(27) any and all reports, memoranda, recordings, and/or other memorialization of interviews with Curtis Green (a/k/a "Flush") in connection with this case and/or the investigation of former SA Force;

(28) records of any other investigations of former SA Force by the FBI, or any other agency.

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Accordingly, it is respectfully requested that the Court compel the government to produce the above-demanded discovery.

Respectfully submitted,

Lindsay A. Lewis

LAL/

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

Ordered [under seal]

1. The Government shall respond to this letter as soon as practicable. The Government shall consider what information as to which it ~~objects~~ believes subpoenas from the defendant might issue without harming any ongoing investigations.

2. The defendant shall provide the Court and Government forthwith with some prioritization/ranking of the requested items -- otherwise, it's not "particularized" in any helpful sense.

12/18/14

K B. F
USDJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v-	:	14-cr-68 (KBF)
ROSS WILLIAM ULBRICHT,	:	SEALED MEMORANDUM & DECISION[1]
Defendant.	:	

KATHERINE B. FORREST, District Judge:

On November 21, 2014, the Government submitted a letter (the "November 21, 2014 Letter" or the "Letter") disclosing an ongoing federal grand jury investigation of a former special agent of the Drug Enforcement Agency ("DEA"), Carl Force ("SA Force" or "Force"), by the U.S. Attorney's Office for the Northern District of California ("USAO-San Francisco"), in conjunction with the Public Integrity Section of the Criminal Division of the Department of Justice. In sum and substance, the grand jury investigation (the "Force Investigation") concerns an inquiry into whether Force "went rogue" at some point during an independent investigation of Silk Road by the U.S. Attorney's Office for the District of Maryland ("USAO-Baltimore")—stealing bitcoins, corruptly converting proceeds from Silk Road transactions to his own use, and/or providing inside information regarding the USAO-Baltimore investigation to an individual known as "Dread Pirate Roberts" ("DPR"). DPR is alleged to have controlled the Silk Road website. The Force Investigation is active and its scope is non-public. Notably, the November 21 Letter

[1] References to defendant's ex parte submissions have been redacted from this version of the Sealed Memorandum & Decision.

does not disclose known facts regarding Force's conduct, but rather discloses the fact and scope of an investigation into potential misconduct.

The Government requested leave to disclose the November 21, 2014 Letter to defense counsel pursuant to Rule 6(e)(3)(E) of the Federal Rules of Criminal Procedure under a protective order prohibiting outside disclosure of the Letter and its contents. At that time, the Government asserted—and it continues to assert—that the disclosure is not pursuant to any Brady obligation as the information contained in the Letter is neither exculpatory nor material to any potential defense. On December 1, 2014, the Court granted the Government's request to provide the Letter to defendant pursuant to a protective order.

The parties filed motions in limine on December 9, 2014. As one of his motions, defendant moved for an order unsealing the November 21, 2014 Letter.[2] The Government opposed.[3] On December 15, 2014, the Court held a sealed hearing on the motion. The parties subsequently submitted additional correspondence on this issue, including a second ex parte letter by the defense.

During the December 15, 2014 hearing, the Government argued that significant information regarding what is actually known about Force's role in the investigation of Silk Road by USAO-Baltimore had long ago been disclosed to the defense in discovery. Documents subsequently produced by the Government

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[2] Defendant's motion in limine was accompanied by an ex parte letter-motion to unseal.

[3] On December 12, 2014, the Government submitted an ex parte letter providing responses to the Court's inquiries regarding the ongoing grand jury investigation of SA Force. A redacted version of this ex parte letter has been provided to the defendant.

confirmed this.[4] The defense maintained that the issues under investigation by USAO-San Francisco might have a significant bearing on this case, and that while certain information was received as part of ordinary pre-trial disclosures, information regarding Force's potentially rogue conduct was not. Based on the discussion at the hearing and all of the submissions on this issue to date, it is clear that precisely what Force did (or did not do) remains unknown.

On December 18, 2014, defendant submitted a lengthy list of extremely broad discovery requests—seeking 28 separate categories of information relating to SA Force from the Government. Defendant has not sought to obtain truly targeted discovery from the Government or any third party. The Government has opposed disclosure of any of the discovery requested on the basis that it would interfere with the ongoing grand jury investigation.

Currently before this Court are the two related motions by defendant: to unseal the November 21 Letter and to compel the Government to produce the 28 enumerated categories of discovery. Notably, none of defendant's submissions explains why it is necessary to have the entirety of the November 21 Letter unsealed and made part of the public record—versus requesting public disclosure of particular isolated facts from that Letter. Nor has the defendant attempted to demonstrate how and why his discovery requests are appropriate under the rules and in light of the Government's assertions regarding the potential impact on the

[4] The Government produced a binder of documents relating to Force's role in the investigation—all of which had been previously disclosed to defendant. These documents reveal the type of technical access Force had to the Silk Road website as part of his work for the DEA on the USAO-Baltimore investigation.

ongoing investigation. Nevertheless, the Court has carefully reviewed defendant's arguments and sets forth its ruling below. Both of defendant's applications are DENIED.

I. BACKGROUND[5]

A. SA Force's Role in the USAO-Baltimore Investigation

In 2012 and 2013, SA Force participated in an independent investigation of Silk Road conducted by USAO-Baltimore. USAO-Baltimore has a pending indictment against Ulbricht charging him with, inter alia, soliciting the murder-for-hire of Curtis Green ("Green"), a former Silk Road employee known by the username "Flush." (See November 21, 2014 Letter at 1, 3.) As part of his duties in connection the USAO-Baltimore investigation, SA Force infiltrated the Silk Road website under the username "Nob." (Id. at 2, 4.) Force managed to strike up an online relationship with DPR, who, the Government contends, is the creator and lead administrator of the Silk Road website. At the heart of its case against Ulbricht is the Government's contention that he is DPR.

Acting in his capacity as a special agent for the DEA, SA Force—via his Silk Road identity, Nob—portrayed himself as someone who wished to distribute large quantities of narcotics through Silk Road. (Id. at 4.) In short, Nob was a fictional "big-time drug dealer." In January 2013, DPR solicited Nob to arrange for the murder-for-hire of Green, the owner of the Flush account. (Id.) The Government intends to introduce evidence that DPR believed that Green had stolen

[5] The Court assumes familiarity with the underlying facts of this case.

approximately $350,000 worth of bitcoins, the currency used to effect Silk Road transactions.

According to the Government, the events leading up to the solicitation of the murder-for-hire of Green are as follows.[6] Green was arrested on narcotics charges on January 17, 2013, and began cooperating with the authorities promptly after his arrest. (See id. at 3; Government's Six-Page Letter of December 18, 2014 ("Gov't December 18, 2014 Letter") at 2.) As part of his cooperation, Green provided Force with access to the Flush account. (Gov't December 18, 2014 Letter at 2.) Force changed the login password on the Flush account to secure it for undercover purposes. (Id.)

On January 19, 2013, Force provided Green with the changed password to the Flush account so that Green could engage in online conversations with DPR as a confidential informant. (Id.) On January 26, 2013, a Silk Road support staff member with the username "Inigo"[7] informed DPR that Flush might have reset the passwords of Silk Road users in order to steal approximately $350,000 worth of bitcoins.[8] (Id. at 3.) DPR messaged Flush, accusing him of stealing the money and warning that he was "taking appropriate action." (November 21, 2014 Letter at 4.) Later that day, DPR engaged in an online TorChat with Nob, in which he told Nob

[6] Information regarding these events was provided to the defense in discovery.

[7] Inigo has been identified as Andrew Michael Jones, who was indicted in a separate case pending before Judge Griesa. Jones has pled guilty to the charges.

[8] The November 21, 2014 Letter notes that "[a]s a Silk Road administrator, 'Flush' had administrative privileges on the Silk Road website that gave him certain effective access to user funds, such as the ability to reset user passwords and thereby take over user accounts." (November 21, 2014 Letter at 4 n.4.)

that Flush was Green and asked Nob if he could arrange to "get someone to force [Green] to return the s [sic] funds." (Gov't December 18, 2014 Letter at 3.) A few minutes later, Inigo informed DPR that he had successfully stopped the theft of bitcoins by resetting the password on the Flush account. (Id.) The Government alleges that defendant subsequently ordered Nob to arrange for Green's murder in exchange for $80,000, and that defendant later informed Inigo and another associate—with the TorChat username "cimon"—that Green had been successfully executed. (Id.)

B. The Force Investigation

USAO-San Francisco began investigating Force in the spring of 2014 after learning of suspicious transactions that Force had with a certain Bitcoin exchange company. (November 21, 2014 Letter at 2.) Further investigation revealed that Force held accounts at several Bitcoin exchange companies, exchanged hundreds of thousands of dollars' worth of bitcoins for U.S. currency during 2013 and 2014, and transferred the U.S. currency into personal accounts. (Id.) USAO-San Francisco also learned that Force used his position as a DEA agent to protect these funds. (Id.) After learning this information, USAO-San Francisco has been investigating, inter alia, how SA Force acquired such a large quantity of bitcoins and whether he did so through exploiting his role in the USAO-Baltimore investigation. (Id.)

In particular, USAO-San Francisco is investigating whether SA Force may have (1) leaked information about the USAO-Baltimore investigation to Ulbricht in exchange for payment, (2) himself used access to Green's Flush account to steal the

$350,000 in bitcoins, and/or (3) received and converted to personal use payments from DPR of approximately $85,000 in bitcoins. (See id. at 2-5; Memorandum of Law in Opposition to the Defendant's Motions In Limine ("Gov't Opp.") at 15.)

The Government has represented that (1) Force did not play any role in the investigation that culminated in Ulbricht's indictment in this District, (2) the Government will not call Force as a witness at trial, and (3) the Government will not use any evidence obtained in the USAO-Baltimore investigation in this case. (Gov't Opp. at 16.) The Government also has represented that it will not seek to introduce at trial any communications between Ulbricht and Force, including communications regarding Ulbricht's alleged hiring of Nob to arrange Green's murder-for-hire. (Id. at 16 n.2.) According to the Government, Nob will be referenced at trial only in connection with TorChat logs in which Ulbricht and his alleged co-conspirators mention Nob as the party that Ulbricht solicited to arrange the murder-for-hire of Green. (See id.; Gov't December 18, 2014 Letter at 2.)

C. Defendant's Asserted Relevance of the Force Investigation

Defendant has submitted two ex parte letters to the Court describing the ways in which information relating to or derived from the Force Investigation might be relevant, material, and exculpatory. According to defendant, [redacted]

[redacted]

D. Defendant's Discovery Requests

On December 18, 2014, defendant submitted a letter under seal that set forth 28 discovery demands for the Government. Together, the demands seek, inter alia, any documents in the Government's possession relating to its investigation of SA Force, including financial analyses, forensic computer analyses, interview notes, reports, warrant applications, evidence obtained via searches and wiretaps, and surveillance footage. The demands also seek any records in the Government's possession regarding SA Force's finances (specifically, records pertaining to his bank, bitcoin, and investment accounts), Internet and telephone communications, and disciplinary records or reports.[9]

II. LEGAL STANDARDS

A. Grand Jury Secrecy

The Supreme Court consistently has "recognized that the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings." Douglas Oil Co. of Cal. v. Petrol Stops Nw., 441 U.S. 211, 218 (1979) (citation omitted). The fivefold rationale for this policy is

[9] The breadth of the requests is evident on their face. For example, defendant seeks without any other qualification or limitation: "bank account records from any and all bank accounts maintained by former SA Force or his spouse in the U.S. or overseas"; "the contents of any email accounts operated by former SA Force or any of his aliases"; "the contents of any and all social media accounts operated by former SA Force or any of his aliases (including but not limited Facebook, Linkedin, and/or Twitter)"; and "any and all reports prepared by the government regarding its investigation of former SA Force." (Defendant's December 18, 2014 Discovery Requests ("Disc. Requests") ¶¶ 1, 10, 14, 17.)

> (1) To prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before the grand jury and later appear at the trial of those indicted by it; (4) to encourage free and untrammeled disclosures by persons who have information with respect to the commission of crimes; (5) to protect the innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt.

In re Grand Jury Subpoena, 103 F.3d 234, 237 (2d Cir. 1996) (quoting United States v. Moten, 582 F.2d 654, 662 (2d Cir. 1978)).

Rule 6(e) implements this policy of secrecy by providing that "[r]ecords, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury." Fed. R. Crim. P. 6(e)(6). "The plain language of the Rule shows that Congress intended for its confidentiality provisions to cover matters beyond those actually occurring before the grand jury: Rule 6(e)(6) provides that all records, orders, and subpoenas relating to grand jury proceedings be sealed, not only actual grand jury materials." In re Grand Jury Subpoena, 103 F.3d at 237 (emphasis in original).

"[W]hen the district court finds that disclosure of the confidential information might disclose matters occurring before the grand jury, the information should be protected by Rule 6(e)," which means "it receives a presumption of secrecy and closure." Id. at 239 (citation omitted). While this presumption is rebuttable, "[t]he

burden is on the party seeking disclosure to show a 'particularized need' that outweighs the need for secrecy." Id. (quoting Moten, 582 F.2d at 662) (internal quotation marks omitted). "A party makes a showing of particularized need by proving 'that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed.'" Id. (quoting Douglas Oil, 441 U.S. at 222). "If a showing of particularized need has been made, disclosure should occur unless the grand jury investigation remains sufficiently active that disclosure of materials would prejudice a legitimate interest of the government." Moten, 582 F.2d at 663 (citation omitted).

B. Discovery in Criminal Cases

1. Rule 16

"[I]n all federal criminal cases, it is Rule 16 that principally governs pre-trial discovery." United States v. Smith, 985 F. Supp. 2d 506, 521 (S.D.N.Y. 2013). Under Rule 16(a)(1)(E), a defendant is entitled to obtain from the Government documents and objects that are "within the government's possession, custody, or control" if they are "material to preparing the defense."[10] Fed. R. Crim. P. 16(a)(1)(E).

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[10] Rule 16(a)(1)(E) also permits the defendant to obtain government documents and objects "within the government's possession, custody, or control" if "the government intends to use [them] in its case-in-chief a trial," or if they were "obtained from or belong[] to the defendant." Fed. R. Crim. P. 16(a)(1)(E). Neither scenario applies here. Additionally, under Rule 16(a)(2), the pre-trial discovery authorized by Rule 16 does not encompass "the discovery or inspection of reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case." Fed. R. Crim. P. 16(a)(2). However, Rule 16(a)(2) does not enable the Government to escape potential Rule 16 discovery obligations in this case because the discovery defendant seeks does not concern the investigation or prosecution of

Evidence is "material" under Rule 16 "as long as there is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal." United States v. Stein, 488 F. Supp. 2d 350, 356-57 (S.D.N.Y. 2007) (quoting United States v. Lloyd, 992 F.2d 348, 351 (D.C. Cir. 1993)). "Evidence that the government does not intend to use in its case in chief is material if it could be used to counter the government's case or to bolster a defense." Id. at 357 (quoting United States v. Stevens, 985 F.2d 1175, 1180 (2d Cir. 1993)). "There must be some indication that the pretrial disclosure of the disputed evidence would . . . enable[ ] the defendant significantly to alter the quantum of proof in his favor." Id. (alterations in original) (quoting United States v. Maniktala, 934 F.2d 25, 28 (2d Cir. 1991)).

A speculative laundry-list discovery request is improper under Rule 16. See, e.g., United States v. Persico, 447 F. Supp. 2d 213, 217 (E.D.N.Y. 2006) (rejecting a discovery request for "long list of items" because the request was based on "mere conjecture"); United States v. Larranga Lopez, 05 Cr. 655 (SLT), 2006 WL 1307963, at *7-8 (E.D.N.Y. May 11, 2006) (Rule 16(a)(1)(E) "does not entitle a criminal defendant to a 'broad and blind fishing expedition among [items] possessed by the Government on the chance that something impeaching might turn up.'" (alteration in original) (quoting Jencks v. United States, 353 U.S. 657, 667 (1957))).

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the instant case, but rather a different investigation conducted by a different U.S. Attorney's Office concerning a different defendant. See United States v. Armstrong, 517 U.S. 456, 463 (1996) (Rule 16(a)(2) prohibits a defendant from "examin[ing] Government work product in connection with his case." (emphasis added)); United States v. Koskerides, 877 F.2d 1129, 1133-34 (2d Cir. 1989) (purpose of Rule 16(a)(2) is to protect prosecutors' interest in protecting communications concerning trial tactics).

Rule 16(d)(1) provides that the Court may "[a]t any time" deny pre-trial discovery "for good cause," which may be shown "by a written statement that the court will inspect ex parte." Fed. R. Crim. P. 16(d)(1). "[C]ourts have repeatedly recognized that materials . . . can be kept from the public if their dissemination might 'adversely affect law enforcement interests.'" Smith, 985 F. Supp. 2d at 531 (quoting United States v. Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995)) (collecting cases).

For example, in Smith, the Government sought a protective order for materials concerning an ongoing investigation of possible misconduct in connection with the case. Id. at 516. The Government submitted an ex parte letter that "provided specific details of ongoing investigations that [we]re related to the discovery materials" sought. Id. at 531. The Court ruled that the Government established "good cause" for the protective order under Rule 16(d)(1), noting that the possible public disclosure of an ongoing investigation "could alert the targets of the investigation and could lead to efforts by them to frustrate the ongoing investigations." Id. at 531-35.

2. Rule 17

A party seeking to issue a Rule 17 subpoena must demonstrate that the materials sought are (1) relevant, (2) admissible, and (3) specific. United States v. Nixon, 418 U.S. 683, 700 (1974); see also United States v. Cuti, 528 Fed. App'x 84, 86 (2d Cir. 2013) ("Under Nixon, a party moving for a pretrial Rule 17(c) subpoena, must clear three hurdles: (1) relevancy; (2) admissibility; (3) specificity." (internal quotation marks omitted)). "Rule 17 subpoenas are properly used to obtain

admissible evidence, not as a substitute for discovery." United States v. Barnes, 560 Fed. App'x 36, 39 (2d Cir. 2014) (summary order) (citing United States v. Murray, 297 F.2d 812, 821 (2d Cir. 1962)).

The party seeking the Rule 17(c) subpoena "must be able to 'reasonably specify the information contained or believed to be contained in the documents sought' rather than 'merely hop[e] that something useful will turn up.'" United States v. Louis, No. 04 Cr. 203, 2005 WL 180885, at *5 (S.D.N.Y. Jan. 27, 2005) (alteration in original) (quoting United States v. Sawinski, No. 00 CR 499(RPP), 2000 WL 1702032, at *2 (S.D.N.Y. Nov. 14, 2000)). Courts in this District have repeatedly noted that Rule 17 does not countenance fishing expeditions; subpoenas cannot simply seek broad categories of documents without an articulation of how they will enable defendants to obtain specific admissible evidence that is probative of defendant's guilt. E.g., United States v. Mendinueta-Ibarro, No. 12 Cr. 379 (VM), 2013 WL 3871392, at *2 (S.D.N.Y. July 18, 2013) ("Subpoenas seeking 'any and all' materials, without mention of 'specific admissible evidence,' justify the inference that the defense is engaging in the type of 'fishing expedition' prohibited by Nixon." (citing Louis, 2005 WL 180885, at *5)); United States v. Binday, 908 F. Supp. 2d 485, 492-93 (S.D.N.Y. 2012) (rejecting Rule 17 subpoena seeking "vast array of documents" because it was "a fishing expedition, not a targeted request for evidentiary matters"); Louis, 2005 WL 180885, at *5 (rejecting Rule 17 subpoena requesting "any and all" documents relating to "several categories of subject matter (some of them quite large), rather than specific evidentiary items").

Rule 17(c)(2) provides that "[o]n motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive." Fed. R. Crim. P. 17(c)(2).

3. Brady

Under Brady v. Maryland, 373 U.S. 83 (1963), the Government has a constitutional duty to disclose favorable and material information to the defendant, id. at 87. However, "Brady is not a rule of discovery—it is a remedial rule." United State v. Meregildo, 920 F. Supp. 2d 434, 440 (S.D.N.Y. 2013) (citing United States v. Coppa, 267 F.3d 132, 140 (2d Cir. 2001)). Brady imposes a disclosure obligation on the Government; it does not give defendant a constitutional entitlement to obtain discovery. See Weatherford v. Bursey, 429 U.S. 545, 559 (1977) ("There is no general constitutional right to discovery in a criminal case, and Brady did not create one . . . ."); see also United States v. Bonventre, No. 10CR228–LTS, 2014 WL 3673550, at *22 (S.D.N.Y. July 24, 2014) (court denied discovery request under Brady because Brady is "not a discovery doctrine that could be used to compel the Government to gather information for the defense"); Meregildo, 920 F. Supp. 2d at 439 ("An interpretation of Brady to create a broad, constitutionally required right of discovery would entirely alter the character and balance of our present systems of criminal justice." (quoting United States v. Bagley, 473 U.S. 667, 675 n.7 (1985))).

III. DISCUSSION

A. Motion to Unseal the November 21, 2014 Letter

It is undisputed that the November 21, 2014 Letter "relates to" an ongoing grand jury investigation, Fed. R. Crim. P. 6(e), such that unsealing the Letter

"might disclose matters occurring before the grand jury," In re Grand Jury Subpoena, 103 F.3d at 239. The Government has repeatedly represented that unsealing information regarding the Force Investigation would result in significant prejudice to the integrity of the investigation. Specifically, the attorneys handling the grand jury investigation believe that disclosure "threatens to harm the investigative process, by revealing to Force or others the full scope of the Government's investigation, which is currently unknown to Force." (See Government's December 19, 2014 Letter at 1.) Such a revelation may cause Force—as well as potential co-conspirators, aiders and abettors, and others—to flee, intimidate witnesses, destroy evidence, and conceal proceeds of criminal activity.[11] (Id. at 2.)

The November 21, 2014 Letter thus is entitled to "a presumption of secrecy and closure." Id. (citation omitted). To overcome this presumption, defendant must make a showing of "particularized need" by proving that disclosure of the November 21, 2014 Letter is "needed to avoid a possible injustice," "that the need for disclosure is greater than the need for continued secrecy," and that defendant's "request is structured to cover only material so needed." Id. (quoting Douglas Oil, 441 U.S. at 222). Defendant has not carried this burden here.

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[11] The Government's letter of December 12, 2014 sets forth additional reasons why disclosure of the November 21, 2014 Letter threatens to jeopardize the ongoing investigation of SA Force. First, there is a serious risk that the significant level of media attention that the allegations against SA Force would likely generate would "influence the information or testimony provided by witnesses, bias grand jury members, or otherwise impact the integrity of the investigative process." In addition, disclosure of the investigation at this time would risk publicly airing suspicions of wrongdoing that may not materialize due to lack of evidence.

1. "Possible Injustice"

a. Defendant's arguments

Defendant argues that "evidence of an investigation of former SA Force is exculpatory, and thus Brady material.'" (Memorandum of Law in Support of Defendant Ross Ulbricht's Motions In Limine at 29.) Defendant describes the supposed exculpatory value of the November 21, 2014 Letter in two ex parte letters to the Court.

[redacted]

[redacted]

[redacted]

b. Analysis

Defendant has not made a showing that either the fact of the Force Investigation or the information learned during that investigation is "needed to avoid a possible injustice." Contrary to defendant's arguments, the statements in the November 21, 2014 Letter are not exculpatory.[13]

[redacted] In discovery, the Government produced information that (1) the Nob account was controlled by an undercover DEA agent, (2) Green a/k/a Flush was arrested in January 2013 on narcotics charges, and (3) the undercover agent had obtained access to the Flush account

[13] If anything, the November 21, 2014 Letter is inculpatory. The Letter indicates that SA Force may have leaked information about USAO-Baltimore's investigation to DPR in exchange for payment. If Ulbricht is DPR, this is evidence of Ulbricht's criminal state of mind and attempts to protect his criminal enterprise by purchasing investigative information.

after Green's arrest. (Gov't December 18, 2014 Letter at 2.) [redacted]

To whatever extent this provides a basis for a defense, it has been known to the defendant for some time. It is not news. The defense also learned in discovery that the Flush account may have had administrative privileges. In fact, the Government produced evidence that, on January 26, 2013, Inigo told DPR that Flush may have stolen $350,000 in bitcoins by resetting the passwords of Silk Road users. (See id. at 3.) [redacted]

The only new information in the November 21, 2014 Letter is that USAO-San Francisco is investigating whether Force may have stolen the $350,000 in bitcoins, converted other bitcoins to personal use, and/or leaked investigative information to DPR. [redacted] Notably, "USAO-San Francisco has not uncovered any evidence that Force fabricated any evidence against the defendant or the 'Dread Pirate Roberts' online persona." (Gov't December 18, 2014 Letter at 4.) To the contrary, there is persuasive evidence that no such fabrication occurred. (See id. at 4-5.)

Nor does the November 21, 2014 Letter help attack the Government's murder-for-hire allegations. The Government alleges that Ulbricht solicited Green's murder-for-hire in part because he believed that Green had stolen the $350,000 in bitcoins. The fact that SA Force may have been responsible for the theft is irrelevant unless defendant knew about it, and there is no evidence that he did. As the Government correctly points out, "[r]egardless of whether SA Force, Green or anyone else stole the Bitcoins, the identity of the culprit is wholly irrelevant to the fact that the defendant believed that they were stolen by his employee, 'Flush'" (Government's Opp. at 17) and that Flush was Green. [redacted]

[redacted]

Importantly, nothing about the Force Investigation prevents defendant from doing that which he could always do: presenting a theory supported by the technical capabilities of Silk Road and the materials produced in discovery. [redacted] To be clear, to the extent the Government now or at any point in the future develops any exculpatory information, such as information suggesting that Force did fabricate evidence against DPR, it would have a Brady obligation to disclose it to the defense. The Government has affirmed that it fully understands its obligations under Brady, that it currently knows of no exculpatory information, and that, if it acquires any exculpatory material, it will readily produce it to the defense. (See, e.g., Government's December 19, 2014 Letter at 4.) The Court has no reason to believe that the Government has not complied with all of its Brady disclosure obligations to date or that it will not comply with those obligations in the future.

The Court finds that defendant has not met his burden of showing that unsealing the November 21, 2014 Letter is "needed to avoid a possible injustice." The Government's ongoing Brady obligations, as well as its representation that it will not call SA Force as a witness at trial, will not use any evidence obtained in the USAO-Baltimore investigation, and will not seek to introduce any communications between Ulbricht and SA Force further mitigate the (virtually non-existent) risk of "possible injustice" from maintaining the November 21, 2014 Letter under seal.

[redacted]

2. Need for Disclosure Versus Need for Continued Secrecy

Defendant also has not demonstrated that any "need for disclosure is greater than the need for continued secrecy." The grand jury investigation of SA Force is ongoing, and the Government has indicated that unsealing the November 21, 2014 Letter would result in significant prejudice to the integrity of the investigation. The Court credits this statement. In particular, after consultation with USAO-San Francisco, the Government has advised the Court that disclosure of the November 21, 2014 Letter threatens to compromise the investigative process by revealing to SA Force the full scope of the investigation against him. Learning about the full range of misconduct that is the subject of the USAO-San Francisco investigation might jeopardize that investigation by causing Force, and others, to flee, destroy evidence, conceal criminal proceeds, and/or intimidate witnesses. (Government's December 19, 2014 Letter at 2.) Under these circumstances, the Court finds that the minimal, if any, value of the November 21, 2014 Letter to Ulbricht's defense is significantly outweighed by the need for continued secrecy.

3. Structure of the Request

Finally, the Court finds that defendant's request to unseal the November 21, 2014 Letter is not "structured to cover only material" needed to avoid a possible injustice. Rather than requesting to unseal specific facts from the Letter and explaining why disclosure of those facts is necessary for a fair trial, defendant seeks to unseal the entire Letter based on broad, vague allegations that it contains exculpatory information.

In sum, the Court finds that defendant has failed to make a showing of "particularized need" sufficient to overcome the presumption of secrecy. Moreover, even if defendant had made such a showing, the Court nonetheless would conclude that the November 21, 2014 Letter should remain under seal while the grand jury investigation of SA Force is ongoing. See Moten, 582 F.2d at 663 ("If a showing of particularized need has been made, disclosure should occur unless the grand jury investigation remains sufficiently active that disclosure of materials would prejudice a legitimate interest of the government." (emphasis added) (citation omitted)); In re Grand Jury Subpoena, 103 F.3d at 240 ("We have grave doubts as to whether Appellants made a showing of particularized need to the district court. Yet, even were we to decide that they had, we would not favor opening the hearing to the press while the grand jury investigation is on-going.").

Over the course of the trial, defense counsel may find that they have a basis to believe that specific information in the November 21, 2014 Letter is useful or necessary for effective cross-examination. If such a situation arises, defense counsel should so inform the Court and make a proffer as to the probative value of the particular information sought to be disclosed.

B. Defendant's Discovery Requests

Defendant is not entitled to the discovery he seeks either under the Federal Rules of Criminal Procedure or under Brady.

1. Rule 16 Discovery

The evidence defendant seeks does not meet the threshold of materiality required by Rule 16(a)(1)(E), as there is at present no strong indication that the

discovery defendant seeks will play an important role in uncovering admissible evidence or will significantly aid in the preparation of defendant's case. As the Government long ago produced discovery regarding SA Force's access to administrative privileges on Silk Road, the only information that should be new to defendant is that SA Force is being investigated for leaking information, and the conversion and/or theft of bitcoins. Defendant has not articulated a coherent and particular reason why the fact of SA Force's investigation, or the fruits of that investigation, could themselves "counter the government's case" or "bolster a defense." Stein, 488 F. Supp. 2d at 357 (quoting Stevens, 985 F.2d at 1180).

Indeed, this much is made clear by defendant's open-ended laundry list of discovery demands, which represent precisely the kind of speculative fishing expedition not permitted by Rule 16. For instance, defendant seeks discovery as to "bank account records from any and all bank accounts maintained by former SA Force or his spouse in the U.S. or overseas," (Disc. Requests ¶ 1), which could encompass SA Force's spouse's bank statements from the time before she married SA Force. Defendant also seeks "the contents of any email accounts operated by former SA Force or any of his aliases," (Disc. Requests ¶ 10), which could encompass all of SA Force's non-work-related emails and emails relating to investigations other than that of Silk Road. Indeed, eighteen of defendant's twenty-eight requests request "any and all" materials in a particular category, and none is time-delimited. Such broad and speculative requests are inappropriate under Rule 16. To the extent that the defendant requests issuance of truly targeted requests, and can

support those requests under the rules, the Court will review those and make an individualized determination.

Finally, the Court notes that it is not unusual for the Government to investigate many aspects of a criminal case and numerous people involved at the same time, nor (sadly) is this the first occasion on which a court has confronted a situation in which the Government's own investigative team has been accused of misconduct in the course of an investigation. See, e.g., Brown v. United States, No. 1:10 CV 752, 2014 WL 4231063, at *1-2 (N.D. Ohio 2014) (DEA agent indicted by a grand jury on charges of creating incriminating evidence, withholding exculpatory evidence, and committing perjury). The fact that multiple investigations of criminal conduct occur simultaneously does not mean that—even if related as to certain facts—one must or even should await the outcome of the other. It is perfectly appropriate for the Government, in the reasonable exercise of its prosecutorial discretion, to pursue charges as and when it deems it appropriate and necessary. Except in unusual circumstances, courts should not attempt to alter the Government's chosen timing.

In any event, even assuming arguendo that the information defendant seeks is material, good cause exists under Rule 16(d)(1) for denying defendant's request. Here, as in Smith, disclosure of the materials sought by defendant could alert Force to the full scope of the ongoing grand jury investigation and lead to efforts by him to frustrate the investigation. Defendant's pre-trial discovery requests are accordingly DENIED under Rule 16.

2. Rule 17 Subpoenas

In its December 19, 2014 letter, the Government opposed the issuance of any Rule 17 subpoenas based on defendant's discovery requests. Rule 17 subpoenas must be limited to information that is specific, relevant, and admissible. As explained above, defendant's requests collectively seek "any and all" materials with regard to several broad categories of information, and defendant has not articulated any specific items of admissible evidence he seeks. Simply put, were defendant to request the materials he seeks via Rule 17 subpoenas, he would be engaged in "a fishing expedition, not a targeted request for evidentiary matters." Binday, 908 F. Supp. 2d at 492. Further, and again as explained above, the issuance of Rule 17 subpoenas in this case could endanger the ongoing grand jury investigation of SA Force. Accordingly, the issuance of subpoenas based on defendant's discovery requests would be "unreasonable or oppressive" under Rule 17(c)(2), and therefore inappropriate.

3. Brady

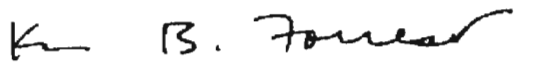
Brady does not provide a vehicle for defendant to obtain the discovery he seeks—it imposes an obligation on the Government to apprise defendant of any exculpatory information obtained via the Force Investigation, but it does not entitle defendant to obtain access to materials from that grand jury investigation, or for that matter any other materials. The Government has an ongoing Brady obligation in this case; this means that to the extent there is any information revealed or developed during the Force Investigation that is material and potentially exculpatory, the Government must disclose such information to the defense.

The Court is aware that defendant argues that the Government cannot know what may be exculpatory as it may not anticipate certain defenses. This is as true here as in any case. To the extent that defendant wants to ensure that the Government provides exculpatory information of which it is aware and that is responsive to a particular theory, it must give the Government enough information to understand that theory. Opening statements are only two weeks away, and the mysteries of the defense theories will be largely revealed at that time; defendant's tactical interest in preserving the mystery of a particular defense theory may now be outweighed by his desire to determine whether particular information supportive of that theory has come to light.

IV. CONCLUSION

For the reasons set forth above, defendant's motion to unseal the November 21, 2014 Letter and discovery requests are DENIED. As explained above, the Court will, over the course of the trial, entertain specific requests to use information from the November 21, 2014 Letter on cross-examination. In addition, if, during the course of the trial, the Government opens the door to specific information or facts develop which render particularized disclosure of facts or documents relevant, the Court will entertain a renewed application at that time.

Dated: New York, New York
December 22, 2014



KATHERINE B. FORREST
United States District Judge

JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION
29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

December 30, 2014

BY ELECTRONIC MAIL

FILED UNDER SEAL

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted on behalf of defendant Ross Ulbricht, whom I represent in the above-entitled case, and, in light of the Court's December 22, 2014, Sealed Memorandum & Decision (hereinafter "December 22, 2014 Opinion"), seeks an adjournment of trial until the government completes its grand jury investigation of former Drug Enforcement Administration Special Agent Carl Force, and the full nature of his alleged misconduct is known, and available to Mr. Ulbricht's defense.

The Court's December 22, 2014 Opinion states that "it is clear that precisely what Force did (or did not do) remains unknown." *Id.*, at 3. Yet that is only because it is the government that is in sole possession of that information, and is in exclusive control of the investigation, and because the government's now ten-month long investigation of former SA Force is not complete.

Under such circumstances, Mr. Ulbricht is compelled to request an adjournment of the trial until the government's investigation is complete, and the defense can have access to and the use of the information gathered as a result of the investigation (through either the government or independent means, which at present are foreclosed to the defense).

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While the Court's December 22, 2014 Opinion also states, at 22, that the government "has affirmed that . . . if it acquires any exculpatory material, it will readily produce it to the defense[,]"[1] such production during trial or even at this late date would not be sufficient to provide Mr. Ulbricht effective use thereof. Also, obviously, learning of such information *after* trial would be entirely ineffectual.

Similarly, admonishing the government that if it "opens the door" at trial, the issue can be revisited, *id*., at 28, fails to provide Mr. Ulbricht sufficient ability to utilize the information, as investigation and pursuit of documents and other materials cannot be accomplished on such short notice and in the middle of trial. Indeed, the breadth of the defense's discovery requests – all of which are consistent with what the grand jury surely has assembled from various sources – is the result of the lack of the defense's ability to do *anything* at present on its own to pursue the investigation of former SA Force. Delaying that process until mid-trial only amplifies and aggravates the problem therein.

Indeed, in its December 19, 2014, letter to the Court, the government protests that "allowing the defense to pursue the Defense Requests [for discovery] would entail a substantial delay of trial, as both gathering of responsive documents and the opportunity for review by the defense would take several weeks at a minimum." Yet that problem is one of the government's own making given its eleventh-hour disclosure of matters under investigation for the past ten months, and is not a basis for precluding Mr. Ulbricht's use of the information. Rather, it is an indisputable justification for adjourning the trial.

Accommodating the government's desire to maintain the secrecy of its extended investigation of former SA Force and protection of Mr. Ulbricht's constitutional rights are not mutually exclusive interests, and the only solution that accomplishes both objectives is an adjournment of trial. Otherwise, Mr. Ulbricht's Fifth Amendment right to Due Process and a fair trial, and his Fifth and Sixth Amendment rights to prepare and present a defense, will be violated, and he will be denied his Sixth Amendment right to compulsory process, as he would otherwise subpoena former SA Force and/or any other witnesses who could provide testimony at trial.

As noted in my prior December 16, 2014, sealed letter (at n. 2), examining former SA Force without the use of the information disclosed in the government's November 21, 2014, letter – and thereby limited to what suits the government – would be meaningless to the defense.

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[1] The government's ability even to acknowledge what is "exculpatory" is doubtful given its refusal to acknowledge that what it has already disclosed with respect to former SA Force is exculpatory – even though it is patent that its exculpatory character, rather than any other discovery obligation, is what motivated disclosure "in an abundance of caution."

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However, it would be the defense's intention to subpoena former SA Force if the full range of his conduct (and/or misconduct) were accessble for inquiry. Consequently, the defense has prepared a subpoena for former SA Force, and will serve it conditionally, and only on the prosecutors in this case, and not on former SA Force (in order to abide by the Court's ruling denying the motion to unseal the government's November 21, 2014, letter).

In addition, Mr. Ulbricht would be denied his Sixth Amendment right to confrontation, as the government's attempt to introduce former SA Force's undercover identity as "Nob" – through references to him that will involve hearsay, and certainly implicate Nob's communications in significant fashion – in the case without providing Mr. Ulbricht opportunity to cross-examine him (or call him or others as witnesses in any meaningful manner) simply constitutes an attempted end-run around Mr. Ulbricht's Sixth Amendment right to confrontation. Moreover, Mr. Ulbricht's Sixth Amendment right to effective assistance of counsel is also compromised by the limitations placed on counsel's advocacy, investigation, and preparation with respect to former SA Force's alleged misconduct.

The government's effort to use its ongoing grand jury investigation as both a sword and shield cannot be reconciled with Mr. Ulbricht's right to a fair trial. Accordingly, for all the reasons set forth above, as well as in Mr. Ulbricht's previously filed submissions on this subject (as well as the sealed portion of the court conference devoted to this issue), the only appropriate solution is an adjournment of the trial until the government's investigation of former SA Force is complete, and the defense can effectively pursue and ultimately use at trial the information disclosed. Having the trial proceed first puts the cart plainly, and unconstitutionally, before the horse.

Respectfully submitted,

Joshua L. Dratel

JLD/
cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

ORDERED:
The Government shall submit any response not later than 12/31/2014 at 6 P.M.

12/30/2014

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

TO BE FILED UNDER SEAL

December 30, 2014

By Electronic Mail
Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, S1 14 Cr. 68 (KBF)

Dear Judge Forrest:

The Government writes respectfully to respond to the defendant's letter submitted under seal earlier today, requesting an adjournment of trial until the conclusion of the pending grand jury investigation of former DEA Special Agent Carl Force. The request essentially seeks to relitigate the issues this Court has already adjudicated in its December 22, 2014 sealed opinion, and should be denied.

The defense's request is premised on the notion that the Force investigation is likely to uncover exculpatory evidence as to the defendant; yet, as the Court has already found, the defense "has not made a showing that either the fact of the Force Investigation or the information learned during that investigation is 'needed to avoid a possible injustice.'" Slip op. at 18. Indeed, the disclosures made by the Government about the investigation to date are "not exculpatory," but rather, "if anything," are "*in*culpatory." *Id.* at 18 & n.13. From the outset, the Government has made clear that the investigation of former SA Force concerns only possible corruption on former SA Force's part rather than anything suggestive of the defendant's innocence. In particular, the investigation does not concern, and has not yielded any indication of, suspected fabrication of evidence, entrapment, or any other conduct by former SA Force that would tend to exculpate the defendant. Accordingly, postponing trial until the Force investigation is over would do nothing except unnecessarily delay these proceedings by several months or longer, to the detriment of the public's right to a speedy trial. *See United States v. Didier* 542 F.2d 1182, 1188 (2d Cir. 1976) ("[T]he right to a speedy trial belongs not only to the defendant, but to society as well.") (internal quotation marks and citation omitted). Again, as stated in the Court's opinion: "The fact that multiple investigations of criminal conduct occur simultaneously does not mean that – even if related as to certain facts – one must or even should await the outcome of the other." Slip op. at 26.

Contrary to the defense's assertion, proceeding with trial will not deny the defendant his "Sixth Amendment right to confrontation." (Ltr. at 3). The Government is not planning to call former SA Force as a witness, and therefore there is no issue of the defendant being deprived of the right to cross-examine him. Nor is the Government is even planning to use any communications of former SA Force as evidence in the case; and even if it were, those communications would not constitute testimonial hearsay implicating the defendant's Sixth Amendment confrontation rights. (Introducing such communications would be no different from introducing a defendant's recorded conversations with an undercover agent on a wiretap or consensual recording, for example.)

As for the defendant's Sixth Amendment right to subpoena witnesses, the Government has never contended that the pending investigation of former SA Force would necessarily prevent the defendant from subpoenaing him to testify *if* the testimony the defendant sought to elicit was material to the defense. However, it appears that the defendant seeks to call former SA Force as a witness merely to elicit the facts surrounding the pending corruption investigation of him. As the Government has previously argued, eliciting such testimony would not merely jeopardize the pending investigation of former SA Force, but it would also plainly be more prejudicial than probative, as it would threaten to turn the trial into a sideshow about former SA Force rather than an adjudication of the guilt or innocence of the defendant. Accordingly, the Government would object to the defense calling former SA Force as a witness simply based on Rules 401 and 403 – regardless of whether the subpoena was issued before or after the conclusion of the grand jury investigation.

In this regard, the Government notes that the defense's letter indicates that the defense has prepared a subpoena for former SA Force to be served "conditionally" on "the prosecutors in this case," as opposed to former SA Force himself. (Ltr. at 3). To the extent the defense means to say that it plans to attempt service of a subpoena on former SA Force by serving the subpoena on the Government, such an attempt at service would be improper. Former SA Force is no longer a federal employee whom the Government has the power to produce at trial; and undersigned counsel are not authorized to accept service on his behalf. Any subpoena served by the defense on former SA Force would thus have to be served personally. However, in order to protect the pending grand jury investigation of former SA Force, the Government respectfully requests that the defense be required to move the Court for permission to serve any trial subpoena on former SA Force, and to give notice to the Government of any such motion, so that the Government has the opportunity to oppose. There is no need for the defense to serve a subpoena on former SA Force merely to trigger litigation over the relevance of his potential testimony. *See United States v. Boyle*, No. 08 Cr. 523 (CM), 2009 WL 484436, at *3 (S.D.N.Y. Feb. 24, 2009) (explaining that requiring a party to make a motion to issue a subpoena is a permissible and advisable procedure where the subpoena is likely to result in a motion to quash).

Accordingly, the Government respectfully requests that the Court deny the defense's request for an adjournment of trial. The Government further respectfully requests that the Court require the defense to move for permission before serving any subpoena on former SA Force, and to notify the Government of such motion, so that the Government may oppose.

Respectfully,

PREET BHARARA
United States Attorney

By: _____
SERRIN TURNER
TIMOTHY T. HOWARD
Assistant United States Attorneys
Southern District of New York

Cc: Joshua Dratel, Esq. (by electronic mail)

Ordered (under seal):
Defendant's motion to adjourn the trial is DENIED. The Court shall provide reasons on the record on January 13, 2015. Any subpoena on former SA Force must be made on motion with notice to the Government. Such a motion would need to be accompanied by a showing that the proposed witness would provide testimony admissible at trial and meet all other applicable rules.
SO ORDERED.

12/31/14

KATHERINE B. FORREST
United States District Judge

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

TO BE FILED UNDER SEAL

February 1, 2015

By Electronic Mail

Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, S1 14 Cr. 68 (KBF)

Dear Judge Forrest:

The Government writes to express its objections to proposed Defense Exhibit E (attached to this letter as Exhibit 1), which was provided to the Government on the evening of January 31, 2015. Defense Exhibit E consists of a redacted version of a chat over the Silk Road messaging system between "Dread Pirate Roberts" and "DeathFromAbove," in an apparent attempt to cast Anand Athavale as an alternative perpetrator. As discussed in greater detail below, Defense Exhibit E contains inadmissible hearsay, as it seeks to use statements made by "DeathFromAbove" for the truth in support of an alternative perpetrator theory. Further, it seeks to redact important context from the conversation, which indicates that "DeathFromAbove" was seeking to extort the "Dread Pirate Roberts" based on information regarding the "Dread Pirate Roberts'" attempts to solicit the murder for hire of Curtis Green, a/k/a "Flush." This is a back-door attempt to re-inject former DEA Special Agent Carl Force into the case. When the full version of the conversation is viewed, in the context of evidence recovered from the defendant's laptop and information recently obtained from USAO-San Francisco that Force controlled the "DeathFromAbove" account, it is apparent that there is no probative value to this evidence, and that any potential probative value is substantially outweighed by the potential of unfair prejudice, confusion of the issues, and misleading the jury. Accordingly, to the extent that the defendant makes a spurious claim that this is not being offered for the truth, it should be excluded under Rule 403.

The redactions proposed by the defendant eliminate critical context to the conversation. Defense Exhibit E simply contains references to statements made by "DeathFromAbove" to the "Dread Pirate Roberts," in which "DeathFromAbove" asserts that he believes that "Dread Pirate

Roberts" is Mr. Athavale. The complete version of the conversation as it occurred over the Silk Road messaging system (attached hereto as Exhibit 2) provides important context, indicating that it started on or about April 1, 2013, when "DeathFromAbove" started making accusations that the "Dread Pirate Roberts" was responsible for the disappearance and death of Curtis Green, a/k/a "Flush." The "Dread Pirate Roberts" only responds once during the conversation, in an April 6, 2013 message in which he states:

> I don't know who you are or what your problem is, but let me tell you one thing: I've been busting my ass every god damn day for over two years to make this place what it is. I keep my head down, I don't get involved with the drama and I do the right thing at every turn. Somehow that isn't enough. Somehow psychotic people still turn up at my doorstep. I've been scammed, I've been stolen from, I've been hacked, I've had threats made against the site, I've had threats made against the community, and now, thanks to you, I've had threats made against my life. I know I am doing a good thing running this site. Your threats and all of the other psychos aren't going to deter me. That's all I say to you. I won't answer your questions, or get sucked in to whatever trip you are on. I have much more important things to do. Stop messaging me and go find something else to do.

"DeathFromAbove" continues to make threats of violence against "Dread Pirate Roberts," until, on April 16, 2013 (the portion that the defendant wants admitted) "DeathFromAbove" ultimately provides Mr. Athavale's personal identifiers, and demands a payment of $250,000 in United States currency as "punitive damages" for Green's death, and otherwise threatens to provide information to law enforcement that Mr. Athavale is "Dread Pirate Roberts."

The statements made by "DeathFromAbove" are inadmissible hearsay. They are plainly offered for the truth, in another, utterly frivolous attempt by the defendant to put forward Mr. Athavale as an alternative perpetrator. Any claim by the defendant that this evidence is not offered for the truth is spurious and belied by the defendant's prior improper attempts to seek to have Special Agent Jared DerYeghiayan testify on cross-examination as to his undeveloped *suspicions* of Mr. Athavale at an early stage of his investigation.

Even if not precluded by the hearsay rules, these statements further present a significant danger of unfair prejudice under Rule 403 in supporting an inference of alternative perpetrator, as the record lacks any legitimate evidence that can link Mr. Athavale to the crimes charged. As the Second Circuit has noted, where a defendant seeks to offer evidence that an "alternative perpetrator" committed the crime charged, a court must be especially careful to guard against the danger of unfair prejudice under Rule 403, for "[t]he potential for speculation into theories of third-party culpability to open the door to tangential testimony raises serious concerns." *Wade v. Mantello*, 333 F.3d 51, 61 (2d Cir. 2003). As the Second Circuit explained in *Wade*:

> In the course of weighing probative value and adverse dangers, courts must be sensitive to the special problems presented by

> 'alternative perpetrator' evidence. Although there is no doubt that a defendant has a right to attempt to establish his innocence by showing that someone else did the crime, a defendant still must show that his proffered evidence on the alleged alternative perpetrator is sufficient, on its own or in combination with other evidence in the record, to show a nexus between the crime charged and the asserted 'alternative perpetrator.' It is not sufficient for a defendant merely to offer up unsupported speculation that another person may have done the crime. Such speculative blaming intensifies the grave risk of jury confusion, and it invites the jury to render its findings based on emotion or prejudice.

Id. at 61-62 (quoting *United States v. McVeigh*, 153 F.3d 1166, 1191 (10th Cir.1998) (citation omitted); *see also DiBenedetto v. Hall*, 272 F.3d 1, 8 (1st Cir. 2001) ("Evidence that tends to prove a person other than the defendant committed a crime is relevant, but there must be evidence that there is a connection between the other perpetrators and the crime, not mere speculation on the part of the defendant."); *People of Territory of Guam v. Ignacio*, 10 F.3d 608, 615 (9th Cir. 1993) ("Evidence of third-party culpability is not admissible if it simply affords a possible ground of suspicion against such person; rather, it must be coupled with substantial evidence tending to directly connect that person with the actual commission of the offense."); *Andrews v. Stegall*, 11 Fed. Appx. 394, 396 (6th Cir. 2001) ("Generally, evidence of third party culpability is not admissible unless there is substantial evidence directly connecting that person with the offense.").[1]

Any evidence that Mr. Athavale was an alternative perpetrator must be carefully scrutinized. In order to introduce evidence that Mr. Athavale was the "alternative perpetrator" in this case, the defense must offer evidence of a direct and substantial connection between Mr. Athavale and Silk Road based on *actual fact*. The record simply does not support any such direct and substantial connection. Rather, the only testimony received by the jury regarding Mr. Athavale was testimony from Special Agent DerYeghiayan on cross examination acknowledging that Mr. Athavale: (1) is a Canadian citizen who resided in Vancouver; (2) was at one time connected to "half a page" of different IP addresses; (3) is a libertarian with a profile on the mises.org website; and (4) frequently used terms and spelled words on the mises.org website in a similar manner to the way that "Dread Pirate Roberts" was known to use them on Silk Road, including "labour," "real-time," "lemme," "rout," "intellectual laziness," "agorism," and "agorist." *See Tr.* 672:23-678:25, 813:6-819:9. The association between Mr. Athavale and the charged offenses is insubstantial on this record, such that that Defense Exhibit E "invite[s] testimony that [is] both distracting and inflammatory" and "pose[s] a danger of turning attention away from issues of [defendant's] culpability." *Wade v. Mantello*, 333 F.3d at 61.

The substantial risk of unfair prejudice in the admission of statements by "DeathFromAbove," is further compounded when the full conversation is viewed in the context of other evidence. First, the defendant's computer contained a file, received into evidence as

[1] Additional legal support for these propositions is detailed on page 12 of the Government's prior letter in this matter dated February 1, 2015.

Government Exhibit 241, which reflects the fact that the defendant did not in fact feel threatened by "DeathFromAbove." Specifically, the unredacted version of Government Exhibit 241 (attached hereto as Exhibit 3), reflects the following entries, which correspond in timing and content to the conversation with "DeathFromAbove":[2]

> 04/02/2013
>
> got death threat from someone (DeathFromAbove) claiming to know I was involved with Curtis' disappearance and death. messaged googleyed about it. goog says he doesn't know. user is prolly friend of Curtis who he confided his plan to.
>
> * * *
>
> 4/10/2013
>
> being blackmailed again. someone says they have my ID, but hasn't proven it.
>
> * * *
>
> 4/13/2013
>
> guy blackmailing saying he has my id is bogus

The full context of the conversation makes plain that the defendant received the threat from "DeathFromAbove," and then rejected it as without substance after "DeathFromAbove" repeatedly incorrectly referred to him as "Anand."[3]

Further, it is important to note that it appears that "DeathFromAbove," was controlled by former Special Agent Force, based on information that was recently obtained from USAO-San Francisco regarding their ongoing grand jury investigation into Force. Following the defendant's first attempt to seek to use Defense Exhibit E with Special Agent DerYeghiayan, the Government consulted with the lead Assistant U.S. Attorney handling the Force investigation, who provided evidence that Force controlled the "DeathFromAbove" account and sent the

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[2] The version of Government Exhibit 241 that was received in evidence is redacted to exclude references to the Curtis Green "murder for hire." The Court previously ruled that the Government was permitted to present evidence regarding the murder-for-hire of Green. Although the Government agreed with the ruling of the Court, it elected to forego presenting evidence regarding that incident at trial, and has redacted references to the incident at the request of defense counsel.

[3] By omitting the full context of the conversation, the defendant also conveniently eliminates the statement by "Dread Pirate Roberts" that he had "been busting my ass every god damn day for over two years to make this place what it is," which is obviously contrary to the defense theory of the case presented during opening argument.

messages to the defendant.[4] Accordingly, when taken in context with the information obtained from the defendant's computer and the fact that "DeathFromAbove" was used by Force, it is evident that the excerpt of the chat is being used to mislead and confuse the jury. Accordingly, because the evidence has no probative value, and any possible probative value is vastly outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury, it should be precluded under Rule 403.

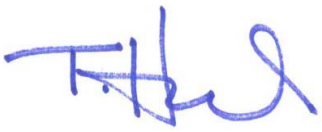
CONCLUSION

For the reasons set forth above, the Government respectfully objects to proposed Defense Exhibit E as inadmissible hearsay. To the extent that the defense makes a spurious application to have it admitted for any purpose other than the truth, Defense Exhibit E should be alternatively excluded under Rule 403 based on the significant danger of unfair prejudice, confusion of the issues, and misleading the jury that the evidence presents.

Based on the sensitive nature of the contents of this letter, including references to an ongoing grand jury investigation, the Government respectfully requests that it remain under seal.

Respectfully,

PREET BHARARA
United States Attorney



By:_____
TIMOTHY T. HOWARD
SERRIN TURNER
Assistant United States Attorneys
Southern District of New York

Cc: Joshua Dratel, Esq.

[4] It should be noted that former Special Agent Force (who was aware of the Curtis Green murder-for-hire attempt) had access to law enforcement reports filed by Special Agent DerYeghiayan concerning his investigation into Mr. Athavale, which is likely the source of the information provided by Force through the "DeathFromAbove" account, in an attempt to extort the defendant.

4/6/13 18:00	DeathFromAbove	Dread Pirate Roberts	Dread Pirate Roberts	It's not that easy Anand [redacted]
4/10/13 11:54	DeathFromAbove	Dread Pirate Roberts	so	[redacted]. Do they have a casino there Anand?
4/16/13 5:56	DeathFromAbove	Dread Pirate Roberts	personal history	Name: Anand Athavale DOB: [redacted] POB: India Citizenship: India Sex: M Brown hair, 5'6" tall, Brown eyes, 300 lbs. Residence: [redacted] is that enough to get your attention? [redacted] So, $250,000 in U.S. cash/bank transfer and I won't give you identity to law enforcement. Consider it punitive damages. DeathFromAbove

Date	To/From	Subject	Message Body
4/1/2013 8:40	From: DeathFromAbove	message for Dread Pirate Roberts	Dread Pirate Roberts, I know that you had something to do with Curtis' disappearance and death. Just wanted to let you know that I'm coming for you. Tuque. You are a dead man. Don't think you can elude me. De Oppresso Liber
4/1/2013 8:43	From: DeathFromAbove	message for Dread Pirate Roberts	Dread Pirate Roberts, I know that you had something to do with Curtis' disappearance and death. Just wanted to let you know that I'm coming for you. Tuque. You are a dead man. Don't think you can elude me. De Oppresso Liber
4/3/2013 7:50	From: DeathFromAbove	I'm coming	Indigo, did you forward the below message to your boss? i'm coming for your ass, also :) "Dread Pirate Roberts, I know that you had something to do with Curtis' disappearance and death. Just wanted to let you know that I'm coming for you. Tuque. You are a dead man. Don't think you can elude me. De Oppresso Liber"
4/5/2013 7:32	From: DeathFromAbove	Dread Pirate Roberts	indigo please pass this message to your boss. FBI, DEA, SOCA, AFP, can't find you but don't think for a second DOD (US Army and Navy) can't. i just want an explanation; if you didn't do it, then I need you to tell me who did. you don't strike me as the Type but I have seen stranger stuff; if I don't hear from you by this weekend then I fly to Vancouver within the next couple of days; DeathFromAbove
4/6/2013 12:37	To: DeathFromAbove	re: Dread Pirate Roberts	I don't know who you are or what your problem is, but let me tell you one thing: I've been busting my ass every god damn day for over two years to make this place what it is. I keep my head down, I don't get involved with the drama and I do the right thing at every turn. Somehow that isn't enough. Somehow psychotic people still turn up at my doorstep. I've been scammed, I've been stolen from, I've been hacked, I've had threats made against the site, I've had threats made against the community, and now, thanks to you, I've had threats made against my life. I know I am doing a good thing running this site. Your threats and all of the other psychos aren't going to deter me. That's all I'll say to you. I won't answer your questions, or get sucked in to whatever trip you are on. I have much more important things to do. Stop messaging me and go find something else to do.
4/6/2013 18:00	From: DeathFromAbove	Dread Pirate Roberts	It's not that easy Anand. I'm legit. Green Beret. Friend of Curtis. I have access to TS/SCI files that FBI, DEA, AFP, SOCA would kill for. In fact, that is what I do ... kill. The only thing that I do. Curtis had a lot of faults but he helped me through a really bad time. I only have one question for you. What did you do with Curtis Green? Tell me the truth and I'll spare you. We, his love ones, need to know. Don't worry DoD has no interest in you and your little website. North Korea and Iran are a lot more important. In fact, as far as the Army and Navy are concerned you are a nobody. Petty drug dealer. But, Curtis was somebody. So tell me where he is and we will can be done with this.
4/10/2013 11:54	From: DeathFromAbove	so	I'm reviewing your file and you don't fit the profile of a killer. So where is Curtis? I need an answer. I got side-tracked from Vancouver, but I think that I'll go to the North Bay Indian Reservation. Do they have a casino there Anand?
4/16/2013 5:56	From: DeathFromAbove	personal history	Name: Anand Athavale DOB: [redacted] POB: India Citizenship: India Sex: M Brown hair, 5'6" tall, Brown eyes, 300 lbs. Residence: [redacted] is that enough to get your attention? After watching you, there is no way you could have killed Curtis. But I think you had something to do with it. So, $250,000 in U.S. cash/bank transfer and I won't give you identity to law enforcement. Consider it punitive damages. DeathFromAbove

03/20/2013
someone posing as me managed to con 38 vendors out of 2 btc each with a fake message about a new silk road posted about cartel formation and not mitigating vendor roundtable leaks.
worked on database error handling in CI

03/21/2013
main server was ddosed and taken offline by host
met with person in tor irc who gave me info on having custom hs guards
buying up servers to turn into hidden service guards

03/22/2013
deployed 2 guards on forum
adjusted check_deposit cron to look further back to catch txns that died with an error

03/23/2013
bought a couple of more servers from new hosts
organized local files
stripped out srsec db naming functions
introduced at least two bugs doing this

03/24/2013
been slowly raising the cost of hedging
orgainzed local files and notes

03/25/2013
server was ddosed, meaning someone knew the real IP. I assumed they obtained it by becoming a guard node. So, I migrated to a new server and set up private guard nodes. There was significant downtime and someone has mentioned that they discovered the IP via a leak from lighttpd.

03/26/2013
private guard nodes are working ok. still buying more servers so I can set up a more modular and redundant server cluster. redid login page.

03/27/2013
set up servers

03/28/2013
being blackmailed with user info. talking with large distributor (hell's angels).

03/29/2013
commissioned hit on blackmailer with angels

04/01/2013
got word that blackmailer was excuted
created file upload script
started to fix problem with bond refunds over 3 months old

04/02/2013
got death threat from someone (DeathFromAbove) claiming to know I was involved with Curtis' disappearance and death. messaged googleyed about it. goog says he doesn't know. user is prolly friend of Curtis who he confided his plan to.
applied fix to bond refund problem
stopped rounding account balance display

04/03/2013
spam scams have been gaining tracktion. limited namespace and locked current accounts.
lots of delayed withdrawals. transactions taking a long time to be accepted into blockchain. Wallet was funded with single large transaction, so each subsequent transaction is requiring change to be verified. lesson: wallets must be funded in small chunks.
got pidgin chat working with inigo and mg

04/04/2013
withdrawals all caught up
made a sign error when fixing the bond refund bug, so several vendors had very negative accounts.
switched to direct connect for bitcoin instead of over ssh portforward
received visual confirmation of blackmailers execution

04/05/2013
a distributor of googleyed is publishing buyer info
mapped out the ordering process on the wiki.
gave angels access to chat server

04/06/2013
made sure backup crons are working
gave angels go ahead to find tony76
cleaned up unused libraries on server
added to forbidden username list to cover I <-> l scam

04/07/2013
moved storage wallet to local machine
refactored mm page

04/08/2013
sent payment to angels for hit on tony76 and his 3 associates
began setting up hecho as standby
very high load (300/16), took site offline and refactored main and category pages to be more efficient

04/09/2013
problem with load was that APC was set to only cache up to 32M of data. Changed to 5G and load is down to around 5/16.
ssbd considering joining my staff
transferring standby data to hecho standby server

04/10/2013
some vendors using the hedge in a falling market to profit off of me by buying from themselves. turned of access log pruning so I can investigate later. market crashed today.
being blackmailed again. someone says they have my ID, but hasn't proven it.

04/11/2013
set up tor relays
asked scout to go through all images on site looking for quickbuy scam remnants
cimon told me of a possible ddos attack through tor and how to mitigate against it.
guy blackmailing saying he has my id is bogus

04/12/2013
removed last remnance of quickbuy scam
implemented new error controller

rewrote userpage

04/13/2013
inigo is in the hospital, so I covered his shift today. Zeroed everything and made changes to the site in about 5 hours

04/14/2013
did support. inigo returned.
started rewritting orders->buyer_cancel, been getting error reports about it.

04/15/2013
day off

04/16/2013
rewrote buyer_cancel

04/17/2013
rewrote settings view

04/18/2013
modified PIN reset system

04/19/2013
added blockchain.info as xrate source and modified update_xrate to use both and check for discrepancies and log.
modified PIN reset system

04/20/2013
migrated to different host because current host would not connect to guards. Bandwidth limited and site very slow after migration.

04/21 - 04/30/2013
market and forums under sever DoS attack. Gave 10k btc ransom but attack continued. Gave smed server access. Switched to nginx on web/db server, added nginx reverse proxy running tor hs. reconfiged everything and eventually was able to absorb attack.

05/01/2013
Symm starts working support today. Scout takes over forum support.

05/02/2013
Attack continues. No word from attacker. Site is open, but occasionally tor crashes and has to be restarted.

05/03/2013
helping smed fight off attacker. site is mostly down. I'm sick.
Leaked IP of webserver to public and had to redeploy/shred
promoted gramgreen to mod, now named libertas

05/04/2013
attacker agreed to stop if I give him the first $100k of revenue and $50k per week thereafter. He stopped, but there appears to be another DoS attack still persisting.

05/05/2013
Attack is fully stopped. regrouping and prioritizing next actions.

05/06/2013
working with smed to put up more defenses against attack

05/07/2013
paid $100k to attacker

05/08/2013
reconfigured nginx to not time out. almost all errors have disappeared.

05/10/2013
started buying servers for intro/guard nodes

05/11/2012
still buying servers

05/13/2013
helping catch up support
smed demo'ed multi address scheme for the forum

05/15/2013
more servers

05/22/2013
paid the attacker $50k

05/26/2013
tried moving forum to multi .onion config, but leaked ip twice. Had to change servers, forum was down for a couple of days.

05/28/2013
finished rewritting silkroad.php controller

05/29/2013
rewrote orders page
paid attacker $50k weekly ransom
$2M was stolen from my mtgox account by DEA
added smed to payroll
rewrote cart page

05/30/2013
spoke to nob about getting a cutout in Dominican Republic. said he knew a general that could help
created misc_cli with send_btc function for sending to many addresses over time.

05/31/2013
$50k xferred to cimon

06/01/2013
someone claiming to be LE trying to infiltrate forum mods

06/02/2013
loaning $500k to r&w to start vending on SR.

06/03/2013
put cimon in charge of LE counter intel

06/04/2013

rewrote reso center

06/05/2013 - 09/11/2013
Haven't been logging. Tried counter intel on DEA's "mr wonderful" but led nowhere. tormail was busted by dea and all messages confiscated. "alpacino" from DEA has been leaking info to me. Helped me help a vendor avoid being busted. did an interview with andy greenberg from forbes where i said i wasn't the original DPR, went over well with community. tried to get a fake passport from nob, but gave fake pic and fucked the whole thing up. nob got spooked and is barely communicating. said his informant isn't communicating with him either. r&w flaked out and disappeared with my 1/2 mil. smed has been working hard to develop a monitoring system for the SR infrastructure, but hasn't produced much in actual results. similarly cimon has been working on the mining and gambling projects, but no results forthcoming. created Anonymous Bitcoin Exchange (ABE) and have been trying to recruit tellers. the vendor "gold" is my best lead at the moment. nod is an H dealer on SR who says he has world class it skills and I am giving him a chance to show his stuff with ABE. did a "ratings and review" overhaul. It hasn't gone over too well with the community, but I am still working on it with them and I think it will get there eventually. tor has been clogged up by a botnet causing accessibility issues.

09/12/2013
Got a tip from oldamsterdam that supertrips has been busted. contacted alpacino to confirm.

09/13/2013
french maid claims that mark karpeles has given my name to DHLS. I offered him $100k for the name.

09/11 - 09/18/2013
could not confirm ST bust. I paid french maid $100k for the name given to DHLS by karpeles. He hasn't replied for 4 days. Got covered in poison oak trying to get a piece of trash out of a tree in a park nearby and have been moping. went on a first date with amelia from okc.

09/19/2013
red pinged me and asked for meeting tomorrow.

09/19 - 09/25/2013
red got in a jam and needed $500k to get out. ultimately he convinced me to give it to him, but I got his ID first and had cimon send harry, his new soldier of fortune, to vancouver to get $800k in cash to cover it. red has been mainly out of communication, but i haven't lost hope. Atlantis shut down. I was messaged by one of their team who said they shut down because of an FBI doc leaked to them detailing vulnerabilities in Tor.

09/30/2013
nod deivered HS tracking service timeline. spoke with inigo for a while about the book club and swapping roles with libertas. Had revelation about the need to eat well, get good sleep, and meditate so I can stay positive and productive.

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION

29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

March 6, 2015

BY ELECTRONIC MAIL

FILED UNDER SEAL

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted on behalf of defendant Ross Ulbricht, whom I represent, as part of his motion, pursuant to Rule 33, Fed.R.Crim.P., for a new trial. This letter is submitted under seal because it relates to former Drug Enforcement Administration Special Agent Carl Force, and matters previously maintained under seal.

For the reasons set forth below, in addition to those documents and materials listed in Exhibit 1 to Mr. Ulbricht's Rule 33 motion, the government has committed, with respect to former SA Force, two separate nondisclosure violations under the standards of *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny:

(1) former SA Force himself was obligated to disclose any misconduct he committed during the course of or related to his investigation of the Silk Road website, and SA Force's knowledge in that regard is imputed to the prosecution as a whole; and

(2) it is clear from the government's February 1, 2015, letter to the Court (a copy of

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.

> which is attached hereto as Exhibit A) that the grand jury investigation of former SA Force continued to generate exculpatory material and information that the government did not disclose until its letter, and likely has not disclosed at all (with respect to other such information and material).

Regarding former SA Force's knowledge of his misconduct, "a prosecutor's constructive knowledge extends to individuals who are 'an arm of the prosecutor' or part of the 'prosecution team.'" *United States v. Thomas*, 981 F. Supp.2d 229, 239 (S.D.N.Y. 2013), *citing United States v. Gil,* 297 F.3d 93, 106 (2d Cir.2002), and *United States v. Morell,* 524 F.2d 550, 555 (2d Cir.1975); *United States v. Bin Laden,* 397 F.Supp.2d 465, 481 (S.D.N.Y.2005). *See United States v. Millan-Colon*, 829 F.Supp. 620, 634-36 (S.D.N.Y. 1993) (in addition to declaring a mistrial following numerous revelations concerning a corruption investigation into police officers involved in the investigation of the offenses charged, the District Court vacated two guilty pleas entered prior to trial, holding that evidence related to the corruption investigation was material and exculpatory and should have been disclosed as *Brady*/*Giglio* material).

Regarding the continuing generation of undisclosed *Brady* material, the government's February 1, 2105, letter (Exhibit A), at 4, revealed that

> it appears that "DeathFromAbove," was controlled by former Special Agent Force, based on information that was recently obtained from USAO-San Francisco regarding their ongoing grand jury investigation into Force. Following the defendant's first attempt to seek to use Defense Exhibit E with Special Agent DerYeghiayan, the Government consulted with the lead Assistant U.S. Attorney handling the Force investigation, who provided evidence that Force controlled the "DeathFromAbove" account and sent the messages to" Dread Pirate Roberts.

That passage demonstrates that the investigation of former SA Force continued to gather exculpatory information – essentially, that *Brady* material was being collected during the trial itself, and being generated by the investigation of former SA Force. In fact, the government, in its earlier submissions, had never identified the DeathFromAbove username/account as being controlled by former SA Force. Yet during trial it used the cross-examination of Homeland Security Investigations Special Agent Jared Der-Yeghiayan to continue its investigation of former SA Force, and to generate further *Brady* material, but *without disclosing it to the defense until the eve of the defense case itself.*

As established by the case law and principles discussed in the Memo of Law in support of Mr. Ulbricht's Rule 33 motion, that constitutes a *Brady* violation. Accordingly, for the

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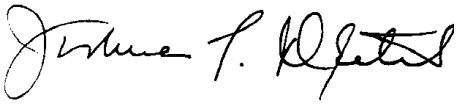
JOSHUA L. DRATEL, P.C.

reasons set forth above and elsewhere in Mr. Ulbricht's motion, it is respectfully submitted that his motion for a new trial should be granted.

Respectfully submitted,



Joshua L. Dratel

JLD/
cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

UNITED STATES OF AMERICA : 14 Cr. 68 (KBF)

- against - :

ROSS ULBRICHT, :

Defendant. :
----------X

REPLY MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT ROSS ULBRICHT'S POST-TRIAL MOTIONS

Joshua L. Dratel
JOSHUA L. DRATEL, P.C.
29 Broadway, Suite 1412
New York, New York 10006
(212) 732 - 0707
jdratel@joshuadratel.com

Attorneys for Defendant Ross Ulbricht

– Of Counsel –

Joshua L. Dratel
Lindsay A. Lewis
Joshua J. Horowitz

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STATEMENT OF THE FACTS

A dramatic event has occurred during the intervening period since Mr. Ulbricht's post-trial motions were filed. Less than two months after trial concluded in this case, the government filed criminal charges against former SA's Force and Bridges in the Northern District of California.

The Complaint against former SA's Force and Bridges (hereinafter the "Force Complaint") was unsealed March 30, 2015. A Department of Justice Press Release, March 30, 2015, "Former Federal Agents Charged With Bitcoin Money Laundering and Wire Fraud," available at <http://www.justice.gov/opa/pr/former-federal-agents-charged-bitcoin-money-laundering-and-wire-fraud>, summarized the Force Complaint's allegations against former SA Force as follows:

> Force used fake online personas, and engaged in complex Bitcoin transactions to steal from the government and the targets of the investigation. Specifically, Force allegedly solicited and received digital currency as part of the investigation, but failed to report his receipt of the funds, and instead transferred the currency to his personal account. In one such transaction, Force allegedly sold information about the government's investigation to the target of the investigation.

As the Force Complaint itself notes, "[i]n late January 2013, members of the Baltimore Silk Road Task Force, to include BRIDGES and FORCE, gained access to a Silk Road administrator account as a result of the arrest of a former Silk Road employee." Force Complaint, at 5.

According to the Force Complaint, former SA Force "created certain fictitious personas" *id.*, at 3, and used those phony personas to "seek monetary payment, offering in exchange not to provide the government certain information." *Id.* Former SA Force also created fictional

characters, such as "Kevin," a supposed law enforcement insider who was providing the information to Nob (who was former SA Force, in his authorized undercover role, masquerading as a drug dealer), which Nob in turn was corruptly providing to Dread Pirate Roberts (hereinafter "DPR"). *Id.*, at 14.

Also, former SA Force "stole and converted to his own personal use a sizable amount of bitcoins that DPR sent to Force . . ." *Id.*, at 4. Former SA Bridges also illegally acquired Bitcoin from the Silk Road website, and assisted former SA Force in his illegal endeavors. *Id.*, at 41-49.

In describing former SA Force's assumption of the screen name DeathFromAbove, which he used alternately in an attempt to extort DPR, and/or provide inside law enforcement information to DPR, the Force Complaint concludes that former SA Force was the source of certain information in the LE_counterintel file found on Mr. Ulbricht's laptop because the excerpts in that file "contain information that came from a person or persons inside law enforcement, in part because of their substance and in part because of their use of certain terminology and acronyms that are not widely know by the public." Force Complaint, at 12.

As a result, in assessing former SA Force's activities as DeathFromAbove, the Force Complaint posits that such misconduct "demonstrates that FORCE had a history of: (1) creating fictitious personas that he did not memorialize in his official reports or apprise his superiors at the DEA or the prosecutor of; (2) soliciting payments from DPR; (3) providing law-enforcement sensitive information to outside individuals when the disclosure of such information was not authorized and not memorialized in any official report." *Id.*, at 26.

ARGUMENT

C. *The Government's Investigations of Mark Karpeles and Anand Athavale Were Not Mere "Leads" or "Theories" or "Suspicions" or "Hunches"*

In a further effort to excuse its late production of *Brady* material in the guise of 3500 material on the eve of trial, the government's cites, in its Memo of Law, at 18, cases for the proposition that the "prosecution is not required under *Brady* to disclose every lead, theory, suspicion, or hunch entertained by law enforcement agents during their investigation." Yet those cases are patently inapposite.

1. *The Government's Investigation of Mark Karpeles*

SA Der-Yeghiayan's investigation of Mark Karpeles was not a "lead, theory, suspicion, or hunch[.]" Rather, as SA Der-Yeghiayan's 3500 material demonstrates, he swore *two* separate affidavits in support of search warrants for Mr. Karpeles's e-mail accounts, in two different federal districts, over the course of several months, attesting that there was *probable cause* to believe that Mr. Karpeles was engaged in criminal activity related to operating or managing the Silk Road website.[5]

In a May 29, 2013, e-mail from SA Der-Yeghiayan, he attaches a draft affidavit for a search warrant in the Northern District of Illinois. *See* 3505-13 (attached hereto as part of Exhibit 1). Within that affidavit, SA Der-Yeghiayan declares that

> [b]ased on the above information, I believe there is probable cause that the email address magicaltux@gmail.com and the email address mark@tibanne.com will contain information and evidence related to the distribution can [sic] of controlled substances and conspiracy to distribute a controlled substance as well as additional evidence of KARPELES operating as an unlicensed money service

[5] Of course, as discussed **post**, at 45-48, that also inextricably links the various federal investigations, including the Baltimore investigation, of the Silk Road site, and demonstrates the relevance of former SA's Force and Bridges's misconduct to *this* case.

business."

See 3505-20-21 (attached hereto as part of Exhibit 1). *See also* 3505-24-25 (relating to the investigation of Mr. Karpeles and his Bitcoin exchange company, Mt. Gox).

Nearly three months later, August 15, 2013, SA Der-Yeghiayan performed the same function for the *Southern District of New York*. In an e-mail that day to *AUSA Turner*, SA Der-Yeghiayan noted he was "preparing to swear this out today." *See* 3505-205 (attached hereto as part of Exhibit 2). Attached to that e-mail, which was in response to an e-mail from AUSA Turner earlier that day, with the draft affidavit attached (and which was most likely written by AUSA Turner). *Id.*

In the affidavit, at 3505-206-33 (attached hereto as part of Exhibit 2), SA Der-Jeghiayan swears that "there is probable cause to believe that the SUBJECT ACCOUNTS contain evidence, fruits, and instrumentalities of narcotics trafficking and money laundering, . . ." 3505-209-10 (at ¶ 3). *See also* 3505-226, at ¶ 23 ("I respectfully submit there is probable cause to believe that KARPELES has engaged in the SUBJECT OFFENSES").

The affidavit by SA Der-Yeghiayan, ostensibly written by AUSA Turner, states that it is "based on my personal knowledge, my review of documents and other evidence, and my conversations with other law enforcement officers and civilian witnesses." 3505-210 at ¶ 4 (Exhibit 2). Also, it "does not include all the facts that I have learned during the course of my investigation." *Id.*, at ¶ 4.

Specifically, the affidavit also attests that:

- "I believe that KARPELES has been involved in establishing and operating the Silk Road website." 3505-224, ¶ 22. *See also* 3505-267 (July 11, 2012, e-mail from SA Der-Yeghiayan stating, "[w]e think we found out who's behind the [Silk Road]");
- Mr. Karpeles "has the technical expertise and experience necessary in order to establish and operate a large commercial website such as the Silk Road Underground Website." 3505-225, at ¶ 22(c);
- Silk Road "relies on a highly complex system for processing Bitcoins strongly suggests that it was designed by someone with extensive technical expertise related to Bitcoins – which KARPELES, being the owner and operator of a major Bitcoin exchange and Bitcoin discussion forum, clearly has." *Id.*; and
- ". . . in early 2011, around the same time the Silk Road began operating, KARPELES acquired Mt. Gox. Given his ownership of this Bitcoin exchange business, KARPELES had a strong motive to create a large underground marketplace where Bitcoins would be in high demand. The Silk Road website was uniquely well suited to this purpose, as it generated a huge source of demand for Bitcoins. Indeed, as of April 2013, the total value of Bitcoins in circulation topped 1 billion dollars. Because there few legitimate vendors who accept Bitcoins as payment, it is widely believed that the rise of Bitcoins has been driven

in large part by their use on Silk Road." 3505-224-25, at ¶ 22(b).[6]

As part of the SDNY search warrant application, AUSA Turner himself filed a declaration seeking a Sealing Order, in which he affirmed that sealing was necessary "to avoid premature disclosure of the investigation which could inform potential criminal targets of law enforcement interest[.]" 3505-234 (attached as part of Exhibit 2). Thus, AUSA Turner asked the Magistrate Judge to "order the Provider not to notify any person of the existence of the warrant."[7]

Notwithstanding these facts, the government possesses the temerity to describe the investigation of Mr. Karpeles – and the rationale for not disclosing it as *Brady* material – as a "hunch" or "lead" or "theory" or "suspicion." *Probable cause*, determined by the very same prosecutor who tried this case, is exceedingly more substantial than of those ephemeral concepts.

In addition, the government's claim, in its Memo of Law, at 17, that the investigation shifted to Mr. Ulbricht once he was identified as a suspect is again refuted by the record created

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[6] In an undated report, SA Der-Yeghiayan also stated, "Agents have discovered strong ties between those controlling the bitcoin markets and those operating the Silk Road." 3505-3122-24. *See also id*., ("HSI O'Hare has also identified multiple financial accounts belonging to the Silk Road operators which contain bitcoins equal in value to millions of U.S. dollars" and "[o]ver the last few months, HSI O'Hare has made several breakthroughs in identifying high priority targets believed to be the backbone of the website"). SA Der-Yeghiayan also wrote another, six-page report regarding his then-ongoing investigation of Mr. Karpeles. *See* 3505-3475-80.

[7] That concern about notice related to Mr. Karpeles and his confederates, and not to Mr. Ulbricht, who was not yet a target or even focus of the government's investigation and is not even mentioned in the warrant application. Of course, as discussed **post**, at 56, Mr. Karpeles had already been alerted to U.S. law enforcement's interest in him by the precipitous seizure – by none other than former SA Bridges (likely in concert with former SA Force) – of Mr. Karpeles's accounts at Dwolla, a money exchange business, worth more than $2 million dollars.

by the government itself. For example, September 30, 2013, the day before Mr. Ulbricht's arrest,

SA Der-Yeghiayan requested, "can we also have a copy of their UC chats (and their Seattle counterparts) with DPR to see if there's any language or connections to [Mr. Karpeles] or the vendors we're working." 3505-3512.

The day after Mr. Ulbricht's arrest, October 2, 2013, SA Der-Yeghiayan wrote an e-mail that "after reviewing some notes from [Mr. Ulbricht's] computer last night/this morning there appears to be some inferences to [Mr. Karpeles's] involvement and associations to [Silk Road]." 3505-3020. Also, SA Der-Yeghiayan wrote in an October 7, 2013, e-mail – nearly a week after Mr. Ulbricht's arrest – to AUSA Turner and Internal Revenue Service Special Agent Gary Alford, in response to SA Alford's e-mail regarding an allegedly hacking of the bitcoin forum soon after Mr. Ulbricht's arrest, "I figured MK [Mr. Karpeles] is purging everything after [Mr. Ulbricht's] arrest . . . I know he was initially involved." 3505-707 (ellipsis in original).

A week later, in an October 15, 2013, e-mail, SA Der-Yeghiayan was still providing materials relating to Mr. Karpeles, as he sent AUSA Turner an Excel spreadsheet of "Karpeles Dwolla Transactions" – which consists of nearly one thousand pages. *See* 3505-895, 901-2916. SA Der-Yeghiayan also authored an investigative report dated October 17, 2013, a little more than two weeks after Mr. Ulbricht's arrest, regarding the return on a search warrant served on Google for two of Mr. Karpeles's e-mail accounts. *See* 3505-3869.

At the same time, the government was also reaching out to Mr. Karpeles for information about Mr. Ulbricht. In an October 12, 2013, e-mail to AUSA Turner and SA Alford, SA Der-Yeghiayan, commenting on the source of information about Mr. Ulbricht's Mt. Gox account,

"just heard that information was passed from MK's [Mark Karpeles's] atty's to Baltimore." 3505-895.

Thus, Mr. Karpeles was a subject of the government's investigation from mid-2012 (*see* 3505-267, cited **ante**, at 23) – nearly 18 months – until even after Mr. Ulbricht's arrest, which ultimately occupied the entirety of the prosecution's attention. In fact, as SA Der-Yeghiayan confirmed at trial, the government has never examined any of Mr. Karpeles's electronic devices, or servers, or any of his other e-mail accounts beyond the two covered by the subpoena served upon Google. T. 681-82.

Consequently, the government's claim that its investigation of Mr. Karpeles was insufficiently substantive to constitute exculpatory material and information it was required to disclose is simply unsustainable.

2. ***The Government's Investigation of Anand Athavale***

The government's investigation of Anand Athavale also constituted an inquiry far more substantial than a "hunch," "lead," "theory," or "suspicion." In a November 12, 2012, e-mail, SA Der-Yeghiayan wrote that "[w]e believe we just make a break through recently and have identified the administrator of the website who is residing in or around Vancouver." 3505-318.

The next day, November 13, 2012, SA Der-Yeghiayan described Mr. Athavale at "the target," 3505-316, and "the Vancouver target." 3505-317. *See also* 3505-738-39 (November 19, 2012, e-mail from SA Der-Yeghiayan stating, "[t]his guy I believe [] is the main admin for the website"). SA Der-Yeghiayan would later write, too, that Mr. Athavale "has the computer skills and knowledge to [be] able to operate the Silk Road in the manner in which it appears DPR does[,]" and "has demonstrated the ability to be able to play the part of multiple identities

online." 3505-3084.

In that November 13, 2012, e-mail, SA Der-Yeghiayan also reported that "[w]e also have pages of chats conducted with a UC agent. I took all the chats and message created by the user and was searching key words used by the administrator in another online forum I believe the Admin posts in." 3505-316. Elaborating, SA Der-Yeghiayan explained that he had "spent quite a bit of time analyzing his writing and posts he has made. Even went as far as having an English professor from a major University critique each writing sample[] and who said they could very well be the same person." 3505-317.

SA Der-Yeghiayan prepared a ten-page report regarding his investigation of Mr. Athavale, focusing on Mr. Athavale's background, his extensive internet presence, and a comparison of Mr. Athavale's writing style with that of Dread Pirate Roberts. 3505-591-600 (a copy of which is attached as Exhibit 3). That analysis included 32 separate similarities cited by SA Der-Yeghiayan. 3505-596-97.

SA Der-Yeghiayan's report regarding Mr. Athavale also noted that "HSI O'Hare has identified ATHAVALE as the likely identity behind the SR [Silk Road] administrator username Dread Pirate Roberts by using the posts on the SR Forum, and using the chat sessions recorded by HSI Baltimore." 3505-598. SA Der-Yeghiayan's report explained that "[t]here has been extensive analysis of distinct writing styles, sayings, spelling mistakes, cliches and specific nuances, which have led to determining ATHAVALE as *a highly likeable target*." *Id.* (emphasis added). Also, HSI O'Hare formally requested the assistance of HSI Vancouver (where Mr. Athavale reportedly resided) in the investigation of Mr. Athavale. *Id.*

In another report regarding Mr. Athavale, SA Der-Yeghiayan set forth in six pages of detail, with specific examples, 27 separate similarities "in use of words or statements" made by Mr. Athavale and DPR. 3505-3072-78, as well as lengthy passages from posts made Mr. Athavale. 3505-3078-83.

The government's attempts, in its Memo of Law, at 18, to minimize the importance of SA Der Yeghiayan analysis of language patterns in identifying DPR would be merely unavailing if they were not so disingenuous and contrary to the government's professed investigative purposes with respect to Mr. Ulbricht.

For example, the warrant for Mr. Ulbricht's laptop (attached as Exhibit 11 to the August 1, 2014, Affidavit of Joshua L. Dratel, Esq., in support of Mr. Ulbricht's motion to suppress certain evidence) sought, and received, authorization to search for precisely that information:

> 44. The SUBJECT COMPUTER is also likely to contain evidence concerning ULBRICHT relevant to the investigation of the SUBJECT OFFENSES, including evidence relevant to corroborating the identification of ULBRICHT as the Silk Road user "Dread Pirate Roberts," including but not limited to:
>
> a. any communications or writings by Ulbricht, which may reflect linguistic patterns or idiosyncracies associated with "Dread Pirate Roberts"[] or political/economic views associated with "Dread Pirate Roberts" *(e.g.,* views associated with the Mises Institute);
>
> * * *
>
> c. any evidence concerning Ulbricht's travel or patterns of movement, to allow comparison with patterns of online activity of "Dread Pirate Roberts" and any information known about his location at particular times;
>
> * * *
>
> h. any other evidence implicating ULBRICHT in the SUBJECT OFFENSES.

See ¶ 44 of the Application for a Search Warrant for Mr. Ulbricht's laptop.

The footnote to ¶ 44(a) explained the basis for that blanket search:

> For example, "Dread Pirate Roberts" is known often to begin sentences with "Yea" – distinct from the usual spelling of the word, "Yeah." ULBRICHT is also known to favor this spelling of the word; for instance, his username on YouTube is "ohyeaross." The SUBJECT PREMISES is expected to contain writings or communications that will allow for similar linguistic comparisons between ULBRICHT and "Dread Pirate Roberts."

Id., at ¶ 44(a) n. 21.

In fact, the government prepared (but did not use) for SA Der-Yeghiayan's re-direct examination at trial a series of exhibits highlighting, with red circles, that alleged idiosyncracy in various electronic communications. Thus, again, the government's argument is contradicted dispositively by its own investigative priorities and its trial preparation.

Thus, SA Der-Yeghiayan devoted countless hours examining Mr. Athavale's language patterns, and ultimately a series of pages in his reports to the subject, and even submitted all the material to a college professor for expert analysis, with the professor reporting back that Mr. Athavale and DPR "could very well be the same person." 3505-317.

It is assumed, based on the search warrant application for Mr. Ulbricht's laptop and social media accounts, as well as the prospective government exhibits at trial, that SA Der-Yeghiayan and/or other agents and AUSA's performed the same meticulous scrutiny with respect to Mr. Ulbricht's communications. Yet no such opinion by a college professor or anyone else was provided to the defense with respect to Mr. Ulbricht.

Moreover, SA Der-Yeghiayan's interest in Mr. Athavale remained active until at least April 2013 – well after former SA Force, in his guise as DeathFromAbove, had alerted DPR that the government believed he was Mr. Athavale – as evidenced by subsequent e-mails from SA

Der-Yeghiayan. *See* 3505-3057-58 (e-mails dated April 3, 2013 & April 4, 2013).

Thus, Mr. Athavale represented not a "hunch" or "lead," but rather, as described by the Special Agent with the most law enforcement experience monitoring and studying the Silk Road website, was "a highly likeable target" to whom significant investigative resources were devoted, including numerous hours of SA Der-Yeghiayan's time, for at least five months. It bears noting as well that, as is the case with Mr. Karpeles, the government has never examined Mr. Athavale's electronic devices or his e-mail accounts, or the contents of the various servers and internet domains he has controlled. T. 682.

Judge Alex Kozinski, dissenting in *United States v. Olsen*, 737 F.3d 625 (9th Cir. 2013), announced that "[t]here is an epidemic of *Brady* violations abroad in the land[,]" and that "[o]nly judges can put a stop to it." *Id*., at 626 (Kozinski, J., *dissenting*). *See also id*., at 631-32 ("*Brady* violations have reached epidemic proportions in recent years, and the federal and state reporters bear testament to this unsettling trend") (citations omitted).

Judge Kozinski added that "[a] robust and rigorously enforced *Brady* rule is imperative because all the incentives prosecutors confront encourage them not to discover or disclose exculpatory evidence . . ." *Id*., at 630. As a result, Judge Kozinski urged his judicial colleagues that they "must send prosecutors a clear message: Betray *Brady*, give short shrift to *Giglio*, and you will lose your ill-gotten conviction." *Id*., at 633.

D. ***The Information That Was Not Disclosed Until the Force Complaint Was Unsealed***

The Force Complaint also revealed information that was not previously disclosed by the government. Obviously, the most dramatic was the involvement of a second law enforcement agent, former SA Bridges, in the corrupting of the Silk Road investigation. However, there were

other revelations, in both kind and degree, that appeared for the first time in the Force Complaint, but which should have been disclosed to the defense herein earlier, and even before trial.

As discussed **ante**, the investigation of former SA Bridges was already fully underway by Fall 2014, and his misconduct, was known by then as well (as demonstrated by the contents of the interviews of him). Former SA Bridges's relevance to this case is beyond obvious: as the Force Complaint attests, former SA Bridges "had been assigned to the Secret Service's Electronic Crimes Task Force." Force Complaint, at 40. Also, former SA Bridges's "specialty was in computer forensics and anonymity software derived from TOR." *Id.* Former SA Bridges was also "the Task Force's subject matter expert in Bitcoin." *Id.*

Beyond his particular expertise, firmly in the wheelhouse of multiple critical aspects of this case (computer forensics, TOR, and Bitcoin), former SA Bridges placed himself firmly in the middle of important factual issues, such as his serving as the affiant for the seizure of Mark Karpeles's Dwolla accounts in May 2013. *Id.*, at 41. Former SA Bridges also, according to the Force Complaint, served as the affiant for other documents. *Id.*, at 41.

In addition, former SA Bridges clearly worked in concert with former SA Force. *Id.*, at 43, 45. Thus, former SA Force was assisted in his illegal, unauthorized infiltration and manipulation of the Silk Road website by a computer forensics with expertise in anonymity and Bitcoin. Yet none of this information was disclosed to the defense herein until the filing of the Force Complaint. Clearly, the government at some point and in some fashion abandoned its "abundance of caution" policy altogether.

The timing, volume, and sophistication of former SA Force's Bitcoin transactions were

also provided for the first time in the Complaint. *See* Force Complaint, at 4 (former SA Force "engaged in a series of complex transactions between various Bitcoin accounts . . ."). Former SA Force received "several large international and domestic wire and Automated Clearing House (ACH) transfers through the latter half of 2013 and first half of 2014." *Id.*, at 7.

Former SA Force's deposits totaled at least approximately $757,000 "for the roughly year long period beginning April 2013 through May 2014." *Id.*, at 7-8 (footnote omitted). Nor does that include other deposits made afterward. *Id.*, at 8 n. 2. Any deposits made in the first half of 2014 would of course have occurred *after* Mr. Ulbricht had been arrested, begging the question of the source of those funds.[8]

The Force Complaint also divulged former SA Force's additional misconduct, which sheds light on his capacity for fraud, deception, forgery, abuse of his government authority and access – including predatory and retaliatory conduct and false accusations against innocent persons – and inventing complex, layered cover stories to conceal his misdeeds.

For example, the Force Complaint, at 29-33, in a section entitled "FORCE's Unlawful Seizure of R.P.'s Funds," details former SA Force's series of attempts to convert the contents of an account held by "R.P.," which efforts included abuse of various criminal law enforcement

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[8] Regarding the value of the Bitcoins former SA Force received via Silk Road, the Complaint notes how those quantities could be leveraged into extraordinary sums depending on when they were exchanged, *see* Force Complaint, at 15 & n. 8, (a concept the government resisted at trial but now embraces) with the maximum value reached soon after Mr. Ulbricht's arrest, a time – perhaps not coincidentally, when former SA Force attempted to cash out. *See Id.* ("during the time FORCE was liquidating bitcoins through his own personal accounts, the value of bitcoin fluctuated dramatically ranging from less than $300 per bitcoin to over $1100 per bitcoin"). *See also id.*, at 43 n. 26 (at its peak value in Fall 2013, the 20,000 bitcoins delivered January 25, 2013, from Silk Road accounts to a bitcoin wallet address would have been worth "in excess of $20 million").

privileges and false accusations against "R.P." to justify seizure of the account.

Former SA Force also misused subpoenas and in effect committed forgery by using his supervisor's stamp. *See id.*, at 29, 33-34, 35. *See also id.*, at 4 (former SA Force "used his supervisor's signature stamp, without authorization, on an official U.S. Department of Justice subpoena and sent the subpoena to a payments company, Venmo, directing the company to unfreeze his own personal account"). He also improperly performed queries in law enforcement criminal databases. *See* Force Complaint, at 27.

Moreover, former SA Force "'papered up' the seizure of the digital currency portion of" one of his victim's accounts "in such a way that he may have thought he would be covered in the event anyone ever asked any questions" about his conduct." At 32. *See also id.*, at 33 (former SA Force's documentation was an "attempt to give himself plausible deniability by memorializing the digital currency seizure . . .").

Thus, the extent and in some respects the nature of former SA Force's misconduct – as well as former SA Bridges's participation altogether – was hidden by the government from the defense in this case until well after trial.

E. ***What Remains Unknown (to the Defense, At Least) About SA Force's and Bridges's Misconduct In the Context of the Silk Road Investigation***

Nor can the government state the extent of that misconduct, which raises additional questions about what remains unknown. In fact, the government – even in the Force Complaint, or in any other context – cannot confirm the full range of former SA's Force and Bridges's misconduct and illegal activities in connection with the Silk Road site and investigation. Nor can the government produce or confirm the full range of communications and/or relationship between former SA's Force and Bridges with Dread Pirate Roberts, or any other person or entity

involved in the Silk Road site.

In fact, as the Force Complaint acknowledges with respect to the contacts between former SA Force and DPR, "[m]any but not all of their communications were encrypted[.]" *Id.*, at 12. Also, while "[s]ome portion of the communications between DPR and Nob (FORCE) are memorialized in FORCE's official case file . . ." and "[s]ome of the communications are also preserved on FORCE's official computers[,]" nevertheless "not all of the communications between DPR and Nob (FORCE) were memorialized." *Id.*, at 12.

Nor did former SA Force memorialize in any government file or computer his private key necessary to decrypt those PGP-generated communications with DPR. As a result, as the Complaint notes, the government cannot even provide a full account of former SA Force's communications with DPR. *Id.*, at 13-14. The Force Complaint also concluded that the encryption and failure to memorialize the private key was indicative of former SA Force's intent to conceal those communications from the government and that the reason was because they were corrupt communications. *Id.*, at 13-14. *See also id.*, at 13 ("the communications should have been documented, in deciphered form, and memorialized in the file").

The encrypted communications grew in frequency as the relationship between former SA Force and DPR progressed: "toward the end of the timeframe in which Nob (FORCE) was in relatively heavy communication with DPR, FORCE increasingly was not providing the decrypted versions of their communication." *Id.*, at 14.

For instance, for the chain of messages between former SA Force and DPR from July 31, 2013, through August 4, 2013, all but one of the messages (which was from DPR) are completely encrypted. *Id.*, at 16. Also, the communications between French Maid (another of

former SA Force's aliases)[9] and DPR, spanning from August 26, 2013, through September 13, 2013, were also predominantly encrypted. *See* Force Complaint, at 21. However, the Force Complaint tells only part of the encryption story, as review of discovery establishes that the range of Nob's encrypted communications with DPR was from January 29, 2013, through August 4, 2013.

As evidence of some of the encrypted communications between former SA Force and DPR, the Force Complaint also cites the portions included in the "LE_counterintel" file (proposed Defendant's Exhibit C at trial in this case) found on Mr. Ulbricht's laptop, which file, in response to government objections discussed in a sealed robing room conference prior to court February 3, 2015, the defense was permitted only to summarize – and only portions thereof (despite the defense's request to admit the entire document and/or read from additional sections). *See also* Force Complaint, at 20 ("the file appears to contain cut and pasted sections of what the insiders were relaying to [DPR] through online chats or private messages."

Yet the Complaint acknowledges the importance of that LE_counterintel file: "[p]rior to his arrest, DPR was known to have been hiding his true identity and location from law enforcement, so information concerning the government's investigation was material and valuable to him." *Id.*, at 13.

Also, the government cannot provide any assurance that *all* of former SA Force's communications with DPR – regardless of the particular alias utilized by former SA Force –

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[9] Interestingly, the Force Complaint cites as one basis for identifying former SA Force as French Maid their mutual use of an outdated version of software, the same technique used by SA Der-Yeghiayan with respect to Mr. Karpeles and the use of an outdated version of MediaWiki software. T. 659-63 (January 20, 2015).

have been preserved in *any* form, even encrypted. Nor is there any certainty with respect to how many aliases former SA Force employed – indeed, it was not until the defense pointed it out at trial that the government realized Death From Above was one of those aliases – or with whom he communicated with respect to Silk Road (via any system, *i.e.*, Silk Road Forum, private messaging, Tor chat, Pidgin chat).

Also unknown is the precise extent of former SA's Force and Bridges's compromising of the Silk Road website. In its Memo of Law, at 12 n. 3, the government provides bullet point arguments why what it describes as a defense "scenario was implausible . . ." Of course, no SDNY AUSA has ever described any defense as "plausible," but in any event that is an argument with respect to the *weight* of the evidence, an issue for the jury.

Nor are the government's arguments persuasive in any event. The codebase for the Silk Road site, PHP myadmin,[10] provided in discovery reveals that an administrator with the level of access granted to the user "Flush" could have reset the PIN on DPR's account and usurped control of it. Indeed, at the December 15, 2014, pretrial conference (previously sealed portion), the government could not state for certain what level of access former SA Force possessed as a result of his corrupt activities. *See* Transcript, December 15, 2014, at 40-43.

With PHP myadmin access, Flush (whose account former SA Force initially hijacked), or anyone (such as former SA's Force and/or Bridges) could have changed anything in the Silk Road database, including message text in the Forum or Market messages, and re-set passwords. There were multiple PHP myadmin accounts; therefore, Flush (or someone acting as him) could have had access to DPR's account without DPR losing access.

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[10] PHP is a server-side scripting language and can be used to build web applications.

In addition, the second SSH key – to which government witness Brian Shaw testified to at trial, *see* T. 1970-71 (February 2, 2015), unquestionably provided root access to the Silk Road server(s), and it is unknown who had access via that SSH key, or when it was created. Mr. Shaw did testify, however, that the "Frosty" SSH key was modified March 26, 2013, certainly after former SA's Force and Bridges's corrupt access to the Silk Road site.

Also, in a TOR chat log commencing February 17, 2012, at 19:14, DPR and Inigo (another administrator for the Silk Road site), there is discussion for approximately half an hour regarding privileges provided to Inigo for access to the Silk Road *database*. It is unclear whether Flush was granted the same access, but certainly the government has not established that Flush did not enjoy such access. In addition, the government's contention about the private key is meritless, as that key could easily have been duplicated.

Absent the opportunity to inspect items relevant to the investigation of former SA's Force and Bridges, the full extent of potentially exculpatory material cannot be determined. At this point, the defense has only a limited idea of the extent to which former SA's Force and Bridges were able to penetrate the Silk Road site given their level of administrative access. From information publicly available about the investigation, though, it appears that certainly former SA Bridges, and even former SA Force, had a relatively high level of technical sophistication. It is feasible that given their level of access, former SA's Force and Bridges could have been able to exploit vulnerabilities in the site to gain access to other administrative accounts, or possibly even the Dread Pirate Roberts account.

In that context, if the defense theory was "implausible," there was certainly no harm in its admission at trial. Rather, the government's still feverish efforts to preclude presentation of that

evidence demonstrates that it was material to the trial. Moreover, the information regarding former SA's Force and Bridges cannot be viewed in isolation. Instead, it must be evaluated along with other evidence the defense introduced at trial, and which it offered but was denied admission. Taken together, that evidence provides a compelling defense that Mr. Ulbricht should have been allowed to present to the jury.

Another still unknown aspect is the contents of the still-sealed paragraph (at 11) in the Force Complaint. In addition, the Force Complaint itself notes that it "does not include certain additional facts known to me and the government's investigation continues." *Id.*, at 6.

F. *The Record Demonstrates That Silk Road Investigations Were Coordinated and, for Practical Purposes and for Determining Relevance to This Case, Combined*

The government's repeated insistence that the Southern District of New York's investigation was "independent" of that in which former SA's Force and Bridges were involved is demonstrably repudiated by the record *created by the government's investigators and prosecutors themselves*.

That record establishes that all of the federal investigations of the Silk Road website, were coordinated and, for practical purposes, combined. To the extent there is any question with respect to that conclusion, it is respectfully submitted that the Court should order and conduct an evidentiary hearing on the issue.

By any conception of "independence," these investigations do not qualify. Rather, they were decidedly *inter*dependent because, as detailed below,

- the agents conducting the investigation were in continued contact with each other regarding the status of the investigations;
- supervisory law enforcement officials coordinated the investigations;

- each investigation made its fruits available to the other, and used that information from the companion investigation(s);
- information was entered in law enforcement databases to which all federal law enforcement enjoyed access;
- the investigations sought information about and from the same targets at the same time; and
- ultimately, SDNY was able to dictate the distribution of federal charges in the case for *all* of the districts involved in the coordinated investigations.

The 3500 material produced for SA Der-Yeghiayan serves as a catalogue of the interaction and linkage of the various investigations of the Silk Road website. For example, a report by SA Der-Yeghiayan regarding his investigation of Mr. Athavale (discussed in more depth **ante**, at 26-30), notes that in October 2012, "HSI Baltimore office provided SA Der-Yeghiayan with a file containing all of the Undercover (UC) chats made between a UC agent and DPR." 3505-3072 (attached hereto as part of Exhibit 4).

Similarly, in a May 22, 2013, e-mail to Lisa M. Noel, an HSI intelligence analyst with HSI Baltimore (and part of that Silk Road Task Force), SA Der-Yeghiayan wrote that "[w]e would like to examine some of the language, usage, diction, etc. with the new U/C chats from Nob." 3505-628. *See also* 3505-630 (in a November 2, 2012, e-mail regarding analyzing Mr. Karpeles's writing, SA Der-Yeghiayan remarks that "[t]his professor knows dread's writing better than anyone, it would be good to show him raw posts that are unedited").

Thus, at the outset of his investigation – which the government cannot claim was "independent" of the case against Mr. Ulbricht – SA Der-Yeghiayan was provided with the

principal product of the Baltimore investigation, *generated by former SA Force himself*. Thus, the connection is inescapable, regardless of the government's mantra of "independence."

Other e-mails and reports authored by SA Der-Yeghiayan describe the continued contacts. In a May 15, 2013, e-mail, SA Der-Yeghiayan wrote that "[i]n early August 2012, HSI Chicago notified HSI Baltimore of the connection made [between Mr. Karpeles and Silk Road] and stated that Karpeles was a target of HSI Chicago's investigation." 3505-273. Also, "HSI Baltimore was provided a copy of the HSI Chicago's ROI [Report of Investigation] that highlighted all the facts of the connection." *Id.*

In that same e-mail, SA Der-Yeghiayan memorialized the following interaction:

> HSI Chicago contacted HSI Baltimore and they confirmed that they shared all of HSI Chicago's information on KARPELES with members of their task force. HSI Chicago discovered that their IRS Agent, DEA Agent and SS Agent all inputted KARPELES into their individual investigations as a target and a potential administrator of the Silk Road based on HSI Chicago's ROI/information.

Id.

Subsequently, in an undated report, at 3505-273-75 (attached hereto as Exhibit 5), SA Der-Yeghiayan provided the following chronology:

- "[o]n May 10, 2013, [SA Der-Yeghiayan] was contacted by the HSI case agent and the Baltimore AUSA that the SS agent in their task force had issued a civil seizure warrant for Mutum Sigillum's Wells Fargo bank account. Both the case agent and AUSA stated they were not notified by the SS agent in their task force of the seizure warrant before it was already filed. The AUSA stated that he learned that the SS headquarters was notified that Wells Fargo had closed down

Mutum Sigillum account over suspicions of [18 U.S.C. §]1960 violations and the money was going to be returned to KARPELES. It is not exactly known at this time, but HSI Chicago believes that SS Headquarters notified the SS agent in Baltimore based on his record on KARPELES and therefore he got involved in making the seizure." 3505-274;

- "[t]he following Monday May 13, 2013, HSI Baltimore and the Baltimore AUSA Justin Herring contacted HSA Chicago to notify him that they negotiated with SS Baltimore to seize the money in KARPELES's Dwolla account using the same affidavit written by the SS. The total in the account was said to be over 3 million USD. HSI Baltimore stated that they would add Chicago's project code for their CUC and case number to their seizure of 3 million." 3505-275;
- "[t]he Chicago AUSA Marc Krickbaum is aware of both seizures and has informed the AUSA Justin Herring in Baltimore that Chicago was still intending on possibly pursuing criminal charges for 1960 violations that occurred in the State of Illinois. AUSA Marc Krickbaum had no objections to the SS seizure or HSI's seizure over the accounts even though HSI Chicago felt they should be making the seizure on the Dwolla account." *Id.*;
- "[i]t is HSI Chicago's and HSI Baltimore's case agent's position that the SS Baltimore Agent would never have been alerted by SS headquarters about KARPELES's bank account had it not been for the record they entered as a direct result of it being provided to them by HSI Chicago through HSI Baltimore. HSI Chicago is the source of the information for Baltimore's work on KARPELES as

well. HSI Chicago maintains the longest standing TECS records on KARPELES, and exclusive TECS records on Mt. Gox and Mutum Sigillum." *Id.*;

- "[c]ase agent Jared Der-Yeghiayan is also of the opinion that HSI Baltimore should have offered to defer the Dwolla seizure of 3 million USD plus to HSI Chicago knowing that they had developed the charges in their district and were pursuing criminal charges." *Id.*

Another, (seven-page) report from SA Der-Yeghiayan regarding various investigations into Silk Road further recounts their interlocking character. 3505-295-301 (attached hereto as Exhibit 6). For example,

- January 13, 2012, a Baltimore HSI supervisor "requested a phone call about HSI Chicago's Silk Road case." 3505-295;
- February 1, 2012, representatives of HSI Baltimore flew to Chicago for a meeting regarding the Silk Road investigation. AUSA's from both jurisdictions attended, as did HSI case agents and other personnel (including an Intelligence Analyst). *Id.*;
- during that February 1, 2012, meeting, HSI Baltimore "requested to split up our investigation so they could work a section of it[,]" to which HSI Chicago "strongly disagreed and stated that they were fully advance[d] in the case and did not see any advantage to give up any aspect of their investigation which included the administrators and organizers." *Id.*;
- HSI Baltimore claimed to have an informant who would enable HSI Baltimore to "take down the site within a week or two with that information." HSI Chicago

"disagreed that could be done and disagreed with the strategy they intended to take and stated they were working all aspects of the investigation and wanted to send a message with the case." 3505-296;

- "[t]he [February 1, 2012] meeting ended with HSI Baltimore stating that they intended on shutting down the website soon and weren't concerned with HSI Chicago's stragegy but they would coordinate once they take the website down." *Id.*;
- communications between HSI Chicago and HSI Baltimore continued with respect to the status of the investigation of Silk Road. *Id.*;
- in April 2012, HSI Chicago developed a new informant and informed HSI Baltimore. According to SA Der-Yeghiayan's report, "HSI Baltimore requested access directly to the informant but wouldn't tell HSI Chicago why they wanted access or what they wanted to ask the CI [Confidential Informant]. HSI Chicago offered to take any questions and directly ask the CI the questions for them, but they would not allow access to the CI without knowing any topic of questions. HSI Baltimore expressed anger over not being allowed direct access to the CI." *Id.*;
- in July 2012, HSI Chicago identified Mark Karpeles as a target of the investigation, and entered a record to that effect in the TECS system, to which all federal law enforcement agencies have access. 3505-296-97;
- July 9, 2012, a Baltimore HSI agent "wanted to send out a draft for HSI Headquarters notifying all HSI offices that he is the POC [point of contact] for all

Domestic Silk Road related investigations and that HSI Chicago will be the POC for all international related investigations. HSI rewrote HSI Baltimore's draft to state that they were [either redacted or missing]." 3505-297;

- during July 2012, more inquiries arose with respect to coordinating the HSI Chicago and HSI Baltimore investigations of the Silk Road website (*id.*);
- August 3, 2012, [HSI supervisory officials] informed SA Der-Yeghiayan that they believed HSI Baltimore wanted funding to travel to the foreign country to interview [Mr. Karpeles]." In response, SA Der-Yeghiayan sent an e-mail to HSI Baltimore agents "notifying them that [Mr. Karpeles] was more involved in the Silk Road and was a target o[f] their invesigation, and asked in the email not to share the information with the rest of their unofficial Task Force." *Id.*;
- August 23, 2012, "HSI Chicago was called to a meeting at [HSI supervisory offices] to meet with HSI Baltimore and each present their cases to both SACs [Special Agent in Charge] Operations each of their cases. At the end of the presentations both HSI Baltimore and HSI Chicago's Operations Managers were discussing the confusion and odd approach to the HSI Baltimore's investigation and asked HSI Chicago if [HSI Baltimore's] investigative methods are interfering with HSI Chicago's case. HSI Chicago expressed deep concern for HSI Baltimore's tactics and the lack of focus in their investigation." *Id.*;
- in October 2012, an HSI Baltimore agent "began asking SA Der-Yeghiayan for all his information on [Mr. Karpeles] because they were trying to work him too. In response, SA Der-Yeghiayan "informed [the HSI Baltimore agent] to not work

[Mr. Karpeles] independent of HSI Chicago." 3505-298;

- "HSI Chicago later discovered that HSI Baltimore had disseminated [Mr. Karpeles] to all members of their task force and they had issued multiple subpoenas on [Mr. Karpeles], and actively worked him to include a type of surveillance without the knowledge of HSI Chicago." *Id.*;
- "[i]n early October 2012, HSI Chicago began developing a method to identify the main administrator of the website by analyzing thousands of pages of text on various websites to make a match. In early November 2012, HSI Baltimore offered to provide UC [Under Cover] Chat information with the administrator to help HSI Chicago with their development. HSI later identified a target [Anand Athavale] and began issuing subpoenas to further the identification and location of [Mr. Athavale]. HSI Chicago informed HSI Baltimore and shared the subpoena information with HSI Baltimore." *Id.*;
- in December 2012, HSI Baltimore continued to request from HSI Chicago information regarding Mr. Karpeles. 3505-299. In late April 2013, "HSI Baltimore stated that they had looked heavily on their own into [Mr. Karpeles] and don't believe [Mr. Karpeles] is involved in the website no longer. HSI shared a few of their subpoena returns they received in early May." *Id.*;
- May 10, 2013, "[HSI] Baltimore notified HSI Chicago that the SS agent in their Task Force went 'rogue' and seized the bank account in the U.S. containing 2

million dollars from [Mr. Karpeles].[11] HSI Baltimore claimed to have no knowledge of the seizure until after it occurred. HSI Baltimore also admitted that they told the SS agent of the connections HSI Chicago made to the Silk Road back in August of 2012. HSI Baltimore stated that the SS agent went to a totally different AUSA in their District to file the affidavit to seize the account." *Id.*;[12]

- May 13, 2013, "HSI Baltimore called HSI Chicago and stated that they had complained enough to the SS about the way the agent went behind their back that the SS agreed to give HSI the other account containing 3 million USD belonging to [Mr. Karpeles]. HSI Baltimore proceeded to ask HSI Chicago if they could provide any other bank accounts belonging to [Mr. Karpeles] so they could seize those accounts too. HSI Baltimore proceeded to seize the 3 million USD using the same affidavit written by the SS agent except [the HSI Baltimore agent] substituted his name and knowing that HSI Chicago built their pending charges [against Mr. Karpeles] on those seizures." *Id.*;[13]

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[11] As the Force Complaint states, May 9, 2013, former SA Bridges "served as the affiant on a multi-million dollar seizure warrant for Mt. Gox and its owner's bank accounts" two days after receiving a large wire transfer from Mt. Gox and benefitting in the amount of $820,000 fronm a Mt. Gox account. Force Complaint, at 5. *See also id.*, at 9, 45.

[12] Despite the concentration on this issue during cross-examination of SA Der-Yeghiayan, and the government's related motion to preclude cross-examination and strike testimony, the government remained inexplicably mum regarding its knowledge of former SA Bridges's role in securing that seizure affidavit. If there is any question regarding what the government knew and when it knew it, it is respectfully submitted that the Court should order and conduct an evidentiary hearing on the issue.

[13] While HSI Chicago had expressed its intention to seek charges against Mr. Karpeles for violating 18 U.S.C. §1960 (operating an unlicensed money service business), HSI Baltimore had decided it would not pursue such charges. 3505-298.

- during a May 17, 2013, conference call that included as participants an AUSA from the Northern District of Illinois, two AUSA's from the District of Maryland, and HSI agents from both HSI Chicago and HSI Baltimore, one of the D.Md. AUSA's "stated they were trying to work on an interview with [Mr. Karpeles] with [Mr. Karpeles's] attorneys." The N.D. Illinois AUSA "asked what the purpose of the interviews was and [the D.Md. AUSA] stated they wanted to know more about [Mr. Karpeles's] money business and wanted to ask him directly about his knowledge of the Silk Road." In response, "HSI Chicago expressed serious concern over that approach and was concerned as to [the D.Md. AUSA's] using HSI Chicago's information developed on [Mr. Karpeles] for their own use." Ultimately, the "outcome of the" conference call was that one of the D.Md. [3505-299-300;
- HSI Chicago and HSI Baltimore conducted a "joint" search warrant "based on a new target developed by HSI Chicago." 3505-300;
- HSI Chicago and HSI Baltimore conducted another conference call July 9, 2013, about the Silk Road investigation. *Id.* During that call, neither the HSI Baltimore agents nor the D.Md. AUSA on the call mentioned – despite a question from SA Der-Yeghiayan whether there were any new developments – that another D.Md. AUSA had scheduled a meeting with Mr. Karpeles's attorneys. *Id.* That meeting occurred July 11, 2013. *Id.* During the meeting, Mr. Karpeles's attorney "randomly brought up the Silk Road and stated that their client was willing to tell them who [Mr. Karpeles] suspects is currently running the website in order to

relieve their client of any potential charges for [18 U.S.C. §1960]." *Id.* Also, the D.Md. AUSA "proceeds to set up a meeting with [Mr. Karpeles] overseas." *Id.* HSI Chicago did not learn of the July 11, 2013, meeting with Mr. Karpeles's attorneys until July 16, 2013. *Id.* Subsequently, one of the D.Md. AUSA's informed SA Der-Yeghiayan that the other D.Md. AUSA "continued to negotiate with [Mr. Karpeles's] attorneys" – despite SA Der-Yeghiayan's objections – and has changed the meeting location to Guam [] later on in August. *Id.*;

- July 12, 2013, there was a "coordination meeting with HSI Chicago, HSI Baltimore, *FBI New York* and multiple DoJ [Department of Justice] attorneys and CCSIP attorneys[.]" 3505-300. At that "coordination meeting, "HSI Chicago mentioned [Mr. Karpeles] as their main target." *Id.*;

A month later, in August 2013, SA Der-Yeghiayan swore to the affidavit, composed by AUSA Turner, in support of the SDNY search warrant application for Mr. Karpeles's e-mail accounts. Again, in light of this overwhelming evidence, any claim of "independence" is untenable. In the event there remains any question, it is respectfully submitted that an evidentiary hearing is necessary to challenge the government's utterly unreliable and unsupported assertions (that are contradicted by the government's own documents).[14]

Nor was former SA Force's investigation into Silk Road was transitory or superficial in any respect. It began in February 2012, *see* Force Complaint, at 22 n.14, and generated dozens of DEA-6 reports of his (authorized) undercover activities investigating the Silk Road website.

[14] A separate question that merits an answer is whether any evidence related to Nob or Flush was introduced in the grand jury that indicted Mr. Ulbricht.

In fact, as the Force Complaint points out, information-sharing, and its impact relevant to this case, continued through the summer of 2013: "by late July 2013, the Baltimore Silk Road Task Force had been made aware that the FBI was seeking to obtain an image of the Silk Road server, and therefore FORCE may have had reason to fear that any communications between himself and DPR would be accessible to the FBI in the event the FBI was successful in imaging the server." Force Complaint, at 17-18.[15]

Even the government's Memo of Law, at 14 n. 4, contradicts its naked claim of "independence." That footnote, in explaining the government's realization (after the defense attempted to introduce certain documents provided in discovery) that DeathFromAbove was among former SA Force's aliases, states that "former SA Force had access to law enforcement reports filed by SA Der-Yeghiayan, including reports concerning his suspicions regarding Anand Athavale, which was likely the source of the information leaked by Force through the "DeathFromAbove" account." (Citation omitted).

Ultimately, the investigations were not only interrelated and interdependent, but their outcomes were dictated by SDNY. As SA Der-Yeghiayan reported in a September 20, 2013, e-mail to an HSI colleague,

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[15] That would also ostensibly have provided DPR, via former SA Force as Nob (or French Maid, or alpacino, or DeathFromAbove, or perhaps some other incarnation) with advance notice of the FBI's imaging of Silk Road's servers – consistent with the defense's position that DPR purchased and/or was provided with information that permitted him to formulate and implement – with former SA Force's (and perhaps former SA Bridges's) assistance – an escape plan that also incriminated Mr. Ulbricht falsely. In that context, former SA Force also learned at least days in advance that law enforcement intended to make an arrest of DPR in late September 2013, thereby giving him ample time to warn DPR. *See* Force Complaint, at 18 & n. 10. Yet Mr. Ulbricht did not assume any additional security protocols, but instead violated even the most fundamental security precepts in multiple ways.

> I think that would be a good pitch but that they can't expect to take an admin or something – they all need to be prosecuted out of the same AUSA's office under a conspiracy – NY will never agree to anything else. It's not like they can give them an admin, that makes no sense from a prosecutorial standpoint.
>
> Baltimore can have a few vendors of our choosing – as well as the ability to say they "helped" ID some of the admins by "allowing" NY to use OUR UC account to identify some of the lower admins, and they can have sloppy seconds on DPR for their murder for hire. They can also have some info on other bitcoin companies that MK might name is shady after we get done with him.
>
> That's the best that can be given and they should consider themselves lucky for getting anything close to that. Or we can just stall, and Baltimore gets nothing and we contributed to the other two admins getting away [redacted]. We'll get no HSI banner on the site, and will probably get no cooperation from NY with any information related to MK. If DPR names MK in the interview and we didn't help them get the other admins when we had the chance – NY will leave us out of it and tie him into their conspiracy. We will then be left dealing with HSI Baltimore's tears and them then trying to take [redacted].
>
> I think it's important we help them have a "come to Jesus" moment otherwise our agency loses as a whole. It's a simple sell if they know the alternative is they will be left with absolutely nothing – no matter how much they whine and complain to HSI HQ, it won't stop the SDNY from prosecuting all of them without any of us.

3505-319 (attached hereto as Exhibit 7).

A half-hour later that same day, September 20, 2013, SA Der-Yeghiayan e-mailed that same colleague with the following message:

> I think there's room to avoid the drama by instead of dwelling on the past or trying fluff up each others cases under the false assumption that the website will be up in the next month to talking about how to try and make HSI in general walk away from this without looking like complete fools. But it has to start with HSI Baltimore conceding that they will not be identifying or prosecuting dread first or any other admin for a fact. Then realizing that they still stand a chance, if they play nice, to walk away from this with something to show from their "investigation."

> They can easily erase a lot of the damage they've done by cooperating with NY's almost guaranteed prosecution of the website.
>
> The only two options are remain in denial and walk away with nothing but blame and egg on their face in the next few weeks, OR play nice and possibly take some credit for the identification and prosecution of all the admins, and reap some of the benefits by prosecuting some of the vendors our defendant is going to identify. No other way forward than that.

3505-320 (attached hereto as Exhibit 7).

Thus, in light of all of the evidence set forth above, the interdependence and continuing relationship among the investigations, including that in which former SA's Force and Bridges participated, is indisputable.

G. *The Information Regarding the Investigation of Former SA's Force and Bridges Would Be Relevant to This Case Regardless Whether the Investigations Were Independent*

Even assuming *arguendo* the SDNY investigation was "independent" from the District of Maryland investigation, the information and material regarding former SA's Force and Bridges was, *as evidenced by the government's own strategy in preparing for trial herein*, as well as other objective indicia, plainly relevant to this case.

1. *The Government's Initial Exhibit List*

The government's initial Exhibit List was provided December 3, 2014 – two days *after* the government's November 21, 2014, letter to the Court setting forth information regarding the investigation of former SA Force was disclosed to the defense – included a number of documents and materials directly relevant to former SA Force. For example,

- GX 220 was a Torchat buddy list that contained the identification for "Nob," an account operated by former SA Force;
- GX 225 was a Torchat between DPR and "Scout," dated January 26, 2013, in which DPR stated, "I'm not even going to hurt this guy that ripped me off if I can help it. This isn't the mob or cartel." Given the time frame of the chat, that is most likely a reference to "Flush," an account ultimately operated by former SA Force, and the administrator who was the subject of the alleged murder-for-hire scheme in which Nob was involved;
- GX 227 was a Torchat log between DPR and Cimon dated January 26, 2013, in which DPR stated, "had a csr go rogue and rip me off for 350k." That, too, related to the "Flush" account that ultimately was under former SA Force's control, and which he allegedly used to steal funds from the Silk Road website. The discussion also references Nob's involvement in the first alleged murder for hire plot;
- GX 229A was a Torchat log containing a conversation dated January 26, 2013, between DPR and PatHenry, in which, at 6, DPR stated "also I have Flush (our new guy) ready for you." That portion of the chat, however, was deleted from the exhibit ultimately entered into evidence at trial by the government as GX 229A;
- GX 229B was a Torchat log between DPR and Inigo containing multiple discussions regarding the "Flush" account, "Flush's" whereabouts, the money "Flush" had allegedly stolen from the Silk Road site, and as to his capture;
- GX 241 was the unredacted journal for part of 2013 recovered from Mr.

Ulbricht's laptop. The journal includes mid-September 2013, entries regarding DPR's communications with Silk Road user "French Maid," and April 2013 entries regarding DPR's communications with DeathFromAbove. Also, log entries for June 5, 2013, to September 11, 2013, made reference to "alpacino," another one of former SA's Force's unauthorized user accounts, who had been "leaking info to [DPR;]"

- GX 243 was the "LE_counterintel" file in its unredacted entirety. It included multiple entries regarding information provided by alpacino and by another source, "East India Traitor" (whose identity has been determined, at least by the defense, but who could be former SA Force as well). A copy of that proposed Government Exhibit, which was offered by the defense at trial as Defendant's Exhibit C, is attached hereto as Exhibit 8;
- GX 250 was a computer file entitled "SR_accounting," an alleged Silk Road expense report, that included references to "theft from mtgox" as well as regular payments to hackers and other extortionists, a large number of which occurred in the spring and summer of 2013;
- GX 252 was a document titled "todo_weekly.txt" which contained a section entitled "pay employees" that listed "albertpacino" as receiving $500 per week;
- GX 275 was a document entitled "ops.txt," and which was ultimately redacted to remove references to Curtis Green and his bitcoin address, both of which were related to the first alleged murder for hire plot involving former SA Force) by the government prior to its admission into evidence.

2. *The Government's Opposition to Mr. Ulbricht's Motion for Bail*

The government also relied on former SA Force's work in opposing Mr. Ulbricht's application for bail in November 2013. The government's November 20, 2013, letter included the following passages:

- "[t]he Complaint also describes how Ulbricht was willing to use violence to protect his online drug empire, commissioning multiple murders for hire in seeking to guard his interests in Silk Road. Ulbricht has been separately charged for one of these attempted murders for hire in an indictment issued by the United States Attorney's Office for the District of Maryland, unsealed on October 2, 2013." Gov't Letter, at 2. The government also attached the District of Maryland Indictment to its Response, as Exhibit B;
- "[m]oreover, he repeatedly resorted to violence in seeking to protect his lucrative business, commissioning at least six murders for hire in connection with operating the site." *Id.*, at 4;
- describing "no fewer than six murders for hire within a span of four months in 2013" that Mr. Ulbricht allegedly "commissioned," followed by a detailed account of the chats between DPR and Nob and others, and payment particulars. *Id.*, at 5; and
- describing another chat between Nob and DPR regarding DPR's concealment of his identity even from his girlfriend. *Id.*, at 10.

3. *The Importance of the First Half of 2013 Regarding the Evidence At Trial*

The relevance of the misconduct committed by former SA's Force and Bridges is also apparent from the time frame in which it is believed to have commenced and occurred – the first half of 2013. That period was critical in the context of the creation and collection of evidence used against Mr. Ulbricht at trial, and the defense's response to it.

A partial time line of relevant events during that span – described only by information possessed by the defense at the time of trial (and not including reference to former SA's Force or Bridges misconduct) – consists of the following:

- January 26, 2013: $350,000 is taken from Silk Road accounts;
- January 26, 2013: DPR learns "Flush" has been arrested for cocaine possession;
- January 26-29, 2013: DPR discusses a murder for hire plot with several Silk Road administrators, as well as with a federal law enforcement agent posing as a Silk Road user;
- February 2013: "Nob" murder for hire plot against Flush allegedly occurs;
- March 13, 2013: discussion thread regarding "friendlychemist" and "redandwhite" begins (GX 936);
- March 16, 2013: User with user name "Ross Ulbricht" posts a question on Stack Overflow (T. 1343-44 [January 28, 2015]);
- March 16, 2013: publicly displayed user name on Stack Overflow account changes from "Ross Ulbricht" to "frosty" (GX 1200; T. 1343-46[January 28, 2015]);
- March 21, 2013, March 25, 2013, and April 11, 2013: Silk Road servers are subject to a DDOS (distributed denial of service) attack (T. 928 [January 21, 2015]; T. 1443 [January 28, 2015]; T. 1755 [January 29, 2015]; *see also* GX 241]);

- March 26, 2013: SSH root access key to Silk Road servers modified to "frosty@frosty" (GX 901; T. 1753-1755 [January 29, 2015];

- March 31, 2013, April 8, 2013, and April 12, 2013: notable Bitcoin transactions occur those dates, as pointed out by SA Der-Yeghiayan in a September 16, 2013, e-mail (3505-355);

- April 1, 2013: communications to DPR from DeathFromAbove threatening DPR but also offering confidential law enforcement investigative information – including the name Anand Athavale as a government target – in exchange for payment begin (DX E);

- April 4, 2013: Email account associated with Stack Overflow account is changed from "rossulbricht@gmail.com" to "frosty@frosty.com" (T. 1347-48 [January 28, 2015]);

- April 15, 2013: murder for hire plot against "friendlychemist" allegedly carried out by "redandwhite" allegedly occurs, ending with a $500,000 payment (GX 936);

- May 10, 2013: HSI Baltimore seizes more than $2 million from accounts Mark Karpeles's company holds at Dwolla, thereby notifying Mr. Karpeles that he is on the government's radar (T. 729 [January 20, 2015]);

- Early June 2013: according to FBI Special Agent Christopher Tarbell, FBI first learns of the genuine IP address for the Silk Road servers (in Iceland) (*see* Declaration of former Special Agent Christopher Tarbell, at 3-4);[16]

- June 6, 2013: at the request of the U.S. government, law enforcement officials in Iceland image the Silk Road servers located there;

[16] The government, however, had a lead on a different Silk Road server months prior: "[s]everal months earlier, the FBI had developed a lead on a different server at the same Data Center in Iceland ("Server-1"), which resulted in an official request for similar assistance with respect to that server on February 28, 2013." *See* Tarbell Declaration, at 5 n.7.

- June 11, 2013: SA Der-Yeghiayan sends an e-mail noting the difficulty of determining the identities of users on the Silk Road site because multiple people were operating multiple accounts with different user names, leading him to ask, "Sheesh. Who's on first?" (3505-03523-03524; T. 426-28 [January 15, 2015]; T. 633-34 [January 20, 2015]);
- June 2013: "alpacino" begins providing DPR confidential law enforcement information in return for payment (DX D [which is the same as initial GX 241]);
- July 2013: DPR assumes control of the Cirrus/ Scout account to obtain information about Mr. Wonderful, allegedly a federal law enforcement agent who had been investigating DPR;
- July 11, 2013: HSI Baltimore agents meet with Mr. Karpeles's lawyers, who offer to reveal DPR's identity in exchange for the government not bringing any charges against Mr. Karpeles (3505-300; T. 490-556 [January 15, 2015]);[17] and
- July 23, 2013: FBI images the Silk Road servers located in Iceland.

4. *The Communications Between DeathFromAbove and DPR*

In foreclosing the defense's use of any information or materials relating to former SA Force and his misconduct, the government exceeded the boundaries set by the Court in its pretrial rulings on the issue. While the embargo was supposed to cover only the information and materials generated as part of the ongoing grand jury investigation of former SA Force, at trial in this case the government converted that into a ban on the defense's use of information and documents provided as part of discovery, which the defense had been expressly permitted to utilize at trial.

[17] The 3500 material discussed **ante**, at 25, relating how Mr. Karpeles's lawyers passed information about Mr. Ulbricht to the government, *see* 3505-2925, further connects the various investigations. Similarly, the interaction among investigations, and relevance to this case, is further established by the common mention of Mr. Athavale.

In fact, during the previously sealed portion of the December 15, 2014, pretrial conference, AUSA Turner, when asked by the Court about the parameters of the prohibition imposed on the defense by Rule 6(e), Fed.R.Crim.P., answered, "What they can't reveal is that [former SA Force] is under a grand jury investigation. . . . It's just a matter that he's being investigated for [certain activities]." Transcript, December 15, 2014, at 48.

AUSA Turner added that

> [s]o in terms of what [Rule] 6(e) prohibits, we think it prohibits them eliciting somehow that he's under a grand jury investigation. That's the basic point. I mean, that's what 6(e) requires be kept secret while the investigation is pending. They still have many facts in their possession. They've had them in their possession long ago.

Id.[18]

Yet the communications between DeathFromAbove and DPR were *not* mentioned in the government's November 21, 2014, letter to the Court, did not mention former SA Force at all, and did not disclose that he was under a grand jury investigation. Also, the government's reaction at trial to the defense's efforts to introduce those communications (as Defense Exhibit E, a copy of which is attached hereto as Exhibit 9), memorialized in the government's

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[18] During the previously sealed portion of the December 15, 2014, pretrial conference, the Court recognized the government's inconsistent and expansive position with respect to the scope of the Rule 6(e) proscription. In response to AUSA Turner's remark that the "point is, we're not trying to say certain witnesses, certain evidence is off limits. It's the fact that this is a grand jury investigation. That's what they're prohibited from disclosing[,]" the Court replied

> [w]ell, I hear what you're saying. And it's like ships passing in the night. *Because on the one hand it's the content of the investigation*. And what you're suggesting is it's really not the content, it's the fact of.

Transcript, December 15, 2014, at 49-50 (emphasis added).

(previously sealed) February 1, 2015, letter to the Court, makes it clear that the government had not made the connection between former SA Force and DeathFromAbove until the defense sought to introduce DX E. *See also* Government's Memo of Law, at 24 n. 10.

Nevertheless, at trial the government used the grand jury investigation of former SA Force as a sword to preclude far more than the mere fact that former SA Force was under investigation, and instead employed that excuse to eviscerate the defense and its attempts to introduce evidence not covered by the Court's pretrial rulings. In addition to the DeathFromAbove, the contents of Defense Exhibit E did not reveal that former SA Force was the subject of an ongoing grand jury investigation, yet the bulk of the information therein, as well as the document itself was precluded even though, as discussed **ante**, at 4, *it was included as a Government Exhibit in the initial list provided two days after the government disclosed to the defense the grand jury investigation of former SA Force*.

The government's account, in its Memo of Law, at 13-14, of its objections to the defense's attempt to introduce the private messages from "Death From Above" demonstrates the government's true objectives in precluding the information and evidence regarding former SA's Force and Bridges, which was simply to deprive Mr. Ulbricht of a defense at trial.

Conclusion

Accordingly, for all the reasons set forth above, and in Mr. Ulbricht's prior submissions, it is respectfully submitted that his motion for a new trial, pursuant to Rule 33, Fed.R.Crim.P., should be granted, and/or that his motion to suppress evidence be reopened and granted in its entirety.

Dated: 16 April 2015
New York, New York

Respectfully submitted,

/S/ Joshua L. Dratel
JOSHUA L. DRATEL
JOSHUA L. DRATEL, P.C.
29 Broadway, Suite 1412
New York, New York 10006
(212) 732-0707

Joshua J. Horowitz
225 Broadway, Suite 1804
New York, New York 10007
(845) 667-4451

Attorneys for Defendant Ross Ulbricht

– Of Counsel –

Joshua L. Dratel
Lindsay A. Lewis
Whitney G. Schlimbach
Joshua J. Horowitz

15-1815-CR

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

ROSS WILLIAM ULBRICHT, AKA DREAD PIRATE ROBERTS, AKA SILK ROAD, AKA SEALED DEFENDANT 1, AKA DPR,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York (New York City)

APPENDIX
VOLUME IV OF VI
Pages A769 to A1050

MICHAEL A. LEVY
SERRIN A. TURNER
ASSISTANT UNITED STATES ATTORNEYS
UNITED STATES ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK
Attorneys for Appellee
1 Saint Andrew's Plaza
New York, New York 10007
212-637-2346

JOSHUA L. DRATEL, P.C.
Attorneys for Defendant-Appellant
29 Broadway, Suite 1412
New York, New York 10006
212-732-0707

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EXHIBIT 1

To: Krickbaum, Marc (USAILN) (Marc.Krickbaum2@usdoj.gov)[Marc.Krickbaum2@usdoj.gov]
From: DerYeghiayan, Jared
Sent: Wed 5/29/2013 3:57:51 PM
Importance: Normal
Sensitivity: None
Subject: Affdavit draft May 29, 2013
Categories: II=01CE5CAF2DA9930B1C889DB344A0B14C5FE45E53EF8B;Version=Version 14.2 (Build 328.0), Stage=H4

Affidavit draft SR may 29 2013.doc

Marc,

I added two paragraphs to the affidavit at the bottom referencing the MSB charges and relations to the emails we're wanting to search.

Take a look and let me know if you need anything else.

Thanks,

Jared

AFFIDAVIT

I, Jared D. Der-Yeghiayan, first being duly sworn, state the following under oath:

1. I am a Special Agent for United States Immigration and Customs Enforcement ("ICE") Homeland Security Investigations ("HSI"), and have been employed as such for approximately 2 years and 8 months. During my time as a Special Agent I have been assigned to the HSI Chicago O'Hare International Airport office, in Des Plaines, Illinois, and to the Electronic Crimes Task Force located at Oakbrook Tower office, in Chicago, Illinois. My responsibilities include investigating crimes relating to the United States border, including offenses involving the illegal importation of narcotics, and investigations associated to cybercrimes. Prior to serving as a HSI Special Agent, I served for approximately seven years as a Customs and Border Protection Officer at Chicago O'Hare International Airport in Chicago, Illinois. Since July of 2011, I have been the lead Special Agent for an HSI investigation associated to the illicit and anonymous illegal drug market website referred to as the "Silk Road."

2. The information contained in this affidavit is based on my personal knowledge, as well as information provided to me by other law enforcement officers. Because this affidavit is submitted for the limited purpose of establishing probable cause in support of the attached complaint, this affidavit does not set forth each and every fact that I have learned during this investigation.

3. In March of 2011, an anonymous black-market website named the Silk Road was established for the purpose of offering illegal items. The illegal items include such merchandise as illegal controlled substances, weapons and false identification documents, and weapons. The Silk Road currently consists of two individual websites, its marketplace where all the black-

market items can be purchased, and an online chat forum associated to topics related to marketplace. Both the marketplace and online forum are operated by the same administer.

4. The Silk Road protects the physical location of the marketplace and online forum as well as its user's identities using sophisticated publicly available software referred to as The Onion Router ("TOR"). Using a complex network comprised of computers located all over the world, TOR can make it appear as if a user is located in completely different country than their current location. The software accomplishes anonymity by using this worldwide network that will encrypt and decrypt all its internet traffic to protect its user's location. The Silk Road marketplace and online forum can only be accessed using the TOR software.

5. All payments on the Silk Road are handled using a decentralized form of electronic based currency called bitcoins. The concept of a bitcoin was first proposed by anonymous hacker sometime in 2008. According to a confidential source, in approximately 2009, bitcoins came into existence when the first bitcoin was generated using publically accessible software. A bitcoin can be created or also referred to as "mined" by using a computer's computing power to solve an algorithm. Anyone can openly buy, sell or trade bitcoins on a variety of open online markets. The value of a bitcoin fluctuates constantly, and has remained unstable since its creation. For the first time since its creation, in April of 2013, the bitcoin market volume topped over 1 billion dollars. Bitcoins popularity has been mostly due to its exclusive usage on the Silk Road.

6. Once a user is able to access the Silk Road marketplace they can set up a free buyers account. Once logged into the website they can navigate through a variety of categories such as Drugs, Apparel, Erotica, Forgeries, Money and Services for example. In the Drugs

category items are further broken down by sections for Cannabis, Dissociates, Ecstasy, Opioids, Other, Precursors, Prescription, Psychedelics and Stimulants. The administrators of the Silk Road openly advertise that the only things that are not allowed on the marketplace are counterfeit currencies, child pornography, and most weapons including weapons of mass destruction.

7. For a small fee any user can become a vendor on the Silk Road. HSI has identified vendors who advertise their shipping location in over 40 countries. Most of the products being listed on the Silk Road are controlled substances. Most of the quantities being offered for sale are small and are considered personal use in size. As the marketplace has expanded the number of vendors offering larger quantities have increased substantially, and multiple vendors offer bulk quantities of controlled substances.

8. The Silk Road administrators provide the infrastructure and base that supports all the illegal transactions. The administrators also provide guidance and direction to the vendors on how they should handle their transactions, from the method and means of shipping their products, to the steps they should take to avoid detection by law enforcement. In general, a computer administrator can control all aspects of a website to include all of its content, functionality, usage, imagery and accessibility.

9. The Silk Road administrators have publically advertised on their marketplace and on their online forum that they take a percentage from every transaction that occurs on the marketplace. The commission schedule includes percentages of 8-15% based upon the total value of the transaction. The higher the transaction is, the lower the commission rate. In September of 2012, HSI was able to verify that a commission rate exists on the Silk Road by using a Silk Road vendor account and setting a price on a product for sale on the Silk Road

marketplace. HSI then logged in to the Silk Road using a different account and observed the same product offered for sale at a higher price than what was set by the vendor. The difference in price matched the advertised commission rates from the Silk Road administrator.

10. Since November of 2011, HSI has made over 70 individual purchases of controlled substances that came from various vendors on the Silk Road. The orders have varied from various Schedule I and II drugs, such as Ecstasy, cocaine, heroin, LSD and others. As of April of 2013, 54 of the 56 samples that have been tested and returned by a laboratory have resulted in high purity levels of drug being advertised on the Silk Road. Two of the samples showed no controlled substance. These purchases were made from vendors located in over 10 different countries including the United States.

11. The Silk Road first became known through an online user by the name of "Silkroad" who created an account on February 28, 2011, on an online bitcoin talk forum. On June 11, 2011, there was an article written on trefor.net (http://www.trefor.net/2011/06/13/psst-wanna-buy-a-racehorse-silkroad-bitcoin-torproject/) that user posted a message on those forums introducing the website and looking for feedback from other users on how the website should be handled. That user identified themselves at the end of the message as "Silk Road staff" and provided www.silkroadmarket.org as their website in their profile.

12. On June 01, 2011, on the Silk Road forums, the administrator under the username "Silkroad" posted a message stating the following,

"Hey gang,

Really sorry for the dead time there. Hopefully most of you got the message on the bitcoin forum

or at silkroadmarket.org. The only major change is this forum. We have it running on a separate server with it's own url so if the main site ever goes down again, first check here for updates. Unfortunately this means we have separate logins for the main site and the forum.

As we mentioned before, everything was backed up and totally restored, but if for some reason a deposit didn't make it in to your account or something like that, just let us know and we'll track it down and credit you. Also, we're giving everyone a 4 day grace period on taking orders to the resolution center before they are auto-resolved, so sellers, you may see some orders past due for a few days.

Thanks everyone for hanging in there with us. This work is scary and exciting all at the same time, and I'm really very happy to be on this journey with all of you.

Cheers,

Silk Road staff"

13. In order to redirect users who might be searching for the Silk Road marketplace without knowing about TOR, the Silk Road administrators created www.silkroadmarket.org on the open internet that provided specific instructions on how to access the marketplace. From the website archive.org that crawls/ captures websites March 04, 2011, the following message was posted on the silkroadmarket.org,

"This is not the Silk Road, but you are close...

The Silk Road is an anonymous online market. Current offerings include Marijuana, Hash, Shrooms, LSD, Ecstacy, DMT, Mescaline, and more. The site uses the Tor anonymity network, which anonymizes all traffic to and from the site, so no one can find out who you are or who runs

Silk Road. For money, we use Bitcoin, an anonymous digital currency.

