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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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 February 3, 2015
9:10 a.m.

10 Before:

11 HON. KATHERINE B. FORREST,

12 District Judge

13 APPEARANCES

14 PREET BHARARA,
15 United States Attorney for the
16 Southern District of New York
17 BY: SERRIN A. TURNER
18 TIMOTHY HOWARD
Assistant United States Attorneys

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

22 - also present -

23 Special Agent Vincent D'Agostino
24 Molly Rosen, Government Paralegal
25 Nicholas Evert, Government Paralegal

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1 (In open court; jury not present)

2 THE DEPUTY CLERK: The continued matter on trial, the
3 United States of America v. Ross William Ulbricht, 14 Cr. 68.
4 Counsel, state your names for the record.

5 MR. TURNER: Good morning. Serrin Turner for the
6 government. With me at counsel table is AUSA Tim Howard and
7 paralegal Molly Rosen.

8 MR. DRATEL: Good morning, your Honor. Joshua Dratel
9 for Mr. Ulbricht who is standing besides me, also Lindsey Lewis
10 from my office and also Joshua Horowitz.

11 THE COURT: Good morning to all of you.

12 We have several housekeeping matters to go over this
13 morning. Let me make sure that the agenda I have corresponds
14 with the matters which you folks agree we should raise.

15 I would like to check in and find out what the status
16 is of the testimony of Bridget Prince. We left that as an open
17 issue last night. Defense was going to think about it some
18 more. I didn't receive any submissions on that, so I just
19 wanted to find out where that stands.

20 MR. DRATEL: Your Honor, we're not going to use the
21 timeline during her testimony. We informed the government of
22 that last night.

23 THE COURT: All right. Then for inigo, we need to go
24 over that and then we need to go over the defense-requested
25 jury instructions, so those two final matters, since I think we

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1 have then taken care of the one, are where we are.

2 Are there things which you folks would like to raise?

3 MR. TURNER: No, your Honor. I responded to the inigo
4 issue.

5 THE COURT: Mr. Dratel, anything from your perspective
6 you would like to raise in addition to those items?

7 MR. DRATEL: No.

8 THE COURT: In terms of inigo, I have received the
9 letter from defense counsel. Let me just preview that I think
10 it breaks into analytically into two very separate inquiries
11 though they're related: One is the hearsay issue relating to
12 reading into the record the statement that inigo, a cooperating
13 witness, gave to the government and as recounted in the letter
14 of December 29. So there's the hearsay issue and then there's
15 a separate request for a missing witness charge in the event
16 that the statement is otherwise disallowed. So I think
17 analytically those are related but stand separately.

18 Mr. Turner, I didn't receive a written response from
19 the government. I knows you folks are busy, but why don't you
20 tell me your views.

21 MR. TURNER: Sure. As the government sees it, this is
22 sort of another example of the defense assuming they can get in
23 their case through our witnesses. So the defense has known for
24 approximately two weeks that we were not going to call
25 Mr. Jones. They made no effort to contact or subpoena

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1 Mr. Jones until the eve of the defense case. They didn't ask
2 us to immunize him. They made no effort to draft any
3 stipulation even though we told them that we were open to a
4 stipulation until the eve of their case. And now the defense
5 is trying to use the lack of time, which is an issue of their
6 own making, to try to force the government to agree to whatever
7 stipulation language the defense wants, even though it does not
8 include language that is favorable to the government.

9 Defense counsel had no right to assume that he'd be
10 able to rely on a stipulation to get in facts they want from
11 Mr. Jones. You have to have a witness lined up in case a
12 stipulation falls through. That's why for Alex miller with
13 Stack Overflow, we wanted to get that in through stipulation.
14 We weren't able to work that out. We had Alex Miller ready to
15 testify. They were obliged to do the same thing with
16 Mr. Jones.

17 Defense counsel is trying to make it out as we engaged
18 in some sort of tactical maneuver by not calling Mr. Jones. We
19 didn't call Mr. Jones because we felt like we no longer needed
20 it for the case. That was our right. That was our call. And
21 the defense was not entitled to rely on our calling a witness
22 during our case and them getting in some fact from Mr. Jones
23 through his testimony on our case.

24 The confrontation issue that they have tried to raise
25 is ludicrous. This is a stipulation we're talking about. So a

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1 stipulation can present any statements that the witness would
2 be able to testify to. And it would be perfectly appropriate
3 if he were to testify about this conversation he had to explain
4 his understanding of the conversation, to explain his state of
5 mind during the conversation. It happens all the time when you
6 have witnesses testifying about conversations they're having
7 with other people and what's going on, the context of those
8 conversations. That's all we were trying to put in this
9 stipulation and the defense didn't want that in. We think it's
10 necessary to be balanced.

11 So if they're not amenable to a stipulation, then it's
12 up to them to call the witness. You can't just get in core
13 hearsay because the government won't stipulate to putting
14 information in a stipulation. You can't just take a letter
15 that the government sends, which is not the declarant's
16 statement, that is the government's disclosure, that is the
17 government's characterization, that's not been adopted by the
18 declarant, so you can't just ignore the hearsay rules and just
19 submit a letter.

20 THE COURT: Let's go to the hearsay rules. As I said,
21 I think this breaks analytically into two pieces, each of which
22 have their own independent evidentiary standards. One is 8043,
23 there's a typo in defense letter but we understood from
24 yesterday what he was referring to, so it's not 803. It's 8043
25 which is a statement against penal interest, which is an easy

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1 juxtaposition to make, that statement against penal interest,
2 as the Court understands it, requires two parts: It requires
3 subpart A and subpart B. Subpart A requires a statement
4 against penal interest, which typically is a statement made
5 under circumstances which indicate that no person would have
6 made it unless they were telling the truth because it was so
7 contrary to their interest under those circumstances to do so.
8 And it also requires B, which is big letter B, B also requires
9 some independent corroborating evidence as to the
10 trustworthiness and/or reliability.

11 Why don't you address whether or not, putting aside
12 the circumstances over not reaching the stipulation, whether or
13 not the hearsay statement otherwise meets the standard under
14 8043.

15 MR. TURNER: First of all, it's not his statement.
16 It's not like an email that he sent. It's not an affidavit he
17 signed.

18 THE COURT: No. It's your recitation of his
19 statement.

20 MR. TURNER: That is hearsay.

21 THE COURT: I understand we're dealing with hearsay.
22 I'm saying tell me why it doesn't fit within the hearsay
23 exception.

24 MR. TURNER: The point is, it's not just the
25 declarant's statement; it's somebody else's statement about

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1 what the declarant said, so it's double hearsay.

2 THE COURT: Lovely.

3 MR. TURNER: And that's part of the problem. That's a
4 characterization of what this declarant said. It's not the
5 statement itself.

6 THE COURT: So we go to both pieces of it, okay.

7 MR. TURNER: Right.

8 THE COURT: Mr. Turner, I'm trying to cut through
9 because let me be perfectly blunt: I don't think this meets
10 the hearsay standard. I don't think under 8043 this is a
11 statement against penal interest. The reason for that is
12 because the witness at the time was already under a cooperation
13 agreement.

14 Under a cooperation agreement, under Second Circuit
15 law, there is clear law that says that you're no longer under
16 criminal penalty for making a particular statement; (B), based
17 upon the representations of the government, there's no
18 corroborating evidence for reliability because there's no chat
19 that ever indicates apparently that this ever happened.
20 There's no indication in the record so far that there is an
21 absence of chats and, therefore, the absence here, there's just
22 nothing to corroborate this as a reliable statement. So I
23 don't think it meets 8043.

24 Do you disagree with my analysis?

25 MR. TURNER: We absolutely disagree, and we just also

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1 believe there are further reasons that it doesn't even come
2 under 8043 to start with because it's not this witness'
3 statement. It's the government's statement about what he said.

4 THE COURT: Why don't you go to the missing witness
5 charge, which I think is analytically separate.

6 MR. TURNER: Again, this is an issue of the
7 defendant's own making. If they wanted to call this witness,
8 that's something they should have realized right after they
9 learned we weren't going to call him. If they thought he was
10 that important to their case, they should have asked can we
11 immunize him, can we call him. That could have been worked out
12 two weeks ago.

13 THE COURT: Would you have immunized him or is this
14 sort of an argument that you can make because they didn't ask
15 but you would not in fact have immunized him?

16 MR. TURNER: No. I'm not representing that at all. I
17 think we would have immunized him. He's under our control and
18 we would not have resisted allowing him to testify. The point
19 is, even a stipulation was not proposed until the eve of the
20 defense case when government counsel was busy preparing for
21 closing, preparing for possible cross of the defendant,
22 preparing for the witnesses that were going to be part of the
23 defense case.

24 This was sprung on the government on the last minute.
25 It's an issue of the defense's own making and to say that, oh,

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1 now there's an unavailable witness because they don't have time
2 now to scramble and subpoena this witness and work out the
3 immunity issues, it's their fault.

4 THE COURT: Let me ask you, I thought that Mr. Dratel
5 had information that indicated this witness would take the
6 Fifth if called.

7 MR. TURNER: Apparently he called his counsel, he
8 didn't call me, he called -- this is just based on what
9 Mr. Dratel said in court, I didn't even talk to counsel for
10 Mr. Jones since then. But I understand that he called counsel
11 for Mr. Jones and counsel said, well, he'd take the Fifth. But
12 defense counsel can still contact the government and see if we
13 would immunize the witness so that he couldn't claim the Fifth
14 Amendment. We never had that discussion. We were never
15 consulted about that.

16 MR. DRATEL: It's not the government's position to
17 immunize a witness. It's the Court's authority under the
18 statute. The government has never immunized a defense witness,
19 never.

20 THE COURT: They make an application, which is then so
21 ordered by the Court but typically it's within the
22 prosecutorial discretion as to whether to suggest immunization,
23 so they are related.

24 MR. DRATEL: That's the most specious argument, the
25 most disingenuous argument I have heard. This is completely

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1 outrageous. By the way, last weekend we were told that
2 Mr. Turner would not agree to anything and would not discuss
3 anything with us, and that's what we were told last week. I'm
4 just -- I want to call Mr. Turner as a witness. We'll
5 eliminate the double hearsay problem. He wrote the letter and
6 signed it. He's disavowing it. This is so disingenuous, so
7 outrageous. A prosecutor has obligations that transcend
8 wanting to win the case at all costs, and this is what we have
9 here.

10 THE COURT: Let's take these two issues analytically
11 separately; one is the hearsay issue whether we think of it as
12 single hearsay or double hearsay, 8043, whether or not those
13 standards are met.

14 MR. DRATEL: Yes.

15 THE COURT: If they're not met, then we are into the
16 world of the missing witness charge. If they are met, then
17 there is some other issues as to whether we can read it in.

18 MR. DRATEL: Two things: One is, it is a statement
19 against penal interest. He is not sentenced. All of these
20 things can be raised at sentencing. That's why he has a Fifth
21 Amendment privilege is because the statement against
22 penal -- even if he's cooperating, and the truthfulness and the
23 trustworthiness aspect of it, there's a chat that substantiates
24 the first part of it, so that indicates the trustworthiness.
25 They went and found the chat. They didn't have the chat

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1 beforehand. They went and found the chat which substantiated
2 the first part, and he is under an obligation to tell the truth
3 or else he loses his cooperation agreement. Every jury is told
4 that and argued by the government why would -- they're going to
5 argue it here with respect to Mr. Duch. They're going to argue
6 it here with respect to Mr. Bates. They're going to say this
7 guy has an agreement. He would never lie to you. What more
8 trust -- they can't have it both ways.

