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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 Cr. 68 (KBF)

5 ROSS WILLIAM ULBRICHT,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 15, 2015
9:19 a.m.

10 Before:

11 HON. KATHERINE B. FORREST,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,
16 United States Attorney for the
17 Southern District of New York

18 BY: SERRIN A. TURNER
TIMOTHY HOWARD
Assistant United States Attorneys

19 JOSHUA LEWIS DRATEL
20 LINDSAY LEWIS
JOSHUA HOROWITZ
Attorneys for Defendant

21 - also present -

22 Special Agent Vincent D'Agostino
23 Molly Rosen, Government Paralegal
24 Nicholas Evert, Government Paralegal
Sharon Kim, Government Intern

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1 (Trial resumed; jury not present)

2 THE COURT: Please be seated, everyone.

3 THE CLERK: Continuation of the matter now on trial,
4 the United States of America versus Ross William Ulbricht, 14
5 Cr. 68.

6 Counsel, please state your names for the record.

7 MR. TURNER: Good morning, your Honor. This is Serrin
8 Turner and Timothy Howard for the government. With us at
9 counsel table presently are Agent Vincent D'Agostino from the
10 FBI, Molly Rosen, a paralegal from our office, and Sharon Kim,
11 a legal intern from our office. Nicholas Evert will be here
12 shortly, a paralegal from our office.

13 THE COURT: All right. Good morning, all of you.

14 MR. DRATEL: Good morning, your Honor. Joshua Dratel
15 for Ross Ulbricht, who is standing beside me, Lindsay Lewis
16 from my office, and also counsel Joshua Horowitz.

17 THE COURT: Good morning to all of you.

18 OK. I've got two matters to raise. One is I wanted
19 to refer specifically to some additional support for the
20 Court's ruling yesterday relating to the co-conspirator
21 exception for the hearsay objections and to refer in particular
22 to the *Bourjaily* case, which you are all very familiar with,
23 I'm sure. It is a Supreme Court case. B-o-u-r-j-a-i-l-y,
24 which requires the Court to make a finding that the various
25 elements for the co-conspirator exception are made by a

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1 preponderance, which is what I believe I said.

2 I also had mentioned that there were some instances
3 where the evidentiary rules were different. Let me just be
4 clear that that is not the case with respect to the
5 co-conspirator rule. It is a preponderance standard. Where it
6 might be different, and this is a question that as yet actually
7 unresolved, is with things, for instance, having to do with
8 relevance and some probative evidence, and whether or not that
9 is a lower standard than preponderance is something which is an
10 open question but need not trouble us here. I wanted to make
11 it clear that my findings as to the co-conspirator exception
12 are by a preponderance of the evidence.

13 And in terms of the screenshots in particular of the
14 narcotics, I wanted to indicate that -- as I had said
15 yesterday, and as the *Bourjaily* case makes clear, "The
16 inquiry" -- I am reading from the *Bourjaily* case, "The inquiry
17 made by a court concerned with these matters is not whether the
18 proponent of the evidence wins or loses his case on the merits
19 but whether the evidentiary rules have been satisfied. Thus,
20 the evidentiary standard is unrelated to the burden of proof on
21 the substantive issues in a criminal case," At 2278.

22 With that said, I do find by a preponderance that as
23 to the screenshots the vendors were in a conspiracy with Dread
24 Pirate Roberts. It remains subject to connection to the extent
25 that the government is asserting that Dread Pirate Roberts at

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1 that time was Mr. Ulbricht. The Court does believe at this
2 point in time that, subject to that connection, there is
3 sufficient proof of a conspiracy with a common criminal
4 objective, which is the distribution of illegal narcotics.
5 There is demonstration of that conspiracy through, for
6 instance, the vendor contracts, which were put in yesterday.
7 There is also evidence of personal involvement by Dread Pirate
8 Roberts in the form of information put in yesterday of the
9 document -- one of the two documents relating to commissions
10 refers to commissions being taken in instances where he has and
11 the word "involved" is used specifically and "escrow," and that
12 creates a level of involvement as well as the finalize buttons
13 and the arbitration process, all of which there was evidence as
14 to yesterday from Mr. Der-Yeghiayan.

15 In terms of the in furtherance requirement, the Court
16 does find that putting the screenshot of the illegal narcotics
17 up on the Web is in furtherance of the distribution of illegal
18 narcotics, and the reliability of the content being what it
19 purports to be was in part supported by the testimony yesterday
20 that there had been buys from the undercover agent,
21 Mr. Der-Yeghiayan, that indicated that the narcotics received
22 in response to orders from the website tested in all but one
23 instance positive for the narcotics they purported to be.
24 Therefore, based upon a preponderance of the evidence, I just
25 wanted to indicate that the co-conspirator exception did apply

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1 in the manner that I suggested and with the evidentiary basis
2 that I suggested.

3 The second issue is that I understand that a juror was
4 approached yesterday on the subway platform by an individual
5 who represented himself to be a New York Post reporter. It was
6 an individual with a red beard. And the juror indicated that
7 she did not speak to him and that she walked away.

8 It is my intention -- and I should say that that was
9 reported to my deputy. I have not had a conversation with the
10 juror. My intention this morning is at the appropriate time to
11 make sure that I reiterate carefully and slowly the general
12 instructions, indicate that if anybody approaches them
13 purporting to be a reporter or anybody else, that they should
14 walk away and do just that.

15 Do you folks believe that anything further need be
16 done in this instance at this time? I mean, there are pros and
17 cons to having people brought out here and individually
18 questioned, but I will take applications.

19 It was Juror No. 2, by the way.

20 MR. TURNER: May we have a moment to confer?

21 THE COURT: Sure. Yes.

22 (Pause)

23 MR. TURNER: Your Honor.

24 THE COURT: Yes.

25 MR. TURNER: The parties both agree, a limited voir

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1 dire would be I think a good idea just to get clear on what was
2 said, if anything was said that might bias the juror in one
3 direction or another.

4 MR. DRATEL: And to make sure that the juror is still
5 obviously in the same position she was before -- in other
6 words, mentally before the encounter.

7 THE COURT: Yes. All right. That's fine. I think
8 that we can do that in a low-key way. What I would propose to
9 do is just to have her come on out and sit in her spot and ask
10 her a couple of questions and then have her head back in.
11 Sound all right to you folks?

12 MR. DRATEL: That is all we had in mind.

13 MR. TURNER: Yes, your Honor.

14 THE COURT: Let's go ahead. We know she is here. I
15 know you folks may have some things, but let's get her out here
16 to do that.

17 MR. DRATEL: May I alert the Court to a logistical
18 issue, which is Mr. Ulbricht can't see the witness. We may
19 move the monitor around so we can try to configure it in a way
20 to do that.

21 THE COURT: Oh, absolutely.

22 MR. DRATEL: Also, if we move this back a little bit,
23 would that be better, too, just because I am blocked off.

24 THE COURT: It doesn't bother me. What I want to do
25 for the podium, my main concern is that the jurors can see what

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1 is going on. You are certainly welcome to move that back a
2 little bit so long as it doesn't create so much distance that
3 there is another issue, but I don't think you are talking about
4 more than a few inches.

5 In terms of the monitor, do whatever you need to do.
6 I need to see Mr. Ulbricht's face as well, but I can because he
7 is sufficiently tall that I can actually see him over the
8 monitor. Just move it a little over.

9 MR. DRATEL: This way is fine with me.

10 THE COURT: Right. Also, there is no magic to that
11 particular monitor. If you've got a smaller monitor with a
12 similar connection, that would work.

13 MR. DRATEL: I think this is all right. I don't think
14 I will have a problem. I can bring it up on my own screen.

15 THE COURT: Fine. I know we have at least one other
16 matter from somebody who wanted to raise it. Does anybody want
17 to raise a matter other than this?

18 MR. TURNER: I just had two brief matters, your Honor.

19 THE COURT: OK.

20 MR. TURNER: One, I just want to make sure --

21 THE COURT: Can we just do the juror thing first?

22 MR. TURNER: Absolutely.

23 THE COURT: Terrific. I just want to make sure I know
24 what the lay of the land is. We have two from the government.
25 Anything from you, Mr. Dratel?

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1 MR. DRATEL: No, your Honor.

2 THE COURT: All right. So let's just get Juror No. 2
3 out here.

4 (Juror No. 2 was present)

5 THE CLERK: All rise.

6 THE COURT: Let's all be seated.

7 Juror No. 2, thank you for coming out here. I know it
8 is a little intimidating to come out all by yourself with this
9 whole big room full of people. I appreciate it.

10 JUROR NO. 2: That is fine.

11 THE COURT: I just wanted to find out from you what
12 happened yesterday. I understand somebody may have approached
13 you. Why don't you just tell us what happened.

14 JUROR NO. 2: OK. I was at the Centre Street station
15 and I was walking down the stairs to the uptown Bronx side,
16 where the 5 and the 4 and the 6 train are. I walked down the
17 stairs and was walking along the platform, and a reporter kind
18 of approached me with a pad and pencil, said, "I'm from the New
19 York Post. Can I ask you some questions?" And I just went
20 like this with my hand (indicating) and kept walking, and
21 that's all that happened.

22 THE COURT: OK. All right. And what you did was
23 perfectly appropriate and absolutely right and consistent with
24 the Court's instructions. So I thank you for that.

25 And let me just ask you, did the fact that you were

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1 approached in any way make you feel like you are going to be
2 unable to be fair and impartial in this case?

3 JUROR NO. 2: No, not at all.

4 MR. DRATEL: One other question, your Honor, which
5 is --

6 THE COURT: I will ask it.

7 MR. DRATEL: Yes. As to whether there has been any
8 conversation with other jurors about that.

9 THE COURT: I think that is very fair.

10 One thing we want to make sure of is that a
11 conversation even about an incident like that doesn't end up
12 leading to conversations with other jurors, and if it has just
13 let me know and then we'll figure out what to do.

14 JUROR NO. 2: When I mentioned it to Joe, some of the
15 other jurors heard me tell Joe that the encounter happened
16 yesterday.

17 THE COURT: OK. So did you have any other
18 conversations with them about it?

19 JUROR NO. 2: No.

20 THE COURT: Did anybody say to you anything else or
21 ask you any questions about it?

22 JUROR NO. 2: No. I mean they heard me say it. Joe
23 asked me, you know, what happened. And what I just told you.

24 THE COURT: Yes.

25 JUROR NO. 2: You know, she made a comment, "Well,

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1 that was rude," and that was it.

2 THE COURT: OK. All right. So I'll address that, you
3 know, by making sure that I have communicated all the
4 instructions properly.

5 Will you be sure not to --

6 JUROR NO. 2: OK.

7 THE COURT: -- lead to any other -- have that approach
8 lead to any other conversation. Just tell the other jurors
9 that you can't talk about it.

10 JUROR NO. 2: Mm-hmm.

11 THE COURT: I am going to mention to the jurors again
12 that you folks shouldn't talk about anything to do with the
13 case. It is really the broad instruction of nobody should talk
14 about anything having to do with this case, and that covers all
15 of the myriad ways in which the case could come up.

16 JUROR NO. 2: OK.

17 THE COURT: Does that make sense?

18 JUROR NO. 2: It does. Thank you.

19 THE COURT: All right. Terrific.

20 So go back into the room, and even if they ask you
21 what happened just now, just say --

22 JUROR NO. 2: I can't talk about it.

23 THE COURT: Right. You can't talk about it. All
24 right?

25 JUROR NO. 2: Thank you.

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1 THE COURT: Terrific. Thanks very much.

2 THE CLERK: All rise.

3 (Juror not present)

4 THE COURT: All right. Let's all be seated.

5 OK. Any comments on what just occurred? My view is
6 that what I am simply going to do now is before the next break,
7 but not right away, but before the jury goes back into the
8 room, to give them their instructions again slowly and
9 carefully. I can also, if people would like -- well, what
10 would you like? Anything else other than that?

11 MR. DRATEL: Just to confirm that it hasn't had an
12 impact on anybody, to ask them whether or not anybody --

13 THE COURT: The question is do you want me to say to
14 the entire jury panel there was a juror who was approached.
15 The juror handled it perfectly appropriately by telling -- by
16 just walking away and not saying anything. If anybody else is
17 approached, please let the Court know. And was anybody else
18 approached? Do you want me to do that?

19 MR. DRATEL: It is a question of whether it has had an
20 impact on anybody's ability to judge the case impartially,
21 that is all.

22 THE COURT: Do you want me to ask the entire panel?

23 MR. DRATEL: Yes, because think they all know about it
24 by now.

25 THE COURT: Mr. Turner.

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1 MR. TURNER: It doesn't strike me as particularly
2 necessary, your Honor, but I don't object to it. I think that
3 probably the most important thing is to stress to the other
4 jurors that if that happens, that they should do exactly what
5 this juror did, or, you know, just make clear that they should
6 not talk to them, perhaps, and try to avoid hearing any
7 comments about the case that might influence their decision
8 making.

9 THE COURT: All right. So the press who is here in
10 the room, you see what happens -- if this did occur, what
11 happens when this kind of thing occurs because of the
12 possibility of juror influence.

13 So here's what I am going to do. When the group comes
14 out here, I am going to then state, in order to put all of
15 these pieces together that you folks suggested: A juror was
16 approached. She did exactly the right thing, which is she
17 walked away. And I want to make sure that you all understand
18 that if the press, or anybody else even purporting to be the
19 from the press or anybody approaches you about this case, that
20 you do the same thing. Just walk away. Do not have a
21 conversation. Don't talk to each other about any approaches
22 that may be made to you about this case. Do let us know. And
23 has anybody been approached or know about that approach other
24 than what I said and believe that at this point they cannot be
25 fair and impartial based on that?

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1 Is that all right, Mr. Dratel?

2 MR. DRATEL: Yes. Thank you, your Honor.

3 MR. TURNER: Yes, your Honor.

4 THE COURT: Both parties are in agreement that that
5 would be an appropriate way to proceed.

6 OK. Now, Mr. Turner, you had other things.

7 MR. TURNER: Just briefly. I wanted to make sure that
8 our position on the hearsay issue has been adequately
9 articulated. I'm not sure it was yesterday.

10 In terms of the forum posts and the communications of
11 DPR, our position would be that to the extent he says anything
12 like, you know, you've got to follow my rules or else, those
13 statements don't have truth value; it is simply indicative of
14 his role. To the extent that he says things like I am leading
15 an international narcotics enterprise, that would be a party
16 admission. That would not qualify as hearsay under 801. That
17 would be our position.

18 And on the offers of drugs on the website, you know,
19 I'm not sure those are being offered for the truth. If you
20 have simply pictures posted like that on a website with a price
21 tag, there is no statement there. It is just making it clear
22 that somebody is making an offer of drugs. This is a
23 marketplace where people are offering to sell things and buying
24 things.

25 THE COURT: The issue comes in -- just to be very

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1 clear on the first point, I think that is exactly what I was
2 differentiating between yesterday, the portions which are not
3 hearsay versus the portions which could be hearsay, and we, I
4 think, now dealt with them thoroughly.

5 In terms of the posts, the website vendor -- I don't
6 mean the chat posts, I mean the screenshots.

7 MR. TURNER: The listings.

8 THE COURT: When you put up one that says tell us some
9 of the things that were available on that website and the
10 witness says "heroin," all right, not "this is a photograph
11 which has the words on it indicating heroin," then it is being
12 offered for the truth, I think. I think that is a fair
13 argument. That is one that the defendant raised pretrial as
14 part of the hearsay objections.

15 Nevertheless, my ruling on the co-conspirator
16 exception, sort of the reason why I am belaboring it is for
17 that very reason, to ensure that the record is clear as to the
18 basis for my ruling. But I do think that there is some amount
19 of truth which is being sought after and potentially sought to
20 come in for based upon the content. It is not just a picture
21 of a brown block but the word "heroin" around "heroin" that
22 appears underneath it.

23 MR. TURNER: Understood. I just wanted to articulate
24 our position and make sure it is on the record, your Honor.

25 THE COURT: Do you disagree with me?

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1 MR. TURNER: I think there are arguments in the
2 alternative. I think your Honor is certainly correct that if
3 it is being offered for the truth, it would certainly be
4 statements of a co-conspirator. Under the government's theory,
5 we made clear that we think that all the vendors are conspiring
6 with the defendant.

7 THE COURT: Now, I just want to pause for one second.

8 If you don't intend something to be offered for the
9 truth, you will need to approach the questions in a manner that
10 makes that clear. In other words, I see that this indicates,
11 you know, whatever, but, you know, some set of questions other
12 than tell me the type of goods that were sold.

13 MR. TURNER: Understood. There was one other matter
14 that we would request to address at the sidebar, your Honor.

15 THE COURT: All right.

16 (Continued on next page)

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1 (At the sidebar)

2 MR. TURNER: I really don't think this will be a
3 problem but I just wanted to give the Court a heads up. The
4 witness actually is recovering from a serious respiratory
5 illness and is on heavy antibiotics, and he reportedly was
6 feeling very ill after yesterday's testimony. He is a tough
7 guy and I think he will be fine today, but there may be a point
8 when we will just request an additional break, or something
9 like that, if he has indicated that he is not feeling well.
10 Again, I don't think that will happen, but I didn't want it to
11 be a total surprise if it did.

12 THE COURT: Is there any way in which the taking of
13 the antibiotics makes his mind unclear?

14 MR. TURNER: No. I think it is queasiness, nausea.
15 So I don't think it is lack of memory or lack of reasoning
16 ability.

17 MR. DRATEL: I appreciate that because, obviously, I
18 would like him to be fully cognizant on cross as well. I don't
19 want him to say he doesn't remember or things like that because
20 he is not feeling well. I guess the purpose of my cross is to
21 make him queazy. But you understand what I am saying.

22 THE COURT: I do.

23 MR. DRATEL: So if he does need time, I am OK with
24 that because I do want him to be fully attentive.

25 THE COURT: Let's take this, as I like to say, one

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1 step at a time. If there is a point when he is feeling unwell,
2 then we can take a break and take another witness in between.
3 It is very important that he be able to proceed with his
4 faculties about him, as he has proceeded up to this point. In
5 other words, we're not asking him to perform differently than
6 he has performed up to this point, but we don't want Mr. Dratel
7 to end up with a guy who suddenly can't testify because he is
8 sick only for cross.

9 MR. TURNER: No. And that is why I am saying he has
10 been fine so far and I don't think it will be a problem. I
11 think all I want is to let him know that we let the Court know
12 so that if he does feel like he is sick, he can let the Court
13 know and that won't be a problem. Honestly, I don't think
14 there is going to be a problem.

15 THE COURT: OK. One step at a time.

16 MR. DRATEL: OK. Great.

17 THE COURT: Thank you.

18 (Continued on next page)

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1 (In open court)

2 THE COURT: Is there any reason we can't just go ahead
3 and bring the jury out and start right now? Anybody need a
4 break before we start?

5 MR. TURNER: No, your Honor.

6 MR. DRATEL: No, your Honor.

7 THE COURT: OK. Let's go ahead and bring the witness
8 in and we'll get the jury out.

9 (Pause)

10 (Continued on next page)

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1 THE CLERK: All rise as the jury enters.

2 (Jury present)

3 THE COURT: All right. Ladies and gentlemen, let's
4 all be seated. Thank you.

5 I see that you folks -- it looks like the coffee
6 service has arrived this morning. Are there tops for the
7 coffee service? Terrific. OK.

8 Now, remember, confess if you spill, and I will, too,
9 if I spill up here.

10 Ladies and gentlemen, one thing I want to mention
11 before we start this morning is that one of the jurors was
12 approached yesterday on the subway platform by somebody who
13 identified himself as a member of the press, and she did
14 exactly the right thing, which is just walked away, didn't
15 engage at all, and that's exactly the right thing.

16 So if that happens to you, I instruct you to do the
17 same thing. Not to talk to anybody about this case no matter
18 who they are. As I've said, even each other. And so it's
19 very, very important.

20 Now, if it does happen to you and somebody approaches
21 you -- somebody approaches you about this case, be it from the
22 press or somebody else, don't talk to each other about it.
23 Mention it to Joe, and then we'll take it from there. All
24 right?

25 So in light of the fact that it has happened once and

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1 I have just mentioned this to you folks, is there anybody who
2 believes that the fact that somebody has been approached and
3 that a member of the press, or somebody identifying themselves
4 as from the press, has approached somebody, does that make
5 anybody feel that they can't be fair and impartial in this
6 case?

7 (The jury indicated negatively)

8 THE COURT: All right. Thank you.

9 We'll go ahead and we'll continue. I want to remind
10 the witness, sir, Mr. Der-Yeghiayan, you are still under oath
11 from your first day and from yesterday.

12 All right, sir?

13 THE WITNESS: Yes. Thank you.

14 JARED DER-YEGHIAYAN,

15 Resumed, and testified further as follows:

16 THE COURT: You may proceed, Mr. Turner.

17 MR. TURNER: Thank you, your Honor.

18 DIRECT EXAMINATION

19 BY MR. TURNER:

20 Q. Agent Der-Yeghiayan, yesterday we left off talking about
21 the defendant's arrest, and I want to get back to that in a
22 minute, but first I want to go back to a topic that we didn't
23 quite finish earlier yesterday.

24 MR. TURNER: Mr. Evert, could you pull up Government
25 Exhibit 125B and go to page 2.

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Der-Yeghiayan - direct

1 Q. So this was a forum post we looked at yesterday, Dread
2 Pirate Roberts, and it says, "Drumroll, please. My new name is
3 Dread Pirate Roberts."

4 First of all, I wanted to ask you, are you familiar
5 with the name Dread Pirate Roberts in the context of pop
6 culture?

7 A. Yes, I am.

8 Q. How are you familiar with it? Where does it come from?

9 A. It came from a movie from I think it is like the '80s.

10 Q. What is the movie called?

11 A. The Princess Bride.

12 Q. And what is the basic legend of the Dread Pirate Roberts in
13 the movie?

14 A. So in the movie there is -- the main character was the
15 Dread Pirate Roberts, and he met up with one of his loves in
16 his life and he confessed to them that he was not the original
17 Dread Pirate Roberts, that he took over the identity of Dread
18 Pirate Roberts from another guy I think by the name of Ryan and
19 that guy got it from another guy whose name was like
20 Cumberbundt, or something like that, and then he got it from
21 the original Dread Pirate Roberts that was retired like 15
22 years earlier. And the whole point of it was that the identity
23 was what was important, the name was important, that the name
24 lived on. So multiple people could basically assume that name,
25 and it is just the -- or the story of Dread Pirate Roberts

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Der-Yeghiayan - direct

1 would be the intimidating factor.

2 Q. OK. And we also looked yesterday at this "Begin PGP sign
3 message" and "PGP signature" underneath. Let's try it again.

4 So what is the benefit of having a PGP sign message
5 and what does that mean?

6 A. So a PGP sign message, again, is just a way to authenticate
7 or validate who you are online. So when you first -- when you
8 are talking to someone on the Internet, it is hard to always
9 validate you are always talking to the same person every time
10 you see them day after day. So one of the ways that we are
11 able to identify ourselves is using this program, this PGP,
12 because it allows you to create a key that is unique to you
13 that you share with other people, and that key, it is a public
14 key, you could use to verify messages from them at a later
15 date, messages they could sign, that they will authenticate so
16 that you will know time and time again that that person has the
17 same key that you are talking to. It is an unique key as well.

18 Q. All right. So did Dread Pirate Roberts post his public key
19 anywhere on the site?

20 A. Yes, he did.

21 Q. We looked at this exhibit before, Government Exhibit 133.
22 Could you put that up on the screen. Please zoom in.

23 And when was this screenshot taken by you again?

24 A. What exhibit was that again?

25 Q. That was 133.

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Der-Yeghiayan - direct

1 A. That was August 19, 2013.

2 Q. And so you could take this public key and do what with it?

3 A. This would be something that I could then use to
4 authenticate messages that would be later on signed by Dread
5 Pirate Roberts.

6 Q. Like the one we just saw on the forum?

7 A. Yes.

8 Q. Did this public key change over time of Dread Pirate
9 Roberts, or did it stay the same as long as you investigated
10 the site?

11 A. From the beginning of my investigation until the time of
12 the arrest, it stayed the same.

13 Q. Could we take a look at Government Exhibit 133A, please,
14 which did not come in yesterday yet so please don't publish it.

15 A. OK.

16 Q. Do you recognize this document?

17 A. Yes, I do.

18 Q. How do you recognize it?

19 A. It was a screenshot that I took of Dread Pirate Roberts'
20 profile on the Silk Road market page on September 19, 2012.

21 Q. So how does that date -- well, your Honor, we would offer
22 this exhibit into evidence.

23 MR. DRATEL: Just a hearsay objection, your Honor.

24 THE COURT: All right. For the same reasons that
25 we've previously discussed, that objection is overruled.

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Der-Yeghiayan - direct

1 GX-133A is received.

2 (Government's Exhibit 133A received in evidence)

3 MR. TURNER: Put that up, Mr. Evert, and zoom in down
4 here.

5 Q. So this is from approximately what, a year earlier than the
6 last one?

7 A. About, yes.

8 Q. And it is the exact same public key?

9 A. Yes.

10 Q. Did you prepare any sort of demonstration for the jury
11 today to help you explain these concepts and help explain how
12 PGP keys work?

13 A. Yes, I have.

14 Q. Would it aid your testimony to give that demonstration to
15 the jury?

16 A. Yes, it would.

17 MR. TURNER: May I approach, your Honor?

18 THE COURT: You may.

19 Q. Do you recognize the CD I am handing you right now?

20 A. Yes, I do.

21 Q. How do you recognize it?

22 A. It is a disc that I initialed that contains the video that
23 I prepared.

24 Q. May I take it back?

25 MR. TURNER: I am showing the witness what has been

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1 marked as Government Exhibit 133B. With your Honor's
2 permission, may we play it for the jury?

3 THE COURT: Yes. I take it you have shown that to the
4 defendant?

5 MR. TURNER: Yes.

6 THE COURT: All right.

7 (Pause)

8 Q. OK. So if you could do the same thing with this video that
9 you did with yesterday's video, if you could tell Mr. Evert
10 when to start and stop and walk the jury through what it shows,
11 please.

12 A. OK. So what I'm going to demonstrate here in this video is
13 me creating a message and then digitally signing it using the
14 key that I own. So I will show you how that process is done,
15 how I would sign the message, and then how I could verify that
16 that message is authentic from my key.

17 So the first thing I am going to show you once -- if
18 you would begin, please -- is a program that you would use to
19 store your key. And in this instance I have already my key in
20 there. This is one of the keys I used in my Cirrus account.

21 Q. Agent Jared, could I just interrupt you?

22 Is this a public key that you are talking about right
23 now?

24 A. This is both a public key and a private key.

25 Q. And could you explain the difference between private key

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1 and public key?

2 A. Absolutely. So I not only have my public key, which I
3 could share with other people that could verify me, and then I
4 also have the private key, which is what is unique to me. I'm
5 the only one that has that, and that's what allows me to create
6 messages from my key. It basically allows me to sign messages.

7 Q. And if you don't use your private key to sign your message,
8 can the public key be used to authenticate it came from you?

9 A. Without the private key, you cannot create a message. You
10 can't sign it without the private key.

11 Q. OK. Go ahead.

12 A. And so right now it's paused, and, actually, you could stop
13 it. I'm sorry.

14 What this is is it is the profile of the key, and
15 there is there are a few things to point out. That there is a
16 name that you enter in when you create the key as well as an
17 email address. This can be anything you want. It doesn't have
18 to be anything real. In this instance the name that I used was
19 "me" with a lot of e's. And then that is a fake email account,
20 which is just 101010@101010.org. You don't have to enter
21 anything that is real. It is just whatever you want to enter
22 in, you can; it is not required to enter in anything that is
23 real.

24 The other thing that I wanted to point out is the
25 create date. That is automatically added to the key when you

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1 create it. It is on there. You can't modify that or adjust
2 it. It is part of the key. So it will document that. In this
3 case this key was created on October 2, 2013.

4 So when I am going to share my key, everyone can see
5 this information. So my public key and they have it. This is
6 what they will see. They will see the name of me. They will
7 see the email address that I created, and they will see when I
8 created that account as well.

9 And so if you could go ahead and play, I am going to
10 show you how I would then create a message using my key and how
11 I would sign that message, then, using it.

12 So I'm closing out the program, and I would use simply
13 a text file, in this instance, to then type my message. So I'm
14 writing -- this is an example of me signing the message using
15 my PGP key -- the message I wrote using my PGP key. So in
16 order to do this, all I have to do is highlight the message and
17 in this instance right click, and I need to just click things
18 as signed. And as I click sign -- can you pause it, please --
19 this is then what the result will be. And it will essentially
20 take my message, which is in the body above here. This is an
21 example of me signing a message saying I wrote using my PGP
22 key, and it adds this signature at the bottom.