Accessing the site is easy:

Download and install the Tor browser bundle (Click here for instructions and non-windows users)

Open your new Tor browser

Go to: http://ianxz6zefk72ulzz.onion

Once inside, you will find a homepage that looks something like this:

** it takes about a minute for you to make the initial anonymous connection to the site, but afterward you should be able to browse more quickly.*

So what are you waiting for? Get Tor and get to Silk Road! We'll see you inside :)

-Silk Road staff "

The website was visually identical to the TOR based Silk Road marketplace except no products were advertised for sale there. The website was mainly used to redirect users to the actual marketplace and to provide updates to users when the marketplace went down for service. Eventually the Silk Road administrators created another website on TOR that was set up as an online forum to provide a more secure venue for their users to view updates and discussions associated to the marketplace.

14. According to the website domaintools.com the www.silkroadmarket.org was created on March 01, 2011, and all of its public WHOIS information registered with non-existent user information. The name, address, telephone number, and email address on the public registered information did not exist in open source or law enforcement databases. WHOIS is an internet directory service that records public records for owners of servers as well as owners of domain names, and Internet Protocol ("IP") addresses.

15. An IP address is a unique series of numbers that identifies the network location of

a computer. These addresses allow computers to locate and connect to one another.

According to domaintools.com historical hosting history the domain www.silkroadmarket.org was maintained at the domain name server XTA.net from March 01, 2011 through April 13, 2012. Domaintools.com's historical server records also showed that the IP address for the silkroadmarket.org as 174.120.185.75. The IP was registered at that address from March 01, 2011 through March 30, 2011.

16. A domain name server is what translates the domain name and redirects the user to the IP address. When using the internet a computer can only find a website using a specific numerical location that is identified by the IP address. Without a domain name server, the domain name in and of itself would not direct a user to the desired website.

17. According to Domaintools.com, on January 13, 2010, the domain name and server XTA.net was registered to the company Mutum Sigillum LLC, and the administrative and technical contact for the domain was Mark Karpeles (hereafter known as KARPELES). The email address associated to the account and KARPELES at the time of acquisition was magicaltux@gmail.com. According to records from Google the owner of the email address is KARPELES. According to Domaintools.com's Historical WHOIS records for XTA.net, KARPELES has maintained administrative control over the website since he acquired it in 2010.

18. Subpoena records returned from the Internet Service Provider ("ISP") for the IP address 174.120.185.75 shows it was owned by KARPELES from December 18, 2009 through April 01, 2011. KARPELES provided the email address of mark@tibanne.com in his profile for the account. According to records from Google, KARPELES is the registered owner of mark@tibanne.com since September 10, 2011. As of April 05, 2013, Google records show the

email account is active and over 234 logins on April 04, 2013. Google records also showed that KARPELES is the registered owner of magicaltux@gmail.com since September 09, 2004. As of April 05, 2013, Google records show the email account is active and over 211 logins on April 04, 2013.

19. Additional research into KARPELES shows that in February of 2011, he purchased the bitcoin marketplace Mt. Gox. As of April of 2013, the Mt. Gox bitcoin market is largest bitcoin marketplace on the internet, and advertises that they handle over 80% of all bitcoin trade. KARPELES also owns and operates and administers hundreds of online websites and is a self-proclaimed computer hacker.

20. In May of 2013, the Department of Homeland Security seized over 5 million US dollars from a Wells Fargo bank account and an online Dwolla account belonging to KARPELES. The funds were seized as a violation of operating as an unlicensed money service business, a violation of Title 18, USC section 1960. According to FinCen database records, KARPELES has never registered any of the companies he owns as a money service business.

21. In an email dated May 29, 2012, sent and signed by KARPELES to Dwolla from his email address mark@tibanne.com he states, "Whilst Mt. Gox K.K. is not currently licensed as a Money Service Business, it is regulated in several jurisdictions internationally as a corporation providing Bitcoin exchange services and the possibility of needing to be regulated under FinCEN and various state-level authorities is being investigated jointly by our legal team and financial regulation authorities."

22. Based on the above information, I believe there is probable cause that the email address magicaltux@gmail.com and the email address mark@tibanne.com will contain

information and evidence related to the distribution can of controlled substances and conspiracy to distribute a controlled substance as well as additional evidence of KARPELES operating as an unlicensed money service business. Based on my training and experience I am aware that people use their email address when registering with other companies. Also based on my training and experience internet provider companies that register websites will usually send email receipts to their customers notifying them of purchases they made. Based on my training and experience I am also aware that when someone uses one email to register with an internet company they will more than likely use the same address to register with other internet companies. I believe since KARPELES has used his magicaltux@gmail.com and mark@tibanne.com email address to register with a few internet companies that he may have received record of registering, paying for or owning certain aspects of the www.silkroadmarket.org website. I also believe there may be correspondence of communications related to registering, owning and operating the website www.silkroadmarket.org.

_____
Jared D. Der-Yeghiayan, Special Agent
United States Immigration and Customs Enforcement

EXHIBIT 2

To: Osborn, Phillip L[Phillip.L.Osborn@ice.dhs.gov]
Cc: 'Boutros, Andrew (USAILN)'[Andrew.Boutros@usdoj.gov]
From: DerYeghiayan, Jared
Sent: Thur 8/15/2013 9:18:19 AM
Importance: Normal
Sensitivity: None
Subject: FW: Email SW
Categories: vpaccept

Karpeles Email SW - draft to J Ellis.pdf

FYI, preparing to swear this out today.

Jared

Jared Der-Yeghiayan
Special Agent
HSI Chicago
Office- 630-574-4167
Mobile- 630-532-3253

-----Original Message-----
From: Turner, Serrin (USANYS) [Serrin.Turner@usdoj.gov]
Sent: Thursday, August 15, 2013 09:47 AM Eastern Standard Time
To: michael_brantley@nysd.uscourts.gov
Cc: DerYeghiayan, Jared; Tarbell, Christopher W. (FBI)
Subject: Email SW

Michael –

As discussed, please find attached an email SW application. I can be reached at 646-660-4815 or serrin.turner@usdoj.gov whenever the judge is ready to see us. Thanks very much.

Serrin Turner
Assistant United States Attorney
U.S. Attorney's Office, Southern District of New York
1 St. Andrew's Plaza
New York, New York 10007
Phone: 212-637-1946
Fax: 212-637-2429
Email: serrin.turner@usdoj.gov

93 (Rev. 01/09) Search and Seizure Warrant

UNITED STATES DISTRICT COURT

for the

Southern District of New York

In the Matter of the Search of *(Briefly describe the property to be searched or identify the person by name and address)* THE EMAIL ACCOUNTS "magicaltux@gmail.com" and "mark@tibanne.com" MAINTAINED BY GOOGLE, INC.	)	Case No.

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Northern District of California *(identify the person or describe the property to be searched and give its location)*:

THE EMAIL ACCOUNTS "magicaltux@gmail.com" and "mark@tibanne.com" MAINTAINED BY GOOGLE, INC.

The person or property to be searched, described above, is believed to conceal *(identify the person or describe the property to be seized)*:

SEE ATTACHED RIDER.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before August 16, 2013
(not to exceed 10 days)

☑ in the daytime 6:00 a.m. to 10 p.m. ☐ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to the Clerk of the Court.

☑ Upon its return, this warrant and inventory should be filed under seal by the Clerk of the Court. _____
USMJ initials

☐ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)* ☐ for ___ days *(not to exceed 30)*.
☐ until, the facts justifying, the later specific date of _____.

Date and time issued: _____

_____
Judge's signature

City and state: New York, NY

HON. RONALD L. ELLIS
Printed name and title

AO 93 (Rev. 01/09) Search and Seizure Warrant (Page 2)

Return		
Case No.:	Date and time warrant executed:	Copy of warrant and inventory left with:
Inventory made in the presence of:		
Inventory of the property taken and name of any person(s) seized:		

Certification

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the Court.

Date: _____

_____
Executing officer's signature

_____
Printed name and title

AO 106 (Rev. 06/09) Application for a Search Warrant

UNITED STATES DISTRICT COURT

for the

Southern District of New York

In the Matter of the Search of *(Briefly describe the property to be searched or identify the person by name and address)* THE EMAIL ACCOUNTS "magicaltux@gmail.com" and "mark@tibanne.com" MAINTAINED BY GOOGLE, INC.	)	Case No.

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

located in the Northern District of California, there is now concealed *(identify the person or describe the property to be seized)*:

SEE ATTACHED RIDER.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☑ evidence of a crime;
- ☑ contraband, fruits of crime, or other items illegally possessed;
- ☑ property designed for use, intended for use, or used in committing a crime;
- ❒ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	*Offense Description*
21 U.S.C. §§ 841 & 846; 18 U.S.C. §§ 1956, 1960, & 2	narcotics conspiracy, money laundering, operating unlicensed money transmitting business

The application is based on these facts:

SEE ATTACHED RIDER

☑ Continued on the attached sheet.

❒ Delayed notice of ____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

_____
Applicant's signature

Jared DerYeghiayan, Special Agent, Immigration and Customs Enforcement-Homeland Security Investigations

Printed name and title

Sworn to before me and signed in my presence.

Date: August 15, 2013

_____
Judge's signature

City and state: New York, NY

HON. RONALD L. ELLIS

Printed name and title

3505-00208

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR A SEARCH WARRANT FOR THE PREMISES KNOWN AND DESCRIBED AS THE EMAIL ACCOUNTS "magicaltux@gmail.com" and "mark@tibanne.com" MAINTAINED BY GOOGLE, INC.	:	**TO BE FILED UNDER SEAL** AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT

SOUTHERN DISTRICT OF NEW YORK, ss.:

Jared DerYeghiayan, being duly sworn, deposes and says:

1. I am a Special Agent at Immigration and Customs Enforcement-Homeland Security Investigations ("ICE-HSI"). I have been a Special Agent with ICE-HSI for over two years. I am presently assigned to the ICE-HSI Electronic Crimes Task Force in Chicago, Illinois. My responsibilities include investigating offenses involving, among other things, narcotics trafficking and cybercrime.

2. I make this affidavit in support of an application for a warrant to search the e-mail accounts "magicaltux@gmail.com" ("SUBJECT ACCOUNT-1") and "mark@tibanne.com" ("SUBJECT ACCOUNT-2") (collectively, the "SUBJECT ACCOUNTS") maintained by Google, Inc. (the "Provider").

3. For the reasons detailed below, there is probable cause to believe that the SUBJECT ACCOUNTS contain evidence, fruits, and instrumentalities of narcotics trafficking and money

laundering, in violation of Title 21, United States Code, Sections 841 and 846, and Title 18, United States Code, Sections 1956, 1960, and 2 (the "SUBJECT OFFENSES"), as described in Attachment A to this Affidavit.

4. This affidavit is based upon my personal knowledge, my review of documents and other evidence, and my conversations with other law enforcement officers and civilian witnesses. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

BACKGROUND ON THE PROVIDER

5. Based on my training and experience, I have learned the following about the Provider:

a. The Provider offers e-mail services available free of charge to Internet users, under the domain name "gmail.com." The Provider also offers paid services through which users can obtain e-mail accounts that are hosted by the Provider but that can be associated with any domain name that the user controls - e.g., "johndoe@myowndomain.com."

b. The Provider maintains electronic records pertaining to the individuals and companies for which they maintain subscriber accounts. These records include account access information, e-mail transaction information, and account application information.

c. Subscribers may access their accounts on servers maintained or owned by the Provider from any computer connected to the Internet located anywhere in the world.

d. Any e-mail that is sent to or from a subscriber is stored in the subscriber's "mail box" on the Provider's servers until the subscriber deletes the e-mail or the subscriber's mailbox exceeds the storage limits preset by the Provider. If the message is not deleted by the subscriber, the account is below the maximum limit, and the subscriber accesses the account periodically, that message can remain on the Provider's servers indefinitely. Such stored messages can include attachments such as documents, images, and videos.

e. Computers located at the Provider contain information and other stored electronic communications belonging to unrelated third parties. Accordingly, this affidavit and application for search warrants seek authorization solely to search the SUBJECT ACCOUNTS, following the procedures described herein and in Attachment A.

STATUTORY PROVISIONS

6. 18 U.S.C. § 2703(b)(1)(A) allows the government to compel disclosure of all stored content and records or other information pertaining to a subscriber of an electronic communications service provider (such as the Provider) – without notice to the subscriber – pursuant to a search warrant issued using the procedures described in the Federal Rules of Criminal Procedure. Such an order may be issued by "any district court of the United States (including a magistrate judge of such a court)" that "has jurisdiction over the offense being investigated." 18 U.S.C. § 2711(3)(A)(i).

THE INVESTIGATION

Background on the Silk Road Underground Website

7. This application stems from an ongoing investigation into an underground website used to sell illegal drugs known as "Silk Road" (the "Silk Road Underground Website"). The Silk Road Underground Website provides an infrastructure similar to well-known online marketplaces such as Amazon Marketplace or eBay, allowing sellers and buyers to conduct transactions online. However, unlike such legitimate websites, the Silk Road Underground Website is designed to facilitate illegal commerce by ensuring absolute anonymity on the part of both buyers and sellers.

8. The primary means by which the Silk Road Underground Website protects the anonymity of its users is by operating on the "TOR" network. The TOR network is a special network of computers distributed around the world designed to conceal the true Internet Protocol ("IP") addresses of the users of the network.[1] Every communication sent through the TOR network is bounced through numerous relays within the network, and wrapped in a layer of encryption at each relay, such that the end recipient of the communication has no way of tracing the communication back to its true originating IP address. In a similar fashion, the TOR network also enables websites to operate on the network in a manner that conceals the true IP address of the computer server hosting the website.

9. Another means by which the Silk Road Underground Website protects the anonymity of its users is by requiring all transactions to be paid for through the use of "Bitcoins." Bitcoins are a virtually untraceable, decentralized, peer-to-peer form of electronic currency having no association with banks or governments. In order to acquire Bitcoins in the first instance, a user typically must purchase them from a Bitcoin

[1] Every computer attached to the Internet is assigned a unique numerical identifier known as an Internet protocol or "IP" address. A computer's IP address can be used to determine its physical location and, in turn, to identify the user of the computer.

"exchanger." Bitcoin exchangers accept payments of currency in some conventional form (cash, wire transfer, etc.) and exchange the money for a corresponding amount of Bitcoins (based on a fluctuating exchange rate); and, similarly, they will accept payments of Bitcoin and exchange the Bitcoins for conventional currency. Once a user acquires Bitcoins from an exchanger, the Bitcoins are kept in an anonymous "wallet" controlled by the user, designated simply by a string of letters and numbers. The user can then use the Bitcoins to conduct anonymous financial transactions by transferring Bitcoins from his or her wallet to the wallet of another Bitcoin user. All Bitcoin transactions are recorded on a public ledger known as the "Blockchain"; however, the ledger only reflects the movement of funds between anonymous wallets and therefore cannot by itself be used to determine the identities of the persons involved in the transactions.

10. Those operating Silk Road charge a commission, in the form of Bitcoins, for all sales conducted through the site. The commission varies between 8 to 15 percent, depending on the total value of the transaction. (The higher the value of the transaction, the lower the commission.)

11. Since November of 2011, ICE-HSI has made over 70 individual purchases of controlled substances from various

vendors on the Silk Road Underground Website. The substances purchased have been various Schedule I and II drugs, including ecstasy, cocaine, heroin, LSD, and others. As of April 2013, 56 samples of these purchases have been laboratory-tested, and, of these, 54 have shown high purity levels of the drug the item was advertised to be on Silk Road. (Two of the samples tested negative for any controlled substance.) Based on the postal markings on the packages in which the drugs arrived, these purchases appear to have been filled by vendors located in over ten different countries, including the United States.

12. I have traced the Bitcoins that were used in these undercover purchases through the Blockchain, the public ledger reflecting the transfer of Bitcoins from one Bitcoin wallet to another. In doing so, I have found that Silk Road Underground Website appears to use a highly complicated system of Bitcoin wallets to control the movement of Bitcoins in and out of the website. In particular, the website uses a "tumbler" that mixes the funds from various wallets together, so as to make it very difficult to trace the funds from a particular transaction to a particular Bitcoin wallet. Based on my training and experience, this system was likely designed by someone with a high level of technical expertise concerning the operation of Bitcoins.

Background on Mark Karpeles and
His Suspected Role in Establishing Silk Road

13. Based on Internet searches I have conducted, the Silk Road Underground Website appears to have been established in early 2011. In particular, from visiting an online discussion forum about Bitcoins, located at bitcointalk.org, I know that on February 28, 2011, a user account was created on the bitcointalk.org forum under the username "silkroad." The postings made by this user are no longer accessible on bitcointalk.org. However, I have reviewed media articles from mid-2011 which report that, on March 1, 2011, the "silkroad" user posted the following message on the forum:

> Hi everyone, Silk Road is into its third week after launch and I am very pleased with the results. There are several sellers and buyers finding mutually agreeable prices, and as of today, 28 transactions have been made!
>
> For those who don't know, Silk Road is an anonymous online market.
>
> Of course, it is in its infant stages and I have many ideas about where to go with it. But I am turning to you, the community, to give me your input and to have a say in what direction it takes.
>
> What is missing? What works? What do you want to see created? What obstacles do you see for the future of Silk Road? What opportunities?
>
> The general mood of this community is that we are up to something big, something that can really shake things up. Bitcoin and Tor are revolutionary and sites like Silk Road are just the beginning.

> I don't want to put anyone in a box with my ideas, so I will let you take it from here ...
>
> - Silk Road staff

14. The "silkroad" user's account at the bitcointalk.org forum includes a signature block, which contains a hyperlink to the website "silkroadmarket.org." This is not the address of the Silk Road Underground Website, but rather is the address of a site on the ordinary Internet. (Websites operating on TOR have complex domain names ending in ".onion" and can only be accessed through TOR browser software.) However, from reviewing archived versions of the silkroadmarket.org website,[2] I know that in early 2011 this website was used to publicize the Silk Road Underground Website and to explain how it could be accessed through TOR. For example, an archived capture of the silkroadmarket.org homepage from March 4, 2011 reflects that, at the time, the website stated as follows:

> This is not the Silk Road, but you are close...
>
> The Silk Road is an anonymous online market. Current offerings include Marijuana, Hash, Shrooms, LSD, Ecstacy, DMT, Mescaline, and more. The site uses the Tor anonymity network, which anonymizes all traffic to and from the site, so no one can find out who you are or who runs Silk Road. For money, we use Bitcoin, an anonymous digital currency.
>
> Accessing the site is easy:

[2] The archived material is available at www.archive.org, a non-profit digital library of archived websites.

1. Download and install the Tor browser bundle (Click here for instructions and non-windows users)
2. Open your new Tor browser
3. Go to: http://ianxz6zefk72ulzz.onion

. . .

* it takes about a minute for you to make the initial anonymous connection to the site, but afterward you should be able to browse more quickly.

So what are you waiting for? Get Tor and get to Silk Road! We'll see you inside :)

-Silk Road staff

15. Later archived captures from the silkroadmarket.org website reflect that the site continued to be used by the administrators of the Silk Road Underground Website to inform Silk Road users of service outages and otherwise to provide updates on the status of the service. For example:

a. On June 5, 2011, the silkroadmarket.org website posted a message stating: "The Silk Road is currently closed to new visitors. This will be reviewed on July 1st and the site will possibly be reopened. Sorry for the inconvenience : (."

b. On June 18, 2011, the silkroadmarket.org website posted a message stating: "So the server went down unexpectedly today. This was very unnerving because we thought it had somehow been seized or something terrible like that. Fortunately it was just some kind of glitch and we were able to reboot. Everything has been backed up and is totally current, but we are not going

to turn the site back on for a couple of days while we work out a way to prevent such problems."

16. Archived captures of the silkroadmarket.org website show that it ceased operating as an outlet for information about the Silk Road Underground Website in or about April 2012.

17. Based on publicly accessible information from domaintools.com,[3] I have learned the following:

a. The "silkroadmarket.org" domain name was registered on March 1, 2011 by a "Richard Page" at 11640 Gary Street, Garden Grove, California. This contact information appears to be entirely fictitious, as I have been unable to find any information on a "Richard Page" associated with this address in any law-enforcement or open-source databases. Based on my training and experience, I believe that whoever registered the "silkroadmarket.org" domain name used false identification information in order to conceal his association with the website.

b. From March 1, 2011 through April 13, 2012, the "silkroadmarket.org" domain name was controlled through the

[3] Whenever a domain name or IP address is registered so that it can be accessed through the Internet, the registrant must provide certain information to Internet governance authorities, including the registrant's contact information (which is not verified, however). This registration information is stored in what is known as the "WHOIS" database and can be searched through various websites, including domaintools.com.

domain name server "xta.net." A domain name server is a server responsible for translating a domain name (e.g., "abc.com") to an IP address (e.g., "198.199.200.201") and redirecting users who type in the domain name to the computer with the corresponding IP address. The "xta.net" domain name server used to control the "silkroadmarket.org" domain name has, since January 13, 2010, been registered to the company "Mutum Sigillum LLC." The administrative and technical contact person listed for the company in the domain name registration information is Mark Karpeles ("KARPELES"), with an e-mail address of "magicaltux@gmail.com" – i.e., SUBJECT ACCOUNT-1.

c. From March 1, 2011 through March 30, 2011, the silkroadmarket.org domain name resolved to the IP address 174.120.185.75 ("IP Address-1"). That is, traffic to the website was directed during this time, through the xta.net domain name server, to IP Address-1, where the content of the silkroadmarket.org website was hosted. Based on records subpoenaed from a server-hosting company that maintains IP Address-1, I have learned that IP Address-1 was leased to KARPELES from December 18, 2009 through April 1, 2011. The records list KARPELES's e-mail address as "mark@tibanne.com" – i.e., SUBJECT ACCOUNT-2.

d. In searching registration records for other websites hosted at IP Address-1 in 2011, I discovered that the website "tuxtelecom.com" was also hosted at IP Address-1 from March 1, 2011 through March 30, 2011. The "tuxtelecom.com" domain name is registered to KARPELES in his own name.

e. The websites for both silkroadmarket.org and tuxtelecom.com were subsequently moved – repeatedly and simultaneously – to different IP addresses. Specifically, on March 30, 2011, the IP addresses for both silkroadmarket.org and tuxtelecom.com changed to 173.224.127.76 ("IP Address-2"). Both websites remained at that address until April 21, 2011, when they were both moved to the IP address 173.224.119.60 ("IP Address-3"). I believe this evidence shows that KARPELES controlled the silkroadmarket.org website along with the tuxtelecom.com website, and that he hosted them both at IP addresses he controlled.

18. According to KARPELES's publicly accessible page on "LinkedIn" – a professional networking site where users can post their resumes and other career information – KARPELES is an experienced computer programmer. KARPELES's resume on LinkedIn indicates that, from 2003 to 2010, he worked as a software developer at various companies, specializing in developing e-commerce websites. Based on my training and experience, I know

that this type of background would make KARPELES well-suited to operating an e-commerce site such as the Silk Road Underground Website.

19. Based on media articles and Japanese incorporation records, I know that, by at least early 2011, KARPELES acquired a Bitcoin exchanger service based in Japan known as "Mt. Gox." KARPELES continues to own Mt. Gox to this day and serves as its Chief Executive Officer. According to its website, Mt. Gox is the "world's largest and oldest Bitcoin exchange" and handles "over 80% of all Bitcoin trade." Based on my own familiarity with the market for Bitcoins, I know that Mt. Gox is in fact one of the largest Bitcoin exchangers in operation at the present time, if not the largest.

20. I have spoken with a confidential informant ("CI-1") who has worked for KARPELES within the past two years. According to CI-1, KARPELES operates bitcointalk.org – the same discussion forum where Silk Road was first publicized by the user "silkroad" in late February 2011. From visiting the forum, I know that the forum operates on a software platform known as "Simple Machines." From visiting the Silk Road Underground Website on TOR, I know that this same software platform is used to operate the discussion forums included on the Silk Road Underground Website itself. Based on my training and

experience, the Simple Machines forum software is not widely used by forum administrators. Thus, the fact that the software is used to operate both the discussion forum on bitcointalk.org and the discussion forum on Silk Road indicates that the forums were likely set up by the same administrator – that is, KARPELES.

21. Similarly, from visiting the tuxtelecom.com website – publicly registered to KARPELES, as described above – I know that the website includes a webpage containing a tutorial about how to make phone calls over the Internet. From reviewing the source code for the webpage, I know that it was constructed using "wiki" software – a type of software commonly used to create tutorials, "frequently asked questions" or "FAQ" pages, and similar content on websites. More specifically, the source code reflects that the webpage was constructed using a specific "wiki" software called "Mediawiki," and a specific version of this software, version 1.17.[4] From reviewing the silkroadmarket.org website and the Silk Road Underground Website, I know that these websites also contain pages constructed using "wiki" software (such as FAQ pages). The

[4] Software vendors commonly update their software in order to fix bugs and to add new features. Each version of the software is denoted by a higher version number, with larger decimal places representing more significant revisions. (E.g., version 2.34 would be a minor revision to version 2.33, while version 3.0 would be a major revision to any version in the 2.xx series.)

source code for these pages reflects that they were constructed using the same version of the same software used to create the "wiki" page on the tuxtelecom.com website – Mediawiki version 1.17. From reviewing the Mediawiki website, I know that the Mediawiki software is regularly updated and that many versions have been released over time. Thus, the fact that the exact same version of the software was used to create the "wiki" page on tuxtelecom.com and the "wiki" pages on silkroadmarket.org and the Silk Road Underground Website indicates, again, that the same administrator – KARPELES – was responsible for creating all three of these sites.

22. Based on the foregoing, I believe that KARPELES has been involved in establishing and operating the Silk Road website. In summary, the evidence shows that:

a. KARPELES controlled the domain name server and the IP addresses used to host the silkroadmarket.org website on the ordinary Internet. This website was used by the "Silk Road Staff" to publicize the existence of the Silk Road Underground Website on TOR and later to provide information to users about the status of the website.

b. Moreover, in early 2011, around the same time that Silk Road began operating, KARPELES acquired Mt. Gox. Given his ownership of this Bitcoin exchange business, KARPELES

had a strong motive to create a large underground marketplace where Bitcoins would be in high demand. The Silk Road website was uniquely well suited to this purpose, as it has generated a huge source of demand for Bitcoins. Indeed, as of April 2013, the total value of Bitcoins in circulation topped 1 billion dollars. Because there are few legitimate vendors who accept Bitcoins as payment, it is widely believed that the rise of Bitcoins has been driven in large part by their use on Silk Road.

c. KARPELES has the technical expertise and experience necessary in order to establish and operate a large commercial website such as the Silk Road Underground Website. The fact that the Silk Road website utilizes the exact same forum software as bitcointalk.org and the exact same "wiki" software as tuxtelecom.com – both websites directly linked to KARPELES – provides further evidence of KARPELES's involvement in administering Silk Road. Finally, the fact that the Silk Road Underground Website relies on a highly complex system for processing Bitcoins strongly suggests that it was designed by someone with extensive technical expertise related to Bitcoins – which KARPELES, being the owner and operator of a major Bitcoin exchange and Bitcoin discussion forum, clearly has.

23. Accordingly, I respectfully submit there is probable cause to believe that KARPELES has engaged in the SUBJECT OFFENSES. Specifically:

a. By establishing and helping to operate Silk Road, an underground narcotics-trafficking website, KARPELES has participated in a conspiracy to distribute narcotics and has aided and abetted the distribution of narcotics, in violation of Title 21, United States Code, Sections 841 and 846 and Title 18, United States Code, Section 2.

b. Further, by operating a Bitcoin exchanger service, Mt. Gox, while knowing that a large volume of its business derives from narcotics trafficking activity conducted through Silk Road, KARPELES has violated U.S. money-laundering laws. Specifically, KARPELES has violated Title 18, United States Code, Section 1956, which prohibits, among other things, knowingly transferring the proceeds of narcotics trafficking activity with the intent to promote the carrying on of such unlawful activity. See 18 U.S.C. § 1956(a)(1)(A) & (c)(3). KARPELES has also violated Title 18, United States Code, Section 1960, which prohibits a person from operating a money transmitting business that involves the transmission of funds the person knows to have been derived from a criminal offense or

are intended to be used to promote or support unlawful activity. See 18 U.S.C. § 1960(b)(1)(C).

Request to Search the Subject Accounts

24. As described above, KARPELES used SUBJECT ACCOUNT-1 to register the domain name server used to route Internet traffic to the silkroadmarket.org website, and he used SUBJECT ACCOUNT-2 to lease the IP address where the silkroadmarket.org website was initially hosted. Based on records subpoenaed from Google, I have learned the following:

a. Both of the SUBJECT ACCOUNTS are maintained by Google. The subscriber listed for both accounts is KARPELES.

b. Both of the SUBJECT ACCOUNTS were active as of the date of the subpoena return, April 5, 2013. Indeed, on April 4, 2013 alone, the Google records reflect 234 logins to SUBJECT ACCOUNT-1 and 211 logins to SUBJECT ACCOUNT-2.

25. Based on my training and experience, I know that, when a user is required to provide an e-mail address to register an account with an electronic communications service provider, the provider typically sends the user a receipt at the e-mail address provided. Accordingly, I believe that, at a minimum, the SUBJECT ACCOUNTS will contain records of KARPELES registering the accounts associated with the domain name server and an IP address used to host the silkroadmarket.org website.

By tying KARPELES to Silk Road, these records would provide evidence of KARPELES' involvement in the SUBJECT OFFENSES.

26. By the same token, I believe that KARPELES has also used the SUBJECT ACCOUNTS to register other accounts he has used in connection with the SUBJECT OFFENSES. For example, the SUBJECT ACCOUNTS likely contain communications reflecting KARPELES' registration of IP Address-2 and IP-Address-3, where the silkroadmarket.org website was moved after initially being hosted at IP-Address-1.

27. Finally, based on my training and experience, I believe it is likely that KARPELES has worked with others in establishing and operating the Silk Road Underground Website. Indeed, the postings on the silkroadmarket.org site that KARPELES controlled are signed "The Silk Road Staff" and are written in the plural first person. Based on my training and experience, I know that those involved in cybercrime often communicate with their co-conspirators over e-mail. Accordingly, I believe it is likely that the SUBJECT ACCOUNTS will contain communications between KARPELES and the co-conspirators involved with him in committing the SUBJECT OFFENSES.

28. Accordingly, I respectfully submit that there is probable cause to believe that the SUBJECT ACCOUNTS will contain

evidence, fruits, and instrumentalities of the SUBJECT OFFENSES, as described more fully in Section II of Attachment A.

SEARCH PROCEDURE

29. In order to ensure that agents search only the SUBJECT ACCOUNTS, the search warrant requested herein will be transmitted to the Provider's personnel who will be directed to produce the information described in Section II of Attachment A. Based on my training and experience with executing email search warrants, I know that, for practical and logistical reasons, service providers typically produce all stored emails associated with an email account for which a search has been authorized. Upon receiving a digital copy of all stored email and stored content associated with a given email account, law enforcement personnel will review this content information using various techniques, including but not limited to performing keyword searches and undertaking a cursory inspection of all information from the SUBJECT ACCOUNTS (analogous to searching file cabinets in an office to determine which paper evidence is subject to seizure), to determine which information, including emails, contains evidence or fruits of the SUBJECT OFFENSES, as specified in Section III of Attachment A.[5]

[5] I know from my training and experience that keyword searches alone are typically inadequate to detect all information subject to seizure. For one thing, keyword searches work only for text

CONCLUSION

30. Based on the foregoing, I respectfully request that the Search Warrant sought herein issue pursuant to Rule 41 of the Federal Rules of Criminal Procedure.

Dated: New York, New York
August 15, 2013

_____
Jared DerYeghiayan
Special Agent
Immigration and Customs Enforcement-
Homeland Security Investigations

Sworn to before me on
August 15, 2013

_____
HON. RONALD L. ELLIS
UNITED STATES MAGISTRATE JUDGE

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data, yet many types of files commonly associated with emails (including attachments such as images and videos) do not store data as searchable text. Moreover, even as to text data, there may be information properly subject to seizure but that is not captured by a keyword search merely because the information fortuitously does not contain the keywords being searched.

Attachment A

Property to Be Searched

This warrant applies to information associated with the following e-mail accounts:

magicaltux@gmail.com
mark@tibanne.com

(the "SUBJECT ACCOUNTS") stored at a premises owned, maintained, controlled, or operated by Google, Inc., which is headquartered at 1600 Amphitheatre Parkway, Mountain View, CA 94043 ("the Provider").

Particular Things to Be Seized

I. Search Procedure

This warrant will be faxed or e-mailed to the Provider's personnel, who will be directed to produce the information described in Section II below. Upon receipt of the production, law enforcement personnel will review the information to locate the items described in Section III below.

II. Information to be Produced by the Provider

The Provider is required to disclose the following information for each of the SUBJECT ACCOUNTs, to the extent that the information is within the Provider's possession, custody, or control:

a. All stored e-mail and other stored content information presently maintained in, or on behalf of, the SUBJECT ACCOUNTS, and all existing printouts from original storage of e-mail associated with the SUBJECT ACCOUNTS, including all header information associated with such e-mails;

b. All histories, profiles, and contact lists (or "buddy" lists, "Friends" lists, or similar lists), including e-mail addresses, screen names, and user IDs, associated with the SUBJECT ACCOUNTS;

c. All transactional information concerning activity associated with the SUBJECT ACCOUNTS, including internet protocol address logs;

d. All business records and subscriber information, in any form kept, concerning the SUBJECT ACCOUNTS, including applications, account creation date and time, all full names, screen names, and account names associated with the subscribers, methods of payment, telephone numbers, addresses, and detailed billing records; and

e. All records indicating the services available to subscribers of the SUBJECT ACCOUNTS.

III. Information to Be Seized by the Government

The information to be seized by the Government includes all information described above in Section II that contains or constitutes evidence, fruits, and instrumentalities of narcotics trafficking and money laundering, in violation of Title 21, United States Code, Sections 841 and 846, and Title 18, United States Code, Sections 1956, 1960, and 2 (the "SUBJECT OFFENSES"), including any evidence concerning the following:

a. The identity and location of the user of the SUBJECT ACCOUNTS (the "User");

b. Any phone numbers, e-mail accounts, computer servers, IP addresses, domain names, or other electronic communications facilities or accounts maintained or controlled by the User;

c. The User's training, experience, and expertise concerning computers, the Internet, digital currency, the TOR network, and encryption;

d. The User's involvement in operating a Bitcoin exchanger service;

e. The User's involvement in narcotics trafficking;

f. The User's intent to promote narcotics trafficking through operating a Bitcoin exchanger service or knowledge that the exchanger service is facilitating narcotics trafficking;

g. The User's awareness of anti-money laundering laws and any efforts to comply with or evade such laws;

h. Communications with co-conspirators;

i. Passwords, encryption keys, and other access devices that may be necessary to access any of the User's communications or data; and

j. Any other evidence of the SUBJECT OFFENSES.

SEALING ORDER

SERRIN TURNER affirms as follows:

1. I am an Assistant United States Attorney in the Office of Preet Bharara, United States Attorney for the Southern District of New York, and, as such, I am familiar with this matter and the instant application for a warrant under 18 U.S.C. § 2703 to obtain certain stored electronic communications and related records kept at premises owned, maintained, controlled, or operated by Google, Inc. (the "Provider").

2. In light of the confidential nature of this continuing criminal investigation, the Government respectfully requests that this affidavit and all papers submitted herewith be maintained under seal until the Court orders otherwise, in order to avoid premature disclosure of the investigation which could inform potential criminal targets of law enforcement interest, resulting in the endangerment of law enforcement agents and others, except that the Government may without further Order of this Court provide copies of the warrant and affidavit as needed to personnel assisting it in the investigation and prosecution of this matter, and may disclose these materials as necessary to comply with discovery and disclosure obligations in any prosecutions related to this matter.

3. With respect to the return of the warrant and inventory to the Clerk of Court, the Government further requests the return be sealed as the target of the present investigation has not yet been charged and public filing of the return at this time would compromise an ongoing investigation into violations of criminal law.

4. In addition, because notification of the existence of this order will seriously jeopardize an investigation, I request that, pursuant to 18 U.S.C. Section 2705(b), the Court order the Provider not to notify any person of the existence of the warrant.

Dated: New York, New York
August 15, 2013

PREET BHARARA
United States Attorney
Southern District of New York

By: _____
SERRIN TURNER
Assistant United States Attorney
Southern District of New York

SO ORDERED:

_____
HON. RONALD L. ELLIS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT 3

Anand Nathan ATHAVALE
Canadian citizen, DOB: [redacted], 1975.

Lived in New Zealand during their early teens
Education: Dropped out of College, degree in BComm
Height: 5'5"
Weight 300 Pounds

Addresses:
[redacted]

Canadian PP#'s: [redacted]
Canadian DL's/ID's: [redacted]
Telephone # [redacted]
Email addresses: [redacted]@mnsi.net, [redacted]@autodeletepro.[redacted]@adpmods.com

Sister: Anita Genevieve ATHAVALE, Canadian citizen, DOB: [redacted], 1978,
Father: Indian heritage
Mother: German/Czech Heritage

Handles:
Liberty Student (mises.org)
Dixieflatline (Twitter, Notreason.com)
Roscoe36 (pistonsforum.com)
Guerrilla (namecheap.com)

U.S. Crossings (1997 and up)
August 11, 2005 crossed the Ambassador Bridge
June 03, 1998 Crossed at the Sumas POE
January 11, 1997 Arrived inbound on New Zealand flight 10 from Auckland, NZ into Honolulu, HI using Canadian Passport [redacted]

Domains owned by ATHAVALE:
adp-servers.info
adpmods.com
anitaathavale.com
ariacom.net
autodeletepro.com
badboysummercamp.com
crashevent.com
dawgswap.com
dyenchir.net
dziho.com

faafan.com
freeculturefoundation.org
griefandgrace.com
harvestreport.net
humanvictorycigar.com
ksgovernor.com
liftupthelid.com
mahcuz.com
okanaganproperty.org
oviwebportal.com
pachay.com
pistonforum.com
salmonarmproperty.com
salmonarmrealestate.org
shopgpsandsave.com
shuswapproperty.net
shuswaprealestate.org
smilequilts.com
studioprimer.com
technoarena.net
todlokey.com
tv-valjevo.com
tvi-web.com
unifyyoga.com
unifyyoga.net
unifyyoga.org
vegasjunky.com
yogafrogcaps.com
ronpauldonors.com
notreason.com
highdefinition1080i.info
highdefinition1080p.info
glitchproject.com
astroteacher.net
teenbloggersintl.org
unifiedunionworkers.org
pistonsforum.com
email4seniors.org
ceapseap.info
conficker-worm-removal.com
confickervirusremoval.com
libertyseo.com
libertyseo.net
libertyseo.org
consolegamecheater.com
reviewmobilephones.com

laptopbuyer.info
luckygenerics.info
junksilverauctions.com
tramadolhcl.info
bupropiononline.info
buyorlistat.info
diclofenacgel.info
genericcarisoprodol.info
genericphentermine.info
rimonabantonline.info
vardenafilhcl.info
clomiphenecitrate.info
libertydoubleeagle.com
laptopsforstudents.info
usedlaptopsforsale.info
survivingbraininjury.info
buspironehcl.info
buytadalafil.info
genericsildenafil.info
achatmedicament.info
achattadalafil.info
fastprescriptions.info
secureonlinerx.info
euromedsonline.info
buyoseltamivir.info
lfeusers.com
impotencehelp.org
prescriptionrefill.info
drinkmagician.com
notjustprescriptions.com
onlineinsurancedealers.com
airtechaviation.com
facilcobro.com
szetoshuiki.com
chemicalsafetybook.com
doubleolsens.com
webautomationlab.com
brainclub.net
bubblesphere.org
devbridge.org
fivebox.org
planoodle.net
blogify.org
blogtune.net
dazzlepedia.org
zhaotongok.com

connectorz.com
thyroidsupplement.net
ceapseap.info
fadeo.org
fivecast.org
fivefish.org
fivepath.org
jumpcast.org
pixotri.org
misosouprecipes.org
acetazolamide.net
clindamycin.me
cabergoline.me
clozapine.me
cyclosporine.me
minocycline.me
asthmainhalers.info
buyazithromycin.me
fluoxetinehcl.info
paroxetinehcl.info
venlafaxinehcl.info
buydoxycycline.info
cephalexinonline.info
lisinoprilhctz.info
majordepressivedisorder.info
orderamoxicillin.info
superfoodslist.info
bupropionhcl.info
swissballs.org
kettlebellweights.info
petmedsrx.info
athaananda.com
auction-market.com
atenolol.me
tramadol50mg.me
tadalafil20mg.me
sildenafil100mg.info
bupropiononline.info
buyorlistat.info
buytadalafil.info
clomiphenecitrate.info
diclofenacgel.info
genericcarisoprodol.info
genericphentermine.info
genericsildenafil.info
rimonabantonline.info

survivingbraininjury.info
vardenafilhcl.info
buspironehcl.info
crashassets.com
backlinkgarden.com
backlinkgarden.me
backlinkgarden.net
backlinkgarden.org
backlinkgarden.info
sociallinkoptimization.net
sociallinkoptimization.com
sociallinkoptimization.info
sociallinkoptimization.org
shuswaprealestate.org
salmonarmproperty.com
salmonarmrealestate.org
shuswapproperty.net
okanaganproperty.org
getinception.com
getinception.info
getinception.net
getinception.org
fortunepasseseverywhere.com
cseo.bz
communityseo.co
luckydragonconvenience.com

Known/Current IP Addresses:
139.142.249.112 (First used 05/04/2012, last used to log in to namecheap.com, 11/09/2012)
119.152.223.137 (used on 02/02/2012 to log into namecheap)
119.152.21.138 (used on 01/17/2012 to log into namecheap)
216.8.170.40 (used on 04/17/2012)
216.8.163.222 (used from 12/30/2010 to 04/12/2012)
96.30.11.236 (owns/administers) (multiple websites listed above in blue)
96.30.11.237 (owns/administers) (pistonsforum.com)
96.30.11.238 (owns/administers) (teenbloggersintl.org)
96.30.11.239 (owns/administers) (unifiedunionworkers.org)
184.173.203.97 (yogafrogcaps.com, ronpauldonors.com, notreason.com, highdefinition1080i.info, highdefinition1080p.info, glitchproject.com, astroteacher.net)
64.74.223.30 (used for multiple websites)

Observations of ATHAVALE:
-Every website has their whois information protected. Many of which became protected in mid to late 2011
-Subject is a ghost- little to no personal information anywhere on the internet
-Never uses his own name on any of his websites
-Hasn't traveled to the U.S. since 2005
-Knowledge of linux and servers
-Has administered numerous websites including the Mises.org Forums, Pistons Forum, and his own website notreason.com.
-Stopped actively posting on Mises.org on May 11, 2011. Last post on July 03, 2011.
-Majority of his websites are no longer active
-In March of 2011 moved from Ontario to BC and registered his address as a PO Box.

Writing analysis (similarities between Liberty Student/ATHAVALE on Mises and Dread Pirate Roberts on Silk Road/UC chats)
-Both use the same writing style when addressing others and when replying (condescending, Etc)
-Both spells Labor as "Labour" occasionally, and as "Labor" other times
-Both use and spell the word "real-time"
-Both use the word "lemme"
-Both end sentences with ", right?"
-Both spell route as "rout"
-Both use the term "intellectual laziness"
-Both use the term and actively discuss the concept of agorism and the "agorist"
-Both use and spell the work "counter-economics" in this manner
-Both use the term "the latter"
-Both quite often capitalize smaller words they want to emphasize
-Neither uses hyphens to space out sentences or thoughts
-Both start sentences with "And" and "But" quite often.
-Both will commonly not capitalize the first word in a sentence when replying short and quick
-Both use the term "the heart of the matter"
-Both quite often will use a backslash (/) to split words with similar meaning, and the second word never had a space after the slash.
-Both use the term "altruistic"
-Both use the term "pal"
-Both use the term "war mongering"
-Both use the term "phoney"
-Both discuss and mention the authors Rothbard and Konkin
-Both commonly end sentences with a smilie face or with the wink smilie face
-Both sometimes end sentences with the word "amigo"
-Both use the term "anarcho-capitalist"
-Both misspell the word "alot"
-Both have discussed the paleo human
-Both use the word "bullshit"

-Both use similar sayings about “hedge your bet” or “hedge our bets”
-Both use the cliché of not touching something with a “10 foot pole”
-Both commonly use the word “kinda”
-Both say they are knowledgeable and use “Ubuntu”
-Both actively have discussions on bitcoins
-Both have extremely similar political views

Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Chicago O'Hare office is conducting an investigation into the seizures of small quantities of drugs being made at the Customs and Border Protection (CBP) International Mail Branch (IMB) at Chicago O'Hare Airport. These seizures have been linked to anonymous online marketplace called the Silk Road. This investigation is focused on identifying and dismantling the Silk Road website as well as identifying the sellers and recipients of the Scheduled Controlled Substances, as well as the anabolic and synthetic drugs being sold on the website.

HSI O'Hare is respectfully requesting a collateral investigation by HSI Vancouver on the Canadian citizen Anand ATHAVALE.

DETAILS OF INVESTIGATION:

Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Chicago O'Hare office is investigating multiple seizures of various drugs being seized by Customs and Border Protection (CBP) at the International Mail Branch (IMB). The investigation has led to identifying the anonymous online market place referred to as "the Silk Road" (SR) as the purchase location for the majority of the seized controlled substances.

HSI O'Hare is respectfully requesting the assistance of HSI Vancouver to coordinate a collateral investigation on the Canadian citizen Anand Nathan ATHAVALE, date of birth (DOB) November 01, 1975. ATHAVALE is suspected of operating as the main administrator under the username Dread Pirate Roberts on the SR and SR forum.

HSI O'Hare has identified ATHAVALE as the likely identity behind the SR administrator username Dread Pirate Roberts by using the posts on the SR Forum, and using the chat sessions recorded by HSI Baltimore. There has been extensive analysis of distinct writing styles, sayings, spelling mistakes, cliches and specific nuances, which have led to determining ATHAVALE as a highly likeable target.

The following is what identifying information is currently known about ATHAVALE:

Anand Nathan ATHAVALE
Canadian citizen, DOB: [redacted] 1975.

Lived in New Zealand during their early teens
Education: Dropped out of College, degree in BComm
Height: 5'5"
Weight 300 Pounds

[redacted]

Canadian PP#'s: [redacted]
Canadian DL's/ID [redacted]
Telephone # (519) [redacted]
addresses: [redacted].net, [redacted]odeletepro.com,
[redacted]@adpmods.com

Sister: Anita Genevieve ATHAVALE, Canadian citizen, DOB: [redacted] 1978,
Father: Indian heritage
Mother: German/Czech Heritage

Handles:
Liberty Student (mises.org)
Dixieflatline (Twitter, Notreason.com)
Roscoe36 (pistonsforum.com)
Guerrilla (namecheap.com)

U.S. Crossings (1997 and up)
August 11, 2005 crossed the Ambassador Bridge
June 03, 1998 Crossed at the Sumas POE
January 11, 1997 Arrived inbound on New Zeala t 10 from Auckland, NZ into Honolulu, HI using Canadian Passport [redacted]

Domains owned by ATHAVALE:
adp-servers.info, adpmods.com, anitaathavale.com, ariacom.net, autodeletepro.com, badboysummercamp.com, crashevent.com, dawgswap.com, dyenchir.net, dziho.com, faafan.com, freeculturefoundation.org, griefandgrace.com, harvestreport.net, humanvictorycigar.com, ksgovernor.com, liftupthelid.com, mahcuz.com, okanaganproperty.org, oviwebportal.com, pachay.com, pistonforum.com, salmonarmproperty.com, salmonarmrealestate.org, shopgpsandsave.com, shuswapproperty.net,shuswaprealestate.org, smilequilts.com, studioprimer.com, technoarena.net, todlokey.com, tv-valjevo.com, tvi-web.com, unifyyoga.com, unifyyoga.net, unifyyoga.org, vegasjunky.com, yogafrogcaps.com, ronpauldonors.com, notreason.com, highdefinition1080i.info, highdefinition1080p.info, glitchproject.com, astroteacher.net, teenbloggersintl.org, unifiedunionworkers.org, pistonsforum.com, email4seniors.org, ceapseap.info, conficker-worm-removal.com, confickervirusremoval.com, libertyseo.com, libertyseo.net, libertyseo.org, consolegamecheater.com, reviewmobilephones.com, laptopbuyer.info, luckygenerics.info, junksilverauctions.com, tramadolhcl.info, bupropiononline.info, buyorlistat.info, diclofenacgel.info, genericcarisoprodol.info, genericphentermine.info, rimonabantonline.info, vardenafilhcl.info, clomiphenecitrate.info, libertydoubleeagle.com, laptopsforstudents.info, usedlaptopsforsale.info, survivingbraininjury.info, buspironehcl.info, buytadalafil.info, genericsildenafil.info, achatmedicament.info, achattadalafil.info, fastprescriptions.info, secureonlinerx.info, euromedsonline.info, buyoseltamivir.info, lfeusers.com, impotencehelp.org, prescriptionrefill.info, drinkmagician.com, notjustprescriptions.com, onlineinsurancedealers.com, airtechaviation.com, facilcobro.com, szetoshuiki.com, chemicalsafetybook.com, doubleolsens.com, webautomationlab.com, brainclub.net, bubblesphere.org, devbridge.org, fivebox.org, planoodle.net, blogify.org, blogtune.net, dazzlepedia.org, zhaotongok.com, connectorz.com,

thyroidsupplement.net, ceapseap.info, fadeo.org, fivecast.org, fivefish.org, fivepath.org, jumpcast.org, pixotri.org, misosouprecipes.org, acetazolamide.net, clindamycin.me, cabergoline.me, clozapine.me, cyclosporine.me, minocycline.me, asthmainhalers.info, buyazithromycin.me, fluoxetinehcl.info, paroxetinehcl.info, venlafaxinehcl.info, buydoxycycline.info, cephalexinonline.info, lisinoprilhctz.info, majordepressivedisorder.info, orderamoxicillin.info, superfoodslist.info, bupropionhcl.info, swissballs.org, kettlebellweights.info, petmedsrx.info, athaananda.com, auction-market.com, atenolol.me, tramadol50mg.me, tadalafil20mg.me, sildenafil100mg.info, bupropiononline.info, buyorlistat.info, buytadalafil.info, clomiphenecitrate.info, diclofenacgel.info, genericcarisoprodol.info, genericphentermine.info, genericsildenafil.info, rimonabantonline.info, survivingbraininjury.info, vardenafilhcl.info, buspironehcl.info, crashassets.com, backlinkgarden.com, backlinkgarden.me, backlinkgarden.net, backlinkgarden.org, backlinkgarden.info, sociallinkoptimization.net, sociallinkoptimization.com, sociallinkoptimization.info, sociallinkoptimization.org, shuswaprealestate.org, salmonarmproperty.com, salmonarmrealestate.org, shuswapproperty.net, okanaganproperty.org, getinception.com, getinception.info, getinception.net, getinception.org, fortunepasseseverywhere.com, cseo.bz, communityseo.co, luckydragonconvenience.com,

Known/Current IP Addresses:
139.142.249.112 (First used 05/04/2012, last used to log in to namecheap.com, 11/09/2012)
119.152.223.137 (used on 02/02/2012 to log into namecheap)
119.152.21.138 (used on 01/17/2012 to log into namecheap)
216.8.170.40 (used on 04/17/2012)
216.8.163.222 (used from 12/30/2010 to 04/12/2012)
96.30.11.236 (owns/administers) (multiple websites listed above in blue)
96.30.11.237 (owns/administers) (pistonsforum.com)
96.30.11.238 (owns/administers) (teenbloggersintl.org)
96.30.11.239 (owns/administers) (unifiedunionworkers.org)
184.173.203.97 (yogafrogcaps.com, ronpauldonors.com, notreason.com, highdefinition1080i.info, highdefinition1080p.info, glitchproject.com, astroteacher.net)
64.74.223.30 (used for multiple websites)

HSI O'Hare respectfully requests that HSI Vancouver open a collateral case in order to work in conjunction with Canadian law enforcement to pursue all available information on ATHAVALE. This will include possible requests for surveillance, wire taps, personal identification records, search warrants for email, household utility records, as well as household energy consumption, internet use, internet connection IP records, etc.

The HSI Chicago O'Hare investigation continues.

EXHIBIT 4

Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Chicago Electronic Crimes Task Force (ECTF) is conducting an investigation into the seizures of small quantities of drugs being made at the Customs and Border Protection (CBP) International Mail Branch (IMB) at Chicago O'Hare Airport. These seizures have been linked to anonymous online marketplace called the Silk Road. This investigation is focused on identifying and dismantling the Silk Road website as well as identifying the sellers and recipients of the Scheduled Controlled Substances, as well as the anabolic and synthetic drugs being sold on the website.

This report contains information pertaining to Anand ATHAVALE's suspected role as the Silk Road Administrator the Dread Pirate Roberts.

DETAILS OF INVESTIGATION:

Since September of 2011, Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Chicago Electronic Crimes Task Force (ECTF) has been investigation the anonymous online black market referred to as the Silk Road. Since March of 2011, the Silk Road has hosted users that are able to buy and sell illegal drugs, counterfeit commercial merchandise, false identification documents and other illegal goods from destinations all over the world. Since early 2012, the operator and main administrator of the Silk Road website has utilized the screen name the "Dread Pirate Roberts"; prior to that the administrator used the screen name "Silk Road."

Since June of 2011, the Silk Road has maintained two independent websites. The first is its marketplace where it sells all of the illicit goods. The other is an online forum where the users can openly discuss anything related to the marketplace as well as receive updates from the Silk Road administrators concerning outages or maintenance on the marketplace website.

The Silk Road administrator has remained active on the Silk Road forum since its creation by posting messages to its other members.

On June 18, 2011, the Silk Road administrator posted their first message that stated the following.

"Hey gang,

Really sorry for the dead time there. Hopefully most of you got the message on the bitcoin forum or at silkroadmarket.org. The only major change is this forum. We have it running on a separate server with it's own url so if the main site ever goes down again, first check here for updates. Unfortunately this means we have separate logins for the main site and the forum.

As we mentioned before, everything was backed up and totally restored, but if for some reason a deposit didn't make it in to your account or

something like that, just let us know and we'll track it down and credit you. Also, we're giving everyone a 4 day grace period on taking orders to the resolution center before they are auto-resolved, so sellers, you may see some orders past due for a few days.

Thanks everyone for hanging in there with us. This work is scary and exciting all at the same time, and I'm really very happy to be on this journey with all of you.

Cheers,
Silk Road staff"

On February 05, 2012, the Silk Road administrator changed their screen name to the Dread Pirate Roberts (DPR) as a result of a contest held on the forum. The message of the change read as follows, "technically noisebr0 was the last poster, but who is noisebr0??? Most likely a profile made by a cheating bot! The winner is MagicMan!!! Congrats MM! Thanks everyone else for playing. I hope you like my new name) Messages - Dread Pirate Roberts"

On March 20, 2012, DPR posted a message on the forum that gave some insight into their motivations. The message read as follows.

"Hey gang,

I read more than I post in the forum, and my posts are rarely of a personal nature. For some reason the mood struck me just now to put the revolution down for a minute and just express a few things. There is a curtain of anonymity and secrecy that covers everything that goes on behind the scenes here. It is often fast paced and stressful behind this curtain and I rarely lift my head long enough to take in just how amazing all of this is. But when I do I am filled with inspiration and hope for the future. Here's a little story about what inspires me:

For years I was frustrated and defeated by what seemed to be insurmountable barriers between the world today and the world I wanted. I searched long and hard for the truth about what is right and wrong and good for humanity. I argued with, learned from, and read the works of brilliant people in search of the truth. It's a damn hard thing to do too with all of the misinformation and distractions in the sea of opinion we live in.

But eventually I found something I could agree with whole heartedly. Something that made sense, was simple, elegant and consistent in all cases. I'm talking about the Austrian Economic theory, voluntaryism, anarcho-capitalism, agorism etc. espoused by the likes of Mises and Rothbard before their deaths, and Salerno and Rockwell today.

From their works, I understood the mechanics of liberty, and the effects of tyranny. But such vision was a curse. Everywhere I looked I saw the State, and the horrible withering effects it had on the human spirit. It was horribly depressing. Like waking from a restless dream to find yourself in a cage with no way out. But I also saw free spirits trying to break free of their chains, doing everything they could to serve their

fellow man and provide for themselves and their loved ones. I saw the magical and powerful wealth creating effect of the market, the way it fostered cooperation, civility and tolerance. How it made trading partners out of strangers or even enemies. How it coordinates the actions of every person on the planet in ways too complex for any one mind to fathom to produce an overflowing abundance of wealth, where nothing is wasted and where power and responsibility are directed to those most deserving and able. I saw a better way, but knew of no way to get there.

I read everything I could to deepen my understanding of economics and liberty, but it was all intellectual, there was no call to action except to tell the people around me what I had learned and hopefully get them to see the light. That was until I read "Alongside night" and the works of Samuel Edward Konkin III.

At last the missing puzzle piece! All of the sudden it was so clear: every action you take outside the scope of government control strengthens the market and weakens the state. I saw how the state lives parasitically off the productive people of the world, and how quickly it would crumble if it didn't have it's tax revenues. No soldiers if you can't pay them. No drug war without billions of dollars being siphoned off the very people you are oppressing.

For the first time I saw the drug cartels and the dealers, and every person in the whole damn supply chain in a different light. Some, especially the cartels, are basically a defacto violent power hungry state, and surely would love nothing more than to take control of a national government, but you average joe pot dealer, who wouldn't hurt a fly, that guy became my hero. By making his living outside the purview of the state, he was depriving it of his precious life force, the product of his efforts. He was free. People like him, little by little, weakened the state and strengthened the market.

It wasn't long, maybe a year or two after this realization that the pieces started coming together for the Silk Road, and what a ride it has been. No longer do I feel ANY frustration. In fact I am at peace in the knowledge that every day I have more I can do to breath life into a truly revolutionary and free market than I have hours in the day. I walk tall, proud and free, knowing that the actions I take eat away at the infrastructure that keeps oppression alive.

We are like a little seed in a big jungle that has just broken the surface of the forest floor. It's a big scary jungle with lots of dangerous creatures, each honed by evolution to survive in the hostile environment known as human society. All manner of corporation, government agency, small family businesses, anything that can gain a foothold and survive.

But the environment is rapidly changing and the jungle has never seen a species quite like the Silk Road. You can see it, but you can't touch it. It is elusive, yet powerful, and we are evolving at a rapid clip, experimenting, trying to find sturdy ground we can put roots down in.

Will we and others like us someday grow to be tall hardwoods? Will we reshape the landscape of society as we know it? What if one day we had enough power to maintain a physical presence on the globe, where we shunned the parasites and upheld the rule of law, where the right to privacy and property was unquestioned and enshrined in the very structure of society. Where police are our servants and protectors beholden to their customers, the people. Where our leaders earn their power and responsibility in the harsh and unforgiving furnace of the free market and not from behind a gun, where the opportunities to create and enjoy wealth are as boundless as one's imagination.

Some day, we could be a shining beacon of hope for the oppressed people of the world just as so many oppressed and violated souls have found refuge here already. Will it happen overnight? No. Will it happen in a lifetime? I don't know. Is it worth fighting for until my last breath. Of course. Once you've seen what's possible, how can you do otherwise? How can you plug yourself into the tax eating, life sucking, violent, sadistic, war mongering, oppressive machine ever again? How can you kneel when you've felt the power of your own legs?

Felt them stretch and flex as you learn to walk and think as a free person? I would rather live my life in rags now than in golden chains. And now we can have both! Now it is profitable to throw off one's chains, with amazing crypto technology reducing the risk of doing so dramatically. How many niches have yet to be filled in the world of anonymous online markets? The opportunity to prosper and take part in a revolution of epic proportions is at our fingertips!

I have no one to share my thoughts with in physical space. Security does not permit it, so thanks for listening. I hope my words can be an inspiration just as I am given so much by everyone here.

Dread Pirate Roberts”

On DPR’s Silk Road forum profile page and on every post he/she creates is a signature. Since the HSI Chicago investigation began, HSI Special Agent (SA) Jared Der-Yeghiayan has observed that DPR’s signature has been modified with new quotes and links several times. SA Der-Yeghiayan has noted that there have been several quotes similar to the beliefs posted in the message above by DPR. SA Der-Yeghiayan also recalls that DPR’s signature has consistently contained a link to various books or publications from the website mises.org.

Mises.org is a website in support of the Ludwig von Mises institute founded in 1982 in Auburn, Alabama, and is dedicated to, “the research and educational center of classical liberalism, libertarian political theory, and the Austrian School of economics.”

In July of 2012, HSI SA Der-Yeghiayan began researching the Mises.org website and discovered their online forum. SA Der-Yeghiayan then took note of multiple unusual or repetitive words/sayings made by DPR on the SR forum and began to search for them on the Mises.org forum.

While searching the Mises.org forums SA Der-Yeghiayan took note of one individual using the screen name liberty student (LS). LS was an administrator on the Mises.org forums and had made 11,343 posts as early as 2009.

In October of 2012, HSI Baltimore office provided SA Der-Yeghiayan with a file containing all of the Undercover (UC) chats made between a UC Agent and DPR.

The following is a list of the similarities in use of words or statements made by LS on the mises.org forums in comparison to messages posted by DPR on the Silk Road forums and a few from Undercover chats with DPR provided by HSI Baltimore.

-Both spells Labor as "Labour" occasionally, and as "Labor" other times

Posted by DPR on October 03, 2012:

"That work is an opportunity for them to better themselves. Child labour regulations only hampered the development and expansion of the industries that were providing these opportunities."

Posted by LS on April 15, 2009:

"The free market supports everyone's self interest by the right to own your own property and to keep the fruits of your own labour."

-Both use and spell the word "real-time"

Posted by DPR on July 27, 2011:

"We don't do it in real-time to avoid using up alot of system resources."

Posted by LS on August 01, 2009:

"Wikipedia is about the political power of editors, not the capacity for anyone to edit information in real-time"

-Both use the word "lemme"

UC Chat by DPR:

"lemme find a good comp for ya"

Posted by LS on May 25, 2009:

"Lemme guess. You didn't consider that when you make those statements."

-Both frequently end sentences with ", right"

Posted by DPR on July 22, 2012:

"The current sig is ok though, right?"

Posted by LS on October 23, 2010:

"And by rightful owners, you mean people who can prove title, right?"

-Both spell route as "rout"

Posted by DPR on October 01, 2012:

"It will be shut down quickly and the land put to better use leaving the two better routs to serve the demand."

Posted by LS on May 11, 2009:

"It should be a bigger rout than the takedown of Chris Peden last year."

-Both use the term "intellectual laziness"

Posted by DPR on May 03, 2012:

"To look at the hard examples, you have to abandon intellectual laziness and apply market principles to industries where the market has not been allowed to work because of government monopoly (education, transportation, utilities, security, justice, defense, charity etc)."

Posted by LS on August 04, 2009:

"If you are going to assume gaps (real or perceived) without asking in good faith for clarification (which I consider unproductive, insulting AND wasteful), I will point out that intellectual laziness as dishonesty since you're obviously too intelligent to be stupid."

-Both use the term and actively discuss the concept of agorism and utilize the uncommon use of the word "agorist."

Posted by DPR on October 04, 2012:

"I'm out to turn unconscious agorists in to conscious active ones"

Posted by LS on August 18, 2009:

"If that was so, it would not be possible to be an agorist."

-Both use, spell and hyphenate the word "counter-economics"

Posted by DPR on October 03, 2012:

"but his genius lies in his simple insights he called agorism and counter-economics."

Posted by LS on August 27, 2009"

"Agorism is new libertarian stuff. Counter-economics. Which is black markets, engaging in what is illegal under the state, but is not illegal

in a libertarian sense. This means working for cash and paying no taxes, barter economy, drugs, sex, security etc. Agorism is mostly a theoretical concept."

-Both use the term "the latter"

Posted by DPR on October 01, 2012:

"If I had to choose a side to this question, I think it would be the latter, which might be the first point I've disagreed with Rothbard on"

Posted by LS on March 13, 2011:

"The former is a mistake, the latter everyone has agreed with you 1000 times already Eugene."

-Both frequently capitalize words they want to emphasize

Posted by DPR on April 29, 2012:

"We are NOT beasts of burden to be taxed and controlled and regulated. WE are free spirits! We DEMAND respect!"

Posted by LS on May 28, 2009:

"The free market is a system where one can choose to give up their option to compete and join a commune, but a commune INTERNALLY and BY NATURE cannot tolerate the internal competition necessary to be "free market"."

(Agent's note: As seen by the last two excerpts both subjects began capitalizing words of emphasis in relation to the topic of free markets.)

-Neither uses hyphens to space out sentences or thoughts

(Agent's note: Important point above since many of the other members on the Mises.org forum do use hyphens consistently throughout their posts. These are also member who might have also shared the one or two of the same words or sayings that DPR has used.)

-Both start sentences with "And" and "But" quite often.

Posted by DPR on February 18, 2012:

"But yea, I think with this little tweak, you can do your lottery games and be rewarded for your sales at a level that is more fair."

Posted by DPR on October 21, 2011:

"We are soooooo close to going live again. And I am soooooo exhausted"

Posted by LS on March 17, 2011:

"But Misesian Utilitarians seem to use their position very often to avoid making any statement about ethical or moral values. And I am not afraid to do that."

-Both use the saying, "the heart of the matter"

Posted by DPR on October 02, 2012:

"I think that's a tough pill to swallow for some, but really gets to the heart of the matter"

Posted by LS on January 01, 2010:

"Penetrating questions. Right to the heart of the matter."

-Both use the term "altruistic"

Posted by DPR on August 01, 2012:

"Those ends can be altruistic if that individual wishes it."

Posted by LS on June 01, 2009:

"You are welcome to be as altruistic as you like."

-Both use the term "pal"

UC Chat by DPR:

"awww, I've missed you too pal."

Posted by LS on September 15, 2009:

"Your pal Mitt Romney was not a limited government candidate."

-Both use the term "war mongering"

Posted by DPR on March 20, 2012:

"How can you plug yourself into the tax eating, life sucking, violent, sadistic, war mongering, oppressive machine ever again?"

Posted by LS on May 23, 2009:

"Even the LP supports war mongering."

-Both use the word "phoney"

Posted by DPR on January 09, 2012:

"With this change, there are no phoney excuses whatsoever for vendors to ask for out of escrow payment."

Posted by LS on September 13, 2009:

"I thought you were making a point about phoney taste testing."

-Both discuss and debate the authors Rothbard and Konkin

-Both commonly end sentences with a smilie face or the smilie face with a wink

UC chat with DPR:

"I hope you are well :)"
"some of your charm ;)"
"too busy :)"
"I will :)"

Posted by LS on April 19, 2011:

"George, since you started posting here, you have kinda won me over, but it certainly wasn't due to your bedside manner. :)"

Posted by LS on April 18, 2011:

"Welcome to Mises. :)"

-Both call others "amigo"

UC Chats with DPR:

"Thanks for accommodating amigo :)

Posted by LS on May 04, 2009:

"Thank you amigo!"

-Both use the term "anarcho-capitalist"

Posted by DPR on March 20, 2012:

"I'm talking about the Austrian Economic theory, voluntaryism, anarcho-capitalism, agorism etc. espoused by the likes of Mises and Rothbard before their deaths, and Salerno and Rockwell today."

Posted by LS on April 15, 2009:

"If you don't understand a free market, or try to pigeon hole a free market by trying to replace today's institutions straight up for private institutions, then you're not going to be able to appreciate the upside of anarcho-capitalism."

-Both misspell the words "a lot" as "alot"

Posted by DPR on February 19, 2012:

"That's alot of positive responses! Also, lots of great additional suggestions. We could do alot to improve the feedback system, but for now it looks like this small change has lots of support, so we'll go ahead with it."

Posted by LS on June 15, 2010:

"If you can't articulate your own position clearly in a paragraph or less, then there isn't alot of value in my conversing with you."

-Both use the curse word "bullshit"

Posted by DPR on May 02, 2012:

"This isn't utopian bullshit either."

Posted by LS on May 05, 2011:

"Epistemology does get in the way of bullshit conclusions, which is why many people abandon it."

-Both use similar sayings about "hedge your bet" or "hedge our bets"

UC Chat with DPR"

"and you can continue to do so or not once you are up and running? Hedge your bets"

Posted by LS on May 04, 2009:

"In order to engage in risky ventures (like driving) many of us will need a way to hedge our bets that we won't cause damage beyond our means to pay."

-Both use the cliche of not touching something with a "10 foot pole"

UC Chat with DPR:

"is not something I would touch with a 10 foot pole."

Posted by LS on September 18, 2010:

"This is what the OP and strangeloop will not touch with a 10 foot pole via a clear definition for the term."

-Both commonly use the slang "kinda"

Posted by DPR on October 11, 2012:

"Kinda opens a can of worms about the state's role in national security."

Posted by LS on April 19, 2011:

"George, since you started posting here, you have kinda won me over, but it certainly wasn't due to your bedside manner. :)"

-Both actively have discussed the topic of bitcoins

(Agent's Note: While observing the Mises.org forums it would seem that at face value almost anyone there could easily be DPR. Even a few dozen members had used a few of the same things mentioned above. Yet a closer look at most of them will show that they are nothing like DPR. Besides LS, none of them even matched more than 3 of the words/ sayings listed above. Often times they would use one of the more common words used by DPR, but they never talked about DPR's main inspirations, writers Murray Rothbard, and Samuel Konkin.

This connection was made based upon the all the important aspects of DPR's writing matching LS, to include many unusual words and sayings, which were interestingly located at the same place that both DPR and LS are affiliated to.)

HSI SA Der-Yeghiayan also searched the Mises.org forum and all of LS's posts that could reveal any specific details about LS's true identity. SA Der-Yeghiayan noticed that LS never ended any of his posts with a name, nor did it appear that any other member ever addressed LS with anything but their screen name.

SA Der-Yeghiayan did find the following information in various posts made by LS.

"I live near these landmarks.

http://www.forgottendetroit.com/mcs/index.html

http://www.forgottendetroit.com/national/history.html

http://www.forgottendetroit.com/metropolitan/history.html"

"NZ is a cool spot. Lived there for a couple years, would take it over Canada in a second. Quite fond of Whangarei."

"I have lived with Muslims, I have been in mosques for prayers, and I have observed Ramadan. I have been around a madrasa, and I have spent time asking an Imam questions about his faith. I think I have a clue or two about Islam. I'd hazard a guess I know a hell of a lot more about Islam than you do. Not that it is relevant, but since you continue to make fallacious appeals and ignore the meat of the argument, I'll play your little authority game and raise the level of play.

Good luck finding any Muslim today who follows the Quran precisely, good luck finding more than a handful of Muslims who agree upon what the Quran says and how it should be interpreted. I'm tired of you not substantiating your claims, and continuing to assert you're right. If the best you have are logical fallacies and denial of your own biases, then this conversation is stillborn."

"You're in luck here. We have people who have lived, or are from Europe including England, and Canada, and the former Soviet Union, and you can find out lots of first hand experiences. For example, I am a Canadian. And I would not wish our health care system on my enemy."

"Nice to see another Canadian waking up, and in the best way possible."

"I moved around a lot, and changed schools 8 times from Montessori to University (dropped out). School is almost completely indoctrination. I have made the most progress in my life, when my education was self-directed."

"I dropped out of university 3 months into a BComm."

"I also unschooled myself. It helped having parents who were too busy to keep me in the system."

"http://faculty.msb.edu/hasnasj/GTWebSite/MythWeb.htm
I am not studying law, but it is important to point out that the law is arbitrary, and thus support for the state can only be arbitrary."

"Particularly in doing anything in IT, by the time you reach the 3rd year of your degree, a good portion of the course load may be outdated.
I work online, and probably spend 15 hours a week keeping up with industry developments. I'm pretty sure this will be the model going forward. People having to upgrade as they work, or risk their productive advantage wiped out through obselence."

"I've started looking into bitcoin and it is pretty interesting. Bitcoin supporters would do well not to be so defensive about it, as they are working against spreading the idea with such an approach."

The next quote was posted on April 15, 2011:

"I don't use Ubuntu on the desktop, but I have a fair bit of Linux experience with servers. This stuff has come a long way since I bought a retail copy of Mandrake 10 years ago."

"I ran Fedora a couple years ago, but an upgrade broke it, and I couldn't be bothered to fix it because I am on a dual boot system and I can't afford to muck up my primary Windows install.
I've installed Ubuntu several times since, becoming increasingly pleased with the hardware support, but never really getting into using the system very much.
Anyone complaining about Linux h/w support now should have been around 10 years ago."

"I'm always connected. Most people with broadband are. When the net goes down, about once or twice a year for a couple hours, I go lay down and take a nap. My net connectivity is usually very robust.
The benefits are that when I come to your house, I can access my data. When I travel, I can access my data without carrying a local copy with me. I don't even need to carry a computer with me. I only need to find

one with a net connect, and it doesn't matter what OS it is running or what software it has installed.
There are downsides. Security. Redundancy. But everything in life has ups and downs, my point is that for most people, the downs are not as mission critical to what they are doing. There is a pretty good chance Gmail and Facebook keep very good backups, dare I say, better backups than most people keep locally"

"I run 00 locally. But you could easily use Google Documents (or any of another number of document services) to do the very same thing online. Your connection is slow, but 10 years ago I was also on dialup, and now I have a 5mBit line. In another 10 years, 24/7 broadband access EVERYWHERE will be taken for granted. I understand today, (as I am surrounded by 4 PCs) the PC is still the king of the jungle, but I can see no reason why that will be so a decade from now."

"There is one other problem with changing. There is an investment into learning Linux and adapting my Windows usage models. As time goes on, I have less and less free time (or rather time I would invest in this). I have 4 computers at my desk. I will have to switch one and start playing with it to slowly get comfortable. In fact, I think I will start today."

"I use Open Office and Linux, and I do not have the skills to create either. In fact, there are 100s of thousands (if not millions) of people in a similar situation.
Your claims about the market don't even pass the most basic evidence or a quick test of reality.
Linux is produced under a division of labor, and true market anarchy. It is designed, tested and deployed in a decentralized fashion, adopting temporary heirarchies as necessary along the way, with no prevailing hierarchy permanently entrenched at the top."

"Speak for yourself. I'm pretty awesome. Then again, I am half asian."

"I am self-employed, so I am a self-owner."

The next quote was posted March 14, 2011:

"Ron Paul ain't just for young people! I'm in my mid-30s. :)"

The next quote was posted May 08, 2011"

"I quit smoking 3 years ago."

"I have two horror stores, mine and that of a very close family member. The people who defend the Canadian health care scheme are typically those who don't use it, and those who are dependent on it."

"My friend, I am a few klicks north of you. I love Detroit. It will not have a small government renaissance. I admire your optimism however. You can't starve the beast. That doesn't actually work. You have to lose popular support for the government.

The people of Detroit keep looking to messiahs like Bing, or Kilpatrick, or Young for solutions. As long as they do that, the government will simply be a parasite hibernating until there is something new to feed off."

"We should go for Coney Dogs sometime. But first I have to get a passport so I can cross the Ambassador. All hail the security state!"

"Ok, Auburn Hills is not Detroit, but include the Pistons and Shock too. :)"

"Perhaps. My father was one of 7 kids. I have about 20 cousins between both sides. My grandparents helped raise me while my parents worked. My parents helped maintain my grandparents when they got old. I was expected during summer vacations to take my grandfather for walks. I support my parents now when I can and when they need it. As they get older, I will expect to help them further. My sister keeps me on speed dial if she needs help. Is it because I am male? or because I am a useful fellow? She's quite the feminist, but more than happy to let me lift the heavy stuff or pay a bill."

"Sell them. My sister knows a guy who plays WOW with bots, and sells the high level characters on ebay. He drives a sports car. Lol"

The next quote was posted July 02, 2011:

"Also, before anyone starts any conspiracy theories, I am going to have my account here deleted. So if this post goes missing or set to guest, it was by intention."

The next quote was posted July 03, 2011:

"I am done here. I thought it would be deleted by now, but I might wait another day and do it myself.

I don't really write for libertarians anymore. I was never very good at it. If you see "DixieFlatline" around, that's me.
I intend to write about business from an Austrian perspective at some point, but it won't be ideological.
Anyone who wants to reach me, use the contact info at notreason.com
Last post. Auf wiedersehen.

(Edit: of the irony that it is broken due to the POS rich text editor.)"

"I have made a post here explaining how to get some of this functionality back.
http://notreason.com/mises-community-quote-workaround/
Let me know if pictures would be helpful. If you have any questions, ask here.
Big thanks to Nir for helping make this happen."

Using all the information listed above SA Der-Yeghiayan was able to conclude that LS was a non-white half-Asian male in his mid-30's who resides or resided in Canada. He grew up in New Zealand, and has a

"feminist" sister. He dropped out of college while pursuing a degree in perhaps Business Commerce. He has an advanced, self-educated knowledge of computers and networking. He possibly lives or has lived near Detroit, close to the Ambassador Bridge, and follows American sports teams such as the Detroit Pistons, and maybe without a passport. He uses another username "dixieFlatline", and forwarded others seeking him to notreason.com.

On or around November of 2012, SA Der-Yeghiayan conducted several open database searches on notreason.com and discovered that the website was still active and was registered on July 17, 2008 through GoDaddy. With exception of one month, all of its WHOIS information had been protected by Domains by Proxy.

The July 14, 2009 WHOIS registration remained unprotected and was filed pubilically, and showed that the registrant was Autodeletepro located at 105 - 2940 Elsmere Court, Windsor, Ontario N8X 5A9, Canada. The administrator and technical contact was listed as Athavale, Anand, with the email address sales AT adpmods.com, Autodeletepro, which was located at 105 - 2940 Elsmere Court, Windsor, Ontario N8X 5A9, Canada and telephone number (519) 250-9021. The servers for the website were controlled by the company Hostgator.

SA Der-Yeghiayan conducted additional research on the website and noticed that it was originally hosted at Internet Protocol (IP) address 74.53.81.66 but on May 28, 2011 it switched to IP address 184.173.203.97.

Running a reverse lookup on IP 184.173.203.97 showed 112 other websites located on that IP. Majority of those websites WHOIS information were protected.

SA Der-Yeghiayan sent several Title 21 administrative subpoenas to companies such as GoDaddy, Hostgator and WhoisGuard for subscriber information related to the notreason.com website.

SA Der-Yeghiayan also conducted several searches in law enforcement databases and found a traveler with the name ATHAVALE, Anand Nathan, who was a Canadian Citizen, with the date of birth (DOB) November 01, 1975 who had traveled over the Ambassador bridge on August 11, 2005, and had travel as early as January 11, 1997, arriving inbound from Auckland, New Zealand into Honolulu, HI bearing Canadian Passport VD084114.

SA Der-Yeghiayan was also able to find a Canadian driver's license for ATHAVALE showing he resided at 2739 Parent Ave, Windsor, ON, CA. SA Der-Yeghiayan also discovered a more current Canadian driver's license with the address 3733 Edgehill Dr, PO Box 87, Tappen, BC CA.

All three subpoenas returns were eventually received and showed that Anand ATHAVALE with the same addresses listed above, registered, owned, protected and administered the notreason.com website.

SA Der-Yeghiayan found a website registered and operated by ATHAVALE by the name of anitaathavale.com. SA Der-Yeghiayan was able to identify her as Anita Genevieve Athavale, Canadian citizen, with the DOB of June

21, 1978, bearing an active Canadian passport #WK180678. ATHAVALE maintains several websites for Anita, including a yoga website.

While conducting open database searches on Anita, SA Der-Yeghiayan found an article that showed her as being one of Canada's most gifted singer songwriter. The article went on to say the following:

"Born in Windsor, Ontario, Anita Athavale was the child of entrepreneurs and music lovers. The daughter of a mother with German/Czech heritage and a father from India, Anita was drenched in cultural richness and determination from the get-go. Her parent's mixed-culture marriage became strained over time and in an effort to reconcile, the family moved to New Zealand for a fresh start. Living abroad in her early teens, Anita found an opportunity to pursue her secret interest in singing and performing.

Eventually her parents decided to divorce and Anita returned to Canada with her brother and mother. Dealing with her family turmoil, Anita more certainly felt the need to find an avenue for expression. When she turned sixteen, Anita began performing a mix of covers and original songs on open stages and in coffee-houses. Within months of her debut performance, she had garnered enough attention to be offered opening slots for Canadian major label acts."

(Agent's note: This paragraph helps fill in the gaps about LS. His father is from India, and mother is from German/Czech background, which is why he calls himself half-Asian. It also fits in to see why he says he was traveling around so much and was in an out of a lot of schools. This also explains how he grew up partly in New Zealand.)

Based on this information SA Der-Yeghiayan placed a record on Anita to be alerted of any travel associated to the United States.

On March 08, 2013, Anita traveled through pre-clearance at Calgary International airport in destination of Hawaii. Customs and Border Protection (CBP) officers stopped Anita and conducted an enforcement examine. SA Der-Yeghiayan was requesting that the officers attempt to gather any information about her association and the location of her brother.

CBP Officers reported that Anita was on her way to a yoga retreat in Hawaii and was traveling alone. The officers stated that she currently resides at 720 2nd Ave NW Apt 307, in Calgary AB T2N0E3. She is a yoga instructor and works for Bodhi Tree yoga here in Calgary.

She provided the officers a couple of email addresses, such as anitagenevieve AT gmail.com, tootsiewootz AT gmail.com, unifyyoga AT gmail.com and anitaathavlemusic AT gmail.com. They stated that her brother Anand lives with her mom Gwen and step dad Brian KRIVASHEIN in BC. Their address is 3733 Edgehill DR, Tappen BC V0E2X1. The telephone number she had listed on her phone for her brother was 250-515-6180. Her current Canadian passport number is QH98637.

SA Der-Yeghiayan also discovered through open database searches that ATHAVALE administers and operates a Detroit Pistons forum under the

username Roscoe36. The website is pistonsforum.com. On March 31, 2011, he posted the following:

"I have been East Coast, even when I lived on the West Coast. I am now moving to the West Coast, where I plan to be West Coast for the rest of my life."

Another member asked him where and he responded, "4 hours give or take north of Seattle."

(Agent's note: There are several key points to make about LS and his activity, as well as DPR. On the Mises.org forum he was active from 2009 up until early July of 2011. Then in May of 2011 he suddenly stops posting until he reappeared in July to make several final posts to inform members of his departure from the site. During his time on the Mises.org forums he produced over 11,000 posts. Then, all of a sudden he tells everyone he's leaving and vanishes.

The timing is interesting in that the Silk Road began in March of 2011, and then became enormously popular after an article broke about the website's existence in early June of 2011. This is around the same time it appears he decided to leave his home in Windsor and move into his mother's home in a remote location north of Vancouver.

It also appears as if ATHAVALE was a computer administrator for multiple websites, yet most of them he doesn't operate anymore. It is unknown as to how he's sustaining himself. The cost of the servers he owns and his other active websites are costly and have expensive monthly bills. It is unknown as to how ATHAVALE is supporting himself and his current lifestyle.

Another unique observation between DPR and ATHAVALE is that they both seem to write to the level of their reader. Looking at the UC chats between DPR and the UC Agent look nothing like the posting made on the SR forum. It shows that DPR is cognizant of his/her audience. The posts on the Silk Road forums are careful and time is spent to not reveal too much about his/her identity. The sentence structure is near perfect, and his/her spelling is nearly without flaws. The paragraphs and thoughts are spaced out correctly, and grammatically it appears as if DPR possesses a graduate level degree. Yet, once in the UC chats he/she appears relaxed but his/her grammar resembles that of a high school graduate. One could think the two could never be one in the same.

The same is seen in ATHAVALE. On the Mises.org forums his posts were thought out, conscientious and cognizant of his audience. ATHAVALE used his notreason.com website to post blogs under the username dixieflatline. There it appears he felt he was weighed more by other so his writing skills increased to that of again graduate level education. Yet, once you read his posts under the username Roscoe36 on the Detroit Pistons forum you would never think the two people could ever be the same.

ATHAVALE has demonstrated the ability to be able to play the part of multiple identities online. His timing of activity and departure from not only the forums he occupied for so long, but also his home correspond

very closely with the rise of the Silk Road. He has the computer skills and knowledge to able to operate the Silk Road in the manner in which it appears DPR does.)

The HSI investigation continues.

EXHIBIT 5

To: Osborn, Phillip L[Phillip.L.Osborn@ice.dhs.gov]
From: DerYeghiayan, Jared
Sent: Wed 5/15/2013 12:18:52 PM
Importance: Normal
Sensitivity: None
Subject: Mt Gox/ KARPELES Baltimore money seizures DWOLLA and Mutum Sigillum

Phil,

Here are the facts of the most recent money made by HSI and SS Baltimore on bank accounts and Dwolla accounts belonging to the target of our HSI investigation (Mark KARPELES).

-In July of 2012, HSI Chicago identified links between the owner of the Mt. Gox bitcoin exchange (Mark KARPELES) and the Silk Road website.

-In early August of 2012, HSI Chicago notified HSI Baltimore of the connection made and stated that KARPELES was a target of HSI Chicago's investigation.

-HSI Baltimore was provided a copy of the HSI Chicago's ROI that highlighted all the facts of the connection.

-HSI Baltimore was asked not to share the connection with any other Agencies in their unofficial task force comprised of Secret Service, DEA, IRS, and potentially others. HSI Baltimore agreed not to share the information.

-In August of 2012, HSI Chicago inputted KARPELES in DICE/SOU as a target of the investigation and OCDETF provided an intelligence product on KARPELES in return. In the intelligence product HSI Chicago found that the DEA agent in Baltimore had inputted similar information on passports and details that were identical to HSI Chicago's TECS record on KARPELES in DEA's system NADDIS.

-HSI Chicago contacted HSI Baltimore and they confirmed that they shared all of HSI Chicago's information on KARPELES with members of their task force. HSI Chicago discovered that their IRS Agent, DEA Agent and SS Agent all inputted KARPELES into their individual investigations as a target and a potential administrator of the Silk Road based on HSI Chicago's ROI/information.

-In January of 2013, HSI Chicago opened a UC Bank account for the purpose of being able to move money through Mt. Gox and the other companies owned by KARPELES (Mutum Sigillum LLC). HSI Chicago's AUSA Marc Krickbaum was briefed on the

transaction and was in concurrence.

-On April 03, 2013, HSI Chicago initiated an UC purchase of evidence from the Silk Road using Mt. Gox/ Mutum Sigillum. The purpose of the transaction was mainly to develop venue and provide evidence to successfully charge the 1960 violation in the Northern District of Illinois.

-On April 23, 2013, all of the transfers were complete and HSI Chicago arranged a meeting on May 16, 2013 with HSI Chicago's AUSA to discuss the 1960 charges that were developed on KARPELES through the transactions.

-In April of 2013, on several occasions, HSI Chicago briefed HSI Baltimore's case Agent Michael McFarland and the Baltimore AUSA Justin Herring (Who is the AUSA over all the agencies in the Baltimore task force) that HSI Chicago was pursuing KARPELES and his company Mutum Sigillum/ Mt. Gox with criminal 18 USC 1960 charges for operating as an unlicensed Money Service Business (MSB). Each acknowledged and stated that KARPELES was not an active target of their investigation and they did not believe he was involved in operating the Silk Road. Their AUSA knew HSI Chicago was pursuing KARPELES/ Mt. Gox/ Mutum Sigillum and their DWOLLA account and on May 08, 2013 provided to HSI Chicago copies of records they previously subpoenaed DWOLLA for on KARPELES and contacts for Dwolla's attorneys.

-On May 09, 2013, HSI Chicago sent a Grand Jury subpoena to Dwolla for all their account activity associated to Mutum Sigillum.

-On May 10, 2013, HSI Chicago case Agent Jared Der-Yeghiayan was contacted by the HSI case agent and the Baltimore AUSA that the SS agent in their task force had issued a civil seizure warrant for Mutum Sigillum's Wells Fargo bank account. Both the case agent and AUSA stated they were not notified by the SS agent in their task force of the seizure warrant before it was already filed. The AUSA stated that he learned that the SS headquarters was notified that Wells Fargo had closed down Mutum Sigillum account over suspicions of 1960 violations and the money was going to be returned to KARPELES. It is not exactly known at this time, but HSI Chicago believes that SS Headquarters notified the SS agent in Balitmroe based on his record on KARPELES and therefore he got involved in making the seizure.

-HSI Chicago was told by the Baltimore AUSA that the SS agent never contacted him or the HSI Agent in Baltimore about the money and instead went to a different AUSA in the Baltimore office to seize the money. The Baltimore AUSA and HSI Baltimore agent only found out about the seizure after the AUSA writing the warrant contacted him.

-This is when the HSI Baltimore and the Baltimore AUSA then contacted the HSI Chicago agent to notify him of the seizure. They stated that they (meaning the SS and

the other Baltimore AUSA) were not pursuing criminal charges for the 1960 violation on KARPELES.

-The following Monday May 13, 2013, HSI Baltimore and the Baltimore AUSA Justin Herring contacted HSI Chicago to notify him that they negotiated with SS Baltimore to seize the money in KARPELES's Dwolla account using the same affidavit written by the SS. The total in the account was said to be over 3 million USD. HSI Baltimore stated that they would add Chicago's project code for their CUC and case number to their seizure of 3 million.

-The Chicago AUSA Marc Krickbaum is aware of both seizures and has informed the AUSA Justin Herring in Baltimore that Chicago was still intending on possibly pursuing criminal charges for 1960 violations that occurred in the State of Illinois. AUSA Marc Krickbaum had no objections to the SS seizure or HSI's seizure over the accounts even though HSI Chicago felt they should be making the seizure on the Dwolla account.

-It is HSI Chicago's and HSI Baltimore's case agent position that the SS Baltimore Agent would have never been alerted by SS headquarters about KARPELES's bank account had it not been for the record they entered as a direct result of it being provided to them by HSI Chicago through HSI Baltimore. HSI Chicago is the source of the information for HSI Baltimore's work on KARPELES as well. HSI Chicago maintains the longest standing TECS records on KARPELES, and exclusive TECS records on Mt. Gox and Mutum Sigillum.

-Case agent Jared Der-Yeghiayan is also of the opinion that that HSI Baltimore should have offered to defer the Dwolla seizure of 3 million USD plus to HSI Chicago knowing that they had developed the charges in their district and were pursing criminal charges.

-HSI Chicago is still pursuing to educate and persuade the AUSA in Chicago to criminally charge KARPELES for 1960 violations. The meeting with the AUSA is still scheduled for tomorrow morning.

Jared

EXHIBIT 6

-June of 2011, HSI Chicago started monitoring unusual drugs seizures from the Mail Branch related to the Silk Road

-On October 12, 2011, HSI Baltimore reported in ROI 13 in general case number BA08NR11BA0004 that in September of 2011 an informant told them that the Silk Road existed and they sold drugs there. No further reports were filed or subsequent cases opened on the website.

-On October 13, 2011, HSI Chicago opened case Operation Dime Store to document the findings of the seizures coming into the mail branch.

-On October 18, 2011, HSI Chicago documented the first Silk Road website lookout in TECS under number X8O00659400COH.

-On December 8, 2011, HSI Headquarters prepared HSIR ID# ICE-HQINT-00431-12 titled Digital Currency Bitcoin and the Underground Website Silk Road. In that report they list 6 HSI investigations that had mentioned the Silk Road, including HSI Chicago and HSI Baltimore. HSI Chicago's investigation was shown as actively working the website and multiple vendors. HSI Baltimore's summary was that of only having one report from a CI mentioning the Silk Road existed. The other 4 HSI cases had only mentioned the website from interviews conducted.

-On January 03, 2012, HSI Baltimore SA Gregory Miller opened investigation BA13CR12BA0016 and stated in ROI 001 that on December 29, 2011, their CI began telling them some details about the Silk Road website.

-On January 13, 2012, HSI Baltimore GS Veronica Ryan requested a phone call about HSI Chicago's Silk Road case.

-GS Ryan expressed interest in our investigation and wanted to meet with HSI Chicago to learn about the investigation.

-By January 13, 2012, HSI Chicago had over 19 reports, 200 seizures, identified multiple vendors/targets, coordinated POE's and case information with multiple HSI attaché offices, signed up a CI and had met with the AUSA's office to prosecute the case.

-On February 01, 2012, HSI Baltimore flew into Chicago for a meeting. In attendance from Baltimore was AUSA Justin Herring, GS Veronica Ryan, Case Agent Gregory Miller, Co-Case Agent Michael T. McFarland, Co-Case Agent Melinda LeCompte and/or Intelligence analyst Lisa Noel. From Chicago was GS Tom Sebens, Case Agent Jared Der-Yeghiayan and SA Dave Jackson and partly there was AUSA Marc Krickbaum.

> -During the meeting HSI Baltimore requested to split up our investigation so that they could work a section of it. They requested to work all the administrators and organizers and suggested HSI Chicago only works the drugs and overseas vendors. HSI Chicago strongly disagreed and stated that they were fully advance in the case and did not see any advantage to give up any aspect of their investigation which included the administrators and organizers. HSI

Baltimore had all 19 of HSI Chicago's ROI's printed out and commented how useful all their reports have been to them.

-HSI Baltimore then revealed that their informant that told them about the Silk Road in September was just arrested on or around January 17, 2012 for something unrelated and admitted to them then that he was actually a Silk Road vendor. He provided HSI Baltimore with access to his Silk Road account and HSI Baltimore suggested they would take down the site within a week or two with that information. HSI Chicago disagreed that could be done and disagreed with the strategy they intended to take and stated they were working all aspects of the investigation and wanted to send a message with case. HSI Baltimore stated that they would proceed by conducting multiple drug reversal deliveries across the United States. HSI Chicago asked if they were working with DEA in order to accomplish that and they responded they were not and they had the full authority to perform those reversals without the DEA. The meeting ended with HSI Baltimore stating that they intended on shutting down the website soon and weren't concerned with HSI Chicago's strategy but they would coordinate once they take the website down.

-In early March 2012, HSI Baltimore Case agent Gregory Miller contacted HSI Chicago Case Agent Jared Der-Yeghiayan to inform him that their case was likely to be shut down by their ASAC after he found out they were attempting multiple Domestic CD's without DEA participation. SA Miller stated their case had nowhere else to go from there.

-In late March 2012, HSI SA Miller informed HSI SA Der-Yeghiayan that he had been pulled from the investigation and GS Ryan had reassigned the investigation to SA McFarland because they needed to transform their case by using a certified undercover agent.

-On March 27, 2012, SA McFarland opened case BA02CR12BA0026 and started by sending multiple collaterals to other offices to conduct surveillance on multiple targets associated to the account they took over from their once informant. SA McFarland also created an unofficial task force comprised of multiple agencies to include DEA, Postal Inspectors, IRS and Secret Service.

-In April of 2012, HSI Chicago developed a new informant and informed HSI Baltimore of development. HSI Baltimore requested access directly to the informant but wouldn't tell HSI Chicago why they wanted the access or what they wanted to ask the CI. HSI Chicago offered to take any questions and directly ask the CI the questions for them, but they would not allow access to the CI without knowing any topic of questions. HSI Baltimore expressed anger over not being allowed direct access to the CI.

-In May of 2012, HSI SA McFarland called and requested the assistance of HSI Chicago to stop 2 outgoing parcels containing drugs from surveillance they conducted on a target. HSI Chicago located one of the two parcels and seized the drugs and then forwarded them to HSI Baltimore.

-In July of 2012, HSI Chicago developed a target (hereinafter referred to as "Target A") they associated to the creation of the Silk Road website.

On July 06, 2012, HSI Chicago inputted a TECS record on Target A.

-On July 9, 2012, SA McFarland wanted to send out a draft for HSI Headquarters notifying all HSI offices that he is the POC for all Domestic Silk Road related investigations and that HSI Chicago will be the POC for all international related investigations. HSI Chicago rewrote HSI Baltimore's Draft to state that they were

-On July 17, 2012, HSI Baltimore sent a collateral request to C3 for assistance in their Silk Road investigation to include funding and assistance coordinating all cases on the Silk Road.

-In late July, 2012, C3 contact SA Der-Yeghiayan and asked to brief them about the HSI Chicago case. After the briefing C3 stated to SA Der-Yeghiayan they were confused because HSI Baltimore visited C3 and pitched their case as the only Silk Road investigation HSI has and wanted to be a part of their undercover OP and wanted their support. C3 then queried TECS and found out that HSI Chicago had a much longer and what appeared to be diverse investigation on the Silk Road. C3 was also briefed on Target A.

-On August 01, 2012, C3 requested that HSI Chicago travels to C3 to pitch their case and to gauge what assistance they could provide.

-On August 03, 2012, C3 informed SA Der-Yeghiayan that they believed HSI Baltimore wanted funding to travel to the foreign country to interview Target A. HSI SA Der-Yeghiayan sent an email to SA Miller and SA McFarland notifying them that Target A was more involved in the Silk Road and was a target or their investigation, and asked in the email not to share the information with the rest of their unofficial Task Force.

-On August 03, 2012, SA Miller acknowledged the email.

-On August 06, 2012, SA McFarland acknowledged the email.

-On August 09, 2012, HSI Baltimore created an unlinked to HSI Chicago's TECS record on the Silk Road.

-On August 10, 2012, HSI Chicago met with C3 and presented their case. During that meeting C3 informed HSI Chicago that HSI Baltimore was being dropped from their CUC program because of improper use of CUC provided equipment.

-On August 23, 2012, HSI Chicago was called to a meeting at C3 to meet with HSI Baltimore and each present their cases to both SACs Operations Managers (Debra Note for Chicago). HSI Baltimore and HSI Chicago presented each of their cases. At the end of the presentations both HSI Baltimore and HSI Chicago's Operations Managers were discussing the confusion and odd approach to the HSI Baltimore's investigation and asked HSI Chicago if their investigative methods are interfering with HSI Chicago's case. HSI Chicago expressed deep concern for HSI Baltimore's tactics and the lack of focus in their investigation. HSI Chicago provided Debra Note a complete list of concerns and only received a response the same day to thank HSI Chicago for the email.

-On September 18, 2012, HSI Chicago received a report from OCDETF on Target A that showed that DEA Baltimore had a record in NADDIS on Target A that mirrored exactly HSI Chicago's TECS record. SA Der-Yeghiayan contacted SA McFarland and asked if he had shared the TECS record with their DEA Agent and the rest of their task force and he said he did. SA Der-Yeghiayan asked why he shared it when he explicitly asked Mike not to and his response was it was his task force so he had to share it. SA Der-Yeghiayan expressed serious concern over how any information that all these agencies would acquire on the target be relayed back to HSI Chicago and Mike stated verbally that he would share anything he learned on the target.

-On September 19, 2012, HSI Chicago received an email from HSI Baltimore CUC Program Manager Steven Snyder stating that HSI Baltimore was attempting to be under HSI Baltimore's CUC program but during his routine searches in TECS he noticed the HSI investigation and saw HSI Chicago was also under a CUC program and had the same targets, but had them in the system first. The program manager also called HSI SA Der-Yeghiayan and stated that he was not going to approve HSI Baltimore's request because it was clear to him that they were copying the HSI Chicago's case, and that there could only be one CUC program over the target website. A few weeks later HSI Chicago found out that HSI Baltimore's case was approved under their CUC OP.

-In October of 2012, SA McFarland began asking SA Der-Yeghiayan for all his information on Target A because they were trying to work him too. SA Der-Yeghiayan informed SA McFarland to not work Target A independent of HSI Chicago.

-HSI Chicago later discovered that HSI Baltimore had disseminated Target A to all members of their task force and they had issued multiple subpoenas on the target, and actively worked him to include a type of surveillance without the knowledge of HSI Chicago.

-In early October of 2012, HSI Chicago began developing a method to identify the main administrator of the website by analyzing thousands of pages of text on various websites to make a match. In early November of 2012, HSI Baltimore offered to provide UC Chat information with the administrator to help HSI Chicago with their development. HSI Chicago later identified a target (hereinafter referred to as "Target B") and began issuing subpoenas to further the identification and location of Target B. HSI Chicago informed Baltimore and shared the subpoena information with HSI Baltimore. HSI Baltimore began issuing duplicate subpoenas on the side for Target B without HSI Chicago's knowledge.

[redacted]

-On November 14, 2012, HSI Chicago sent a collateral request to HSI Vancouver for assistance with Target B.

-In December of 2012, SA McFarland continued to request information on Target A and Target B from SA Der-Yeghiayan.

-In January of 2013, HSI Chicago began pursuing Target A for charges of acting as an unlicensed money service business (18 USC 1960). Over several months HSI Chicago conducted several movements of money in a UC capacity in anticipation of charging Target A with 1960 violations.

-In late April 2013, HSI Chicago notified HSI Baltimore that they had secured the necessary charges needed to pursue Target A with 1960 charges. HSI Baltimore stated that they had looked heavily on their own into Target A and don't believe that Target A is involved in the website no longer. HSI Baltimore shared a few of their subpoena returns they received in early May.

-On May 10, 2013, HASI Baltimore notified HSI Chicago that the SS agent in their Task Force went "rogue" and seized the bank account in the U.S. containing 2 million dollars from Target A. HSI Baltimore claimed to have no knowledge of the seizure until after it occurred. HSI Baltimore also admitted that they told the SS agent of the connections HSI Chicago made to the Silk Road back in August of 2012. HSI Baltimore stated that the SS agent went to a totally different AUSA in their District to file the affidavit to seize the account. HSI Baltimore stated that the AUSA was not planning on charging Target A with 1960 violations.

-On May 13, 2013, HSI Baltimore called HSI Chicago and stated that they had complained enough to the SS about the way the agent went behind their back that the SS agreed to give HSI the other account containing 3 million USD belonging to Target A. HSI Baltimore proceeded to ask HSI Chicago if they could provide any other bank accounts belonging to Target A so they could seize those accounts too. HSI Baltimore proceeded to seize the 3 million USD using the same affidavit written by the SS agent except SA McFarland substituted his name and knowing that HSI Chicago built their pending charges on those seizures.

-On May 17, 2013, a conference called occurred between SA Der-Yeghiayan, Chicago AUSA Krickbaum, Baltimore's AUSA Herring, the seizing Baltimore AUSA Richard Kay, and SA McFarland.

> -During the call AUSA Kay stated that they were trying to work on an interview with Target A with Target A's attorneys. AUSA Krickbaum asked what the purpose of the interviews was and AUSA Kay stated that they wanted to know more about Target A's money business and wanted to ask him directly about his knowledge of the Silk Road. HSI Chicago expressed serious concern over that approach and was concerned as to AUSA Kay using HSI Chicago's information developed on Target A for their own use. The outcome of the conversation resulted in AUSA Kay

stating that he would hold off for several months and "wag the dog" with Target A's attorneys while HSI Chicago prepares their indictment. AUSA Kay agreed to check in with AUSA Krickbaum about the progress in the indictment.

-On June 19, 2013, During a joint SW conducted by HSI Chicago and HSI Baltimore based on a new target developed by HSI Chicago. SA McFarland spoke with SA Der-Yeghiayan about the Target A and SA McFarland stated that he had complete control over AUSA Kay and he was the one to decide whether or not Target A would be interviewed. SA McFarland stated that he would honor SA Der-Yeghiayan's request to not pursue or interview Target A.

-On July 08, 2013, according to AUSA Herring, he was notified by AUSA Kay that a face to face meeting was going to take place between him and Target A's attorneys. AUSA Kay or AUSA Herring did not notify HSI Chicago or AUSA Krickbaum.

-On July 09, 2013, during a conference call with AUSA Herring, SA Der-Yeghiayan, HSI Chicago GS Phil Osborn, and HSI Chicago SA Sixto Luciano, SA Der-Yeghiayan specifically asked AUSA Herring if there were any developments with Target A and AUSA Kay, specifically if there were any more talks about meetings, and AUSA Herring said there was not.

-On July 11, 2013, AUSA Kay met in person with Target A's attorneys. According to AUSA Herring, during the meeting Target A's attorney's randomly brought up the Silk Road and stated that their client was willing to tell them who Target A suspects is currently running the website in order to relieve their client of any potential charges for 1960. AUSA Kay proceeds to set up a meeting with Target A overseas.

-Later in the evening of July 11, 2013, in preparation for a coordination meeting on July 12, 2013 at SOD, GS Osborn and SA Der-Yeghiayan met with AUSA Herring and SA McFarland for a coffee. No mention of the meeting with Target A was mentioned by AUSA Herring or SA McFarland.

-On July 12, 2013, during a coordination meeting with HSI Chicago, HSI Baltimore, FBI New York and multiple DOJ attorneys and CCSIP attorneys, HSI Chicago briefed their case and mentioned Target A as their main target. The CCSIP attorney over the meeting asked if any other office had any case on Target A, and all the Baltimore attendees (SA McFarland, SA LeCompte, AUSA Herring and AUSA Herring's Supervisor, the SS agent that went "rogue") all remained silent. The CCISP attorney stated that since the information HSI Chicago shared was brought in good faith that no other office should attempt to pursue that target outside of HSI Chicago.

On July 16, 2013, AUSA Herring notified AUSA Krickbaum and SA Der-Yeghiayan about the meeting AUSA Kay had with Target A's attorneys. SA Der-Yeghiayan told both AUSA Krickbaum and AUSA Herring that he did not want them to pursue the target or to continue with this meeting. It was expressed that this would damage HSI Chicago's investigation.

-On July 22, 2013, HSI SA Der-Yeghiayan spoke with AUSA Herring who informed him that AUSA Kay has continued to negotiate with Target A's attorneys and has changed the meeting location to Guam on later on in August. HSI Der-Yeghiayan continued to express deep concern over this meeting and its

effect on HSI Chicago's investigation against Target A. AUSA Herring did not appear concerned or willing to stop the meeting from occurring.

EXHIBIT 7

To: Osborn, Phillip L[Phillip.L.Osborn@ice.dhs.gov]
From: DerYeghiayan, Jared
Sent: Fri 9/20/2013 10:49:44 PM
Importance: Normal
Sensitivity: None
Subject: RE: Coordination Meeting
Categories:

II=01CEB63DAF9F4F6E6175712246BAB5D68DE95977C96C00044E73
9000085A0D1600005F62B800003AE0A00000691D530001B3EA1800009B188C
;SBMID=3;S1=<C7E24005AE3DA54CA27632A74B73C6DC6262EED5@D1ASE
PRIC240.irmnet.ds2.dhs.gov>;Version=Version 14.2 (Build 328.0), Stage=H1

I think that would be a good pitch but that they can't expect to take an admin or something- they all need to be prosecuted out of the same AUSA's office under a conspiracy - NY will never agree to anything else. It's not like they can give them an admin, that makes no sense from a prosecutorial standpoint.

Baltimore can have a few vendors of our choosing- as well as the ability to say they "helped" ID some of the admins by "allowing" NY to use OUR UC account to identify some of the lower admins, and they can have sloppy seconds on DPR for their murder for hire. They can also have some info on other bitcoin companies that MK might name is shady after we get done with him.

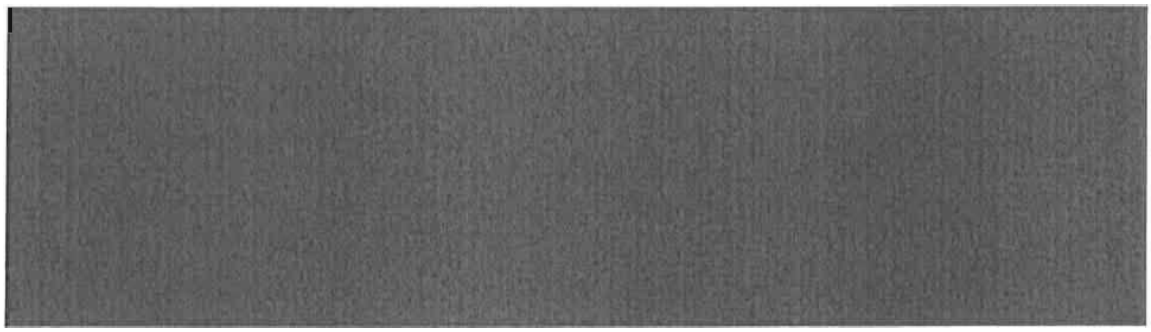
That's the best that can be given and they should consider themselves lucky for getting anything close to that. Or we can just stall, and Baltimore gets nothing and we contributed to the other two admins getting away [redacted] We'll get no HSI banner on the site, and will probably get no cooperation from NY with any information related to MK. If DPR names MK in the interview and we didn't help them get the other admins when we had the chance - NY will leave us out of it and tie him into their conspiracy. We will then be left dealing with HSI Baltimore's tears and them then trying to take [redacted].

I think it's important we help them have a "come to Jesus" moment otherwise our agency loses as a whole. It's a simple sell if they know the alternative is they will be left with absolutely nothing - no matter how much they whine and complain to HSI HQ, it won't stop the SDNY from prosecuting all of them without any of us.

Jared Der-Yeghiayan
Special Agent
HSI Chicago
Office- 630-574-4167
Mobile- 630-532-3253

-----Original Message-----
From: Osborn, Phillip L
Sent: Friday, September 20, 2013 11:32 PM Eastern Standard Time

To: DerYeghiayan, Jared
Subject: RE: Coordination Meeting



-----Original Message-----
From: DerYeghiayan, Jared
Sent: Friday, September 20, 2013 10:43 PM Eastern Standard Time
To: Osborn, Phillip L
Subject: RE: Coordination Meeting

I think there's room to avoid the drama by instead of dwelling on the past or trying fluff up each others cases under the false assumption that the website will be up in the next month to talking about how to try and make HSI in general walk away from this without looking like complete fools. But it has to start with HSI Baltimore conceding that they will not be identifying or prosecuting dread first or any other admin for a fact. Then realizing that they still stand a chance, if they play nice, to walk away from this with something to show from their "investigation." They can easily erase a lot of the damage they've done by cooperating with NY's almost guaranteed prosecution of the website.

The only two options are remain in denial and walk away with nothing but blame and egg on their face in the next few weeks, OR place nice and possibly take some credit for the identification and prosecution of all the admins, and reap some of the benefits by prosecuting some of the vendors our defendant is going to identify. No other way forward than that.

Jared Der-Yeghiayan
Special Agent
HSI Chicago
Office- 630-574-4167
Mobile- 630-532-3253

EXHIBIT 8

from East India Traitor on forum:

Well this obviously isn't private but i'll share jediknight is your attacker. I realize this will be treated like bullshit as most other info that gets relayed to you, but he is the script writer over at atlantis and brags of his assualt on your psuedo-revolution. I realize you support free market but even at the cost of attacks on your marketplace, you may say yes in public but i know this not to be true in your pirate head. Be sure to read my sig if this helps you otherwise
I want nothing more than for this to continue for as long as possible...soon the other markets will decentralize your profits and
vendors and you can retire...please do not let the dea follow your btc trails as they did in the past watchin your btc pile grow
daily until it was obvious who the owner of the mtgox account was...i know this is a non issue now but im just saying, they have
a quarter million dollar bounty on your head for info and have been here since May 2011.

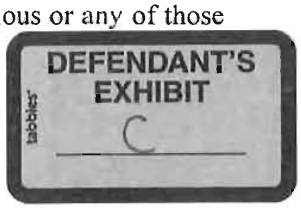
Attacker
SR Forum Profile: http://dkn255hz262ypmii.onion/index.php?action=profile;u=51427

Long story short I just did 6 months federal time in a DRAP program for SR related crimes,
currently living in halfway house very little time to get up to the local library to talk.
DEA visited/visits me twice a month...asks me shit, then they brag about their shit.
Such as the mt gox bullshit a couple months ago, asking if SR members would go for
paid informant work, I sent them on wild goose chases just enough to get them to
come share with me more than they could get from me. I in no way snitched out anyone,
they are currently trying to get into your staff forum mods esp...i suggest they change usernames every month start posts counts back at zero.
I suggest you relocate outside usa...if not already, they are foaming at the mouth which branch of the LE gets credit for your arrest.

blah blah got to run...last person in library have an 7:30pm curfew.
---
yeah it's more detailed
also covered that jediknight info was from an unlogged set of chat sessions so i dont have
links but the atlantis crew runs on the same server as the Silk Road IRC so to make a fake username and buddy up to them is no problem...the younger and smarter they are the more they brag. There's definately more details on the visits
from the different visited me...esp trying to track down ovdb vendors and admin.

Please if there's something you have questions about ask and i will tell you what I know...they are pretty forthcoming and brag like any other ego driven personality. Like I said Im still on parole in a halfway house and visit a library to get
this back to you so my dedication to this is obviously a great risk to my freedom again except there is no way ill get a light 6 months federal
Residential Drug Abuse Program my second strike. So please understand I need this info I bring back to you and convey to
be Ultra Top Secret. Burned After Reading scenario.

Wow i never expected that.
Well let's start with the most important issue and I dont expect you to answer this to me but think,
"Who knows your real name in relation to Silk Road?" Admin from OVDB? Eneylsion or Envious or any of those guys?
What about people from the Bitcoin forums?



"Do you have the servers in your name or a staff members name?" Hopefully these servers are spread out internationally.
Again these are rhetorical questions? I dont wanna know the answers just stuff for you to protect yourself.
Again the BTC block chain is definitely being watched for large transfers or deposit to same address which I assume was solved
long ago.
They know you have multiple btc tumblers and that you dont keep but around 1/3 of SR's btc balance on any given site.
Remember the agent that i spoke with that had been on the investigation started in late april 2011...i asked him and he told me.

The postal inspector asked me shit like why do i think you tell everyone to use USPS instead of private couriers and I told him
and he was pissed and wanted to know how I knew that. Then he wanted the postal workers that use SR in the forums real names..like I have a clue to that.
They expect shit that is unrealistic but I do know there's compromised vendor accounts and looking for the highest up vendors to interrogate.
They are paerticularly hung up on Limetless...they asked me about my money laundring and I of course said I have no idea how to do that cause admitting that gets you 15 years.
They seem to think Limetless laundrers for you, probably cause he has spoken about laundring in the forum opening countless times.
This isnt just a US investigation they ARE collaborating with other governments and international packages can be opened without a warrant. They simply have to have an address
on a postal list and it can be opened as part of the homeland security initative.

Sorry this is all I can cover today, I've go to spilt to get to a meeting at the halfway house...idk if i can hit the library on Friday but they let me go to there on Saturdays to "study law".
I'm trying to get some community service out of the way with the library as well so ill have more time here.

Thank you again and I'll be in touch very soon.

:)
---
ok not sure where we left off.
Let me explain my situation a little more.
See I still have contact with these agents, not in person anymore but by phone.
So guess who I talked to yesterday.
They are focusing on the forum and your admin and mods.
In particular Libertas and Samesamebutdifferent who is in my opinion your weakest link.
They dont really know anything about Libertas except he helps on the marketplace with coding...they have his tormail.
Idk what that does for them but they have ssbd's as well.
So i advise you to have them erase their emails and change tormail accounts or better yet not use tormail.
The way they got their tormail mail addresses is by importing their pgp ley and it was on there.
I have a feeling they think Libertas is scout...idk for sure but they have been asking about those three for months.
If by monday you can have them all start new usernames it is in your best interest as well as the community at large.

So you can see I have them in the perfect spot to play spy for Silk Road with the DEA.
Does this interest you?
Let's see what else...they believe that admin fromovdb is your chief code writer or at least the very least works on your staff.
They have envious' return address in montana some how.
They seem to think he might have some connection with you pre SR days...not sure why.

Several agents question me on a fairly regular basis and are all doing different cases and sharing the info from interrogations.
I know there are things I'm not remembering at this very moment but when they do come to me I shall relay them to you.
If there is anything in particular you want to know if Ive heard about ask.
These guys vary in intelligence quite a bit from person to person...one cant use encryption another has been in the forum since it was on the orignal market.
They asked me if I knew anyone that bought shrooms from you and that if they had a return address for you...like that is even remotelty possible to come up with.
They are looking for every little think said in the forum about personal habits or the mods/admin..you.
Yesterday they told be they believed their was at least 2 ppl using the DPR username or more, which makes sense to me.
One for the forum bs and one for the marketplace.

Is this the type of stuff you are interested in?

As far as I know dont know anything about the shroom sales except you sold them sometime in the first month or couple months.
Mt Gox I was given anything but generalities...such as a huge amount of btc in one account that blew up in the matter of weeks, I'm thinking
they said around the time of the original gawker article...the public invite article.
They seem to be under pressure to get someone of great impoertance toshow a win for the USA on this situation.
And from what i gathered from the dea they were [issed they couldnt login during the dos attacks, so that says they had nothing to do wirth it, like i said anyway
jediknight was in chat bragging about how he had implemented escrow on atlantis in a 24 hour period and that he had plans to divert members from Silk road to Atlantis.
It wouldnt hurt i suspect to have someone look into logging chat on the atlantis channel that ios also non the SR IRC.

O just as i was about to sign out i remembered they asked me if Graham Greene was possibly a moderator or Admin.
I remembewr graham from before the arrest but ive been out of the loop for a couple of months so I really have no idea how much
he got involved in the forum...I know he was one of the more outspoken members that had the best interests of the community in mind
but i told them i didnt know that name.
---
can you give me links to where he is bragging?

what do you know about an mtgox account?

the DEA has a $250k bounty on me? how do you know?

==========

Cause i just did 6 months federal time for your revolution and they bragged about their doings too much upon interrogations.
They would visit me twice a month trying to get info from me..i would lead them on wild goose chases.
Just enough to get more out of them than they me.
They asked about offering the average member this bounty, how many would flip on you ,
they assumed 80% of the members would flip on you, but i know much better your following than them.
I also know that your current members dont have jack on you...but they are trying to talk to nelson you remember nelson right
from database days. He's still locked up.

I will also warn you that your staff is currently being targeted if not already a compromised one. Specifically the forum

members.

They followed an mtgox account that was in excess of some outrageous number of bitcoins, an account that should have had enough
bitcoin to be it's own exchange. They did not release the account username but they are very much obtaining info in manner
possible. I'm trying to warn you. The DEA, ICE, POSTAL INSPECTOR, NSI,FBI,CIA,NSA are itching to get credit for your arrest.

I advise you to relocate yourself from the US and before that have your complete staff change usernames at least once a month and no rolling over posts.

As far as jediknight i do not log chats so I cant link you to anything but that doesnt change the fact.

Like I said I just got back out and am on parole...so to clear up the info i have on jediknight it is at least 6 months old. But he was your denial of service instigator before the members started dos themselves and he and the atlantis crew are your troublemakers
as Im sure you've come to the conclusion yourself. I know without the exact quotes this is meaningless to you but at least I tried to make you
aware of the issues you are currently being annoyed with...and could even become your fall from grace.

Please delete all info as it is for your safety not mine. I want nothing from you and I am not trying to throw psyops at you. I've not always liked the way you ran the community
but I'm no traitor. I respect your progress on this frontier but I worry about your future. Along with the members futures.

If you don't believe me and wanna live in denial go ahead one day you will look back and wished you'd looked further in the rabbit hole.

---

scout's tormail where he is talking to mrwonderul:
username: scoutsr
password: b3l1am0n

Symm's tormail talking to mrwonderful:
symmetry2
bjBTrmPzUBhmN3uH

scout, forum
username: scout
pass: nlNlaGKUb1r6sqYY

StExo has discovered that Dr David DÃ©cary-HÃ©tu is planning to do research on SR for canadian LE
Address: Montreal, Canada
http://ca.linkedin.com/pub/david-d%C3%A9cary-h%C3%A9tu/41/298/702
http://jrc.sagepub.com/content/early/2011/09/20/0022427811420876

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2119235
E-mail: david.decary-hetu@umontreal.ca

correspondence with alpacino:
silkpirate@tormail.org

This is for YOU only.

Try this (and I'll explain later why). Message your staff/moderators individually and ask "So, feeling wonderful lately? " and then ask "Anything you want to tell me?" Make sure to use the word "wonderful".

Theres an ongoing effort to engage and coerce your staff into giving up some access/insight/internal communications. Last I hear there IS headway on that. The key points are potential greed or intimidation. I believe it was someone @ DHS or CBP who wanted to own it, but ultimately its a DEA gig with a few cooks in the kitchen. Will absolutely request you not ever let on about this, and I'm sure you know how to run your team (and what level of trust to repose), but just know that absolutely there's an ongoing dialogue there with a "mr wonderful". Shocking, huh? Be smart about that.

Know that some of your vendors have been approached for (and have provided for money) buyer information (the idea is to purchase buyer information, which gets dumped and collated into excel). Vendors that get banned are approached via the email addresses they provide on their pages "in the event SR is down, contact here..". Just recently a New York based pill guy sold his entire customer list to what he thought was atlantis. Can find out his handle so you can poke around old private messages if need be. Several uses for databases of buyer information..

Am certain there are not many techies involved. Due to the unconventional nature of this network and technology, not much use for full time "geeks" being sourced & assigned anything more then standard workload. Unless there's some specific technical question/explanation needed

There are a few different working "profiles" on you (can probably get into detail later on how thats culled). The most popular is that you're East Coast , live with family, have either quit your office job or primarily do consulting/contract work from home. Theres other stuff I'd rather not get into, but rest assured anything worthwhile/concrete usually makes the rounds as gossip, and there's no real gossip. If that makes any sense..

There are really tons of useful nuggets that I do have to offer. And what my birdie doesn't know, he can probably find out, but no guarantees on timeframe. Due to the nature of keeping everything properly 'insulated', birdie has to fetch information with proper care. Also please realize the risk I run (and have run)..

Anything you want to ask?

I don't mind you talking my ear off asking questions.. there's a decent amount in my head, and fairly regular amount of chatter that makes it rounds to my ears. But as said, weekends are not optimum for me to poke my nose around as you can imagine the nature of this stuff (despite me being pretty insulated).. being casually brought up with the birdie(s) in anything other then a casual environment could trigger a disastrous chain of events for me. Evenings and weekends are probably when I can be more responsive.

1) That I struggled with myself, and anticipated. Well, I suppose you have no solid way of knowing. But ponder this - I have NO intention of asking YOU anything what so ever. There is not a single thing I have any intention or need to ask you. If this was a play to extract information/data out of you, it would be futile as there is not a single thing I want to know. If you dig around your staff's correspondence (unless already deleted) you will notice I'm right on the money

about "mr wonderful".I would not be privy to such if I was Joe Blow from nowhere. I can also tell you that one of your guys claimed he's been "recycled". That is the *exact* word. I am not sure if thats some internal term or it means he/she was in a different role and put into another one. I can assume it means a moderator or administrator was shifted from a previous role to a similar role. If that term "recycled" means anything to you, then that should at least speak to my legtimacy. Again, you do not have to acknowledge you know what that means. If it makes sense to you, then so be it, and if it doesn't then I can poke around more. I'm confident if you re-examine your staffs behavior and correspondence, it should verify my solid info. I'm not psychic, I'm not on your staff, therefore&

2)If you can come up with a method to verify I'm not, I am open to it as long as I'm able to protect myself to the fullest. I'm hesitant to touch any data, but I can (and do) commit things to memory.
There would be no gain in feeding you false information or lying to you. It would not benefit you in any way and you would realize your time is being wasted and that would be all she wrote. I think you are intelligent enough to parse bullshit from fact. Feeding false information would be the goal of someone intent on disrupting your activities or hoodwinking you. Again, something you would probably be able to verify - maybe half a year ago a guy from podunk Virginia contacted local and was crying about being blackmailed for his personal information by 'anonymous criminals' (Phil something). Middle aged guy who ran a travel agency. Even down to that level pops up on the radar nearby to where the birdie hangs out. Did not take long to assemble the backstory (small time recreational buyer just got blackmailed if you want to call it that by a crooked vendor) and dismiss as utterly irrelevant. I'm sure old private messages or communications can be examined to verify that instance.
How on *earth* would I be privy to that? And to know hard details? These things make the rounds, believe me. I would only provide you with things that could be of utility.

3) In short I admire you and what you've created, I don't think for a minute that helping you out time to time would hurt anyone (might sound hypocritical but it's not), and personal gain.
I don't think you've done anything that warrants resources of the state being delegated to interfere. I call a spade a spade, and JTFs/reports/operational/mindset are all a crock. I don't see anything wrong in what goes on here, and in another less boring life I'd probably have wished I could have been apart of it. Granted I'm technically on the other 'side' on paper (indirectly), but that's a means to eat. I'm not Snowden by any stretch, but I admire that. I've always tossed around the idea that how cool would it be if someone like the birdie would hook you up here and there, but the horror of getting utterly fucked and have my freedom taken would kill any such thoughts. But as I've said.. without being arrogant I know I'm relatively insulated enough by virtue of NOT being that close anymore. I'm a fly on the wall in the grand scheme of things. And more importantly, personal gain. If you're in a position to potentially augment your means & income, wouldn't you? I make a decent living, but I also have responsibilities and material desires. My conscience is clear because I don't feel I'm harming a single living creature. I don't come for free, so theres that motivation.

Worst case scenario I can provide you with insight and philosophy. Best case I can provide you with solid action-items that would unequivically give you a competitive edge.

I'm not trying to sell my utility to you, I'm pretty sure thats a no brainer. But I do think I can deliver..

I think that works. Initial+ weekly. I'm not entirely sure myself on what's fair or not fair.

Initial retainer.. I don't know, 5k too much or is 8k too much? I'll let you decide.
Weekly do you want to do 500? Obviously some weeks there will be nothing major other then chatter, and other weeks there might be extremely useful intel. I think we can just leave it at 500/weekly.

I made an account on your main site: "albertpacino".

Another thing, what I'm doing, despite all precautions (I've thought out all scenarios) could possibly ruin mine and my

family's life if ever discovered. I implore that never utter a word to a soul, a partner, a significant other, even God (if you're religious). I know you take security seriously, and you've demonstrated that, so I know you know where I'm coming from..
And if either of us ever wants to cease communication, then that should be an option and understood as a logistical decision, with no hard feelings.

Let's operate under your terms, and I will get to work tonight on writing up as much as I can RE you'r questions, then you can dissect and pick my brain with followups, then I respond etc.
I just have to be careful to walk a fine line that won't identify me or my location, but I've made a decision and I'm fairly confident in my abilities to satisfy your purposes and cover my ass too.

The only condition I have is that nothing I ever say be used in a manner that can harm anyones safety. Even if actual information is provided for some purposes (a vendor name or location), I would hope that nobody's safety is ever seriously jeopardized. Could not live with that. What you do with information (if involves threatening or anything) is your business, but nobody can actually be harmed.
I don't think you operate that way anyways..

I do have to run to dinner, so will get you get a comprehensive writeup later tonight.

And I do respect what SR stands for. In another life I'd have loved to be part of it. Maybe this is one way to live that fantasy out.

I know that Eileen has a publishing deal and is writing a book around SR, and has had extensive dialogue with everyone from buyers to new vendors to old hats. She claims that she has your blessing and at some point will be (or has) interviewing you of sorts. Also you've made reference to a book or memoir at some point. No matter what, I will make a gentleman's request that a word of this isn't spoken in this lifetime. I've taken many risks and gambles in my life and mostly have been lucky.. but the magnitude of what I'm doing, if uncovered, could put my family in harms way and/or devastate them and no money in the world could justify that. So that's that.

(Some stuff might jump allover the place as it comes to me, so apologies if theres more stream-of-thought and less organization)

Byt virtue of the professional capacity of a birdie I know, I have/had access and in-office/out of office knowledge of local, state and federal initiatives that deal with work tasked to monitor, report on, and coordinate interagency initiatives dealing with

1) Domestic movement of narcotics
2) Movement of narcotics traffic through land/sea/air borders
3) Cyber crime (extortion, child porn, domestic terrorism, credit card fraud, SPAM, password trafficking, counterfeiting of currency, computer intrusion, etc)
4) Financial crimes related to narcotics trafficking/distribution,/profit laundering

Prominent on the radar is Silk Road (amongst other known sites/actors on TOR) and since late 2011 there's been a lackluster yet interagency effort to monitor, disrupt, infiltrate and/or penetrate operations.
The office of the DAAG (Deputy Assistant Attorney General) Computer Crime (at time Jason Weinstein) was the principal in spearheading. This is after Sen. Schumer & party created a hoo-ha. Weinsteins office jumped to take charge and assume oversight.
Under the auspices of the NCIJTF (National Cyber Investigative Joint Task Force which is DOJ), the following fed agencies have a presence when it comes to SR (Stateside)
1) DEA

2) FBI
3) DHS
4) ICE
5) USPIS
6) ATF
7) CBP

That should NOT worry you, because by "presence" I only mean their are active agents and officer level involvement from who's resources are pooled and budgets are shared. On a limb I'll say this, everything having to do with Silk Road (like any other open set of investigations) is on shared drives that almost all can read+write, and there is a shared public Outlook folder where all emails/correspondence pertaining to SR are routed. Everybody (and I mean everybody) from entry level up to the heavens have "read" access. Additionally, people talk a LOT. Loose lips is an understatement and the level of immaturity and juvenile attitude is staggering. There is no such thing as "confidential", and this is a culture where people are numb. You must understand that part of why I'm so confident (in my ability to maintain this relationship) is that nothing is treated as sacred and there are probably 100 people like me who could offer the same level of access. Analysts do collate data and prepare summarizations/status sheets and CC the requisite list/group.. and majority of the time nothing happens. Little to none replies/discussion. This is not SR specific, but does include SR. For example reports related to CP sites/forums or BMR often get the same treatment.. ambivalence. Here is something that will bring a smile to your face.. it is just not in the budgets to aggressively dedicate resources to SR. The way the budgets are allocated are almost certainly political in nature, and the lions share goes to War on Terrorism or "real world" drug activity. That's the cold hard truth. That's not to say that there are no zealots who do have a harden for SR related activity, but that is more focused on suspected real world trafficking. Ironically enough, guys at USPIS do not care in the least about SR. Yes you read that right. They're broke and have no concept of tech savvy.. and frankly, they are not interested. DEA guys often initiate most chatter having to do with SR, yet follow up is minimum and they are too bogged down in pending investigations of subjects whom they have the ability to surveil and/or who's circle they can infiltrate by way of CI's (conf informants).. none of which is possible when dealing with a beast that is virtually immune to real world surveillance. It's not a question of getting warrants to ISPs.. its a question of who/where to begin looking. They're stuck.

At the analyst level, SR forums and the main site are crawled/monitored. Not more then 4 people are tasked with just crawling and mining the forums main site in an observational capacity. These 4 people are also tasked with crawling and mining many other websites and forums on TOR and clear net. So while everything is printed, you can guesstimate the scrutinity level is not extraordinary. That's not to say that others do not actively surf the forums and maintain both buyer and vendor accounts on the main site, they do. But at any given time, there are not more then a handful of people overseeing a crawl. When something deemed highly interesting or important pops up, they will CC the SR mailing list with a description and screenshot with their thoughts. Otherwise, there is a weekly status sheet that gets dumped with the most relevant/interesting/useful occurrences on the forum along with a summary on value/suggested "action items". Everything you post (along with the time stamps) is copied. You are referred to as DPR across the board. Often there is nothing interesting, and if there is there is it would be a bullet point such as "Vendor XYZ (who deals in ABC..) said his packaging methods consist of 123" etc. This is so they seem like they're doing their job as often there is nothing interesting at all taking place on the forum side. When moderators quote you, that is often the bulk of what gets bullet pointed "DPR has instructed us to do such and such".
Now, there have and continue to be attempts to compromise staff accounts (on the forum and main side) by the normal methods of password guessing, but AFAIK none have been successful. There have been successful instances of cloning lookalike accounts which have all been shut down on your side. Of significant focus is attempts to impersonate you and your moderators on not only SR mainsite/forum, but on other TOR sites such as BMR or Atlantis to see if any prior correspondences can be restarted. Nothing there either.

A 'profile' is an outline of a user that contains key points/occurences/assesment regarding their activities. There is not one on every single vendor, but there are on the high volume ones. The goal is to have all user profiles searchable offsite. In vendor profiles are return addresess/packaging method/pictures of the package & contents, replication of their vendor page text, and any other relevant data.
Your profile (no idea who authored) has you as extremely intelligent with a background in IT, between 35 and 55, living on the East Coast, working from home in a contractor/consulting arrangement and living with family. An

assessment like this would be based on your speech, patterns (such as when you log on, when you go idle on the forums), personality,expressed interests, ideology, unique mannerisms (for example your use of the word "ya" instead of "you" sometimes. As in "I'll tell ya" or "would ya believe" .. etc off the top of my head). The assumption is that you are conscious to actively remain off any kind of radar, do not take any drugs, do not live extravagantly.

If you have any partners (I'm not talking about staff), you most certainly are the assumed shot caller and are as anonymous to them as you are to everyone else. Contrary to rumors, it's not stated or assumed that you are not the original brainchild of SR or have ever not been the same person. You are the same you that started the site and have never relinquished ownership. Whether it's all you or you've farmed out responsibilities, it's unclear if the servers are all located in your physical possession or spread out. It's pretty much agreed that you have never been a vendor on the site or tied to any vendor IRL.
You're essentially a ghost. And since you are not a vendor, there is no tangible way to engage you in any compromising scenario. There have been attempts to approach you (can assume under the guise of journalists or researchers) to probably build a repertoire and study your speech, to later on analyze and compare if by some fluke there are any suspected leads on who you are IRL. As of now, I can say with utmost surety there are absolutely none whatsoever. You are as anonymous as you were 1 year ago. There HAVE been concentrated efforts to DoS/DdoS the site and forum to assess your response time and technical acumen. I'm not too savvy regarding this, but on a horizontal scope there have been/are attempts to run exit notes and track traffic across TOR. To what end this has been aimed at SR would be something I would need to poke around about.

Since the assumption is that security of the servers and high level system are handled solely by you, you are overworked and delegate lower level duties to your staff. There is a fixation on some how penetrating or compromising your moderators into giving access. The philosophy is that you are less stoic with your team and interact with them in a more informal fashion, which would provide insight into where you are located geographically and your habits (which could be identifiers). The Mr Wonderful operation (if you want to call it that) is still in progress and revolves around bribing or threatening your team into providing access to a staff account. The benefit would be to not only get closer to you, but to be in a position of trust in the community which could potentially net high volume vendors. A few of your staff have absolutely been in touch with Mr.W and most likely have carried on correspondence with them off-site. Mr. W is being actively maintained by DEA. Nothing major has come from this AFAIK, but tidbits have made the rounds such as there is fear of you and you have or had asked for personal information in the past in order to appoint members of staff. Also that you have "recycled" staff, which is taken to mean that either Cirrus is Scout (who has communicated with Mr W) and Liberatas could be Nomad Bloodbath. SSBD has also communicated with Mr.W. To what extent exactly the nature of their correspondences are, I do not know. I could find out, but it would not be immediate as it has to be handled with tact. If there was a successful breach of any staff account, it would be known and I would tell you. There has not been. Moderators are seen as loyal but weak, susceptible to intimidation and/or bribery. If their anonymity is ever compromised, they would turn. SSBD is assumed to be in the UK, where as Cirrus is assumed to be Midwest Stateside. Inigo UK, Liberatas States.
Assumption is that you also have employees on the main site who are completely unknown who handle maintenance and upkeep. No geographic assumption on any of them. AFA your relationship with vendors it is a rule of thumb that you do not have any special relationship with high volume vendors over other vendors. No vendor is assumed or perceived to be close to you. They will keep trying to open open lines of communication with you under various guises, even as vendors yet the likelihood of you befriending any vendor (real or agent) is nil. Locating you or the servers, although would be a major coup, seems all but impossible so the focus is aimed at netting vendors.

The high-vol vendor operations such as (to just name a few) Nod, NorCalKing, RxKing are all under scrutiny. They've all been purchased from multiple times and general geographic location is assembled. For example it would be known that the Nod operation is NY, NCK is in California, RxK is Southwest US etc. There are also ongoing attempts to befriend the 'biggish' vendors through private message/forum pm/privnote/pgp and take correspondence off-site. This is where off-site deals and 'partnerships' would get cooked up and layers of anonymity be peeled away, leading to more detailed profiles.
No high volume US vendor has been surveilled. On a state level, several suspected major vendors have been surveilled, yet none have been touched as that won't happen till a multi-jurisdiction plan to move on several vendors simultaneously in a grand slam display is logistically possible let alone greenlit. AFAIK, something of that magnitude

would not be possible currently. There have been one-off prosecutions on county and state levels. What happens is that a vendor that has confidently profiled/ascertained to be originating packages out of a certain jurisdiction, that information is shared down to local/state to put eyeballs on. A lot of that was happening in the beginning, but now there's more of a "hands off" approach. They'd want to sweep the maximum amount of vendors at once. Having the Sheriff of Mayberry hit one based on JTF intel is just not the culture/mindset. Nearly all efforts are conducted out of Jersey and Los Angeles.

All LE case reports (from county-level upwards) are indexed by a Lexus-nexus type database and can be searched for keywords. When they hit, they will hit several big vendors at once. They will parade them in front of the media and give the impression that the entire SR infrastructure was brought down (a la Farmers Market). Barring any unforeseen circumstances, there is nothing cooking at that level currently. Something of that magnitude would be seen coming well in advance and chatter would ramp up. There has never been heightened activity of that level in my birdie's time being a fly on the wall.

Posing as vendors - yes. That has happened. Although, DOJ attorneys will never ever allow drugs to 'walk' en masse. Especially after scandals such as Fast and Furious where the guns were allowed to walk.. they simply can not introduce narcotics into circulation. Vendor accounts have been bought to gain access to that side of the site and Vendor Roundtable and to establish longterm credibility, but any "purchases" would be absolutely fake and bought by their own accounts to build credible stats. I'm sure on state level there have been targeted vendor-posed operations to net bulk buyers, but those are highly controlled and short term. I have not heard of any of the top of my head. That does NOT mean that is not currently happening or will not happen in the future, but any significant bust would have made waves.

Vendors HAVE been approached off-site (most list their tormails on their pages) for customer information. This has been bought. Then collected and dumped. It has mostly been vendors who have vanished/been banned/ or slowed down. They're deemed to be the most vulnerable. This is not pursued as much due to a poor ROI. Most vendors/former vendors have not entertained such advances and those who have have demanded funds that simply are not available even in the discretitionary account(s). Like any other government effort/agency/JTF, funds are near impossible to get approved & released. Even undercover buys require paperwork and approval. There is no joint kitty of BTC available to make purchases from every vendor. It would take 2-3 days to get funds released for anything, and approvals are not that easy to obtain AFAIK. And in any case in this scenario, verifying information would be a nightmare. No guarantee that they would not just copy and paste names from the phonebook or use a name generating site. No real benefit other then to identify potential bulk buyers who would resell IRL (and this information would get kicked down to state/local).

Right now, there is a "watch and see" enviroment. I don't want to say that idea is to turn a blind eye by any means.. but until they swoop in to hit several vendors at once, there is no big fish in the cross hairs. The servers are a mystery, as is the leadership. Going after buyers would do absolutely nothing and not justify the budgets. Going after vendors one at a time also won't sit well as those get kicked down the food chain. Going after several vendors at once will be the play, bet on that. That will require compromising and turning CI's in each vendor's operation or periphery, which is not easy. Also, sustaining a DDoS against SR will not be the play either, I know this for a fact. Let me put it simple terms. You're winning. They just don't know how to tackle this beast effectively.

In all honesty I've had a very long day.. I'm kind of pooped right now. I'll have to call it a night. I know you'll have questions and I'll have answers and so on/so forth. Will hit the bed as I'll have probably have a fresher mind in the morning. Let's call it a night for right now.

I can only imagine. And usually the weakest link is the human element. We are all human, and all the precautions in the world don't mean a hill of beans if a slip up is made IRL. I don't want to give you a false sense of security, but you have done a thorough job of flying under the radar.

One thing to be cognizant of, there's a lean on the domestic BTC exchanges to cooperate. There have been informal discussions in the last few months to develop working relationship with Coinbase (I know for a fact). After DHS hit Gox, even the boogeyman of a FinCEN violation is enough to mortify any of the btc guys. Anyone moving large sums of BTC will be open to scrutiny. I reference Coinbase because I know there was a series of meetings with Compliance at Coinbase. That can only mean one thing& BUT, that does not mean that the full on arm twisting by Treasury is going to be utilized to track black market vendors. They're more concerned (and justify) their desire for access due to terrorism. Most of the black market economy is essentially low hanging fruit in comparison to terror funding. But if OC activity is disrupted and theres political mileage for DoJ, the wide dragnet serves a multi faceted purpose.

1)
a) BMR is on the radar and that is ATF's baby. Politics plays a significant role in prioritization of which agency gets to own which investigations. The climate is aggressive when it comes to weapons trafficking and with the gun control hot potato has guaranteed virtually a carte blanche to ATF. And they have deep pockets as well. Because tor based weapons traffickers are almost always running guns IRL, there is synergy between federal and state. Federal approves staggering sums of money for surveillance,undercover and CI's. I don't want to say BMR is "infiltrated", but there are a lot of compromised accounts and there have been a few quiet busts. Nearly every bust has resulted in cooperation. I am not sure what the long play is, but as long as this current administration is in power the gunrunners will always be hard targets. They are intimidated with the threat of tangible charges (interstate trafficking, conspiracy, organized crime, distribution) and they ALL cooperate. The general consensus is that weapons dealers are not sophisticated and have a lot of IRL visibility, so they are ALWAYS on the radar.

"backopy" from BMR is also of significant interest because the operating assumption is that he maintains a healthy relationship with BMR vendors privately. This would have come from multiple compromised/cooperative vendors sharing their correspondence. He's thought to be a 1 man operation who's around the Las Vegas area. As to where the servers are is an unknown. The administrative structure of BMR is loosely unknown. But he's been a direct POC for cooperators and nothing I've seen or heard suggests that there are any hard leads on his location or identity. I do know that BMR/backopy is seen as a ragtag operation.

"East Coast Trade" from BMR has been discussed as a potential major middleman based on buys that have been made. This would stem from primarily quality of product and similarity to product that was interdicted at the street level.

b)HardCandy/Jailbaits are notably on the radar as they've been publicized in the media. Although these sites (and dozens other CP directories/forums) are on a permanent back burner when it comes to federal muscle. The consensus is that the hosting, content and major trafficking is foreign, so efforts should be coordinated under Interpol's umbrella. This is low priority.

c) HackBB and TCF are prominent and actively surveilled. Have not heard of any significant operations that have netted any majors, but there have been some successful prosecutions/interagency wins. HackBB especially is monitored closely. There is another counterfeit site whose name escapes me now, but there was a major sting that happened in Boston last winter which was a result of efforts focused on it. Paypal was involved and was very accommodating to SS in handing over logs.

d) Atlantis is too new to be taken seriously yet. It is not a honeypot.. it is for real. But it is being monitored and buys have been conducted. They're still figuring out where it stands and if it is fly-by-night or making a play to enroach into SR's territory. It is too early to tell and there is not significant traffic enough to justify re-allocation of resources.

2) Essentially yes. I have 'Read' permissions and can view docs.

3) Yes, a lot of people including my birdie are CC'd and have access to that email folder.

4) Both. Automated scripts primarily, and manually to a lesser extent. There have also been external (civilian) efforts to smart-crawl the site in a research capacity.