9 They continually want it both ways. This is a
10 preposterous argument. I want a page and-a-half stipulation
11 that they don't have time to read. They knew exactly what was
12 in the -- my stipulation is completely what's in the letter.
13 And what I objected to in their stipulation is what they're not
14 entitled to. They could have called the witness if they wanted
15 balance.

16 THE COURT: Hold on. I want us to pull back and take
17 a deep breath and focus on --

18 MR. DRATEL: It's just an outrage. That's all. It's
19 an outrage.

20 THE COURT: I hear what you're saying. I do want us
21 to focus on the evidentiary rules because --

22 MR. DRATEL: Part of it is fairness. Part of it is
23 *Chambers v. Mississippi*. Part of it is due process. Part of
24 it is they can't do a bait and switch. I called the lawyer.
25 He's on trial, by the way. I called him on the weekend and he

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1 told me he's taking the Fifth.

2 They never offered -- this immunity is preposterous.
3 You should ask them right now. He's said no, we're not saying
4 we're going to immunize him. Of course not, because they're
5 not going to. This is a bogus argument, bogus, bogus, bogus,
6 and it's coming in a way that is completely disingenuous.

7 He should be a witness, and it's a problem 100 percent
8 of his making because they had him on the witness list. In the
9 middle of trial, they say he's not testifying. He's the best
10 witness; Mr. Turner wrote the letter. He heard the statement.
11 He was there.

12 THE COURT: You folks are sufficiently emotional about
13 it. I have the government's statement. I have your letter. I
14 have read your letter. I have also looked at case law. Let me
15 be sure that I understand the chats which do exist versus the
16 chats which don't exist.

17 As I understand it, the chat which does exist is the
18 October 16, 2012 chat which indicates the "recommend a good
19 book Rothbard" answer, that that chat has been found.

20 MR. DRATEL: Correct.

21 THE COURT: I understand that paragraph C, which is
22 really the heart of what we're discussing here, the chat as to
23 whether the key identifying question was asked, that chat has
24 not been found.

25 MR. DRATEL: Because it was a Pidgin chat, which are

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1 not saved. It's different. It's a different type of chat.

2 THE COURT: There are some.

3 MR. DRATEL: Well, not the Pidgin chats, no.

4 THE COURT: Here, let me just tell you my ruling on
5 the 804(3) issue. On the 804(3) issue, putting aside the
6 double level of hearsay, just assuming that this is a faithful
7 representation of what the witness said, it's an out-of-court
8 statement; without a doubt it's being offered for the truth.
9 It has to meet both provisions of 804(3).

10 I do not believe that it was against the declarant's
11 penal interest as the case law interprets it because he was
12 under a cooperation agreement at the time. Moreover, the chat
13 itself independently and in itself doesn't carry any particular
14 penal impact; in other words, it's not the equivalent of a
15 statement saying I sold the drugs or the equivalent of saying I
16 did X, Y or Z. It's simply whether or not a particular
17 communication occurred. So it does not meet some of the
18 circumstances that are anticipated under (A).

19 Under subpart (B), it also needs to be -- and there's
20 an "and" between those subparts -- corroborated by
21 circumstantial evidence clearly indicating its trustworthiness.
22 Its trustworthiness is not whether or not it was said to
23 Mr. Turner. Its trustworthiness is whether or not it ever
24 occurred. There's nothing that I'm aware of that indicates the
25 trustworthiness as to whether or not it ever occurred.

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1 Therefore, it is not a hearsay statement which can come in
2 under 8043.

3 Under a missing witness charge, I've received the
4 government's now oral response and I've also looked at the
5 defendant's papers. Important in this regard are several
6 Second Circuit cases, which the Court pulled this morning. One
7 is the *Myerson* case, 18 F.3d 153 at pin cite 159; the other is
8 the *Burgess v. U.S.* case, which is a DC circuit case -- the
9 *Myerson* case is a Second Circuit case -- the *Burgess* case is a
10 DC circuit case which is quoted at length in the *Myerson* case
11 favorably. That's at 440 F.2d 226. And then there are a
12 series of other cases. There's the *U.S. v. Torres* case, Second
13 Circuit, 845 F.2d 1165, pin cite 1169 to 70.

14 In the *Myerson* case where there's a question about a
15 missing witness, the Court is to look at a series of things:
16 One the relation of the parties, not only physical
17 availability, and I think that there are some questions as to
18 whether or not there was in fact true physical availability
19 which would include the immunity issues and everything else,
20 but the Court does note the special relationship between the
21 parties by virtue of the cooperation agreement and that,
22 therefore, there is some further ability by the government to
23 control this witness.

24 Whether or not that the defense did all that it could
25 have I think is open to question but, frankly, I'm more

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1 persuaded that the government does have control over this
2 witness. That does not end the analysis. That just clears us
3 to the point where we're able to ask the substantive question.
4 The substantive question is whether or not -- and by the way,
5 immunity is only given under extraordinary circumstances and I
6 don't think that immunity here would be extraordinary
7 circumstances.

8 But putting that aside, the question really is, and
9 I'm quoting from the Second Circuit, "When the court is asked
10 to give the instruction, then a judgment is to be reached as to
11 whether, from all the circumstances, an inference of
12 unfavorable testimony from an absent witness is a natural and
13 reasonable one."

14 From the *Burgess* case, I'm going to recite a longer
15 paragraph because it gives really the basis for what all of the
16 circuit courts do in this regard and it's the *Burgess* case is
17 widely cited for setting this standard.

18 "When the court is asked to give the instruction, then
19 a judgment is to be reached as to whether, from all the
20 circumstances, an inference of unfavorable testimony from an
21 absent witness is a natural and reasonable one. In reaching a
22 decision, the court will have in mind that it is not ruling
23 upon an offer of evidence. The missing witness instruction is
24 not evidence, but is concerned with the absence of evidence.
25 While the context in which the question arises may clothe the

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1 missing witness with significance, there is the danger that the
2 instruction permitting an adverse inference may add a
3 fictitious weight to one side or another of the case. When
4 thus an instruction is sought, which, in a sense, creates
5 evidence from the absence of evidence, the court is entitled to
6 reserve to itself the right to reach a judgment as wisely as
7 can be done in all the circumstances."

8 It is the Court's view having looked at the proffered
9 language, and assuming that the witness, if called, would
10 testify to that language, is that this is not reasonably
11 exculpatory when all things are considered. This witness says
12 he asked a first question. There's no indication that it was
13 not answered -- I guess the only implication is it was not
14 answered. There's no implication that it was answered wrongly.
15 There's no implication as to whether or not multiple things
16 were going on at the same time. Eleven months had passed. A
17 second question was then asked to reveal identity, just as
18 Google does to reveal identity of people all the time where you
19 get three or four different questions to figure out what your
20 first dog's name was, that second question was answered
21 correctly; and therefore, the only reasonable inference to be
22 drawn from this is that the DPR identification was completed.
23 Any other inference would be, in this Court's view, an
24 unreasonable inference, so the inigo issue is resolved. There
25 will be no missing witness instruction on that issue.

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1 MR. DRATEL: Then I'm signing the stipulation that the
2 government proposed.

3 THE COURT: Go ahead. Do you want to agree to the
4 stipulation?

5 MR. DRATEL: He already did. He proposed it to me.

6 MR. TURNER: Let me just consult, your Honor, over the
7 break.

8 THE COURT: That's fine with me. If you stipulate to
9 facts, that takes it out of the Court's hands, then I have no
10 reason to make an independent evidentiary ruling.

11 Now, on the jury instructions, we will accept the
12 defense jury instruction on the character evidence with the
13 addition of two sentences from the Sands instruction. Sands
14 for character evidence also includes -- I don't have the exact
15 language right here, but it's essentially, here it is, the
16 testimony is not to be taken by you as the witness' opinion as
17 to whether the defendant is guilty or not guilty, that question
18 is for you alone to determine.

19 So it will say an independent -- there will be an
20 independent instruction on character: You have reputation
21 evidence about the defendant's character trait for peacefulness
22 and nonviolence. This testimony is not to be taken by you as
23 the witness' opinion as to whether the defendant is guilty or
24 not guilty. That question is for you alone to determine. You
25 should consider character evidence together with and in the

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1 same way as all other evidence in the case. So that will be
2 included.

3 MR. DRATEL: I object to that sentence being added.
4 Sand also has that a character testimony alone can provide a
5 reasonable doubt and I left that out because generally most of
6 the circuits don't have that and they don't have the other
7 sentence. What I took is from the Seventh Circuit. I believe
8 it's the same as the Ninth Circuit. It's a very simple
9 instruction and I object to that additional sentence.

10 THE COURT: Your objection is noted.

11 As to supplemental instructions number two, three and
12 four as well as five, those will not be included for the
13 following reasons: Number two is an incorrect statement of the
14 law. Conduct outside of a district when combined with
15 sufficient jurisdictional conduct within a district is fine.

16 As to three, it's confusing and misleading and, in
17 fact, the undercover purchases becomes argumentive because
18 they're not by themselves. These are combined with a whole
19 variety of other evidence, so that's not an issue. But in any
20 event, by themselves, they would nonetheless be potentially
21 evidence of a variety of things.

22 The Homeland Security seizures could be, for instance,
23 evidence of sales over the Internet. They could be evidence of
24 sales of a narcotics conspiracy or substantive narcotics
25 violations. The venue issue the Court has already discussed at

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1 length.

2 In terms of fake identification documents, that's just
3 an incorrect statement of the law.

4 In terms of supplemental defense instruction number
5 five, this is not applicable under the circumstances here.
6 This is not about a law enforcement confession. There are
7 independent indicia of reliability for these statements indeed
8 because they were stated in chats where this individual
9 believed that the communications were quite secure and
10 anonymous; but in any event, the cases cited are inapplicable
11 to this statement. So that's the Court's ruling on those
12 instructions.

13 Are there any other applications we should take up
14 before we bring the jury out?

15 MR. TURNER: Not from the government.

16 MR. DRATEL: Well, I want to know about the
17 stipulation before we start the case.

18 MR. TURNER: I'll need to confer, your Honor.

19 THE COURT: You folks do that outside of the presence
20 of the Court. We're waiting, I think, for everybody else to be
21 gathered for the jurors. We had most of them but not all.

22 We have three witnesses. Who is going to be the first
23 witness?

24 MR. DRATEL: We only have two witnesses.

25 THE COURT: Who is the one who is not going to be

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1 testifying?

2 MR. DRATEL: Schiller.

3 THE COURT: Schiller will not be here?

4 MR. DRATEL: Correct.

5 THE COURT: So we'll have Kincade and Prince. And
6 Prince is going to be talking about an investigation which she
7 herself conducted and has firsthand knowledge.

8 MR. DRATEL: Put in some documents mostly. She'll be
9 putting in documents.

10 THE COURT: Let's take it step by step. I assume
11 she's got some independent foundation and basis. She can't be
12 a generalized custodian of records but we'll take it --

13 MR. DRATEL: She reviewed certain discovery that they
14 provided. It's clearly authentic because it's provided by the
15 government. And you wouldn't let me get it in through the guys
16 who authenticated the actual material, so I'm putting it
17 through my witness. Like you said, put on a witness.