23 And so now I'm going to go through and I am going to
24 find -- if I share this with someone else, they can now verify
25 this came from me and I'll show you how I would do that.

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1 Q. They verify it using what?

2 A. Using, again, a program such as this, a PGP program using
3 my public key that I would have shared with them.

4 In this instance I have my public key so I can verify
5 my own key.

6 If you could play it.

7 First, I just wanted to show you again I have
8 highlighted that that was the original message that I typed and
9 I signed. Then in order to verify it, I just simply have to
10 right click and verify. And it is going to tell me -- if you
11 could pause it, please -- that this is a good signature, and it
12 says -- it is a good signature from the person "me" with my
13 email address. So I was able to automatically recognize the
14 key that I had stored in my program and verify it to that
15 message and tell me it is a good signature.

16 Click play, please.

17 And I'm going to show you what would happen if I was
18 to now alter this message after I signed it. So this is me
19 typing extra information in there after signing the document.
20 So it is no longer the same document that I signed.

21 Now, I go to verify it again after I altered it -- can
22 you pause it, please -- it is going to tell me that I have a
23 bad signature by that user. So there is no way after you sign
24 a document to alter it, to then manipulate it in any way. Once
25 you sign that message, it has to stay exactly that message

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1 intact.

2 Q. Does that include the signature down at the bottom, if any
3 part of that signature changes.

4 A. That is correct. Anything on that from basically the top
5 line that begins "PGP sign message" all the way through the
6 very bottom has to remain exactly the same, the same amount of
7 spaces, the same amount of characters. Everything has to be
8 exact in order for it to authenticate.

9 Can you click play, please.

10 I am just going to demonstrate that again by removing
11 the information that I added originally to it and verifying it
12 again in the original state that it was. And it's going to
13 come back with a good signature again, that that was the
14 original message.

15 So now I'm going to take -- these are on the
16 right-hand side -- a text file of -- I will let him scroll
17 first. Can you pause it, please. On the right-hand side there
18 is a text file of all of DPR's posts from the forum from the
19 beginning of his account in around June 2011 'til about
20 May 2013. That was all of the posts that I copied out of the
21 forum and into a text file such as this.

22 And on the left-hand side I also have a screenshot
23 that I took from my Cirrus account of posts that were made by
24 Dread Pirate Roberts, and what I am going to do first is show
25 you now if I was a user how I would acquire Dread Pirate

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1 Roberts' public key and then how would I verify basically
2 things that he wrote. So I am going through the steps of
3 essentially taking in his public key that he shares with
4 everybody and then verifying things that he wrote using his
5 signature.

6 So first this is -- if you want to play it, please.
7 This is one post that I copied, again, from Dread Pirate
8 Roberts' profile. And it came from November 2012 --
9 November 12, 2012, which is up on the top. And he signed a
10 message that said "The sig checks out for me," but I will do
11 another one just in case. And then he says -- if you could
12 pause it right now, please. He says, and right here -- "And
13 here is the public key that I've been using since the site
14 began, normally located on my user page on my main site.

15 Q. Just to be clear, the user page on my main site, is that
16 the page we saw before with the --

17 A. It is referring to the Silk Road market page.

18 Q. That is the page we saw before with the public key?

19 A. Yes.

20 Q. OK.

21 A. And so you could tell that this is his public key down
22 below because it says "begin PGP public key." So this
23 information from here to here is his public key, again. That
24 was a screenshot. I can't copy that text exactly and import it
25 so I have to use that text document to do it. So what I am

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1 going to show you is that the text document on the right is the
2 same information that is from the screenshot from the left.

3 If you could play it, please.

4 So again this is the text document. I just wanted to
5 point out that it is the same date. Now, this was copied from
6 a user that actually has time set differently on his computer
7 when I originally copied this stuff. So it is slightly
8 different, but it is hours different because of the UTC
9 variation. But, again, it is the same message and the same PGP
10 key.

11 So can you pause it, please. Pause, please.

12 So right now in order to import this key -- that is
13 actually fine. That is a good place to stop.

14 I would highlight his public key, and what I am going
15 to do is import it. There is a second option up here above
16 this. And that's all I have to simply do in order to bring in
17 his public key into my program and for me to verify his
18 signatures at a later date. So right now I am going to import
19 his key.

20 So click play, please.

21 There is nothing so important about importing it or
22 taking it as more than that this is how I would capture it.
23 And if you could pause it, please. It tells me right now that
24 the import was successful and that I imported a key that was
25 titled Silk Road with the email address

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1 staff@silkroadmarket.org and the import was OK. So it let me
2 know that the import was successful, that I was able to capture
3 that public key.

4 Q. So now it is on your computer permanently?

5 A. Yes. Not permanently. I can delete it, too.

6 Q. Sure.

7 A. So if you click play, please.

8 I'm going to show you off that same program where I
9 keep my key.

10 If you could pause it, please.

11 This is now that imported key that's from Silk Road.
12 So his public key is now available, and it lets me know that
13 all I have is his public key with that "pub." And the one up
14 above says "sec/pub," and that means that I have the private
15 key and the public key for the key up above, which is mine,
16 but. I only have the public key for Silk Road. I do not have
17 the private key.

18 Q. Just to be clear, the public key you are talking about,
19 that is used to verify a signature. The private key is used to
20 sign the signature, right?

21 A. Yes. The private key is used to sign it and the public key
22 is used to verify.

23 Q. The Silk Road name, did that come from you or was that
24 automatically generated when you downloaded it?

25 A. That was what was created in the key when it was created by

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Der-Yeghiayan - direct

1 the user who created it.

2 Q. So you didn't create that?

3 A. I did not.

4 Q. And the Silk Road -- the staff@silkroadmarket.org, same
5 thing?

6 A. The same thing. I am going to open his profile.

7 If you click play.

8 Q. I just want to make clear. You mentioned earlier that you
9 used a fictitious email address in creating your key?

10 A. Yes, I did.

11 Q. Do you know whether staff@silkroadmarket.org is a real
12 email address?

13 A. That domain, which is silkroadmarket.org, that website does
14 exist or did exist at the time. It was a website that was on
15 the open Internet that was used to advertise the Silk Road
16 market on Tor. It was a redirect for people that would be
17 maybe doing a Google search on the regular Internet. And
18 Google searching "Silk Road," they would find that website, and
19 that website would give you directions on how to get to the Tor
20 Silk Road website.

21 Q. OK. But the email address, staff@silkroadmarket.org, do
22 you know if that was real or not?

23 A. I'm not sure if it was --

24 Q. So it could have been fictitious, it could have been real,
25 it doesn't really matter for the program?

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1 A. Right.

2 MR. DRATEL: Objection. Leading.

3 THE COURT: Why don't you rephrase.

4 MR. TURNER: I will withdraw, your Honor.

5 A. OK. So if you click play, please. I just want to show you
6 when I opened that -- again, if you pause it for a second --
7 the name that is on the account is Silk Road. The email
8 account that was entered in by the user that created it was
9 staff@silkroadmarket.org, and it was created on April 1, 2011
10 at 4:47 a.m. And that is information, again, that I can't
11 modify that comes with the key that comes when you share it.

12 Can you click play.

13 So now that we have his public key stored, we can now
14 verify messages that were signed by him. And so I am going to
15 go through this list on my right. I am going to scroll down.

16 Now, the bottom is the oldest messages and it starts
17 around June 2011, and it goes chronologically to the top which,
18 would be the newest messages, which would be May 2013. And
19 what I'm going to do from the bottom is basically try to find
20 one of his first signed messages that I could see, and this is
21 the first signed one.

22 If you could pause it, please.

23 And this is from June 19, 2011. And it is, again, a
24 signed message, and so I am going to try to verify this now
25 signed message with this key that I just imported.

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1 Can you click play, please.

2 So, again, I copied the entire message. I simply
3 right clicked and then clicked verify.

4 If you could pause it, please.

5 This then shows that I have a good signature from Silk
6 Road at staff@silkroadmarket.org. So it is verifying that that
7 message that was signed -- and this is what a user would do if
8 they would see this message and maybe they didn't know if they
9 could trust who is posting this on the forum or posting it
10 elsewhere or posting it anywhere on the Internet, how do I know
11 that I can trust this message that came from Dread Pirate
12 Roberts? Because anyone could just start up an account maybe
13 and try to fake it's him, well, this would be one way to do it
14 because this key is somewhere that somebody would have already,
15 something that they know they could trust him with, something
16 that would be something that is from the past.

17 And so click play, please.

18 I am going to also show that this key stayed the same
19 over time. And so I'm going to actually scroll up somewhat
20 randomly here and go up to a post that I found from -- this is
21 from January 16, 2012. And, again, I'm going to try to verify
22 this. That's all I'm doing, just verifying that the message is
23 a good signature. So when I could verify, again it comes back
24 as a good signature from Silk Road at staff@silkroadmarket.org.

25 I'm going to scroll up again. This time I am going to

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1 try to find something later in 2012, early 2013, to see if,
2 again, that signature is the same signature from that same key
3 and if it still verifies that it came from Dread Pirate
4 Roberts' public key.

5 (Pause)

6 Some of these I'm skipping over because they are a
7 little bit longer and I just wanted to get a message that was
8 shorter so you could see the entire message. So this one was
9 from November 23, 2012. Again, this is another signed message
10 with a signature. And just by highlighting the entire message
11 and clicking "verify," it will tell me it is a good signature.

12 And, lastly, I'm going to go up to my most recent copy
13 that I had of a post that was made by Dread Pirate Roberts, and
14 I was going to see if that one, too, will verify. That was
15 from -- it is going to be from May of 2013.

16 So this is the most recent post I had, and this is
17 from May 7, 2013. When I say "most recent post I have," it is
18 just on this particular text file.

19 And when I click "verify," again it comes back as a
20 good signature, that it stayed the same signature and the same
21 key from 2011, 2012 -- late 2012 and May of 2013.

22 I'm going to show you again -- now, if I was to alter
23 this message that was signed by DPR -- so I typed in "altered."
24 Do you want to pause it, please. So down at the bottom here I
25 actually typed in "altered" on this text page. I am going to

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Der-Yeghiayan - direct

1 try to verify it now again that I have changed that message.

2 Click play, please. And if you pause it.

3 It comes back as a bad signature now. There is no way
4 that I could alter that message and still have it come up as a
5 good signature. It has to stay in its original state that was
6 created by the person that owns that key.

7 And if you click play. Again, I am going to remove
8 that -- actually, I could do a different version but that is
9 the end of the video.

10 Q. All right. So what does the fact that you were able to
11 verify those different messages from DPR at different times
12 imply about the user who posted those messages?

13 MR. DRATEL: Objection.

14 THE COURT: Why don't you rephrase it.

15 MR. TURNER: OK.

16 Q. So what did the person who posted those different messages
17 from DPR at different times have to have in order for you to be
18 able to successfully validate each of those messages?

19 A. Since all those messages were verified with the same public
20 key, they had to have the same private key for that entire
21 duration. So it is one person with one --

22 MR. DRATEL: Objection. Objection.

23 THE COURT: I'll sustain the objection.

24 (Continued on next page)

25

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Der-Yeghiayan - direct

1 BY MR. TURNER:

2 Q. Let me see if I -- without talking about the number of
3 people involved, let me just ask you again, what would the
4 person or persons who posted these various messages have to
5 have in order for you to successfully validate those messages
6 using DPR's public key?

7 A. It would have to be the same private key for the entire
8 duration.

9 Q. If at any time those messages, one of those messages was
10 posted, the person posting them lacked DPR's private key, would
11 you have been able to validate that message with DPR's public
12 key?

13 A. No. It would come back as a bad signature.

14 MR. TURNER: Let's go back to where we left off
15 yesterday afternoon and, Mr. Evert, can you pull up 128C,
16 please.

17 Q. Just to recap. Yesterday you testified that you saw the
18 defendant enter the library when you were in this area depicted
19 in the photo, right?

20 A. Correct.

21 Q. And when you saw the defendant enter the library where,
22 again, were you situated?

23 A. I was seated across the street.

24 Q. Would you use the laser pointer.

25 A. I can't -- right here.

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Der-Yeghiayan - direct

1 Q. Okay. And who was with you when you saw him in the
2 library?

3 A. It was computer scientist Tom Kiernan.

4 Q. You testified yesterday that a few minutes after the
5 defendant entered the library, what happened to DPR's online
6 status?

7 A. He went online.

8 Q. And did you begin chatting with him after that?

9 A. Yes, I did.

10 Q. And where were you while you were chatting with him?

11 A. I was seated outside, again, on the bench across the street
12 from the library.

13 Q. Same place?

14 A. Same place.

15 Q. And who, if anyone, was with you by that point, at the
16 point when you were chatting with DPR?

17 A. FBI Special Agent Chris Tarbell.

18 Q. And where had Tom Kiernan gone?

19 A. Tom Kiernan had entered into the library once he saw
20 Mr. Ulbricht enter.

21 MR. TURNER: Could you put up 129C on the top half of
22 the page, Mr. Evert. That's too much. Just the bottom few
23 lines, please. There we go. Thank you. Can you put 128C
24 below.

25 Q. So you said at some point during your chat, you gave a

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Der-Yeghiayan - direct

1 signal to FBI Agent Chris Tarbell to do what?

2 A. To effect arrest.

3 Q. And at what point in the chat was that again?

4 A. That was after the last message that I received from Dread
5 Pirate Roberts which said "okay, which post."

6 Q. And then you typed in the last two lines of this chat?

7 A. Yes, I did.

8 Q. And where were you by that point?

9 A. I was still seated across the street.

10 Q. After typing in the last two lines of the chat, what did
11 you do next?

12 A. After I got done with the last line that I typed in there,
13 "there was the one with atlantis," I got up and moved over to
14 the library, so I entered the library.

15 Q. So can you take a look at Government Exhibit 128D, please.
16 Do you recognize this document?

17 A. Yes, I do.

18 Q. How do you recognize it?

19 A. It's the outside of the Glen Park library.

20 MR. TURNER: The government offers 128D into evidence.

21 MR. DRATEL: No objection.

22 THE COURT: Received.

23 (Government's Exhibit 128D received in evidence)

24 Q. So you say you went inside the library?

25 A. Yes.

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1 Q. And the patron area is located where?

2 A. As you enter into the library, the stairs go immediately to
3 the right and go up into the library.

4 Q. So could you look at 128F, please. Do you recognize this
5 document?

6 A. I do.

7 Q. How do you recognize it?

8 A. It's the stairway going up inside the Glen Park Library.

9 MR. TURNER: The government offers Exhibit 128F into
10 evidence.

11 MR. DRATEL: No objection.

12 THE COURT: Received.

13 (Government's Exhibit 128F received in evidence)

14 Q. Is this where you go after you enter the library?

15 A. Yes.

16 Q. And who is with you at this point?

17 A. Special Agent Chris Tarbell.

18 Q. Do you still have your computer open at this point?

19 A. I do.

20 Q. Are you still logged onto staff chat?

21 A. I'm still connected to the Internet and still logged into
22 the staff chat.

23 Q. Had you heard anything from Dread Pirate Roberts since you
24 sent those last two messages?

25 A. There were no replies, no.

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1 Q. And at any time at this point if DPR had tried to respond
2 to your last chat message, would you have received it on your
3 screen?

4 A. Yes, I would have.

5 Q. What happened next?

6 A. As I was standing on the stairs with Agent Tarbell, the
7 other agents inside that effected the arrest brought
8 Mr. Ulbricht to us in handcuffs and turned him over to Agent
9 Tarbell. And I then shut my laptop and put it in my book bag
10 and then escorted Mr. Ulbricht and with Agent Tarbell down the
11 stairs of the library.

12 MR. TURNER: Could you pull up, Mr. Evert, 129C,
13 please, and could you zoom in at the end of the chat there.

14 Q. Is the time when you shut your laptop that you just
15 described reflected anywhere in the chat?

16 A. Yes, it is.

17 Q. Where is it reflected?

18 A. It says you have disconnected at 10:16:36.

19 Q. Okay. So what did you see -- excuse me. What did you do
20 next?

21 A. After I disconnected and we escorted Mr. Ulbricht
22 downstairs, Agent Tarbell performed a pat-down search of
23 Mr. Ulbricht. And then I waited there for about a minute or
24 two before another agent came from downstairs and I asked him
25 to stay with Mr. Ulbricht and Agent Tarbell so I could go

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Der-Yeghiayan - direct

1 upstairs into the library. And I wanted to go up there so I
2 could see if there was a computer and if there was anything on
3 that computer.

4 Q. So then what happened next?

5 A. So I entered the library. And I proceeded into the library
6 and I saw from a distance a computer scientist Tom Kiernan
7 sitting at a seat in the library. So -- and he had a laptop in
8 his lap.

9 And so I proceeded to him and sat down next to him and
10 observed the computer. And I saw on the computer screen the
11 same chat that I had with Dread Pirate Roberts minutes earlier.

12 Q. What was Tom Kiernan doing exactly?

13 A. Tom Kiernan had his Blackberry phone out at the time. He
14 was taking photographs of the computer screen.

15 Q. Could you take a look at what's been marked as Government
16 Exhibit 201H, please. Do you recognize what's on this
17 photograph, this document?

18 A. Yes, I do.

19 Q. How do you recognize it?

20 A. It's the computer screen that I saw in the library the day
21 after I had met up with the computer scientist Tom Kiernan.

22 Q. Did you take this photograph?

23 A. No, I did not.

24 Q. Does it fairly and accurately depict what you remember
25 seeing on the screen?

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1 A. Yes, it does.

2 MR. TURNER: The government offers 201H into evidence.

3 THE COURT: No objection?

4 MR. DRATEL: No objection.

5 THE COURT: Received.

6 (Government's Exhibit 201H received in evidence)

7 MR. TURNER: Could you zoom into the box here.

8 Mr. Evert, could you compare that side by side with

9 Exhibit 129C and zoom in here, please.

10 Q. So what are we looking at on the left side?

11 A. On the left side was what I saw on the computer in the
12 library and on the right side is my chat.

13 Q. And how do they compare?

14 A. They're identical.

15 Q. Identical except for what?

16 A. Except for -- instead of "dread" it says "me," but then my
17 username cirrus is the same on the other screen and the colors
18 are different.

19 Q. Just to be clear for the record, it says "me" on which copy
20 of the conversation?

21 A. On the left-hand side.

22 Q. The image of the computer that Mr. Kiernan was taking
23 photographs of?

24 A. Yes.

25 Q. Could you take a look at Exhibit 201I, please.

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1 A. Okay.

2 Q. Do you recognize this document?

3 A. I do.

4 Q. How do you recognize it?

5 A. Again, it's the computer that I saw in the library.

6 Q. And again, did you take this photograph?

7 A. No, I did not.

8 Q. Does it fairly and accurately reflect what you remember
9 seeing on the screen?

10 A. Yes, it does.

11 MR. TURNER: The government offers 201I into evidence.

12 MR. DRATEL: No objection.

13 THE COURT: Received.

14 (Government's Exhibit 201I received in evidence)

15 MR. TURNER: Could you zoom into here, Mr. Evert. Can
16 you put it on the bottom half of the screen. The top half. It
17 doesn't matter. Mr. Evert, before you do anything else, can
18 you zoom in here, the last line of the chat.

19 Q. The last line that you sent to Dread Pirate Roberts was
20 "there was the one with the atlantis," right?

21 A. Yes.

22 Q. What did that refer to again?

23 A. It referred to a flagged message that I was asking Dread
24 Pirate Roberts to look at.

25 MR. TURNER: Mr. Evert, can you put 129D down at the

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Der-Yeghiayan - direct

1 bottom of the screen and zoom in here.

2 Q. Do you remember this exhibit from yesterday?

3 A. Yes, I do.

4 Q. Where did this exhibit come from down at the bottom of the
5 screen?

6 A. This is the flagged message page from the admin panel that
7 I took.

8 Q. That you took from your computer?

9 A. Yes.

10 MR. TURNER: Can you back out of the top, Mr. Evert,
11 and zoom in here.

12 Q. Did you see that same post on Mr. Ulbricht's computer that
13 you had directed DPR to look at?

14 A. Yes, I did.

15 Q. Could you take a look at what's been marked as Government
16 Exhibit 201J?

17 A. Okay.

18 Q. Do you recognize this exhibit?

19 A. Yes, I do.

20 Q. Is this a photograph that you took?

21 A. No, it's not.

22 Q. Does it fairly and accurately depict something that you saw
23 on Mr. Ulbricht's screen that day?

24 A. Yes, it does.

25 MR. TURNER: The government offers 201J into evidence.

F1FGULB2

Der-Yeghiayan - direct

1 MR. DRATEL: No objection.

2 THE COURT: Received.

3 (Government's Exhibit 201J received in evidence)

4 MR. TURNER: Can you zoom into here, Mr. Evert.

5 Q. What are we looking at here?

6 A. This is what I observed on the computer that showed the
7 account was logged in as dread at the dot-onion address for the
8 staff chat.

9 MR. TURNER: Can you compare that with 129B,
10 Mr. Evert.

11 Q. And where is this image from?

12 A. This is from my computer.

13 Q. And this was the status window you used to check on DPR's
14 online activity?

15 A. Yes, it was.

16 Q. How does the dread username compare to the dread username
17 you saw on the screen here?

18 A. It's the same.

19 Q. And the avatar?

20 A. It's the same.

21 Q. And what program was this that was open on Mr. Ulbricht's
22 laptop?

23 A. That would have been Pidgin.

24 Q. How do you spell that?

25 A. P-I-D-G-I-N.

F1FGULB2

Der-Yeghiayan - direct

1 Q. Do you remember yesterday we looked at the chat
2 instructions that DPR had given you on how to set up staff
3 chat?

4 A. Yes.

5 MR. TURNER: Mr. Evert, can you pull those up. It's
6 Government Exhibit 127 right here.

7 Q. "Hey, we're all on a more secure chat channel. Here are
8 the instructions for joining in: Download and install Pidgin."

9 Can you go down to the bottom of this message.

10 "add buddy dread@."

11 Is this the same dread username you saw again from
12 Mr. Ulbricht's computer?

13 A. That is.

14 Q. So about how long were you -- did you spend looking at the
15 computer while you were at the upstairs of the library?

16 A. Only a few minutes I was up there.

17 Q. And what did you do after you were done?

18 A. After that, I went back downstairs out of the library and
19 met back up with Special Agent Tarbell who at that point, with
20 several other agents, they had Mr. Ulbricht inside a car
21 sitting in there, and then I observed him read Mr. Ulbricht his
22 Miranda rights.

23 Q. What happened next?

24 A. And then near that area, too, the rest of the team that was
25 there that was going to effect a search warrant then on

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Der-Yeghiayan - direct

1 Mr. Ulbricht's residence was meeting up, and we basically
2 talked about how we're going to go over to the house and
3 approach it.

4 Q. What house?

5 A. Mr. Ulbricht's residence.

6 Q. And why were you going there?

7 A. To effect a search warrant.

8 Q. So what happened next?

9 A. I then -- I left that area and drove over to Mr. Ulbricht's
10 residence. I parked outside down the street from the residence
11 and I waited for the rest of the team to arrive. Shortly
12 thereafter, the computer scientist Tom Kiernan and another
13 agent arrived in a separate car, and I joined them in their
14 car. And agent -- or computer scientist Tom Kiernan still had
15 the computer with him at the time.

16 Q. And what was he doing with it at the time?

17 A. He was still taking photographs of it.

18 Q. And what happened next after you joined him in the car?

19 A. I asked him whether or not he could click back on the
20 browser that was on the flagged message page to see if there
21 was anything before that, and I was asking that because I
22 know --

23 Q. Let me interrupt you. Click back on the browser, what do
24 you mean by browser?

25 A. It was the Tor browser that was up, the web browser. I

F1FGULB2

Der-Yeghiayan - direct

1 wanted to see if they'd hit the "back" button to see the
2 previous pages that might have been visited on that browser.

3 Q. What was on the browser when you saw it in the library
4 again?

5 A. It was on the flagged message page.

6 Q. The one with the Atlantis reference in it?

7 A. Yes.

8 Q. And why did you want to hit the "back" button on the
9 browser? What were you trying to learn?

10 A. I know from my account from when I access that page I had
11 to be logged in under my administrator account. So I wanted to
12 see what account he used to enter into that flagged message
13 page.

14 Q. So what happened next?

15 A. So when he clicked "back" on the browser, it then took to
16 the support page, which you would use to click to get to that
17 flagged message page, so the support admin panel came up on the
18 screen.

19 Q. Would you take a look at Government Exhibit 201K, please.

20 A. Okay.

21 Q. Do you recognize this document?

22 A. Yes, I do.

23 Q. What is it?

24 A. This is what appeared on the computer when the computer
25 scientist Tom Kiernan hit "back" on the browser. This is the

F1FGULB2

Der-Yeghiayan - direct

1 support page.

2 Q. Did you take the photo?

3 A. No, I did not.

4 Q. Does it accurately and fairly reflect what you remember
5 seeing on the screen?

6 A. Yes, it does.

7 MR. TURNER: Government offers 201K into evidence.

8 MR. DRATEL: No objection.

9 THE COURT: Received.

10 (Government's Exhibit 201K received in evidence)

11 MR. TURNER: If we could zoom into this part here.

12 Q. What are we looking at again?

13 A. This is, again, the support panel that you use to access
14 the flagged message page that I was responsible for moderating.

15 MR. TURNER: Could you put 127D below that, Mr. Evert.

16 Q. What is 127D again?

17 A. That was the screen shot that I took when I originally got
18 access to that support panel.

19 MR. TURNER: Could you go back to 201K, Mr. Evert, and
20 can you zoom in up here.

21 Q. What's the little icon here next to "support"?

22 A. That would be the "back" button.

23 Q. The little icon above the "back" button?

24 A. Oh. I'm sorry. It's that's the man on the camel, the
25 green logo.

F1FGULB2

Der-Yeghiayan - direct

- 1 Q. From what?
- 2 A. From Silk Road.
- 3 Q. And the web address, do you recognize that?
- 4 A. Yes, I do.
- 5 Q. What is it?
- 6 A. It's the Silk Road's market URL.
- 7 Q. And it has the slash support?
- 8 A. Yeah, the forward slash support is what you would type in
- 9 or what I'd type in to access that page.
- 10 Q. And what is this over here? It says SR?
- 11 A. It's a folder that says SR.
- 12 Q. So, did you go back any further in the browser?
- 13 A. Yes, we did.
- 14 Q. Could you take a look at Government Exhibit 201L.
- 15 A. Okay.
- 16 Q. Do you recognize this document?
- 17 A. Yes, I do.
- 18 Q. How do you recognize it?
- 19 A. It's a what appeared on the screen on the computer after we
- 20 hit "back" again.
- 21 Q. This is the second time you hit "back"?
- 22 A. Yes.
- 23 Q. Did you take this photograph?
- 24 A. No, I did not.
- 25 Q. Does it fairly and accurately reflect what you remember

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Der-Yeghiayan - direct

1 seeing on the screen at this point?

2 A. Yes, it does.

3 MR. TURNER: The government offers 201L into evidence.

4 MR. DRATEL: No objection.

5 THE COURT: Received.

6 (Government's Exhibit 201L received in evidence)

7 MR. TURNER: Mr. Evert, could you try zooming in here,
8 including the address bar.

9 Q. Had you ever seen this page before?

10 A. No, I have not.

11 Q. Just to be clear, you hadn't at the time, right?

12 A. Well, previous to that, no, I had never seen it -- never
13 saw that screen before.

14 Q. And the address at the top, what did it say this time
15 instead of "support"?

16 A. It says the silkroadmarket.onion/mastermind.

17 Q. And there's some names under here: Inigo, libertas,
18 cirrus. Tell us who those are.

19 A. Those are the other support staff members minus
20 samesamebutdifferent.

21 Q. Do you know whether DPR ever kept track of your time on the
22 site?

23 A. After that I knew.

24 MR. TURNER: Can you back out, please. Can you zoom
25 in here.

F1FGULB2

Der-Yeghiayan - direct

1 Q. Could you read off what it says here?

2 A. It says escrow db in parenthesis USD. And then a number
3 \$4,146,736.57. And then in parenthesis, it's bitcoins
4 30,951.60. And then there's escrow db, which is 22,234.91
5 bitcoins, and accounts db, which is 180,448.96 bitcoin.

6 Q. And from your experience working on the support staff at
7 Silk Road, do you know whether at any given time on Silk Road
8 there were various pending transactions into the escrow system
9 of Silk Road?