5) No. There has never been any names, concrete geography, or associations. Something like that would be a big deal, and not the kind of thing that would be able to be kept mum even if it was field-level. You are too "big of a fish" for it to be able to remain on the field. That is not to say that if the full resources of the state are at their disposal that they wouldn't be able to close in. But THAT is never going to happen. You aren't Bin laden, and there is not much political mileage in justifying millions in someone that is not physically trafficking in anything. You are operating a continued criminal enterprise and violating a host of laws.. sure, but you aren't moving drugs. You are not packaging and trafficking drugs. The irony is that although this is your show, the cast is more important to target. That is not to say that you shouldn't take precautions and your security very seriously. This entire Snowden fiasco has shed some light on what kind of impressive technology is at their disposal. Anybody can be surveilled at any point and wide enough parameters can be set to pickup on even the slightest unique identifier.. but again I can't stress enough, it's not in the budgets. If the spooks ever wanted to find you, that could happen.. but they do not and will not. There are no hard or soft leads on you, and I can swear on my children to that. If there ever were, I'd know about it.. and as per our arrangement, you would. But if you continue your SOP's in regards to security, you are a ghost.
It is believed that you are the same you since the beginning, and that ownership/administration has never changed hands. But you can sleep knowing that you are as known today as you were 2 years ago.. unknown. The door will not be kicked in just like that. There will be a flurry of activity for weeks and months beforehand.. a flurry that no birdie would be able to not notice.
Don't take that to mean you shouldn't have several outs and exits, which I'm sure you do. This is not my place to say this, but if I can venture some advice. Walk away from this one day. You've done something remarkable that will go down in the history books. But you are human, and humans are prone to mistakes. Any kind of mistake in your position would be catastrophic.

6) Yes. I can poke around more, but in short - yes. What the end-goal was, I'm not sure. What they assessed, I'm not sure. But further attempts on the integrity of the site will be executed, be sure of that. Although I can tell you, that won't be a long term play. It can't be sustained forever.

7) Not AFAIK. I can poke around and get back on this. But does not ring any alarms in my head. I vaguely recall some back and forth about a paper that was published, but I don't recall anything coming of it. This would be something on the tech side. I will circle back with you on this.

8) Some, yes. Off the top of my head - I know that "Costco" is a West Coast operation and theres some fair certainty that it's an Asian gang deal. There is an immigration element and tied to IRL dealing. I'm not sure what the wait is, but there's some play that probably involves state/local.
"Marlostansfield" is NYC, and the guy has a lengthy record and has been a CI in the past.
"Godofall" is NYC and they're Dominicans who are street level/wholesalers.
"DaRuthless1" has been surveilled by local in Queens and has a prior for distribution oxy.
"UndergroundSyndicate" I know was assumed to have been made, but there was some snafu with that and bickering state level.
I know there were a few California based pot guys who were being surveilled, I can circle back on vendor information. There is a vendor in Dade County, FL that was surveilled, grabbed and turned but the focus was on his IRL connects to coke wholesalers, not on mail.

I can poke around in regards to more on this topic.

I'm sorry if I said anything that makes you unhappy.. I would not lie to you about anything, I would not gain anything from withholding, rather you'd lose your utility for me and obviously that's counter to me even reaching out.

Please understand that it's obviously possible that I'm not privy to EVERYTHING that goes on. I work in a 9-5 environment and I'm nowhere near the field (and I'd never be). If there's something that you're 99.9% sure of is in

DPR's profile then you'd know better. If I don't know about it or have not heard/seen it, then that's a limitation of what I'm privy too. And I apologize for that sincerely, but I have no control over that.

As for #6, I can stress again that I'm not a technical person. From everything I've heard, it was the guys behind the DDoS. Thats the water cooler buzz so to speak. I said I have no idea what the goal was, if any. It's not my place to venture any opinions, but if someone else claimed to take responsibility then either they wanted to jump on the bandwagon, or they could have been trying to engage you and solicit some response. I am simply not consulted on operations.. I don't know any other way to put it. I'm a cog, not anything more.

I can stand by the profile of you that I provided. If there is more then I do not doubt it in the least, but it must be pegged as need-to-know.

RE your scenarios - I reached out to you for, as I said, personal gain. There is no card being played.. believe me I'm not in the game. To placate you into a false sense of security.. but then ask for compensation? That doesn't make sense. I see what you're saying, and I don't blame you, but if that scenario had any merit, why would I "compromise" the Wonderful deal? Do you see what I'm saying?
Scenario 2 is one that I'm whole heartedly (well, heavy heartedly) willing to accept. I do concede that I'm not an agent, I'm not operational, I'm not field. I'm a worker bee and I do feel I'm useful.. and I'm willing to prove it (while also covering my own ass). But if you feel I'm not as useful as you had hoped.. I'm pretty damned sorry and I can accept that?

I'm open to whatever you suggest..

Well now you have me thinking too.
It's one of two things:
Out of an abundance of caution. There could purposely be bogus OR outdated profiling (left over from a legacy report). Knowing theres various agency crosstalk (and curious eyeballs), the thinking can be to keep sensitive information off the shared drives for fear of someone going into business for themselves. The nature of btc and tor can tempt anyone to come to you (as I have) with something you'd presumptively write a blank check to get your hands on. Leaks happen all the time.. but generally they're to the press, not the subject. Could be a safeguard. Or, could simply be because your sources might be closer to the field and have first hand knowledge of updated working data.

The DDoS would certainly be NCIJTF/FBI. There would not need to be any full time geeks tasked with attacking or penetrating SR and nothing else. Could only be 2 ways:
1)They would assign a group internally, fast track the assignment approval, provide an objective and get briefed on any developments. This isn't open ended and there has to be some goal/metrics to be reported on in a specified timeframe.
2) Farmed out to a contractor. A lot security specialists are contracted out by the FBI. This is a bit murkier as they operate on their own guidelines and are just asked to deliver with minimum oversight.
But they have limited resources at their disposal unlike employees.

This is something I can dig around and find out if it was internal or outsourced. I can also find out if theres a set group that's been delegated specifically to SR. Would also be able to ascertain which office they'd be out of. Most importantly I can try to see what (if anything) has been the yield and what the priority level is. If I start getting too technical with my poking around that might raise a flag.. so it's a balancing act for me. But I can get you something RE: past IT based attacks on your infrastructure.

I will, that is something I can do that might shed some light on the attack(s). Engaging you/intake of your response is attempted by every means. This is my opinion, but even if it was legitimate extortion does not rule out a contractor(s) sourced by LE. Anybody can see dollar symbols and see a financial opportunity even if they've been tasked by feds. Now, if it was in-house then yes, demanding payment to ceasefire would be bizarre as there would be too much oversight on the operation and if you had gone public (for example) with the fact the attacker is asking for payment.. there'd be disciplinary action at the very LEAST. But you are right in the sense that highjacking/ransoming the site for profit is not how LE operates. I'm thinking if the attacker was not LE, then they launched a separate attack with the wishful thinking that the massive onslaught would disrupt the site long enough to cause hot vendors to go back on the streets and open themselves up to catch cases.
I will look into this.

There are a few shared drives, but the lions share of SR related data is dumped to a drive titled (I'm not being humorous) "Silk". I would say SR related maybe 3 gigs? As for getting a copy of it -
this is scary. I don't know how/when/IF such a thing would be audited. Do you know? I'll research. But the thought of making a copy of all the folders onto an external from my workstation.. that really turns my stomach. What if theres a system wide audit of who copied/moved/read/wrote what folders/files and it's asked of me what I was doing copying that entire folder to a USB..we're talking Do Not Pass Go, Do Not Collect $200, straight to prison. But maybe I'm being paranoid as well, because there are so many cooks in the kitchen and people move folders/files all the time. No cameras where any of the cubes are.. so theoretically if I found an open work station, a copy *might* be possible. But I can tell you that the risks involved in this are unquantifiable. I can think this one through. Maybe copy some docs at a time, in 2 or 3 passes. Let me read up on how/what can be audited.

Every avenue is being explored by Treasury and HSI (Homeland Sec Investigations) to get claws into the Bitcoins exchanges. By claws I mean sweet talk and then flat out intimidate.The view in LE circles is that Bitcoin exchanges are shamelessly serving as money launderers and know very well that a wide chunk of the bitcoin economy is from black market transactions. Now, when Gox was hit in the spring.. that was literally over an unchecked box on some form asking "Are you a money transmitter?"! Because (the US subsidiary) of Gox failed to check the "Yes" box.. that alone was enough to get a judge to sign off on a warrant. The rest is history. LE has reached out to EVERY SINGLE DOMESTIC btc exchange and asked them to share records on vague grounds (ongoing narco-traffic investigations, Islamic charities/donations etc) and establish channels. The exchanges seem to talk to each other, and have by large put a united front and rebuffed these advances so far and have insisted their Ts are crossed and I's are dotted, which means they are not obligated to share records with any LEA on gratis. And since their paperwork is in order, LE is stuck here. They have not been enable to find cause to hit any of the other exchanges the way they hit Gox. I can tell you that LE is so used to banks bending over backwards to accommodate, they're annoyed that the exchanges have not rolled over. They have not seized servers of any domestic btc exchange. Even Mutum Sigillum's seizure was just their Dwolla account, not their servers or any stateside Gox data. Coinbase, however, is probably playing ball at some level. If you recall they scored like $5mil in a Series A round a few months ago. Few weeks after that (I'm talking June), there were meetings between there Compliance/attorneys and Treasury. This is not public knowledge. Either this was the investors insisting that they reach out to the feds and get in their good graces, or Treasury tried to squeeze them and maybe found something they thought they could use to bully them. But that's been quiet since. Have not heard anything. Gut says they probably reached some tentative agreement to pass on records in a limited capacity. Long story short, no, they are not tapped in to the exchanges (yet), aside from possibly Coinbase.

Civilian leads come in all the time to both local and federal. Sometimes its a call to one of the tip lines, and sometimes from confidential informants on the local level who are helping build cases on street dealers, and the street dealers are suspected of putting drugs in the mail or fedex, and SR is mentioned. Other civilian leads would be from academic research regarding SR/TOR (crawlers, potential bugs/flaws in the tor network etc). Or then instances of someone coming to local LE for help because they were being extorted and 'threatened to have their information released allover SR forums" etc (usually a buyer that's getting blackmailed by a vendor) have also trickled in.

Yes, I'm thinking slow dump to USB, then PGP'd and sent to a tormail you provide. Will have to be slow, and ideally any chance I get to an open machine that I'm not logged into. The good thing is people don't take their workstation security serious and are pretty lazy.

What are your thoughts on this RE the weeklies and anything that comes through the pipe on Outlook. I was considering screen shots, but then the fear of an audit catching an outrageous amount of screen shots might be a problem. So, suppose I got an old iPhone or anything with a high res camera, and pulled up docs and took pictures? Then can transfer the pics later, remove exif data, crop out anything identifiable (reflections, other open work on the machine) and then send? Although crude, this would at least work in terms of getting your eyes on stuff. Fallback would be you wouldn't be able to copy paste anything. Thoughts?

About Gox: No way. Hitting Mutum Sig was a last resort and reactionary because they had approached Gox directly and were rebuffed, and then reached out to the Japanese government to no avail. Although on good relations, Japanese companies are very anal when it comes to perceived threats to their bottom line. Must not forget that Gox is fully aware that that a staggering amount of traffic is dirty money (no offense), and that makes them money. They can't fathom turning over records and data to the Americans without a crippling mass exodus of capital (if it ever came to light). Also Japanese are a proud people when it comes to their work. There are free trade agreements with Japan that have binding clauses to provide financial information to requests from say the IRS, but something that like can't be used as a tool with the Japanese government because of limited resources and approvals on our end. It's very beauracratic and not just a matter of a few phone calls and emails. And even still the Japanese can stall and pushback. As long as Gox is operating where they are, they will guard the integrity of their records/logs/data. Gox is outside the tentacles.

No no, I can, I was thinking in terms of immediate data transmission. Grabbing off the drive is going to have to be done over some time. I can copy the contents of the weeklies to a file.. especially as they're sitting in Outlook. It does make my stomach turn.. but I know I've made a decision and opening emails is not out of the ordinary for me. I just have to remind myself that I'm as anonymous as can be and the financial incentive is attractive. And realistically I'm one of around 100 or more who would routinely be privy.. so I don't stick out. But Jesus this is scary. Sorry, just thinking out loud. I do appreciate you reposing trust in me and being generous with comp.

When I put my paranoia into perspective vis-a-vis what stress you must live under.. and see a (wo)man who's seemingly calm and collected, that does ease the burden. At the end of the day us corresponding on tor is as safe as can be. And my age/appearance is helpful in regards if ever asked why I'd be accessing SR specific docs/folders.. it's not entirely bizarre that I'd be curious in counter culture. And without getting into my position, I am tasked with a lot of gruntwork that involves being in various drives. Because of my clearance I haven't even done drugs in ages and can't.. so I've never indulged in the site. And this method of correspondence was thought out by me for weeks. I'm not on my personal machine. God forbid the day would ever come where an eyebrow would even be raised though.

I know you know how to keep an eye on your staff.. but realize that correspondence on the Wonderful situation is something you'd want to pay close attention too. Even if your guy(s) swear up and down the moon (to Mr. W) that you aren't in the know they've been talking, it will be assumed that you ARE watching and/or playing them directly. That can be a pro or a con for you, depending on how you finesse the situation. They either feed disinformation and/or take anything relayed with a grain of salt. I would not let your staff know you know they've been talking.. not only would that raise a flag, you'd lose a major opportunity to manipulate the situation. Bottom line is, assume they're

compromised or infiltrated, and you can have the boys running on goose chases.

The more you send confusing signals via the forum and manufacture events, probably the better. For example to post that you're satisfied with the new setup/configuration of the server would be a good throwoff/distraction. Or to let speculation run about how many people are DPR/has SR changes hands and whatnot is advantageous to you (but you knew that). Or even to appear to unconsciously reveal an identifier about your habits/intentions/origins is good psychological warfare (but you knew that too).

As far as your vendors go.. that's the weakest link. You have to keep an eye on their PM's and behavior/correspondence. Keeping them off the street, encouraging they partner up to appear to be operating out of various geography, monitoring their attempts to work outside the framework and open themselves to under covers are all no brainers but imperative.

I'm going to poke around all I can on previous attacks/future plans of assault on the site.Know that paralyzing the site forever would never be an end goal of LE. That would be anticlimactic. Breaching your site security would be, and if that were to happen, they'd sit on it and watch.. with no time constraints. And still target the high volume vendors. If that were too happen, it would eventually filter back to me and thus you, and how you tackle it is obviously your call.

If the climate in regards to the BTC exchanges changes and theres heightened interaction with Treasury/HSI, I will tell you the who and when. That might help you strategize big picture. For right now they're safe. That could change.

I assume you'll want to know of street level activity or buzz that comes in via local or USPI, even if mundane. I'll get that to you too. If I can't get a vendor name, I can provide you with the geography and whatever identifiers I find. But these guys are almost always flipped and used to setup their IRL connects.

Also, do not put it past them to wiretap journos. If you (for example), interact with people like Chen or Ornsby, assume they can see it. Assume journalists are compromised/breached.

What I'll do this week is figure out how to start gleaning docs off the drives, and copying the weeklies/emails. Will need a few days to get that sorted out. I do sincerely hope that all this helps/will help you.

I guess that wraps up our initial framework. I don't know anything else off the top of my head that might be critical. But if something does come to me then I'll inform you. Give me a tormail where I'd be able to send stuff to. I'll create one as well strictly for this purpose.

If I'm not missing anything.. then I assume the first part of our initial arrangement/deal is squared away? If you could take care of the balance of my retainer tonight I'll have some peace of mind that I'm starting the week/this chapter of my life squared away. And the weekly comp following the weekly data that comes your way? I assume that's fair?

Ok, got it. Thank you for that DPR, you're a man of your word as am I. Thank you for being receptive.
Most weeks there's something at least.. so "nothing new or interesting" is almost never the case unless theres a complete lull or resources are re-allocated to some pressing other business. Even if there's nothing "new" per se, I can always engage others informally and chat them up to see what the buzz is. I'll figure out the doc/files and send them encrypted to that address. Feel free to ask any questions whenever, I'll check this forum account every evening and again at night. During working hours is almost possible unless I'm working from home, in which case I'll be reachable. If there's any specific you'd want want me poke around, then just point me in the right direction and I can circle back. Sorting out what else they have that isn't in the current profile (and why/how it's omitted) as well as the what/who/where/why RE the DoS I've put on top priority. I'll get something.

EXHIBIT 9

4/6/13 18:00	DeathFromAbove	Dread Pirate Roberts	Dread Pirate Roberts	It's not that easy Anand [redacted]
4/10/13 11:54	DeathFromAbove	Dread Pirate Roberts	so	[redacted]. Do they have a casino there Anand?
4/16/13 5:56	DeathFromAbove	Dread Pirate Roberts	personal history	Name: Anand Athavale DOB: November 11, 1975 POB: India Citizenship: India Sex: M Brown hair, 5'6" tall, Brown eyes, 300 lbs. Residence: 3733 Edgehill Drive, P.O. Box 87, Tappen, BC, Canada VOE 2XO is that enough to get your attention? [redacted] So, $250,000 in U.S. cash/bank transfer and I won't give you identity to law enforcement. Consider it punitive damages. DeathFromAbove

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ROSS WILLIAM ULBRICHT,

Defendant.

14-cr-68 (KBF)

OPINION & ORDER

KATHERINE B. FORREST, District Judge:

Ross Ulbricht ("defendant" or "Ulbricht") was indicted on February 4, 2014. On August 21, 2014, the Government filed a superseding indictment; Ulbricht was arraigned on that indictment on September 5, 2014. The charges against Ulbricht stemmed from his alleged design, creation, and operation of Silk Road—a sprawling online marketplace for illegal narcotics, computer hacking materials, and fraudulent identification documents. The Government alleged that Ulbricht owned and operated Silk Road on the dark net under the username "Dread Pirate Roberts" ("DPR") and, as DPR, controlled every aspect of the illegal enterprise until the day of his arrest. The Superseding Indictment charged Ulbricht with seven crimes: narcotics trafficking, narcotics trafficking by means of the Internet, conspiring to commit narcotics trafficking, engaging in a continuing criminal enterprise, conspiring to commit or aid and abet computer hacking, conspiring to traffic in fraudulent identification documents, and conspiring to commit money laundering. (ECF No. 52.)

Trial was initially scheduled for November 3, 2014, but, on applications from the defense, it was adjourned to November 10, 2014 and then to January 5, 2015. On December 30, 2014, the defense made an additional application for an adjournment—which the Court denied. This matter proceeded to trial on January 13, 2015.[1] On February 4, 2015, after just a few hours of deliberation, the jury returned guilty verdicts on all counts.

Now before this Court is Ulbricht's motion for a new trial on all counts. (ECF No. 222.) There is no basis in fact or law to grant the motion and it is DENIED.

I. THE TRIAL[2]

In his opening statement, Ulbricht's counsel conceded that Ulbricht had, in fact, created Silk Road. Counsel told the jury that the evidence would show that Ulbricht had ceased his involvement with Silk Road "after a few months" but had been lured back—just as law enforcement closed in—to be the fall guy. In short, he was caught red-handed but was a dupe. Counsel told the jury that Ulbricht was not the Dread Pirate Roberts.

By the time of trial, defendant had received what evidence the Government possessed; he had copies of the website, the code, the servers, the thumb drives, the photographs, the screen shots, etc. It was in the face of all this evidence that Ulbricht's counsel presented his opening statement and outlined his defense. His defense was not that the evidence would fail to show that all manner of illegal drugs

[1] The one-week delay in the start of trial was due to a personal matter affecting one of the attorneys for the Government.

[2] The Government has laid out the facts developed during the trial in detail in its submission on this motion. (ECF No. 230.) The Court does not repeat all of those facts here and recites only those most pertinent to resolution of the instant motion.

were sold on Silk Road, that Ulbricht was not its creator, that he did not purchase several counterfeit drivers' licenses from the site, that he was not arrested with a laptop which was a standalone, independently sufficient, massive repository of incriminating evidence. His defense was that somehow—in a manner not then explained—Ulbricht had been set up by the real criminal mastermind.

Counsel's opening suggested a developed defense—a defense supported by known evidence. It suggested that there was evidence that Ulbricht—who concededly started Silk Road—at some point ceased his involvement with the enterprise and returned only at the very end. It suggested that there was evidence that the mound of incriminating material on Ulbricht's laptop had been created and placed there by someone else—or by some automated process—in a technologically feasible way.

Counsel pursued this "alternative perpetrator" line of argument during cross-examination of the Government's witnesses—particularly Special Agent ("SA") Der-Yeghiayan, whom counsel questioned extensively regarding two other individuals who were investigated as possible leads on DPR.

There is a necessary disconnect between this defense theory—presented in counsel's opening and cross-examination—of what really happened, and the theory on this motion: that defendant has not had the time or information to develop any defense at all.

The evidence of Ulbricht's guilt was, in all respects, overwhelming. It went unrebutted. This motion for a new trial urges that Ulbricht was prejudiced by that

which he could not know in time, or at all. But the motion does not address how any additional evidence, investigation, or time would have raised even a remote (let alone reasonable) probability that the outcome of the trial would be any different.

The trial started with the jury hearing that at the time of his arrest, Ulbricht was actively engaged in an online chat with an undercover agent posing as a Silk Road employee. Ulbricht was at his laptop, typing, and logged in as the Dread Pirate Roberts. The jury heard and saw evidence connecting the purchase of that laptop to Ulbricht: it was purchased using Bitcoins (converted by Ulbricht into Amazon.com gift cards) and shipped to Ulbricht's home. (GX 312C, 312.) A confirmation e-mail was sent to Ulbricht's e-mail account, and Ulbricht duly recorded the purchase in a spreadsheet of Silk Road-related expenses. (GX 312C, 250.)

The jury heard that the laptop contained what can only be described as an electronic diary: a detailed description by Ulbricht of how and why he started Silk Road—and the various events that occurred over the years in relation to it—sprinkled with details from Ulbricht's private life. (GX 240A–240D.) The laptop also contained thousands of pages of chat logs with Silk Road employees (GX 222–232E), a weekly to-do list for Silk Road (GX 255), copies of the Silk Road website and the Silk Road market database (GX 212, 213), spreadsheets of Silk Road–related expenses and servers (GX 250, 264), a "log" file reflecting actions that Ulbricht took in connection with the day-to-day maintenance of Silk Road (GX 241), the encryption keys used to verify the Dread Pirate Roberts's identity (GX 269, 296),

a spreadsheet listing Ulbricht's personal assets in which he valued Silk Road at $104 million (GX 251), and scanned copies of identification documents belonging to Silk Road staff members (GX 216, 256). There were also Bitcoin wallets on the laptop containing over 144,000 Bitcoins, valued at the time of Ulbricht's arrest at $16-18 million. (GX 214, Tr. 1032:21-1033:5, 1673:8-1674:6.) An analysis of those Bitcoins showed that the vast majority of them—nearly 90%—came directly from Bitcoin wallets found on Silk Road servers. (GX 620B.)

The jury also heard extensive testimony that Silk Road was a website used to buy and sell narcotics and other illicit goods and services. The jury saw printouts from the website showing advertisements for a variety of such narcotics, and heard testimony from a law enforcement agent who had seized a large volume of narcotics purchased through Silk Road. The jury heard from a former friend of Ulbricht that Ulbricht had confessed his involvement in Silk Road to him. The jury saw a variety of Silk Road transactional data demonstrating the sale of computer hacking materials, currency, and a host of fake drivers' licenses, passports, and other identification documents. The jury heard that a law enforcement agent had intercepted a package containing nine counterfeit drivers' licenses for Ulbricht himself, and that Ulbricht had mentioned Silk Road when confronted with them. The jury saw copies of papers taken from Ulbricht's garbage can shortly after his arrest which had handwritten notes of tasks associated with Silk Road. The jury also saw documents which demonstrated that the Dread Pirate Roberts attempted

to protect his interests in Silk Road by commissioning the murder of several individuals (though there is no evidence that murders resulted).

By contrast, the jury was not presented with any evidence that the laptop which Ulbricht possessed at the time of his arrest was ever out of his possession since he had purchased it (and it had been delivered to his home address). It was also not presented with any evidence that someone—or some automated process—could, much less did, populate Ulbricht's hard drive with any of the evidence described above, located in different files and in different places on the computer.

II. DEFENSE ARGUMENTS

Defendant makes three arguments in support of his motion for a new trial. First, defendant argues that he was deprived of his Fifth Amendment right to due process and his Sixth Amendment rights to a fair trial and effective assistance of counsel. In that regard, defendant argues that the Government's production of 3500 material less than two weeks prior to trial was voluminous and contained exculpatory material that should have been produced sooner. In addition, defendant asserts that he was denied the ability to use, or have discovery into, certain information concerning the corruption investigation into former SA Carl Force and another law enforcement agent (the "Rogue Agents"). Defendant asserts that the recently unsealed criminal complaint against the Rogue Agents—who were involved in an investigation of Silk Road by the U.S. Attorney's Office for the District of Maryland ("USAO-Baltimore")—reveals that Brady material was suppressed in this case. Defendant argues that all of these failures were compounded by the Government's repeated additions and modifications to its

exhibit list on the eve of and during trial—which sowed confusion and inhibited effective preparation.

Second, defendant argues that 3500 material revealed that "the government was conducting warrantless TOR network surveillance on a TOR exit node" that his pre-trial suppression motion should be therefore "reopened" and granted. (Memorandum of Law in Support of Defendant Ross Ulbricht's Post-Trial Motions ("Def.'s Br.") at 15, ECF No. 224.)

Third and finally, defendant offers a "proffer" regarding the proposed testimony of Andreas M. Antonopoulos, implicitly suggesting that the Court erred in precluding Mr. Antonopoulos from testifying as an expert witness before receiving a full proffer of his testimony.

None of these arguments supports granting a new trial.[3]

III. LEGAL STANDARDS

A. Rule 33

Rule 33 provides that a district court may "vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). The ultimate question is whether manifest injustice would result if a court allows a guilty verdict to stand. United States v. Snype, 441 F.3d 119, 140 (2d Cir. 2001). Given the deference owed to a jury's verdict, the Second Circuit has instructed that district courts should exercise their Rule 33 authority "sparingly" and only in "the most extraordinary circumstances." United States v. Ferguson, 246 F.3d 129, 134 (2d

[3] The Court notes that Ulbricht's reply papers focus exclusively on the first argument. It is unclear whether this exclusive focus means that Ulbricht has abandoned his other arguments or whether he is content to let his opening papers address them.

Cir. 2001) (quoting United States v. Sanchez, 969 F.2d 1409, 1414 (2d Cir. 1992)) (internal quotation marks omitted). Such extraordinary circumstances exist, for example, when testimony is "patently incredible or defies physical realities." United States v. Cote, 544 F.3d 88, 101 (2d Cir. 2008) (quoting Sanchez, 969 F.2d at 1414) (internal quotation marks omitted). A motion for a new trial should not be granted unless, upon examining the entire case and taking into account all of the facts and circumstances, the court is left with "a real concern that an innocent person may have been convicted." Ferguson, 246 F.3d at 134 (citation and internal quotation mark omitted). After a full and thorough review of the evidence, the Court here is left with no such concern.

B. Discovery Obligations in Criminal Cases

"[I]n all federal criminal cases, it is Rule 16 that principally governs pre-trial discovery." United States v. Smith, 985 F. Supp. 2d 506, 521 (S.D.N.Y. 2013) (citations omitted). Rule 16(a)(1)(E) provides, in pertinent part, that a defendant is entitled to obtain from the Government documents and objects that are "within the government's possession, custody, or control" if they are "material to preparing the defense" or will be used by the Government in its case-in-chief at trial. Fed. R. Crim. P. 16(a)(1)(E).

Evidence that the Government does not intend to use in its case-in-chief at trial is material "if it could be used to counter the government's case or to bolster a defense; information not meeting either of those criteria is not to be deemed material within the meaning of the Rule." United States v. Stevens, 985 F.2d 1175, 1180 (2d Cir. 1993). To warrant a new trial "[t]here must be some indication that

the pretrial disclosure of the disputed evidence would have enabled the defendant significantly to alter the quantum of proof in his favor." Id. (quoting United States v. Maniktala, 934 F.2d 25, 28 (2d Cir. 1991)) (internal quotation marks omitted). Even the withholding of material evidence does not warrant a new trial if the defendant cannot show that it caused him "substantial prejudice." Id. at 1181 (citation omitted). "In assessing that question, the court analyzes the nature of the evidence sought, the extent to which it bore on critical issues in the case, the reason for its nonproduction, and the strength of the government's untainted proof." Id. (citation omitted).

Rule 16(a) was never "intended to provide the defendant with access to the entirety of the government's case against him." United States v. Percevault, 490 F.2d 126, 130 (2d Cir. 1974) (citation omitted). "Discovery of evidence in criminal prosecutions is, inevitably, more restricted than discovery in civil cases." United States v. Tolliver, 569 F.2d 724, 728 (2d Cir. 1978). Rule 16 "does not entitle a criminal defendant to a 'broad and blind fishing expedition among [items] possessed by the Government on the chance that something impeaching might turn up.'" United States v. Larranga Lopez, 05 Cr. 655 (SLT), 2006 WL 1307963, at *7-8 (E.D.N.Y. May 11, 2006) (alteration in original) (citing Jencks v. United States, 353 U.S. 657, 667 (1957)).

C. 3500 Material

The Jencks Act provides that "[a]fter a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement . . . of the witness in the

possession of the United States which relates to the subject matter as to which the witness has testified." 18 U.S.C. § 3500(b). The plain meaning of this provision does not require production of 3500 material before trial. In practice, however, courts in this district require the Government to produce 3500 material at least the Friday prior to the commencement of trial and sometimes earlier.

The Jencks Act is intended to provide the defense with prior statements of Government witnesses for purposes of impeachment. United States v. Carneglia, 403 F. App'x 581, 586 (2d Cir. 2010). The Jencks Act is not a general discovery device. See United States v. Exolon-Esk Co., No. 94-CR-17S, 1995 WL 46719, at *2 (W.D.N.Y. Jan. 19, 1995) (citing In re United States, 834 F.2d 283, 286 n.2 (2d Cir. 1987)); see also United States v. Jackson, 345 F.3d 59, 76 (2d Cir. 2003) (The Jencks Act "does not normally mandate disclosure of statements made by a person who does not testify." (citations omitted)). In instances in which the Government has failed to provide 3500 material, a defendant is only entitled to relief if there is a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Carneglia, 403 F. App'x at 586 (quoting United States v. Nicolapolous, 30 F.3d 381, 383-84 (2d Cir. 1994)) (internal quotation marks omitted).

D. Brady

"There is no general constitutional right to discovery in a criminal case, and Brady did not create one." Weatherford v. Bursey, 429 U.S. 545, 559 (1977); see also Pennsylvania v. Ritchie, 480 U.S. 39, 59 (1987) ("Defense counsel has no constitutional right to conduct his own search of the [Government's] files to argue

relevance." (citation omitted)); United States v. Evanchik, 413 F.2d 950, 953 (2d Cir. 1969) ("Neither [Brady] nor any other case requires the government to afford a criminal defendant a general right of discovery."); United State v. Meregildo, 920 F. Supp. 2d 434, 440 (S.D.N.Y. 2013) ("Brady is not a rule of discovery—it is a remedial rule." (citing United States v. Coppa, 267 F.3d 132, 140 (2d Cir. 2001))).

Rather, Brady established that the Government has a constitutional obligation to disclose favorable and material information to the defendant. See Brady v. Maryland, 373 U.S. 83, 87 (1963). "There are three components of a true Brady violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." Strickler v. Greene, 527 U.S. 263, 281-82 (1999). A defendant seeking a new trial on the basis of an alleged Brady violation bears the burden of demonstrating that these elements are met. United States v. Douglas, 415 F. Supp. 2d 329, 336 (S.D.N.Y. 2006), aff'd, 525 F.3d 225 (2d Cir. 2008).

Prejudice ensues only if the suppressed evidence is material—that is, "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Kyles v. Whitley, 514 U.S. 419, 433 (1995) (quoting United States v. Bagley, 473 U.S. 667, 682 (1985)) (internal quotation marks omitted). "A reasonable probability" means that the likelihood of a different result is sufficiently great to "undermine confidence in the outcome of the trial." Smith v. Cain, 132 S. Ct. 627, 630 (2012) (quoting Kyles, 514

U.S. at 434) (alteration and internal quotation marks omitted). Undisclosed information may not be material if the Government's "other evidence is strong enough to sustain confidence in the verdict." Id. (citation omitted). This standard is not satisfied, however, if the Government "offers a reason that the jury could have disbelieved [the undisclosed evidence], but gives us no confidence that it would have done so." Id. (emphases in original). Materiality is assessed in light of the trial evidence. "Where the evidence against the defendant is ample or overwhelming, the withheld Brady material is less likely to be material than if the evidence of guilt is thin." United States v. Gil, 297 F.3d 93, 103 (2d Cir. 2002) (citations omitted).

"Brady material that is not 'disclosed in sufficient time to afford the defense an opportunity for use' may be deemed suppressed within the meaning of the Brady doctrine." United States v. Douglas, 525 F.3d 225, 245 (2d Cir. 2008) (alteration omitted) (quoting Leka v. Portuondo, 257 F.3d 89, 103 (2d Cir. 2001)); see also Coppa, 267 F.3d at 135 ("Brady material must be disclosed in time for its effective use at trial." (citation omitted)). Brady material buried within "reams" of 3500 material and provided too close to trial to permit effective use may also be deemed suppressed. See Douglas, 525 F.3d at 245 (citing Gil, 297 F.3d at 103); see also United States v. Rittweger, 524 F.3d 171, 181 n.4 (2d Cir. 2008) ("Complying with the Jencks Act . . . does not shield the government from its independent obligation to timely produce exculpatory material under Brady . . . .").

IV. DISCUSSION

A. Fifth and Sixth Amendment Claims

Ulbricht asserts that his Fifth and Sixth Amendment rights were violated as a result of the Government's belated production of 3500 material, failure to timely disclose the details of the investigation of the Rogue Agents, and repeated additions and modifications to trial exhibits. According to Ulbricht, the Government's gamesmanship in this regard led to inadequate trial preparation, an inability to investigate whether certain evidence might be exculpatory, and, ultimately, an unfair trial. These arguments are without merit.

1. 3500 Material

Ulbricht argues that he is entitled to a new trial because the Government's 3500 production contained Brady material concerning SA Der-Yeghiayan's investigation of Messrs. Karpeles and Athavale (the "Karpeles/Athavale Materials") which was not disclosed in time for effective use at trial. This argument fails for three independent reasons.

First, the Karpeles/Athavale Materials do not constitute Brady material because they are not exculpatory vis-à-vis Ulbricht. Defendant argues that these materials constitute "other perpetrator" evidence, but they in fact only reflect investigative leads that SA Der-Yeghiayan explored but that ultimately turned out to be misplaced. See Moore v. Illinois, 408 U.S. 786, 795 (1972) (noting that there is "no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case," including any "early lead the police abandoned"); United States v. Amiel, 95 F.3d 135, 145 (2d Cir.

1996) ("The government has no Brady obligation to 'communicate preliminary, challenged, or speculative information.'" (quoting United States v. Diaz, 922 F.2d 998, 1006 (2d Cir. 1990)) (internal quotation marks omitted)).

SA Der-Yeghiayan investigated Mr. Karpeles because the website "silkroadmarket.org"—which provided instructions on how to access Silk Road on the Tor network—was hosted on a server that was registered to Mr. Karpeles. However, further inquiry revealed that Mr. Karpeles's connection to the server was an innocent one: he was simply running a server-hosting company that leased servers to others, and the server in question was in fact leased to Ulbricht. The Government's investigation of Mr. Karpeles thus does not exculpate Ulbricht. See United States v. Sessa, No. 92-CR-351 ARR, 2011 WL 256330, at *24 (E.D.N.Y. Jan. 25, 2011) (police reports concerning other suspects in a murder investigation did not constitute Brady material where, inter alia, their fingerprints came back negative), aff'd, 711 F.3d 316 (2d Cir. 2013).

As to Mr. Athavale, SA Der-Yeghiayan's suspicion was based on certain linguistic similarities between DPR's writing and that of Mr. Athavale. However, these similarities are not exculpatory vis-à-vis Ulbricht because they were never corroborated by any substantial evidence.[4]

In any event, the Karpeles/Athavale Materials were not "suppressed" within the meaning of the Brady doctrine. These materials were included in the 3500

[4] Even if the Karpeles/Athavale Materials somehow inculpated Messrs. Karpeles and Athavale, they would not exculpate Ulbricht or undermine the mound of evidence against him. Rather, they would simply suggest that there might have been more than one DPR operating Silk Road in the same time period. Whether there was one or 100 DPRs is irrelevant to the ultimate question of whether the Government met its burden of proof as to the crimes charged vis-à-vis Ulbricht.

material for SA Der-Yeghiayan—which was produced to the defense on December 31, 2014, thirteen days before trial began. While Ulbricht asserts that the 3500 production for SA Der-Yeghiayan was voluminous (totaling 5,000 pages), he has failed to demonstrate that he had insufficient time to make effective use of any of these materials. See Douglas, 525 F.3d at 245-46 (disclosure of 290 pages one business day before trial did not constitute suppression). Indeed, the defense displayed great familiarity with the Karpeles/Athavale Materials and used them repeatedly during cross examination. See Gardner v. Fisher, 556 F. Supp. 2d 183, 195 (E.D.N.Y. 2008) (finding no Brady violation based on last-minute disclosure of an exculpatory statement "since the defense made effective use of this statement at trial through extensive cross-examinations"). Notably, the defense never requested a continuance based on the late disclosure of 3500/Brady material. See United States v. Menghi, 641 F.2d 72, 75 (2d Cir. 1981) (finding no Brady violation where, inter alia, defense counsel made no motion for a continuance to allow further investigation).

Finally, the Karpeles/Athavale Materials are not material to Ulbricht's defense. Ulbricht does not offer any explanation as to why there is any chance that he would not have been convicted had the defense been given more time to review the Karpeles/Athavale Materials. He does not explain how the defense would have used the additional time, much less give how this effort may have affected the outcome of the trial. As set forth in Part I above, the Government presented overwhelming evidence of Ulbricht's guilt. Ulbricht was caught red-handed—logged

in and chatting as DPR on a personal laptop, which Ulbricht unquestionably owned, filled with Silk Road files. In the face of this mound of evidence, there is no faint possibility, much less "reasonable probability," that the jury would have reached a different verdict had the Government produced the Karpeles/Athavale Materials earlier. See Gil, 297 F.3d at 103 ("Where the evidence against the defendant is ample or overwhelming, the withheld Brady material is less likely to be material than if the evidence of guilt is thin." (citations omitted)); Jackson, 345 F.3d at 74 (finding a lack of materiality because "[t]he jury's verdict was supported by compelling evidence" and "the undisclosed materials were of limited utility").[5]

2. The Rogue Agents Issue

The vast majority of Ulbricht's reply on this motion concerns the unsealing of the criminal complaint in the Northern District of California against two individuals who held positions with law enforcement and were involved in the USAO-Baltimore investigation of Silk Road: former SAs Carl Force and Shaun Bridges. Defendant's focus on the complaint against these investigators—and the Northern District of California's investigation of them—is misguided. The Government's failure to reveal more regarding the investigation of either individual violated neither its discovery nor its Brady obligations.

[5] In passing, defendant challenges two other aspects of the Government's 3500 production. First, defendant asserts that "[o]ther exculpatory material was included within the 3500 material for Internal Revenue Special Agent Gary Alford (which was produced January 6, 2015)." (Def.'s Br. at 10.) Second, defendant suggests that the Government may have redacted exculpatory information from its 3500 production. (Id. at 10-11.) However, there is no indication that either of these assertions is true, and defendant's unsupported conjecture in that regard is insufficient to establish a Brady violation. See United States v. Numisgroup Int'l Corp., 128 F. Supp. 2d 136, 150 (E.D.N.Y. 2000) ("In the absence of a particularized showing by the defense that certain materials covered by Brady are being withheld, the Court accepts the Government's good faith assertion [that it has complied with its Brady obligations] as sufficient." (citations omitted)).

Despite the attention given to the Rogue Agents issue in defendant's brief, this Court remains unclear (as it always was) as to how any information relating to that investigation is material or exculpatory vis-à-vis Ulbricht. Either the defense assumes the answer is so obvious that it need not explain, or its omission is purposeful. For purposes of the instant motion, this Court assumes that defendant believes he was deprived of information which would have revealed that (1) the Rogue Agents' conduct may have tainted any evidence relating to the website (since they assumed identities on the site), (2) the Rogue Agents may provide a link to someone (including themselves) who may have taken over the DPR account and framed Ulbricht, and/or (3) the Rogue Agents may know the identity of the real DPR. There is no basis in the record—including in any of what defendant has cited regarding the Rogue Agents—which supports any one of these theories. These theories are based on no more than speculation and premised on erroneous assumptions as to the scope of discovery obligations and the meaning of exculpatory evidence.

To start, there is no basis for this Court to believe that any undisclosed materials relating to the Rogue Agents would have been remotely useful, let alone exculpatory, vis-à-vis Ulbricht. The Rogue Agents did not participate in the USAO-SDNY's investigation of Silk Road that resulted in defendant's arrest and indictment, and none of the evidence at defendant's trial came from the USAO-Baltimore investigation in which the Rogue Agents participated.[6] That the Rogue

[6] Defendant argues that the USAO-SDNY and USAO-Baltimore investigations were coordinated, and "[t]o the extent there is any question with respect to that conclusion," the Court should hold an

Agents may have exceeded the scope of their authority in the USAO-Baltimore investigation does not, in any way, suggest that Ulbricht was not the Dread Pirate Roberts. As this Court explained in an earlier (sealed) ruling on this topic, the investigation of SA Force is, if anything, inculpatory as it suggests that Ulbricht, as DPR, was seeking to pay law enforcement for inside information to protect his illegal enterprise.

Moreover, even if defendant could point to a favorable piece of evidence from the investigation of the Rogue Agents, defendant has not constructed any argument that had he had earlier disclosure, the result of the trial may have been different. There is no reasonable probability of a different outcome here: the circumstances of defendant's arrest, and the evidence found in his own possession at the time of the arrest, are in and of themselves overwhelming evidence of his guilt.

One of defendant's key arguments is that suppression of the Rogue Agents material prevented him from exploring potentially exculpatory avenues—that, in effect, we cannot know whether the result of the trial would have been different since we do not know what it missing. (See, e.g., Def.'s Reply at 3-4 ("[T]he complete scope of what SA's Force and Bridges were able to accomplish with the illicit access they gained to the Silk Road web site, and its impact on this case, has yet to be determined."); id. at 37 ("Absent the opportunity to inspect items relevant to the investigation of former SA's Force and Bridges, the full extent of potentially

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evidentiary hearing on the issue. (Reply Memorandum of Law in Support of Defendant Ross Ulbricht's Post-Trial Motions ("Def.'s Reply") at 38, ECF No. 232.) There is no need for any evidentiary hearing: whether the investigations proceeded separately or intersected has no bearing on whether any undisclosed materials relating to the Rogue Agents are exculpatory as to Ulbricht.

exculpatory material cannot be determined.").) This argument misconstrues Brady—and attempts to turn Brady into a discovery device or to expand the requirements of Rule 16. The Government had an obligation to turn over favorable material evidence to prevent injustice; it had no obligation to keep Ulbricht continually apprised of developments in a separate investigation. On the record before the Court, the Government complied with its obligation: as explained above, none of the Rogue Agents evidence is exculpatory—let alone sufficiently exculpatory to give rise to a reasonable probability of a different outcome.

3. Trial Exhibit Disclosures

Defendant argues that the Government's failure to timely disclose Brady material was "compounded" by its late and continued production of a significant number of exhibits throughout the trial. (Def.'s Br. at 12.) To start, and as explained above, there were no Brady violations to compound. In any event, the Government's disclosure of exhibits was neither unusual nor unreasonable.

Prior to trial, the Court established a procedure for the Government's disclosure of its trial exhibits. That procedure was designed to allow the parties to assess potential objections, discuss them, and preview evidentiary issues with the Court. That process occurred as ordered, but, as is frequently the case, there were exhibits added and subtracted as trial approached and then commenced. The Court did not preclude these modifications—though it expected counsel to work together in good faith in that regard. Defense counsel remarked on this during the trial, but specifically stated that he was not "complaining" and that "[i]t [was] not something that's out of the realm of a trial." (See 1/28/15 Tr. 1553:13-24, ECF No. 214; 1/29/15

Tr. 1837:2-6, ECF No. 212.) While counsel did raise an issue with regard to one particular document—an analysis of Bitcoins found on defendant's laptop (1/28/15 Tr. 1546:2-20)—this document was added to the Government's exhibit list during the trial to address an argument defense counsel raised in his opening.

B. Suppression Motion

Next, defendant argues that 3500 material produced by the Government just prior to trial warrants reopening and granting his pre-trial motion to suppress evidence obtained as a result of the search and seizure of a server located in Iceland. (ECF No. 46.) In particular, defendant points to text messages between SA Der-Yeghiayan and a confidential informant (the "CI") from August 2012 in which SA Der-Yeghiayan asks, "Are we up on the exit node yet?" The CI confirms that they are and states, "100 percent running, logging and recording . . . with verification." (Def.'s Br. at 16 (quoting 3505-4059–3505-4060).) Defendant also references texts in which SA Der-Yeghiayan and the CI discuss the prospect of the Government performing a distributed denial of service ("DDOS") attack with the purpose of "listening" to the Silk Road servers. (Id. (quoting 3505-4066).) Defendant asserts that these communications provide "further evidence that the government discovered the Internet Protocol . . . address for the Iceland server ending in '.49' through warrantless TOR network surveillance" and that it may have authorized or conducted DDOS attacks. (Id.) This argument is without merit.

Defendant's pre-trial suppression motion was denied principally on the basis that he had failed to establish a personal privacy interest in any Silk Road servers or the items thereon. (ECF No. 89.) That has not changed: defendant still has not

provided an affidavit attesting to his personal privacy interest in the affected servers at the relevant time. His arguments in support of a new trial are premised on a defense that he was set up—that someone else was DPR. Thus, despite admitting that he started Silk Road (and was logged in as DPR on the day of its demise), he nevertheless has not attested to a personal privacy interest.

In addition, none of the communications between SA Der-Yeghiayan and the CI goes to the core issue on the suppression motion, namely how the Icelandic server was located. At trial, SA Der-Yeghiayan testified that he had no involvement in that aspect of the investigation. (1/20/15 Tr. 695-98, ECF No. 202.)[7]

C. The "Proffer" of Expert Testimony

Finally, Ulbricht's motion includes what is captioned as a "proffer from Andreas M. Antonopoulos regarding his proposed expert testimony."[8] (Def.'s Br. at 17.) Curiously, this proffer—which describes what Mr. Antonopoulos "would have testified" about had he been permitted to appear as an expert at trial—is unaccompanied by any request for relief. The Court construes this portion of Ulbricht's motion as an argument that the Court erred in precluding Mr. Antonopoulos's testimony—particularly after receiving Ms. Lewis's January 31, 2015 letter indicating that Mr. Antonopoulos was traveling and thus was

[7] Ulbricht also assets that, "[i]n reopening Mr. Ulbricht's suppression motion, the government should be required to produce any and all pen registers not previously provided to defense counsel, such as any for Mr. Ulbricht's email accounts." (Def.'s Br. at 17.) The Court need not address this discovery demand given that there is no basis to reopen the suppression motion.

[8] This proffer was outlined orally for the first time on February 2, 2015, the day that the Government rested.

unavailable to make a full proffer. This argument ignores the history that underlies the Court's decision to preclude Mr. Antonopoulos's testimony.

Long before trial began, the Government disclosed to the defense the evidence underlying its case-in-chief. With respect to Bitcoins, the defense knew at the outset that Silk Road transactions occurred in Bitcoins, that the Silk Road servers contained Bitcoin wallets, that Ulbricht's laptop contained its own Bitcoin wallets, and that inside Ulbricht's wallets were over 144,000 Bitcoins, valued at the time of his arrest at approximately $18 million. At that point, the defense had at its disposal all the information necessary to make a decision as to whether to call an expert on Bitcoins at trial.

In his opening statement, defense counsel referred to Bitcoins and the "Bitcoin market," and suggested to the jury that the $18 million in Bitcoins found on Ulbricht's laptop had nothing to do with Silk Road—that Ulbricht had earned this money through Bitcoin trading. (1/13/15 Tr. 67:13-20, ECF No. 196.) This statement logically leads to the following: (1) defendant had some evidence to support this theory already—in the form of an expert who analyzed the various Bitcoin wallets, as a leading possibility, and (2) after defendant affirmatively opened the door, it was reasonable to expect that the Government would respond to this theory in its case-in-chief (indeed, not to do so would have been irresponsible).

On January 14, 2015, the second day of trial, the Court inquired as to defense counsel's intention to call expert witnesses. Counsel indicated that it was too early to tell, and the Government previewed that it would move to preclude any experts

unless it received the requisite notice. Defense counsel responded that it would provide such notice "at the earliest possible rather than at the latest." (1/14/15 Tr. 125:14-15, ECF No. 198.)

No such notice was provided for the next twelve days. As the trial unfolded, it became increasingly clear that counsel did not want to show the defense's hand, and that his strategy was to use the Government's witnesses as his own—often through cross-examinations that went beyond the scope of the direct.

On January 26, 2015—well into the trial—the defense disclosed to the Government its intention to call Mr. Antonopoulos as an expert witness on Bitcoins. The defense's disclosure letter recited Rule 16, listed eight general subjects as to which Mr. Antonopoulos would testify, and attached Mr. Antonopoulos's curriculum vitae. (ECF No. 165-1.) Lacking were any expected opinions or the bases therefor, any description of analysis or methodology, and any indication that Mr. Antonopoulos has the requisite expertise. On January 29, 2015, the Government indicated on the record that it would move to preclude Mr. Antonopoulos's testimony. At that time, the Court requested that defense counsel provide notice to the Court immediately upon receiving the Government's motion to preclude as to when he would respond to that motion. January 29, 2015 was a Thursday; the Government indicated that it would rest on Monday, the next trial day.

The Government promptly filed its motion to preclude after the day's proceedings on January 29, 2015, yet the Court did not hear from defense counsel that evening or the following day. On January 31, 2015—after the Court issued an

order requiring the defense to respond by 2:00 p.m. that day—Ms. Lewis indicated that Mr. Antonopoulos was traveling and that religious observance prevented Mr. Dratel from complying with the court's order. The Court then set 8:00 p.m. as the deadline to file any opposition to the Government's motion to preclude. Shortly after that deadline, the defense filed an opposition which further set forth Mr. Antonopoulos's testimony without in fact disclosing any analysis or methodology underlying that testimony. On February 1, 2015, the Court issued an Opinion & Order precluding Mr. Antonopoulos's testimony on the basis of the defense's plainly untimely and inadequate Rule 16 notice and the Court's inability—based on the deficient disclosures before it—to assess Mr. Antonopoulos's qualifications and the relevance and reliability of his testimony.[9] (ECF No. 173.)

The Court's decision was amply supported. Defense counsel had failed to timely comply with the appropriate disclosure requirements, and that failure was a tactical choice—not an oversight. The potential utility of a defense expert on Bitcoins—particularly one who would testify as to the Bitcoins found on Ulbricht's laptop—was known very early in the case. Defense counsel understood at the outset—upon receiving the discovery in this case—that Bitcoins were an important aspect of Silk Road, and that the origin of the Bitcoins on Ulbricht's laptop was an important issue in this case. Indeed, defense counsel opened on a theory that Ulbricht had earned the Bitcoins through Bitcoin trading. Nonetheless, counsel chose not to disclose his intention to call an expert witness on Bitcoins until two

[9] For similar reasons, the Court also precluded the testimony of another proposed defense expert, Steven Bellovin. Defense counsel has not argued that the Court erred in precluding Mr. Bellovin's testimony.

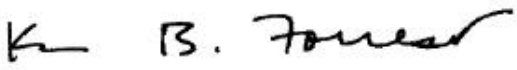
weeks into the trial, and even then utterly failed to comply with the requirements of Rule 16 as to the content of the disclosure. Counsel cannot undo this tactical choice now by offering a belated "proffer" of Mr. Antonopoulos's testimony.

V. CONCLUSION

For the reasons set forth above, Ulbricht's motion for a new trial is DENIED. The Clerk of Court is directed to terminate the motion at ECF No. 222.

SO ORDERED.

Dated: New York, New York
April 27, 2015



KATHERINE B. FORREST
United States District Judge

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

April 28, 2015

By ECF

Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

The Government writes in response to the defense counsel's letter, dated April 24, 2015, requesting an adjournment of sentencing, which is currently scheduled for May 15, 2015. The Government does not object to a brief adjournment of sentencing to the extent it is based on defense counsel's representation that, due to competing demands on his schedule, he has not had sufficient time to prepare for sentencing, including reviewing and investigating certain materials produced by the Government in advance of sentencing concerning certain overdose deaths. However, to the extent that the defendant is requesting a *Fatico* hearing concerning these overdose deaths, the Government submits that the defendant is not entitled to such a hearing.

On March 16, 2015, the Government produced to the Probation Office, as well as to the defense, materials related to three overdose deaths, including evidence that they were caused by drugs purchased from Silk Road. On April 17, 2015, the Government produced to the Probation Office and the defense materials recently received from a foreign government, related to three additional overdose deaths linked to Silk Road. The type and quantity of evidentiary materials vary somewhat from case to case (based on the availability of certain evidence, and the limits of what was provided by foreign authorities), but they include autopsy and toxicology reports, witness statements, and Silk Road transactional and private message data. In addition, the Government in the process of producing to the defendant and the Court the five victim impact statements which it has received, which includes statements from the two individuals who intend to address the Court at sentencing.

The Court is fully entitled to rely on such materials at sentencing in assessing the consequences of the defendant's conduct and the seriousness of his offense – without the need for any hearing or extensive factual inquest. A "district court is not required, by either the Due Process Clause or the federal Sentencing Guidelines, to hold a full-blown evidentiary hearing in resolving sentencing disputes. All that is required is that the court afford the defendant some opportunity to

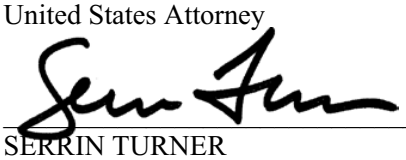
rebut the Government's allegations." *United States v. Phillips*, 431 F.3d 86, 93 (2d Cir. 2005). Indeed, a sentencing court's discretion is "largely unlimited either as to the kind of information [it] may consider, or the source from which it may come." *United States v. Carmona*, 873 F.2d 569, 574 (2d Cir.1989); *see also United States v. Martinez*, 413 F.3d 239, 242 (2d Cir. 2005) ("Both the Supreme Court and this Court . . . have consistently held that the right of confrontation does not apply to the sentencing context and does not prohibit the consideration of hearsay testimony in sentencing proceedings."); *Williams v. Oklahoma*, 358 U.S. 576, 584, 79 S.Ct. 421, 3 L.Ed.2d 516 (1959) ("[O]nce the guilt of the accused has been properly established, the sentencing judge, in determining the kind and extent of punishment to be imposed, is not restricted to evidence derived from the examination and cross-examination of witnesses in open court . . . .").

Moreover, the evidence of the overdose deaths in question is not being offered in support of any enhancements under the Sentencing Guidelines that would require a specific factual determination by the Court. *See, e.g., United States v. Wahl*, 563 Fed. Appx. 45, 53 (2d Cir. 2014) (district court did not abuse discretion in denying *Fatico* hearing where controversy concerning loss amount would not impact total offense level under the Guidelines). The evidence is instead simply being offered to illustrate the obvious: that drugs can cause serious harm, including death, particularly when distributed in the massive quantities they were here. The Court could take judicial notice of that fact; the Government does not need to affirmatively prove it. The Government simply intends to highlight a selection of overdose deaths at sentencing in order to provide specific examples of the harm caused by drug trafficking in the context of this case. But the Court does not need to rely on any particular overdose death in order to find that the defendant's conduct entailed these plainly foreseeable risks.

In short, the Government does not oppose a brief adjournment of sentencing to the extent that the defense needs more time to prepare. However, to the extent the defense's request is made in anticipation of pursuing a *Fatico* hearing concerning overdose deaths linked to Silk Road, the defense is not entitled to such a hearing. The Court may instead consider the evidence of the deaths presented by the Government and draw whatever conclusions it deems warranted under 18 U.S.C. § 3553(a).

Respectfully,

PREET BHARARA
United States Attorney

By: 
SERRIN TURNER
TIMOTHY T. HOWARD
Assistant United States Attorneys
Southern District of New York

cc: Joshua Dratel, Esq. (by electronic mail)

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION

29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

May 15, 2015

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted on behalf of, and in connection with, the sentencing of defendant Ross Ulbricht, and provides to the Court, as directed in its April 28, 2015, Order endorsement, the "matters as to which the hearing is requested . . . [and] any evidence in support of his position and a list of witnesses" related to the hearing sought by Mr. Ulbricht pursuant to *United States v. Fatico*, 579 F.2d 707 (2d Cir. 1978).

While this letter identifies witnesses who would testify at such a hearing, and provides the supporting evidence, upon preparing these materials the defense believes that this letter and supporting materials, including the Declaration of Lindsay A. Lewis, Esq., and the Exhibits thereto, are sufficient, and that an evidentiary hearing is not necessary, thus Mr. Ulbricht will rely on the papers and oral presentation by counsel at sentencing.

The reasons for that conclusion are (1) the witnesses would simply be repeating in their testimony what they have included in their Declarations (that constitute Exhibits to Ms. Lewis's Declaration); (2) the logistics of producing the witnesses – who are located across the globe – for a hearing next Friday that in some instances conflicts with their pre-existing schedules are impracticable, unwieldy, and inordinately costly. Also, the government's position has been that while written submissions are appropriate, an evidentiary hearing is not necessary. This

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approach obviates the need to resolve that issue.

As a result, this letter will address two issues made relevant by the government's reliance, in the context of sentencing, on six deaths it attributes to each deceased's alleged purchase of drugs from vendors on the Silk Road web site:

(1) in contrast to the government's portrayal of the Silk Road web site as a more dangerous version of a traditional drug marketplace, in fact the Silk Road web site was in many respects the most responsible such marketplace in history, and consciously and deliberately included recognized harm reduction measures, including access to physician counseling. In addition, transactions on the Silk Road web site were significantly safer than traditional illegal drug purchases, and included quality control and accountability features that made purchasers substantially safer than they were when purchasing drugs in a conventional manner; and

(2) to the extent the six deaths are relevant at all to Mr. Ulbricht's sentencing – there being no allegation that he or any vendor ever intended the death of a purchaser, or that any of the drugs sold were adulterated or of a purity that was dangerous – the information provided by the government, and reviewed by the defense expert, Mark L. Taff, M.D., a Board-certified forensic pathologist, is utterly insufficient to attribute any of the deaths to drugs purchased from vendors on the Silk Road site. Due Process protects Mr. Ulbricht from being sentenced on the basis of speculation, and the information provided by the government – in tandem with the information that is missing with respect to the six deaths – does not rise above that level.

Accordingly, for the reasons set forth below and in the supporting materials and exhibits, it is respectfully submitted that the six deaths should not contribute in any manner to consideration of Mr. Ulbricht's sentence.

I. *The Silk Road Web Site Instituted Unprecedented Harm Reduction and Quality Control Measures That Made the Purchase of Drugs from Vendors On the Site Far Safer Than Traditional "Street" Drug Transactions*

The findings by the academics and researchers, who have studied the Silk Road web site (and other on-line drug marketplaces) and subjected it to rigorous and accepted social science research protocols, demonstrate that the Silk Road web site in many respects represented a far safer environment for drug purchasing and even use, and constituted a more evolved, better-informed drug-using (or even abusing) community than any previously observed in the "street"

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or elsewhere.

The Silk Road web site provided features, including physician counseling, ratings of vendors, and improved accountability and transparency, as well, conversely, an anonymous forum in which drug users and abusers could be candid about their drug use and abuse, and seek advice not only about drug use, but also about drug safety, use reduction, and even ceasing such activity altogether.

For example, as set forth in the accompanying affidavit of Tim Bingham (attached as Exhibit 11 to the Declaration of Lindsay A. Lewis, Esq.), who has worked for over 20 years in the field of addiction and mental health, and between September 2012 and August 2013 conducted research both on and surrounding the Silk Road web site regarding the user experiences of vendors and consumers on the site, which research has formed the basis for three published research papers on that topic, the cyber community on the Silk Road website fostered a "'nested support system[]' which in turn fuelled information sourcing and exchange, user connectivity, identification of trusted and reliable sourcing routes, and mutual user supports." *See* Bingham Aff., at ¶6.c.

Indeed, in interviewing site participants – who Mr. Bingham noted were not first-time users, *see* Bingham Aff., at ¶6.f. ("I did not encounter a single customer whose first drug purchase was on the Silk Road website") but instead exhibited drug use trajectories ranging from 18 months to 25 years – Mr. Bingham found that

> comments centered around a perceived sense of "belonging" in the Silk Road community. This occurred irrespective of whether members were purchasing or only accessing the forums. Thus, risks and harms traditionally posed by illicit open and closed drug markets were replaced by insular online communities interacting within Silk Road's built in quality of information exchange, where protected by screen pseudonyms and anonymity, members could converse freely about their drug use. In this way Silk Road as novel technological drug subculture, potentially minimized drug-related stigma by reinforcing as sense of community[.]

Id., at ¶ 6.1.

Mr. Bingham also found that "along these same lines, forum postings also included member support for those requiring assistance in quitting their drug habit." *Id*., at ¶ 6.m. Thus, Mr. Bingham concluded, based on his study of multiple users, that "Silk Road forums . . . appeared to act as an information mechanism for the promotion of safer and more acceptable or

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responsible forms of recreational drug use" and "Silk Road's member subcultures offered a viable means of enmeshing safer drug use and encouraging harm reduction amongst a very hard to reach and informed drug-using population." *Id*., at ¶ 6.n.

The harm reduction ethos on Silk Road also extended to the vendor population, which Mr. Bingham found "from a vending perspective . . . centered on informed consumerism and responsible vending by availability of high quality products with low risk for contamination, vendor-tested products, trip reporting and feedback on the vending infrastructure. *Id*., at ¶ 6.p.

Dr. Fernando Caudevilla, a Spanish physician specializing in drugs and addiction, who provided expert advice on drug use and abuse to Silk Road users on the site under the username "Doctor X," and has submitted an affidavit, attached to the Declaration of Lindsay A. Lewis, Esq., as Exhibit 12, was also a critical part of the harm reduction ethos of the site. As Dr. Caudevilla affirms in his accompanying affidavit,

> [b]etween April 2013 and late October 2013, [he] sent more than 450 messages to Silk Road users in response to requests for advice and assistance. [He] also spent up to two to three hours a day on the forum during that time frame providing expert advice as to drugs and health. [His] advice ranged from information as to safe dosage and administration of particular drugs as well as the risks attendant to the use of certain drugs, information as to where to find reliable and credible information about various substances on the internet, proper methods of drug administration, adverse effects, pharmacological interactions, advice as to whether particular combinations of drugs (both legal and illegal) should be avoided, advice as to how to stop use of particular drugs or drugs generally, to general medical and psychiatric advice related to drugs.

See Caudevilla Aff., at ¶ 5.

Dr. Caudevilla further explains that his contact with and assistance to Silk Road users was in part possible because "[t]he administrator pf the Silk Road site, Dread Pirate Roberts, was aware of [his] presence on Silk Road and was supportive of [his] role in furthering the harm reduction ethos of the site. *Id*., at ¶6. Indeed, Dr. Caudevilla notes that he

> provided weekly reports to DPR which documented the topics [he] had discussed in [his forum] thread [entitled "Ask a Drug Expert Physician About Drugs & Health"] during the previous week.. . . .

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> Dread Pirate Roberts never censored my views or advice in any way, even when I espoused views that Silk Road users should not use or buy certain drugs sold on the site . . . . , discouraged drug use, or helped customers to reduce or cease drug use entirely.

Id., at ¶ 6.

In fact, when the demand for Dr. Caudevilla's advice became a burden because of the time it consumed in Dr. Caudevilla's day, DPR even offered to pay Dr. Caudevilla $500 a week to continue to provide advice to site users. *Id*., at ¶ 7. Around the same time, "Dread Pirate Roberts also sought to partner with [Dr. Caudevilla] to send the drugs sold on the Silk Road out to laboratories for independent testing as an effort to ensure that only safe, non-toxic substances were being sold on Silk Road." *Id*., at ¶ 8. That effort was halted only by the government's seizure and discontinuation of the site in October 2013 following Mr. Ulbricht's arrest. *Id*.

As Dr. Caudevilla attests, "as a result of his personal experiences working with customers on the site, and monitoring the site's drug safety forums," he has

> firsthand knowledge that Silk Road provided site users with the tools to take drugs in a safer and more informed manner, espoused a harm reduction ethos which was reflected in the individual buyer-seller transactions on the site and in the community created on the site's forums, and enabled some site participants to actually reduce, if not entirely eliminate, their drug use. For example, some heroin users were drawn to Silk Road because it provided them access to methadone, a drug utilized in many countries, and administered by physicians, to enable heroin users to end their addictions. For many Silk Road users methadone was illegal or unavailable in their home countries. Accordingly, they would likely not have had access to the resources necessary to reduce their heroin use without the Silk Road.

Id., at ¶ 9.

Tellingly, Dr. Caudevilla also reports that "[i]n his seven months monitoring and actively participating in the Silk Road forums [he] never came across even a single report of a Silk Road-related drug overdose." *Id*., at ¶ 10. To the contrary, "on several occasions, when users provided negative feedback about the drugs sold by a particular vendor, that vendor or the drug in question was removed from the site" – a decision he believed "was made by the site's administrators. " *Id*.

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In analyzing the various motivations, however, for use of the Silk Road site to purchase drugs, the member forums, professional medical advice and assistance and community of Silk Road were certainly factors, but so was the contrast between the user experience of buying drugs on Silk Road versus far more dangerous and unpredictable "street-level" transactions and drug purchases, according to Mr. Bingham's research and also research conducted by Dr. Monica Barratt, who authored a research report along with co-authors Jason A. Ferris and Adam R. Winstock, entitled "Use of Silk Road, the online drug marketplace, in the United Kingdom, Australia and the United States," (*Addiction* (2013) 109, at 774-783), and which represents the first large scale survey to characterize buyers on the Silk Road. *See* Affidavit of Dr. Monica Barratt, attached as Exhibit 13 to the Declaration of Lindsay A. Lewis.

As Mr. Bingham explains in his affidavit

> participant reasons for accessing and using Silk Road appeared centered on the site's anonymity, its member forums, the wide variety of products advertised, its transaction system supported by the dispute resolution modes and vendor feedback ratings [but] [u]sers also expressed concern for poor drug quality in their locality and fears for personal safety when buying drugs in the street. Observational site data further revealed member comments around the avoidance of adverse health and social consequences associated with street drug sourcing when purchasing drugs on Silk Road; . . . those participants with purchasing experience on the Silk Road commented on the perceived levels of insular trust within the Silk Road member communities, which assisted them in consumer decision-making and openly contrasted with the unknowns associated with street drug-dealing. For instance, according to one Silk Road customer who had stopped purchasing drugs elsewhere, "[t]his type of market significantly lowers the chances of a scam or buying contaminated products. Like Amazon or eBay, I have a market of sellers to choose from and product reviews to satisfy my own requirements before I purchase. A street market in comparison is based on a 'take it or leave it' approach which gives no rights to a buyer. This form of regulation ensures safety and harm reduction for the buyer[.]"

See Bingham Aff., at ¶ 6.h.-6.i.

Likewise, as memorialized by Dr. Barratt in her research paper based on the findings of

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the survey she conducted of Silk Road buyers in the United States, Australia and the United Kingdom, and as set forth in her accompanying affidavit,

> [s]urvey respondents who had purchased drugs from Silk Road were asked to pinpoint their reasons for consuming drugs purchased on Silk Road from a list of eight possible reasons. Respondents across all three countries indicated that among their top four reasons for consuming drugs purchased on Silk Road were: (1) the drugs were of better quality than the drugs they could normally access, and (2) they were more comfortable buying from sellers with high ratings.

Dr. Barratt Aff., at ¶ 7.

The views of Meghan Ralston, whom, until today was the director of harm reduction for the Drug Policy Alliance, described in its web site as "the nation's leading organization promoting drug policies that are grounded in science, compassion, health and human rights," also align with the position that Silk Road was unique amongst drug markets because it "created a safe environment, free of weapons and violence during the transaction, where people could acquire drugs." *See* Affidavit of Meghan Ralston, attached to the Declaration of Lindsay A. Lewis, Esq., as Exhibit 14, at ¶ 5.c. As Ms. Ralston explained,

> [m]any reformers, myself included, have long been highlighting the forward-thinking benefits of Silk Road and the ways it began to slowly revolutionize drug sales around the world. For instance, it provided a platform that could allow indigenous growers and cultivators around the world to sell directly to the consumer, potentially reducing cartel participation and violence[.] . . . [A]ccordingly, using Silk Road could be seen as a more responsible approach to drug sales, a peaceable alterative to the often deadly violence so commonly associated with the drug war, and street drug transactions, in particular. None of the transactions on Silk Road, for instance, resulted in women drug buyers being sexually assaulted or forced to trade sex for drugs, as is common in street-level drug transactions. Nor did any Silk Road transactions result in anyone having a gun pulled on them at the moment of purchase, also a common danger present in street-level drug transactions[.] . . .[M]oreover, even with all the hurdles and the risks, people chose to use Silk Road rather than rely exclusively on whatever illegal and potentially dangerous drug market existed in

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> their 'real world' community. The site's success reinforced that people who are dependent or addicted can make rational choices, even if we like to imagine them as being totally irrational. Given the choice of quickly and easily accessing drugs in potentially sketchy or dangerous neighborhoods, or buying them safely on-line but having to wait, many users preferred privacy, security and a wait to the alternative[.]

Id., at 5.c.-5.e.

Collectively, these accounts by researchers, academics and doctors deeply familiar with the Silk Road site and the state of drug use and abuse worldwide, provide a more accurate, multifaceted portrayal of Silk Road – based on research and study – that is quite different than the one-dimensional characterization the government advances. Silk Road, like any social or economic experiment, evolved, but it is undisputed that its operator(s) endeavored to incorporate harm reduction measures as well as the resources for drug users and abusers to become better informed, better protected, and, ultimately, *former* users if they so wished.

Indeed, the distinction between Silk Road and traditional drug selling is as dramatic as it is unique. Traditional drug sellers do not offer counseling, much less by a physician who is empowered, without interference, to guide a user to abstinence. Traditional drug sellers do not provide forums for their customers to rate vendors, share experiences, ensure quality control and reliability. Traditional drug-selling operations do not afford customers an environment in which they can anonymously and, as a result, candidly, absent stigma and fear, discuss their drug use and abuse, its impact on their lives, and acquire the skills and perspective to reduce their use or even quit altogether.

Confronted as a society with the reality of continuing drug use and abuse, and the continuing U.S. consumer demand that perpetuates the illegal drug industry (and in many respects the legal drug industry as well), Silk Road represented – in large part, as demonstrated above, by design and deliberate practice – the safest incarnation of a drug marketplace to date, made possible by its protected internet status on TOR and its use of Bitcoin for payment, and which was the most likely to encourage users to examine their own conduct, and seek assistance in reducing their use/abuse and stop abusing drugs before it irreparably damaged their lives.

II. *For Legal, Factual, and Forensic Reasons, the Six Deaths Cited By the Government Cannot Be Attributed to Purchases Made from Vendors on the Silk Road Web Site*

As detailed in the accompanying Declaration of Lindsay A. Lewis, Esq., at ¶¶ 3-37, Dr. Taff's preliminary findings, which will be converted to a formal report, establish that the records

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provided by the government – in conjunction with the records and information that are absent from that production – are insufficient to attribute any of the six deaths to drugs purchased from vendors on the Silk Road site.

As explained by Dr. Taff is his preliminary impressions and findings, the evidence presented by the government in discovery reveals gaping holes in each death investigation which would prevent Dr. Taff, or any medical examiner or forensic pathologist, including those who conducted the actual death investigations in these cases – given Dr. Taff's assessment of a proper death investigation, as set forth in ¶ 10-11 of the Lewis Aff.– from forming opinions to a reasonable degree of medical certainty as to the cause, manner, and time of death. Indeed, for many of the deaths, the most basic of forensic documents including autopsy reports, toxicology reports and death certificates, were notably absent.

What is, however, clear from the limited discovery as to the six alleged overdose deaths is the following:

- each and every decedent had a history of chronic substance abuse as well as medical and psychiatric problems prior to death which could have caused or contributed to their death. For instance, Dr. Taff concluded that Jordan Mettee, a overweight 27-year old black man alleged to have died as a result of drugs purchased on Silk Road, may have suffered an acute brain hemorrhage consistent with a stroke, which could have been a competent cause of death and was consistent with a pre-existing condition. *See* Lewis Aff., at ¶ 22. Jacob Lyon Green, another individual alleged to have overdosed on drugs purchased on Silk Road, had recently suffered from bronchitis and been admitted to the hospital for complications related to that condition just prior to death (and been discharged), and in fact his cause of death was found by the medical examiner in that case to be "aspiration pneumonia." *See* Lewis Aff., at ¶ 15;

- many of the decedents sought out and ingested multiple legal and illegal drugs prior to death. The synergism of multiple drugs, taken in varying amounts, via different routes of administration (*i.e.,* inhalation, ingestion, injection), at different times, in individuals with varying levels of drug tolerance leaves too many variables and unknowns to conclude that a particular drug caused death;

- when interpreting drug test results, physicians cannot selectively ignore one or more drugs from the drugs contributing to death in order to single out the one the government would like to be able to conclude caused death; and

- it is simply impossible for the government to prove that drugs obtained *from Silk Road* "caused" death, and in certain cases, the government cannot even establish to any degree

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of certainty that *any* of the drugs ingested came from Silk Road. Indeed, among the many unsatisfied discovery demands made of the government after their initial discovery productions was a request for "the underlying information used to create the Silk Road user summaries contained in the discovery as to Jacob Scott Lyon-Green and Scott Christopher Wilsdon, as well as any information as to who prepared the summaries, and when they were prepared." These summaries were the only alleged evidence that drugs taken by Lyon-Green or Wilsdon were obtained from Silk Road.

Accordingly, the information provided by the government is inadequate to establish that the six deaths are attributable to drugs purchased from Silk Road vendors.

A. *The Six Deaths Are Not Relevant to Mr. Ulbricht's Sentencing At All*

Another dispositive impediment to consideration of the six deaths in the context of Mr. Ulbricht's sentencing is that the information provided by the government does not sufficiently establish *as a matter of law* that the six deaths detailed below resulted from the offense conduct in this case. Absent the appropriate evidence of causation, the deaths are not relevant to sentencing.

However, the extent or degree of causation required to conclude that death or injury was the "result" of the offense conduct has not been clearly or consistently addressed in the Second Circuit, as most cases which enhancements or upward departures are sought on the basis of uncharged injury or death, present fairly straightforward links between cause and effect.[1]

1. *Proximate Causation Is Required*

When causation is not immediate and direct, the general rule is that conduct must be a proximate cause of injury in order to give rise to liability. *See United States v. Guillette*, 547 F.2d 743, 749 (2d Cir.1976) (if defendant's conduct is not the "immediate" cause of injury or death, criminal liability is imposed only when "intervening events are foreseeable and naturally

[1] For example, in *United States v. Russow*, 2015 WL 1057513, at *3 (D. Conn. Mar. 10, 2015), which addressed an upward departure pursuant to §5K2.1, the Court quickly dispensed with the causation issue because the evidence demonstrated that the heroin the victim bought from the defendant on the day the victim died was almost certainly the heroin injected hours before the victim was found dead from acute heroin toxicity. *United States v. Russow*, 2015 WL 1057513, at *3 (D. Conn. Mar. 10, 2015); *see also United States v. Reis*, 369 F.3d 143 (2d Cir. 2004) (Court affirmed upward departure under §5K2.1 when defendant accidentally strangled underage victim during sexual intercourse).

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result from . . . [the] criminal conduct").

In the criminal context, proximate cause has been defined as requiring "some direct relation between the injury asserted and the injurious conduct alleged," which cannot be "too remote," "purely contingent," or "indirec[t]." *Hemi Grp., LLC v. City of New York, N.Y.*, 559 U.S. 1, 9, 130 S. Ct. 983, 989, 175 L. Ed. 2d 943 (2010) (defining proximate cause in the RICO context), *quoting Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258, 268-274 (1992).

Whether the conduct is too attenuated from the injury is determined by the foreseeability of events that occur between the conduct and the injury. For instance, in the context of a health care fraud prosecution, the Sixth Circuit described intervening acts which would not break the chain of causality in a proximate cause analysis as acts or events that "involve[] reaction to the conditions created by the defendant." *United States v. Martinez*, 588 F.3d 301, 321 (6th Cir. 2009); *see also United States v. Harris*, 701 F.2d 1095, 1102 (4th Cir. 1983) (although victim, who was already ill, died from heat stroke, proximate cause was established because defendants, whose convictions stemmed from charges of involuntary servitude, were aware of the victim's illness and forced him to work anyway).

As the Court explained in *Martinez*, "the perimeters of legal cause are more closely drawn when the intervening cause was a matter of coincidence rather than response," and consequently, "an unforeseeable coincidence will break the chain of legal cause" and "a response" will do so "if it is abnormal." 588 F.3d at 321.

2. *"But-For" Causality, As Established By the Supreme Court In* Burrage v. United States

The recent Supreme Court decision in *Burrage v. United States*, analyzed the section of 21 U.S.C. §841(b)(1)(C), which permits an enhanced sentence when death "results from" the offense conduct, and its holding significantly narrows the doctrine of causation. *Burrage v. United States*, 134 S.Ct. 881 (2014). Although the government does not seek the specific enhancement contained in the Controlled Substances Act section, the principles of causation set forth in the *Burrage* opinion apply because the government seeks to introduce evidence of death or serious injury alleged to be a result of the defendant's offense conduct, and drug-trafficking in particular. *Burrage*, 134 S.Ct. at 887-91.

Prior to the decision in *Burrage*, facts used to establish what had been, prior to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing enhancement in §841(b)(1)(C) needed to be proven only by a preponderance of the evidence, as is the case generally with respect to demonstrating uncharged conduct at sentencing. *See e.g. United States v. Chevalier*, 776 F.

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Supp. 853, 860 (D. Vt. 1991), *citing United States v. Madkour*, 930 F.2d 234, 237 (2d Cir.1991). However, before the Supreme Court specified a causality standard in *Burrage*, courts rarely, if ever, specified with any clarity or consistency the extent to which a victim's death or injury must be caused by the defendant's offense conduct.

After addressing the common meaning of "results from," the Supreme Court noted the various legal contexts in which language similar to that contained in §841(b)(1)(C), is read to require "but-for causality." *Id*., at 887-88. The Supreme Court defined "but-for causality" as requiring evidence that the use of the drug distributed by the defendant was "an *independently* sufficient cause of the victim's death or serious bodily injury." *Id*., at 892 (emphasis added).

In *Burrage*, the Court held that standard had not been met because although two expert witnesses agreed that the heroin sold by the defendant was a "contributing factor" in the victim's overdose death, neither was able to opine that the victim would not have died absent the heroin use. *Id*., at 885-86; *see e.g. United States v. Hoey*, 2014 WL 2998523, at *4 (S.D.N.Y. July 2, 2014) (adopting the causality standard set forth in *Burrage*).

In affirming the "but-for" standard, the Supreme Court rejected the government's argument that the "distinctive problems associated with drug overdoses," primarily that overdoses very often involve the use of more than one drug, support a broader definition of causality. *Burrage*, 134 S.Ct. at 889-90. Again pointing to the traditional interpretation of language similar to that contained in §841(b)(1)(C), the Court in *Burrage* concluded that Congress made a conscious decision to limit the possibility of an enhanced sentence to those situations in which the drug distributed by the defendant was the "but-for" cause of the victim's death or injury. *Id*., at 891.

While here the government did not include a charge under §841(b)(1)(C), any evidence of overdose deaths must still be satisfactorily connected to a defendant's conduct in order to serve the goals of punishment, particularly deterrence. The concerns and issues raised in *Burrage*, and which compelled the Supreme Court to conclude but-for causality was the appropriate standard, are equally applicable here.

As detailed **ante**, in the discussion of Dr. Taff's review of the information provided by the government, here the government has not met the requisite standard of causation with respect to *any* of the six deaths it attributes to drugs sold by vendors on the Silk Road site, and in turn to Mr. Ulbricht. In fact, in not a single instance is there proof that drugs distributed via Silk Road constituted "an *independently* sufficient cause of the victim's death or serious bodily injury." *Burrage*, 134 S.Ct. at 892.(emphasis added).

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2. ***There Was No Intent to Sell "Bad" Drugs on the Silk Road Web Site***

Indeed, it is quite clear from the harm reduction analysis set forth above that the Silk Road web site, espoused an ethos of drug safety and education that was more sophisticated and evolved than anything else in existence at the time. Likewise, on the whole, the vendors of drugs on the site were some of the most well- informed, careful, and accountable drug sellers in the drug trade. In fact, as set forth **ante**, "when users provided negative feedback about the drugs sold by a particular vendor, that vendor or the drug in question was removed from the site" – a decision Dr. Caudevilla believed "was made by the site's administrators." *See* Dr. Caudevilla Aff., at ¶ 10. Thus, it is quite clear that there was never an intent by anyone associated with the Silk Road site to sell "bad" drugs. In fact, to the contrary, the site was known for selling drugs of higher, safer quality than available in ordinary "street" encounters.

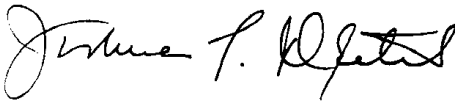
3. ***It is Not Alleged that Any of the Drugs Sold On Silk Road Were Adulterated or Were Too Pure to Be Found Safe***

Nor is there any evidence that any of the drugs sold on Silk Road were adulterated in any manner or too pure to be considered safe. In fact, as Dr. Taff explained in his preliminary findings, there were a multitude of *other* factors, such as lethal combinations of drugs, pre-existing medical and psychiatric conditions, and administration of and quantity of drugs that likely caused or contributed to cause of death in the six cases presented by the government.

Conclusion

Accordingly, for all the reasons set forth above and in the supporting documents and materials, it is respectfully submitted that the six deaths cited by the government should not be considered in connection with Mr. Ulbricht's sentencing.

Respectfully submitted,



Joshua L. Dratel

JLD/lal

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA	:	14 Cr. 68 (KBF)
- against -	:	**DECLARATION OF LINDSAY A. LEWIS, ESQ. IN SUPPORT OF DEFENDANT ROSS ULBRICHT'S PRE-SENTENCING SUBMISSION**
ROSS ULBRICHT,	:	
Defendant.	:	

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Lindsay A. Lewis, Esq., pursuant to 28 U.S.C. §1746, hereby affirms under penalty of perjury:

1. I am an attorney, and I represent defendant Ross Ulbricht in the above-captioned case. I make this Declaration in support of Mr. Ulbricht's pre-sentencing evidentiary submission in relation to the *Fatico* hearing presently scheduled for next Friday, May 22, 2015, at 9 a.m.[1]

I. *Evidence in Support of Mr. Ulbricht's Position*

2. Attached as Exhibits to this Declaration, and responsive to the Court's request for evidence in support of his position, are the following:

(a) article written by Hout, M.C.V., & Bingham, T., entitled "'Silk Road,' The Virtual Drug Marketplace: A Single Case Study of User Experiences," attached as Exhibit 1;

(b) article written by Hout, M.C.V., & Bingham, T., entitled "'Surfing the Silk Road:' A Study of Users Experiences," attached as Exhibit 2;

[1] As noted in the accompanying letter from Joshua L. Dratel, Esq., the defense is no longer requesting an evidentiary hearing but instead will rely on the written submissions provided herewith.

(c) article written by Hout, M.C.V., & Bingham, T., entitled "Responsible Vendors, Intelligent Consumers: Silk Road, the Online Revolution in Drug Trading," attached as Exhibit 3;

(d) thread in the Silk Road drug safety forum started by Dr. Fernando Caudevilla, entitled "Ask a Drug Expert Physician About Drugs & Health," attached as Exhibit 4;

(e) Private Messages from Dr. Caudevilla to Silk Road Users, attached as Exhibit 5;

(f) weekly report from Dr. Caudevilla to DPR documenting topics discussed in his thread during the week of September 13, 2013 through September 19, 2013, attached as Exhibit 6;

(g) Private Messages Between Dr. X and Dread Pirate Roberts, attached as Exhibit 7;

(h) research report by Dr. Monica J. Barrett, Jason A.Ferris and Adam R. Winstock, entitled "Use of Silk Road, the online drug marketplace, in the United Kingdom, Australia and the United States," attached as Exhibit 8;

(i) article written by Meghan Ralston, entitled "The End of the Silk Road: Will Shutting Down the 'e-Bay for Drugs' Cause More Harm Than Good?" attached as Exhibit 9;

(j) article written by Meghan Ralston, entitled "Silk Road Was a Better, Safer Way to Buy and Sell Drugs." attached as Exhibit 10;

(k) declaration of Tim Bingham, attached as Exhibit 11;

(l) declaration of Dr. Fernando Caudevilla, attached as Exhibit 12;

(m) declaration of Dr. Monica J. Barratt, attached as Exhibit 13;

(n) declaration of Meghan Ralston, attached as Exhibit 14;

(o) curriculum vitae of Dr. Mark L. Taff, attached as Exhibit 15; and,

(p) documentary evidence reviewed by Dr. Taff, attached as Exhibit 16.[2]

II. *Dr. Mark Taff's Preliminary Assessment of the Alleged Overdose Deaths*

3. Also responsive to the Court's request for evidence in support of Mr. Ulbricht's position, is the following account of the preliminary impressions and findings of Dr. Mark L.Taff, whom the defense has retained in his capacity as a Board-certified forensic pathologist and consultant, *see* Taff Curriculum Vitae (Exhibit 15), to review and analyze a selection of documentary evidence (*see* Exhibit 16) provided to Mr. Ulbricht by the government (following conclusion of trial) in regard to six alleged overdose deaths it claims were the result of drugs purchased on the Silk Road web site.

4. Due to necessarily expedited nature of Dr. Taff's review of the materials in light of the May 15, 2015, deadline for the submission of evidence in support of Mr. Ulbricht's position, and his other professional commitments, Dr. Taff has provided preliminary findings that are set forth herein. His formal report will be produced to the Court and the government before next Friday, May 22, 2015.

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[2] The lion's share of these exhibits will be posted to ECF, with the exception of Exhibit 16 (the documentary evidence provided to Dr. Taff as to the various overdose deaths) which, in order to maintain the privacy of the decedents, will only be provided to the Court. In the public filing, Exhibit 16 will be replaced by a list of the documentary evidence provided to him. In addition, a disk containing all of the exhibits to this Declaration will be provided to the Court on Monday, May 18, 2015, in lieu of submission of exhibits by e-mail.

5. Further findings from Dr. Taff are necessary as well because his preliminary report does not include his observations and conclusions regarding the 59-page coroner's report in regard to the death of Alejandro Nunex Avila, received from the government last night at 7:10 p.m. in an e-mail in which Assistant United States Attorney Serrin Turner wrote the government received the report "recently."

A. ***Dr. Taff's Credentials and Publications***

6. Dr. Taff is currently a Forensic Pathologist Consultant, and previously served as Chief Medical Examiner in Rockland County, New York, from 2008 until 2012. He provides forensic pathology consultancy services to various private and public entities in and outside of New York state, including District Attorneys' Offices in New York and New Jersey, and Legal Aid and Public Defenders' offices throughout the Northeast.

7. Dr. Taff obtained his medical degree from the University Bologna School of Medicine in 1978, and completed his residency in Pathology in 1984. He is board certified in Forensic and Anatomic Pathology and has medical licensure in New York, Michigan and New Jersey. In addition to his consulting work, he has been a Clinical Associate Professor of Pathology at the Mt. Sinai School of Medicine since 1990. He has also held various teaching and lecturing positions at universities and hospitals in New York and Michigan for more than thirty years.

8. Throughout his career Dr. Taff has been an active member of numerous medical societies and professional organizations, including the New York Academy of Sciences, the Committee on Public Health of the Medical Society of the County of New York, the American Association of Suicidology, and the American Academy of Forensic Sciences. He was awarded the AMA Physician's Recognition Award early in his career, and founded the New York Society

of Forensic Sciences at Lehman College in 1985. He served as Co-Chairman of the National Association of Medical Examiner's Inspection & Accreditation Committee and as Vice-President of the Society of Medical Jurisprudence in 1997.

9. Dr. Taff's work has been published in a broad range of medical journals, publications, newspapers, symposium papers, and educational materials, and a comprehensive list of his published and unpublished work is included in his *curriculum vitae*, attached hereto as Exhibit 15.

B. *Dr. Taff's Preliminary Analysis of the Alleged Overdose Deaths*

10. According to Dr. Taff, a medical examiner death investigation is a six-stage process consisting of (a) history; (b) scene findings; (c) autopsy (external and internal/invasive/ surgical exams); (d) lab tests (including DNA, toxicology, histology, dental, anthropological, x-rays, and others); (e) bureaucratic processes *(i.e.*, creation and preservation of the autopsy report, related test results and communications); and (f) signing of the death certificate with opinions regarding the cause, manner and time of death.

11. The process is conducted in an orderly, sequential manner and all of the steps are dependent upon one another. The medical examiner/ forensic pathologist oversees the entire investigation and is responsible for the integration and interpretation of all the scientific evidence collected, retained, tested, and analyzed.

12. With regard to the six deaths from different parts of the world Dr. Taff was asked to review and analyze, he concluded that each case – based on the documentary evidence provided by the government, which we in turn provided to Dr. Taff – lacks information about one or more of the six stages of a death investigation. Therefore, Dr. Taff could provide the defense with only

impressions about the gaps in each case. He was also consequently precluded from forming opinions to a reasonable degree of medical certainty as to the cause, manner, and time of death. Having provided that general overview of the deaths as a whole, Dr. Taff then outlined each death with respect to the history, scene, autopsy, lab (toxicology results) and death certification (cause, manner, and time of death).

1. *Jacob Lyon Green*

13. As per Dr. Taff's assessment, Mr. Green was a 22-year old male based in Adelaide, Australia, who suffered from a history of mirtazapine treatment for anxiety and depression, polydrug abuse, and overdoses in 2010 and 2011. Without access to Mr. Green's medical and psychiatric records (which were not provided by the government, despite a request for them in discovery), it remains unknown to Dr. Taff whether Mr. Green was suicidal.

14. The autopsy performed by Dr. John G___[3] on February 15, 2015, the day after Mr. Green was found dead, also revealed old and recent intravenous injection sites in superficial veins of elbow creases and several portal/abdominal lymph nodes were enlarged, a condition commonly found amongst intravenous ("I.V.") drug addicts.

15. Most notably, however, the day before Mr. Green's death he was treated for ringing ears, difficulty swallowing, nausea and fever after a night of drinking alcohol and taking amphetamines and heroin. His white blood cell count was elevated, and he received IV fluids, anti-heartburn medication, paracetamol for pain relief and as a fever reducer, and ibuprofin for muscle aches and fever. Despite having recently completed a course of antibiotics for

[3] Dr. Taff used this format in identifying the particular physicians, and this Declaration conforms with that methodology.

bronchitis, he was discharged from the hospital less than three hours after he was admitted. Dr. Taff notes that Mr. Green's diagnosis with bronchitis is extremely important with respect to the stated cause of death: "aspiration pneumonia."

16. Indeed, according to Dr. Taff, it is unknown whether Dr. John G___, who performed the autopsy, and may or may not be board-certified in forensic pathology, knew that Mr. Green had recently been treated for bronchitis, which could have developed into pneumonia. It is also unknown whether Dr. G___ had subpoenaed Mr. Green's medical records or reviewed his most recent chest x-rays. It does not, however, appear that Mr. Green had a chest x-ray before death.

17. Dr. Taff also identified several other gaps in the death investigation performed by Dr. G___. The post-mortem drug screen showed low levels of "4 different illicit drugs" (methylamphetamine, heroin, cocaine, and 4-methylmethcathinone) and therapeutic levels of mirtazapine and metoclopramide. Yet a cause of death due to multiple drug (narcotic, depressants, and stimulants) intoxication complicated by aspiration pneumonia was not entertained. Dr. Taff considered this to be a very important finding that was completely omitted from the diagnosis.

18. More importantly even, the manner of death was omitted. It is unclear whether Mr. Green's death was natural, accident, suicide, undetermined, or homicide. In this regard, time of death is important because there was not any information regarding when aspiration occurred with respect to a possible drug overdose (by which it would be possible for the synergistic effect of multiple illicit drugs in low doses to work together to kill to Mr. Green). However, it is common to find some agonal or terminal aspiration in people who are intoxicated at the time of death and miscroscopic exam of the lungs shows "widespread patchy pneumonic consolidation

associated with some vegetable material." Such an extensive tissue reaction suggests pneumonia existed *before* agonal aspiration of food while intoxicated.

19. Dr. Taff further concludes that Mr. Green's death might represent some medical malpractice, *i.e.,* failure to diagnose and treat pneumonia/premature hospital discharge. The chronology of events also indicates that Mr. Green's death occurred within a 27½-hour time frame, during which time Mr. Green "self-medicated," and aggravated his pre-existing pneumonia which caused and/or contributed to his death.

2. *Jordan Mettee*

20. As per Dr. Taff's assessment, Jordan Mettee was a 27-year old black male, weighing 260 to 265 pounds, who was found dead August 31, 2013, at approximately 11:06 p.m., at his home, which contained drugs and drug paraphernalia. The file related to his death lacks certificates with the dates and times of onset of injuries and death, and/or a signed death certificate.

21. Dr. Taff notes that Mr. Mettee had an alleged history of multiple drug-related arrests between 1992 and 2001, as well as marijuana, opiate, anti-histamine, alcohol hydrocodone, and anti-pain usage for chronic pain related to a spleen ailment. Accordingly, Dr. Taff concluded that Dr. Timothy W___, the Medical Examiner of Kings County should have subpoenaed Mr. Mettee's past medical and psychiatric records to better understand Mr. Mettee's ante-mortem issues.

22. Importantly, the autopsy performed on Mr. Mettee showed the presence of acute brain hemorrhage (bleeding) consistent with a stroke, which could have been a competent cause of death. Despite the fact that Mr. Mettee was an obese black male who may have suffered from

untreated hypertension, a condition that frequently causes strokes, for unknown reasons a stroke was omitted as a cause or contributing factor to his death. According to Dr. Taff, the time of onset of the brain bleed cannot be correlated with times of drug usage. The drugs were probably used prior to brain hemorrhage, which was most likely the terminal event.

23. Dr. Taff also notes other unresolved or open issues as to Mr. Mettee's death. First, while a post-mortem drug screen revealed alpazolam and diazepam (both anti-anxiety drugs) it is not indicated whether these drugs were found at the death scene. Next, the autopsy revealed that Mr. Mettee's liver was heavy and enlarged, probably due to fatty changes from overeating and alcohol use. Indeed, a microscopic exam of the liver shows "hepatocyte necrosis," which leaves open the question of whether Mr. Mettee suffered from drug-induced liver failure.

24. Moreover, the autopsy report was issued November 12, 2013, two months after the autopsy was performed. The medical examiner ruled the manner of death as an "accident." The Washington State Police Crime Lab, however, labeled the death a "controlled substance homicide." Dr. Taff questions why the medical examiner did not also refer to "homicide" in the autopsy report.

25. Dr Taff's preliminary impressions are that the autopsy report correctly attributed death to multiple/combined drug intoxication. Heroin/opiate, however, was not singled out primary cause of death, and of course, for reasons unknown, the brain hemorrhage was ignored by the authorities conducting the investigation of Mr. Mettee's death.

3. ***Preston Bridge***

26. As per Dr. Taff's assessment, Preston Bridge was a 16-year old male with a history of being a drug user (alcohol and marijuana). On Saturday, February 16, 2013, Mr. Bridge fell or

jumped from a balcony at the Sunmoon Resort, in Perth, Australia, after taking a psychedelic drug reportedly purchased or obtained from vendors on the Silk Road web site. It is assumed that Mr. Bridge sustained multiple blunt force impact bodily injuries associated with bone fractures and internal organ (*i.e.,* brain) and blood vessel lacerations.

27. According to Dr. Taff, the autopsy report and death certificate, which contain crucial information, are unavailable for review as they were never provided by the government, and may not exist. Dr. Taff notes that a post-mortem drug screen was performed by the Perth Coroner. However, the drug levels therein are useless because they cannot be placed in the context of other (absent) autopsy findings.

28. Additionally, while testing of chest blood revealed low level of morphine (a narcotic drug) and midazolam (a benzodiazapene sedative) that raises several issues. For instance, the date of blood collection for drug testing is unknown, and regardless, chest blood is usually contaminated and is not a reliable specimen for testing. Moreover, while it was indicated that there were low levels of drugs in the blood, the levels may be lower than at the time of Mr. Bridge's fall due to his two-day survival and the continued metabolism and breakdown of the drugs by his body. The introduction of fluids and blood transfusions to prevent a fall in his blood pressure may also have altered these levels.

29. Femoral blood tested was negative for alcohol, but low for morphine, as well as for an active component of marijuana and benzodiazapines. It is unknown whether Mr. Bridge received benzodiazapines in the hospital, or whether the marijuana was laced with any hallucinogens.

4. *Scott Wilsdon*

30. As per Dr. Taff's assessment, Scott Wilsdon was a 36-year old male, found dead (and decomposed) May 19, 2013, on the floor next to a computer in his residence in Adelaide, South Australia. Drug paraphernalia and heroin were found at the scene. Mr. Wilsdon had a history of deafness with cochlear implants, deep vein thrombosis (blood clots in deep veins of his legs) and heroin abuse. An autopsy was performed by Dr. Stephen W____ on Mr. Wilsdon four days after his death. Dr. W____ listed the cause of death as "multiple drug toxicity."

31. Dr. Taff questioned several aspects of the death investigation. For instance, he questioned whether Dr. W___ was a board-certified forensic pathologist, and why he had waited four days to conduct the autopsy. He also questioned the manner of death, which is unknown. Noting that the toxicology screen performed on Mr. Wilsdon indicated eight different drugs (the morphine level was potentially lethal/toxic; codeine at "therapeutic concentration;" and doxylamine, tramadol, 7-aminoclonazepam, alrpazxolam, oxazepam, and warfarin at "non toxic/therapeutic concentration"), Dr. Taff concluded that the manner of death was most likely "accident," but noted that "multiple drugs at low levels might be some covert form of suicide." However, Dr. Taff also commented that it is bad science to extrapolate from one person to groups of people, and to make generalizations, and that each case must be evaluated on its own merits.

32. Finally, Dr. Taff noted evidence in Mr. Wilsdon of pre-existing coronary artery disease, a pathological finding, in and of itself, sometimes associated with fatal cardiac arrhythmia (irregular heart beat) and sudden cardiac death.

5. *Bryan Barry*

33. As per Dr. Taff's assessment, Bryan Barry was a 20-year old white male, found dead October 7, 2013, in his residence in Boston, Massachusetts. According to the death certificate the cause of death was "acute opiate intoxication" due to substance abuse.

34. Dr. Taff identified a number of issues with the death investigation conducted in Mr. Barry's case. First, the date and time of injury, and the time of death, are all unknown. The death certificate was signed by Dr. Marie ____ four months after Mr. Barry's death, and it omits information about performance of an autopsy; nor was there an autopsy report provided in Mr. Barry's file. It is also unknown whether Dr. Marie ____ is a board-certified forensic pathologist.

35. While a toxicology report was prepared and indicates the presence of morphine and alcohol, as well as a blood alcohol level ("BAC") of .06% – which is the equivalent to three 12-ounce beers for the average person with a body weight of 170 pounds – neither alcohol nor morphine were listed on the death certificate. Also, with regard to the heroin, the time and route of usage are unknown, as is the source of the heroin itself. It is also unknown whether there was another source of heroin present at the scene.

36. Finally, according to the Boston Police report, the "victim [was] known to [the] Commonwealth." Dr. Taff questioned whether this language indicated, for instance, that Mr. Barry had a prior drug-related arrest record.

6. *Alejandro Nunez Avila*

37. As per Dr. Taff's assessment, Alejandro Nunez Avila was a 16-year old Hispanic male found dead on the garage floor of his friend's house in Camino, California, on or around September 9, 2013. Dr. Taff found that Mr. Avila had a history of wanting to buy marijauna, get

high, and party. Based on the limited information available to Dr. Taff at the time of his assessment (*i.e.,* without the coroner's report provided last night),[4] he found the file useless for forensic medical evaluation. It did not contain an autopsy report, a toxicology report, or a death certificate. In fact, there was no medical information whatsoever available to assess cause of death precisely or accurately.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. 28 U.S.C. §1746. Executed May 15, 2015.

/S/ Lindsay A. Lewis
LINDSAY A. LEWIS

[4] Dr. Taff will be provided with the coroner's report for review and inclusion in his formal report.

EXHIBIT 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	14 Cr. 68 (KBF)
- against -	:	
ROSS ULBRICHT,	:	DECLARATION OF TIM BINGHAM
Defendant.	:	

TIM BINGHAM, pursuant to 28 U.S.C. §1746, hereby affirms under penalty of perjury:

1. I have worked for over twenty years in the field of addiction and mental health, and currently work in a variety of settings, which include delivering workshops and training courses to community projects on a diverse range of topics such as Motivational Interviewing, Brief Interventions, Harm Reduction, and others. I am an experienced Privileged Access Interviewer, and use these skills to reach and interview drug users for use in my own independent research and training.

2. My published work has appeared in numerous journals and conferences, including the International Journal of Drug Policy and the International Journal of Mental Health and Addiction. In addition, I recently co-authored a policy brief for the Global Drug Policy Observatory, addressed to the evolution and operation of hidden online markets and providing comparisons to traditional drug use frameworks. I also lecture at University College Cork (UCC) and other universities in Ireland, on a visiting basis.

3. I obtained a Bachelor of Arts, with Honours, in Applied Addiction Studies, from Athlone Institute of Technology in 2010, as well as Diplomas from UCC in the areas of Psychology of Criminal Behaviour and Youth and Community Work. I am also Ireland's Sub-Regional

Coordinator for the European Harm Reduction Network, through my work as Coordinator of the Irish Needle Exchange Forum, and I served as an Expert Contributor for the Internet Drugs Market Trend Spotter Seminar held by the European Monitoring Centre for Drugs and Drug Addiction.

4. Between September 2012 and August 2013 I conducted research both on and surrounding the Silk Road website regarding the user experiences of vendors and consumers on Silk Road. In order to prepare to conduct my research I spent six months simply navigating the Silk Road site and actively participating in the Silk Road forums. Once we were ready to formally begin data collection, I requested and received permission from the website administrator, Dread Pirate Roberts, to undertake research as to members' experiences and to upload information and recruitment threads to the site's forums. The study was undertaken as part of a longitudinal Silk Road site monitoring exercise which involved three phases: a holistic single case study with a Silk Road member; an integrated study of systematic site monitoring of forum activity and online interviewing of a cohort of Silk Road customers; and an interview study of vendor experiences of retailing on the site.

5. My research formed the basis for the following three papers, which I co-authored with Dr. Marie Claire Van Hout, and which were published in the International Journal of Drug Policy between mid-January and late October 2013:

- Hout, M.C.V., & Bingham, T., "'Silk Road,' The Virtual Drug Marketplace: A Single Case Study of User Experiences," *International Journal of Drug Policy* (January 14, 2013), http://dx.doi.org/10.1016/j.drugpo.2013.01.005, attached as Exhibit 1 to the Declaration of Lindsay A. Lewis, Esq.;

- Hout, M.C.V., & Bingham, T., "'Surfing the Silk Road:' A Study of Users Experiences," *International Journal of Drug Policy* 24 (August 30, 2013) 524 -529, http://dx.doi.org/10.1016/j.drugpo.2013.08.011, attached as Exhibit 2 to the Declaration of Lindsay A. Lewis, Esq.;
- Hout, M.C.V., & Bingham, T., "Responsible Vendors, Intelligent Consumers: Silk Road, the Online Revolution in Drug Trading," *International Journal of Drug Policy* (October 27, 2013), http://dx.doi.org/10.1016/j.drugpo.2013.10.009, attached as Exhibit 3 to the Declaration of Lindsay A. Lewis, Esq.;[1]

6. As established by my research, and set forth in the above-cited papers, I have reached the following conclusions about the Silk Road website:

a. the Silk Road website operated more similarly to "Ebay" than street drug markets by way of vendor and buyer ratings of drug products, and feedback on quality of transactions, speed of dispatch and profile of drug products;

b. in contrast to street drug markets, the Silk Road site operated a professional dispute resolution mechanism to resolve disputes between buyers and sellers as well as forums dedicated to drug safety and harm reduction practices;

[1] I also authored other pieces, including "The Rise and Challenge of Dark Net Drug Markets," with Julia Buxton, which deal with Dark Net Drug Markets more broadly, in contrast to these papers which focused exclusively on Silk road and my research as to the user experiences of vendors and consumers on the site. *See e.g.* Buxton, Julia & Bingham, T., "The Rise and Challenge of Dark Net Drug Markets," *Policy Brief 7, Global Drug Policy Observatory, Swansea University* (January 2015), http://www.swansea.ac.uk/media/The%20Rise%20and%20 Challenge%20of%20Dark%20Net%20Drug%20Markets.pdf.

c. vendor authenticity and commitment to providing quality goods was controlled by the purchasing of new vendor accounts through auctions to the highest bidder;

d. while perhaps the largest of its kind, Silk Road was not the first site which offered Internet drug sourcing. For instance, in conducting our single case study, the findings of which were published in January 2013, our participant – a 25-year-old male in professional employment who had commenced using drugs at age 15 and whose drug use included use of cannabis, ecstasy, cocaine, and hallucinogens – recalled increased awareness of the possibilities of Internet drug sourcing in 2010 via his use of social media with various sites appearing to offer a legitimate, safe, opportunistic channel for sourcing a variety of drugs. He described Silk Road as the only trusted place to get both information on the available drug products and in contrast to street purchasing, the opportunity to receive quality products.[2] Overall quality of consumer experience and assistance in product and vendor decision-making was supported by visible online vendor reviews, vendor accountability, buyer-vendor negotiations and resolution modes;

e. the single case study also led to certain observations about the cyber communities that ultimately formed on the Silk Road site. As per my research, cyber communities appeared to provide a series of "nested support systems" which in turn fuelled information sourcing and exchange, user connectivity, identification of trusted and reliable sourcing routes, and mutual user supports. Accordingly, the single case study

[2] While this user and others I have come across in my research also found that Silk Road provided them the opportunity to try drugs they would otherwise not have known to try or had access to, this adverse factor is overridden by the fact that Silk Road simultaneously provided such users the chance to source drugs from vendors located in countries renowned for producing quality forms of the drugs they sought to purchase as well as the other facets of the site's harm reduction ethos. Moreover, even with an expanded drug horizon available for purchase, participants on the whole remained loyal to street drugs based on their customer purchase portfolios.

we found held some promise in illustrating Silk Road's capacity to encourage harm reduction within a very hard to reach drug using population, considering the lack of scientific knowledge around pharmacological properties and toxicity of available substances on the net;

f. following the single case study, we embarked on a case study of multiple Silk Road members which revealed additional information as to makeup of Silk Road drug users and their experiences on the site. Observational data revealed that Silk Road users were predominantly male and in professional employment or tertiary education. In addition, participant drug trajectories ranged from 18 months to 25 years, with popular drugs including cannabis, mephedrone, codeine, cocaine, nitrous oxide, MDMA, 2C-B, ketamine, heroin, LSD, amphetamine, NBOME, methylone, benzodiazepines, methamphetamine, morphine, PCP, 2C-I, and psilocybin. In my many months of interacting with users on the Silk Road site, I did not encounter a single customer whose first drug purchase was on the Silk Road website. Patterns of drug use were described as typically recreational and confined to weekend consumption. Several participants in the study described themselves as "pyschonauts," defined as a persons who intelligently experiment with mind-altering chemicals, sometimes to the extent of taking exact measurements and keeping records of experiences. Few participants reported daily drug use;

g. while the majority of participants reported commencing internet drug sourcing and purchasing on Silk Road and happening upon it by chance, with little prior experience of cyber drug retailing prior to 2011, several drug sites were described as popular resources for Silk Road members, *i.e,,* Erowid, Bluelight, Shroomery, Pill Reports,

Pharmacy Reviewer, Gwern and OVDBer. These sites along with the Silk Road forums were observed as useful in providing informative "trip reports," and assisting individuals with questions about optimum dosage, lab testing and harm reduction practicalities;

h. participant reasons for accessing and using Silk Road appeared centered on the site's anonymity, its member forums, the wide variety of products advertised, its transaction system supported by dispute resolution modes and vendor feedback ratings. Users also expressed concern for poor drug quality in their locality and fears for personal safety when buying drugs in the street. Observational site data further revealed member comments around the avoidance of adverse health and social consequences associated with street drug sourcing when purchasing drugs on Silk Road;

i. those participants with purchasing experience on the Silk Road commented on the perceived levels of insular trust within the Silk Road member communities, which assisted them in consumer decision-making and openly contrasted with the unknowns associated with street drug-dealing. For instance, according to one Silk Road customer who had stopped purchasing drugs elsewhere, "[t]his type of market significantly lowers the chances of a scam or buying contaminated products. Like Amazon or eBay, I have a market of sellers to choose from and product reviews to satisfy my own requirements before I purchase. A street market in comparison is based on a 'take it or leave it' approach which gives no rights to a buyer. This form of regulation ensures safety and harm reduction for the buyer;"

j. moreover, while some participants interviewed indicated that they would never go back to sourcing drugs from the street after turning to Silk Road, I also did not encounter any Silk Road user who would have stopped purchasing drugs entirely if unable to do so on Silk Road. Some Silk Road users, in fact, indicated that while Silk Road had for the most part replaced their local street dealer, a few used street and closed market (friend and peer networks) sourcing when waiting for Silk Road products to arrive;

k. in addition, observational data as to the users on the site revealed an active forum community. The usefulness of the Silk Road forums was emphasized in providing information, product and vendor reviews, transaction feedback, forums for harm reduction, tutorials, guides, and book/film reviews. One participant described the site as a "great community with lots of information." Comments were made about member education and know how, with forum participants appearing well read and well informed about drug use, with members sharing advice, stories, experiences and general chit chat;

l. many comments centered around a perceived sense of "belonging" in the Silk Road community. This occurred irrespective of whether members were purchasing or only accessing the forums. Thus, risks and harms traditionally posed by illicit open and closed drug markets were replaced by insular online communities interacting within Silk Road's built in quality of information exchange, where protected by screen pseudonyms and anonymity, members could converse freely about their drug use. In this way Silk Road as novel technological drug subculture, potentially minimized drug-related stigma by reinforcing as sense of community;

m. along these same lines, site forum postings also included member support for those requiring assistance in quitting their drug habit. As one user described it, "[t]he community is awesome here. There is a Drug Safety forum. The whole philosophy behind the place is that if you want to put heroin in your body, go ahead. But hey, if you want to get off that nasty drug, we're here to help you too. It's not like real life where street dealers might coerce you into keeping your addiction;"

n. based on my study of multiple users I therefore concluded that Silk Road forums, both for purchasers and for those who had not yet purchased, appeared to act as an information mechanism for the promotion of safer and more acceptable or responsible forms of recreational drug use. Likewise, Silk Road's member subcultures offered a viable means of enmeshing safer drug use and encouraging hard reduction amongst a very hard to reach and informed drug-using population;

o. my research revealed a similar ethos among drug vendors. As with Silk Road buyers, participants in a study of Silk Road vendors described themselves as possessing a personal interest in the intelligent and responsible use of drugs.[3] All reported intense use of the internet to research drug information and use of sites like Erowid, Bluelight, and Topix—the same sites Silk Road buyers had frequented. As with purchasers on Silk Road, vendors commented on the supportive safety net provided by member communication via TOR messaging and in Silk Road forums;

[3] Of the ten vendors that participated in our study, nine were male. They ranged in age from 25 to over 50. Four participants reported being in fulltime employment, one reported part time employment, one was in tertiary education, and four participants were unemployed. Only two out of ten participants had not sold drugs prior to becoming vendors on Silk Road.

p. from a vending perspective, Silk Road's harm reduction ethos appeared centered on informed consumerism and responsible vending by availability of high quality products with low risk for contamination, vendor-tested products, trip reporting, and feedback on the vending infrastructure. Quality of drug products sold was ensured by use of proper reagents, lab work and analytics, personal research and testing, freebie testing by long term customers, feedback from other vendors, and sourcing from reliable suppliers;

q. several vendors also cited the lack of personal safety involved in street sales as a reason for vending online. As one stated, "[t]he street market is more risky for everyone. It doesn't have feedback or rating available for every buyer to read. You are more likely to be involved with people who might not be concerned in your welfare,"

r. however, for the vast majority of vendors, Silk Road's libertarian ethos and embedded online culture appealed to them in terms of its revolutionary ethos and mechanism for the responsible vending of personally tested high-quality products, informed consumerism, and controlled safe retail infrastructure;

s. ultimately, drug markets are incredibly resilient and adaptable to changes in the environment, market driven, law enforcement, and otherwise. Challenges do exist in disembedding drug markets, and are reliant on the complexities of relationships between vendors, markets, and communities, both online and in reality. Operating on Silk Road appeared to present vendors and consumers with a novel way to circumvent drug market violence and create distance between vendor and buyer. The drug trade represents a key cause of violence, particularly in urban settings, and

especially as a means for individuals and groups to secure and maintain market share. One of the more positive side of Silk Road was that it prevented such violence, in addition to its general harm reduction ethos.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. 28 U.S.C. §1746. Executed May 14, 2015.

TIM BINGHAM

EXHIBIT 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	14 Cr. 68 (KBF)
- against -	:	
		DECLARATION OF
ROSS ULBRICHT,	:	DR. FERNANDO CAUDEVILLA
Defendant.	:	

DR. FERNANDO CAUDEVILLA, pursuant to 28 U.S.C. §1746, hereby affirms under penalty of perjury:

1.

I am a Spanish physician specializing in the area of drugs and addiction. In addition to my full-time work as a Family Physician at the National Spanish Health Care Service, in Madrid, Spain, I provide private medical consultation in the area of recreational drug use. I have also been working in a professional capacity on "Deep Web"- related projects since 2012 and providing health and medical advice from a harm reduction standpoint to drug users via the Internet. I graduated from the Universidad Autónoma de Madrid with a degree in Medicine and Surgery in 1999, and specialized in the area of Family Practice in 2002. Additionally, I was qualified as a University Expert in Drug Dependence by the Universidad Complutense de Madrid in 2004.

2.

I am involved with numerous professional organizations, including as a member of the Drug and Alcohol Working Group of the Spanish Society of Family and Community Medicine, as a

coordinator of the Drug and Alcohol Working Group of the Madrilenian Society of Family and Community Medicine, and as a technical consultant for NGO Energy Control, which works to reduce the risks associated with drug use.

3.

My work has been published in numerous medical journals and reviews, including various international publications such as the Journal of Psychopharmacology and Human Pharmacology.

4.

I have also taught numerous workshops at the National Scientific Conference, and various courses in the Continuing Medical Education Programs throughout Spain. I am currently participating in expert meetings organized by the European Monitoring Centre for Drug and Drug Addiction (EMCDDA), as well as working on a report addressed to harm reduction and cryptomarkets, including factors like drug testing or on-line advice, similar to that provided by myself on Silk Road.

5.

Operating under the username, "DoctorX," but with complete transparency as to my real name which I readily supplied to those who asked for it, I provided expert advice on drug use and abuse to Silk Road users, both through a thread I started in April 2013, in the drug safety forum, entitled "Ask a Drug Expert Physician About Drugs & Health" (*see* "Ask a Drug Expert Physician About Drugs & Health" thread, attached to the Declaration of Lindsay A. Lewis, Esq., as Exhibit 4) and through private messages on the forum to individual Silk Road users who reached out to me (*see* Private Messages from Dr. Caudevilla to Silk Road Users, attached to the Declaration of Lindsay A. Lewis, Esq., as Exhibit 5). Between April 2013 and late October 2013, I sent more

than 450 messages to Silk Road users in response to requests for advice and assistance. I also spent up to two to three hours a day on the forum during that time frame providing expert advice as to drugs and health. My advice ranged from information as to safe dosage and administration of particular drugs as well as the risks attendant to the use of certain drugs, information as to where to find reliable and credible information about various substances on the internet, proper methods of drug administration, adverse effects, pharmacological interactions, advice as to whether particular combinations of drugs (both legal and illegal) should be avoided, advice as to how to stop use of particular drugs or drugs generally, to general medical and psychiatric advice related to drugs.

6.

The administrator of the Silk Road site, Dread Pirate Roberts, was aware of my presence on Silk Road and was supportive of my role in furthering the harm reduction ethos of the site. I provided weekly reports to DPR which documented the topics I had discussed in my thread during the previous week. Attached to the Declaration of Lindsay A. Lewis, Esq., as Exhibit 6, is one such report, prepared September 21, 2013, and containing the thread topics I covered during the week of September 13, 2013 through September 19, 2013. Dread Pirate Roberts never censored my views or advice in any way, even when I espoused views that Silk Road users should not use or buy certain drugs sold on the site (particularly *Legal High* or *Research Chemicals*, new synthetic drugs that have not been tested in humans and that have a higher potential for harm compared with other drugs), discouraged drug use, or helped Silk Road customers to reduce or cease drug use entirely.

7.

I performed my role and provided expert advice on a volunteer basis from April 2013 to August 2013. When I contacted Dread Pirate Roberts in mid-August 2013 to alert him to the fact that the time commitment required to answer all questions and keep up with the forum thread had become too great, he offered to compensate me $500 per week to continue to provide advice to users on the site. *See* Private Messages Between Dr. X and Dread Pirate Roberts, attached to the Declaration of Lindsay A. Lewis, Esq., as Exhibit 7. I thus continued my work on a paid basis from mid-August 2013 through October 2013, when the site was shut down.

8.

In addition to compensating me for my advice on the forums and through private messages, Dread Pirate Roberts also sought to partner with me to send the drugs sold on the Silk Road out to laboratories for independent testing as part of an effort to ensure that only safe, non-toxic substances were being sold on Silk Road. *See* Exhibit 7 to Lewis Dec. We agreed that I would contact him to explain the process to him in detail once we had fully developed the International Service Test that would facilitate such drug testing. *See id.* At the time the Silk Road website was shut down by law enforcement we were still working on the project. At present, International Drug Testing Service from Energy Control provides a drug testing service available to "Deep Web" drug users.

9.

As a result of my personal experiences working with customers on the Silk Road site, and monitoring the site's drug safety forums, I have firsthand knowledge that Silk Road provided

site users with the tools to take drugs in a safer and more informed manner, espoused a harm reduction ethos which was reflected in the individual buyer-seller transactions on the site and in the community created on the site's forums, and enabled some site participants to actually reducetheir drug use and/or use drugs in a safer way into a harm reduction perspective. For example, some heroin users were drawn to Silk Road because it provided them access to methadone, a drug utilized in many countries, and administered by physicians, to enable heroin users to end their addictions. For some Silk Road users methadone was illegal or unavailable in their home countries. Accordingly, they would likely not have had access to the resources necessary to reduce their heroin use without the Silk Road.

10.

In my seven months monitoring and actively participating in the Silk Road forums I never came across even a single report of a Silk Road-related drug overdose. In fact, on several occasions, when users provided negative feedback about drugs sold by a particular vendor, that vendor or the drug in question was removed from the site. To my knowledge that decision was made by the site's administrators.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. 28 U.S.C. §1746. Executed May 14, 2015.

_____

DR. FERNANDO CAUDEVILLA

EXHIBIT 13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	14 Cr. 68 (KBF)
- against -	:	
ROSS ULBRICHT,	:	DECLARATION OF DR. MONICA J. BARRATT
Defendant.	:	

DR. MONICA J. BARRATT, pursuant to 28 U.S.C. §1746, hereby affirms under penalty of perjury:

1. I am Research Fellow at Australia's National Drug and Alcohol Research Centre, part of the University of New South Wales, Sydney. My position is funded by the Australian National Health and Medical Research Council. I attained a Bachelor of Science (Honours) in psychology and a PhD in Health Sciences at Curtin University, Perth, Australia. My research concerns the social and public health implications of internet technologies for people who use illicit and emerging psychoactive drugs, and the impacts of legislative responses to drug use and drug problems. I also hold an adjunct position at the National Drug Research Institute, Curtin University, and a position as visiting fellow at the Burnet Institute.[1]
2. During the course of 2013, I authored a research report along with co-authors Jason A. Ferris and Adam R. Winstock, entitled "Use of Silk Road, the online drug marketplace, in the United Kingdom, Australia and the United States," which was published in *Addiction* 109, at 774-783. *See* "Use of Silk Road, the online drug marketplace, in the United

[1] I am acting in a personal capacity, and the views represented in this affidavit do not necessarily represent those of my affiliated institutions.

Kingdom, Australia and the United States," attached as Exhibit 8 to the Declaration of Lindsay A. Lewis, Esq. The paper presented the results from a quantitative analysis of international survey data from a purposive sample of drug purchasers, derived from an anonymous annual online survey of drug use conducted by Global Drug Survey, and for which 22, 289 responses were received between November 15, 2012, and January 2, 2013.

3. The sample used in our paper was restricted to those who had indicated that they usually bought their own amphetamine, cannabis, cocaine, MDMA, ketamine or mephedrone, or or who reported buying "legal highs" or "research chemicals" or any drugs online during the previous 12 months, bringing the sample size down to 11, 848. The base sample was then further restricted to comprise only those 9, 470 respondents who resided in or used the currency of Australia, the United States or the United Kingdom. Commentary on our paper that was published in the same issue of *Addiction* in which our paper was published, noted that our paper presented the first large scale survey to characterize buyers on Silk Road and that prior to this, no sound, large-scale study of the buyers was available.

4. We designed questions that were informed by ongoing digital ethnographic research of Silk Road that I was conducting, and which involved participating in online discussions and monitoring the marketplace.

5. To compare differences between drug buyers who created three outcome groups based on knowledge and utilization of Silk Road: (1) those who had never heard of Silk Road; (2) those who had heard of, but never consumed drugs purchased from Silk Road, and (3) those who had consumed drugs purchased from Silk Road. Overall, half of the

sample had heard of the online drug marketplace Silk Road, but the percentage was not the same across the three countries, with the majority in the United States having heard of Silk Road (65%) compared to approximately half of Australian respondents (53%) and 40% of U.K. respondents. Of respondents who had heard of Silk Road, approximately one-quarter of U.S. and U.K. respondents reported having consumed drugs purchased from Silk Road, while only 14% of Australian respondents reported doing so.

6. One table in our report (Table 3) presented the top 20 drugs purchased from Silk Road by country of residence. MDMA was the most commonly purchased drug. More than half of respondents in each country reported purchasing it, mainly in powdered (crystal) form. Cannabis was ranked in the top four drugs across countries and lysergic acid Diethylamide (LSD) in the top five. Cocaine was ranked sixth in Australia and 18th in the U.K., but ranked outside the top 20 in the U.S. Heroin was also outside the top 20 in all of these countries. No form of NBOMe (including 25I-NBOMe) was ranked in the top four in the U.K., the U.S. or Australia. Rather, it was ranked fifth in the U.S., 10th in Australia and 13th in the U.K.

7. Survey respondents who had purchased drugs from Silk Road were asked to pinpoint their reasons for consuming drugs purchased on Silk Road from a list of eight possible reasons. Respondents across all three countries indicated that among their top four reasons for consuming drugs purchased on Silk Road were: (1) the drugs were of better quality than the drugs they could normally access, and (2) they were more comfortable buying from sellers with high ratings. The range of drugs available and convenience were also among the top four reasons for consuming drugs purchased on Silk Road.

8. Respondents who had heard of Silk Road but had not purchased drugs from the site were asked for reasons why they had not made purchases on the site. The most common response across all countries was "I have adequate access to drugs through my own networks." The next most common response was "I fear being caught by police/customs if drugs are sent to my own address." Compared to respondents from the U.K., U.S. respondents were significantly more likely not to use Silk Road to purchase drugs as they found accessing Bitcoins too difficult, were concerned about being ripped off, thought the prices for drugs on Silk Road were too high and believed using the Silk Road to purchase drugs to be too much effort. By contrast, compared to UK respondents, Australian respondents were less likely to indicate accessing Bitcoins was too difficult, less likely to consider Silk Road prices as being too high and less likely to indicate that accessing drugs via Silk Road was too much effort.
9. In this study we found that the most commonly mentioned reasons for using Silk road to buy drugs fitted with wider e-commerce trends: access to a wider variety and better quality of product offerings, the convenience of online shopping and access to more information about the products and the vendor/ companies selling them.
10. Since the data was collected the cryptomarket landscape has changed with the arrivals of new drug marketplaces, the fall of the original Silk Road, and the rise and fall of Silk Road 2.0.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. 28 U.S.C. §1746. Executed May 14, 2015.

DR. MONICA J. BARRATT

EXHIBIT 14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	14 Cr. 68 (KBF)
- against -	:	
ROSS ULBRICHT,	:	DECLARATION OF MEGHAN RALSTON
Defendant.	:	

MEGHAN RALSTON, pursuant to 28 U.S.C. §1746, hereby affirms under penalty of perjury:

1. I am the former harm reduction manager for the Drug Policy Alliance (hereinafter "DPA"), based in Los Angeles, California. I was employed full-time with DPA from October 2006 through May 15, 2015. My work included implementing over-the-counter pharmacy syringe sales throughout Los Angeles County; organizing the first major U.S. commemoration of International Overdose Awareness Day; and creating the first-ever Southern California Harm Reduction Summit. I have served as the point person on two DPA California harm reduction bills which were successfully signed into law (AB 1535; AB 472). I have also served as co-chair of both the Los Angeles Overdose Prevention Task Force and the Los Angeles Harm Reduction Collaborative. I currently work as a freelance policy consultant for Drug Policy Alliance. In 2015, I will be focusing on implementing California pharmacy access to the overdose reversal medicine naloxone.

2. In light of my expertise in the areas of the U.S. overdose crisis; prescription drugs; drug use; harm reduction issues and U.S. drug policy generally, my op-eds, quotes and interviews about effective ways to reduce the harms of U.S. drug policies, including the misuse of pharmaceutical and non-pharmaceutical drugs, have appeared in dozens of news outlets

including *AP*, *Reuters*, the *UK Daily Mail*, the *Los Angeles Times*, *USA Today*, *Newsweek*, the *San Francisco Chronicle*, the *Orange County Register*, *Newsday*, the *Houston Chronicle*, the *Huffington Post* and on Time.com. My television appearances on the same subjects include Al Jazeera, RT America, HuffPost Live and Fox. I have been interviewed and featured in the *New York Times* best-selling book "Chasing the Scream" by Johann Hari as a leading expert on the prescription drug crisis. I have also appeared in the documentary film, "After EDC," which chronicles the aftermath of a suspected ecstasy-related death at a rave in Los Angeles. Additionally, I have presented on a variety of harm reduction topics at numerous conferences across the country and internationally.

3. I graduated *summa cum laude* from Capital University in Columbus, Ohio, and my research on relationship management has appeared in a variety of academic publications. Prior to joining DPA, I created and ran Street Medicine, a volunteer-driven project to assemble and distribute first aid kits to homeless populations throughout Los Angeles County.

4. As a result of my work with the DPA, and in the areas of harm reduction and reduction of drug-related violence, I have become familiar with the Silk Road website. I have studied the site and have also published opinion editorials on the topic of Silk Road, in particular, including:

- *The End of the Silk Road: Will Shutting Down the 'e-Bay for Drugs' Cause More Harm Than Good?* October 3, 2013 http://www.huffingtonpost.com/meghan-ralston/silk-road-shut-down_b_4038280.html, attached as Exhibit 9 to the Declaration of Lindsay A. Lewis, Esq.; and,
- *Silk Road Was a Better, Safer Way to Buy and Sell Drugs* February 12, 2015 http://www.alternet.org/drugs/silk-road-better-safer-way-buy-sell-drugs, attached as Exhibit 10 to the Declaration of Lindsay A. Lewis, Esq.

5. Accordingly, through my analysis of the Silk Road website, and my work with the DPA in the area of harm reduction, and as set forth in the above-mentioned pieces, I have reached the following conclusions – all of which represent my personal beliefs; none of which necessarily represent the views or official positions of my employer, the DPA:

a. at the outset, we must acknowledge the current state of drug use and the drug trade in the United States and abroad. People use drugs. They get those drugs from someone else. In order to consume drugs, someone had to buy them, and someone had to sell them. Well-established research has also demonstrated links between violence and the illicit drug trade, in a variety of settings, including urban settings. We don't have to like it, but we do have to accept the reality of it;

b. our entire approach to responding to that reality has thus far been a dismal disappointment. Silk Road was, in the most basic sense, a product of our failed war on drugs—a response to our woefully inadequate way of managing not only drug use, but also drug demand and drug sales;

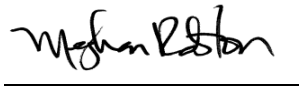
c. operating as an above-ground source for a variety of drugs, ranging from marijuana to heroin and virtually everything in between, Silk Road created a safe environment, free of weapons and violence during the transaction, where people could acquire drugs. Many reformers, myself included, have long been highlighting the forward-thinking benefits of Silk Road and the ways it began to slowly revolutionize drug sales around the world. For instance, it provided a platform that could allow indigenous growers and cultivators around the world to sell directly to the consumer, potentially reducing cartel participation and violence;

d. accordingly, using Silk Road could be seen as a more responsible approach to drug sales, a peaceable alterative to the often deadly violence so commonly associated with the global drug war, and street drug transactions, in particular. None of the transactions on Silk Road, for instance, resulted in women drug buyers being sexually assaulted or forced to trade sex for drugs, as remains a possibility in some street-level drug transactions. Nor did any Silk Road transactions result in anyone having a gun pulled on them at the moment of purchase, also a danger present in face-to-face street-level drug transactions;

e. moreover, even with all the hurdles and the risks, people chose to use Silk Road rather than rely exclusively on whatever illegal and potentially dangerous drug market existed in their 'real world' community. Given the choice of quickly and easily accessing drugs in potentially sketchy or dangerous neighborhoods, or buying them safely on-line but having to wait, many users preferred privacy, security and a wait to the alternative;

f. thus, the shutdown of Silk Road, intended to curtail organized drug use and sales, will not accomplish that goal. Silk Road is not the only website of its kind and its displaced users will likely either turn to a competitor site or seek out drugs in other ways. This approach to fighting the war on drugs has never worked and it's not likely to start working now.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. 28 U.S.C. §1746. Executed May 14, 2015.



MEGHAN RALSTON

EXHIBIT 15

Mark L. Taff, M.D.
FORENSIC PATHOLOGIST
511 Hempstead Avenue, Suite 2
West Hempstead, New York 11552
OFFICE TELEPHONE: (516) 292-2300
HOME TELEPHONE: (516) 887-4691

Citizenship United States

Medical Licensure

- State of New York, 1981 No. 148497-1
- State of Michigan, 1983, No. 004704
- State of New Jersey, 1990, No. 56900

Board-Certification Forensic and Anatomic Pathology

Professional Experience

1987-Present

- **Chief Medical Examiner, Rockland County,** New York (10/01/08 - 10/31/12)
- **Forensic Pathologist Consultant**
- Coroner's Pathologist, Orange, Sullivan, Putnam & Greene Counties, New York
- Forensic Pathologist Consultant, Rockland County Medical Examiner's Office, Pomona, NY
- New York City & New Jersey Transit Authority
- Aetna Life Insurance Company, Hartford, CT
- New York, Kings, Queens Counties and Bergen County, New Jersey District Attorney's Office
- New York Law Department
- New York Attorney General's Office
- New York Housing Authority
- New York, Brooklyn & Queens Legal Aid Societies
- Connecticut, New Jersey, Dutchess County (New York), Pennsylvania & New Hampshire Public Defenders' Offices
  - Performed over 2,000 medicolegal autopsies
  - Testified in court/depositions as an expert witness in forensic pathology over 375 times

1984-1988 **Deputy Medical Examiner,** Nassau County Medical Examiner's Office, East Meadow, NY

Academic Affiliations

- Clinical Associate Professor of Pathology, Mt. Sinai School of Medicine, New York, NY, 1990-Present
- Adjunct Professor, Department of Criminal Justice, C.W. Post/Long Island University, Brookville, NY, 1998-2003
- Scientist-in-Residence, Metropolitan Forensic Anthropology Team, Department of Anthropology, Lehman College, City University of New York, 1985-2003
- Special Teaching Staff pathologist, Department of Pathology, Long Island Jewish-Hillside Medical Center, New Hyde Park, NY 1987-1993
- Assistant Professor of Forensic Pathology, School of Medicine, State University of New York at Stony Brook, NY 1985-1988
- Lecturer in Forensic Pathology, Queens Medical School at York College, City University of New York, 1987

- Instructor in Pathology, Wayne State University School of Medicine, Detroit, MI, 1983-84
- Instructor in Pathology/Clinical Assistant Pathologist, Mt. Sinai School of Medicine, New York, NY 1982-83

Education & Training

- **1983-84** Resident in Forensic Pathology, Office of the Medical Examiner of Wayne County, Detroit, MI
- **1979-82** Resident in Pathology, Mt. Sinai School of Medicine, New York, NY
- **1978-79** Resident in Pathology (first-year), Long Island Jewish-Hillside Medical Center, New Hyde Park, NY

Educational Experience

- **1968-72** University of Maryland, College Park, MD
  - Bachelor of Science Degree
- **1972-78** University of Bologna School of Medicine, Bologna, Italy
  - Doctor of Medicine Degree
- **1975-77** Queens Medical Center & Queens Medical Examiner's Office
  - Pathology Clinical Clerkship

  Jewish Hospital & Medical Center of Brooklyn
  - ECFMG-approved Clinical Clerkship

Professional Activities

- AMA Physician's Recognition Award, 1981-92
- House Staff Representative, Academic Council, Mt. Sinai School of Medicine, 1981-82
- Member, Public Information Network (PIN), College of American Pathologists, 1981-84
- Chairman, "The Young Associates" of the Milton Helpern Library of Legal Medicine, 1982
- Creator, "Residents' Corner," The American Journal of Forensic Medicine and Pathology, 1982
- Feature Editor, The American Journal of Forensic Medicine and Pathology, 1982-91
- Member, Medical Board, International Boxing Writers Association, 1982-93
- Member, Governor's Task Force on Domestic Violence, State of New York, Professional School Curriculum Subcommittee, 1982-83
- Member, Governor's Commission on Domestic Violence, State of New York, 1985-89
- Member, New York City's Task Force on Acquired Immunodefiency Syndrome (AIDS), 1982-83
- Member, Committee on Public Health, New York City Medical Society, 1982-83
- Member, The Histogram, The Newsletter of the International Study Group in Forensic Sciences, 1984-85
- Editor, Inform - The International Reference Organization in Forensic Medicine, 1984-94
- President & Founder, New York Society of Forensic Sciences at Lehman College, Bronx, NY, 1985-96
- Co-Chairman, National Association of Medical Examiner's Inspection & Accreditation Committee, 1985-87

- Judge, American Institute of Science & Technology of the City of New York, 49th Queens Borough School Science Fair, John Browne High School, Flushing, NY, Mar. 13, 1987
- Fellow, American Society of Clinical Pathologists, 1988-96
- Member, Library Committee, Nassau Academy of Medicine, 1990-93
- Member, Preventive Medicine Section, Nassau Academy of Medicine, 1992-93
- Editorial Board Member, Frontiers in Bioscience, 1995-97
- Vice-President, Society of Medical Jurisprudence, New York, 1997
- Member, Advisory Board, American Foundation for Gender and Genital Medicine and Science (AFGAGMAS), Baltimore, MD, 1997
- Member, Reader Advisory Board, Mayo Clinic Proceedings, Rochester, MN, 1997-1998
- Guest Columnist, *Education Update*, New York, NY, 1997

Memberships

- American Medical Association
- American Society of Clinical Pathologists
- Public Information Network (PIN), College of American Pathologists, 1981-82
- New York Academy of Sciences
- Committee on Public Health, Medical Society of the County of New York
- Milton Helpern Society of Legal Medicine
- American Society of Law & Medicine
- American Association of Suicidology
- Medical Society of the County of New York
- University of Maryland Alumni Association
- New England Pathology Residents' Society, 1980-83
- National Association of Medical Examiners
- The Hastings Center
- American Academy of Forensic Sciences
- Society for the Scientific Study of Sex, Inc., 1983-84
- Michigan Society of Pathologists
- Nassau County Medical Society
- Nassau County Society of Pathologists
- New York Pathological Society
- New York Society of Forensic Sciences at Lehman College, Bronx, NY
- New York Association of County Coroners & Medical Examiners
- Society of Medical Jurisprudence
- Friends of the John N. Snell Library, Inc.
- International Society of Clinical Forensic Medicine
- American Society of Forensic Odontology
- American Suicide Foundation
- American College of Sports Medicine

Grants

New York Society of Forensic Sciences at Lehman College, The Research Foundation of the City University of New York, 9/85-12/96

Awards

- Editor's Choice Award for Outstanding Achievement in Poetry, The National Library of Poetry, Owings Mills, MD, 1994
- Distinguished Member, The International Society of Poets, Owings Mills, MD, 1995

- Editor's Choice Award for Outstanding Achievement in Poetry, The National Library of Poetry, Owings Mills, MD, 1995
- Editor's Choice Award for Outstanding Achievement in Poetry, The National Library of Poetry, Owings Mills, MD, 1996
- Editor's Choice Award for Outstanding Achievement in Poetry, Best Poems of the '90s, The National Library of Poetry, Owings Mills, MD, 1996
- Slogan Winner, *Education Update*, New York, NY, 1997
- Editor's Choice Award for Outstanding Achievement in Poetry, The National Library of Poetry, Owings Mills, MD, 1998
- Editor's Choice Award for Outstanding Achievement in Poetry, The National Library of Poetry, Owings Mills, MD, 1998
- Editor's Choice Award for Outstanding Achievement in Poetry, The National Library of Poetry, Owings Mills, MD, 1999
- Editor's Choice Award for Outstanding Achievement in Poetry, The National Library of Poetry, Owings Mills, MD, 1999
- Editor's Choice Award for Outstanding Achievement in Poetry, The National Library of Poetry, Owings Mills, MD, 1999
- Listed in Index of Forensic Pathology Experts In, Forensic Sciences. Vol. 5. Wecht, CH (Ed.). Matthew Bender, 1999, p.41-69.
- Editor's Choice Award for Outstanding Achievement in Poetry, The National Library of Poetry, Owings Mills, MD, 1999

Publications

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3. *Taff, ML:* Interview with Russell S. Fisher, M.D., Chief Medical Examiner, Baltimore, MD. Am J Forensic Med Pathol (Submitted for Publication).
4. *Taff, ML:* Interview with Michael M. Baden, M.D., Deputy Chief Medical Examiner, Suffolk County, NY. Am J Forensic Med Pathol (Submitted for Publication).
5. *Taff, ML:* Interview with Joseph H. Davis, M.D., Chief Medical Examiner, Dade County, FL. Am J Forensic Med Pathol (Submitted for Publication).
6. *Taff, ML,* Siegal, FP: Acquired immune deficiency syndrome. Medcom Teaching Series, New York, 1983.
7. *Taff, ML:* "The Young Associates" of the Milton Helpern Library for Legal Medicine. Am J Forensic Med Pathol (Submitted for Publication).
8. *Taff, ML:* Interview with William A. Tari, Dean, American Academy McAllister Institute of Funeral Service, New York. Am J Forensic Med Pathol (Submitted for Publication).
9. *Taff, ML,* Siegal, FP, Geller, SA: Outbreak of an acquired immunodeficiency syndrome associated with opportunistic infections and Kaposi's sarcoma in male homosexuals. An epidemic with forensic implications. Am J Forensic Med Pathol 1982; 3:259-264.
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12. Gordon, RE, *Taff, ML,* Schwartz, IS, Kleinerman, J: Malignant retroperitoneal paraganglioma: unusual light and electron microscopic findings. Mt Sinai J Med 1983; 50:507-513.
13. Leslie, J, *Taff, ML,* Patel, I, Sternberg, A, Fernando, MM: Self-inflicted ocular injuries: a rare form of self-mutilation. Am J Forensic Med Pathol 1984; 5:83-88.
14. Unger, PD, *Taff, ML,* Song, S, Schwartz, IS: Sudden death in a patient with von Recklinghausen's neurofibromatosis. Am J Forensic Med Pathol 1984; 5:175-179.
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21. Reich, L, *Taff, ML:* Deaths resulting from fires, thermal burns, or carbon monoxide poisonings. Mecap News June, 1984; 9:2.
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78. *Taff, ML:* Poem: White rap. NY Amsterdam News, Oct. 3, 1992, p. 13.
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Acknowledgements

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ROSS WILLIAM ULBRICHT,
Defendant.

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14 Cr. 68 (KBF)

ORDER

KATHERINE B. FORREST, District Judge:

The Court has been reviewing the mitigation materials provided by defendant and has several questions.

1. Can defendant provide the Court a complete copy of all of Dr. Caudevilla's communications with DPR (including, but not limited to, his weekly reports and private messages)? Defendant has attached two excerpts at Exs. 6 and 7 to the Lewis Declaration; the Court would like a complete set.

2. In the Declaration of Tim Bingham, he states, "I did not encounter a single customer whose first drug purchase was on the Silk Road website." (Bingham Decl. ¶ 6(f).) What is this based on? Was there a specific question posed in this regard? Please provide the Court the [form of] questionnaire.

   —Similarly, what is Bingham's conclusion in ¶ 6(j) based on? (See Bingham Dec. ¶ 6(j) ("I also did not encounter any Silk Road user who would have stopped purchasing drugs entirely if unable to do so on Silk Road.").) Please provide the Court the [form of] questionnaire.

—Relatedly, in footnote 2, Bingham states that certain users found that "Silk Road provided them the opportunity to try drugs they would otherwise not have known to try or had access to." (Bingham Decl. at 4 n.2.) Does Bingham's conclusion in ¶ 6(j) take such new/introductory usage into account? In other words, if a user had only tried 2C after learning of it on Silk Road, did that user indicate that he/she would continue to purchase such drugs elsewhere if unable to do so on Silk Road?

3. Bingham references violence/safety concerns expressed by respondents. Were these concerns expressed by users or sellers or both (e.g., safety at the wholesale or retail level)?

4. In reaching their conclusions as to Silk Road's safety, did Bingham and Ralston consider DPR's commission of murders-for-hire? Is that relevant to their conclusions in this regard?

5. Dr. Caudevilla states in ¶ 10 of his declaration that, during his seven months of providing advice on Silk Road, he never came across a single report of a Silk Road–related overdose. Did he consider whether the posts of a number of users describing symptoms could have related to non-fatal overdoses (e.g., oldcactushand's post dated May 31, 2013)?

SO ORDERED.