18 So I'm putting on witness who has reviewed the
19 material provided by the government. I'm putting in two
20 documents through her that were government exhibits back in
21 December. These are two documents that were government
22 exhibits, Government Exhibit 242 and Government Exhibit 252.
23 They were government exhibits back in December, and I'm putting
24 them in.

25 THE COURT: What's her basis for firsthand knowledge

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1 as to those documents?

2 MR. DRATEL: She has reviewed the image of the laptop
3 that the government provided us. The government is going to
4 back off that then, fine; if they're going to make that
5 argument, that's another argument that is really --

6 THE COURT: Mr. Dratel, I simply asked you for just
7 what she had looked at. You've answered that. Exhibit 242, I
8 thought this came in.

9 MR. DRATEL: Which?

10 THE COURT: 242.

11 MR. HOWARD: To be clear, some of the exhibits were
12 renumbered, so I think he's referring to what was originally
13 numbered as 242.

14 THE COURT: What is the current number?

15 MR. DRATEL: There is no current number because the
16 government pulled it. It's our exhibit I believe it's D. I
17 have the original government exhibits here, your Honor.

18 THE COURT: And what's the second document?

19 MR. DRATEL: I'm sorry. 243, not 242. 243 and 252 is
20 the original exhibits.

21 THE COURT: Basically what she's going to do is say I
22 reviewed the hard drive. These are documents which I saw on
23 the hard drive. They're true and correct copies of what I saw
24 on the hard drive?

25 MR. DRATEL: Correct.

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1 THE COURT: And she's not going to interpret the
2 content?

3 MR. DRATEL: I'm going to read.

4 THE COURT: That's fine. If they're received into
5 evidence, you would read it.

6 Is that going to create any problems?

7 MR. TURNER: We don't have any authenticity
8 objections. I think we're going to have a relevance objection
9 to Exhibit N. I don't know how it's relevant to the defense
10 case. And if I'm guessing why they want to put it in, then I
11 think we're going to object for the basis.

12 THE COURT: Let's see how that goes. If there's no
13 authenticity issue so far as this witness is concerned, she can
14 do what Mr. Dratel is suggesting, which is to say I reviewed
15 the hard drives, these were on the hard drives, I printed them
16 off, here they are. They'll be received into evidence.
17 Mr. Dratel will then -- unless you object on relevance grounds,
18 I'll take a look at it -- but Mr. Dratel will read in whatever
19 he's going to read in.

20 MR. TURNER: Right. I think our objection is going to
21 be in the nature of relevance and hearsay.

22 THE COURT: Why doesn't somebody hand me them so I can
23 look at these while we are waiting for the jury. We're waiting
24 for four. They have gotten used to us.

25 MR. DRATEL: C and N.

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1 THE COURT: Is she going to do anything apart from
2 those two documents, Mr. Dratel?

3 MR. DRATEL: Yes, your Honor. She's going to talk
4 about her review of the Google production with respect to
5 emails during periods of time that we have already established.
6 There was a gap in the login. And then she's also going to
7 recite from the complaint about four sections, probably about
8 four sentences.

9 MR. TURNER: We object to that, your Honor.

10 THE COURT: So I understand what their issues are, do
11 you have any issue with the witness saying I reviewed the
12 Google production and there's a gap between X period of time
13 and Y period of time? This is what I have personally observed
14 from my review of these hard copies. There's nothing for X to
15 Y.

16 MR. DRATEL: No. The opposite, that there are emails.

17 THE COURT: Okay, whatever it is. My personal
18 observation of the production is that there are emails covering
19 whatever the period is.

20 MR. TURNER: The issue is whether she has foundation
21 to opine about --

22 THE COURT: She's presumably looked at the production.

23 MR. TURNER: Right, but there are two issues. We can
24 look at the emails in the email account and then there's the
25 logs, the IP logs which show the defendant log into a Gmail

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Trial

1 account. I know from having dealt with Google before that
2 those IP logs are not complete; they don't log in every log,
3 for example --

4 THE COURT: But she won't be speculating as to why.
5 She'll just be saying this is what's here; this is what's not
6 here. So be it.

7 MR. DRATEL: Why did we present a stipulation that
8 those are accurate records if he knows they're not? I don't
9 get it.

10 THE COURT: I don't even follow that one. I'm focused
11 on one very small thing, which is, it sounds like she's
12 reviewed this production.

13 MR. DRATEL: It's simple.

14 THE COURT: And she just wants to say I review it,
15 here's what is here.

16 MR. TURNER: The problem is, your Honor, if she's
17 interpreting --

18 THE COURT: She can't interpret, right, because she's
19 not a Google witness.

20 MR. TURNER: If that's implicit in the testimony, then
21 she's interpreting what the Google records mean.

22 THE COURT: We'll get to each question as it comes,
23 but in terms of her ability to say I reviewed the Google
24 production, this is what I have observed personally in terms of
25 the Google production in terms of the date ranges are as

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Trial

1 follows X, Y or Z, that's fine.

2 MR. DRATEL: They can put on a witness to say that the
3 records mean something else. I'll argue that in summation.
4 I'm not going to ask her to argue it.

5 THE COURT: I take it she's not going to draw
6 conclusions from the presence or absence of documents; is that
7 right?

8 MR. TURNER: That's what I'm --

9 THE COURT: I'm trying to figure out from Mr. Dratel.

10 MR. DRATEL: Yes.

11 THE COURT: She's not going to draw conclusions.
12 She's just going to state the facts.

13 MR. DRATEL: No.

14 THE COURT: That's fine. We'll take it step by step.
15 These are the two documents I understand she'll be doing other
16 than that and reciting from the criminal complaint.

17 MR. TURNER: I just want to be clear on what is being
18 offered because the government is getting conflicting messages.
19 One of the exhibits looks like this.

20 THE COURT: That I have as Defense Exhibit C it looks
21 like. It's the multipage document.

22 MR. DRATEL: No, no. It's D actually. C.

23 THE COURT: I have C.

24 MR. DRATEL: C is the law enforcement file.

25 MS. LEWIS: Here is a copy of C.

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Trial

1 MR. TURNER: This I think raises problems, your Honor,
2 and I think we need to address it at side bar. This raises
3 significant problems.

4 THE COURT: Let me read this.

5 MR. DRATEL: This was a government exhibit.

6 THE COURT: This was originally a government exhibit?

7 MR. DRATEL: Yes; 243.

8 MR. TURNER: It's different.

9 MR. DRATEL: I printed it this morning from their
10 first disk. I can give the Court the copy that I printed this
11 morning from their disk.

12 MS. LEWIS: Actually, I even have a copy here that I
13 put a sticker on weeks ago. You can see on the back.

14 MR. TURNER: This means nothing. We need a side bar.

15 THE COURT: Hold on.

16 You know what, I'll tell you, I need to read this and
17 I can't do it with you folks because you interrupt my train of
18 thought.

19 Joe, how many are we waiting for? We are still
20 waiting for four.

21 MR. TURNER: I'd also note this was not emailed to us
22 before the Court's deadline for disclosure of exhibits. It was
23 just sprung on us now.

24 THE COURT: All right. Well, we've had issues. We're
25 not going to quibble with timing in light of the back and forth

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Trial

1 and what short lengths of time people have had for documents.
2 I will look at this and I think we resolved then the Google.
3 production.

4 The reciting from the complaint, are we going to have
5 any issues with that?

6 MR. TURNER: Yes, your Honor.

7 THE COURT: Tell me what your issues are with that so
8 I can think about that, too.

9 MR. TURNER: This goes back to the *GAF* issue.

10 THE COURT: I understand.

11 MR. TURNER: Great. First of all, *GAF* has not been
12 held to apply to an affidavit in the complaint. *Ramirez*
13 specifically reserved decision on that. But in any event, even
14 if it did, the prerequisite for it to apply is a genuine
15 inconsistent statement with some position the government is
16 taking now.

17 THE COURT: Let me find out what the four statements
18 are, Mr. Dratel, that you are considering getting in.

19 MR. TURNER: It was also not provided as a defense
20 exhibit.

21 THE COURT: We were talking about the *GAF* issues back
22 then.

23 MR. TURNER: The complaint is an exhibit.

24 MR. DRATEL: It's not an exhibit. It's an admission.

25 THE COURT: He wants to put it in as an admission.

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Trial

1 And actually whether or not it would come through this witness
2 and whether or not Mr. Dratel would stand up and state it as an
3 admission I think is not -- the vehicle is not the issue; it's
4 the content.

5 MR. DRATEL: One is the \$79.8 million in commissions.
6 That's one. That's in paragraph 22C. And then paragraph 24A,
7 the Silk Road forum in its current form was created on or about
8 June 18, 2011.

9 At 24CII, the first sentence which is a quote from on
10 or about December 1, 2011, DPR announced that he had changed
11 the onion address for the Silk Road website, stated Silk Road
12 now resides at a new more easily remembered URL address.

13 And III: On or about October 19, 2011, DPR posted a
14 message concerning an outage of the Silk Road website
15 explaining we are having to rebuild the site from a backup.
16 DPR assured the sites users, etc.

17 THE COURT: Let me ask you, in terms of the DPR
18 October 19 posting, is it the case that that posting is
19 somewhere on the hard drives that have been received into
20 evidence?

21 MR. DRATEL: Yes, from the servers.

22 THE COURT: Is it also the case that the quote from on
23 or about December 1, 2011 where DPR announced that he had
24 changed the onion address for the website, stated Silk Road now
25 resides at a new more easily remembered URL address, I actually

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Trial

1 thought we had gotten that into evidence at one point.

2 MR. DRATEL: We may have, your Honor. I'll withdraw
3 that one.

4 THE COURT: I think that came in early. But in any
5 event, I would assume that would actually be part of a post
6 also that is on the servers.

7 MR. DRATEL: Yes.

8 THE COURT: So I understand the lay of the land, would
9 you state the date of the complaint?

10 MR. DRATEL: Okay. I'll do it how ever the Court
11 wants me to do it.

12 THE COURT: My copy of the complaint, which I used to
13 carry faithfully because this was a big issue, I left
14 downstairs. Does somebody have a copy I can take a look at?

15 MR. DRATEL: I have it, your Honor.

16 THE COURT: It's 22C.

17 MR. DRATEL: May I add one thing. With respect to
18 Ms. Prince, I would have, had the Court not precluded
19 Defendant's E earlier, I would have also moved to introduce
20 that through her.

21 THE COURT: So noted. Are you planning on reading the
22 entire -- it looks like the October 19, 2011 post is just a
23 post. Are you going to read that entire paragraph, or just the
24 top part? You've highlighted just a piece of it.

25 MR. DRATEL: Right. I'll read the whole thing if

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Trial

1 that's the way the Court wants me to do it. I was trying to be
2 as surgical as possible.

3 THE COURT: The one thing you shouldn't do is talk
4 about based on his training and experience what it means.

5 MR. DRATEL: Right.

6 MR. TURNER: Your Honor, we addressed this issue, you
7 may recall, in our January 22 letter.

8 THE COURT: I remember.

9 MR. TURNER: There's *United States v. Purdy*. It
10 clearly holds you cannot just introduce a bill of particulars,
11 prior indictment, certainly not a complaint without some
12 showing that is inconsistent with the position the government
13 is taking now.