10 A. There were.

11 MR. TURNER: Could you back out and zoom in down here.

12 Q. The bottom: Unshipped, in transit, resolution. Can you
13 remind the jury what those categories relate to with respect to
14 Silk Road?

15 A. The listing, when you place the order, it would say
16 "processing." And then once a vendor will mark it as being
17 shipped, it will say "in transit." So -- and then if -- there
18 is resolutions as well. There would be -- there's a resolution
19 mode for any order that you placed you can put into resolution.

20 Q. To put into resolution means what again?

21 A. It means to try to resolve basically a package that didn't
22 arrive or a claim that it wasn't shipped.

23 Q. Could you take a look at -- well, let me ask you, did you
24 go back any further or was this it in the browser?

25 A. No. I hit "back" again on it.

F1FGULB2

Der-Yeghiayan - direct

1 Q. Could you take a look at Government Exhibit 201M.

2 A. Okay.

3 Q. Do you recognize this page?

4 A. Yes, I do.

5 Q. How do you recognize it?

6 A. It's what appeared on the screen after I hit "back" again.

7 Q. Did you take this photo?

8 A. No, I did not.

9 Q. Does it fairly and accurately reflect what you remember
10 seeing?

11 A. Yes, it does.

12 MR. TURNER: The government offers 201M into evidence.

13 MR. DRATEL: No objection.

14 THE COURT: Received.

15 (Government's Exhibit 201M received in evidence)

16 MR. TURNER: Could you zoom into this corner,

17 Mr. Evert.

18 Q. So what are we looking at here? Do you know?

19 A. This is that same URL, the silkroadmarket URL, forward
20 slash support, forward slash landing. This is the same page
21 that appeared on my screen when I was given directions by Dread
22 Pirate Roberts to access the support panel. He gave me that
23 URL and this was the screen that appeared that I put in my
24 username on the left and my password on the right before I
25 could go.

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Der-Yeghiayan - direct

1 MR. TURNER: Mr. Evert, could you put that on top and
2 on the bottom, could you bring up 127C, please. Could you zoom
3 into the area of that hyperlink.

4 Q. Do you remember 127C, an exhibit that we looked at
5 yesterday?

6 A. Yes, I do.

7 Q. Can you remind the jury what it is.

8 A. It was a chat that occurred between myself and Dread Pirate
9 Roberts on the staff chat where he gave me instructions and
10 gave me more authority to access the support admin panel on the
11 marketplace.

12 Q. And at one minute, 14 seconds -- excuse me -- at 01:14:24
13 it says "dread: Now go to," and then it provides the
14 silkroad.onion address/support/landing, is that the page that
15 we see here up top?

16 A. Yes, it is.

17 Q. And then it says "and enter your user and pass and let me
18 know what happens."

19 So if you were on the page, what username would you
20 enter there?

21 A. On the left-hand side, I would have entered in "cirrus."

22 Q. And what username did you see when you hit the "back"
23 button on Mr. Ulbricht's computer?

24 A. Dread Pirate Roberts.

25 Q. And what did that indicate to you?

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Der-Yeghiayan - direct

1 A. That the person had signed into that computer using Dread
2 Pirate Roberts.

3 Q. So what happened next after you were in the car looking at
4 the computer?

5 A. The rest of the team for the search warrant arrived and we
6 effected the search warrant on the home.

7 Q. What type of residence was it?

8 A. It was a multifamily home, like a multiflat.

9 Q. Would you take a look at what is marked as 130A as in
10 apple.

11 A. Okay.

12 Q. Do you recognize this document?

13 A. Yes, I do.

14 Q. How do you recognize it?

15 A. It's the outside of Mr. Ulbricht's home.

16 Q. Did you take the photo yourself?

17 A. No, I did not.

18 Q. Does it fairly and accurately reflect the residence as you
19 remember it?

20 A. Yes, it does.

21 MR. TURNER: The government moves 130A into evidence.

22 MR. DRATEL: No objection.

23 THE COURT: Received.

24 (Government's Exhibit 130A received in evidence)

25 Q. Which one is it on here?

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Der-Yeghiayan - direct

1 A. It's this one right here. That's the front entrance.

2 Q. The brown one?

3 A. Yes.

4 Q. So did you personally participate in the search?

5 A. Yes, I did.

6 Q. Were you able to locate the defendant's bedroom in the
7 residence?

8 A. Yes, I was.

9 Q. How were you able to identify his bedroom?

10 A. There were personal effects in the room that belonged to
11 Mr. Ulbricht.

12 Q. Such as what?

13 A. There was a driver's license, a passport, as well as credit
14 cards and other bank statements.

15 MR. TURNER: May I approach.

16 THE COURT: Yes.

17 Q. I'm showing you what's been marked as Government
18 Exhibit 134A. Do you recognize the document?

19 A. Yes, I do.

20 Q. And what is it?

21 A. It's Mr. Ulbricht's U.S. passport.

22 Q. Could you take a look at what's been marked as Government
23 Exhibit 135 -- I'm sorry -- Government Exhibit 134.

24 A. Okay.

25 Q. Do you recognize those documents?

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Der-Yeghiayan - direct

1 A. Yes, I do.

2 Q. How do you recognize those?

3 A. It's photographs of Mr. Ulbricht's U.S. passport and the
4 pages contained therein.

5 Q. Did you yourself take those photographs?

6 A. No, I did not.

7 Q. Do the photographs accurately reflect the pages of the
8 passport?

9 A. Yes, they do.

10 MR. TURNER: The government offers Exhibits 134 and
11 134A into evidence.

12 MR. DRATEL: No objection.

13 THE COURT: Received.

14 (Government's Exhibit 134, 134A received in evidence)

15 MR. TURNER: Could you publish Exhibit 134, Mr. Evert,
16 and can you go to the second page.

17 Q. In looking at the passport, can you tell where the travel
18 markings are from here from the top half?

19 A. Yes, I could. It's from Dominica. It's entry and exit
20 stamps.

21 Q. What is Dominica?

22 A. Caribbean country.

23 Q. And what are the dates of the travel indicated, the enter
24 and exit?

25 A. There's -- the blue stamp on the left -- on the right,

F1FGULB2

Der-Yeghiayan - direct

1 sorry -- is an enter stamp and it's from November 15, 2012, and
2 the stamp on the left is an exit stamp from Dominica from
3 December 4, 2012.

4 Q. Did you find anything related to Silk Road in the bedroom?

5 A. Yes, I did.

6 Q. What did you find?

7 A. In the trash, there was, in the bedroom, I located the rest
8 of Mr. Ulbricht's belongings. We found -- there was a paper
9 that was crumpled up in the trash, two yellow sheets of paper
10 that contained writing on it that I recognized as things that
11 were similar to Silk Road.

12 Q. Did it say the Silk Road -- did the paper have the words
13 "Silk Road" written on it?

14 A. No, they did not.

15 Q. So what enabled you to make the link that it came from Silk
16 Road?

17 A. There was language on it such as, like, talking about
18 transactions and buyer weights and ratings; and there was also,
19 like, a way to, like, rate the users on Silk Road that I
20 recognized as well, language that was similar to that.

21 Q. How did you recognize it? Was there something going on on
22 Silk Road with respect to the rating system?

23 MR. DRATEL: Objection; leading.

24 THE COURT: Sustained.

25 MR. TURNER: I'll rephrase.

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Der-Yeghiayan - direct

1 Q. How did you recognize it as being related to anything going
2 on at Silk Road at the time?

3 A. There was a -- they were fairly recent, within early
4 September, talks from Dread Pirate Roberts about revamping and
5 redoing the buyer rating system on Silk Road. So there were
6 discussions that were openly talked about by Dread Pirate
7 Roberts about redoing that system.

8 Q. Can you take a look at Government Exhibit 130, please.

9 A. Okay.

10 Q. Do you recognize these pages?

11 A. Yes, I do.

12 Q. How do you recognize them?

13 A. These were the sheets of paper that we found in the trash.

14 Q. Did you personally participate in that seizure?

15 A. I was. I witnessed it happening; yes.

16 Q. So there are two pages at issue?

17 A. Yes.

18 MR. TURNER: The government offers Exhibit 130 into
19 evidence.

20 MR. DRATEL: The previous objection, your Honor.

21 THE COURT: All right. Government Exhibit 130 is
22 received. The objection is overruled.

23 (Government's Exhibit 130 received in evidence)

24 MR. TURNER: Mr. Evert, can you publish Exhibit 130.
25 First of all, can you zoom in on the very top.

F1FGULB2

Der-Yeghiayan - direct

1 Q. There's, sort of, an algebraic formulas up top. Do you see
2 that?

3 A. That would be accurate.

4 MR. TURNER: Zoom out and zoom into this area.

5 Q. Okay. Can you make out what it says there starting with
6 "ratings"?

7 A. Yeah. It says ratings, then buyer weight at time of
8 purchase X TX size X and age factor, followed by calculate on
9 page load and generate bars.

10 MR. TURNER: Can you highlight "generate bars and
11 ratings," Mr. Evert, and then put that on top.

12 Q. Now what I'd like you to do is take a look at Government
13 Exhibit 131. Do you recognize what these pages are? Where
14 they're from?

15 A. Yes, I do. They're screen shots that I took of posts made
16 by Dread Pirate Roberts on October 6, 2013.

17 Q. And what do the posts concern?

18 A. These had to do with the overhaul that Dread Pirate Roberts
19 was discussing in the feedback and the buyer ratings.

20 MR. TURNER: Mr. Evert, could you put up page three of
21 Government Exhibit -- I'm sorry.

22 The government would move Exhibit 131 into evidence.

23 MR. DRATEL: Objection on hearsay grounds and Vayner.

24 THE COURT: The objections are overruled. Government
25 Exhibit 131 is received.

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Der-Yeghiayan - direct

1 (Government's Exhibit 131 received in evidence)

2 MR. TURNER: Mr. Evert, can you zoom into just the
3 first paragraph in the heading.

4 Q. So the date of this post is August 11, 2013, correct?

5 A. Correct.

6 Q. And the title is "feedback system overhaul," right?

7 A. Yes.

8 Q. And it says, Update 08/18/2013 2213 UTC. Wow! So much
9 feedback and ideas for ratings. I think this will be a major
10 focus for a while until we can really flesh everything out so
11 both vendors and buyers can have all of the information and
12 tools they need to decide who they want to work with. At this
13 point, there are so many things to do, we have to start
14 thinking about what order to do things and how to transition.
15 Everyone responds to change either positively or negatively,
16 and I'll keep doing my best to keep the negative to a minimum.

17 Can you scroll down a little bit, Mr. Evert. Can you
18 zoom back in again. Great. Can you zoom in right here. All
19 right.

20 You see at the top it talks about ratings and it says
21 calculate on page load and generate bars.

22 Update 2028 UTC: Okay, I've rolled out the first set
23 of major changes. We've done away with a percent based rating
24 score entirely and are now displaying the ratings as a bar
25 chart that shows the relative weight of each rating category

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Der-Yeghiayan - direct

1 (one through five) and a total average.

2 Could you go back up to the document here in the top
3 and scroll down. Maybe could you pull out a little bit and
4 expand. Can you highlight buyer weight, vendor weight, sales
5 volume, age factor. And now can you scroll down here and open
6 that up more, please. And go down here starting with the long
7 line of text:

8 So here's what we have so far. I want to rework how
9 both buyers and vendors are related. We've identified six
10 critical dimensions that I think effect how SR users should be
11 judged, they are...

12 Mr. Evert, I want to point out buyer weight, account
13 age, vendor weight, total sales volume.

14 Now, was this the only post that DPR made on
15 August 2013 about revising, overhauling the rating system?

16 A. No, it was not.

17 THE COURT: Is this a good time that we can make our
18 mid-morning break, Mr. Turner?

19 MR. TURNER: Five more minutes along these lines --

20 THE COURT: Why don't we take a break right now if
21 it's going to be five minutes. Ladies and gentlemen, we'll
22 take our mid-morning break. I want to remind you not to talk
23 to each other or anybody else about this case. Thank you.

24 (Jury excused) (Continued on next page)

25

F1FGULB2

Der-Yeghiayan - direct

1 (In open court; jury not present)

2 THE COURT: You can take a break yourself.

3 THE WITNESS: Thank you.

4 (Witness temporarily excused)

5 THE COURT: The reason for the break right then was
6 one of the jurors made eye contact and indicated that he wanted
7 a break.

8 MR. TURNER: Sorry for not picking that up.

9 THE COURT: That's okay. Because sometimes when I've
10 been just trying to find the right time, having you continue to
11 a logical end is neither here nor there for me.

12 I'll use this opportunity to address two of the
13 objections that I overruled, both as to GX 130 and GX 131. In
14 the Court's view, neither of those were being offered for the
15 truth and therefore the hearsay objection would not be a
16 relevant objection. In terms of I think the venue which you
17 mentioned as to 131, Mr. Dratel, that was addressed in my *in*
18 *limine* motion. Did you mean *Vayner*?

19 MR. DRATEL: I said *Vayner*. I'm sorry.

20 THE COURT: You said "venue." All right, *Vayner*. For
21 the *Vayner*, then my ruling would be similar to that from
22 yesterday, which is, these documents that we have gone through
23 all have been appropriately authenticated as the require; so
24 therefore, the *Vayner* objection would not be appropriate or
25 would not be sustained.

F1FGULB2

Der-Yeghiayan - direct

1 MR. DRATEL: When they come back out, would the Court
2 instruct the jury about 130, 131 about not for the truth, your
3 traditional instruction in that regard?

4 THE COURT: Sure. I'm happy to go through and to do
5 that.

6 MR. DRATEL: Thank you.

7 THE COURT: I think it's obvious because it's not
8 about whether or not -- it's just for the fact that the words
9 "buyer weight, vendor weight" was on the page, not whether or
10 not they were, in fact, ultimately taken into consideration.

11 MR. TURNER: I don't think there's any unique
12 statement on the document that can carry any truth value.

13 THE COURT: That's sort of my point; yes. But
14 nevertheless, I'll just indicate that those are not for the
15 truth. If Mr. Dratel would like that, I'm happy to do that.

16 MR. DRATEL: Thank you.

17 THE COURT: Is there anything else that folks would
18 like to raise before we take own break.

19 MR. DRATEL: There's one issue.

20 THE COURT: At the side bar, sure, come on up.

21 (Continued on next page)
22
23
24
25

F1FGULB2

Der-Yeghiayan - direct

1 (At the side bar)

2 MS. LEWIS: I wanted to bring it to the Court's
3 attention that I may have inadvertently addressed -- I walked
4 into a crowded subway car at Union Square and I saw there was
5 woman behind me. And seeing a juror in the courtroom makes me
6 think it may have been her.

7 THE COURT: All right.

8 MS. LEWIS: Such is life.

9 THE COURT: Thank you. Thank you for disclosing that.

10 MS. LEWIS: That was all.

11 THE COURT: It's life in the New York City subways at
12 rush hour.

13 Is there anything anybody thinks needs to be done?

14 MR. DRATEL: As long as it wasn't a New York Post
15 reporter behind her.

16 THE COURT: I think we're all set. Does anybody want
17 the Court to do anything with that?

18 MR. TURNER: No.

19 THE COURT: Thank you.

20 Let's take our own break for a few minutes before we
21 resume.

22 (Recess)

23 (Continued on next page)

24

25

F1FGULB2

Der-Yeghiayan - direct

1 (In open court; jury present)

2 THE COURT: Now, one thing I wanted to mention before
3 we continue is there were two documents that we were just
4 hearing testimony with respect to. One was the photograph of
5 the crumpled notes, that's GX 130, and the other was the buyer
6 ratings. What would you call it? Posts?

7 MR. TURNER: Yes.

8 THE COURT: The posts at Government Exhibit 131 that
9 the government and the witness were going back and forth on,
10 these are not offered for the truth as to whether or not, for
11 instance, the calculation that was put forward, in fact, is the
12 right calculation or the truth of any of the information. It's
13 just for the fact that these words appeared on the page.

14 Mr. Turner, you can go ahead and continue.

15 MR. TURNER: Could we put Government Exhibit 131, the
16 page back on the screen, please.

17 You can publish the whole page. Zoom in there. We
18 were just looking at these references to buyer weight, account
19 age, vendor weight, sales volume, etc. Mr. Evert, can you
20 scroll all the way down to the bottom of the message.

21 Q. "There are a couple of other changes I have in mind, but
22 this post is already getting long and complex, so let's leave
23 it at that. I look forward to hearing your feedback."

24 MR. TURNER: Could you now put up page two of the
25 exhibit, please.

F1FGULB2

Der-Yeghiayan - direct

1 Q. So this is a forum post approximately 20 days later. Is
2 that right?

3 A. Yes.

4 Q. It says more updates and ratings and reviews overhaul. And
5 I'll read a few lines of it:

6 The latest, the buyers may remove a weighting and/or
7 review from the recent orders link on their account pages. The
8 price of the transaction has been obscured in the same way that
9 buyer stats are when the review is displayed. The style has
10 been slimmed down further. Buyer weight now has the same
11 freshness factor included in the rating and vendor weights (old
12 transactions don't count as much toward a buyer's weight.)

13 Was this a continuing topic of discussion in the forum
14 posts around this time?

15 A. Yes, it was.

16 Q. So now let me go, please, to page one of the exhibit. So
17 this the approximately 12 days later?

18 A. Yes.

19 Q. And it says:

20 Buyer ratings September 12, 2013. Let's see
21 more -- excuse me. Let's see, where were we? Oh, yeah,
22 ratings and review overhaul.

23 There's an emoticon there.

24 Can you focus in on what's been marked with that has
25 the paragraph two number on it.

F1FGULB2

Der-Yeghiayan - direct

1 It says labeling four of five as "solid, would
2 recommend" is bringing down my average. And that's in quotes.

3 Then it says don't worry, it's a level playing field
4 and all vendors are experiencing this. The net effect is to
5 give more info to buyers, distinguishing "solid" vendors from
6 "outstanding" ones.

7 Can you just explain what this photograph is about?

8 A. This is in reference to the marketplace when a buyer would
9 leave a rating for a vendor, they could label them one through
10 five basically as far as five being the highest. And he's
11 talking about marketing or trying to make sure you could
12 differentiate between them being outstanding or just so-so, I
13 guess.

14 (Continued on next page)

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Flfdulb3

Der-Yeghiayan - cross

1 Q. OK. And the quote here, was this like a comment that
2 somebody had made previous to the post, the "labeling 4 of 5 as
3 'solid, would recommend' is bringing down my average"?

4 A. I don't recall the previous messages on the post.

5 Q. OK. Did you find -- well, you said before there were two
6 pieces of paper you found in the trash?

7 A. Yes, there were two sheets.

8 MR. TURNER: Could you put up Government Exhibit 130,
9 page 2, on the bottom, Mr. Evert, and keep that same thing up
10 on the screen. Could you zoom in here.

11 Q. OK. This is the second piece of scrap paper that you found
12 in Mr. Ulbricht's bedroom, in the trash?

13 A. Yes, it was.

14 Q. And the top line says: "5- Wow! Outstanding.

15 "5 - Wow! Best of the best."

16 MR. TURNER: Can you highlight "outstanding" there,
17 Mr. Evert and "outstanding" up here.

18 Q. "4 - solid, would recommend."

19 Can you highlight that?

20 "3 - Meh, they're OK, I guess.

21 "2 - definitely needs improvement.

22 "1 - Never again!"

23 Do you recognize some of this specific terminology
24 from Silk Road?

25 A. Yes, I do.

Flfdulb3

Der-Yeghiayan - cross

1 Q. How do you recognize it?

2 A. It was similar exactly to what Dread Pirate Roberts said in
3 his posts.

4 MR. TURNER: Could you cut out to the first page of
5 Government Exhibit 130, full screen, please, and zoom in here.

6 Q. So what was down in the middle of this page?

7 A. It was a name and a telephone number below it.

8 Q. And the name is?

9 A. Danielle.

10 Q. And there is a phone number here.

11 MR. TURNER: And, your Honor, just to make the record
12 clear, we've redacted it from the screen but not from the paper
13 copy that will be available to the jurors?

14 THE COURT: All right.

15 Q. So after you were done with the search, did you ever log
16 back into the chat channel you had been communicating with
17 Dread Pirate Roberts on prior to the defendant's arrest?

18 A. Yes, I did.

19 Q. First talk a look, actually, at Government Exhibit 129E, as
20 in Edward.

21 Do you recognize this document?

22 A. Yes, I do.

23 Q. How do you recognize it?

24 A. It is a screenshot of my entire computer screen I took on
25 October 2, 2013.

Flfdulb3

Der-Yeghiayan - cross

1 Q. That is the day after the arrest?

2 A. Yes.

3 MR. TURNER: The government offers Exhibit 129E into
4 evidence.

5 MR. DRATEL: No objection, your Honor.

6 THE COURT: Received.

7 (Government's Exhibit 129E received in evidence)

8 MR. TURNER: Could you zoom in here, Mr. Evert.

9 Q. So up 'til now we've seen a copy of that chat log in the
10 log forum. Is this how it looked on your computer?

11 A. This is how it looked on my computer.

12 MR. TURNER: Now could we go back to the log screen at
13 129C, please. And go down just to the bottom part here.
14 Starting a little bit farther up, starting with "Dread."

15 Q. OK. So the conversation, again, left off at 10:14 with you
16 saying, "There was the one with the Atlantis." You
17 disconnected at 10:16.

18 Now, if the Dread Pirate Roberts had ever tried to
19 respond to your last message after you disconnected, would you
20 have had any way of receiving that message?

21 A. The message would have come the next time I logged into the
22 server.

23 Q. And when was the next time you logged into the chat server?

24 A. At 3:32 a.m.

25 Q. UTC?

Flfdulb3

Der-Yeghiayan - cross

- 1 A. UTC -- 3:33, sorry, a.m.
- 2 Q. That would have been at 8 p.m. the night after the arrest?
- 3 A. Yes.
- 4 Q. Had you received any reply from the Dread Pirate Roberts by
- 5 that point?
- 6 A. No, I had not.
- 7 Q. All right. Did you login subsequently after that?
- 8 A. I did login after that.
- 9 Q. When was the next time you logged in?
- 10 A. Again, I believe hours later, so 7:19 a.m.
- 11 Q. About midnight that night?
- 12 A. Yes.
- 13 Q. Still no reply?
- 14 A. No reply.
- 15 Q. Was the Silk Road website still operational by this point?
- 16 A. Yes, it was.
- 17 Q. When was it shut down?
- 18 A. October 2nd, around -- I think like around 10 a.m., I want
- 19 to say, 11.
- 20 Q. So the following day?
- 21 A. I believe so.
- 22 Q. And when was the defendant's arrest made public?
- 23 A. At that time.
- 24 Q. At what time?
- 25 A. Around 10/11 a.m. Pacific.

Flfdulb3

Der-Yeghiayan - cross

1 Q. October 2nd?

2 A. Yes.

3 Q. All right. So up until that time, did the defendant --
4 excuse me, up until that time, from between the time when the
5 defendant was arrested to the time when the site was shut down
6 and the arrest was made public, did Dread Pirate Roberts ever
7 respond to your last chat message?

8 A. No, he did not.

9 MR. TURNER: That is all I have, your Honor.

10 THE COURT: All right. Thank you.

11 Mr. Dratel.

12 MR. DRATEL: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MR. DRATEL:

15 Q. Good morning, Agent Der-Yeghiayan, is that right?

16 A. It is right, yes, sir.

17 Q. Why don't we talk about the PGP demonstration, the key that
18 you did this morning.

19 A. OK.

20 Q. And just initially, there were forum posts, weren't,
21 there's, that people couldn't validate with the public key,
22 correct?

23 A. That's correct.

24 Q. And a private key, which you talked about, is just a block
25 of text like the public key that you showed, correct?

F1FDULB3

Der-Yeghiayan - cross

1 A. Correct.

2 Q. And when you use the term own a private key, you just mean
3 have possession of that block of text, correct?

4 A. That is correct.

5 Q. So it could be cut and paste and sent to someone else,
6 correct?

7 A. Yes, it can.

8 Q. It could be shared by the person who generated the key,
9 correct?

10 A. That is correct.

11 Q. It could be stolen --

12 A. Yes.

13 Q. -- correct?

14 It doesn't have to be the same person who uses that
15 private key from message to message much less year to year,
16 right?

17 A. It doesn't have to be, no.

18 Q. And it doesn't have to be the same device that uses that
19 key from message to message, from month to month, year to year,
20 correct?

21 A. That is correct.

22 Q. It is really the block of text. It is not whether it is a
23 laptop or a desk-top or a phone or anything like that, right,
24 it is the block of text that counts, right?

25 A. It is universal, yes.

F1FDULB3

Der-Yeghiayan - cross

1 Q. So the only thing that you know when you verify is that
2 you're communicating with someone who is using that block of
3 text, correct?

4 A. That is correct.

5 Q. It doesn't have to be the same person from message to
6 message, just a person who is using that block of text?

7 A. And let me clarify. It is the same text and there is also
8 a password that is associated with utilizing that private key
9 as well, too.

10 Q. Right. But the same thing. The password is just like any
11 other password? It could be typed in? It could be shared? It
12 could be sent? It could be cut and paste? Right?

13 A. That is correct.

14 Q. It could be hacked, right?

15 A. Yes.

16 Q. So I just want to go back to that question.

17 So the only thing that you can verify is that you're
18 communicating with someone who has that block of text and can
19 enter the password?

20 A. That is correct.

21 Q. And these keys can be passed on, correct, from person to
22 person?

23 A. It can be shared, yes.

24 Q. In that way it is not really any different on a certain
25 level than a car key, right? It can go from driver to driver

F1FDULB3

Der-Yeghiayan - cross

1 and you operate the car, correct?

2 A. Well, it can but it needs a password, too.

3 Q. Right. So if you had to, let's say, enter something into a
4 car like on a punch key or something like that, it would be the
5 same difference, right? All you had to do is a password?

6 A. It would be key plus the password, yes.

7 Q. Yes. The same thing if the office manager retires and has
8 the key to the file cabinet and there is maybe also not only
9 the key but also a little keypad on it and the next office
10 manager comes along and says here's the file key and here's the
11 code for the key punch, right?

12 A. That is correct.

13 Q. Now, what you showed us on the exhibit was that the key was
14 created April 1, 2011, correct?

15 A. That is correct.

16 Q. And it wasn't created as Dread Pirate Roberts, right?

17 There is nothing about that key that says Dread Pirate Roberts,
18 right?

19 A. That is correct.

20 Q. It says Silk Road, right?

21 A. Yes.

22 Q. By the way, the person who creates that key would still
23 have the information -- even if it was passed on, they still
24 have that block of text, right?

25 A. I'm sorry. I am confused.

F1FDULB3

Der-Yeghiayan - cross

1 Q. Let me go through it again.

2 The person who created the key, generates the key,
3 created the key, they would retain that block of text forever,
4 essentially, right?

5 A. They could save it, yes.

6 Q. Right. Even if someone else was using the key, even if
7 they passed on -- the office manager could have made a copy of
8 the file key, right -- of the file cabinet key, right?

9 A. Right. There could be multiple copies of a private key
10 that multiple people can have.

11 Q. And multiple people could use it at the same time?

12 A. They could, yes.

13 Q. Message to messaging?

14 A. They could.

15 Q. You talked about Dread Pirate Roberts and the movie "The
16 Princess Bride," right?

17 A. Yes.

18 Q. In fairness to the author, you know it was also a book
19 originally?

20 A. It was a book, yes. I didn't read it, though.

21 Q. Part of that legend is continuity, right?

22 A. Yes.

23 Q. And the continuity being that the essence of the
24 personality stays the same, correct?

25 A. Yes.

F1FDULB3

Der-Yeghiayan - cross

1 Q. And if the key changed -- withdrawn.

2 If DPR had changed over time and the private key
3 changed over time, that would ruin that continuity, wouldn't
4 it?

5 A. That would create some doubt.

6 Q. In fact, you yourself thought that DPR changed over time,
7 didn't you?

8 A. There are times that there was writings that would make me
9 think that, yeah, it potentially was a different person.

10 Q. And even as late as August of 2013, you thought that DPR
11 had changed in April of 2013, didn't you?

12 A. There was discussions that I had had with another moderator
13 who was convinced that it was a new DPR.

14 Q. But you told people inside your organization, Homeland
15 Security Investigations, that DPR -- you believed that DPR had
16 changed in April of 2013?

17 A. There -- if there is anything that you could refresh my
18 memory?

19 MR. DRATEL: Sure. Just for the witness, 3505-787.

20 (Pause)

21 Your Honor, I understand it can't be done
22 electronically from our position. I guess only from the
23 main -- I will just show him.