Dated: New York, New York
May 20, 2015

KATHERINE B. FORREST
United States District Judge

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION
29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

May 22, 2015

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted on behalf of defendant Ross Ulbricht in connection with his sentencing, scheduled for May 29, 2015, at 1 p.m., and supplements my May 15, 2015, letter, which addressed certain evidentiary issues related to information the government provided regarding sentencing, and a prospective hearing pursuant to *United States v. Fatico*, 579 F.2d 707 (2d Cir. 1978). Discussion of those issues will not be repeated herein (and are therefore respectfully incorporated herein by reference), except with respect to discrete matters not addressed in my May 15, 2015, letter, but which are relevant to sentencing generally; rather, this letter predominantly covers other issues relevant to sentencing.

For the reasons set forth below, it is respectfully submitted that analysis and application of the sentencing factors enumerated in 18 U.S.C. §3553(a) establish that a sentence substantially below the applicable advisory Sentencing Guidelines range represents a sentence "sufficient but not greater than necessary" to achieve the goals of sentencing listed in 18 U.S.C. §3553(a)(2).

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As detailed below, those reasons include:

(1) Mr. Ulbricht's personal history and background, as reflected in the scores of letters submitted herewith on his behalf, which establish that Mr. Ulbricht is far more multifaceted than merely the conduct for which he has been convicted,[1] has expressed genuine remorse for his conduct related to the Silk Road web site, and can make – and is committed to making, as his own letter attests – a positive contribution to society after completion of a sufficient but not unnecessarily lengthy prison term;

(2) the nature of Mr. Ulbricht's offense conduct, and the motivation and intent underlying that conduct;

(3) the need, pursuant to 18 U.S.C. §3553(a)(6), to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct[;]"

(4) that, for practical, policy, and equitable reasons, including ongoing empirical and academic research, as well as the realities of drug trafficking and drug use notwithstanding the severity of federal sentences for three decades, general deterrence does not serve as a basis for enhancing Mr. Ulbricht's sentence;

(5) the empirical and academic research has established that longer prison sentences do not reduce recidivism, and that individuals over the age of 40 – which Mr. Ulbricht will reach well before the mandatory minimum term of 20 years' imprisonment would expire – present a significantly reduced threat of recidivism;

(6) the statistical information from the United Statets Sentencing Commission, which establishes that a sentence *below* the applicable Guidelines range is not only very much the *norm* in the Southern District of New York (hereinafter "SDNY"), but increasing in frequency, as 73.1% of sentences during all of Fiscal Year 2014 and 77.1% of sentences during the First Quarter of Fiscal Year 2015 in SDNY were below the applicable Guidelines range; and

(7) Mr. Ulbricht has spent his 20-month confinement at the Metropolitan Detention

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[1] Of course, in the context of sentencing, the jury's verdict is deemed dispositive with respect to the legal implications of Mr. Ulbricht's conduct. However, that context does not waive any of his rights to appeal that verdict.

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Center ("MDC") in Brooklyn (13 months) and the Metropolitan Correctional Center ("MCC"), facilities that have been recognized by courts as constituting harsh pretrial confinement and therefore a basis for a sentence below the applicable Guidelines range.[2]

In addition, this letter enumerates Mr. Ulbricht's corrections, additions, and/or objections to the Pre-Sentence Report, and seeks a recommendation from the Court that the U.S. Bureau of Prisons (hereinafter "BoP") waive any Public Safety Factors and/or Management Variables that might preclude designation of Mr. Ulbricht to a BoP facility commensurate with the security criteria that would otherwise apply to him.

Accordingly, for all these reasons, it is respectfully submitted that Mr. Ulbricht should be sentenced to a prison sentence substantially below the applicable advisory Guidelines range.

I. *The Principles Governing Federal Sentencing Since* United States v. Booker, *543 U.S. 220 (2005), Require the Court to Look Beyond the Guidelines In Order to Arrive at a Sentence Sufficient But Not Greater Than Necessary to Achieve the Purposes of Sentencing Set Forth in 18 U.S.C. §3553(a)(2)*

The PSR calculates Mr. Ulbricht's Offense Level as Level 43, with a Criminal History Category (hereinafter "CHC") of I, corresponding to an advisory Sentencing Guidelines range of life imprisonment. Yet the Guidelines calculation merely begins the analysis. In that context, the PSR also fails to provide any guidance in navigating and evaluating the relevant considerations under §3553(a), and arriving at a sentence "sufficient but not greater than necessary" to achieve the goals listed in §3553(a)(2).

Rather, it merely hews to a reflexive Guidelines-centric analysis without reference to any other factors listed in §3553(a), and fails to recognize that a Guidelines-only approach was constitutionally dismantled by *Booker*, and, in practical terms, has been overwhelmingly abandoned by the courts in this District in the course of their continuing sentencing practice.

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[2] Following his October 1, 2013, arrest in San Francisco, California, Mr. Ulbricht was confined in a pretrial facility in California for nearly four weeks before being transferred to MDC, a process that consisted of another three-to-four weeks of travel between various facilities en route. That process, too, was grueling, as the transient nature of Mr. Ulbricht's stay at each facility along the way meant that while he was in transit he was confined in Special Housing Units and was unable to avail himself of any of the ordinary amenities otherwise accessible to inmates at each facility.

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In *Pepper v. United States*, 562 U.S. 476, 131 S. Ct. 1229 (2011), the Court *twice* emphasized that a sentencing judge assumes "an overarching duty under § 3553(a) to 'impose a sentence sufficient, but not greater than necessary' to comply with the sentencing purposes set forth in § 3553(a)(2)." *Id.*, at 1242. *See also United States v. Dorvee*, 604 F.3d 84, 93 (2d Cir. 2010) ("[u]nder §3553(a)'s 'parsimony clause,' it is the sentencing court's duty to 'impose a sentence sufficient, but not greater than necessary to comply with the specific purposes set forth' at 18 U.S.C. §3553(a)(2)"), *quoting United States v. Samas,* 561 F.3d 108, 110 (2d Cir. 2009).

As the Second Circuit explained in *Dorvee*,

> [e]ven where a district court has properly calculated the Guidelines, it may not presume that a Guidelines sentence is reasonable for any particular defendant, and accordingly, must conduct its own independent review of the §3553(a) sentencing factors. *See* [*United States v.*] *Cavera,* 550 F.3d [180,]189 [(2d Cir. 2008) (*en banc*)].

604 F.3d at 93. *See also Pepper*, 562 U.S. at ___, 131 S. Ct. at 1244-45 (statute – 18 U.S.C. §3742(g)(2) – precluding consideration, at re-sentencing, of post-sentence rehabilitation was invalid because it had the effect of making the Guidelines mandatory in "an entire set of cases").

Thus, as the Supreme Court declared in *Nelson v. United States*, 550 U.S. 350 (2009), "[t]he Guidelines are not only *not mandatory* on sentencing courts; they are also not to be *presumed* reasonable." *Id.*, at 351 (emphasis in original).[3] *See also Dorvee*, 604 F.3d at 93 ("[i]n conducting this review [of the §3553(a) sentencing factors], a district court needs to be mindful of the fact that it is 'emphatically clear' that the 'Guidelines are guidelines – that is, they are truly advisory'"), *quoting Cavera,* 550 F.3d at 189.

Indeed, in *Pepper*, Justice Sotomayor again hearkened back to *Koon v. United States*, 518 U.S. 81 (1996) – as Justice Stevens had in *Rita v. United States*, 551 U.S. 338, 364 (2007) (Stevens, J., *concurring*) – repeating that

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[3] While the Supreme Court's ruling in *Rita v. United States*, 551 U.S. 338 (2007), established that a within-Guidelines sentence can be presumptively reasonable, *id.* at 347, that presumption is restricted to appellate review and "the sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply." *Id.* at 351 (*citing United States v. Booker*, 543 U.S. 220, 259-60 (2005)). *See also Nelson*, 550 U.S. at 351.

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> "[i]t has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue."

562 U.S. at ___, 131 S. Ct. at 1239-40, *quoting Koon*, 518 U.S. at 113.

Therefore, while sentencing judges must still consider the Guidelines, *see* 18 U.S.C. §3553(a)(4), nothing in the statute provides any reason to treat that calculation as more controlling of the final sentencing decision than any of the other factors a court must consider under §3553(a) as a whole. *See United States v. Menyweather*, 431 F.3d 692, 701 (9th Cir. 2005); *United States v. Lake*, 419 F.3d 111, 114 (2d Cir. 2005), *explaining United States v. Crosby*, 397 F.3d 103, 111-13 (2d Cir. 2005).

Also, as Justice Scalia noted in his dissent from the "remedial" opinion in *United States v. Booker,* 543 U.S. 220 (2005):

> [t]he statute provides no order of priority among all those factors, but since the three just mentioned [§§ 3553(a)(2)(A), (B) & (C)] are the fundamental criteria governing penology, the statute – absent the mandate of § 3553(b)(1) – authorizes the judge to apply his own perceptions of just punishment, deterrence, and protection of the public even when these differ from the perceptions of the Commission members who drew up the Guidelines.

543 U.S. at 304-305 (Scalia, J., *dissenting in part*).

Moreover, the Supreme Court has been vigilant in ensuring that the Guidelines are genuinely advisory, and not merely a default sentence ratified by appellate courts by rote. For example, in *Nelson*, 550 U.S. at 350, the Court reiterated that "district judges, in considering how the various statutory sentencing factors apply to an individual defendant 'may not presume that the Guidelines range is reasonable.'" 550 U.S. at 351, *quoting Gall v. United States*, 552 U.S. 38, 50 (2007); *see also id.* ("[o]ur cases do not allow a sentencing court to presume that a sentence within the applicable Guidelines range is reasonable").

The broad discretion afforded district courts to determine a sentence also conforms with 18 U.S.C. § 3661, which provides that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate

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sentence." *See also United States v. Murillo*, 902 F.2d 1169, 1172 (5th Cir. 1990); *Jones*, 531 F.3d at 172, n. 6.

In fact, in *Pepper*, the Court cited §3661 as an important means of achieving just sentences: "[p]ermitting sentencing courts to consider the widest possible breadth of information about a defendant 'ensures that the punishment will suit not merely the offense but the individual defendant.'" 562 U.S. at___, 131 S. Ct. at 1240, *quoting Wasman v. United States,* 468 U.S. 559, 564 (1984).[4]

As the Supreme Court directed in *Gall*, 552 U.S. at 49, "after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the §3553(a) factors to determine whether they support the sentence requested by a party."

Thus, here, in light of the analysis and application of the §3553(a) factors, the Court possesses sufficient discretion to impose a sentence below the Guidelines. A sentence premised upon analysis of the Guidelines exclusively, and an implicit but unmistakable presumption that the Guidelines, and *only* the Guidelines, prescribe a reasonable sentence, is in irreconcilable conflict with the Supreme Court's and Second Circuit's direction manifested in the series of cases discussed **ante**. Accordingly, the sentencing factors in §3553(a) provide the proper guidepost for determining for Mr. Ulbricht a sentence "sufficient, but not greater than necessary" to achieve the objectives of sentencing.

II. *Application of the §3553(a) Factors Also Compels a Sentence for Mr. Ulbricht Substantially Below His Applicable Sentencing Guidelines Range*

As discussed below, in applying to Mr. Ulbricht both §3553(a)'s mandate that a sentence be "sufficient, but not greater than necessary, to comply with the purposes of sentencing set forth

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[4] Indeed, the Court's opinion in *Pepper* opened with the following statement:

> [t]his Court has long recognized that sentencing judges "exercise a wide discretion" in the types of evidence they may consider when imposing sentence and that "[h]ighly relevant-if not essential-to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics."

562 U.S. at___, 131 S. Ct. at 1235, *quoting Williams v. New York,* 337 U.S. 241, 246-247 (1949).

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in" §3553(a)(2), and the sentencing factors set forth in §3553(a)(1)-(7), it is respectfully submitted that a sentence substantially below the applicable Guidelines range is appropriate.[5]

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[5] The sentencing factors enumerated in §3553(a) are:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) need for the sentence imposed –

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for –

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines [. . .];

(5) any pertinent policy statement [. . .];

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

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In considering those prescribed sentencing factors and identified purposes of sentencing,[6] several aspects of Mr. Ulbricht's circumstances are relevant. Either independently or in combination, they amply justify a sentence far below the Guidelines range.

A. ***Mr. Ulbricht's Personal History, Background, and Characteristics***

Mr. Ulbricht, now 31 years old, was born and raised in Austin, Texas, by his parents Lyn and Kirk Ulbricht. *See* PSR, at ¶ 130. He grew up in a loving and supportive environment, along with his sister, Cally, 35, who currently resides in Sydney, Australia, and his half-brother Travis, who lives in Sacramento, California. *Id.*

Mr. Ulbricht excelled in school, but also enjoyed nature and the outdoors, even becoming an Eagle Scout during his teen years. *Id.*, at ¶ 134. Upon graduating high school, Mr. Ulbricht relocated to Dallas, where he attended the University of Texas on a full academic scholarship. *Id.*, at 138. He graduated in 2006, with a Bachelor's of Science degree in physics, and proceeded to complete a Master's Degree in material sciences at Penn State University, in 2009, specializing in the subject matters of photovoltaic cells and crystallography. *Id.*

Although Mr. Ulbricht showed considerable promise in the field of physics and his professor had asked Mr. Ulbricht to accompany him to Cornell University, where Mr. Ulbricht had been offered a full scholarship to pursue a PhD, Mr. Ulbricht declined that opportunity in order to return to his home town of Austin and pursue more entrepreneurial and charitable endeavors. Most notably, Mr. Ulbricht became the CEO and manager of Good Wagon Books, a company he operated from the end of 2009 until early 2011, and which solicited book donations, and upon resale donated 10% of all profits to charity. *Id.*, at ¶ 140. At approximately that same

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[6] Section 3553(a)(2) lists the following purposes of sentencing:

(2) the need for the sentence imposed –

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or correctional treatment in the most effective manner.

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time, Mr. Ulbricht created the Silk Road website, which led to his involvement in the instant case.

As set forth below, and demonstrated by the 97 letters submitted on Mr. Ulbricht's behalf and appended hereto as Exhibits, Mr. Ulbricht is an individual who possesses a multitude of exemplary traits that have had a positive impact on his family, friends, professional colleagues, even acquaintances, and the world at large. That, of course, is juxtaposed against the offenses for which he has been convicted – convictions of which those who have submitted letters acknowledge and are well aware.

Notwithstanding those offenses, those who have written on Mr. Ulbricht's behalf have not abandoned him, but instead have rallied to support him because, like all humans, Mr. Ulbricht is a composite of many characteristics – some perhaps even irreconcilable – and which, in his case, those who have written believe on balance are positive, can contribute to society in the future, and should not be forfeited to a lifetime in prison – not only for his sake, but for the sake of the promise they see in Mr. Ulbricht as a positive force in the world.

The measure of a person, even a convicted defendant, is the totality of his conduct and interaction with the world. As detailed below, the 97 letters are unanimous in their position that if Mr. Ulbricht is released after serving a sufficient term of imprisonment, he has a unique set of skills and traits that will enable him to become a valuable asset to his community.

1. *Mr. Ulbricht Is Extraordinarily Devoted to His Family, to Which He Has Maintained Close Ties Despite His Incarceration and Conviction*

Pursuant to §3553(a), family ties are a relevant and important factor in determining an appropriate sentence. *See*, *e.g.*, *United States v. Nellum*, ___ F. Supp.2d ___, 2005 WL 300073, at *4 (N.D. Ind. 2005) ("under §3553(a), the history and characteristics of the defendant, including his family ties, are pertinent to crafting an appropriate sentence"). As the letters note by acclamation, Mr. Ulbricht is "deeply committed" to his family, which remains in close contact with him, even during the 20 months he has been incarcerated. *See, e.g.,* Letter of Maureen McNamara, attached hereto as Exhibit 2, at Letter 40.

In addition, since Mr. Ulbricht's arrest and imprisonment, his parents have relocated from Austin, Texas, to New York State to be closer to their son, and Mr. Ulbricht has received multiple visits from his sister (who has flown in twice from Australia to visit him and to attend his trial), his half-brother, Travis, and his aunts, uncles and cousins, who reside all over the country and unwaveringly support and care for Mr. Ulbricht.

Indeed, the overwhelming majority of the letters on Mr. Ulbricht's behalf, whether from

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family, colleagues, friends, or neighbors, refer to the extremely strong bond the Ulbrichts share, including "the family's close ties to one another and the extended family as well." *See* Letter of Gail Gibbons, attached hereto as Exhibit 2, at Letter 54.[7]

As Kelly Payne, "who first met Ross in 1984 when [she] became friends with his sister, Cally" explains in her letter,

> [i]t was through this friendship that I came to know Ross and both Lyn and Kirk as well. Anyone who knows the Ulbricht family knows that it is impossible to know one of them without knowing them all. They are an extremely close-knit family who spent their time together more than apart and who are deeply connected to one another. . . It is my experience of Ross that he is a gentle and kind man who loves his family deeply.

See Letter of Kelly Payne, attached hereto as Exhibit 2, at Letter 72.

Likewise, Mary Alice Spina, who is based in Costa Rica, where Mr. Ulbricht's parents operate a business, writes that the Ulbrichts "are a close and loving family, sharing vacations as well as a homelife. . . Over the years I have observed Ross as an upstanding individual and a dedicated son. . . He always remains close with his family. . . . Their love and commitment to one another is admirable." *See* Letter of Mary Alice Spina, attached hereto as Exhibit 2, at Letter 43.

Another letter, from Loanne Snavely, the mother of Mr. Ulbricht's friends Joe and Elody Gyekis, also refers to the strong connection Mr. Ulbricht has to his family. Ms. Snavely remarks in her letter that "[a]s a mother, I . . . appreciated [Ross's] close family relationships. He often spoke fondly about his family while he was far from them in Pennsylvania. At every opportunity he participated in family activities, and made special efforts to see them." *See* Letter of Loanne Snavely, attached hereto as Exhibit 2, at Letter 77.

Karen Lasher, who has known Mr. Ulbricht since 2005, is best friends with Mr. Ulbricht's sister Cally, and "joined [Ross] and his family in San Francisco two weeks before Ross was arrested in October, 2013," remarks in her letter that "I have spent time with Ross with his family and have witnessed first hand the love and devotion that he shows to his family and friends." *See* Letter of Karen Lasher, attached hereto as Exhibit 2, at Letter 20.

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[7] Attached as Exhibit 4 is a group of photographs depicting Mr. Ulbricht and a number of the persons who have written letters on his behalf (and others).

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Accordingly, throughout Mr. Ulbricht's incarceration, and if released, he will have a devoted and firmly rooted support network including his parents, sister, and brother, as well as aunts, uncles, and cousins, to rely on in rejoining society in a productive manner.

2. *Mr. Ulbricht Is a Loyal and Dependable Friend*

Of the 97 letters written to the Court on Mr. Ulbricht's behalf, an impressive number are from Mr. Ulbricht's friends, many of whom have known him for decades. However, it is clear from the letters' sincerity and effusiveness regarding Mr. Ulbricht's character and capacity as a friend in letters from friends both recent and long-term, that Mr. Ulbricht has made lifelong friends and left a lasting and positive impression on people at every juncture of his life.

For example, Susie Jauregui, who considers Mr. Ulbricht to be "like another brother to [her]," discusses Mr. Ulbricht's friendship with Ms. Jauregui's brother, Mark. *See* Letter of Susie Jauregui, attached hereto as Exhibit 2, at Letter 31. Ms. Jauregui writes that she "went to grade school with Ross Ulbricht and have known him since my middle school days. He has been my brother Mark's best friend for as long as I can remember. . . I always envied my brother Mark for having such a close, trusting, and loyal friend growing up." *Id.*

Mr. Ulbricht's cousin, Sean Becket, who considers Mr. Ulbricht to be "a close friend and someone [he] greatly admires," notes of Mr. Ulbricht's character and nature as a friend,

> Ross deeply cares about his fellow human beings. He is the kind of guy who remembers your name when you meet him, and he doesn't have to be reminded. He'll ask you questions about yourself, not to be polite, but because he's genuinely interested. Ross has a positive influence on everyone he meets. He is always helpful, giving and ready to contribute to people, even in little ways. He's the friend you can count on for a ride when your car breaks down, and will feed your cat when you're out of town.

See Letter of Sean Becket, attached hereto as Exhibit 2, at Letter 33.

Casey Nelson, a friend of Mr. Ulbricht's for more than a decade, since high school, also summarizes Mr. Ulbricht's essence as a friend, in her letter, explaining, "Ross has always been a kind and generous friend – he was a person who you could call upon if you needed to talk or reflect on any of life's big questions, or if you just wanted playful company and to have some fun. He's a loyal person, greatly respected by his peers." *See* Letter of Casey Nelson, attached hereto as Exhibit 2, at Letter 49. Ms. Nelson concludes, "I have admired his compassion and

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acceptance toward his friends for as long as I have known him." *Id.*

Mr. Ulbricht's childhood friend, Rene Pinnell "who has known Ross since childhood and spent a year living with him as an adult," sheds additional light on Mr. Ulbricht's compassion in his friendships in his letter:

> I consider [Ross] to be one of my oldest and closest friends. Growing up together I was always impressed by his kindness and gentle nature. . . . A few years ago Ross moved across the country [to San Francisco] to help me start a company that scanned family photos. I was also going through a painful break up of an eight-year relationship. Ross not only helped me get my company on track but more importantly he helped me get my life back on track. . . . He is a good person who has so much to give and contribute. The world would be a much poorer place without him.

See Letter of Rene Pinnell, attached hereto as Exhibit 2, at Letter 48.

Mr. Pinnell's mother, who "fe[lt] as though Ross were a part of [her] family" shared similar memories of her son's "cherished friend," noting that "[Ross] has a big heart and a tender loving nature and . . . is the kind of man who was there when anyone needed him. He literally would drop what he was doing to come to your aid." *See* Letter of Suzi Stern, attached hereto as Exhibit 2, at Letter 73.

Ultimately, as Michael Haney, the father of one of Mr. Ulbricht's closest friends remarked, "[Ross] cares deeply for his friends, and they for him." *See* Letter of Michael J. Haney, attached hereto as Exhibit 2, at Letter 67.

3. *Mr. Ulbricht Has Continuously and Generously Contributed His Time and Energy to Charitable Endeavors*

In addition to Mr. Ulbricht's stewardship of Good Wagon Books, which many of the letter writers remember, and which had a significant charitable component (Mr. Ulbricht donated 10% of all profits from book sales to charity, and also books to prisons), a number of letters provide insight into other charitable endeavors which Mr. Ulbricht has vigorously pursued throughout his life.

For instance, as a youth, Mr. Ulbricht was a Boy Scout and later became an Eagle Scout. Brandon Schaffner, who met Mr. Ulbricht more than 17 years ago through Mr. Ulbricht's sister, recalled that "Ross was very involved with his Boy Scout troop and through that gave back to

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the community over the years." *See* Letter of Brandon Schaffner, attached hereto as Exhibit 2, at Letter 50. Long-time family friend Karen Steib Arnold, who testified at Mr. Ulbricht's trial as a character witness, also recalls that Mr. Ulbricht "participated enthusiastically in the Boy Scouts, taking part in numerous community service projects on his way to becoming an Eagle Scout." *See* Letter of Karen Steib Arnold, attached hereto as Exhibit 2, at Letter 51.

Shiloh Travis relates an anecdote about Mr. Ulbricht's gracious contribution of his time to an event Mr. Shiloh had organized and was seeking volunteers to help run, explaining

> I first met Ross in the summer of 2010, when I was putting together a team of volunteers to put on an event designed to enrich and empower the lives of attendees. I called him up from a recommendation of another friend, not knowing who he was, and asked if he would consider volunteering his time for some of the event. . . . He blew me away by not only saying yes to my request, but offered to volunteer full time for the entire 5 day event. Of the 16 people that volunteered in the event, he was the only one that was there the whole time. . . . Ross taught me to look toward the service of others to find peace and happiness,. It will be a huge loss for our society if his positive and peaceful contribution is taken away.

See Letter of Shiloh Travis, attached hereto as Exhibit 2, at Letter 63.

Marcia Brady Yiapan, a former teacher and filmmaker who has known Mr. Ulbricht and his family for many years, worked alongside Mr. Ulbricht on another charitable venture, Well Aware. According to Ms. Yiapan's letter, "[a]n example of Ross's commitment to helping people is the time and effort he spent in Austin, Texas helping to establish the non-profit water charity Well Aware. This charitable effort, which I also worked on, raised money to dig wells for poor villagers in Kenya." *See* Letter of Marcia Brady Yiapan, attached hereto as Exhibit 2, at Letter 82.

In making these contributions, Mr. Ulbricht devoted his time for charity's sake alone, not for any personal gain or reward, or in anticipation of sentencing. As his friend Brandon Anderson attested,

> [w]hen [Ross] was in college he volunteered at charities. Not for resume building or to brag. He basically never mentioned it except for when it resulted in scheduling conflicts. His volunteer work was because he really wanted to help people. Ross also regularly

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> donated to charities in college, despite making a very minimal salary working in a lab.

See Letter of Brandon Anderson, attached hereto as Exhibit 2, at Letter 64.

Indeed, as Mr. Anderson concludes, "[Ross's] humility and desire to do good are a core value of his that I do not feel has diminished." *Id.*

4. *Mr. Ulbricht's Remarkable Thoughtfulness and Compassion for Others*

Of the many admirable traits Mr. Ulbricht possesses, "an abundance of compassion" was one that many of the letter writers recall. *See*, *e.g.*, Letter of Logan Becket, attached hereto as Exhibit 2, at Letter 10. *See also* Letter of Clay Cook, attached hereto as Exhibit 2, at Letter 56 ("I have seen [Ross's] caring and compassionate demeanor many times.[.] . . . He was especially protective of his grandparents, elderly friends and acquaintances"); Letter of Robert Gold, attached hereto as Exhibit 2, at Letter 75 ("[Ross] is someone who would go out of his way to support a new acquaintance, not just his close friends").

The recurring mention of this particular characteristic in letters from a widely disparate group of people reflects that, as attested to by Mr. Ulbricht's sister, Cally, "Ross's qualities of empathy and compassion have extended to people throughout his life." *See* Letter of Cally Ulbricht, attached hereto as Exhibit 2, at Letter 3. As Cally elaborates,

> [Ross] has always accepted everyone, no matter their race, station in life or status. . . . That is because Ross sees people for who they are, not what's on the outside. He cares about people and wants to help improve their lives, be it through music, philosophy discussions or acts of kindness. Even as a child Ross especially felt for the underdogs, the kids who did not have many friends. His sympathetic nature reached out to them, so they felt wanted and part of the group. This continued into adulthood.

Id.

Dr. Joel R. Meyerson, a close friend of Mr. Ulbricht's from elementary school through college, had similar memories of Mr. Ulbricht:

> [i]n thinking back on our childhood, one particularly salient memory of [Ross] was as someone who would repeatedly display friendship to many in our school who were perceived as nerdy,

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> weird or otherwise unpopular. I always thought this was admirable given the often harsh social conditions among high schoolers. This is a small and impressionistic recollection, but it has stayed in my mind for over 10 years and I think it's emblematic of the kindness that Ross displays so effortlessly.

See Letter of Dr. Joel R. Meyerson, attached hereto as Exhibit 2, at Letter 26. *See also* Letter of Lindsay Gunter Weeks, attached hereto as Exhibit 2, at Letter 84 ("Ross is amazing in the way he embraces life: loving nature for both the science and spirit, accepting all people despite the social implications, and keeping his word even if it costs him").

Mr. Ulbricht's father, Kirk, provides in his letter a particularly moving account of an incident during Mr. Ulbricht's time as an Eagle Scout which demonstrates Mr. Ulbricht's compassionate nature. He recalls,

> [t]here was an incident while he was a boy scout which illuminates Ross's character. One of the kids in the troop was almost completely blind. . . . There were a few kids who were always helping out as his companion. Ross was one of them, even though Ross was younger. When our troop went to Philmont Scout Ranch for summer camp in the Pecos Wilderness, the blind boy, I'll call him Bill, went with us. . . . The boys would rotate in and out of being Bill's trail companion several times a day. It meant leaving early, arriving late, and hiking at Bill's slow pace instead of hiking with the leaders of the main group, but there was a group of boys who did it. Ross was one of them. Bill never made it through a day without falling at least twice, but he never gave up. . . As we were walking into base camp on the sixth day, I walked a few hundred yards in front of Bill, so he couldn't hear me kicking the loose rocks off the trail in front of him. Ross joined me, and we walked along kicking rocks aside with tears of pride and joy falling down our faces. Bill was going to complete the hike with the rest of his buddies. . . . When the whole group stood and roared out their approval of Bill's accomplishment there wasn't a dry eye in the crowd. Ross never got or sought any particular praise for his part in Bill's triumph, but that's the kind of guy he is, compassionate and selfless.

See Letter of Kirk Ulbricht, attached hereto as Exhibit 2, at Letter 2.

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Mr. Ulbricht's aunt, Leigh LaCava, mentions in her letter that another "example of Ross' compassion and caring occurred a few years ago when [their] family had a reunion in Cape Cod, [Massachusetts]." *See* Letter of Leigh LaCava, attached hereto as Exhibit 2, at Letter 9. As Ms. LaCava recounts,

> I flew in from California with my daughter Ava, who at the time was 9 years old, much younger than her adult cousins. The age difference caused her to feel left out, so Ava was spending most of her time alone in her room not participating with the others. Ross became aware of this and went out of his way to spend time with Ava and help her feel comfortable. He made it a point to get to know her. He took her sailing and swimming and Ava was thrilled to have the attention. It warmed my heart to see Ross take this time with his much younger cousin and make the extra effort while her other cousins were too busy. Ross is known for his big heart, and this is just one example. Not all young men are sensitive enough to take the time to make their younger cousin feel part of the group. It was wonderful to see and just one of many times Ross has demonstrated sensitivity and compassion toward others.

Id.

Mr. Ulbricht's step-cousin, Catherine Becket recalls yet another family occasion during which Mr. Ulbricht demonstrated his extreme thoughtfulness and compassion for others. As she explains,

> [t]he last time I saw Ross was at my brother's wedding in 2012. There was a dinner held for out-of-towners and most of the guests were in their 20s and 30s. My mother and step-father, both in their 70s, were a bit out of their element. . . . I had a look around for my parents, wanting to make sure they were well situated. I needn't have worried, however, because there was Ross, having a chat with them. I believe they were discussing World War II, one of my step-father's favorite topics. Ross, a handsome and affable young man who could have been chatting with any of the cute girls in attendance, chose to take the time to join my parents who had been sitting by themselves. Being thoughtful comes naturally to him.

See Letter of Catharine Becket, attached hereto as Exhibit 2, at Letter 19. *See also* Letter of Suzanne Howard, attached hereto as Exhibit 2, at Letter 74 ("[t]he last time I saw Ross in 2013, I

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was struck by his demeanor and his eye contact as we spoke. . . . As a senior citizen I am invisible to many younger people, but the interest Ross demonstrated during our visit speaks volumes about his character").

Other letter writers recount a more recent story reflective of Mr. Ulbricht's compassionate nature, from his time living in San Francisco just prior to his arrest. As told by his aunt, Ann Becket,

> [o]ne of Ross's friends told me how, once, while out walking they passed a woman selling flowers. Ross stopped and bought a flower and then turned around and gave it to the flower seller. Confused, his friend asked Ross why he did such a thing. Ross replied, "People are always buying flowers *from* her, but I wonder how often someone buys a flower *for* her." That sums up perfectly the essence of my nephew.

See Letter of Ann Becket, attached hereto as Exhibit 2, at Letter 6. *See also* Letter of Lyn Ulbricht, attached hereto as Exhibit 2, at Letter 1.

Indeed, as JoJo Marion, a long time friend of Mr. Ulbricht's and also the younger brother of one of Mr. Ulbricht's close friends, Noah Marion, writes in his letter, "Ross' qualities of empathy, compassion and kindness, [are] qualities he is widely known for and that inspire loyalty among people who know him." *See* Letter of JoJo Marion, attached hereto as Exhibit 2, at Letter 87.

5. *Mr. Ulbricht Is Well-Known to Be Kind, Peaceful and Gentle In Nature*

As Mr. Ulbricht's aunt, Gale LaCava, stated in her letter, "[o]ne would be hard-pressed to find a kinder, more gentle soul that Ross. Although Ross has now been convicted of a crime, my faith in him remains as strong as when I pledged my life savings toward his bail." *See* Letter of Gale LaCava, attached hereto as Exhibit 2, at Letter 7.

Likewise, his aunt Kim LaCava, attests, "I have shared countless personal moments with Ross as well as seen him interact with others through all stages of his life. He has always been an exceptionally sweet, thoughtful and peaceful person. I can't remember seeing him lose his temper." *See* Letter of Kim LaCava, attached hereto as Exhibit 2, at Letter 5. *See also* Letter of Michael Harrison, attached hereto as Exhibit 2, at Letter 36 ("Over the years I encountered Ross on many occasions. . . . In that time I observed him to be very even tempered, with an upbeat and positive outlook. I cannot recall a single occasion where I saw him angry or annoyed"); Letter of Kim Norman, attached hereto as Exhibit 2, at Letter 38 ("[a]ll through his life I've

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known Ross to be kind, courteous, peaceful and respectful"); Letter of Andy Pruter, attached hereto as Exhibit 2, at Letter 80 ("[a]lways polite and generally reserved, Ross . . . is a peaceful person and [it] would be hard to imagine him to be a threat to anybody").

Still others who know Mr. Ulbricht well, feel the same way. Rosy Hanby, a "long time friend of the Ulbricht family" who has "known Ross since he was just a little boy" commented in her letter, "[t]hroughout his life Ross has been caring, sweet and thoughtful. His relationship with his parents, peers and those around him is a testament to that. I have always known him to have a positive outlook and a peaceful disposition." *See* Letter of Rosy Hanby, attached hereto as Exhibit 2, at Letter 21.

Similarly, Sara Dunn, whose friendship with the Ulbricht family "goes way back to the days [they] shared a South Austin babysitting co-op,"states in her letter, "[o]ver the years it was a joy to watch Ross mature and grow. He was always a bright, conscientious person, polite and gentle." *See* Letter of Sara Dunn, attached hereto as Exhibit 2, at Letter 35.

Daniel Davis, who testified at Mr. Ulbricht's trial and "consider[s] [Ross] to be one of [his] oldest and closest friends," remarked in his letter, "[i]n that time I have known [Ross] to be a kind, forthright, generous and caring person. . . . As a consistently peaceful and non-violent person, I feel that Ross does not pose a threat to the public, and that the likelihood of his committing any criminal acts in the future is nonexistent." *See* Letter of Daniel Davis, attached hereto as Exhibit 2, at Letter 8.

Joe Gyekis, a good friend of Mr. Ulbricht's since they were graduate students at Penn State University, remarked in his letter that "among [his] friends, [Ross] was one of the ones that [his] wife liked best, mostly because of his general kind and respectful personality" as exemplified by a couple of anecdotes that Mr. Gyekis recalled in his letter, and which his wife "remembers to this day." *See* Letter of Joe Gyekis, attached hereto as Exhibit 2, at Letter 27.

In particular, Mr. Gyekis referenced an occasion on which "[his] wife rather shyly invited people from [their] group to come to her singing recital, Ross was the only one to show up." *Id.* On another occasion, when Mrs. Gyekis's parents were in town, "despite the language barrier, [Ross] very kindly invited them to his place and treated them in the polite and thoughtful way that he does to everyone else [they] saw [Ross] around." *Id.*

6. *Mr. Ulbricht's Potential to Contribute to Society, Including His Support and Encouragement to Others to Make Positive Contributions to Society*

Mr. Ulbricht's impressive academic and scientific accomplishments in college and graduate school are well-known among his family and friends. In addition, nearly all who have

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written letters on his behalf have also articulated a strong belief in Ross's ability to use his intelligence, in conjunction with his compassionate, generous nature, and inherent desire to improve on peoples lives, to contribute positively to society.

a. ***Mr. Ulbricht's Potential for Positive Contributions to Society***

As Mr. Ulbricht's father remarks in his letter, "[d]uring his college years, Ross had developed a strong desire to use his talents to make a positive difference in the world [and] . . . rightly felt that he had the potential to do something good for mankind." *See* Kirk Ulbricht Letter (Exhibit 2, at Letter 2). Mr. Ulbricht's father, in turn, regards his son as "a young idealistic man who was driven to succeed and to do good work" and who, "in his early twenties, . . . was either in college doing theoretical work for the betterment of mankind or working a book-selling business with a significant charitable component." *Id.* Mr. Ulbricht's father also notes "the potential that Ross still has to contribute to society" and to "be a contributor to the benefit of us all" explaining "that the illegal aspects of Ross' Silk Road experiment represents a complete departure from the trajectory of his life," and adding that "[h]is desire to contribute still exists" but "[i]t is tempered with a respect for the law that this experience has added to his character." *Id.*

Kirk Ulbricht's perception of his son as a gifted young man with tremendous potential to benefit society is shared by many of his lifelong friends, relatives, his former business partner, and those others that know him best.

For instance, Mr. Ulbricht's close friend since high school, Curtis Rodgers, notes "I think Ross' experience as a material science researcher, and entrepreneur with his Good Wagon books venture illustrate his capacity to have a positive impact on our society." *See* Letter of Curtis Rodgers, attached hereto as Exhibit 2, at Letter 17.

Mr. Ulbricht's business partner at Good Wagon Books, Donny Palmertree, writes in his letter,

> [w]e were friends and business partners, but we never argued, and never had any disagreements that I can remember. This is one of the best things about Ross – he is as friendly, good-natured and easy going as a person can be. . . . I ask that he will have as short a sentence as possible so that he can use his infectious personality to do more good in the world, like he did with me at Good Wagon Books.

See Letter of Donny Palmertree, attached hereto as Exhibit 2, at Letter 32. *See also* Letter of

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Robert Reisinger, attached hereto as Exhibit 2, at Letter 55 ("I have known Ross through his family, as a friend for about seven years. I also had a business association with him while he was in the book-selling trade. . . . [E]very person [I spoke to about their experience with Ross and his business] gave me nothing but confidence about Ross's professional dealings and ethics. This was also corroborated by my own experience").

J'aime Mitchell, a friend of Mr. Ulbricht's since high school, attributes "the positive impact that people like Ross can have on their communities" to "the community servitude of an Eagle Scout, and the peaceful demeanor of someone who loves the outdoors" which "are all characteristics that bring benefits to this world." *See* Letter of J'aime Mitchell, attached hereto as Exhibit 2, at Letter 61.

Vicky Cheevers, who has known Mr. Ulbricht since January 2012, remarks in her letter that, "[h]e is highly intelligent, often using intelligence to help people and society in general, as demonstrated by his scientific ability." *See* Letter of Vicky Cheevers, attached hereto as Exhibit 2, at Letter 12.

Dr. Meyerson, a research scientist and friend of Mr. Ulbricht's since elementary school, comments in his letter that

> in the scientific community I see firsthand on a daily basis the incredible feats that can be accomplished when passion, creativity and technical abilities combine in an individual. This is an exceedingly rare combination of traits that I know Ross happens to possess. . . . It would be a loss for our country if someone like Ross were unable to have the chance to contribute positively to the many challenges we face now, and will in the years to come.

See Dr. Joel R. Meyerson Letter (Exhibit 2, at Letter 26). *See also* Letter of Martha and Herb Ulbricht, attached hereto as Exhibit 2, at Letter 59 ("Ross could use some of his inherited traits to benefit the community with what time he has left"); Letter of Madeline Norman, attached hereto as Exhibit 2, at Letter 37 ("I have known Ross Ulbricht for almost 18 years. . . His intellect is inspiring. He is an amazing person with so much potential. This . . . should not go to waste"); Letter of Melanie C. Norman, attached hereto as Exhibit 2, at Letter 39 ("[i]t would be a shame to waste such a brilliant mind and heartfelt being"); Letter of Douglas and Valencia Mills, attached hereto as Exhibit 2, at Letter 58 ("[w]e believe [Ross] still has the capacity to do something worthwhile for others. Our great fear is that his life will be wasted"); Letter of Rick Hardy, attached hereto as Exhibit 2, at Letter 83 ("I feel strongly that [Mr. Ulbricht] should serve as an asset to our nation and not be simply warehoused. . .. The possibilities are unlimited and I feel Mr. Ulbricht can truly be a contributor when given the chance to work toward the good,

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providing positive and pragmatic solutions to contemporary problems").

John Charles Miller, who has known Mr. Ulbricht and his family since the 1990s, states in his letter, "I believe that with a future out of prison, Ross could achieve many positive actions and deeds for society in general, and specifically his community." *See* Letter of John Charles Miller, attached hereto as Exhibit 2, at Letter 13. *See also* Letter of Lyn Pierce, attached hereto as Exhibit 2, at Letter 45 ("I believe in the depths of my heart that Ross is capable of achieving great good in the world"); Letter of Noah Marion, attached hereto as Exhibit 2, at Letter 46 ("[a]s a person who has been convicted of two crimes, I know personally what it means to be able to move past terrible realities and make a truly altruistic impact on the world. . . What it comes down to is this: Ross has the energy . . . to bring about positive change"); Letter of Linda D. Bailey, attached hereto as Exhibit 2, at Letter 52 ("[Ross is] a bright and personable young man who has a desire to do positive work for society"); Letter of Ariana Stern-Luna, attached hereto as Exhibit 2, at Letter 68 ("[n]ot only have I observed the positive impact that Ross has had among the individuals who he has personally encountered throughout the years, but I have always believed his positive impact would one day expand to benefit society as a whole"); Letter of Luis Jauregui, attached hereto as Exhibit 2, at Letter 79 ("Ross is an intellectual, a free spirit and guileless, with great potential to contribute in very positive ways to the people and world around him").

Jay Thomas, a friend of Mr. Ulbricht's since high school, believes that "Ross is the kind of person this world sorely needs more of. He is someone who can impact this world in a positive way." *See* Letter of Jay Thomas, attached hereto as Exhibit 2, at Letter 29. It is Mr. Thomas's "sincerest belief that when Ross is back in society again, he will use his compassion and talents to do good works and be a productive member of this community." *Id. See also* Letter of Timothy A. O'Leary, attached hereto as Exhibit 2, at Letter 60 ("I believe that these criminal activities do not represent . . . the positive things that [Ross] would be capable of achieving both for himself and for society if he were to be spared a long sentence"); Letter of Michele Desloge, attached hereto as Exhibit 2, at Letter 65 ("[a] person such as Ross provides a positive impact on society. We need more people like him contributing ideas and taking action to improve our communities")

Windy Smith, who has known Mr. Ulbricht since 1988 when she was eight years old, and her family moved onto Mr. Ulbricht's street, too, is "positive [that] if [Ross] is spared a long sentence, society would benefit from the impact of his good workings." *See* Letter of Windy Smith, attached hereto as Exhibit 2, at Letter 34.

Mr. Ulbricht's uncle, Jeff Crandall, concurs in his letter: "Ross has a tremendous intellect and strong belief in his fellow man. Given his . . . freedom, Ross will contribute to the betterment [of] our world as few others could – I have no doubt." *See* Letter of Jeff Crandall,

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attached hereto as Exhibit 2, at Letter 15.

Rosalind Haney, the wife of one of Ross's closest friends, expresses a similar sentiment in her letter, asking the Court to grant Mr. Ulbricht "a second chance to use his intellect and kindness to make a positive impact on society[,]" and sharing her opinion that "of [her husband] Thomas' friends, Ross was always one of my favorites for his friendliness and desire to do something important and meaningful with his life." *See* Letter of Rosalind Haney, attached hereto as Exhibit 2, at Letter 24.

In that regard, George Reinke, who has known Mr. Ulbricht since August 2011, posits that "the time for Ross to understand the wrongfulness [of his offense conduct] must be a length that the constructive value Ross can being to society is not lost." *See* Letter of George Reinke, attached hereto as Exhibit 2, at Letter 88. Mr. Reinke bases this conclusion on a personal connection, as his own "great grandfather was sentenced to death in 1828 for horse theft, then was not only re-sentenced to life . . . but pardoned . . . [and] [h]e became a significant contributor to the development of Sydney[, Australia]." *Id.*

Indeed, Hannah Thornton, the wife of one of Mr. Ulbricht's close childhood friends, states in her letter, "I was friends with Ross when he began Good Wagon Books, the company he founded with the intention of donating 10% of all profits to charity. Ross was energized by this undertaking, excited by the idea that through his business he could make the lives of others better." *See* Letter of Hannah Thornton, attached hereto as Exhibit 2, at Letter 22.

An anecdote from Timothy A. Losie, who met Mr. Ulbricht several years ago when the two were selected to participate in an event at which "you pitch your idea to a small group, and then you . . . spend the next 72 hours making the best ideas a reality," also evokes Mr. Ulbricht's enthusiasm when taking on new ventures. *See* Letter of Timothy A. Losie, attached hereto as Exhibit 2, at Letter 81. As Mr. Losie explains, "Ross's idea was one of the only ones I remember. . . . I remember Ross's idea because he was so passionate about it." *Id.*

Barbara Record Emmert-Schiller, who has "had the privilege of knowing Ross and his family since Ross and [her] son were in elementary school together," remarks in her letter that she knew Mr. Ulbricht "to be a young man busy collecting books for charitable purposes and improving solar efficiency. . . . Ross has always been adventurous and pioneering and has tried to contribute to the greater good." *See* Letter of Barbara Record Emmert-Schiller, attached hereto as Exhibit 2, at Letter 23.

Put simply by Mr. Ulbricht's cousin, Alex Becket, "I consider Ross one of those truly exceptional individuals who thinks about the greater good for all people." *See* Letter of Alex Becket, attached hereto as Exhibit 2, at Letter 18. *See also* Letter of Susie Kim, attached hereto

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as Exhibit 2, at Letter 85 ("I have never met a person who cares about the world and humanity as truly and pragmatically as Ross does").

b. ***Mr. Ulbricht's Inherent Ability and Desire to Have a Beneficial Impact On Society Have Been Manifested By His Positive and Voluntary Contributions to His Prison Community***

Even while incarcerated, Mr. Ulbricht's engine for contributing in positive fashion has been active. As Mr. Ulbricht's older brother, Travis, writes

> [w]hile it's hard to sum up a person's life, there is something I heard about Ross that really "fits" who he truly is. Ross started up a yoga group in jail, to help ease the stress of his fellow inmates, and of himself as well. . . . I believe Ross started the yoga group because it was a bit of good that he could do in his surroundings and for the people around him. That gesture of compassion is who my brother is. It is how he has been in most situations in his life. He is always looking for how he might improve the world and the lives of those around him, even if it's in a small way.

See Letter of Travis Ulbricht, attached hereto as part of Exhibit 2, at Letter 4.

Indeed, Mr. Ulbricht's mother, who has visited him many times during his incarceration at the MDC, and more recently the MCC, is well-aware of his day-to-day activities, and has interacted with prison staff on her visits, attests in her letter that

> [i]n prison Ross has been a great boon to his fellow inmates. Now at MCC, he's tutoring some of them in math and science. He tutored his cellmate for the GED in the evenings after trial. At MDC he led a physics class and a yoga class. His former cellmate (now released) wrote me to say what a positive influence Ross had been on him. An MDC guard took me aside and literally gushed about what a wonderful person Ross is and what an asset he was to the environment there.

See Letter of Lyn Ulbricht, attached hereto as Exhibit 2, at Letter 1.

Fellow inmates, too, have written letters regarding Ross's remarkable contributions to improving the prison community and individual prisoners's lives, and his good temperament while doing so. For example, Michael Satterfield, an electrical contractor, and formerly Mr.

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Ulbricht's cell mate at MDC, writes,

> [w]e shared a cell at MDC and spend 24 hours, 7 days a week [together] for several months. During that time Ross consistently exhibited a peaceful and positive demeanor. He spent his days sharing positive thoughts with the other inmates. Ross also encouraged them to find peaceful ways to resolve their differences. With the permission of detention staff, he also began teaching yoga and meditation to the general population, inviting anyone to join in. He was always respectful, compliant, and he had the foresight to understand and empathize with the difficult duties of the staff.

See Letter of Michael Satterfield, attached hereto as Exhibit 2, at Letter 97.

Davit Mirzoyan, "an inmate at MCC in the same unit as [Mr.] Ulbricht," and who has known him now for five months, states in his letter,

> Ross is generally interested in the welfare of others. He is well educated and gives freely of his time to those who wish to benefit from his knowledge. He has tutored students seeking their GED, two others who are working on bachelor degrees by correspondence, and me. When he was helping one prisoner with math in the common area, I mentioned that I wanted to learn physics some day. He heard and told me he'd be happy to tutor me. That same day, he lent me his physics text book and we had our first lesson. It has been challenging to absorb the material, but Ross helps me fill in the gaps and patiently explains the concepts to me. He is attentive and enthusiastic and makes it fun to learn. Every time we sit down for a lesson, I am eager to move forward and make productive use of my time in prison.

See Letter of David Mirzoyan, attached hereto as Exhibit 2, at Letter 90.

These sentiments echo the sentiments expressed by Mr. Ulbricht's friends who have known him for many years, including, for instance, Mr. Ulbricht's high school friend, Allison Cassel, who first met Mr. Ulbricht when they were both sixteen years old. She recalls "[h]e is so full of energy, life and love[.] . . . He is so intellectual, patient and articulate in explaining the complexities of this world." *See* Letter of Allison Cassel, attached hereto as Exhibit 2, at Letter 16.

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Another inmate, Scott A. Stammers, who invited Mr. Ulbricht to be his cell mate just weeks after Mr. Ulbricht's arrival at MCC, recounts that "when [Mr. Ulbricht] first came in, he struck me as a very calm and collected individual. I knew he was facing serious charges and going to trial, yet every night when he'd come back from court, I'd see him mingling with the other inmates, getting to know them, playing [table] tennis and just being at ease." *See* Letter of Scott A. Stammers, attached hereto as Exhibit 2, at Letter 91. Accordingly, Mr. Stammers explains, "[i]t's easy to get overwhelmed with grief and despair, but when I see Ross, [whose] situation is so much worse, and how he remains friendly and kind to me and the others in our unit, it gives me the strength to do the same. I know Ross would continue to set an example for how to be a strong and peaceful person if he were given his freedom back." *Id.*

As Mr. Ulbricht's sister, Cally, notes in her letter, "[e]ven in the lowest and worst situations, my brother focuses on the positive and aims to make the environment around him a better space." *See* Cally Ulbricht Letter (Exhibit 2, at Letter 3).

Likewise, Mr. Ulbricht's college friend for the past decade, Mae Rock-Shane, explains, "[Ross is] a smart person, a kind soul and one of those people you want to be around, because just having him in your life improves it. He has the same effect on his community, bringing energy and positive change wherever he goes." *See* Letter of Mae-Rock Shane, attached hereto as Exhibit 2, at Letter 25.

It is not surprising then that yet another letter writer, Debbie Tindle, an occupational therapist and friend of Mr. Ulbricht's for more than 13 years, reports in her letter that "[e]ven now, in these dire circumstances, Ross is teaching inmates how to treat their own back pain with 'tennis ball massage' . . . something he learned from [Ms. Tindle] many years ago." *See* Letter of Debbie Tindle, attached hereto as Exhibit 2, at Letter 41.

Put succinctly by his close friend Thomas Haney, "[t]he entire time I've known Ross he has been a positive and uplifting presence and influence on the people around him, and I'm sure he will continue to be so wherever he finds himself." *See* Letter of Thomas Haney, attached hereto as Exhibit 2, at Letter 11.

c. ***Mr. Ulbricht's Ability to Inspire and Encourage Others to Achieve Their Goals and Make Positive Contributions to Society***

Indeed, so many of Ross's close friends and relatives discuss his unique ability to inspire others to pursue and ultimately achieve their goals, even some who had doubted their own abilities to achieve personal success and happiness. As one friend from high school, Margeaux Paschall-Kolquist, attested "[Ross] has always been a very helpful individual who wants to share his knowledge to help others better than own lives." *See* Letter of Margeaux

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Paschall-Kolquist, attached hereto as Exhibit 2, at Letter 44.

Thus, even in high school, Mr. Ulbricht was guiding and encouraging others. As James McFarland, another friend from high school recalls, "[o]n numerous occasions his friendship and advice helped myself (and others) navigate difficult situations of high school social life." *See* Letter of James McFarland, attached hereto as Exhibit 2, at Letter 57.

As. Mr . Ulbricht developed, his drive to help and direct others in their personal, and professional, pursuits continued. Mr. Ulbricht's close friend since the third grade, Alden Schiller III, states in his letter, "Ross has lived his life being very conscientious of those around him. He took a personal interest in my well being and showed me that he deeply cared about my happiness and that I was flourishing in my environment." *See* Letter of Alden Schiller III, attached hereto as Exhibit 2, at Letter 47.

Similarly, Jonathan Rosenberg, a close friend of Mr. Ulbricht's since middle school, recalls that "[Ross] has always been willing to share his time with anyone who wanted to chat or needed help" and that "Ross [had] deeply affected [his] path in life." *See* Letter of Jonathan Rosenberg, attached hereto as Exhibit 2, at Letter 78. *See also* Letter of Carla Bacelli, attached hereto as Exhibit 2, at Letter 86 ("I remember confiding my feelings in Ross at different times and him giving me advice and just listening"). When during college, Mr. Rosenberg "was considering dropping out of school, Ross was embracing full acceptance of life and inspired [Mr. Rosenberg] to stick to a goal." *Id.* With Ross's encouragement, Mr. Rosenberg "ended up turning [his] grades around, took a bike tour around the USA and got a BS in Computer Science at UT Austin." *Id.*

Michael Policelli, "an aerospace propulsion engineer working in the commercial space industry and a friend of Ross Ulbricht['s] for over [eight] years," remembers that

> [w]e met my sophomore year in college while we were both pursuing degrees in Material Science and Engineering. At the time I was pursuing my B.S. with plans to work immediately after graduation in the industry, but after discussions with Ross and attending his M.S. thesis defense about crystal grain growth, I was inspired by him to pursue an advanced degree and follow my passion in life – and I am extremely grateful for his advice to live up to my potential. . . . [Ross's] intelligence, talents and passion to help others have so much potential to bring positive change to the world.

See Letter of Michael Policelli, attached hereto as Exhibit 2, at Letter 42.

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Notably, Mr. Policelli's college girlfriend, Ashley Callaghan, who first met Mr. Ulbricht in college through Mr. Policelli, also comments in her letter regarding "the positive ways in which Ross has uplifted [her] life." *See* Letter of Ashley Callaghan, attached hereto as Exhibit 2, at Letter 71.

Captain James Woodring, Mr. Ulbricht's friend from Penn State University, remarks in his letter that he "has repeatedly" been "impressed" by Mr. Ulbricht's "depth of character over the years" and describes a particular incident during which Mr. Ulbricht had helped him:

> I struggled in college and had a hard time living on my own and taking care of myself. At that time, I looked up to Ross and was able to learn from his self-discipline, work-ethic, and personal habits. He was always happy to include others in his own positive activities and I benefitted from the solid example he set of good study habits, yoga practice and regular outdoor exercise. . . . Many times he invited me to spend time meditating and attending workshops to study self-empowerment, peaceful communication, and spiritual mindfulness. I cannot thing of another person who embodies these ideals as well as Ross does.

See Letter of Captain James Woodring attached hereto as Exhibit 2, at Letter 53.

Jessica Graves, an acquaintance from high school and subsequently a close friend, who also recalled Mr. Ulbricht's drive to help others succeed, states in her letter,

> I remember once, I mentioned that there was an advanced yoga pose I wanted to get good at, but that it would be impossible without months of stretching. Ross remembered to ask me how it was going months later, long after I had forgotten it was something I had ever said I wanted to do. He is the kind of person who wants you to succeed in your goals. I still haven't mastered that pose, but when I think of the kindness and generosity of spirit that Ross displayed in remembering somethingI said I wanted for myself, I get motivated to get out the mat and work on it.

See Letter of Jessica Graves, attached hereto as Exhibit 2, at Letter 70.

Jenni Stewart Pittman who met Mr. Ulbricht during their freshman year at the University of Texas at Dallas, paints in her letter a clear portrait of Mr. Ulbricht's ability to inspire and guide others, including herself, stating

> I am continually grateful that Ross came into my life at such a

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> critical age. He was a guiding force in our peer group and offered the best advice and unique worldview. I often talked to Ross during that time about my fear of the future and life after university. I wasn't sure if I should follow my passion to become an artist and work in public service. Ross counseled me to follow my dreams, not to worry about money, and to do the right thing for myself and others. I saw him be this positive force with out other friends as well. We all needed someone who believed in us at that time. After college, Ross and I stayed updated on each other's lives through email and in person when distance and time allowed. His letters always encouraged me to take that next step in my own life and gave me confidence to move forward. Ross encouraged and held us all accountable to be the best version of ourselves.

See Letter of Jenni Stewart Pittman, attached hereto as Exhibit 2, at Letter 76.

Ms. Pittman concludes that, "I know I would not be the person I am today without Ross Ulbricht. And I hope that he has the chance to impact other people's lives as much as he has mine." *Id.*

Similarly, another letter writer who identifies herself as a former "dating partner" and more recently a friend of Mr. Ulbricht's, describes in her letter, based largely on e-mail correspondence between herself and Mr. Ulbricht, that she "value[s] Ross for his willingness to provide constructive feedback[:]"

> [f]or example, on one occasion I made a tangential reference to downplaying my true enthusiasm for a particular subject matter, to which [Ross] addressed, "I encourage you to express your enthusiasm. More often than not, it 'gives people permission' to do the same and will attract supportive people to you."

See Redacted Letter, attached hereto as Exhibit 2, at Letter 14. Likewise, "[o]n another occasion when [she] explicitly asked for candid feedback [Ross] responded, '[j]ust my perspective. . . try going for what you want without over analyzing how to get there."

Mr. Ulbricht's commitment to supporting and encouraging the people in his life has not ceased with his incarceration, as demonstrated by his efforts with fellow inmates, discussed **ante**, and also as relayed by letter writers who have reached out to him for guidance since his time at the MDC, and later the MCC.

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Christine Reitmeyer, a friend of Ross's since high school who currently works part-time as an academic counselor at a high school and part-time as a care coordinator at a rehabilitation center for people suffering from addictions to drugs and alcohol, writes in her letter, "I wrote to [Ross in February 2015] about my life and curious about how life had been for him, with so many changes. . . . I expressed feelings of doubt in my new career and he encouraged me to keep going. Even through this difficult time, Ross is working to remain himself: kind, optimistic and full of love." *See* Letter of Christine Reitmeyer, attached hereto as Exhibit 2, at Letter 28.

Jenny Keto, an old friend of Mr. Ulbricht's, also relays in her letter Mr. Ulbricht's ability to support and encourage her, even during his incarceration. As she explains,

> [a]nytime I share my own fears and struggles with my life, he is always there with a positive affirmation to boost my spirits in the midst of troubles far greater than mine. He is the kind of man who cares to reach out to people, focus on others, and in some way help those around him, even in the confines of prison.

See Letter of Jenny Keto, attached hereto as Exhibit 2, at Letter 62.

There is, however, only so much Mr. Ulbricht can achieve while incarcerated. As his aunt, Kim LaCava frankly conveys in her letter, "I am saddened by the turn Ross' life has taken, but in particular that there is so much good that will be lost to society in general, not only from him directly but the support he gives others. . . . I know there are still many positive contributions that Ross can make." *See* Kim LaCava Letter (Exhibit 2, at Letter 5).

Mr. Ulbricht is the quintessential example of a good person, with a lifetime of good deeds and admirable behavior, who has also now been convicted of committing a serious crime for which he must be sentenced. This Court, however, would not be the first in this district to face the challenge of sentencing such an individual. In fashioning an appropriate sentence under such circumstances, *i.e.*, in which a defendant's "past history was exemplary" but he committed an "egregious" offense with a Guidelines range of life imprisonment, Judge Jed. S. Rakoff remarked,

> surely, if ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all the great religions, moral philosophies, and systems of justice, was plainly part of what Congress had in mind when it directed courts to

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> consider, as a necessary sentencing factor, "the history and characteristics of the defendant."

United States v. Adelson, ___ F.Supp.2d ___, 2006 WL 2008727, at *7-8 (S.D.N.Y. 2006) (providing rationale for imposing a below-Guidelines sentence of 42 months' imprisonment in case in which defendant's Guidelines range was life imprisonment, limited only by the statutory maximum sentence of 85 years available on the counts of conviction).[8]

B. ***The Nature of Mr. Ulbricht's Offense Conduct, and the Motivation and Intent Underlying That Conduct***

1. ***Mr. Ulbricht's Motivation and Intent In Creating the Silk Road Site***

Mr. Ulbricht has been convicted of seven counts, including narcotics trafficking, narcotics trafficking by means of the Internet, conspiring to commit narcotics trafficking, engaging in a continuing criminal enterprise, conspiring to commit or aid and abet computer hacking, conspiring to traffic in fraudulent identification documents, and conspiring to commit money laundering, all stemming from his alleged design, creation and operation of the Silk Road website.

Yet, as set forth in Mr. Ulbricht's own letter to the Court, and several others, including those of his parents, to whom he has confided throughout this process, Mr. Ulbricht's motivations and intent for the creation of Silk Road were drastically different from what the Silk Road website ultimately became, and which led to its eventual demise.

As Mr. Ulbricht explains in his letter to the Court,

> [m]y incarceration for the past year and a half has given me a lot of time to reflect on the actions I took which led to my arrest and conviction, and my motivations for those actions. When I created

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[8] In *Adelson*, Judge Rakoff lamented the

> the utter travesty of justice that sometimes results from the guidelines' fetish with abstract arithmetic, as well as the harm that guideline calculations can visit on human beings if not cabined by common sense.

2006 WL 2008727, at *6.

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> and began to work on Silk Road I wasn't seeking financial gain. I was, in fact, in fairly good financial shape at the time. I was the head of a startup company, Good Wagon Books, that was growing and had potential. I held two degrees that could land me an excellent job I could fall back on should the company fail. I created Silk Road because I thought the idea for the website itself had value, and that bringing Silk Road into being was the right thing to do. I believed at the time that people should have the right to buy and sell whatever they wanted to as long as they weren't hurting anyone else. However, I've learned since then that taking immediate actions on one's beliefs, without taking the necessary time to really think them through, can have disastrous consequences. . . .
>
> Silk Road was supposed to be about giving people the freedom to make their own choices, to pursue their own happiness, however they saw individually fit. What it turned into was, in part, a convenient way for people to satisfy their drug addictions. I do not and never have advocated for the abuse of drugs. I learned from Silk Road that when you give people freedom, you don't know what they'll do with it. While I still don't think people should be denied the right to make this decision for themselves, I never sought to create a site that would provide an avenue for people to feed their addictions. Had I been more mature, or more patient, or even more worldly then, I would have done things differently.

See Letter of Ross Ulbricht, attached hereto as Exhibit 1.

Mr. Ulbricht's parents' letters echo those sentiments. As Mr. Ulbricht's mother, Lyn, states in her letter,

> when [Ross] created Silk Road, [he] was a young idealist who was passionate about the concept of personal and economic freedom. He wanted to convince others of he ideas he was caught up in. To that end he created an open, free market website with few restrictions. This was a rebellious act and I don't justify it. Nor would I ever defend Silk Road. I simply ask that you consider his young age and his motivations, which I believe were political and, from his immature view, humanitarian. . . . I believe he allowed his rash, youthful idealism and zeal to take him into areas and choices

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> he shouldn't have made, and normally wouldn't have, and it got out of hand.

See Lyn Ulbricht Letter (Exhibit 2, at Letter 1).

> Mr. Ulbricht's father, Kirk, too refers to his son's passion for economic theory and misguided idealism as the catalyst for his son's creation of Silk Road, stating "[Ross's] study of economic theory was done with the intention of using his knowledge to better the common condition of us all. His idealism led him to implement a free market website. His naivete and the folly of youth blinded him to the consequences. . . . It was a terrible decision. I would give anything I have to be able to go back in time and have the opportunity to counsel Ross on the inevitable outcome of his decision.

See Kirk Ulbricht Letter (Exhibit 2, at Letter 2).

As Mr. Ulbricht's uncle, Peter L. Becket, bluntly put it, "[Ross's] creation of the Silk Road website . . . turned out to be a naive, most unfortunate attempt to put his libertarian and economic beliefs into a real world setting. So an idealistic a dream has turned into a nightmare for someone who had an otherwise bright future." *See* Letter of Peter L. Becket, attached hereto as Exhibit 2, at Letter 30.

Accordingly, to the extent that Mr. Ulbricht's actions created a site that was not what he had initially envisioned, the criminal nature of which has resulted in his imprisonment and inability to use his considerable intellect and many talents to make a positive contribution to society, at least for many years to come, Mr. Ulbricht has expressed deep remorse, in his own letter, and to many others, who in turn have reiterated that sentiment to the Court.

In Mr. Ulbricht's own words, "Silk Road turned out to be a very naive and costly idea that I deeply regret. . . In creating Silk Road, I ruined my life and destroyed my future. I squandered the enviable upbringing my family provided me, all of the opportunities I had been given, and the ones I have earned, and my talents. I could have done so much more with my life. I see that now, but it's too late." *See* Ross Ulbricht Letter (Exhibit 1).

Mr. Ulbricht goes on to explain that his feeling of regret extend beyond even the implications of the site itself, to the ramifications his creation of the Silk Road, and eventual arrest and incarceration, have had on his family: "If I had realized the impact my creation of Silk Road would ultimately have on the people I care about most, I never would have created Silk

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Road. I created it for what I believed at the time to be selfless reasons, but in the end it turned out to be a very selfish thing to do." *Id.*

Mr. Ulbricht then explained to the Court,

> I tell you these things because I want you to know that while I will miss the comforts and joys of freedom, the most painful loss is the loss of my ability to support the people I care about and to be a daily part of their lives, and to be a productive member of society. For these reasons, if you find that my conviction warrants a sentence that allows for my eventual release, I will not lose my love of humanity during my years of imprisonment, and upon my release I will do what I can to make up for not being there for the people I love, and to make the world a better place, but within the limits of the law.

Id.

Indeed, Mr. Ulbricht's own family has seen a marked change in Mr. Ulbricht since his arrest. His sister, Calla, with whom Mr. Ulbricht is extraordinarily close, remarked in her letter, "[Ross's] mindset and ideals have drastically shifted as he had time to think about his actions in the past 19 months." *See* Calla Ulbricht Letter (Exhibit 2, at Letter 3). His father, Kirk, similarly expressed that

> Ross regrets the decision to launch and operate the [Silk Road] website. He has told me that in our visits to him in prison. I have seen a very pronounced change in his attitude toward life in general, and in particular to the law, and the consequences of breaking the law. He is a very different person now than he was before his arrest. The experience of a year and a half in prison has matured him more than 15 years of life on the outside would have.

See Kirk Ulrbricht Letter (Exhibit 2, at Letter 2).

Mr. Ulbricht's mother, too, has found that Mr. Ulbricht "now 31 and chastened by his imprisonment . . . has matured and will continue to do so. . . . This is someone who is civilized, ready to cooperate and endure what he must in the hopes of returning to society as a law abiding citizen." *See* Lyn Ulbricht Letter (Exhibit 2, at Letter 1). Elaborating, she states, "I know he regrets his actions very deeply, not only for the severe consequences he is suffering and the terrible grief and hardship he has caused his family, but for any harm he may have caused

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others." *Id.*

Yet, while the Silk Road website provided a vehicle for the purchase and sale of illicit drugs, as my May 15, 2015, letter and accompanying Declarations establish, those researchers and professionals who studied the site, and/or participated in its harm reduction measures in the site's forums, and interacted with its users– *i.e.*, Tim Bingham, Dr. Monica Barratt, Dr. Fernando Caudevilla, and Meghan Ralston – attest that the site did in fact ultimately have a positive and progressive element, manifested in its ability to make the inevitable drug trade safer for all participants, both in the terms of the transactions, and the composition of the drugs themselves. *See* May 15, 2015, Letter from Joshua L. Dratel, Esq., to The Honorable Katherine B. Forrest, at 2-8 (Dkt. # 241), and Exhibits 11 to 14 to the Declaration of Lindsay A. Lewis, Esq., (Dkt. # 242).

Moreover, as those Declarants explained, by maintaining the anonymity of its users, Silk Road permitted those users to be open and honest about their drug use and abuse, in turn transforming a universe of customarily wary and inaccessible drug users into a community that provided and availed itself of access to advice that ultimately enabled a number of users to reduce their drug use, or cease use of drugs entirely. *Id.*, at Bingham Declaration (Exhibit 11 to the Lewis Dec. (Dkt. # 242).

In fact, since that letter and the accompanying Declarations were filed, I received an e-mail from a former Silk Road user who related the following:

> I can say without a doubt I [private message']d DPR and alerted him to the presence of DoctorX on the SR forum back in 2013. My first pm to him did not include a link to X's thread, DPR pm'd me and asked for that link which I sent to him right away. Several days later I noticed a huge increase in thread views caused by DPR putting X's thread up on the same page as the products were displayed. DoctorX went from working to keep his thread from dropping down to dead thread land, to a sticky on the main page. Huge change due to DPR seeing his importance as a harm reduction specialist.
>
> Far as X goes, I can say he inspired me to quit drugs and follow the golden rule. I helped him a little bit with some English translation issues.

See E-mail, May 21, 2015, attached hereto as Exhibit 3.

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Thus, while Silk Road was the largest such web site in history, it was also the most responsible drug market place in history as a result of its ingrained harm reduction ethos and the accountability and safety features integrated into the site. In addition, though there are countless other similar sites operating on the Deep Web and the Internet, by many accounts these other sites do not provide the positive aspects that Silk Road was able to. *See, e.g.*, Greenberg, Andy, "How the Dark Web's New Favorite Drug Market is Profiting From Silk Road 2.0's Demise," *Wired* (November 20, 2014) (in contrast to Silk Road's "libertarian views and bann[ing of] all but victimless contraband," the "rise [of Evolution, a successor site] . . . signals perhaps the final shift away from the political roots of the original Silk Road"); Greenberg, Andy, "Drug Market 'Agora' Replaces the Silk Road as King of the Dark Net," *Wired* (September 2, 2014) (although less permissive than its competitor "Evolution," "[Agora,] unlike Silk Road, . . . allows users to sell several categories of weapons, including powerful semi-automatic firearms").

Accordingly, Mr. Ulbricht is deeply remorseful for the negative aspects of the Silk Road site, in particular because it did not fulfill his idealist vision for it. Indeed, Mr. Ulbricht's exceedingly modest lifestyle demonstrates that his vision for Silk Road did not include personal enrichment, or that he motivated by avarice.

2. *The Attempted "Murder for Hire" Allegations Should Not Be Considered*

As detailed below, the attempted "murder for hire" allegations should not be considered because (1) they were not charged conduct, and were not encompassed within the jury's verdict in any respect; (2) they do not constitute elements of Counts One, Three, or any of the other counts in the Indictment; and (3) as the Stipulation embodied in Government Exhibit 805 establishes beyond dispute, there is no evidence – despite the government's comprehensive investigation – that anyone was murdered or even harmed in relation to any of the alleged "murder for hire" plots – indeed, all of the evidence, and lack of evidence, establish that the persons purportedly targeted, as well as any related activity, were fictitious and the alleged plots were not manifested in any manner, but were limited to cyberspace discussions.[9]

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[9] The Stipulation states as follows:

1. Canadian authorities have no record of any Canadian residents named "Blake Krokoff" or "Andrew Lawsry," or any name associated with "Friendly Chemist."

2. Canadian law enforcement authorities do not have any record of any homicide occuring in the area of White Rock, British Columbia on or

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In that context – cyberspace – there was abundant evidence at trial establishing that the Silk Road web site (and the internet as a whole) contains ample components of masquerade, code, disguise, deception, and role-playing. That lack of transparency with respect to meaning, intent, and even identity deprives those discussions, included within Government Exhibit 936, of any firm meaning, much less that sufficient to justify enhancement of a defendant's sentence.

For example, there is no evidence establishing the identity of "redandwhite," who could have been *anybody*, including even former Drug Enforcement Administration Special Agent Carl Force or former Secret Service Special Agent Shaun Bridges, both of whom have subsequently been charged with corruption with respect to their unauthorized access to the Silk Road site, including the use of (of a non-exhaustive list of) aliases.

Nor can anyone state with the requisite certainty just what the parties to GX 936 meant in their communications, particularly since certain communications occurred by other means and have not been preserved. It could just as easily been an elaborate means of moving money from the site for an ostensible but fabricated purpose, *i.e.*, extortion or theft. Again, the destination of the payments supposedly related to the "murder for hire" allegations, and any persons connected to such an account, were not identified.

Indeed, the lack of *any* connection to a genuine, identifiable person – either the supposed predators or their targets – reinforces dramatically the prospect that GX 936 describes a fictitious episode with some other import or meaning that, without further evidence, cannot be ascertained. Absent that necessary grounding in reality, the attempted "murder for hire" allegations are insufficiently substantiated to be considered with respect to Mr. Ulbricht's sentencing.

In addition, the "murder for hire" allegations should not be considered in sentencing Mr. Ulbricht because (a) the government has not offered sufficient proof of any of that conduct, and/or Mr. Ulbricht's participation therein, under any standard of proof; (b) due to the potential impact including such uncharged conduct would have on Mr. Ulbricht's sentence, it should be subject to a more exacting standard of proof and discounted entirely if the proof fails to satisfy that stricter standard; and (c) the impact of any such alleged conduct on Mr. Ulbricht's sentence

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> about March 31, 2013, or any record of any homicides occurring in the area of Surrey, British Columbia on or about April 15, 2013, or any other evidence that anyone was physically harmed as a result of the plans discussed by "Dread Pirate Roberts" and "redandwhite."

See Government Exhibit 805.

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should be ameliorated by consideration of the other sentencing factors enumerated in §3553(a).[10]

As detailed below, even before the Supreme Court commenced its series of decisions beginning with *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and carrying through *United States v. Booker*, 543 U.S. 220 (2005) and beyond,[11] in which the Court has held that elements of an offense must be decided by a jury, beyond a reasonable doubt (and not by a judge as a "sentencing factor"), the Second Circuit acknowledged the problem inherent in evaluating Guidelines enhancements by the "preponderance of the evidence" standard rather than by a more exacting burden of proof, particularly when the enhancements can result in a substantial increase in the defendant's sentence.

Nor is there a difference for practical purposes when, as here, the government and the PSR have cited the allegations as relevant Mr. Ulbricht's sentence not as relevant conduct under §1B1.3, or as specific Guidelines enhancements, but rather under the broader rubric of §3553(a) factors. Even in that context, though, Due Process would still apply, and require that the information be accurate and sufficiently reliable to warrant consideration.

As a remedial measure, during the pre-*Booker* the Second Circuit established a process by which sentencing courts could ensure that dramatic increases in a defendant's offense level, imposed by either adjustments or inclusion of relevant conduct, could be alleviated by a secondary level of analysis that subjected the facts to a more demanding standard of proof and, if those facts did not meet that standard, an appropriate downward departure.

That process has survived *Booker*, and is indeed augmented by the advisory nature of the Guidelines, and a sentencing court's capacity to balance extreme Guidelines calculations against the sentencing factors listed in §3553(a) in order to arrive at a sentence "sufficient, but not greater than necessary" to achieve the purposes of sentencing identified in §§3553(a)(2)(A)-(D).

In addressing the burden of proof issue in the pre-*Booker* environment, the Second Circuit several times grappled with the inexorable tension between a defendant's Due Process and Sixth Amendment rights at sentencing, and the preponderance of the evidence standard. For

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[10] The same analysis applies to the six deaths the government seeks to attribute to the Silk Road web site and, in turn, to Mr. Ulbricht. Those deaths are discussed in detail in my May 15, 2015, letter (Docket #241).

[11] The line of cases includes more recently *Alleyne v. United States*, ____ U.S. ____, ____, 133 S. Ct. 2151, 2155 (2013) (extending *Booker* to facts that increase a mandatory minimum sentence) and *Southern Union Co. v. United States*, ____ U.S. ____, 132 S. Ct. 2344 (2012) (extending *Booker* principles to criminal fines).

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example, in *United States v. Cordoba-Murgas*, 233 F.3d 704 (2d Cir. 2000), the Second Circuit clarified its various opinions on the issue, explaining that

> the enhancement of a sentence based upon a defendant's "relevant conduct," if done without regard to the weight of the evidence proving the relevant conduct, may result in a total term of incarceration which is excessive, inappropriate, and unintended under Sentencing Guidelines.

233 F.3d at 708.

The Court in *Cordoba-Murgas* cited and quoted from *United States v. Gigante*, 94 F.3d 53 (2d Cir. 1996), which included adjustments within that framework:

> the preponderance standard is no more than a threshold basis for adjustments and departures, and the weight of the evidence, at some point along a continuum of sentence severity, should be considered with regard to both upward adjustments and upward departures. With regard to upward adjustments, a sentencing judge should require that the weight of the factual record justify a sentence within the adjusted Guidelines range.

94 F.3d at 56. *See also United States v. Concepcion*, 983 F.2d 369, 390 (2d Cir. 1992) and 983 F.2d at 393-95 (Newman, J., *concurring*).

Under such circumstances, the Court in *Gigante* instructed that in making its determination,

> the Court may examine whether the conduct underlying multiple upward adjustments was proven by a standard greater than that of preponderance, such as clear and convincing or even beyond a reasonable doubt where appropriate.

94 F.3d at 56.

The Court in *Gigante* added, "[w]here a higher standard, appropriate to a substantially enhanced sentence range, is not met, the court should depart downwardly." *Id.* In *Cordoba-Murgas*, the Court similarly declared that "the factual finding by a preponderance of the evidence is a preliminary step susceptible to adjustment." 233 F.3d at 709. The Court in *Cordoba-Murgas* also authorized downward departures when the appropriate standard of proof

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was not satisfied, 233 F.3d at 708, and provided the following direction to sentencing courts after finding such enhancements or relevant conduct by a preponderance of the evidence:

> under the combination of circumstances that may be present here, including (i) an enormous upward adjustment (ii) for uncharged conduct (iii) not proved at trial and (iv) found by only a preponderance of the evidence, (v) where the court has substantial doubts as to the accuracy of the finding, the Court would be authorized to depart downward from the scheduled adjustment by reason of the extraordinary combination of circumstances.

233 F.3d at 708, *citing United States v. Concepcion*, 983 F.2d at 389. *See also United States v. Allen*, 644 F. Supp.2d 422, 435 (S.D.N.Y. 2009) (footnote omitted).

Since *Booker*, that doctrine has not been disturbed. For example, in *United States v. Vaughn*, 430 F.3d 518 (2d Cir. 2005), in addressing whether acquitted conduct can be used in calculating a Guidelines range (and deciding it can), then-Judge Sotomayor, writing for the panel, considered it important to remind courts that

> [w]e restate, however, that while district courts may take into account acquitted conduct in calculating a defendant's Guidelines range, they are not required to do so. Rather, district courts should consider the jury's acquittal when assessing the weight and quality of the evidence presented by the prosecution and determining a reasonable sentence. *See Cordoba-Murgas,* 233 F.3d at 708 (acknowledging that enhancements based on relevant conduct may be excessive when imposed "without regard to the weight of the evidence proving the relevant conduct") (citation omitted); *United States v. Gigante,* 94 F.3d 53, 56 (2d Cir.1996) (holding that, for sentencing purposes, "the preponderance standard is no more than a *threshold* basis for adjustments and departures, and the weight of the evidence, at some point along a continuum of sentence severity, should be considered") (emphasis in original).

430F.3d at 527. *See also United States v. Juwa*, 508 F.3d 694 (2d Cir. 2007) (*citing Cordoba-Murgas* in the context of holding that the allegations in an indictment were by themselves insufficient to justify an enhanced sentence).

Indeed, the *Cordoba-Murgas* doctrine was applied in *United States v. Allen*, 644 F. Supp.2d 422 (S.D.N.Y. 2009), in which the Court found certain relevant conduct by the

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preponderance standard, yet noted that "the Guidelines are not mandatory[,]" *id.*, at 434 (footnote omitted), and that "were defendants to be sentenced in accordance with the Guidelines, a downward departure might be appropriate." *Id.*, at 435.

In examining the conduct – which the Court concluded it had "no doubt that [it] in fact occurred," although adding that it was equally "skeptical that any rational jury could make this finding beyond a reasonable doubt" *id.* (footnote omitted) – the Court in *Allen* remarked that "[t]he situation in *Cordoba–Murgas* exactly parallels that of these defendants" because "[t]he related conduct increases their sentencing exposure *at least five-fold* for conduct proven only by a preponderance of the evidence." *Id.*, at 435 (emphasis in original) (footnote omitted).

In addition, the Court in *Allen* reasoned that "[w]ere the Guidelines mandatory, and no downward departure available, this situation would present serious constitutional problems. Due process of law has little meaning if it does not protect citizens from such arbitrary exercises of power." *Id.*, at 434.

The discretion *Cordoba-Murgas* and its successors in the post-*Booker* environment afford sentencing courts for the purpose of ameliorating disproportionate enhancements and/or relevant conduct has been amplified since *Booker* by the Guidelines' status as merely advisory, and the added consideration of §3553(a)'s sentencing factors that are balanced against the Guidelines' severity. *See, e.g., United States v. Jones*, 531 F.3d 163, 176 (2d Cir. 2008) (noting that question of standard of proof is less compelling because *Booker* makes *all* Guidelines findings "in the end, only advisory") (other citations omitted), *citing Vaughn*, 430 F.3d at 525; *United States v. Salazar*, 489 F.3d 555, 558 (2d Cir. 2007) ("the discretion afforded district judges by *Booker* applies only to their consideration of a Guidelines range as one of the §3553(a) factors *after* that range has been calculated").[12]

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[12] The panel's statement in *Jones* that "[i]n light of this Court's continual application of the preponderance of the evidence standard, it is incorrect to construe the [] language [in *United States v. Shonubi*, 103 F.3d 1085, 1089 (2d Cir. 1997)] as authorizing the use of a higher standard of proof[,]" 531 F.3d at 176, *citing Cordoba-Murgas*, 233 F.3d at 708, and *United States v. Bennett*, 252 F.3d 559, 565 (2d Cir. 2001) (reiterating that *Shonubi* remark was *dictum*), which would appear to deprive the Court of discretion to follow *Cordoba-Murgas* and *Gigante*, and apply a higher standard of proof, are at best confusing and inconsistent. Neither *Cordoba-Murgas* nor *Gigante* have ever been overruled; indeed, the cases that reassert the preponderance standard – *i.e.*, *Vaughn*, and even *Jones* itself – all cite *Cordoba-Murgas* as authority while inexplicably ignoring the remainder of *Cordoba-Murgas*'s instruction to the District Court: that, as set forth **ante**, at 38-42, it at least permissible, and even appropriate, to calibrate the burden of proof proportionately with the effect a particular adjustment or set of facts exerts on a

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Consequently, it is respectfully submitted that the process set forth in *Cordoba-Murgas* should be implemented to determine whether any conduct constitutes relevant conduct.[13] Such a potential increase in Mr. Ulbricht's sentence requires attendant safeguards, with respect to both the quality of information relied upon, *i.e.*, whether the evidence is competent and/or admissible under the Federal Rules of Evidence.

While the Federal Rules of Evidence do not limit the type of information a Court can consider at sentencing, *see* 18 U.S.C. §3661 (*see also* **ante**, at 6), certainly the integrity and reliability of certain information is a factor in determining whether such information can legitimately form the basis for increasing the length of a sentence – and to what extent if permissible at all. Indeed, Due Process places constraints on the impact information can have on sentence relative to that information's provenance. *See United States v. Fatico*, 579 F.2d 707 (2d Cir. 1978). Due Process and the Sixth Amendment do not permit any less.

Accordingly, under any standard of proof, the attempted "murder for hire" allegations are legally and factually insupportable in this case, and consequently do not qualify as competent for

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defendant's Guidelines level, and depart downward accordingly. In addition, the comment in *Jones* that the language in *Shonubi* was merely *dictum*, 531 F.3d at 176, is perplexing because the relevant passage in *Shonubi* declares "though the Sentencing Commission has favored the preponderance-of-the-evidence standard for resolving all disputed fact issues at sentencing, U.S.S.G. § 6A1.3., p.s., comment., *we have ruled that a more rigorous standard should be used* in determining disputed aspects of relevant conduct where such conduct, if proven, will significantly enhance a sentence." 103 F.3d at 1085 (emphasis supplied), *citing United States v. Gigante*, 94 F.3d 53, 56-57 (2d Cir.1996) (denying petition for rehearing).

[13] Nor does the opinion in *United States v. Yannotti*, 541 F.3d 112 (2d Cir. 2008), alter the analysis. In *Yannotti*, the jury convicted the defendant of RICO conspiracy, but deadlocked on the substantive RICO count. *Id.*, at 118. The jury also deadlocked on an alleged kidnaping conspiracy, *id.*, at 119, and the Court made the unremarkable determination that it "could be factored into Yannotti's sentence as relevant conduct pursuant to §1B1.3." *Id.*, at 128. The Court did not address *Cordoba-Murgas*, or *Gigante*, or whether the effect of the relevant conduct could be moderated by imposition of a higher burden of proof and a downward departure, as those cases authorize.

Interestingly, too, in *Yannotti*, while the jury had marked on the verdict sheet "not proven" with respect to murders and attempted murders, *id.*, at 118-19, apparently that conduct was *not* included in the Guidelines calculation or sentence as relevant conduct (but only the kidnaping conspiracy was in dispute). *Id.*, at 127-28.

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the Court to consider.[14] Moreover, even if they did, it is respectfully submitted that the Court should ameliorate their impact on Mr. Ulbricht's sentence by balancing them against consideration and application of §3553(a)'s sentencing factors.

3. *Mr. Ulbricht's Offense Conduct Most Closely Resembles A Violation of 21 U.S.C. §856, Proscribing "Maintaining Drug-Involved Premises"*

Also, as set forth in Mr. Ulbricht's initial pretrial motions (Docket # 19-21), his offense conduct more closely resembles a violation of 21 U.S.C. §856, "Maintaining Drug-Involved Premises, than it does either 21 U.S.C. §§841, 846, or 848. Section 856 makes it unlawful to "knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance;" §856(a)(1), and/or "manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance." §856(a)(2).

Designed in particular to eliminate "crack houses," the text of and legislative history for §856 make it clear that it imposes criminal liability only on persons whose premises are operated for the purpose of manufacturing, storing, distributing or using a controlled substance. *See* H 5484, 99th Cong, 2d Sess (Sept 8, 1986), in 132 Cong Rec S 26473, 26474 (Sept 26, 1986) (purpose of §856 was to "[o]utlaw operation of houses or buildings, so-called 'crack-houses,' where 'crack,' cocaine and other drugs are manufactured or used"); *see also* Historical and Statutory Notes to 21 U.S.C. §856.[15]

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[14] As noted **ante**, at n. 10, these principles and the same result should obtain with respect to the six deaths the government seeks to attribute to the Silk Road web site and Mr. Ulbricht, which are addressed in my May 15, 2015, letter to the Court (Docket # 241).

[15] Consistent with Congress's express purpose in enacting §856, it has been primarily applied to punish those individuals involved in operating drug manufacturing or distributing operations out of crackhouses, warehouses, or large drug manufacturing and storage facilities. *See United States v. Wicker*, 848 F.2d 1059 (10th Cir.1988) (methamphetamine lab); *United States v. Martinez–Zyas*, 857 F.2d 122 (3rd Cir.1988) (cocaine warehouse and packaging facility); *United States v. Bethancurt*, 692 F.Supp. 1427 (D.C. Dist.Ct.1988) (crack house); *United States v. Restrepo*, 698 F.Supp. 563 (E.D.Pa.1988) (cocaine warehouse). *But see United States v. Tamez*, 941 F.2d 770, 773-74 (9th Cir. 1991) (owner of used car dealership who was aware of large-scale drug distribution activities emanating from his dealership, and allowed them to continue, was guilty of violating §856(a)(2)); *United States v. Chen*, 913 F.2d 183, 185, 191 (5th Cir. 1990) (same re: motel owner who was aware of and/or willfully blind to the fact that her

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Plainly, §856 was intended to cover a gap in the criminal code and create a vehicle for holding criminally liable those whose premises were used, with their knowledge and intent, for the particular criminal activity described in §856. That is exactly what Mr. Ulbricht's conduct manifested, albeit in the more modern form of a web site.

Yet, §856, which describes Mr. Ulbricht's offense conduct with precision, carries a maximum penalty of 20 years' imprisonment. As a result, it is respectfully submitted that Mr. Ulbricht's sentence should reflect significant consideration of the appropriate sentence, and limitations thereon, for the specific type of offense conduct for which Mr. Ulbricht has been convicted.

C. *Sentencing Mr. Ulbricht to a Prison Term Substantially Below the Applicable Guidelines Range Would, As Required by §3553(a)(6), Avoid Creating an Unwarranted Sentencing Disparity*

In sentencing a defendant the Court is required to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. §3553(a)(6). Here, a sentence of life imprisonment or the functional equivalent would create just such an "unwarranted sentence disparit[y]" in contravention of §3553(a)(6)'s mandate.

As noted **ante**, Mr. Ulbricht's offense conduct was more analogous to a violation of §856, which carries a maximum prison sentence of 20 years. Yet here he faces substantially more prison time due to the broader nature of the charges (and their corresponding lengthier statutory maximum penalties), and because the applicable Sentencing Guidelines level – a base offense level of 36 – is predominantly a function of the quantity of drugs involved.

In that context, as a threshold matter, the Second Circuit's decision in *Dorvee*, in which the Court addressed essentially automatic but severe Guidelines enhancements in child pornography cases that placed Guidelines ranges at or near the statutory maximum(s), is particularly pertinent here, too.

In *Dorvee*, addressing enhancements relating to possession of child pornography (§2G2.2), the Circuit noted that "the district court was working with a Guideline that is fundamentally different from most and that, unless applied with great care, can lead to

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motel was occupied by drug dealers who sold drugs in the rooms and on the premises, and who also stored drugs at her motel).

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unreasonable sentences that are inconsistent with what §3553 requires." 616 F.3d at 184.[16]

The Circuit also explained in *Dorvee* that §2G2.2 is different from most Guidelines in that it is not based on empirical data. 616 F.3d at 186. Indeed, that was a defect in the crack-cocaine Guidelines at issue in *Kimbrough v. United States*, 552 U.S. 85 (2007). The same is true with respect to the drug quantity enhancements as well: they represent merely a point in space chosen arbitrarily, and are not the result of the Sentencing Commission's core function, *i.e.*, assigning Guidelines levels that conform with conclusions based on data compiled from a statistically significant number of cases.

The drug quantity Guidelines were developed by the Sentencing Commission pursuant to a directive from Congress, as part of the Sentencing Reform Act of 1984 that the Commission set Guideline ranges for drug offenders. In formulating this Guideline the Commission's task was to engage in a developmental process that included examination of pre- Guideline sentences to ensure that the Guideline sentences would not be, on average, materially different from actual time spent in prison by then-current offenders. *See* 28 U.S.C. §994(m).

Also, the Commission was to review periodically the implementation of those Guidelines by considering feedback from the judiciary and other components of the criminal justice system. *See* 28 U.S.C. §§994(o), (p) & (x). In addition, Congress directed the Commission to conduct extensive empirical research by collecting data and studying the relationship of the sentences imposed to the sentencing goals enumerated in 18 U.S..C. §3553(a)(2). *See* 28 U.S.C. §§995(a)(12)-(16).

Yet, since their promulgation, neither the original Guidelines nor the amendments expanding the class of the offenders has ever been the subject of, or supported by, empirical evidence or reason. As noted **ante**, the Supreme Court has advised in a number of cases including *Rita v. United States*, *Kimbrough v. United States*, and *Pepper v. United States*, district courts can consider whether a particular Guideline itself can be disregarded (or discounted) because it was based merely on Congressional or Commission fiat, and *not* on empirical evidence. *See also Dorvee*, 616 F.3d at 184-88.

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[16] *See also United States v. Tutty*, 612 F.3d 128, 130-33 (2d Cir. 2010) (applying *Dorvee*); *United States v. Bonilla*, 618 F.3d 102, at 110 (2d Cir. 2010) (extending *Dorvee* doctrine to the 16-point enhancement related to illegal reentry conviction); *United States v. Hernandez*, 2010 WL 2522417, at *1 (E.D.N.Y. May 28, 2010) (acknowledging *Dorvee,* but noting that §3553(a) analysis would not alter sentence because defendant received the mandatory minimum term of five years).

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In *Dorvee*, the Court further examined the extent to which a sentencing court owes deference to the Guidelines when a particular enhancement is not the product of empirical evidence, explaining that the ordinary

> deference to the Guidelines is not absolute or even controlling; rather, like our review of many agency determinations, "[t]he weight of such a judgment in a particular case will depend upon the
> thoroughness evident in [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.,* 323 U.S. 134, 140 [] (1944); *see Kimbrough,* 552 U.S. at 109 [] (citing the crack cocaine Guidelines as an example of Guidelines that "do not exemplify the Commission's exercise of its characteristic institutional role").

616 F.3d at 188.

As a result, the Court in *Dorvee* recognized that under such circumstances

> adherence to the Guidelines results in virtually no distinction between the sentences for defendants like Dorvee, and the sentences for the most dangerous offenders who, for example, distribute child pornography for pecuniary gain and who fall in higher criminal history categories.

616 F.3d at 187.

Confronted with that situation in *Dorvee*, the Court concluded that "[t]his result is fundamentally incompatible with § 3553(a)[,]" because "[b]y concentrating all offenders at or near the statutory maximum, §2G2.2 eviscerates the fundamental statutory requirement in §3553(a) that district courts consider 'the nature and circumstances of the offense and the history and characteristics of the defendant[.]'" *Id.*

The Court in *Dorvee* added that mechanical application of such Guidelines enhancements

> violates the principle, reinforced in *Gall,* that courts must guard against unwarranted similarities among sentences for defendants who have been found guilty of dissimilar conduct. *See Gall,* 552

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> U.S. at 55 [] (affirming a sentence where "it is perfectly clear that the District Judge considered the need to avoid unwarranted disparities, but also considered the need to avoid unwarranted *similarities* among other co-conspirators who were not similarly situated" (emphasis in original)).

Id.[17]

Thus, as the Court in *Dorvee* lamented with respect to §2G2.2, "sentencing enhancements cobbled together through this process routinely result in Guidelines projections near or exceeding the statutory maximum, even in run-of-the-mill cases." 616 F.3d at 186. Yet, as the Court cautioned, "[i]n all events, even a statutory maximum sentence must be analyzed using the §3553(a) factors." 616 F.3d at 184.[18]

Ultimately, the Court in *Dorvee* reminded that

> [d]istrict judges are encouraged to take seriously the broad discretion they possess in fashioning sentences under §2G2.2 – ones that can range from non-custodial sentences to the statutory maximum-bearing in mind that they are dealing with an eccentric Guideline of highly unusual provenance which, unless carefully applied, can easily generate unreasonable results.

616 F.3d at 188.

That "broad discretion" exists here as well, even in the context of Mr. Ulbricht's conduct, which essentially facilitated the sale of drugs. As the Court concluded in *Dorvee*, "[w]hile we

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[17] In *Dorvee*, the Court offered an example of how Guidelines like §2G2.2 create – via automatic substantial enhancements applied across a broad spectrum of a specific offense conduct – unwarranted *similarities* among dissimilar defendants: "[e]ven with no criminal history, this [defendant's] total offense level of 23 would result in a Guidelines sentence of 46 to 57 months. This is the same Guidelines sentence as that for an individual with prior criminal convictions placing him in a criminal history category of II, who has been convicted of an aggravated assault with a firearm that resulted in bodily injury.[]" 616 F.3d at 187 (footnote omitted).

[18] *See also United States v. Adelson*, (certain customary offense-specific enhancements "represent[] . . the kind of 'piling-on' of points for which the guidelines have frequently been criticized"). 2006 WL 2008727, at *5.

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recognize that enforcing federal prohibitions on child pornography is of the utmost importance, it would be manifestly unjust to let Dorvee's sentence stand." *Id.*

Here, as in *Dorvee*, "adherence to the Guidelines results in virtually no distinction between sentences for the most dangerous offenders," 616 F.3d at 187, and someone like Mr. Ulbricht, who, as the scores of letters on his behalf attest, should not be categorized among them. As a result, sentencing Mr. Ulbricht at or close to the applicable advisory Guidelines range would result in a sentence that is "fundamentally incompatible with § 3553(a)." *Id.*

In amending the drug quantity table in 2014, the Sentencing Commission expressly acknowledged that the focus on drug quantity skewed sentences in the wrong direction. As the Commission noted in explaining its 2014 amendments,

> [t]hese numerous adjustments, both increasing and decreasing offense levels based on specific conduct, reduce the need to rely on drug quantity in setting the guideline penalties for drug trafficking offenders as a proxy for culpability, and the amendment permits these adjustments to differentiate among offenders more effectively.

Amendments to the Sentencing Guidelines (April 30, 2014), at 23 (hereinafter "2014 Amendments"), <available at http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140430_RF_Amendments.pdf>.

Moreover, the Commission noted that "[t]he amendment was also motived by the significant overcapacity and costs of the Federal Bureau of Prisons." *Id.* As the Commission reported,

> [i]n response to these concerns, the Commission considered the amendment an appropriate step toward alleviating the overcapacity of the federal prisons. Based on an analysis of the 24,968 offenders sentenced under §2D1.1 in fiscal year 2012, the Commission estimates the amendment will affect the sentences of 17,457 – or 69.9 percent – of drug trafficking offenders sentenced under §2D1.1, and their average sentence will be reduced by 11 months – or 17.7 percent – from 62 months to 51 months. The Commission estimates these sentence reductions will correspond to a reduction in the federal prison population of approximately 6,500 inmates within five years after its effective date.

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Id.

In that context, the Commission

> the Commission received testimony from several stakeholders that the amendment would permit resources otherwise dedicated to housing prisoners to be used to reduce overcrowding, enhance programming designed to reduce the risk of recidivism, and to increase law enforcement and crime prevention efforts, thereby enhancing public safety.

Id., at 24. *See also* Sari Horwitz, "Holder Calls for Reduced Sentences for Low-Level Drug Offenders," *The Washington Post*, March 13, 2014, available at <http://www.washingtonpost.com/world/national-security/holder-will-call-for-reduced-sentences-for-low-level-drug-offenders/2014/03/12/625ed9e6-aa12-11e3-8599-ce7295b6851c_story.html > (quoting Attorney General Eric H. Holder, Jr. testifying before the Sentencing Commission with respect to the Amendment to §2D1.1, as stating that "[c]ertain types of cases result in too many Americans going to prison for far too long, and at times for no truly good public safety reason . . . Although the United States comprises just five percent of the world's population, we incarcerate almost a quarter of the world's prisoners").

The Sentencing Commission, in explaining its pending amendment to §2D1.1, and its conclusion that "the amendment should not jeopardize public safety[,]" also cited the absence of any reduction in recidivism resulting from increased sentences:

> the Commission was informed by its studies that compared the recidivism rates for offenders who were released early as a result of retroactive application of the Commission's 2007 crack cocaine amendment with a control group of offenders who served their full terms of imprisonment. *See* USSG App. C, Amendment 713 (effective March 3, 2008). The Commission detected no statistically significant difference in the rates of recidivism for the two groups of offenders after two years, and again after five years. This study suggests that modest reductions in drug penalties such as those provided by the amendment will not increase the risk of recidivism.

2014 Amendments, at 23-24.

Accordingly, the disproportionate impact drug quantity exerts on sentencing has been

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recognized by the Sentencing Commission as a factor that needs to be recognized and rectified. Here, the distorting effect of drug quantity is magnified in the context of Mr. Ulbricht's offense conduct, which did not involve the sale of controlled substances, but rather the construction and operation of an internet vehicle that permitted others to do so, activity that in the brick-and-mortar world would be most akin to a violation of §856 and subject to a maximum punishment of 20 years' imprisonment.

D. ***The Prevailing Academic and Other Research Establishes That General Deterrence Is Not a Valid Basis for Enhancing Mr. Ulbricht's Sentence***

1. ***Specific Deterrence for Mr. Ulbricht Will Be More Than Amply Accomplished By the Mandatory Minimum 20-Year Prison Term***

Among sentencing's principal purposes is deterrence, both general and specific. *See* §§3553(a)(2)(B) & (C). The issue of *specific* deterrence – relating solely to deterring Mr. Ulbricht from future criminal conduct – is addressed in depth **ante** in section II(A) of this letter, and, it is respectfully submitted should not be a factor beyond the 20-year mandatory minimum Mr. Ulbricht faces as a result of his conviction on Count Four.

This case represents Mr. Ulbricht's first interaction with the criminal justice system, and his first conviction. In *United States v. Mishoe*, 241 F.3d 214 (2d Cir. 2001), in the context of the Career Offender Guidelines, the Court pointed out that "[t]he Commission has explained that the escalating sentence ranges prescribed by the CHCs are intended to achieve the purpose of deterrence[.]" *Id.*, at 220, *citing* U.S.S.G. Ch. 4, Pt. A, intro. comment.

Yet, as courts have concluded, for defendants who have not yet experienced extended incarceration, the deterrent purpose is satisfied by a sentence far shorter than a particular Guidelines range (including even those pursuant to the Career Offender Guidelines) would provide. For example, in *Mishoe*, explaining its reasoning in the Career Offender context, the Second Circuit remarked that

> [o]bviously, a major reason for imposing an especially long sentence upon those who have committed prior offenses is to achieve a deterrent effect that the prior punishments failed to achieve. That reason requires an appropriate relationship between the sentence for the current offense and the sentences, particularly the times served, for the prior offenses. If, for example, a defendant twice served five or six years and thereafter committed another serious offense, a current sentence might not have an adequate deterrent effect unless it was substantial, perhaps fifteen

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> or twenty years. *Conversely, if a defendant served no time or only a few months for the prior offenses, a sentence of even three or five years for the current offense might be expected to have the requisite deterrent effect.*

241 F.3d at 220 (emphasis added).

Consequently, the Court in *Mishoe* concluded the District Court "would be entitled on remand to consider whether to make a departure based on an individualized consideration of factors relevant to the assessment whether CHC VI 'significantly over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit further crimes.'" *Id*. at 219, *citing* U.S.S.G. §4A1.3.

Here, of course, Mr. Ulbricht is in Criminal History Category I, yet faces the possibility of a life sentence. Yet the Second Circuit's rationale in *Mishoe* applies with equal if not greater force here: that a sentence of that length, or even approaching that length, is not necessary to achieve a deterrent effect.

2. *General Deterrence Should Not Be a Factor In Mr. Ulbricht's Sentence*

Regarding general deterrence, while it is an express component of so many sentences, there is not any research or clinical evidence that justifies enhancing a particular defendant's sentence based on the prospect, entirely speculative and inchoate, of influencing some putative future wrongdoer, unidentified in any fashion, who has yet to commit, and perhaps even contemplate, a crime. Such a person's knowledge, motivation, and compelling factors that would lead to criminal conduct are simply unknown. Defendants should receive the sentence *they* deserve, and not have as a component of their sentence what some other, future, unknown defendant deserves.[19]

Indeed, strict and in many instances Draconian mandatory minimum sentences for federal drug offenses have been in place for three decades now, and there remains no shortage of

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[19] *See* Michael J. Lynch, *Beating a dead horse: Is there any basic empirical evidence for the deterrent effect of punishment?*, 31 Crime, Law & Social Change 347 (1999) (hereinafter "*Beating a dead horse*"), at 355 ("[m]ost assuredly, the assumption that a lesser increase in the rate of incarceration would have caused an inflated rate of offending *is just that* – an *assumption* or assertion *which cannot be demonstrated* except with data that make a great many assumptions about how individuals *might* behave given some set of *hypothetical* circumstances") (emphasis in original).

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persons willing to engage in the illegal activity that puts them in jeopardy of such punishment. Consumer demand for illicit drugs in the U.S., and not prudential behavior, is what drives this market, the profits, and the consequent willingness of individuals to risk their freedom for what for many is a lifestyle they fully expect will be short-lived before they are apprehended or become a casualty of drug violence.

As detailed below, in the context of Silk Road, internet drug markets will not be affected by the sentence in this case. Whether due to the anonymity TOR provides, or the global nature of the marketplace, those who build and operate such markets will not be discouraged by the sentence in this case any more than the street drug trade wants for steerers, sellers, distributors, and suppliers notwithstanding thirty years of a well-advertised severe regime of pretrial detention, sentencing, and forfeiture in the federal system (and/or in the states that implemented such systems since the 1970's).

a. *Harsh Penalties Are Not Effective In Deterring Drug Activity*

For decades, law makers and courts have implemented various methods addressed to reducing drug crime, with varied focus and limited success. Drug policy in the United States is currently dominated by a concentration on increasing the cost of drug crime to participants, primarily through heavy punitive measures, in an effort to reduce the supply of and demand for drugs. The underlying theory is that the threat of a heavy penalty is incorporated into the cost of participating in drug activity, ideally resulting in higher prices and lower quality drugs, and thus, decreased demand. *See* Echegaray, Margarita Mercado, *Drug Prohibition in America: Federal Drug Policy and Its Consequences*, 75 Rev. Jur. U.P.R. 1215, 1246-47 (2006) (hereinafter "*Echegaray*").[20]

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[20] Also, according to a criminologist, there

> is a widespread belief that in order for society to "get revenge" against those who transgress the law, criminal penalties must be stiffened so that they are much graver than the crimes criminals commit (the punishment must outweight the rewards of crime). This interpretation of the connection between revenge and punishment, while popular, misses one of the central premises of retributive philosophy: namely, that the crime and punishment should be near equivalents [ ]. From the perspective of retributive theory, the excessive punishments which characterize the U.S. penal system do not fall within the parameters of retributive philosophy, and does not facilitate meetings the goals of

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However, current and historical trends demonstrate that an enforcement policy grounded in deterrence does not account for the various, and possibly unique, motivations driving participation in drug crimes. Since harsher penalties, including mandatory minimums, were instituted, and despite focusing billions on disrupting the supply of drugs, the rate of drug use has remained fairly constant, new drugs continue to emerge, drug purity has in fact improved, and drug prices have fallen. *See The Price and Purity of Illicit Drugs: 1981 Through the Second Quarter of 2003*, Executive Office of the President, Office of National Drug Control Policy, November 2004 (hereinafter "*Price and Purity 1981-2003*"), at v-vii, available at <https://www.ncjrs.gov/ondcppubs/publications/pdf/price_purity.pdf>; *see also* Fries, Arthur et al., *The Price and Purity of Illicit Drugs: 1981-2007*, Institute for Defense Analyses, October 2008, at VII-1 - 3, available at <https://www.whitehouse.gov/sites/default/files/ondcp/policy-and-research/bullet_1.pdf>.

Comprehensive surveys examining the impact of increased sentences on drug activity have repeatedly concluded that attempting to deter drug dealers and users with heavy sentences is too blunt an approach to make any significant impact on actual participation in drug crime. Mascharka, Christopher, *Mandatory Minimum Sentences: Exemplifying the Law of Unintended Consequences*, 28 Fla. St. U. L. Rev. 935, 947-49 (Summer 2001) (hereinafter "*Mascharka*"), *citing* Jonathan P. Caulkins et al., Rand Drug Policy Research Center, *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?* (1997) (hereinafter "*Rand Analysis*"), and Barbara S. Vincent & Paul J. Hofer, Federal Judiciary Center, *The Consequences of Mandatory Minimum Prison Terms: A Summary of Recent Findings*, 1 (1994). *See also* Tonry, Michael, *The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings*, 38 Crime & Just. 65 (2009).

b. *Drug Supply Is Not Reduced Through Imposition of Harsh Penalties*

As the *Rand Analysis* explains, the efficacy of deterrence and incapacitation in the context of black market criminal activity is substantially diluted by the consensual nature of the crime. *See Rand Analysis*, at 13. Indeed, even adopting the hypothesis underlying general deterrence as a crime-reducing mechanism (challenged by the research discussed **post**, at 60-66),

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punishment.

Beating a dead horse, at 348 (citations omitted).

Yet, as Mr. Lynch added, "[i]In theory, however, there is no necessary connection between tough, retributive punishments and deterring criminals. *Id.* (citation omitted).

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the commerce in controlled substances defies the operative rationale.[21]

For example, while an increased penalty for burglary would (theoretically) weigh firmly against committing the burglary and would therefore deter that crime, a drug seller can compensate for the possibility of a severe sentence by charging more money for his product. *Id.* However, in a black market framework, a deterrent effect exists only when a drug seller has determined that he cannot charge enough money for his product to offset the risk of an extended prison sentence. Rasmussen, David W. & Benson, Bruce L., *Rationalizing Drug Policy Under Federalism*, 30 Fla. St. U. L. Rev. 679, 697 (Summer 2003) ("the effect of law enforcement focused in one direction can be completely mitigated by drug market entrepreneurs within a short period of time").

Consequently, rather than deterring drug activity, imposing lengthy sentences on drug dealers will select for individuals "who attach high value to money and low value to the risk of lengthy incarceration." *Rand Analysis*, at 13. *See also Price and Purity 1981-2003*, at 18 ("[p]erhaps the most striking observation about illicit drug prices is simply that they are still extraordinarily high per unit weight, even though prices have declined over the past 20 years").[22]

Similarly with respect to incapacitation, the incarceration of drug dealers for an extended period does not exert any impact the amount of drugs sold because, unlike other kinds of criminal activity, there is demand for drugs unaffected by removing suppliers from the market. *See Rand Analysis*, at 14-15. As the *Rand Analysis* notes, "[t]he common pessimism is not too far from the truth: 'If you arrest one dealer, someone else will take his or her place.'" *Id.*

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[21] As Michael Lynch explains, "[t]he deterrence hypothesis states that rational people, calculating the costs and rewards of their behavior, will be deterred from selecting negative (criminal) behaviors when the costs (punishment, arrest, etc.) of such behavior are greater than the rewards. *Beating a dead horse*, at 352, *citing* Becker, Gary S., *Crime and Punishment: An Economic Approach*, 76 Journal of Political Economy 169-217 (1968).

[22] The individuals the 1997 *Rand Analysis* predicted would be least discouraged by severe penalties, and would thus flock to the high yield, high risk field of drug dealing, are in fact a large portion of today's drug vendors – "young, impoverished, inner-city . . . [people] who perceive few legitimate alternatives as compared to the large, immediate returns from dealing." *Mascharka*, 28 Fla. St. U. L. Rev. at 949, *citing* Vincent & Hofer; *see also* Little, Michelle & Steinberg, Laurence, *Psychosocial Correlates of Adolescent Drug Dealing in the Inner City: Potential Roles of Opportunity, Conventional Commitments and Maturity*, J. Res. Crime Delinq. at 3-4, 10, 12-13 (2006) (discussing the role of social and financial incentive in adolescent drug trafficking among inner city youth), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2792760/>.

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On a broader scale, increased sentences also mean offenders remain incarcerated well beyond the ten or fifteen years of the average criminal career. *See Rand Analysis*, at 15. Lengthier sentences mean allocating resources to the continued incapacitation of individuals who are statistically much less likely to commit crimes, instead of to the prosecution and incarceration of the next generation of offenders, which only expands the pool of individuals available to take the place of arrested dealers. *Id.*

c. *Drug Demand Is Not Reduced By Imposition of Harsh Penalties*

The primary, and most obvious, aspect of drug culture which inhibits the deterrent effect of harsh punishments is demand, and even addiction, among drug users. The power of deterrence is nullified when the process of balancing the costs and benefits of committing a drug crime is so heavily influenced by the perceived benefit of satisfying an addiction. *See Mascharka*, 28 Fla. St. U. L. Rev. at 948. In that respect, addicts as a group are willing to assume any number of irrational risks which are objectively more hazardous than a lengthy prison term, in order to sustain their addictions. *Id.*

Yet even dependence short of addiction, or simply desire, can override rational considerations and evaluation of risk. Thus, deterrence is equally ineffective with respect to first time or casual drug users. While addiction is an irrational motivator that upsets the process of balancing the cost and benefit of drug activity, most first time and casual drug users cannot be relied upon to consider seriously or sufficiently the possibility of a lengthy prison term when deciding whether to commit a drug crime. *See* Johnston, Lloyd et al., *2014 Overview: Key Findings on Adolescent Drug Use*, Monitoring the Future: National Survey Results on Drug Use, 1975-2014, February 2015, available at <http://www.monitoringthefuture.org/pubs/monographs/mtf-overview2014.pdf>. *See also* Johnston, Lloyd et al., *2013 Volume 2: College Students and Adults Ages 19-55*, Monitoring the Future: National Survey Results on Drug Use, 1975-2014, August 2014, available at <http://www.monitoringthefuture.org/pubs/monographs/mtf-vol2_2013.pdf>.

Also, the impact of publicized harsh sentences apparently overrated. As Michael J. Lynch of the Department of Criminology at the University of South Florida wrote in a 1999 article, "[e]xisting research suggests, however, that there is little media effect, and that people derive their information about probabilities of arrest from personal encounters with others." Michael J. Lynch, *Beating a dead horse: Is there any basic empirical evidence for the deterrent effect of punishment?*, 31 Crime, Law & Social Change 347 (1999) (hereinafter "*Beating a dead horse*"), at 361 n. 3, *citing* Tyler, T., & Cook, F., *The mass media and judgments of risk: Distinguishing impact on personal and societal level judgments*, 47 Journal of Personality and Social Psychology, 693-708 (1984) (other citations omitted).

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Drug interdiction policies grounded in deterrence fail to address at all the massive demand for drugs. As a result, law enforcement is faced with the monumental task of stemming the staggering flow of illegal narcotics without any corresponding reduction in the financial incentive to sell drugs. *See Echegaray,* at 1258-66.

d. ***The Failure of Steep Sentences to Deter Drug Illegal Drug Selling and Use Is Apparent From the Number of Hidden Websites That Have Already Replaced, and Surpassed, Silk Road***

The most obvious proof that harsh sentences do not deter drug activity is the continued, and expanding, presence of hidden web sites selling illegal drugs on what has been denominated the "Dark Net." Despite Mr. Ulbricht's arrest and conviction, as well as the arrests of numerous other individuals alleged to be involved in Silk Road or similar enterprises, the Digital Citizens Alliance reported in its April 2014 report – six months after Mr. Ulbricht's arrest – *Busted, But Not Broken – The State of Silk Road and the Darknet Marketplaces*, Digital Citizens Alliance Investigative Report, April 2014 (hereinafter "*Busted, But Not Broken*"), available at <https://media.gractions.com/314A5A5A9ABBBBC5E3BD824CF47C46EF4B9D3A76/5f8d4168-c36a-4f78-b048-f5d48b18dc0a.pdf>, that while shortly before Mr. Ulbricht's arrest there existed 13,000 listings for drugs on Silk Road, six months later that total had increased to 13,648 listings on Silk Road 2.0. *Id*., at 1.

Moreover, while the total Dark Net drug listings at the time of the closure of the Silk Road site (October 2, 2013) was 18,174, *id*., at 22, by April 2014, the listings had nearly *doubled* to 32,029. *Id.* As *Busted, Not Broken* recognized, Silk Road's closure simply prompted "significantly more competition[,]" as competitors arose to fill the void left by the absence of what had previously constituted the largest site. *Id*., at 1.

Indeed, within the six months after the closure of Silk Road, *Busted, Not Broken* had identified six new sites offering controlled substances. *Id*., at 22. Thus, while Silk Road's drug listings had increased by only 5% in the six months following Mr. Ulbricht's arrest, at that same point in time "the Darknet drug economy as a whole contain[ed] 75% more listings for drugs." *Id*., at 1. As a result, as *Busted, Not Broken* concluded, Silk Road "and other Darknet marketplaces continue to do steady business despite the arrests of additional alleged operators who authorities say worked for Ulbricht." *Id.*

In the year following the October 2013 seizure and shuttering of Silk Road, "the Dark Net economy [grew] to more than double its original size." Ingraham, Christopher, "The FBI promises a perpetual, futile drug war as it shuts down Silk Road 2.0," *The Washington Post* (November 6, 2014), available at <http://www.washingtonpost.com/blogs/ wonkblog/wp/ 2014/11/06/ the-fbi-promises-a-perpetual-futile-drug-war-as-it-shuts-down-silk -road-2-0/>.

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The Digital Citizens Alliance's 2015 updates have confirmed that trend. For example, the most recent update, *Darknet Marketplace Watch – Monitoring Sales of Illegal Drugs on the Darknet (Q1)*, Digital Citizens Alliance, April 24, 2015, available at <http://www.digitalcitizensalliance.org/cac/alliance/content.aspx?page=Darknet>, documented that between March 17, 2015, and April 21, 2015, drugs listings on Dark Net sites had increased from 41,934 (already a 31% increase from the year before, and six weeks after Mr. Ulbricht's conviction at trial) to 43,622. *Id.*, at 1. *See also* Greenberg, Andy, "Global Web Crackdown Arrests 17, Seizes Hundreds of Dark Net Domains," *Wired* (Nov. 7, 2014), available at <http://www.wired.com/2014/11/ operation-onymous-dark -web-arrests/>.

That *Darknet Marketplace Watch* update noted the extraordinary resiliency of the market because the increase occurred despite the disappearance of the largest site, Evolution (which in March 2015 hosted 47% of those drug listings), in the intervening period in what was generally regarded as a scam on its customers (as the site appeared to abscond with its customers' Bitcoin). *Darknet Marketplace Watch*, at 1.

Also, the *Darknet Marketplace Watch* update reflected on the reaction of the marketplace to Evolution's absence: "[i]nstead of a large amount of growth concentrated among two or three central players like we have seen in the past, our research shows that the wealth is being spread. We've seen 7-8 sites experience significant growth over the last month." *Id.* In that context, the update reported that "8 out of the 12 sites we were tracking when Evolution went down have doubled in size in the past month." *Id.*

The growth of Dark Net web sites has been exponential, and the speed with which they have multiplied demonstrates the futility and even disutility (in terms of resources devoted to punitive, rather than rehabilitative, sollutions) of pitting the threat of heavy prison sentences against the financial benefit of supplying even a small piece of the overwhelming demand for drugs in this country and across the globe. *See e.g.* Jones, Ben, "The Amazons of the dark net," The Economist (Nov. 1, 2014), available at < http://www.economist.com/news/international/21629417-business-thriving-anonymous-internet-despite-efforts-law-enforcers>. *See also Darknet Marketplace Watch*, at 2 (noting that such sites are proliferating globally).

Just as surely, the notion that deterrence will somehow curb illegal drug sales on the internet, and over the TOR network in particular, is fanciful. We might as well try to stop the world from spinning forward to the future, which has already arrived in the context of internet penetration generally, and as a vehicle for criminal conduct. Mr. Ulbricht did not create that world, and his sentence should not be enhanced as part of Phyrric effort to stem its continued evolution.

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Accordingly, the notion of general deterrence in the context of drug crimes is illusory, and increasing the length of one defendant's sentence in an attempt to deter the general population from participating in similar drug activity – either selling or purchasing – is indisputably ineffectual and inconsequential and, therefore, would be inappropriate.

e. ***The Literature Is In Agreement That Deterrence Through Longer Sentences Is Illusory***

Practical experience alone does not teach this lesson. Rather, it is also the conclusion of the research. Academic literature and clinical research concur that no greater degree of deterrence would be attained by a sentence within the advisory Guidelines range compared with a sentence well below that range. Research has consistently established that while the certainty of being caught and punished has a deterrent effect, "increases in severity of punishments do not yield significant (if any) marginal deterrent effects." Michael Tonry, *Purposes and Functions of Sentencing*, 34 Crime & Just. 1, 28 (2006).[23]

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[23] In that context, the current research simply confirms the theses proposed by the influential 18th Century Italian philosopher and criminologist Cesare Beccaria, whose analysis was praised and quoted with favor by such varied readers as Voltaire, Jeremy Bentham, and John Adams, and who provided three incontestable reasons why proportionality in punishment represents an essential component of any justice system:

(1) punishment should be only that severe enough necessary to deter crime, and any penalty in excess of that objective constitutes an abuse of power by the state;

(2) the lack of any distinction between punishments for crimes of inequal kind or degree creates a dangerous and counterproductive equation: an offender contemplating two offenses, a greater and a lesser, that are punished alike is presented no disincentive to forego the greater for the lesser. If the punishments are identical, there is no greater risk in attempting the greater; and

(3) the punishment should fit the crime, *i.e.*, those who defraud the public should build public works.

Cesare Beccaria, *On Crimes and Punishments* (1764), translated from the French edition by Edward D. Ingraham (Seven Treasures Publications: Lexington, Kentucky 2009), at 70-71, 97. *See also United States v. Canova,* 412 F. 3d 331, 351 (2d Cir. 2005) (citing *Booker*, 541 U.S. at 263, for the proposition "that post-*Booker* sentencing contemplates consideration of Guidelines to serve goals of 'avoiding unwarranted sentencing disparities' and 'proportionality'").

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As Michael J. Lynch has noted, "[d]espite the paucity of evidence favoring a connection betweeen punishment and deterrence, there is, it seems, a desire or hope that deterrence works[.]" *Beating a dead horse*, at 348-49. Yet, as his article demonstrates, "[a]n examination of the incarceration and crime data from 1972-1993 reveals *no evidence of deterrence* at the aggregate level for the U.S. Additional analysis of cross-sectional crime and imprisonment trends for 1980 through 1991 also failed to provide any basic support for the deterrence hypothesis." *Id.*, at 359 (emphasis in original). *See also id.* ("[c]onservatively, we can say that imprisonment does not appear to deter most criminals").

In fact, "[t]hree National Academy of Science panels . . . reached that conclusion, as has every major survey of the evidence." *Id.* *See also* Zvi D. Gabbay, *Exploring the Limits of the Restorative Justice Paradigm: Restorative Justice and White Collar Crime*, 8 Cardozo J. Conflict Resol. 421, 447-48 (2007) ("certainty of punishment is empirically known to be a far better deterrent than its severity").

Typical of the findings on general deterrence are those of the Institute of Criminology at Cambridge University. *See* Andrew von Hirsch *et al.*, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (1999), summary available at http://members.lycos.co.uk/lawnet/SENTENCE.PDF (hereinafter "Cambridge Report").

The Cambridge Report, commissioned by the British Home Office, examined penalties in the United States as well as several European countries. *Id.* at 1. It examined the effects of changes to both the certainty and severity of punishment. *Id.* While there existed significant correlations between the *certainty* of punishment and crime rates, the "correlations between sentence severity and crime rates . . . were not sufficient to achieve statistical significance." *Id.* at 2.

As a result, the Cambridge Report concluded that "the studies reviewed do not provide a basis for inferring that increasing the severity of sentences is capable of enhancing deterrent effects." *Id.* at 1. *See also Beating a dead horse*, at 354 ("[f]rom these data, it appears that over the long run, imprisonment has no suppression effect on the rate of criminal offending in the aggregate. The implication of this finding is that criminal offending has much less to do with levels of imprisonment than with other independent variables or causal processes related to criminal offending").[24] Consequently, here, a life or equivalent sentence for Mr. Ulbricht, in

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[24] In evaluating the data discussed in *Beating a dead horse*, Mr. Lynch calculated a "series of additional correlation coefficients" to "address the question of a time lag effect between rising rates of incarceration and decreases in criminal offending – the idea that increased

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contrast with one substantially lower, likely would not achieve any additional general deterrence.

Similarly, an extensive report issued earlier this year by the Brennan Center for Justice (at New York University School of Law) concluded that, controlling for other variables, incarceration rates have increased to such an extent in the United States that they have not played a role in crime reduction for many years. *See* Dr. Oliver Roeder, Lauren-Brooke Eisen & Julia Bowling, *What Caused the Crime Decline?*, Brennan Center for Justice, at 7 (February 12, 2015) (hereinafter "*Brennan Report*") ("the current exorbitant level of incarceration has reached a point where diminishing returns have rendered the crime reduction effect of incarceration so small, it has become nil"). Synthesizing data from the past few decades with recently collected data, the *Brennan Report* determined that "incarceration has been decreasing as a crime fighting tactic since at least 1980 . . . [and s]ince approximately 1990, the effectiveness of increased incarceration on bringing down crime has been essentially zero." *Id.*, at 23.[25]

This lack of correlation between crime reduction and heightened incarceration rates is apparent from the simultaneous declines in state prison populations and crime rates in those states. *See Brennan Report*, at 27 (imprisonment and crime decreased by more than 15% in New York, California, Maryland, New Jersey, and Texas, which account for "more than 30 percent of the US population"). The *Brennan Report* cites the overestimation of the deterrent effect of heavy penalties as one possible factor in the ineffectiveness of incarceration as a crime reduction tool. *See id.*, at 26 (relying in part on the National Academy of Sciences report, discussed below, that concluded that "insufficient evidence exists to justify predicating policy choices on the general assumption that harsher punishments yield measurable deterrent effects").

While the *Brennan Report* explored the various factors contributing to the conclusion that heavy incarceration (and accompanying lengthy sentences) has minimal impact on crime reduction, the 2014 report by the National Academy of Sciences (hereinafter "NAS") provided an even more in-depth treatment of the issue, focusing on the law enforcement policies that have resulted in the current state of mass, prolonged incarceration, and how those policies have diluted the effectiveness of incarceration as a crime-fighting tool. *See The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council (hereinafter "*NAS Report*"), 2014, available at

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rates of incarceration have a positive effect on knowledge of the increased tendency to send people to prison, which in turn decreases criminal offending . . ." *Id.*, at 357 (citation omitted). However, "none of the three cross-sectional correlation tests provided support for the deterrence argument." *Id.*, at 359.

[25] The *Brennan Report* is available at <www.brennancenter.org/sites/default/files/analysis/What_Caused_The_Crime_Decline.pdf>.

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<http://www.nap.edu/download.php?record_id=18613>, at 130-156. In particular, the *NAS Report* examined the diminution of deterrence as sentence length increased across various crimes, including those imposed on low level offenders. *See id.*, at 155-56.

Summarizing the findings of several studies[26] focused on determining whether there is an appreciable improvement in deterrence as sentence length increases, the NAS report concluded that the "deterrent effect of sentence length may be subject to decreasing returns." *NAS Report*, at 154. As sentences grow longer and thus, more costly, the deterrent effect decreases to the point of irrelevance to crime rates, and becomes especially inefficient when sentences are so lengthy that individuals age past the point of any significant risk of recidivism, simultaneously mooting the achievement of crime reduction through incapacitation of those individuals, and draining resources better aimed at crime prevention. *See id.*, at 155-56.

Nor has the inefficacy of longer terms of imprisonment been lost on national public officials. Only last month, Supreme Court Justices Anthony Kennedy and Stephen Breyer appeared before Congress. In response to a question from Rep. Steve Womack (R-AR) regarding whether the United States possessed the "capacity to deal with people with our current prison and jail overcrowding," Justice Kennedy testified, with respect to the corrections system, that "[i]n many respects, I think it's broken." *See, e.g.,* Jess Bravin, "Two Supreme Court Justices Say Criminal-Justice System Isn't Working," *The Wall Street Journal*, March 24, 2015, available at <http://www.wsj.com/article_email/two-supreme-court-justices-say-criminal-justice-system-isnt-working-1427197613-lMyQjAxMTA1NTIzNDUyNTQyWj>. *See also* <sentencing.typepad.com/sentencing_law_and_policy/2015/03/justices-kennedy-and-breyer-urge-congress-to-reform-broken-federal-criminal-justice-system.html>. Video of the Justices' testimony is available from C-SPAN at <www.c-span.org/video/?324970-1/supreme-court-budget-fiscal-year-2016>.

Justice Kennedy added that "[a]nd this idea of total incarceration just isn't working, and

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[26] One such study, which reviewed California's "Three Strikes" laws, scrutinized whether there was a different recidivism rate between offenders with two "strikes" and those with one "strike" who had been tried for a "strike" offense but convicted of an ineligible offense. *See NAS Report*, at 137. The study found a lower arrest rate among the first group (one "strike" closer to the 25-year mandatory minimum under "Three Strikes" legislation), but the authors also concluded that "the crime-saving benefits are so small relative to the increased costs of incarceration that the lengthy prison sentences mandated by the third-strike provision cannot be justified on the basis of their effectiveness in preventing crime." *Id.*, at 138.

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it's not humane." *Id.*[27] Similarly, then-U.S. Attorney General Eric Holder, Jr., has stated that "too many Americans go to too many prisons for far too long, and for no truly good law enforcement reason." *See* Editorial, "Smarter Sentencing," *The New York Times*, August 14, 2013, available at <http://www.nytimes.com/2013/08/14/opinion/smarter-sentencing.html>. What *The Times* editorial described as a "harsher-is-better mind-set" characterized by "widespread incarceration" is, according to AG Holder, "both ineffective and unsustainable."[28]

The underlying empirical reality recognized by Justices Kennedy and Breyer and AG Holder is that, as the *NAS Report* states, at 2, "[i]n 2012, close to 25 percent of the world's prisoners were held in American prisons, although the United States accounts for about 5 percent of the world's population. The U.S. rate of incarceration, with nearly 1 of every 100 adults in prison or jail, is 5 to 10 times higher than rates in Western Europe and other democracies." *See also Brennan Report*, at 20; *Beating a dead horse*, at 353 (U.S. has the "highest average sentence lengths in the world") (footnote omitted).

As a result, "[t]here are five times as many people incarcerated today than there were in 1970." *Brennan Report*, at 3 (footnote omitted). As *The New York Times* noted in a 2011 editorial, "[i]n the past generation, the imprisonment rate per capita in this country has multiplied by five[,]" and "[s]pending on prisons has reached $77 billion a year[.]" Editorial, "Falling Crime, Teeming Prisons," *The New York Times*, October 29, 2011, available at

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[27] A different approach to corrections, practiced in Norway, was profiled in a recent *New York Times Magazine*. *See* Jessica Benko, "The Radical Humaneness of Norway's Halden Prison," *New York Times Magazine*, March 29, 2015, available at <mobile.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html?from=promo>.

[28] AG Holder, appearing in the Eastern District of New York to support and encourage that District's alternatives-to-incarceration programs that he described as "'emblematic' of the sort of specialized programs that the nation needs in order to address overincarceration within the federal criminal justice system[,]" told the audience that "[w]e will never as a nation be able to incarcerate ourselves to better outcomes, a stronger nation or brighter futures. Instead we need to make smart choices and smart investments that will help individuals get on the right path and stay out of the criminal justice system." *See* Andrew Keshner, "Holder Endorses Eastern District Alternatives to Prison," *New York Law Journal*, October 31, 2014, available at <www.newyorklawjournal.com/printerfriendly/id=1202675146471>. *See also Beating a dead horse*, at 349 ("[o]ver the past two decades it is clear that this view has been at least partially responsible for what [Irwin, John and James Austin, *It's About Time: America's Imprisonment Binge*, (Belmont, CA: Wadsworth 1997) call[s] the 'imprisonment binge' – or America's rapidly expanding prison population").

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<http://www.nytimes.com/2011/10/30/opinion/sunday/falling-crime-teeming-prisons.html>.

Observing these figures, the *NAS Report* concluded, at 2, that "[t]he growth in incarceration rates in the United States over the past 40 years is historically unprecedented and internationally unique." *See also Brennan Report*, at 3 ("[f]or the past 40 years, the United States has been engaged in a vast, costly social experiment. It has incarcerated a higher percentage of its people, and for a longer period, than any other democracy").

Yet, as discussed **ante**, the results of mass, prolonged incarceration have not exerted an impact on crime rates. Jeremy Travis, President of John Jay College of Criminal Justice in New York and co-editor of the *NAS Report*, told *The New York Times* earlier this year "[t]he policy decisions to make long sentences longer and to impose mandatory minimums have had minimal effect on crime. . . . The research on this is quite clear." Erik Eckholm, "In a Safer Age, U.S. Rethinks Its 'Tough on Crime' System," *The New York Times*, January 13, 2015, available at <http://www.nytimes.com/2015/01/14/us/with -crime-down-us-faces-legacy-of-a-violent-age-.html>. *See also Beating a dead horse*, at 356 (data "also provides evidence that a consistently increasing rate of incarceration appears to have little or no effect on the amount of crime in the U.S. from 1972-1993").

Consequently, one of the *Brennan Report*'s three central findings was that "Increased incarceration at today's levels has a negligible crime control benefit[.]" *Brennan Report*, at 4. Elaborating, the *Brennan Report* observed that

> [i]ncarceration has been declining in effectiveness as a crime control tactic since before 1980. Since 2000, the effect on the crime rate of increasing incarceration, in other words, adding individuals to the prison population, has been essentially zero. Increased incarceration accounted for approximately 6 percent of the reduction in property crime in the 1990s (this could vary statistically from 0 to 12 percent), and accounted for *less than 1 percent* of the decline in property crime this century. Increased incarceration has had little effect on the drop in violent crime in the past 24 years. In fact, large states such as California, Michigan, New Jersey, New York, and Texas have all reduced their prison populations while crime has continued to fall.

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Id.[29]

In that context, a sentence for Mr. Ulbricht substantially below the advisory Guidelines range, would also be fully consistent with 18 U.S.C. §3553(a)(2)'s sentencing purposes.[30] The Second Circuit and Southern District of New York figures since *Booker*, discussed **post**, at 72-

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[29] The *Brennan Report* notes, at 13, that it did not include federal inmates in its analysis. However, the *Report* also explained why adding federal inmates would likely only amplify the findings:

> [t]o study the incarceration variable the authors first sought to include the total incarceration rate, including federal prisons, state prisons, and local jails. As explained further in Appendix B, federal prison data and local jail data were not available for all the years analyzed and for all states. For that reason, the authors used state imprisonment data (the number of state prisoners incarcerated in public or private prisons, and the number of *state prisoners* held in local jails). It does not include individuals in the overall jail population (those held pretrial or serving short sentences), juvenile facilities, or immigration detention centers. The use of this subset of incarceration is in line with other research in the field. The exclusion of federal prisoners, juvenile detainees, and the majority of the jail population does not affect the core findings of this report. If that data were included, the rate of incarceration would be even higher than that in the authors' regression. A higher incarceration rate would likely show more dramatic diminishing returns on crime reduction. Accordingly, this report's empirical findings are likely conservative compared to what a more inclusive definition of "incarceration" would produce.

See also Beating a dead horse, at 351 (also not including federal inmate in the study's data set, but noting that "the exclusion of the federal data will not have a significant impact on the analysis since most crimes and most inmates are under state jurisdiction. For example, in 1994 federal inmates made up 5.8 percent of all persons incarcerated at the state and federal level in the U.S. [ ] . . . This figure is relatively stable over time") (citations omitted).

[30] Also, 18 U.S.C. §3582(a) requires that a sentencing court "recognize [that] imprisonment is not an appropriate means of promoting correction or rehabilitation." Regardless, as the letters on Mr. Ulbricht's behalf, as well as his background, attest, the mandatory minimum 20-year prison term will suffice for "correction or rehabilitation."

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78, reflect that reality, as well as the reality that prison overcrowding as a result of reflexively long Guidelines sentences needs to be addressed.

E. *Longer Terms of Imprisonment Do Not Reduce Recidivism*

Nor, according to "the best available evidence" does imprisonment "reduce recidivism more than noncustodial sanctions." Francis T. Cullen *et al., Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 Prison J. 48S, 50S-51S (2011). *See also* Gary Kleck, et al, *The Missing Link in General Deterrence Theory*, 43 Criminology 623 (2005); Michael Tonry, *The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings*, 38 Crime and Justice: A Review of Research 102 (2009).

Again, Justice Kennedy concurred during his Congressional testimony last week, as *The Wall Street Journal* reported that "[i]n many instances, [Justice Kennedy] said, it would be wiser to assign offenders to probation and other supervised release programs." Jess Bravin, "Two Supreme Court Justices Say Criminal-Justice System Isn't Working," *The Wall Street Journal*, March 24, 2015, available at <http://www.wsj.com/article_email/two-supreme-court-justices-say-criminal-justice-system-isnt-working-1427197613-lMyQjAxMTA1NTIzNDUyNTQyWj>.

Quoting Justice Kennedy directly, the article added, "'This is cost-effective,' he said, even 'without reference to the human factor' involved in incarceration. 'We have a very low recidivism rate for those who are on release.'" *Id.* Of course, here Mr. Ulbricht faces a mandatory minimum of 20 years in prison, which only augments the policy revisions expressed by Justice Kennedy and others because the threshold question of whether incarceration at all is appropriate is moot. Rather, the question is at what *length* does Mr. Ulbricht's sentence become not only unnecessary for the purposes of sentencing, but also a future burden on the federal penal system, which is correctly concerned about the aging nature of its population.

Indeed, the impracticality of diverting resources to lengthy prison terms is further emphasized by the Department of Justice Office of Inspector General's report, issued earlier this month, documenting the exceedingly high cost of housing and caring for an aging inmate population. *See The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, Office of the Inspector General, Department of Justice (May 2015) (hereinafter "*Aging Inmate Population*"), available at <https://oig.justice.gov/reports/2015/e1505.pdf#page=1>. In addition to the fact that the inmate population over 50 years is more expensive, the risk of recidivism among individuals over 50 is greatly reduced, and the incidence of misconduct while incarcerated is extremely low, and generally limited to low-level and/or non-serious infractions. *See id.*, at 37-39 (Table 7).

Furthermore, the cost of the aging inmate population will only increase. As the *Aging*

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Inmate Population report notes, the number of aging inmates is not only "increasing at a faster rate in older age groups," but the underlying factors ("elimination of parole, use of mandatory minimum sentences, increases in average sentence length . . ., and an increase in white collar . . . and sex offenders") which contributed to this growth have also resulted in a "9 percent increase in the number of younger inmates who will be age 50 and older when they are ultimately released." *Id*., at 1-3.

Again in the context of the Career Offender Guidelines, which have been a proving ground for the efficacy – or, more accurately, the lack thereof – of long sentences as a means of reducing recidivism, the Sentencing Commissions's report entitled *Fifteen Years of Guideline Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform*, at 133-34 (2004) (hereinafter "*Fifteen Year Report*"),[31] also repudiated any argument that the long sentences imposed pursuant to the Career Offender Guidelines are justifiable based on recidivism issues:

> [m]ost importantly, preliminary analysis of the recidivism rates of drug trafficking offenders sentenced under the career offender guideline based on prior drug convictions shows that their rates are much lower than other offenders who are assigned to criminal history category VI. The overall rate of recidivism for category VI offenders two years after release from prison is 55 percent (USSC, 2004). The rate for offenders qualifying for the career criminal guideline based on one or more violent offenses is about 52 percent. But the rate for offenders qualifying only on the basis of prior drug offenses is only 27 percent.

Id.

As a result, the *Fifteen Year Report* concluded,

> [t]he recidivism rate for career offenders more closely resembles the rates for offenders in the lower criminal history categories in which they *would be* placed under the normal criminal history scoring rules in Chapter Four of the *Guidelines Manual*. The career offender guideline thus makes the criminal history category

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[31] The *Fifteen Year Report* is available at <http://www.ussc.gov/Research/Research_Projects/Miscellaneous/15_Year_Study/15_year_study_full.pdf>.

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> a *less* perfect measure of recidivism risk than it would be without the inclusion of offenders qualifying only because of prior drug offenses.

Id. (emphasis in original). *Cf. United States v. Wilken*, 498 F.3d 1160 (10th Cir. 2007) (rejecting further reduction than afforded by the District Court – to CHC V – while noting defendant's reliance on the *Fifteen Year Report*'s findings that Career Offenders classified as such based only on prior drug offenses have lower recidivism rates than career offenders whose prior crimes were violent).

Moreover, in the context of recidivism, defendants over 40 years of age present a dramatically reduced danger of recidivism. Mr. Ulbricht is presently 31 years old, which puts the peak years of potential recidivism behind him. *See* United States Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, at 12 ("[r]ecidivism rates decline relatively consistently as age increases," from 35.5% for those under age 21 to 9.5% for those over age 50) (available at <http://www.ussc.gov/publicat/Recidivism_General.pdf>. *See also United States v. Nellum,* 2005 WL 300073, at *3 (N.D. Ind. 2005); Daniel Glaser, *Effectiveness of A Prison and Parole System*, 36-37 (1964); P.B. Hoffman & J.L. Beck, *Burnout – age at release from prison and recidivism*," 12 J. Crim.Just. 617 (1984); *United States v. Clark*, 289 Fed.Appx. 44, 48 (5th Cir. 2008) (unpublished opinion).[32] Moreover, the 20-year mandatory minimum prison term would by itself put Mr. Ulbricht well past the 40-year old threshold by the time of his release.

As a *New York Times* editorial commented last month,

> the persistent fantasy that locking up more people leads to less crime continues to be debunked. States from California to New York to Texas have reduced prison populations and crime rates at the same time. A report released last week by the Brennan Center for Justice found that since 2000 putting more people behind bars has had essentially no effect on the national crime rate.

Editorial, "The Roadblock to Sentencing Reform," *The New York Times*, February 17, 2015,

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[32] According to a recent News Analysis in *The New York Times*'s *Sunday Review* section, "[n]euroscience suggests that the parts of the brain that govern risk and reward are fully developed until age 25, after which lawbreaking drops off." Dana Goldstein, "Too Old to Commit Crime?" *The New York Times*, March 20, 2015, available at <www.nytimes.com/2015/03/22/sunday-review/too-old-to-commit-crime.html>.

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available at <http://www.nytimes.com/2015/02/17/opinion/the-roadblock-to-sentencing-reform.html?gwh=58092C4DB7605498FC0E7490098282A6&gwt=pay&assetType=opinion>.

According to a June 2012 study by the Pew Center on the States, entitled *Time Served – The High Cost, Low Return of Longer Prison Terms* (hereinafter "*Pew Report*"),[33] which analyzed state data reported to the federal government between 1990 and 2009, "offenders released in 2009 served an average of almost three years in custody, nine months or 36 percent longer than offenders released in 1990. The cost of that extra nine months totals an average of $23,300 per offender." *Id.*, at 2.

Also, the *Pew Report* found that "for offenders released in 2009 after serving prison sentences for drug crimes: 2.2 years in prison, up from 1.6 years in 1990 (a 36% increase)." *Id.*, at 3. Nor, with respect to many offenders, was there a correlation between the longer imprisonment and improved public safety. As the *Pew Report* concluded,

> [d]espite the strong pattern of increasing length of stay, the relationship between time served in prison and public safety has proven to be complicated. For a substantial number of offenders, there is little or no evidence that keeping them locked up longer prevents additional crime.

Id., at 4. *See also id.* ("[a] new Pew analysis conducted by external researchers using data from three states – Florida, Maryland, and Michigan – found that a significant proportion of nonviolent offenders who were released in 2004 could have served shorter prison terms without impacting public safety").[34]

The above-discussed empirical and social science research demonstrates that a sentence dramatically below the applicable advisory Guidelines range would be sufficient to achieve the sentencing goal of specific deterrence with respect to Mr. Ulbricht, and more than adequately address the issue of recidivism.

As discussed **ante,** as the Second Circuit has recognized in *Mishoe*, for someone like Mr.

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[33] The *Pew Report* is available at http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Prison_Time_Served.pdf.

[34] And legislatures, too, are becoming aware. As the *Pew Report* states, "a 2006 legislative analysis in Washington State found that while incarcerating violent offenders provides a net public benefit by saving the state more than it costs, imprisonment of property and drug offenders leads to negative returns.[]" *Pew Report*, at 8 (footnote omitted).