14 If they want to produce these forum posts, they can
15 introduce the forum posts. There's no need to get them in
16 through the complaint. They have the forum posts.

17 THE COURT: Right, but I have the ability, if there is
18 an easy and efficient way to do something and that these are
19 accurate reflections of forum posts, just to have it done
20 through these, right?

21 This doesn't strike me as something which is
22 particularly earth shattering and you can address the timing
23 and what inference should be drawn from the timing.

24 MR. TURNER: But getting it in through the complaint
25 suggests that the government is taking some different position

F23gulb1

Trial

1 now.

2 THE COURT: Mr. Dratel, are you amenable to just
3 saying that you're going to read the following into the
4 record --

5 MR. DRATEL: Sure.

6 THE COURT: -- from posts from Silk Road?

7 MR. DRATEL: Yeah.

8 THE COURT: You can use the complaint's recitation as
9 a faithful representation of what those posts said?

10 MR. DRATEL: That's fine.

11 THE COURT: So you won't cloak it in the ermine cloth,
12 such as it is, of a complaint.

13 MR. DRATEL: No, not of Mr. Turner's complaint.

14 THE COURT: Fine. You can do those. That issue is
15 done. Hand back the complaint. Just don't call it a complaint
16 and please, as a result, you can just say that these come from
17 posts on Silk Road. Now, if those paragraphs don't come from
18 posts on Silk Road, you're going to have to modify that
19 language in some manner.

20 MR. DRATEL: Okay.

21 THE COURT: All right. Okay.

22 MR. TURNER: I'm sorry to belabor the issue, but I'm
23 not clear. There were two posts and then there were two other
24 things from the complaint that the defense wanted to read that
25 were not in the nature of posts.

F23gulb1

Trial

1 THE COURT: He's going to do 79.8 million --

2 MR. TURNER: That's not a post.

3 THE COURT: -- in commissions.

4 MR. TURNER: That has been directly addressed in the
5 government's letter. It's not inconsistent in any way with
6 what --

7 THE COURT: Then it's not going to be a problem for
8 you. I'm allowing it. I'm allowing it. No. Sit down. I'm
9 allowing it.

10 MR. TURNER: It's suggests --

11 THE COURT: I'm allowing it.

12 The June 18, 2011, the October 19, 2011, the June 18
13 and the October 19 both come from posts, Mr. Dratel.

14 MR. DRATEL: Correct.

15 THE COURT: The 79.8 does not, so for that one, you
16 can say "information as of" and then give the date of the
17 complaint, all right?

18 MR. DRATEL: Okay. We have December 1. I'm sorry.

19 THE COURT: 22C.

20 MR. DRATEL: Okay. Right. 22C is first.

21 THE COURT: June 18, 2011.

22 MR. DRATEL: Yes.

23 THE COURT: October 19, 2011.

24 MR. DRATEL: Right. Then also on December 1 the page
25 before, 401C, it's another post.

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Trial

1 THE COURT: It's a post.

2 MR. DRATEL: Yes, December 1, 2011.

3 THE COURT: If it's a post, you can read it as a post.

4 MR. DRATEL: What does the Court want me to say --

5 THE COURT: About the 79.8, which apparently that may
6 have changed. One can argue an inference that it did or did
7 not change over time, but that is based upon information as of
8 this date.

9 MR. TURNER: We ask that the context of that sentence
10 in the complaint be read in in full, because the complaint is
11 very clear that this was based as of the date of the arrest.

12 THE COURT: Fine. Why don't you pull out that
13 language and make sure you all agree on the highlight on that.

14 MR. TURNER: I'd also like an instruction to the jury
15 that they're not to infer that there is some sort of
16 inconsistency here. This is why it's being put in, because the
17 defendant is trying to confuse the jury that the government
18 said that \$80 million in bitcoins were seized or were part of
19 the commissions and now it's only saying that \$13 million in
20 commissions. It is apples and oranges, and they're trying to
21 treat it as the same thing.

22 This is being introduced for no other purpose but to
23 confuse the jury and that's why *Purdy* is important.

24 THE COURT: All right. I will give the instruction.
25 Mr. Dratel, you'll give the entirety of that context, all

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Trial

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right?

MR. DRATEL: Okay.

THE COURT: We're still waiting on three. We'll come back out as soon as they have or I have a resolution of this situation.

THE DEPUTY CLERK: All rise.

(Recess)

(Continued on next page)

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Trial

1 (Pages 2084 through 2097 sealed by order of the Court)

2 (In open court; jury not present)

3 THE CLERK: All rise.

4 THE COURT: Let's bring the jury out.

5 THE CLERK: All rise as the jury enters.

6 (Jury present)

7 THE COURT: All right. Ladies and gentlemen, let's

8 all be seated.

9 Your witness. We've got a new witness.

10 MS. LEWIS: The defense calls Chris Kincaid.

11 THE COURT: Mr. Kincaid.

12 THE CLERK: Please raise your right hand.

13 CHRISTOPHER KINCAID,

14 called as a witness by the defendant,

15 having been duly sworn, testified as follows:

16 THE CLERK: Please state and spell your full name.

17 THE WITNESS: Christopher Kincaid,

18 C-h-r-i-s-t-o-p-h-e-r K-i-n-c-a-i-d.

19 THE COURT: All right, Mr. Kincaid. You can be

20 seated, sir. And it will be important for you to pull up your

21 chair and to adjust that microphone so that you can speak

22 clearly. And there is water there on your left.

23 THE WITNESS: Thank you.

24 THE COURT: Ms. Lewis, you may proceed.

25 MS. LEWIS: Thank you.

F23gulb1

Trial

1 DIRECT EXAMINATION

2 BY MS. LEWIS:

3 Q. What is your name?

4 A. Christopher Kincaid.

5 Q. How old are you?

6 A. 31.

7 Q. And where do you live?

8 A. 235 Monterey Boulevard in San Francisco.

9 Q. That's in California?

10 A. Yes.

11 Q. And where do you currently work?

12 A. I work at Room & Board, a furniture store in San Francisco.

13 Q. How long have you worked there?

14 A. It's been about three months at this point.

15 Q. OK. What did you do before that for work?

16 A. I worked for a chi tea company for a short period of time,
17 and then before that I worked for a mattress company and
18 managed their flagship store for seven years.

19 Q. OK. What is your educational background?

20 A. Currently I'm working on my associate's degree and hoping
21 to transfer to State or UC. I am a psyche major.

22 Q. Are you familiar with Ross Ulbricht?

23 A. Yes.

24 Q. OK. And how are you familiar with Ross?

25 A. I was living with Ross for a couple of months roughly 15 or

F23DULB2

Kincaid - direct

1 16 months ago.

2 Q. OK. And that was until his arrest?

3 A. Yes.

4 Q. OK. So from about August to September -- I'm sorry, August
5 to October?

6 A. That sounds right.

7 Q. And that is 2013?

8 A. Yes.

9 Q. And do you see Ross in the courtroom today?

10 A. Oh, yes.

11 Q. And can you identify him by an article of clothing that he
12 is wearing?

13 A. Yeah. He's got a gray sweater on and a white collared
14 shirt.

15 Q. And how did Ross come to live with you?

16 A. A room in our house opened up and we posted a Craigslist
17 ad, and there were several people who came to look at the room.
18 We had a good feeling about Ross from the first conversation
19 that we had with him. He was actually trying to decide between
20 two places to live, and ultimately he decided to move in with
21 us and we were happy to have him.

22 Q. When you say "our house," who is that?

23 A. That was myself, my wife and our other roommate Alex.

24 Q. OK. And so how many people were living at the house at
25 that time?

F23DULB2

Kincaid - direct

1 A. Including Ross, there was four of us.

2 Q. How big is the house?

3 A. It is a three-bedroom.

4 Q. Did you ever know him by any other name besides Ross
5 Ulbricht?

6 A. No.

7 Q. Did you socialize with him while he was living with you?

8 A. Oh, yeah, absolutely.

9 Q. And in what ways did you socialize?

10 A. It was common for us to hang out in the living room, and he
11 would play on his djembe, his drum, and I would play my bass
12 guitar and, you know, talk about random life events. And there
13 was a time he had a gathering of people out at the beach and we
14 all just kind of hung out and celebrated. I mean, he
15 accompanied me to a friend's birthday one time, as well. And
16 we ended up leaving and going on this long walk to the city and
17 ended up food shopping and eating some crepes. And it was good
18 times?

19 Q. Did he ever bring people over to the house?

20 A. Oh, yeah. Absolutely. His childhood friend Rene and his
21 girlfriend came by for dinner one night, and Ross and them and
22 my wife and I all sat down in our living room and had dinner
23 together. And we shared childhood stories about Ross, and we
24 all kind of laughed at some of the peculiar things that he
25 shared. Yeah.

F23DULB2

Kincaid - direct

1 Q. And did you ever meet anyone else -- anyone else come over
2 to the house?

3 A. Oh, yeah. Absolutely. His family came and stayed with us
4 for a couple of nights. I think they were on a road trip and
5 his parents --

6 MR. HOWARD: Objection. Relevance.

7 THE COURT: Overruled.

8 Q. You can continue.

9 A. His parents stayed with us for a couple of nights, and I
10 was fortunate to meet his brother during that time as well.

11 Q. OK. So which of his family members did you meet then?

12 A. It was his mother Lynn and his father Kirk and his brother
13 Travis.

14 Q. Around what time was this that they came to visit you or
15 came to --

16 A. I want to say it was like somewhere between two and three
17 weeks before Ross was arrested.

18 Q. OK. And where exactly did his family stay?

19 A. They slept in his bed and he slept in the couch in the same
20 bedroom even though he was too tall for the couch and his legs
21 were hanging off the side.

22 Q. OK. And if you know, how much time did Ross spend with his
23 family during that visit?

24 A. I don't know exactly because I was working at the time, but
25 every time I was home he was there with his family. I think

F23DULB2

Kincaid - direct

1 they stayed for a few days beyond that as well, if I remember
2 correctly.

3 MS. LEWIS: Thank you. No further questions.

4 THE COURT: Thank you.

5 Mr. Howard.

6 MR. HOWARD: Thank you. I will be brief.

7 CROSS-EXAMINATION

8 BY MR. HOWARD:

9 Q. So, Mr. Kincaid, you said on direct examination you only
10 knew the defendant for a couple of months before he was
11 arrested, correct?

12 A. Yes, that's right.

13 Q. And you weren't with him on the day that he was arrested,
14 were you?

15 A. No, sir. I was at work.

16 Q. You sublet a room to him through Craigslist, right?

17 A. I'm sorry. Could you repeat that?

18 Q. You sublet -- you leased a room in your house to him
19 through Craigslist, correct?

20 A. That's right.

21 Q. And he paid for the first month with a money order, isn't
22 that right?

23 A. That sounds right.

24 Q. You had no idea what he was doing for a living at the time,
25 isn't that right?

F23DULB2

Kincaid - cross

1 A. I didn't.

2 Q. And now on direct examination you described you had a
3 social relationship while you lived with him, is that right?

4 A. That's right.

5 Q. Do you remember meeting with an FBI agent in late October,
6 a couple of weeks after the defendant's arrest?

7 A. That sounds right.

8 Q. And do you remember telling -- isn't it true that you told
9 him that you barely spoke with the defendant during the two
10 months you lived with him?