24 THE COURT: I think it is fine if you just show it in
25 hardcopy to the witness, and let the government know what you

F1FDULB3

Der-Yeghiayan - cross

1 are turning his attention to.

2 MR. DRATEL: Yes. It is 3505-787.

3 (Hanging)

4 THE WITNESS: Thank you.

5 MR. DRATEL: Obviously, just read it to yourself, the
6 top part.

7 Q. And so in August of 2013, you expressed your opinion that
8 DPR had changed in April of 2013?

9 A. I'm not sure if the April I was referring to was 2012 or
10 2013. The April might have been from 2012.

11 Q. But it is April?

12 A. April.

13 Q. I'm sorry. The email is August of 2013, correct?

14 A. Correct.

15 Q. And you talk about someone with a screen name who you
16 thought might have been the previous DPR, right?

17 A. There is another profile that was administrator on Silk
18 Road as well.

19 Q. And you thought that even though you knew that the private
20 key was the same as it always had been, right?

21 A. That's correct.

22 Q. You thought there was a different DPR notwithstanding the
23 continuity of the private key?

24 A. There was conversation that would change, and it would be
25 similar in a lot of ways but there would be other things that

F1FDULB3

Der-Yeghiayan - cross

1 would make us think that potentially there might have been a
2 different person behind it at different times.

3 Q. What I'm saying is even notwithstanding this same private
4 key throughout, you expressed an opinion in August of 2013,
5 basically two months before Mr. Ulbricht's arrest, correct,
6 that DPR had changed in April, and now you don't know whether
7 it is 2012 or 2013 in April, right?

8 A. Correct. I think it was April of 2012, though.

9 Q. But it doesn't say 2012, does it?

10 A. No.

11 Q. That is not what you put in your email, right?

12 A. It says just April.

13 Q. Right. In August of 2013, right?

14 A. I don't think it is April 2013.

15 Q. No. No. what I am saying is the email is August of 2013?

16 A. August, yes.

17 Q. And when you say it changed in April, you didn't say April
18 a year ago, you said April, right?

19 A. Yes.

20 Q. Have you taken any acting courses?

21 A. No, I have not.

22 Q. What kind of computer training have you had?

23 A. Just the basic stuff that we had from the academy.

24 Q. What did that include?

25 A. There are various courses on -- just basic computer classes

F1FDULB3

Der-Yeghiayan - cross

1 for maintaining evidence and also documenting things as well as
2 we also have for submitting subpoenas and things that are
3 related to computers and investigating computer crimes, just a
4 basic overview course.

5 Q. OK. So nothing about computer deception, right?

6 A. No.

7 Q. Nothing about how to assume an online identity different
8 from your actual identity, right?

9 A. No.

10 Q. But you were able to do that flawlessly, right?

11 A. Yes, I was.

12 Q. You operated a number of accounts, maybe two dozen over
13 time, maybe more, right, on Silk Road at some point or another?

14 A. I'm not sure of the exact number but there was over a
15 dozen.

16 Q. And you were an administrator communicating directly with
17 Dread Pirate Roberts every couple of days, right?

18 A. That is correct.

19 Q. Communicating with the other administrators -- inigo,
20 libertas -- right?

21 A. Yes.

22 Q. Anybody else, administrators who you communicated with?

23 A. The same thing but different.

24 Q. And they never -- withdrawn.

25 Yes. They didn't know that you were a law enforcement

F1FDULB3

Der-Yeghiayan - cross

1 agent?

2 A. No, they did not.

3 Q. Dread Pirate Roberts didn't know you were a law enforcement
4 agent?

5 A. No, he did not.

6 Q. None of the people you interacted with on the vendor
7 support or any kind of other -- with Silk Road users, none of
8 them knew, right, that Cirrus was a law enforcement agent,
9 right?

10 A. That is correct.

11 Q. Without any training, you were able to do that?

12 A. Yes.

13 Q. You had multiple persona at the same time, right?

14 A. There were multiple identities that I would operate.

15 Q. At the same time online, right?

16 A. Yeah, during different periods.

17 Q. And, again, without any glitch in terms of you never gave
18 it away; no one ever said, oh, I know you're a cop, get off the
19 site, right?

20 A. No.

21 Q. In fact, you weren't sure yourself often who you were
22 communicating with on the site despite their screen name,
23 correct?

24 A. There was always a level of distrust as to potentially who
25 you might be talking to. So there would be ways that we would

F1FDULB3

Der-Yeghiayan - cross

1 try to always authenticate one another through just different
2 language and common things that we would say to one another.

3 Q. And, in fact, there were times when you taught that DPR
4 might be operating some of the other administrator accounts,
5 right?

6 A. There was, yeah, there was times that we didn't know who
7 was operating what accounts.

8 Q. And at one point it was pretty frustrating, right, for your
9 investigation purposes, correct?

10 A. It was very difficult, yeah.

11 Q. In fact, at one point you said "Who's on first," right?

12 A. That would probably be something that I would say.

13 Q. I mean, literally, right?

14 A. If there was an email, yeah, I'm pretty sure, yeah.

15 Q. OK.

16 MR. DRATEL: May I approach, your Honor?

17 THE COURT: You may.

18 MR. DRATEL: It was a little more complicated than I
19 had hoped it would be.

20 (Pause)

21 THE WITNESS: Thank you.

22 MR. DRATEL: It is the bottom of the first page, and
23 then it is double-sided so just flip over to the top of the
24 next page.

25 (Pause)

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Der-Yeghiayan - cross

1 A. I recall this, yes.

2 Q. So you said, "Sheesh, who's on first," right?

3 A. "Sheesh, who's on first again."

4 Q. Because it was a complicated situation as to whether or not
5 someone was commandeering someone else's account and who you
6 are actually communicating with, right?

7 A. Yeah. Specifically in this period of time there was
8 multiple things going on with multiple accounts.

9 Q. And that's June of 2013?

10 A. That was June 2013, yes.

11 Q. And Cirrus was an account that you took over, correct?

12 A. Yes, it was.

13 Q. And Cirrus was originally an account that was called Scout,
14 correct?

15 A. Yes, it was Scout before.

16 Q. And you ultimately cultivated Scout to give up the account,
17 correct?

18 A. The person that originally had, yeah, the Scout account
19 became Cirrus originally and then gave it over to me, yes.

20 Q. At some point because you revealed to them that you were
21 law enforcement, correct?

22 A. The original operator didn't know that I was law
23 enforcement, yes.

24 Q. No, but I'm saying at some point you did reveal it and then
25 they let you assume their account?

F1FDULB3

Der-Yeghiayan - cross

1 A. They knew that I was law enforcement when they let me
2 assume the account, yes.

3 Q. In fact, you were surprised when you found out Scout was
4 female, right?

5 A. Yes.

6 Q. One of your challenges in getting Scout to relinquish her
7 account and give you access to Scout, and then ultimately to
8 Cirrus, was how to convince Scout that you were law enforcement
9 and that DPR was tricking her -- him you thought at the time
10 but her and that her better option, or Scout's better option
11 was to go with the law enforcement, you had to do that online
12 in a way that didn't impair the investigation, correct?

13 MR. TURNER: Objection to form.

14 THE COURT: If you understand the question, you can
15 answer it.

16 A. I --

17 Q. I will break it down.

18 A. I guess the response is that I wasn't -- I didn't portray
19 myself as law enforcement to Scout. That was another agent
20 that did that. I had another account at that time that I was
21 utilizing to talk to Scout that they did not know -- I wasn't
22 portrayed as law enforcement.

23 Q. But that was a challenge for the investigation, correct, as
24 a whole?

25 A. A challenge, I'm sorry, to?

F1FDULB3

Der-Yeghiayan - cross

1 Q. To convince Scout, whether it was you or a colleague of
2 yours, to convince Scout that DPR was tricking Scout and that
3 Scout's better option was to essentially align with law
4 enforcement?

5 A. That was another agent's goal with another account that
6 they were utilizing. My particular goal with the account that
7 I was utilizing was to try to get Scout to buy something from
8 me which would then result in exchanging their name and
9 address.

10 Q. Right. That is ultimately what happened, right?

11 A. That is what happened.

12 Q. I'm saying, the other agent's challenge was this other
13 aspect of trying to do something online that would convince
14 Scout to essentially relinquish her account to law enforcement?

15 A. Correct.

16 Q. I want to go back to the beginning of your testimony.

17 And the first time that any of this came on the radar
18 at Chicago O'Hare International mail was June of 2011?

19 A. It was roughly the first time that I saw a few of the
20 packages that contained ecstasy.

21 Q. Then you started the investigation in October of 2011?

22 A. Yes.

23 Q. And you told us that the seizures began to increase after
24 June 2011, right?

25 A. Correct.

F1FDULB3

Der-Yeghiayan - cross

1 Q. Prior to that there were hardly any -- nothing to note, if
2 there was anything noteworthy?

3 A. That is correct.

4 Q. In fact, by October -- in October of 2011, there were only
5 four seizures that year.

6 A. That month I believe that we maintained, that we held for
7 our investigation, there were four seizures.

8 Q. And then that multiplied by 2012 and throughout the months
9 of 2012, right?

10 A. Yes. They steadily increased over that period.

11 Q. And you said you had never seen that ecstasy before, right?
12 You testified --

13 A. I hadn't seen it in the mail in the letter class like that
14 before.

15 Q. That is right. OK. Also, these Netherlands' shippers,
16 right?

17 A. I had never seen packaging like that before.

18 Q. So anything that would have happened on Silk Road before
19 June of 2011 really would not have come to your attention at
20 all, right?

21 A. It potentially could have. If there was a seizure that was
22 made, we would have been called.

23 Q. But you don't know is what I am saying?

24 A. I don't know, no.

25 Q. You have no idea really where the packages -- you don't

F1FDULB3

Der-Yeghiayan - cross

1 know anything about any of the transactions before June 2011?

2 A. I don't.

3 Q. And you had been there for years, in some form or another,
4 at O'Hare as either border patrol or HSI?

5 A. Customs and Border Protection and HSI.

6 Q. CBP?

7 A. Yes.

8 Q. Customs and Border Patrol.

9 And one of the things that -- well, withdrawn.

10 In June 2011, there was an article on gawker.com about
11 Silk Road, right?

12 A. Yes, there was.

13 Q. And the traffic on Silk Road increased significantly after
14 that, correct?

15 A. That was about the time, yes.

16 Q. And also there was an NPR report in October 2011, right?

17 A. As I have been told, yes.

18 Q. That also publicized it, and, again, you started seeing an
19 increase in traffic?

20 A. That was what came out of an interview, I believe.

21 Q. Now, you talked about border authority initially.

22 Basically, without a warrant, you have the authority to pretty
23 much search anything that is coming in, right, to the United
24 States?

25 A. Yes.

F1FDULB3

Der-Yeghiayan - cross

1 Q. You say you do a lot of x-ray and other -- and canines,
2 right?

3 A. X-ray, canine, and then searching by hand as well.

4 Q. Now, all of the screenshots that you put in evidence of the
5 silkroad.onion, they are all from 2012 or later, right?

6 A. The majority of them, yes. Actually, all of them, yes,
7 pretty much.

8 Q. And were you on the site at all before 2012?

9 A. I was.

10 Q. Late 2011?

11 A. Late 2011.

12 Q. After you started your investigation?

13 A. Yes.

14 Q. So do you know when Silk Road first began charging
15 commissions?

16 A. It was apparent from the beginning they started, from what
17 I read, they were on commissions.

18 Q. You think it is from the very start?

19 A. I believe it was, yes.

20 Q. Did you ever look at the initial transaction history?

21 A. No, I didn't have that.

22 Q. But you have it now, right?

23 A. I have the transaction history --

24 Q. Yes. You have access to it, right?

25 A. I haven't reviewed it but I have access to it.

F1FDULB3

Der-Yeghiayan - cross

1 Q. You haven't reviewed it, right. So it is your assumption
2 that the commissions go back to the beginning?

3 A. That is correct.

4 Q. But you don't know for sure?

5 A. I don't know for sure.

6 Q. How about the escrow system, do you know when that was
7 instituted on Silk Road?

8 A. I believe that is from the beginning, from when we released
9 our first buys.

10 Q. Your first buys were when?

11 A. I believe it was January 2012.

12 Q. So it has already been in existence for eight/nine months
13 already, right?

14 A. That is correct.

15 Q. So you don't know anything about the transactions before
16 then with respect to an escrow system other than when you
17 started making purchases, right?

18 A. That is correct.

19 Q. Do you know when Silk Road first launched its Wiki page?

20 A. I don't recall offhand.

21 Q. Do you know whether it was when it launched the forum,
22 before or after?

23 A. The forum was around June 2011.

24 Q. Right. So do you know whether it was launched before or
25 after the forum?

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Der-Yeghiayan - cross

1 A. I don't know if it was before or after it.

2 Q. Do you know what the seller's guide looked like in June or
3 July or August or September of 2011, before you first got on
4 that site?

5 A. No, I do not.

6 Q. Do you know what the buyer's guide looked like during that
7 same time period before you got on the site?

8 A. No.

9 Q. Do you know if there was a seller's contract of the type
10 where it says "I agree" before you got on the site?

11 A. No, I do not.

12 Q. Do you know when the first heroin sale on Silk Road was
13 made?

14 A. No, I do not.

15 Q. Cocaine?

16 A. I do not.

17 Q. Do you know when Silk Road first offered forgeries?

18 A. No, I do not -- well, actually, from the posting that was
19 made from Dread Pirate Roberts, I can assume that that might
20 have been when it was announced.

21 Q. When was that?

22 A. I would have to look back at the screenshot.

23 Q. With respect to 116B, which is not forgeries but the
24 hacking tools, right, there was something called an RAT? Is
25 that a remote access trojan, do you know what that is?

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Der-Yeghiayan - cross

1 A. I am assuming a trojan that you can access remotely.

2 Q. Trojan means something you implant into somebody's
3 computer, right?

4 A. It is something that would conceal itself as something else
5 as someone's computer that might be downloaded inadvertently, a
6 program perhaps.

7 Q. And then allow others to operate it, right?

8 A. It could do things like that, yes.

9 Q. This is already in evidence, Government 106, Tor. I want
10 to talk about Tor a little bit. OK?

11 MR. DRATEL: Would you show government's 106, please.

12 (Pause)

13 That is it. Thank you.

14 Q. So that is the diagram where you explained somewhat how Tor
15 operates, right?

16 A. That is correct.

17 Q. And if the user, let's say, on the left initiates a
18 communication, right, that first computer is the entry node,
19 right?

20 A. That is correct.

21 Q. And the one on the right, where it says "Web server (hidden
22 service)," where it goes from that last computer to the hidden
23 service, is an exit node, right?

24 A. No, that wouldn't be an exit node.

25 Q. Where were the exit nodes?

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Der-Yeghiayan - cross

1 A. This isn't completely accurate. I think it is for simple
2 use. But, generally, exit nodes are on the outside but a
3 hidden service is generally within, and there is what is called
4 intrapoints that protect the hidden service, which they are all
5 relays, essentially, within Tor.

6 Q. Right. Obviously, there is a lot more computers than this,
7 correct?

8 A. Yeah. There is a lot more relays and nodes.

9 Q. That's why it works is because there are enough computers
10 worldwide on the Tor network to permit the relays not to be
11 traced?

12 A. Yes. There is -- they are all documented as well.

13 Q. And when you say "documented" --

14 A. There is lists of IPs for the relays and for the nodes.

15 Q. Right. But, nevertheless, because of the way it is done,
16 it's very difficult, if not impossible, to trace, correct?

17 A. It is very difficult to trace, yes.

18 Q. And some people think that by monitoring exit nodes and
19 looking at traffic, you can find hidden services, correct?

20 A. We thought that we could earlier on but we realized fairly
21 quickly that we couldn't.

22 Q. And let's try to put it in a different analogy. If you're
23 the user on the left and you get into a car on the street and
24 then someone sees you get into the car on the street and then
25 you go on the highway and you stop and you change cars and you

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Der-Yeghiayan - cross

1 stop and you change cars and you stop and you change cars and
2 you stop and you change cars, when you get to the destination,
3 no one may be able to find you, right, because assuming that
4 that -- that you are not being surveilled the whole way
5 through, right?

6 A. That is a fair analogy, yes.

7 Q. By the way, 125H, Government's 125H, just if you want to
8 look at it, for the forgeries.

9 (Pause)

10 August of 2011.

11 A. Correct.

12 Q. Thank you. Now, Tor is not, as you said, not illegal. In
13 fact, it is widely used by millions of users to access typical
14 Internet activity, right?

15 A. That is correct.

16 Q. And, for example, people, let's say, Chinese nationals in
17 China use Tor to get around governmental restrictions on their
18 Internet activity, right?

19 A. That is correct.

20 Q. And you talked about torproject.org, right, which is a
21 website on the open Web, right?

22 A. Yes, it is on the regular Internet.

23 Q. Ordinary Web, we'll call it, on the ordinary Internet.

24 And that will allow you to download Tor, correct?

25 A. Yes.

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Der-Yeghiayan - cross

1 Q. And you have been on that page, right?

2 A. Yes.

3 Q. And so you know that Tor was originally developed by the
4 U.S. government -- U.S. Naval research, right?

5 A. It originally was, yes.

6 Q. And designed for sensitive military and government
7 communications; that's what it was designed to facilitate?

8 A. I believe it was between Navy ships trying to create a new
9 network to communicate between them.

10 Q. But now it's used by not only the military, journalists,
11 law enforcement, as I say, people in countries where Internet
12 is restricted, right?

13 A. That is correct.

14 Q. It also has real-world advantages for ordinary people,
15 right -- well, withdrawn.

16 Ordinary people can use it so that they aren't
17 monitored by commercial establishments, websites, and others so
18 that they will know their buying habits and can target them for
19 merchandising and things like that, right?

20 A. You can use it to protect essentially your identity, yeah,
21 and who you are.

22 Q. So, for example, if a website uses your search history and
23 your buying history to decide whether you should get a discount
24 or not, depending on your buying habits and how often you buy
25 retail and how often you use a discount, Tor could prevent them

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Der-Yeghiayan - cross

1 from discriminating one way or the other -- the website against
2 a customer who uses Tor to gain access to those sites, right?

3 A. Yeah. They could be tracking by your IP address, and if
4 you constantly visit certain sites it will remember you and it
5 could learn your buying habits and things, too. So, yes.

6 Q. So what Tor really does is prevent whoever can, or would,
7 from monitoring a person's Internet tracking?

8 A. It can, yes.

9 Q. In fact, you can use Tor as a law enforcement officer to
10 either visit a website or some other part of the Internet
11 without the other side knowing that it is law enforcement
12 that's viewing a page, right?

13 A. It could be used for law enforcement, yes.

14 Q. It is like having a No Caller ID, right?

15 A. Right. It won't come back to an IP address that is a
16 government IP.

17 Q. And a lot of people got No Caller ID for that kind of
18 reason, right?

19 A. That is correct.

20 Q. Now, "hidden service" just really means that it is on Tor
21 alone, correct?

22 A. That it is built within Tor and that is the website that it
23 is accessible.

24 Q. It is only accessible --

25 A. Only accessible on Tor, yes.

F1FDULB3

Der-Yeghiayan - cross

1 Q. It could be anything. It could be something that someone
2 in Iran doesn't want censored, right?

3 A. Just by being a hidden service doesn't make it illegal.

4 Q. There is nothing sinister about that connotation, that
5 description, right?

6 A. That is correct.

7 Q. Now, let's talk about seizures. And you had an exhibit
8 with all of the boxes, right --

9 A. All the seizures.

10 Q. -- that you made at Chicago O'Hare International mail of
11 illegal -- of contraband coming into the United States, right?

12 All of that was drugs, right?

13 A. Yes, it was all primarily drugs.

14 Q. And it was primarily -- withdrawn.

15 There was nothing on the packaging that said "As
16 advertised on Silk Road," or something like that, right? There
17 was nothing that said it was ordered off of Silk Road, correct?

18 A. No. I never recall seeing any envelope that said Silk Road
19 on it.

20 Q. So you connected them to Silk Road because you would match
21 the product with something that was advertised for sale on Silk
22 Road, correct?

23 A. Yes.

24 Q. But you don't have any proof that that was actually ordered
25 off of Silk Road, what you seized?

F1FDULB3

Der-Yeghiayan - cross

1 A. Only what we were able to make by comparing it to our
2 controlled purchases.

3 Q. Right. Only the purchases that you made, right? You were
4 able to go on the Internet, put in the information, the fake
5 address that you used, and then it would come to that address
6 and then you would confirm that it was off of Silk Road.

7 But that room full of drugs, none of that is confirmed
8 that it came off of Silk Road, right?

9 A. There is at least one vendor that we did arrest that told
10 us --

11 MR. DRATEL: Objection.

12 THE COURT: Overruled. He can finish.

13 MR. DRATEL: OK.

14 A. That during a proffer later that stated -- that confirmed
15 that several of the packages that I showed him that were part
16 of that collection that were mailed directly from him through
17 Silk Road.

18 Q. And he told you that, right?

19 A. Yes, he did.

20 Q. OK. There were also other websites on Tor that sell drugs,
21 right, through the mail and through -- right? Through the
22 mail?

23 A. There is other hidden services that would sell drugs, too,
24 yes.

25 Q. And some of them -- withdrawn.

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Der-Yeghiayan - cross

1 So the only thing that connects all but those few that
2 you just talked about of seizures, all that connects them to
3 Silk Road is that those items were advertised on Silk Road,
4 right?

5 A. For the ones that we did, for our buys. The other ones,
6 yeah, were comparative analysis.

7 Q. So if I saw a book on Amazon and then I ordered it from
8 Barnes & Noble and it came in a package that didn't say where
9 it was -- that didn't have either -- anything on it, can you
10 assume where it came from -- can you confirm, rather, can you
11 conclude that it came from Barnes & Noble's or Amazon if they
12 both sell it just because it advertises on Amazon?

13 A. I couldn't necessarily confirm it just from looking at it.

14 Q. It wouldn't even have to be off of sites; people could be
15 on Tor chat or some other private messaging, PGP, Pidgin, be in
16 direct contact with drug dealers overseas or in the United
17 States, order drugs through the mail?

18 A. It could have been, yeah, independent from a market.

19 Q. What could also happen is that someone could have been on a
20 site, any of the Tor sites, any of the hidden services that
21 might sell drugs, purchase ones off the site and then initiate
22 a private conversation with the person who actually sold the
23 drugs and do all the rest of the sales privately, right?

24 A. That is a possibility, yes.

25 Q. And they could tell all their friends how to do it, too,

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Der-Yeghiayan - cross

1 right?

2 A. Yeah. I suppose that is possible, yes.

3 Q. Now, at some point you stopped making seizures, right?

4 A. Yes.

5 Q. You had plenty, right?

6 A. Yes.

7 Q. We saw the room full of seizures.

8 The highest volume was ecstasy, right?

9 A. The highest volume for the drugs that we maintained were
10 ecstasy.

11 Q. By a large margin?

12 A. By a large margin.

13 Q. And heroin was only 261 grams, right, of heroin?

14 A. I believe that is about right, yes.

15 Q. And about 457 grams of cocaine, right?

16 A. That sounds about right.

17 Q. That is May of 2013?

18 A. Correct.

19 THE COURT: Let me just make sure I understand. So
20 counsel was questioning you about the room full of boxes, is
21 that right?

22 THE WITNESS: That is correct.

23 THE COURT: And your statements were in connection
24 with the room full of boxes?

25 THE WITNESS: Yes.

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Der-Yeghiayan - cross

1 THE COURT: So is it the case that you examined the
2 contents of each of the boxes and that based upon your
3 examination of those contents the quantities were as you
4 testified?

5 THE WITNESS: Yes.

6 THE COURT: All right. Thank you.

7 You may proceed.

8 MR. DRATEL: Thank you, your Honor.

9 BY MR. DRATEL:

10 Q. You talked a fair amount of bitcoin in your direct
11 testimony, right?

12 A. Yes, I did.

13 Q. Bitcoin was an essential element of Silk Road, right?

14 A. That is correct.

15 Q. And the exchanges that you talked about that were used to
16 cash out, the ones you talked about, like Mt. Gox and others,
17 were all on the ordinary Internet, right?

18 A. Correct.

19 Q. They are not hidden services, they are not on Tor?

20 A. They are regular websites, yes.

21 Q. And even any exchanges that were made on the page or as a
22 result of the people who were advertising on the page that you
23 showed in Silk Road to exchange bitcoins, all of those things,
24 all of those transactions still wind up on the block chain,
25 correct?

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Der-Yeghiayan - cross

1 A. Not internally within Silk Road it wouldn't. If it was a
2 transfer between one account to another, that wouldn't be
3 reflected in the block chain.

4 Q. No, but if you were cashing out.

5 A. If you were cashing it out and taking it off of Silk Road,
6 yes, that would be reflected on the block chain.

7 Q. The block chain, again, is this public ledger, right?

8 A. Correct.

9 Q. That records every bitcoin transaction where -- in terms of
10 everything that goes from bitcoin to cash, cash to bitcoin?

11 A. Every transaction, basically just a transfer of bitcoins
12 between one address and another is documented.

13 Q. So even bitcoin to bitcoin?

14 A. Everything essentially is bitcoin to bitcoin. There might
15 be a cash transaction that occurs outside of that, but the
16 block chain just reflects that you just moved a bitcoin from
17 one address to another.

18 Q. I can't take -- there is no physical bitcoin, right?

19 A. There is things that have been made into physical form that
20 they sell as bitcoins that have the private key on it, but it
21 is all done electronically, essentially.

22 Q. Right. So it -- and as of, let's say, prior to October of
23 2013, and even now, you can't -- I couldn't go and take a horde
24 of bitcoins to someone and then cash it for them without it
25 showing up on the block chain, right?

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Der-Yeghiayan - cross

1 A. Right.

2 Q. Because they are not physical, they are a digital
3 instrument, right?

4 A. It is a digital instrument, yes.

5 Q. It doesn't exist outside of a digital character?

6 A. Just those coins but they are not widely used.

7 Q. And it was started in 2008 or so, right, it was invented,
8 essentially?

9 A. Yeah. I think the white paper that originally, the concept
10 of it was around 2008.

11 Q. And the person who essentially invented them hasn't yet
12 revealed themselves, correct?

13 A. Not publicly, no.

14 Q. And it is a bit of a cottage industry to try and identify
15 that person, correct?

16 A. It is.

17 Q. Now, each bitcoin has a unique digital identity, correct?

18 A. Each one, yeah, as I understand it, has it's unique
19 signature to it, in a sense, or unique string to it.

20 Q. And some of the elements of bitcoin are designed to prevent
21 fraud, correct?

22 A. I mean, the whole network itself, I mean, it's very well
23 documented, I mean, throughout the whole network.

24 Q. Well, you can't duplicate a bitcoin, right?

25 A. I believe so, yes.

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Der-Yeghiayan - cross

1 Q. You can't, or you can?

2 A. I don't know. There has been speculation. I am not sure.
3 I am not technical enough to say that it can't be.

4 Q. But it can't be counterfeited?

5 A. Not that I am aware of, no.

6 Q. And it can't be -- well, withdrawn.

7 Now, when you talked about -- on your direct you
8 talked about acquiring bitcoins and you were talking about you
9 how you did it by putting cash into an account, getting
10 bitcoins back, right?

11 A. Correct.

12 Q. But there are other ways to acquire bitcoins, correct?

13 A. There are other ways, yes.

14 Q. Can you describe what you understand to be bitcoin mining,
15 m-i-n-i-n-g?

16 A. So bitcoin mining is the process of creating a bitcoin, and
17 that is -- someone that mines would generally use a computer to
18 specifically run a series of it is called algorithms that will
19 try to mathematically create this like perfect string which was
20 of all the different transactions. It confirms them. Once it
21 is confirmed it becomes a part of a block. Once you solve a
22 block, you get a bitcoin. And right now there is rewards that
23 are given. And it has been -- I think it is 25 bitcoins right
24 now you get for each block you solve as a miner, but it takes a
25 lot of computing power. So the thing to take away from it is

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Der-Yeghiayan - cross

1 it takes a lot of computing power to solve this block and to be
2 awarded these bitcoins. But people do it and try to run
3 computers all the time to try and mine and get these rewards.

4 Q. So it is essentially not necessarily free but you don't
5 have to pay for them, you have to -- you earn them essentially
6 by --

7 A. Electricity is what people weigh it against generally, the
8 cost to run their computers, but, yeah.

9 Q. And those aren't -- I mean, those are still authorized
10 bitcoins, right?

11 A. Yes, they are.

12 Q. Because the bitcoin universe is limited, right?

13 A. It is at 21 million.

14 Q. One of the theories of the person who invented bitcoin was
15 that it have a cap, and bitcoins are created periodically until
16 that cap will be reached at some point, correct?