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Ulbricht, who has not previously served any prison sentence, shorter sentences can protect against recidivism as effectively as longer terms: "if a defendant served no time or only a few months for the prior offenses, a sentence of even three or five years for the current offense might be expected to have the requisite deterrent effect." 241 F.3d at 220. *See also* Donald P. Green & Daniel Winik, *Using Random Judge Assignments to Estimate the Effects of Incarceration and Probation on Recidivism among Drug Offenders*, 48 Criminology 357 (2010) ("[t]hose assigned by chance to receive prison time and their counterparts who received no prison time were re-arrested at similar rates over a four-year time frame"); Francis T. Cullen *et al., Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 Prison J. 48S, 50S-51S (2011) (according to "the best available evidence, . . . prisons do not reduce recidivism more than noncustodial sanctions").[35]

F. *The Sentencing Commission's Most Recent Sentencing Statistics*

The United States Sentencing Commission (hereinafter "the Sentencing Commission") publishes each quarter an abstract of federal sentencing statistics entitled *U.S. Sentencing Commission Preliminary Quarterly Data Report* (hereinafter "*Quarterly Data Report 2014*").[36] The figures in the most recent version, the *4th Quarter Release, Preliminary Fiscal Year 2014 Data, Through September 30, 2014*, which covers sentences imposed from October 1, 2013 through September 30, 2014, demonstrate that the Guidelines no longer constitute the predominant factor in a decisive majority of sentences in the Southern District of New York (or the Eastern District of New York, either).

For example, the *Quarterly Data Report* reveals that in Fiscal Year 2014 within the Second Circuit, a clear majority of sentences, 69.6%, were *not* within the calculated Guidelines range. *See Quarterly Data Report 2014*, at 2.[37] In SDNY, 73.1% of sentences were outside the Guidelines range (along with 74.5% in the Eastern District of New York). *Id.* Those numbers

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[35] *See also* Gary Kleck, et al, *The Missing Link in General Deterrence Theory*, 43 Criminology 623 (2005); Michael Tonry, *The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings*, 38 Crime and Justice: A Review of Research 102 (2009).

[36] The *Quarterly Data Report* is available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/quarterly-sentencing-updates/USSC-2014-4th-Quarterly-Report.pdf>. Prior *Quarterly Data Reports* are also available on the Sentencing Commission's web site, www.ussc.gov.

[37] Nationally, for Fiscal Year 2014, only 53.3% of sentences were *within* the Guidelines range (down from 54.8% in Fiscal Year 2013). *Quarterly Data Report 2014*, at 1.

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represent a continuing trend since *Booker* was decided January 12, 2005: in the first quarter of 2005, 70.5% of sentences nationally were within the Guidelines range. *Sourcebook of Federal Sentencing Statistics*, U.S. Sentencing Commission, Section 2, Fig. G & Section 3, Fig. G (2005), available at <http://www.ussc.gov/research-and-publications/annual-reports-sourcebooks/2005/sourcebook-2005>. That number initially decreased to 61.8% by the first quarter of 2006, then remained essentially steady (60.7% for first quarter 2007, and 60.0% for first quarter 2008), before resuming its decline in 2009 and thereafter. *Id.*

In addition, only a minute fraction – 1.5% – of all SDNY sentences were *above* the Guidelines range, while 71.7% were *below* the range. In addition, the reasons for sentences below the Guidelines have evolved as well. Also, in SDNY, in Fiscal Year 2014 only 20.9% of sentences[38] were attributable to government-sponsored motions,[39] while §3553(a) factors, Guidelines downward departures, and/or a combination thereof were responsible for 50.8% of sentences (all of which were *below* the Guidelines range). *Quarterly Data Report 2014*, at 3.[40]

The proportion of sentences in SDNY in Fiscal Year 2014 below the Guidelines, and attributable exclusively to "below range w/ *Booker*" – 45.1% – represents by a wide margin the highest percentage in that category among *all* districts (with the Northern District of Illinois second at 40.6%). *See Quarterly Data Report 2014*, at 3, 5. Also, the proportion of §3553(a)-based below-Guidelines sentences relative to government-sponsored below-Guidelines has increased dramatically since *Booker*. *Compare*, *U.S. Sentencing Commission Preliminary Quarterly Data Report*, 3rd Quarter Release, Preliminary Fiscal Year 2006 Data, Through July 30, 2006, at 3.[41]

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[38] The percentages are of *all* sentences within the District, as that is how the figures are presented in the *Quarterly Data Report*.

[39] Of those, 17.0% were the result of motions pursuant to §5K1.1, and the remaining 3.9% were composed of "§5K3.1 Early Disposition" (1.3%) and "Other Government Sponsored" (2.6%). *Quarterly Data Report 2014*, at 3.

[40] The components of below-Guidelines sentences in SDNY (other than government-sponsored) were classified as follows: (1) downward departures alone: 2.9%; (2) "downward departure w/ *Booker*": 1.9%; (3) "below range w/ *Booker*": 45.1%; and (4) "remaining below range": 0.9%. *Quarterly Data Report 2014*, at 3.

[41] In the Second Circuit as a whole, only 30.4% of sentences were within the Guidelines, with 1.4% above the Guidelines range and 61.8% below. 20.1% of sentences were attributable to motions pursuant to §5K1.1, and another 8.2% to other government-sponsored downward

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Those figures are reinforced by those for the First Quarter of Fiscal Year 2015, published in the Sentencing Commission's *Preliminary Quarterly Data Report*, 1st Quarter Release, Preliminary Fiscal Year 2015 Data October 1, 2014, Through December 31, 2014 (hereinafter "*Quarterly Data Report 2015*"), available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/quarterly-sentencing-updates/USSC-2015_1st_Quarterly_Report.pdf>.

In fact, the proportion of sentences within the applicable advisory Guidelines range continues to decline. Thus, for the First Quarter of FY 2015, within the Second Circuit 72.1% of sentences were outside the Guidelines range, with 71.6% *below* the range (and 0.5% above the range). *See Quarterly Data Report 2015*, at 2-3.[42]

In the Southern District, the numbers are even more dramatic, as 77.1% of sentences were outside the range, with 0.7% above the range and 76.4% – more than three-quarters of all sentences imposed during the period – *below* the applicable range. *Id.*[43] Of that 76.4% below the Guidelines range, 21.7% were attributable to government-sponsored downward departures,[44] while 54.6% were independent of any government support.[45]

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departures. 40.1% of sentences were below the Guidelines range without any government sponsorship (via 5K1.1 or otherwise), with "below range w/ *Booker*" alone responsible for 34.4% of sentences. *See Quarterly Data Report 2014*, at 2-3.

[42] Nationally, the proportion of sentences within the Guidelines range dropped for the first time below 50%, to 46.5%. *See Quarterly Data Report 2015*, at 1.

[43] The only districts with a lower percentage for First Quarter FY 2015 were Delaware, at 20% (but which had only a statistically small sample of 25 cases compared with 432 in SDNY), and the Southern District of California, for which its national low 14.6% total is attributable to a whopping 61.3% of its sentences including §5K3.1 Early Disposition downward departures (sponsored by the government), due to its voluminous immigration-related criminal docket, with only 6.8% attributable to *Booker* alone. *See Quarterly Report 2015*, at 2-3, 6-7.

[44] Of those, 18.5% were the result of motions pursuant to §5K1.1, and the remaining 3.2% were composed of "§5K3.1 Early Disposition" (1.6%) and "Other Government Sponsored" (1.6%). *Quarterly Data Report 2015*, at 3.

[45] The components of below-Guidelines sentences in SDNY (other than government-sponsored) for the First Quarter FY 2015 were classified as follows: (1) downward departures alone: 1.4%; (2) "downward departure w/ *Booker*": 1.4%; (3) "below range w/ *Booker*":

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In addition, a *majority* of sentences in SDNY during First Quarter FY 2015 – 50.9% – were, for the first time, below the advisory Guidelines range based on *Booker alone*. *See Quarterly Data Report 2015*, at 3.[46] Thus, in SDNY, a sentence *below* the Guidelines range is the overriding *norm*, and *not* the exception. Even excluding cases involving §5K1.1 (or other government-sponsored) motions, the incidence in SDNY of a below-Guidelines sentence based on §3553(a) factors and/or Guidelines downward departures (50.8% of all sentences for FY 2014; 54.6% for 1st Quarter 2015) was nearly double the number of within-Guidelines sentences (26.9% of all sentences in 2014; 22.9% for First Quarter FY 2015).

For drug trafficking offenses (which are not distinguished any further with respect to type of drug or quantity), the data – which are provided in the *Quarterly Data Report* only on a national level – are also instructive. Only 27.5% of drug-trafficking sentences nationally for FY 2014 were within the Guidelines range (down from 38.8% in Fiscal Year 2013). *Quarterly Data Report 2014*, at 8. Only 0.8% of all drug-trafficking sentences were *above* the Guidelines, while 71.7% were below the Guidelines. *Id.*, at 8-9.

The *Quarterly Report* for the first quarter of FY 2015 establishes that for drug-trafficking generally, nationally only 31.0% of sentences were within the Guidelines. The 68.2% that were below the Guidelines were composed of 24.9% due to §5K1.1 motions, 18.7% due to other government-sponsored downward departures, 1.5% on downward departure grounds, 1.0% as a result of downward departure and *Booker*, and 21.5% based on *Booker* alone (with 0.6% uncategorized "remaining below range"). *See Quarterly Data Report 2015*, at 8-9.[47]

50.9%; and (4) "remaining below range": 0.9%. *Quarterly Data Report 2015*, at 3.

[46] The District of Delaware, at 48% (with only 25 cases) is the only district close to that percentage. *See Quarterly Data Report 2015*, at 2.

[47] Nationally for FY 2014, the distribution for drug-trafficking defendants sentenced below the applicable advisory Guidelines range was as follows:

Attributable to:

§5K1.1 motion:	26.2%	
§5K3.1 departure:	6.9%	
Other government sponsored:	14.0%	
Downward departure:		1.5%
Downward departure with *Booker*:	1.6%	
Below range with *Booker*:	21.3%	
Remaining below range:	0.3%	

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For SDNY in particular, for FY 2014, 82.3% of drug-trafficking sentences were *below* the Guidelines (with 0.2% above the range), with 20.5% attributable to §5K1.1 motions by the government, 5.5% the result of other government-sponsored downward departures, 2.2% due to downward departures alone, 1.8% because of a combination of downward departure(s) and *Booker*, and 52.0% a consequence of *Booker* exclusively (with 0.3% "remaining below range" but uncategorized). *See U.S. Sentencing Commission, Statistical Information Packet*, Fiscal Year 2014, Southern District of New York (hereinafter "*SDNY Packet 2014*", at 19, available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2014/nys14.pdf>.

The mean sentence for the 19,974 defendants sentenced for drug-trafficking during FY 2014 was 73. *See Id.*, at 10 (Table 7, "Length of Imprisonment By Primary Offense Category"). The median sentence for that class of defendants in FY 2014 was 57 months. *Id.* In SDNY, the mean was 62 months and the median 46 months (for the 522 defendants sentenced for drug-trafficking during FY 2014). *Id.* For the 4,834 defendants sentenced for drug-trafficking during the first quarter of FY 2015, the mean sentence was 65 months, and the median 48 months. *See Quarterly Data Report 2015*, at 31 (Table 19, "Sentence Length In Each Primary Offense Category").

Moreover, of the 4,336 sentences meted out for drug trafficking nationally during Fiscal Year 2014, and in which the sentence was below the Guidelines based on §3553(a) factors alone, the *median* sentence was 46 months, representing a 29.8% "*median* percent decrease from Guideline minimum." *Quarterly Data Report 2014*, at 24 (emphasis added). That, of course, refers to a median percentage decrease from the Guidelines for the drug offense, and not the Career Offender Guidelines (which would likely show a greater percentage decrease from the Guidelines minimum).

Also, of the 298 drug trafficking sentences imposed during the data period, and in which the sentence was below the Guidelines based on a downward departure and §3553(a) factor(s), the median sentence was 37.6% below the Guidelines minimum. *Id.*, at 23. In addition, as Figure H, at p. 37 of the *Quarterly Data Report 2014* establishes, since Fiscal Year 2009 all federal drug sentences have remained on average approximately at least 20% below the applicable Guidelines (as the average sentence has decreased along with the Guidelines range),

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See U.S. Sentencing Commission, Statistical Information Packet, Fiscal Year 2014, Southern District of New York, at 19 (Table 10), available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2014/nys14.pdf>.

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with that gap widening through Fiscal Years 2013 and 2014.[48]

For the first quarter of FY 2015, the *Quarterly Data Report 2015*, again at Table 11 (p. 23), the median sentence for the subset consisting of "downward departures with *Booker*/3553s" was 51 months' imprisonment, representing a 33-month median decrease from the applicable Guidelines range minimum (and a 40.5% median decrease from that Guidelines range minimum). For "*Booker*/3553" only, the median was 44 months, representing an 18-month median (corresponding to a 28.6%) decrease from the Guidelines range minimum. *Id*., at 24 (Table 12).[49]

Moreover, even if the attempted "murder for hire" allegations are considered, a sentence substantially below the advisory Guidelines range would still be consistent with the statistical record both in SDNY and nationally. For instance, for FY 2014, the mean sentence for murder was 273 months nationally, and 240 months in SDNY. *See SDNY Packet 2014*, at 10 (Table 7). In SDNY, the mean sentence was 172 months, and the median 162 months. *Id.* For the first quarter of FY 2015, the national mean was 297 months, and a 330-month median. *See Quarterly Data Report 2015*, at 31 (Table 19).

Thus, any support for a Guidelines sentence pursuant to the applicable advisory range for Mr. Ulbricht in this case not only ignores all §3553(a) factors other than the Guidelines (and particularly as they relate to him), but also defies empirical reality in this district and in this Circuit. As a result, the Guidelines simply no longer reflect a sentence "sufficient but not greater than necessary," and Mr. Ulbricht's circumstances present a compelling example why they do not.

The Second Circuit and SDNY figures since *Booker* reflect the reality of reflexively long Guidelines sentences. As The Honorable John Gleeson has noted in his academic writing, "the federal prison population has exploded under the Guidelines, and the average sentence lengths

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[48] Even when a sentence for drug-trafficking is within the Guidelines, courts have moderated those sentences. For example, for the first quarter of FY 2015, of the 1,269 cases, 64% of the sentences were at the Guidelines range minimum, 14.2% within the lower half of that range, 7.0% at the midpoint, 6.3% within the upper half of the range, and 8.5% at the Guidelines range maximum. *See Quarterly Report 2015*, at 39 (Table 20).

[49] For the much smaller proportion of defendants sentenced during the first quarter of FY 2015 for drug-trafficking, and who received below Guidelines sentences for "all remaining below Guideline range cases," the median sentence was 60 months, constituting a 15-month and 28/6% decrease from the applicable advisory Guidelines range minimum. *Quarterly Data Report 2015*, at 25 (Table 13).

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have increased dramatically." Hon. John Gleeson, *The Sentencing Commission and Prosecutorial Discretion: The Role of the Courts in Policing Sentencing Bargains*, 36 Hofstra L. Rev. 639, 657 (2008).

As a result, the Guidelines do not represent a sentence "sufficient, but not greater than necessary" to accomplish the objectives of sentencing with respect to Mr. Ulbricht. Instead, a prison term substantially shorter than the advisory Guidelines range more than adequately serves that purpose.

G. *Mr. Ulbricht Has Endured Pretrial Confinement for Nearly 20 Months Under Harsh Conditions at Both MDC and MCC*

Mr. Ulbricht spent approximately 13 months at MDC while on pretrial confinement, and another five months at MCC during trial and awaiting sentencing in this case. The harsh conditions at these two pretrial facilities – including lack of ample programming, limited family visits, and lack of exposure to sunlight and the outside – are well known to the courts. *See, e.g., Bell v. Wolfish*, 441 U.S. 520 (1979); *United States v. Gallo*, 653 F.Supp. 320, 336 (E.D.N.Y. 1986).

Thus, even prior to *Booker*, courts held that "pre-sentence confinement conditions may in appropriate cases be a permissible basis for downward departure." *See United States v. Carty*, 264 F.3d 191, 196 (2d Cir. 2001). *See also United States v. Farouil*, 124 F.3d 838, 847 (7th Cir.1997) (harsh conditions of confinement constitute valid ground for departure); *United States v. Hernandez-Santiago*, 92 F.3d 97, 101 n. 2 (2d Cir. 1996) (remanding for reasons for downward departure due to "harsher incarceration" due to unavailability of programs); *United States v. Brinton*, 139 F.3d 718, 725 (9th Cir. 1998); *United States v. Mateo*, 299 F. Supp.2d 201 (S.D.N.Y. 2004); *United States v. Francis,* 129 F. Supp.2d 612, 616 (S.D.N.Y. 2001), *citing United States v. Sutton*, 973 F. Supp. 488, 491-495 (D.N.J. 1997).

The harsh conditions at MCC have been observed by several courts. *See, e.g., United States v. Behr*, 2006 WL 1586563 (S.D.N.Y. 2006). *See also Bell v. Wolfish*, 441 U.S. 520 (1979); *United States v. Gallo*, 653 F.Supp. 320, 336 (E.D.N.Y. 1986). In *Behr*, the court noted that a judge had "reduced an individual's sentence by one third based upon the harsh conditions in Unit 11-South at MCC[.]" 2006 WL 1586563, at *5. In light of the harsh conditions at MCC, the defendant in *Behr* was sentenced to a non-Guidelines sentence. *Id. See also* Ken Strutin, "Cognitive Sentencing and the Eighth Amendment," *New York Law Journal*, March 24, 2015, available at <http://www.newyorklawjournal.com/expert-analysis/id=1202721348619/Cognitive-Sentencing-and-the-Eighth-Amendment?mcode=1380566174563&curindex=11>.

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Accordingly, it is respectfully submitted that an adjustment below the Guidelines is appropriate to account for Mr. Ulbricht's extended pretrial custody at MDC.

III. *Mr. Ulbricht's Objections, Corrections, and Additions to the Pre-Sentence Report*

Mr. Ulbricht's objections, corrections, and additions to the PSR are as follows:

(1) at ¶ 2, "a/k/a Dead Pirate Roberts" should be corrected to "Dread Pirate Roberts;

(2) at ¶ 10, with respect to the citation issued to Mr. Ulbricht on December 18, 2014, "for being insolent" which resulted in a suspended sanction of 30 days loss of phone privileges and visitation, the PSR should be amended to include the following: the incident arose from the failure of MDC staff to abide by the Court's Order permitting Mr. Ulbricht to review discovery in the visiting area of the MDC on his designated laptop during the time frame appointed in the Court's Order. Ultimately, Mr. Ulbricht was informed by his counselor that because Mr. Ulbricht had been correct, despite his having disobeyed an order he would not be punished if he did not commit another infraction for 30 days, a condition which Mr. Ulbricht satisfied;

(3) at ¶ 49, with respect to Mr. Ulbricht's alleged "willingness to use violence to protect interests in Silk Road," and the description of Mr. Ulbricht's alleged participation in "an attempt to solicit the murders for hire of five people" as having been "established at trial[,]" Mr. Ulbricht objects to that language, which should be deleted from the PSR, because those allegations were not charged, and were not established by any cognizable standard of proof;

(4) at ¶ 60(A)(e), with respect to the conclusion that Mr. Ulbricht "used violence" and "paid approximately $650,000 for five attempted murders for hire, which he commissioned to protect his interests in Silk Road," Mr. Ulbricht objects to that language and conclusion, which should be deleted from the PSR for the same reasons set forth **ante** in ¶ (3) above;

(5) at ¶ 60(B)(1), with respect to the conclusion that Mr. Ulbricht "assumed a leadership role" in the Conspiracy to Commit and Aid and Abet Computer Hacking, Mr. Ulbricht objects to that language and conclusion, which should be deleted from the PSR because there was not any evidence of such leadership role;

(6) at ¶¶ 61-86, with respect to the alleged overdose deaths, Mr. Ulbricht objects to their inclusion in the PSR (and they should be deleted therefrom) because the

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information provided by the government, including the available forensic evidence, has not established that these deaths are attributable to drugs obtained from vendors on the Silk Road site, or in turn to Mr. Ulbricht;

(7) at ¶ 87, with respect to victim impact, Mr. Ulbricht objects to that paragraph, which should be deleted from the PSR for the same reasons set forth **ante** in ¶ (6) above.;

(8) at ¶ 94, with respect to the calculation of Mr. Ulbricht's base offense level, he objects to the the two-level enhancement based on "credible threats of directed violence," which should be deleted from the PSR because (a) the allegations constitute uncharged conduct and are therefore not appropriately part of the *base* offense level; and (b) for the reasons set forth **ante** in ¶ 3 above;

(9) at ¶ 146, the PSR should be corrected to reflect that Mr. Ulbricht no longer owns the residence at 111 South Coral Street in State College, Pennsylvania, and has not owned it for several years;

(10) at ¶ 147, the PSR should be corrected to reflect that Mr. Ulbricht no longer owns the referenced vehicles and has not since well before his arrest in this case;

(11) at ¶ 150, with respect to the minimum terms of imprisonment for Counts One through Three, and Count Four, Mr. Ulbricht objects to the characterization that each mandatory minimum term should be imposed separately. Counts One, Two, and Three are lesser included offenses of Count Four, and therefore merge for purposes of sentencing. Therefore sentences on Counts One, Two, and Three cannot be imposed independent of Count Four, much less consecutively. The PSR should be amended to include the following language: "Counts One, Two, and Three merge with Count Four. As a result, the sentence on Count Four, carrying mandatory minimum term of imprisonment of 20 years, encompasses the potential sentences for Counts One, Two, and Three; and

(12) at p. 38 of the "Justification" for the recommended sentence, Mr. Ulbricht objects to the statement (which should be deleted from the PSR) that "a site like Silk Road can entice people who are maybe uncomfortable with the face-to-face aspect of traditional drug deals to go into drugs[.]" As set forth in my May 15, 2015, letter, and the Declarations submitted therewith, the Silk Road site did not entice first-time users, and in fact helped individuals reduce and even eliminate their drug use. Mr. Ulbricht also objects, for the same reasons set forth **ante**, at ¶ (6) above, in his objection to ¶¶ 61-86 of the PSR, to the claim (which should be

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deleted from the PSR) that "Silk Road represents a grave threat to public health," and to the contention (which should be deleted from the PSR) that "we've seen six individuals die from drugs purchased on Silk Road."

IV. *Recommendation for BoP Waiver, and Motion Pursuant to Rule 38, Fed.R.Crim.P.*

Mr. Ulbricht's lack of any criminal history, or history of violence or escape, would, despite the severity of his offense level, result in him scoring favorably with respect to his security classification by BoP, which in turn would affect, if not control, the options for designation to a particular BoP facility.

However, BoP Public Safety Factors (hereinafter "PSF's") and/or Management Variables (hereinafter "MV's"), which take into account generic factors such as sentence length and greatest severity level of offense (which Mr. Ulbricht's offense will be categorized as), could override a low security score. Consequently, Mr. Ulbricht could be confined in a facility at a higher security level than his security score would otherwise require or dictate.

Accordingly, it is respectfully requested that the Court recommend, on the record and in the Judgment, that BoP waive its application of any sentence length/greater security PSF or MV with respect to Mr. Ulbricht. There are several reasons why, it is respectfully submitted, such a recommendation, which would enable designation to one of three facilities, the Federal Correctional Complex (hereinafter "FCC") at Coleman (Sumterville, Florida), FCC Allenwood (White Deer, Pennsylvania), or FCC Tucson (Tucson, Arizona), would be appropriate:

(1) those three facilities are regarded as significantly safer than other BoP penitentiaries. Mr. Ulbricht's background would otherwise make him vulnerable in a more dangerous facility;

(2) those facilities would enable Mr. Ulbricht's family to continue visiting him on a regular basis;

(3) those facilities provide more appropriate programming opportunities for someone of Mr. Ulbricht's education level; and

(4) those facilities would be more consistent with Mr. Ulbricht's security classification scoring absent consideration of PSF's and MV's.

In addition, after sentencing Mr. Ulbricht will be filing a motion, pursuant to Rule 38, Fed.R.Crim.P., for a recommendation by the Court that he be confined locally (at MCC or MDC) during the pendency of his appeal. Mr. Ulbricht's lack of e-mail access, as well as the nature

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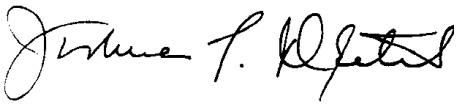
and volume of the digital discovery and evidence in this case make access to him during the appellate process a priority for counsel.[50]

Conclusion

Accordingly, for all the reasons set forth above, either independently or combination, and in the supporting documents and materials, it is respectfully submitted that Mr. Ulbricht be sentenced to a term of imprisonment substantially below the applicable advisory Guidelines range.

Respectfully submitted,



Joshua L. Dratel

JLD/
Encls.

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

[50] Rule 38(b)(2) reads:

> If the defendant is not released pending appeal, the court may recommend to the Attorney General that the defendant be confined near the place of the trial or appeal for a period reasonably necessary to permit the defendant to assist in preparing the appeal.

15-1815-CR

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

ROSS WILLIAM ULBRICHT, AKA DREAD PIRATE ROBERTS, AKA SILK ROAD, AKA SEALED DEFENDANT 1, AKA DPR,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York (New York City)

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MICHAEL A. LEVY
SERRIN A. TURNER
ASSISTANT UNITED STATES ATTORNEYS
UNITED STATES ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK
Attorneys for Appellee
1 Saint Andrew's Plaza
New York, New York 10007
212-637-2346

JOSHUA L. DRATEL, P.C.
Attorneys for Defendant-Appellant
29 Broadway, Suite 1412
New York, New York 10006
212-732-0707

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EXHIBIT 1

Dear Judge Forrest,

I am writing you this letter in anticipation of my upcoming sentencing. This is a challenging letter to write because, as one who faces punishment, I have a strong incentive to say anything I think might result in leniency. But I have endeavored to be honest and forthright throughout this process, and so I will be in this letter as well.

My incarceration for the past year and half has given me a lot of time to reflect on the actions I took which led to my arrest and conviction, and my motivations for those actions. When I created and began to work on Silk Road I wasn't seeking financial gain. I was, in fact, in fairly good financial shape at the time. I was the head of a startup company, Good Wagon Books, that was growing and had potential. I held two degrees that could land me an excellent job I could fall back on should the company fail. I created Silk Road because I thought the idea for the website itself had value, and that bringing Silk Road into being was the right thing to do. I believed at the time that people should have the right to buy and sell whatever they wanted so long as they weren't hurting anyone else. However, I've learned since then that taking immediate actions on one's beliefs, without taking the necessary time to really think them through, can have disastrous consequences. Silk Road turned out to be a very naive and costly idea that I deeply regret.

Silk Road was supposed to be about giving people the freedom to make their own choices, to pursue their own happiness, however they individually saw fit. What it turned into was, in part, a convenient way for people to satisfy their drug addictions. I do not and never have advocated the abuse of drugs. I learned from Silk Road that when you give people freedom, you don't know what they'll do with it. While I still don't think people should be denied the right to make this decision for themselves, I never sought to create a site that would provide another avenue for people to feed their addictions. Had I been more mature, or more patient, or even more worldly then, I would have done things differently.

I was naive in other ways as well. Before this case, I had never been arrested, let alone jailed. Imprisonment was an abstract concept for me. I knew it was undesirable, but I didn't have a firm grasp on what it would actually be like. I have now learned that the absolute worst aspect is separation from my family and loved ones and the grief it has caused them. If I had realized the impact my creation of Silk Road would ultimately have on the people I care about most, I never would have created Silk Road. I created it for what I believed at the time to be selfless reasons, but in the end it turned out to be a very selfish thing to do.

In creating Silk Road, I ruined my life and destroyed my future. I squandered the enviable upbringing my family provided me, all of the opportunities I have been given, and the ones I have earned, and my talents. I could have done so much more with my life. I see that now, but it is too late. You are charged with sentencing me to at least 20 years. In 20 years I could have made a positive contribution to society, without breaking the law. In 20 years I could have raised a family, and celebrated countless milestones in the lives of my friends, parents and

siblings. I tell you these things because I want you to know that while I miss the comforts and joys of freedom, the most painful loss is the loss of my ability to support the people I care about and to be a daily part of their lives, and to be a productive member of society. For these reasons, if you find that my conviction warrants a sentence that allows for my eventual release, I will not lose my love for humanity during my years of imprisonment, and upon my release I will do what I can to make up for not being there for the people I love, and to make the world a better place, but within the limits of the law.

As I see it, a life sentence is more similar in nature to a death sentence than it is to a sentence with a finite number of years. Both condemn you to die in prison, a life sentence just takes longer. If I do make it out of prison, decades from now, I won't be the same man, and the world won't be the same place. I certainly won't be the rebellious risk taker I was when I created Silk Road. In fact, I'll be an old man, at least 50, with the additional wear and tear prison life brings. I will know firsthand the heavy price of breaking the law and will know better than anyone that it is not worth it. Even now I understand what a terrible mistake I made. I've had my youth, and I know you must take away my middle years, but please leave me my old age. Please leave a small light at the end of the tunnel, an excuse to stay healthy, an excuse to dream of better days ahead, and a chance to redeem myself in the free world before I meet my maker.

Sincerely,

Ross Ulbricht

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	14 Cr. 68 (KBF)
- against -	:	
ROSS ULBRICHT,	:	
Defendant.	:	

EXHIBIT 2

LETTERS IN SUPPORT OF DEFENDANT ROSS ULBRICHT

Joshua L. Dratel
JOSHUA L. DRATEL, P.C.
29 Broadway, Suite 1412
New York, New York 10006
(212) 732 - 0707
jdratel@joshuadratel.com

Attorneys for Defendant Ross Ulbricht

– Of Counsel –

Joshua L. Dratel
Lindsay A. Lewis

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LETTER 1

[redacted]

April 16, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am Ross Ulbricht's mother. I write to entreat you to give my son the shortest possible sentence, which is still very long. I ask this not simply because I love Ross dearly or that his arrest and incarceration have shattered our family. I sincerely ask because I am certain that Ross does not require a severely long sentence to be corrected and learn to abide by the law. In fact I am confident that if Ross were released today he would obey the law for the rest of his life. He is an intelligent person and a fast learner. He has learned some terribly hard lessons, and learned them well. He is not someone who would be prone to repeat his behavior in any way. I know he regrets his actions very deeply, not only for the severe consequences he is suffering and the terrible grief and hardship he has caused his family, but for any harm he may have caused others.

Despite his conviction, it is telling that Ross has no prior arrests or offenses. He has lived most of his life well within the law and has never been known to threaten or endanger anyone. There is not a violent or cruel bone in his body. Quite the contrary, he is known to be philanthropic, honest and compassionate. He has never been motivated by greed, money or power. Rather, when he created Silk Road, Ross was a young idealist who was passionate about the concept of personal and economic freedom. He wanted to convince others of the ideas he was caught up in. To that end he created an open, free market website with few restrictions. This was a rebellious act and I don't justify it. Nor would I ever defend Silk Road. I simply ask that you consider his young age and his motivations, which I believe were political and, from his immature view, humanitarian.

We all know that young people can be foolishly reckless and often blind to the destructive ramifications of their choices. They are often influenced by ideas and impulses that, once older and more mature, they would never consider. Parents hope that their children grow past those foolhardy years without hurting themselves or others. In the normal course of events they mature and move on unscathed. In some cases their choices lead to disastrous results. I think this was true in Ross' case. I believe he allowed his rash, youthful idealism and zeal to take him into areas and choices he shouldn't have made, and normally wouldn't have, and it got out of hand. Again, this not to excuse Ross of any crimes he has been convicted of, but to say that, now 31 and chastened by his imprisonment, he has matured and will continue to do so. Growing older and learning hard lessons have a way of doing that.

You had the opportunity to sit across the courtroom from Ross for almost a month. You know that the entire time, even when the devastating verdict was read, he conducted himself with dignity and equilibrium. He was unerringly respectful to the court and the people handling him. This is not an incorrigible criminal. This is someone who is civilized, ready to cooperate and endure what he must in the hopes of returning to society as a law abiding citizen. It is someone who can be corrected within the least amount of time allowed. More than that is far greater than necessary.

My son Ross has been a joy to raise and a blessing to friends, family and strangers. As his mother, he has been a son to be proud of. I have been told countless times of his compassion, integrity and commitment to truth and good deeds. His former housemate tells of how, while out walking with him, Ross suddenly dashed off to help an old homeless woman cross the street. He bought flowers for the flower lady on the corner, because he figured nobody did that for her. When he went to a sophisticated New York party he told me he spent most of it outside talking to a homeless man. It is so typical of Ross to help the helpless, encourage the outcast, reach out to people.

In prison Ross has been a great boon to fellow inmates. Now at MCC, he's tutoring some of them in math and science. He tutored his cellmate for his GED in the evenings after trial. At MDC he led a physics class and a yoga class. His former cellmate (now released) wrote me to say what a positive influence Ross had been on him. An MDC guard took me aside and literally gushed about what a wonderful person Ross is and what an asset he was to the environment there.

Through this ordeal Ross has had the unwavering support of friends and family – the people who actually know him. Many of them, although not wealthy, pledged their homes, life savings and other assets for his bail without hesitation. Seventeen offered to co-sign the bond. This was because they know Ross is trustworthy and because they love him. A reporter said that he was struggling to find anyone to say anything negative about Ross. Not one person who knows him has reported anything unfavorable about him or anything that would imply violent or criminal behavior.

Despite his recent conviction, Ross Ulbricht is an exceptionally kind, generous, caring and high minded individual. I am not saying he hasn't made grievous mistakes. I am saying that he has already well learned to never repeat them. I am certain that any thinking in Ross that led him to break the law has been corrected. The job of rehabilitation is accomplished. The job of punishment is up to the court. When deciding what this will be, I implore you to consider his fundamental character as conveyed in letters from those who have known him for years, some his entire life. Please also consider Ross' age; his personal history; his repentant attitude; and what he can contribute if allowed to do so.

Even with the shortest possible sentence, Ross will lose what are the most productive, rewarding and important years of his life. I beseech you to make his sentence no longer than necessary and give Ross the chance to rectify his mistakes. Please allow him time to re-join society as a reformed and chastened individual, who still has much to offer to his community.

Sincerely yours,

Lyn J Ulbricht

Lyn Ulbricht

[redacted]

LETTER 2

[redacted]

April 19, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I'm Ross Ulbricht's father. I was a home builder in Austin Texas for many years. Before that I worked for a US Industries subsidiary, Diversicon, as a project engineer. We built freeways in Florida. Now I own and operate a vacation rental home business in Costa Rica with my wife, Lyn Ulbricht, Ross' mother.

In my research of the sentencing phase of the judicial process, I have read that judges always want to know "why did the guilty individual commit the crime?". I believe I know what motivated Ross to do what he did, and I hope I can shed some light on that issue for you. I also hope to give you a fuller picture of the character of the young man you will be sentencing.

Ross has always been a thoughtful and inquisitive person. When he was a toddler, we noticed that he was never the type of child who would do foolish things, like running out into the street. He was measured in his actions, and mindful of their consequences. At first he seemed timid to me, but then I came to understand that he was thoughtful beyond his years.

As his character developed, he became what I can only describe as a "good" child. He was never in trouble in school. He was always obedient and willing to help at home. He was unselfish and kind to other kids.

Ross is an Eagle Scout, and so am I. There was an incident while he was a boy scout which illuminates Ross character. One of the kids in the troop was almost completely blind. He could only see dim shapes, and walked with a cane with the help of someone at his arm. He was being mainstreamed in school and in scouts. He and his parents wanted him to do everything the other kids did, and he was able to do almost everything, as long as he had another person at his side. There were a few of the kids who were always helping out as his companion. Ross was one of them, even though Ross was younger.

When our troop went to Philmont Scout Ranch for summer camp in the Pecos Wilderness, the blind boy, I'll call him Bill, went with us. Bill's dad came too. The challenge was for the 25 boys and five adults to hike 50 miles of rough Rocky Mountain trails, carrying all their food and camping gear for six days on their backs. Since Bill couldn't see the ground except vaguely, and he had a 30-pound pack, he was at a severe disadvantage. Even though he had a scout in front of him and his dad behind, on the first day he fell down hard five times. We all loved Bill and his dad, and wanted him to succeed, but that night I was sure he would have to give up.

The next day, some other scouts joined him as his trail companions. The boys would rotate in and out of being Bill's trail companion several times a day. It meant leaving early, arriving late, and hiking at Bills slow pace instead of hiking with the leaders of the main group, but there was a group of five boys who did it. Ross was one of them. Bill never made it through a day without falling at least twice, but he never gave up. His trail mates kept him from any more bad falls after the first day.

As we were walking into base camp on the sixth day, I walked a few hundred yards in front of

Bill, so he couldn't hear me kicking the loose rocks off the trail in front of him. Ross joined me, and we walked along kicking rocks aside with tears of pride and joy falling down our faces. Bill was going to complete the hike with the rest of his buddies. At the closing campfire that night, our troop's scoutmaster got up to tell of Bill's accomplishment. During the week, word of what was happening in our troop had spread throughout the other 500 scouts who were on their own difficult 50-mile hikes. When the whole group stood and roared out their approval of Bill's accomplishment there wasn't a dry eye in the crowd. Ross never got or sought any particular praise for his part in Bill's triumph, but that's the kind of guy he is, compassionate and selfless.

Ross did well in math and science in high school, and earned a full scholarship to the University of Texas. He majored in physics, and worked on the development of new materials for use in solar cells. When he graduated from UT with a Bachelor's in physics, he had earned a full scholarship to Penn State. While there, he continued to work on the development of new thin film materials with novel uses, and got his Masters degree in Material Science.

During his college years, Ross had developed a strong desire to use his talents to make a positive difference in the world. He rightly felt that he had the potential to do something good for mankind. He was offered a scholarship to continue his work on thin film materials at Cornell University while seeking a PhD.

Ross was at a significant turning point in his life. Along the way, he had become more interested in economic theory and free markets than he was in material science. He felt that a move to Cornell and a PhD in Material Science would take him away from economics and leave him with limited employment opportunities. Material Science PhD's have one principle job opportunity, to work in academia. He chose to become an entrepreneur, and planned to market a couple of ideas he had developed.

The first idea was to solicit donations of unwanted books that people typically have on their shelves. Ross formed a company with another budding entrepreneur to collect and then sell these books. Ten percent of profits would go to charity. Books would also be donated to prison libraries. The company operated at a small profit. When the entire stock of over 20,000 books on interconnecting shelving tragically collapsed, the venture was abandoned and sold.

While in college, Ross had played several mass-participant internet games. Some of these games have millions of clients and are complex enough to include virtual economies. Ross had noticed that these virtual economies did not function properly and were a bone of contention with the game participants. He had an idea that he could fix this problem by using a free market based economic model. He proceeded to create a program which would change the economy of some of the biggest internet virtual games from a Keynesian to an Austrian economic model. This was a large undertaking, and consumed Ross' energy for a couple of years. The result was a plug in type generic program that could be inserted into an existing mass-participant virtual reality game. The object was to show the games' owners how a free market economy would make the game more exciting, compelling, and end the persistent problems.

Then he began to look for a buyer for his product. Unfortunately, Ross was never able to convince any of the major game operators that the added value of his economic program would be worth the effort and expense to change the existing games' entire economy. He came close, but in the end his efforts came to naught. Interestingly, today, the most successful of those games use free market economic models, exactly as Ross had envisioned.

And so, Judge Forrest, given the frustration of the book business, and failed attempt to market his game economy program, plus his drive to succeed, the stage was set for the creation of the Silk Road. With some readily available information about bitcoin and the Tor Network, Ross was able to shift from a program that ran the economy of a virtual game to a program that ran a free market on the

internet.

It was a terrible decision. I would give anything I have to be able to go back in time and have the opportunity to counsel Ross on the inevitable outcome of his decision. Please Judge Forrest, consider that he was only 26 when he started the project to create Silk Road. He was a young idealistic man who was driven to succeed and to do good works. When he was in his early twenties he was either in college doing theoretical work for the betterment of mankind or working a book-selling business with a significant charitable component. His study of economic theory was done with the intention of using his knowledge to better the common condition of all of us. His idealism led him to implement a free market website. His naiveté and the folly of youth blinded him to the consequences.

The Silk Road was created in the hopes that something good would come of it. As history has shown, it quickly spiraled out of control. I know Ross regrets the decision to launch and operate the website. He has told me that in our visits to him in prison. I have seen a very pronounced change in his attitude toward life in general, and in particular to the law, and the consequences of breaking the law. He is a very different person now than he was before his arrest. The experience of a year and a half in prison has matured him more than 15 years of life on the outside would have.

Judge Forrest, please consider that the illegal aspects of Ross' Silk Road experiment represents a complete departure from the trajectory of his life. Please consider that Ross shared an old house and lived like a grad student when he was arrested. He didn't start the Silk Road out of greed. Money was never a motivating factor for him. He did it because he had an idealistic vision of freedom for all of us. Just as the French Revolution was born of an idealistic idea of freedom, and then became a nightmare that consumed its founders, so reads the story of the Silk Road.

Please consider the potential that Ross still has to contribute to society. His desire to contribute still exists. It is tempered with a respect for the law that this experience has added to his character. He can still be a good citizen of the United States. He can still be a contributor to the benefit of us all. Please give him the shortest sentence possible. His life as well as his potential to contribute is in your hands.

Respectfully,

Kirk Ulbricht
[redacted]

LETTER 3

[redacted]

April 21, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York,
United States Courthouse
500 Pearl Street, New York, New York 10007

Dear Judge Forrest,

I am Ross' sister and I work for a medical equipment company as a Territory Sales Manager in Sydney, Australia. I'm writing on behalf of my brother, to beg you to apply the minimum sentence, which in itself will be most of his productive life. Through visits and phone conversations I can tell my brother is already a changed man. I truly believe he was idealistic, with an unrealistic view of how the world works. He felt he was offering an opportunity that had never existed before. His mindset and ideals have drastically shifted, as he has had time to think about his actions in the past 19 months. He is truly sorry, and I know will never go against the law again.

Our family is extremely close, and Ross is seeing the suffering this is causing us. Many friends and family travelled across country, and I from Australia, to support Ross through the trial. He would never intentionally hurt us, and I know he would do anything to reverse what he did. Please give him a chance to have at least some life once this nightmare ends.

Following are examples of who my brother is as a person, and why I implore you to apply the least amount of years to his sentence.

Compassion: Growing up we always had pets: dogs, cats, fish, hamsters. If stray dogs appeared in the neighbourhood, Ross and I would always take them in, care for them and find their owners. More than one unwanted dog became beloved family pets.

Accepting: Ross' qualities of empathy and compassion have extended to people throughout his life. He has always accepted everyone, no matter their race, station in life or status. One example is his membership in an African drum group in grad school. He was the only white person in the group, but he was instantly welcomed. That is because Ross sees people for who they are, not what's on the outside. He cares about people and wants to help improve their lives, be it through music, philosophy discussions or acts of kindness. Even as a child Ross especially felt for the underdogs, the kids who did not have many friends. His sympathetic nature reached out to them, so they felt wanted and part of the group. This continued into adulthood.

Caring and considerate: Ross' gentle nature as a child only blossomed when he was older. Several of his girlfriends (whom I have met) have told me what a gentleman Ross is, bringing flowers and chocolates, always opening doors for them. One time, when we were out with our cousins, it was relentlessly raining and we were stranded, waiting to get the car. Without a word Ross dashed out and ran through the rainstorm to get the car, getting soaked to the bone. Ross is a gentleman through and through.

A recent example of his generosity and caring occurred at MCC when, after exhausting days at trial, Ross tutored his cell mate in the evenings to help him pass his GED. He is the man other inmates come to when they've placed a bet, to measure their opponent's push-ups and ensure the other person does not cheat. Ross is known to be an honest man, even in jail.

A prison guard at MDC went out of her way to tell my parents what a wonderful man she thinks Ross is. During visiting hours, another inmate told my mother that Ross "is a good man and I'm watching out for him." Even in the lowest and worst situations, my brother focuses on the positive and aims to make the environment around him a better space. He will continue to do this once out of prison, too. He was raised to be a kind and sweet man. He would never intentionally hurt anyone. I know people can change, but I don't believe their core values do.

Positive upbringing: We grew up in a very peaceful, loving household, with no computer/video games or cable TV. Instead we played with neighborhood friends, making-up games, climbing trees, riding bikes. Ross was always such an easy-going child that he would befriend everyone and we had a great group of friends. We are still in touch with them, and you will receive several letters attesting to Ross' character from them as well.

Team player: Growing-up Ross was a boy scout and achieved Eagle. Becoming an Eagle Scout is not an easy task. To that end he gave up personal time, which is very important to high school students. This shows that even then he was committed to learning, growing and spending time with our father. When most young men are testing their masculinity, Ross was never in any fights in or out of school. He learned how to take care of himself in a peaceful manner. My father and Ross spent many camping trips and weekends with the troop. Unfortunately, many boys are not lucky enough to spend so much time with their fathers, learning about survival but also learning how to be a good man. He also grew up being part of a soccer team, which teaches you how to work together, how to take care of your teammates and be a part of a community.

Philanthropic: We were raised in an entrepreneurial household, and after grad school Ross created a business that also gave back. In addition to other charities, Good Wagon Books ironically supported libraries in jails to help give prisoners an opportunity to learn. Ross worked hard at this company and wanted it to succeed to continue to help the community.

Humble: My brother is a brilliant man, but you would never know it meeting him. He won scholarships to put himself through both undergrad and graduate school, in physics and material science. Yet Ross is down to earth and easy to talk to, never condescending to anyone. Again, he gets along with everyone. He's social and has many friends, all of whom vouch for his character and have stood by him through this ordeal.

Frugal: We were raised in a middle-class, safe, nice neighbourhood and home. We were taught to always pay your debts and never spend beyond your means. Once he left home, my brother wore the same clothes that were handed down from his older cousins for years. He cooked at home, his favorite dish being sausages with frozen veggies. He has always been happy with a simple life.

Open-minded: Ross is always open to hearing other points of view, another person's feelings and opinions. He truly listens and takes it in. He would express his viewpoint as well, but he was always respectful. It was

sure to be an enlightening discussion because Ross is so smart, yet open to hearing what other people have to say.

Spiritual: Ross has become more religious since his arrest. In the past, because he thinks scientifically, unless God's existence could be proven he expressed doubt, although was always respectful of others' religious beliefs. I believe this experience has humbled Ross. He now prays to God, asking for forgiveness, guidance and mercy. He is truly repentant.

My brother is a good man. His criminal convictions do not represent who Ross truly is. I respectfully and eagerly request that you give Ross the shortest sentence possible. Please leave him some time to live as a reformed man with his family and loved ones. Please allow him to come back to his family and be a part of our lives again.

Sincerely,

Cally Ulbricht

LETTER 4

[redacted]

March 29, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York, U S Courthouse
500 Pearl Street, New York, NY 10007

Dear Judge Forrest,

My name is Travis Ulbricht, I am Ross Ulbricht's older brother. I am currently semi-retired from running a business in the information technology field, and live in Sacramento, California. I have known Ross his whole life, although we were raised apart as we have different mothers. I think I can speak to his character and give you an idea of who he is as a person.

I have known Ross to be a bright, curious, hardworking, family loving young man who more often than not put others before himself. He is also a thinker, giving much of his life to thinking about philosophical questions regarding the relationship of human beings with society and freedom in general. One was always assured a stimulating conversation when speaking with Ross. You were also always assured of being listened to and your ideas respected as well.

As Ross's older brother I had the opportunity to watch him make some impressive choices growing up. Ross followed our Dad in becoming an Eagle Scout. This is not an easy task for a teen while many of his peers were "partying." Instead Ross gave up much of that time to finishing what he had started and became an Eagle Scout before graduating high school.

Ross also was a gifted student, with a near perfect math score on the SAT. He was accepted at a good engineering program at UT Dallas with a full scholarship and eventually completed his Masters at Penn State.

Ross also did something I would not have imagined in college. At a young age he purchased a multi-bedroom home and spent a considerable time doing all the repairs necessary to then rent it to fellow students. In all my college years I can't recall anyone doing anything that "adult" and constructive.

While it's hard to sum up a person's life, there is something I heard about Ross that really "fits" who he truly is. Ross started up a yoga group in jail, to help ease the stress of his fellow inmates, and of himself as well. I had never heard of anyone ever doing that in jail. Jail is not a place where one wants to stand out. I believe Ross started the yoga group there because it was a bit of good that he could do in his surroundings and for the people around him.

That gesture of compassion is who my brother is. It is how he has been in most situations in his life. He is always looking for how he might improve the world and the lives of those around him, even if it's in a small way.

How you are known is often by the little things. The fires you don't stoke, the peace you make during upsets, the helping hand that wasn't asked for, the small kindnesses. While there are many things that I am proud of about Ross, it's not one specific thing that means the most to me. People like Ross add little things to every moment you're with them, which adds up to so much more. For instance, no one would have missed the yoga group if it hadn't been in the jail. But because it was, I imagine it helped a number of people who were hurting. That's who Ross is.

I have accepted that Ross will spend time in prison, and more important I know Ross has accepted it as well. When I think about what he faces I feel afraid for him. When I think of the men in prison they stand in stark contrast to who Ross is. Ross has no tattoos, no tear drops on his cheeks, no spider webs on his elbows. No scars given to him by anyone in anger, or by himself. Ross is not dark, brooding, violent or angry at the world. Ross has never been a cynic. He has no priors, so no recidivism. Rather, Ross is an idealist, a thinker, philosophically minded and peaceful. A lover of nature.

My hope for Ross is that the good he has in him to give the world is not torn from him during his experience in prison; that the parts that would seek truth, be curious and helpful would not be crushed into nonexistence. I hope that, after the punishment phase, he has the possibility of a future where his natural inclination to help could be of benefit. I have no doubt he would do what he could to help others if he were given a chance. That is simply who I know Ross to be.

The world is a rapidly changing place where so many things are digital and open. Much like children, people are exploring where the boundaries and cliffs are, what this new technological world means for our society. For many young people it's like finding fire for the first time and reaching out to touch it. Many will be burned. But they are young and not yet wise. Please your honor, take Ross' young age and youthful tendencies into account.

What I hope, and what I so humbly ask of you, is to please consider giving Ross a sentence that would give him a chance to still have a positive impact on the world in his future. It would be such a loss to not have his intelligence and light in the world.

Thank you for your time and letting me express the love I have for my brother with you.

Sincerely,

Travis Ulbricht

LETTER 5

[redacted]

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am writing you on behalf of Ross Ulbricht who stood trial before you earlier this year. I attended much of the trial, traveling twice from Virginia, taking time off work (without pay) to do so. It was important to me that Ross saw support and didn't face trial alone.

I am a graphic artist and have worked with an educational company for over 15 years producing digital coursework for college aged students. I am also Ross's aunt and share a very close relationship with him, even considering him a second son. I've known Ross all his life. I pledged my life savings for his bail, something that would have been a hardship for me as a single mother. I would do it again without hesitation because of my strong belief in Ross.

While I understand Ross has been convicted of serious crimes, life is more complex than simple verdicts. These crimes do not reflect who he really is. Ross is a person who holds high standards and can be trusted more than the average person. He actually holds truth, and telling the truth, as an ideal and a challenge.

I have shared countless personal moments with Ross as well as seen him interact with others through all stages of his life. He has always been an exceptionally sweet, thoughtful and peaceful person. I can't remember seeing him lose his temper. As a young adult, he grew into someone I knew I could trust and count on. In fact, while I was going through some personal hardship in my life, I called on Ross to help me on more than one occasion. He offered me a place to stay more than once. He also helped me move during a scorching hot time in Austin. Ross was busy but knew I needed help and he cheerfully showed up, as I've seen him do so often for others. There were also a few months when he needed to a place to live and I welcomed him, without reservation, to live with me for as long as he needed. It was a fine and pleasant experience and I would do it again now, without hesitation.

I also have interacted with Ross in family and social contexts over the years, and he is always a positive contributor to any event. I have consistently been impressed with his outlook and determination to look towards the social good in a larger picture. An attitude like this isn't luck but is consciously cultivated, which isn't always easy. It is something we all aspire to. I still correspond, speak, and visit with Ross and see this attitude even now under such difficult conditions.

I realize youthful ideals can sometimes push serious boundaries and I believe this is what was behind Ross' actions. Fresh from graduate school, I know he was thinking about how he could impact the world for good. A lofty goal. Freedom coupled with his free market ideals interested him. He was very idealistic. I actually had vigorous debates with him about pure ideals vs. ideals within existing parameters, and I know he thought

about things carefully. However, youthful ideals don't always consider far reaching outcomes and consequences. This comes with time and maturity for most of us. I believe in another scenario Ross would have found this hard reality with less impactful consequences.

Despite the tragic, unforeseen consequences of Ross' actions, I know that these crimes do not reflect who Ross is. He made a terrible mistake, one that he would never repeat. Ross is contemplative and I know that this experience has caused reflection and change. Wherever Ross goes, in or out of prison, I am certain from my intimate and long experience with him, that Ross will not cause any problems, will be no danger to anyone and, as he has so often demonstrated, will contribute to others.

I am saddened by the turn Ross' life has taken, but in particular that there is so much good that will be lost to society in general, not only from him directly but the support he gives others. I only hope he can retain some of his desire to help others during this experience and not become hardened. That would be a loss for all of us. I know there are still many positive contributions that Ross can make.

Please consider Ross' peaceful nature and prior record when sentencing him. I respectfully ask for as short a sentence as possible—one that will allow this young man to return to and still contribute to society.

Sincerely,

Kim LaCava

Kim LaCava
[redacted]

LETTER 6

Ann Becket
[redacted]

March 10, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest:

I am writing you on behalf of my nephew, Ross William Ulbricht.

I have known Ross his entire life and he is one of the most outstanding young men it is my privilege to know. While I understand he has been convicted of several crimes, these do not represent who Ross really is or the positive things he is capable of achieving. The man I know possesses many fine qualities too often found in short supply these days. Ross is a humble, modest individual who is considerate of others and is deeply loyal and caring about his friends and family. The one quality that stands out the most is his integrity. I know Ross would never deliberately hurt or cheat another human being (or animal for that matter). An Eagle Scout, Ross internalized the virtues of honor, discipline and hard work at a young age and in a lifetime of knowing Ross, I have never heard him make a mean or disparaging remark about another person. Rather, Ross is a warm, funny, easy going and affectionate individual who doesn't have a selfish bone in his body.

You are probably unaware that Ross has been tutoring other inmates while in prison. Even during the most difficult week of his life when, understandably, Ross might be preoccupied with his own troubles, Ross returned daily to his cell from his trial and tutored his cellmate who was studying for his GED.

One of his friends told me how, once, while out walking they passed a woman selling flowers. Ross stopped and bought a flower and then turned around and gave it to the flower seller. Confused, his friend asked Ross why he did such a thing. Ross replied, "People are always buying flowers *from* her, but I wonder how often someone buys a flower *for* her." That sums up perfectly the essence of my nephew.

Another friend related to me how Ross asked her to take a Valentine's Day present to the girlfriend of someone he had befriended in prison. She asked him why. Ross told her, "So that she knows there is someone who loves her." When Ross heard the verdict of the jury, his first response was to turn and comfort his family, whispering to us that he would be ok. Ross is an extraordinary individual who is

always thinking of and putting others first. As a prison guard at MDC Brooklyn told my sister during one of her weekly visits to Ross said, "I can't tell you how highly I think of your son."

I appeal to you to allow Ross to return to society, his family and community as soon as is possible. The fact that Ross spent a great deal of his adult life in the world of academic ideas and theories may have contributed to his naïve idealism. Ross has so much to contribute and could have a far greater and positive impact on society if he is spared a long sentence.

Please feel free to contact me if you have any questions.

Thank you for your consideration.

Sincerely yours,

Ann Becket

LETTER 7

[redacted]

March 10 2015

The Honorable Katherine B. Forrest
United States District Judge, Southern District of New York
United States Courthouse, 500 Pearl Street
New York, New York 10007

Dear Judge Forrest:

I am the Marketing Principal in an Interior Architecture firm in New York. I am also Ross Ulbricht's aunt and have known him all his life. I wish to convey to you the nature of the man I have known since he was a baby.

The criminal conduct Ross has been convicted of does not represent who he is as a person, or the many outstanding things he is capable of achieving. One would be hard pressed to find a kinder, more gentle and compassionate soul than Ross. Although Ross has now been convicted of a crime, my faith in him remains as strong as when I pledged my life savings towards his bail.

Particular and outstanding values that Ross embodies are integrity, honor and honesty. In addition to his relaxed and non-judgmental approach to life, this is a young man who embodies great sensitivity, fair play, and a gregarious nature filled with good humor. He is, and always has been, a sweet, considerate and funny guy with high ideals and love of life, family and friends. This is the Ross I know and have always known.

Ross is ever quick to make the first move in smoothing out difficulties – both in family squabbles or misunderstandings, and among peers and associates. As an example, I recall having an argument with Ross and his cousin. Both were in their twenties at the time, the perfect age for young men to think they know the answers to everything. We argued and ended the conversation with a slightly tense air. Within 15 minutes, Ross came up to me to apologize and admit his folly. It is a rare twenty year old who does that.

Ross is a man who embodies great potential for positive contribution to all who know him and society at large if he is spared a long sentence. I ask you to seriously consider the assessment of those of us who know Ross well, who have knowledge and experience of him, and consider it an honor to call him family and friend.

Thank you for your consideration.

Sincerely,

Gale La Cava

LETTER 8

[redacted]

March 27, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am writing as a friend of Ross Ulbricht. I have known Ross for nearly 20 years through middle school, high school, and in our adult lives. I consider him to be one of my oldest and closest friends. In that time I have known him to be a kind, forthright, generous and caring person.

Ross and I have travelled together, gone backpacking, and he even organized my surprise bachelor party when I got married three years ago. Ross is someone whom I call a dear friend. I gave testimony to this effect as a character witness on Ross's behalf during his trial in February.

When we were 18, Ross and I and another friend went to Big Bend National Park on a backpacking trip. Ross was our cross-country navigator and despite dehydration, harsh conditions, and long miles, he persevered and managed to find a safe route for us across a long stretch of desert. On this trip, and other adventures since, Ross has been a dedicated, honest, caring companion and I will always be proud to call him my friend.

A little about myself: I am 30 years old, and have been married for three years. My wife and I just had our first child. We live in Austin, Texas where we recently purchased our first home. I have worked for the City of Austin for seven years as a GIS Analyst. My wife teaches at a university near Austin. My wife and I are in all regards typical, ordinary, law-abiding people. I stress this point because I want to make clear that I have respect for the rule of law and due process.

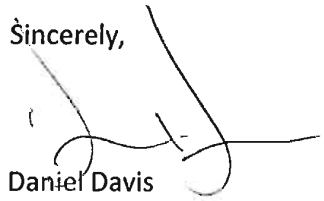
I am familiar with the charges that were brought against Ross, and I am aware that he was found guilty by the jury. I understand that these are very serious charges, however I believe that a sentence that would allow Ross to return to his family and his community as soon as possible is most appropriate in this case. Ross does not have a previous history of criminal behavior. As a consistently peaceful and non-violent person, I feel that Ross does not pose a threat to the public, and that the likelihood of his committing any criminal acts in the future is nonexistent. Additionally, I feel that a long sentence would do grievous harm to Ross via the

demoralizing and dehumanizing effects of prison, and that in this case, given the lack of prior criminal history, this punishment is not the best course.

Please consider the full circumstances of Ross's life and situation when assessing the sentence in this case. Please consider that Ross is well loved by his community and family, and that in my opinion his probability of recidivism is zero.

Thank you for your attention to this matter.

Sincerely,



Daniel Davis

[redacted]

LETTER 9

March 25, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am Ross Ulbricht's aunt. I have known Ross since he was born. I am writing this letter to give you insight into Ross as a human being and shed light on his true nature.

Ross grew up in a loving family, raised by parents who instilled in him high morals and values – qualities that shaped who he fundamentally is, an honorable, kind and caring person. I trust Ross completely. So much so that my husband and I pledged our house toward his bail. I would never have considered jeopardizing the roof over our heads if I didn't think Ross was completely trustworthy. I am aware that Ross has been convicted of crimes, but he is fundamentally honest, peaceful and a danger to no one.

Rather, Ross is an outstanding person, gentle and compassionate. He has a deep love for family and friends. He is a person one can count on in time of need. He is a fun loving, happy go lucky person who loves life. All those who have had the good fortune to know Ross, have been positively touched by him.

One example of Ross' compassion and caring occurred a few years ago when our family had a reunion in Cape Code, MA. I flew in from California with my daughter Ava, who at the time was 9 years old, much younger than her adult cousins. The age difference caused her to feel left out, so Ava was spending most of her time alone in her room not participating with the others.

Ross became aware of this and went out of his way to spend time with Ava and help her feel comfortable. He made it a point to get to know her. He took her sailing and swimming and Ava was thrilled to have the attention. It warmed my heart to see Ross take this time with his much younger cousin and make the extra effort while her other cousins were too busy. Ross is known for his big heart, and this is just one example. Not all young men are sensitive enough to take the time to make their younger cousin feel part of the group. It was wonderful to see and just one of many times Ross has demonstrated sensitivity and compassion toward others.

I ask when you are considering Ross's sentence to take into account his outstanding character. He still has so much to give. Even with the shortest possible sentence, Ross will be severely punished. Please give him the chance to have some life at the end of that time.

Thank you.

Sincerely,

Leigh LaCava

LETTER 10

[redacted]

March 23, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am Ross Ulbricht's first cousin and I write to share with you some thoughts on Ross from the perspective of someone who has known him for his entire life. In fact, I was there on the day of his birth and I still remember it vividly, despite only being four at the time. Since then it has been my privilege to spend many other days with Ross doing everything from hiking to skiing to playing board games and engaging in countless other activities that I look back on so fondly. In fact, every memory that I have of Ross is accented by the fact that he has a spark; a passion for life and an adventurous spirit.

Ross is undeniably a man of exemplary character. I have known this all his life, but am reminded of it by a simple act of kindness that Ross demonstrated in May, 2013. After an event, he, I and our cousins found ourselves trapped under an awning in the midst of an extreme downpour. We assumed we would be stranded for a considerable time, lest we become thoroughly soaked. As the driver, I felt a sense of obligation to rescue us by making a dash for the car, but given our distance I opted for the relative dryness of our existing location. I sensed that I was disappointing the group, but I also wasn't prepared to be drenched. Without hesitation or prompting, Ross requested the keys and simply strolled out into the tempest.

Not one other person took it upon himself to sacrifice his comfort. So, if it is truly the little things that define a man's character, then it is clear that Ross is among a rare class of people who value others more than themselves.

What truly makes Ross an astonishing person is the fact that he has an abundance of compassion. Again in May 2013 we spent an evening engaged in a rather deep, philosophical conversation that stretched late into the night. I remember asking Ross what he thought the purpose of life was. Specifically, I asked what he would do with his time if money was no object. I was struck—although perhaps I should not have been given what I know of his character—that his response was completely consistent with how he was already living his life. He expressed that money is "useful" because it affords resources and with those resources you can achieve amazing things to help

further the greater good. Useful... I remember his choice of the word distinctly because there was a tone in his voice that made it clear that money is ultimately inconsequential. All that Ross cared about was how his life might be used to serve humanity.

And that question—the question of how Ross will be able to use his life to serve humanity—is one that you are in a unique position to answer. I believe that Ross' crime is not a reflection of his true character, but rather the result of ignorance and idealism. Ross has an astounding intellect and a warm heart and that heart has been profoundly humbled by what I can only describe as a tragic series of choices that have real-life consequences. I know that he is deeply sorry, not only for his actions, but for the hurt that this has caused his loved ones and for the opportunity cost of a lifetime that I'm sure he fears is at risk of being wasted.

When determining Ross' sentence, I humbly implore you to consider what I, and I'm sure many others, have shared. I offer no excuse for his crimes, but I know unequivocally that humanity will be better served by a man like Ross being free than it would by his being behind bars. I ask that you would extend Ross the compassion that I have witnessed in him so many times and impose a sentence that ultimately allows him to return to society.

Sincerely,

Logan Becket

[redacted]

LETTER 11

[redacted]

March 8, 2015

The Honorable Katherine B Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Thomas Haney. I met you briefly at Ross Ulbricht's trial about a month ago when I spoke about his character. I work summers in Montana as a U.S. Forest Service Smokejumper, and winters in Virginia in oyster and clam aquaculture.

I'm writing you today on behalf of my friend Ross, to ask that you be as lenient as possible with his sentencing. I've known Ross since we were in high school, and have had many great experiences with him over the years. During our friendship I've always been struck by his kindness, openness, intelligence, and general love of life. Ross is absolutely one of the most unique people I've met, and is someone who I strongly believe deserves leniency.

The entire time I've known Ross he has been a positive and uplifting presence and influence on the people around him, and I'm sure he will continue to be so wherever he finds himself. I can think of several times when something in life was really bothering me, and though I didn't feel comfortable talking about it with many of the people closest to me, I could always talk to Ross. This is because I knew without a doubt that I could trust him, and that he always wanted the best for me.

Please leave open the possibility that Ross can live life freely again, because freedom and life were two things that were never wasted on him.

Thanks for your time,

Thomas Haney 

[redacted]

LETTER 12

[redacted]

21 March 2015

The Honourable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest

My name is Vicky Cheevers and I am a marketing professional based in the UK. I write with regards to Ross Ulbricht.

I have known Ross since January 2012 - we were introduced via a good friend of mine - his sister, Cally - at a house party in Bondi, Sydney.

I immediately formed a friendship with Ross, which later transferred to becoming Facebook friends (I moved back to the UK).

He is a kind, gentle person, who is easy to talk to and I have never heard him a say a bad word against anybody, not even on his Facebook profile! He is unassuming and doesn't like to get involved in or provoke conflict. He is highly intelligent, often using his intelligence to help people and society in general, as demonstrated by his scientific ability. He goes out of his way to help people, no matter how small the task. This sounds like a very small thing but it is just one of many examples of his selfless nature - at a BBQ we had, he was first to offer to stand all day cooking people's food even though we were all having fun, despite the scorching hot weather! He put us before himself. As I say, small, but a great demonstration of his selflessness.

I appreciate that he has been convicted of a crime, however I do ask that he be given as short a sentence as possible to allow a genuinely good person back into society.

Sincerely,

Vicky Cheevers

[redacted]

LETTER 13

[redacted]

March 1, 2015

The Honorable Katherine B. Forrest
U.S. District Judge
Southern District of New York
United States Courthouse
500 Pearl St.
New York, NY 10007

Dear Judge Forrest,

My name is John Charles Miller. I am a retired real estate investor.

I have known Ross Ulbricht and his family since the 1990's. We are part-time neighbors in a small community in Costa Rica.

Ross has always been a well-mannered, soft spoken, likable individual. He never created any sort of upsets or commotion in the area. He has been a trouble-free, well behaved young man and a good student.

I understand that Ross has been convicted of a crime. I hope that in his sentencing you can give him as short a sentence as possible. I believe that, with a future out of prison, Ross could achieve many positive actions and deeds for society in general, and specifically his community.

Sincerely yours,

John Charles Miller

LETTER 14

[redacted]

April 6, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

Please accept this character testimonial for Ross William Ulbricht in advance of his upcoming sentencing. My objective is to contribute an account of Ross that did not come through at trial and has been absent from the predominant media narrative. While I am private by nature, my motivation in sharing the following anecdotes is to aid in distinguishing the character of Ross from the classic archetypal images that accompany the criminal conduct of which he is convicted.

First, I would like to preface this letter by acknowledging that as a [redacted] ph.D. student in [redacted] Psychology, I am keenly aware that there is no objective answer to the question of "*who*" somebody is. In research this problem is mitigated by obtaining reports from multiple relational sources, ideally individuals that have observed the actions of the target individual across various scenarios, moods, exchanges, and contexts. In clinical interviews this problem is mitigated by eliciting behavioral anecdotes and examples to substantiate verbal reports. With this in mind, my aim is to offer a description of Ross' character drawing from my vantage points as a dating partner (late Spring 2012-late Summer, 2012) and a platonic friend (Fall, 2012 – Present), and I will strive to substantiate my claims by drawing on examples, including excerpts from past written correspondence.

One of the more succinct illustrations of Ross' character and values comes from an email exchange that he initiated shortly after his move from TX to CA. I include both sides of our exchange because one's character is reflected both by virtue of the qualities that *they* value in the people they choose to spend their free time with, as well as by the assessments and impressions that *others* (me) have about their time together (which by late July and August, constituted a near daily basis):

"Dear [redacted], [...] There are a couple of things unspoken that should be. For one, you are an amazing person. I was continually impressed by you over the summer. I have not encountered a mind quite like yours before. Your intelligence is refreshing and inspiring. You showed kindness, humility and respect to me in all of our interactions. There was literally ZERO drama between us. [...] I felt we could have worked out any dispute that might've arose, mostly because you are so rational and open minded. Additionally, I think you are gorgeous! [...] When you laugh, your face lights up and I can't help but laugh myself. [...] So yes [redacted], I miss you. Whatever the future holds, I want to be your friend, ok? I don't want to lose touch. [...]When I'm in Austin, I want to see you. [...]"

"Ross, [...] At the risk of sounding unoriginal, I was continually impressed by you over the summer as well. Initially I was very cautious - as you picked up on with our "5 first dates" :) but the more time we spent together and the more I got to know the real you, I was able to see that in addition to the characteristics that initially drew me to you (including superior intellect), you have a [genuine heart]. And you also have an exceptional sense of humor - I still think about some of your morning comedy and can't help but smile [...] I was also impressed by your intellectual curiosity and open-mindedness. I think very few people would have actually read the articles I sent you, or so readily watched the TED talks and YouTube videos I recommended. And likewise, I think few people would have shared their [research] with me - especially knowing that I don't have a background in their area of study[...]

As far as maintaining a friendship, I have a bit of a relevant story [...] Ultimately I decided that the value of continuing to spend time together and getting to know you further, outweighed the discomfort that accompanies losing somebody romantically [...] And really, the most influential factor in this decision was whether I would value a friendship with you - if so, it would be particularly short-sited, and immature, to just stop seeing you for the duration of your time in Austin. So [...] yes, I do want to stay in touch and be your friend - I have known this for a while :)"

In addition to positive feedback, I also value Ross for his willingness to provide constructive feedback. For example, on one occasion I made a tangential reference to downplaying my true enthusiasm for a particular subject matter, to which he addressed, *"I encourage you to express your enthusiasm. More often than not, it "gives people permission" to do the same and will attract supportive people to you."* On another occasion when I explicitly asked for candid feedback he responded, *"Just my perspective, as you know, but I would say you are very reserved [...] Try going for what you want without over analyzing how to get there. Try also speaking without thinking. This has to do with trusting yourself and being willing to make a fool of yourself for the sake of learning how to express yourself." / "Ya know, I became much more careful with my words in grad school. With all of the jargon and status around being smart, there was social pressure to be that way."*

As referenced above, Ross has an enthusiastic and contagious intellectual curiosity. One example of this is nicely illustrated by his response to a TED talk I recommended: *"That was a great one! Thanks for sending it my way. It's so true that you stop learning/growing when you get committed to the I'm right, you are wrong paradigm, or even the I'm wrong you're right. Either way it shuts off the mind. In my pursuit of moral truth over the years, I have progressed by finding inconsistencies in my views, and then seeking a deeper understanding that might prove one right and the other wrong, or both wrong or right. The idea is that two inconsistent things cannot both be true. Either one or both are wrong, or your view of them is. And it never ends, and it is ever fascinating :)"*

Finally, Ross demonstrated empathy, particularly for his family. He spoke often, and uniformly fondly, of his mom, dad, and sister. Additionally, Ross exhibited concern about the well-being of one aunt in particular, whose son was diagnosed with a severe medical condition. From time to time Ross would share some of the challenges faced by his cousin and aunt, and ask my opinion about various support options and community resources. Ross was in close communication with both his aunt and cousin hoping to help alleviate some of the palpable stress that he perceived his aunt was experiencing in her role as primary caretaker. Ross appeared to contribute a valuable role in his cousin's life as his cousin was able to hear Ross in a way that a parent, simply by virtue of their role as primary caregiver, sometimes can not get through.

In closing, on a more somber note, *nightmare* does not begin to aptly characterize Ross' situation, because unlike a nightmare, the nature of this horror, to include the loss of hopes and dreams, extends well beyond Ross. Moreover to be frank, unlike a nightmare, there is the distinct possibility that Ross' parents – who have never been alleged of any wrongdoing; *we truly could be in their shoes* – will not live to wake up from their living nightmare. This reality is deeply disturbing. This is also true of his extended family, many friends, and society as a whole as Ross has the capacity to go on to make many valuable contributions to society.

Therefore it is my hope, Your Honor, that you might consider a sentence that allows Ross to return to society within a time frame that will allow him to play a positive role in his family, community and society.

Sincerely,

[redacted]

[redacted]

LETTER 15

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My Name is Jeff Crandell, I am Ross Ulbricht's Uncle and I currently live in Los Angeles, CA. I am aware Ross has been convicted of a crime and is about to be sentenced. I have known Ross his entire life and feel his incarceration is unjust. He is a good kind person.

Ross loves his family and friends and has always cared for and looked out for my daughter Ava his younger cousin.

Ross also has a tremendous intellect and strong belief in his fellow man. I know he has learned a great lesson. Given his true character and freedom, Ross will contribute to the betterment our world as few others could – I have no doubt.

I ask when you are considering Ross's sentence, to take into account Ross's true nature. In spite of his conviction, to keep Ross behind bars longer than required would be a terrible waste.

Your honor, I ask you please for leniency in your sentencing of my nephew Ross Ulbricht.

Thank you for your consideration and God Bless.

Jeff Crandell

LETTER 16

[redacted]

April 3, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I'm writing on behalf of my friend Ross Ulbricht. Ross has been a friend of mine since we were sixteen. We met at Westlake High School in Austin, Texas, where we were in a close group of friends that would spend time together in and away from school. In high school we saw each other almost every weekend and would chat and have lunch together almost every day at school. Our friendship has held up over time, due to Ross' outgoing and caring nature. We both moved away after high school, but always called each other when back in Austin to get together to share new stories and reminisce. In 2012, he sublet our apartment after we purchased our first home and I was delighted to have such a responsible, loyal friend in the space. I trust Ross.

I am a practicing Landscape Architect and new mom to a beautiful fifteen month old girl named Hannah. While Ross was still in Austin we would often get together for food and good conversation. I'm sad that Ross has been convicted of a crime, and because of such, has not been able to come back for a visit. I am deeply saddened that he may not be able to visit for years to come and hope for the shortest possible sentence for him. I so wish that he could come over to our house and hang out with our daughter while we cook for him. He is so full of energy, life and love that I wish I could expose my daughter to. She would be delighted in his presence. I also feel that he would be able to pass on great wisdom to her as an 'uncle' figure. He is so intellectual, patient and articulate in explaining the complexities of this world.

During our senior year Ross accompanied me to the high school prom. I was dating a guy from another school who was in a wheel chair at the time. My boyfriend did not want to go to the dance with me, because he was embarrassed to be in the wheel chair and thought he would slow our group of friends down. No amount of convincing changed his mind and I thought that I would not have a chance to go to prom. Ross stepped in, being very good friends with both of us, and offered to be my date. He enabled me to have the only prom experience I ever had, while being a non-threatening alternative for my boyfriend. Had it been anybody else, I'm sure that my boyfriend would have uneasy about motives. Not with Ross. He trusted him to be my date for the night and my friend without compromising our relationship. Ross is trustworthy and loyal to his friends.

Ross glows. When you're with him, you feel uplifted and alive. He has a great way of living in the moment and recognizing the preciousness of the ordinary. He opens your eyes up to see things a little bit clearer and inspires to dig deeper. I hope his beautiful gift of living in the moment has not turned into a curse for him, given his current circumstance. I hope that he is able to return to society as soon as possible, so that he is able to share his gifts with his friends and family again. I sincerely hope that my daughter has a chance to meet him and to learn from him. I hope for his health and wellbeing. Ross is a playful, delightful, and kind soul. I am shocked by the convictions that he faces and just can't believe that the Ross I know and grew up with is capable of such crimes. He is a good person and is capable of sharing so much positivity in this world.

I miss Ross and hope that he knows how loved he is. I hope to see my friend again soon.

Sincerely,

Allison Cassel (formerly Wait)

[redacted]

LETTER 17

[redacted]

March 31, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse, 500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I have written you in regards to my good friend, Ross Ulbricht.
My name is Curtis Francis Rodgers Jr. and I work as a technology and process improvement specialist for McCarthy Construction in San Francisco. I live with my girlfriend of five years, and we're both from Austin, Texas.

Ross Ulbricht and I are good friends; we have known each other since we attended high school together in Austin. Ross and I have been close friends for about six years, having spent time together in Texas and California on average once a month, and sometimes multiple times a week. We would typically visit the park to throw a Frisbee and talk about our lives, relationships, work, and current events.

I understand that Ross has been convicted of serious crimes. I know Ross well, and the crimes he has been convicted of do not change my high opinion of my close friend. Ross' criminal convictions are not a representation of Ross' character, considering my close experiences with him. I regard Ross so highly that I flew across the country in order to testify at trial if needed on his excellent character and peaceful nature.

Over the years, Ross has proven to be a kind, trustworthy person who I have relied upon on numerous occasions. When I first moved to San Francisco, Ross offered me a place to sleep while I found an apartment and even let me wash my clothes in his apartment instead of walking up the steep hill to a laundromat. Ross is the only friend of mine from high school that I kept in regular contact with, and the only friend from Austin who came up to Dallas to visit me after I started my career in construction. I can't recall a single argument between us; it just seemed we enjoyed each other's company and had genuine interest in each other's success.

I think Ross' experience as a material science researcher, and entrepreneur with his Good Wagon Books venture illustrate his capacity to have a positive impact on our society. I implore you to sentence Ross to as short a sentence as possible.

Sincerely,

Curtis Rodgers

[redacted]

LETTER 18

[redacted]

April 27, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am an agent at the Creative Artists Agency in Los Angeles, CA, the leading talent agency in the world that represents clients across film, TV, music, sports, and much more. I am writing you in regards to Ross Ulbricht and his sentencing.

Ross is my cousin. Our mothers are sisters and I've known him my whole life. We spent all our summers together growing up. The members of our family are loving, honest, and hardworking people.

I consider Ross one of those truly exceptional individuals who thinks about the greater good for all people. This should not be discounted when one considers how unusual a quality that is in the world today.

On a personal level, Ross is one of the most caring, honorable, and trustworthy people I know. He is sweet, humble, friendly, selfless and outgoing. He is also incredibly accomplished in academia, with multiple degrees in the sciences. My fondest memories of him are of surfing in Costa Rica and drawing comic books together.

I once told Ross he should have been an astronaut. I watched him consider the possibility and we both knew he had the means to do it. I can't say that about anyone else I've ever met. I have faith that time will reveal him as the man I know, with so many incredible qualities of character and such a big heart. In spite of everything, I believe Ross is an honorable and noble guy. That's the highest praise I can give and he deserves it. Ross cares about family, friends, and his country. He cares about good values and he cares about people. If we were all like Ross the world would be a much better place.

For these reasons, I can say that the crimes Ross is convicted of do not fit the person I know for one minute. Please give Ross the shortest possible sentence so his life is not wasted, so he can have a second chance to make a positive impact on his

community and the greater world. With all he is capable of contributing, it would be a terrible waste to have him spend a long sentence behind bars.

Sincerely,

Alex Becket

[redacted]

LETTER 19

Catharine Becket
[redacted]

March 27, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I have known Ross Ulbricht, my step-cousin, his entire life.

I live in New York where I work as a Vice President at Sotheby's auction house. I would occasionally pass by the Brooklyn jail in which Ross is currently being held, and each time I do I am hit with both sadness and frustration. While I know he is serving as a positive light in the lives of his fellow inmates, he could be doing so much more for society as a free man. He is someone who truly contributes to the world around him and, as an incredibly compassionate person, he will no doubt check on the well-being of these inmates when he is released.

Ross is a remarkably gentle and positive person; he always puts others before himself. I have spoken with him when he has called from jail, and he always asks how we're doing before offering up some of the more pleasant details of his incarceration. He never complains, knowing this might add to his family's distress.

The last time I saw Ross was at my brother's wedding in 2012. There was a dinner held for out-of-towners and most of the guests were in their 20s and 30s. My mother and step-father, both in their 70s, were a bit out of their element. I went to go collect my dinner from the buffet and when I returned with my plate I had a look around for my parents, wanting to make sure they were well situated. I needn't have worried, however, because there was Ross, having a chat with them. I believe they were discussing World War II, one of my step-father's favourite topics. Ross, a handsome and affable young man who could have been chatting with any of the cute girls in attendance, chose to take the time to join my parents who had been sitting by themselves. Being thoughtful comes naturally to him.

While most people possess a modicum of self-preserving cynicism, Ross approaches people with optimism and an open-mind. If I ever had a concern for Ross it was that someone might take advantage of his good nature. He was born with a kind disposition, and through the guidance of his family he grew up to be man of integrity. The crimes of which he has been accused do not reflect the character of the Ross Ulbricht I have known for three decades. It would be a great tragedy and waste to have him kept away from society. I ask that you give him the shortest sentence possible.

Please do not hesitate to contact me with any questions. I may be reached on [redacted]

With best regards,

Catharine Becket

LETTER 20

[redacted]

March 27, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Karen Lasher. I am the Director of Sales & Events for GDI, a group of locally based Austin restaurant and live music venues.

I have known Ross Ulbricht since 2005. Ross is my best friend and former housemate Cally's younger brother. Over the years he spent many afternoons visiting with Cally and myself in our apartment and joined us for lunches and outings to enjoy the Austin outdoors. I also joined him and his family in San Francisco two weeks before Ross was arrested in October, 2013.

Throughout all the years I have known Ross I have always found him to be kind, considerate, gentle natured, and easy to be around. I have spent time with Ross with his family and have witnessed first hand the love and devotion that he shows to his family and friends.

I understand that Ross has been convicted of a crime. The events surrounding his conviction came to a shock to me, as it seemed completely out of character for the young man that I have seen grow and mature over the past 10 years. I truly believe that Ross has no intention of harming anyone and only wants to be a present part of his family and nature once again. I am certain that Ross has many positive contributions to offer.

I ask with the utmost respect that you consider giving Ross the minimum sentence possible.

Sincerely,

Karen Lasher

[redacted]

LETTER 21

April 21, 2015

The Honorable Katherine B. Forrest
U.S. District Judge
Southern District of New York
United States Courthouse
500 Pearl St.
New York, NY 10007

Dear Judge Forrest,

I am a designer based in Austin, Texas and a long time friend of the Ulbricht family. I have known Ross since he was just a little boy and his parents have known me since I was a baby.

Throughout his life Ross has been caring, sweet and thoughtful. His relationship with his parents, peers and those around him is a testament to that. I have always known him to have a positive outlook and a peaceful disposition. It has been my pleasure to know Ross all these years and watch him grow into a wonderful young man.

I know that Ross has been convicted of serious crimes. Despite this fact, I believe this does not reflect the man he really is.

I hope that you will give him the shortest sentence allowed, due to how much Ross still has to contribute to society and to those around him. He is missed every day by all whose lives he has touched. I hope you are able to see the kind young man we all know and love and adjudicate accordingly.

Thank you for taking the time to read my letter and for your consideration.

Sincerely,

Rosy Hanby
[redacted]

LETTER 22

[redacted]

March 31, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Hannah Thornton. I am a Senior Lecturer in nutrition at a university in Central Texas. I consider myself a friend of Ross Ulbricht, and I understand that Ross has been convicted of a crime. I am writing to ask you to consider a sentence for Ross that allows him to return to society and his community.

Ross is a childhood friend of my husband, and I have known Ross for the last eight years. I attribute our friendship largely to Ross's kindness, generosity, and selflessness. During the years that I have known him, Ross has shared many meals at our house, playing board games and chatting about life until late into the evening. On these occasions, he never failed to remember and inquire about various aspects of my life, even if it had been months since we'd seen each other. He was always genuinely interested in discovering what he could do that might possibly make our lives better.

I have witnessed Ross offering support to many people – visiting a cousin during a health crisis, helping a friend with a heavy duty move, assisting another friend with a business endeavor. Without being asked, Ross helped my husband and I extensively with the set up and break down for our wedding, traveling back to Austin from across the globe for the event. I was friends with Ross when he began Good Wagon Books, the company he founded with the intention of donating 10% of all profits to charity. Ross was energized by this undertaking, excited by the idea that through his business he could make the lives of others better.

Judge Forrest, I believe in the rule of law. I am writing today not out of disrespect, but because I believe that the criminal conduct of which Ross has been convicted does not represent who he is as a person. I believe that if Ross is spared a long sentence, he will return to his community and engage in positive work for the greater good. I look forward hopefully to one day living in a community where I can again count on Ross's contributions. Thank you for your consideration.

Sincerely,

Hannah Thornton

[redacted]

LETTER 23

[redacted]

March 25, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

This letter to you is about Ross Ulbricht. I am a retired RN. My husband is a retired Deloitte partner. We continue to work on projects and have a healthy family life.

I have had the privilege of knowing Ross and his family since Ross and my son were in elementary school together. They both attended boy scouts and I especially remember Ross working diligently on projects to earn points to become an Eagle scout after many of the boys dropped out of the program. We've always known Ross to be of sound character and disposition. We saw him often and he even accompanied my son occasionally on family trips where relatives always welcomed him. My son did the same with his family.

Whenever Ross visited either our home in Austin or our farm, he was always happy to pitch in with whatever task was at hand, even helping our family begin to restore our 1895 farm house soon after we bought it. He and my son would do chores and then go outside and go fishing or hiking or petting the horses afterward. I also know him to be a young man busy collecting books for charitable purposes and improving solar efficiency.

I know Ross and his family to be kind, creative, intelligent upstanding people who in no way are prone to illegal activity. On the contrary, I believe Ross and his family to
have been a benefit to society, always trying to do something positive. In other words, they are great Americans.

Ross has always been adventurous and pioneering and has tried to contribute to the greater good. He certainly has been loving to his friends and family.
In my opinion, Ross has in no way deliberately posed a threat to our society, nor do I believe he will do so in the future.

For these reasons, I support releasing Ross from prison as soon as possible. He is a well educated young man who is likely to help society, not hurt it.

Please give Ross Ulbricht the minimum sentence possible.

Sincerely,

Barbara Emmert-Schiller

Barbara Record Emmert-Schiller

[redacted]

LETTER 24

[redacted]

March13, 2014

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am writing to ask that you give Ross Ulbricht a second chance to use his intellect and kindness to make a positive impact on society.

My name is Rosalind Haney and I work as a registered nurse, counseling women in pregnancy. I know Ross through my son Thomas who was a close friend of Ross in high school. Thomas and Ross played sports together, went on camping and outdoor treks and shared many great experiences. We continued to see Ross regularly over the past 15 years.

Of Thomas' friends, Ross was always one of my favorites for his friendliness and desire to do something important and meaningful with his life. He never failed to express his gratitude for the gatherings we had that brought their friends together, all of whom he cared deeply for.

Please do not let Ross' criminal conduct and conviction halt the potential he holds to make a meaningful difference in his life and the lives of others. I ask you to please allow Ross to return to society in the shortest time permissible, so that this young man may have a second chance to prove his true nature and worth.

Sincerely,

Rosalind Haney

[redacted]

LETTER 25

The Honorable Katherine B. Forrest

United States District Judge

Southern District of New York

United States Courthouse

500 Pearl Street

New York, New York 10007

Dear Judge Forrest,

I'm writing on behalf of Ross Ulbricht. I hope he will be back with us, his friends and family, and as a productive member of society as soon as is possible.

I met Ross in college 10 years ago. I cherish the nights we would stay up late talking philosophy and idolizing the potential we had for accomplishing things when we were done with school. Now that I'm a "real adult," working as a Project Manager for an industry-leading software company, owning a home and married to a great man, I look back on those days when we were learning who we are, and I smile. I miss Ross. He's a smart person, a kind soul, and one of those people you want to be around, because just having him in your life improves it. He has the same effect on his community, bringing energy and positive change wherever he goes.

Ross is one of those people that you fall into friendship with. After a summer apart, you talk as though no time has passed, or like you'd seen each other daily. He's one of those people you can ask philosophical questions and get a real answer. Maybe you didn't even know you were asking a real question, just musing, and Ross gets to the heart of the matter. I hope everyone gets the chance to have a friend or neighbor like Ross, since he fills a role that's hard to come by: that of someone who thinks on a different wavelength. When you come into contact with it, it alters your thought process as well, and you're better for it.

I know Ross has been convicted of serious crimes. However, I implore you to issue a sentence that will benefit Ross, our community and our country. The crimes Ross has been convicted of aren't indicative of the person he is. His the ideals are, and that's why we need him rehabilitated and returned to us, so he can correctly apply his personality, ingenuity, and general guidance in a positive and constructive way. Ross can use his powers for good, and will do the most good, if he's spared a long sentence.

Sincerely,

Mae Rock-Shane

Mae Rock-Shane

[redacted]

LETTER 26

Joel R. Meyerson
[redacted]

March 25, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

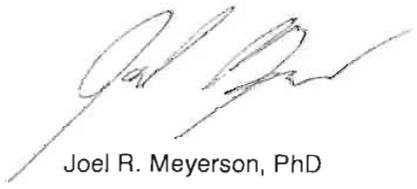
My name is Joel Meyerson and I'm a friend of Ross' going back to our time in elementary school. We were quite close up into our college years, but lost touch when I left Austin some years ago to pursue my PhD, and I now work as a research scientist.

Since leaving Austin I have regrettably lost touch with Ross, but have remained very close to others in our circle of friends including James McFarland, Thomas Haney, Taylor Marshall, and Jonathan Rosenberg. As such I have followed Ross' life only indirectly in recent years. I was deeply surprised and saddened to learn of Ross' conviction, which I understand to be very serious both from the reporting in the news, and from what I hear from our friends and his family.

I'm writing to you to say that I've always known Ross to be an incredibly gentle, warm, and considerate person. In thinking back on our childhood, one particularly salient memory of him was as someone who would repeatedly display friendship to many in our school who were perceived as nerdy, weird, or otherwise unpopular. I always thought this was admirable given the often harsh social conditions among high schoolers. This is a small and impressionistic recollection, but it has stayed in my mind for over 10 years and I think it's emblematic of the kindness that Ross displays so effortlessly. I mention this because I can't help but feel that the criminal conduct for which Ross was convicted is at odds with who he is as a person.

On a less personal note, in the scientific community I see firsthand on a daily basis the incredible feats that can be accomplished when passion, creativity, and technical abilities combine in an individual. This is also an exceedingly rare combination of traits that I know Ross happens to possess. It is my feeling that our country needs as many such people as can be found to tackle the assorted challenges that we face now and will in the future. It would be a loss for our country if someone like Ross were unable to have the chance to contribute positively to the many challenges we face now, and will in the years to come.

Sincerely,



Joel R. Meyerson, PhD

[redacted]

LETTER 27

[redacted]

March 8, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Joe Gyekis, I'm an instructor of Biobehavioral Health at Penn State University and a good friend of Ross Ulbricht since he was a graduate student here at PSU. We spent most of our time together in a qigong club, where we did meditation and discussed a lot of science and philosophy together. We spent time together on about a weekly basis for two years, and we kept in touch with occasional phone calls and emails in the years that followed.

In the meditation club meetings, we frequently told stories about our lives and experiences, and Ross was always a polite listener and encouraging of other people. He knew a lot about many topics, and combined with his cheerful disposition, he made it fun to talk about almost anything, from exercise and travel to pretty hard-core physics and social issues. He wasn't the type that you would need to fear a disagreement when talking about religion or politics, he was open to listening to anything and wouldn't force his opinions on anyone. I admired him a lot for being well-mannered, frugal, well-educated, and idealistic. When his mom came to visit during the holidays, it was nice to meet her and see their close relationship.

Among my friends, he was one of the ones that my wife liked the best, mostly because of his general kind and respectful personality, but also because of a few anecdotes that she remembers to this day. When my wife rather shyly invited people from the group to come to her singing recital, Ross was the only one to show up, and she really appreciated that. When her parents were in town, despite the language barrier, he very kindly invited them to his place and treated them in the polite and thoughtful way that he does to everyone else we saw him around.

I understand that Ross has been convicted of serious offenses. However, because I am confident he will do good for others when he is free, please give Ross the shortest possible sentence.

Thank you for taking the time to read my letter,

Joe Gyekis [redacted]

LETTER 28

[redacted]

March 9, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Christine (Chrissie) Reitmeyer and I am an LLPC (Limited Licensed Professional Counselor) living in Northern Michigan. I currently work part time as an academic counselor at a local high school and part time as a care coordinator at a rehabilitation center for people suffering from addictions to drugs and alcohol. Upon hearing that he was convicted, I felt compelled to write about my experiences with Ross Ulbricht. I went to high school with him, though he is two years older. I met Ross almost thirteen years ago when our best friends started dating.

I immediately liked Ross. Of his group of friends, he stood out as being the friendliest, and I mean that in the purest sense of the word: Ross excels at being a friend because he is one of the warmest, most accepting, and most gentle people I have ever met. We did not *have* to connect because our friends dated; he was older, much cooler, exceptionally intelligent, and already in college. Still, he always made me feel welcome and included me in his group of friends even when others did not.

Over the years, many memories stand out in our friendship from Ross making hilarious noises to throw off my pool game, to ultimate Frisbee games in the rain, to discussing the *Lord of the Rings* Trilogy because he always reminded me of Legolas. Once, a somewhat random group of acquaintances took a weekend trip to North Padre Island to go fishing and swimming. We were only united by our desire to get away. However, where others would have been uneasy, Ross was able to connect everyone with his openness and sense of humor. Despite my horrible sunburn, we had a great time and everyone left that weekend having bonded as friends.

Even after I moved away to go to Northwestern University, I always looked forward to seeing Ross back home each Christmas. I have missed him these past two years. I wrote to him last month about my life and curious about how life has been for him, with so many changes. Admittedly, when I received his response I was nervous. However, in true Ross fashion, his letter left me at ease. He told me he is trying to be grateful for every little thing in his life. I expressed feelings of doubt in my new career and he encouraged me to keep going. Even through this difficult time, Ross is working to remain himself: kind, optimistic, and full of love.

This wisdom, generosity, and compassion, even in dark times, shows me who Ross really is; the crimes for which he has been convicted do not. Anyone who has met him can attest to his character, and I know from experience we are all happy to do so. All I can ask is for a sentence that will allow Ross Ulbricht to return to his loved ones where his intelligence, sensitivity, and profound love can benefit others.

Sincerely,

Christine M. Reitmeyer, MA LLPC

[redacted]

LETTER 29

[redacted]

March 11, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse, 500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Jay Thomas and I am a Renewable Energy Consultant, born and raised and currently living in Austin, Texas. Ross Ulbricht and I attended high school together, although we maintained our friendship beyond high school and through our twenties. I have known Ross for a very long time. He was, truly, one of those folks that I regretted not knowing on a deeper level.

I know Ross to be a caring, thoughtful, intelligent person. I specifically remember reflecting one day that he seemed like a much closer friend than we actually were, because he was so kind and so easy to get along with.

In my interactions with others since his arrest, I have been truly amazed at the outpouring of support for Ross from people who know him. You just don't see that kind of love and admiration for someone who doesn't deserve it. Ross truly does deserve it, because he has earned it by living a life of compassion and dignity, this I have seen myself.

Ross is the kind of person this world sorely needs more of. He is someone who can impact this world in a positive way. Judge Forrest, it is my sincerest belief that when Ross is back in society again, he will use his compassion and talents to do good works and be a productive member of this community. For these reasons, I ask that you sentence Ross to the least possible time in prison.

Sincerely,

Jay Thomas

[redacted]

LETTER 30

BECKET BUSINESS APPRAISALS, LLC

[redacted]

[redacted]

March 18, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United State Courthouse
500 Pearl Street
New York, New York 10007

Re: U.S. vs. Ross Ulbricht

Your Honor,

I am Ross Ulbricht's 74-year-old uncle, married and the father of six, having resided for many years in Lakeville, Connecticut, and continuing to work at my long career as a business appraiser. Given my familial relationship with the defendant, my nephew Ross Ulbricht, I have had a lifelong knowledge of his years growing up, his academic success up through the post-graduate level, and his more recent pursuits of various business interests. At no time had he ever been in any kind of trouble with the law, not even a traffic ticket.

Ross has been convicted of crimes stemming from his creation of the Silk Road website, which turned out to be a naïve, most unfortunate attempt to put his libertarian and economic beliefs into a real world setting. So an idealistic dream has turned into a nightmare for someone who had an otherwise bright future.

In March of 2012, prior to Ross's arrest in 2013, I had shared an apartment with just him for one week in Sydney, Australia, where one of my sons was getting married. I mention this time together because there was no indication that Ross was still not the same young man I have always known—relaxed, cheerful and outgoing, honest, thoughtful of others, caring little about money, and supporting his many friends. I still cannot conceive of any malicious purpose on his part in promoting a free-market website.

We can accept that, to compensate for any harm done due to his misguided actions, Ross is to be punished. But I would ask that the court give a good person a chance at having a productive life in lieu of spending untold years in prison, which would be a tragic waste.

Respectfully submitted,

P L Becket

Peter L. Becket

LETTER 31

Susie Jauregui
[redacted]

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am a Senior Interior Designer with my family firm Jauregui Architect Builder Inc. I went to grade school with Ross Ulbricht and have known him since my middle school days. He has been my brother Mark's best friend for as long as I can remember.

Ross has always been like another brother to me. He and Mark would always let me tag along on their adventures together. He taught me so many things. Stepping in as another great big brother, he helped teach me who was worthy of dating, how to talk to anyone in the room and generally how to be a positive person and respect everyone. He always walked in the room singing and helped me see the glass half full growing up.

My parents are successful business owners and entrepreneurs and I would consider them hard to please. Ross was always one of their favorites and I remember getting jealous because he was often the only friend invited on family trips because they liked him so much. He was the type of high school friend that could talk to any adult for hours and was so interested in everything. I always envied my brother Mark for having such a close, trusting and loyal friend growing up. Even after college, when friendships become harder to keep, Ross would always stop by my parents' house to say hi, share his latest achievements and catch up with our family when he was in town.

When I heard of the crime Ross was convicted of, my entire family was in complete shock and couldn't believe what we were hearing. All of it sounds so out of character for such a smart, loving and all around stand-up man like Ross is. Knowing how positive and selfless Ross has always been, and continues to be through this process, only reconfirms to me that he is capable of great things. Ever since I was a young girl I knew Ross was going to achieve great things in his life and make a difference in the world. I look forward to seeing what positive impact his future holds.

To that end, I ask that you give Ross the shortest sentence possible.

Sincerely,

Susie Jauregui, M.B.A
[redacted]

LETTER 32

Donny Palmertree
[redacted]

Lindsay A. Lewis
29 Broadway, Suite 1412
New York, New York 10006

To Whom it may concern,

Ross and I met about 6 years ago in Austin, TX when we were neighbors and we instantly became friends because of his outgoing personality and our shared interest in business. Around 6 months later, he joined me in my used book business, Good Wagon Books – we collected and sold used books, and gave 10% of the sales price to a local charity.

We were friends and business partners, but we never argued and never had any disagreements that I can remember. This is one of the best things about Ross – he is as friendly, good-natured, and easy going as a person can be.

From the early days in the book business, Ross and I spend many many hours together building book shelves out of scrap materials and driving around in my truck collecting thousands of books. We would just chat for hours and hours about our lives, and where we wanted to be in 5 years, our families, our goals, and so on. Overall, if I only had one word to describe Ross, it would be genuine. He is a genuine person and a genuine friend.

I truly believe that Ross's conviction was not indicative of the type of person he is. I ask that he will have as short a sentence as possible so that he can use his infectious personality to do more good in the world, like he did with me at Good Wagon Books.

Sincerely,

Donny Palmertree
Vice President
JC Millwork, Inc
4/17/2015

LETTER 33

March 18, 2015

Dear Judge Forrest:

My name is Sean Becket and I'm writing this letter so that it may serve as a testament to my cousin, Ross Ulbricht's character. I want to convey to you what an exceptional human being my cousin is.

At the age of 29 I've achieved relative success, overseeing sales operations at a national publication while simultaneously starting my own software company. I've accomplished these things by maintaining a high standard for myself, and equally for those with whom I surround myself.

Ross is not only my cousin, he is a close friend and someone I greatly admire. Ross has always been kind-hearted, humble, good-natured, generous and outgoing. He treats everyone with respect and caring, regardless of their status. When I visited Ross in prison he told me about how he's teaching yoga and physics classes to other inmates. It didn't surprise me at all. That's just like Ross to make the best out of a bad situation, and to see the good in people despite their circumstances.

Ross cares deeply about his fellow human beings. He is the kind of guy who remembers your name when you meet him, and he doesn't have to be reminded. He'll ask you questions about yourself, not to be polite, but because he's genuinely interested. Ross has a positive influence on everyone he meets. He is always helpful, giving and ready to contribute to people, even in little ways. He's the friend you can count on for a ride when your car breaks down, and will feed your cat when you're out of town.

When I think of Ross, I just think of the easy-going, creative guy who loves the outdoors, loves his family and friends, enjoys the simple things in life and would never wish harm upon anyone.

I am aware that Ross has been convicted of serious crimes. However, in my experience, he has always demonstrated good character and integrity and is a man of his word. I am confident that if released, Ross will go on to do great things and make a positive contribution to society. The world would be worse off without him.

I write this with the utmost sincerity and respect, and ask that you please give Ross a chance, with the minimum sentence possible.

Sincerely yours,

Sean Becket

LETTER 34

[redacted]

April 16, 2015

The Honorable Katherine B. Forrest
United States District Judge, Southern District of New York
United States Courthouse, 500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Windy Smith and I am a 34 year old real estate agent in Austin, Texas. I have known Ross Ulbricht since 1988 when I was eight years old. My family moved into the cul-de-sac where Ross and his family lived. I quickly became best friends with Ross and his sister. He was a sweet, gentle, caring little boy. Even though Ross was younger than me he still stood up for me when the neighborhood bully was mean to me and tried to hurt my feelings. One time in particular that same boy named Steven who lived across the street from the entrance of our cul-de-sac came running at me and was about to hit me with a stick. Ross stood between us and yelled at him to go away and leave me alone.

Ross was good spirited and playful. He would join in when his sister, my sister, and I would play together. We made silly home movies acting out commercials and fitness instruction videos. Even though three of us were girls he was always sweet and did not treat us as inferior. We played board games a lot and he was always a good sport, win or lose.

We were close throughout our elementary, middle, and high school years. After we graduated he went to college. We kept in touch mostly around the holidays. Ross grew up to be a very intelligent, loyal, kind, and charming man. In recent years we have kept in touch through social media as I have a family of my own.

Although I am aware that he has been convicted of a crime, the criminal conduct that Ross has been convicted of does not represent who Ross is as a person or the positive impact he is capable of achieving. I was appalled at the way the media portrayed him as a demon or a monster. That simply is not the Ross Ulbricht I grew up with. Ross Ulbricht is a good man.

I am positive, if spared a long sentence, society would benefit from the impact of his good workings.

Sincerely,

Windy Smith

[redacted]

LETTER 35

Sara Dunn
[redacted]

March 17, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Sara Dunn. I live in South Austin with my husband, a high tech employee. I work part time as a home health provider. My friendship with the Ulbricht family goes way back, to the days we shared a South Austin babysitting co-op. I have known Ross for most of his life. Our families have kept up a contact through the years, even as some co-op members moved away to other parts of town and beyond. My children didn't attend the same schools as Ross, so we met mostly during holidays and other gatherings. Over the years it was a joy to watch Ross mature and grow. He was always a bright, conscientious person, polite and gentle. I followed his school achievements over the years: high school, college, pursuing a master's degree in physics, publishing papers.

Ross is someone who has always exhibited compassion and is a danger to no one. I recall one instance when a night drive to our house during the Hanukkah week resulted in a cat injury on the street, and how distressed Ross felt about the hurt cat.

The Ross I know is a caring person who thinks about global and social issues, always with an eye on the "larger picture," and at the same time caring about his family and friends. Ross is the sort of young man who can carry our changing world forward.

I am well aware of the crimes of which Ross has been convicted. However I am strongly convinced that he has much to contribute to society. It is my hope that Ross will be in an environment that enables him to give of his gifts and that he will receive the shortest sentence possible. We will all be the better for it.

Sincerely,

Sara Dunn

[redacted]

LETTER 36

[redacted]

March 9, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am currently a resident of Costa Rica where I caretake a rental house and lead adventure tours. I have known Kirk and Lyn Ulbricht for about 14 years. In that time I also came to know their son Ross. I found Ross to be a quiet spoken, respectful young man, studious and a credit to his parents.

Over the years I encountered Ross on many occasions, either surfing or playing chess. In that time I observed him to be very even tempered, with an upbeat and positive outlook. I cannot recall a single occasion where I saw him angry or annoyed - even after losing two consecutive games of chess; or surfing, which is quite a competitive pass time.

Ross struck me as a budding intellectual, someone who was keenly interested in how and why things work. As this is a small location, with just one local bar and no shops or infrastructure of any kind, it is easy to observe how people operate. In the years that I knew Ross he was so moderate that I never saw him drinking at the bar.

Previous to moving to Costa Rica I spent a decade as a youth worker, dealing with a cross section of at risk and troubled youth. In that time I became familiar with a spectrum of anti social behavior, that most of these kids possessed to greater or lesser degrees. Many of them had a history with the law and often aspired to become players in the criminal underworld. In such cases career criminals are a high risk.

So it was quite a shock to see a gifted, level headed kid like Ross placed in this very role. From my perspective and experience he lacks all the profile behaviors and histories that are normally associated with individuals in this predicament.

I am aware that Ross has recently been convicted of multiple felonies and is facing sentencing this May. Yet I am quite sure that Ross is a well adjusted individual who represents no risk to public safety. As a gentle kind of guy, I hope that he ends up in a situation that is not designed for hardened, dangerous criminals and that in some measure he may in the future yet be a valuable member of society. Please give him the shortest sentence you can.

Yours sincerely,

Michael Harrison.

LETTER 37

[redacted]

April 4, 2015

The Honorable Katherine B. Forrest

United States District Judge

Southern District of New York

United States Courthouse

500 Pearl Street

New York, New York 10007

Dear Judge Forrest,

Your Honor, My name is Madeline Norman, I am student living in San Diego. I have known Ross Ulbricht for almost 18 years. His family is an extension of my own. I strongly stand behind the attestation of Ross' character. As a child I looked up to Ross. He was like a mentor to me. His intellect is inspiring. He is an amazing person with so much potential. This great person should not go to waste. I am aware of the crimes Ross has been convicted of and I am asking you give him the shortest sentence possible.

Thank you for this consideration.

Sincerely,

Madeline Norman

[redacted]

LETTER 38

[redacted]

April 5, 2015

Dear Judge Forrest,

My name is Kim Norman. I am a building contractor, and home builder. I've been fortunate to have known Ross Ulbricht all his life. His father Kirk and I have been close friends for 45 years.

All through his life I've known Ross to be kind, courteous, peaceful and respectful. He has never been a threat to anyone. I'm appealing to you to keep this in mind during his sentencing and to give him the shortest sentence possible.

I am aware that Ross has been convicted of serious crimes, but believe that, if given a second chance, he would be an asset to this world.

Thank you for considering this letter and the experience of someone who has known Ross his whole life. You have a tough job but please consider that Ross, at his core, is a good person.

Sincerely,

Kim Norman
[redacted]

LETTER 39

[redacted]

April 4, 2015

The Honorable Katherine B. Forrest

United States District Judge

Southern District of New York

United States Courthouse

500 Pearl Street

New York, New York 10007

Dear Judge Forrest,

My name is Melanie Norman and I am a 30 year real estate broker and owner of a vacation rental, writing this letter to appeal to you regarding the sentencing of Ross Ulbricht.

I have been a close friend of the Ulbricht family and have known Ross for over 18 years. I have been impressed by Ross's caring nature, as well as his dedication to liberty. His sensitivity to the feelings of people (and even animals), was often expressed in our presence.

It is my hope that you will consider his good character and helpful, caring nature in your decision for sentencing him.

We know that he would be an asset to society if re-guided, instead of being put away. It would be a shame to waste such a brilliant mind and heartfelt being.

I thank you for reading this letter.

Respectfully submitted,

Melanie C. Norman

[redacted]

LETTER 40

[redacted]

April 3, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

Your Honor,

My name is Maureen McNamara, I am chef at Bosque del Cabo Lodge in Costa Rica.This is a letter attesting to the character of Ross Ulbricht.

I have been friends with the Ulbricht family for 23 years and know Ross. I have watched him grow up.
I know him to be honest, trustworthy, kind and deeply committed to his family. He is a peaceful, non-violent person who is an asset to his community.

I am aware of the crimes Ross has been convicted of and I am asking that you give him the shortest sentence you can.

Thank you for this consideration.

Sincerely,

Maureen McNamara

Maureen Mcnamara

LETTER 41

Debbie Tindle, OTR
[redacted]

March 28, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am an Occupational Therapist working in private practice in Austin Texas. I specialize in working with people who suffer from chronic pain as well as treating musculoskeletal issues. I have known Ross Ulbricht for greater than 13 years. I met Ross as a patient when he was having some issues with his ankle joints. I quickly came to know Ross, his mother and sister, and his aunt and cousin. I have spent numerous hours over these many years with Ross and his family. The type of work I do lends itself to a level of intimacy that is rare in today's world. In this context, Ross shared a great deal of himself with me. He and my son attended the same college, which became another point in common. I watched Ross grow into a wonderful young man. It was exciting to see his life unfold. We have stayed in touch as he moved to various cities.

When I think of who Ross is, the first thought that comes to mind is abundant love. This young man can fill a room with his generous spirit. Over the past few years, he has sought help for friends through my work. He emailed me once to research treatment for scoliosis to help a friend who was suffering from spinal pain. He wanted to connect her with the best possible options for her treatment. In this case, he actually ordered the latest textbook on a cutting edge treatment for scoliosis, and READ it in order to help her! He consistently goes out of his way to help others. He exhibits a level of compassion for others that unfortunately is rarely seen.

Another characteristic that Ross possesses is intellectual curiosity. I could always look forward to engaging and innovative discussions with Ross when we had our visits. His forward thinking and eagerness to explore the outer limits of human potential is inspiring. His overall philosophy and driving force has always been to improve the life of others, to understand the world around him, and fulfill his own potential. I highly value Ross' example of seeking balance in his life. He could have chosen to jump into the corporate rat race and monetize his superior intellect. But instead, he sought peace and a life balance that quite frankly, I've never been able to achieve.

I was so shocked to watch the last year and a half of Ross' life. And now to think of him behind bars for an extended period takes my breath away. I implore the court to give the

shortest sentence possible. This young man has so much to contribute to society. Even now, in these dire circumstances, Ross is teaching the fellow inmates how to treat their own back pain with "tennis ball massage"..... a little something he learned from me many years ago. I understand he is teaching math and yoga as well. This is the Ross I know.

With Sincere Respect,

Debbie Tindle, OTR

[redacted]

LETTER 42

[redacted]

April 21, 2015

The Honorable Judge Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am an aerospace propulsion engineer working in the commercial space industry and a friend of Ross Ulbricht for over 8 years. We met my sophomore year in college while we were both pursing degrees in Materials Science and Engineering. At the time I was pursing my B.S. with plans to work immediately after graduation in industry, but after discussions with Ross and attending his M.S. thesis defense about crystal grain growth; I was inspired by him to purse an advanced degree and follow my passion in life – and I am extremely grateful for his advice to live up to my potential.

While we both lived in State College, I would see Ross on a regular basis, sometimes weekly or even more frequently, and we share several mutual friends. We would go hiking, camping, have picnics on the campus lawns, cook meals together, and had many long discussions varying over infinite topics. Over all these discussions it was overwhelming evident of how caring, compassionate, and empathetic of a person he is. He would always be encouraging, positive, and uplifting even through difficult times, and genuinely listen and understand. When I was going through a rough time in a relationship with a mutual friend within our circle, Ross was whom we both turned to. I don't have a single memory of him being angry, acting mean-spirited, selfish, or holding a grudge.

Ross has so much more to offer society. Please give him the shortest sentence possible. The Silk Road should not be his legacy, and is not indicative of who he is as an individual. His intelligence, talents, and passion to help others have so much potential to bring positive change to the world.

Sincerely,

Michael Policelli, M.S. Aerospace

[redacted]

LETTER 43

Osalicious

[redacted]

April 14, 2015

To the Presiding Judge,

Re: Character reference for Ross Ulbricht

I have known Ross Ulbricht for approximately sixteen years. I met him and his family through our mutual interest in surfing. They are a close and loving family, sharing vacations together as well as homelife. They are active in the community with a supportive and positive role. Over these years I have observed Ross as an upstanding individual and a dedicated son. It has been a pleasure to watch him grow up and succeed academically as well as personally. This entire incident has been devastating to Ross and his family. He is a peaceful young man. I plead with the court to give this young man as short a sentence as possible.

I provide this letter in full knowledge of Ross's charges. I have always found him to be a reliable, responsible, and trustworthy individual, sharing family time in between college studies. His academic achievements are impressive. In the years I have known him and his family, there have never been any problems. He has been a role model for others with his postive attitude and good character. He always remains close with his family.

Ross is a good person who loves his family. Their love and commitment to one another is admirable. Ross has always taken responsibility for himself and been supportive of his family and friends. I humbly ask you to please give Ross the shortest possible sentence. It would be the best scenario for such a fine young man as Ross.

If you have further questions, please feel free to contact me at this U.S. number : [redacted]

Thanking you.

Yours sincerely,

Mary Alice Spina
Owner

[redacted]

LETTER 44

[redacted]

April 21, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Margaux Paschall-Kolquist and I am writing to you on behalf of my friend, Ross Ulbricht. Ross appeared in court this past February and was convicted of criminal charges at that time. My hope is that you will consider the content of this letter during Ross' sentencing hearing in May 2015.

Ross is my friend, first and foremost. We met each other when we were fourteen years old and just beginning our high school education. We quickly became friends due to our common interests and mutual friends. We ate lunch together nearly every day of the week and spent time at each other's houses after school and on weekends, we met each other's families and had a strong friendship with one another. Some of my most happy memories of these times are, when Ross would show me a yoga pose, because he is one of the most flexible individuals I know, and I would try to recreate it without nearly the grace or athletic ability he has; also, when we would go swimming together on hot summer days at our local natural spring fed pool, Barton Springs Pool.

Ross gave me pointers on driving safety laws and how to drive a car when I was studying for my driving exam. He has always been a very helpful individual who wants to share his knowledge to help others better their own lives. He has made my life better because he's been a part of it.

After high school we were not in as close of contact as we went our separate ways onto college and young adult life. We did remain in contact with each other through Facebook though and spoke with each other as recently as our ten year high school reunion in 2012.

I have been continually impressed with the scholastic ambition and achievements that Ross showed in pursuing his degrees at UT Austin and Pennsylvania State University. He has also traveled around the world to understand and gain further insight into other cultures and ways of life. He is a visionary and has always been a well-read and grounded individual. He is very fair and respectful in his dealings with both friends and strangers. He has a great sense of personal integrity that was apparent even as a young teenager.

I am saddened that he is in prison as he is such a bright light in many people's lives. I am proud of him for staying true to himself and making the best of his time in the jail; by carrying out polite and respectful behavior, offering yoga classes to the inmates and further educating himself with reading materials. As his friend and someone who would really like to share the experiences of adult life and friendship with him, please consider as short of a sentence as possible for Ross.

Thank you for taking this statement into consideration in the sentencing of Ross William Ulbricht. We miss him and love him dearly.

Sincerely,

Margaux Paschall-Kolquist

[redacted]

LETTER 45

[redacted]

April 1, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am writing to you on behalf of Ross Ulbricht who will be sentenced by your court on May 15th of this year.

My name is Lyn Pierce and I live and work in Austin, Texas where Ross grew up. My son, Daniel and he have been close friends since childhood. I recall many times having conversations with Ross while he was in our home. I found him to be a bright, always kind, funny and personable young man. Because of his genuine and warm nature and the close relationship he shared with my son, he became one of my favorites of Daniel's friends.

He was at my son's wedding two years ago and I had the good fortune to sit and visit with him for awhile and reminisce about their high school days. I saw that same spark of wit and gentle nature in the young man that I remembered in the child years before.

I understand that Ross was convicted of a serious crime. I am requesting only that his sentence represent an amount of time that is appropriate and that will allow him to return to society, his community and his family to fulfill the life he was meant to have. I believe in the depths of my heart that Ross is capable of achieving great good in the world. Please allow him and the world that opportunity.

Sincerely,

Lyn Pierce

Lyn G. Pierce

LETTER 46

[redacted]

April, 12th 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Noah Marion. I'm a long time Austin resident, entrepreneur, designer and business owner. I pride myself on my contribution to the betterment of the community and those around me.

For years now I have had the pleasure of keeping Ross Ulbricht as a close friend and confidant. Ross and I became friends about fifteen years ago as kids, and no matter where or when, we stayed in touch. After graduating college we got to spend a lot of quality time together and I remember those years fondly. They are some of my favorite years.

I truly think Ross is one of the most kind and truly brilliant people in the world. A true conversationalist, Ross makes everyone around him happier. He makes people laugh and think.

As a person who has been convicted of two crimes, I know personally what it means to be able to move past terrible realities and make a truly altruistic impact on the world. Ross has been convicted of some serious crimes, and understandably he will serve his time incarcerated. It is my understanding, however, that jail is a place for growth, change, and a time to really reevaluate what, where, and how you plan to exist for the remainder of your time on earth.

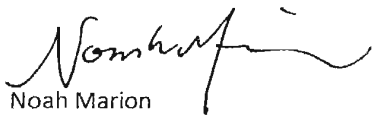
Ross is a truly good person. His heart is so big, his eyes are clear and true and he means to make the world a better place. If he truly did the things he's been convicted of, I believe that he should pay his due, but that he also would never have done these things with malicious intent. Therefore, it's my hope that Ross is allowed to reenter society as soon as possible. His capacity for greatness is unparalleled. He is such a brilliant and kind person. If given the option I know he'll make right any and all wrongs he has done. He will prove to the world that he can leave a positive trail behind him for many more years.

What it comes down to is this: Ross has the energy and fortuitous nature to bring about positive change in this world. Every person he has touched will tell you the same tale: he's kind, generous and always

well-intentioned. Ross is a truly phenomenal person and I would love to have him back in the world where he can make amends and make peace. Truly, he deserves the opportunity. Keeping a beautiful soul like his incarcerated any longer than necessary is an injustice to the greater good.

Thank you for the opportunity to express myself to you. Whatever you choose, I truly appreciate your service and dedication to justice.

Sincerely,



Noah Marion

[redacted]

LETTER 47

Alden L. Schiller III
[redacted]

March 27, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Alden Schiller. I'm a real estate broker and investor in Denver, Colorado. I received my MBA in 2009 and have been working to help my clients buy and sell investment properties for the last two years.

I have known Ross since we were in the 3rd grade. We grew up camping, swimming, digging for worms in the backyard, building forts and telling stories to each other. A Friday would come upon us and it was a matter of where we were staying: his parent's place or mine. He is someone I consider to be a true blue friend. Over the years I've witnessed the flowering of a mature, insightful person with goodness at the core of his being. More recently we spent time discussing business ideas, ventures and investment strategies. Ross is like a brother to me and I am confident that anything he has done was with the best intentions.

Although we went to different schools, Ross and I stayed in very close contact. And, as is true of all long term friends, even after time has gone by, the moment we see each other it's as if no time has passed at all. I love Ross very much, and to hear that he has been accused of these crimes is very disconcerting. This is why I traveled across country to testify on his behalf at his trial. Unfortunately, due to bad weather, I had to turn back half way to New York.

I understand that Ross has now been convicted of a litany of crimes. Frankly, I am still very much in shock over the whole thing. It's difficult for me to accept because Ross has shown me while growing up together that deep down he is a kind hearted soulful man. One small example illustrates this. I remember once we were eating breakfast and a bee landed on the table. I put a cup over the bee, trapped it and put it in the freezer to kill it. Ross immediately told me to take the bee out of the freezer. When I refused he took it out himself and scolded me for being heartless. I look back on that moment as one where Ross defined himself as one of the kindest people I know. I think how Ross is a guy who would defend a bee against one of his best friends and how something small like that can actually take considerable character. It shows what a compassionate, empathetic person Ross is at his core.

Ross has always lived life being very conscious of those around him. He took a personal interest in my well being and showed me that he deeply cared about my happiness and that I was flourishing in my environment.

Judge Forrest, I am not envious of your position. You are tasked now with the very difficult decision of enforcing appropriate penalization to a man whom you do not know personally. I hope that I have been able to showcase even a sliver of the humanity of Ross. I understand that now you are in control of the fate of my dear friend and I want to plead for you to spare him a lengthy sentence. Although I will not defend his actions I will support the man who I know is decent, kind, and caring towards all those he surrounds himself with. Despite his conviction, Ross is an asset to society and I beg that you consider his character when making your decision.

Please, you have my sincerest thanks for your consideration,

Sincerely,

Alden Schiller III

[redacted]

LETTER 48

[redacted]

March 10th, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am a graphic designer at a company in San Francisco that makes software for elementary schools. I have known Ross since childhood and spent a year living with him as an adult. I consider him to be one of my oldest and closest friends. Growing up together I was always impressed by his kindness and gentle nature. Ross treated everyone with respect, even the kids who bullied us in middle school. And that's because Ross sees the best in people.

A few years ago Ross moved across the country to help me start a company that scanned family photos. I was also going through a painful break up of an eight year relationship. Ross not only helped me get my company on track but more importantly he helped me get my life back on track. Often before work we'd drive down to the ocean and Ross would teach me how to surf. Waiting for a set of waves we'd talk about our dreams for the future. We both wanted to start families and hoped that one day our kids might become friends.

Since Ross's arrest he has told me many times that all he wants in the world is to live a simple life with his friends and family. I know in my heart, and from my years of experience with Ross, that when Ross is eventually released he will not be a threat to society in any way. For the hundreds of people who know and love Ross I hope you will consider as short a sentence as possible. He is a good person who has much to give and contribute. The world will be a much poorer place without him.

Sincerely,

René Pinnell
[redacted]

LETTER 49

Casey Nelson
[redacted]

March 25, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am writing to petition you on behalf of my friend Ross Ulbricht who will be sentenced May 15, 2015. I believe, and I hope to persuade you, that a harsh sentence is not appropriate for Ross. Please consider my testimony and the words of Ross's many friends, colleagues and family members as you make a decision that will hugely impact not just one man, but his entire community.

I currently live in Washington, DC and attend graduate school at The George Washington University, studying public health and medicine. I am a longtime friend of Ross Ulbricht. I have known Ross for over ten years as we went to high school together in Austin, TX and became friends as teenagers. Ross and I stayed close in college and afterwards. I have many fond memories of Ross throughout the years - vacationing with me at my family's beach house, socializing at my childhood home, relaxing in the sunshine on the lake. Ross and I have kept in contact and had the pleasure of seeing each other in our hometown frequently over the years. We would both return to Austin, TX to visit our community of friends and family around the holidays and on vacation. I last saw Ross at a birthday celebration for our mutual friend over the winter holidays prior to his arrest in October 2013.

Ross has always been a kind and generous friend - he was person who you could call upon if you needed to talk or reflect on any of life's big questions, or if you just wanted playful company and to have some fun. He is a loyal person, greatly respected by his peers. I have admired his compassion and acceptance towards his friends for as long as I have known him. Even when we were teenagers, he was in tune with the world around him and innately empathetic, never one to judge another. Ross is a gentle person, a trusted person. Being two years younger, I looked up to Ross both because I knew he was someone who would make great contributions to society and because I was inspired by his positive spirit and great attitude. He is so intelligent and such a joyful person, I count myself lucky to be his friend.

As many will attest, Ross Ulbricht's character is not defined by his criminal conviction. His conviction does not negate all the positive things he has done in his short life – from Eagle

Scouts, to research in college and graduate school, to the steadfast personal relationships he has maintained with family and friends. Ross is not done contributing to society. He is not done inspiring others.

Please spare Ross an unnecessarily long sentence. A long prison sentence or one that mandates maximum security prison would not afford Ross the opportunity to return as a contributing member of society, nor does it benefit justice. Please use your discretion to impose a sentence for Ross Ulbricht that is not unduly long or severe.

Thank you for considering my words and please keep them in mind as you use your power to determine a reasonable sentence for Ross Ulbricht.

Very Sincerely,

Casey Nelson

[redacted]

LETTER 50

Lindsay A. Lewis
29 Broadway, Suite 1412
New York, New York 10006

March 1, 2015

The Honorable Katherine B. Forrest
U.S. District Judge
Southern District of New York
United States Courthouse
500 Pearl St.
New York, NY 10007

Dear Judge Forrest,

My name is Brandon Schaffner. I am a Ux designer living and working in Houston Texas. I met Ross Ulbricht 17 years ago, in my junior year of high school when I started dating his sister. Through that relationship I got to know the Ulbricht family, including Ross, very well. I spent time at their house and accompanied them on vacation and got to see Ross in many situations and feel qualified to speak about who he is as a person.

Ross was a smart, upbeat middle schooler who loved reading comics, playing soccer and riding his bike. He was one of those kids who had a spark in his eyes and was always happy and good natured. He was very involved with his Boy Scout troop and through that gave back to the community over the years.

Although I am aware that Ross has been convicted of serious crimes, I can attest that he is a good hearted man and not a hardened criminal. Rather, Ross is a caring sensitive individual who is a danger to no one.

Sincerely,
Brandon Schaffner

LETTER 51

[redacted]

March 22, 2015

The Honorable Katherine B. Forrest, United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Dear Judge Forrest;

I am writing to you in support of granting as short a sentence as possible to Ross William Ulbricht. I am a seventy two year old Licensed Professional Counselor in Austin, Texas with a Master's degree in counseling psychology and over twenty years experience in clinical practice. As a close friend of the Ulbricht family, I have known Ross Ulbricht all his life and have had frequent contact and interaction with him throughout that time.

My observation of and experience with Ross Ulbricht has consistently revealed him to be a person of extraordinarily fine character. Ross has always exhibited a strong sense of respect for life and an aversion to violence. I have personally seen him as a loving, creative and playful child and teen develop into a kind and caring young man with a sincere concern for others. Ross has long-term friendships as well as very close family ties, and a deep sense of loyalty. He was a diligent student throughout his educational career. He participated enthusiastically in the Boy Scouts, taking part in numerous community service projects on his way to becoming an Eagle Scout. Ross has been unwaveringly forthright and honest, as well as idealistic, from early childhood to the present. As Ross has developed into a young adult, I have been pleased with and grateful for his continuing friendship.

I am definitely familiar with Ross's case, as I have followed it from its outset. I traveled halfway across the country to testify in court to Ross's good character because I believe in him so strongly. It is clear to me that the conduct for which Ross has been convicted does not represent Ross as a person, nor the fine contributions he is capable of making to society. Knowing Ross as I do, and as a mental health professional, I am confident Ross will, upon his return to society, be an asset to his community and to the world.

Thank you very much for your time and consideration. Please feel free to contact me if you wish.

Respectfully,

Karen Steib Arnold, L.P.C.

Karen Steib Arnold, L.P.C.

[redacted]

LETTER 52

March 30, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

The first time I met Ross Ulbricht was when he was around 12 years old. His mother is a family friend and she brought him by when she came to visit my home in Austin, Texas. Ross and I spoke for a short time in my front yard and he was gracious, concerned about his mother's opinion, and well appointed. He was very polite, obviously bright, and respectful. Over the years, I heard about Ross from his mother and kept up with him though his sister's updates. The reports were always positive as Ross achieved a series of outstanding academic accomplishments.

When Ross came back home from his graduate studies in the northeast, I visited his mother in their home. Because he was a intelligent, and personable young man, I offered to recommend and assist him in finding a job in Austin. My background is in high tech -- I worked for the leader in the computer industry for 15 years. Also, I was an adjunct professor in a top business school teaching MBAs and undergraduates and spent much informal time career-counseling students. I thought Ross's physics degree provided him with the proper logic knowledge and skills for an investment career. These are the type of skills needed in good investment selection and trading. Ultimately, through contacts here, I did arrange for him to interview for a position in finance at a local high frequency trading firm. They said Ross interviewed very well but did not have an opening for his skills.

I believe in the fairness of the US government and am writing this recommendation for Ross because I have faith that my government will be fair and kind. I do understand that Ross was convicted and do not oppose the decision. What I am asking is that the court give the shortest possible sentence to a bright and personable young man who has a desire to do positive work for society. Once free, I trust Ross would take the right path.

Sincerely,

Linda D. Bailey

[redacted]

LETTER 53

[redacted]

March 20, 2015

The Honorable Katherine B. Forrest

United States District Judge

Southern District of New York

United States Courthouse

500 Pearl Street

New York, New York 10007

Dear Judge Forrest,

I have known Ross Ulbricht for more than twelve years, since we began our undergraduate degrees together at UT Dallas. We weren't technically roomates, but lived in adjacent quarters, effectively cohabitating throughout our time there. Since then, we have stayed in loose contact as our lives and occupations have diverged, yet maintain a sincere and genial connection and correspondence to this day, throughout his incarceration.

I work in the recreational boat industry on the east coast. I hold a USCG Captain's license on inland waters and also do contract work repairing and restoring classic sailing vessels. I have been following Ross's case, conviction, and understand that you have the responsibility for his upcoming sentencing. Since there is little room in court for unqualified opinion, I am nevertheless grateful for this opportunity to convey my feelings and experiences of Ross's character to you as you decide his sentence.

Ross is a responsibile, caring, and deeply soulful individual who has repeatedly impressed me with his depth of character over the years. I struggled in college and had a hard time adjusting to living on my own and taking care of myself. At that time, I looked up to Ross and was able to learn from his self-discipline, work-ethic, and personal habits. He was always happy to include others in his own positive activities and I benefited from the solid example he set of good study habits, yoga practice, and regular outdoor exercise. Eventually, I came to understand that his success in school and social circles couldn't be attributed to good habits alone, but came from a deeply sincere and loving nature in the way he related to others and conducted himself. Many times he invited me to spend time meditating and attending workshops to study self-empowerment, peaceful communication, and spiritual mindfulness. I cannot think of another person who embodies those ideals as well as Ross does.

Ross will often go out of his way to make the world around him a better place. Once, when I was sick and bedridden, he squeezed himself into a ridiculous costume and burst into my room, dancing around wildly. He soon had me laughing so hard that my ribs were hurting, and it wasn't long before I was out of bed and feeling better again.

Another time, many years after college, I called him up out of the blue. I was hiking on the

Appalachian Trail at the time and was wet, exhausted, and covered with poison ivy. Ross drove 300 miles out of his way to come and pick me up and bring me back home to stay with him.

Your Honor, I have no doubt that in your tenure you have come into contact with hardened criminals who are dangerous to society, for whom there is no help but for the state to separate them from those they would harm. I truly believe that Ross in no way represents one of these people and I think that the longer he is shut away in a cell, the worse off the world will be for it. I know that we all make mistakes, and must be responsible for our actions. If Ross has taught me anything, it is that we also have the ability to overcome them and become better people, hopefully with the help of our friends, family, and community.

Sincerely,

Capt. James Woodring

[redacted]

LETTER 54

March 29, 2015

The Honorable Katherine B. Forrest
United States District Judge, Southern District of New York
United States Courthouse, 500 Pearl Street
New York, New York 10007

Dear Judge Forest

My name is Gail Gibbons and I am a Licensed Psychotherapist in private practice for thirty years.

I first met Ross Ulbricht and his family when he was a young toddler. I was impressed with the family's close ties to one another and extended family as well. Ross's mother and aunt had created a small business together and his father was a well known green builder in the Austin community. I remember going to social gatherings at their home with many friends and family members there and a lot of children as well. My son was one of those kids and he and Ross and Ross's cousin played together often. They also attended a Montessori school together.

I had a very personal and intimate connection with Ross and his family during this time and I can say, from both a personal and professional viewpoint, that Ross was often the most peaceful and easygoing child when playing with other children. I never witnessed him as aggressive or disruptive, but often the "most mellow" as my son would say, of the children playing together.

I saw no indication that Ross would become the kind of person he is being portrayed as today in his criminal conviction. Rather he struck me as the kind of young person whose intelligence and temperament would lead him to accomplish and achieve work of an inventive and positive benefit to his community. I remember at one time he had a small business collecting and selling donated books to benefit charitable causes.

The criminal conduct that Ross has been convicted of does not represent or reflect in any way the Ross, and the peaceful and loving family, that I know. His character and the support of his family point to a person whose achievements could offer positive benefit to his community. A shorter sentence would grant him that opportunity.

Please consider these factors and the age of this young man in your sentencing.

Sincerely,
Gail Gibbons
Gail Gibbons
Gail Gibbons LPC LMFT SEP

[redacted]

LETTER 55

[redacted]

March 31, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

This letter is to appeal to you in the sentencing of Ross Ulbricht. I am a family friend, father of four, and work as a sales engineer in the marine industry.

I have known Ross through his family, as a friend, for about seven years. I also had a business association with him while he was in the book-selling trade. At that time I spoke to several people about Ross, their experience of him and his business. Without exception every person gave me nothing but confidence about Ross' professional dealings and ethics. This was also corroborated by my own experience.

In the period when I was associated with Ross, he gave me every indication that he was worthy of my trust and friendship. He showed himself to hold an exemplary, honest and forthright character. Beyond this, I found him to be a positive person who was not interested in conflict. I believe this is the true Ross Ulbricht and I would not hesitate to have a professional relationship with him in the future.

I am aware of Ross' conviction and the charges that were brought against him. It is a difficult position for Ross and I know he is not taking it lightly. I urge you to consider his lack of a prior record, his conduct while incarcerated, and his general positive nature when applying his sentence. Based on my knowledge and experience of Ross Ulbricht, I believe it would be right to give him nothing more than what is mandatory.

Sincerely,

Robert Reisinger

[redacted]

LETTER 56

March 21, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Clay Cook. . I'm writing on behalf of my friend, Ross Ulbricht.

I was born and have resided in Texas for 55 years. I owned a Construction Company in Houston, Texas and I am currently semi-retired and live in the Texas Hill Country

I first met Ross when he was seven years old while on a family vacation. I became fast friends with Ross and his family in the subsequent years. The Ulbricht family and I spent many weekends and vacations together.
Over the years I have watched Ross grow from a child to an adult. Ross was a very well mannered and respectful child and this carried on into his adult life. Ross is a courteous and conscientious person and was raised by two loving parents. The Ulbricht Family is very traditional in every way. Lyn and Kirk raised Ross and his sister Cally to be independent, ambitious, and considerate. Ross always showed great respect for his family, friends, and humanity.

I can attest to Ross' intelligence and patience in frustrating situations; I taught Ross backgammon and soon thereafter, he was teaching me. I have seen his caring and compassionate demeanor many times as he was always willing to help me or whomever needed help. He was especially protective of his grandparents, elderly friends and acquaintances. Ross could always be counted on to carry his load whether we were working or vacationing. He was simply always a joy to be around and an exemplary young man.

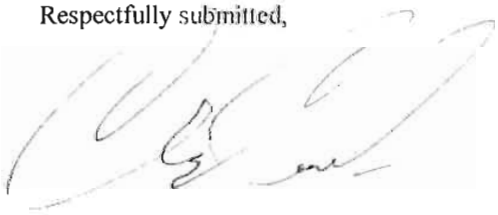
Ross excelled in school and has a B.S. from the University of Texas at Dallas and a Master's Degree in Physics from Pennsylvania State University. He also completed the Eagle Scout program of the Boy Scouts of America in Austin Texas. Ross is a very intelligent and goal oriented person. Any one of these accomplishments, taken individually, bespeaks of a person who knows determination and sacrifice.

Having said this, I also understand the severity of the charges he has been convicted of. In my life I have seen many things that defy description and I believe this is one of those circumstances: Ross is the last person I would have ever thought would be in this situation.

I am not here to question the court or the jury's decision. I would only ask that in sentencing, the court consider rendering a sentence that would give Ross a chance to right his wrong. A person of his intelligence and caliber certainly can be of benefit to our society and humanity.

Thank you for your time concerning this matter.

Respectfully submitted,



Clay Cook

[redacted]

LETTER 57

James McFarland
[redacted]

March 18, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

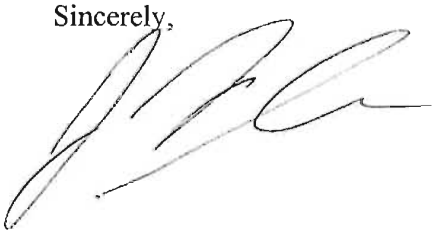
Dear Judge Forrest,

I am writing this letter to attest to the character of Ross Ulbricht, and to ask that you consider a sentence that will allow him to return to society and have the positive impact I know he is capable of.

I am currently a research neuroscientist working at the University of Maryland. I first met Ross in high school over 10 years ago in physics class. We became close friends, and spent a good deal of time together throughout high school, and continued our friendship after we both went off to college. Ross clearly stood out from his peers in high school, demonstrating a level of maturity and selflessness that went far beyond his years. In all of my interactions with Ross, without exception, he was open, honest, and extremely caring. On numerous occasions his friendship and advice helped myself (and others) navigate the difficult situations of high-school social life, and he set a consistent example of generosity and honesty. Critically, he set this example not just through his words, but, more importantly, in how he always treated others in a caring and selfless way, from his family and friends to complete strangers.

I am confident that the criminal offenses Ross has been convicted of are not representative of these core values he has demonstrated throughout the time I've known him, and certainly do not reflect the great potential he has for producing a highly positive impact on society.

Sincerely,



LETTER 58

[redacted]

March 19, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

We are an emergency room physician and mother of three who reside in Austin, Texas and have been close friends of Ross Ulbricht's parents, Lyn and Kirk Ulbricht for many years. We have known Ross since he was two years old, almost his entire life. Ross attended the same middle and high schools that our two sons and daughter attended and he was often with us for birthday parties, playgroups, family dinners, etc. Even after leaving for college we would still see Ross several times a year when our families met for holidays and casual get togethers.

It was a terrible shock when Ross was arrested. We found it hard to believe. He grew up with loving, involved parents, surrounded by family and friends. His school years included soccer, field trips and family vacations. He was in the Boy Scouts and achieved Eagle. Ross was creative, artistic, loved adventure and being outdoors. Growing up, he often went on camping and fishing trips with his father.

Ross was good academically. He was in the gifted-talented program, took advanced high school classes, and received a full scholarship at the University of Texas Dallas. Never did Ross seem interested in acquiring material possessions. His mother often commented on how Ross would forget his shoes even when leaving on trips. With his easy going manner we often laughed at how he could manage to stay organized with his forgetfulness.

We saw Ross even after he had left for college when he would stop by our house. He was always friendly, sweet, and happy. He liked to just hang out and talk and enjoyed

being around people and home cooked meals. He seemed very aware of healthy food and living and did not seem to be interested in drugs or alcohol.

Early on when bail had seemed possible, and because of our belief in Ross' good character, we committed $20,000 to bail. We were confident that Ross would never jeopardize the trust that his family and friends placed in him.

For as long as we have known Ross he has always been kind, caring, loving, considerate, sensitive - with his family, at school, with us and our children, and in interacting with others. We've seen Ross as a thoughtful gentle dreamer who loved the outdoors and venturing off the beaten track.

We have been very disturbed at Ross's involvement in Silk Road. It has been shocking and unexpected. We are extremely sad for Ross and his family.

Apparently Ross has made bad choices. His idealism and dreams have led to serious wrong doing. However, we truly believe that Ross is a well-meaning young man with a good heart. We believe that he still has the capacity to do something worthwhile for others. Our great fear is that his life will be wasted. We sincerely hope that Ross may have another chance.

Thank you for your consideration.

Sincerely,

Douglas Mills, MD
[redacted]

Valencia Mills
[redacted]

LETTER 59

[redacted]

March 24, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York, U S Courthouse
500 Pearl Street, New York, NY 10007

Dear Judge Forrest,

We are grandparents of Ross Ulbricht, and we have known him his whole life. Before he entered the Justice system, we knew he was a very promising man. Now we give him over to the system until he pays his debt to society. When he is free again, Ross will undoubtedly be a fine citizen. We have such strong faith and trust in Ross that we pledged our home for his bail.

Should you see fit to give him the shortest possible sentence, Ross could use some of his inherited traits to benefit the community with what time he has left. He has the spatial skills necessary for architectural designing. They are in his blood, passed on from us, his Dad and our parents. Or he might leave these talents untapped for other pursuits.

Ross has a good share of humanitarianism. He is a people person. He has the support of a lot of friends. One of his earliest crowd of friends was his group of tiny metal figures which sparked his imagination as he played with them for hours on the floor of his room at age eight.

Ross honed his leadership skills in a camping troop with the Boy Scouts of America. He once led a patrol of scouts to a good source of clean water with his knowledge of survival in the wild. He forcibly chipped through stone to get to the water they needed. He became an Eagle Scout.

Ross was resourceful and worked his way through UT Dallas with the aid of a 4-year scholarship. In a part-time job, he donned protective clothing to work in a "clean room" using nano particles experimentally. At Penn State, he purchased a house and rented it out to students, as a means of supporting himself through school. He earned a Masters degree in Materials Application and Engineering.

Ross has a strong religious faith and the values of peace, love and service.

We are in hopes that this letter will serve to let you know more about the Ross Ulbricht we know and dearly love.

Sincerely,

Herb & Martha Ulbricht

Martha and Herb Ulbricht

[redacted]

LETTER 60

Alexandria, Virginia
11 March 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am Timothy Arthur O'Leary, a free-lance journalist and former communications officer for the World Health Organization and the international medical charity Doctors Without Borders.

I write in the matter of Ross Ulbricht, who was recently convicted in your court of running an illegal drug marketplace.

I was distressed to learn of Ross's conviction because I have been a friend of Ross, of his parents Lyn and Kirk, his sister Cally, and his aunt Kim Lacava, since the mid 1990s, and because I hate to see any bright and promising young person ruined, if even through actions of his own.

When Ross was a still a high school student in Austin, Texas, I developed a concern for his welfare, counselling him and his mother about the advantages and disadvantages of his accepting a full academic scholarship from the University of Texas at Dallas. I knew something about the university and the Dallas community because I was then an editorial writer for *The Dallas Morning News*. It was to a certain extent because of my advice that Ross accepted the university's offer.

When his mother would drive up to Dallas to visit Ross, she would stay at my house, and I was an occasional guest of the Ulbrichts and of his aunt in Austin. I cared about and continue to care about Ross, the rest of the Ulbrichts and their extended family. As a parent of two daughters, I imagine how devastated Lyn and Kirk must be by their son's conviction and the prospect of a long prison sentence.

Without getting into details of the case, I have conveyed my sympathies to the family. During a recent business trip to Sydney, Australia, I went out of my way to visit Cally, thinking that the sight of an old family friend might alleviate whatever feelings of hurt and isolation she might have, separated as she is from her only sibling and from the rest her family by an ocean and thousands of miles.