11 A. I don't recall.

12 MR. HOWARD: Your Honor, may I approach the witness?

13 THE COURT: You may.

14 Q. Would you just take a look at that document and let me know
15 when you've finished reading it?

16 A. OK.

17 Q. Does that refresh your memory?

18 A. Where would you like me to start, from the top --

19 Q. I am not asking you to read it.

20 THE COURT: Don't read it out loud.

21 THE WITNESS: Oh, OK.

22 Q. Does that refresh your memory about whether you told that
23 to the FBI agent?

24 A. It doesn't.

25 MR. HOWARD: No further questions.

F23DULB2

Kincaid - cross

1 THE COURT: All right. Thank you.

2 Ms. Lewis, anything further from you?

3 MS. LEWIS: Just a couple of questions, your Honor.

4 REDIRECT EXAMINATION

5 BY MS. LEWIS:

6 Q. Just to be clear, the activities you described, did you do
7 all these things with the defendant while you were living
8 together?

9 A. Which activities? Sorry.

10 Q. The ones you spoke about in your direct examination, the
11 parties you went to when you went to eat crepes, you know,
12 hanging out in the house playing the djembe drum, going on that
13 long walk together.

14 A. Yes. And there were times we went out to eat together as
15 well.

16 Q. He lived with you for two months, right?

17 A. That's right.

18 Q. Were you working during that time?

19 A. Yes.

20 Q. OK. About how many hours a week were you working?

21 A. Probably 45 to 50 hours.

22 Q. And was just on weekdays?

23 A. No. I worked weekends and then I'd have two days off
24 during the week.

25 MS. LEWIS: Thank you. No further questions.

F23DULB2

Kincaid - redirect

1 THE COURT: Thank you. You may step down, sir.

2 (Witness excused)

3 THE COURT: All right. Would the defense like to call
4 its next witness, please?

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

6 I call Bridget Prince.

7 THE COURT: All right. Ms. Prince, please.

8 THE CLERK: Please raise your right hand. Stand.

9 Please raise your right hand.

10 BRIDGET PRINCE,

11 called as a witness by the defendant,

12 having been duly sworn, testified as follows:

13 THE CLERK: Please state and spell your full name for
14 the record.

15 THE WITNESS: Bridget Prince, B-R-I-D-G-E-T

16 P-r-i-n-c-e.

17 THE CLERK: Thank you.

18 THE COURT: All right. Ms. Prince, please be seated.

19 And it will be important for you to adjust that microphone so
20 that you can speak into it clearly and directly, and there is
21 water there on your left.

22 THE WITNESS: Great.

23 THE COURT: Mr. Dratel, you may proceed, sir.

24 MR. DRATEL: May I just have a moment, your Honor,
25 because I think there was a miscommunication?

F23DULB2

1 (Pause)

2 Thank you, your Honor.

3 DIRECT EXAMINATION

4 BY MR. DRATEL:

5 Q. Good morning.

6 A. Good morning.

7 Q. Could you state your name again, please?

8 A. It's Bridget Prince.

9 Q. And how old are you?

10 A. I'm 39.

11 Q. And how are you employed?

12 A. I'm an investigator and researcher.

13 Q. And what kind of investigation and research do you do?

14 A. I run a company called One World Research, and we carry out
15 a variety of investigations primarily for attorneys and NGOs.

16 Q. What are "NGOs"?

17 A. Nongovernmental organizations.

18 Q. Can you give us an example of an NGO that you have worked
19 for?

20 A. Human Rights Watch or the ACLU.

21 Q. And how long have you been doing this job of One World
22 Research?

23 A. I've worked for One World research since 2007.

24 Q. And before that?

25 A. Before that I worked the Habeas Corpus Research Center in

F23DULB2

Prince - direct

1 San Francisco as an investigator, and before that I worked for
2 a private investigator company called Murphy & Associates in
3 San Francisco.

4 Q. And what is your education?

5 A. I have a master's in human rights from the London School of
6 Economics and a bachelor's in Philosophy from Kings College,
7 London.

8 Q. And you were retained by the defense in this case to be an
9 investigator?

10 A. That's correct.

11 Q. I show you what's -- did you have access to the image of
12 the defendant's laptop, Mr. Ulbricht's laptop?

13 A. Yes, I did.

14 Q. I'm going to approach and show you what's marked as
15 Defendant's M, as in Mary, and ask you if you recognize that
16 document.

17 A. Yes, I do.

18 Q. And can you just explain what it is generally?

19 A. This is a document that was found on the laptop.

20 Q. And is it a file?

21 A. Yes. It is a text file.

22 Q. And what is the name of the text file?

23 A. It's named "market rewrite."

24 MR. DRATEL: I move Defendant's M in evidence, your
25 Honor.

F23DULB2

Prince - direct

1 MR. TURNER: No objection.

2 THE COURT: Received.

3 (Defendant's Exhibit M received in evidence)

4 MR. DRATEL: And could we publish Defendant's M,
5 please.

6 (Pause)

7 THE COURT: Mr. Horowitz, will you be able to brighten
8 that a little bit also?

9 MR. HOROWITZ: I believe that once the projector warms
10 up, it will probably be brighter.

11 THE COURT: All right.

12 BY MR. DRATEL:

13 Q. So this document says: "For later.

14 "Use auto focus on pages with form inputs.

15 "reso center message format to make admin message
16 clear.

17 "Minimize cache parameters in silkroad," and then a
18 symbol "users.

19 "Group listings under category tree on vendor pages.

20 "Update placeholders.

21 "Style pagination links.

22 "Flag URLs in discussion posts and reviews.

23 "Cleanup order process.

24 "Cleanup old orders still processing.

25 "Add transaction hash to withdrawal and deposit

F23DULB2

Prince - direct

1 records.

2 "Restrict item title characters.

3 "Change - one quantity to deleted flag.

4 "Move constants to global config."

5 And it is essentially a list, correct, the rest of it?

6 A. That is right.

7 Q. Now, did you have a chance to review production of

8 Mr. Ulbricht's Google account?

9 A. Yes, I did.

10 Q. And did you review emails associated with that account?

11 A. Yes, I did.

12 Q. And did you review whether there were emails between June

13 24, 2013 and June 28, 2013?

14 A. Yes, I did.

15 Q. Did you find emails from Mr. Ulbricht -- from Mr.

16 Ulbricht's account for that period of time?

17 A. Yes, there were.

18 Q. And approximately how many emails did you find during that

19 period that you looked?

20 A. Approximately six.

21 MR. DRATEL: May we approach, your Honor?

22 THE COURT: Yes. Do you mean to the sidebar?

23 MR. DRATEL: Yes. I'm sorry.

24 THE COURT: Sorry. I thought you meant the witness.

25 MR. DRATEL: Yes. I have one question.

F23DULB2

Prince - direct

1 (At the sidebar)

2 MR. DRATEL: I just wanted to make sure. I am not
3 going to ask her about the complaint. I am just going to read
4 that in separately.

5 THE COURT: Yes.

6 MR. DRATEL: OK.

7 (Continued on next page)

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Prince - direct

1 (In open court)

2 MR. DRATEL: I have nothing further, your Honor.

3 THE COURT: Thank you.

4 Anything from you, Mr. Turner?

5 MR. TURNER: No. Thank you.

6 THE COURT: Thank you. You may step down.

7 (Witness excused)

8 THE COURT: Mr. Dratel.

9 MR. DRATEL: Yes.

10 I am just going to read what has been stipulated as
11 coming in.

12 THE COURT: These are posts from the Silk Road forum,
13 is that correct?

14 MR. DRATEL: Yes.

15 THE COURT: All right.

16 MR. DRATEL: DPR's first posting to the forum was
17 June 18, 2011. At that time DPR's username on the forum was
18 simply "SilkRoad."

19 MR. TURNER: Your Honor, may we have one moment?

20 THE COURT: Yes. Hold on one second, Mr. Dratel.

21 MR. TURNER: This document is already in the record
22 your Honor as 125A.

23 THE COURT: All right. So do you want to point out
24 125A, Mr. -- let me just take a look at it, but it is already
25 in evidence. We can do it either way. You are certainly

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1 welcome to point it out now, if you would like.

2 MR. DRATEL: That is a June 18, 2011 post from DPR
3 with the username silkroad -- I'm sorry, it is from username
4 silkroad. It is a June 18, 2011 post --

5 THE COURT: Do you want to just --

6 MR. DRATEL: -- by DPR.

7 THE COURT: Do you want to see the version that is in
8 evidence? It might be helpful.

9 MR. DRATEL: OK.

10 THE COURT: Here. I can give you my hardcopy.

11 MR. DRATEL: OK. Thank you, your Honor.

12 THE COURT: (Handing to Mr. Dratel).

13 MR. DRATEL: June 18, 2011, at 1:44 a.m.

14 "Hey, gang,

15 "Really sorry for the dead time there. Hopefully most
16 of you got the message on the bitcoin forum or at
17 silkroadmarket.org. The only major change is this forum. We
18 have it running on a separate server with its own url so if the
19 main site ever goes down again, first check here for updates.
20 Unfortunately this means we have separate logins for the main
21 site and the forum.

22 "As we mentioned before, everything was backed up and
23 totally restored, but if for some reason a deposit didn't make
24 it into your account or something like that, just let us know
25 and we'll track it down and credit you. Also, we're giving

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1 everyone a 4 day grace period on taking orders to the
2 resolution center before they are auto-resolved, so sellers,
3 you may see some orders past due for a few days.

4 "Thanks everyone for hanging in there with us. This
5 work is scary and exciting all at the same time, and I'm really
6 very happy to be on this journey with all of you.

7 "Cheers, Silk Road staff."

8 Another post, December 1, 2011, from the Silk Road
9 staff. It says: "Silk Road now resides at a new more easily
10 remembered URL" -- and I'll leave out the URL. "Please update
11 your book marks and memorize it: Silk Road vb5piz3r.onion."

12 October 19, 2011, Silk Road staff posted a message as
13 follows: "We're having to rebuild the site from a backup.
14 There was no security breach or anything to worry about that
15 led to this situation. Release server space in different
16 locations around the globe through unaware third parties. We
17 do this to hide the identities of those that run Silk Road in
18 the event of a security breach in one of the servers.
19 Unfortunately this means we have to deal with some unreliable
20 people."

21 October 21, 2011, Silk Road staff posted: "The light
22 at the end of the tunnel is getting bigger. We have a full
23 capacity server online and are in the process of configuring
24 it."

25 October 22, 2011, Silk Road staff posts: "The site

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1 just went live. The new server is more powerful and secure
2 than the one we were on before the outage and at least through
3 a more professional proxy. So I have high hopes that it will
4 last us a long time."

5 MR. TURNER: Your Honor, could I just note for the
6 record that most of that post is contained in 125E.

7 THE COURT: 125D --

8 MR. TURNER: Yes.

9 THE COURT: -- is also a record of the October 19th,
10 2011 post. Yes.

11 MR. DRATEL: Your Honor, I'm just going to return your
12 copy. Thank you.

13 THE COURT: All right. Thanks.

14 MR. DRATEL: And there are two additional issues that
15 I don't know that we have resolved yet with respect to defense
16 exhibits.