17 A. Correct.

18 Q. And that's supposed to protect the valuation of bitcoin as
19 opposed to -- I don't want to get too technical about it but
20 monetary policy; that is why it is nongovernmental?

21 A. To set a limit, I think.

22 Q. By the way, you talked about computing power just a second
23 ago. You defined a server as a computer that would run a
24 website.

25 Silk Road had servers, right?

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Der-Yeghiayan - cross

1 A. Correct.

2 Q. Not just an ordinary computer running it, it had -- it is a
3 complex operation to run, right?

4 A. Right. Basically, I just described it as a computer but,
5 yeah, it is a server.

6 Q. Silk Road, you have servers with significant computing
7 power, right?

8 A. As I understood, yeah, they were ones that could operate a
9 website that's more heavy in traffic.

10 Q. Now, you also mentioned on direct that the value of a
11 bitcoin fluctuates constantly?

12 A. It does.

13 Q. And in April of 2013 the market eclipsed \$1 billion for the
14 first time, right?

15 A. I believe so, yes.

16 Q. And when you first got involved in the investigation, it
17 was worth a couple of dollars, right, per bitcoin?

18 A. That is correct.

19 Q. And then you said that there was a point in 2013 where it
20 went up to about 250, \$250 per bitcoin?

21 A. That is correct.

22 Q. And then by the time of Mr. Ulbricht's arrest it was down
23 to \$100 per bitcoin?

24 A. Around 100, 117, somewhere in there.

25 Q. Then after his arrest it went up again, right?

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Der-Yeghiayan - cross

1 A. It spiked dramatically.

2 Q. Dramatically?

3 A. Yeah, after his arrest.

4 Q. Up to a thousand dollars for a bitcoin?

5 A. Over a thousand dollars.

6 Q. So people who were holding bitcoins at the time of
7 Mr. Ulbricht's arrest and thereafter could really make a
8 killing, right?

9 A. I believe there is a lot of people who made money, yeah,
10 off of that.

11 Q. And the more bitcoins you have, obviously, the more money
12 you are going to make on that transaction, right?

13 A. Correct.

14 Q. Have you ever seen a graph of bitcoin valuation over time?

15 A. I have.

16 Q. I show you what is marked as Defendant's B, for boy, and
17 ask you if that is a representation of the fluctuation of the
18 bitcoin marketplace from its inception through today -- not
19 today, through this week?

20 A. It looks accurate, yes.

21 MR. DRATEL: I move Defendant's B in evidence, your
22 Honor.

23 MR. TURNER: No objection.

24 THE COURT: Received.

25 (Defendant's Exhibit B received in evidence)

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Der-Yeghiayan - cross

1 MR. DRATEL: Could we publish it, please.

2 It actually looks like that mountain.

3 (Pause)

4 Q. OK. So going back to 2011, if we look at the start in
5 2011, we see it is very close to zero, right?

6 A. It was, yeah, approximately 2 to \$4 or so at that point.

7 Q. Then in 2013 is when it really starts to move, right?

8 A. That is correct.

9 Q. And then it goes down -- there is a spike in the early part
10 of 2013, and then it goes back down to somewhere in the
11 hundreds, right?

12 A. That spike was at \$250.

13 Q. I'm sorry. Do you have the --

14 A. Laser pointer? Yes.

15 MR. DRATEL: Can I borrow yours?

16 THE WITNESS: Do you want it?

17 MR. DRATEL: I will just point it out.

18 Q. So there is a little spike in the middle of 2011, right?

19 A. That is about a \$20 spike I believe it went up to.

20 Q. By the way, just -- and that is zero, right, that line
21 there?

22 A. The line is zero, yes.

23 Q. So there we have in the early part of 2013, it goes up to
24 about 250, as you stated, right?

25 Then it goes back down until the latter part of 2013,

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Der-Yeghiayan - cross

1 and this spike right here is after Mr. Ulbricht's arrest,
2 right?

3 A. It was, I believe, like starting around mid/late October,
4 yes.

5 (Continued on next page)

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Fifgulb4a

Der-Yeghiayan - cross

1 Q. And that goes up to over a thousand dollars per bitcoin?

2 A. I think the highest is around a thousand or 1200.

3 Q. Do you know what it is now?

4 A. I believe it's around \$300 bitcoin.

5 Q. So even though a lot of bitcoin use may have been
6 attributable to Silk Road, it survives Silk Road?

7 A. It survives Silk Road; yes.

8 Q. In fact, it's now used or accepted by certain large
9 vendors, right, ordinary vendors? I'm not talking about Tor or
10 illegal. Overstock.com accepts bitcoin?

11 A. Yes. It's starting to hit other websites and other -- the
12 mainstream.

13 Q. Certain casinos accept it?

14 A. I think there's a university that you can pay tuition with
15 it.

16 Q. Now, you talked about the tumbler, right, on Silk Road?

17 A. Yes, I did.

18 Q. Just to refresh the jury, tumbler -- I'll just try to
19 explain it shorthand -- which is something that's designed to
20 create confusion about which specific bitcoins are involved in
21 a specific transaction. Is that a fair statement?

22 A. That's a fair statement.

23 Q. And do you know whether Silk -- do you know when Silk Road
24 instituted tumbler?

25 A. I don't know when they instituted it, no.

Fifgulb4a

Der-Yeghiayan - cross

1 Q. Do you know if Silk Road actually used a tumbler?

2 A. They advertised it in and I also did my own research
3 through the block chain of transactions that I would move into
4 Silk Road and out of Silk Road, and I observed from patterns
5 that would resemble that of a tumbler.

6 Q. And those started in 2012?

7 A. Yeah, the bitcoin --

8 Q. In other words, your transactions --

9 A. Yes.

10 Q. -- that would you monitor?

11 A. 2012, yes.

12 Q. So you were able, because you -- and you could see both
13 sides of a bitcoin transaction, right --

14 A. Correct.

15 Q. -- you were able to do some tracing, right?

16 A. I was; yes.

17 Q. Even with a tumbler, you were able to do some tracing? Or
18 even if they were tumbled, you were able to do some tracing?

19 A. Yes. There were accounts that we believed belonged to Silk
20 Road that were so high in volume at the time that -- and they
21 would stop after we would deposit money and that would lead us
22 to believe that that belongs to Silk Road, and we'd be able to
23 trace other transactions to that account.

24 Q. And that started in 2012?

25 A. Yes.

Fifgulb4a

Der-Yeghiayan - cross

1 Q. And you never heard of Mr. Ulbricht until September of
2 2013, right?

3 A. That's correct.

4 Q. Now, based on your training and experience, you concluded
5 that the system was likely designed by someone with a high
6 level of technical expertise concerning the operation of
7 bitcoins, right?

8 A. It appears so, yes.

9 Q. In fact, Silk Road had a lot of sophistication, right?

10 A. It was sophisticated; yes.

11 Q. And I mean that in a computer way as well as marketing and
12 business oriented, right?

13 A. Yes.

14 Q. In fact, it used leading-edge encryption-based
15 technologies, right?

16 A. It did, yes.

17 Q. And encryption-based technologies is really about security,
18 right?

19 A. Yes.

20 Q. And you reported, right, that the operators of the website
21 are believed to be highly experienced web administrators that
22 take precautionary steps to protect themselves and their users,
23 right?

24 A. Yes.

25 Q. Would they be the type of people who would leave

Fifgulb4a

Der-Yeghiayan - cross

1 handwritten notes in a wastebasket?

2 A. At this point, I don't know. I couldn't say whether they
3 would or wouldn't.

4 Q. You called it a complex criminal enterprise, right?

5 A. Yes, I did.

6 Q. And you used multiple confidential informants throughout
7 the course of your investigation, right?

8 A. Yes, I did.

9 Q. Now, you have Mr. Ulbricht's passport still up there?

10 A. Yes, I do.

11 Q. And his birthdate is March 27, 1984?

12 A. Yes, it is.

13 Q. So in late 2010, he would be -- he would have been 26?

14 A. Yes.

15 Q. Now, you said on direct Silk Road operated like a lot of
16 other websites, correct, that operate on the ordinary Internet?

17 A. It was similar, yes.

18 Q. And we saw on the left-hand side all the categories of
19 merchandise, right?

20 A. Correct.

21 Q. And by the time you were on the site in December of 2011,
22 it had about 2,000 or so products for sale, right?

23 A. I think that first screen shot was about April for the
24 2,000 products. For the drugs, the earlier ones I think were
25 less.

Fifgulb4a

Der-Yeghiayan - cross

1 Q. Yeah, but I'm saying 2,000 products for sale total --

2 A. Total or so --

3 Q. -- like in December of 2011?

4 A. That would be about correct, yeah.

5 Q. And there were certain items -- by the time you got on the
6 site, there were certain items that were forbidden, correct?

7 A. That's correct.

8 Q. Child pornography, counterfeit currency, weapons of mass
9 destruction, right?

10 A. That's correct.

11 Q. And in fact, on the site it said -- and this is November of
12 2011 -- on the site it said please do not list anything whose
13 purpose is to harm or defraud, such as stolen credit cards,
14 counterfeit currency, personal info, assassinations, weapons of
15 mass destruction, chemical/bio weaponry, nukes and anything
16 used to make them. Please do not post anything related to
17 pedophilia. To allow listings of items designed to defraud or
18 harm innocent people would be to stoop to the level of the very
19 people we are standing up to.

20 Right, that's what it said on the site?

21 A. That remained, yeah, throughout the site.

22 Q. Now, you interviewed -- as you said before, you interviewed
23 some people who had ordered drugs and you'd go and then
24 confront them sometimes, right?

25 A. Yes, I would.

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Der-Yeghiayan - cross

1 Q. And they weren't of any help really in identifying Dread
2 Pirate Roberts?

3 A. No. They only helped with the vendors.

4 Q. And those vendors didn't give you access in terms of to who
5 Dread Pirate Roberts was, right?

6 A. No.

7 Q. Now, you mentioned that it was -- one of the seizures that
8 was tested -- sorry. Withdrawn. One of the undercover buys
9 that you made of the 50 or so undercover buys that you made
10 from Silk Road, that one tested negative for drugs, right?

11 A. That's correct.

12 Q. But do you know how many other sales or scams or frauds
13 that didn't provide real drugs in exchange for bitcoin?

14 A. I don't know how many, no.

15 Q. And it's kind of difficult for the consumer to go to the
16 police or the fraud bureau for that, right?

17 A. It would be, yeah.

18 Q. In one way that it differed from ordinary websites in some
19 respects is that the vendors would come and go, right?

20 A. Yes, they would.

21 Q. They would vanish for a little bit, come back, vanish. It
22 was not that kind of organization or continuity that you would
23 find for, let's say, Amazon where sellers were there?

24 A. No. Some would stay for longer periods. Others would
25 disappear periodically and then just reappear. And sometimes,

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Der-Yeghiayan - cross

1 they'd leave for a larger period and come back.

2 Q. Now, with respect to the commissions that Silk Road charged
3 on transactions, January 2012 was when the commission structure
4 changed, correct, and you put in those exhibits. And you
5 verified that in September of 2012 when you opened up your
6 first vendor account?

7 A. That was an account we took over.

8 Q. Sorry. When you assumed control of the vendor account.

9 Now, do you know the volume of transactions before you
10 had access to the site? I don't mean access in terms of with a
11 vendor account or something when you first went on the site.

12 You don't know the volume of transactions just from
13 going on the site at that point, right?

14 A. I do not know that, no.

15 Q. And have you studied that since in terms of the volume over
16 time?

17 A. I've looked at -- there was other reports that are done by
18 universities. Carnegie Mellon did a report where they did an
19 analysis and I reviewed that which was based upon the feedback
20 that was in the marketplace. So I reviewed their work they
21 did, as well as I've seen results that came later on off of
22 servers.

23 Q. So 2013 was a huge year, right?

24 A. I'm sorry?

25 Q. 2013 was a huge year for Silk Road, right?

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Der-Yeghiayan - cross

1 A. It was a larger year, yeah.

2 Q. There was a big spike in volume?

3 A. The listings went up; yes.

4 Q. Now, the silkroadmarket.org, that is something on the
5 ordinary Internet, right, was?

6 A. Correct.

7 Q. And the only way we have it is because of something called
8 archive.org, right?

9 A. Right.

10 Q. And archive.org is an organization that is dedicated to
11 capturing everything on the Internet, right?

12 A. They capture everything on the regular Internet.

13 Q. Not Tor?

14 A. Correct.

15 Q. Not anything that's on Tor, but on the ordinary Internet,
16 archive.org's purpose is to try to capture everything?

17 A. It takes screen shots regularly over time and it documents
18 that on its website, that you can view a website and the screen
19 shots that it took.

20 Q. Right. So if I put in Silk Road, that's all you come up
21 with, is that Silk Road market.org, right, if you did that
22 research?

23 A. It would lead you specifically to that URL, yes, it would
24 pull up silkroadmarket.org.

25 Q. And that's the way for people to see historic pages on the

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Der-Yeghiayan - cross

1 Internet that don't exist anymore, that you just can't get.
2 You type in a URL and the page no longer exists, right, when
3 you get that kind of message, you can try archive.org to see
4 whether something is there?

5 A. Yes. And it will show if there's changes done also. You
6 can change a web page over to reflect different things.

7 Q. So that silkmarket.org was just one page, right?

8 A. It was just one page.

9 Q. Silkroadmarket.org?

10 A. Yes.

11 Q. And that was a page essentially both -- if people put in
12 Silk Road into their ordinary Internet computer, that they
13 might get that and then be directed to Silk Road on Tor because
14 it kind of told you how to get there, right?

15 A. That's correct.

16 Q. And that page stopped operating in April of 2012, right?

17 A. I believe that's correct; yes.

18 Q. And there were changes throughout to the site over time,
19 right?

20 A. The silkroadmarket.org?

21 Q. No, I'm sorry. Let's go back to dot-onion.

22 A. Okay.

23 Q. So, right, the site is changed in some ways over time,
24 right?

25 A. There was a whole new format in appearance to the site

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Der-Yeghiayan - cross

1 after I think it was in late 2012.

2 Q. Also, even before that, did you know from reviewing forum
3 messages and things like that, right, that in June of 2011,
4 June 11 of 2011 in particular that there was a message that the
5 site was closed for a while and that it would reopen in July,
6 right?

7 A. From what I read on previous articles, yes.

8 Q. And that it was going to split into two sites and you've
9 seen that post, right, the one where it's going to split into
10 two sites?

11 A. I don't recall offhand.

12 Q. Well, one -- but you testified --

13 A. Oh, the forum you're talking about? Yes.

14 Q. It split into two sites, the marketplace and the forum?

15 A. Yes.

16 Q. And you've seen that post that announced that, right?

17 A. Yes.

18 Q. And that's June 2011?

19 A. Correct.

20 THE COURT: Mr. Dratel, just for a couple of more
21 minutes.

22 MR. DRATEL: This is a good time.

23 THE COURT: Oh, this is a good time?

24 MR. DRATEL: Yes.

25 THE COURT: Ladies and gentlemen, we'll take our lunch

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Der-Yeghiayan - cross

1 break now and pick up again at 2:00. So, again, just to remind
2 you folks, most of you, if are able, to get yourself ready to
3 come out here a couple minutes before 2:00 so we can come on
4 out.

5 I want to remind you not to talk to anybody about this
6 case, including each other. And if anybody tries to talk to
7 you about this case, to avoid them and just walk away and then
8 to let Joe know, all right.

9 We'll see you after lunch. Thank you.

10 (Jury excused)

11 (Continued on next page)

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Der-Yeghiayan - cross

1 (In open court; jury not present)

2 THE COURT: All right, ladies and gentlemen, be
3 seated.

4 Let's see if there are things that we need to take up.
5 One thing that I wanted to mention is that I had not
6 appreciated for some reason before just a little while ago that
7 the conspiracy charge is not only an 841(a)(1) charge, but also
8 an 841(h) charge; that is, given my comments about scope a
9 significant difference, and I wanted to state that on the
10 record. I have to think through what the implications of that
11 are, but that is different from what I had been thinking.

12 It certainly doesn't alter my ruling in terms of the
13 bottom-line orders on the rulings which I had issued, though
14 the scope, it is potentially the case that the scope would
15 cause me less concern for an 841(h) than otherwise. I have to
16 think that through.

17 The other point that I wanted to raise was that
18 Mr. Dratel had objected to a portion of the witness' answer
19 where an individual who was being arrested, I believe, an
20 alleged seller --

21 MR. DRATEL: Purchaser, your Honor. Never mind. I
22 thought he was --

23 THE COURT: Was he a purchaser?

24 MR. DRATEL: I think he was a purchaser because I
25 think the testimony was essentially that when they confronted

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Der-Yeghiayan - cross

1 him with the package, he said, yeah, he ordered it off of Silk
2 Road.

3 MR. TURNER: My recollection was it was a vendor.

4 THE COURT: I thought it was a vendor, too. In any
5 event, the reason I allowed that in was because, number one, it
6 was responsive to the question in terms of presenting his
7 knowledge; but also to the extent that there was a statement
8 against interest under 804, it would have come in and there
9 would have been the requisite unavailability given the timing
10 and the reasonableness of getting someone here that quickly.
11 So that's the basis of what I was stating because it was to
12 support the facts that the witness had been asked to testify
13 about.

14 Are there any things which you folks would like to
15 state now or issues that we should go through before we take
16 our own lunch break? I do not have a matter in here during the
17 lunch break. I have a meeting someplace else. You are welcome
18 to all stay here as you see fit.

19 MR. DRATEL: I just wanted to project that this went
20 faster than I anticipated in large part because of the witness'
21 cooperative manner, so obviously that's very helpful and
22 efficient. I'm coming to a more dense part, so it's hard to
23 say. I think at least another two hours is my guess.

24 THE COURT: So the government can plan around that in
25 terms of getting your next witness, Mr. Turner, on deck. That

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Der-Yeghiayan - cross

1 I think you had previously stated was Kiernan.

2 MR. TURNER: Thomas Kiernan.

3 THE COURT: So it will be Kiernan either way, so if we
4 start, it's possible Mr. Kiernan may get on the stand sometime
5 between 3:00 and 5:00.

6 MR. DRATEL: I don't think he would be on before 4:00.

7 THE COURT: So 4:00, so between 4:00 and 5:00 maybe.

8 MR. DRATEL: We'll see how it goes.

9 THE COURT: If you think you're going to beat 4:00,
10 let us know; otherwise, the government will have Mr. Kiernan
11 here at 4:00.

12 MR. DRATEL: I will reevaluate at lunch what I think
13 based on how it went this morning.

14 THE COURT: Right. Understood. Anything further that
15 we should go over right now?

16 MR. TURNER: No, your Honor.

17 MR. DRATEL: No, your Honor.

18 THE COURT: Let me say one thing to the press also. I
19 would ask you folks not to approach any of the jurors or to the
20 extent that you're communicating with anybody else from your
21 office to have them approach the jurors. Obviously, it creates
22 issues with juror misconduct or potential bias. They're not
23 having any misconduct on their part. It's misconduct with the
24 jury.

25 I had the occasion to speak to other judges in the

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Der-Yeghiayan - cross

1 courthouse regarding what they have done in the past. They
2 have actually excluded the newspapers or the press itself from
3 the courtroom, not all, the offender member of the press and/or
4 his or her paper or if it's not a newspaper, it's an Internet
5 source.

6 I'm not doing that right now. I just wanted to let
7 you folks know what would be one of the potential courses of
8 action that would be recommended to be taken at that time if we
9 had another repeat.

10 Thank you. We're adjourned for lunch.

11 (Luncheon recess)

12 (Continued on next page)

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Der-Yeghiayan - cross

1 AFTERNOON SESSION

2 2:05 p.m.

3 THE DEPUTY CLERK: All rise for the jury.

4 (In open court; jury present)

5 THE COURT: Mr. Dratel, you may proceed now.

6 MR. DRATEL: Thank you.

7 JARED DER-YEGHIAYAN,

8 CROSS-EXAMINATION CONTINUED

9 BY MR. DRATEL:

10 Q. Good afternoon, Agent Der-Yeghiayan.

11 A. Good afternoon.

12 Q. Ross Ulbricht, you learned during the course of your
13 investigation he was an Eagle Scout?

14 A. I did.

15 Q. And that he was living in that house in San Francisco,
16 right?

17 A. There's I think there were two residents I knew of.

18 Q. I'm saying he was in there. There were other, as well,
19 right?

20 A. Correct.

21 Q. He shared that with other people?

22 A. Yes.

23 Q. He was not the owner of the house, right?

24 A. I don't believe so, no.

25 Q. You said that in his bedroom, you found credit cards, bank

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Der-Yeghiayan - cross

1 statements, things like that, the passport, right?

2 A. Correct.

3 Q. And you investigated all of that, correct?

4 A. Yes.

5 Q. Because it was important to try to find out about money,
6 right, bitcoin and location?

7 A. Yes.

8 Q. And there was discussion -- withdrawn. And there was a
9 concern about, not concern, but there was an interest in how
10 and when and in what quantity Mr. Ulbricht may have cashed out
11 bitcoins, right?

12 A. Yes.

13 Q. Now, you, as a law enforcement officer in an undercover
14 capacity, occupied and controlled the account for cirrus on
15 Silk Road, right?

16 A. From July from July on; yes.

17 Q. From July -- late July, you said about the 26th, 27th of
18 2013?

19 A. Around -- correct, around that date.

20 Q. And cirrus is C-I-R-R-U-S, right?

21 A. Correct.

22 Q. And that previously had been the account for scout?

23 A. Correct. The original operator that started the cirrus
24 account was scout before that.

25 Q. And scout changed it to cirrus before you took it over,

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Der-Yeghiayan - cross

1 right?

2 A. Scout -- the person that operated scout account created the
3 cirrus account.

4 Q. About two or three weeks after you got control of the
5 cirrus account, DPR, Dread Pirate Roberts, granted you
6 administrative rights over the Wiki page?

7 A. I had the chat from one of the dates, but yes, it was
8 granted to me when I was controlling it.

9 Q. Did August 16 sound about right?

10 A. Sounds about right; yes.

11 Q. You were given only limited privileges, correct?

12 A. I was given a level -- second level underneath admin
13 privileges.

14 Q. You never spoke to DPR on the telephone, right?

15 A. No.

16 Q. You never communicated in a ordinary Internet electronic
17 communication?

18 A. Nothing outside of Tor.

19 Q. Right. And the same was true of the other -- to your
20 knowledge from your investigation and your interaction with the
21 other administrators, the same was true with them as well,
22 correct?

23 A. I didn't engage with them outside of Tor either.

24 Q. Right. But I'm saying they didn't engage with DPR outside
25 of Tor?

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Der-Yeghiayan - cross

1 A. Not from what they told me.

2 Q. And you saw no evidence of that in the course of your
3 investigation?

4 A. No. There were a few that were closer connected to him
5 than me, but not -- they didn't ever say that.

6 Q. DPR would you say was careful to conceal his identity?

7 A. I think he was.

8 Q. And he set up a series of security measures on the site
9 such as this tiered level of access even for administrators and
10 employees?

11 A. He did.

12 Q. Now, for Government Exhibit 127, it's already in evidence.

13 A. 127. Okay.

14 Q. It's up there. These are the instructions that you were
15 given by DPR on how to get administrative access, correct?

16 A. To clarify, this was given to the person --

17 Q. I'm sorry?

18 A. I'm sorry.

19 Q. This was given to cirrus before you were cirrus?

20 A. Yes.

21 Q. In essence -- now, did you learn how to get on the site
22 from the person who was operating the cirrus account or did you
23 go to this page to get the information?

24 A. The person that operated the cirrus account walked me
25 through the steps.

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Der-Yeghiayan - cross

1 Q. So, in essence, it was not a difficult process for someone
2 to walk someone through the process of getting access, as long
3 as you had the right password or access code?

4 A. It was a little more complicated to set up than I was -- my
5 previous knowledge before that with dealing with, like, an IRC
6 type of setting like this, but it was -- with the directions it
7 was simple.

8 Q. And you follow the directions, and you had, instead of that
9 username and that password, if that was for DPR, that would get
10 you DPR's access, right?

11 In other words, you know where it says 8b username?
12 So if that were in DPR's username and if 8c and 8d were DPR, it
13 wouldn't be any different to get into the DPR-level of access,
14 right?

15 MR. TURNER: Objection; form.

16 THE COURT: Hold on one second. Let me read it.

17 Why don't you rephrase.

18 Q. This is information that cirrus was given to log on, right?

19 A. Correct.

20 Q. So it's a username, a domain, is that a, b, c and d.
21 There's a username, domain and password that allow a certain
22 amount of access, right?

23 A. I guess so, yes.

24 Q. If you had the information for DPR's username, domain and
25 password, that's how you would get to -- there's no other way

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Der-Yeghiayan - cross

1 to get in the site to your knowledge other than through this,
2 just with a different password and a different domain and
3 different username?

4 A. I don't -- I wouldn't know how he got in. I know that
5 there's -- there are different ways to access servers or there
6 are different ways to access programs. I don't know if he
7 would do this from, like, almost a front-face way that you do
8 this. I'm not sure. Hypothetically, yes, I'm guessing it is
9 possible to do it that way, too.

10 Q. And in terms of logging into the Pidgin chat, and just to
11 refresh the jury's recollection, the Pidgin chat is the little
12 box in the upper right that you were chatting with with DPR on
13 October 1, and you had a couple of other instances of that as
14 well, right?

15 A. Correct.

16 Q. And that's not on the Silk Road site, correct?

17 A. No. That server was separate.

18 Q. That's a separate encrypted chat system, right?

19 A. Yeah. It's separate dot-onion address.

20 Q. But for that one, in terms of logging on, the steps that
21 you went through with us are the only steps for logging on,
22 right? Nothing more complicated than that?

23 A. That's the only ones I know of; yes.

24 Q. But that got you on the Pidgin chat, correct?

25 A. It was a little bit different from the Adium program that

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Der-Yeghiayan - cross

1 cirrus was originally using, so that's why that user or the
2 person, the original owner walked me through it because it was
3 different than Pidgin.

4 Q. And Adium is used more on Macs, right?

5 A. I guess so. It was just the program that user decided to
6 use, so I wanted to stay consistent.

7 Q. You talked about timezones on that, right? And you're
8 aware that Adium has a plugin, meaning an additional option
9 that you can use to adjust the timezone?

10 A. I'm not sure about a plugin for it, but I never did it.

11 Q. And the timezone that's reflected on that, that's really
12 just a timezone of the person's computer who is logging on,
13 right?

14 A. I'm assuming that that's the computer, yes, the computer's
15 time.

16 Q. So if you set your computer in a different timezone --
17 withdrawn.

18 You can set your computer to a different time than the
19 time, right?

20 A. You can set your computer to any timezone you want.

21 Q. So all that does is tell you where the computer timezone
22 is, not where the computer is, but what timezone is provided to
23 that --is programmed to that computer; is that accurate?

24 A. Yes.

25 Q. Programmed to that computer?

FIFGULB4

Der-Yeghiayan - cross

1 A. That's accurate. You can modify your timezone on the
2 computer and that doesn't reflect where you're at at the
3 timezone. You can put anywhere in the world.

4 Q. Also, those chats, don't they also contain a line, and we
5 can look at it if you need to, but it says encrypted OTR chat
6 initiated identity not verified the other side, right? Don't
7 they say that?

8 A. There's OTR different plugins, I guess, that allow you to
9 do it. It stands for off-the-record chats.

10 Q. What I'm saying is, the ones that you've testified about,
11 don't they say that? There's sort of a line that says it's
12 encrypted, but the other side is not verified?

13 A. I believe so, yeah. When you first start it up, all the
14 chats I had with the staff would always initiate the OTR
15 setting, so it would turn on every time I start a chat.

16 Q. And you said before you spent thousands of hours on the
17 Silk Road site, right, in a variety of different roles
18 essentially: Buyer, seller, administrator. Right?

19 A. Yeah, and just browsing, too.

20 Q. Right. Some of that, like you said, every couple of days
21 in direct contact with DPR, right?

22 A. Just about, yes.

23 Q. Is it fair to say that during that entire period, DPR never
24 let -- and I would say he, but it could be a she, right? We
25 wouldn't know just from the screen, right? I mean, in essence,

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Der-Yeghiayan - cross

1 you don't know who you're talking to, right?

2 A. From a user account, yeah, it could be a he or she.

3 Q. DPR never let his or her guard down to give you a piece of
4 personal information that enabled you to establish identity; is
5 that fair to say?