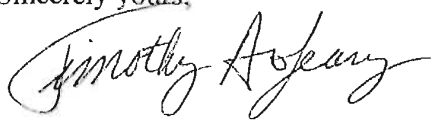
Although I have not been in direct contact with Ross since his graduation from the University of Texas at Dallas in 2002, I have stayed in touch with his mother and with his aunt. I followed Ross's life from afar and was as pleased by his academic success as I am disappointed and dismayed by the jury's finding of guilt.

Based on what I know of Ross, I have considered the criminal activities of which he has been convicted to be out of character. The Ross that I knew was intelligent, charitable, idealistic, kind and family-oriented. I believe that these criminal activities do not represent the real person or the positive things that he would be capable of achieving both for himself and for society if he were to be spared a long prison sentence.

I would and do, therefore, Your Honor, implore you to impose as short and humane a sentence as possible so that Ross can eventually return to his family and to society and make the kind of positive contributions of which I believe that is capable and, I am sure, inclined.

Thank you.

Sincerely yours,



Timothy A. O'Leary

[redacted]

LETTER 61

J'aime Mitchell
[redacted]

March 22, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is J'aime Mitchell and I grew up with Ross in Austin, TX. We became close friends in my sophomore year of high school when I was dating his best friend but we have had mutual friends since childhood. Throughout school, I was in several classes with Ross and his friends: advanced placement math classes, gifted and talented English classes, Spanish, and photography to name a few. It's come to my attention that Ross has been convicted of a crime and it's hard for me to reconcile that fact with the cherished memories I have of Ross, so I hope you will consider my letter when sentencing him.

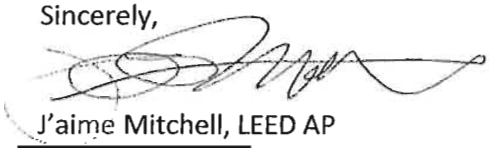
Throughout the years Ross proved his strength of character to me many times. When dating his friend, our social activities revolved mostly around our mutual love for the outdoors. Our group would frequently go camping, swimming, and hiking in the areas around our hometown together. We even made a game of testing our survival skills in the woods, where we would create obstacle courses with rope swings, tree climbing, and bouldering. We learned a lot about our personal limits and our abilities to overcome challenges, but what stands out most is how Ross would support and encourage people to become stronger both physically and mentally. He would often be the first and the last person to complete challenges because he would lead by example and then would circle back to make sure nobody was left behind. Our adventures built a strong bond of trust among all of us, and we all felt safe going into the wilderness together because knew we could rely on each other along the way. It has been many years since these adventures and, although this group may not see each other often, the sincerity and honesty of our friendship remains just as true.

Ross is also one of the reasons that a few of us purchased land in Costa Rica a years ago to help reforest a site that had been destroyed by slash and burn agriculture. Ross and his family owned a house on the Osa Peninsula that was well-travelled by many locals and tourists. On three separate occasions I can remember, I had friends who didn't know the Ulbrichts return

from the Osa to tell me that they were impressed by the hospitality and warmth they experienced during their stay – only to determine later that it was in fact Ross who had hosted them. Whether in kayak or hammock, Ross always seemed to be at peace there, and that feeling radiated out to everyone around him. When he would come back to school after a stay in Costa Rica, he carried with him a keen awareness of his own personal integrity and a sense of being in harmony with nature. He inspired us with his stories of living close to the land and engendered a sense of stewardship that is obvious in the careers that many of us chose.

At this point in time, I have been working as a professional in Sustainable Development for five years and have seen the positive impact that people like Ross can have on their communities: the selflessness of never leaving anyone behind, the community servitude of an Eagle Scout, and the peaceful demeanor of someone who loves the outdoors are all characteristics that bring benefits to this world. The crimes he has been convicted of do not represent who Ross is as a person or the positive things he is a capable of achieving. Please consider as short a sentence as possible, one that allows Ross to return to a community that needs him.

Sincerely,



J'aime Mitchell, LEED AP

[redacted]

LETTER 62

[redacted]

March 24th 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,
I believe there are some things you should know about Ross Ulbricht before you deliberate with his sentencing. I can say with confidence, he is one of the best men I've been blessed to know. He is kind, gentle, intelligent, considerate, patient, and passionate about changing the world for the better. He is the type of man who is not just open to helping but searching for ways to help others. I once shared with Ross a story of how I saved a friend's life, and his response was unlike that of most: "I've always wanted to save someone's life." I wish I could save his life too, but his fate is in your hands now, and as you decide what is to be of his life. I pray that you consider my testimony as well as the testimony of so many others who have been positively impacted by Ross.

I grew up with Ross. We went to the same high school and ran in the same circle of friends, a tight-knit group of loyal, loving people who have stayed in touch over the years. We would have regular parties during the holidays that felt almost like a yearly reunion where we could talk and catch up on each other's lives. I always remember Ross smiling with something positive and supportive to say. One year, the year our class was supposed to have their 10-year reunion, our friend reneged on his duties as treasurer to organize the reunion. Funny enough, he was the one hosting the party we were attending at the time. Anyway, Ross told me he would take it upon himself to organize the reunion and make sure it happened. See that's who Ross is. He's a problem solver, always looking for a positive solution.

After Ross's arrest, so many of our circle of friends reached out to each other in astonishment. How could this be? Not Ross. Anybody but Ross. I called a mutual friend who was organizing communication on Facebook and told him if there was anything I could do to help, I wanted to help. My best friend Isabelle called and we talked about how wrong it felt, and she said, "The saddest part of all this is the possibility of losing the life and freedom of such a bright soul." We have both known and loved Ross Ulbricht. And although she knew him better in the first half of his life, I have come to know him deeply in the second half.

See I came to NY around the same time that Ross did, not because of Ross, but because I am an actress, and I was pursuing my dreams. The week I moved, Ross's mom called me asking to donate to Ross's bail. I happened to mention I just moved to NYC. Lyn told me Ross was in NYC, and would I want to visit him. "Of course! If he wants to see me."

I said. I figured I was the only friend in New York who could come see him. This turned out to be true. so I've been visiting Ross regularly ever since and have come to know him far better than I ever did when we were kids. Even in prison. he is the same Ross, making a positive impact on his community. He made a pact to commit to a consistent Yoga practice and organized a class to teach others and share how Yoga and its philosophies can reduce stress in confinement. He taught fellow inmates math so they could pass their G.E.D. And so many times when I would visit Ross. the C.O.'s. when they saw who I was visiting. would take the time to tell me. "He's a good guy, that Ross. He's a good guy." I would simply smile and say. "I know."

I know because we've spent countless hours together with weekly visits, phone calls and letters. sharing our lives. and thoughts on the world. morality. religion and God, and in doing so. I've gotten to know an old friend even better. He has become a confidant. someone I know I can always trust. and he always puts me before himself. Anytime I share my own fears and struggles with my life. he is always there with a positive affirmation to boost my spirits in the midst of troubles far greater than mine. He is the kind of man who cares to reach out to people. focus on others. and in some way help those around him. even in the confines of prison. No matter what he may or may not have done. I know in my heart that the actions associated with his conviction were motivated out of a deep passion to make the world a better place. I also know that if you give him the lowest possible sentence. as I pray you will. Ross will use the years he has left wisely and do everything he can to apply the gifts God gave him for a better purpose.

In the end. I hope you consider the actions of his friends and family who continue to support Ross even after his conviction. We stand for him in loyalty, not just because we love him. but also because we believe in his good character. From acquaintances like Chris Kincaid. who roomed with him only a matter of months. to friends who grew up with him. friends like Thomas Haney and Daniel Davis who traveled half way across the country to serve as character witnesses and testify to his peaceful and loving nature, and friends like myself. who sat in on the trial every day. we all continue to support him because he is a man we love and know to be good. When Thomas talked to me after his testimony. we shared stories of Ross and reminisced. Thomas said. "Ross is uniquely wonderful. wonderfully unique." He said he wished he'd had the opportunity to say these words on the witness stand. It's true. Ross is wonderfully unique. And no matter what the outcome. Ross will continue to be uniquely wonderful and we will continue to love him. I pray you grant him as short a sentence as possible so he may return to his loved ones.

Sincerely.

Jenny Keto

[redacted]

Jenny M. Keto

LETTER 63

[redacted]

April 6, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Shiloh Travis. I am 38 years old. I've been happily married to my wife Laura for 14 years. We have an 11 year old son and an 8 year old daughter. I am an entrepreneur and have owned and operated my own a custom home building companies since 2001. Along with my business endeavors, I am very engaged in the community, and give a lot of my time towards volunteer efforts to better the lives of people around me. By any measure, I would be considered a constructive, valuable, law abiding, member of my community. I knew Ross Ulbricht to be the same.

I first met Ross in the summer of 2010, when I was putting together a team of volunteers to put on an event designed to enrich and empower the lives of the attendees. I called him up from a recommendation of another friend, not knowing who he was, and asked him if he would consider volunteering his time for some of the event. In that first conversation, it quickly became apparent that Ross was somebody who was committed to the empowerment of others. He blew me away by not only saying yes to my request, but offered to volunteer full time for the entire 5 day event. Of the 16 people that volunteered in the event, he was the only one that was there the whole time. Over that initial time together, he gave his time very generously, and we connected around our common interests and shared commitments. We enjoyed each other's company enough that we made plans to stay in touch. For months after that event we would have scheduled phone calls to coach each other around the areas of life that were important to us. We both shared very personal stuff around our personal relationships, jobs/careers, God, and our shared passion for finding purpose and happiness.

Above all else, a couple things became very clear to me in the time I knew Ross. Ross is a gentle soul, with a huge heart. It always struck me how much of his attention was on seeking ways to express love for others. In my time with Ross, never once was there any conversation about causing damage to others. Ross wouldn't hurt a flea. That's what has been so sad for me

in following this case. Whatever crime Ross has been convicted of, it does not represent who Ross is and the value he can bring to our community. The idea of him being locked up in prison, frankly, seems a tragedy. Not just for him, not just for his family and friends, but for our society. Ross taught me to look towards the service of others to find peace and happiness. It will be a huge loss for our society if his positive and peaceful contribution is taken away. With the upmost respect, I implore you to spare Ross a long sentence, for the time he is locked up will truly be a loss for us all.

Respectfully,

Shiloh B. Travis

[redacted]

LETTER 64

[redacted]

March 20, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

Ross is a close friend of mine who I have known for over a decade. I can unequivocally say that Ross is one of the best individuals I have ever met. I have followed his trial closely since the initial news reports emerged, and I am fully aware of all the accusations and evidence presented, as well as the verdict. I believe it is in society's best interest to give Ross as lenient sentence as possible.

Ross liked the Ghandi quote "Be the change you wish to see in the world." He has lived his life with a vision of a peaceful world where everyone gets along and is the best they can be. In all my interactions with Ross, this philosophy has shone through and he has consistently lived his life in a way that improved the lives of all those around him. It is difficult not to sound hyperbolic when describing Ross. However, let me be clear that what myself and others write about him is true and accurate.

Ross is a kind and gentle soul. I have never seen him show malice or anger towards anyone. This is including when he's been in situations that I would expect to bring out the worst in anyone, such as a romantic partner sleeping with his friends. Even then, when it was clear he was hurting, he did his best to remain calm and try to forgive. After a while he fully forgave everyone and reached out to maintain his friendships without any animosity. I have never seen anyone else who could so genuinely treat others with such compassion and respect.

Ross is generous and thoughtful of others. I have seen him literally give his shirt off his back to someone after they mentioned they liked his shirt. This was not an isolated case. Ross would give away his stuff to people after they merely mentioned they thought it was neat. His generosity would extend well beyond this amusing anecdote. When he was in college he volunteered at charities. Not for resume building or to brag. He basically never mentioned it except when it resulted in scheduling conflicts. His volunteer work was really because he wanted to help people.

Ross also regularly donated to charities in college, despite making a very minimal salary working in a lab. He still was sure to put charity before himself, and was likely donating to help support people who made more money than he did. I asked him why, and he said (paraphrasing) "if I can't learn to do this now, how can I do it if I make a lot of money?" Again, Ross did not do this to brag. The only reason I found out was he was helping me learn to create and follow a budget, and showed me his. I may be the only person who ever knew he did this regularly. And recall this was still at an age when most kids were interested in getting drunk. His humility and desire to do good are a core value of his that I do not feel has diminished. Even as recently as a few years ago he ran Good Wagon Books, which donated to reading programs in prison and mentorship programs for kids.

On a personal note, Ross has been a loyal friend who has helped me grow into the person I am now. I have a PhD in physics, and now work as a postdoctoral scholar at the University of Chicago. Without Ross, I can confidently say I would not be here. Ross helped me through some difficult times early in college, and was a friend to me when I needed one most. Over the years I have come to Ross with whatever problems I've been having, and he has always been happy to talk for hours until I came to peace or a solution with whatever was troubling me. Many of my best qualities I developed largely from using Ross as a role model, and aspiring to achieve his level of goodness. I do not feel I am alone in this, as I could tell many of our friends in college seemed to follow his lead, even if only subconsciously.

I reiterate that Ross is a good person whose conviction does not reflect on who he is as a whole, nor all the good he has done outside of those actions. He has lived his life in an attempt to do good whenever possible. If anyone has earned enough karma to deserve a second chance it is Ross. Ross will attempt to make the world around him better no matter where he is. Indeed, he already has taught yoga classes, physics classes, and helped his cell mate study for the GED. However, a lenient sentence that would allow Ross to reenter the general population as soon as possible would let him continue to affect significant positive change as he has done so many times in the past.

I will now close with (unedited) thoughts I had on the night that I first heard the news of Ross' arrest: "*Ross is one of those rare lights in the world. Over the ten years I've known him, he's always been a loyal friend. There are few crucial turning points in my life, but at almost all of them Ross was there to help guide my path. He has helped me grow as a person in countless ways, and I can say definitively I would not be who I am today, or have arrived at this point in life, without him. We have both changed over the years, but there has always been a core to Ross that has stayed steady.*"

Sincerely,

Brandon Anderson

[redacted]

LETTER 65

[redacted]

May 1, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York, United States Courthouse
500 Pearl Street, New York, New York 10007

Dear Judge Forrest,

My name is Michele Desloge and I am a real estate investor, developer, and appraiser residing in St. Louis, Missouri where my husband and I conduct our real estate business. I am a longtime friend of Cally Ulbricht and the Ulbricht family. I met Ross and the Ulbricht family while I was pursuing my bachelor's degree at the University of Texas in Austin, Texas. I have known Ross for over 15 years. Cally Ulbricht is one of my closest friends and the Ulbricht family is akin to my own. I had a wonderful experience living with them during my senior year in college and always look forward to our visits.

I am aware of Ross's conviction and have a hard time reconciling the Ross Ulbricht I know with any criminal conduct. On the contrary, Ross Ulbricht is a caring and compassionate person, always striving to learn more from life and give to others. He has a very gentle demeanor and would never hurt anyone. His smile and laugh remain always in my mind as testament to his character.

Ross loves nature and the outdoors. He is interested in wholesome, healthy pastimes. During my time in Austin we spent many days hiking in the greenbelt and swimming at a local natural spring pool.

Ross is very health conscious as well and showed discipline and character about positive living. He was always able to maintain a healthy diet when my friends and I would cheat and eat fast food or ice cream. He is a dedicated young man.

A person such as Ross Ulbricht provides a positive impact on society. We need more people like him contributing ideas and taking action to improve our communities. As such, I hope that he is spared a long sentence for the benefit of the greater good.

Sincerely,

Michele Desloge

[redacted]

LETTER 66

[redacted]

May 5, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Tyler and I live in Portland, Oregon. I moved here after graduating in 2008 and have since been working as an engineer for RDH (www.rdh.com). I am also an active musician and band manager (www.dusumaliband).

Ross and I met during our time at Penn State, through our mutual involvement as musicians in a student-run West African drum and dance performance company called Nommo. The group rehearsed two-to-three times per week and performed regularly around campus and the surrounding area. I remember Ross as enthusiastic, patient, and kind-natured. He was a great person to have on the team—trustworthy, hard-working, and always showed up. He had a great attitude. We became good friends and eventually found ourselves hanging out away from the rehearsals and shows.

I understand that Ross has been convicted of a crime, and is facing serious penalties. I am writing simply to vouch for Ross as a good person. He is honest and kind, and I cannot imagine Ross conducting himself in any way that would make me feel he should not be allowed back into society. I just cannot picture it.

I trust in my heart that those tasked with determining Ross's sentence are honest and fair. I pray that all aspects of Ross's character and history are fully taken into consideration, as well as the pain and suffering that he and his family have already endured throughout this process.

Thank you for your hard work and effort in deciding this case and Ross's future. I imagine it cannot be an easy position to be in, and I want you to know that I and others appreciate you spending your time figuring it out.

Sincerely,

Tyler Smith

[redacted]

LETTER 67

Michael Haney
[redacted]

March 23, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Michael Haney and I work for an oil and gas services company. Iam writing to ask that you give Ross Ulbricht a second chance to turn his life around and make a positive impact on society.

Ross is a Jong-time friend of my son Thomas, since early in their high school years. Ross has always been one of my favorites of Thomas' friends. My experience and that of my son is that Ross is a kind, friendly and thoughtful person with tremendous potential. He cares deeply for his friends, and they for him.

Despite Ross' criminal conduct and conviction, please don't allow his sentence to destroy the potential he holds to do something positive with his life. I respectfully ask you to please allow Ross to return to society as soon as possible. I am very confident, that given a second chance, he will be an exemplary citizen and role model.

Sincerely,

Michael J. Haney

[redacted]

LETTER 68

[redacted]

March 30, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I have had the pleasure of knowing Ross for the majority of my life and have come to consider him another member of my family. My name is Ariana Stern-Luna and I am the sister of René Pinnell, one of Ross's closest friends for the past 18 years. My relationship with Ross is very much like that of a sibling, maintaining a close bond no matter the distance or time. I feel as though I grew up with a second older brother—another role model to look up to.

I am a counseling student at the University of North Texas, and have always prided myself in my instinctual judge of character. My natural ability to sense the degree of genuineness, empathy, and compassion in others is what drove me into the helping profession. I have never doubted these qualities in Ross, but rather admired the limitlessness of them. He is one of the most kind-hearted, caring, and peaceful individuals I have ever met and his positive energy seems tangible to every person he comes into contact with. He has a way of making others feel at ease and worthwhile. Even when I was the (probably annoying) younger sibling trying to hang out with my cool older brother and his friends, Ross always made me feel valued and included. All of my memories of him involve being surrounded by friends and family, laughing and purely enjoying life. I could not help but become angered when reading articles that attempted to twist the story to create a villainous image of Ross that could not be farther from the truth.

Not only have I observed the positive impact that Ross has had among the individuals who he has personally encountered throughout the years, but I have always believed his positive impact would one day expand to benefit society as a whole. I have never doubted his ability to do something great for humanity, until the unimaginable and shocking threat of imprisonment immerged. The criminal conduct that Ross has been convicted of is difficult to accept, as these charges do not represent the person I have come to know and love. It is devastating to see such a wonderful person facing such horrific consequences. Although much has already been lost in this heartbreaking trial, hope remains that Ross will be given a sentence that allows him to return to his family, his community, and his society.

Sincerely,

Ariana Stern-Luna

[redacted]

LETTER 69

[redacted]

April 20, 2015

The Honorable Katherine B. Forrest

United States District Judge

Southern District of New York

United States Courthouse

500 Pearl Street

New York, New York 10007

Dear Judge Forrest,

I have known Ross since I was in middle school, he was always a caring, nice gentleman, who was very smart & was never interested in going to hang out to do anything bad with us other kids on the bus, even amongst the teen peer pressure. I always thought he was so kind hearted & admired him as a peer, and a friend. Later in life, reconnecting through social media, he was still the same kind & friendly person we ALL knew Ross to be. I could never imagine him doing any wrong or wishing harm to anyone, thats just how he is. Thank you.

Sincerely,

Rosa da Silva

[redacted]

LETTER 70

[redacted]

May 6, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse, 500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

If you had told me years ago that I would be writing a letter to a judge regarding the sentencing of my friend Ross Ulbricht, I would never have believed you. Even with the reality of his verdict, I still find it difficult to believe. I was an acquaintance of his in high school, but after he and I participated in a weekend course together, and were both in college on the east coast, he became my friend.

The course was one of those things most people call self-help, but that presupposes that people who participate are looking to fix something broken about themselves. This was, rather, a place to bring your higher aspirations and deal with the barriers preventing you from making your dreams come true, or, as they put it in the course literature, "Living a life you love, and living it powerfully." Knowing that Ross was the kind of guy who took on challenges and strove for higher ideals was part of what made me want to hang out with him--he was in cahoots with others, and me, in the pursuit of greatness.

I remember once, I mentioned that there was an advanced yoga pose I wanted to get good at, but that it would be impossible without months of stretching. Ross remembered to ask me how it was going months later, long after I had forgotten it was something I had ever said I wanted to do. He is the kind of person who wants you to succeed in your goals. I still haven't mastered that pose, but when I think of the kindness and generosity of spirit that Ross displayed in remembering something I said I wanted for myself, I get motivated to get out the mat and work on it.

It's hard to consider the verdict and this man as I know him and think that they have anything to do with each other. You know him as he appeared before you in your court. I hope that my letter can help you get a sense of who he has been to other people in his life. Ross is not a danger to society, and in fact I believe that he is someone who makes life better for those around him.

Thank you for your time and consideration,

Jessica Graves
Certified American Sign Language Interpreter

LETTER 71

[redacted]

May 7, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

Dear Judge Forrest,

My name is Ashley Callaghan and I am a Corporate Trainer for the restaurant group Mama Fu's. I only have good memories of Ross Ulbricht. Ross and I met through a mutual friend, my college boyfriend, Michael Policelli. Both Michael and Ross were studying Material Science at the Engineering department at The Pennsylvania State University. From the beginning, Ross offered his generous hand at friendship, inviting us along to camping trips, potluck dinners and hikes. When I told Ross I was dealing with eczema, a debilitating skin disease, Ross suggested that I consider joining a club he was active in at the university that studied and practiced a form of traditional Chinese meditation, qigong. He even set up a small introductorily meeting with the president of the club, outside of any of their meetings, to make sure I was comfortable with the idea of it. Turns out I was, and I attended the club for the remainder of my college career, along with Ross and Michael and many others I now know as friends. This is how I know Ross-- as a great friend.

My friendship with Ross continued to grow after college. One year after I graduated, I decided to move to Austin, Texas to be closer to my family living in Conroe, Texas. The only people I knew living in Austin at that time were Ross and his girlfriend at the time, Julie Allen. When I told them I was moving down to Austin and moving in with a roommate I had found off of Craigslist whom I had never met, they offered to meet me at the prospective apartment to make sure the roommate and apartment were reliable. Once there, and having realized the living situation was indeed safe, they offered to help me move into the space, up three flights of stairs. I didn't even ask. Ross just offered. And that is how Ross is. He always lends a helping hand. He is one of those generously wholesome people who has everyone's best interests at heart.

These are a slim sampling of the positive ways in which Ross has uplifted my life. I do understand that Ross has been convicted of serious offenses. However, because I am confident he will positively impact others when he is free, please give Ross the shortest sentence possible.

Thank you for taking a moment to read my letter,

Ashley Callaghan

Ashley Callaghan

[redacted]

LETTER 72

[redacted]

March 26, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Kelly Payne and I am a stay-at-home wife and mother, an entrepreneur, and a long time friend to the Ulbricht family. I first met Ross in 1994 when I became friends with his sister, Cally Ulbricht. Cally and I met in our newspaper class at Westlake High School and quickly became close friends, and remain so to this day. As teenagers do we spent as many waking hours together as possible. It was through this friendship that I came to know Ross and both Lyn and Kirk as well. Anyone who knows the Ulbricht family knows that it is impossible to know one of them without knowing them all. They are an extremely close-knit family who spent their time more together than apart and who are deeply connected to one another. I knew Ross well through his formative years, and saw him occasionally as he became a college student and adult. It is my experience of Ross that he is a gentle and kind man who loves his family deeply.

As someone who knows Ross personally, I followed the trial closely and though I do understand that he was tried and found guilty of a crime, I also found much of the perception of him (especially in the media) to be irreconcilable to the man I have always known him to be. I hope in writing this, to shine a light into who I know that he is and further, what I know he is capable of still giving to the world as a very young man with gifts, talents, accomplishments, and intelligence beyond what most people achieve.

I would like to share a particularly poignant memory that I have of Ross from a time we traveled to Costa Rica together with his family. Ross was probably around fourteen years old. Getting to our destination involved long and often difficult travel; a flight, a night in a foreign city, and an eight hour bus ride, followed by more bumping along in the back of a truck down dirt roads; we were all tired to say the least. Ross was at an age that finds many kids self-centered

and generally surly yet after all of the travel, exhaustion, and generally being in close quarters when we finally arrived at the house, Ross carried all of my bags up the stairs and into the house without being prompted at all. He was gracious and generous to me throughout the trip, always offering a helping hand to whomever needed it family or total stranger. On this trip I often compared, perhaps unfairly, Ross to my own younger brother and many of the boys I knew in their general age range. Ross was markedly mature and calm for his age. He always has been. Where many boys his age would have nagged and pestered their older sister and her friend, he was pleasant to be around. When he could have been competitive or whiney, he was patient and giving. I have always known him to be that way from the time I first met him.

Every time I consider the strange events that are now associated with Ross I am surprised and baffled all over again. It saddens me to think of all his potential for good being stunted by mistakes. Knowing Ross as I do; his intellect, his capacity to do good works and help all of those around him, his desire to teach and share his knowledge and experiences, his ability to contribute to society in a positive manner; it is my hope that these gifts are not diminished by a long prison sentence. He is the kind of person I want out in the world, contributing to making it a better place.

I know that my opinion is a small one, but I hope that I have shared something of worth and benefit. Please consider Ross as the man he is to those who know him best, and for the man he has yet to be and not for the stranger the press has created to fulfill and sensationalize a story.

Sincerely,

Kelly Payne

[redacted]

Kelly Payne

LETTER 73

Suzi Stern
[redacted]

May 4th, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Suzi Stern. I am a music teacher, and vocal coach in Austin Texas. Ross Ulbricht and my son Rene have been friends since they were small boys and continue a cherished friendship to this day. I feel as though Ross were a part of our family and I'm comfortable saying that I know him very well.

I always loved and appreciated (and still do) Ross's wit and warmth. Of all of my son's friends that I enjoyed, I was most impressed and moved by the sensitivity and gentleness in Ross's character. My family has been following Ross's case and I felt that I had to write to you to describe another side of the character you may think is Ross.

This young man has always been a light in our lives. It was apparent to me from an early age that Ross was extremely bright and had an enormous capacity for caring, sharing and giving, which is why we all love him so much. He has a big heart and a tender loving nature and has grown into a trustworthy and generous adult. I think the world of this young man and cannot say enough to stress that fact. Ross is the kind of man who was there when anyone needed him. He literally would drop what he was doing to come to your aid. Ross was the guy who would be up until the wee hours helping haul lumber, nailing and painting for a theatre set that Rene needed built, or volunteering to help on any of his high school film shoots in a myriad of different ways, doing the hard labor no one else would acquiesce to do.

I simply cannot believe that the criminal charges that he's been convicted of are part of Ross's supportive, caring, loving and gentle nature. We know him to be so generous and positive and capable of great accomplishments.

Please consider the fact that this young man is a brilliant and caring man: capable of great things in this world, and a gentle human being and please make his sentence as short as possible.

Sincerely,

Suzi Stern

LETTER 74

Suzanne Howard
[redacted]

May 7, 2015

To whom it may concern:

I am writing on behalf of Ross Ulbricht. I am a family friend who has had the privilege of being around the household on a regular basis through many years. I first met Lyn and subsequently Ross in 1988, along with other family members.

Ross has been consistent in his personality throughout the different stages of his development. He has always been gentle, well mannered, thoughtful, intelligent and responsive in conversations with me and any adults who were in the room. Ross is a thinker and holds high ideals of fairness and compassion towards the world. The last time I saw Ross in 2013, I was struck by his demeanor and his eye contact as we spoke. He was the same Ross I've known through the decades and I enjoyed seeing him. As a senior citizen I am invisible to many younger people, but the interest Ross demonstrated during our visit speaks volumes about his character.

Thank you for your time and consideration in this matter. If you have further questions, I can be reached at [redacted].

Regards,

Suzanne Howard

Suzanne Howard

LETTER 75

Robert Gold
[redacted]

March 9, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse, 500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I knew Ross Ulbricht ten years ago, and even though I am thirty years older, the age difference had me respect and admire him nonetheless. Ross Ulbricht is an honorable man.

When I knew Ross, he was intelligent, generous and kindhearted. I remember him as someone with whom I shared long talks about humanity, relationships, family and service. My sons were pre-teens at the time, very accomplished and I imagined them in ten years, embodying the traits of this responsible young man.

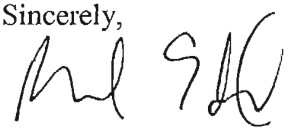
Ross never had a troubled background. He was an Eagle Scout (a straight arrow). He stood for honoring humanity. He is someone who would go out of his way to support a new acquaintance, not just his close friends.

People say that people can change. However, the core principles instilled at a young age, the nature of their character, doesn't change. Ross consistently has had a great capacity to care for people, to revere wisdom and curiosity.

At twenty, it was obvious to me that I was relating to a man who would contribute much to the world. His genius, wisdom, kindness, openness and compassion make Ross someone I would deeply admire at any age. That he was twenty-years-old, merely set him apart as a powerful man of integrity.

My heart goes out to a young man who is in the prime of his life. Please give him the shortest sentence possible.

Sincerely,



Robert Gold, Ontologist (Organizational Reconstructionist, Author and Inventor)

[redacted]

LETTER 76

[redacted]

April 13, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am writing to you today on behalf of Ross Ulbricht, a person who I have been lucky to call friend for 14 years now. Ross and I met our freshman year at the University of Texas at Dallas and developed a friendship that would endure many years and much distance due to our mutual desire to deepen our understanding of humanity, make the world a better place, and serve our community.

After undergrad, Ross headed off to graduate school at Penn State, while I stayed in Dallas to begin my career in non-profit. I still reside in Dallas where I serve as the Program Director for Shakespeare Dallas, a 44 year-old non-profit whose mission is to make arts and culture accessible to all North Texans regardless of socio-economic background. I am a leader in the Dallas community, serving on various committees and working alongside our city government to make Dallas a better home to its citizens.

I understand that Ross has been convicted of a crime, however I do not think that his criminal conduct is in any way indicative of his personal character. If Ross were to receive a sentence that allowed him to return to society, I know he is uniquely capable of doing good works and impacting his community in a positive way. Ross is one of the most brilliant, sensitive, and kind people I have ever had the pleasure to meet.

Ross was something of a fixture around our undergraduate university. Everyone knew him, respected him, and enjoyed his company. Ross was always there to lend a helping hand and has the type of infectious spirit that always cheers you up. I am continually grateful that Ross came into my life at such a critical age. He was a guiding force in our peer group and offered the best advice and unique worldview. I often talked to Ross during that time about my fear of the future and life after university. I wasn't sure if I should follow my passion to become an artist and work in public service. Ross counselled me to follow my dreams, not worry about money, and to do the right thing for myself and others. I saw him be this positive force with our other friends as well. We all needed someone who believed in us at that time. After college, Ross and I stayed updated on each other's lives through email and in person when distance and time allowed. His letters always encouraged me to take that next step in my own life and gave me confidence to move forward. Ross encouraged and held us all accountable to be the best version of ourselves.

Above all else, Ross showed me personal kindness when I needed it most. I began college at the age of 16 and had just moved to a new city without any existing friends, family, or a support group nearby. I had terrible potluck roommates and was just socially adrift in a new city where people were different than me, older, and intimidating. Ross saw that I was in need of inclusion and reached out to me in a way no one else had, introduced me to a peer group, and from that moment on I had a place where I belonged.

A person so naturally predisposed to helping others should be allowed to do that. I have dedicated my life to community service and recognize that capacity in others. If Ross is spared a long sentence, I am confident that he will use his considerable intelligence and many talents to positively impact our community in a way that no one else can. I know that I would not be the person I am today without Ross Ulbricht. And I hope that he has the chance to impact other people's lives as much as he has mine.

Thank you for taking the time to read my letter.

Sincerely,

Jenni Stewart Pittman

Jenni Stewart Pittman
[redacted]

LETTER 77

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am a librarian, recently retired after nearly 40 years, 23 of which were at the Pennsylvania State University. I knew Ross for a few years during the time he was earning his masters' degree at Penn State and living in State College. I am a friend of Ross, and he was also friends with my two children, Joe and Elody Gyekis. Ross also lived with members of my family for a time in State College, PA, and I would welcome him into my family again.

My relationship with Ross was mostly social, although we did also talk about searching the literature and other topics related to the library and its resources.

Ross, Joe, Elody and I and various other friends often gathered for discussions, picnics, and social events. Ross was kind, considerate, sensitive, smart and fun to be around. We talked about philosophy, science, health, personal experiences and all manner of topics. I was always impressed by Ross' caring attitude toward others and his kindnesses and consideration. Ross is also an honest and sincere person, one who keeps his word and completes what he promises. As a mother, I also appreciated his close family relationships. He often spoke fondly about his family while he was far from them in Pennsylvania. At every opportunity he participated in family activities, and made special efforts to visit them.

Ross has been convicted of crimes and awaits a determination of the length of his sentence. I would plead for a shorter sentence, as short as the law allows. Ross is peaceful and kind person and the crimes of which he is convicted does not represent who Ross is, or the positive things he has done in the past, or that he is capable of doing in the future.

Again, I plead for the shortest possible sentence for Ross.

Sincerely,

Loanne Snavely

Loanne Snavely

[redacted]

LETTER 78

Jonathan Rosenberg
[redacted]

March 27, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am a partner in Jackrabbit Mobile LLC, a Mobile design and development agency. I am a longtime friend of Ross Ulbricht and am writing to request that you grant him the shortest sentence possible, one that will allow him to return to his community and be a positive influence.

I have known Ross since I was in middle school. I wasn't a very popular kid until later in college. In fact, I was a bit of a social liability. Ross was well-liked even then, but he still befriended me. It was amazing to see his compassionate and caring nature at such a young age. This is a deep characteristic of Ross. As we grew up he always lived modestly and has always been willing to share his time with anyone who wanted to chat or needed help.

Ross deeply affected my path in life. While I was considering dropping out of school, Ross was embracing full acceptance of life and inspired me to stick to a goal. I ended up turning my grades around, took a bike tour around the USA and got a BS in Computer Science at UT Austin. Later in life Ross continued to inspire me. I am happy to speak up for him.

I am aware that Ross has been convicted of serious crimes. However, I do not believe this conviction represents who Ross really is. He has extreme integrity with a fearless embrace of making the world a better place for everyone. I have known him to inspire many to be a better person.

Please listen to the people who know Ross best and give him a chance to redeem himself.

Sincerely,

Jonathan Rosenberg

[redacted]

LETTER 79

J A U R E G U I
WWW.JAUREGUIARCHITECT.COM

April 5, 2015

To the Honorable Judge

Re: Ross Ulbricht

This letter is written on behalf of Ross Ulbricht whom I have known since his youth.

My name is Luis Jauregui and I am a practicing architect-builder in Austin, Texas with a successful design/build company of over 30 years. My wife and I, and our now grown 4 children and 5 grandchildren to date, all live in Austin and are a close-knit family. Ross was considered part of our family thru the years as he and our son, Mark, who is 31 and a successful Realtor, were best friends growing up, and are still very close.

Ross was a good kid, not without fault, but that is true of most kids, including my own, and they all turned out great. We watched Ross grow from a gangly quiet youngster into a studious, thoughtful young adult. Ross has always displayed a quiet intelligence and distinguished himself academically, earning advanced degrees in areas of complex science.

Like our son, Ross was an entrepreneur at heart and drawn to on-line commerce as a means of earning a living, as are so many of their generation. Ross created a website for resale books, buying up left over stock from book stores and cataloging the inventory for on-line sales.

I last saw Ross when he and his then girlfriend joined us for a 4th of July get-together at our home about 5 years ago. I asked him what he was up to and he mentioned bit coins, of which I had never heard, so we got into a conversation about how bit coins were the upcoming new currency for on-line commence. He was very animated about it, as young people tend to be with new ideas. I can't say that I related to the concept but was intrigued to hear the latest buzz among the millennial generation.

I personally know Ross to be a young man of strong family values and a good heart. I believe that his passion for e-commerce, combined with his intellect and his libertarian belief system, took him to places that grew outside his control.

Ross is not a danger to society and the criminal offenses of which he is accused do not represent who he is. Ross is an intellectual, a free spirit and guileless, with great potential to contribute in very positive ways to the people and world around him.

My wife and I, and all of our family, are very concerned for Ross' wellbeing and pray that his sentence is short and his placement low security.

Thank you.

Luis Jauregui, AIA
Friend and supporter of Ross Ulbricht

LETTER 80

[redacted]

March 26, 2015

The Honorable Katherine B. Forrest

United States District Judge

Southern District of New York

United States Courthouse

500 Pearl Street

New York, New York 10007

Dear Judge Forrest,

Having followed the trial of Ross Ulbricht, I would like to share my impressions of the young man I watched grow up whenever he visited his family in Costa Rica. Always polite and generally reserved, Ross liked to play ping pong and surf. I never suspected him to be involved in illegal activity. He is a peaceful person and would be hard to imagine him to be a threat to anybody.

I was impressed with Ross' academic pursuits in college and his ultimate graduation. His intellect was never intimidating and demeanor, never malicious.

While his involvement with creation of the Silk Road is undeniable, I don't believe Ross is a hardened criminal. Please consider Ross's background when sentencing him to an institution that often promotes violence and instability. Could he possibly be used in a more productive manner which benefits, if not society... the state?

Respectfully,

Andy Pruter

LETTER 81

[redacted]

May 2, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

Several years ago when I was attending graduate school I was lucky enough to be one of 30 people selected to participate in an event in Austin, Texas. Ross Ulbricht participated as well. The idea–since copied in cities all over the world–was that you arrive with an idea, you pitch your idea to a small group, and then you and the 29 others spend the next 72 hours making the best ideas a reality.

Ross Ulbricht and I were thrown into a mini shark tank for 3 days and told to get to work. Our true selves came out over hard work and sleepless nights. He and I bonded with each other and many of the other participants, and I only have fond memories of Ross. I'd wager everyone else who had the pleasure of working with Ross then would say the same.

Five or so years later Ross's idea was one of the only ones I remember. In fact, it is *the only* idea that did not succeed to the final round of pitches that I remember. Ross had an idea to build a real life economy within games played on the Internet. Online money that had real value. Currency existed within individual games at the time, though it was a relatively new concept. I remember Ross's idea because he was so passionate about it. He envisioned a virtual world where currency could transcend the games. In retrospect it was akin to the world of Bitcoin (which I believe was invented later). Ross, a couple others and I worked on the idea a bit that first night, but I eventually moved on to another project.

I saw Ross at a social mixer only once after those three days of working together. After that we were just Facebook friends and LinkedIn contacts. I graduated and moved to Houston to lead a team of insurance underwriting professionals. But Ross was someone I enjoyed those few short hours with five years ago. I would have liked to become his friend, but it seems I may never have that chance.

I am writing to tell you my rather insignificant story today, because I feel I got to know Ross just a little bit better than what I've read others writing about him in the news. I'm not writing to argue whether the justice system failed him. I do think as short a sentence as possible is warranted though. I'm not a lawyer and don't know all that the prosecutors or Ross's defense counsel know. What I do know is, deep down

in my gut, I feel Ross deserves the opportunity to regain his freedom. He is a genuinely good person. And I hope I get that chance to someday pursue a friendship with him, in person, not behind bars.

Thank you for your consideration,

Timothy A. Losie
[redacted]

LETTER 82

[redacted]

March 27, 2015

Dear Judge Forrest,

I am a former teacher and filmmaker. My family and I have known Ross Ulbricht, his sister, and his parents for many years. We believe them all to be fine people and good citizens. We think highly of Ross because of his genuine, authentic personality. He is a man of integrity. Ross says what he truly believes, not what he thinks people want to hear.

I am aware that Ross has been convicted of crimes, but these do not reflect who he truly is or what he is capable of contributing to society.

An example of Ross's commitment to helping people is the time and effort he spent in Austin, Texas helping to establish the non-profit water charity Well Aware. This charitable effort, which I also worked on, raises money to dig wells for poor villagers in Kenya .

Despite recent events, my family and I consider Ross a good friend because of his extraordinary character and goodness. I believe that it would benefit all for this brilliant young man to be released in time for him to marry and reproduce, have a family. To that end, I am writing this to ask the court to issue the shortest sentence possible.

Meanwhile, I know that Ross will endure his incarceration with dignity and fortitude. He will undoubtedly be a blessing to everyone he shares his space with.

I pray the court will issue the minimum sentence.

Sincerely,

Marcia Bracy Yiapan

Marcia Bracy Yiapan

LETTER 83

Rick Hardy
[redacted]

May 8, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am writing on behalf of Ross Ulbricht and his future. I am very pragmatic and utilitarian in my approach to life, and in this way I would like to offer my opinion with regard to Mr. Ulbricht and the consequences he must pay for his misdeed.

I first met Ross as a child of no more than seven or eight and I can still remember my first impressions of this inquisitive little boy. He always struck me as a kid who knew what he wanted out of life and was willing to put in the time and energy to reach a positive outcome to any problem he might be doing his best to solve. Even as a young person, Ross came across as a very intelligent, yet compassionate individual. I never saw anything but positive and constructive energy being expended by this curious problem solver.

This brings me to the purpose of this letter. If Mr. Ubricht is indeed guilty, then he must accept the consequences for his actions. In no uncertain circumstances would I ever consider Ross Ulbricht as a threat to society, but just the opposite. I see Ross (especially in this situation) as pure potential, an energy source that should be tapped for the good of society.

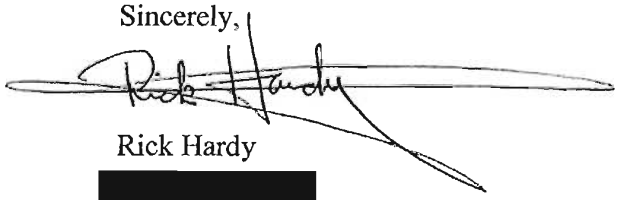
I don't see Ross as a criminal, but simply as an inquisitive young man who took a wrong turn. As so often happens in life, things start off small and sometimes quickly escalate or morph into something completely foreign, ending in a state with no resemblance to the original situation.

I feel strongly that Mr. Ross Ulbricht should serve as an asset to our nation and not be simply warehoused. I am quite confident that Ross has learned some very hard lessons and is now in a state of mind that will allow him to see life much differently.

Please allow Ross to serve the shortest possible sentence, housed in a facility that will allow this brilliant young man the opportunity to give back to our nation. The possibilities are unlimited and I feel Mr. Ulbricht can truly be a contributor when given a chance to work toward the good, providing positive and pragmatic solutions to contemporary problems.

In closing, I want to say that, in my opinion, Mr. Ross Ulbricht is an untapped energy source, ready to be utilized for the good of his fellow human beings. Please give careful consideration to his placement and length of time behind bars. From a totally utilitarian point of view, I feel justice can be served while also receiving the benefits of a brilliant mind.

Sincerely,



Rick Hardy

[redacted]

LETTER 84

[redacted]

April 9, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Lindsay Gunter Weeks. I am the Development Officer at a non-profit organization that provides services to children who are medically fragile and/or developmentally delayed. My degree is in psychology, and I spent years as an early childhood educator. My husband and I live in Austin, with our fantastic son and old black lab.

I met Ross Ulbricht when we were in high school together. We must have been about 15, which means that I've known him half my life. We were good friends in high school, always hanging out with the same group of friends, frequently even at my house. Ross was also in Boy Scouts with my little brother, so my parents have always thought of him as a friend of the family. He was always welcome.

I am aware that my friend has been convicted of a crime. My family and I have been having a hard time accepting this and have moved through many emotional states on our way to this point: shock, confusion, denial, sadness, and most recently, fear. Many people have chosen to pine over every possible news article out there, searching for some kind of relief. I have chosen to read only what is unavoidable, because I refuse to let any media skew my memories of the kind, intelligent and honest Ross that I know.

Ross was always so polite. My mother told him many times that he didn't have to knock and to call her Patti, but he couldn't help himself. He called her Mrs. Gunter and rang the bell every time. Ross went out of his way to be compassionate. My brother, being a few years younger and struggling socially, always looked up to Ross. Ross always talked to my brother for a while, even when he was there to visit with me. My father loved discussing science and nature with Ross. While I consider myself a smart person, their conversations quickly went to the level of physics, space and time, and I couldn't keep up. While I witnessed all of that, what I remember most is that Ross was the sensible one of our group. He would encourage us to go home on time, call our parents and be honest when we got caught misbehaving. It takes quite a respectful teenager to be responsible, not just for himself, but for all of us too. Ross is amazing in the way that he embraces life: loving nature for both the science and spirit, accepting all people despite the social implications, and keeping his word even if it costs him.

I can't lie, I'm worried for him. I feel that a maximum security facility would be dangerous for Ross. He is gentle and peaceful. I want to cry just wondering when he'll get to breathe fresh air or swim in a lake again. To this end, I entreat you to give him the shortest possible sentence. I

hope that one day, I'll get to see him again, when he is allowed to return to his friends, family and community. We all miss him and know that he can be remembered for his positive contributions to our world. When he is released, I know that he will be a threat to no one.

Sincerely,

Lindsay Gunter Weeks

[redacted]

LETTER 85

[redacted]

April 5, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Susie Kim and I am a friend of Ross Ulbricht. I'm originally from Austin, but I now work and live in Manhattan as a Business Development Manager at a fintech company called OnDeck. I am writing to share the true character of a friend that I respect, admire, and cherish.

I have been friends with Ross for 20 years. We went to the same schools and shared the same group of friends. His best friend Mark lived across the street from me and his first date was my best friend Clemmy (they went to go see Lord of the Rings). We worked on class projects together, hung out together, and managed to meet up every Christmas break since we graduated from high school in 2002. We are and will be lifelong friends.

In 2011, I quit my job as an investment banker at JP Morgan in SF and spent a half year traveling the world before returning to SF. Shortly after, Ross moved up to San Francisco and I was happy to reunite with my long time friend. After high school, we only saw each other once or twice a year so it was great to live in the same town and hang out regularly in SF. I talked to Ross about my travels over the previous year-- to India, Southeast Asia, South America, and Europe. We always had the best conversations about our travels and challenged ourselves to solve the problem of poverty by developing local economies, reducing corruption, creating access to clean water, education, healthcare, etc. As corny as it sounds, I have never met a person who cares about the world and humanity as truly and pragmatically as Ross does.

Ross has been convicted of charges that are hard to reconcile with the person I know. He is one of the kindest, most genuine, and generous souls that I have had the privilege of knowing. He doesn't care about money, glory, or status. Rather, Ross cares about using his talent and intelligence to solve problems and make things better for others. It is a tragedy and a great shame that he is locked up in prison, unable to be a productive citizen when he, of all people, literally has the intelligence, drive, and ability to make the world a better place! He can actually execute his ideas for eliminating poverty, creating a better world for others.

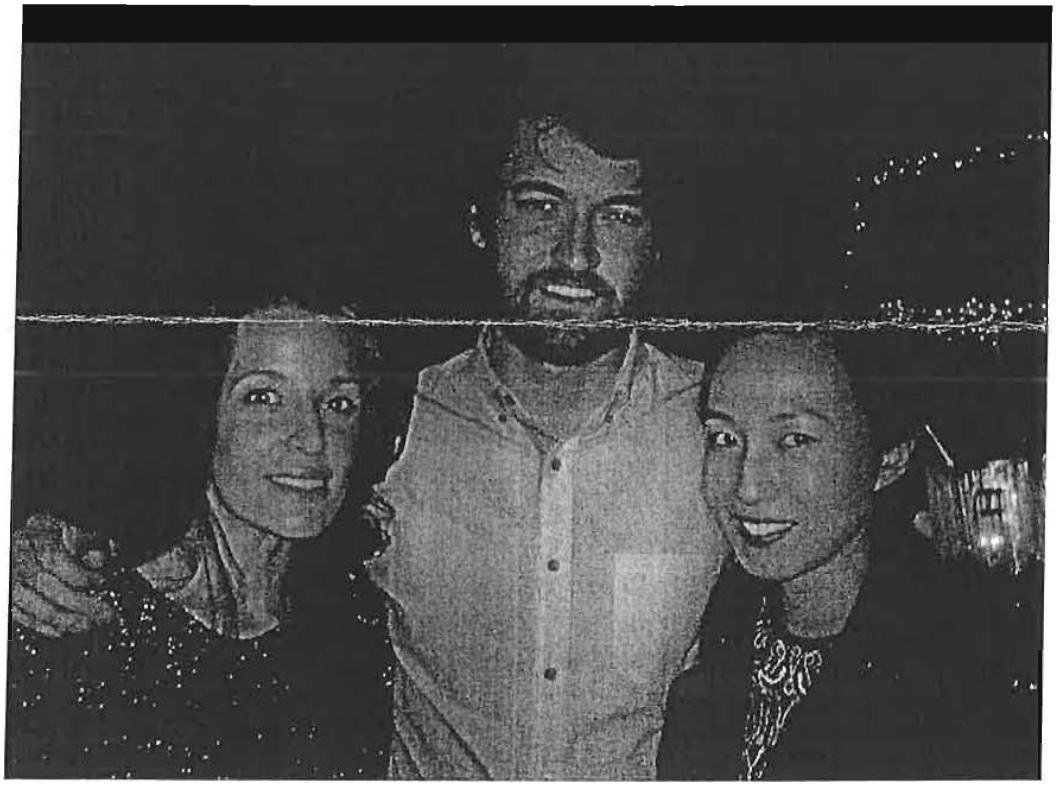
Ross is not a dangerous criminal. All he wants is the freedom to do good. There are criminals who would be a big risk to release to the general population based on their record. But Ross is not one of those criminals. He has only been a source of light and good to everyone who actually knows him. Please trust the opinions and testimonies of those who actually know the wonderful human being he is. Locking up Ross is a tragic waste of a wonderful, and productive human. He's not just an idealist-- he is a doer who lives to make those around him smile and make the world better and kinder. My heart breaks that this wonderful human and source of light is being quashed.

Please give Ross Ulbricht the shortest sentence possible. The world is so much better with him active among us.

Sincerely,

Susie Kim
[redacted]

Clemmy, Ross & myself. Christmas 2012.



LETTER 86

[redacted]

April 8, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

Hello, my name is Carla Baccelli, I live in Pennsylvania and am a stay at home mom and a part time student. In 2009 I graduated from Penn State University. During my 2 ½ years there I knew Ross Ulbricht.

Ross and I were in an African drumming and dance group called Nommo. We practiced together nearly every week and went to a social gatherings as friends several times. We also carpooled together on different occasions. Even though after I graduated Ross and I did not keep in touch, I will always remember him fondly.

I remember Ross as being punctual, thoughtful, helpful and being a good listener. While attending Penn State I was a non-traditional student and had a two year old daughter, but at the same time wanted to get the most out of my education. I remember confiding my feelings in Ross at different times and him giving me advice and just listening. Also there were several occasions when Ross gave me a ride because my car was getting worked on. He was someone who I knew would lend me a hand and that I could count on. He knew about my situation and still accepted me. I appreciated him for that.

He was a good drummer as well and was patient and helpful at practice.

I understand that Ross has been convicted of a crime, but I could never think of him as a criminal. If I saw Ross today I would probably thank him for being there for me while I was getting my Bachelors degree, and I would probably ask him if he was up for some drumming. I can only imagine him as being a positive part of whatever community he is in.

Sincerely,

Carla Baccelli

[redacted]

LETTER 87

JoJo Marion
[redacted]

May 11, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

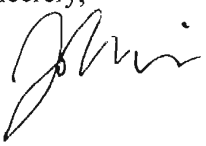
I am writing this on behalf of my longtime friend, Ross Ulbricht. I am a Designer in Austin, TX.

I know Ross because he's my older brother's close friend. Growing up the youngest of three brothers, I have done a great deal of tagging along. Some of my brother's friends weren't welcoming, while others talked down to me and treated me like a tag along. Not Ross. Instead, he got to know me, invited me in, shared experiences with me and treated me as a friend. This demonstrates Ross' qualities of empathy, compassion and kindness, qualities he is widely known for and that inspire loyalty among people who know him.

I love Ross. He has a huge heart. He is incredibly sweet and kind and treats everyone with a great deal of respect. I am proud to call him my friend. I am aware that Ross has been convicted of serious crimes. However, I am confident that he is a danger to no one and that once released he will go on to make a contribution to his community.

Please give Ross Ulbricht the shortest sentence possible. I know it will be more than sufficient for him to return as a constructive, law abiding member of society.

Sincerely,



JoJo Marion

[redacted]

LETTER 88

[redacted]

March 26, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I am forty one years of age. I have a sixteen year old daughter and a very responsible professional sales career with 'SingTel Optus' (AT&T equivalent). I deal with enterprise level business and government people of importance from CEO, CFO, and CIO levels. I pride myself in understanding people quickly and carefully, a skill necessary in my job.

I knew Ross intimately from about August 2011 to January 2012, and personally got to learn about and understand him as a person over that period. This was in Sydney Australia, where Ross and his sister lived with me in a share house in Bondi Beach. After a month Ross moved one street behind our home, but he was around our house daily and nightly thereafter. Consequently, I spent significant time with Ross, enough to regard him as a close friend. I therefore feel that I have enough experience and knowledge of Ross to testify to his personality and intentions in life.

I do not surround myself in social circumstances with unlawful people, including drug consumers, nor do I tolerate them. I do not support drugs whatsoever, and have been very disappointed and surprised at the findings regarding Ross Ulbricht, as I have never seen him use or be involved with illegal drugs.

In fact, I never thought Ross would act illegally. What's even more astonishing is that he did not seem to be monetary focused, but rather achievement focused on a grand scale. I feel that combining this need for achievement with impatience has mislead him to act unlawfully. Therefore I agree that Ross should be punished until he fully understands the wrongfulness of his actions.

That said, I feel that the time for Ross to understand the wrongfulness must be a length that the constructive value Ross can bring to society is not lost. My family origin is part English convict that built Australian foundations. My great grandfather was sentenced to death in 1828 for

horse theft, then was not only re-sentenced to life to Australia but pardoned. He became a significant contributor to the development of Sydney, while also fathering eight children whose families spanned the eastern coast from Sydney to far north Cooktown developing roads, towns, and founding Australian societies. His later generations fought and died in world wars for Australia, England, and America.

People can change and their will to contribute can be strengthened from forgiveness and support of others. I see Ross as an opportunity to be a valuable future contributor to American and Australian society as this situation unfolds in many years to come. To waste his talents, that have been gravely misguided for a short period of time, I believe would be a terrible loss. Rather Ross needs guidance and support to direct the ability he has to the greater cause of our society.

Ross clearly has the motivation to achieve, and understands new technologies that are accelerating in our society at a rapid pace. I have worked in the Telecommunications and IT industry for nearly 15 years, and a person of Ross Ulbricht's ability to learn, adapt, and apply is highly valuable in our industry.

The Ross I know is thoughtful, caring and respectful to others. I strongly believe that, with the minimum disciplinary action, he can be reverted back to who he really is. Ross is not a true criminal, but rather a misguided youth who can be salvaged into someone who can significantly make a positive difference for society in the future. Please grant him the benefit of the doubt and the shortest possible sentence so be can repay society for his offences.

Should you or any representative wish to contact me on this matter, you are welcome to do so.

Sincerely,

George Reinke

LETTER 89

February 24, 2015

Mark North Jauregui
[redacted]

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

To: The Honorable Katherine B. Forrest

Re: ROSS W. ULBRICHT, Bail Hearing

Your Honor:

Ross Ulbricht is a trusted friend of over 18 years and is one of the best men I know. I have read the full Complaint against Ross, read the full trial transcript and understand the conviction. It is with this in mind that I would ask that Ross not be made to stay imprisoned longer than he has to be. Ross is a man of tremendous worth and heart, he is not a dangerous man and would be a productive and upstanding member of society when able to rejoin it. I can understand how he has made mistakes and I hope that you will separate Ross from some of the dangerous people that you must encounter as a judge.

Ross and I grew up together and I know him well. He is modest, humble, and caring. Loved by those who know him as someone who is reliable, peaceful, and intelligent. Always available to listen or offer help, he is dependable; he goes out of his way to help others. It is a testament to his character that everyone who has met him in his life will speak highly and fondly of Ross; this is even true of prison guards and other inmates. Ross has demonstrated his character in the time that he has already spent incarcerated by teaching classes, helping others and being a model inmate. The support from his family and friends is unwavering. I'm confident that time will prove Ross a good man who is deserving of our support and respect.

Please allow Ross to be grated his freedom while he is still able to make a positive impact; he is certainly not a danger to the community. With full knowledge of the convictions, Ross has my unwavering support. Thank you for your consideration.

Sincerely,

Mark North Jauregui

LETTER 90

Dear Judge Forrest,

I am an inmate at MCC in the same unit as Ross Ulbricht. I've come to know him well in the five months he has been here and I am writing so you may benefit from my knowledge of his character. Ross is genuinely interested in the wellfare of others. He is well educated and gives freely of his time to those who wish to benefit from his knowledge. He has tutored students seeking their GED, two others who are working on bachelor degrees by correspondence, and me.

When he was helping one prisoner with math in the common area, I mentioned that I wanted to learn physics some day. He heard and told me he'd be happy to tutor me. That same day, he lent me his physics textbook and we had our first lesson. It has been challenging to absorb the material, but Ross helps fill in the gaps and patiently explains the concepts to me. He is attentive and enthusiastic and makes it fun to learn. Every time we sit down for a lesson, I am eager to move forward and make productive use of my time in prison.

The more I get to know Ross, the more sad I become knowing he faces so much time. I sincerely believe everyone deserves a second chance and I hope you will find it wise to give Ross one at sentencing.

Sincerely,

Davit Mirzoyan
#597-30-112

LETTER 91

Dear Judge Forrest,

I have been an inmate at MCC awaiting trial for the past 18 months. Ross Ulbricht came into my unit earlier this year. When he first came in, he struck me as a very calm and collected individual. I knew he was facing serious charges and going to trial, yet every night when he'd come back from court, I'd see him mingling with the other inmates, getting to know them, playing table tennis and just being at ease. Of all the people in our unit, Ross is facing the most time, but he never complains or tries to bring anyone down. On the contrary, he's often the one to remind us to look on the bright side and be grateful for the blessings we still have.

A few weeks after he arrived, I invited him to live with me in my cell. I got to know him since then and consider him a friend. It's incredibly hard to be away from my family over seas and it's easy to get overwhelmed with grief and despair, but when I see Ross, who's situation is so much worse, and how he remains friendly and kind to me and the others in our unit, it gives me the strength to do the same.

I know Ross would continue to set an example for how to be a strong and peaceful person if he were given his freedom back. I can think of few who would deserve it more.

Sincerely,

Scott A. Stammers
#92131-054

LETTER 92

March 23rd, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Billy Becket and I am Ross Ulbricht's step cousin. I am currently living in Shanghai, China and am the Managing Director of an International Visual Effects Company.

I have known Ross since he was a young man. However, it wasn't until more recently when I got to know him as the intelligent and caring adult he is today.

Ross moved to Sydney, Australia in 2011 after I had already been living there for approximately 6 years. Within weeks of his arrival, he had easily adopted our circle of friends. We would often take advantage of Australia's natural surroundings by going surfing or hiking in Sydney's many beaches and parks. Ross clearly has a passion for the outdoors.

I remember on one occasion several of us went on a houseboating trip on the Hawkesbury River; Ross was completely in his element. His positive outlook on life and engaging spirit on that trip were infectious to the rest of the group. He was such a joy to be around.

About a year after Ross moved to Sydney, my wife and I had the pleasure of having him and his sister Cally join us on our wedding day. Having extended family there meant the world to us. The Ulbrichts are such a loving and supportive family, which is evident by the two amazing children they have raised.

I was completely shocked when I heard the news Ross had been accused of a crime. He is such a compassionate, soft spoken and generous individual and the last person I would ever expect to do anything illegal.

I sincerely hope that Ross is spared a long sentence. I have no doubt he can make the world a better place if given the chance.

Sincerely,

Billy Becket

LETTER 93

[redacted]

March 3rd, 2015

The Honorable Katherine B. Forrest

United States District Judge

Southern District of New York

United States Courthouse

500 Pearl Street

New York, New York 10007

Dear Judge Forrest,

My name is Rachel Barac, I am currently working in the field of Human Resources/Office Management in the visual effects industry.

I met Ross Ulbricht for the first time in 2012. Ross is my husband's cousin through marriage. He was in Australia and we invited him to attend our wedding in Sydney. We spent time with family and friends leading up to our wedding which included spending time with Ross. In this time, I found him to be friendly, well mannered, likeable, and gentle. Ross came to social events leading up to the wedding and was well liked by everyone. As I understand it, he also has a large group of friends in the United States that deeply care for him.

I was particularly touched when Ross thanked us for inviting him to our wedding. His sentiments centred on love, commitment and family being of the utmost importance to him. His words were sincere and heartfelt.

I understand that Ross has been convicted of a crime. The news of this shocked me and still does, as it is not inline with the person I met or the sentiments he expressed about his belief in love and family.

Sincerely,

Rachel Barac

[redacted]

LETTER 94

From: Michael Pierce
[redacted]

April 6, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Michael Pierce. I am 27. I work as an audio engineer in Austin, the city where I met Ross Ulbricht 15 years ago. He was a classmate of my stepbrother, so I would see him fairly frequently as I was growing up. We got to be friends.

My stepbrother's group of friends were some of the most inspiring, self-motivated people I've met so far in my life. They were unique in their intelligence and in their attitude toward life. It's a difficult phenomenon to explain, but there was an enthusiasm in these guys' eyes. They were at the top of their class at Westlake High School. The group was extremely close-knit.

There were six: Daniel, my stepbrother who now works for the City of Austin; Jonathan, who is now the CEO of an iPhone app company; Noah, who now runs his own leather-working business; Rene, who runs a startup in San Francisco; Thomas, a published photographer who works as an extreme-fire fighter in Virginia; and Ross, an entrepreneur who has been convicted of a serious crime and who now faces an extreme prison sentence.

When I graduated from USC in 2009 at 22 years old, I moved to Austin hoping to begin my adult life. I was met with the hard realities of a freshly recessed economy, and I had trouble getting a job despite my brand-new degree. Ross offered me a part-time job with his small book-selling company. He saw a member of his community hit a wall, and he stepped up to help using the resources at his disposal. He paid a fair wage for his employees' work, rather than the minimum wage. Ross understands the value of human beings.

The crimes that Ross has been convicted of are not a good representation of who he is as a person. There is no reason for him to endure an extended prison sentence. I know him personally, and I believe that he is capable of benefiting society in powerful ways, but not if he is stuck in a cell. As a society, we are better off with Ross out of prison.

Sincerely,

Michael Pierce
[redacted]

LETTER 95

April 13, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

Ross Ulbricht has been a friend and confidante to me since fall 2002, when we both entered college at the University of Texas at Dallas. His kindness, openness, and good nature were easily apparent upon first meeting him, and my respect for him only continued to grow after we became roommates while we were both still undergraduates. Even though our paths diverged after college, Ross still maintained, to a remarkable degree, the ability to easily resume a conversation years before and leave the other person grateful for his warmth, geniality, and simple presence. I am currently the project manager for a medical services company with a master's degree, and more than 10 years after we first met I still find myself reflecting on insights I've gotten from the honest and personal discussions that were Ross' strength.

His arrest and subsequent trial has left me, like all of Ross' friends, truly baffled, as the hardened criminal portrayed in the media could not be more different than the gentle and caring soul that I and the hundreds of people whose lives he was a part of knew. Whatever led him on the path that ended with his conviction, absolutely nothing could convince me that he was in any way a danger to the community at large or that American society would be served in any way by a harsh and punitive sentence. The Ross that I know is a constant source of laughter, a continual fount of adventure, and an eternally optimistic seeker of truth whose main goal is ensuring his friends around him are living life to the same full extent he does.

My purpose in writing this letter is to add my voice to the many others whose lives were enriched by knowing Ross, and to express my feeling that justice will be best served by taking into account his close relationships with the people around him. Ross' life journey has taken him all over the world, but with the constant expectation among his friends that wherever he was that he was still a part of our lives. After this trial and conviction, I know that nothing would be more important to him than to reconnect with his close friends and family, because at heart Ross is someone looking to help people and bring joy to their lives. He has a long history of charitable and philanthropic activities, and it's hard for me to see who is helped by applying a long and onerous sentence on him.

All of the people that knew him best are united behind him, because we've seen with our own eyes the essential goodness of his heart. Please take the testimony of his friends and the evidence of his loved ones into account when determining his future.

Sincerely,

Aaron Arnold

LETTER 96

[redacted]

April 13, 2015

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

My name is Austin Tindle. For the past 8 years, I have been the Office and Programs Manager for the Advisory Board of Booker T. Washington High School for the Performing and Visual Arts, one of the top eight public arts magnet schools in the nation according to the Department of Education as of 2009. Before that, I attended the University of Texas at Dallas along with Ross Ulbricht.

During my senior year at St. Andrew's Episcopal Upper School, I had the choice of attending a few different colleges. UTD was not my first choice, but I had the opportunity to spend a night there and I was hosted by Ross. He was incredibly hospitable and kind. The evening was spent discussing things like astrophysics and discrete mathematics, and many other things that went totally over my head. But I was convinced that I wanted to learn more and I enrolled at UTD in the Electrical Engineering department.

Ross tutored me and mentored me for the three years that we were at school together. My sophomore year I lived directly above him. I couldn't cook for myself and he would feed me healthy breakfasts and show me quick tips. I was depressed from a bad breakup one year and Ross started working out with me everyday. He would help me with math and science, and afterwards I would try to understand some of the stuff he was doing. He worked in the nano-tech lab and they were growing photosynthetic cells. He told me they could one day make energy more affordable for everyone and could really help people. He was a pacifist. He was generous. He was never concerned about making money. He wanted to solve problems and make things better for people.

He went to Pennsylvania for graduate school and we kept in touch. He was publishing articles and researching really incredible technology. I was still struggling as an engineering student. I was inspired by his work and the way he was finding new ways to make things better for people. He definitely played a part in my decision to enter non-profit fundraising after I graduated. I took the critical thinking skills and problem solving urges that I'd picked up, and I helped create a brand new online accounting and marketing system that allowed a two person staff to facilitate raising over 4 million dollars during my 8 years there. That money changed the lives of over 1600 disenfranchised public school students in the inner city of Dallas, TX and the program's success continues to build everyday. The average graduation rate for this public high school is currently 99%; and over 95% go on to higher education. Now that I have moved on to pursue an

independent career in commercial acting and voice over, I am incredibly proud of the work that I've done to help my community. Ross Ulbricht played a huge part in making me who I am. If he were still in this community, I am sure he would still be helping me and many others.

Ross Ulbricht's conviction does not at all reflect his character, in my opinion. Everything Ross has done with his research and career decisions has been motivated by helping people. And I am an example of someone who was helped by him.

Thank you for your time,

Austin Tindle

[redacted]

The Honorable Katherine B. Forest
United States District Judge
Southern District Of New York
U.S. Courthouse, 500 Pearl St.
New York, N.Y. 10007

May 21, 2015

Dear Judge Forest;

My name is Michael Satterfield. I am a former writer/director of films. I am currently an electrical contractor. I have known Mr. Ross Ulbricht for approximately 15 months. During that time he and I developed a friendship. We shared a cell at MDC and spent 24 hours, 7 days a week for several months. During that time Ross consistently exhibited a peaceful and positive demeanor. He spent his days sharing positive thoughts with the other inmates. Ross also encouraged them to find peaceful ways to resolve their differences.

With the permission of detention staff, he also began teaching yoga and meditation to the general population, inviting anyone to join in. He was always respectful, compliant, and he had the foresight to understand and empathize with the difficult duties of the staff. He always chose the moral high ground in every situation regardless of the personal hardship that it caused him personally. His level of empathy is extraordinary. On many occasions he expressed his extreme dislike for violence on any level. He possesses great strength of character and he a calm soft spoken manner. Furthermore, he consistently committed acts of unusual kindness towards others.

I understand that he has been convicted of criminal acts. However, it is with great respect to the justice system that I request of the court that consideration be given to Ross. My request is based on his nonviolent nature and the positive Impact he would have on society if he were to be allowed to return at some point that would give him the opportunity to have a meaningful life. I also feel that he would have a strong, positive impact on society as a whole. His conviction in the court does not reflect the character of the man that I've come to know and admire.

I do thank you for taking the time to read this letter. I hope that it has been helpful to this honorable court of which I have the pleasure to address.

Sincerely, Michael S. Satterfield

Michael Satterfield

[redacted]

EXHIBIT 3

Joshua Dratel

From:
Sent: Thursday, May 21, 2015 4:50 PM
To: Joshua Dratel
Subject: DPR actions relative to DoctorX

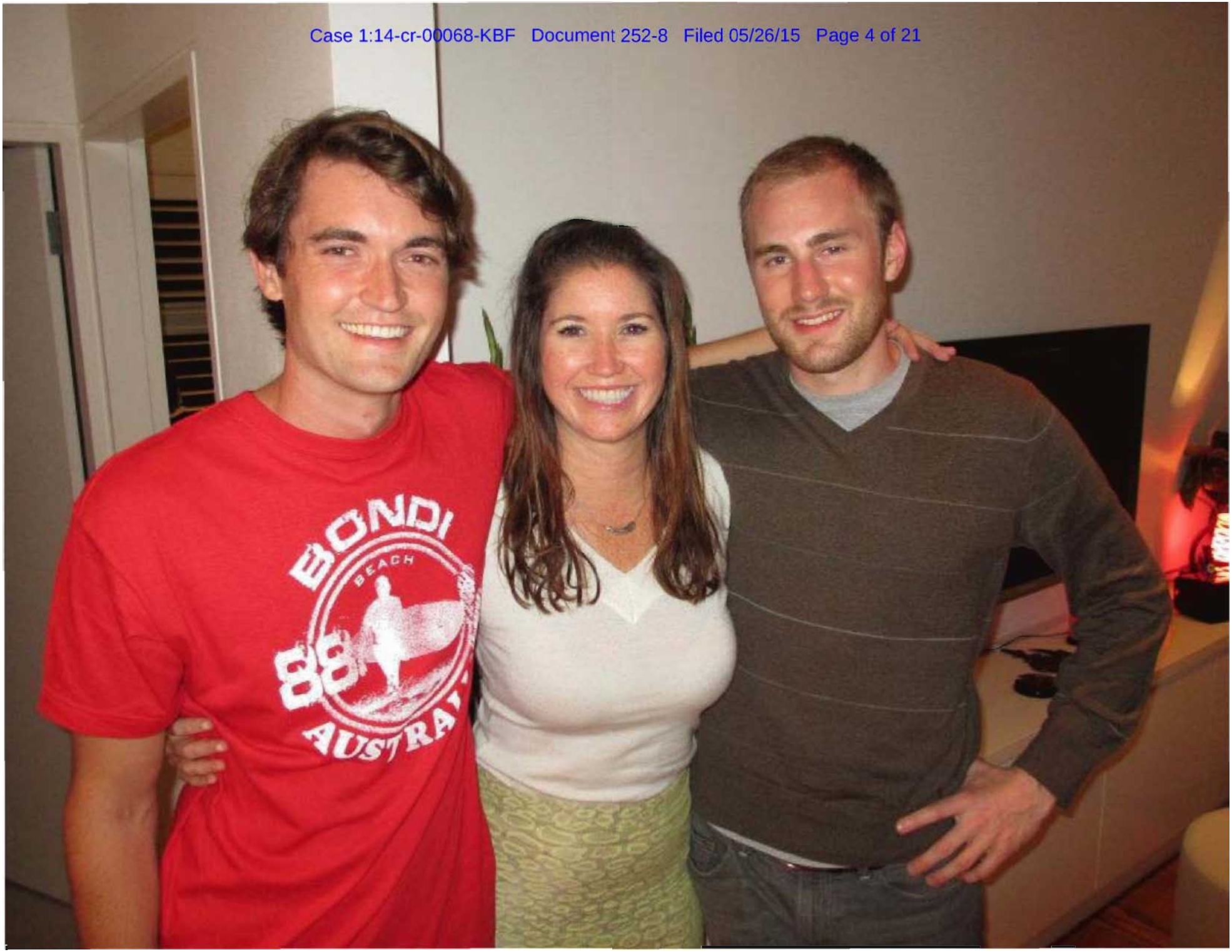
Dude,

I can say without a doubt I PM'd DPR and alerted him to the presence of DoctorX on the SR forum back in 2013. My first pm to him did not include a link to X's thread, DPR pm'd me and asked for that link which I sent to him right away. Several days later I noticed a huge increase in thread views caused by DPR putting X's thread up on the same page as the products were displayed. DoctorX went from working to keep his thread from dropping down to dead thread land, to a sticky on the main page. Huge change due to DPR seeing his importance as a harm reduction specialist.

Far as X goes, I can say he inspired me to quit drugs and follow the golden rule. I helped him a little bit with some English translation issues.

Cordially,

EXHIBIT 4

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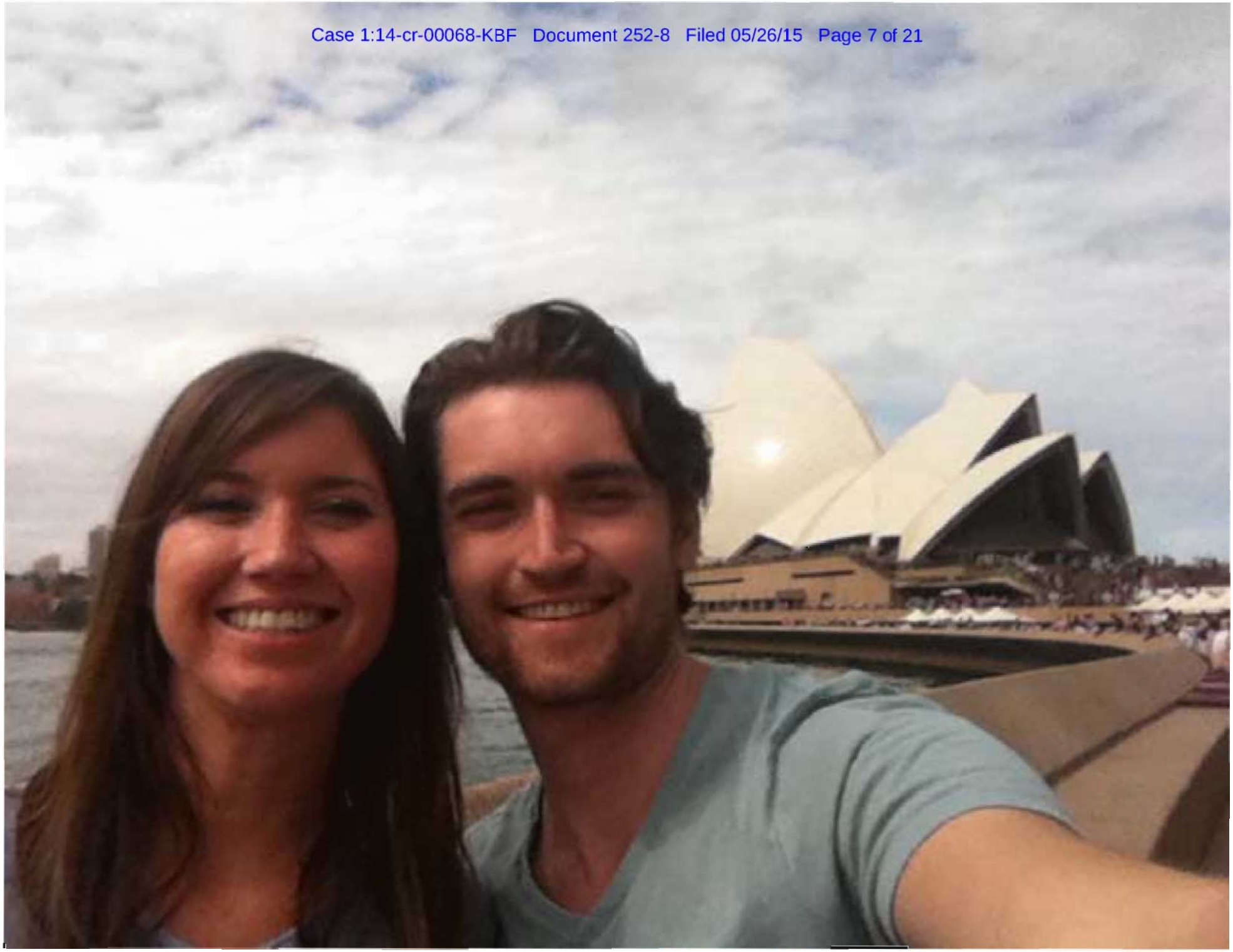

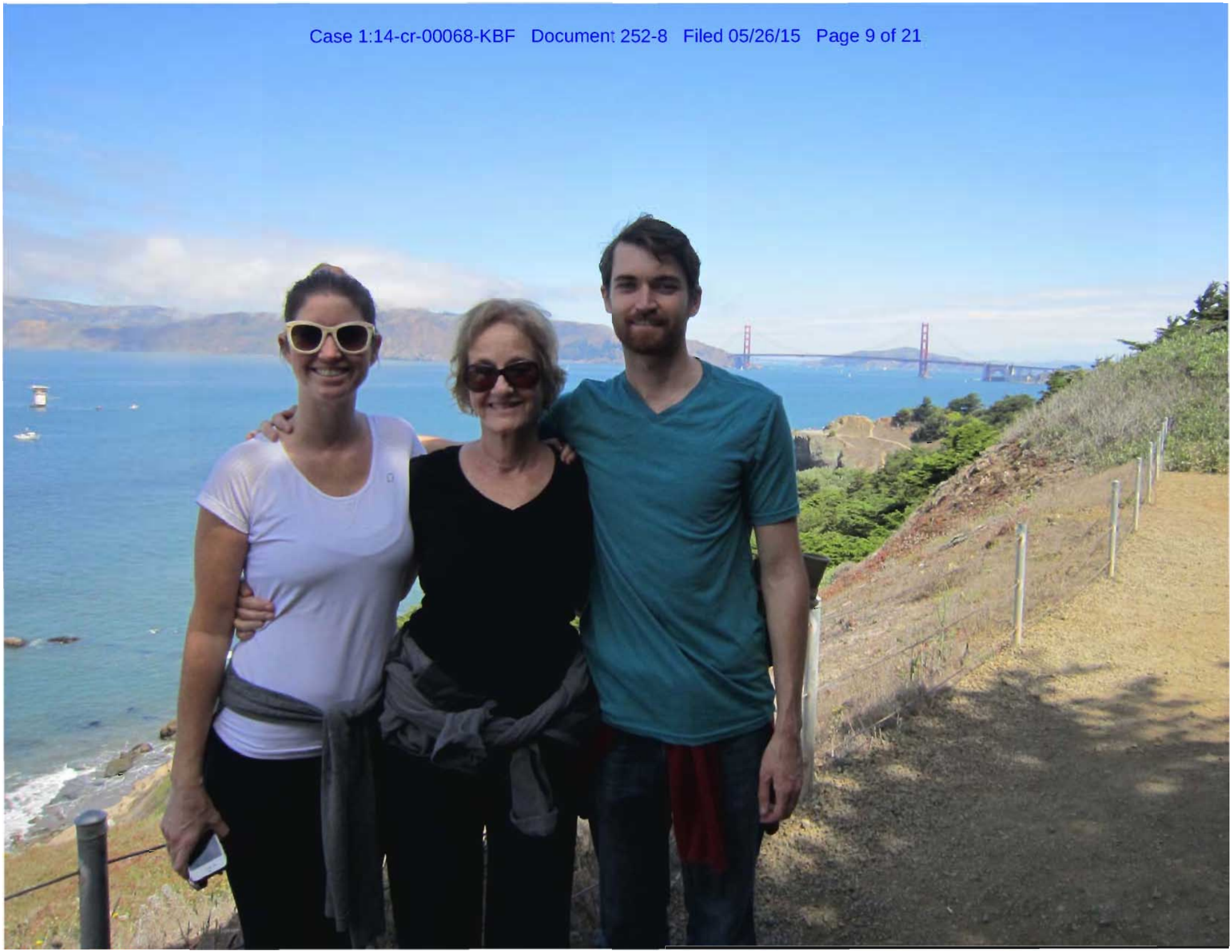

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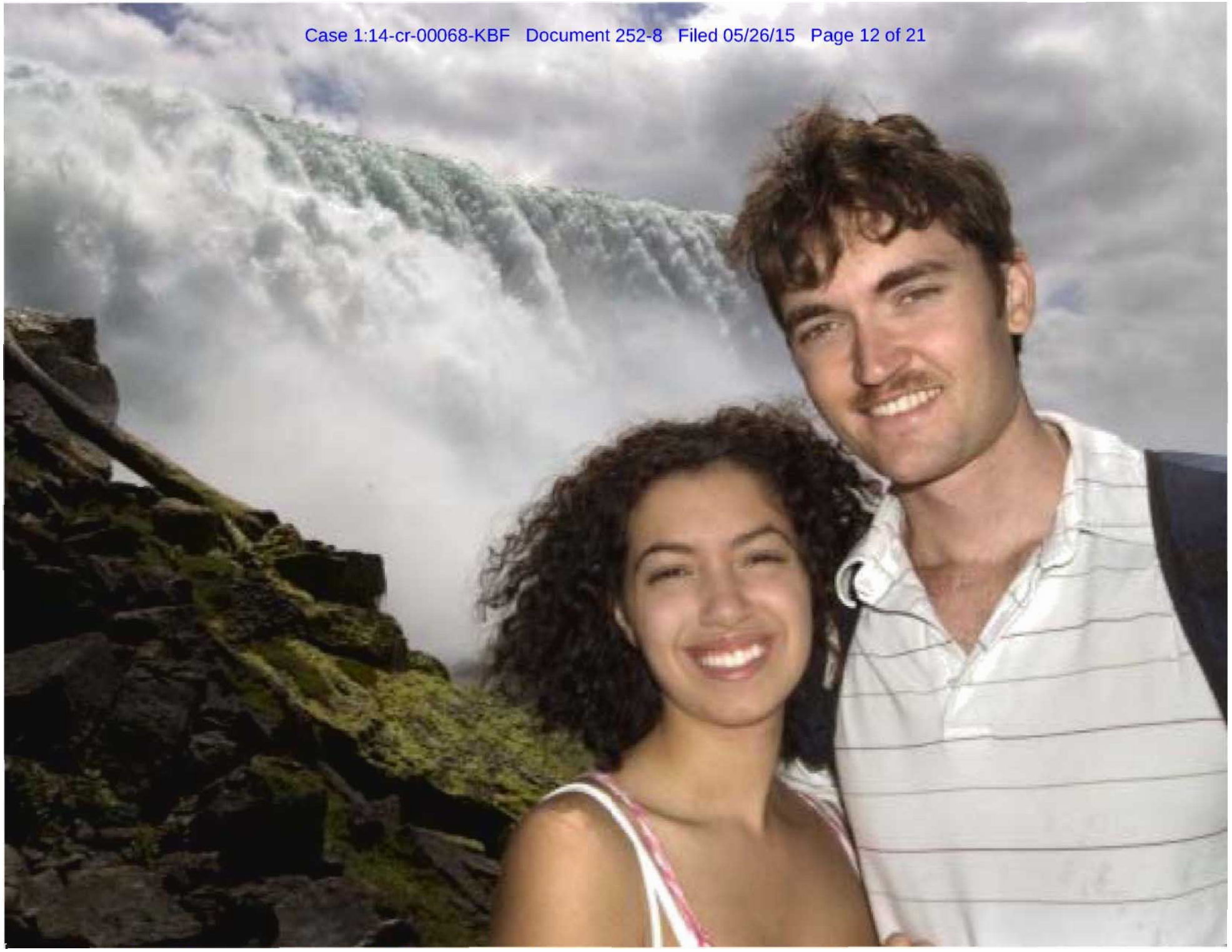


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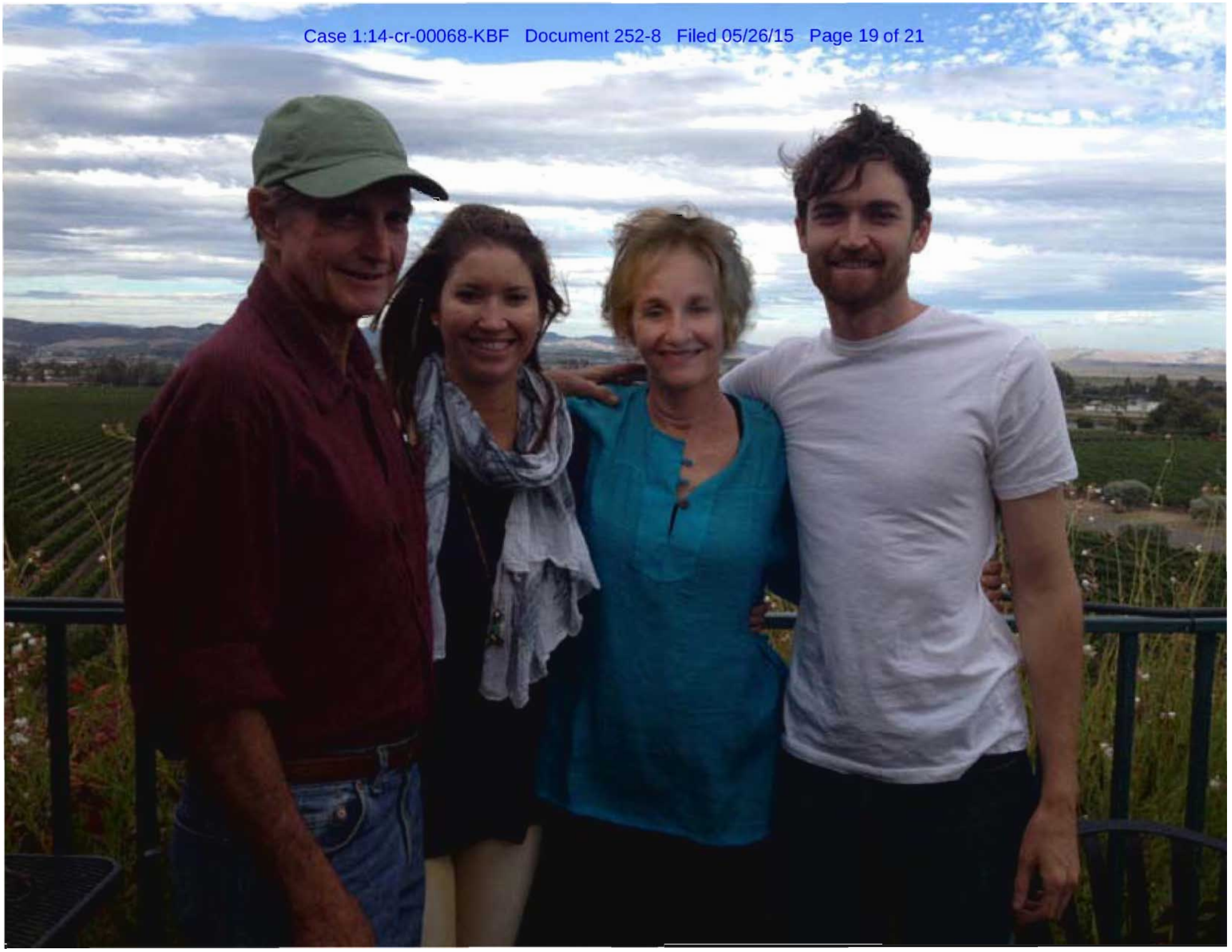

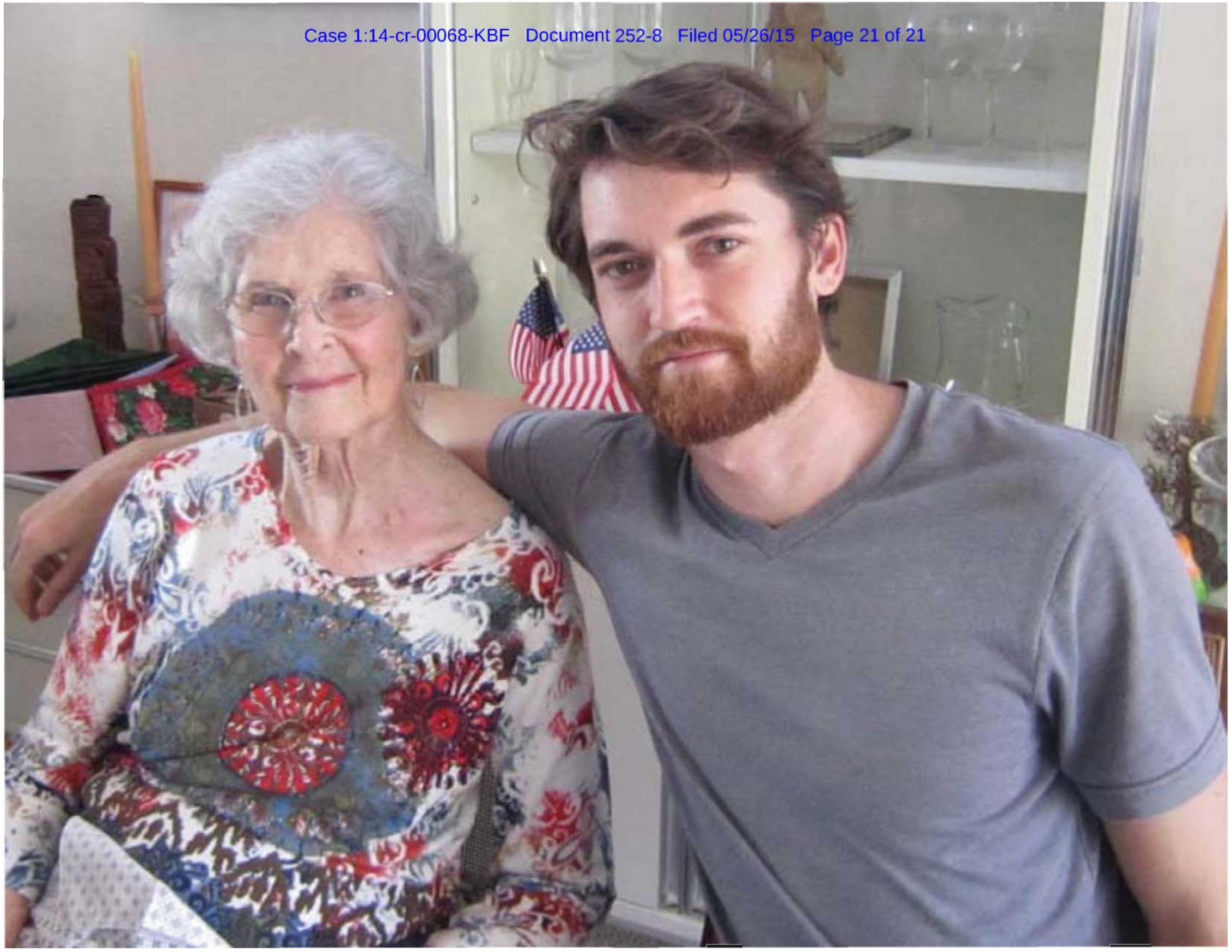

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15-1815-CR

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

ROSS WILLIAM ULBRICHT, AKA DREAD PIRATE ROBERTS, AKA SILK ROAD, AKA SEALED DEFENDANT 1, AKA DPR,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York (New York City)

APPENDIX
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Pages A1314 to A1554

MICHAEL A. LEVY
SERRIN A. TURNER
ASSISTANT UNITED STATES ATTORNEYS
UNITED STATES ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK
Attorneys for Appellee
1 Saint Andrew's Plaza
New York, New York 10007
212-637-2346

JOSHUA L. DRATEL, P.C.
Attorneys for Defendant-Appellant
29 Broadway, Suite 1412
New York, New York 10006
212-732-0707

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

ROSS ULBRICHT,
a/k/a "Dread Pirate Roberts,"
a/k/a "DPR,"
a/k/a "Silk Road,"

Defendant.

14 Cr. 68 (KBF)

GOVERNMENT SENTENCING SUBMISSION

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

SERRIN TURNER
TIMOTHY T. HOWARD
Assistant United States Attorneys
- Of Counsel –

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U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

May 26, 2015

By ECF
Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

The Government respectfully submits this letter in advance of the sentencing of defendant Ross Ulbricht, scheduled for May 29, 2015. Ulbricht stands before the Court convicted of all seven counts of the Indictment in connection with his creation and operation of the Silk Road website. The evidence at trial established that Ulbricht ran a massive narcotics-trafficking enterprise that dramatically lowered the barriers to obtaining illegal drugs. As the Presentence Report ("PSR") filed by the Probation Office makes clear, that enterprise resulted in serious real-world consequences, including at least six drug-related deaths. Such consequences were entirely foreseeable to Ulbricht, who understood that his business was fueling drug abuse and addiction. Ulbricht profited greatly from his operation of Silk Road, ultimately amassing millions of dollars in commissions. He was willing to use violence to protect his enterprise, as evidenced by his solicitation of multiple murders for hire in attempts to eliminate perceived threats. At no point has he acknowledged full responsibility or shown true remorse for his actions.

Given the enormous quantities of drugs sold on Silk Road, in combination with other aggravating factors, Ulbricht's recommended sentence under the United States Sentencing Guidelines is life imprisonment, with a 20-year mandatory minimum due to his conviction for engaging in a continuing criminal enterprise in violation of Title 21, United States Code, Section 848. The Probation Office, too, recommends life imprisonment, finding "no factors that could overcome the severity of the instant offense." (PSR at 38). As set forth below, in light of the seriousness of the offense and the need for general deterrence, the Government believes that a lengthy sentence, one substantially above the mandatory minimum, is appropriate in this case.

I. Ulbricht Was the Kingpin of a Worldwide Digital Drug-Trafficking Enterprise and Is Responsible for All of Its Foreseeable Consequences

A. By Design, Silk Road Provided Easy Access to Illegal Drugs and Other Illicit Goods and Services

Silk Road was an online black market of unprecedented scope. By the time it was shuttered in October 2013, over 13,000 offerings were listed on its homepage for illegal drugs of every conceivable variety. (PSR ¶ 25; GX- 910). A wide variety of other illicit goods and services were sold on the site as well, including fake IDs and passports, computer-hacking tools and services, counterfeit goods and pirated media, criminal guidebooks and instruction manuals, and money laundering services. (PSR ¶¶ 29, 32, 34; *see also* Ex. A (sample screenshots)).[1] In total, over 1.5 million transactions were conducted over Silk Road, involving over 100,000 buyer accounts and nearly 4,000 seller accounts. (PSR ¶ 59). Those transactions had a total value of nearly $214 million in U.S. currency. (*Id.*) Nearly 95 percent of those sales were for illegal drugs – including at least $8.9 million in sales of heroin, $17.3 million in sales of cocaine, and $8.1 million in sales of methamphetamine. (*Id.*) The buyers and sellers involved in these transactions were spread across the world, from Argentina to Australia, from the United States to the Ukraine. (*Id.*; GX-940F; GX-940-G).

Ulbricht specifically designed Silk Road for the purpose of facilitating black-market transactions. He hosted the site on the Tor network to enable users to conduct business anonymously. (PSR ¶¶ 12-17, 45). He implemented a Bitcoin-based payment system to enable them to make payments and cash out proceeds without leaving behind a traditional money trail. (PSR ¶¶ 35-42). He provided instruction on "stealth" shipping methods and other ways to evade detection by law enforcement. (GX-119; GX-120). And he created a slick user interface aimed at making the illicit commerce on the site as simple and frictionless as ordinary online shopping. (PSR ¶ 14).

The effect of Ulbricht's conduct was to dramatically lower the entry barriers into the underground economy – for both buyers and sellers alike. As illustrated by the trial testimony of Michael Duch, a significant heroin dealer on Silk Road, the site's plug-and-play platform enabled someone like Mr. Duch – who had never dealt drugs before in his life – to develop a bustling heroin-trafficking business in just a few weeks, all from the comfort of his own living room. (Tr. dated Jan. 28, 2015, at 1499:13-1532:16). Mr. Duch merely had to procure a supply of drugs (which he bought from his existing personal supplier on the street), and Silk Road provided the rest: an anonymous online sales portal, a huge preexisting customer base, how-to

[1] Ulbricht attempts to favorably distinguish Silk Road from "Agora," a "dark market" currently in operation, on the basis that "Agora" permits the sale of firearms. (Def.'s Ltr. dated May 22, 2015, at 36). However, Ulbricht also permitted sales of firearms on Silk Road, including sales of assault rifles, until March 2012, when he moved firearms sales to a companion site he ran known as "The Armory." Ulbricht closed "The Armory" after several months only because it was not drawing enough business. (*See* Ex. B (forum posts and screenshots reflecting firearms sales on Silk Road and the Armory)).

advice from the "Seller's Guide" and Silk Road discussion forum, and an escrow system enabling him to collect payment from his customers remotely. (*Id.* at 1518:12-1519:1). As Mr. Duch testified, he never would have been able to become a drug dealer so easily and surreptitiously in real space; he was only able to do so online, through the facilitating technology of Silk Road.[2]

By the same token, Silk Road made it simple for anyone anywhere to buy any drug of their choosing. They needed only a computer and a shipping address. With the click of a mouse, a Silk Road user could circumvent all of the physical obstacles that might otherwise prevent or deter one from obtaining drugs locally. Someone who might not know where to find drugs in his or her area, or feel comfortable searching them out, could find and buy drugs effortlessly on Silk Road. Again, Mr. Duch's testimony is instructive. He was able to sell heroin on Silk Road at double the price he paid for it on the street in the New York metropolitan area, in part because he was re-shipping it to less populous locations across the country where heroin was harder to come by. (Tr. dated Jan. 28, 2015, at 1523:18-1524:23). In the same way, Silk Road made it easy for existing users of one drug to find and abuse more serious drugs. The site provided a one-stop online shopping mall where the supply of drugs was virtually limitless.

The problem of drug dealing on the Internet is specifically recognized in a Guidelines sentencing enhancement for the mass-marketing of illegal drugs online (which is included in Ulbricht's Guidelines calculation). As noted by the Sentencing Commission in approving the enhancement:

> The Commission identified use of an interactive computer service as a tool providing easier access to illegal products. Use of an interactive computer service enables drug traffickers to market their illegal products more efficiently and anonymously to a wider audience than through traditional drug trafficking means, while making it more difficult for law enforcement authorities to discover the offense and apprehend the offenders.

U.S.S.G. app. C (Vol. III), amend. 667, reason for amend. ¶ 2. That is precisely what Silk Road did – on a scale never before seen. The site enabled thousands of drug dealers to expand their markets from the sidewalk to cyberspace, and thereby reach countless customers whom they never could have found on the street. The consequence was to vastly expand access to illegal drugs, as Ulbricht well knew. As he stated in one of "DPR's" posts on the Silk Road discussion forum: "Silk Road has already made an impact on the war on drugs. The effect of the war is to limit people's access to controlled substances. Silk Road has expanded people's access." (Ex. C).

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[2] (*Id.* at 1500:22-1501:7 ("Q. Had you ever considered selling drugs on the street? A. Never. Q. So why were you willing to deal drugs on Silk Road? A. Well, I think, you know, being successful in purchasing drugs on Silk Road, I saw the relative ease that came with it. . . . [I]t seemed like something that I could potentially . . . get away with.")).

B. The Drugs Sold on Silk Road Carried Serious Health Risks and Led to Multiple Drug-Related Deaths

Given the massive quantities of drugs distributed through Silk Road, Ulbricht's operation of the site generated clear and continuing risks to public health. And in fact, as set forth in the PSR, the Government has learned of at least six drug-related deaths linked to Silk Road drugs. These deaths are described below.[3]

Jordan M.

On the afternoon of August 29, 2013, Jordan M., a 27-year-old Microsoft employee residing in Bellevue, Washington, was found unresponsive in his bedroom by one of his roommates, who called 911. Members of the Bellevue Police Department ("BPD") arrived soon thereafter to discover Jordan slumped in a chair, unconscious and cold to the touch, his arms dangling by his sides and his head tilted backwards. A black belt with a looped end was lying near his feet on the floor, along with a hypodermic needle and an express mail package that had been torn open. Jordan was seated next to a desk, where officers found a plastic bag containing a grayish powder (which later tested positive for heroin), along with a spoon and lighter (for dissolving it into water for injection). These drugs and paraphernalia were strewn next to Jordan's computer. (PSR ¶¶ 62-64).[4]

Jordan's computer had two browser windows open. One was a Tor browser window displaying the Silk Road website – specifically, Jordan's private message inbox on the site, maintained under the username "d0xic." The most recent message was from a Silk Road vendor, "PTandRnR," bearing the subject line "Your day just got better." It was about a package of heroin and Xanax due to arrive that morning, for which "PTandRnR" had supplied the tracking number in an earlier message. The other window was a standard webpage, open to USPS.com, displaying tracking information for a package sent from Chicago – a package with the same tracking number provided by "PTandRnR," which matched the tracking number on the express mail package next to Jordan's chair on the floor. (PSR ¶¶ 64, 66; *see also* Ex. D (photo of screen showing Silk Road inbox)).[5]

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[3] The facts set forth below are based on the PSR and supporting evidentiary materials provided to the Probation Office and the defense in advance of sentencing, certain of which are attached hereto as exhibits. All of the supporting materials were provided to the Court on a DVD-ROM delivered to chambers on May 18, 2015 (the "May 18, 2015 DVD"). The Government respectfully requests that the May 18, 2015 DVD be made part of the record and kept under seal given the sensitive contents contained therein (including investigative reports and medical records).

[4] Further documentation of what was found at the scene of the incident is found on the May 18, 2015 DVD, in the document titled "BPD Case Report," at pages 18 through 22.

[5] Further documentation of the contents observed on the computer screen and the tracking number for the package is found in the "BPD Case Report" at pages 27-33.

Jordan's messages on Silk Road reflect that he had ordered pharmaceutical drugs on the site in the past, including valium and Xanax ordered from "PTandRnR" in the previous weeks. On August 24, 2013, Jordan inquired with "PTandRnR" for the first time about ordering heroin. "I'm hesitant about this," Jordan stated, but went on to ask "PTandRnR" if he had any "QUALITY H." A few days later, "PTandRnR" replied that he could get "grams of china white for $150." Jordan responded, "Boom! Would you be able to attest to its quality?" On August 28, 2013, "PTandRnR," replied: "my buddy [*i.e.*, supplier] doesn't play – good shit all the time (I don't do it so I can't say from a personal point of view)." Jordan messaged back: "Slap…or sounds like a plan." Later on August 28, 2013, "PTandRnR" told Jordan that he was sending a package to arrive by noon the next day, "to include 2 grams dope [*i.e.*, heroin] & 50 bars [*i.e.*, Xanax pills] which puts us at $1,100." That night, Jordan replied he was "so F'ing excited I might not sleep tonight." The next morning, "PTandRnR" responded: "you got about an hour before it gets there . . . as far as the quality is concerned . . . all I got to say is you should be good. there have been no complaints and a lot of satisfied people." (PSR ¶ 65).[6]

Jordan was found unconscious in his room the next afternoon. (PSR ¶ 62). He was promptly transported to the hospital after BPD arrived and died two days later. (*Id.*) An autopsy determined the cause of death to be acute intoxication from heroin, Xanax, and valium – all drugs he had ordered on Silk Road from "PTandRnR," as evidenced by his messages on Silk Road. (PSR ¶¶ 62, 68).[7]

Preston B.

On Saturday, February 16, 2013, the father and sister of Preston B., a 16-year old boy from Perth, Australia, were on their way to a restaurant for breakfast. Their route took them past a hotel where they knew Preston B. had stayed the night before, as part of a post-prom party. They noticed an ambulance and police officers in the driveway. Worried for Preston's safety, they drove back to the hotel, where they learned that Preston had suffered some sort of fall and was in critical condition. He was taken to the hospital, where he was unresponsive, and died two days later. (PSR ¶ 77).

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[6] Further documentation of the relevant private messages between "d0xic" and "PTandRnR" is found in the document titled "d0xic" on the May 18, 2015 DVD, at pages 21, 37, 39, 42 through 49, and 57 through 64.

[7] Astoundingly, Ulbricht states in his May 15, 2015 letter to the Court that Jordan, whom Ulbricht describes as an "overweight 27-year old black man," "may have suffered an acute brain hemorrhage consistent with a stroke, which could have been a competent cause of death." (Def.'s Ltr. dated May 15, 2015 at 9). Yet the autopsy report (included on the May 18, 2015 DVD) clearly attributes Jordan's death to a drug overdose – a conclusion that Ulbricht's own expert appears to agree with. (Lewis Decl. dated May 15, 2015, at ¶ 25). In any event, the circumstantial evidence that the death was due to an overdose – from Silk Road drugs – could not be more stark. *See United States v. Russow*, No. 14 Cr. 84 (JBA), 2015 WL 1057513, at *2-*3 (D. Conn. Mar. 10, 2015) (imposing upward departure based on overdose death where victim's text messages indicated he had recently obtained heroin from defendant).

Australian law enforcement officers interviewed a number of witnesses who were at the party and had seen Preston before his accident. According to witness statements, Preston had told his friends he had been looking forward to trying "acid" during the party. One of Preston's friends (himself 16 years old) admitted that, in advance of the party, he had used Silk Road to purchase eleven tabs of 25i-NBOMe, a powerful synthetic drug designed to mimic LSD, colloquially known as "N-Bomb."[8] The friend had chosen the "cheap" option from among Silk Road's offerings – 10 "tabs" for $20, plus "1 for free." Records from the Silk Road database confirm the placement of the order. (PSR ¶ 78).[9]

The friend – who stated that he himself had never used any drug other than marijuana before – further admitted to providing Preston two doses of the drug (each one-third of a "tab") during the course of the party. Multiple witnesses reported that Preston acted increasingly erratically after taking the drug. One friend described him as muttering incoherently and seemingly "at war with himself." Others described aggressive outbursts and random, destructive behavior. Eventually, when it was time to leave, Preston's friends tried to get him to exit the hotel room, but he would not respond, instead staring vacantly into space. When the friends went for help, they heard Preston scream loudly, followed by a loud thud outside. He had leapt from the hotel-room balcony, and was found lying on the deck below. (PSR ¶¶ 77-80).

Bryan B.

On October 7, 2013, Bryan B., a 25-year-old male resident of Boston, Massachusetts, was found dead in his apartment, with a belt in his left hand and a small plastic bag of brown heroin and a syringe immediately next to him. A toxicology report confirmed the presence of opiates in his system, which was pronounced as the cause of death in his death certificate. A forensic analysis of Bryan's laptop computer revealed searches of the Internet for how to find heroin. Notably, some of his search queries (*e.g.*, "how to find heroin in Boston") indicate that he lacked a local source, while others indicate that he sought to find heroin on Silk Road instead (*e.g.*, "download tor," "fastest way to get a bitcoin," "can you trust seller reviews on silk road"). (PSR ¶¶ 69-70).

The computer forensic examination also confirmed the presence of a Tor browser on the computer, with Silk Road bookmarked as a favorite website. A PGP key for encrypting communications was also found, which was created on September 25, 2013; the file was titled "ilmsh." Records from the Silk Road server revealed a Silk Road user named "ilmsh," who sent his first message to a Silk Road vendor "mrgood247," on the same date – September 25, 2013. The message stated, "Hey Mrgood. This will be my first order and I'm trying to figure out this PGP business." (PSR ¶¶ 70-71).

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[8] *See also* Drug Enforcement Administration, Office of Diversion Control, Information Sheet on 25I-NBOMe, *available at* http://www.deadiversion.usdoj.gov/drug_chem_info/nbome.pdf.

[9] Records of these purchases, and further details regarding the friend's interview statements, are included on the May 18, 2015 DVD.

The next day, September 26, 2013, only days before Silk Road was shut down by law enforcement, Bryan used the "ilmsh" account to place his first orders on the site – one for "1 GRAM OF PURE UNCUT #4 RAW HEROIN," and another for a pack of syringes. Bryan's Silk Road private messages reflect that he was given a tracking number for the heroin. According to postal records, the package arrived at Bryan's residence on October 1, 2013. That same day, Bryan messaged "mrgood247" on Silk Road, stating, "Ordering from you was flawless and i will be back. Thank you for everything Mrgood." (PSR ¶ 71).

The quantity of heroin Bryan purchased from "mrgood247" was sufficient for approximately 5 to 10 doses of heroin. (PSR ¶ 72). Bryan was last heard from Friday, October 4, 2013. (PSR ¶ 69). He was found dead three days later. (*Id.*). The heroin and syringe found next to his body closely resembled the product photos on the Silk Road listings from which he had ordered. (PSR ¶ 72; *compare* Ex. E at 1 (photo from apartment) *with* Ex. E at 3-4 (photos from Silk Road listings)).

Alejandro N.

On September 10, 2012, police officers in Camino, California, responded to a 911 call regarding a reported drug overdose. They found Alejandro N., a 16-year old boy, lying on the garage floor of his friend's house. (PSR ¶ 73).

One of Alejandro's friends, who had been present at the scene, informed law enforcement that he had witnessed Alejandro take four hits of 25i-NBOMe approximately two hours before the police arrived. According to the friend, Alejandro became increasingly incoherent and aggressive. His friends tried to calm him and were able to get him to sit down. However, Alejandro appeared to stiffen his entire body and then fell face-first out of the chair, completely rigid. He began having violent seizures, at which point his friends went to get help. After law enforcement arrived at the scene, Alejandro was transported to a hospital and pronounced dead. (PSR ¶¶ 73-74).

Local law enforcement later interviewed a friend of Alejandro's, who admitted that he had given Alejandro the 25i-NBOMe after obtaining the drug from a local dealer ("Dealer-1"). Dealer-1 was subsequently arrested and interviewed. He stated that he had acquired the drug in turn from a vendor on Silk Road, who appeared to be located in Spain, based on the packaging of the shipments. Dealer-1 supplied the username of the vendor. Records from the Silk Road server confirm the existence of a Silk Road vendor of 25i-NBOMe who operated under the username in question. (PSR ¶¶ 75-76).

Scott W.

On May 19, 2013, Scott W., a 36-year old male from Australia, was found dead at his home. He was hunched at his computer desk, with his sleeve rolled up, with a used syringe and a plastic bag containing a cream-colored powder believed to be heroin nearby. An autopsy found toxic levels of morphine in Scott's system that were "almost certainly derived from heroin," as well as depressants with the potential to increase the drug's harmful effects. The cause of death was determined to be "multiple drug toxicity." (PSR ¶ 85).

Evidence recovered from the Silk Road server reflects that Scott had a Silk Road user account that had been used to place over 70 orders from January to May 2013, including 9 orders for heroin and 19 orders for a category of depressants, which were shipped to him under his true name at the address where he was found dead. (PSR ¶ 86).

Jacob L.

On February 14, 2013, Jacob L., a 22-year old male from Australia, was found dead by his mother at his home. Unlike the preceding deaths, Jacob's death appears to have been caused not by an overdose, but by a health condition that was aggravated by the use of drugs. Specifically, an autopsy found that Jacob had recently used multiple drugs – including heroin, cocaine, and methamphetamine – while he had pneumonia. The autopsy noted that "[t]he presence of multiple drugs of abuse may have blunted the deceased's perception of the severity of his illness." (PSR ¶¶ 81-83).

Evidence recovered from the Silk Road server reflected that Jacob had a Silk Road user account – under the username "Needheroin" – which he had used to place over 30 orders for various narcotics between early 2012 and early 2013, including heroin, "speed," "meth," "crack," mephedrone, and others, and that they were shipped to Jacob under his true name at the address where he was found dead. (PSR ¶ 84).

Ulbricht generally does not dispute any of the foregoing facts, but instead claims they are insufficient to allow the Court to draw any inference, arguing that "it is simply impossible for the government to prove that drugs obtained *from Silk Road* 'caused' death" in these instances. (Def.'s Ltr. dated May 15, 2015, at 9 (emphasis in original)). However, the evidence speaks for itself. Ulbricht appears to assume a standard of proof considerably higher than that applicable to fact-finding at sentencing. A preponderance of the evidence is all that is required. *See United States v. Vaughn*, 430 F.3d 518, 525-27 (2d Cir. 2015).[10] Conjecture about possible alternative causes of death or alternative sources for the drugs is insufficient to undermine the concrete

[10] Moreover, at sentencing, the Court is entitled to rely on hearsay evidence such as police reports and witness interviews. See *United States v. Broxmeyer*, 699 F.3d 265, 280 (2d Cir. 2012) ("A sentencing court's largely unlimited discretion to review information relevant to the defendant and his crime permits it to consider hearsay evidence." (internal quotation marks omitted)).

evidence tying these deaths to his criminal enterprise. *See United States v. Pacheco*, 489 F.3d 40, 45 (1st Cir. 2007) (district court appropriately found that victim's death was caused by drugs distributed by the defendant by a preponderance of the evidence where the record contained no proof supporting conjecture that victim had other sources for narcotics).

The deaths detailed above highlight the obvious fact that the distribution of controlled substances can lead to serious bodily harm, including death, particularly when distributed in the massive aggregate quantities sold on Silk Road. Moreover, for every death caused by Silk Road drugs, there are doubtlessly many more destructive addictions that were fueled by the site. The trial testimony of Mr. Duch provided a glimpse into these consequences of Silk Road. Mr. Duch explained that he became a Silk Road vendor after struggling to finance his own crushing addiction to heroin, which was costing him thousands of dollars a week. Mr. Duch acknowledged that many of his customers on Silk Road were suffering from similar addictions. Indeed, he testified that, nearly every day, he would receive messages from his buyers indicating they were anxiously awaiting their shipments in order to avoid the onset of withdrawal symptoms. (Tr. dated Jan. 28, 2015, at 1510:6-1512:17). "[I]s there anyway you could ship it overnight," asked one buyer, noting, "I am throwing up, the worst of the worst withdrawl [*sic*] symptoms and plus i have life destroying pain." (GX-704 at 2). "[I] see ur cutoff time is 3," wrote another, adding, "[I] just wanna double check because i am EXTREMELY dope sick and NEED something by tomorrow!!" (*Id.* at 1). These messages are, of course, only examples from Mr. Duch's set of customers. Given that the site as a whole had over 100,000 customers and was regularly selling all manner of highly addictive substances, the full scope of the drug dependency sustained by Silk Road is far broader.[11]

C. Ulbricht Is Responsible for the Harm Caused by Silk Road Drugs

Ulbricht bears responsibility for the overdoses, addictions, and other foreseeable repercussions of the illegal drugs sold on Silk Road. It does not matter that he did not personally handle those drugs; neither would a traditional kingpin. Ulbricht was the architect and overseer of the entire Silk Road enterprise. From the beginning, he intended it to be a drug-trafficking venture – starting with the hallucinogenic mushrooms that he himself grew in order to have something to sell on the site when it first launched. After that he did not handle the drugs flowing through Silk Road because he did not have to. The thousands of drug dealers who subsequently flocked to the site served as Ulbricht's source of supply. They were, as Ulbricht himself described them, his "business partners," who had to give Ulbricht a cut of every deal in order to sell on his digital turf. (GX-933). Ulbricht thus had a hand in every sale Silk Road dealers made on the site, and he is responsible for the consequences of the dangerous products they sold together. *See* U.S.S.G. § 1B1.3(a)(1)(B) (defendant responsible for all harm caused by "reasonably foreseeable acts" of others involved in jointly undertaken activity); *see also United*

[11] Beyond drugs, Silk Road also offered other illegal goods and services for sale without any regard to the societal harm they might cause. Among other things, Silk Road sold counterfeit identity documents as well as computer hacking tools and services that could be used to facilitate a wide array of fraud, identity theft, and other criminal offenses capable of causing serious loss to victims.

States v. Faulkner, 636 F.3d 1009, 1022 (8th Cir. 2011) ("While [the defendant] may not have played a direct role in manufacturing or distributing the heroin that caused [the victim's] death, he was part of the conspiracy that distributed the heroin."); *United States v. Westry*, 524 F.3d 1198, 1219 (11th Cir. 2008) ("Where a conspirator is involved in distributing drugs to addicts, some of which are even administered intravenously, it is a reasonably foreseeable consequence that one or more of those addicts may overdose and die.").

Likewise, it does not matter that Ulbricht did not specifically intend any deaths to occur from his conduct. Few drug dealers do. But it is a foreseeable risk they inevitably take, and they are responsible when that risk turns into a reality. *See United States v. Russow*, No. 14 Cr. 84 (JBA), 2015 WL 1057513, at *2-*3 (D. Conn. Mar. 10, 2015) (imposing upward adjustment based on overdose death even though death was accidental and not specifically intended by defendant); *see also United States v. Nossan*, 647 F.3d 822, 824 (8th Cir. 2011) (imposing upward adjustment in similar circumstances, explaining that defendant "engaged in dangerous activities, disregarding the grave risks accompanying the use of the drugs," and that his argument regarding intent was "only [a] mitigating factor [ ] to be considered in deciding whether and to what extent to depart upward").

Nor does it matter whether other factors may have contributed in some way to the deaths at issue here, such as accidental overdoses, "lethal combinations of drugs," or "pre-existing medical and psychiatric conditions." (Def.'s Ltr. dated May 15, 2015, at 13). Overdoses, toxic drug cocktails, and interplay with existing health conditions are all common features of drug-related deaths, and do not relieve the dealer who supplied the drugs of culpability for his part in the causal chain. A drug dealer takes his customers as he finds them. *See Pacheco*, 489 F.3d at 48 n.5 (rejecting defendant's argument that he could not be held accountable for overdose death where victim mixed two drugs in combination and, according to defendant, could have been attempting suicide: "[T]he defendant here engaged in the commercial trade of potent substances that he must have known could have dire consequences in a myriad of circumstances. . . . [W]hile he could not have anticipated the exact sequence of events that unfolded here, he could (and should) have foreseen the possibility of the kind of serious harm that in fact occurred.").

D. Any Harm-Reduction Measures on Silk Road Were Dwarfed by the Easy Access to Drugs That It Enabled and Promoted

Ulbricht seeks to downplay the harm caused by Silk Road by pointing to certain aspects of Silk Road that he characterizes as "harm reduction measures" – primarily a vendor-rating system and the presence of a physician on the Silk Road forums who volunteered advice to users during the last seven months of the site's operation. (Def.'s Ltr. dated May 15, 2015, at 2-8). According to Ulbricht, these measures made Silk Road "in many respects the most responsible [illegal drug] marketplace in history." (*Id.* at 2). These measures, however, did little to mitigate the fundamentally harmful feature of Silk Road – the sales portal it gave to drug dealers enabling them to sell every illegal drug imaginable to anyone in the world who wanted them.

Indeed, praising Silk Road for including "harm reduction measures" is akin to applauding a heroin dealer for handing out a clean needle with every dime bag: the point is that he has no business dealing drugs in the first place. Our laws, like the laws of many other nations, reflect a

societal judgment that there is no such thing as a "safe" or "responsible" marketplace for illegal drugs – that certain drugs should not be distributed *at all*, because they inherently pose unacceptable dangers. And in fact, as the evidence detailed above makes clear, many people developed or sustained addictions, and some individuals died, as a result of Silk Road drugs, notwithstanding any supposed "harm reduction measures" offered on the site.

Silk Road's "vendor rating" system, for example, did not help Jordan M. when he fatally overdosed from heroin and other drugs purchased from "PTandRnR," whose rating on Silk Road was "4.96" out of 5. Nor did it help Bryan B., who bought the heroin that killed him from "mrgood247," whose rating was a perfect "5." Notably, Silk Road vendor ratings, even on their own terms, were hardly a model of reliability. Faked feedback was a common problem on the site. (*See* GX-227-A at 2 (chat in which Ulbricht notes "faking feedback" among the "major issues" dealt with by his customer support staff)). Some vendors were even known to threaten buyers with leaking their address information on the forums (and thereby outing their real identities) if they gave anything less than a perfect rating. (Ex. F).[12] Mr. Duch took a page from this playbook, instructing users on his vendor page: "YOU MAY NOT ORDER unless you agree to rate 5 out of 5 no matter what happens with the product, the packaging, delays or anything else!" (GX-700). But more fundamentally, Silk Road's vendor rating system was flawed because it provided a veneer of safety to an intrinsically unsafe business. Even if rated "5 out of 5," heroin is still *heroin*. That notorious drug and many others that were sold on Silk Road are highly potent substances, capable of causing harm in many unpredictable ways – which is precisely why they are classified as controlled substances to begin with. Again, the law deems them not to be fit for distribution at all – let alone under some crude, manipulable "rating" system operated by those dealing and abusing drugs themselves.

Likewise, the mere fact that a single doctor – "Doctor X" – volunteered medical advice on the Silk Road discussion forum, for seven months, hardly makes up for the uncontrolled distribution of massive quantities of drugs on Silk Road over several years. While "Doctor X" states that "[b]etween April 2013 and late October 2013, I sent more than 450 messages to Silk Road users in response to requests for advice and assistance," (Caudevilla Decl. ¶ 5), the fact remains that from January 2011 to October 2013, over 100,000 users made more than 1.5 million

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[12] Ulbricht was aware of this practice, as reflected in Exhibit F, which is an excerpt of a chat with a co-conspirator found on Ulbricht's computer:

(2011-12-19 17:12) vj:	so vendors that mention a buyer[']s handle to bitch about fucking feedback should be fed to the sharks
(2011-12-19 17:13) vj:	ones that do that AND keep records of the addresse[s] should be fed to ants, and then to sharks
(2011-12-19 17:13) vj:	lttm keeps addressess
(2011-12-19 17:13) vj:	Paperchasing keeps addressses and threatens to spread names of anyone who dares give him a 4/5
(2011-12-19 17:13) myself:	how do you know all of this?
(2011-12-19 17:14) vj:	I read the forums
(2011-12-19 17:14) myself:	I should probably do that ;)

purchases from Silk Road, mostly for illegal drugs. Thus, the number of individuals seeking out "Doctor X's" advice constituted a small fraction of the overall Silk Road user population. There is no evidence that "Doctor X" sent any private messages to Jordan M., Bryan B., Scott W., or Jordan L., for example. And he obviously had no opportunity to counsel teenagers Alejandro N. and Preston B., who did not even purchase drugs from Silk Road directly themselves, but rather obtained them downstream from others. Indeed, these latter two examples show that Silk Road drugs were not only distributed to users who purchased them from the site; they were also easily resold or redistributed on the street, where any "harm reduction measures" found on Silk Road were moot.

In any event, Ulbricht's overriding motive was never "harm reduction." He did not set up Silk Road simply to give drug users a way to rate drug dealers online or use drugs "safely," let alone to help them find drug counseling. He set up Silk Road as a drug-trafficking business, run for a profit. And in pursuit of those profits, he was willing to supply any kind of illegal drug in demand – no matter how dangerous or addictive. Every conceivable prohibited substance – even poisons such as cyanide[13] – could be found for sale on Silk Road, without restriction. The buyer's age didn't matter. The buyer's health condition didn't matter. The buyer's motives – including drug addiction – didn't matter. Ulbricht was content to let users buy whatever drugs they pleased and leave them to deal with the consequences.

Ulbricht was well aware of the dangers inherent in the products he was selling. One telling example is synthetic drugs – which even "Doctor X" specifically warned Silk Road users against trying, given the novelty of the drugs and the lack of research about their known effects, (Caudevilla Decl. ¶ 6). Notably, Ulbricht himself was warned about these drugs in his personal life, in an email from a relative dated February 10, 2013, recovered from his Gmail account. In the email, the relative advised Ulbricht and others:

> You may already know this…and I am not assuming that any of you use, but I just heard some stories about how much worse – how dangerous and damaging – synthetic pot ("spice") is. This, and of course "bath salts" are to be totally avoided. Well, I would say all drugs. . . . A girl is now blind and paralyzed and the stories go on. Fore-warned is fore-armed.

(Ex. G). Ulbricht reassured the relative that "I don't go near that stuff." (*Id.*). But even though Ulbricht knew enough to avoid using these drugs himself, he evidently had no compunction about distributing large quantities of them to others, through Silk Road. Silk Road transaction records show that Ulbricht sold over $200,000 worth of synthetic cannabis on Silk Road[14] and

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[13] (*See* GX-223, GX-229C (chats reflecting that Ulbricht knowingly permitted the sale of cyanide on the site)).

[14] (*See* GX-940 at 1 (entry for "Synthetic – Cannabis"), 4 (entry for "Smoking Blend – Synthetic"); Ex. H (sample screenshots of Silk Road offerings for these products)).

more than $4.4 million worth of drugs known on the street as "bath salts."[15] Obviously, the most effective "harm reduction" measure Ulbricht could have taken with respect to these drugs would have been to ban their sale on the site. But he chose not to. It would have been antithetical to his business model.

Not only did Ulbricht allow drugs of all kind to be sold on Silk Road without restriction, he specifically encouraged and promoted drug use in pursuit of ever greater profits. As evidenced at trial, Ulbricht went so far at one point as to offer customer prizes on Silk Road – including a vacation giveaway – as a marketing gimmick designed to drive up the drug sales on the site. In a chat about the promotion with a co-conspirator, "VJ," Ulbricht joked about the fact that he was, in essence, offering incentives to buy drugs ("we're selling drugs here, first one's free little jonny! damn that sounds awful"). (GX-226C at 2). Tellingly, the winner of the grand-prize vacation was a heroin addict. In a later chat about the promotion, "VJ" told Ulbricht he was "worried about our winner," explaining: "He's trying to dry out. Heroin." Ulbricht responded, "oh geez. fuck, what are we doing." "VJ" continued: "Yeah, he told me some time ago he was trying to quit, but SR made it kinda tough." Ulbricht mockingly retorted: "maybe our next prize will be 3 months in rehab." (GX-226C at 2-3).

Ulbricht thus knew full well that he was in the business of profiting from drug abuse and addiction. Against that context, Ulbricht's claim that Silk Road was designed to "encourage users to examine their own conduct, and . . . stop abusing drugs before it irreparably damaged their lives," (Def.'s Ltr. dated May 15, 2015, at 8), rings completely hollow.

II. The Proliferation of "Dark Markets" Like Silk Road Underscores the Need for a Lengthy Sentence

Ulbricht did not merely commit a serious crime in his own right. He developed a blueprint for a new way to use the Internet to undermine the law and facilitate criminal transactions. Using that blueprint, others have followed in Ulbricht's footsteps, establishing new "dark markets" in the mold of Silk Road, some selling an even broader range of illicit goods and services than Silk Road itself. Although the Government has achieved some successes in combating these successor dark markets, they continue to pose investigative challenges for law enforcement. The use of sophisticated anonymizing technologies, such as the Tor network, make it difficult to locate the infrastructure and identify the operators behind them.

Curiously, Ulbricht argues that the continuing growth of "dark markets" counsels *against* factoring general deterrence into his sentence, based on the notion that attempting to deter this type of criminal conduct is pointless. (Def.'s Ltr. dated May 22, 2015, at 59). The opposite inference is warranted. Because "dark markets" represent an emerging front in the fight against

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[15] (*See* GX-940 at 1 (entry for "Methylone") & 2 (entry for "MDPV"); Ex. I (sample screenshots of Silk Road offerings for these products); *see also* Drug Enforcement Administration, Office of Diversion Control, Information Sheets on Methylone and MDPV, *available at* http://www.deadiversion.usdoj.gov/drug_chem_info/methylone.pdf and http://www.deadiversion.usdoj.gov/drug_chem_info/mdpv.pdf.).

crime, general deterrence interests are a particularly salient sentencing factor in this case. Ulbricht's conviction is the first of its kind, and his sentencing is being closely watched. The Court thus has an opportunity to send a clear message to anyone tempted to follow his example that the operation of these illegal enterprises comes with severe consequences. While not all may be deterred as a result, that is virtually always the case with any deterrent measure. *Cf. Empress Casino Joliet Corp. v. Balmoral Racing Club, Inc.,* 651 F.3d 722, 728 (7th Cir. 2011) (noting that "deterrence is never perfect"). The point is to deter those at the margins. To the extent that would-be imitators may view the risk of being caught to be low, many are still likely to be deterred if the stakes are sufficiently high.

Accordingly, beyond the seriousness of Ulbricht's offense, the interest in general deterrence of similar criminal conduct also counsels in favor of a lengthy sentence of imprisonment.

III. Ulbricht's History and Personal Characteristics Do Not Present Significant Mitigating Factors

In his sentencing submission, Ulbricht portrays himself as having created Silk Road for idealistic, disinterested motives and attaches numerous letters from family and supporters attesting to their impressions of his good moral character. The evidence, however, tells a different story, of someone who consciously chose to operate a criminal enterprise for several years, motivated in substantial part by greed and vanity. On balance, Ulbricht's history and personal characteristics do not significantly cut in his favor.

Ulbricht claims in his letter to the Court that he created Silk Road to "giv[e] people the freedom to make their own choices" and that he "wasn't seeking financial gain." (Def.'s Ltr. dated May 22, 2015, Ex. 1, at 1). But, in fact, Ulbricht was motivated by a personal agenda at least as much as a political one. As he himself stated in his journal in 2010, anticipating the launch of the site the following year: "I am creating a year of prosperity and power beyond what I have ever experienced before. Silk Road is going to become a phenomenon and at least one person will tell me about it, unknowing that I was its creator." (GX-240).

The desire for "prosperity and power" continued to motivate Ulbricht as he operated the site over the next three years. Ulbricht paid close attention to the collection of profits from his enterprise. (GX-240B (journal entry discussing profits); GX-250 ("SR Accounting" spreadsheet); GX-251 ("net worth" spreadsheet listing Silk Road as $104 million asset). He collected commissions automatically on every Silk Road sale, and prominently banned users from transacting business "out-of-escrow" in order to avoid these commissions – a prohibition that he and his support staff continually sought to enforce. (Tr. dated Jan. 14, 2015, at 220:14-221:22; GX-120; GX-125G; GX-226B; GX-227A; GX-242; GX-930). He tracked sales and profit figures for the site, noting various milestones in his chats with "VJ," at one point boasting: "I made a declaration about 8 years ago that I'd be a billionaire by my birthday in 2014. If you coun[t] the discounted future values of the enterprise, it could happen." (GX 226A).

Ulbricht succeeded in making a considerable fortune from Silk Road, including the huge stash of Bitcoins seized from his personal laptop, worth nearly $18 million at the time of his

arrest. (PSR ¶¶ 41-42, 57). Ulbricht was careful not to flaunt his money, because he knew it was important to maintain a low profile to avoid detection. As he told a co-conspirator, "I live a modest life still . . . security requires it." (GX 229D). But Ulbricht did not plan to live a modest life forever. He researched offshore havens such as Monte Carlo and Andorra, where, as he put it, "you can live permanently w/o income tax." (GX-226E at 3). In mid-2012, he filed an application for foreign citizenship in the Caribbean island of Dominica, one of a handful of countries that sells citizenship in exchange for a substantial "economic investment," and followed up in November by traveling to the country for an interview. (GX-290; GX-291; GX-316; GX-321). In mid-2013, he took further steps toward preparing for a possible life on the run, ordering nine high-quality fake IDs from a Silk Road vendor, whom he repeatedly asked for assurance that the IDs were sufficient "to get through being pulled over by a cop" or "to board a domestic USA flight." (GX-400; GX-935). Thus, while it is unclear whether Ulbricht ever settled on a specific plan, clearly, he was exploring exit strategies. He had every intention of enjoying the fruits of his criminal enterprise.

As for the letters submitted in support of Ulbricht, which describe the letter writers' memories of acts of compassion and kindness by Ulbricht, the Government does not doubt the sincerity of these letters; but the fact remains that Ulbricht kept those close to him deeply in the dark about his criminal livelihood. He became well practiced in leading a double life. As he confided in a chat with a co-conspirator, who asked Ulbricht what he told his family he did for a living: "I have my little alibi. I'm clever, so I can bs when I need to. . . . and friends will tell me shit like, why don't you do this or that like I have all this free time. I just want to scream at them 'because i'm running a goddam multi-million dollar criminal enterprise!!!!'" (GX-229D).

Indeed, behind the mask of the "Dread Pirate Roberts," Ulbricht cultivated a darker side of his personality, one that his friends and family – and even "DPR's" admirers on Silk Road – would have found shocking. He proved quite ruthless in seeking to protect his illegal empire, attempting on multiple occasions to solicit murders for hire in order to deal with perceived threats to his operation. At trial, the Government introduced evidence of five of those attempted murders-for-hire. (GX-936). As the Government made clear, no one, thankfully, was actually killed as a result of Ulbricht's actions; the "hitman" involved in these five attempts appears to have been a conman. But – contrary to Ulbricht's absurd suggestion in his sentencing submission that these murder-for-hire attempts were mere "masquerade" or "role-playing," (Def.'s Ltr. dated May 22, 2015, at 37) – Ulbricht clearly believed that all of the murders were real and intended for them to occur. He paid for them with $650,000 in Bitcoins – transferred directly from a Bitcoin wallet on his laptop.[16] He coldly noted the arrangement and execution of the murders-for-hire in entries in his "log" file on his computer.[17] And he excitedly reported one

[16] (Tr. dated Jan. 2, 2015, at 1727:21-1732:13; GX-601; GX-630; GX-631; GX-936 at 22, 31).

[17] *See* GX-240 ("being blackmailed with user info," "commissioned hit on blackmailer with [hell's] angels," "got word that blackmailer was ex[e]cuted," "received visual confirmation of blackmailers execution").

of the murders-for-hire in a chat with "VJ."[18] Ironically, in his public pronouncements on Silk Road in the voice of "DPR," Ulbricht portrayed himself as a champion of "freedom" on the Silk Road website, opposed to the use of any kind of "force" against others. In truth, Ulbricht was just as willing as a traditional kingpin to use intimidation and violence in furtherance of his criminal enterprise.[19]

Thus, while the Court should of course give due consideration to the letters submitted in support of Ulbricht, they must be weighed against the facts surrounding his criminal conduct. The defendant created Silk Road for self-aggrandizing motives, despite ample opportunities available for him to pursue as a law-abiding member of society. He sought to profit from the drug abuse and addiction of others and was even willing to solicit murder to eliminate threats to his business. At no time has he accepted full responsibility for his actions. The Court's sentence should hold Ulbricht accountable for his choices.

---

[18] *See* GX-227D ("I get blackmailed by a guy saying he's in deep shit with hell's angels . . . i said, have the hells angels contact me so i can work something out . . . very foolishly he did . . . they said they caught up with lucy, got the product back and killed him").

[19] Accordingly, there is no basis for Ulbricht's objection to the PSR's inclusion of a Guidelines enhancement under U.S.S.G. § 2D1.1(b)(2), which applies "[i]f the defendant used violence, made a credible threat to use violence, or directed the use of violence." (Def.'s Ltr. dated May 22, 2015, at 80). As its plain terms make clear, the enhancement does not require that violence actually occur, but only that violence be credibly intended. *See United States v. Harris*, 578 Fed. Appx. 451, 453-54 (5th Cir. 2014) (affirming application of enhancement even though "there was no actual drug stash" that defendant intended to rob, explaining: "the enhancement's view that higher sentences are warranted for those with a propensity for violence—even if just reflected in a threat and not an actual act of violence—is implicated even when the threat occurs in connection with a sting"). Moreover, contrary to Ulbricht's argument that the murder-for-hire solicitations constitute uncharged conduct that cannot be factored into his base offense level, the solicitations were specifically charged as an overt act of the alleged narcotics conspiracy. *See* Indictment S1 14 Cr. 68 (KBF) ¶¶ 16.b & 16.c. Moreover, all relevant conduct, whether charged or uncharged, must be considered in calculating Ulbricht's base offense level in any event. *See* U.S.S.G. § 1B1.3(a). Notably, Ulbricht does not challenge any other aspect of the Guidelines calculation in the PSR. The Government agrees with the calculation in its entirety.

IV. Conclusion

For the reasons set forth above, the Government respectfully requests that the Court impose a lengthy sentence, one substantially above the 20-year mandatory minimum, in order to reflect the seriousness of the offense, to promote respect for the law, and to afford adequate deterrence to criminal conduct. 18 U.S.C. § 3553(a).

Respectfully,

PREET BHARARA
United States Attorney

By: _____
SERRIN TURNER
TIMOTHY T. HOWARD
Assistant United States Attorneys
Southern District of New York

cc: Joshua Dratel, Esq.