17 THE COURT: The one that we spoke about?

18 MR. DRATEL: Yes and the other one.

19 THE COURT: We didn't resolve it?

20 MR. DRATEL: Well, we resolved it. I just -- should
21 we have a sidebar?

22 THE COURT: OK. That's OK. Let me just sort of tell
23 the ladies and gentlemen of the jury -- actually, you know what
24 we'll do, we'll take a break. This is what we do, right, when
25 we are within striking distance of a break and we are going to

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1 have a sidebar.

2 Let me tell you, ladies and gentlemen, of the jury
3 that we are very close to the end of the evidentiary record.
4 So I don't want you to talk to each other or anybody else about
5 this case. If you use the breaks to look at any kind of news
6 reports or anything else, make sure you do not read anything
7 about this case. Take a break and we'll be back in a few
8 minutes and we'll take it from there.

9 Thank you very much.

10 THE CLERK: All rise as the jury leaves the courtroom.

11 (Continued on next page)

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F23DULB2

1 (Jury not present)

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

3 As I understand it, there are the three components
4 that we had talked about. Were there other items which you had
5 identified?

6 MR. DRATEL: Yes, your Honor. Just that --

7 THE COURT: Do you want to hand me the document?

8 MR. DRATEL: Sure.

9 THE COURT: Or is there language that you are
10 suggesting we add?

11 MR. DRATEL: Yes. Well, let me try to -- I can hand
12 you the document but I also kind of need this.

13 THE COURT: Actually, I realize I have a copy from
14 earlier.

15 MR. DRATEL: OK.

16 THE COURT: Tell me the component that you are
17 thinking of adding.

18 MR. DRATEL: Yes. One is that DPR was informed that
19 the concentration was on the forum and administrators and
20 moderators.

21 THE COURT: The "concentration." What do you mean by
22 concentration?

23 MR. DRATEL: In other words, the investigation was
24 focusing -- I'm taking it from the document directly --
25 focusing on the forum and your admin and mods. So rather than

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1 putting it in slang, administrators and moderators.

2 THE COURT: Let me get the other one and then we will
3 talk about this.

4 MR. DRATEL: OK. There are references to
5 Mr. Wonderful as one of the people who is conducting -- who was
6 one of the undercovers.

7 That Mr. -- I'm sorry, that DPR is paying for the
8 information.

9 THE COURT: All right. What else? Anything else?

10 MR. DRATEL: There have been efforts to DDos,
11 distributed denial of service, the site and the forum.

12 THE COURT: That came in through the law enforcement
13 investigation? Didn't he know about those? There is already
14 evidence in the record about DDos attempts.

15 MR. DRATEL: Not -- he didn't have information that
16 the government may have been responsible for it. I'm not
17 saying that is true or not.

18 THE COURT: I know, but that is coming in for the
19 truth, though.

20 MR. DRATEL: It is not come in for the truth. It is
21 coming in for his state of mind as to what he is going to do
22 after he learned this.

23 THE COURT: All right. Let me get the complete list.

24 MR. DRATEL: OK. There have been attempts to run exit
25 nodes and track traffic across TOR, and that there also is a

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1 focus on bitcoin exchanges as part of the investigation.

2 THE COURT: Anything else?

3 MR. DRATEL: That's it, your Honor. I mean,
4 obviously, we would like the whole document but this is --

5 THE COURT: I understand.

6 Mr. Turner.

7 MR. TURNER: We would have no objection to the first
8 change about administrators and moderators. Everything else we
9 would object to for the reasons stated in camera.

10 MR. DRATEL: That he was paying for it?

11 THE COURT: Let me just tell you what I think is
12 within the scope of what I believe is appropriate and straddles
13 the lines between the hearsay issues and the 403 issues, which
14 are the three statements that we had previously talked about:
15 That DPR learned in the spring of 2013 that law enforcement was
16 investigating Silk Road and attempting to identify DPR.

17 Number two, that on Ross Ulbricht's laptop there was a
18 multipage document entitled "LE Counterintelligence," which the
19 parties agree means "law enforcement counterintelligence."

20 Three. This document contains communications to DPR
21 about a variety of information relating to purported ongoing
22 law enforcement efforts with respect to Silk Road and DPR.

23 Four -- these are new -- DPR learned that the
24 investigation included the forum, administrators and
25 moderators, and bitcoin exchanges.

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1 And, five, DPR was providing payment for the
2 information. Full stop.

3 MR. TURNER: We'd object to the mention of bitcoin
4 exchanges, your Honor, for the reasons we've stated.

5 THE COURT: All right. I think that in terms of
6 bitcoin exchanges, let me be clear. That is not to be confused
7 with a reference to Mr. Karpeles, but to the extent that there
8 was investigation as to whether or not the movement of funds
9 could be a focus of the investigation and might give some
10 indication as to anything having to do with Silk Road, I think
11 that that is just part and parcel of what was being
12 investigated. Whether or not it caused a reaction by DPR is, I
13 think, entirely different. So I'm not suggesting that the
14 Karpeles, Mount Gox piece is incorporated in that.

15 MR. TURNER: I understand your Honor is not suggesting
16 that, but I think that is a suggestion that is going to be made
17 to the jury and it is based on hearsay and it is --

18 THE COURT: Well, I think that the fact that it
19 included bitcoin exchanges is fact, right?

20 MR. DRATEL: Yes.

21 THE COURT: And you can't use from that, Mr. Dratel --
22 just so that we're clear, you can't extrapolate from that that
23 Mr. Karpeles did it.

24 MR. DRATEL: I will not use it in connection with
25 Mr. Karpeles, your Honor.

F23DULB2

1 THE COURT: All right. That's what I am going to
2 allow.

3 All right. Do you have those down?

4 (Pause)

5 MR. DRATEL: No. I can read what the Court has
6 written down, if that's OK, but -- your Honor, I took some of
7 the notes --

8 THE COURT: You have my notes.

9 MR. DRATEL: Yes.

10 THE COURT: But I'm going to --

11 MR. DRATEL: I'm one of those jurors who don't like to
12 take notes and listen at the same time.

13 THE COURT: Tell me if you can't decide on
14 particularly the placement of the word "purported," and I think
15 it should be introduced with "The parties have agreed to the
16 following."

17 (Continued on next page)

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F23gulb3

Trial

1 MR. DRATEL: The only part I can't make out is it says
2 "ongoing law enforcement efforts," I think it says "with
3 respect to ID'ing Silk Road or DPR." Is that --

4 THE COURT: Silk Road and DPR; yes.

5 MR. DRATEL: Okay.

6 THE COURT: Now, there was a second item.

7 MR. DRATEL: Whether the government is going to
8 stipulate with respect to Mr. Jones the stipulation that they
9 proposed to me that I ultimately am unable to get the statement
10 in --

11 THE COURT: What's your position?

12 MR. TURNER: No.

13 MR. DRATEL: I move for mistrial, your Honor, on that.

14 THE COURT: That does actually have the benefit of
15 actually evening out the number of times you have moved for a
16 mistrial. Between this trial and the last one we tried, the
17 count makes it five movements, five applications denied. So
18 that application is denied. My ruling is as it was previously
19 and there's no basis to change it.

20 Here's what I'd like to ask you folks to do: We can
21 bring the jury right out now, go through the one final thing
22 and then take another short break before closings, or we can
23 take our own short break right now, do the one final matter and
24 go directly into closings.

25 Preferences?

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Trial

1 MR. DRATEL: With respect to the last thing: I think
2 that when the party offers a stipulation and the other party
3 accepts it, it's not a question of asking the defendant to
4 accept it and the defendant has to do it because that's a
5 different issue. But when one party offers a stipulation and
6 the other party accepts it, it's a stipulation, and they can't
7 then withdraw it in a fit of pique.

8 THE COURT: These are contract principles in part.
9 And there are lots of things which go into whether or not you
10 have a binding agreement, and there is the old saying that it's
11 not over 'til it's over, etc. You got to see the signature wet
12 on the page, etc. There are some instances, but that's not the
13 case. I'm not going to force the government into a
14 stipulation. In the absence of a stipulation, it's hearsay.

15 MR. DRATEL: The government's email to me last night
16 was take it or leave it, so I'm taking it and now they renege.

17 THE COURT: So be it.

18 Do you folks want to take a break right now and come
19 back, and then we'll go from this last piece, which I think
20 will take a minute or two, into the closings, which I think
21 makes more sense because the jury is already breaking right
22 now.

23 Are you ready?

24 MR. TURNER: Sure. Can we have a 15-minute break just
25 to make sure we have all of the electronics lined up.

F23gulb3

Trial

1 MR. DRATEL: I object.

2 THE COURT: Yes. The answer is yes. Over objection,
3 the Court grants the application to set up the equipment.

4 Why don't you tell the jury that we'll resume at
5 11:30. We'll have the remaining matters at 11:30 and then
6 straight into closing statements. Thank you.

7 (Recess)

8 (In open court; jury not present)

9 THE COURT: Just so you're all aware, we're going to
10 start and go directly into the closings. When we get to 12:45,
11 the closings after Mr. Dratel has completed what he's going to
12 do, I will need to get a signal from you as to whether or not
13 we should try to go 'til 1:00, if that's a more logical place
14 to stop or we can stop at 12:45, but we need to break for lunch
15 between 12:45. I suspect we'll be in the middle of something
16 at that point or not quite done. If you have a preference as
17 to when, just somehow make it clear if you can.

18 MR. TURNER: Okay.

19 THE COURT: If you keep going beyond 12:45, I'm going
20 to let you go to 1:00, but then I'll stop you at 1:00.

21 MR. TURNER: If I have maybe five minutes left at
22 1:00 --

23 THE COURT: Then why don't you just tell me that. Say
24 your Honor, I have a few more minutes left. And we have lunch
25 brought in for the jury, so they will be fine with that to have

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Trial

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you stop at that point.

MR. TURNER: Okay.

THE COURT: Let's bring out the jury.

(Continued on next page)

F23gulb3

Trial

1 (In open court; jury present)

2 THE COURT: Thank you. Let's be seated. Mr. Dratel,
3 you may proceed.

4 MR. DRATEL: Thank you, your Honor.

5 The parties have agreed to the following: DPR learned
6 in the spring of 2013 that law enforcement was investigating
7 Silk Road and attempting to identify DPR. There was a
8 document -- withdrawn.

9 There was a multipage document on the Ross Ulbricht
10 laptop titled "LE Counterintel," which the parties agree means
11 law enforcement counterintelligence. This document contains
12 communications to DPR about a variety of information relating
13 to ongoing law enforcement efforts with respect to Silk Road
14 and DPR. DPR learned that the investigation included the forum
15 administrators and moderators and bitcoin exchanges. DPR was
16 providing payment for the information.

17 Thank you, your Honor.

18 THE COURT: Is there anything further from the
19 defense?

20 MR. DRATEL: No, your Honor. The defense rests.

21 THE COURT: Ladies and gentlemen, the evidentiary
22 record in this matter is now closed. You have now heard all of
23 the evidence in this matter. Let me just describe to you how
24 we're going to proceed from here. We're now going to go
25 directly into closing statements. I told you at the outset

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Trial

1 that there are two opportunities for the lawyers to address you
2 directly. The first is during the opening statements when they
3 give you an overview as to what they expect the evidence will
4 show; and the second comes at the end of the case when they may
5 argue to you as to what they believe the evidence that's in the
6 record has shown. They will argue to you as to what inferences
7 they think you should draw.