6 A. I don't know. For gender-wise, I didn't never really see
7 anything that would indicate that it was a he, but some of the
8 writing just appeared to be more masculine to me from reviewing
9 it.

10 Q. I'm not talking about gender. I'm just talking about in
11 general.

12 A. Okay. No, there wouldn't be a defined, exact way to say
13 that it was a he or she.

14 Q. Never let his guard down. By the way, you were surprised
15 that scout was a woman, right?

16 A. I was.

17 Q. I want to take you to the day of Mr. Ulbricht's arrest, all
18 right. And just so it's clear, you had never seen Mr. Ulbricht
19 in person prior to you going to California the day before?

20 A. That's correct.

21 Q. Did you identify him from photographs or from people
22 pointing him out, you know, in other words, the other agents
23 saying "that's him," or did you identify him -- in other words,
24 did they say this is him and then when you saw the photo, you
25 saw him?

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Der-Yeghiayan - cross

1 A. When I started investigating him around September tenth,
2 11th, it was brought to my attention. I did pull up documents
3 such as his passport application, the photograph. I saw other
4 photographs as well that I found online of him.

5 Q. So that's how you were able to recognize him?

6 A. Yes.

7 Q. He didn't have any kind of markedly -- or different
8 appearance that would prevent you from recognizing him?

9 A. No.

10 Q. You had never spoken to Mr. Ulbricht before that time, in
11 other words, voice contact or anything else to your knowledge
12 in terms of Ross Ulbricht?

13 A. I had not.

14 Q. Now, I think you testified on direct that you
15 wanted -- that the plan was to try to have Mr. Ulbricht out in
16 public for purposes of effecting the arrest, correct?

17 A. Correct.

18 Q. And that would be so he would be more vulnerable that way
19 in terms of -- obviously in terms of just the immediacy of the
20 arrest and your ability to track and all that, right?

21 A. Yes. We had an arrest warrant, so we were -- wanted to
22 initiate that in those settings.

23 Q. And you didn't, as cirrus, or anyone else to your knowledge
24 didn't coax him out of his house, right?

25 A. No, I did not.

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Der-Yeghiayan - cross

1 Q. So he left his residence voluntarily, right, to go to, the
2 day before you noted, to a public Wi-Fi spot, right?

3 A. Correct.

4 Q. And then the next day, went to the cafe and then did not
5 stay at the cafe but instead went to the public library?

6 A. Was never coaxed out that I know of.

7 Q. Right, right. But it was the plan to get him online during
8 that period, right?

9 A. Mr. Ulbricht himself, we would be observing him if he went
10 to an area that would provide public Wi-Fi and then, yes, try
11 to initiate a chat with Dread Pirate Roberts online.

12 Q. By the way, you mentioned the passport and you seized the
13 passport from his residence, right? That's an authentic U.S.
14 passport, correct?

15 A. It's an authentic U.S. passport.

16 Q. And so, if we could pull up 129C, please.

17 A. Okay.

18 Q. And that's the chat that you were having at the time of
19 Mr. Ulbricht's arrest, correct?

20 A. Correct.

21 Q. And so, you initiated, correct?

22 A. I initiated the chat; yes.

23 Q. And then you asked him can you check out one of the flagged
24 messages for me, right?

25 A. That's correct.

FIFGULB4

Der-Yeghiayan - cross

1 Q. And dread says sure. And then the next thing he says is
2 let me log in, right?

3 A. Correct.

4 Q. So he needs to log into silkroad, correct?

5 A. To log into the market, yes.

6 Q. So he's already on the Internet. He's already active, so
7 you're chatting with him, but until you ask him, he's not
8 logged into silkroad, correct?

9 A. I -- it doesn't appear he's logged on to silkroad.

10 Q. And then -- by the way, you know what happens when you log
11 in as -- withdrawn.

12 Do you know whether or not if one logs in as DPR, as
13 Dread Pirate Roberts onto the silkroad site, whether or not the
14 mastermind page comes up automatically? Do you know?

15 A. I do not know.

16 Q. Did you ever test it?

17 A. No.

18 Q. During that period in the library, you're aware that there
19 are law enforcement officers in the library, you're not sure
20 who but you know there are people watching him, right?

21 A. That's correct.

22 Q. And to your knowledge no one -- withdrawn.

23 Mr. Ulbricht still had his laptop out on a library
24 desk, right?

25 A. As I was told by other agents there.

FIFGULB4

Der-Yeghiayan - cross

1 Q. By the way, with respect to the mastermind, going back to
2 the mastermind screen, you said that Mr. Kiernan is a computer
3 scientist?

4 A. He is.

5 Q. That's how you described him. So you had to tell him to
6 hit the "back" tab to find the previous screen?

7 A. I asked him if he could go back. I think he was trying to
8 keep it in a place or trying to keep the computer just active
9 and alive so it wouldn't -- the encryption wouldn't turn back
10 on or wouldn't lock. So he wasn't actively, as far as I could
11 tell, doing anything on the screen besides keeping it alive at
12 that point.

13 Q. So before that chat, 129C on October 1, 2013, what was the
14 time before that that you communicated with DPR?

15 A. I believe I had a chat. I have to look back at my logs.

16 Q. In fact, it was a couple of days, right?

17 A. It might have been a few days before. Actually, earlier I
18 think in the day, I think I had a short chat with him or it
19 might have been -- I got to doublecheck.

20 Q. That day?

21 A. Not -- I'm saying earlier the day before I left maybe.

22 Q. Weren't you concerned that -- withdrawn.

23 Wasn't it unusual for him not to be on what you call
24 the IRC for two days?

25 A. On the staff chat?

FIFGULB4

Der-Yeghiayan - cross

1 Q. Yes.

2 A. It would be a little bit unusual but there were periods
3 that he would take some time off.

4 Q. But did that concern you at some point? I mean, did you
5 talk to the other agents and ask them whether they got physical
6 surveillance because Dread Pirate Roberts had not been on the
7 staff chat for over two days and that was unusual?

8 A. I think he was online. I hadn't been engaging him in chat,
9 though.

10 Q. Do you recall?

11 A. I'm sorry?

12 Q. Do you recall specifically?

13 A. I'd have to look back at my records to --

14 Q. I'm going to show you what's marked as 3505, 36 and 37.
15 Just ask you to -- if you don't mind, I'll just point out to
16 you where I prefer that you read rather than take time. So
17 that and then through there. It goes up obviously from the
18 oldest quote. Start on page 37 I think is how it works.

19 A. Okay.

20 (Continued on next page)

21

22

23

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Flfdulb5

Der-Yeghiayan - cross

1 Q. So you wanted to know from Agent Tarbell whether they had
2 physical surveillance because you said that not logging into
3 IRC for over two days is unusual for DPR, right?

4 A. Yes.

5 Q. There is also something else. Do you recall that on the
6 29th, which is two days before, that you noticed someone with a
7 username peaceloveharmony was what you called sitting on DPR's
8 profile for a couple of hours; do you recall that?

9 A. If I could see something that would help me recollect?

10 (Pause)

11 Q. I show you what's marked 3505-00775, and just ask you,
12 again, read from the bottom to the top, essentially.

13 A. Sure.

14 (Pause)

15 I recall this.

16 Q. Thank you. So there was a period on the 29th of September,
17 2013, where someone with a username or a screen name
18 peaceloveharmony was what you called sitting on DPR's account?

19 A. Yeah. There was from the forums, on the Silk Road forums,
20 there is a way to see what users were viewing actively in the
21 forums, and what I mean by "sitting" on an account, they were
22 viewing the profile of Dread Pirate Roberts for an extended
23 period of time.

24 Q. And so you asked the people on the arrest team as to
25 whether it was any of them, essentially, right?

Flfdulb5

Der-Yeghiayan - cross

1 A. If there was anyone else that was monitoring him.

2 Q. Right. And they said no, that it was not them?

3 A. Right. The responses I got from the other agents that I
4 was working with said no.

5 Q. Right. Your conclusion was that it might be law
6 enforcement, some other law enforcement that you were unaware
7 of?

8 A. I suspected, yes.

9 Q. But it didn't have to be law enforcement, it could have
10 been anyone?

11 A. It could have been anyone, yea.

12 Q. But it was unusual, right; it wasn't typical activity that
13 someone would be monitoring that profile for that extended
14 period of time?

15 A. I didn't actually watch them for a long time. I was
16 watching his account and watching the forums more vigilantly,
17 actively for the last few days. So that's why I took notice of
18 that.

19 Q. And you had spent a fair amount of time yourself as law
20 enforcement doing that very thing, right, sort of trolling
21 through that account for periods, right?

22 A. And watching it, yes.

23 Q. While you were doing that, were other people doing it at
24 the same time? Do you recall anyone else doing it?

25 A. Generally me. I believe Special Agent Gary Alford also was

Flfdulb5

Der-Yeghiayan - cross

1 watching the account on the forums as well.

2 Q. But he wasn't peaceloveharmony; we don't know who that is?

3 A. I said it to him and he said no.

4 Q. I just said, we don't know who peaceloveharmony is?

5 A. I don't know who peaceloveharmony is.

6 Q. Now, is it fair to say that the Silk Road site, that users,
7 both vendors and purchasers, were extremely security conscious?

8 A. A lot of them were, yes.

9 Q. And there was a lot of talk on the forum about keeping
10 track of law enforcement infiltration or attempts to infiltrate
11 the site?

12 A. There was discussions about that, yes.

13 Q. And they actively discussed prior arrests and what happened
14 to people and rumors and all of that kind of stuff?

15 A. There would be discussions about that regularly on the
16 forums.

17 Q. Would you say they were very motivated in finding out more
18 about what law enforcement is doing with the Silk Road?

19 A. There was a lot of discussion. If there was anyone that
20 would ever bring up something that would occur with law
21 enforcement, then they would like to discuss that a lot.

22 Q. Now, in April of 2012, you believe you had identified some
23 Silk Road bitcoin accounts, correct?

24 A. That would be correct.

25 Q. And you were working to further identify the people behind

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Der-Yeghiayan - cross

1 them, right?

2 A. That is correct.

3 Q. And sometime in the summer, maybe July of 2012, you
4 believed that you had identified the person, right?

5 A. I believe that I had a good target for it, potentially.

6 Q. A good target, Mark Karpeles, right?

7 A. Karpeles and an associate of his.

8 Q. Right. Ashley Barr, correct?

9 A. Correct.

10 Q. Karpeles is K-a-r-p-e-l-e-s.

11 Mark Karpeles is a French citizen, right?

12 A. That is correct.

13 Q. He lives in Japan, right?

14 A. He does.

15 Q. He is also the owner of Mt. Gox, correct, the bitcoin
16 exchange?

17 A. That is correct.

18 Q. And he bought Mt. Gox I think in 2009?

19 A. I think it was 2010.

20 Q. OK. But you thought that -- what you had concluded there
21 was that Karpeles was essentially behind Silk Road but that his
22 associate Ashley Barr was DPR?

23 A. There was -- Karpeles' English that I could see from his --
24 the things he would write online did not match the level of
25 English skills that Dread Pirate Roberts possessed. So I

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Der-Yeghiayan - cross

1 thought it was someone else close to him, and there was a
2 person that shared some of the same viewpoints that was working
3 for him by the name of Ashley Barr that I suspected.

4 Q. He was a Canadian, right?

5 A. He was a Canadian citizen.

6 Q. And has a degree in computer science, right?

7 A. He has computer science degrees, yes.

8 Q. And he is also Karpeles' right-hand man, or was at the
9 time, right?

10 A. He was.

11 Q. And so as a result you built up quite a large list of
12 information to lead you to that, right?

13 A. There is little bits and pieces of evidence that was
14 pointing the investigation towards them, yes.

15 Q. And -- well, did you say we had built up quite a large list
16 of information to lead us to this?

17 A. It was, yeah, a lot of little pieces, a list of exhibits.
18 It was a lot of little things that added up to it.

19 Q. The question is did you not say inside Homeland Security
20 Investigations, HSI, we had built up quite a large list of
21 information to lead us to this?

22 A. That sounds right.

23 Q. And you also didn't want anybody reaching out to Karpeles,
24 right?

25 A. There was other --

Flfdulb5

Der-Yeghiayan - cross

1 Q. Just let me ask because I will get to that.

2 A. OK.

3 Q. I want to get to --

4 A. Other law enforcement I didn't want reaching out.

5 Q. Right. You were worried that if someone reached out or did
6 something that Karpeles might find out, it could impair the
7 investigation?

8 A. Correct.

9 Q. Right. So -- and in fact, you let people know within law
10 enforcement that Karpeles, he closely monitors everything, all
11 of his websites?

12 A. That is correct.

13 Q. And that you thought that a lot of the websites he ran --
14 and he ran a lot of websites, right? He had a lot of domain
15 names and things like that within his control?

16 A. He hosted a lot of websites, yes.

17 Q. So you advised avoiding visiting them since many of them
18 appeared to be fronts and that Karpeles is actively tracking
19 them?

20 A. That is correct.

21 Q. So that if someone went on and wasn't sufficiently
22 disguised, then he might recognize it as law enforcement and
23 then again impair the investigation?

24 A. That is correct.

25 Q. In fact, in August of 2012 you sent out an email and then

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Der-Yeghiayan - cross

1 you realized, as we all do at some point in our lives, that you
2 left out the word "not," right?

3 A. There might have been an occasion like that.

4 Q. You had to send a quick email to say not to --

5 A. Not to, I think, maybe contact --

6 Q. Right. That was an important facet of the investigation,
7 obviously, is to keep it as confidential and as close as
8 possible as you gathered more information?

9 A. That is correct.

10 Q. And at some point because -- withdrawn.

11 It came to your knowledge that there were other
12 investigations of Silk Road going on around the country, right?
13 Other agencies, other offices, I mean, were investigating Silk
14 Road, right?

15 A. That is correct.

16 Q. And you -- when I say "you," HSI, and yourself as a part of
17 HSI, were operating with or working in tandem with the U.S.
18 Attorney's Office in the Northern District of Illinois, right?

19 A. We were docketed there originally, yes.

20 Q. You did that in Chicago, right?

21 A. Right.

22 Q. So that is where you were running your investigation out
23 of. Those were the assistant U.S. attorneys that you were
24 talking to and keeping them advised of your progress?

25 A. That is correct.

Flfdulb5

Der-Yeghiayan - cross

1 Q. And there are obviously other U.S. attorneys offices around
2 the country and other agencies that were not necessarily either
3 aware or in contact with Chicago about what they were doing?

4 A. There was, yeah, we were doing our best to try to
5 deconflict with other districts.

6 Q. At some point you learned that Baltimore had an
7 investigation, right?

8 A. That is correct.

9 Q. And, actually, you learned that from Agent Alford?

10 A. No. Baltimore, the HSI agent that originally opened the
11 case and their supervisor came to Chicago originally to talk to
12 us about their investigation and about working together.

13 Q. It wasn't in August of 2012 that someone from the Organized
14 Crime Task Force told you that Chicago had input the same
15 information about Karpeles as a target as you had?

16 A. I was notified of that, about Karpeles, later on, but I
17 knew of their investigation long before that, though.

18 Q. And in January of 2013 you got permission to open up an
19 undercover bank account to try to move money through Mt. Gox,
20 the bitcoin exchanger, just to remind everybody, right? It is
21 the largest bitcoin exchanger, right?

22 A. It was at the time.

23 Q. It was at the time.

24 And other companies owned by Karpeles, right?

25 A. That is correct.

Flfdulb5

Der-Yeghiayan - cross

1 Q. And so you got permission to do that?

2 A. I got permission to open up under our investigation an
3 undercover bank account, yes.

4 Q. Right. Now, Karpeles is also a computer developer systems
5 administrator, right?

6 A. That is correct.

7 Q. Self-proclaimed hacker?

8 A. That is correct.

9 Q. Who brags about his hacking in Twitter and other social
10 media.

11 A. He does.

12 Q. And he has control over hundreds of websites and companies,
13 or had at the time in 2012/2013?

14 A. He did have hosting services, yes.

15 Q. And you believed him to be the mastermind behind keeping
16 Silk Road secure and operating?

17 A. He had ties to the original silkroadmarket.org website.

18 Q. But my question is did you not say that you believed him to
19 be the mastermind behind keeping the website secure and
20 operating?

21 A. He had the credentials to do so, yes.

22 Q. But did you say that?

23 A. I would have said that, yes.

24 Q. And that Ashley Barr was acting as the voice of the website
25 under the name Dread Pirate Roberts?

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Der-Yeghiayan - cross

1 A. That's what I suspected, yes.

2 Q. Now, in April of 2013, Chicago initiated -- when I say
3 "Chicago," HSI Chicago, your office, right -- initiated an
4 undercover purchase from Silk Road using Mt. Gox and another
5 Karpeles company as the bitcoin exchange?

6 A. Yeah. We did an exchange through two different ways.

7 Q. Part of the purpose of that was to -- withdrawn.

8 You also suspected that Karpeles was running an
9 unlicensed money exchange operation, right?

10 A. I did.

11 Q. And so this could be a way of establishing jurisdiction to
12 charge him with that in Chicago?

13 A. Yes, it was.

14 Q. And in May of 2013, HSI Chicago issued a grand jury
15 subpoena to a company called Dwolla, right, D-w-o-l-l-a?

16 A. That is correct.

17 Q. And that is an online payment processing system?

18 A. Yeah. It's like an online wire transfer company.

19 Q. It is based in the United States, right?

20 A. I believe so, yes. It has service in the United States.

21 Q. It was a way that Mt. Gox used to transfer money
22 essentially in and out of the U.S.?

23 A. It was one of the ways that they offered to either withdraw
24 or deposit funds.

25 Q. And bitcoin, right? It was part of the bitcoin exchange

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Der-Yeghiayan - cross

1 process that Mt. Gox used?

2 A. It was used for just the money part of it to withdraw.

3 Q. And that was -- and the subpoena was with regard to a
4 Karpeles company called -- and I will spell it -- M-u-t-u-m,
5 new word, S-i-g-i-l-l-u-m?

6 A. Mutum Sigillum.

7 Q. Right. That was what the subpoena was for, the records for
8 that company, right?

9 A. Correct.

10 Q. And the grand jury subpoena keeps the investigation secret
11 and confidential, right?

12 A. Correct.

13 Q. Within law enforcement only?

14 A. Right.

15 Q. Then you find out the next day, May 10, 2013, that
16 Baltimore had seized the -- how do you pronounce it, the Mutum
17 Sigillum?

18 A. Mutum Sigillum.

19 Q. -- Mutum Sigillum that HSI Baltimore had seized \$2 million
20 in that company's account, right?

21 A. They notified me by phone, yeah.

22 Q. Then it was apparent to Karpeles that the U.S. government
23 had him on its radar, right?

24 A. That is correct.

25 Q. This is May of 2013, right?

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Der-Yeghiayan - cross

1 A. I believe so, yes.

2 Q. May 10th.

3 In fact, there were newspaper articles about it,
4 right?

5 A. It was a large seizure at the time, yes.

6 Q. Sorry. More than \$3 million was seized.

7 And it was from Mutum Sigillum's Wells Fargo account,
8 right?

9 A. Correct.

10 Q. And you were notified in advance that Baltimore was going
11 to do that?

12 A. I was told that it had already happened.

13 Q. Right. And no one even in your office had been notified in
14 advance? When I say "your office," I mean Chicago HSI.

15 A. No.

16 Q. And was that money ultimately returned to Mr. Karpeles?

17 A. I don't know its current state right now.

18 Q. And you thought that HSI Baltimore should have deferred
19 that seizure because of your criminal investigation of
20 Mr. Karpeles?

21 A. At the time, yes.

22 Q. Now, despite that and the fact that Mr. Karpeles was
23 already on notice, to a certain extent, that he was on your --
24 not your radar but the U.S. radar -- and I am not being
25 critical, I'm just talking about despite that, in terms of the

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Der-Yeghiayan - cross

1 chronology, you prepared a draft affidavit of May 29, 2013 for
2 a search warrant for email of Mr. Karpeles, correct?

3 A. That is correct.

4 Q. And these search warrants would not be on notice to him,
5 correct? They would just be to the provider, and they would
6 provide the information so that he wouldn't necessarily know,
7 right?

8 A. No. The provider -- well, he wouldn't know, yes, that the
9 provider --

10 Q. So you were doing it in a way that would keep it
11 confidential. Baltimore did it in a way where it would be
12 public. You did it in a way that it was confidential, right?

13 A. Correct.

14 Q. So in your draft, which was prepared for swearing under
15 oath, right?

16 A. That is correct.

17 Q. And you said that Silk Road had been launched in March of
18 2011, right?

19 A. Correct.

20 Q. And that both the marketplace and the online forum were
21 operated by the same administrator?

22 This was your conclusion?

23 A. Yeah, that's what I assumed, yes.

24 Q. And that you had done some -- you talked yesterday about
25 whois.com, w-h-o-i-s.com?

Flfdulb5

Der-Yeghiayan - cross

1 A. Who.is, yes.

2 Q. You talked about it yesterday for the purpose of
3 identifying IP addresses or the people behind IP addresses?

4 A. Correct.

5 Q. And in your draft affidavit you talked about the whois.com
6 for the Silk Road -- the searches that you had done for the
7 silkroadmarket.org, right?

8 A. Correct.

9 Q. And when you said before -- oh, withdrawn.

10 That the registration was March 1, 2011, and then that
11 only went through April 13, 2011. And then there was a
12 separate registration through March 30th, right, through 2012,
13 I guess, right?

14 A. There were changes in the hosting administration.

15 Q. There were changes in the postings, right?

16 And that there was something called sta.net, a
17 company, right, that was involved in -- well, withdrawn -- that
18 you concluded from your investigation was involved or connected
19 to the silkroadmarket.org?

20 A. That is correct.

21 Q. And that was registered to Mutum Sigillum?

22 A. I believe so, yes, yeah.

23 Q. Which was Karpeles' company?

24 A. It was.

25 Q. And in fact, he was the contact for Mutum Sigillum; it was

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Der-Yeghiayan - cross

1 listed to his email address, right?

2 A. That is correct.

3 Q. Ands that he was the administrative -- and that he was in
4 administrative control of Mutum Sigillum since he had acquired
5 it in 2010?

6 A. That is correct.

7 Q. And in February 11, Karpeles bought Mt. Gox, right? I
8 think -- I apologize before for having the wrong date, but
9 February 11th he bought Mt. Gox?

10 A. Around February 2011.

11 Q. If you want to see the draft, I would be happy to have
12 you -- to have it in front of you.

13 A. If I could, yeah. That would helpful. Thank you.

14 (Pause)

15 MR. DRATEL: I apologize but when it printed out, the
16 numbers cut off halfway so sometimes it is hard to tell 8's
17 from 9's. This is 3505-3085 through 3092. Yes.

18 (Handing)

19 THE WITNESS: Thank you.

20 Q. OK. So let's go back to paragraph 18, if you could look at
21 that.

22 A. OK.

23 Q. And you trace more of Mr. Karpeles' sort of electronic
24 footprint as either corporate or personal, right?

25 A. Correct.

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Der-Yeghiayan - cross

1 Q. In terms of how you link him through whois.com, other
2 companies, to sta and other companies that are affiliated --
3 that are connected, through your research and investigation,
4 connected to the silkroadmarket.org?

5 A. That is correct.

6 Q. So, in fact, if you look at 19, in February 2011,
7 Mr. Karpeles buys Mt. Gox, right?

8 A. Sorry, you said 19th?

9 Q. Yes.

10 A. It stopped at 18.

11 Q. What is the last page of that?

12 A. Page 5.

13 Q. On the bottom, 35 --

14 A. Oh, it is cut off. 03 --

15 Q. It is double-sided.

16 A. It is still cut off. 03091, 92.

17 (Pause)

18 Q. I'm sorry, paragraph 17. I apologize.

19 A. OK.

20 Q. Do you have 17 there?

21 A. I have 17, yes.

22 Q. So in February 2011 -- so paragraph 17, he buys Mt. Gox in
23 February 2011?

24 A. That is when it is shown, yes.

25 Q. That is a month before Silk Road launches, right?

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Der-Yeghiayan - cross

1 A. That is correct.

2 Q. And you note there that Mt. Gox handled perhaps as much as
3 more than 80 percent of all of the bitcoin exchange in the
4 world, right?

5 A. That is what they advertised, yes.

6 Q. And that was as of April 2013, right?

7 A. Yes.

8 Q. And, excuse me, part of your theory in terms of your
9 investigation was that Silk Road was a device for leveraging
10 the value of bitcoin, right?

11 A. It appeared so.

12 Q. Yes. In other words, that if you had cornered the market
13 on bitcoin and could create a site that only used bitcoin and
14 everybody used bitcoin, you would drive the price up?

15 A. Yes.

16 Q. And also get business as an exchange?

17 A. Right.

18 Q. Now, so based on that, in terms of an affidavit, you were
19 prepared to swear that there was probable cause that Mark
20 Karpeles was intimately involved as the head of Silk Road?

21 A. From the connections that I listed in the affidavit draft,
22 yes.

23 Q. But he had already been -- he had already had that seizure
24 of Mutum Sigillum by the time you had drafted this affidavit,
25 right?

Flfdulb5

Der-Yeghiayan - cross

1 A. Correct.

2 Q. And he was in Japan?

3 A. He was in Japan.

4 Q. Also, around the same time, in May of 2013, you submitted
5 to Dwolla, or subpoenaed from Dwolla, the online payment
6 processing company here in the U.S., information about --
7 subscriber information for certain accounts that you thought
8 were suspicious and related to Silk Road based on the movement
9 of bitcoin or money in and out of there, right?

10 A. There was a subpoena issued for that, yes.

11 Q. And that was because -- well, you thought that there could
12 be vendors or operators that you could find with that
13 information?

14 A. Yes.

15 Q. And by "operators," you mean administrators, people who
16 were running the site?

17 A. Potentially, yes.

18 Q. And there was large movement of money -- withdrawn.

19 There were large movements of money from Mt. Gox to
20 Dwolla accounts?

21 A. It showed, yeah, movement of money moving out of Mt. Gox
22 through Dwolla.

23 Q. And, by the way, on that list I think there were 16 names
24 on that list or 16 accounts, do you recall?

25 A. I don't. If I could see the --

Flfdulb5

Der-Yeghiayan - cross

1 Q. Sure.

2 (Pause)

3 But do you recall whether or not Mr. Ulbricht's name
4 was on that list of accounts?

5 A. I don't believe that it was.

6 Q. And ultimately you created a spreadsheet -- or received a
7 spreadsheet from Dwolla with all of the transactions relating
8 to Mr. Karpeles, is that right?

9 A. It was all the Mutum Sigillum -- I'm sorry, in the Mutum
10 Sigillum account for Dwolla for all the transactions that they
11 had received and debited, credited and debited.

12 Q. That is about a thousand pages long, that --

13 A. It was, yeah, a pretty large return.

14 Q. And do you recall whether Mr. Ulbricht's name comes up
15 there?

16 A. It did.

17 Q. Right. And there are about 20 transactions, right?

18 A. Roughly or so, yes.

19 Q. And they are all in the amount of probably like a thousand
20 dollars or around there, some less?

21 A. Around a thousand dollars. I think one was for like a few
22 hundred dollars.

23 Q. So nothing large, assuming you mean by "large" more than a
24 thousand dollars, when you are talking about large movements of
25 money, right?

Flfdulb5

Der-Yeghiayan - cross

1 A. No. There wasn't anything that compared to the other
2 accounts, no.

3 Q. And those were spread out over a couple of years, right?

4 A. I believe so, if memory serves me right.

5 Q. In fact, even after Mr. Ulbricht's arrest you went back and
6 looked at that, right?

7 A. I did.

8 Q. Now, you also learned as part of your investigation at some
9 point in the summer of 2013 that Baltimore was trying to work
10 on an interview with Karpeles through his attorneys, right?

11 A. That is correct.

12 Q. And they wanted to ask him directly about Silk Road as well
13 as his money business, right?

14 A. Yes, they wanted to talk to him.

15 Q. And you advised against that?

16 A. We requested that they did not.

17 Q. Right. But they went ahead and met with his lawyers
18 July 11, 2013, right?

19 A. That sounds about right, yes.

20 Q. Not with him but with his lawyers?

21 A. With the lawyers.

22 Q. And then you say Karpeles' -- withdrawn.

23 Karpeles' attorneys brought up Silk Road, right?

24 A. That is what I was told.

25 Q. And they say that he was willing to tell the government who

Flfdulb5

Der-Yeghiayan - cross

1 he thought was running Silk Road, right?