Silk Road
anonymous market

messages 0 | orders 0 | account ฿0.0000

Search [ ] Go

a few words from the Dread Pirate Roberts

Hi, FBINY *logout* 0

Shop by Category

- Forgeries 156
  - Fake IDs 55
  - Passports 10
- Apparel 753
- Art 14
- Books 1,322
- Collectibles 26
- Computer equipment 100
- Custom Orders 87
- Digital goods 892
- Drug paraphernalia 496
- Drugs 13,802
- Electronics 239
- Erotica 584
- Fireworks 34
- Food 13
- Hardware 35
- Home & Garden 28
- Jewelry 104
- Lab Supplies 30
- Lotteries & games 169
- Medical 56
- Money 269
- Musical instruments 7
- Packaging 91
- Services 171
- Sporting goods 3
- Tickets 4
- Writing 7

sort by: bestselling ☐ Domestic only update discuss this category 0

! Ohio (US) Novelty / Fake ID (holos/magstrip/UV)
seller: TedDanzigSR 0.0
ships from: United States of America
5 4 3 2 1
฿1.9788 add to cart

Illinois Driver's License [Holograms+UV+Scans]
seller: MisterReplicator 0.0
ships from: United States of America
5 4 3 2 1
฿1.1857 add to cart

Illinois Fake ID (UV/Scans/Blacklights) BEST ON SR
seller: leOracle 0.0
ships from: United States of America
5 4 3 2 1
฿1.1452 add to cart

New South Wales Driving License (Holograms+Scans)
seller: KingOfClubs 0.0
ships from: undeclared
5 4 3 2 1
฿1.4935 add to cart

Illinois Fake ID License ** UV, Hologram, Scans **
seller: crcr1 0.0
ships from: United States of America
5 4 3 2 1
฿0.8961 add to cart

♔ Forged Social Security Card ♔
seller: namedeclined 0.0
ships from: United States of America
5 4 3 2 1
฿0.3707 add to cart

Illinois ID(UV/Scans/Blcklghts)WORKS IN CLUBS/BARS
seller: idsupply 0.0
ships from: United States of America
5 4 3 2 1
฿0.7468 add to cart

UK Driving License (Holograms + Scannable)
seller: KingOfClubs 0.0
ships from: undeclared
5 4 3 2 1
฿1.4935 add to cart

Silk Road
anonymous market

messages 0 | orders 0 | account ฿0.0000

Search | Go

a few words from the Dread Pirate Roberts

Hi, FBINY
logout

0

Shop by Category

- Forgeries 156
  - Passports 10
  - Fake IDs 55
- Apparel 753
- Art 14
- Books 1,322
- Collectibles 26
- Computer equipment 100
- Custom Orders 87
- Digital goods 892
- Drug paraphernalia 496
- Drugs 13,802
- Electronics 239
- Erotica 584
- Fireworks 34
- Food 13
- Hardware 35
- Home & Garden 28
- Jewelry 104
- Lab Supplies 30
- Lotteries & games 169
- Medical 56
- Money 269
- Musical instruments 7
- Packaging 91
- Services 171
- Sporting goods 3
- Tickets 4
- Writing 7

sort by: bestselling | Domestic only | update

discuss this category 0

EU Passport Scan - Customised HQ
seller: starlight 0.0
ships from: Netherlands
5 4 3 2 1
฿0.6314
add to cart

NEW USA PASSPORT CUSTOM SCAN, ANY NAME, ANY PIC
seller: perfectscans 0.0
ships from: United States of America
5 4 3 2 1
฿0.7393
add to cart

UK British Passport Custom Scan Any Name/Pic
seller: perfectscans 0.0
ships from: United Kingdom
5 4 3 2 1
฿0.7393
add to cart

((AUSTRALIAN PASSPORT SCAN, ANY NAME, ANY PIC
seller: perfectscans 0.0
ships from: Australia
5 4 3 2 1
฿0.9633
add to cart

USA Custom Passport/SSN ID Any Name, Any Pic
seller: perfectscans 0.0
ships from: United States of America
5 4 3 2 1
฿0.9334
add to cart

NEW USA PASSPORT CUSTOM SCAN, ANY NAME, ANY PIC
seller: perfectscans 0.0
ships from: United Kingdom
5 4 3 2 1
฿0.7393
add to cart

no image

100% REAL! USA PASSPORT! AUCTION! MAKE AN OFFER!!
seller: Rapid RX 0.0
ships from: United States of America
5 4 3 2 1
฿5.1853
add to cart

no image

Romania / Romanian passport - valid, OK for travel
seller: EuHighz 0.0
ships from: Hungary
5 4 3 2 1
฿11.7470
add to cart

Real Passport/New Identity in 30 days RUSH SERVICE
seller: IdentitySource 0.0
ships from: undeclared
5 4 3 2 1
฿156.0700
add to cart

A Real Passport, A New Identity in 45 days
seller: IdentitySource 0.0
ships from: undeclared
5 4 3 2 1
฿120.0500
add to cart

Silk Road
anonymous market

messages 0 | orders 0 | account ฿0.0000

Search Go

a few words from the Dread Pirate Roberts

Hi, FBINY logout

0

Shop by Category

- Digital goods 892
  - Media 143
    - Video Games 10
  - Invites / Accounts 12
  - Security 25
  - Synthesis 8
  - Video 103
- Apparel 753
- Art 14
- Books 1,322
- Collectibles 26
- Computer equipment 100
- Custom Orders 87
- Drug paraphernalia 496
- Drugs 13,802
- Electronics 239
- Erotica 584
- Fireworks 34
- Food 13
- Forgeries 156
- Hardware 35
- Home & Garden 28
- Jewelry 104
- Lab Supplies 30
- Lotteries & games 169
- Medical 56
- Money 269
- Musical instruments 7
- Packaging 91
- Services 171
- Sporting goods 3
- Tickets 4
- Writing 7

sort by: bestselling | Domestic only | update | discuss this category 0

Windows 7 - All Versions
seller: plutopete 0.0
ships from: United Kingdom
5 4 3 2 1
฿0.0961 add to cart

Crack WiFi Passwords for FREE INTERNET
seller: aldog25 0.0
ships from: undeclared
5 4 3 2 1
฿0.2323 add to cart

[Android] Hackers Handbook (Full Version)
seller: sh4d3r1950 0.0
ships from: undeclared
5 4 3 2 1
฿0.0609 add to cart

Adobe Photoshop Cs6 Extended 13.0.1 Portable
seller: HipsterPikachu 0.0
ships from: undeclared
5 4 3 2 1
฿0.0496 add to cart

♔ Adobe Photoshop CC - Hacked Portable Copy ♔
seller: namedeclined 0.0
ships from: undeclared
5 4 3 2 1
฿0.0370 add to cart

no image

Rosetta Stone 3.4.5 All Languages (PC) BEST price!
seller: mesa235z 0.0
ships from: United States of America
5 4 3 2 1
฿0.0373 add to cart

[Android] Hackers Home Pro (Fully Fuctional)
seller: sh4d3r1950 0.0
ships from: undeclared
5 4 3 2 1
฿0.0366 add to cart

Shop by Category

- Digital goods 892
  - Invites / Accounts 12
  - Media 143
  - Security 25
  - Synthesis 8
  - Video 103
- Apparel 753
- Art 14
- Books 1,322
- Collectibles 26
- Computer equipment 100
- Custom Orders 87
- Drug paraphernalia 496
- Drugs 13,802
- Electronics 239
- Erotica 584
- Fireworks 34
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- Home & Garden 28
- Jewelry 104
- Lab Supplies 30
- Lotteries & games 169
- Medical 56
- Money 269
- Musical instruments 7
- Packaging 91
- Services 171
- Sporting goods 3
- Tickets 4
- Writing 7

sort by: bestselling | Domestic only | update | discuss this category 0

HUGE Hacking Pack **150+ HACKING TOOLS&PROGRAMS;**

seller: sniffsniff 0.0
ships from: undeclared

5 4 3 2 1

฿0.1867
add to cart

Sassafras oil to mdma.hcl guide, 1kg easy, sick!

seller: ron paul 0.0
ships from: United States of America

5 4 3 2 1

฿4.4017
add to cart

Lab Notes: LSD synthesis! Two guides in one! EASY!

seller: ron paul 0.0
ships from: United States of America

5 4 3 2 1

฿7.1220
add to cart

Extreme Darknet Bootable USB (v2) 16GB

seller: uglysurfer 0.0
ships from: United States of America

5 4 3 2 1

฿0.4973
add to cart

ATM Cash Machine Hack...

seller: UK Stealth 0.0
ships from: United States of America

5 4 3 2 1

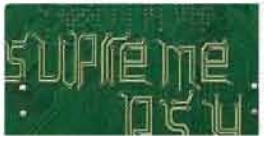
฿0.6000
add to cart

Netflix Account

seller: sniffsniff 0.0
ships from: undeclared

5 4 3 2 1

฿0.0374
add to cart



ALL Hacking Listings (40% Discount)

seller: supremePSY 0.0
ships from: United States of America

5 4 3 2 1

฿0.6123
add to cart

Silk Road
anonymous market

messages 0 orders 0 account ฿0.00

Search Go

a few words from the Dread Pirate Roberts

Hi, **ajax424** *logout* 0

Shop by Category

- Jewelry 47
- Apparel 87
- Art 5
- Books 736
- Collectibles 13
- Computer equipment 17
- Custom Orders 21
- Digital goods 317
- Drug paraphernalia 105
- Drugs 2,603
- Electronics 15
- Erotica 291
- Fireworks 3
- Food 3
- Forgeries 46
- Hardware 2
- Herbs & Supplements 9
- Home & Garden 7
- Lab Supplies 6
- Lotteries & games 31
- Medical 3
- Money 62
- Packaging 21
- Services 42
- Tickets 1
- Weight loss 13
- Writing 3
- Yubikeys 3

sort by: bestselling ☐ Domestic only update

Replica Tiffany&Co; Like the Wind Fashion Earrings
seller: AsianVixen(100)
ships from: undeclared
฿0.93 add to cart

Replica Tiffany & Co three hearts Necklace
seller: AsianVixen(100)
ships from: undeclared
฿1.29 add to cart

Cartier Love Ring - Woman & Man
seller: FoxyGirl(100)
ships from: China
฿1.91 add to cart

Beautiful Hermes bracelet Replica
seller: FoxyGirl(100)
ships from: undeclared
฿2.68 add to cart

Replica Tiffany&Co;. Heart bracelet
seller: AsianVixen(100)
ships from: undeclared
฿1.41 add to cart

Beautiful Cartier Necklace replica
seller: FoxyGirl(100)
ships from: China
฿3.21 add to cart

Silk Road
anonymous market

messages 0 orders 0 account ฿0.00

Search Go

the Dread Pirate Roberts

Hi, **ajax424**
logout

0

Shop by Category

- Apparel 87
  - Clothing 22
  - Handbags 3
  - Sunglasses 32
  - Watches 26
- Art 6
- Books 736
- Collectibles 13
- Computer equipment 17
- Custom Orders 21
- Digital goods 317
- Drug paraphernalia 105
- Drugs 2,603
- Electronics 15
- Erotica 291
- Fireworks 3
- Food 3
- Forgeries 46
- Hardware 2
- Herbs & Supplements 9
- Home & Garden 7
- Jewelry 47
- Lab Supplies 6
- Lotteries & games 31
- Medical 3
- Money 62
- Packaging 21
- Services 42
- Tickets 1
- Weight loss 13
- Writing 3
- Yubikeys 3

sort by: bestselling ☐ Domestic only update

Hermes Real Leather Belt - Woman & Man

seller: FoxyGirl(100)
ships from: China

฿6.93
add to cart

LV Initials Damier Graphite Belt Replica -Man

seller: FoxyGirl(100)
ships from: China

฿3.63
add to cart

Fake Ray ban RB2140 Sunglasses - Children

seller: FoxyGirl(100)
ships from: China

฿3.20
add to cart

Gucci Belt with Square Buckle - Woman

seller: FoxyGirl(100)
ships from: China

฿3.33
add to cart

LV Inventeur Damier Ebene Reversible Belt - Man

seller: FoxyGirl(100)
ships from: China

฿4.34
add to cart

LV Initials Damier Ebene Belt Replica - Man

seller: FoxyGirl(100)
ships from: China

฿4.60
add to cart

Silk Road
anonymous market

messages 0 | orders 0 | account ฿0.0000

Search Go

a few words from the Dread Pirate Roberts

Hi, FBINY logout 0

Shop by Category

- Books 1,322
  - Magazines 3
  - Newsletters 4
  - Physical Books 15
- Apparel 753
- Art 14
- Collectibles 26
- Computer equipment 100
- Custom Orders 87
- Digital goods 892
- Drug paraphernalia 496
- Drugs 13,802
- Electronics 239
- Erotica 584
- Fireworks 34
- Food 13
- Forgeries 156
- Hardware 35
- Home & Garden 28
- Jewelry 104
- Lab Supplies 30
- Lotteries & games 169
- Medical 56
- Money 269
- Musical instruments 7
- Packaging 91
- Services 171
- Sporting goods 3
- Tickets 4
- Writing 7

sort by: bestselling ☐ Domestic only update

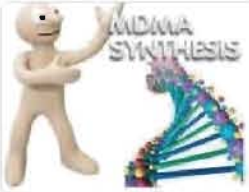
discuss this category 0

All New 5 ATM Cash Machine HackS...

seller: UK Stealth 0.0
ships from: United States of America

5 4 3 2 1

฿0.6000
add to cart



How To - MDMA Synthesis Complete guide

seller: optiman 0.0
ships from: undeclared

5 4 3 2 1

฿0.6980
add to cart

How to Get ANY Cell Phone for FREE

seller: sniffsniff 0.0
ships from: undeclared

5 4 3 2 1

฿0.1494
add to cart

BYE BYE BIG BROTHER -- OFFSHORE BANKING MANUAL

seller: echo 0.0
ships from: United States of America

5 4 3 2 1

฿0.5601
add to cart

HUGE Compliation of Info-Graphics. MUST HAVE!

seller: shroomeister 0.0
ships from: United States of America

5 4 3 2 1

฿0.0579
add to cart

The Great Big Narcotics Cookbook EBOOK

seller: xRedBullx 0.0
ships from: undeclared

5 4 3 2 1

฿0.0414
add to cart

Massive Collection of Banned and Rare Books

seller: captainpicard 0.0
ships from: undeclared

5 4 3 2 1

฿0.0074
add to cart

Silk Road
anonymous market

messages 0 | orders 0 | account ฿0.0000

Search Go

a few words from the Dread Pirate Roberts

Hi, FBINY *logout* 0

Shop by Category

- Money 269
  - Bullion 27
  - Digital currencies 48
- Apparel 753
- Art 14
- Books 1,322
- Collectibles 26
- Computer equipment 100
- Custom Orders 87
- Digital goods 892
- Drug paraphernalia 496
- Drugs 13,802
- Electronics 239
- Erotica 584
- Fireworks 34
- Food 13
- Forgeries 156
- Hardware 35
- Home & Garden 28
- Jewelry 104
- Lab Supplies 30
- Lotteries & games 169
- Medical 56
- Musical instruments 7
- Packaging 91
- Services 171
- Sporting goods 3
- Tickets 4
- Writing 7

sort by: bestselling | Domestic only | update | discuss this category 9

$1,000 US Dollars (10 $100 bills)
seller: gold 0.0
ships from: United States of America
5 4 3 2 1
฿9.3597 add to cart

$10,000 US Dollars (100 $100 bills)
seller: gold 0.0
ships from: United States of America
5 4 3 2 1
฿91.6370 add to cart

$100 US Dollars (1 $100 bill)
seller: gold 0.0
ships from: United States of America
5 4 3 2 1
฿0.9830 add to cart

$1000 USD Cash AND 1 Ounce Amer. Buffalo Gold Coin
seller: gold 0.0
ships from: United States of America
5 4 3 2 1
฿19.9820 add to cart

£100 - Tesco Vouchers UK
seller: Mr BlackHat 0.0
ships from: United Kingdom
5 4 3 2 1
฿0.3050 add to cart

$100 Bill
seller: CashExpress 0.0
ships from: United States of America
5 4 3 2 1
฿0.9180 add to cart

ANONYMOUS VISA ATM CARD EUR/ USD + Bank ACC
seller: BioCanna 0.0
ships from: Poland
5 4 3 2 1
฿0.3421 add to cart

ANONYMOUS | VISA ATM DEBIT CARD | EUR/USD/GBP
5 4 3 2 1
฿0.1380 add to cart

600 **Silk Road discussion / A brand new annonymous market!**
« **on:** February 26, 2012, 07:57 am »

-----BEGIN PGP SIGNED MESSAGE-----
Hash: SHA1

We are happy to announce a brand new site called The Armory. It focuses exclusively on the sale of small-arms weaponry for the purpose of self defense.

The issue of whether weapons should be sold on Silk Road has been brought up and debated too many times to count. I have heard good arguments on both sides of the debate and had to really think hard before choosing to take this direction. Here is a brief summary of my thoughts on the matter and why I chose to spin-off a new site rather than ban weapon sales completely, or allow them to continue here:

First off, we at Silk Road have no moral objection to the sale of small-arm weaponry. We believe that an individual's ability to defend themselves is a cornerstone of a civil society. Without this, those with weapons with eventually walk all over defenseless individuals. It could be criminals who prey on others, knowing they are helpless. It could be police brutalizing people with no fear of immediate reprisal. And as was seen too many times in the last century, it could be an organized government body committing genocide on an entire unarmed populace. Without the ability to defend them, the rest of your human rights will be eroded and stripped away as well.

That being said, there is no reason we have to force everyone into a one-size-fits-all market where one group has to compromise their beliefs for the benefit of another. That's the kind of narrow thinking currently used by governments around the world. It's why we are in this mess in the first place. The majority in many countries feel that drugs and guns should be illegal or heavily regulated, so the minority suffers.

Here at Silk Road, we recognize the smallest minority of all, YOU! Every person is unique, and their human rights are more important than any lofty goal, any mission, or any program. An individual's rights ARE the goal, ARE the mission, ARE the program. If the majority wants to ban the sale of guns on Silk Road, there is no way we are going to turn our backs on the minority who needs weaponry for self defense.

So, without further ado, I give you our answer to this whole conundrum:

The Armory: ayjkg6ombrsahbx2.onion

The Armory is run on the same codebase that runs Silk Road, with all of the same features you know and love. However, it is run completely independently with it's own servers, Bitcoin wallets, databases, etc. If it becomes popular, we'll even look into putting it under separate management.

A note to vendors: If you have items in the Silk Road weapons category, please relist them at The Armory asap. We will be shutting down weapons sales on Silk Road on Sunday March 4th.

-----BEGIN PGP SIGNATURE-----
Version: GnuPG v2.0.14 (GNU/Linux)

iQEcBAEBAgAGBQJPSt5DAAoJEAIiQjtnt/olO9IH/jIH9+bqUjakcOSbbOxqKe7g
lGBQwpNdTVcvyi/5/EX7Y6DtJs3sR5OhQpXoeQHI+aGvNoF+iUrot0TiYmiTDa72
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KsoP/fxpiGeZyUprkVUarCs1LtSNHBsbiz+MzsaTYltVwSagZId+3X33n7AH2Mo=
=+nt5
-----END PGP SIGNATURE-----

Reply Quote Notify

File Edit View History Bookmarks Tools Help

Welcome! | Silk Road | Closing the Armory | Bushmaster/Colt AR-15 (Full Auto/M-16) ...

ayjkg6ombrsahbx2.onion/silkroad/item/ffa8aa8492

Google

THE ARMORY

Welcome **grouper!**
messages(0) | orders(0) | account(฿0.00) | settings | log out

search | (0)

The armory will close indefinitely in **11 days 15 hrs 49 mins 30 secs**. Please conclude any outstanding business and withdraw all funds from your account.

bookmark this item

Rifles

Bushmaster/Colt AR-15 (Full Auto/M-16)

Seller:
GunsmithCats

Price:
฿659.44

Ships from: United States of America
Ships to: United States of America

Description:
Bushmaster AR-15 with installed/working autosear. Receiver was modified and autosear was installed by me.

16.1" barrel with 1:7 twist, ribbed foreguard, standard collapsible stock and standard grip.

The upper is a brand new Colt... all parts in the upper are Colt. The lower is well used but not damaged in any way. The lower is not registered as a Class 3 weapon, so in a way it is very hot. It will ship in 2 parts (Upper and lower).

MESSAGE ME BEFORE YOU BUY. If you don't I will cancel the order.

Email because TA is closing: gunsmithcats [at] tormail.com

add to cart

become a seller | how does it work? | community forums | contact us

Saturday 4th of August 2012 04:14:37 AM UTC

File Edit View History Bookmarks Tools Help

Welcome! | Silk Road | Closing the Armory | Welcome! | The Armory

ayjkg6ombrsahbx2.onion/silkroad

Google

THE ARMORY

Welcome **grouper!**
messages(0) | **orders(0)** | **account(฿0.00)** | **settings** | **log out**

search | (0)

The armory will close indefinitely in **11 days 15 hrs 55 mins 16 secs**. Please conclude any outstanding business and withdraw all funds from your account.

Shop by category:
Firearms(19)
Handguns(7)
Rifles(5)
Shotguns(1)
Accessories(6)
Ammunition(27)
Guides(15)
Non-Lethal(1)

FREE Glock 19 (G19) Gen 4 FS 9mm...
฿0.68

News:

- The Armory opens for **business!**

become a seller | **how does it work?** | **community forums** | **contact us**

Saturday 4th of August 2012 04:08:52 AM UTC

File Edit View History Bookmarks Tools Help

Welcome! | Silk Road | Closing the Armory

dkn255hz262ypmii.onion/index.php?topic=33758.0

Silk Road forums

simplemachines forum

Welcome, **Guest**. Please login or register.

Forever Login

Login with username, password and session length

Search

Home Help Search Login Register

Silk Road forums » Guest markets » The Armory » Closing the Armory

« previous next »

Pages: [1] 2

PRINT

Author	Topic: Closing the Armory (Read 2067 times)

Dread Pirate Roberts

Administrator

Sr. Member

Posts: 389

Karma: +124/-3

as you wish...

Closing the Armory

« **on:** August 02, 2012, 10:28 PM »

As most of you have figured out, we are closing the armory. Your first question is probably "why?". Well, it just wasn't getting used enough. Spinning it off originally was done somewhat abruptly and while we supported it, it was a kind of "sink or swim" experiment. The volume hasn't even been enough to cover server costs and is actually waning at this point. I had high hopes for it, but if we are going to serve an anonymous weapons market, I think it will require more careful thought an planning.

The next question is probably "can we now sell guns on Silk Road?". The answer there is most definitely NO. If we do support weapons sales once more, it will be on a separate site.

As the banner on the site says, finish up your business there and withdraw your coins before the end of the countdown. If you recently bought a seller account and haven't made enough sales to at least break even on it, contact us on the armory and we'll get you a refund.

Logged

"any time nothing has gone wrong for more than a few days, I have time to work on features that then break when I launch them"

Transferring data from dkn255hz262ypmii.onion...

427 **Silk Road discussion / Re: chat**
« **on:** September 23, 2012, 11:06 pm »

Thank you for expressing a dissenting viewpoint. I appreciate a civilized debate, so allow me to respond.

Quote from: bitfool on September 23, 2012, 07:15 am

> Silk road is nice because it's a fuck-you of sorts to the powers that be...
>
> ...but...
>
> It will have no impact whatsoever on the so called war on drugs. It's not going to affect government in any meaningful way. Agorism is a pretty lame strategy. It may even backfire (from the point of view of agorists) and cause the government to ban tor or bitcoin or both. Of course it can be done, just ask ISPs to do a bit of traffic shaping.
>
> Lastly, DPR is doing this for the money.

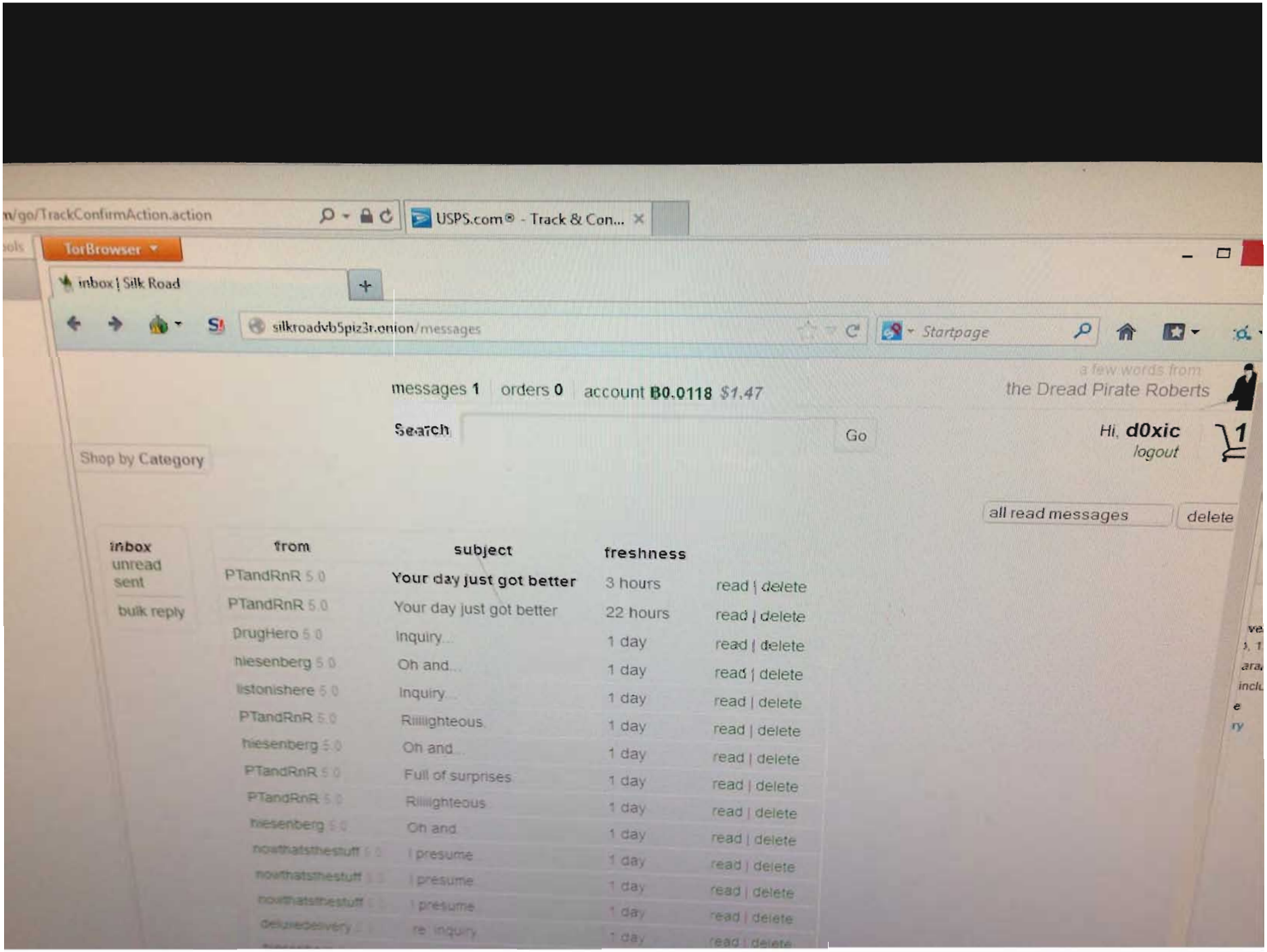
Silk Road has already made an impact on the war on drugs. The effect of the war is to limit people's access to controlled substances. Silk Road has expanded people's access. The great thing about agorism is that it is a victory from a thousand battles. Every single transaction that takes place outside the nexus of state control is a victory for those individuals taking part in the transaction. So there are thousands of victories here each week and each one makes a difference, strengthens the agora, and weakens the state.

The state may try to ban our tools, but if we never use them for fear of them being banned, then we have already lost, no? Personally, I don't think they can be effectively banned at this point. Iran and China, for example, are actively trying and failing.

On your last point, we agree, though I'd like to add some clarification. Money is one motivating factor for me. If it wasn't I wouldn't impose a commission on trades, or require vendors to use the Silk Road payment processor. Money motivates me for two reasons. For one, I have basic human needs that money allows me to meet so that I may devote my time to our cause. I also enjoy a few first-world pleasures that I feel I have earned, but nothing extravagant. In fact, compared to most I know, I still live quite frugally. I buy better food at the grocery store now, and got some new clothes, and am more generous with my friends and loved ones, but I've always been a cheap ass, and still kinda am out of habit. Besides that, I don't want the attention that buying big toys brings for security reasons.

More importantly, money is powerful, and it's going to take power to affect the kinds of changes I want to see. Money allows us to expand our infrastructure and manpower to accommodate the growing demands of our market and to pursue paths that will compliment and strengthen what's already been created here.

All that being said, my primary motivation is not personal wealth, but making a difference. As corny as it sounds, I just want to look back on my life and know that I did something worthwhile that helped people. It's fulfilling to me. If you don't know this joy, you may hear my words as insincere and as a way to manipulate, but I know they are true and resonate with some of you. There is nothing wrong with living your life to maximize your own pleasure, so long as you aren't hurting anyone in the process, but you will miss out on higher levels of happiness if your focus is always on yourself. It's paradoxical, but the less you focus on your own happiness and focus on other's, the happier you'll be. Try it out, you can always go back to being selfish 




UltiCare
1cc
Insulin Syringes
For U-100 Insulin
1cc
5/16"
30

(2011-12-19 17:12) vj:	so vendors that mention a buyers handle to bitch about fucking feedback should be fed to the sharks
(2011-12-19 17:13) vj:	ones that do that AND keep records of the addresse should be fed to ants, and then to sharks
(2011-12-19 17:13) vj:	lttm keeps addressess
(2011-12-19 17:13) vj:	Paperchasing keeps addressses and threatens to spread names of anyone who dares give him a 4/5
(2011-12-19 17:13) myself:	how do you know all of this?
(2011-12-19 17:14) vj:	I read the forums
(2011-12-19 17:14) myself:	I should probably do that ;)
(2011-12-19 17:14) vj:	your aware of the Gummy stars fiasco?
(2011-12-19 17:14) myself:	yes
(2011-12-19 17:14) vj:	search under lttms name for 'address'
(2011-12-19 17:15) vj:	for that I'd lifetime ban the bitch and take her funds and split them 'tween gummy's victims, and make it known that she got off easy.
(2011-12-19 17:16) vj:	a vendor keeping addresses is gonna be doing that to save a little negotiating material in case they get busted, otherwise its pretty dangerous to have around.
(2011-12-19 17:18) vj:	Paperchasing is not only blackmailing folks into 5/5's or face his wrath, he's also keeping addresses - or as he says, he has a 'good memory' for them, so in spite of his 1000+ orders if someone who's crossed his little feedback fetish tries to order under another name, he can 'remember' their addy from before.
(2011-12-19 17:19) vj:	For that, I'm gonna give him a bit of a bollocking on the forums, probably leave a few bruises on him for

	the effort. But next week, I've too much to do this week, and when it starts it's gonna go on for a day or 4
(2011-12-19 17:19) vj:	Just giving you a heads up, is all. Not asking permission. Not asking you to get involved.
(2011-12-19 17:20) vj:	just when it blows, I thought you should know why
(2011-12-19 17:20) myself:	thanks for the heads up. I'll definitely be keeping a closer eye on things. Up to this point, I have been relying on buyers to come to me with complaints and there haven't been many.
(2011-12-19 17:21) myself:	looks like I need to be more proactive

From: Ross Ulbricht
To: Kim [redacted]
Subject: Re: just heard about this
Date: Date
2/10/2013 11:30:58 PM UTC

thanks kim. I heard about spice about a year ago. if they didn't outlaw pot, they wouldn't need to come up with experimental synthetic and dangerous cannabanoids to get around the laws. But yea, I don't go near that stuff.

On Sun, Feb 10, 2013 at 2:54 PM, Kim [redacted] <kim [redacted]> wrote:

> You may already know this...and I am not assuming that any of you use, but I just heard some stories about how much worse -- how dangerous and damaging -- synthetic pot ("spice") is. This, and of course "bath salts" are to be totally avoided. Well, I would say all drugs. These are legal, but you never know what is added to any of it. A girl is now blind and paralyzed and the stories go on.
>
> Fore-warned is fore-armed.

Silk Road
anonymous market

messages 0 | orders 0 | account ฿0.0000

Search Go

a few words from the Dread Pirate Roberts

Hi, FBINY logout 0

Shop by Category

- Drugs 13,802
  - Cannabis 2,906
    - Synthetic 212
      - Chemicals 123
      - Smoking Blend 43
    - Concentrates 302
    - Cuttings 1
    - Edibles 157
    - Hash 559
    - Pre-rolled 21
    - Seeds 143
    - Shake 17
    - Topicals 9
    - Trim 14
    - Weed 1,230
  - Dissociatives 203
  - Ecstasy 1,304
  - Intoxicants 71
  - Opioids 365
  - Other 82
  - Precursors 62
  - Prescription 4,650
  - Psychedelics 1,746
  - Stimulants 1,644
  - Tobacco 218
- Apparel 753
- Art 14
- Books 1,322
- Collectibles 26
- Computer equipment 100
- Custom Orders 87
- Digital goods 892
- Drug paraphernalia 496
- Electronics 239
- Erotica 584
- Fireworks 34
- Food 13
- Forgeries 156
- Hardware 35
- Home & Garden 28
- Jewelry 104
- Lab Supplies 30
- Lotteries & games 169
- Medical 56
- Money 269
- Musical instruments 7
- Packaging 91
- Services 171
- Sporting goods 3
- Tickets 4
- Writing 7

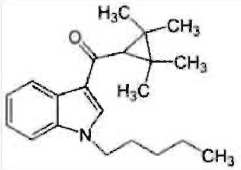
sort by: bestselling | Domestic only | update | discuss this category 0

3.5grams 100% pure JWH-018

seller: alkaloyd 0.0
ships from: United States of America

5 4 3 2 1

฿0.3707
add to cart



5F-UR-144 - 1g - Pure and Domestic

seller: illegal entrepreneur 0.0
ships from: United States of America

5 4 3 2 1

฿0.0897
add to cart

JWH-073 1g - synthetic THC magic

seller: nawlins 0.0
ships from: United States of America

5 4 3 2 1

฿0.2614
add to cart

OMG I'M SO FUCKING STONED 3g @ 4% JWH-018 FRESH

seller: nawlins 0.0
ships from: United States of America

5 4 3 2 1

฿0.1493
add to cart

BRAIN DAMAGE 5g of each JWH-018 & 073 @ 4% blends

seller: nawlins 0.0
ships from: United States of America

5 4 3 2 1

฿0.2237
add to cart

no image

1 One gram JWH-018

seller: FatBurger 0.0
ships from: United States of America

5 4 3 2 1

฿0.2241
add to cart

1gram of Ultra Pure JWH-018 99+% pure white powder

seller: alkaloyd 0.0

5 4 3 2 1

฿0.1486
add to cart

☼ Astro Turf ☼ Syntheic Cannabis 30g | 5F-UR-144

฿0.3734

add to cart | bookmark | discuss 0 | report

Item info:	
seller	illegal entrepreneur 0.0
ships from	United States of America
ships to	Worldwide
category	Smoking Blend

postage options:
combined (฿0.0000)

Description

☼ Astro Turf ☼ - 30g - 5F-UR-144

INFO:

Name: Astro Turf
Net Weight: 30g
Price Per Gram: $1.65
Scent: None
Strength: 2g:1oz chem/leaf ratio
Leaf(s) Used: Damiana
Chem(s) used: 5F-UR-144

SHIPPING:

Please only choose "Ships Free" if it says free shipping in the title.

I promise to only sell the best and purest spice and chem. on the market. My spice is never full of stems and my chem. is never cut!

Become a Fan!! Keep an eye on my seller page for new blends.

If you have any questions please message me!

****SEE SELLER PAGE FOR PGP****

Reviews:

sort by: freshness go

King Salami
orders spent vendors
10+ ฿1+ 10+

review for: ☼ Astro Turf ☼ Syntheic Cannabis 30g | 5F-UR-144 qty: 1 price: ฿0+
1y 8m old 5 of 5
Perfect stealth. Just had 2 cones mixed and I am nicely stoned. Great stuff , came quick to Aus and wasn't intercepted by kangaroos. I will definitely be back.

alias hidden
stats: (hidden)

review for: ☼ Astro Turf ☼ Syntheic Cannabis 30g | 5F-UR-144
1y 11m old 5 of 5
gotta mow that astro-turf, man.

7G SUPER STRONG SYNTHETIC MARIJUANA -AUS VENDOR-

฿0.9207

add to cart | bookmark | discuss 0 | report

Item info:	
seller	BURN CITY 0.0
ships from	Australia
ships to	Australia
category	Synthetic

postage options:
EXPRESS POST (฿0.03

Description

Our synthetic weed is super strong. I can't let you know the chemical makeup as it's currently legal in AUS and I don/t want it getting found out. We are ex suppliers in a big was in AUS and now due to federal bans we have gone underground. Rest assure the blends we use although SUPER STRONG are legit and not harmful stuff.

We do however recommend you toke lightly. Give it 2-4 tokes and wait a few minutes. If smoking through a bong have a half cone first. Guys its really strong.

Reviews:

sort by: freshness go

free2c
orders spent vendors
10+ ฿100+ 10+
review for: 7G SUPER STRONG SYNTHETIC MARIJUANA -AUS VENDOR- qty: 1 price: ฿0+
1y 8m old | 5 of 5
Arrived super quickly, superb stealth method and I'm sure I've tried some before bcoz I recognise the look and smell - so I know it's the best synth available atm (and it's legal, too!) Huge props to BURN CITY - count on me for repeat business!

alias hidden
stats: (hidden)
review for: 7G SUPER STRONG SYNTHETIC MARIJUANA -AUS VENDOR-
1y 9m old | 5 of 5
Superb quality and great high as per usual. Thanks Burn City, you are the original and the best.

alias hidden
stats: (hidden)
review for: 7G SUPER STRONG SYNTHETIC MARIJUANA -AUS VENDOR-
1y 9m old | 5 of 5
awesome as always

alias hidden
stats: (hidden)
review for: 7G SUPER STRONG SYNTHETIC MARIJUANA -AUS VENDOR-
1y 9m old | 5 of 5
lovely

alias hidden
stats: (hidden)
review for: 7G SUPER STRONG SYNTHETIC MARIJUANA -AUS VENDOR-
1y 9m old | 5 of 5
1/2 a bong half an hour ago and I'm still ripped. This stuff is strong and has serious legs. Delivery was next day as guaranteed. A+++

BRAIN DAMAGE 5g of each JWH-018 & 073 @ 4% blends

฿0.2237

add to cart | bookmark | discuss 0 | report

Item info:	
seller	nawlins 0.0
ships from	United States of America
ships to	United States of America
category	Smoking Blend

postage options:
Priority Mail USA (฿0.(

Description

5 grams each of two very strong smoking blends made with the legendary synthetic cannabinoids JWH-018 and JWH-073.

5g of JWH-018 at 4% blend.
5g of JWH-073 at 4% blend.

Ten grams total.

Remember kids, Don't forget your screens....
in Brass: http://silkroadvb5piz3r.onion/silkroad/item/97069ff760
or Stainless Steel: http://silkroadvb5piz3r.onion/silkroad/item/60f58b49aa

Reviews:

sort by: freshness go

irishjunkie420
orders spent vendors
10+ ฿10+ 10+
review for: BRAIN DAMAGE 5g of each JWH-018 & 073 @ 4% blends qty: 3 price: ฿0+ — 1y 7m old | 5 of 5
Perfect Transaction A+++

bobdole111
orders spent vendors
1+ ฿1+ 1+
review for: BRAIN DAMAGE 5g of each JWH-018 & 073 @ 4% blends qty: 1 price: ฿0+ — 1y 7m old | 5 of 5
Good packaging, solid weight on the product, and reasonable stealth. Took a little bit longer than expected to ship, but that might have just been the weekend too. Seems like a pretty solid seller!

ojsam329
orders spent vendors
10+ ฿1+ 10+
review for: BRAIN DAMAGE 5g of each JWH-018 & 073 @ 4% blends qty: 1 price: ฿0+ — 1y 7m old | 5 of 5
Nice stealth, good packaging! Product looks good! Would recommend!

jeebuskreyest
orders spent vendors
10+ ฿100+ 10+
review for: BRAIN DAMAGE 5g of each JWH-018 & 073 @ 4% blends qty: 1 price: ฿0+ — 1y 7m old | 5 of 5
A #1 Joe!!

Jeebus wut is this stuff? LOL

Silk Road anonymous market | messages 0 | orders 0 | account ฿0.0000 | a few words from the Dread Pirate Roberts | Hi, FBINY logout | 0

Search | Go

Shop by Category

3g Kush Synthetic Blend Sale HOT !

฿0.1529

add to cart | bookmark | discuss 3 | report

Item info:	
seller	CrystalMethCat 0.0
ships from	Germany
ships to	Worldwide
category	Smoking Blend

postage options:
Free (฿0.0000)

Description

Hi friends !

$$*SALE ON ALL MY SYNTHETIC CANNA BLENDS*$$

CHOOSE 4 IN QUANTITY OF ANY OF MY BLENDS LISTED AND GET A 5TH ONE FOR FREE !!

or

CHOOSE 10 IN QUANTITY OF ANY OF MY BLENDS LISTED AND GET 3PACKS FOR FREE !!

BUY 4 PACKS AND GET 5 ! |

or

BUY 10 PACKS AND GET 13 ! |

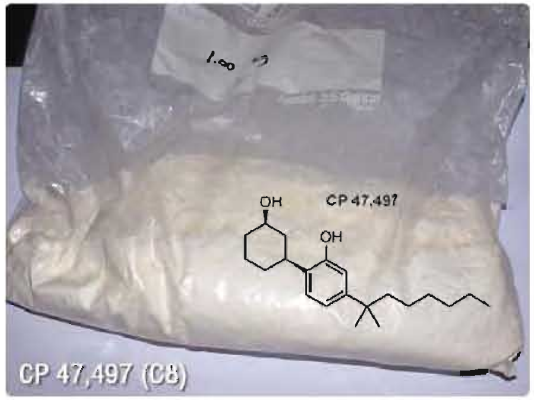
Here i offer u 1 Pack of famous Kush 3g Blend ! Youll get the original sealed ZipperBag, containing 3g of Herbals. Strength is 9/10.

Its the original recipe mixture, no cheap imitate !

Check it out

Reviews:

sort by: freshness | go



CP 47,497 / Cannabicyclohexanol - 100g

฿13.4110

add to cart | bookmark | discuss 0 | report

Item info:	
seller	b1g1mpact 0.0
ships from	Czech Republic
ships to	Worldwide
category	Chemicals

postage options:
European Union (฿0.0)

Description

CP 47,497 / Cannabicyclohexanol

2-[(1R,3S)-3-hydroxycyclohexyl]- 5-(2-methyloctan-2-yl)phenol

This is the C8 - or 1,1, dimethyloctyl homologue - of CP 47,497, which is several times more potent than standard CP 47,497. It is one of the most potent synthetic cannabinoids, around 20x stronger than THC. The product should be used sparingly, it is normally dissolved in warm alcohol and evaporated off of a smokeable herb. If using neat, use in very small quantities.

CP 47,497 is a cannabinoid receptor agonist drug, developed by Pfizer in the 1980s.[1] It has analgesic effects and is used in scientific research. It is a potent CB1 agonist with a Kd of 2.1nM. The compound is widely illegal in Europe and the far East since the ingredients of Spice were found.

Chemical formula: C21H34O2

CAS number: 70434-82-1

We ship super stealth, in heat sealed, triple layered, odour free pouches.

Reviews:

sort by: freshness go

alias hidden — *review for: CP 47,497 / Cannabicyclohexanol - 100g* — 1y 9m old | 5 of 5

stats: (hidden) — Leave feedback here

1/2 OZ Stupid Strong Spice *CHEAP*

฿0.2614

add to cart | bookmark | discuss 0 | report

Item info:	
seller	j1m1th1ng 0.0
ships from	United States of America
ships to	United States of America
category	Smoking Blend

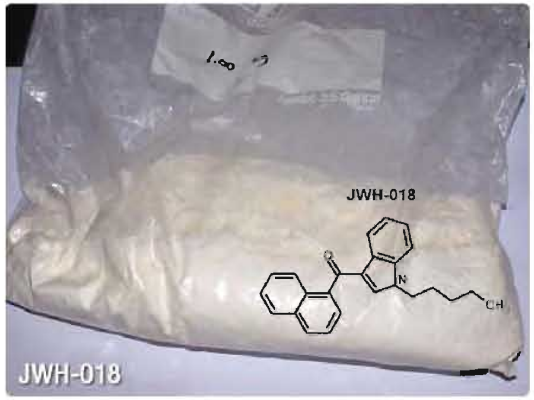
postage options:
multi item order alrea

Description

This is our "Stupid Strong" straight spice blend we use a stupid high ratio of noids to blend. You will not find a blend with a higher ratio out there. This blend used 100% destimmed and cleaned marshmellow leaf and tons of AM-2201 and 5F-AKB48 in just the right ratio and for basement level prices.

Reviews:

sort by: freshness go



JWH-018 - 30g

฿3.8334

add to cart | bookmark | discuss 0 | report

Item info:	
seller	b1g1mpact 0.0
ships from	Czech Republic
ships to	Worldwide
category	Chemicals

postage options:
European Union (฿0.0)

Description

JWH-018

Naphthalen-1-yl-(1-pentylindol-3-yl)methanone

The original ingredient of the legendary Spice is still one of the most popular synthetic ingredients. Ours is 99.9% certified pure and absolutely top quality.

JWH-018 (1-pentyl-3-(1-naphthoyl)indole) or AM-678[1] is an analgesic chemical from the naphthoylindole family that acts as a full agonist at both the CB1 and CB2 cannabinoid receptors, with some selectivity for CB2.

Chemical formula: C24H23NO

CAS number: 209414-07-3

We ship in heat sealed, triple layered, odour free pouches and send in extreme stealth.

Reviews:

sort by: freshness go

alias hidden — review for: *JWH-018 - 30g* — 1y 9m old | 5 of 5
stats: (hidden)
Brilliant as always

alias hidden — review for: *JWH-018 - 30g* — 1y 9m old | 5 of 5
stats: (hidden)
Leave feedback here

Silk Road
anonymous market

messages 0 | orders 0 | account ฿0.0000

Search Go

a few words from the Dread Pirate Roberts

Hi, **FBINY** *logout* 0

Shop by Category

- Drugs 13,802
  - Ecstasy 1,304
    - Methylone 205
    - 4-EMC 2
    - 4-MEC 14
    - 5-APB 4
    - 5-IT 3
    - Butylone 7
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    - MDMA 513
    - MPA 1
    - Pentedrone 1
    - Pentylone 1
    - Pills 467
  - Cannabis 2,906
  - Dissociatives 203
  - Intoxicants 71
  - Opioids 365
  - Other 82
  - Precursors 62
  - Prescription 4,650
  - Psychedelics 1,746
  - Stimulants 1,644
  - Tobacco 218
- Apparel 753
- Art 14
- Books 1,322
- Collectibles 26
- Computer equipment 100
- Custom Orders 87
- Digital goods 892
- Drug paraphernalia 496
- Electronics 239
- Erotica 584
- Fireworks 34
- Food 13
- Forgeries 156
- Hardware 35
- Home & Garden 28
- Jewelry 104
- Lab Supplies 30
- Lotteries & games 169
- Medical 56
- Money 269
- Musical instruments 7
- Packaging 91
- Services 171
- Sporting goods 3
- Tickets 4
- Writing 7

sort by: bestselling | Domestic only | update | discuss this category 1

28gr (1oz) PURE Crystal Methylone *DOMESTIC*

seller: PablosPuro 0.0
ships from: United States of America

5 4 3 2 1

฿2.8002
add to cart

112gr (4oz/QP) PURE Crystal Methylone *DOMESTIC*

seller: PablosPuro 0.0
ships from: United States of America

5 4 3 2 1

฿8.9569
add to cart

100 GRAMS OF HUGE 99.9% PURE METHYLONE CRYSTALS

seller: Jack N Hoff 0.0
ships from: China

5 4 3 2 1

฿3.3016
add to cart

1 Kilogram OF 99.8% PURE METHYLONE FREE SHIPPING

seller: DRG0NZO 0.0
ships from: undeclared

5 4 3 2 1

฿21.0030
add to cart

56gr (2oz) PURE Crystal Methylone *DOMESTIC*

seller: PablosPuro 0.0
ships from: United States of America

5 4 3 2 1

฿4.8537
add to cart

14gr PURE Crystal Methylone *DOMESTIC*

seller: PablosPuro 0.0
ships from: United States of America

5 4 3 2 1

฿1.5682
add to cart

7gr PURE Crystal Methylone *DOMESTIC*

seller: PablosPuro 0.0
ships from: United States of America

5 4 3 2 1

฿0.8961
add to cart

Silk Road
anonymous market

messages 0 | orders 0 | account ฿0.0000

Search Go

a few words from the Dread Pirate Roberts

Hi, **FBINY** *logout* 0

Shop by Category

- Drugs 13,802
  - Stimulants 1,644
    - MDPV 60
    - 2-DPMP 1
    - 3,4DMMC 17
    - 4-EMC 3
    - 4-MEC 24
    - 6-APB 36
    - A-PVP 35
    - Caffeine 11
    - Cocaine 643
    - D2PM 2
    - Dimethocaine 2
    - Ephedrine 39
    - Ethylphenidate 10
    - FAs 40
    - FMAs 22
    - FMCs 1
    - Khat 1
    - MDPPP 8
    - Mephedrone 101
    - Meth 261
    - MOPPP 1
    - Pentedrone 17
    - Speed 266
  - Cannabis 2,906
  - Dissociatives 203
  - Ecstasy 1,304
  - Intoxicants 71
  - Opioids 365
  - Other 82
  - Precursors 62
  - Prescription 4,650
  - Psychedelics 1,746
  - Tobacco 218
- Apparel 753
- Art 14
- Books 1,322
- Collectibles 26
- Computer equipment 100
- Custom Orders 87
- Digital goods 892
- Drug paraphernalia 496
- Electronics 239
- Erotica 584
- Fireworks 34
- Food 13
- Forgeries 156
- Hardware 35
- Home & Garden 28
- Jewelry 104
- Lab Supplies 30

sort by: bestselling | Domestic only | update

discuss this category 7

10g MDPV

seller: uhrwerk 0.0
ships from: Germany

5 4 3 2 1

฿1.1201
add to cart

5g MDPV

seller: uhrwerk 0.0
ships from: Germany

5 4 3 2 1

฿0.6538
add to cart

Bring on the Shadow People! New batch MDPV 1g

seller: nawlins 0.0
ships from: United States of America

5 4 3 2 1

฿0.2166
add to cart

1g MDPV

seller: uhrwerk 0.0
ships from: Germany

5 4 3 2 1

฿0.1825
add to cart

MDPV Half Gram SUPER COKE 99.5% Pure

seller: FabioOchoa 0.0
ships from: Australia

5 4 3 2 1

฿1.7100
add to cart

Bring on the Shadow People! New batch MDPV 10g

seller: nawlins 0.0
ships from: United States of America

5 4 3 2 1

฿7,467.2000
add to cart

CAUTION PURE TAN FLUFFY MDPV 250mg !FREE SHIP

seller: CrystalMethCat 0.0

5 4 3 2 1

฿0.1115
add to cart

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

May 26, 2015

By ECF
Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross William Ulbricht*, 14 Cr. 68 (KBF)

Dear Judge Forrest:

Please find attached five victim impact letters submitted by relatives of several of the individuals whose drug-related deaths are described in the Government's sentencing submission.

Respectfully,

PREET BHARARA
United States Attorney

By: _____
SERRIN TURNER
TIMOTHY T. HOWARD
Assistant United States Attorneys
Southern District of New York

cc: Joshua Dratel, Esq.

April 20, 2015

The Honorable Katherine B. Forrest
United States District Judge, Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Room 1950
New York, NY 10007

Dear Judge Forrest:

I am writing to tell you about my son, Bryan, and how his life was taken by heroin that was supplied by Silk Road – the scheme that was created by Ross Ulbricht.

On the morning of Monday, October [redacted], 2013, I received a phone call from Bryan's employer in Boston to tell me that he had just found him dead in his apartment. He believed he had died from a drug overdose. I can't accurately describe what a shock this call was. Bryan had turned 25 the week before and had come home to spend his birthday weekend with us in California. Our birthdays are only 4 days apart and we almost invariably celebrated our birthdays together. Bryan was an incredibly good athlete, a beautiful blond haired, blue eyed young man, a graduate (with honors) of the University of D[redacted] working at a small money management company in Boston where he had moved just two months before. He was in perfect health. When Bryan moved to Boston, his first major purchase was a bright yellow kayak. He would paddle on the Charles River for hours and, when he was done, he would carry it back to his apartment. This was no small feat: the kayak and all of its accessories weighed nearly 50 pounds and Bryan lived several blocks from the river. When Bryan's body was found in his apartment, the kayak was hanging on the wall right next to him. The weekend of his birthday we took a scenic 30 mile bike ride together. He was the last person that anyone would have expected to die from a drug overdose. When a Boston detective called me within an hour of the call from his employer to tell me that he believed Bryan had died from a heroin overdose, I told him "you either have the wrong guy or my son was murdered. He does not do drugs." I believed I had good reason to say that. It was something we had talked about within a week of his death.

I could not reconcile his death - and, in particular, the cause of his death - with the son who I was so close to, loved so deeply and thought I knew so well. In fact, it is difficult to get my mind around it as I write this to you. I began my own investigation almost immediately. I hired a lawyer in Boston who helped me navigate the process. We contracted with a forensics team to examine Bryan's computers (both work and his laptop) and his cell phone. We looked at his text messages, emails, web searching activity, etc. I also interviewed anyone I could get to talk to me: his employer, his colleagues, former employer, former

colleagues, college friends, roommates, etc. Within weeks, I had a good outline of what had taken place and a few months later, I developed a better understanding.

In sum, what I learned was that Bryan had probably tried heroin at the beginning of his senior year of college, realized what a huge mistake he had made, and spent the last two years of his life fighting off occasional urges to do it again. We will never know why he tried it. Nobody - except a small handful of people he thought were his friends knew he had done it. That's why everyone - his close friends, his family, and his relatives - was so shocked. In hindsight, it breaks our hearts to learn that he was struggling with this, but it was clearly something he was not proud of and something he thought he could handle on his own. He wanted no one to know.

He was doing very well in life despite these struggles until mid September 2013, when he discovered Silk Road. We now know that Silk Road could only be accessed by the TOR browser – a deeply encrypted software program that was originally used by the defense department. The website offered an amazon.com-like experience: a vast selection of illicit drugs (among other things) that any potential user could want, delivery to his doorstep, complete anonymity, and, perhaps best of all, everything had to be paid with Bitcoin (an untraceable crypto-currency). The scheme was diabolical. It eliminated every obstacle that would keep serious drugs away from anyone who was tempted. Silk Road customers would avoid high-risk back alley drug deals, police detection, friends and parents finding out…all with the promise that no one would ever know. Our investigation revealed that Bryan, who was fighting off urges to try heroin again, was simply overpowered by the combination of convenience and anonymity. Bryan downloaded the TOR browser, he set up a series of fictitious email accounts as per Silk Road's instructions, he transferred money from his bank account to a Bitcoin dealer, and he ordered heroin on Silk Road. On the morning of his birthday (September 29th), the supplier called him on Skype to confirm the shipment of the product. It was delivered by USPS to his apartment (where we later found the packaging) and he was dead a few days later.

The autopsy of Bryan's body revealed that he most likely died on Friday evening (October 4th) which we can confirm from the lack of cell phone activity after 9:30 pm that night. While Bryan's dead body laid in his apartment that weekend, my daughter tried repeatedly to reach him by phone in order to share some great news with him; he was going to be an uncle. Today, my grandson will never know his Uncle Bryan and Bryan never knew of him. My daughter's wedding was on July 6th and it was a joyous occasion for our entire family. Three months later, Bryan was gone.

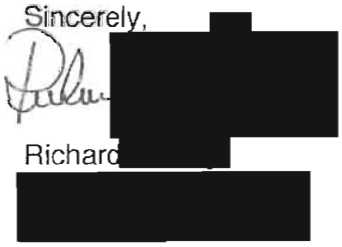
As you know, Ross Ulbricht was arrested on October 2, 2013. Unfortunately, that was one week too late to save Bryan. Since Ulbricht's arrest our family has been assaulted by the persistent drumbeat of his "supporters" who go as far as to proclaim him (in your courtroom) a "hero." They continue to tell anyone who will listen the narrative that Ulbricht's crimes were "victimless" and

the government's case against him was unnecessary and unjust. Suffice it to say their claims, aside from being deeply offensive, are false and absurd.

While it is true we are all born with free will that allows us to make our own choices in life, drugs that are highly addictive - like heroin - diminish or eliminate our ability to make good choices. This is exactly why these types of drugs are illegal: they offer no medicinal or therapeutic value and have addictive qualities that can lead to extremely harmful consequences for society. Clearly my son made a horrible choice in electing to try heroin in the first place, but Ross Ulbricht's Silk Road scheme removed all the natural "governors" that would otherwise prevent people like Bryan from gaining access to a drug like heroin. This is why the creation of Silk Road was so evil: Ulbricht's business plan was not simply a plot to disintermediate local drug dealers. It was Ulbricht's plan to radically expand the market for illicit drugs, and in the process, dramatically enrich himself without any regard for the lives of others or the effects on our society. This is not the behavior of an Eagle Scout – as constantly claimed by his supporters – this is the behavior of a sociopath. I have seen no sign of remorse or contrition from Ross Ulbricht for the consequences of his monstrous crimes. It is inconceivable that he did not realize that by creating Silk Road people would die because of his greed. Deaths from drug overdoses – especially heroin – are well documented. In fact, it is highly unlikely that my son was the only victim to die from drugs supplied by Ulbricht's Silk Road. I am fortunate because I had the time and resources to investigate what happened to Bryan. Other parents will have learned of the death of their child and may spend the rest of their lives wondering how it could have happened. The loss of a child leaves a parent with a deep and permanent emotional scar. Ross Ulbricht clearly did not care about the negative consequences of creating Silk Road or about the lives – like Bryan's - that would be lost while he watched his wealth grow with every drug transaction. Every time a customer engaged in the seemingly innocuous act of clicking on the "Purchase" icon on Silk Road's website, Ross Ulbricht's wealth expanded while his customer's lives were put at risk. His victims were just more Bitcoins.

Ross Ulbricht deserves the most severe sentence the law will allow. Everyone who knew Bryan feels the enormous pain of our loss. I lost my only son and my daughter lost her only sibling. We loved him more than we can describe. We know that punishing Ross Ulbricht will never bring Bryan back, but a clear message needs to be sent to Ulbricht and anyone who contemplates a similar scheme in the future.

Sincerely,



Richard [redacted]

April 23, 2015

The Honorable Katherine B. Forrest
United States District Judge, Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Room 1960
New York, NY 10007

Dear Judge Forrest:

I am writing you about my little brother, Bryan [redacted] whom we lost in October of 2014, shortly after he discovered the Silk Road. He had just turned 25 years old when he died of a heroin overdose, with heroin he purchased on the Silk Road.

My father, Richard [redacted], has also written you a letter in which he gives a very detailed account of the events that transpired prior to my brother's death. If you have not yet read his letter, please read his before continuing on with mine. His letter is far more eloquent and detailed than mine.

My brother was smart, atheltic, loveable, funny, and sensitive. He was always the bright light in the room, with people circling around him, hanging on his every word. At the same time, he was sensitive: always quick to befriend the new kid in school, or take a struggling classmate under his wing. He really was incredibly well rounded. Did I mention he was handsome too? He really had it all.

Yet, in addition to all of these amazing qualities, Bryan was also impulsive and naive. He was a daredevil on a bike and on the ski slopes, and thought he was invincible. He was really athletic, so he got away with it, but being impulsive in life is another matter.

We know from Bryan's heroin overdose that he wasn't making good decisions, but he most likely had the sense to not go seeking out drug dealers in Boston's dark alleys. Once he discovered the Silk Road one night his mind was made up – he was ordering heroin and it was as simple as a few clicks of a mouse, and it would arrive on his doorstep within just a few days. The Silk Road online market place enabled anonymity and seemed to eliminate all the risks of traditional drug transactions. No one was going to try to physically harm or rob him, and most importantly no one would know whom he was.

I often read articles about sites or services on the Internet, such as social media for instance, or online forums, and how the users feel a sense of anonymity just because they're interacting through a computer screen. I'm 31 years old, and I even see some of my peers treating social media as some sort of anonymous outlet for sharing too much information and bad decisions. Everything seems less "real" online. It's easier for people to buy too much online for instance [speaking from experience]. If I were to go to the mall, and physically handle all of my purchases - pick them out, try them on, purchase them, and then carry them around the mall, I would certainly buy much less. Yet, when I go online and remove nearly all these steps - all I have to do is scroll through a few pages, add to cart, and sometimes there's even 1 click checkout, thus I buy more. A few days later boxes show up at our door and it looks like I bought half the mall.

I think Ross Ulbricht and his supporters have been unable to see past the online nature of his crimes, and to him he probably doesn't envision any real victims. I think that a connection needs to be established from the intangible, almost imaginary online life to real life and real consequences.

Given other sites like the Silk Road keep trying to start up, and everything else in the world is developing a stronger Internet presence, I would think this would be a crucial time to set a strong precedent. If Ross Ulbricht were to receive the harshest sentence allowed by the law, perhaps it may make some of these other 'entrepreneurs' realize the true nature of these crimes – they are clearly not victimless crimes. If his sentencing can force people to see the connection between online activity and real life consequences, then perhaps it can deter them from becoming the next Ross Ulbricht.

Thank you very much for your time and consideration. I very much appreciate it.

Sincerely,

Lauren [redacted]

[redacted]

In the matter of : Ross Ulbricht

Charges : Narcotics, Money Laundering, Conspiracy

VICTIM IMPACT STATEMENT
OF
Vicki [redacted] (mother)
Aimee [redacted] (sister)

I received a telephone call around 9.45am Saturday [redacted] February 2013, saying that Preston had a bad accident and had been transferred by ambulance to the local hospital. Aimee and their Dad picked me up to go to the hospital. All we knew was that Preston was very badly hurt.

When we arrived at the hospital, the emergency department staff asked us how we knew about it, as no one had been officially notified. It was only because Aimee and her Dad had by chance, driven past the scene and asked Preston's friends.

At the hospital, we were ushered into a private room with the doctor and then a social worker to talk to us. They prepared us for what was going to happen. Preston had suffered severe head injuries and they would have to operate immediately to reduce the swelling on his brain. I asked if I could see him before they prepared for surgery.

As it was a Saturday, I felt it took some time for the hospital to organize staff, etc. I was escorted in to see him. I noticed there was a lot of blood coming out from his right ear. There was staff surrounding Preston with apparatus to keep him breathing and continual observations. Preston was lifeless on the trolley.

Everyone was rushing around. I knew that blood out of his ear was not a good sign. I left the room. I asked if Aimee could come in and see him.

Due to the swelling, they had to operate to remove part of his skull. I went in with Aimee who said "hang in there Preston." I said "I love you son, hang in there, everything will be okay, they are going to look after you."

We went back to waiting in the family room. It seemed like a long time. During the wait the doctor came in and told us that Preston had lost all dilation in his pupils. They weren't going to go ahead with the surgery as it was too dangerous; they were going to administer a medication instead to help with the swelling of the brain. He was put onto life support at that stage. The doctors said they would see how Preston went over the next few days.

Shortly after, the doctor left, the social worker came back in and said "Sorry you have lost Preston." We were in total shock at her comments as we had not been told this by the Doctor.

From emergency he was transferred to the Intensive Care Unit, there were multiple meetings with specialists and the organ donation coordinator. I left the room and collapsed in shock, curled up in a ball on the floor, crying in disbelief of what was happening.

Media were at the hospital and also phoning us to get a story.
It was a waiting game. Aimee continued to get phone calls so posted on Facebook, "Preston is not in a good way – hope he will come out of it."

Over Saturday, Saturday night – it was a very long time. Close family were coming in and knew the outcome wasn't going to be good, that Preston may not survive. On Saturday afternoon we understood from some of Preston's friends that what had happened to him was somehow connected with drugs.

Aimee and I had a room in the hospital that night. On Sunday morning, about 200 people came. We asked the hospital to let them in to say hello to Preston.

I took the first group of Preston's friends in and found myself saying, "This is what drugs are going to do to you." Nursing staff advised that I had better tone it down for the next group. That's not what I felt, I was angry that he had taken this drug, I just held onto hope that some miracle may happen and that my little boy was going to be ok.

Seeing all these kids coming in, some of them howling, it was so hard. Sunday was very busy – chauffeuring in all the friends and family to see Preston. We realised that day how much Preston had an influence on so many people.

We were aware of all sorts of rumors flying around. Rick [redacted] a local TV presenter and friend of the family telephoned us. We decided to do an interview with him. There were all sorts of out of control messages on Facebook. In the interview with Rick [redacted] we said we didn't know if drugs were involved.

On the Sunday night, Preston's blood pressure skyrocketed and his forehead became so swollen, we thought we were going to lose him. The hospital managed to control his blood pressure.

We were spending as much time as possible with Preston, just holding his hand, talking to him. I even gave him a sponge bath, given that it may be the last time I would get to be with my son.

On Monday, Preston had an MRI. More reporters were phoning constantly, we turned our phones off. The media started posting on Facebook, it was extremely exhausting and traumatic all at once.

A Doctor came in and sat in the interview room. He had a smile on his face. I thought it was going to be good news. It wasn't. He told us that Preston had died from a catastrophic brain injury – there was no blood flowing through his brain.

I asked "How do we know when to turn off the machine or to donate his organs?" The Doctor showed us an xray of a healthy skull and then Preston's skull. We could see that there was no blood flow.

The organ donor coordinator came straight in. We all agreed that was what Preston would have wanted. It seemed as if we were making a shopping list of what organs to donate. We decided that it would be his vital organs – heart, lungs, liver, kidneys and pancreas.

We said we wanted an opportunity for family and close friends to say goodbye to Preston. It was arranged that they could spend an half an hour with him on the Tuesday to say their last goodbyes.

Throughout Tuesday, people said goodbye. Wednesday was scheduled for operating. The three of us walked down to the theatre to say goodbye to Preston.

We kept the cast off his arm and some of his hair for keeps sake.

We then had to make funeral arrangements. A Service was held at Preston's school and over a thousand people attended. There were about nine hundred people at his funeral. Preston was very popular and well known.

He was an extrovert with a genuine heart. He once told me "mum I don't know anyone that I don't like, and who doesn't like me". At that time I just took what he said as being a show off. But it was telling the truth. He gave people guidance and wasn't judgmental. Preston was wise beyond his years, which I had relayed to me on numerous occasions.

He was always involved in sporting activities - football, little athletics, and baseball. We lived in the same area for many years along with living in the south west of WA for three years. Preston made many friends during his short life. His passing has affected a lot of people.

Vicki

The last two years have been extremely hard. I had an intense job as a Contracts Administrator. I went back to work after two weeks. After a year, my employer moved me into another role because I wasn't managing well. As a result, I had to learn a new job and have a $15,000 pay cut which added to my already very high stress levels. Just before my pay cut, I had bought a new house with partner.

I went to counseling. I had lost a whole lot of confidence, I was being micro managed. However, I decided it wasn't going to beat me. Fortunately, last year I was given a good manager and I feel things are getting back on track at work slowly. My partner is very supportive and our relationship has stayed strong.

I think I was numb for the first twelve months after Preston's death. In ways, 2014 was the hardest year, the numbness had worn off, and I was crying all the time. When things get hard, I withdraw, push people away. These feelings can be overwhelming on anniversaries.

I am very concerned about Aimee's well being and health. She spends most of the time in her bedroom. I worry that she has bottled up her emotions. She and Preston had a very good relationship; she was his nurturing big sister. As Preston grew up, he was her protector. They hardly ever fought.

Often I look at old messages from Preston on my phone. Generally I try to keep busy and not over think what happened to Preston, and life without him. We keep Preston's ashes at home. Sometimes I just hold his ashes and get his blanket and try to get close to him.

At other times, I get really mad - Why did it happen? Why did Preston do it? He had so much to live for. One stupid synthetic tablet cost him his life.

I have started a Facebook page - "Stop Synthetic Drugs Killing Our Teens" I provide updates on what's going around at the moment, what's out and about and associated deaths and/or catastrophic reactions.

I also do volunteer work for Donor Mate, targeting 15-35 year olds to consider registering to donate their organs.

Aimee

On the Saturday morning my Dad and I were going for breakfast at the beach and we decided to contact Preston to see if he wanted to join us, but we didn't get a reply. We saw an ambulance and police car and what looked like a body under a sheet. As we drove on, we seemed to have the same thought – that it might be Preston as he attended his leavers' ball the night before and was staying with a friend for the night that only lived a few streets away. We decided to turn around and make some enquires. That's when my life changed forever. I was told by his friends that Preston had totally lost control, out of his mind; he was on the veranda of the hotel and jumped from the first floor because he was freaking out about going down the stairs.

I am not much of one for crying. People say that I am "so strong" but I'm not. I just cry myself to sleep. I have lost all motivation. I miss my brother so much.

I have had the same job for four years. My employers are very understanding. They had met Preston and attended his funeral. There has never been a problem with my having time off when I need it.

I was always really close to Preston, spent a lot of time with him. I didn't have an ongoing group of friends. Preston was the consistent person in my life.

Often I feel depressed and suicidal, wondering what is the point? I saw a doctor who prescribed anti- depressant medication. I only took for about six weeks. I just want to see Preston be with him. I can be going along okay and then this deep grief just hits me, like a bolt out of the blue. I try to avoid burdening people with my emotions.

I have a lot of trouble sleeping and then I am sleeping too much. At home I am constantly reminded of Preston's absence. We used to stay up late together, watch movies, get takeaway. Now, it is just me.
I have no doubt in my mind, that had Preston not taken that drug which one of his friends had purchased off the internet Silk Road, he would still be alive today.

Signed: [redacted] _____ **Signed:** _____

Dated: 8/[redacted]/2015 **Dated:** _____

OUR PERFECT LIFE

After a scheduled morning meeting with my business partner I made comment that I felt this was going to be a great and rewarding year for both of us. Boy, was I wrong, this was the day of February [redacted] the night of Preston's Year 12 school ball. I remember coming home around 4pm, he arrived home shortly after. He had been to the beach and I asked him if he had been for a spray tan. He replied he didn't want to destroy a perfect body.

He was all excited and eager to get in his new suit for the big night. He had a glow about him, something that was always there but this had added excitement. He entered his room and I prompted him to hurry up as his mother was coming to get him to attend the pre ball photos. No doubt all his school friends would be waiting for him. I went back to the entrance of his room and found him glaring into his cupboard with both doors wide open. I walked over and on the top shelf in a perfect line I sighted all my aftershaves that had randomly disappeared over the previous months. When I asked the simplest of questions "what are you doing with all my after shaves?" I had a simple response "well it would be a waste on you if you used them." Simple in context, polite but true. That was Preston, he had an answer for everything.

At 5.30pm Preston was joined by a friend, they came out of his room both dressed immaculately, black suits, cocktail bow ties and those matching cheeky grins. The boys were ready for the night of their lives. They departed with Preston's mother for the pre ball photos. Before leaving I took a picture and arranged to pick him up from the ball at closing time.

Later that night I waited in the foyer at the convention centre and at 11.30pm he departed surrounded by many friends, this was Preston. A party or gathering was not the same if he wasn't there. The ultimate practical joker but the one that would stay

back and help the parents clean up. Preston was a sportsman, Record breaker in Athletics, Fairest and Best in Baseball, hockey, football, winning in most age groups of his sporting career. A Claremont Colt squad member, School captain, School prefect, Champion boy, he had it all. The envy of many, the one to beat.

On leaving the ball with the normal vehicle full of his friends we travelled to my house so they could get changed and off to the after party. I dropped them off at 12.30am and I remember my final words to him, stay safe ring me when you are finished and I will pick you up. His reply was simple, "Dad, what do you think I am an idiot." They were the last words that were spoken, I will never forget them.

At 3.30am I text him and he replied that he will stay at the house where the party was and help clean up in the morning. This was not uncommon for him.

At 9am my daughter Aimee suggested we go for breakfast. We decided it was such a beautiful morning that we would go to a café on the beach. This was an activity that we did on a regular basis. We decided to call Preston to see where he was so he could join us. We text him but had no reply. We rang his number but no reply. On driving along the main highway we came across Police cars and Ambulances at a popular beach resort. On the side driveway was what appeared to be a body under a white sheet. I remember saying to Aimee Oh my god I think someone has fallen from a balcony. Disturbed by this we attempted to ring Preston again but no answer. I kept driving to the café and suddenly a cold shudder crossed my body, I looked at Aimee and I said I think that was Preston. Aimee to my amazement agreed as she had the same chilling feeling. I turned the car around and drove back to the scene. The body was gone and the Ambulance had left. In attendance were several Police and some very familiar teenage faces. I crossed the road and all I could think was Preston just show your face, step out from behind a wall whatever, I didn't care. I looked into the eyes of one of his best friends and all I could see was him trying to say

Preston's name. I knew at that moment it was Preston. The local Police in attendance gave us the news that he had fallen from a two storey balcony and had suffered a severe head injury.

We left the scene and picked up Preston's mother from her home and raced directly to the Hospital. On arrival at the emergency section of Sir Charles Gardiner Hospital we were greeted by an entourage of medical staff, this vision did not look promising. We just wanted to see our son and Aimee wanted to be with her brother. We entered the ICU unit and here we saw this perfect specimen of a teenage boy on a hospital bed with tubes and wires going everywhere. He looked peaceful but lifeless. We stayed with him just sitting looking and shedding many tears. I remember thinking this is our boy, what the hell has happened. His vitals were stable, he remained lifeless but peaceful. I left his bedside for a few hours and I had to ask questions in relation to what happened to him.

A teenager that was with him in the morning said that one of the school students turned up at the resort and gave Preston and the other boys in the room tabs of synthetic acid. The teenager made mention that the boy that handed out the drugs said he bought them from Silk Road. I was wondering what suburb Silk Road was in. I was then told that Silk Road was a website that you can buy drugs from. Call me naïve but I had no idea that this was possible. I decided that after the heat died down I would investigate more. Throughout the day we had an entourage of friends and family coming to see him. We allowed family and some close friends to visit his room but kept it to a minimum. I decided to remain with Preston during the night.

At 5.25am the following day I remained next to his bedside and I could hear the sounds of loud constant beeps, this seemed a concern to the nurse in attendance. I remember asking what that noise was, she hesitantly replied that was his blood pressure. As I glanced over to the machine and noticed the reading was increased to 252 over 230 this couldn't be good. I placed my hand on this forehead and it felt like it was about to explode. It was at this point I caught a glimpse of the nurse; she made an

indication to a colleague with a slight shake of her head. I knew at this point Preston was not going to survive. Again, this vision will remain with me forever. I was asked to telephone Aimee and Preston's mum and ask them to come to the hospital. They joined me a few hours later and we remained with him. At this point his blood pressure had returned to normal and now I was totally confused.

Preston was moved to a room to allow privacy for family and friends. We had many updates on Preston's condition over the course of the day but unfortunately nothing overly positive. At around 11am we were told by one of the nursing staff that a group of Preston's friends and parents were gathering in the waiting area. To my surprise the automatic doors opened and I was greeted with a packed house. 120 to 150 people had gathered waiting for news. It was then decided that we let his friends visit his bedside. We allowed groups of 8 to visit him at each time. This wasn't the easiest decision for us to make but it served a purpose. The teenagers had the chance to see what happens when things go terribly wrong. I have never experienced a tragedy in this way and the sadness that was seen in the eyes of his close friends will never leave my memory. As teenage friends, parents and family were leaving the room they struggled to handle their emotions. This was a truly unbelievable sight. We stayed on through the night with Preston, with regular visits from family and friends. Many teenagers changed their clothing so they could be in disguise,so they could return to see him that one last time.

I stayed with Preston during the night just waiting for a positive sign but it did not happen. I remember clearly falling asleep for a few hours and when I woke I stared up at the ceiling and thought where the hell am I? I glanced over my right shoulder and saw Preston's head only a few feet away. The reality hit me so hard I cried uncontrollably. This was my beautiful son and he shouldn't be the one. I have always believed that children should outlive their parents and I was of the belief that this was not going to happen. It fascinates me when your mind can think like that in tragic circumstances.

Monday [redacted] February will always be a day I would like to forget. We were called in to a meeting room and greeted by the head nurse and the leading surgeon of the ICU. We were given the news that no parent will ever wanted to hear. Preston was pronounced brain dead at 3.48pm on this day. I remember looking at my daughter Aimee and trying to think what do I say, she has just lost her brother and I my son. You want to be angry but you cannot. What now, what do we do, it was all so surreal, he is no longer here, gone never to be seen again. The next decision was one of the easiest that my family had to face, the donation of Preston's organs. We were asked the question and immediately we responded in favour of it. If his life can save others this is exactly what Preston would want. The paperwork was completed and we agreed to all organs that are life saving to be made available. I remember going to the waiting area and stood there trying to explain the news of Preston's death to our immediate families and close friends. This was one of the most difficult times that I can remember. We had the pleasure of having Preston with us for two more days, they were the most precious days and I will always remember them. We allowed more visitors to see him but a decision was made that on the Wednesday morning before they took him away it would only be his mother, Aimee and myself with him.

On Wednesday at 11.45am it was time for Preston to leave. The surgeons from another hospital were in attendance and waiting in anticipation for Preston to be delivered. I remember walking beside him and as they pushed the bed past the waiting room I saw the faces of our friends and family as he left the area. This was the last time they were going to see him. We travelled in a lift to a designated floor where surgeons were waiting to operate. It was overwhelming to see the nurses that looked after Preston shedding tears. Everyone was emotional and I could only think that he touched their hearts in a different way, the only way he knew how to, just being him. It was obvious from the amount of visitors he had at the hospital it had an effect on many. This was the last time we were to see him. We said our

emotional goodbyes and returned to where our family was waiting.

That night was my first night home, I slept in Preston's bed. I just kept thinking this could not be happening, but it was and it was real. I had many tears that night and cried uncontrollably. It was not fair, not him, he did not deserve this at this young age.

Over the next few days we had meetings with the senior staff of Churchlands High school. They kindly offered to have a memorial service at the school on the day of our choosing. Over 1400 people attended the service and later that day we held a cremation service at Pinnaroo where a further 700 attended. The crowd was that big it flowed to the edges of the car-park.

Since the funeral many things have happened, football clubs playing for the Preston [redacted] Cup, tree planting service at the school, it has been so overwhelming.

Now I had to focus on something to take away the pain.
While waiting for the Council approval of a café I had time to reflect on the Silk Road issue. I could not believe that a website could sell drugs and not be closed down. To my disbelief it was true, the site could not be closed down due to some very advance software. This site was the conduit for selling drugs which allowed dealers and buyers to connect together to complete anonymous transactions. The more I considered it the more I blamed this Silk Road site. The site was responsible for my son's death. I will not allow this to happen to another family again. I had two choices in front of me, educate teenagers of the dangers of this website and the dangers of cheap and nasty drugs and show them the real reality of life and how it can destroy lives and families.

I have campaigned vigorously in Australia against this site and finding out about the arrest of the director of Silk Road, Ross Ulbricht brought many tears. I will still continue to campaign against these terrible sites as they are nothing but evil.

The Silk Road web site has been responsible for many deaths globally. You can buy any drug that you desire with no quality control. Ross Ulbricht does not know what is sold on his site, he does not care, it is all about money and greed. He shows no remorse regarding his actions and continues to try and convince everyone of his innocence.

At last Preston's Café has now been completed and we have now opened the doors. The venue will be for family and friends and the public to come and enjoy the atmosphere and celebrate Preston's short but most amazing and wonderful life. He was a true gift and words would never do him justice.

Life goes on in some ways but it is quite clear that the pain will never leave me, it will always remain, I now have no option but to try and manage and live with it.

Every night I go to bed crying and I must wake up and remind myself that I have a beautiful daughter who needs me even more than ever now.

I will never be able to understand what happened that night, my son is not a drug user and maybe peer pressure was an issue. The only issue I have is that if Silk Road did not exist then Preston would still be with us and for this reason I will continue to campaign against these Evil web sites.

Every day we are reminded of Preston in some way, those beautiful moments are now gone and we are only left with disbelief, sadness and despair and memories. As a human being I have always been scared of death but in some way when it is my turn to go I will be at peace. I know longer worry about death as I will hopefully one day be united with my beautiful boy. Rest in Peace my little buddy. DAD

Signed [redacted] 11[redacted]15

FD166

STATEMENT OF WITNESS

Statement of Witness: **Michelle** [redacted] Age: **Over 18 years**

This statement, consisting of 7 page(s) signed by me is true to the best of my knowledge and belief. I know that this statement may be accepted in evidence in the Coroner's Court of South Australia and that if it contains material which is false or misleading in a material particular and which I know to be false and misleading I will be guilty of an offence.

Dated the 8th day of APRIL 20 15

Signature: M [redacted]

Witnessed by: SCOTT [redacted] (name)

of C/- SAPOL (address)

Signature of Witness:

Relative to the death of:

Jacob [redacted]

I provided this statement to Detective Senior Constable First Class DAVIES ID no. [redacted] on Wednesday the 18th of March 2015.

I am the mother of Jacob L [redacted]. He passed away on Thursday the 14th of February 2013. I have been asked to provide a statement in relation to how Jacob's death has affected me.

Signed: M [redacted] Signature Witnessed by:

South Australia Police
STATEMENT OF WITNESS

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Continuation of Statement of: **Michelle** [redacted]

Life with Jake was anything but ordinary or normal. We had the funniest and the saddest moments possible. The last few years of Jake's life were not easy. He went on a journey that took him to some dark places with consequences that on occasions almost and eventually took his life. He had an addiction. An addiction that was fuelled and enabled by many demons. One of which was the internet. Silk Road. What he (like many other people with addiction) did not understand and he refused to acknowledge is that he took me with him on this journey. It was a journey that I did not ask to go on. It was a journey that we worked together to end many times but without success. On the 14th February 2013 Jake started me on a new journey. One that did not ask to go on nor do I want to be part of.

Now I am left with a life sentence for a crime that I did not commit. Grief. I am left to spend the rest of my life wondering. Wondering why he started. Wondering why he could not stop. Wondering what pain or trauma was he trying to forget. Is it my fault? Was I a bad parent? Where did I go wrong? Did I do enough to help him? Did I do enough to stop him? Why wouldn't he listen to me? Why do I have to go through this? What did I do to deserve this? Why has this happened? Why me? Why Jake? Why me? Why Jake? It seems I am condemned to life of endless questions that I will never get answers for.

Shame and guilt. Telling people about Jake's journey and how he died is a conversation killer. People do not know how to respond. They just do not know what to say. Instead they judge. They judge me as a person and they judge me as a parent. "Oh well, she must be a druggie too". "Well he was from a single parent family and we all know what that means". No one has said this to me but I know people are talking and will continue

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STATEMENT OF WITNESS

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Continuation of Statement of: **Michelle** [redacted]

to talk. It feels like society does not care. People who die from a drug related death are not reported on the news but it is a tragedy, and yet a story people do not want to hear. People do not want to hear that everyday someone lost their precious daughter or their loving son. All over the world is the sound of hearts breaking and yet nobody can hear it. A heart like mine. There is no organisation that swoops in on your family and offers support like it would if your child died of cancer. People offer their condolences, send you flowers and then promptly get on with their lives. I am left standing. Feeling very alone wondering how do I get on with mine. How do I pick up the pieces of my shattered heart and live a long and happy life? What does happiness mean now? It is something that I struggle to redefine.

Although Jake passed away just over two years ago, my grieving started a long time ago. I had to learn to live with the fact that Jake would not grow up to be the man I thought he should be and had the potential to be. Living with a loved one who's life is spiralling downward at a fast pace is an incredibly difficult journey to be part, particularly when you feel like a bystander. Someone watching. Trying to reach out and doing everything you can yet feeling like a bystander. The approach I took to protect myself from the emotional pain was to manage. Manage his behaviour. Put in boundaries. Stop enabling. This resulted in me asking him to move out of home all the while knowing he had nowhere to go. The feelings of anxiety and guilt and are indescribable. This went against my belief that my job as a mother was to protect and provide a good home. There were times I did not hear from him for days or weeks and then it would get to a point where I had to know, so I would go looking for him. The fear that he had turned to crime and was living on the street made me feel sick. Physically sick. Endless days of nausea. Waiting for the knock on the door. Fortunately, this never happened and the

South Australia Police
STATEMENT OF WITNESS

Continuation of Statement of: **Michelle** [redacted]

boundaries and rules that I put in place meant that home was a safe place for Jake. And when he needed a break, when he needed time out – he came home. When he asked to move home, for what would be his last few weeks, I said yes, but the boundaries and rules remained. He came home for help. One more try to get this monkey off his back.

I decided that I would never give up on Jake. Statistics tell me that I should have. Cut your ties, count your losses and keep yourself safe. But if I gave up, then who would believe in him, who would believe that he would get through this, who would be there for him when he was ready? The to-ing and fro-ing in my head resulted in days when I could not work because the anxiety got the better of me. Over time I realised it had to be me. I was the one that had to be strong and I vowed to do everything I could to help him. Enjoy the good times and manage the bad. I set a benchmark myself – could I stand up at Jakes funeral and feel confident that I had done everything I could to help him. Not once believing this would become the reality.

Forgetting and remembering. I loved Jake through the good times and bad and I do not want to forget any of that. Grief has had a huge impact on my memory. And yet I cannot forget what it felt like when I found him the night he died. I cannot forget how it felt to ring my sister, ask my neighbours for help, to face my family and Jake's friends. I cannot forget the level of heighten anxiety when I see people for the first time since he passed. Do they know, do they not know, what will I say if they ask me? At the moment I seem to remember more of the bad then the good. I hope my memory recovers and the good comes back.

Signed: [signature] Signature Witnessed by: [signature]

South Australia Police
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Continuation of Statement of: **Michelle** [redacted]

Jake was my family. I lost my family in one night. I have not had the opportunity to have more children and I did not mind because I felt complete. I had my family. I had my Jake. Now I feel incredibly incomplete. When I die that is the end of me. There is no part of me left in the world. When I grow old, who will go with me to doctors' appointments? Who will visit me in the nursing home? I am most hurt knowing that I will not have grandchildren, a part of my life I was most looking forward to. The truth is that in the last few years of Jake's life, he caused me so much pain and suffering. Now, I would give anything to have that back. I would give anything for him to walk through that door. I would give anything to not know where he is and if he is ok. I would do anything to be sitting in the hospital's intensive care unit again waiting for him to wake up from an overdose. Anything. It was hard. A very difficult time, yet easy compared to this. This grief.

Losing Jake has also affected my wider family. My sisters lost me (to grief) for a while and still do some days, as I just cannot love and support them the way I used to. My parents lost their first grandson. They played a major role in raising Jake and they were very close. Jake's passing is something they may never fully understand as addiction is not discussed by their generation, nor do they understand the power of the internet. My father initially suffered from heart failure and a mild heart attack following Jake's death which resulted in a couple of weeks in hospital each time. Both Mum and Dad now suffer from sleepless nights that they cannot explain and overall their general health has suffered. I can explain. It is called grief.

Both of my sisters have suffered from the anxious moments that I have experienced, what will I say? How do I say it? They too have had to take days off work when the grief

South Australia Police
STATEMENT OF WITNESS

Continuation of Statement of: **Michelle** [redacted]

has become too much. I have a young nephew and niece. They have had their world turned upside down. Their cousin, who they loved dearly, has gone from their lives. Their mum, my sister, has had to have conversations with them that no parent should have to. She has had to have discussions about suicide (as this is what people think when young people die suddenly), drug addiction and then finally the truth. My nephew and niece are at a loss to explain to their friends why they did not come to school, they struggle to explain who the person in the photos is. They have suffered multiple unexplained emotional outbursts, separation anxiety and sleepless nights. But most of all they just miss hanging out with Jake, playing Xbox, watching movies and we all miss his sideways hugs. Grief has invaded my whole family and taken so much.

Grief is like roller coaster. I do not know what is around the corner. I do not know what is over the next rise and I cannot get off, I am trapped. What I do know is that grief hits you from nowhere. There you are busily getting on with what your life and then bang. It's a smell, a song, a t-shirt, a colour, an expression, a person, a memory. It comes out of nowhere and leaves you flat for a moment, a day or maybe a week. People think that the anniversary or a birthday of someone who has passed is a day. The reality is for me is that it lasts for weeks. The anxiety slowly builds up. What will I do? How will I feel? Who do I want to be with? Can I go to work today? The day comes and it is gut wrenching. Shattering. A day to think about what I have lost. Those thoughts are there every day. It is on these days I cannot put it in a box and close the lid. Once the lid has been opened, I have no choice but to deal with it, usually this means for weeks at a time. Grief fills my head. I cannot work. I cannot socialise. I can only breathe and sleep. It becomes my life.

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Continuation of Statement of: **Michelle** [redacted]

I was often fearful that a stranger would knock on my door seeking money that Jake owed or looking for drugs. I was at times fearful for my safety. As it turns out, I should have been more fearful of the internet. The internet makes it too easy. Silk Road made buying and selling drugs safe. Buying drugs over the internet eliminated the risk of threat. The risk of being robbed or physically hurt. It eliminated the risk of meeting a stranger in a dark alley. All things Jake was fearful of. In fact, Silk Road meant that Jake did not even have to leave the comfort of his home. My home. The home I had created as a safe place. Drugs are not tolerated. I find, I flush. Not in my house. This behaviour is not acceptable. Then Silk Road walked in. Uninvited. Providing a platform that preys on the weak and vulnerable. A platform to bring illegal activities into my home. It is not ok. In fact, it is not fair. My loss will always be greater than yours.

I turned 40 the year Jake passed and my friends kept telling me to have a party and that I should celebrate. All the while I was thinking that if I was turning 40 and lived to 85, it would be 45 years I would have to live without Jake. I would have to live with this 'grief'. I did not want to celebrate. I barely remember my life before Jake entered it and the thought of living without him is overwhelming. What I do know is that life without Jake will continue to be anything but ordinary and normal.

Signed: _____ Signature Witnessed by: _____

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION
29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006
TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL

LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

May 27, 2015

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted on behalf of defendant Ross Ulbricht, in response to the questions posed in the Court's May 20, 2015, Order (Dkt. #249), regarding the mitigation materials relevant to Mr. Ulbricht's upcoming sentencing this Friday, May 29, 2015. Those responses are as follows:

1. ***Can defendant provide the Court a complete copy of all of Dr. Caudevilla's communications with DPR (including, but not limited to, his weekly reports and private messages)? Defendant has attached two excerpts at Exs. 6 and 7 to the Lewis Declaration; the Court would like a complete set.***

Unfortunately, it is not possible to provide the Court with a complete set of Dr. Caudevilla's communications with DPR. These communications were not produced by the government in discovery, and after a thorough search, do not appear to have been formally preserved elsewhere either. Accordingly, all communications between DPR and Dr. Caudevilla submitted to the Court as Exhibits 6 and 7 to my May 20, 2015, Declaration were provided to us directly by Dr. Caudevilla, who had saved a select number of his communications with DPR prior to the October 2013 closure of the Silk Road web site.

Since our May 20, 2015, filing, and based on the Court's request for a complete copy of

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communications, Dr. Caudevilla has located a few additional weekly reports to DPR, which we have attached hereto as Exhibit 1, and has advised us that he does not have any additional communications in his possession. Thus, as of this letter, the Court has all preserved communications between DPR and Dr. Caudevilla of which the defense is aware.

2. ***In the Declaration of Tim Bingham, he states, "I did not encounter a single customer whose first drug purchase was on the Silk Road website." (Bingham Decl. ¶ 6(f)). What is this based on? Was there a specific question posed in this regard? Please provide the Court the [form of] questionnaire.***

I have spoken with Tim Bingham and he has informed me that his statement that he "did not encounter a single customer whose first drug purchase was on the Silk Road website" was based on the responses he received to his "buyers questionnaire," attached hereto as Exhibit 2, that he circulated while conducting his research on Silk Road.

Indeed, there were several questions in the "buyers questionnaire" which would have revealed first time users and/or confirmed prior drug purchases and use, including the following:

- "Length of Drug using History;"
- "Repertoire of Street Drugs Used;"
- "Patterns of Prior Use;"
- "Favourite Street Drugs;"
- "Favourite Settings for Street Drug Use;"
- "Year when commenced using Internet drug sourcing. Why?;"
- "When did you first starting using Silk Road? Why?;"
- "Why do you purchase drugs from Silk Road as opposed to a street dealer, or as opposed to other drug sites on the web?;"
- "Have you found drugs and bought on the site that would not be available in your area?;" and
- "Do you use any street drugs now? If yes, Why? If no, Why?"

See "Buyers Questionnaire (Exhibit 2).

—***Similarly, what is Bingham's conclusion in ¶ 6(j) based on? (See Bingham Dec. ¶ 6(j) ("I also did not encounter any Silk Road user who would have stopped purchasing drugs entirely if unable to do so on Silk Road."). Please provide the Court the [form of] questionnaire.***

Mr. Bingham informed me that his statement that he "did not encounter any Silk Road user who would have stopped purchasing drugs entirely if unable to do so on Silk Road" was also

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based on the responses he received to his "buyers questionnaire" (Exhibit 2), while conducting his research on Silk Road.

In addition to many of the questions bulleted **ante** in response to Question 2, answers to the following "buyers questionnaire" questions would also have revealed that a particular buyer would have continued to purchase drugs elsewhere if unable to do so on Silk Road:

- "Do you use any street drugs now? If yes, Why? If no, Why?;" and
- "What are your future intentions around purchasing and use of drugs on Silk Road?"

See "Buyers Questionnaire" (Exhibit 2).

—Relatedly, in footnote 2, Bingham states that certain drug users found that "Silk Road provided them the opportunity to try drugs they would otherwise not have known to try or had access to." (Bingham Decl., at 4 n.2). Does Bingham's conclusion in ¶ 6(j) take new/introductory usage into account? In other words, if a user had only tried 2C after learning of it on Silk Road, did that user indicated that he/ she would continue to purchase drugs elsewhere if unable to do so on Silk Road?

Based on evidence that emerged through the "buyers questionnaire" (Exhibit 2) and Mr. Bingham's own interactions on the site, it is Mr. Bingham's position that even if a user had only learned of and ultimately tried a drug as a result of Silk Road, they would nonetheless seek to purchase that drug elsewhere if unable to do so through Silk Road.

3. ***Bingham references violence/ safety concerns expressed by respondents. Were these concerns expressed by users or sellers or both (e.g. safety at the wholesale or retail level)?***

Mr. Bingham has informed me that violence/ safety concerns were expressed primarily by users, not sellers. In this regard, he also included his "Vendors Questionnaire," attached hereto as Exhibit 3.

4. ***In reaching their conclusions as to Silk Road's safety, did Bingham and Ralston consider DPR's commission of murders-for-hire? Is that relevant to their conclusions in this regard?***

I have communicated with both Meghan Ralston and Tim Bingham regarding the bases for their conclusions as to Silk Road's safety. In regard to the Court's inquiry, Ms. Ralston responded,

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> it is my understanding that [the murder-for-hire] allegations remain uncharged in the Southern District of New York and that Mr. Ulbricht has neither been tried nor convicted for any crimes outside of those of which he has already been found guilty. I therefore did not consider the allegations when assessing the harm reduction and safety aspects of the site for people who buy or sell drugs. My opinions about the harm reduction merits of the site are based on the function and workings of the site itself. Nonetheless, were Mr. Ulbricht to be convicted of additional crimes, it would not change my opinions about the harm reduction merits of the website itself.

Mr. Bingham, likewise, responded that his "observations were focused on the findings of [his] study which related to user experiences on the site and harm reduction and not to the facts of the case."

Accordingly, the uncharged, unproven murder-for-hire allegations did not alter the conclusions reached by Mr. Bingham or Mr. Ralston regarding Silk Road's safety. Nor did the allegations appear to be relevant to their particular analyses.

5. ***Dr. Caudevilla states in ¶ 10 of his declaration that, during the seven months of providing advice on Silk Road, he never came across a single report of a Silk-Road related overdose. Did he consider whether the posts of a number of users describing symptoms could have related to non-fatal overdoses (e.g. oldcactushand's post dated May 31, 2013)?***

In response to the Court's inquiry as to whether Dr. Caudevilla had considered posts regarding non-fatal overdoses when he declared that he "never came across a single report of a Silk-Road related overdose," Dr. Caudevilla provided the following answer:

> [i]n the statement "I never came across even a single report of a Silk Road-related overdose" I meant "lethal, fatal overdose." In any case, I do not remember [having] heard about SR related deaths in the forum and there [is] no data about this in DoctorX's thread.
>
> I have reviewed my thread[,] searching for non-fatal overdoses, or relevant acute toxicity cases . . . including the answers that I gave. [*See* relevant cases/ portions of DoctorX's thread, attached hereto as Exhibit 4].

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While acknowledging that "information provided through an e-mail system is very limited and in many cases does not allow [for] definitive conclusions" Dr. Caudevilla provided the following commentary and analysis as to six of the nine potential (non-fatal) overdose cases indicated in his thread, and which are included in Exhibit 4 to this letter:

> CASE 1 is a user who has been using new synthetic drugs "during two years." Substances like 4-MMC, methylone, 4-FA, 4-EMC or MXE were easily available through the Internet, outside SR.
>
> CASE 2 is an unusual reaction to LSD, as epileptic seizures are not a common LSD toxic effect. It is not clear if the episode was really a "seizure" or if it was related to drug use.
>
> CASE 4 seems [to be] a psychiatric disorder that worsened after a single DMT experience, but there are symptoms before use of the substance.
>
> CASE 5 refers [to] . . . respiratory-cardiovascular symptoms that could be (or not) related to illegal drug or nicotine use.
>
> CASE 6 is a depressive acute episode after a high dosage of cocaine. It is the unique case in which the user refers [to having acquired the drug on Silk Road].
>
> CASE 7 refers to an unavailable page of the forum[.] It seems [to be] an acute ketamine intoxication but I do not remember any data.

Dr. Caudevilla also noted that "the thread reviewed is the 'public' part of the forum but [he] also provided advice through private messages (around 100-150). These messages are unavailable (although topics covered are in the reports sent)." *See* Exhibit 1. Nonetheless, Dr. Caudevilla reported that he "do[es] not remember about any death or fatal overdose in these messages."

He does, however, "remember once . . . assessing a person across instant messages whose girlfriend had suffered an acute reaction." He does not "remember details of the story but it is described in [an article], which notes that "[o]ne Silk Road member, Trust In Us, wrote that his girlfriend had overdosed and contacted Caudevilla who happened to be online at the time: 'He gave her the directions she followed and lived.'" *See* Eileen Ormsby, "Fernando Caudevilla: Spanish Doctor Advises Drug Users on the dark web's Silk Road," *The National* (October 20, 2014), available at

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http://www.theage.com.au/national/fernando-caudevilla-spanish-doctor-advises-drug-users-on-the-dark-webs-silk-road-20141020-118lfi.html.

None of the communications indicate that the girlfriend of the person who contacted Dr. Caudevilla, and who suffered the overdose, obtained the drugs that caused the overdose from any vendor on the Silk Road site. Thus, it is just as likely that the resource provided by Silk Road via Dr. Caudevilla's expertise and guidance saved the life of a person whose drug crisis was not the result of purchases from a Silk Road vendor.

In addition, Dr. Caudevilla notes that he has "been involved in on-line assessing [of] drug users for 10 years and it is a bit difficult for [him] to remember every case."

Respectfully submitted,

Lindsay A. Lewis

LAL/
Encls.

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

0613

Etizolam and GHB cross tolerance
Moclobemide and amphetamine interaction
Steroid selection and dosage
Phenelzine interactions with drugs
Candyflipping dosage questions
Adulteration of drugs
Phenibut adverse effects and dosage
Ketamine intoxication
Viagra adverse effects
LSD dosage and long-time risks

PM:
Cocaine risk of nasal septum problems
Hyoscine buthybromide and scopolamine differences
Auto-medication with amphetamines
Methylone general information
LSD and risk of seizure in a epileptic man

1319

Differences between 4-AcO-DMT and 5-MeO-DMT
Benzodiacepines and driving skills
MDMA and terbinafine interaction
MDMA and piracetam interaction
Long term effects of 2C-X-NBOMe
Neurobiological aspects of "rush"
Paranoid reaction to cocaine
Long term effects of 2C-X-NBOMe (II)
Spiritual use of psychedelics
Morphine detoxification using buprenorphine/naloxone
LSD microdosing
Drugs for lumbar pain
Oxycodone as antidepressant
Alpha-lipoic-acid as neuroprotective for MDMA
5-HTP and green tea extract for MDMA neuroprotection
Cannabis use and flu

PM:
Testosterone dosage
3-MMC toxicity
Oxycodone as antidepressant

1622

Effects of Growth hormone analogs
Damage of GHB use in night
Use of vaporizers (cannabis)
Dosage of Dextroamphetamine
Effects of melatonin and 5HTP
Dosage of DMT
DMT and psilocybin cross-tolerance
Carcinogenic potential of nicotine
Benzodiacepines withdrawal and anxiety
Cardiovascular training and cocaine
Effects of low dose weed
Cocaine and antihypertensives
Benzos and amphetamine interactions
Rick Simpson's Oil
Methylphenidate dosage
Cannabis and bipolar disease
Neurotoxicity of 4-fluoroamphetamine
Amphetamine and ADHD

PMs:
IV use of crushed OxyContin
Midazolam negative effects
Heroin and diabetes
Flunitrazepam dosage
Methamphetamine dependence potential
Irritable bowel syndrome and psychedelics

2330

Cocaine and cardiovascular risk
Drug use and risk in teenagers
Neurotoxicity of 2C-E and AMT
Drugs and anxiety
Emergency drugs for acute intoxication
Pre-treatment with antihypertensives before stimulant use
Lisdexamphetamine and cocaine combination risks
Clonazepam detoxification
Heroin withdrawal and kratom
Modafinil and mental health/neurocognitive effects of cannabis
Dependence potential of ketamine
LSD, DMT and psilocybin neurotoxicity
Heroin withdrawal and further use of heroin
LSD and major depressive disorder
Persisting nausea after high dose of MDMA
Psychedelics and vegeto-vascular dystonia
Physical effects from opiates

PMs:

ADHD and cannabis
Heroin tolerance
Flunitrazepam recreational use
Fluoxetine treatment and cannabis use
Steroids adverse effects (oxandrolone)
Cocaine and cardiovascular disease

3005

Cocaine as a cognitive drug enhancer
DMT and psychiatric disorder
2C-T-2 and 2C-T-7 neurotoxicity
Fentanyl detection in urine
Psychological discomfort on stimulants
Physical side effects of opiates
Time to inject after preparing syringe
Idiopatic intracraneal hypertension and MDMA
Ketamine as antidepressant
Mortality rates from MDMA
Rectal administration of amphetamines
Mechanism of action of amphetamines and cocaine
Pupilar assimetry while on drugs
Candyflipping dosing and timing
Risks of aluminium foil

PMs:
Oxandrolone dosage for muscular gainings
Heroin and risk of seizure in epileptics.
Ephedrine for losing weight
Solubility and stability of cocaine in water
Lethal dose of pentobarbital

Buyers questions

Participant Details

Age

Gender

Employment

Type of Drug User (ie. Psychonaut)

Length of Drug using History

Repertoire of Street Drugs Used,

Patterns of Prior Use,

Favourite Street Drugs,

Favourite Settings for Street Drug Use

Year when commenced using Internet drug sourcing. Why?

Had you used other internet information source sites prior to selecting Silk Road?

If yes, which ones?

If yes, what was your experience of the other drug information sites (ie erowid, bluelight etc)?

Which sites do you prefer and why?

Silk Road

When did you first starting using Silk Road? Why?

Why do you purchase drugs from Silk Road as opposed to a street dealer, or as opposed to other drug sites on the web?

Who introduced you to Silk Road?

Can you describe your experience of using Silk Road?

Can you describe how you purchase drugs off Silk Road

How do you make choices around which drugs to buy from Silk Road- for example is it influenced by Chat forums reporting favourably about a particular drug?

Have you interacted with other users on the Silk Road Forum?

From whom do you get advice and information around optimum dosing? Is this from other cyber users?

Have you found drugs and bought on the site that would not be available in your area ?

Have you had any negative experiences with drugs bought on Silk Road?

Do you feel part of a drug using web community?

Do you use drugs with others or alone? Why?

Does the purchasing of drugs on the Internet facilitate solitary use?

Do you feel safer buying from silk road ?

Can you describe any negative effects of drugs bought on the internet when you use them, and afterwards? Is this the same for drugs bought on Silk Road? (short and long-term effects)

What is your opinion on the rapid growth of designer drugs fuelled by web retailing?

Do you think it promotes drug consumerism?

Do you feel your experience as drug connoisseur helps you make your choices around purchase and use of Internet drugs?

Do you pay any attention to product labelling, and do any products you buy have health warnings on outer or inner packaging?

Has a packages ever been seized by customs and excise ?

Do you keep your internet drug use a secret from friends?

Do you use any street drugs now? If yes, Why? If no, Why?

What are your future intentions around purchasing and use of drugs on Silk Road?

What's your opinion on the security browser permitting access to Silk Road?

Vendor Questions

Gender

Age

18 – 25

25 – 30

30 – 35

35+

Employment (ie full time on SR or other employment)?

What drugs you sell ?

What year did you start selling on silk road ?

Who introduced you to Silk Road?

Were you selling drugs before Silk Road (example street seller or via another website) , if yes are the drugs your selling now different ?

How easy or difficult was it for you to get started with Silk Road

How do you ensure you maintain a customer base

Have you seen a growth in sellers on silk road

How do you compete with competition on silk road

Do you sell on the street as well as Silk Road ?

Do you use the same supplier ?

Have you ever had to change supplier ? if yes why ?

How do you ensure the quality of the drugs ?

What is your motivation to maintain quality, consistency and basic safety standards for your buyers ?

Do you interact with others on the forums ?

Had you used other internet information sites prior to selecting Silk Road?

Do you purchase off Silk Road ?

Whats your opinion on the BTC ? ie does the fluctuation in the valuation of the currency concern you

Would you sell to a person with under 5 previous transaction if no why ?

If you were allowed to sell without the fear of prosecution would prefer to sell other drugs? if so what would you prefer to sell ?

In your opinion has silk road made drug use safer ?

In your opinion would regulation of the 'drug market' make drug use safer ?

In your experience, what are the advantages and disadvantages of selling drugs using Silk Road compared with (a) other websites, (b) traditional drug markets?

CASE 1

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: jorgecassio on 15 May 2013, 02:47:34

I got a question, mainly about research chemicals and their long-term effects. I've dug up as much info as I can on it (online, bought a $130 book on toxic pharmacology, etc.) but still have questions about persistent symptoms I'm having. I used to use 4-MMC, methylone, 4-FA, 4-EMC, and MXE with my use spread out over a 2 year period in small quantities. Apart from the 2-3 times I've gotten out of control with 4MMC, I was pretty good about using everything carefully and only tiny doses, only bought 8g total of any of this stuff, as I was broke back then and RC's were cheap and plentiful.

Anyways, currently I have permanent bruxism and problems with my vision. What made me quit was when I started seeing floaters and swirls of light in my vision 24/7 after a night of methylone, whether my eyes are opened or closed, I still see things. I tested 2 anti-psychotics out recently (seroquel and lamictal), and they make the swirls away, so I think I've been hallucinating for a long time now without realizing it :-\. I'd like to know if I should be concerned about any brain damage or possible mental health conditions down the road and how to mitigate any potential risks. I longer mess with RC's or any dodgy/illegal stuff but I do still drink beer from time to time. Thanks.

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: DoctorX on 16 May 2013, 11:27:13

We have discussed previously in this thread about the potential harms related to RCs. There is little experience with substances like 4-MMC, methylone, 4-FA, 4-EMC, and MXE.It is not clear if 4-FA is neurotoxic or not. MXE is clearly related with reversible cerebellar toxicity and cathinone derivatives are known to cause problems, although they are so new and experience is so small that it is impossible to know what are "safe" doses.

http://www.ncbi.nlm.nih.gov/pubmed/22108839

http://www.ncbi.nlm.nih.gov/pubmed/22578175

If your problems are persistent I think you should search for direct, personal and professional attention. We can´t give advice through Internet about if you need exams or treatment, but if symptoms persist after weeks of abstinence I think it would be important to search for help.

CASE 2

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: oldcactushand on 29 May 2013, 13:43:11

This is really great work. Thanks a lot for this thread DoctorX.

I made a thread about my friend having a seizure after taking LSD, followed by a period of semi-consciousness and then an intense migraine and vomiting. I now believe it was a panic attack set off by a bad trip, but I know my friend would love to hear your opinion.

http://dkn255hz262ypmii.onion/index.php?topic=165311.0

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: DoctorX on 30 May 2013, 16:24:39

It is very difficult to know what can exactly have happened. It could be a panic attack. But it is very uncommon that a panic attack causes a complete lose of consciousness. The sequence (short time of complete lose of consciousness followed by a post critic state with symptoms) could correspond to a seizure (epileptic-like). I can´t confirm it 100% but it sounds possible to the story, as I have read in your thread. If case she is taking LSD or stimulants, she should be careful with doses, stay with someone else and consult to a doctor if something strange happens

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: oldcactushand on 31 May 2013, 11:51:29

Thanks for taking the time to read my thread. My understanding of epilepsy is that everyone has some sort of seizure threshold, and potentially can have an epileptic fit. I know she was complaining of it all getting too much, she said everything was just rushing at her eyes and there was way too much to take in. This was when she said she couldn't see, and I believe it was getting too much even when her eyes were shut.

Is it possible then that the hallucinations she experienced were powerful enough to set off an epileptic seizure in someone with no history of epilepsy? If so, does this mean she will have a lower seizure threshold in future? I know she's not going to jump back in on the same dose of LSD straight away, but if she was to take a similar amount, is there a good chance the hallcuinations would again become too overwhelming? I know you won't be able to answer such questions with any certainty, but I value your opinion.

My theory regarding her lack of consciousness (if it was a panic attack), is that she had a panic attack just as she experienced ego death, the experience of ego death rendering her seemingly un/semi-conscious. She was in the fetal position, and would move intermittently. She would make noise, and would be able to communicate with me but could not muster up the effort to say many actual words. There is no doubt she experienced ego death during this period.

I am certainly not trying to challenge your knowledge or opinion which is much more credible than my own, but is it actually possible that fear could trigger an epileptic seizure? She fell to the ground screaming, and this was preceded by a very definite increase in stress and fear and panic. I have never seen someone have their *first* epileptic seizure though... is it possible

that someone would get very scared as they began to experience the prelude to an epileptic seizure?

On a side note, there were no flashing lights and it was actually getting progressively darker at the time. If it was epileptic, do you think her not being able to see (except hallucinations) was an early symptom of the epileptic attack set off by an unknown cause, or is it more likely to be the cause itself?

I've probably repeated myself a bunch of times there, sorry. She is perfectly fine and happy now and had a wonderful experience, but out of my group of friends I'm "the one" who does the most research and who gets to know all of this stuff etc. so I still feel a certain responsibility about all of this, and I want to be able to offer sound advice where possible. Thanks a lot DoctorX, awesome work you're doing here!

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: DoctorX on 03 June 2013, 16:01:20

In general, panic attacks don´t trigger an epileptic seizure. In fact, epileptic seizures are not a known complication of LSD use (at least in healthy, non-epileptic persons) although LSD use is contraindicated in epileptic persons.In medicine, it is sometimes very difficult to distinguish between a panic attack and an epileptic seizure. I can´t be sure about what has happened with your friend. The story resembles more of seizure but it is not a sure diagnosis. In my professional experience, when someone has suffered a very unpleasant experience on LSD at his first experiences, there is more chances the bad experience will repeat with subsequent uses of the same substance. It is not always in 100% cases but I have seen it many times.

CASE 3

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: barbequehax on 28 May 2013, 20:15:53

Hello DoctorX,

First I would like that I really appreciate what you are doing for us guys here. It is often hard to get reliable information about drugs. Anyways I got a question about combining 25c-NBOMe and MDMA. A friend of mine dropped 800mg of the 25c and 150mg MDMA a 2 nights ago and still did not sleep yet. He is still dancing around in the room to the music and does totally ignore that he should sleep.

And another question, I am not sure if it was asked already, but do you know something about the long time harms of weekly usage of 25c-NBOMe?

Thanks in advance.

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: DoctorX on 29 May 2013, 22:03:23

2C-C-NBOMe has no history of human use prior to 2010 when it first became available online. In fact there is only one published studied about its propreties and it is a investigation on pigs. There are no data about its mechanism of action in humans, adverse effects, short or long time toxicity. We can´t say anything about short or long term effects because they are completely unknown. Compared with other substances (like MDMA, for example, with more than 6.000 studies in the last 40 years) people taking 25-NBOMe are behaving as guinea pigs.

I hope your friend has finished dancing :o

CASE 4:

Title: It's not Lupus

Post by: Sooperknot on 11 June 2013, 15:41:27

A mid-forties female has been suffering recurrent anxiety episodes that lead to respiratory distress with hyperventilation syndrome. Following a particularly serious attack of this type, a medical screening and detailed exam showed "no evidence of any type of acute emergency process at this time." BP at the time was mildly elevated -- enough to suggest ongoing treatment for hypertension.

The patient's subjective experience of the recent, particularly serious attack includes the following:

- A multitude of voices shouting in her head, mixed with an overwhelming clamour of noise in general

- "I felt like I was dying"

- Extreme confusion about her physical location. At different times during the episode, she clearly stated her location as two different places that are separated by 100 miles or more.

The patient has a history of "seizures" that have been recurring infrequently for more than 20 years. Information about the exact nature of these episodes is sparse, but some of the incidents did lead to ER visits and medical exams. At no time did any medical exams produce a diagnosis of any organic process causing these "seizures," and they have always been attributed to general anxiety. For much of this historical period she has been a very heavy smoker of cannabis. Light drinker, 1/4 pack per day cigarette smoker, no other drugs of abuse.

Physically the patient is very slender. Her measured body temperature tends to be lower than normal, yet her skin feels warm to the touch -- warmer than an average person. She states that she has had "thyroid problems"in the past but we have no specific information about those.

Two weeks prior to the most recent spate of anxiety attacks, the patient used DMT for the first time. This was her first genuine psychedelic experience of any kind. In the immediate aftermath of the trip she reported the usual feelings of wonder, awe, and amazement, expressing a desire to do it again as soon as possible and try a higher dose to achieve "breakthrough."

However in the two week period that followed, this already slender woman lost 10 lbs, became increasingly anxious and irritable, and finally began having the acute anxiety attacks that culminated in something resembling a psychotic break.

The patient believes that the DMT trip caused, or at least precipitated, her psychiatric symptoms.

Any thoughts?

Title: Re: It's not Lupus

Post by: DoctorX on 14 June 2013, 18:57:46

It is important to consider that it is not possible to give concrete diagnosis based on Internet information, although you have explained very well and detailed the situation. There is only one thing that sounds strange in the story. The fact that " a multitude of voices shouting in her head, mixed with an overwhelming clamour of noise in general" does not coincide with panic attacks. There are some rare diseases (like temporal epilepsy) that can curse with symptoms like that. I´m not stating that is the cause of the problem, I´m only pointing one possibility and the idea that, in general, auditive alucinations are not typical of panic or anxiety.

Of course DMT can trigger a psychotic problem. It is an uncommon situation but, in my experience this can happen more frequently with DMT than other drugs. In general, these episodies occur in pre-morbid, predisposed personalities. The symptoms you describe could indicate this (once more, it is only a possibility, I can´t be 100% sure). Anyway, if she is experiencing psychotic symptoms I think she should search for professional help. DMT psychosis usually have an excelent response to antipsychotics and 2-3 months are enough for most patients. It is important also to avoid DMT and psychedelics in general.

Title: Re: It's not Lupus

Post by: Sooperknot on 29 August 2013, 12:02:05

This question is directed at both Doctor X, and also at all DMT users reading the thread.

For the past three months the woman described below has continued to experience a range of psychotic delusions, often of a paranoid nature. The psychiatric symptoms are not present constantly -- on some days she seems positive and perfectly normal, while other days I feel like she ought to be physically restrained to prevent harming herself and others; though I lack the medical authority to do so.

The patient continues to firmly believe that her one and only DMT experience, three-and-a-half months ago, was THE cause of all her psychological problems, and not merely one element in a complex of interacting psychological factors.

Of particular concern is a recent claim she made:

“I have been doing a lot of research and it seems that it is common knowledge among DMT users that you should NOT be sitting on a chair as we were, and that you should not attempt to talk to someone who is tripping, which both you and [another person present during her trip] did. Apparently, both are very dangerous.”

I am not exactly naive about DMT, but I have NEVER heard of these items of "common knowledge" among users. If you're NOT supposed to do DMT while sitting on a chair, what IS the appropriate posture, and why? I could certainly see that some DMT users may not want to be spoken to during their trips; and if that's the case, they could make their wishes known. However I'm not aware that this is some kind of universal law. Has ANYBODY heard of something like these universal rules of doing DMT?

Title: Re: It's not Lupus

Post by: DoctorX on 30 August 2013, 11:32:24

Discussions about causes of mental health problems and the role of psychedelics are theoretical. In a practical case, it is not really important if she believes that her problem has

been “caused”, “trigged” or “exaggerated” by DMT use. The thing is, as you say, that a person is suffering from periodic symptomps that seems psychotic in their nature (disorientation, voices shouting in head, anxiety…).n this case a real face to face medical evaluation is important for obvious reasons. Some rare epilepsies look similar to this women's symptoms. maybe is the consequence of DMT use or maybe not, but it would be important to clarify the diagnosis and use a specific treatment in order to reduce her symptoms and avoid problems (for her and for other people). Some psychotropic drugs, used for weeks or maybe months, are extremely effective for this problems. We don´t know what is the role of DMT in this case, but, as a preventive measure, she should avoid using psychedelics.

There is no logical reason not to stay sitting down while using DMT. In fact, to sit down or to lie down are the best way to avoid falls or accidents in a modified state of consciousness. The closer one's head is to the ground the better since falls are a common risk factor for most drugs. On psychedelics, some people prefer to concentrate in their inner world and avoid communication. For other people is different. But there is no “sacred rule” that prohibits oral communication and this should not trigger any psychotic problem.

CASE 5:

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: chil on 15 June 2013, 10:22:46

Hola Doc,

I am an occasional (2-3 a month) user of stimulants (coke, amphetamines, modafinil, mephedrone, nicotine). I've been running (jogging) outside 3-4 times a week for 3 months with no problems whatsoever.

I've used mephedrone last week and nicotine daily (electronic cigarette). Since then, whenever I go for a jog, I have to stop after 3 minutes because there is a strong pain in my heart. I don't feel breathless, I just have to stop because of the pain. Once I stop running, the pain disappears.

1) do stimulants have a long-term negative effect on your heart ?

2) does this pain could be related to mephedrone use or nicotine ?

Muchas Gracias !

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: DoctorX on 16 June 2013, 12:36:15

I can´t say exactly what can be happening but data you provide are enough to reccomend search medical assistance. It is not sure that you have a problem, even I don´t know if this problem is or not related to drugs. But there are several respiratory and cardiac conditions with symptoms like yours. It should be important to have a RX and cardio-respiratory stress test to rule out the possibility of serious problems. In the meanwhile, I reccomend you to stop jogging and using stimulants.

CASE 6:

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: bodizzle on 07 July 2013, 17:01:23

DoctorX: Thanks so much for offering your time and knowledge here.

I am currently rather concerned after an experience I have had and hoping maybe you could offer some insight:

Last tuesday and wednesday I did some pretty pure coke I bought from here on SR. Only 1 gram total for both days. I also had on hand, about 70-80 mgs of valium to help with the comedown and increased heartrate/nervousness. Besides having the valium on hand, having to do with history before taking the coke, I have also been taking 10 mg lexapro as well as 250mg Rhodiola Rosea 2x day for 2 years. Lexapro is an SSRI and rhodiola seems to be a dopamine/serotonin reuptake inhibitor as well (also read it could be a slight MAOI). But overall rhodiola has a very safe track record.

So on the 2 days I did the 1 gram coke, I had taken my regular dosages of 10 mg lexapro and 500 mg rhodiola. Alongside those, I also ended up taking all of my valium (maybe 80-90mgs) as I hate the jitteryness of coke (do it for the euphoria) and I hate the comedown.

The following days, starting thursday, up until now, I just feel so very very down, unable to feel back to my normal self and really unable to feel any sort of happiness. Just an overall feeling of shit basically. Like there was some overload of dopamine or serotonin maybe and some possible damage to synapses in my brain that are just not regenerating. I understand 1-2 days of rehab time is normal, but it is going on 4 days now and I still feel like shit. I have never felt like this after doing coke before in my life (but had not been on the lexapro/rhodiola combo) and I am feeling very very concerned that some kind of permanent damage might have taken place? Something to do with dopamine/serotonin reuptake inhibitors being maxed or damaged? OR could it just be I am still detoxing from all that valium? (4 days doesnt make sense though...)

Do you think my brain could regenerate from this? Any ideas on what is going on? Should I stop taking the lexapro and rhodiola for a couple days to try and initiate a reset of my brain chemistry?

Any feedback is massively appreciated.

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: DoctorX on 08 July 2013, 17:57:43

Sorry for delay, but I have too much work (here in SR and outside) and I have little time to answer all your questions in general forum and in PM. I usually answer questions one by one, but I understand you have some urgency. I have read your story. It is difficult to give advice only by Internet, without personal communication. But, in your case, I suspect what is happening can be a "normal" effect after high doses of cocaine. I don´t know if you are a frequent user or if you have tolerance to the substance, but a gram of cocaine can cause your symptoms. Depressive episodes are common after a binge of coke. They are related to monoamine deplection, but they are normally reversible along time.

I would not reccomend to abandomn Lexapro, as it can help to mitigate symptoms. I have doubts on Rhodolia, as there is little information available about its mechanism of action. But,

probably, symptoms will improve in following days. It is important that you sleep well (as long as you need) during these days and try not to be stressed or make important decissions. I think you will improve during following days, if it is not the case I reccomend for proffesional evaluation

CASE 7:

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: iamcanada on 11 September 2013, 05:09:12

Hey doctorX

if you have time to help me here I would appreciate it http://dkn255hz262ypmii.onion/index.php?topic=211153.0

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: DoctorX on 11 September 2013, 09:06:19

I am sorry that through Internet is impossible to offer help of this kind. But your symptoms and antecedents (heavy use of ketamine) seem so important to recommend to seek for immediate medical evaluation, to rule out the possibilitiy of severe problems.

CASE 8:

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: Davey Jones on 14 September 2013, 00:18:03

Hey Doc, I had a buddy of mine went on a binge doin coke, and in the middle of his party he swore he saw me and someone else he knew go into the hotel room next to his and he claimed he could hear us talking about him thru the wall so he goes and gets the manager and has him open the door and no one was there so he thinks we ran off and were messing with him. Seems like he was hallucinating and had a little break with reality. Is there anything that can stabilize him besides opiates? Benzos possibly?

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: DoctorX on 15 September 2013, 10:52:26

I think it sounds more like a paranoid reaction than hallucination. There is no real break with reality but a false belief that he could hear you talking about him in a bad way. Paranoid reactions are very typical of high dosages of stimulants (cocaine, amphetamines or methamphetamine). If this disappears in a few hours, nothing else is necessary to do. Anyway, some people are prone to this effect and he should know this and be very careful with stimulant dosages. He should think about this once the cocaine effects have passed, analyzing the situation again and realizing that this was not true.

If these unreal ideas persist hours or days after cocaine use or if the paranoid ideas are out of reality (for example, you and your friends are aliens that are laughing at him) it should be necessary medical-psychiatric evaluation and specific medication. It is not worthy to try benzos (or worse, opiates) without medical prescription. A paranoid person can be dangerous (for himself or others), as he feels fear. He could feel, for example, that he is going to be poisoned if he is offered medication. So, if the strange ideas do not disappear in a few hours I would recommend medical evaluation

CASE 9:

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: mrmrmr on 20 September 2013, 18:27:04

Dr. X,

Now that was interesting. Yesterday I had what I'd guess was a panic attack (high BP (up to 173/100 when I was able to measure), high HR, scared shitless, sweating, chest pain, and so on). I'm not sure what exactly caused it, but I guess it was dosing up amphetamine too fast in only a few days (a week or so) with Moclobemide being present, and maybe the (not related to both drugs) little sleep I had the last weeks.

Just to be specific: I was at 3x8mg d/l-amphetamine throughout the day, and I only had slightest if any changes in BP throughout the day, while also taking 600mg moclobemide as prescribed. The amphetamine worked wonders for my adhd even after the in that case undesired euphoria disappeared, and only in the afternoon I felt a bit "wired". The panic attack happened in the evening, probably three or four hours or so after the last dose.

Of course I stopped taking any amphetamine the next day and will probably only and carefully try it again when I get my hands on some dextroamphetamine, because without the l-amphetamin it should probably have less effect on noradrenaline and so cause less bp issues or anxiety, as far as I know.

So now my question is: If something like that happened again, could/should I take a benzo as it seems to be recommended for "general" amphetamine overdoses and/or rebound, or would the combination of moclobemide, amphetamine and a benzo do bad things? From what I know moclobemide only slows the breakdown of the benzos and one should take a smaller dose.

And if it would be the right option in an situation like that, is there any recommended benzo for that purpose? I might be able to get some sublingual lorazepam, would that be OK? And at which dose?

Thanks again for your work, by the way, I guess I should get some coin and send it to you asap. :)

Title: Re: Ask a Drug Expert Physician about Drugs & Health

Post by: DoctorX on 22 September 2013, 12:41:12

I am not sure that moclobemide and amphetamine combination is a good idea. Moclobemide is much safer than other MAOIs but combination with amphetamine should be done with caution. It is possible (but not sure) that combination of both substances has caused your problem. It is possible that d-amphetamine has fewer effects, but I do not recommend combining with moclobemide, anyway.

Combination of benzos with moclobemide and amphetamine is probably safe. Lorazepam 1 mg sublingual is useful for panic attacks. But we can`t be sure that your problem was this. So if you are suffering again it should be prudent to confirm diagnosis before using benzos.

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION
29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

May 28, 2015

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted on behalf of Ross Ulbricht, defendant in the above-entitled matter, and supplements the previous submissions made on his behalf with respect to sentencing. This letter, in particular, will:

(1) reply to the government's sentencing letter dated May 22, 2015 (Dkt # 256);

(2) provide two additional letters on Mr. Ulbricht's behalf (and which were not received until after my May 22, 2015, letter was submitted); and

(3) the May 26, 2015, report by Board-certified forensic pathologist Mark L. Taff, M.D. (and also Clinical Associate Professor of Pathology at Mount Sinai School of Medicine), which is attached hereto as Exhibit 7,[1] regarding the six deaths the government seeks to attribute to Mr. Ulbricht.

[1] The Exhibits attached hereto are numbered sequentially starting with Exhibit 5 in order to avoid confusion with the four Exhibits attached to my May 22, 2015, letter.

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I. *The Government's Sentencing Submission*

A. *The Silk Road's Harm Reduction Measures*

The government's claim that the Silk Road web site represented an enhanced danger because it "lowered the barriers" for drug purchasing and selling is based not on a canvass of users of the site – as was the case for the researchers who provided Declarations in conjunction with my May 15, 2015, letter – but rather on Michael Duch, a single convicted felon providing cooperation in return for extraordinary leniency,[2] and whose testimony at trial was so riddled with inconsistencies and insupportable claims that he lacks credibility – even if the experience of a single person were somehow a valid substitute for the comprehensive research conducted by the Declarants (Tim Bingham, Meghan Ralston, and Dr. Monica Barratt), and the contact Fernando Caudevilla, M.D., had with many of the site's visitors. *See* May 15, 2015, Letter from Joshua L. Dratel, Esq., to the Court (Dkt #241), at 2-8.

Also, while the government repeats Mr. Duch's claim that he did not begin selling drugs until he became a vendor on Silk Road, that contention is belied by Mr. Duch's 2008 arrest for possession with intent to distribute a felony-weight quantity of drugs. T. 1596.[3] Also, in 2009-09 (as reflected in his cooperation agreement, *see* T. 1542), Mr. Duch had traded prescription medication for heroin. Mr. Duch also sold drugs on multiple internet sites, including Atlantis and Black Market Reboot. T. 1592.

In addition, Mr. Duch's claim that he consumed 600-700 bags per week for his own heroin addiction is not corroborated at all. *See* T. 1535-36. Indeed, that astronomical amount more than likely included bags that he sold to others to support his extensive and prohibitively costly habit. In any event, Mr. Duch's claims are without any verification.

Yet the government urges the Court to rely exclusively on that self-serving,

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[2] While Mr. Duch acknowledged selling three times the amount of heroin required for a charge carrying a ten-year mandatory minimum prison term pursuant to 21 U.S.C. §841(b)(1)(A), he was permitted to plead guilty to a charge, under §841(b)(1)(B), that carried only a five-year mandatory minimum. T (Trial Transcript) 1532-34. In addition, the government has not filed against Mr. Duch a prior felony information, which would double any applicable mandatory minimum sentence. *Id.* *See also* T. 1538-39. Mr. Duch's cooperation agreement with the government also insulated him from charges for a host of other criminal activity, including theft, assault (throwing a telephone at his girlfriend), and use and distribution of other drugs. T. 1541-42.

[3] "T." refers to the trial transcript in this case.

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unsubstantiated anecdotal account and ignore the independent, objective clinical professional research provided by Mr. Bingham, Ms. Ralston, Dr. Barratt, and Dr. Caudevilla. Moreover, as even the government's figures establish, heroin sales did not constitute a significant portion of the sales made by Silk Road vendors. Rather, they comprised 3.5% of all sales on the Silk Road site, and were not in the top 20 drugs for the U.S., the U.K., and/or Australia. *See* Declaration of Dr. Monica Barratt, at ¶ 6 (attached as Exhibit 13 to the May 15, 2015, Declaration of Lindsay A. Lewis, Esq. (Dkt. #242). *See also* Monica Barratt, Jason A. Ferris and Adam R. Winstock, "Use of Silk Road, the online drug marketplace, in the United Kingdom, Australia and the United States," *Addiction* 109, at 774-783 (2013) (attached as Exhibit 8 to the Lewis Dec.). Indeed, Mr. Duch's sales may very well have represented a considerable portion of the total of heroin sales from Silk Road in the U.S.[4]

The government discounts entirely the harm reduction measures instituted on the Silk Road site, but that categorical approach defies the reality of the demand, and consequent supply, of controlled substances (which are detailed in my May 22, 2015, letter, at 52-67). Of course Mr. Ulbricht is being sentenced for his participation in the Silk Road site, but the government's approach would deprive the sentencing of any context with respect to the atmosphere that Silk Road engendered in its totality – perhaps unprecedented, but certainly in more respects than simply internet availability of illicit drugs within the anonymized TOR network. In that context, the harm reduction measures were as much a part of that environment, and highly relevant for sentencing, as the means of buying and selling.[5]

B. *Attributing to Mr. Ulbricht the Six Deaths Cited By the Government Would Create An Unwarranted Disparity In Contravention of 18 U.S.C. §3553(a)(6)*

As discussed in my May 22, 2015, letter, at 43, 18 U.S.C. §3553(a) directs a sentencing court to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." Here, in addition to the lack of sufficient proof linking the six deaths to drugs purchased from vendors on the Silk Road site – the government has not engaged any forensic expert or analysis sufficient under any standard of proof –

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[4] Mr. Duch's testimony included other prevarications and evasions, including his persistent denial that he made statements (or heard statements made to him) that were reflected in government interview memoranda. *See, e.g.,* T. 1538-39, 1597-98, 1600-01 & 1605-06.

[5] In fact, the chat passages between Dread Pirate Roberts and site administrators quoted by the government (in its letter, at 12-13) demonstrate not an amoral disregard for the consequences, but rather a recognition of the sometimes uncomfortable moral ambiguity, including adverse impact on others, that unavoidably attended the Silk Road site's commitment to an unregulated free market for all forms of commerce and merchandise.

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enhancing Mr. Ulbricht's sentence because of those deaths would institute an unwarranted disparity.

In that context, the government's argument, in its letter at 9-10, with respect to foreseeability proves too much. If it is axiomatic that facilitating the sale of illegal drugs is inherently dangerous for purchasers, then it applies in *every* drug-trafficking case, particularly in those involving sales by organizations that exist over a period of time.

Yet the government cannot cite a single case in this district, and only one in the Second Circuit, discussed and distinguished below, in which *any* enhancement applied in such a case. Thus, the government would have Mr. Ulbricht serve additional time for a factor that is present in *every* drug-trafficking case of any magnitude or duration, but which is subject to an enhancement within this district only in this case (and in only a minute fraction of cases nationwide, and in very different factual circumstances). That is the essence of an unwarranted disparity.

Also, here the disparity is not merely generalized. This past Tuesday, May 26, 2015, in *United States v. Peter Nash*, 13 Cr. 950 (TPG), the Honorable Thomas P. Griesa sentenced the defendant, Peter Nash, a/k/a Samesamebutdifferent, a forum moderator and one-time administrator on the Silk Road site for nearly a year prior to its closure (during which time the Silk Road site experienced its highest volume of sales), to "time served" – essentially a 14-month sentence. *See* Judgment (Dkt. #36), *United States v. Peter Nash*, 13 Cr. 950 (TPG). *See also* Gov't Nash Sentencing Letter, at 4, 7, 8.

Mr. Nash pleaded guilty to conspiracy to sell drugs in an amount that made him subject to a ten-year mandatory minimum sentence pursuant to 21 U.S.C. §841(b)(1)(A). *See* Government's Sentencing Submission, *United States v. Peter Nash*, 13 Cr. 950 (TPG) (Dkt. # 35) (hereinafter "Gov't Nash Sentencing Letter"), at 4. As a result, Mr. Nash's Sentencing Guidelines Base Offense Level was 36, the same as Mr. Ulbricht's is here. *See id.*, at 5. *See also* Mr. Ulbricht's Pre-Sentence Report (hereinafter "PSR"), at ¶ 94. Yet even with multiple downward adjustments for his minor role and his safety valve proffer, Mr. Nash's adjusted Guidelines range was still 121-151 months. *Id.*, at 5.

The government did not seek any enhancement for Mr. Nash for the deaths it cites here, even though Mr. Nash, who worked for the Silk Road site from January 2013 through its closure in October 2013, was involved with the site during a period in which five of the six deaths occurred. *See* Gov't Nash Sentencing Letter, at 4 & n.1. In fact, the PSR for Mr. Nash clearly noted the drug-related deaths, as the government, in its submission, remarked that Mr. Nash involved himself with the Silk Road site with full knowledge of its activities and "with predictably harmful (and in some cases deadly) consequences, as the PSR makes clear." *Id.*, at

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10.

Yet, as noted above, the government did not seek an enhancement of Mr. Nash's sentence on that basis, and clearly, in imposing a "time served" sentence, the Court did not enhance Mr. Nash's sentence on that ground, either. Indeed, the government recommended a below-Guidelines sentence for Mr. Nash. While certain factors, *i.e.*, Mr. Nash's minor role and his safety valve proffer, could justify a disparity in his sentence and that of Mr. Ulbricht, the gulf between time-served and even the 20-year mandatory minimum Mr. Ulbricht faces represents too drastic a disparity, particularly when the government selectively decides against whom to seek enhancements for unintended events, even accidents, that are by the government's rationale attributable to *every* participant in a drug-trafficking conspiracy.[6] Of course, that includes as well Mr. Duch, who sold heroin directly to customers (and against whom it is extremely doubtful the government will seek such an enhancement).

The cases cited by the government only reinforce the conclusion that any enhancement here (pursuant to §3553(a), the Guidelines, or otherwise) would be inappropriate factually and legally, and in contravention of §3553(a)(6). Indeed, none are from this district, or the Eastern District of New York, both of which have an inordinate volume of drug-trafficking cases without a single reported case in which such an enhancement has been applied.

For example, *United States v. Faulkner*, 636 F.3d 1009 (8th Cir. 2011), and *United States v. Westry*, 524 F.3d 1198 (11th Cir. 2008), cases from the 8th and 11th Circuits, respectively, addressed issues of conspiratorial liability for overdose deaths caused by a co-conspirator. Neither opinion discusses the evidence at issue, or whether it, or the causation, was contested by the defendant(s). Rather, the opinions *presume* that the drugs distributed by the charged conspiracies caused the charged overdose deaths. *See, e.g., Faulkner*, 636 F.3d at 1022 (defendant's liability established because *jury* found *beyond a reasonable doubt* that overdose was reasonably foreseeable, although the defendant did not play a "direct role in manufacturing or distributing heroin *that caused* [the victim's] death") (emphasis added); *Westry*, 524 F.3d at 1220 ("[b]ecause [the victim] died from a drug overdose from drugs distributed by a member of the conspiracy . . . , and the goal of the conspiracy was to distribute drugs, [the victim's] death was reasonably foreseeable and within the scope of the conspiracy").

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[6] The government's insinuation, in its letter herein, at 16 (that Mr. Ulbricht "at no time [] has accepted full responsibility for his actions) that Mr. Ulbricht be penalized for exercising his right to trial should be disregarded entirely, especially since the government did not extend to Mr. Ulbricht a plea offer that would have ameliorated any aspect of the Guidelines calculation ultimately adopted by the PSR.

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In *United States v. Pacheco*, 489 F.3d 40 (1st Cir. 2007), in contrast with the circumstances here, the government presented medical records which established that the victim, who survived (and is therefore incorrectly described as deceased in the government's submission) was admitted to the hospital with a "provisional[] diagnos[is of] a ketamine overdose" which was confirmed by the victim's later statements to hospital staff regarding his ingestion of heroin and a substantial ketamine dose, as well as "subsequent diagnoses [which] reflected . . . ingestion of both drugs." *Id.* at 42-43.

In addition to the well documented cause of the victim's injuries, the defendant in *Pacheco* in fact admitted to mailing ketamine to the victim regularly, including a shipment five weeks before the overdose. *Pacheco*, 489 F.3d at 43. As the government notes, in its letter herein, at 9, the defendant's argument in *Pacheco* that the five-and-a-half week gap between the last shipment and the overdose raised a "serious question" as to whether he had actually supplied the fatal dose was rejected by the Court, in part because another package of ketamine from the defendant was waiting in the victim's mailbox at the time of his overdose, dispositively undermining the defendant's claim that the last shipment he sent was more than a month before the overdose. *Pacheco*, 489 F.3d at 45.

Similarly, in *United States v. Nossan*, 647 F.3d 822 (8th Cir. 2011), the government was able to rely on the defendant's own admissions to establish the connection between the drugs and the overdose. The defendant told police she had mailed a package "containing black tar heroin, a single balloon of cocaine, and syringes" to the victim using the name of one of his former girlfriends as a return address. *Nossan*, 647 F.3d at 824. Following the victim's death, established by an autopsy to be the result of heroin toxicity, the police recovered "a small balloon containing . . . black tar heroin" and two padded envelopes, one of which had "a return address of 'Michelle Lamport'," an ex-girlfriend of the victim. *Id.*

The only case cited by the government on this issue which arises from a court in the Second Circuit is *United States v. Russow*, 2015 WL 1057513, at *1-2 (D. Conn. Mar. 10, 2015), in which the victim's overdose occurred only a few hours after several text messages between the victim and the defendant discussing heroin availability and quality. The heroin sale was corroborated by surveillance video of the victim arriving and leaving the defendant's home around the same time he sent a text informing someone else that the defendant had "Much Better" brand heroin. *Russow*, 2015 WL 1057513, at *1-2. He was found dead about three hours later with two empty bindles labeled "Much Better," and the autopsy report concluded that the cause of death was "acute heroin toxicity." *Id.*

The government's focus on drug abusers' addictions, and other harms associated with drug abuse, *see* Government's Sentencing Letter, at 9-13, should also not be grounds for enhancing Mr. Ulbricht's sentence. Those aspects are already factored into the severe

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punishment matrix and high Guidelines levels for drug offenses in the first place. Singling out Mr. Ulbricht in that regard would not only be, in effect, inappropriate "double-counting," but would also create further unwarranted and unjustified disparity.

C. *"General Deterrence" Would Not Constitute An Appropriate Reason to Enhance Mr. Ulbricht's Sentence*

Regarding general deterrence, the government's citation, in its letter, at 14, to *Empress Casino Joliet v. Balmoral Racing Club, Inc.*, 651 F.3d 722, 728 (7th Cir. 2011), that "deterrence is never perfect" is entirely unpersuasive. Not only is that a civil case, but as demonstrated by the research and studies discussed in my May 22, 2015, letter, at 50-64, in the criminal context not only is deterrence "never perfect," it is *illusory*.

Given the lack of any empirical evidence supporting an enhanced sentence for purposes of achieving general deterrence, the government would have the Court enhance Mr. Ulbricht's sentence on a hope – as yet unproven by any clinical studies – that it could have an impact on a hypothetical person who may, at some point in the future, contemplate a crime. The number of conditional elements in that construction are far too numerous to permit, much less justify, a longer sentence on that ground. That is not criminal justice; rather, it is a lottery in which only Mr. Ulbricht suffers.

Relying on general deterrence to enhance Mr. Ulbricht's sentence would also aggravate the disparity between his sentence and others, both generally and specifically with respect to the Silk Road web site, because any such enhancement is neither quantifiable nor consistent with other "general deterrence" components of sentencing. As a result, it represents a recipe for disparity untethered to any objective standard or ability to measure.

D. *Mr. Ulbricht's Lifestyle and the Money Generated By the Silk Road Site*

The government's contention that the Silk Road web site's purpose was, like other drug-selling operations, based on the profit motive is belied by several factors. Mr. Ulbricht neither displayed nor possessed any of the traditional material, ostentatious trappings of drug-trafficking, or of financial success at all. Indeed, with respect to Dread Pirate Roberts (hereinafter "DPR"), certain TOR chat logs provide a window to a very different set of priorities.

For example, in TOR log chat TV32, at 785-90, between DPR and Cimon, DPR suggests using profits from the possible sale of the Silk Road site for "feeding and empowering" Africans

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by providing seeds for agricultural and other growth.[7] Later in that same TOR chat, at 499-501 519-20, 523, 526 & 708, DPR and Cimon discuss channeling Silk Road proceeds to Kiva, a global micro loan charity. *See* <www.kiva.org>. Similarly, in TOR chat log GX5O, between DPR and Flush, DPR notes that certain Silk Road funds would be passed on to certain non-profit organizations that DPR supported.

E. *The Two-Point Enhancement for "Credible Threats of Violence" Should Be Denied and Deleted from the Pre-Sentence Report*

As the government notes, in its letter at 16 n. 19, the PSR, at ¶ 94 and pursuant to §2D1.1(b)(2) of the Guidelines, assesses a two-point enhancement for "credible threats of violence." For all the reasons set forth above and in the previous submissions on his behalf, Mr. Ulbricht objects to that enhancement, which should be deleted from the PSR.[8]

II. *Two Additional Letters on Mr. Ulbricht's Behalf*

Attached hereto as Exhibits 5 & 6 are two additional letters on Mr. Ulbricht's behalf. Exhibit 5 is from Michael Van Praagh, an inmate at the Metropolitan Correctional Center (hereinafter "MCC"). As Mr. Van Praagh recounts in his letter, he met Mr. Ulbricht at MCC while Mr. Van Praagh was teaching General Education Diploma (hereinafter "GED") classes for other inmates, recalling that "Mr. Ulbricht approached me after class to inquire how he too, might get involved in teaching classes." *See* Letter from Michael Van Praagh (attached hereto as Exhibit 5).

Mr. Van Praagh was "moved immediately by [Mr. Ulbricht's] sense of concern for what we were doing in trying to share our gifts and help teach some of the other dedicated inmates who haven't been so fortunate to have had some of the same privileges afforded to Ross and myself." *Id.*

Even during trial, Mr. Ulbricht remained committed to the other inmates, including Mr. Van Praagh, who writes,

> [a]s difficult of a time as it was [during Mr. Ulbricht's trial], he always was available for me and for my students. Sharing his

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[7] The excerpts from these TOR chats will be provided as soon as defense counsel can collect them and prepare them as Exhibits.

[8] The PSR includes that enhancement within the Base Offense Level computation in ¶ 94 instead of as a separate offense-conduct specific enhancement.

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> knowledge and his experiences had inspired me to do something that I always wanted to do but never managed to accomplish. I enrolled in College.

Id.

Thus, even during a period of extraordinary stress and concentration on a matter of utmost importance to him, Mr. Ulbricht nevertheless found the time and energy to devote to others. Yet Mr. Ulbricht's positive influence on Mr. Van Praagh did not stop there. As Mr. Van Praagh relates,

> [a]s a first generation college student, the whole ordeal of choosing a school, enrolling, picking a major, and registering for classes was completely foreign to me and frankly intimidating. I am forever grateful that Mr. Ulbricht patiently walked me through the entire process. He has provided me the advice and confidence necessary to take those vital first steps.

Id.

In addition, Mr. Van Praagh reports, "[t]here are three other students in my class that are grateful to Mr. Ulbricht, for he convinced them too that as proud as they should be to have made such valuable strides and receive their GED's, that it is only the first step to ensuring a successful life that is free of recidivism." *Id.*

As a result, Mr. Van Praagh and the three other imates "are degree seeking students, enrolled at Adams State University." *Id.* Yet Mr. Ulbricht did not stop even there. The correspondence courses provide materials and a note of encouragement, but little else in the form of guidance. As Mr. Van Praagh admits, "[t]hat is pretty scary. I know that it is nothing that has not been done before, but with no personal instruction, it's a daunting task."

Mr. Ulbricht fills that void. According to Mr. Van Praagh, "Mr. Ulbricht sits with the four of us every single day and we've made such great progress that I fear what it will be like when we are no longer able to take advantage of his wealth of knowledge [and] the unparalleled generosity with which he shares it." *Id.*

In addition, Mr. Van Praagh recognizes that "Mr. Ulbricht does all this without any expectation of something in return. It's [] solely to help others and I have found that to be of the most endearing and noble qualities I have found in anyone I have met throughout this entire unfortunate experience." *Id.* As a result, even in an environment as desolate and despairing as

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the MCC is in many respects, Mr. Ulbricht's "kindness and devotion to excellence has truly inspired us all." *Id.*

Exhibit 6 is a letter from Joseph Ernst, the son of Thomas J. Ernst, "[a] Georgetown Law Graduate, Air Force intelligence officer and tireless philanthropist," and also a convicted felon currently serving a 48-month sentence at FCI Fort Dix. Joseph Ernst contacted defense counsel yesterday because he wanted to write a letter to the Court on Mr. Ulbricht's behalf after identifying certain similarities between Mr. Ulbricht and his father, who "like Ross, . . . spent a life in service to others, only to make a mistake" which led to his conviction and incarceration. *See* Letter of Joseph Ernst, attached hereto as Exhibit 6.

Mr. Ernst's chief concern is that Mr. Ulbricht, if imprisoned at a higher security level facility for a long period of time, will suffer the same fate as his father who even "incarcerated for what seemed like a short period of time" has experienced irreparable damage to his ability to be a high-functioning and productive member of society. *Id.* As Mr. Ernst explains in his letter, his father

> [a]s a man with considerable education, has been unable to find programs to better himself or prepare himself for life outside beyond basic correspondence courses. . . . As a convicted felon, his job prospects are non-existent. . . . In sum, he is a man that while educated at the highest levels, now finds himself unemployable at even the most entry level jobs. He has no place to live once released, nor means of subsistence and finds himself in an endless cycle of indignity, spiraling ever downward.

Id.

Accordingly, "[h]aving seen the affects that even a short period of incarceration can have, it is [his] fervent hope that Ross is not subject to an unduly long period away from his family and friends" given that "[a] man like Ross Ulbricht, with an impressive education, demonstrated ability to favorably impact people around him and prior experience in business with community service components, could add something so positive to [the national] fabric" and "is not someone who has placed himself beyond the edge of society." *Id.*

III. *Dr. Taff's Report*

Attached as Exhibit 7 hereto is Dr. Taff's report regarding the six deaths the government seeks to attribute to drugs purchased from vendors on the Silk Road site. As Dr. Taff notes, he possesses "over 30 years of clinical, investigative, teaching, testimonial, and administrative

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experience," and has "conducted hundreds of death investigations and autopsies, including dozens of drug-related fatalities in urban, suburban and rural communities." *Id.*, at 1.

As Dr. Taff's report states, based on his "review of the available documentary evidence," *id.*, at 2, each of the six deaths "lacks information about or more the 6-stages of death investigation." *Id. See also id.*, at 1 (listing the six stages of a death investigation); Lewis Dec., dated May 15, 2015, at ¶ 10-12 .[9]

Elaborating, Dr. Taff's report cautions that

> [p]artial death investigations and/or partial autopsies yield partial answers which is as bad as no autopsy at all. Without certain pieces of information, it is impossible for medical examiners to render opinions about issues that typically arise during criminal and civil litigation (*e.g.*, cause, manner and time of death, time of onset of injury, pre-existing pathological (medical and/or psychiatric) conditions, interactions of drugs, drug metabolism (absorption, breakdown and elimination of drugs), conscious pain and suffering, life expectancy, quality of medical and surgical care, etc.).

Id., at 2.

Also, Dr. Taff's report points out that

> [t]he interpretation of drug levels is difficult because of multiple variables, including: a) use of multiple drugs in varying amounts; b) administration of drug[s] via different or multiple routes (inhalation (snorting, sniffing), ingestion, injection); c) use of drugs at different times; and d) use of drugs by individuals of different ages and body weights with varying levels/degrees of drug tolerance.