8 What the lawyers say is not evidence. The evidence is
9 that which was received into evidence in this matter through
10 the witnesses, through the documents during the trial.

11 During closings, as at any other point in time, what
12 lawyers say is not evidence, with the sole exception as to when
13 they are reciting a stipulation. But other than that, what
14 lawyers say is not evidence. So your recollection of evidence
15 and ultimately the inferences that you determine should be
16 drawn from the evidence is what controls.

17 The closing statements will not be completed in their
18 entirety before lunch. After all the closing statements are
19 completed, I'll then charge you on the law and I'll be giving
20 you a copy of the jury instructions to follow along with me and
21 then you'll start your deliberations.

22 I don't know that you'll get to your deliberations
23 today. It may be tomorrow morning. We'll have to see how
24 things go and be a little bit fluid. All right. Thank you.

25 Mr. Turner.

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Summation - Mr. Turner

1 MR. TURNER: Thank you, your Honor.

2 At the beginning of this case we told you that we
3 would prove beyond a reasonable doubt that the defendant Ross
4 Ulbricht was the creator, the owner and the operator of the
5 digital drug-trafficking enterprise that was Silk Road, and
6 that's exactly what we've shown.

7 The evidence presented by the government comes from
8 multiple independent sources. It's interlocking, it's
9 overwhelming, and to a significant extent, it's undisputed.
10 There is no dispute in this case that the defendant started the
11 Silk Road website. The defense counsel conceded that right off
12 the bat. There's no dispute that it was used to sell drugs
13 from the start. There's no dispute the defendant started it on
14 the Tor network so that the users of the site and the dealers
15 on the site and the site itself would be hidden. And there's
16 no dispute that when the defendant was arrested, he was logged
17 into the Silk Road website as the Dread Pirate Roberts.

18 The dispute in this case isn't even about whether the
19 defendant operated the Silk Road website. The defense has
20 already granted that he did. It's about when and for how long.
21 I'll explain later under the law it doesn't even really
22 matter --

23 MR. DRATEL: Objection.

24 MR. TURNER: -- but the evidence is clear that he ran
25 it from beginning to end. He started it. It was his baby.

F23gulb3

Summation - Mr. Turner

1 And he stayed with it enthusiastically for nearly three years.
2 It was his secret livelihood. It was his passion. He built it
3 he grew it, he operated it from top to bottom until the very
4 end when he was arrested logged into the site as its
5 mastermind.

6 How do you know that it was Ross Ulbricht the whole
7 time behind his computer? Because of the mountain of evidence
8 you've seen that he ran it the whole time. Let's start with
9 the files on his computer, ladies and gentlemen. His computer
10 is filled with evidence related to Silk Road. There are
11 hundreds of files spread across numerous folders. There's an
12 entire copy of the Silk Road website itself. There's an entire
13 copy of transaction records covering the whole duration of the
14 site.

15 There are chats with Silk Road employees. There are
16 Silk Road bookkeeping records. There are lists of Silk Road
17 servers, there's Silk Road to-do lists, Silk Road reports, Silk
18 Road maintenance logs and on and on. These files date from
19 2013 all the way back to 2010 when the defendant was first
20 starting to work on the site. This is not what you'd expect to
21 see if Silk Road had been just some passing fad and passing
22 interest of the defendant that he pursued for a few months back
23 in 2011. It's what you'd expect to see on a person's computer
24 who had been running the site continuously for years, and the
25 details of so many of these files are damning, so let's start

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Summation - Mr. Turner

1 with the personal journal that the defendant kept on his
2 laptop.

3 THE COURT: Can you speak up a little bit.

4 MR. TURNER: Sure.

5 These files go from 2010 to 2012. And it's absolutely
6 clear that the defendant wrote these journal entries. They're
7 filled with personal details about the defendant. So in these
8 entries, the defendant talks very explicitly about starting and
9 running and continuing to run Silk Road. The 2010 journal
10 entry begins "I started the year in the middle of my stint with
11 Good Wagon Books." Remember this is something he did before
12 Silk Road. The journal entry goes on and on about Good Wagon
13 Books for a few paragraphs and the defendant's personal life.

14 And then it says, "While all of this was happening, I
15 began working on a project that had been in my mind for over a
16 year. I was calling it Underground Brokers, but eventually
17 settled on Silk Road. The idea was to create a website where
18 people could buy anything anonymously, with no trail whatsoever
19 that could lead back to them. I had been studying the
20 technology for a while, but needed a business model and
21 strategy. I finally decided that I would produce mushrooms,"
22 magic mushrooms, illegal drugs, "so that I could list them on
23 the site for cheap to get people interested. I worked my ass
24 off setting up a lab in a cabin out near Bastrop off the grid.
25 In hindsight, this was a terrible idea and I would never repeat

F23gulb3

Summation - Mr. Turner

1 it, but I did it and produced several kilos of high quality
2 shrooms. On the website side, I was struggling to figure out
3 on my own how to set it up."

4 How do you know that's Ross Ulbricht? Well, for one
5 thing in the defendant's Gmail there's an email around the same
6 time showing that he was looking for a place to rent in
7 Bastrop. There's also a copy of the book on the defendant's
8 computer titled "The Construction and Operation of Clandestine
9 Drug Laboratories." It's filled with instructions on how to
10 set up your own laboratory custom built for drug dealing. So
11 from the very beginning the defendant conceives that Silk Road
12 as a website for drug trafficking and he was setting up to be
13 its very first drug dealer.

14 In 2010 journal entry ends with an express of high
15 hope for Silk Road in the coming year. "It says" in 2011, "I
16 am creating a year of prosperity and power beyond what I have
17 ever experienced before. Silk Road is going to become a
18 phenomenon and at least one person will tell me about it,
19 unknowing that I was its creator." The same journal entry, the
20 same guy. It's clear from this entry that Silk Road is not
21 some little experiment he's pursuing for a few months. It's an
22 obsession. He wants power. He wants prosperity. He is
23 relishing the thought, the site becoming a phenomenon with him
24 the secret mastermind behind it. Those are long-term
25 ambitions, ladies and gentlemen.

F23gulb3

Summation - Mr. Turner

1 We see these ambitions continue in the journal entries
2 into 2011 and beyond. So the 2011 journal starts out, "Still
3 working on Good Wagon Books and Silk Road at the same time.
4 Programming now. Patchwork PHP MySQL. Don't know how to host
5 my own site. Didn't know how to run bitcoind. Got the basics
6 of my site written. Launched it on freedom hosting. Announced
7 it on the bitcointalk forums. Only a few days after launch, I
8 got my first signups, and then my first message. I was so
9 excited I didn't know what to do with myself. Little by
10 little, people signed up, and vendors signed up, and then it
11 happened. My first order. I'll never forget it. The next
12 couple of months, I sold about ten pounds of shrooms through my
13 site."

14 How do you know that's Ross Ulbricht? First of all,
15 he says he launched his site on Freedom Hosting and there's an
16 email in his Gmail account where he's contacting somebody about
17 setting up a Tor hidden service. The person recommends Freedom
18 Hosting.

19 Second, the journal entry says he announced the site
20 on the bitcoin talk forums. And you saw evidence recovered
21 from the bitcointalk.org website showing that that was one of
22 the places where Silk Road was first publicized on the
23 Internet. Remember, that's how IRS Agent Gary Alford caught up
24 to the defendant's trail. He found a message on
25 bitcointalk.org that quoted a message by another user named

F23gulb3

Summation - Mr. Turner

1 Altoid from January 2011 publicizing Silk Road. Altoid's
2 original message had been deleted from the forum, but the
3 quotation still remained. The defendant didn't realize that.
4 There's a chat on his computer where the defendant is telling a
5 Silk Road employee about how he first publicized the site. He
6 says he made one thread on the forums at bitcointalk.org but it
7 got taken down pretty quickly. The defendant must have thought
8 that once his original Altoid post had been deleted from the
9 site, there was no longer any link between that Altoid username
10 and Silk Road, because months after that Altoid post, he would
11 use the same Altoid username to post a message on bitcointalk,
12 unrelated to Silk Road, where he mentioned his true email
13 address, rossulbricht@gmail.com. That's how Special Agent
14 Alford was able to tie the Altoid username of the defendant,
15 and that's another way that you know that the defendant was the
16 author of that 2011 journal entry where he's talking about
17 announcing the site on the bitcointalk forums.

18 Now, he also talks about, in that journal entry, the
19 shrooms that he grew. He said those were the first things he
20 sold on Silk Road. And you know that another place the
21 defendant first advertised Silk Road was on a website called
22 the Shroomery and you see that in his Gmail account, too. And
23 you see there was another forum that he advertised on,
24 drugsforum.com where he's actually sort of punished by the
25 forum for spamming. So, these emails show, again, the

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Summation - Mr. Turner

1 defendant knew what he was doing. He wasn't starting up some
2 content-neutral economic experiment. He was creating a
3 drug-trafficking website. That's why he's spamming about it in
4 discussion forums relating to illegal drugs.

5 Going back to that 2011 journal entry, there is
6 nothing in there, nothing to indicate that Ross Ulbricht ever
7 walked away from Silk Road a few months after starting it. To
8 the contrary, the journal entry goes on and on about how the
9 site grew bigger and bigger over the course of 2011. He says
10 "For the first several months, I handled all of the
11 transactions by hand." And he rewrites the site. "Rewriting
12 the site was the most stressful couple of months I've ever
13 experienced." Then he perseveres. "When I finally got the
14 site ready, there were several new features including a tumbler
15 and an automated payment processing."

16 He keeps going: "Two U.S. Senators came out against
17 the site..they made a big deal out of it and called for a
18 shutdown of the site. I started getting into a bad state of
19 mind. I was mentally taxed." Then he ends with "Eventually we
20 got through it and entered a more calm and harmonious phase."
21 Later: "Some major advances were price pegging, vendor
22 ranking, a more sophisticated feedback system, buyer stats,
23 transaction logging, building up the admin toolset. More
24 importantly, the market began its path to maturity. After
25 making about 100k and up to a good 20- to 25k monthly, I

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Summation - Mr. Turner

1 decided it was time to bring in some hired guns to help me take
2 the site to the next level. For the next three months, SYG,"
3 one of those hired guns, "had my full attention."

4 So the journal entry goes through the year. He's
5 continuing to run Silk Road. It's getting big enough to
6 attract the attention of government officials. It doesn't
7 dissuade him. He sticks with it. He grows it bigger. And
8 there's a separate file on the defendant's computer with a
9 journal entry for 2012 which makes it clear again he's still
10 running the site. "Well, I'm choosing to write a journal for
11 2012," he says. "I imagine that some day I may have a story
12 written about my life, and it would be good to have a detailed
13 account of it." So it's clear at this point the site has only
14 gotten bigger and the defendant's ego has gotten bigger with
15 it.

16 It goes on to talk about his life in Australia where
17 Ross Ulbricht was living at the time. And he talks about
18 personal things like his friends inviting him to hang out but
19 he can't, he says, he's too busy, it's just too much time away
20 from Silk Road.