2 A. That is correct.

3 Q. And for that he would get a walk on his charges, right?

4 A. I don't know what their deal was.

5 Q. That's what he wanted?

6 A. I don't know. I don't know what was discussed then.

7 (Pause)

8 Q. OK. And during this period after this all occurred --
9 withdrawn.

10 So I am going to show you what is marked as 3505-300.

11 (Pause)

12 I am just going to bracket a point here. Just read
13 that to yourself and then when you are done let me know.

14 (Pause)

15 During this period -- I'm sorry. Let me know when you
16 are finished.

17 (Pause)

18 A. OK.

19 Q. During this period you were upset about the work -- about
20 the investigation that Baltimore was pursuing and how they were
21 pursuing it, correct?

22 A. I was upset about it, yes.

23 Q. And you wrote a long memo with a chronology to lay out what
24 had occurred and what the problems you saw were?

25 A. That is correct.

Flfdulb5

Der-Yeghiayan - cross

1 Q. And as part of your investigation, as part of your
2 preparation and all of that, you learned that Karpeles' lawyers
3 had made this offer that they would tell the government who was
4 behind Silk Road if he would not be prosecuted for the money
5 exchange charges, which, by the way, had not been instituted,
6 right?

7 A. I'm sorry.

8 Q. He hadn't been charged yet with any money exchange --

9 A. It was just the civil forfeiture, the civil seizure of the
10 money.

11 Q. Right. But in return for not pursuing any potential
12 charges against him, he was willing to give that name up? That
13 was the offer that his lawyers made, that you learned during
14 your investigation?

15 MR. TURNER: Objection. Foundation.

16 THE COURT: Certainly you will answer as to what you
17 know. If you had knowledge of that fact or if your memory is
18 refreshed by something and now recollect something, then you
19 may testify to it.

20 MR. TURNER: Objection. Foundation. Hearsay as well.

21 THE COURT: Why don't you try and rephrase it,
22 Mr. Dratel, and come at it in a different angle.

23 MR. DRATEL: Sure.

24 BY MR. DRATEL:

25 Q. It was crucially important to you at the time to know what

Flfdulb5

Der-Yeghiayan - cross

1 was going on with respect to other pursuits of Karpeles and
2 what was going on with other agencies investigating or other
3 U.S. Attorney's offices investigating him, right?

4 A. Yes.

5 Q. And as part of that you had conversations and read
6 memoranda and were in touch with people who provided to you
7 information about it so that you could pursue your own
8 investigation correctly, right?

9 A. Be more specific. I am sorry.

10 Q. Sure. That you wanted to know what was going on with
11 Baltimore, you wanted to know what was going on with the
12 meeting with Karpeles' attorneys, you wanted to know what was
13 out there because you had your own parallel independent
14 investigation of him going on that could be completely wiped
15 out by what Baltimore was doing?

16 A. Yes. And we had verbal agreements with the attorneys in
17 that district also about that.

18 Q. And so in the course of this and in pursuing your
19 investigation, you learned that Karpeles' lawyers had made that
20 offer to the government?

21 MR. TURNER: Objection.

22 Q. You learned through people either in Baltimore or at HSI in
23 Chicago?

24 MR. TURNER: Objection. Hearsay.

25 THE COURT: Sustained.

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Der-Yeghiayan - cross

1 MR. DRATEL: I will just say Rule 807.

2 THE COURT: You know, I think now is a good time to
3 take our mid-afternoon break so that we can take up this
4 evidentiary matter while you folks stretch your legs.

5 So let's take our mid-afternoon break. We'll come
6 back in about -- probably about 12 minutes. I want to remind
7 you not to talk to each other or anybody else about this case.
8 Thank you.

9 And you could take a break, too.

10 THE WITNESS: Thank you, your Honor.

11 (Continued on next page)

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Der-Yeghiayan - cross

1 (Jury and witness not present)

2 THE COURT: All right. Let's all be seated.

3 So, of course, you folks know a lot more about the
4 facts than I do, and so I'm learning about this as I hear it
5 and don't have the background that you folks have.

6 The residual exception of the hearsay rule is Rule
7 807. That is the rule that Mr. Dratel has cited. And since I
8 know he knows the rules well, I assume that that is the one he
9 intended to cite.

10 MR. DRATEL: Correct, your Honor.

11 THE COURT: All right. And why don't you folks -- I
12 mean, as I understand the issue and as I have been hearing the
13 issue, the issue is that the witness allegedly learned
14 something only by virtue of being told it, that it is being
15 offered for the truth; namely, that this particular offer was
16 in fact made and that the offer had the terms that Mr. Dratel
17 has in his questioning suggested.

18 Am I right about what the problem is from the
19 government's perspective?

20 MR. TURNER: Exactly right, your Honor.

21 THE COURT: All right. So so far so good.

22 And, Mr. Dratel, tell me where you are going with
23 this. I mean, I understand generally the issue with
24 Mr. Karpeles. I had followed that, I think. I think it is
25 pretty clear where you are going with that. But tell me why

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Der-Yeghiayan - cross

1 you need this point through this witness in this way, as
2 opposed to after learning whatever he learned about the
3 Baltimore investigation with Karpeles, what did you do next.
4 That would be the typical way to avoid the hearsay issue.

5 MR. DRATEL: The reason is because it's the offer by
6 Karpeles' attorneys that is the material fact. In other words,
7 that is what it is. Their client is saying we're going to give
8 you the name of Silk Road and don't charge us now. Karpeles
9 was never charged. But the point is that he was offering that
10 in return for that.

11 They had this guy in their sites and he had never been
12 charged. The point is that he at some point claimed to know,
13 and our position is that he set up Mr. Ulbricht --

14 THE COURT: I understand.

15 MR. DRATEL: -- maybe not in this conversation.

16 THE COURT: I followed your reasoning.

17 MR. DRATEL: And I think it comes under the rule, you
18 knows, it has circumstantial guarantees of trustworthiness, I
19 think. Otherwise, I will just -- you know, do I get to call
20 the assistants who were at the meeting, who heard this?

21 THE COURT: You could call the lawyer. I mean --

22 MR. DRATEL: I don't know who the lawyer is. I don't
23 know his name. This is 3500 material. I don't know. This is
24 something we learned in December 31st, in a 5,000-page 3500
25 material dumped on this witness.

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Der-Yeghiayan - cross

1 THE COURT: That is not unusual for this or any other
2 trial, as you know.

3 MR. DRATEL: 5,000 pages for a single witness, I
4 think --

5 THE COURT: It is not really, not when you've got an
6 investigation that's been going on for years. I'm sure you
7 have been involved in situations.

8 Let's not deal with the volume because I don't want
9 there to be some takeaway point that is not relevant to our
10 discussion about the procedures that we used. I think we
11 followed the appropriate procedures for the 3500.

12 MR. DRATEL: I agree with that. I think it is Brady.

13 THE COURT: That is a different issue, in any event.
14 It was disclosed pretrial. Let's hear -- so your point is that
15 under the residual exception the offer by the attorney should
16 come in as an offer that was in fact made?

17 MR. DRATEL: Yes.

18 THE COURT: And then what are you planning on doing
19 next, just so that we've got the various issues on the table?

20 MR. DRATEL: It is more about Karpeles and Baltimore
21 but not about that.

22 THE COURT: All right. So that would be the extent of
23 the conversation you want the witness to testify about?

24 MR. DRATEL: There is one other part that I would --
25 that probably is part of the same piece, which is just that

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Der-Yeghiayan - cross

1 they were going to meet with Karpeles and this meeting was
2 supposed to be in Guam, and I don't know whether this meeting
3 ever occurred.

4 THE COURT: All right.

5 MR. DRATEL: This is the important part. I don't care
6 about the Guam meeting or anything like that more than this.

7 THE COURT: I just want to get the issues on the table
8 to deal with them as a group.

9 Mr. Turner, why don't you address your position on
10 this.

11 MR. TURNER: I think we are dealing in hearsay and
12 double hearsay and potentially triple hearsay. I think it is
13 basically --

14 THE COURT: Why don't you walk through it slowly and
15 bit by bit so that we have got a clear record.

16 MR. TURNER: Sure. Basically, what is being asked is
17 for this witness to testify that he heard from an attorney in
18 Baltimore that an attorney for Mr. Karpeles had been told by
19 Mr. Karpeles that Mr. Karpeles had information about who DPR
20 was. I cannot possibly see how that would be a reliable
21 statement and it would have indicia of trustworthiness. In any
22 event, Rule 807 requires prior notice to the opposite party if
23 this is going to be introduced, and, obviously, we had none.

24 I would also add, your Honor, that this is all about
25 an investigation of someone that did not pan out and,

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Der-Yeghiayan - cross

1 obviously, we haven't objected up to this point --

2 THE COURT: Well, I assume you will go into that on
3 redirect.

4 MR. TURNER: Yes.

5 THE COURT: That will be for you to take up.

6 MR. TURNER: Obviously, it is not unusual for any
7 number of leads to be --

8 THE COURT: Well, you will take that up on redirect.

9 MR. TURNER: I understand.

10 THE COURT: Explain to me the different levels of
11 hearsay because I am not familiar with how this conversation
12 occurred.

13 Is it, Mr. Dratel, your view that this occurred from
14 the attorney himself who was making the offer to this witness,
15 or was it through one attorney to another attorney -- well,
16 originating with the client to the attorney to another attorney
17 to the witness?

18 MR. DRATEL: The only part -- your Honor, the only
19 part to me that is hearsay is the relation by either Baltimore
20 or Chicago to Special Agent Der-Yeghiayan of what was said by
21 the lawyer. The fact that the lawyer said it is not hearsay.
22 The fact that it was said, it would not come in for the truth
23 of it, that he could provide the name of the Silk Road operator
24 in return, but that he offered it; that is the important thing.
25 That is not hearsay. That is just offered for the fact that it

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Der-Yeghiayan - cross

1 was said. It is essentially a verbal act. It is not hearsay.
2 It is not offered for the truth. It's offered for the fact
3 that somebody made that offer to the government, someone whom
4 the government was investigating.

5 So the only part that is hearsay is what a U.S.
6 attorney, or an agent of the United States government, told
7 another agent of the United States government that the
8 government is now saying is unreliable.

9 THE COURT: All right. Let's take this piece by
10 piece. Let's take it from -- because the way the hearsay rule,
11 as you all understand, is you evaluate it at each step.

12 Would you agree, Mr. Turner, that the initial
13 statement from the attorney for Mr. Karpeles, that his client
14 was offering to divulge information in exchange for some form
15 of leniency, that that is not in and of itself hearsay; that
16 would be offered for the fact that that statement was made?

17 MR. TURNER: I think it could be offered that way. I
18 think there is the danger of the jury understanding it as --

19 THE COURT: I could give a limiting instruction, as I
20 have.

21 MR. TURNER: Understood. But, yes, an offer of
22 basically a proffer, an interview, would not have intrinsic
23 value in itself.

24 THE COURT: Right. And that that statement, would you
25 agree with Mr. Dratel's characterization, was made in terms of

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Der-Yeghiayan - cross

1 the way he's been positing it, Mr. Dratel, that is, to a U.S.
2 attorney in Baltimore, an A.U.S.A. in Baltimore?

3 MR. TURNER: An assistant U.S. attorney in Baltimore
4 is a human being, like everybody else, and the whole hearsay
5 rule obviously exists in order to make sure that there is no
6 misinterpretation, there is no miscommunication.

7 THE COURT: I understand. But do you have any reason
8 to believe that the offer was not made, that this was not a
9 real offer?

10 MR. TURNER: I do not know the details. I certainly
11 wasn't present or involved in those conversations.

12 THE COURT: But you have --

13 MR. TURNER: Neither was this agent.

14 THE COURT: I understand. He can't, and you can go
15 back on cross how he has no idea if this was true, false. All
16 he knows is that he was told this, and he has no idea if it was
17 in fact made.

18 But what I'm trying to figure out is have there been
19 other aspects of the Baltimore investigation which you have
20 found to be unreliable in some way, which leads you to believe
21 it is unreliable? And in terms of these particular A.U.S.A.s
22 who were involved, let's put it that way -- and I don't need to
23 know their names because I don't want to --

24 MR. TURNER: Your Honor, I am not going to comment on
25 the general proviso of another A.U.S.A., but what I would say

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Der-Yeghiayan - cross

1 is that obviously even where you have highly coordinated
2 investigations with other districts, all the time there is
3 miscommunication, misunderstandings because those people are
4 dealing with details in concrete situations that you are not
5 intimately familiar with like they are. So you are going to
6 misconstrue things they say. They are going to miscommunicate
7 things. That is why they have the hearsay rules. And there is
8 no reason here to believe that just because this is what Agent
9 Der-Yeghiayan believed he heard at that time, that it should be
10 offered for the truth and that the typical rule should not be
11 complied with.

12 MR. DRATEL: Your Honor, just one thing I would add is
13 that Agent Der-Yeghiayan thinks it is reliable. He put it in a
14 detailed chronology of the investigation because he was upset
15 about the way it was proceeding in Baltimore. He felt
16 undermined by it. So he would not have included it in that
17 chronology if he did not think it was reliable.

18 THE COURT: One thing you can do, Mr. Dratel, is you
19 can ask Mr. Der-Yeghiayan whether or not when he put things in
20 the chronology, whether or not he believed the sources for that
21 information were reliable before you get to the next step.

22 MR. DRATEL: Fine.

23 THE COURT: If he says not always, that may lead us
24 down a different path. If he says -- I don't know. You do
25 what you want to do.

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Der-Yeghiayan - cross

1 But here's my -- is there something else you wanted to
2 say, Mr. Turner?

3 MR. TURNER: I understand. He is reporting up his
4 chain what he has heard from others, but it still puts us right
5 in the hearsay box.

6 THE COURT: I don't dispute that it's in the hearsay
7 box. I think that we've appropriately analyzed whether or not
8 it -- how it travels up the chain. There are two statements.
9 One statement is a statement from the lawyer to the A.U.S.A.
10 There is a subsequent statement from an A.U.S.A. to another
11 either A.U.S.A. or directly to Mr. Der-Yeghiayan. It almost
12 doesn't matter whether or not it has got two hops after that or
13 one hop after that because I think my analysis would be the
14 same, which is that -- let me pause and make sure I have...

15 (Pause)

16 All right. Let me ask, before I go any further -- one
17 portion of the rule does require that the adverse party have a
18 fair opportunity to meet it. Is there anything that you think
19 you would do if you had found out about this this morning that
20 you can't do now?

21 MR. TURNER: I mean, I haven't even looked at the
22 document, extensively. I haven't had a chance to talk with the
23 witness about it. I haven't had a chance --

24 THE COURT: You can't talk to the witness about it,
25 anyway, during the pendency of an examination.

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Der-Yeghiayan - cross

1 MR. TURNER: This should have been provided to us
2 beforehand, though.

3 THE COURT: I'm just trying to figure out what you
4 would have done.

5 MR. TURNER: I could have talked to the A.U.S.A. I
6 could have talked to the lawyer. I could have done any number
7 of things.

8 THE COURT: OK. Here's what we're going to do.
9 Mr. Dratel, you are going to tell me how important this is,
10 because what we'll do is we'll hang the witness over the
11 weekend if that is important to you. I will allow you to
12 continue, but I won't require the government to do his redirect
13 until we come back on Tuesday.

14 MR. DRATEL: OK.

15 THE COURT: So it will be both a tactical choice as
16 well -- because I am not going to make them end the witness,
17 and there is obviously issues involved in hanging him over the
18 weekend for this.

19 MR. DRATEL: Right.

20 THE COURT: I don't know if it is that kind of point.

21 MR. DRATEL: I would like the point to be made.

22 So here's my proposal. I have at least an hour, at
23 least, probably more. I could probably --

24 THE COURT: Don't take -- God knows, don't take up any
25 more time than you need to.

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Der-Yeghiayan - cross

1 MR. DRATEL: No. No. No. What I am saying is we
2 won't be wasting time if we break at a time where I say, OK, we
3 can now resolve this issue and come back Tuesday morning.

4 THE COURT: I would rather you complete your
5 examination so we at least know where you are ending.

6 Are you proposing to hold yours open? I don't want to
7 hold yours open.

8 MR. DRATEL: No. No. No. What I am saying is I
9 don't know where I am going to end. I am at least going to go
10 to 5 o'clock or finish very close to it. That is what I meant.

11 THE COURT: Well, if you're going to go to 5 o'clock,
12 what I'll do is we'll end before you get to this issue. Don't
13 go back to it right now. I will hold on whether or not we --
14 what we do with it because you both will then have had time to
15 consider it, so will I, over the weekend, and we can then come
16 back to it on Tuesday morning. So let's do it that way. It
17 sounds like it's sufficiently important to you.

18 Let me tell you my thinking on it without giving a
19 ruling on it, and this is an issue which, in light of the
20 defendant's interest in this, we'll hold it open until Tuesday
21 morning. All right? So the government will not with
22 Mr. Der-Yeghiayan be able to do the redirect until Tuesday
23 morning, for which I apologize, but that will be the way it is.
24 So that witness will have to just come back.

25 MR. DRATEL: Right.

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Der-Yeghiayan - cross

1 THE COURT: But do you want to hear what I am
2 thinking?

3 MR. DRATEL: I'm sorry. Yes. OK.

4 THE COURT: I'm thinking that there are indicia of
5 truth to this for 807 purposes, but I do want to consider it
6 further and will be able to do so in light of the additional
7 time that we will have. Having a proffer from a lawyer is not
8 a particularly unusual type of act -- in fact, it is quite
9 common -- and, therefore, it is a reasonable thing that a
10 thought might occur which is that if there is any information
11 which a potential target of an investigation has, that they
12 might attempt to consider exchanging that for leniency. So the
13 story that is going along with this has indicia of something
14 which could well have happened.

15 And the fact that it is between two A.U.S.A.s or one
16 or more A.U.S.A. in terms of the hearsay portion, because the
17 first portion with the lawyer is not a hearsay statement, but
18 the fact that an offer was made -- is being offered for the
19 truth, there are cases which suggest that sometimes indicia of
20 reliability can come from the position of a person. That would
21 be the kind -- and there are cases and I believe, actually, it
22 is in the form of an attorney, not necessarily an A.U.S.A., if
23 I am recalling my Second Circuit cases. I don't have a name
24 but you will be able to find them.

25 So I think that there is enough here that I am not

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Der-Yeghiayan - cross

1 prepared right now if we are going to be falling over into
2 Tuesday anyway to make a definitive ruling on this. We'll let
3 you folks noodle around with it some, and the government can
4 then have the notice that it otherwise would have had under the
5 rules.

6 And in the future we will try to head these off a
7 little earlier.

8 MR. DRATEL: OK. Yes.

9 THE COURT: It is unusual for me to knowingly be in a
10 position where we're going to hold open a witness. I don't
11 like to do that because it leaves open the possibility that the
12 jury's time won't be used most efficiently. But I understand
13 the various interests, and in the interest of justice I am
14 going to do that. So we will figure out what comes of it
15 step-by-step, as I say.

16 MR. DRATEL: Your Honor, can I just ask, with respect
17 to where I'm going, because that's just one question of a
18 larger piece, obviously?

19 THE COURT: Yes.

20 MR. DRATEL: So -- and as I said before, that was not
21 any deeper than the question itself. In other words, I wasn't
22 going to ask follow-up questions about that particular meeting.
23 But I will still pursue the Karpeles part without that piece.

24 THE COURT: Yes.

25 MR. DRATEL: OK.

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Der-Yeghiayan - cross

1 THE COURT: This is only about this one hearsay
2 statement. Do what you otherwise were planning to do and do it
3 all.

4 MR. DRATEL: OK.

5 THE COURT: Then we will figure out where to go from
6 there.

7 Yes, Mr. Turner.

8 MR. TURNER: I would just add that because it was
9 another office's investigation for Karpeles, that this is all
10 going to come in through what the agent heard about that
11 investigation from the agents involved there in Baltimore, the
12 lawyers involved, I think there is going to be a continuing,
13 running objection.

14 THE COURT: All right. So there may be more to this.
15 As we are thinking our way through it, Mr. Turner, you
16 understand what might be coming up with other testimony. These
17 are things you can lay out and suggest that the time we've got
18 will be used by both sides to help put the picture together
19 completely, and people can decide whether this particular Q and
20 A is earthshattering enough to do this.

21 MR. DRATEL: I will -- you know, your Honor, what I
22 will do is, as I go through it, if I think it is something that
23 is in the same ballpark, you know, obviously -- I know you
24 don't want to do sidebars so that would be --

25 THE COURT: Well, in this case a sidebar is better

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Der-Yeghiayan - cross

1 than waiting until Tuesday.

2 MR. DRATEL: Yes. Right, I agree, because I would
3 like to do it in sequence.

4 I don't think that it is the same level of an issue of
5 information imparted from others and what I am going to be
6 doing down the road here. It is more about his investigation.

7 THE COURT: We've got one open item and we don't have
8 more. Let's just continue and proceed as we normally would for
9 this. I don't expect there to be any other issues, right, that
10 you see coming up?

11 MR. DRATEL: No.

12 THE COURT: All right.

13 MR. DRATEL: Not for today.

14 THE COURT: Let's take a very short break ourselves,
15 come back, and we will go until two or three minutes before 5,
16 then we'll break for the today and, in fact, for the weekend.

17 THE CLERK: All rise.

18 (Recess)

19 (Continued on next page)

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Der-Yeghiayan - cross

1 (In open court; jury not present)

2 THE COURT: I want to state one matter before we bring
3 in the jury. As it turns out, the Post was active yesterday on
4 a story other than this case. And it appears from information
5 that the courthouse has obtained that there was a red-bearded
6 Post reporter who looks like somebody actually here who
7 approached juror no. 2 and was in the process of writing an
8 article about man-spreading, apparently a new phenomenon of
9 which I was unfamiliar.

10 In any event, that was the topic about which he was
11 going to approach. He was not assigned to this case. So it
12 was just really a happenstance. So I just wanted to make that
13 clear, that nobody on this case that we are aware of has then
14 been approached by anyone.

15 Let's bring out the jury. I will look forward to
16 reading the article by the Post.

17 (Continued on next page)

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Der-Yeghiayan - cross

1 (In open court; jury present)

2 THE COURT: We'll all be seated. We have to get the
3 witness out here. Witnesses also take a break during the
4 breaks for the jury. Here we go.

5 Mr. Dratel, you may proceed.

6 MR. DRATEL: Thank you, your Honor.

7 Q. Special Agent Der-Yeghiayan, where we left off, after -- as
8 part of your investigation and in the course of your
9 investigation, you communicated to Baltimore in July of 2013
10 that you did not want Baltimore to pursue Mr. Karpeles or to
11 meet with him, correct?

12 A. That's correct.

13 Q. And you said that it would -- that you believed it would
14 damage HSI Chicago's investigation?

15 A. Correct.

16 Q. Now, in August, August 15 of 2013, you are operating as
17 cirrus on Silk Road, right?

18 A. Yes.

19 Q. You're operating a number of other buyer accounts, right?

20 A. I had many available to me, yeah.

21 Q. And you also had some seller accounts, as well?

22 A. I did.

23 Q. And you, at that point, drafted another search warrant for
24 emails for Mr. Karpeles, correct?

25 A. Correct.

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Der-Yeghiayan - cross

1 Q. And so one -- this is August 15, 2013, one was for the
2 Northern District of California, correct?

3 A. Correct.

4 Q. And one was for the Southern District of New York?

5 A. Correct.

6 Q. And they were for email accounts, Google email accounts?

7 A. It was yeah, gmail.

8 Q. Gmail accounts.

9 And this is, again, three months after the seizure of
10 Mr. Karpeles' money by HSI Baltimore that essentially put him
11 on notice of the government investigation?

12 A. Yes.

13 Q. And in your affidavit, which you were prepared to sign that
14 day and swear, right, August 15, 2013?

15 A. I believe the date sounds right, yes.

16 Q. If you need help, I'll be happy to --

17 A. That sounds correct.

18 Q. You were ready to swear that there was probable cause to
19 believe that those gmail accounts contained evidence of
20 instrumentalities of narcotics trafficking and money
21 laundering, right?

22 A. Correct.

23 Q. Anal that was based upon your personal knowledge, your
24 review of documents and other evidence and your conversations
25 with other law enforcement officers and civilian witnesses?

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Der-Yeghiayan - cross

1 A. Correct.

2 Q. And you went through a lot of the details that we discussed
3 before about Mr. Karpeles, Silk Road market website, Mt.Gox,
4 all of that, right?

5 A. Yes.

6 Q. And you wrote -- ready to swear that -- and did you ever
7 swear to that evidence?

8 A. Yes, I did.

9 Q. So, you wrote I believe this evidence shows that Karpeles
10 controlled the silkroadmarket.org website along with the
11 tuxtele.com website and that he hosted them both at IP
12 addresses he controlled?

13 A. That's correct.

14 Q. And you also cited his LinkedIn entry, right?

15 A. I believe so, yes.

16 Q. Where he described himself as an experienced computer
17 programmer who, from 2003 to 2010, worked as a software
18 developer at various companies specializing in developing
19 ecommerce websites?

20 A. That's correct.

21 Q. And you wrote that based on my training and experience, I
22 know that that type of background would make Karpeles well
23 suited to operating an ecommerce site such as the Silk Road
24 underground website?

25 A. That's correct.

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Der-Yeghiayan - cross

1 Q. Now, you also had a confidential informant that you cited
2 in that affidavit, correct?

3 A. Yes.

4 Q. Who had worked with Karpeles for the past two years at that
5 time -- this is 2013 -- that had worked for him two years
6 previous to that, right?

7 A. That's correct.

8 Q. And that reported to -- that Karpeles operated something
9 called bitcointalk.org?

10 MR. TURNER: Objection, your Honor. 803.

11 THE COURT: Sustained.

12 Q. Did you swear to this in an affidavit?

13 A. I swore to it, yes.

14 THE COURT: Do you want a side bar about this? I
15 don't want to have the colloquy in front of the jury.

16 MR. DRATEL: A short side bar.

17 THE COURT: Come on up.

18 (Continued on next page)

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Der-Yeghiayan - cross

1 (At the side bar)

2 THE COURT: Let me say that I don't want to do this in
3 front of jury. There's no inconsistent statements so the fact
4 it that he's sworn to it doesn't get you for impeachment
5 purposes to ability to put that in.

6 MR. DRATEL: Right. What I want to do is get the
7 basis for his conclusions of his investigations.

8 THE COURT: Why don't you ask him?

9 MR. DRATEL: That's fine. And the government's
10 objection is hearsay, I have no problem that it's not for the
11 truth. It's just for what his investigation collected that led
12 him to have probable cause to believe --

13 MR. TURNER: But --

14 THE COURT: What the investigation -- so you would ask
15 him, and tell me, Mr. Turner, what your view is.

16 MR. TURNER: That sounds like it is being offered for
17 the truth of the matter; he's trying to get out what the
18 probable cause was for the affidavit. He's trying to establish
19 that these are the facts, that show that somebody else, in
20 fact, was running Silk Road, that somebody else is the real
21 operator of the site.

22 THE COURT: It's obviously, number one, we can all
23 agree it's obviously highly relevant, right, if the lead
24 investigator believed at one point in time in August of 2013
25 that somebody else might be a candidate, then how he arrived at

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Der-Yeghiayan - cross

1 how that fellow was a candidate is obviously relevant; and also
2 how he changed his mind if he changed his mind would similarly
3 be relevant. And you could go into that to your heart's
4 content on redirect and Mr. Dratel can bring it out.

5 MR. TURNER: I think there are two concerns I have,
6 your Honor, one is, I understand if he believed these things,
7 but it's another thing to start citing the evidence that
8 consists of hearsay from a confidential informant. That's core
9 hearsay.

10 THE COURT: It goes to his state of mind, though.

11 MR. TURNER: I think it's going to be impossible for
12 the jury to segregate that out. We're bringing out --

13 THE COURT: I'll give them a limited instruction, but
14 I'm going to allow him to ask what was the basis for his view
15 that somebody else was an appropriate target. That strikes me
16 as in the heartland of the defense.

17 MR. TURNER: Another problem I have is law enforcement
18 privilege. If we're going to start getting into statements of
19 confidential informants, these are people who have brought
20 information to the government in secrecy.

21 THE COURT: Here's what we're going to do. We won't
22 have him go into the content of the communications. He can
23 simply list, and why don't you take it carefully?

24 MR. DRATEL: Okay.

25 THE COURT: And let's cut him off if he's going to go

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Der-Yeghiayan - cross

1 into the content of any of those communications. He's just
2 going to give an itemized list of these are the types of things
3 I relied on.