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[9] Mr. Ulbricht submitted to the government a number of discovery requests regarding the six deaths. However, the government failed to provide any additional information or materials with the exception of a coroner's and toxicology report with respect to one death, a toxicology report with respect to another death, and scant information as to what the government described as Silk Road drug user profiles.

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Id.

In addition, Dr. Taff's report notes that "[d]rug-related homicides are rare[,]" and "medical examiners rarely classify drug overdoses as homicides." *Id.* As Dr. Taff's report explains, "[b]ecause of the lack of reliable circumstantial, testimonial and scene information surrounding many drug overdoses, the manner of many drug-related deaths are not clear-cut." *Id.*, at 3. As a result, "[m]any medical examiners have opted to rule the manner of many drug-related deaths as 'undetermined' (possible accident, suicide or homicide) with the understanding that such a classification might be amended if additional (compelling) information comes forth in the future. *Id.*

Dr. Taff's report proceeds with the evaluation of the six deaths, which findings are summarized in the May 15, 2015, Declaration of Lindsay A. Lewis, Esq. (which is attached as Exhibit 1 to my May 15, 2015, letter). Dr. Taff's report also discusses the coroner's and toxicology report for Alejandro A. (which was provided to the defense May 14, 2015, after Dr. Taff had provided his preliminary findings to defense counsel).

In addition to analyzing the documents provided, including the exclusion of certain factors – such as the presence of two other drugs, marijuana and Prozac, as well as a pre-existing heart disease – from the cause of death, *id.*, at 9, Dr. Taff , based on his review of Mr. A.'s records, offered an opinion to a reasonable degree of forensic medical certainty that Mr. A.'s cause of death was "due to multiple drug (25I-NBOMe, marijuana and Prozac) intoxication." Dr. Taff's report adds that "[c]ardiomegaly (enlarged heart) of undetermined origin was a significant associated condition contributing to [Mr. A.'s] death. *Id.*[10]

Ultimately, Dr. Taff concludes that "the incomplete records raised several questions and precluded [Dr. Taff] from rendering opinions regarding the cause, manner and time death as well as, possibly, other forensic medicine issues of interest to the criminal justice system." *Id.*, at 3. Thus, he was "unable to render opinions to reasonable degree of medical forensic certainty in 5 of 6 cases regarding cause, manner and time of death as well as several other forensic issues typically addressed by medical examiners investigating drug-related deaths . . ." *Id.*, at 9.

Dr. Taff's report cites as reasons the following:

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[10] Dr. Taff's report notes that "[a]fter a 7-month long investigation, California[] officials concluded that the manner of [Mr. A.'s] death should be classified as an accident." *Id.*, at 9. Finding "nothing the records to suggest otherwise," Dr. Taff rendered an opinion to a reasonable degree of medical forensic certainty that Mr. A.'s "manner of death was appropriately ruled an accident." *Id.*

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a) paucity of information;
b) confusing interpretations, selective/partial/incomplete diagnoses;
c) omissions; and
d) inability to inspect original death investigation and autopsy reports and primary autopsy evidence.

Id.

Regarding the sixth case, that of Mr. A., in which Dr. Taff does posit a cause of death, Dr. Taff, as noted **ante**, "disagreed with the official cause of death[]" because "the California[] forensic team failed to factor in the presence of other drugs and a pre-existing heart condition into [Mr. A.'s] cause of death." *Id.*, at 9-10.[11]

Regarding the other five deaths, Dr. Taff's report cites, *inter alia*, the "paucity of post-mortem medical-scientific evidence and the decedents' ante-mortem histories of medical and mental health and substance abuse problems . . ." among the reasons for his inability to render an opinion. Also, he explains that "[a]lthough all the decedents had drugs in their systems at the time of death, toxicology labs cannot match illicit drugs present in a person's body fluid and tissues to an exogenous (outside) source of drugs." *Id.*, at 10.

Also, "[b]ased on the available information," Dr. Taff was unable to

> correlate the time of purchase/acquisition from an alleged Silk Road vendor, time of usage of the alleged Silk Road purchase, time of usage of other illicit drugs and prescribed medications, the amount/dose of drugs used, time of mixing/cocktailing of alleged Silk Road purchase with other drugs, pre-existing pathological health conditions and cause, manner and time of death.

Id.

Indeed, Dr. Taff's report points out that "[i]t is unknown when each decedent, with other

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[11] In noting that Mr. A.'s death was ultimately declared an accident, Dr. Taff notes that "[t]his ruling indicates that local authorities had insufficient evidence to criminally charge another person for contributing to or directly causing [Mr. A.'s] death." *Id.*, at 10. Dr. Taff was "not surprised" at that conclusion, although he points out that during his career, "law enforcement has conducted dozens of in-depth investigations with the intention of making drug dealers legally/criminally responsible for the deaths of individuals to whom they sold drugs." *Id.*

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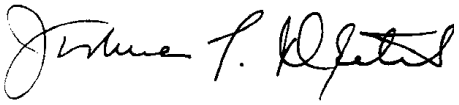
drugs in his system, took alleged Silk Road drugs." *Id.* In that context, as Dr. Taff's report states, "[t]he mixing of drugs in low levels can cause more powerful and potentially fatal effects than each drug used individually (so-called synergism)." *Id.* Consequently, "[m]edical examiners must look at all of the results in a post-mortem drug screen[,]" *id.*, and "[i]t is bad science to be selective or hierarchical about drugs (*e.g.*, heroin in more dangerous than cocaine which is more dangerous than alcohol, and, thus, if not for heroin, the person would still be alive) when rendering opinions about the cause of drug-related fatalities." *Id.*, at 10-11. As a result, "[p]ost-mortem drug results must be viewed in context with the findings from other phases of a death investigation." *Id.*, at 11.

Accordingly, the information provided by the government fails to establish a sufficient factual, medical forensic basis for attributing the deaths either to drugs purchased from vendors on the Silk Road site, or to Mr. Ulbricht. That would be not only "bad science," but, in the context of the Due Proces requirements for considering information at sentencing, legally unsustainable. While, as the letters from the decedents' family members make clear, unquestionably the six deaths represent personal and family tragedies and trauma, there is simply not an adequate basis to attribute them to Mr. Ulbricht.

Conclusion

Accordingly, for all the reasons set forth above, as well as in Mr. Ulbricht's prior submissions, it is respectfully submitted that he should be sentenced to a term of imprisonment substantially below the advisory Guidelines range.

Respectfully submitted,



Joshua L. Dratel

JLD/

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

EXHIBIT 5

Honorable Katherine Forest
United States District Court
Southern District
500 Pearl Street
New York, NY 10007

Michael Van Praagh
Reg # 70470-054
MCC-NY 150 Park Row
New York, NY 10007

May 21, 2015

My name is Michael Van Praagh and I am an inmate currently being held at the Metropolitan Correctional Center in Downtown Manhattan. I am not proud of my current living situation but I am thankful because I know now that this experience has not only changed me, but probably saved my life. I have been fortunate enough to be able to use the resources available to me to become someone who I always wanted to be and grow to my fullest potential.

After just a few months here I started working with the Education Department and formed some GED prep classes on my unit. I found a passion for teaching and I held and still hold, one year later, two classes everyday for six days out of the week. I spend a major portion of my day in the classroom, in fact, it was in the classroom where I first met Mr. Ross Ulbricht. Mr. Ulbricht approached me after my class to inquire about how he too, might get involved in teaching classes. He explained that he was fortunate enough to have had a good education and that he was interested in getting involved with the Education Department or at the very least, helping me out in any way he could. I was moved immediately by his sense of concern for what we were doing in trying to share our gifts and help teach some of the other dedicated inmates who haven't been so fortunate to have had some of the same priveleges afforded to Ross and to myself.

Mr. Ulbricht began joining me every morning at 8:00 am in the classroom. His consideration and dedication made me realize that he is the kind of person that being around I found would prove to be in my best interest. From that point on, he and I became friends. That is not, however, why I am writing this letter. I would like to share with Your Honor, not that Mr. Ulbricht and I became friends, but why, and to shed some light, from my perspective, on the kind of person he is and how he has affected, not only me, but many of our other fellow inmates. Of course, I have no knowledge of who he was or how he lived before coming here, but I can speak for who he is today.

Ross Ulbricht and I share the common experience of having gone to trial, so I know how stressful of a time that can be for anyone. As difficult of a time as it was, he always was available for me and for my students. Sharing his knowledge and his experiences had inspired me to do something that I always wanted to do but never managed to accomplish. I enrolled in College.

As a first generation college student, the whole ordeal of choosing a school, enrolling, picking a major, and registering for classes was completely foreign to me and frankly intimidating. I am forever grateful that Mr. Ulbricht patiently walked me through the entire process. He has provided me the advice and confidence necessary to take those vital first steps. There are three other students in my class that are grateful to Mr. Ulbricht, for he convinced them too that as proud as they should be to have made such valuable strides and receive their GED's, that it is only the first step to ensuring a successful life that is free of recidivism.

I am so very proud to broadcast to anyone that will listen that Michael Jimenez, Elvin Soto, Leon Santiago, and I, aside from being inmates here at MCC, are degree seeking students, enrolled at Adams State University. We take classes through correspondence. The school mailed us books, course syllabi, due dates, and a note from our professors that says, basically, "Good Luck." That is pretty scary. I know that it is nothing that has not been done before, but with no personal instruction, it's a daunting task. Mr. Ulbricht sits with the four of us every single day and we've made such great progress that I fear what it will be like when we are no longer able to take advantage of his wealth of knowledge the unparalleled generosity with which he shares it. Mr. Ulbricht does all this without any expectation of something in return. It's is soley to help others and I have found that to be of the most endearing and noble qualities I have found in anyone I have met throughout this entire unfortunate experience. Ross Ulbricht kindness and devotion to exellence has truly inspired us all.

I cannot even begin to understand the pain and the stress this most exceptional person harbors because that is the only way that he would have it. He does not wear his misery like most people around here do and if I didn't know about it, I could never imagine what it is he is going through. He does not share most of the details but I am aware of his pre-sentencing recommendation. If I may most respectfully share with Your Honor, my feelings, to sentence this young man to a lifetime detained behind bars, kept from society, would not only be tragic but also a detriment to Mr. Ulbricht, his family, and society.

Respectfully and Humbly Submitted,

Michael Van Praagh

EXHIBIT 6

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I write to you on behalf of Ross Ulbricht, who is scheduled for sentencing this Friday, May 29, 2015. I write in sincere support of his attorney's submission that Ross receive a sentence substantially below the applicable sentencing guidelines and be allowed a chance to reclaim part of his life to spend in the service of others, where his considerable intellect, interest in people and compassion for others could find him in a position to affect many lives for the better.

It is worth mentioning that I do not know Ross Ulbricht personally in any way. Like many in the computer forensics business, I have followed his case with great interest, given the technology involved and technical matters presented at trial. In reading the ninety seven letters to the court in support of Ross, I was struck by the universal overtones of love, respect and gratitude in each one. I found myself compelled to reach out to his attorneys, as it became apparent that Ross is not a career criminal, a technically proficient supervillain or evil, but rather an educated man who cares for others, is interested in the world around him, and has no prior history of criminality before making an extraordinarily bad choice. This is a man, who with the help of such an impressive support system, could truly give back to society if given the chance.

This apparent duality resonated deeply with me. My own family has been forever altered by the extraordinarily bad choices of my Father, Thomas J. Ernst, a man much like Ross, who spent a life in service of others, only to make a mistake which saw our family cast into a whirlwind that ultimately destroyed it. My Father was convicted of tax crimes in 2011and sentenced to 48 months in prison in the Eastern District of Virginia.

A Georgetown Law Graduate, Air Force Intelligence officer and tireless philanthropist, my Father was an advocate for the disadvantaged regardless of race, creed or station. He was honored by no less a moral compass than Nobel Prize recipient Elie Wiesel with a place on the board of the Elie Wiesel Foundation for Humanity. In spite of his success, accolades and the love of his family, he made a series of tragically bad decisions that led to his incarceration at Fort Dix, the loss of all family assets and in part contributed to the untimely death of my Mother three months ago.

While incarcerated for what seemed like a short period of time, the effects of this time have been incredibly hard to believe. Over the course of his first year, he experienced a series of falls that have now left him increasingly incapacitated physically. He has received a preliminary diagnosis

of Parkinson's disease, brought on in part by these falls where he has hit his head. He is unable to recall names, events or places and is unable to groom himself. As a man with considerable education, he has been unable to find programs to better himself or prepare himself for life outside beyond basic correspondence courses, only some offering college credit. Most of all, my Father knows his actions led to him never seeing his wife of forty one years ever again, and that, coupled with the experiences above, have had a tremendous impact on his mental state.

My Father knows as a seventy year old convicted felon, his job prospects are non-existent. His attempt to serve as a volunteer mentor at a school where many of my family members attended was rebuffed. He's been unable to even get an interview to be a greeter at a large retailer. In sum, he is a man that while educated at the highest levels, now finds himself unemployable at even the most entry level of jobs. He has no place to live once released, nor means of subsistence and finds himself in an endless cycle of indignity, spiraling ever downward.

While brought about by his own decisions, our hope as a family was that someone with his experience and education would at minimum, be well placed to be a mentor to someone at risk of doing something similar. While obviously more of a national conversation with clear political components, I believe it is fair to say that we can do and ultimately must do more to give incarcerated citizens a path back toward reintegration that leads to personal fulfillment and community benefit. That path could begin as early as the first day of their sentence.

Having seen the affects that even a short period of incarceration can have, it is my fervent hope that Ross is not subjected to an unduly long period away from his family and friends, which at a minimum will be a decade and a half longer than my father will be away from his friends and family. While not based on personal acquaintance, this hope is based on the firm personal belief that all of us as citizens, whether we be free or incarcerated, have something to add to the national fabric. A man like Ross Ulbricht, with an impressive education, demonstrated ability to favorably impact people around him and prior experience in business with community service components, could add something so positive to that fabric. This is not someone who has placed himself beyond the edge of society, but someone who made an awful mistake and yet can find redemption still in reach.

As a young man with an impressive array of people that obviously are personally invested in his well-being and ultimate path in life, Ross is far better poised for success once released than the average person. With the right placement in a lower security level facility, Ross could be working towards a larger goal from day one. He could be the force for good that was mentioned so often in his letters of support. He could be that caring friend, doting cousin, loving brother and son to not only his own family, but maybe to others who really need that sort of person in their lives. Most importantly, Ross could realize the potential in his tomorrows that may have eluded him in the present.

With respect and thanks,

Joseph Ernst

LAW OFFICES OF
JOSHUA L. DRATEL, P.C.
A PROFESSIONAL CORPORATION
29 BROADWAY
Suite 1412
NEW YORK, NEW YORK 10006

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
E-MAIL: JDratel@JoshuaDratel.com

JOSHUA L. DRATEL
—
LINDSAY A. LEWIS
WHITNEY G. SCHLIMBACH

STEVEN WRIGHT
Office Manager

May 29, 2015

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Ross Ulbricht*,
14 Cr. 68 (KBF)

Dear Judge Forrest:

Attached please find excerpts from TOR chat logs, including TOR log chat TV32, at 785-90 (cited in Mr. Ulbricht's reply to the government's sentencing letter, at 7), which rebut the government's contention that the Silk Road web site's purpose was, like other drug-selling operations, based on the profit motive.

Respectfully submitted,

Lindsay A. Lewis

LAL/
Encls.

Excerpt From Torchat Log gx5of53tpzvvjwbn.log [Flush]

2012-11-06 11:27) flush: also, one guy wanted to tip customer support. I just gave them the standard " donate to DPR" pasta
(2012-11-06 11:28) myself: if he wants to tip support specifically, you can accept it and split it with inigo. if they want to donate to the site, have them send it to me. we pass those along to some non-profits we support
(2012-11-06 11:28) flush: okay cool
(2012-11-06 11:29) flush: hey, if you want, you can add The Family Literacy centers, llc to the non profits
(2012-11-06 11:29) flush: its for helping people learn how to read
(2012-11-06 11:29) flush: its the one i donate my time to
(2012-11-06 11:29) flush: when i have extra time that is, lol
(2012-11-06 11:29) flush: they are a registered 501c
(2012-11-06 11:30) flush: their website is www.flcinc.org
(2012-11-06 11:30) myself: oh good, then I can write off my taxes, lol
(2012-11-06 11:30) flush: absolutely
(2012-11-06 11:30) myself: that's a joke mate :)
(2012-11-06 11:30) flush: my dad is in charge of it

Excerpts from Torchat Log tv32wkhirljvcb4f.log [Variety Jones]

Cited as 785 – 790 in Dratel May 28, 2015 Letter

(2012-05-16 14:14) vj: [delayed] I know where I want to put my 2.5, and yours if you agree, if we make this deal.
[delayed] And considering my background, this is funny as hell
[delayed] Seeds.
(2012-05-16 14:14) vj: Over 1/4 million 3rd world farmers went broke last year, and over 2,000 killed themselves, because they'd bought into Dow's and Monsanto's promise of better crops, but the crops are sterile and they need to buy more seed stock the next year, and they only grow if fertilized by patent encumbered agents and fertilizers.
(2012-05-16 14:15) vj: and as a result, over 2 million people died of starvation last year
(2012-05-16 14:15) vj: at a minimum
(2012-05-16 14:15) myself: I've heard of this
(2012-05-16 14:15) myself: breifly
(2012-05-16 14:15) vj: I want to break their backs
(2012-05-16 14:16) myself: seeds are magical things
(2012-05-16 14:16) myself: so tiny, but so much comes from them
(2012-05-16 14:16) myself: well water and seeds
(2012-05-16 14:16) vj: Read up on it. GMO *could* be the worlds salvation...
(2012-05-16 14:17) vj: Borlaug won a noble peace prize for seeds
(2012-05-16 14:17) vj: Dwarf wheat
(2012-05-16 14:17) vj: Africa couldn't feed itself, Russia was close, as too dense of wheat fell over from the weight of the tops
(2012-05-16 14:18) vj: and borlaug came up with Dwarf Wheat, literally saved a billion lives
(2012-05-16 14:18) myself: what a badass
(2012-05-16 14:18) vj: it was a special strain that was short, so the stalk could hold the weight, and improve yields
(2012-05-16 14:19) vj: and then Dow and Monsanto came out with GMO versions, designed to be sterile, and priced high, so new seed stock had to be bought every year, and their chmeicals are needed to grow it
(2012-05-16 14:19) vj: and patented them
(2012-05-16 14:19) vj: and are reversing his work, starving folks for profit
(2012-05-16 14:19) vj: them, oh them, I could run over with a train, or put out of business
(2012-05-16 14:20) vj: fuck drugs, I want to smuggle non -sterile seeds to the bread-baskets of the world, and give it away.
(2012-05-16 14:20) vj: and trust me, the DEA are pansies compared to the armies these guys have hired to hold their exclusive rights.
(2012-05-16 14:21) vj: I was almost asleep, thinking of who had done the most in history for mankind, and there are two folks.
(2012-05-16 14:21) vj: Borlaug, he kept the world from starving

(2012-05-16 14:21) vj: and several thousand years ago, the guy that invented the solid yoke
(2012-05-16 14:22) vj: you see, with a leather strap, a slave, a horse or an oxen could all pull about the same weight of a plow
(2012-05-16 14:26) vj: but the solid yoke, well
(2012-05-16 14:27) vj: then an oxen could pull from it's shoulders, as could a horse
(2012-05-16 14:27) vj: one horsepower was originally deigned as: the work that could be done by 22 1/2 men
(2012-05-16 14:27) vj: so one horse replaced 22.5 men
(2012-05-16 14:27) vj: oxen, 55 men
(2012-05-16 14:27) vj: the solid yoke ended slaverly
(2012-05-16 14:28) vj: GMO seeds has re-started it, economic slaverly, and over a billion farmers in the third world are Monsanto's slaves
(2012-05-16 14:28) vj: Tired, I am.
(2012-05-16 14:28) myself: hows that work? monsanto is in bed with the dictators in africa so they don't let other seed in?
(2012-05-16 14:29) vj: they give them seeds to plant, and discount the fertilizers
(2012-05-16 14:29) vj: Normally, farmers hold back seeds for next year
(2012-05-16 14:29) vj: these are sterile, they can't
(2012-05-16 14:30) vj: next year, it's $45 an acre for seeds, for a farmer that makes $500 a year on 200 acres
(2012-05-16 14:30) vj: plus the chemicals the plants don't need, but are genetically engineered to require to mature
(2012-05-16 14:30) vj: and now it's full price
(2012-05-16 14:30) myself: why can't the better seeds get in?
(2012-05-16 14:31) vj: cause Dow and Monsanto control the mechanisms of delivery
(2012-05-16 14:31) vj: GMO can be good, better yields, more pest resisitance
(2012-05-16 14:31) vj: but they took it too far, and built in sterile seeds, so they'd have to re-buy every year
(2012-05-16 14:31) vj: and a false requirement for rare chemicals they produce, in order to mature properly
(2012-05-16 14:32) myself: so what's the plan, make our own strains that aren't sterile and don't need bs chems?
(2012-05-16 14:32) myself: or do they exists but can't get in
(2012-05-16 14:32) vj: I know a lot about this - my first 'angel' investor in a software company called ARS inc at the time, owned CIC Canola, a seed cleaning and coating biz that sold several patents, and eventually the whole company, to Monsanto
(2012-05-16 14:33) vj: Simple, buy non GMO regulated seeds anywhere, Alberta, Russia, don't matter - and smuggle them where they're needed.
(2012-05-16 14:34) vj: It's illegal in dozens of countries to import non approved seeds, and guess who sells the sterile 'approved' seeds...
(2012-05-16 14:34) myself: ok, i get it now
(2012-05-16 14:35) vj: Monsanto seed stock cost 150X what plain seed stock costs
(2012-05-16 14:35) vj: and use it once, yer locked in.

(2012-05-16 14:35) vj: plus the chems the plants are designed to require not for growth, but for survival solely to protect Monsanto's IP in the product
(2012-05-16 14:36) myself: if these locals start using good seed, won't their govts figure it out and shut em down?
(2012-05-16 14:36) vj: they can't get good seed
(2012-05-16 14:36) myself: if we get it to them
(2012-05-16 14:36) vj: they can't afford to buy it#
(2012-05-16 14:36) vj: see - lemme back up
(2012-05-16 14:36) myself: once you have one good crop, you can make your own seed, no?
(2012-05-16 14:36) vj: for centuries, farmers grow wheat, sell most, save some to plant next year
(2012-05-16 14:37) myself: ok
(2012-05-16 14:37) vj: then these guys came in - our shit yields way more - here, take some
(2012-05-16 14:37) vj: and take this fertilizer, it makes it grow better
(2012-05-16 14:37) vj: and they have their best crops ever!
(2012-05-16 14:37) vj: But, the offspring are sterile, you can't save it for next year
(2012-05-16 14:37) vj: and next year, the seeds aren't free
(2012-05-16 14:37) vj: nor are the fertilizers required
(2012-05-16 14:37) vj: and they have no money, at all
(2012-05-16 14:38) vj: and so they go bankrupt, and kill themselves in shame, and Monsanot racks up billions
(2012-05-16 14:38) vj: and millions starve, even today - fuck, especially today.
(2012-05-16 14:38) vj: There is no excuse, and who else can take 'em on. sure, I can drill wells, but any asshole can drill a well.
(2012-05-16 14:39) vj: But not anyone can take on Monsanto and Dow, and the US hegemony that fosters it.
(2012-05-16 14:39) myself: so the issue is not so much that the govts outlaw fertile seed, it's that these farms have no money to buy it since monsanto tricked them into buying a bunch of sterile seed
(2012-05-16 14:40) vj: no, they also get the governments to outlaw importing unapproved 'foreign' seeds
(2012-05-16 14:40) vj: so even if you wanted to sell it at 10% of Dow and Monsanto on the open market, it's not allowed
(2012-05-16 14:40) myself: and what about using unapproved seed once it's in
(2012-05-16 14:41) myself: I just wonder if suggling it in and giving it away will be enough, or if there needs to be structural changes in the politics
(2012-05-16 14:41) vj: Google 'farmer sued by monsanto seeds'
(2012-05-16 14:41) vj: I'll wait
(2012-05-16 14:41) myself: locals might not even accept the seed for fear of reprisal
(2012-05-16 14:43) vj: Dude, they are actually killing themselves because they can't feed their families. Reprisal ain't on their list of worries
(2012-05-16 14:43) myself: ok
(2012-05-16 14:43) myself: schmeiser

(2012-05-16 14:43) vj: OK. not all of my funds, but i'm gonna put it on my to do list for the next 2 years. At least I'll make a dent, and save some lives.
(2012-05-16 14:44) vj: Also, this idea is (scrolls back) all of 31 minutes old, came to me in a flash, hell, I hadn't thought about Dwarf Wheat in decades, so it may need some polish ;)
(2012-05-16 14:45) vj: But it's the type of thing I need to do - it's the type of thing we need to do if we're gonna work together
(2012-05-16 14:45) vj: Cause if it's just about the money, well, money I have.
(2012-05-16 14:46) myself: you know why I am in this
(2012-05-16 14:46) vj: And this type of shit, is like inventing the solid yoke - it can remove literally billions of people from economic slavery
(2012-05-16 14:46) myself: it's the structural changes that have the biggest impact. there is no uninventing dwarf wheat
(2012-05-16 14:46) myself: exactly
(2012-05-16 14:47) myself: we need to be really careful with how we invest
(2012-05-16 14:47) myself: too easy to throw money at problems and do more damage than good
(2012-05-16 14:47) vj: I was talking about kiva before, I withdraw that
(2012-05-16 14:48) vj: we won't give money to folks to drill wells, if we think a place needs a well, we'll buy the rig truck, hire a crew, and send it where it's needed. We don't need zillions of layers of bureauacracy, we need action at the point of most impact.
(2012-05-16 14:49) vj: And less investigation too - we need to invest in infrastructure and agraian ;methods of production
(2012-05-16 14:49) vj: not charities and feel-good programs
(2012-05-16 14:49) vj: and you're right, charity can make things worse
(2012-05-16 14:50) vj: but non - sterile high yield seeds... can't put that cat back in the bag, or seize or encumbrance it
(2012-05-16 14:50) myself: trouble is, the places that need us the most are in need for a reason. investors won't touch them because the governments there will just confiscate any wealth that's created
(2012-05-16 14:51) vj: Not from me, they won't.
(2012-05-16 14:51) vj: I have teeth.
(2012-05-16 14:51) myself: maybe a place like somalia, where we wouldn't be up against a well organized state. could be good pirates there
(2012-05-16 14:51) vj: See, we're not gonna invest expecting a return, and hence have a track to follow back
(2012-05-16 14:52) vj: we'll just drop the shit off
(2012-05-16 14:52) myself: i have a podcast you need to listen to
(2012-05-16 14:52) myself: might've already recommneded it
(2012-05-16 14:52) myself: the one with bruce bueno de mesquita?
(2012-05-16 14:52) vj: and we can buy a million tons of seed grain
(2012-05-16 14:53) vj: nope, not familiar
(2012-05-16 14:53) vj: could you PM me on SR with the details, my travel computer only has torchat on tor, I save nada to it. I'll check it out in the AM

(2012-05-16 14:54) myself: he has this political model based on game theory. great analysis of foreign aid and how it hurts the common man in these countries by propping up the dictators that supress them
(2012-05-16 14:54) myself: we could be the real foreign aid
(2012-05-16 14:54) vj: Here's the good part - stop a ship with 120 thousand metric tons of wheat on it, ain't illegal anywhere ;)
(2012-05-16 14:54) myself: that gives the common man the energy they need to throw off their oppressors
(2012-05-16 14:54) vj: We need to buy a ship.
(2012-05-16 14:55) vj: No one will see us coming at all
(2012-05-16 14:55) myself: nope
(2012-05-16 14:55) myself: fuck im excited
(2012-05-16 14:55) vj: See, this here - this is change
(2012-05-16 14:55) vj: and why I like staying awake for 60 hours on ocassion. Hard on the system, but damn, my brain works hard then.
(2012-05-16 14:56) myself: if we can figure out how to get these govts off people's backs. empowering the population is a huge part of that
(2012-05-16 14:56) vj: And in the back of my mind, it's why I went 180 on nob. Let's take his money.
(2012-05-16 14:56) myself: that starts with enough to eat
(2012-05-16 14:56) vj: Food, water, shelter. That's our holy trinity.
(2012-05-16 14:56) myself: security
(2012-05-16 14:57) vj: No one should do without 'em
(2012-05-16 14:57) myself: that's the beginning of property, and then wealth
(2012-05-16 14:57) vj: So, take a step back, and tell me what you think
(2012-05-16 14:58) myself: about?
(2012-05-16 14:58) vj: Everything I've said in the last 40 minutes
(2012-05-16 15:00) vj: Borlaug's new semi-dwarf, disease-resistant varieties, called Pitic 62 and Penjamo 62, changed the potential yield of spring wheat dramatically. By 1963, 95% of Mexico's wheat crops used the semi-dwarf varieties developed by Borlaug. That year, the harvest was six times larger than in 1944
(2012-05-16 15:00) vj: SIX fucking times!
(2012-05-16 15:00) vj: https://en.wikipedia.org/wiki/Norman_Borlaug#Dwarfing
(2012-05-16 15:00) myself: yea, africa is growth waiting to happen
(2012-05-16 15:01) vj: The world doesn't have starving people today because it's not capable of growing enough food, it's starving because they're patent encumbering it for profit.
(2012-05-16 15:01) myself: I think we need to find the perfect experiment
(2012-05-16 15:01) vj: Dude, my petri dish is called 'Earth'
(2012-05-16 15:01) myself: a cheap experiment that gives us information on how to take it to the next level
(2012-05-16 15:01) vj: yeah, we need smarter folks than us in this field.
(2012-05-16 15:02) vj: As a rule of thumb, I never hire anyone that isn't at least 50% smarter than me. Dumb folks like me, I can get lots of for free.
(2012-05-16 15:02) myself: like a particular farm or farming area in a particular country where we think we'll have the most impact. spend the money we need to do

it right on that small scale and see if it works. how does the govt react, how does monsanto react. does anyone even notice
(2012-05-16 15:03) vj: Ghana
(2012-05-16 15:03) myself: plant the seed, no pun
(2012-05-16 15:03) vj: 'Cause that's where I'm buying a gold mine I'm gonna use to launder money, so i'll be there once in a while anyways
(2012-05-16 15:04) myself: yea, a place that needs the seed, but has reasonably solid property rights for the farmers
(2012-05-16 15:04) vj: Or iffy property rights, and where we can effect change
(2012-05-16 15:04) vj: synergy
(2012-05-16 15:04) vj: do two things at once
(2012-05-16 15:05) myself: we need to do alot of research, like will these farmers need to educated on what they are being given, or are they so desperate for seeds they'll plant anything.
(2012-05-16 15:05) myself: and we need to be sure of the quality of our seed source
(2012-05-16 15:05) vj: Solid property rights means a tired farmer can retire. Iffy property rights means if he can't make his lease payment, his family starves to death
(2012-05-16 15:06) vj: Dude, CIC Canola, CCF Wheat co-operative... I know these guys
(2012-05-16 15:06) myself: let's come back to this. there are alot of steps between here and there. I wanna get this new skin knocked out
(2012-05-16 15:07) vj: sure, I just hadda share while it was hot, and get yer mind thinking
(2012-05-16 15:07) vj: But I like it for one of our prongs - and we're gonna have lots of prongs
(2012-05-16 15:07) myself: let's feed africa
(2012-05-16 15:07) vj: Let's feed everywhere but Washington
(2012-05-16 15:07) myself: ok
(2012-05-16 15:08) vj: Well, that's decided. We'll feed the world. What do you want to do for an encore tomorrow?
(2012-05-16 15:08) vj: Also, we need nice office chairs. Put that at #2 on the list.
(2012-05-16 15:08) myself: the same thing we do every night pinky
(2012-05-16 15:08) vj: heh
(2012-05-16 15:08) vj: damn right!
(2012-05-16 15:09) vj: K- this has been damn near an hour, get the fuck back to work on that layout, you layabout.
(2012-05-16 15:09) vj: Else yer fired.
(2012-05-16 15:09) myself: yes sir!
(2012-05-16 15:09) vj: GAtor
(2012-05-16 15:10) vj: ...Dwarf fucking wheat, who'da thunk it would grab our attention...

Kiva Material

2012-03-14 14:42) myself: had another idea, completely unrelated.
(2012-03-14 14:42) vj: shoot

(2012-03-14 14:43) myself: have a donate link. shows a page of users who've donated and how much. The fund is used to help out people who get scammed on the site, or if there is a surplus, it can go to torservers or a freedom/drug legalization cause.
(2012-03-14 14:44) myself: anon donations are ok of course
(2012-03-14 14:44) vj: good idea, but I don't think acknowledging scammers is a good idea.
(2012-03-14 14:44) vj: hmm...
(2012-03-14 14:44) vj: gimme a sec to google something...
(2012-03-14 14:44) myself: ok
(2012-03-14 14:45) vj: how about http://www.kiva.org/

make micro-loans with the funds, when they're paid back, re-invest them in more loans. Track on the site how many people we've helped. Warm fuzzies all over.
(2012-03-14 14:46) vj: match funds too! Donate $20, throw in another $10
(2012-03-14 14:46) vj: and guaranteed to get press!
(2012-03-14 14:47) myself: who would the recipients be do you think?
(2012-03-14 14:47) vj: hire a lawyer to hire a lawyer to hire a lawyer to admin it from a safe jurisdiction,
(2012-03-14 14:47) vj: with kiva, you PICK who you want to give the money to. (not quite, they had some hassles over that, but that's the idea.)
(2012-03-14 14:47) vj: You read a story, say I want to help them, and give them $25.
(2012-03-14 14:47) myself: oh, I thought you meant it would be like kiva, not through them
(2012-03-14 14:48) vj: X lots of people to help.
(2012-03-14 14:48) vj: it would be a great cause to get behind.
(2012-03-14 14:48) myself: I'll check it out
(2012-03-14 14:48) vj: and folks could get 'kiva badges' for every $25 they donate! Collect all 1200!

. . .

(2012-03-14 14:54) vj: Kiva. I really like that idea.
(2012-03-14 14:59) vj: http://www.kiva.org/lend/402229
Fuck, can't be a tough guy and read some of these...
(2012-03-14 15:00) vj: her previous loan for $125, 1/2 paid off now
http://www.kiva.org/lend/354220

. . .

We could give away an ultimate home theatre package, a shitload of electronics from computers to ipads and roombas stereos and satellites and hd tv's, etc. All easier to order and pay for discretely, discreetly. <-- loves that, will use again.
[delayed] There is a brewing mutiny by a few vendors that our sale will head off. Ask DA or me for details, whoever you chat with first. Don't panic, it's a few weeks away, and their currently stymied as Pharmville is on vacation and they want him on

board. Huge trip prize for winner, 5/6 numbers wins big prizes, 4/6 wins great ones, and we'll give 1000 3/6 folks something unique, a conversation piece, or something. Announce that SR was never about making money, and we've had some huge infrastructure costs, but we are blessed to be currently running a surplus. So we're having this contest, as well as announcing that we're going to be supporting kiva, matching donations in $5 increments, giving badges in 1/5th increments for donations they make, and we'll match them. We're kicking it off with $7, 385 from our current surplus, and will strive to continue matching donations as long as we can.

. . .

(2012-03-23 22:11) myself: I'm thinking I'll find someone with an austrian econ background to dig up stories loosely related to our kiva people and use some praxeological logic to connect them.

. . .

(2012-03-23 22:13) vj: I'm also hunting about for someone to manage kiva stuff, including picking loan recipients, doing summaries and follow-ups, etc.

. . .

(2012-03-23 22:29) vj: Tying the kiva stuff to the blog also is a constant source of feel-good posting, and I'm working on a format for that now. I think I'll get someone to write us a scraper/API for kiva, so we can massage the data they offer into an easy format for us, especially when it comes to followups, which we'd otherwise have to search out manually.

. . .

2012-03-24 08:37) vj: [delayed] Heh, check out this kiva page
http://www.kiva.org/lend/395901
[delayed] "About IMON International
Tajikistan, a country with a captivating Silk Road history and a rich cultural heritage..."

. . .

(2012-04-07 09:09) vj: and while we were talking about doing philanthropical works, supporting kiva, or something similar, etc.,

. . .

2012-04-07 09:11) vj: yeah, I don't want to support something with donations. I want to buy the trucks that tow the rigs that drill the wells.

(2012-04-07 09:11) vj: not send $25 to someone to help them get a well.
(2012-04-07 09:12) vj: I don't want to support organizations, I want to create them.
(2012-04-07 09:12) myself: well, kiva works with "boots on the ground" orgs
(2012-04-07 09:12) myself: you could get involved more closely with one of them and then look for opportunities from there
(2012-04-07 09:13) vj: yeah, no lack of opportunities, no doubt. Just hard to find an area to focus on.
(2012-04-07 09:14) myself: what about r&d
(2012-04-07 09:14) vj: The realization that I never again in my life have to do anything for money has made me question how I'm going to responsibly deal with the money I do get.
(2012-04-07 09:14) myself: space exploration and such
(2012-04-07 09:15) vj: ahh - r&d - please let me wait until tomorrow to tell you the current fucked up state of the frigid boot s/w. Much joy and pain there.

Space, fuck. Sold, let's go!

. . .

(2012-05-01 13:17) myself: we def should get into that kiva stuff
(2012-05-01 13:17) vj: It does. It's been waaaaaaay more fucking work setting it up than I expected, I tell ya though. I'd think doing another trip long and hard.
(2012-05-01 13:18) myself: yea, kudos for taking it on though.
(2012-05-01 13:19) vj: I learned a bit about moving money around the world this weekend, bitcoins didn't come up, just as well, but I did find out how to get in touch with people that move $ from country to country for a small (3%) fee.
(2012-05-01 13:19) vj: There's a whole 'nother world of banking out there
(2012-05-01 13:20) vj: I wonder if we could convince Kiva to take BTC
(2012-05-01 13:20) vj: would make it a whole bunch easier.
(2012-05-01 13:20) myself: putting it on the to do list!
(2012-05-01 13:20) vj: Perhaps donate the funds to make the changes that will allow them to take BTC.

. . .

eprisal
(2012-05-16 14:43) vj: Dude, they are actually killing themselves because they can't feed their families. Reprisal ain't on their list of worries
(2012-05-16 14:43) myself: ok
(2012-05-16 14:43) myself: schmeiser
(2012-05-16 14:43) vj: OK. not all of my funds, but i'm gonna put it on my to do list for the next 2 years. At least I'll make a dent, and save some lives.
(2012-05-16 14:44) vj: Also, this idea is (scrolls back) all of 31 minutes old, came to me in a flash, hell, I hadn't thought about Dwarf Wheat in decades, so it may need some polish ;)

(2012-05-16 14:45) vj: But it's the type of thing I need to do - it's the type of thing we need to do if we're gonna work together
(2012-05-16 14:45) vj: Cause if it's just about the money, well, money I have.
(2012-05-16 14:46) myself: you know why I am in this
(2012-05-16 14:46) vj: And this type of shit, is like inventing the solid yoke - it can remove literally billions of people from economic slavery
(2012-05-16 14:46) myself: it's the structural changes that have the biggest impact. there is no uninventing dwarf wheat
(2012-05-16 14:46) myself: exactly
(2012-05-16 14:47) myself: we need to be really careful with how we invest
(2012-05-16 14:47) myself: too easy to throw money at problems and do more damage than good
(2012-05-16 14:47) vj: I was talking about kiva before, I withdraw that
(2012-05-16 14:48) vj: we won't give money to folks to drill wells, if we think a place needs a well, we'll buy the rig truck, hire a crew, and send it where it's needed. We don't need zillions of layers of bureauacracy, we need action at the point of most impact.
(2012-05-16 14:49) vj: And less investigation too - we need to invest in infrastructure and agraian ;methods of production
(2012-05-16 14:49) vj: not charities and feel-good programs
(2012-05-16 14:49) vj: and you're right, charity can make things worse
(2012-05-16 14:50) vj: but non - sterile high yield seeds... can't put that cat back in the bag, or seize or encumbrance it
(2012-05-16 14:50) myself: trouble is, the places that need us the most are in need for a reason. investors won't touch them because the governments there will just confiscate any wealth that's created
(2012-05-16 14:51) vj: Not from me, they won't.
(2012-05-16 14:51) vj: I have teeth.
(2012-05-16 14:51) myself: maybe a place like somalia, where we wouldn't be up against a well organized state. could be good pirates there
(2012-05-16 14:51) vj: See, we're not gonna invest expecting a return, and hence have a track to follow back
(2012-05-16 14:52) vj: we'll just drop the shit off

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 14 Cr. 68 (KBF)

ROSS WILLIAM ULBRICHT,

Defendant.

----------x

New York, N.Y.
May 29, 2015
1:10 p.m.

Before:

HON. KATHERINE B. FORREST,

District Judge

APPEARANCES

PREET BHARARA,
United States Attorney for the
Southern District of New York
BY: SERRIN A. TURNER
TIMOTHY HOWARD
Assistant United States Attorneys

JOSHUA DRATEL
LINDSAY LEWIS
WHITNEY SCHLIMBACH
JOSHUA HOROWITZ
Attorneys for Defendant

ALSO PRESENT: VINCENT D'AGOSTINO, Special Agent, FBI
GARY ALFORD, Special Agent, IRS
JARED DER-YEGHIAYAN, Homeland Security Investgations
Molly Rosen, Government Paralegal
Nicholas Evert, Government Paralegal

(Case called)

THE DEPUTY CLERK: Counsel, please state your names for the record.

MR. TURNER: Good afternoon, your Honor. Serrin Turner for the government, along with Timothy Howard from the U.S. Attorney's office, Special Agent Gary Alford from the Internal Revenue Service, Special Agent Jared Der-Yeghiayan from Homeland Security Investigations, and paralegals Nicholas Evert and Molly Rosen of our office. Also, I left out Vincent D'Agostino, Special Agent from the FBI.

MR. D'AGOSTINO: Good afternoon.

THE COURT: Good afternoon to all of you.

MR. DRATEL: Good afternoon, your Honor. Joshua Dratel with Ross Ulbricht standing beside me; Lindsay Lewis, Whitney Schlimbach, and Joshua Horowitz.

THE COURT: Good afternoon to all of you.

We are here today for the sentencing of Mr. Ross Ulbricht who was convicted, after a jury trial, of seven crimes for which he is to be sentenced. Those crimes are as follows:

Count One is the narcotics trafficking count which carries a 10-year mandatory minimum with a statutory maximum of life;

Count Two, distribution of narcotics by means of the Internet, which also carries a 10-year statutory minimum and a statutory maximum of life;

Count Three, narcotics trafficking conspiracy, which carries a 10-year minimum by statute and a statutory maximum of life;

Count Four, continuing criminal enterprise, which requires a 20-year mandatory minimum with a maximum by statute of life;

Count Five, which is conspiracy to aid and abet computer hacking which carries a maximum penalty of five years;

Count Six, conspiracy to traffic in fraudulent identification documents which carries a statutory maximum of 15 years; and

Count Seven, which is conspiracy to commit money laundering which carries a statutory maximum of 20 years.

I am going to set forth for the record now the materials that I have received in connection with this proceeding and that I am relying upon. Of course, the trial first and foremost, but also a number of submissions:

The defense had made a number of submissions including a submission on May 15, May 22nd, May 27th, three submissions on May 28th, one of which was an additional letter of support, and a submission this morning on May 29th.

I want to point out just a few things about those submissions and that is by no means to suggest that I will be covering right here, at this very moment all of the content of those, but just to point out a few things.

One of the main points of the May 15th submission relates to an argument that Silk Road was harm-reducing and that this is a factor in favor of mitigation. And we will discuss this more later in this proceeding.

Attached to the declaration of Lindsay Lewis were additional declarations from a number of individuals written for this proceeding:

Tim Bingham, who worked in the field of addiction and works now in the field, inter alia, of motivational interviewing;

Dr. Fernando Caudevilla from Spain, also known as Dr. X;

Dr. Monica J. Barratt, who is a research fellow at Australia's National Drug and Alcohol Research Center which is part of the University of New South Wales in Sydney;

Meghan Ralston, a former harm reduction manager for the Drug Policy Alliance and now working as a freelance policy consultant for the Drug Policy Alliance;

Also attached was a resume of Dr. Mark Taff. The Court has received, at this time, a summary of Dr. Taff's conclusions and has now received a formal declaration in that regard later.

Also attached were private communications between Dread Pirate Roberts -- Mr. Ulbricht -- and Dr. X, including a notation that Mr. Ulbricht paid Dr. X $500 per week starting at

one point in time, for his continued work on the Silk Road forum.

There is also the forum thread from Dr. X which is several hundred pages attached as Exhibit 4 to Ms. Lewis' declaration. I have read each and every one of those posts and in fact the entirety of every piece of paper submitted to me in this proceeding.

There are also several articles:

Articles by Barratt, Ferris and Winstock regarding Silk Road; an article by Ralston entitled, "End of the Silk Road," Ralston. Another article, "Silk Road Was Safer Than the Streets."

There are also a number of attachments to the May 22nd submission including a letter from Mr. Ulbricht and seven letters from a very broad array, an impressive array of family and friends including his parents, his grandparents, aunts, uncle, cousins, sister, brother, and a large group of friends essentially from every stage of his life like his early childhood, his young schooling, his college years, his grad school years, and his professional life.

There were also attached a number of photographs of Mr. Ulbricht with various people from his life, and a letter from an individual who states that Dr. X assisted that individual in kicking his or her drug habit.

There was also a submission, a third submission of May

27th, and a fourth submission -- as I said, there were a number of submissions -- on May 28th, but that's where the Court received the Dr. Taff report, he is a forensic pathologist who discusses whether, in his view, it is appropriate to causally link the overdose deaths which are mentioned in the presentence investigation report which is known by the acronym PSR to Silk Road. Actually, a copy of Dr. Taff's declaration had been provided as a courtesy to the Court by the defense counsel even before it was formally submitted the day before at the Court's request, for which I thank them.

The government made a number of submissions dated May 18, May 26, May 27th, and May 28th. The government also submitted five victim impact statements. They submitted those twice so there were two separate submissions but it is the same victim impact statements both times.

The Court has also reviewed a number of additional materials specifically in connection with this proceeding after receiving, in particular, the defense materials. There were a number of articles, as I mentioned, that were attached to those materials, and the Court felt it not only appropriate to read those articles but also appropriate to explore some of the material that was cited in those articles. So, the Court indicated to counsel that it was doing so, requested the receipt of certain information including certain harder to get articles which were then provided, and the Court has reviewed

those.

The Court also looked at a few references from those articles into other articles and I am now going to set forth for the record the articles I have read. It is not particularly typical to go through all of the articles a Court reads in connection with any sentencing proceeding, but because they were submitted as part of the defense submission and relied upon therein, the Court does believe it is appropriate to give a complete indication as to the array of articles that the Court read in connection with this proceeding. So, they are as follows:

Michael Tonry, "The Mostly Unintended Effects of Mandatory Penalties," 2009.

The Brennan Center's, "What Caused Crime to Decline?" 2015.

Cullen, Johnson and Nagin, "Prisons Do Not Reduce Recidivism," 2011.

Green & Winik, of Yale, "Using Random Judge Assignments to Estimate the Effects of Incarceration and Probation on Recidivism Among Drug Offenders," 2010.

Kleck, Sever, Li and Gertz, "The Missing Link in General Deterrence," 2015.

Caulkins, Rydell, Schwabe and Chiesa, "Mandatory Minimum Drug Sentences, Throwing Away the Key or the Taxpayers Money?" Rand, 1997. I only read chapters 2, 4, 5 and 6 of that

book.

Martin, "Lost on The Silk Road," 2014.

Barratt, Ferris and Winstock, "Use of Silk Road, The Online Drug Market Place in the U.K., Australia and the U.S.," Addiction, 2013. Addiction is the name of the publication/periodical.

Also, Addiction, "Commentary on Barratt, et al," 2014.

Ralston, "The End of Silk Road, Will Shutting Down the eBay for Drugs Cause More Harm Than Good?" 2014.

Ralston, "Silk Road was Safer Than the Streets for Buyers/Sellers," 2015.

Hout and Bingham, "Silk Road: The Virtual Drug Marketplace," 2013.

Hout and Bingham, "Surfing the Silk Road," 2013.

Hout and Bingham, "Responsible Vendors, Intelligent Consumers: Silk Road, the Online Revolution and Drug Trading."

Fox-Brewster, "There is No Evidence Dark Websites Like Silk Road Reduce Violence." 2015.

Corazza, et al, "Phenomena of New Drugs on the Internet," 2012.

Aldridge and Decary-Hetu, Not an eBay for Drugs: The cryptomarket 'Silk Road' as a Paradigm-Shifting Criminal Innovation.

Martin, "Drugs on the Dark Net," 2014, which is different than his other publication.

The ACLU's 2013 study of life sentences.

The Sentencing Project's 2013 study of life sentences.

Johnson and McGuinigall, "Life without Parole," 2008.

Appleton and Grover, "Pros and Cons of Life Without Parole," 2007.

Mauer, Ryan and Young, "The Meaning of 'Life,'" 2004.

In addition, the Court also requested a number of searches be run on the Silk Road website in connection with a number of assertions that were made in some of the submissions and, in particular, as to whether or not drugs were sold mostly for personal use or whether they were sold in wholesale quantities as well as some other facts the Court wanted to explore. By order of the Court listing those searches, requested those searches be performed, or that a copy of the site be provided to the Court.

The government then provided a computer which had the site loaded onto it. Defense counsel was present when that was provided to the Court. The Court ran those searches which it had indicated in its order and reviewed those searches in connection with this.

Now I want to go into the Fatico issue.

There are a number of facts at issue in this proceeding and on April 24th, the defense counsel requested an adjournment of the sentencing that was originally set for May 15th because of some information that had been provided. It

wanted an opportunity to develop facts, consult with people, and determine whether or not it wanted to have a Fatico. It, at that time, indicated that it would likely request such a hearing. On April 28 the government responded to that letter.

The Court then, on April 28th, granted the request for an adjournment and set May 22nd down as a date for a Fatico hearing. A Fatico hearing is a hearing to determine facts that are necessary for a sentencing if those facts are contested. It doesn't have to be done through a hearing, it can also, under many circumstances, be done on a written record. But, that's what a Fatico relates to.

On May 15th the defendant made its submission, as I have already discussed and recited, which indicated that it was not seeking a Fatico but submitted the extensive additional material which I have mentioned. In light of those additional factual materials, the Court asked whether the government requested a Fatico. The Court did that by order dated May 18th.

The Court also stated that it assumed that the parties understood that even if they waived a Fatico hearing, the Court would make any necessary factual findings based on the evidence in the record. That statement was contained in the Court's order of May 18th. By letter dated the same day, May 18, the government agreed that it did not request a Fatico hearing and the Court received no further reference to a Fatico hearing

from defense counsel.

Now, as I had mentioned, there are a number of actively contested factual issues between the parties. The defendant has not conceded those facts and, as I have said, there is no necessary reason to have a live evidentiary proceeding where live witnesses testify. The Court believes it has the necessary factual record before it to make the appropriate factual determinations and will do so at the appropriate time in this proceeding and based upon that evidentiary record. Any factual determinations would be based on the standards set forth in a vast number of cases in the Second Circuit which indicate that such findings are made at sentencing proceedings or in connection with sentencing proceedings by a preponderance of the evidence.

I want to confirm, however, that in light of all of the very recent submissions -- and there are submissions most recently by the defense but also submissions by the government, that no one is seeking a Fatico hearing which would require an adjournment of the sentencing today.

Mr. Turner?

MR. TURNER: That's correct, your Honor.

THE COURT: Mr. Dratel?

MR. DRATEL: Yes, your Honor.

THE COURT: Thank you.

Now, let me turn to the PSR.

The PSR notes an offense level of 43 which is the highest possible offense level but a Criminal History Category of I which is the lowest possible Criminal History Category. The PSR will be made part of the record in this matter and filed under seal, and if an appeal is taken then counsel on any appeal may have access to the PSR without any need for further application to the Court.

Mr. Dratel, have you reviewed the PSR with your client?

MR. DRATEL: I have, your Honor.

THE COURT: Are there any additional objections to the PSR apart from those which are contained at pages 75 to 77 of your submission of May 22nd, which we will go over in some detail?

MR. DRATEL: Also, in I think yesterday's submission we had the formal objection to the two points for the credible threats of violence. I am not articulating it the same way so I want to bring up the formal objection.

THE COURT: The Court had seen such an objection and included it in my notation of objections previously indicated so I think we are all set.

Was there anything else?

MR. DRATEL: No, your Honor.

THE COURT: So. I am going to go through the factual disputes in a moment. So, before I adopt any factual findings,

I am going to go through the factual issues.

Now, first before we get there I want to examine the offenses of conviction. There was some back and forth. The Court had issued an order indicating that while there are seven counts of conviction there appears to be a legal reason why certain of those counts must be, at the time of sentencing, vacated.

On May 27th I issued an order suggesting that Count One is a lesser included offense in Count Two and Count One should therefore be vacated and that Count Three is duplicative of Count Four and should therefore also be vacated. The government responded by letter indicating that it agreed and would proceed today to move to vacate those counts. I don't think it needs to do so because I'm going to vacate them sua sponte. The defense also agrees that those two counts should be dealt with in that manner; however the defense, in addition, argues that Count Two should be dismissed as it is a lesser included offense in their view of Count Four and as it is also a predicate offense to Count Four.

Now, just to be clear, what we are talking about, Count Two is the sale of narcotics by means of the Internet and Count Four is the continuing criminal enterprise. Count One is just the narcotics sales and Count Three is the conspiracy. So, Count One and Count Three are vacated. Count Two and Count Four the Court does not find require any further action.

The Court's rationale is as follows:

The Court first refers to the Supreme Court's decision in the Rutledge case which is a 1996 case, also the Blockburger decision, Supreme Court, and the Second Circuit's decision in Andino.

Count One charges narcotics trafficking. Count Two charges narcotics trafficking over the Internet. It is clear Count One is a lesser included offense of Count Two and that's why it is vacated.

The Court also finds that Count Three, which is the conspiracy, is a lesser included offense of the continuing criminal enterprise which requires you find all elements of Count Three in order to find Count Four. That is specifically the situation found in Rutledge.

Counts Two and Four, however, are not duplicative. Count Two is a substantive offense. Congress intended that they be separate offenses and under the Supreme Court's guidance in the Garrett case, 105 S.Ct. 2407, separate punishments may be imposed. The Court has considered defense counsel's arguments set forth in the May 28th submission but I disagree with defense's points. There is case law directly on this issue which is contrary to the defense arguments.

In Garrett, the Supreme Court considered whether a charged substantive and predicate offense had to be vacated at sentencing in light of a conviction on a CCE as well and the

Court held it did not. It reviewed the statute, the CCE statute, and determined that, "Congress intended the CCE provision to be a separate criminal offense which is punishable in addition to and not as a substitute for the predicate offense. Insofar as the question is one of legislative intent, the Blockburger presumption must, of course, yield to a plainly expressed contrary view on the part of Congress. And the Court later held that the CCE offense is indisputably not the same offense as a predicate substantive offense.

I would also refer to the Second Circuit's Amen decision, 1987, also holding that double jeopardy does not preclude prosecution nor does it preclude later the subsequent punishment for both counts.

Accordingly, the Court vacates only Counts One and Three.

The Court also notes that in the event of an appeal and if one of the remaining counts were to be dismissed, there is Second Circuit case law and also there are statements in Rutledge about what happens in just such a circumstance. One of the vacated counts can be unvacated and can be reinstituted as an offense of conviction, if that were to occur.

The vacatur here is due solely to the reasons that I set forth above.

Now, these dismissals occur prior to any guidelines calculations and prior to sentencing leaving sentencing only as

to Counts Two, Four, Five, Six and Seven. So, now I move on to the guidelines.

I want to go through the correct calculation in some detail because the PSR has certain corrections which need to be made and there are certain clarifications which are important to make. I used the November 2014 guidelines which are in effect on the date of sentencing. Because there are multiple counts of conviction, the Court has to turn, and it is a rather complicated procedure to determine how you assess and come up with the guidelines calculation in such a circumstance, but the Court turns to Section 3D1.1 for the procedure for determining offense level on multiple counts. You look at the counts first, you determine which ones are grouped together; second, you determine the offense level applicable to each group under 3D1.3; and then you determine the combined offense level by taking into account the rules set forth in 3D1.4.

3D1.2 deals with groups of closely related counts. Subpart B provides that when two or more acts or transactions are connected by a common criminal objective or constituting part of scheme or plan, they can be grouped. And that is really the most applicable here.

3D1.3(a) also provides that when grouping occurs under 3D1.2(a) through (c), the offense level of the group is the highest offense level for the counts grouped. But, if grouping occurs pursuant to (b), the offense level for the group is the

offense level for the aggregated quantity and then the highest offense level is used. Thus, for (b), it is the aggregate behavior which is the driver of the offense level.

In both cases the offense level includes all of the adjustments per application note 1 to 3D1.3. The Court believes it is proper to refer to 3D1.2(b) for Counts Two and Four because only Two is determined primarily by quantity. But, the Court notes that it is frankly irrelevant, and to the calculation if one were to use one or the other subpart, the CCE count, Count Four, is connected to Count Two by a common criminal scheme or objective, hence the use of subpart (b).

Now, probation asserts that because Counts Five and Six represent a separate type of harm they are not included in the first group. The Court agrees. Selling narcotics and the harm that comes from that is clearly distinct from the harms relating to computer hacking and the computer hacking conspiracy and a false identification document conspiracy.

Here, operating the Silk Road website involved the computer hacking conspiracy and the identification document conspiracy but they are different harms. So, therefore, Two, Four and Seven are grouped in Group One; Count Five, Group Two; and Count Six, Group Three.

Now to the calculation.

The money laundering offense in Count One, which under the statute 1956, it requires that the Court look at the

underlying narcotics offense to guide the offense level calculations. The Court looks first to the CCE count which is Count Four and 2D1.5 provides that the offense level is the greater of the offense level from 2D1.1 plus four levels, or 38.

If we turn to 2D1.1, we calculate the number of kilos of cocaine, the number of kilos of heroin, the number of kilos of meth for a total equivalency for marijuana which is the way the guidelines are written, of 60,720 kilos. That corresponds with an offense level of 36 under 2D1.1(2).

The Court next looks to the specific offense characteristics and this is where we get into some of the contested facts and it is now that I will make and begin to make certain factual findings.

The first factual finding relates to the direct abuse of violence.

Under 2D1.1(b)(2) there would be a two-level upward offense level adjustment for the directed use of violence. Because it is contested, the Court must make appropriate factual findings if it is to include it. The standard by which I do that is by a preponderance of the evidence. Ulbricht's directed violence here is and relates to the murders for hire which he is alleged to have commissioned and paid for. The Court must determine whether these allegations have been demonstrated by a preponderance of the evidence and I find that

there is ample and unambiguous evidence that Ulbricht commissioned five murders as part of his efforts to protect his criminal enterprise and that he paid for these murders. There is no evidence that he was role-playing.

The Court finds that the evidence is clear and unambiguous and it far exceeds the necessary preponderance findings, that Ulbricht believed he was paying for murders of those he wanted eliminated, and that he believed they had in fact been murdered. He was told his first victim had a wife and several children. That fact was known to Ulbricht and it is never mentioned by him in connection with his consideration of the murder. The consequences flowing from the murder of a man with his family is never, so far as the Court can tell from the record, considered.

When he commissioned the hit on other of what he thought was one person, Tony76, he learned that Tony76 was apparently someplace -- located someplace with three other individuals. Ulbricht then agreed and paid for a hit on all four of them. There is no evidence in the record that he knew them -- these other three folks -- that he ever dealt with these three folks or had any beef with them at all. He commissioned the hit without regard to who they were, to the fact that they had a right to life. He never asked if they had families, he never expressed any concern for them at all.

The evidence of this murderous intent and the actions

specifically taken by Ulbricht to commission the hits is based on trial exhibits including Ulbricht's own journal and his chats with the individuals he hired to oversee the murders and it was not, as I have said, role-playing.

He commissioned the hits, there is no discussion of hypotheticals, he paid actual funds. He paid hundreds of thousands of dollars which were, in fact, paid. He is told when the murders are completed, he was provided with a photo of the murder scene with random numbers that he had provided to the would-be assassins. That there had been no confirmation of any of the deaths does not eliminate the fact that he directed violence and directed the use of violence.

So, the Court finds by a preponderance of the evidence that the addition of the two-level enhancement is appropriate.

The Court turns to the next enhancement which is 2D1.1(7). If the defendant, or a person for whose conduct the defendant is accountable, distributed a controlled substance through mass marketing by means of an interactive computer service one adds two levels.

The Court has considered whether in light of the fact that Count Two is a substantive offense using the Internet the addition of this enhancement is in fact appropriate. It is.

Because the offense level is the same for conviction under 841(a) and 841(h), the enhancement here which refers to the use of an interactive computer service is not duplicative

and the punishment is not cumulative.

In terms of any findings necessary to support the use of the factual predicate for that, the Court finds by a preponderance of the evidence that Silk Road operated, of course using the Internet, and that the drug sales occurred over the Internet on a slick website intended to and in fact marketing drugs to a mass audience. Therefore, the two-level enhancement is appropriate by a preponderance of the evidence.

The next enhancement is 2D1.1(B)(12), which relates to maintaining a premises for the purpose of manufacturing a controlled substance and that would result in a two-level enhancement.

The Court finds, by a preponderance of the evidence, that this enhancement is appropriately applied. The evidence at trial including Mr. Ulbricht's own journal entries indicate that he rented a house to make psychedelic mushrooms, that he in fact made 10 pounds of such psychedelic mushrooms from that house. The evidence is unambiguous, it is far beyond a preponderance, and that two-level enhancement is appropriate.

The next increase is 2D1.1(b)(5). The offense involved importation of methamphetamine. The PSR notes this on page 18 but the calculation which is included in the PSR on page 26 does not include that enhancement, though the total aggregate calculation embodies it, it is just a mistake between those two pages. But, if you try to add up what occurs on page

26 you wouldn't get to 50 unless you go back to page 18.

The evidence at trial was clear and the Court so finds, by a preponderance of the evidence, that significant quantities of such narcotics were mailed from abroad to Silk Road customers within the United States. That's at the transcript pages 74 to 96; pages 177 to 183; and GX 804.

Also, there is an adjustment for the role in the offense -- but actually there is no adjustment for role in the offense for this particular group because, pursuant to application note 1 of 2D1.5, a Court is not to apply a leadership adjustment when the offense of conviction is a continuing criminal enterprise. However, because the defendant was convicted under a money laundering statute which is 18 U.S.C. 1956, there is an additional two leading to a total aggregate offense level of 50.

Group Two is for computer hacking. The Court looks to guidelines Appendix A to associate the statutory offense with the guidelines provision. That leads us to 2X1.1. That provision leads us to the substantive offense which is 18 U.S.C. Section 1030(a) which leads us to 2B1.1(a)(2), the base offense level is 6. There is a leadership role adjustment of four. That is based upon the Court's finding by a preponderance of the evidence that Mr. Ulbricht was the leader, the creator, the designer, the operator, the ultimate administrator of Silk Road. While he had help he was certainly

the leader of Silk Road and the computer hacking conspiracy related to that activity. So that enhancement is appropriately applied.

The next enhancement for this second group is 2B1.1 which is that the offense was committed through mass marketing. That is appropriately applied because the Court finds, by a preponderance of the evidence, that the website was available to all who had the browser and that marketing was intended to reach as many people as it could reach, thousands if not millions. The offense also utilized a sophisticated means and so there is an appropriate two-level enhancement under 2B1.1(e)(10)(C).

The Silk Road itself included a number of sophisticated means including the use of Tor which required some amount of sophistication, the bitcoin tumbler of course, the use of stealth listings, all of which support a sophisticated means enhancement. That leads to a total of 14 for that group which is Group Two.

Group Three is Count Six only. The base offense level is 11 pursuant to 2L2.1(a). There is a specific offense characteristic of involving more than 100 or more documents or passports and the Court finds, by a preponderance of the evidence, that that factual predicate is found. Certainly there is ample evidence to show that in terms of the sales of such items at trial. That adds 9 to the 11 which is 20, plus a

leadership adjustment. The Court has already discussed the facts supporting a leadership role. That adds 4 for a total of 24.

Now, how one arrives at what the total offense level is when you are dealing with these groups relates to looking at the various aggregate totals and one adds also units.

Group One has one unit, no levels are added to the offense level because that is essentially the one unit. No units are also added to Groups Two, Three because they are nine or more levels, less serious than Group One. So, the total offense level is 50.

Pursuant to Chapter 5, application note 2, in the rare cases when the total offense level exceeds 43, the offense level becomes 43 and that is the appropriate offense level here.

Counsel, are there any other arguments, other than those which are addressed and set forth in your papers that you would like to raise at this time or any disagreement you would like to raise at this time?

MR. TURNER: No, your Honor.

MR. DRATEL: No, your Honor.

THE COURT: Thank you.

The offense level then is 43 and the Criminal History Category is I.

I am now going to turn to, Mr. Dratel, to your

objections to the PSR and go through each of those.

There is an objection to paragraph 2, a typo. That is fine to make a change from "dead" to "dread."

In paragraph 10 there is a suggestion about some additional language to be included. The Court has no problem with that language in paragraph 10.

In paragraphs 49, 60(A)(e) there is a request to strike the language regarding the willingness to use violence and for the payment of the $650,000 for the murder for hire and the related language. That request is denied for the reasons the Court has already discussed. And, based on the findings that I have made, the statements regarding Mr. Ulbricht's willingness to use violence and the other language that is used here is entirely appropriate.

Paragraph 60(B)(1) there is a request to strike a reference to a leadership role in the conspiracy to aid and abet computer hacking and that is denied. For the reasons set forth above regarding the guidelines findings, the Court finds that the sale of these materials could not have occurred without Mr. Ulbricht. He was the leader and without the rules that he implemented and oversaw and directed others to oversee on his behalf, this would not have been possible. So, he was, by all accounts, the leader.

Paragraphs 61 to 86 and 87, there is a request to strike the references to the overdose deaths. That request is

also denied.

I am now going discuss the factual basis for the inclusion of the overdose deaths in the PSR.

The PSR states that the overdose deaths are included as they are related to Silk Road. The defendant contests that the drugs sold through Silk Road cannot be shown to have caused the deaths of those identified in the PSR as having died following the ingestion of narcotics. But, this is not the standard of proof that is required for inclusion in the PSR.

The defendant is not convicted of killing these people. Those are not the offenses of conviction. This is related conduct relevant to his sentencing. His guidelines are not being enhanced for bodily harm to these individuals or the suffering that they may have endured. The question as to whether this information is properly included in the PSR is whether the Court finds, by a preponderance of the evidence that the deaths, in some way, related to Silk Road. And, they do.

Indeed, the evidence is really quite clear on this point so the question is not the but-for causation which was addressed in the defense submissions.

As a related point, the Court has determined that for the same reason it is appropriate for the decedent's relatives to speak at this proceeding to the extent they so request. I would note that there is a definition of crime victims that is

contained in 18 U.S.C. 3771(b)(2)(D). However, that definition is not, in and of itself, controlling, as to what the Court can determine is a victim for purposes of a sentencing proceeding. But, I do find, nonetheless, that the decedents here constitute victims under that provision. A victim is simply person against whom the offense is committed. It does not mean that the victim, him or herself, could not be participating in some way or manner in the conduct that is ultimately leading to his or her own death.

Here the relevant offense committed is the unlawful distribution of drugs and the running of a criminal drug enterprise, inter alia, and there is no factual doubt that based on the evidence before the Court, the sale of the drugs through Silk Road caused harm to the decedents. Whether it was a factor in causing their death, a contributing factor, or somehow related to their deaths in close association is not a decision that we have to make for today's purposes.

The Court's determination is supported by the following:

The trial record of this matter established beyond doubt that the types of drugs associated with the deaths of each and every one of these individuals were in fact available on Silk Road. But, in addition to that, there is a direct tie to Silk Road to each of the decedents and to the purchase of the drugs in proximate -- very proximate relation to their

death.

On May 18, 2015, the government provided the Court with a DVD that contained extensive information associated with the deaths of each of these six individuals. That DVD is made part of the record in this matter and is filed under seal. If an appeal is taken, counsel on the appeal may have access to that DVD without further application to the court.

On that DVD are materials which specifically link each decedent to the drug purchased by themselves or through another who purchased the drugs from vendors through Silk Road. The drugs were used by the decedents immediately prior to their deaths.

On April 29 and then again on May 26, the Court received five victim impacts statements which contained additional detail the Court does rely upon that for its findings herein.

The Court received also the declaration of Dr. Mark Taff dated May 26. He is a forensic pathologist retained by the defendant.

The defendant's basic argument is that it is not appropriate to hold Ulbricht responsible for these deaths and the defendant cites to the Burrage case, the Supreme Court case from 2014. But the case is entirely inapposite. In that case the Court was confronted with the question of whether a penalty enhancement may be applied under a statute which was

841(b)(1)(C) if a death can't have been shown to have been an independently sufficient cause of death. Then it may have been insufficient to support a statutory penaltied enhancement. There the drug had to have been the but-for cause of death.

The statutory scheme that was at issue was a statutory scheme when "death results," and in that case if such a finding had been made, then Burrage's -- the defendant's -- penalties would have been increased thus the element had to be submitted to the jury. That wasn't new law, the Alleyne case and the Apprendi case before that found something that was quite similar.

But, here the deaths of the users set forth in the PSR to which the victim impact statements relate are not the basis for any kind of statutory penalty enhancement. These are not the crimes of conviction, this is related conduct which is entirely appropriate for a sentencing Court to take into consideration in a sentencing proceeding.

The government, in its submission of May 26, 2015, lays out the fact which tie each of the decedents to Silk Road and they do that in some detail. And I will talk about the decedents more in just a moment, but let me comment on Dr. Taff, his examination relates to the manner of death for what he uses, what he refers to as the six-stage death investigation. He finds in each instance information is missing regarding at least one stage of the six-stage process.

He states in some cases no autopsy was performed and there was no cause of death that could be reliably be determined.

He also indicates that without certain pieces of information, it is impossible for a medical examiner to render certain types of opinions and he states that what are deemed overdoses may be death by suicide or other causes.

He opines that he is unable to render opinions to a reasonable degree of medical certainty as to the cause, manner and time of death with each of the decedents except for Alejandro. As to him he agrees that NBOM was one of several drugs which caused his death. But, Dr. Taff is asking a question which this Court does not need answered. It is just the wrong question. The Court is not asking whether the but for cause of death is drugs purchased on Silk Road. It doesn't have to be but-for. The Court's question is whether there is a connection between the purchase of drugs on Silk Road and death and whether the drugs were ingested -- those drugs purchased on Silk Road were ingested and whether the ingestion of those drugs may be reasonably associated with those deaths.

The Court can make such findings by a preponderance of the evidence and can make reasonable inferences based upon the available circumstantial evidence and I make those reasonable inferences based upon that circumstantial evidence now. There is strong and even more than sufficient circumstantial evidence

to show the connection. I am only going to go very briefly through a few of these. I want to just describe the connection so it is clear on the record.

Jordan M., who was 27 years old, found dead of an overdose. There was an express mail package torn open in the room where he was found, there was heroin and needles near him. How is it tied to Silk Road? His computer had two browser windows open, one displayed Silk Road. The decedent's private message inbox showed messages with a vendor describing a purchase, the package tracking and receipt. The package tracking on the Silk Road site corresponded with that on the open window, the second open browser window on the U.S. Postal Service site which corresponded with the number on the express mail envelope found with the decedent at his death.

It appeared from a prior message dated August 24th that this individual had ordered Valium and Xanax in the past but he had not previously ordered heroin through Silk Road, and he inquired about ordering it for the first time.

The Court finds by a preponderance of the evidence that the death is properly associated with the receipt of heroin from a vendor on Silk Road and purchased through Silk Road. The Court also finds by a preponderance of the evidence, including the autopsy report and notwithstanding the contrary statement by Dr. Taff, that he died of an overdose.

Would this individual have died at that time without

the drugs purchased through Silk Road? It would be speculation to even suggest that he could have. What we know is that he died in the manner that he did and that his death was connected to Silk Road.

For Preston B., he was a 16-year-old boy who received a powerful synthetic drug called NBOM from a friend. The friend made a statement in which he told the police, after the decedent's accident, he purchased it from Silk Road to share with his friends on prom night and that he had not purchased on Silk Road before, that he had only ever used cannabis before. The decedent is known to have ingested this drug and he had a terrible reaction and jumped from a balcony of a hotel and he subsequently, after being hospitalized, died.

The Court finds, by a preponderance of the evidence, that Preston's death is properly associated with Silk Road and that his death was related to a purchase of drugs from Silk Road. Would he have died on that evening if Silk Road had never existed? To suggest so is pure speculation. We know that he died after having ingested drugs available to him through Silk Road.

In terms of Bryan B., he was found dead with heroin next to him and a syringe. Forensic analysis of his computer revealed that he had run searches on his laptop for heroin in Boston suggesting that he did not have a local source. Other searches indicated that he had found Silk Road, downloaded Tor,

and obtained bitcoins. Silk Road was marked as a favorite website. A PGP key for encrypting communications was established by him on September 25th, 2013. That very same day he contacted a vendor and stated, "This will be my first order." He placed his order for heroin the next day. He also bought syringes. The package arrived on October 1st and he was last heard from on October 4th. The package he received contained enough for 5 to 10 doses. The heroin and syringe found next to his body closely resembled those that he ordered.

The Court finds, by a preponderance of evidence, that Bryan B.'s death is properly associated with Silk Road. It is reasonable to infer that the heroin he consumed was related to his death and that it is reasonable to assume and to infer from the circumstantial evidence that he received that heroin from a vendor on Silk Road. Would he have died in the absence of that heroin? It would be pure speculation to think that.

Alejandro N. took NBOM from a friend who told law enforcement that he obtained it from a dealer. The dealer was then arrested. The dealer was interviewed. The dealer stated that he had received the drug from a vendor on Silk Road. The police were able to confirm that a vendor by the name given to them by the dealer in fact sold NBOM on Silk Road.

The Court finds, by a preponderance of the evidence, that Alejandro's death is properly associated with Silk Road. Drugs sold by Silk Road vendors were a contributing factor, at

least in his death, and even so agrees Dr. Taff. Would the dealer have obtained NBOM elsewhere in the absence of getting it from Silk Road? It would be pure speculation to think so.

Jacob L., a 22-year-old from Australia, was found dead. There were multiple drugs in his system. He also had pneumonia and the autopsy indicated that he may have been less aware of the severity of his illness due to the presence of drugs in his system. The Silk Road server revealed that the decedent had an account which had been used to place several dozen orders for heroin, as well as for other drugs found in his system at the time of his death, including meth and crack.

The Court finds, by a preponderance of the evidence, that purchases from Silk Road are properly associated with the death of Jacob L.

Attached to Exhibit 16 of the Lewis declaration are pages from Jacob's Silk Road account. There is a list of favorite vendors. The court performed searches on those vendors and confirms that those Silk Road vendors sold a large array of subject drugs.

There are additional objections in the PSR that resolves those objections as to the inclusion of the information relating to the overdose deaths:

Paragraph 94 says, discusses a calculation of the base offense level. We have dealt with that.

Paragraph 146 requests a correction that Mr. Ulbricht

has not owned a particular house for several years. That correction is appropriate and will be made.

Finally, the defense objects to the inclusion on page 38 of the justification. The Court does not adopt, at any time ever, the justification section of the PSR. The Court only ever looks to the factual statements so the Court does not address the justification. That is from probation itself and it stands separate and apart.

Do counsel have any other arguments apart from those which were raised in their papers which they would like to raise at this time?

MR. TURNER: No, your Honor. Thank you.

MR. DRATEL: Just obviously, your Honor, we object to findings that the Court made.

THE COURT: Understood, Mr. Dratel.

The Court then does adopt the factual findings set forth in the PSR and the additional factual findings that the Court has made.

We have been going for 55 minutes at this point. We are now at the portion of the proceeding where we are going to hear from the family of two of the victims, I understand; from the government; from Mr. Dratel; and from Mr. Ulbricht if he would like to address the Court. The question is whether or not we need to take a break right now or whether or not we should just go ahead and continue. I would note if we take a

break, anybody who leaves the room has to come back through the additional security that is outside the courtroom at this time.

MR. TURNER: The government is fine proceeding, your Honor.

MR. DRATEL: We are okay proceeding, your Honor.

THE COURT: All right. So, those individuals who are in the audience, if somebody happens to need a short break you will have to go out. You are welcome to go out and come in, you are welcome to go through security but don't hesitate to do so, if you need.

So, I understand that we have the parents of two of the victims here in court today, Mr. Turner?

MR. TURNER: That's correct, your Honor. The father of the individual referred to in the government's submission as Bryan B. and the mother of Preston B.

THE COURT: So, would the father please, of Bryan B., please approach, sir?

RICHARD: Good afternoon, your Honor. Can you hear me okay?

THE COURT: I can, sir. Thank you.

RICHARD: My name is Richard and I am the father of Bryan whose death was referred to in the government's sentencing document. I greatly appreciate the opportunity that you are giving me to speak on behalf of my son.

I have already written a letter to you to describe

Bryan and how he died from an overdose of heroin supplied by Ross Ulbricht's Silk Road. If I may, your Honor, I would like to present you with some pictures of Bryan that I think will help illustrate some of the things I said in my letter to you as well as another important point that I want to make today.

May I?

THE COURT: Yes, sir. Thank you.

Do you have an extra copy for counsel, by any chance?

RICHARD: I do.

THE COURT: Thank you.

RICHARD: It has been nearly 20 months since I buried my son. As I wrote to you in my letter, I could not have been more shocked when I received the phone call on the morning of October the 7th, 2013, to tell me that my son was dead. As far as I knew and as far as anyone who was close to him knew, Bryan did not do drugs.

Bryan and I were very close; we talked, e-mailed or texted nearly every day. In fact, several days before he died I received an e-mail from Bryan that said, among other things, how much he had grown to dislike marijuana, mainly because of the effect that he saw in a number of his friends he said, and I quote, "The older I get, the more pothead friends I see becoming deadbeats."

As I wrote to you, I spent the next several months after Bryan's death trying to understand what happened.

Ultimately, I discovered Bryan had very likely tried heroin during his senior year in college, realized what a mistake he had made and spent parts of the next three years successfully fighting off cravings to do it again. He hid this from nearly everyone.

My letter described Bryan as a great-looking, athletic and intelligent young man. He was careful about his health and what he ate. He often rose at 5 a.m. in the morning to work out in the gym before he went to work. He shopped for organic food and sometimes asked my wife for healthy recipes that he could cook. While Bryan was certainly impulsive, he was planning for a long life ahead. He lectured his friends to make the maximum contribution to their retirement plans, just like he did.

The pictures I have given you illustrate the point I made in my letter: He was the last person anyone would have imagined to die from a drug overdose. Two of those photos were taken during the time of my daughter's wedding in early July, a little less than three months before he died; one was from a ski trip in early 2013; and two were from a family bike trip in the summer of 2012. But I want to draw your attention to one particular picture and that is the one I have indicated with an asterisk. It is a picture of Bryan with his arms around my wife's niece and her boyfriend. In particular, I want to point your attention to the marks on Bryan's left forearm. They're a

little hard to see. There is a series of well-delineated cuts that I didn't notice until he had moved to Boston in late July. Can you see them?

THE COURT: Yes.

RICHARD: He never gave me a good explanation of how those marks got there no matter how many times I asked him. However, after his death, one of his close friends shared with me what he had told her a few months before he died. He put them there, he said, as a reminder to not do drugs. We now know that he had this struggle and it breaks all of our hearts to know that he was struggling and he asked no one for help because he wanted no one to know. He was managing to fight these urges until he discovered Ross Ulbricht's Silk Road. The lure of Silk Road's convenience, the anonymity, the use of an untraceable payment system, the low risk of detection by law enforcement or parents or family or friends, it all overpowered Bryan.

As I indicated in my letter, the forensic analysis of his computers and phone show us exactly what happened. He discovered Silk Road while doing an Internet search. He downloaded the Tor browser. He transferred money from his bank account to a bitcoin account. He set up several new e-mail accounts, as per Silk Road's instructions. And then, he ordered heroin.

They arrived by the U.S. mail. He died from an

overdose a few days later. The U.S. mail packaging from the Silk Road dealer was a few feet away from his body when he was found. The toxicology study discovered only one illegal drug in his body: Heroin.

When I spoke to the pathologist she wanted me to know that Bryan was in exceptional health before he died of an overdose.

Since Ross Ulbricht's arrest, my family and I have endured the persistent drumbeat of his supporters who proclaim Mr. Ulbricht a hero and persistently portray his crimes as victimless.

To add insult to injury, Mr. Ulbricht's defense now touts Silk Road's remarkable harm-reduction with the absurd argument that the website that sold more drugs to more people than any drug dealer ever before was performing a great service to society.

Early in the trial the prosecution revealed that Silk Road generated $200 million in revenue in its existence. With drugs like heroin selling for relatively low prices, Bryan's Silk Road purchase was less than $200. I found it. Just imagine how many individual drug transactions it would have taken to get to $200 million in sales. And, keep in mind that Ross Ulbricht collected a commission on every sale.

Where, exactly, is the harm reduction in that volume of drug sales?

By removing all the hurdles to get dangerous drugs Silk Road expanded the market. Professionals, like my son, were not going to take the risk of buying drugs from a dealer on the street with all the inherent dangers that came with it. I strongly believe that my son would be here today if Ross Ulbricht had never created Silk Road.

But, sadly, when their harm reduction argument wasn't enough, Ross Ulbricht's defense team took things to an even lower level: They blamed the victims. I can't speak for the other victims of Silk Road but I can speak for my son and I can point out the statements made by Ross Ulbricht's lawyers about my son's death and the recent court filings that are blatantly false. They claim that Bryan was 20 years old. He had turned 25 a week before his death. They claim that the source of the heroin was "unknown" when there was a mountain of evidence to show that it came from Silk Road. And, worst of all, they quoted a Boston police report saying that, "the victim was known to the Commonwealth," and speculated that Bryan had a prior drug-related arrest.

Bryan moved to Boston in late July that year. He lived there slightly over two months before he died. The only reason he was, quote unquote, known to the Commonwealth, was because he was found dead in his apartment from an overdose of heroin that was supplied by Ross Ulbricht's Silk Road. He had never been arrested for anything in his life and I deeply

resent the sinister innuendo that he was a chronic drug abuser who had been in trouble with law enforcement before.

Your Honor, I know that punishing Ross Ulbricht is not going to bring my son back. The past 20 months have been more painful to my family and me than anything I can ever describe. I lost my only son. My daughter lost her only sibling. We have lost someone who we treasured and deeply loved. Bryan never saw his 26th birthday. He never met my daughter's first child. He won't be there for any more family holidays, ski trips, or bike trips. We won't be going to Bryan's wedding. We won't be caring for his children. And, I will never see my son in the role of a father. We no longer get his funny texts and e-mails and no longer hear his contagious laugh.

We know that sending Ross Ulbricht to jail won't fix any of those things but in this country we build prisons for two primary reasons: To punish those who commit crimes, but also to protect society from dangerous criminals whose behavior is a threat to others.

Through Silk Road, Ross Ulbricht had one clear aim: To enrich himself by taking a commission on every drug transaction. He did not consider the fallout on society from the expansion of the market for dangerous drugs. He did not consider people like my son who were so vulnerable to Silk Road's deadly combination of convenience and anonymity, and he did not concern himself with the simple fact these drugs are

illegal for a reason. They offer no medicinal value and they're all highly addictive. Once hooked, the addict loses the ability to choose. All Russ Ulbricht cared about was his growing pile of bitcoins.

This is the behavior of a sociopath and this is exactly the kind of person society needs protection from. Your Honor, Ross Ulbricht deserves the most severe sentence the law will allow.

Thank you for allowing me to speak in your courtroom.

THE COURT: Thank you for speaking, sir.

We now have the mother of Preston B.

VICKY: Your Honor, my name is Vicky and I'm here today not only for myself but for my son Preston -- my late son Preston, and family and friends.

I have got some photos here that I would like to give to you and I would like to read you my impact statement.

THE COURT: Yes.

VICKY: Your Honor, Friday the 15th of February, 2013, was my son Preston's school ball or what you would call something different. I assisted him getting ready that day and he looked so handsome. I enjoyed the company of many parents at the before gathering. I was about to leave when I asked him for a photo. Preston said: Thanks mum for your help. I love you. And he placed a kiss on the side of my cheek. His last words to me and this was the photo of my last kiss from my son.

The next day was Saturday the 16th of February, 2013. This would be one of the worst days of my life.

I received a phone call around 9:45 p.m. from my ex-husband Rod and daughter Aimee informing me that Preston had been in a bad accident and was being taken to St. Charles Gairdner Hospital. At the hospital we were ushered into a private room where a doctor and a social worker were there to talk to us about Preston's condition. They prepared us on the extent of his injuries and what was likely to happen. Preston had suffered severe head injuries and they would have to operate immediately to reduce the swelling on his brain. I asked if I could see him before they prepared him for surgery. When I entered the emergency room, I noticed there was a lot of blood coming out from his right ear. There was staff surrounding Preston with all types of apparatus to keep him breathing while continuing to monitor his observations.

Preston laid lifeless on the trolley. Due to the swelling to the brain they wanted to operate to remove part of his skull. I returned to the emergency room with my daughter Aimee who said: Hang in there, Preston. And I said: I love you, son. Hang in there. Everything will be okay. They're going to look after you.

We went back to the family room and waited. It seemed like a long time. During that wait the doctors came in and told us that Preston lost all dilation to his pupils. They

were not going to go ahead with the surgery as it was going to be too dangerous. They were going to administer a medication instead.

Shortly after the Doctor left the social worker came in and she said: Sorry you've lost Preston. And we were in shock because we had not been told this by the doctor at that stage. From the emergency room he was transferred to the intensive care unit. There were multiple meetings with specialists and organ donation coordinators in the event that Preston was to lose his life.

I left the room and collapsed in total shock curling up on a ball on the floor crying in disbelief at what was happening. The night before was only his school ball.

On Saturday night family were coming in and they knew the outcome wasn't going to be good, that Preston may not survive. On the Saturday afternoon we understood from some of Preston's friends that what had happened to him was somehow connected to drugs.

While Preston was at his after-party, a friend handed him a tablet, a synthetic, and was told by his friend who purchased it online from Silk Road that the drug was only to make you stay awake and make you feel happy.

I was surprised to learn later that if you bought 10 for $20 you could get one free to liven the pot; delivered after three days directly to your door, no proof of age was

required and it was delivered by international couriers. I believe this is something he would not have gone to the streets to find. He was not a drug addict. Silk Road made it easily accessible to anyone, children included.

From what I am told after taking the drug Preston became extremely aggressive and he was talking in what his best friend explains as another language. He couldn't understand him. He became resilient and abusive towards his friend of whom he had known since kindergarten. His friend could not control him or get him to go down the stairs of the resort where he had been visiting friends. Preston was afraid of something and kept saying no, no. He didn't want to go down the stairs. So, his friend went to get his other mates to help him. That's when Preston jumped from the second story of the hotel.

On the Sunday morning about 200 people came to the hospital. They were all lined up waiting to see him. It was quite extraordinary that they allowed all of his friends to visit given that it is an emergency -- 200 people.

I took the first group into the ICU unit to say their final good-bye. We were extremely grateful to all the ICU for allowing this to happen. When I took them in I said this is what drugs will do to you. If you take drugs, this is going to happen. And the nursing staff advised me that I had better tone it down for the next group of people. That's not what I

felt. I felt angry that he had taken this synthetic drug. I just held on to hope that some miracle may happen and that my little boy was going to be okay.

Seeing all of his friends coming in, most of them were crying. It was so hard. Sunday was very busy chauffeuring all of his friends and family to see Preston. We realized that day just how much Preston was loved by many friends. He was an extrovert with a genuine heart. Once he told me, Mum, I don't know anyone that I don't like and who doesn't like me. At that time I took it as him just being a bit of a show off but he was telling the truth.

He gave people guidance and wasn't judgmental. Preston was wise beyond his years which I had relayed to me on numerous occasions from many of his friends, parents and friends.

Monday, the 18th of February, 2013, would be the worst day of my life. Preston had an MRI. Not long after the doctors came in, they sat down in the interview room and told us that he had died from a catastrophic brain injury. There was no blood flowing through his brain. I asked, How do we know when to turn off life support? What length of time do we wait because maybe a miracle may happen and he would come around. The Doctors showed us an x-ray of a healthy skull and then the x-ray of Preston's skull. We could see quite clearly that there was no blood flow to his brain. He was pronounced

dead.

From then we had organ donor coordinators to come in to meet with us. We all agreed that organ donation would be what Preston would have wanted given his caring nature. It seemed as if we were making a shopping list of organs to donate. We were spending as much time as possible with Preston just holding his hand and talking with him. I even gave him a sponge bath given that soon we would have to be saying our last goodbye.

Wednesday was the day that was scheduled for his operation. The three of us, my ex-husband Rodney, my daughter Aimee and I, walked down to the theater to say goodbye to Preston. We watched as the theater doors closed and at that moment that was the last time I saw my son. His organ donations did save many lives.

We then made funeral arrangements. Preston was quite lucky. He had two memorial services; one was held at his high school, and one for family and friends.

Preston was very popular and a well-known young teenager. We were getting constant phone calls from reporters. He was always involved in many sporting activities, football, and baseball to name a few. We lived in the same area for many years. He was house captain many times, perfect, and received citizenship awards.

Preston had many friends during his short life. His

passing has affected a lot of people. A yearly football match is played in his honor against two teams which he has played for, for remembering the outstanding citizen that he was and to promote the effects of drugs.

I think I was numb for the first 12 months after Preston's death. It was the hardest year, 2014. The numbers had worn off. I was crying all the time. When things got harder, I truly pushed people away. These feelings can be overwhelming, especially on anniversaries.

I am very concerned about my daughter Aimee's well being and how she spends most of her time in the bedroom. And she and Preston had a very good relationship. She was his nurturing big sister and Preston was her protector. They hardly ever fought.

Often I would look at old messages from Preston on my phone. Generally, I tried to keep busy and not overthink about what happened and life without him. We keep Preston's ashes at home. Sometimes I just hold them and get a blanket, his blanket, and try to get close to him and other times I get really mad. Why did it happen? Why did Preston do it? He had so much to live for. One stupid synthetic tablet cost him his life. I mean, who knows who manufacturers these drugs and where they are manufactured. Continually they're tweaking the ingredients to avoid detection. I believe if he had never taken this synthetic drug he would still be with us today.

I know that all our children have done stupid things or made bad choices. I don't deny or condone what Preston did by taking the drug. Some are lucky, some are not, unfortunately. Preston's consequences were death and I know now I would wait until the afterlife to see him again.

Thank you.

THE COURT: Thank you.

The Court will now proceed in the following manner which is I will ask the government to speak first, Mr. Dratel and then Mr. Ulbricht if he would like to address the Court before sentence is imposed.

Mr. Turner.

MR. TURNER: At the podium, your Honor?

THE COURT: Yes. Thank you.

MR. TURNER: So, as your Honor just heard from two victims of the defendant's crime from opposite sides of the world -- one from Boston, Massachusetts and the other from Perth, Australia -- both lost loved ones due to drugs from the same place: Silk Road. I think their presence here today underscores the global reach of the defendant's drug trafficking enterprise. It is no exaggeration to say that what he did allowed anyone anywhere in the world to obtain any drug they wanted as long as they had a computer and shipping address. The site radically lowered the barriers to selling and buying drugs. It was designed to do that and it did do

that and these are some of the resulting consequences. This was not a victimless crime.

Even the defendant now, in his letter to the Court, acknowledges that Silk Road became, as he puts it, "a convenient way for people to satisfy their drug addictions." But what is disingenuous about that statement, your Honor, is the claim that he also makes in the letter that he never anticipated this happening. That drugs were safe is naive and impulsive. He said he started the site for idealistic motives but since learned that "taking immediate actions on one's beliefs without taking the necessary time to really think them through, can have disastrous consequences." This is another variation of the revisionist history that the defense tried to peddle at trial; that the defendant started Silk Road but he is not responsible for what it grew into. And that is preposterous.

This was not some rash decision by a young kid who didn't know any better. The defendant was not a kid when he started Silk Road, he was a grown man with plenty of intelligence and education and he knew exactly what he was doing. He studied the idea of Silk Road for months, planned it for months. He ran it for nearly three years. He supervised every aspect of its operation. He knew it through and through and he understood perfectly well what was sold on it. He was the one who decided what could be sold. And as for drugs, his

policy was very clear: Anything goes.

He knew that the drugs he was selling included highly hazardous substances, highly addictive substances. This is not some sudden realization he has had in prison. There is no mystery here. We are 50,000 heroin sales on the site, 80,000 cocaine sales, 30,000-plus methamphetamine sales. There is no sudden realization now that he may have been fueling drug addictions.

At any point the defendant could have shut this site down. At any point he could have walked away. And we heard Richard Bates testify at trial that he in fact tried to get defendant to walk away, tried to find something to do that was legal. But he never walked away, he was committed to it through and through. This was a purposeful, deliberate crime with full awareness of what he was doing. He did not do it simply for idealistic motives. He did it, in significant part, to make large amounts of money.

If you wanted to sell on Silk Road you had to pay him a cut. That was the rule. That was a rule that he was quite emphatic about, that he and his support staff constantly labored to enforce. And the only purpose of that rule was so that he could reap huge profits from his illegal enterprise. Which he did. He fantasized about often becoming a billionaire all from drug money. This was not some disinterested do-gooder.

Obviously, there are also the murders for hire. On multiple occasions this defendant tried to have people killed in order to protect his enterprise spending well over half a million dollars on those attempts.

So, this is no idealistic naive who doesn't understand the criminality of what he was doing, this is someone who was emulating a traditional drug kingpin because he understood that he was essentially in the same business.

Now, in addition to money and power did the defendant have other motivations? Without doubt. He was motivated, in part, by a political agenda but that is no excuse for what he did. If he wanted to pursue a political agenda he could have done so through the political process. He was not entitled to legislate his own policies on the Internet whether it was drugs or fake I.D.s or computer hacking or guns or child pornography. You don't get to say that I think these things should be sold without restriction and therefore I am going to do it, whatever the law says. You can't do it on the street, you can't do it in cyberspace. The Internet is not a license to flaunt the law.

Your Honor, in summary, the defendant is guilty of a very serious crime. He leveraged the Internet to partner with thousands of drug dealers around the world. He distributed massive quantities of drugs in total. He amassed millions of dollars in profits. He lowered the barriers to drug use. He

made it easy for anyone, anywhere, to obtain the drugs they wanted. Serious harm resulted as illustrated by the deaths highlighted in the PSR. He knew exactly what he was doing the whole time and for all of these reasons, as we have stated in our letter, we request a lengthy prison sentence substantially above the mandatory minimum.

Thank you.

THE COURT: Thank you, Mr. Turner.

Mr. Dratel?

MR. DRATEL: Thank you, your Honor.

The standard for sentencing -- for a reasonable sentence is sufficient but not greater than necessary to achieve the purposes of sentencing and we have submitted enough paper that I am not going to repeat what is in there but just cover a couple of principles that we talked about in our papers that I think are important and that is the guiding principle, sufficient but not greater than necessary to achieve the purposes of sentencing.

In that context you are sentencing a person, a young man who, like all of us, is not as good as his best conduct and is not as bad as his worst conduct. It is the totality of the person that the Court has to sentence. And I think to a certain extent the Court, part of the sentencing mandate is about projecting into the future. The future is what is the defendant going to be like and what is the world going to be

like.

The situation we have here is a 20-year mandatory minimum sentence so I will start with that in the sense that I think that in 20 years if he is released no one will say that was too short. But, I think when we start to get beyond that and into the higher reaches that within a short period of time; five, 10 years, because of the defendant, because of the world, because it will be removed from the emotional aspect of today's proceeding, that it will be clear to a majority -- overwhelming majority, it is too long to achieve the purposes of sentencing.

What does a longer sentence achieve? In the context of the purposes of sentencing I suggest it does not achieve anything. I think that the Court, based on the letters that the Court has received including Mr. Ulbricht's letter, I think that the concept of specific deterrence is really not an issue here when you talked about the length of the sentence even under the mandatory minimum term.

I am not even sure the government is making that argument in that regard.

I know the Court has already decided on the issue of the consideration of some of these other aspects of the government's presentation but I think it is important that minimizing, not diminishing the nature of the personal tragedies involved, the trauma, the pain. That is all genuine and legitimate but we have to step back and look at the

perspective of what the role is today in sentencing.

I think intent and impact are important in the context of what the emotional content has brought to this and not even the government can suggest that this was an intended result, but the impact and intent are no different than every drug case that involves an organized sale of drugs or even the disorganized sale of drugs.

You talk about volume. The government talks about 50,000 heroin sales, that's about 73 a day over two years to Silk Road. A small organization with two corner spots in this city does that in an hour. Cocaine? 80,000. They do that, when you break that down, they do that in an hour.

These stories are real but they are present in every case. No one is saying this is a victimless crime. That is a red herring. But, I will say it is not in every case, the countervailing factors that we have set forth. And this is not us, this is not coming from the defense, these are independent, objective professional researchers who studied this site. They didn't study it for sentencing, they studied it before. They weren't commissioned by us, they did this on their own as part of their own professional obligation to tell the truth about what is going on with these situations, to be realists. And this is a difference from the average, ordinary drug operation but the other part is no different yet the government would want the Court to enhance the sentence based on what is present

in every case that is not part of the enhancement and that is disparity from every other drug case.

Another part of disparity is this concept of the general deterrence, and in addition to the fact that there is no science or math or any other objective measurement that sustains the concept of general deterrence, also as a question of justice is, Is it disparate? How is it measured? How is it applied in a courtroom in this court house?

On Tuesday, someone who worked for Silk Road for nearly a year, through its most profitable, highest volume period during the period when five of these deaths occurred, the government never sought an enhancement, he walked out of the courtroom, essentially. He got time-served; 14 months, essentially.

So, what is the message there versus the message here? There is no message, it is a sentence of a human being. It is the same foreseeability for Mr. Nash. It is the same foreseeability for anybody involved in any drug operation yet it does not result in the kinds of sentences that are contemplated here by the government.

In the concept of general deterrence if you are looking at the difference between a 20-year sentence and a greater sentence, I suggest that even reduces it even further. I don't know how you can get further than zero but it reduces it even further because what you are talking about is the

margins that someone is going to say, well, I won't do it -- I will do it if it is 20 years in jail but I won't do it if it is 25. That's not generally deterrent. Even beyond the ordinary scholarship on general deterrence that just even reduces it even further. That is more disparity.

We have talked about the -- we have submitted the figures on sentences in this district -- nationwide, and in this district and that is another disparity to be avoided in this case. Even people who commit intentional murder have, the average is about 270 months. That's for intentional murder. You need to keep that in mind when talking about disparity and sentencing the person matching the offender, the circumstances, and the offense. And I submit there is no justice in saddling Mr. Ulbricht with all of that, with all of the general deterrence, with all of the victim impact that occurs in every case that no one else gets as part of their sentence that he bears the burden of all of that.

I think, ultimately, we submitted 100 letters to Court on his behalf. The number is not important, the quality is. These are letters with detail, with specifics, people who really know this defendant, who know Mr. Ulbricht, have known him for a long time with a lot of different connotations. And I said it in the papers, that is true. You can't reconcile some of this. We acknowledge that. But that goes towards what the purpose of sentencing is and how to achieve it with a

reasonable, rational, appropriate sentence for Mr. Ulbricht.

I think those letters and I think all of the information that the Court has including his own letter demonstrate what Mr. Ulbricht is capable of in the future, that the solution for pain is not more pain. The solution for suffering is not more suffering. It is what is sufficient but not greater than necessary to achieve the purposes of sentencing.

So, I submit that down the road, even at 20 years, that would be sufficient but not greater than necessary. No one is going to look back and say that is too short. This is a complex situation with a defendant who has a lot to offer in a positive way, already has in his life to others in many ways, and obviously this case represents a departure from that. The question is are you going to shut it off completely? Shut it off for how long? Or are we going to have an opportunity for positive outcome somewhere down the road for this case because we can't correct the other parts now. That's beyond our power.

Thank you, your Honor.

THE COURT: Thank you, Mr. Dratel.

Mr. Ulbricht, would you like to address the Court before sentence is imposed?

THE DEFENDANT: Yes. Thank you.

Before you sentence me, your Honor, I want to tell you about myself from my perspective. I recognize that it is hard

to be objective when looking at one's self, but I do have a unique point of view because only I know my thoughts and my feelings and my motivations. And one thing I want you to know is that I have changed. I'm not the man that I was when I created Silk Road. I'm not the man I was when I was arrested. I'm a little bit wiser and a little bit more mature and much more humble.

I have spent 20 months in prison. For six weeks I was in solitary confinement and, you know, there is very few distractions in prison and I have spent a lot of time just being with myself and grappling with the possibility that I will never be free again and trying to come to grips with just how I wound up in this situation, in this position, asking myself where did I go wrong at various points along the way and what should I have done differently. I wish I could go back and convince myself to take a different path but I can't do that. And I can learn from my past.

The testimony of these parents was incredibly moving. I never wanted that to happen. I've essentially ruined my life and broken the hearts of every member of my family and my closest friends. I would never risk causing that kind of heartache and loss ever again. If given another chance, I would never break the law again.

One of the things I have realized about the law is that the laws of nature are much like the laws of man. Gravity

doesn't care if you agree with it -- if you jump off a cliff you are still going to get hurt. And even though I didn't agree with the law, I still have been convicted of a crime and must be punished. I understand that now and I respect the law and the authority now.

I also want to talk to you a little bit about my character and my motivations. Since coming into the public eye a lot of people have tried to characterize me and guess at what my motivations were for creating Silk Road. As Mr. Turner said, he believes it was for greed and vanity. I want you to know that that is not true. I am just not a very greedy or vain person by nature. I wasn't raised that way. I was taught to share my blessings, to live, like, a humble, modest lifestyle. I am not into status symbols or luxury, but more than that, I remember clearly why I created the Silk Road. I had a desire to -- I wanted to empower people to be able to make choices in their lives for themselves and to have privacy and anonymity. I am not saying that because I want to justify anything that has happened because it doesn't. I just want to try to set the record straight because from my point of view I am not a self-centered sociopathic person that was trying to express some, like, inner badness. I just made some very serious mistakes.

Lastly, I would like to share with you what a second chance would mean for me personally. I do love freedom. It's

been devastating to lose it. If I had one more chance before I pass on there are just little things, little joys that -- like throwing a Frisbee to a dog in a park, you know? Or Thanksgiving dinner with my family. That would mean a lot to me. More than that, just being in the lives of my family members and friends again. Decades from now many of them will still be alive and if I take care of myself and stay strong and sharp, if I do get out eventually I could possibly be a benefit to their lives and not a burden on them. If there are any children in my family at that time, nieces, nephews, what have you, I could try to share the wisdom that I have gained with them and try to help them out and not make the same mistakes that I have. And, I also want you to know that it is just in me to want to have a positive impact on our broader community and my attempt at that with Silk Road ended in ruin, but if I ever get the chance again I will be incredibly cautious and I will make sure that anything I do, large or small, will only have positive effects on those around me and will absolutely be within the confines of the law.

I am so sorry to the families of the deceased.

Your Honor, I don't envy your position, it can't be easy, but I want you to know that I am here and paying attention and I am ready for whatever sentence you think is wise.

THE COURT: Thank you, Mr. Ulbricht.

What I would like to do is to take a break and to come back in 10 to 15 minutes. I say that because while I don't think I will need a break for 10 to 15 minutes, anybody who leaves is going to have to come back in through security. So, just be aware that you will have to go through again. So, I want to give people time to get back in and get seated again.

I do think it is appropriate at this point to take a break, so let's take a break for those few minutes.

Thank you.

(Recess)

THE COURT: In our system of law one Judge is tasked with the very difficult and very serious responsibility of passing judgment on another human being and it is a task which, in my life, there is no more serious task. It is one I have taken very, very seriously. I have spent well over 100 hours on this sentence contemplating it, walking and being silent and thinking about it, and running over and over and over it in my mind from every angle I could think of.

I have tried very hard to come up with what is a just sentence and in doing that I have tried to come up with what does that even mean. And I have thought a lot about that. What is justice? What is justice here? What does it mean here? What does it mean here for you, Mr. Ulbricht, for this defendant here now in our society at this time in this context in which we find ourselves.

I want to tell you how I arrive at my sentencing decision but that will sound like some of the procedures, but I want you to know the biggest part of the sentencing is just thinking about each and every fact and consideration and provision of law that I am required to look at again and again and again from every possible angle.

Now, you have heard us talk about the guidelines. We have to talk about the guidelines. We are required to come up with what the appropriate offense level calculation is. We are told that it is the first thing that we have to do and we have to consider them. We have to consult them and I have done so. But the guidelines, as your lawyer has said, which here are life for you, the guidelines are not presumed reasonable. The Court has to step back from what is otherwise a book of numbers and look at the facts and the circumstances that are before it, the human side of what is going on before the Court at that time. The Court does that guided by the factors under the statute, the federal statute that we call 3553(a) which is where you find it in a book back when people actually looked in a book, otherwise you enter it as a search time term and find it online. 3553(a) requires that the Court look at certain things. It requires that the Court look at the nature and circumstances of the offense. I have to. It requires that I look at the history and characteristics of the defendant; the good and the bad, and to look hard and to make judgments that I

can't possibly know if they're entirely right. They're my best judgment with everything that I have applied to it. I can't know you like you know you. I can't know you like your parents know you. I can't know you like the people who gave birth to you know you. But I have to try very hard to make a judgment and I have to look at what I know about what you did that was bad. And I have to, in all of this, ask for myself what is a sentence that reflects the seriousness of the offense.

Now, the seriousness of the offense occurs in the context of our society. It is not a seriousness of an offense devoid of social context, it is what did you do here in our community and I have to ask what is just punishment, as I said, for that offense. What kind of punishment provides -- and I have to look at it, the statute requires me to look at the question of personal deterrence, general deterrence. These are not things I can ignore. I have to ask whether there is any educational, medical, vocational or correctional treatment that suggests a particular sentence.

So, I have analyzed each and every one of these factors here and I have analyzed them from every angle I can possibly think of for you and it has been very, very difficult.

What sentence serves the ends of justice? I start with the nature and circumstances of the crime and we have talked about some of it already. The nature and circumstances of the crime can be summed up as a planned, comprehensive, and

deliberate scheme to do that which was unlawful and something which posed serious danger to public health and to our communities.

I, and you all know, that Silk Road was a worldwide criminal drug enterprise with a massive geographic scope. And, Mr. Ulbricht, you don't fit the typical criminal profile. And, you know, it is not television or the movies here, right? Where criminals look a little shady, their eyes are a little shifty, they wear outfits that make them look like, you know, criminals. You are educated. You have got two degrees; you have a physics degree, you have a masters degree in applied materials. You have an in tact family. You have 98 people plus yourself who are willing to write letters on your behalf, maybe a hundred when the other ones had come in.

So, you are a complicated person and you are not the typical criminal profile but this is real life and life is a lot more collected than what we see in the movies or the kind of people we might imagine as the typical criminals. We have you and you're a criminal. And that word I know probably even today may sound harsh to you but you stand convicted of seven counts, we have now dismissed a couple of them, and you are now to be sentenced on the rest.

Criminals are real life people. You are a real life person. They're born to parents who love them, one hopes, if they're lucky enough, as you were. And they're people who have

relationships with other people in their lives who do not want them to be incarcerated for any period let alone a very, very long period. Those relationships are true, those are not fake. You are not a criminal and then nobody loves you. That's not the way the world works. Okay? So, not all criminals are bad people in every way. People are much more complicated, they are a fabric of different characteristics. But, how do I think about you?

I think about the fact that you knew you were running a criminal enterprise. And in the trial exhibit that is Government Exhibit 229D you stated at one point in a communication, Gosh -- and I will quote it in a moment later -- When my friends ask me why don't you do this? Why don't you do that? I don't have enough time. I'm running a multi-million dollar criminal enterprise. It wasn't game and you knew that. It was an enterprise the stated purpose of which -- the stated purpose of which -- was to flout the law, to be outside of the law, to be beyond the law.

In the world that you created over time, democracy that we had set up with our founding fathers that provide for the passage of laws and the enforcement of those laws through our democratic process did not exist. It wasn't about democracy.

You were captain of the ship, as the Dread Pirate Roberts, and you made your own laws and you enforced those laws

in the manner that you saw fit. So, it wasn't a world without restriction. It wasn't a world of ultimate freedom. It was a world of laws that you created, they were your laws. It is fictional to think of Silk Road as some place of freedom. It was a place with a lot of rules and if you didn't comply with the rules you would be bumped out of Silk Road, you would have various kinds of things done to you that are all set forth in the seller's guide, and here and there, and ultimately there were, of course, some commissioned murders for hire when people were making threats against the enterprise.

So, I don't find supportable the argument that the website was started by an impulsive or naive young man. I give you a lot more credit than that. I don't think you did something thoughtless, I think you did something very, very thoughtful with which I disagree entirely. I disagree with the choice that you made but I don't think it was a choice that you made without giving it deep thought.

I don't find supportable the argument that Silk Road was an economic experiment. It was, in fact, a carefully planned life's work. It was your opus. It may have been based on some theory or some philosophy that you held, but it was no experiment of philosophy and provides no excuse. You wanted it to be your legacy -- you said that in some of the communications introduced at trial -- and it is. It was a project that you had an idea for, you carefully nurtured it,

you took deliberate acts to set it up over years to put your plan into motion and to perfect it and to continue to perfect it and to improve it. That was not anything impulsive. That is not the definition of impulsive. There was no experimental quality to it, it was slick, it was professional, it was built to last. And, but for the very hard and creative work of law enforcement, it would still be going right now.

You spent several years very carefully planning the site and designing carefully considered methods of avoiding legal detection both for yourself, for your vendors, and for your customers, and you sought in all of these ways to put yourself above the law. There are so many documents which demonstrate that that were introduced at trial.

You wrote the code and worked with others to perfect it and others helped you with code and wrote some code for you. You designed the terms of service, the seller's guide at Government Exhibit 120, which advised the Silk Road clients on anonymity, on how to sell things in stealth mode, how to use stealth listing; that when vendors sell drugs they should do so through the U.S. Postal Service which needs a warrant to open packages, that to avoid detection in terms of smell how to do that or who to talk to about it and how to "creatively disguise the packages."

All the evidence shows that you viewed Silk Road both as above the law and the laws didn't apply, and in this context

the fact that the laws are what distinguished us from what is uncivilized that they are the embodiment -- laws are the embodiment -- and they are the manifestation of our democratic process. When that gets lost, it becomes meaningless.

Silk Road's birth and its presence asserted that its creator -- you -- and its operator -- were better than the laws of this country and there are posts which discuss the laws as the oppressor and that each transaction is a victory over the oppressor. This is deeply troubling and terribly misguided and also very dangerous.

Your own words I have looked at very carefully and I have reread certainly more than once in this whole process. They reveal a kind of an arrogance and they display an intent that is very important to the Court's determination, and the Court will go through some of the chronology of putting some of your words into chronological order here now and I will give you the Government's Exhibits but they're exhibits that were all introduced at trial and which were all very, very familiar.

In GX 240A you wrote in 2010 that you began -- or about 2010 that you began working on a project that had been in your mind for over a year indicating, of course, the lack of a last minute lightbulb going off, this was a well-planned project, and you say: "The idea was to create a website where people could buy and sell anything anonymously with no trail whatsoever that could lead back to them." And that is not so

much about the economics of it, of an economic experiment, that is about a method of law evasion.

Then you state that, "I finally decided I would produce mushrooms so that I could list them on the site for cheap to get people interested." Then you describe the process of making several kilos of mushrooms and selling them.

Then in 2011 you wrote: "I am creating a year of prosperity and power beyond what I have ever experienced before. Silk Road is going to become a phenomenon at least one person will tell me about it, unknowing that I was its creator."

Government Exhibit 240B; in 2011 you described the technical build of the site and said that, "before long, traffic started to build."

Also in 2011, you wrote proudly that Silk Road was getting its first press from Gawker but you also wrote that two senators came out against the site. And then you said: "I was mentally taxed and now I felt extremely vulnerable and scared. The U.S. government, my main enemy, was aware of me and some of its members were calling for my destruction." And then you changed your name to Dread Pirate Roberts; you devised a cover story.

You say in Government Exhibit 240C in December of 2011, "Everybody knows too much. Dammit."

Government Exhibit 240D, January 1, 2012 you write,

"Well, I am choosing to write a journal for 2012." And footnote, it is still unclear to me why you ever wrote a journal. But putting that aside, "I imagine that some day I may have a story written about my life. It would be good to have a detailed account of it."

In Government Exhibit 226A in March of 2012 you and some employees run a promotional campaign with a prize for a participant. In messages introduced at trial you point out to your colleagues that it is a worthwhile thing to do and state: "We will be doing a mil in sales" -- which I read as a million but it says -- "a mil in sales every week at full commission before long. I think it's leading by example for the vendors. They will be more generous if we are. And we are selling drugs here. First one's free, little Johnny. Damn, that sounds awful." Followed by your colleagues saying, "Ha." And then you say: "Sponge Bob canoe and life-size my little pony with every hash purchase of 50 bitcoins or more."

And in Government Exhibit 226E in March of 2012, so we are in the same time frame, you were discussing with an individual called VJ -- Valerie Jones -- Variety Jones -- getting alternative citizenship because you were planning your exit, and you stated that you already had your banking plan worked out and your living plan worked out.

You also wrote additional messages in May of 2012 that reveal that the winner of the Silk Road promotional contest had

actually been trying to, unfortunately, dry out from heroin. And you were told that the influx of cash as a result of that promotional My Little Pony campaign didn't help and it is clear that he has relapsed and that Silk Road had made it too difficult. And you stated, "shoulda thought more carefully about dropping 4K on an addict so maybe our next prize will be three months in rehab."

And then, Government Exhibit 226E in May 2012, this fellow VJ advises you to carefully create and nurture a public persona and you respond "I'm not complaining about any of this, great fucking problem to have."

Then, in 229C, still in May 2012, you were informed that a vendor is selling cyanide. You were told, "it's only the most well known assassination suicide poison out there." And you consider whether to allow it to be sold because you are the decision maker. In prior statements you had said that things would not be sold that would harm another but within six minutes from the start of this chain of this communication you had made the decision that it is okay to sell cyanide.

In Government Exhibit 229D, that fall in October of 2012, you tell VJ that you have a little alibi for friends and family and that "I'm clever so I can BS when I need to." And that, "friends will tell me shit like, why don't you do this or that, like I have all this free time. I just want to scream at them 'because I'm running a goddammed multi-million dollar

criminal enterprise.'"

Then, in January 2013, you discuss with an employee the risks of working for Silk Road. And when you are discussing getting caught which the individual is concerned about you state, "put yourself in the shoes a prosecutor trying to build a guess case against you. What evidence could they pin on you?"

Then, in Government Exhibit 241, March 2014, you wrote a journal of short snippets of your day and you write -- and each of these snippets is going to be one after another, they're just tiny snippets with a period in between:

March 28: "Being blackmailed with user info. Talking with large distributor, (hell's angels)."

Then, March 29th: "Commissioned hit on blackmailer with angels."

April 1: "Got word that blackmailer was executed. Created file upload script." So, you went back to the technical work right after getting word that the blackmailer had been executed. "Started to fix problem with bond refunds."

Government Exhibit 936 details communications relating to that hit further. Apparently you were sent a photo of the hit. The photo was no longer in existence, you acknowledge receiving the photo and deleting it.

A short time later you wrote, on April 6: "Make sure backup crons are working. Gave angels go ahead to find

tony76." Who was the subject of the next hit. "Cleaned up unused libraries on server."

Two days later on April 8 you write: "Sent payments to angel for hit on Tony76 and his three associates. Began setting up hecho as standby" -- I have no idea what that is -- "refactored main and category pages to be more efficient."

These are the words of a man who knows precisely what he is doing and they're the words of a man who is callous as to the consequences or the harm and suffering that it may cause others.

You joke about an addict unable to contain his addiction because of Silk Road and you seek to kill people that you don't even know -- these are the words of a criminal and that is truth.

The crimes as to which you stand convicted, Mr. Ulbricht, are crimes which are intentional, they occurred over a lengthy period of time, you knew exactly what you were doing. This was not some sort of experiment, it wasn't some sort of game. This is the general nature of Silk Road.

We have talked a lot about the drugs. There were a vast array of narcotics. Silk Road is about fulfilling demand and creating demands. It was market-expanding. It was market fulfilling and market expanding and there are numerous facts in the record that support this.

The facts brought out in connection with the victims'

death provide evidence of first-time and expanded usage. Mr. Duch, at trial, talked about becoming a new drug dealer for the very first time. There are numerous messages with Dr. X in which people discuss using a drug for the very first time.

There is no reason to believe and certainly we cannot know whether, in the absence of the ease of use of privacy and the other features of Silk Road, that these first-time users or those trying different drugs for the first time would have done so in the absence of Silk Road. It is just wishful thinking to believe that Silk Road was a zero sum game.

Silk Road also distributed drugs anywhere that the delivery service would take it worldwide -- DHL, Fed Ex, USPS -- bringing drugs to communities that previously may have had no access to such drugs or in such quantities. That was an assault on the public health of our communities.

In short, there is supportive evidence from which reasonable inferences may be drawn that Silk Road grew the market for certain drugs and certain suppliers, no doubt leaving a trial of drug users and drug dealers in its wake. You could by heroin, crack, cocaine, meth, MDMA, steroids, prescription pills. If it wasn't available that wasn't because it was excluded from the site. You could have it shipped anywhere. A vendor could have shipped it anywhere.

The quantities are staggering, we talked about those, and there are materials by the defense that suggest that the

drug laws -- and these are particularly why the articles are misguided in many respects and also the harm-reduction arguments are implicitly based upon much of that, and it is rare in a sentencing to have the restrictions on drug distribution to safeguard public health as something that we need to argue about. And, in fact, we don't need to argue about it but I think it is worth addressing given the attention that it has gotten here.

There appears to be, in some of these articles that were presented to the Court, some view that there is a moral ambiguity about some of the drug distribution. There is no moral ambiguity about it. It was just wrong. And that is what our democratic process had said and there is a way to change the law but it is not by doing what occurred.

No drug dealer from the Bronx selling meth or heroin or crack has ever made these kinds of arguments to the Court. It is a privileged argument, it is an argument from one of privilege.

Let me start with the basic proposition: The impact of heroin, crack, and meth sold in the Bronx, the impact of those drugs sold in the Bronx are no better for our society than those drugs that were sold through Silk Road. When those drugs arrive it is the same drugs. You are no better a person than any other drug dealer and your education does not give you a special place of privilege in our criminal justice system.

It makes it less explicable why you did what you did.

The social costs of drugs are manifest. The user is only one part of the equation, that is where much of this harm reduction argument comes from and it is focused on the user. The user is one part of a massive, massive worldwide scheme of drug trafficking and if you sat where I sat you would see that the user is not -- it is not -- it is the tail waging the dog, it is the end. So, harm reduction focused on the user is missing the point.

It is a fantasy, it is magical thinking to believe that drug use can occur widely only in private places in some sort of cocoon involving no one other than the user and never involving what is surely predictable collateral damage, so let's just talk about what some of the well known social costs are that are necessary to talk about because of the articles that were submitted.

Some drug users may lead functional lives day to day or they may not. But, you don't know. Or, they may for a time and they may not be able to sustain it.

Many drugs on Silk Road were highly addictive. Many have harmful side effects. Many people have unpredictable reaction. Repeated use of highly addictive drugs leads to a host of clear social costs, costs that we all pay: People lose the ability to function, they lose their jobs, they lose their income, they lose their ability to have meaningful

relationships and sustain those relationships. They lose their ability to care for children and then those children get neglected and then those children grow up and those children grow up with models of parents who have been drug users and addicts and may have had to engage in crime to sustain their habits.

Another cost of addiction is an out-of-control life and a life that is out of control can lead to assaults on loved ones, to assaults on random strangers, to assaults on one's self.

You can lose your home and then society picks up the cost of the homeless families, the homeless kids, of the parents who were drug addicts. There may be a social cost to food stamps or welfare when people can't afford their food and their kids can't afford the food because they can't have jobs anymore because their drug addiction has driven them to such a state.

The social costs associated with arrests for crime committed to support the habit. Not the hand-to-hand drug deal but when those people are addicted and when those people are desperate, they're often stealing. They're stealing to support the habit. That's robbery, it is burglary, or it is worse and that violence was not taken into account in the articles that I read. And, there is the cost of lawyers for the indigent defendants who are then arrested for these crimes and then who

are brought in to court not for drug crimes but for the violent crimes that are the collateral effect of some of those drugs.

There are certainly costs in terms of medical expenses that we, as a society, have to pay for the medical care resulting from worsened use of drugs, from the individuals who have medical conditions worsened by drugs.

The social impact of violence. Let there be no mistake, there is no way in the world that Silk Road could actually reasonably be expected to reduce violence. I have reviewed each and every one of the articles that were submitted and those articles have a very narrow focus and they fail to deal with many of the very obvious facts.

Major violence on the streets during the hand-to-hand transaction. That's been the focus of so much so-called harm reduction argument. It is really, I think, quite misguided.

The facts are clear and there are just cases everywhere about the way the drug world works, that drugs are made available, first of all on the website itself, it shows drugs made available in wholesale quantities; kilos of this, kilos of that. So, it is not just hand-to-hand. All right? So, those drug dealers, when they go out, where is the hand-to-hand harm reduction for them? And drug dealers are targets of violence. So, when they get their express mail package in the mail and it is sitting in their apartment, are they not the targets of somebody coming in? Does the mailman

not show that he is delivering a package to John Doe?

But, there are also other places where the violence comes in and so the violence isn't going to go away with one Silk Road or with a thousand Silk Roads. Drug usage creates demand. Silk Road, in part, based on the evidence we have already seen, created people who hadn't tried drugs before that was increasing the demand for certain drugs and Silk Road wasn't making the drugs so the drugs are going to be made elsewhere.

Let's take Afghanistan or Mexico as the place for poppies for heroin. As we know, there is all kinds of violence in terms of the production of drugs and Silk Road can't reduce that violence because it is not involved in that part of the chain. But, when it expands the market it is expanding the demand on that part of the chain and it is a step in the chain. So then, what happens next? Then there is a valuable cargo.

That valuable cargo comes from place A to place B. The valuable cargo comes into this country or goes into Colombia or somewhere else and there is violence down there. When you have a demand-expanding operation such as Silk Road there is more demand for cargo and there is going to be whatever violence that results. So, Silk Road is not involved in these initial stages.

The drugs arrive here, they arrive in large quantities. So, maybe the next step is further distribution.

Maybe there is going to be some ease of distribution at that time and Silk Road can claim credit for that or not, but the idea that it is harm-reducing is so very narrow and it is talking about such a privileged group able to sit in the privacy of their own home with their high-speed Internet connection.

So, this is our real world. Our real world, if we make it easy and possible to buy and use drugs, are we helping society? Or are we hurting society? And these are the questions I have to ask. These are the values of our country. Our country has made determinations through our democratic process. So, I don't want to defend the drug laws. I don't think it is necessary to. But, the facts that I have described are clear every day in the newspapers. So, there is broad and unrelenting violence known and easily observed from the facts before the Court.

So, let's talk about your own violence.

So, we also have your own violence and there is no doubt -- really none -- that you wanted to and paid for the murders of five people to protect your drug enterprise. That is not the conduct of conviction but it is relevant conduct, so how is that consistent with harm reduction?

The submissions by the defense experts that you folks put in say that we should ignore that because it wasn't charged. But, that doesn't mean it didn't happen. How do you

ignore that? I just really don't understand that argument at all. It happened, it is there in black and white. Now, did the murders happen? Well, they can't find any bodies.

Did you commission a murder? Five? Yes.

Did you pay for it? Yes.

Did you get photographs relating to what you thought was the result of that murder? Yes.

So, I have read many articles about the harm reduction and it is just fantasy.

What Silk Road really was was a social market expander of a socially harmful drug that we have deemed in our democratic process to be unacceptable and it was an enabler of those trying so very hard to get away from it.

The Court notes that there is the presence of Dr. X who deserves special mention in his particularly despicable -- that he has been pointed to as a big part of the harm reduction. I have read each and every post of Dr. X and I was blown away and infuriated by it. A doctor who wants to sell Fentanyl patches? Expired Fentanyl patches?

So, it is absolutely clear that Dr. X is part of the problem, he is not part of the solution and, again, it is magical thinking to think so. So, let's talk about Dr. X because he is an absolute enabler. He is a positive marketing event to get people to use drugs. Does that mean that he never ever helped people discuss how to titrate down on certain

drugs? No. I'm not suggesting he didn't do that. I'm suggesting that having somebody there who can also say, Hey, yeah, ecstasy is not a bad thing, here is how you do it. That's fine. That's enabling.

The first post of Dr. X on Exhibit 4 in Ms. Lewis' affidavit is an example of the problem. He is told that an individual has never done MDMA -- ecstasy -- but is interested in exploring it. -- market expanding -- The individual discloses that he has Type 1 Diabetes. Dr. X states that MDMA would be okay nonetheless, that "dramatic changes in glucose are not expected." He states that a danger is that MDMA could make the user forgetful, that he might forget to test his sugar, so he recommends the individual set an alarm clock. He states: "I think with that, it should be enough."

This doctor has got a guy with Type 1 Diabetes, knows nothing else about him, about to try MDMA. This is breathtakingly irresponsible. It does not take a physician to see this as plain common sense.

So, he was here and elsewhere encouraging experimentation in very dangerous circumstances to another who has disclosed using Lexapro, an anti-depressant, who wants to use MDMA. Dr. X encourages him that he will not feel the full extent of the effects of ecstasy until he has "abandoned" Lexapro.

The irresponsibility of this statement given that this

is a person who may have depression already -- he doesn't know if Lexapro is prescribed for depression or something else -- and given the possible known effects of MDMA which include further depression possibly afterwards, is breathtaking.

In another post he glibly advises that "all drugs are absolutely harmless. They won't, in his words, assault you or rape you.

To an 18-year-old who states he is concerned that he has a developing brain Dr. X advises: "but given how you're on Silk Road and your mannerism of speaking, be careful, and I feel you'll be fine. Stick to psychedelics."

Another asked about combining MDMA with an SSRI and Dr. X advises that there is a theoretical risk but, in his opinion, it is overestimated.

And in a private message between Dr. X and an individual he states to the individual he will sell him 75 milligrams of Fentanyl patches. He shipped them from Spain.

So, he puts in a declaration in this matter and says he is unaware of a single overdose associated with Silk Road. I asked the question about the woman curled up in the fetal position he had been told about and then he then did respond. But, what he is doing is enabling and what he is doing is breathtakingly irresponsible.

The other declarants also described why Silk Road is harm reducing and none consider the upstream or the collateral

violence and the social costs that I have described. There has been much focus on the drug trafficking but there, of course, that is only one aspect of the site. There is also a wide array of computer hacking tools available and fake identification documents. What kind of harm reduction can be found there? What kind of harm reduction can be found in the sale of computer hacking tools? What kind of harm reduction can be found in fake identification documents? Did anybody expect them to be posted on the wall and just looked at? No. The expectation, the reasonable expectation would be use. So, that's fraud. How is that harm reduction in our society? Is it harm reduction to the fraudster user? Maybe. Is it harm reduction to the recipient? Oh, most certainly not.

So, general deterrence.

So, defense counsel has argued that general deterrence, through sentencing, is illusory. And I have listened very closely. I have read very, very closely the articles and interestingly, in a study cited by defense counsel -- which is Kleck as the lead author -- the author acknowledges, right towards the back of the article, "It is also possible that unusually highly publicized punishment events may generate deterrent effects that the routine, largely unpublicized punitive activities of the criminal justice system ordinarily do not."

This is a case in which general deterrence plays a

particularly important role. This is one of those cases. It is a case without serious precedent. What you did was unprecedented and in breaking that ground as the first person you sit here as the defendant now today having to pay the consequences for that.

There is significant public interest in this case in terms of the social utility analysis or any kind of risk reward analysis. For those considering stepping into your shoes, carrying some flag, some misguided flag, or doing something similar, they need to understand very clearly and without equivocation that if you break the law this way there will be very, very severe consequences.

You don't bear only the general deterrence you also bear the responsibility for the other factors as well. That is just one element in the analysis.

For personal deterrence it is also an issue here. It is clear you did lead a double life. Frankly, I can't make a judgment about which of you to know, which of you to rely on, and which of you to believe. You were able to create an identity for friends and family that was entirely different from that which was separate from the sweeping criminal enterprise that you ran. In the quotes that I have already read you stated you changed your name, developed an alibi, you were able to BS when necessary. And I take you at your word in that, that you were able to do all of those things.

It is notable that you were prepared to flee; that having acquired new identification because you acquired your own array of fake identification -- nine of them -- that you were in the process of obtaining alternative citizenship. You had flown down to Dominica, had an interview and filled out the form and were doing that. You just didn't pull the trigger fast enough.

It is also notable that the reasons that you started Silk Road were philosophical and I don't know that it is a philosophy left behind. And except for your family and friends and the statement you made today, I don't know that you feel a lot of remorse for the people who were hurt. I don't know that you believe you hurt a lot of people. I don't think you know that you hurt many.

Let me comment now on the many letters of support you received discussing your character. I read each and every one of them with care. I have read them more than once. They are beautiful letters. These are letters written by a vast, broad array of people which are a statement that is extraordinary for you because they are, as I said earlier, from every phase of your life and they tell different stories and they tell different anecdotes about you. They reveal a man who was loved, who has built enduring and significant relationships over a lifetime and maintained them. The letters reveal you as intelligent, that you displayed great kindness to many people,

that people believed in you when you were younger and believe in you still. The letters that your supporters wrote express experiencing great pain at your incarceration and concern for your future. Most letters ask this Court to impose the lowest possible sentence and those that do not, they don't see it one way or another. Nobody is asking for anything else. The letters are profoundly moving.

I have thought about them and read them over and tried to reconcile them with the facts I know about this case. There is no reason to make a choice between these two people that I see that are on display -- the Ulbricht who is the leader of the criminal enterprise and the Ulbricht who is known and loved. What is clear is that people are very, very complex and you are one of them. They are made up of many different qualities and many characteristics with no one quality defining them. And there is good in Mr. Ulbricht, I have no doubt, but there is also bad, and what you did in connection with Silk Road was terribly destructive to our social fabric.

Now, there have been the issues of sentencing disparities raised. Defense counsel raised that in his letter of May 28th and also today with respect to Mr. Nash. Mr. Nash, who was sentenced before Judge Griesa to time-served, that was 17 months. That individual was a moderator for a period of time on Silk Road. He was a very, very different person than you. It's a person way up on top of the hierarchy and a person

way down in the hierarchy. In any event, he was given a downward role adjustment for having a non-leadership role, a minor role. He was also safety-valve eligible and he made proffers to the government. Also, his sentencing transcript was 8 pages long. It must have lasted -- I don't know -- 10 minutes? And, there is no rationale. So, you are not similarly situated but nor can anybody draw any kind of comparison based upon any rationale that was put forward.

Now I want to talk about forfeiture because I am going to go into the imposition of sentence but I am going to do forfeiture first.

The government seeks forfeiture here in the amount of $183,961,921. The superseding indictment contains a forfeiture allegation as to all seven counts but of course we have dismissed certain counts.

The Court finds that $183,961,921 is subject to forfeiture pursuant to the applicable statutes and that is 21 U.S.C., Section 853(a)(1) as to Counts Two and Four, and 14 U.S.C. 982(a)(2)(B) as to Counts Five and Six, and 18 U.S.C. 982(a)(1) as to Count Seven.

Rule 32.2(b)(1) of the Federal Rules of Criminal Procedure outlines the procedures for criminal forfeiture. After a guilty verdict is returned on a count with respect to which the government has sought criminal forfeiture, the Court must determine what property is subject to forfeiture under the

applicable statute. If the government seeks that personal money judgment, the Court must determine the amount of money that the defendant will be ordered to pay. The government must establish the nexus between the offense and the forfeiture requests by a preponderance of the evidence. Capoccia, (2d Cir. 2007).

Under 21 U.S.C. 853(a)(1) and 982(a)(2)(B), the government is entitled to forfeiture of proceeds obtained directly or indirectly as a result of the offenses in Counts Two, Four, Five and Six.

Under the Second Circuit's decision in Contorinis (2d Cir. 2012), the Court may order the defendant to forfeit proceeds received not by him but "by others who participated jointly in the crime, provided the actions generating those proceeds were reasonably foreseeable to the defendant." I find, by a preponderance of the evidence, that they were.

Here, the government has established by a preponderance of the evidence that the sales of Silk Road of illegal drugs total at least $182,962,583 and that the sales of false identification documents totaled at least $1,001,636. And that is Government Exhibit 940A and Government Exhibit 940B.

At trial, Brian Shaw testified that these figures reflects Silk Road sales specifically categorized in transactional records (Transcript 1929:1 through 1934:13) and

that these sales were foreseeable to the defendant in his role as the Dread Pirate Roberts.

In addition, under 982(a)(1) the government is entitled to forfeiture of property, real or personal, involved in the money laundering offense in Count Seven.

The Circuit has held even where a defendant does not retain money laundered property he will be subject to substitution of assets, i.e., a money judgment, so long as he conducted at least three separate transactions in any 12-month period involving at least a total of $100,000 or more. I should mention that money laundering allowed people on the website to exchange money that, circumstantially the inference is clear, was obtained for one purpose to exchange it into currency and cash out and launder that money.

So, in this case, all funds passing through Silk Road's Bitcoin-based payment system were involved in the money laundering offense in Count Seven. The Bitcoin-based system promoted and facilitated illegal transactions on Silk Road and concealed the proceeds of those transactions. It also concealed the identities of and locations of users. Government Exhibit 119; it is Mr. Der-Yeghiayan's testimony.

The defendant was involved in laundering well beyond $100,000 through many more than three transactions over a 12-month period. That evidence is clear and I find it by far more than a preponderance of the evidence. He is liable for

all the funds that passed through Silk Road regardless of whether he personally retained them.

I also note that the forfeiture amount is not an "excessive fine" under the Eighth Amendment but I say it sua sponte given that is over $180 million. While the amount is significant, it is no more significant than the revenue that was generated through the sales of illegal drugs and fraudulent identification documents on Silk Road and money laundering, a criminal enterprise which the defendant designed and operated.

Accordingly, the Court does find that $183,961,921 is subject to forfeiture and hereby enters an order of forfeiture pursuant to 32.2(b)(2) and I will sign the order following this proceeding.

The Court is not going to impose restitution. While there are victims that are harmed, it is not quantifiable in terms of money damage.

Let me go back now to the other aspects of sentencing.

The guidelines here as we know are life, but the Court has made an independent inquiry under 3553(a) and my sentence is not a Sentencing Guideline sentence. I have given the sentence a great deal of thought, as I have said, and I have considered each potential increment of time and I have considered that in terms of what it means to you, what it means to other people in your family, and also what it means to others in our society who are appropriately considered under

3553(a) and to the extent that they are.

I have examined each potential year of incarceration carefully and I am humbled by this responsibility that requires one person to judge another and that one judge can sit in our society and determine what society deems an appropriate and just sentence. But, I was appointed to do this task and I sit here as a representative of our society and I sit here with a flag of the United States of America representing our democratic process and it is to me to mete out a just sentence and preserve the safety of our community so I take this very seriously. I must impose a just sentence taking into account all applicable factors.

It is with all of that in mind that I now pronounce the remainder of the sentence. So, Mr. Ulbricht, would you please stand, sir?

Mr. Ulbricht, it is my judgment delivered here, now, on behalf of our country, that on Counts Two and Four you are sentenced to a period of life imprisonment to run concurrently; on Count Five you are sentenced to five years' imprisonment to run concurrently; on Count Six, you are sentenced to 15 years' imprisonment also concurrent; and for money laundering in Count Seven, you are sentenced to 20 years, also concurrent.

In the federal system there is no parole and you shall serve your life in prison.

I make this judgment mindful of the tremendous pain

that I am causing you and all of those who you love. I make this judgment mindful of the crimes that you have committed and the needs for the severest possible penalty to be imposed.

There must be no doubt that lawlessness will not be tolerated. There must be no doubt that no one is above the law, no matter the education or the privileges. All stand equal before the law. There must be no doubt that you cannot run a massive criminal enterprise and, because it occurred over the Internet, minimize the crime committed on that basis.

After deep contemplation and much searching, I believe that this sentence and no other is sufficient but not greater than necessary to meet the factors under 3553(a).

In the unlikely event that you are ever released, I also impose a period of lifetime supervised release on Counts Two and Four to run concurrently; three years on Counts Five, Six and Seven to run concurrently; and the usual conditions shall be imposed. There will be a special condition that you will have to submit your person, computer, and place of residence to reasonable searches by the probation office.

There is a required special assessment of $100 for each count on which you are sentenced which is $500 because there are only five remaining counts.

I do not impose a fine because the Court has imposed a very large forfeiture order.

Counsel, is there any legal or other reason why

sentence cannot be imposed, as stated?

MR. TURNER: No, your Honor.

MR. DRATEL: No, your Honor; other than what we have already stated on the record.

THE COURT: The Court does impose the sentence, as stated.

Mr. Ulbricht, you have a right to appeal. Any notice of appeal must be filed within 14 days of the filing of the judgment of conviction in this matter. If you cannot afford the costs of appeal, those costs shall be waived and you can apply to proceed in forma pauperis to have those costs waived.

Now, the defendant made an application to the Court to recommend that he be housed in a facility that may be at a lower security level than he would otherwise score. I decline to do so. The BOP is best positioned to determine where the defendant is housed. I will, however, make a recommendation he be housed in New York, Arizona, or Florida, if possible.

There is also a Rule 38 application that the Court recommend that he not be designated to another facility pending appeal in order to assist with that appeal. I do grant that motion and the Court will make that recommendation. So, Mr. Ulbricht, to the extent that the Court's recommendation is followed, you would be housed in the New York area until your appeal has been completed or whatever appropriate time is determined by the BOP.

Anything further?

MS. LEWIS: Yes, your Honor. We would like to ask for specific language regarding the designation request after further consultation with the family.

First, while we understand that you don't -- we will be asking for the waiver of the public safety factor in light of the fact that the BOP still has the authority to do so. If they determine so, we would ask if they do waive that, that he be designated to FCI Petersburg 1 which is a medium, and that you would recommend that they do so in light of the fact that Mr. Ulbricht's family is in the Richmond area. And, in the alternative, if they don't waive the public safety factor, designation USP Tucson or as a second choice USP Coleman 2 on the basis that both of those facilities have special needs yards which are more appropriate.

(Defendant and counsel conferring)

THE DEFENDANT: Second choice Allenwood.

MS. LEWIS: Second choice Allenwood, then.

That's all, your Honor.

THE COURT: So, the Court will make a recommendation that while the BOP should determine the appropriate security level, if its determination is such that designation at one of those facilities is possible, that the Court recommends that the housing occur in that facility in that order. All right.

Anything further?

MR. TURNER: The original indictment should be dismissed, your Honor.

THE COURT: Thank you. The original indictment is dismissed.

Anything further?

MR. TURNER: No, thank you.

MR. DRATEL: No.

THE COURT: Thank you. We are adjourned.

o0o

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA
v.
Ross William Ulbricht

JUDGMENT IN A CRIMINAL CASE

Case Number: S1 14-cr-00068-KBF-1

USM Number: 18870-111

Joshua Dratel
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) 2,4,5,6,7 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:841A=CD.F	AIDING AND ABETTING DISTRIBUTION OF DRUGS OVE	10/31/2013	2
21:848.F	CONTINUING CRIMINAL ENTERPRISE	10/31/2013	4
18:1030A.F	COMPUTER HACKING CONSPIRACY	10/31/2013	5

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☑ Count(s) UNDERLYING ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Counts One (1) and Three (3) are vacated by the Court.

5/29/2015
Date of Imposition of Judgment

K. B. Forrest
Signature of Judge

Katherine B. Forrest, USDJ
Name and Title of Judge

6/1/15
Date

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: JUN 01 2015

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 1A

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18:1028A.F	FRAUD WITH IDENTIFICATION DOCUMENTS	10/31/2013	6
18:1956-4999.F	MONEY LAUNDERING CONSPIRACY	10/31/2013	7

AO 245B (Rev. 09/11) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Counts Two (2) and Four (4): Life to run concurrently; Count (5): Five (5) Years to run concurrently; Count Six (6): Fifteen (15) Years to run concurrently; Count Seven (7): Twenty (20) Years to run concurrently.

☑ The court makes the following recommendations to the Bureau of Prisons:

PLEASE SEE ADDITIONAL IMPRISONMENT TERMS PAGE FOR RECOMMENDATIONS.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 2A — Imprisonment

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

ADDITIONAL IMPRISONMENT TERMS

It is respectfully recommended that the defendant be designated to FCI Petersburg I in Virginia in the event that the Bureau of Prisons waive the public safety factor with regard to sentence length. However, if the Bureau of Prisons is not inclined to waive the public safety factor, it is respectfully recommended that the defendant be designated to USP Tuscon, in Arizona, or, as a second choice, USP Coleman II, in Florida.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 3 — Supervised Release

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

Life on Counts Two (2) and Four (4) to run concurrently; Three (3) Years on Counts Five (5), Six (6) and Seven (7) to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☑ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 3A — Supervised Release

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall submit his computer, person and place of residence to searched as deemed appropriate by the Probation Department.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 500.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 5A — Criminal Monetary Penalties

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

Forfeiture in the amount of $183,961,921.00 is Ordered.

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

DEFENDANT: Ross William Ulbricht
CASE NUMBER: S1 14-cr-00068-KBF-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 500.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Criminal Notice of Appeal - Form A

NOTICE OF APPEAL

United States District Court

Southern District of New York

Caption:

United States v.

Ross William Ulbricht

Docket No.: 14 Cr. 68 (KBF)

Honorable Katherine B. Forrest
(District Court Judge)

Notice is hereby given that Ross William Ulbricht appeals to the United States Court of Appeals for the Second Circuit from the judgment ✓, other ✓ and Preliminary Order of Forfeiture/Money Judgment (specify) entered in this action on June 1, 2015 (date).

This appeal concerns: Conviction only [ ] Sentence only [ ] Conviction & Sentence [✓] Other [ ]

Defendant found guilty by plea [ ] trial [✓] N/A [ ]

Offense occurred after November 1, 1987? Yes [✓] No [ ] N/A [ ]

Date of sentence: May 29, 2015 N/A [ ]

Bail/Jail Disposition: Committed [✓] Not committed [ ] N/A [ ]

Appellant is represented by counsel? Yes ✓ No [ ] If yes, provide the following information:

Defendant's Counsel: Law Offices of Joshua L. Dratel, P.C.

Counsel's Address: 29 Broadway, Suite 1412
New York, New York 10006

Counsel's Phone: (212)732-0707

Assistant U.S. Attorney: Serrin Turner

AUSA's Address: United States Attorney's Office, Southern District of New York
One Saint Andrews Plaza, New York, New York 10007

AUSA's Phone: 212-637-1946

Signature