4 MR. TURNER: Not only the contents but the source, the
5 identity of somebody --

6 MR. DRATEL: The information --

7 THE COURT: What I was going to say is, the point that
8 I think it's fair for the defense to bring out is that there
9 was information listing the sources that led the investigator
10 to believe at one point in time that there was probable cause
11 for purposes of a warrant. That I think can be done in a way
12 that does not invoke hearsay, all right. So do it in that way
13 that does not get us into the hearsay problem.

14 MR. DRATEL: Tell him what information -- can I lead
15 him?

16 THE COURT: You're on cross.

17 MR. DRATEL: Yes, right.

18 THE COURT: You can just say -- why don't you ask him
19 what his conclusion is if he ever reached a conclusion and what
20 the source was to give you an itemized list of the types of
21 information --

22 MR. DRATEL: But the silkforum.org is important
23 because it's the one that some of the initial --

24 THE COURT: You can't go into the content of what the
25 bitcoin forum was.

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Der-Yeghiayan - cross

1 MR. DRATEL: No. To say that he was running it.
2 That's the information they had.

3 THE COURT: That's definitely -- you're trying to get
4 that in for the truth, right? That is exactly the truth, so
5 you can't do that.

6 MR. TURNER: We would ask for a strong limiting
7 instruction here, your Honor.

8 THE COURT: He's saying it's not going to go into the
9 hearsay. I think we can do this in a way that does not suggest
10 hearsay.

11 MR. TURNER: My concern, is this the defense that the
12 defendant wants to put on, that there was another individual
13 behind it and this is the witness that they're seeking to draw
14 that evidence out of?

15 THE COURT: Yes.

16 MR. TURNER: So that is being offered for the truth in
17 terms of the evidence --

18 THE COURT: No. Let's go through it so we're
19 absolutely clear on what the question is going to be.

20 The question is going to be did there come a point in
21 your investigation when you formed a basis for believing that
22 there was probable cause for a warrant against Mr. Karpeles?
23 Yes or no?

24 You got these in mind?

25 MR. DRATEL: Yes.

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Der-Yeghiayan - cross

1 THE COURT: Then it's going to be tell me, just by
2 source type, the type of sources that led you to that. They
3 were written information that I had received, it was witnesses.
4 I can lead him through that if you want to, but you can do it.

5 MR. DRATEL: No. That's okay. If I'm running astray,
6 you'll let me know.

7 THE COURT: Then what do you want to do next because
8 those are not hearsay so far. The fact that he did reach that
9 conclusion is clearly something that he can testify to.

10 MR. TURNER: I understand that. I guess my concern
11 there is if he just says something like witnesses, then it
12 makes it sound potentially more significant than it is.

13 THE COURT: Then you can go back on cross, but that's
14 not hearsay. That's part of a list of items. I can't preclude
15 him from that. I don't think there's a basis to preclude him
16 from that.

17 MR. TURNER: As long as it's very clear that he's not
18 saying that a witness told me that.

19 THE COURT: No, no. We're not going to let him go
20 into content. He can't go into the content of the
21 communications.

22 MR. TURNER: Then I'm not sure what he can draw out of
23 the question. I understand that he can show -- that asking
24 this witness whether he believes someone else was the person in
25 charge of Silk Road is relevant, but beyond that, unless -- I

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Der-Yeghiayan - cross

1 don't know what the point of going further is unless the
2 defendant is seeking to draw that information out for the truth
3 to show there was credible evidence that somebody else --

4 THE COURT: Well, he is saying this investigator
5 reached a point of having believing there was probable cause.

6 MR. TURNER: I'm not even sure how that is relevant, I
7 mean, if it's not being offered for bias --

8 THE COURT: It's clearly relevant; I have no problem
9 with making a relevance ruling on this.

10 MR. TURNER: But why, your Honor, unless if it's being
11 offered for truth.

12 THE COURT: It's being offered for the truth of
13 probable cause. This is not hearsay. None of this we talked
14 about so far is hearsay. There's no statement.

15 MR. TURNER: Right. My concern, again, is that the
16 effect of the testimony is going to be that there were other
17 sources --

18 THE COURT: He can always say there were 25 sources
19 and he can always list the type. We don't get a hearsay
20 problem as a matter of law until he goes into the content. I
21 think the government's concern is that by implication, there
22 was content. Of course, there's content in any communication.
23 He when he says he spoke to people, there's necessarily
24 content. He can't say what that content was, but his
25 subsequent action led him to do something one might infer, but

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Der-Yeghiayan - cross

1 that's way people get around hearsay all the time.

2 I understand your concern. Let's take it step by
3 step. He clearly gets to ask about the investigator having
4 some belief.

5 MR. TURNER: I would just, finally, I would note our
6 growing concern that there actually is no legitimate basis here
7 if the defense is not trying to show something like bias or
8 anything else that, but, instead, is trying to prove through
9 this witness the contents of other statements, statements of
10 others, of witnesses that aren't being called in to testify
11 themselves, basically the defense is trying to suggest there's
12 all this evidence out there of the person who is running Silk
13 Road. If that's the case, then the defense can introduce that
14 evidence, but trying to get this witness to testify about that
15 evidence, particularly when it concerns statements of
16 others --

17 THE COURT: Here's what we're going to do because I
18 think this is in the heartland of exactly what the defense
19 wants to do, and I have to say right now, my view is it seems
20 to be perfectly appropriate that this fellow says he put
21 together an investigation which identified the defendant, he
22 did it in the following way, showing that he may have put
23 together an equally strong investigation to identify somebody
24 else and that's issue: Is this the right guy?

25 That strikes me as a defense that can be developed

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Der-Yeghiayan - cross

1 through this witness because this witness is not limited only
2 to bias. Factual impeachment by undermining some of his
3 testimony I think is perfectly appropriate, but I don't think
4 we're going to solve it right now.

5 MR. DRATEL: No.

6 THE COURT: Hold on. But I also think, is there
7 anything else you can do because what I'd like to do is rather
8 than break right now, I want to make sure I hear and think
9 about these issues clearly because this is critical. So if the
10 government feels as strongly and we're at 4:00 and we already
11 have issue that this witness is coming back for on Tuesday, I'm
12 inclined to hold both of these issues and talk about it so we
13 can raise our voices above a whisper, but is there anything
14 else you can go to?

15 MR. DRATEL: No.

16 THE COURT: That's fine. We'll break for the day and
17 we'll talk about this then in open court.

18 MR. TURNER: Thank you, your Honor.

19 THE COURT: Thank you.

20 (Continued on next page)

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Der-Yeghiayan - cross

1 (In open court; jury present)

2 THE COURT: Ladies and gentlemen, we are going to
3 break for the afternoon because this conversation is going to
4 take a little bit longer and I don't want to take up your time
5 with it. So since we're at 4:00 anyway, I'm sure you'll be
6 able to get a head start on the traffic and everything else and
7 the commute.

8 I want to give you a few reminders, though, because
9 you do have between now and -- we're not going to see you again
10 until Tuesday morning, right, so set your alarm clock. Don't
11 forget about us. We need you here on time by 9:15 on Tuesday
12 morning so we can pick up here in the room by 9:30. We will
13 not meet tomorrow as I said before and Monday is a holiday, so
14 we will not meet on Monday.

15 I do want to remind you to take as seriously as you
16 can possibly take the instruction not to talk to anybody about
17 this case, anybody at all, including those in your life who you
18 may have in your home or visitors, friends, spouses,
19 significant others, whoever they may. Be don't update your
20 Facebook page. I know that sounds ridiculous. People have
21 done it before. And don't send emails about it, don't Tweet.

22 And really, it's very important that if you run across
23 any news articles on the Internet, on the television,
24 newspapers, avert your eyes. Do not read them. You can read
25 the remainder of the paper but do not read them. It's very,

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Der-Yeghiayan - cross

1 very important that the only information that you folks use as
2 the triers of fact in this case is the evidence which you
3 receive here in this room. And don't watch Princess Bride over
4 the weekend, okay? Don't do any particular research on any
5 aspect of this case from anything that you've heard about to
6 further inform yourself. You will have all the facts as they
7 develop here in this record here at trial.

8 See you Tuesday morning. Thank you very much.

9 (Jury excused)

10 (Continued on next page)

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Der-Yeghiayan - cross

1 (In open court; jury not present)

2 THE COURT: Let's all be seated. When the witness has
3 left the room, let's pick up where we left off on this issue
4 and we can speak about it then in a voice that is above a
5 whisper, which always feels both as if it's being done more
6 quickly than we otherwise might do. There's an urgency to it
7 when we're at side bar and also people are constrained in terms
8 of what they can reasonably say.

9 (Witness temporarily excused)

10 THE COURT: All right, so let's go back to the issue.
11 We have two issues on the table. We have the one that we spoke
12 about before and that was the earlier issue, which we'll now
13 take up Tuesday morning as well. You folks, by the way, on any
14 of these issues can write to me letters over the weekend and
15 collect your thoughts and any case law or other support that
16 you may believe is appropriate for me to have. I will read
17 anything that you put before me.

18 On this last issue, Mr. Dratel, so we have it clearly
19 in mind now, can you maybe give me the kind of question or
20 questions that you believe you could ask that you believe are
21 not objectionable and otherwise comply with the rules of
22 evidence and then let's get them on the record. And we'll find
23 out what kinds of issues we have so we can think about them.

24 Question number one?

25 MR. DRATEL: Question number one is, you reached a

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1 conclusion based on your investigation that there was probable
2 cause to believe that Mark Karpeles was behind the Silk Road as
3 an operator and was using it to sell narcotics, essentially,
4 what's in the affidavit.

5 Second would be, what kind of sources did you have for
6 that information. And I would lead him saying you did your own
7 investigation, you did a lot of Internet research, you had
8 confidential informants, your own research, other collection by
9 your colleagues. And then there is a whole range of
10 information that he collected on his own through his own
11 Internet research, which I would go into.

12 THE COURT: "He" being the witness?

13 MR. DRATEL: Special Agent Der-Yeghiayan, yes, that he
14 did, and it's really Internet research that he did, and then I
15 would just go through that with him a little bit.

16 THE COURT: Hold on. Let's take that, okay. Let's
17 not skip through that too quickly. I want to understand what
18 you want to do with it.

19 MR. DRATEL: Sure.

20 THE COURT: I understand the type of information, you
21 want to get a list of source types, right? So that includes,
22 for instance Internet, confidential CI, confidential informant,
23 etc., that's a source type.

24 Then what's the next thing you want to do?

25 MR. DRATEL: The next thing I wanted to do, and, your

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1 Honor, just so we're clear, because I usually don't see the
2 need for this given how we practice in this district, but
3 obviously I'm going to ask for it specifically: That there be
4 no communication with the witness from the prosecution team in
5 any respect because I am now previewing my cross, 615.

6 THE COURT: So to the extent that anything would be
7 done differently -- there are things done with witnesses all
8 the time, but they shouldn't be talking to him about the
9 specific content of his testimony; I wouldn't expect anybody
10 would in terms of these things.

11 But to the extent they're going to have the kinds of
12 conversations and communications they would normally have, then
13 I'm not going to preclude that, but they shouldn't be preparing
14 him on your cross.

15 MR. DRATEL: That's right, or on the redirect because
16 while someone is on cross, they shouldn't be talking --

17 THE COURT: I have no reason to believe they won't
18 fulfill their obligations. I'm not going to give a special
19 instruction. So you're going into he develops his own
20 information.

21 MR. DRATEL: Right. This is it: That the Silk Road
22 website, from visiting the Silk Road website, I'm quoting him
23 now, I know that this same software platform used by
24 bitcoin.talk is used to operate the discussion forums on Silk
25 Road.

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1 THE COURT: The same software platform?

2 MR. DRATEL: Correct. You can ask that in a way that
3 is simply getting out a factual question, right?

4 THE COURT: Let's talk about the nonhearsay way of
5 getting at that which is, Are you familiar with bitcoin.talk,
6 are you familiar with that software platform, are you aware of
7 any similarities between that and the Silk Road platform,
8 right?

9 MR. DRATEL: He says based on my training and
10 experience, this platform is not widely used by forum
11 administrators. And then he reached the conclusion that the
12 forums were likely set up by the same administrator; that is,
13 Karpeles. And there's more to it, which is, both platforms,
14 the Silk Road and bitcoin talk.org use something called
15 Mediawiki version 1.17, and this is not an updated version, but
16 the same exact version, even though the software has been
17 updated since the 1.17 version.

18 So he concludes I believe that Karpeles has been
19 involved in establishing and operating the Silk Road website.
20 And then he goes on to say in the affidavit that Karpeles is
21 using Silk Road to increase the value of bitcoin because Silk
22 Road generated a huge source demand for bitcoin.

23 Then he says Karpeles has the technical expertise and
24 experience necessary in order to establish and operate a large
25 commercial website such as Silk Road. Further, the fact that

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1 the Silk Road relies on a highly complex system for processing
2 bitcoin strongly suggests that it was designed by someone with
3 extensive technical expertise related to bitcoin, which
4 Karpeles, being the owner and operator of a major bitcoin
5 exchange and bitcoin discussion forum, clearly has.

6 He also talks a little further about based on training
7 and experience, I believe it is likely that Karpeles has worked
8 with others in establishing and operating the Silk Road website
9 because the postings on the silkroadmarket.org are signed Silk
10 Road staff and written in the plural first person.

11 Then it points to some investigative stuff. He did
12 some other subpoenas that went out.

13 THE COURT: There's a bunch of that that you can get
14 at in a way that does not invoke any of the hearsay issues that
15 we're talking about.

16 MR. DRATEL: That's right. I'm just --

17 THE COURT: I understand.

18 MR. DRATEL: But there is one piece of hearsay that I
19 don't think it's hearsay based on my purpose, which is not with
20 respect to the affidavit because I'm trying to go through this
21 so we get all of this out of the way right now.

22 THE COURT: Yeah.

23 MR. DRATEL: But a little further on, in the context
24 of sort of DPR and the context of more than one DPR, there was
25 an interview done by a journalist named Andy Greenberg of DPR,

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1 someone claiming to be DPR, in August 2013, right at the same
2 time. And in the interview, DPR says no, I bought the site
3 from -- and I'm not going to go into that, that he bought the
4 site from someone else and all of that, I'm not going to go
5 into the hearsay -- but just the fact that in that interview,
6 the person who claims to be DPR to Andy Greenberg says I'm not
7 the first DPR, there were other DPRs before me. And Special
8 Agent Der-Yeghiayan says in an email that sounds very much like
9 Karpeles. That's what he says, that the person in that
10 interview --

11 THE COURT: And so your point is that Der-Yeghiayan
12 reads -- that's the Bloomberg article?

13 MR. DRATEL: Forbes.

14 THE COURT: So Der-Yeghiayan reads the Forbes article
15 that has this statement in it, and I've actually run across
16 that, and you want to bring out that statement.

17 MR. DRATEL: His conclusion, his conclusion that
18 sounds very much --

19 THE COURT: You want to bring out the statement and
20 the conclusion he draws from that?

21 MR. DRATEL: Right.

22 THE COURT: Tell me now, give me your argument as to
23 why that's not rank hearsay.

24 MR. DRATEL: Because it's his conclusion that it
25 sounds like Karpeles based on his investigation. It's not

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1 whether the statement is true that there were other -- it sort
2 of informs his conclusion and it buttresses it.

3 THE COURT: There's a way of getting at the "sounds"
4 that doesn't bring out the statement, of course, so I need to
5 understand the statement. Because the way to get out the fact
6 that he sounds like Karpeles could be, Did you read the
7 article? Yes. Did it -- let me finish it so the record is
8 clear about the way it could be brought out.

9 Were there words that were reported to be by DPR?
10 Yes. Did you draw any conclusions? Yes. What was your
11 conclusion? That it sounded like Karpeles.

12 That doesn't require getting into the statement. So
13 if you're going to get into the statement, tell me why, in
14 terms of your argument, that's not rank hearsay.

15 MR. DRATEL: You're right. I agree. Playing it out,
16 that's correct.

17 THE COURT: All right, so you could do it that way.

18 MR. DRATEL: That's my purpose, not to get into the
19 other stuff that we got into.

20 THE COURT: So what you'd say is was there a Forbes
21 article? In the Forbes article that you read, did you read
22 it -- did it purport to have an interview with DPR? And did
23 you draw any conclusions from that? Yes. What was your
24 conclusion? X.

25 MR. DRATEL: Right.

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1 THE COURT: Okay.

2 MR. DRATEL: In a leading way.

3 THE COURT: What's that?

4 MR. DRATEL: In a leading way.

5 THE COURT: I'm playing out a nonhearsay way to do it.

6 And now I want to get the government's view. And I am going to
7 allow these issues, of course, to evolve over the next few days
8 because we're all dealing with this right now for the first
9 time.

10 If you come up with additional questions, Mr. Dratel,
11 I'm not going to prevent you from asking them, nor will I
12 prevent the government from further refining its position.

13 Mr. Turner, what's your view about these pieces? If
14 you can take them in a granular manner, that would be helpful.

15 MR. TURNER: Sure. Overall, I certainly understand
16 what your Honor was saying at side bar that in terms of this
17 being the core of the defense, that the defense wants to argue
18 that there was somebody else running the site, but it just has
19 to be done through competent evidence. And the fact that a
20 witness at one time believed there was probable cause that
21 somebody else was running the site, that in and of itself is
22 not evidence; it's not competent evidence. And there is no
23 inconsistent statement that's been drawn out that provides a
24 justification to use that sworn affidavit to try to impeach the
25 witness.

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1 THE COURT: Why isn't an investigator who says I
2 received the following four pieces of information, I took the
3 following action based upon that information -- it doesn't have
4 to be in terms of belief, not belief, when you file an
5 affidavit in support of a search warrant, you're taking action
6 based upon that information.

7 In the government's view, is that line of approach
8 acceptable or do you also oppose that line of approach?

9 MR. TURNER: It's not evidence of anything.

10 THE COURT: The investigator receives -- I received
11 four pieces of information.

12 MR. TURNER: Right.

13 THE COURT: I then took the following act based upon
14 those four pieces of information, that's evidence of four
15 pieces, correct?

16 MR. TURNER: The government's view is what should be
17 the focus of the defense here is the four pieces of information
18 whether --

19 THE COURT: And the act.

20 MR. TURNER: I don't know what the act might be.

21 THE COURT: If the act is to walk to a judge and get a
22 warrant, that's an act.

23 MR. TURNER: If the act is simply an assertion that
24 this agent believed there was probable cause that someone was
25 operating a website other than Mr. Ulbricht at the time, that

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1 assertion, that belief, that is not competent evidence of
2 anything.

3 THE COURT: The act of "What did you do next? I
4 sought a search warrant without the statement of law as to
5 probable cause."

6 MR. TURNER: Right. So that act would only be
7 evidence that the agent had that belief at the time, but again,
8 that belief isn't evidence of anything.

9 If the defendant is trying to prove that there was
10 somebody else operating Silk Road, they can do that by focusing
11 on the underlying evidence itself. And then the question
12 becomes, What evidence is admissible?

13 THE COURT: Are the four facts admissible?

14 MR. TURNER: So, for example, the report of a
15 confidential informant obviously is clearly hearsay.

16 THE COURT: Hold on. We're not going into the content
17 of the report. We're going to say what information did you
18 receive, just like he's testified for a day about the
19 information he developed about the website itself.

20 MR. TURNER: But there, your Honor, it was all facts
21 that were being elicited. Here, it's just a belief of the
22 agent.

23 THE COURT: No, I'm moving aside from the belief. I'm
24 taking the facts. So he says there were four facts. I read X
25 or I did Y or I heard this. And he doesn't go into content. I

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1 had a communication; I had a visual sighting on some website.
2 I have my four facts, can he list those four facts? In the
3 course of my investigation, because you don't want him to skip
4 over August, right, or April, I mean, that's part of what
5 you've been bringing out.

6 MR. TURNER: It depends on what it's being offered
7 for, your Honor. If, for example, what that information was
8 being offered for was to show some sort of inconsistency that
9 he says now that he never believed that anybody but Ross
10 Ulbricht --

11 THE COURT: Isn't it an ultimate inconsistency?

12 MR. TURNER: No, your Honor, because in order to prove
13 that, the defendant needs to rely on competent evidence. In
14 order to prove the ultimate inconsistency that it was someone
15 else running the site, if that's what they're trying to prove,
16 they have to prove that through competent evidence. Then it
17 becomes a question of the individual pieces of underlying
18 information that the agent relied on in his sworn affidavit,
19 for example, which of those are admissible.

20 THE COURT: Let's take a different example because you
21 and I, our minds are not meeting here, I want to move away from
22 the word "belief." I want to focus on analogous types of
23 evidence as to that which we have gone over here so far with
24 this witness. And if analogous types of evidence were reviewed
25 by this witness and he lists those analogous types of evidence

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1 as among those that he reviewed, he can do that, right?

2 MR. TURNER: Right.

3 THE COURT: I reviewed X, I reviewed Y, I reviewed Z.

4 He can do that, right?

5 MR. TURNER: Right -- it depends, if I may.

6 So, for example, the forum software, that is a fact,
7 and if the defendant wants to bring that out through this
8 witness' testimony -- isn't it true that Silk Road, the forums
9 operated using a certain version of forum software? Do you
10 know that to be a fact? Did you personally observe that?

11 Those are facts that this witness can competently
12 testify to.

13 THE COURT: Presumably, he might have information
14 about the bitcoin.org. Did you become familiar with the
15 software platform that bitcoin.org relied upon? Yes, I did.
16 And did you compare that to the Silk Road forum software
17 platform? Yes, I did. Did you draw any conclusions? Yes, I
18 did. What was your conclusion? It was the same thing or
19 similar.

20 He can do that.

21 MR. TURNER: Yes. Those are personal observations of
22 this witness. He's made no hearsay issue --

23 THE COURT: Here's what we'll do: First, I will
24 elicit from you whether there are any other bases upon which
25 you sought to object to the testimony so I get a full view of

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1 your objections.

2 Then I want you to find a case for me, or cases,
3 because if what you're saying is supported and it's the way
4 that the law works, then there ought to be oodles of cases. I
5 feel like what we're talking about is analogous types of
6 evidence that would be described in very similar ways, but
7 there may be something that I am missing --

8 MR. TURNER: We'd be happy to brief it.

9 THE COURT: -- at 4:30 on a Thursday. It does happen.

10 Tell me: Are there any other bases apart from this
11 one that you just described?

12 MR. TURNER: Other than about confidential informants,
13 as I mentioned at side bar.

14 THE COURT: So, the way I would articulate back to you
15 what I understand your concern is or your objection, is that
16 underlying the witness' statement or testimony, potential
17 testimony about why he took certain action which is seeking a
18 warrant, underlying that are or information which he believed
19 were facts and based upon which he took certain action, and you
20 dispute the reliability of those facts and you believe that
21 those facts are themselves based upon hearsay.

22 Do I have your point right?

23 MR. TURNER: I'm not sure if that captures all of it,
24 honestly, your Honor. There are a couple of points, and I
25 think it would probably best if, at the end of the day, for us

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1 to lay this out in our papers.

2 I think one is certainly hearsay issues to the extent
3 that basically what the defense is trying to draw out are
4 hearsay assertions that were proffered as support for probable
5 cause in a search warrant affidavit, that's not competent
6 evidence.

7 THE COURT: He's not going to go into the content of
8 the communications. He would say I have these four types; I
9 took this act.

10 MR. TURNER: I understand. Then our larger concern
11 is, the witness' act is irrelevant, what this witness did is
12 irrelevant.

13 THE COURT: I don't think it's irrelevant because if
14 he pursued a target of this conduct and it wasn't the
15 defendant, I think that's directly relevant to the defendant's
16 theory of the case.

17 MR. TURNER: My point is, your Honor, what the defense
18 is trying to prove here is not simply that this agent pursued
19 another target. The defense is trying to argue that this other
20 target is the real DPR.

21 THE COURT: They're trying to raise a reasonable doubt
22 as to whether or not the defendant is the real DPR.

23 MR. TURNER: But that is the assertion they are trying
24 to prove, so that's why the hearsay concerns we have --

25 THE COURT: How else do you do it?

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1 MR. TURNER: -- are so acute.

2 The way the defense does it, your Honor, is by relying
3 on competent evidence. So, for example, if they want to point
4 to the fact that the Silk Road forums were based on a certain
5 software that Mark Karpeles also used, that has nothing to do
6 with what the agent did or didn't do or whether a search
7 warrant was sworn out or not. It's a simple fact, and this
8 agent observed that fact and can testify to it.

9 It's a completely different matter for the defense to
10 say, well, didn't you hear from some confidential informant or
11 hear from some other witness certain information that led you
12 to believe that Mark Karpeles was the person behind it and then
13 go to a judge with a search warrant sworn out? All of that is
14 being offered to try to prove that someone else was running the
15 site and that is clear hearsay being offered for the truth of
16 the matter.

17 THE COURT: It's an inference. There are certain
18 facts that are being posited to draw inferences.

19 Here's what I think we should do: We should all get
20 this transcript and read this portion of it that relates to
21 what we have just all gone over. I think that to the extent
22 that there's any question as to whether or not the defense has
23 been building all afternoon a picture that Mr. Karpeles was, in
24 fact, at least arguably a DPR, that I think has come out in
25 spades. I think the jury understands that that's the argument.

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1 I have no idea what they think about it, but that I think is
2 not -- that cat's out of the bag, right, and that this
3 particular witness Mr. Der-Yeghiayan, for some period of time,
4 was pursuing Mr. Karpeles, all of that's out.

5 So I don't know that what we're talking about,
6 frankly, is particularly additive, but you folks, again, know
7 more than I. And I very much hesitate to preclude something
8 unless there's a very solid evidentiary basis when it goes to
9 the heartland of the defendant's theory.

10 That's why I want you to look at it, think about it,
11 measure it against what's already in the record, and then
12 present whatever you want to present in terms of a written
13 submission. I'll absolutely read it.

14 MR. TURNER: We'll do so.

15 THE COURT: Thank you.

16 MR. DRATEL: I wanted to add the identification of an
17 alternative suspect and the conduct of the government's
18 investigation with respect to that alternative suspect is core
19 *Brady* in so many cases, and we'll brief that for the Court.

20 THE COURT: In terms of *Brady*, the very fact that we
21 have all this 3500 material is *Brady*. If you think it's *Brady*,
22 then it's there.

23 MR. DRATEL: Yes. I'm just talking about relevance.
24 I agree with the Court, it couldn't be more relevant. And the
25 question of competent evidence, the Court has navigated that,

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1 but we'll address it in the papers.

2 THE COURT: I'll tell you, it raises some issues that
3 I would benefit from people's writing things down so that I can
4 sit there and I can really go through it very carefully.

5 MR. DRATEL: I'm saying, we will submit something as
6 well, your Honor.

7 THE COURT: If you're going to change what you're
8 doing, let us know so we're not ships passing in the night.

9 MR. DRATEL: Correct; I agree 100 percent.

10 THE COURT: I am sorry that this occurred in terms of
11 cutting things short, but I think it was necessary in light of
12 this particular issue.

13 We'll come back on Tuesday morning. Is there anything
14 else that we should know about that we should preview for next
15 week? And we're going to need to come up with a solution for
16 that monitor because I can't see Mr. Ulbricht's face. I like
17 to see actually everybody's face. The Court looks around. I
18 can see Mr. Howard's face because he's closer. I don't need to
19 see Ms. Lewis' face.

20 MS. LEWIS: I'm fine with that. We can put it in
21 between.

22 MR. DRATEL: We'll figure it out.

23 THE COURT: I had a note to myself a couple of times.

24 MR. DRATEL: Let me review what I have left. And if
25 there's something else that I think needs to be previewed, I'll

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1 include it in the submission and figure it out.

2 THE COURT: Anything from the government's
3 perspective?

4 MR. TURNER: No.

5 THE COURT: What we're going to do, I'm also going to
6 provide next week, it's likely to be Wednesday, a set of the
7 draft jury instructions. You folks will then be asked to go
8 back and to go through them using comments with Word so that I
9 can just look and see what you don't agree with.

10 We're actually working off of your draft because your
11 draft is off of one of my prior drafts, so actually I think
12 it's working okay that way.

13 Tomorrow I have a full day with a million lawyers in
14 this room, so you'll need, unfortunately, to at least clear the
15 tables and put things someplace safe.

16 MR. DRATEL: It will be pristine.

17 THE COURT: Terrific. I don't mean the jury room.
18 Well, you can't go in the jury room.

19 We're adjourned. Thank you. See you Tuesday morning.

20 THE DEPUTY CLERK: All rise.

21 (Adjourned to January 20, 2015 at 9:15 a.m.)

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