21 How else do you know that the defendant didn't just
22 run Silk Road for a few months? Because the evidence from
23 these journal entries dovetails with what you heard from a
24 personal friend of the defendant, Richard Bates. Mr. Bates was
25 only one of two people in real life who he confided his secret

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Summation - Mr. Turner

1 to.

2 You saw Mr. Bates testify on the stand. He was not
3 happy to tell you about that, ladies and gentlemen. He did not
4 want to be here. You could tell it was painful for him to
5 testify about his former friend. But Mr. Bates' testimony
6 makes clear that the defendant talked with him about running
7 Silk Road for many months in 2011 until the defendant moved to
8 Australia and cut his ties to Mr. Bates.

9 Mr. Bates told you the defendant started acting
10 mysteriously in late 2010 when the defendant kept contacting
11 him with programming questions. He wouldn't say what it was
12 for. Instead the defendant would only say top secret. And
13 again, we saw the journal entries where in 2010 he says "On the
14 website side I was struggling to figure out on my own how to
15 set it up."

16 Eventually at the end of February 2011, Mr. Bates told
17 the defendant he wasn't going to help him until you tell me
18 what your secret is, right? I'm officially forbidding you from
19 mentioning your secret project to me again unless you're going
20 to reveal it. So the defendant gave it and he let him in on
21 his carefully-guarded secret. The defendant showed Mr. Bates
22 the Silk Road website. He was full of pride about it. And
23 Mr. Bates told you he continued to talk with the defendant
24 about Silk Road regularly in the months that followed.

25 Mr. Bates told you he remembered conversations where

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Summation - Mr. Turner

1 the defendant mentioned he was making commissions from the
2 site. He told you he remembered a conversation where the
3 defendant said the site was getting too big for himself and he
4 needed to hire admins, and he actually asked Mr. Bates if he
5 wanted to be an admin.

6 All of this lines up with what you saw in the 2011
7 journal entry. Do you remember how Mr. Bates told you he
8 remembered Senator Chuck Schumer issuing a statement about Silk
9 Road calling it to be shut down by law enforcement. That's
10 also referenced in the 2011 journal entry. And Mr. Bates told
11 you after that happened, he tried to dissuade the defendant
12 from continuing to work on Silk Road, work on something legal,
13 but the defendant didn't drop it; he continued working on Silk
14 Road and talking with Mr. Bates about it.

15 How do you know he's telling you the truth? Because
16 you see references to Silk Road in the communications between
17 Mr. Bates and the defendant all the way through October 2011.
18 Mr. Bates told you that after the defendant told him about Silk
19 Road whenever they'd mention it in chat, they wouldn't say
20 "Silk Road," they talked about "the site," right.

21 "My site had a 40-minute spot on a national radio
22 program."

23 "I might tell people about the site if that's okay."
24 This is from March 2011.

25 April 2011: "All my friends think your site is really

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Summation - Mr. Turner

1 cool."

2 October 2011: "You don't have a job besides the site
3 right now, do you?"

4 "Nope."

5 Now, in November 2011, things changed between the
6 defendant and Mr. Bates. The defendant got nervous about how
7 much Mr. Bates knew. You remember that Mr. Bates testified
8 that he invited the defendant to an 11-11-11 party,
9 November 11th party and the defendant shows up early to talk to
10 Mr. Bates in private. He was panicking. He asked Mr. Bates
11 have you told anybody, have you told anybody about my
12 involvement with Silk Road. Mr. Bates says no. The defendant
13 explained that the only other person who knew his secret, his
14 ex-girlfriend, had told someone else, and that person had
15 posted a message on the defendant's Facebook page saying I'm
16 sure the authorities would love to know about your
17 drug-trafficking site.

18 The defendant told Mr. Bates he had deleted that
19 message and unfriended the poster. And Mr. Bates warned the
20 defendant, you've got to shut this thing down. And the
21 defendant responds I can't shut it down, I've already sold it.
22 That was a lie. It was a lie that the defendant told so he
23 could cut his ties to Mr. Bates and eliminate him as a
24 potential source of liability. Chats recovered from the
25 defendant's computer make that crystal clear. You remember

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Summation - Mr. Turner

1 those chats. They were read into evidence right after
2 Mr. Bates testified.

3 Those charts were with VJ, Variety Jones, who went
4 later by the name Cimon, and you can tell from the chats he's
5 kind of a mentor to the defendant. The defendant talks about
6 him in that 2011 journal entry. He says around the end of 2011
7 that Variety Jones shows up. This was the biggest and
8 strongest willed character he had met through the site so far.
9 He quickly proved he had value in pointing out a major security
10 hole I was unaware of. And he says he helped me interact with
11 the community about Silk Road, delivering proclamations,
12 handling troublesome characters, running a sale, changing my
13 name. He's been a real mentor.

14 The idea of "changing my name," changing the
15 defendant's username on Silk Road came from a chat the
16 defendant had with VJ about Bates. It's dated December 9,
17 2011, about a month after that party where the defendant told
18 Mr. Bates he had sold the site.

19 And VJ asked the defendant: "IRL," in real life, "is
20 there anyone with a clue at all?"

21 "myself: Unfortunately, yes. There are two, but they
22 think I sold the site and got out."

23 "Good for that - when do they think you've sold."

24 "About a month ago," right when he told that lie to
25 Mr. Bates.

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Summation - Mr. Turner

1 Then about a month later, VJ comes up with the idea of
2 changing the defendant's name on Silk Road to the Dread Pirate
3 Roberts. And as you heard during the trial, Dread Pirate
4 Roberts is a movie character and part of the legend is that
5 there's not just one Dread Pirate Roberts. When one person
6 gets tired of being Dread Pirate Roberts, he hands off the
7 title to someone else to be the successor. So VJ suggests this
8 to the defendant to clear his trail.

9 "Have you ever seen The Princess Bride? Do you know
10 the history of the Dread Pirate Roberts? You need to change
11 your name from admin to Dread Pirate Roberts, clear your old
12 trail - to be honest, as tight as you play things, you are the
13 weak link from those two previous contacts," those two previous
14 contacts being Mr. Bates and his ex-girlfriend. And that's
15 what happened. So on the site about a month later -- well,
16 about a month later, the defendant changes his name on Silk
17 Road: My new name is Dread Pirate Roberts.

18 That's whole point of the Dread Pirate Roberts
19 nickname, ladies and gentleman. It's a con. It's a bogus
20 cover story designed to fool people into believing there was
21 some sort of rotating command over the site. The defendant and
22 VJ explicitly talked that way about it in other chats. For
23 example, this one from October 2012: The DPR thing is great,
24 and we need to make at least one public set of statements that
25 indicates that the old admin is long gone, and dpr is now in

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Summation - Mr. Turner

1 charge.

2 Myself: yea, I was thinking the same thing. Have a
3 back story for him.

4 Cimon: I suggested DPR when I first realized I could
5 track you. I don't give a shit who you are, and it's to my and
6 everyone's advantage no one else can. DPR by it's very nature
7 indicates a rotating command. We'll play that."

8 Which brings us to the TorChat logs on the defendant's
9 computer, the chat logs you saw so many of between DPR and the
10 Silk Road employees and advisors like VJ. And like the journal
11 entries, they are incredibly damning. There are reams of them.
12 Some of these chat logs are hundreds of pages long. The one
13 with VJ is over 1,000 pages long. And there is no real dispute
14 that the person reflected as "myself" in those chats is DPR,
15 the operator of the Silk Road website.

16 Here is an example. This one is with Squid Shepard,
17 who was a member of the Silk Road support staff labeled here as
18 sSh, and he starts the chat by confirming that he's talking to
19 DPR.

20 "May I ask to whom I'm speaking?"

21 "Myself: DPR, and you are?"

22 And that's consistent with all of the other chat logs
23 you've seen. In each one "myself" is either specifically
24 referred to as DPR or Dread Pirate Roberts or Silk Road admin
25 or the context otherwise makes clear that "myself" is the

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Summation - Mr. Turner

1 operator of the Silk Road website.

2 How do you know that the user reflected as "myself"
3 a/k/a DPR is the defendant, Ross Ulbricht? Well, first of all,
4 Mr. Bates communicated with the defendant through TorChat later
5 in 2011. And he told you he recognized who was who. "r,"
6 Richard, Richard Bates; "myself" was the defendant. This is
7 the same TorChat program that generated all the other TorChats
8 you see on the computer. So it's true for all the other chats
9 that involve Silk Road employees and coconspirators. The user
10 "myself" is the defendant.

11 But of course, you don't have to rely on Mr. Bates'
12 testimony to infer that because repeatedly and these chats
13 "myself" reveals little details about what's going on in his
14 life that match up perfectly with the details of Ulbricht's
15 life. The details don't pop up regularly, but when they do,
16 it's often a perfect match between what they talked about in
17 the chat and what we see in the email account or Facebook
18 account or other evidence of what's going on in the defendant's
19 life.

20 For example, whenever "myself" talks about traveling
21 or being away in his chats, it matches up with the defendant's
22 travel plans. An example is this chat with h7, who was one of
23 the programmers who worked for Silk Road, and in these chats,
24 "myself" is clearly the boss and h7 -- he gives programming
25 assignments to h7. He tells h7 when he's going to be paid. In

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Summation - Mr. Turner

1 other words "myself" is DPR.

2 Now, at one point in these chats between "myself" and
3 h7, "myself" tells him I'm going to be unavailable from
4 4:00 a.m. UTC Friday to 4:00 a.m. UTC Sunday. At that point,
5 the defendant is living in Australia, which is 12 hours ahead,
6 so that makes him unavailable from Friday to Sunday afternoon,
7 and that's what you see in the defendant's email account. He's
8 going house-boating starting Friday 7:00 p.m. staying two
9 nights. So it's the defendant who is speaking as "myself" in a
10 chat with h7. He is the boss of h7.

11 Here is another example, a chat with VJ, January 26,
12 2012. He tells VJ he's in a relaxing environment, friendly
13 folks everywhere. VJ says "Sounds very Thai."

14 DPR says "Haha, I didn't expect you to start
15 guessing."

16 Well, where is the defendant at that time? His
17 Facebook account shows that he is in Thailand. A few days
18 later there's more chats with VJ where "myself" says "Took the
19 day off. Ran around beaches and jungles with some girls, very
20 little on my mind."

21 "VJ: Girls and jungles, life don't get any better for
22 'ol Dread Pirate Roberts."

23 Where is the defendant that day? Beaches and jungles,
24 ladies and gentlemen. This is his Facebook album "Thailand,
25 February 2012." There are many more examples like this.

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Summation - Mr. Turner

1 The chat with VJ -- now he's using the name Cimon --
2 "myself" says "I changed timezones today." There's an
3 itinerary in his Gmail account where he's flying from San
4 Francisco to Austin.

5 November 2012, DPR says "I'm done traveling, at least
6 for a while anyway." What does the defendant's email account
7 show? He was traveling to Dominica that day. He just got done
8 with three flights.

9 February 2013, DPR tells Cimon he's going to be away
10 over the weekend. What does the defendant's Facebook account
11 show? He went camping that weekend.

12 And it's not just travel. It gets a lot more specific
13 than that. Another example relates to a series of chats that
14 DPR has with VJ from March to May 2012 where DPR is talking
15 about how he is applying for foreign citizenship so he can
16 eventually renounce his U.S. citizenship. And they
17 specifically talk about what it takes to buy citizenship in
18 foreign countries, and DPR mentions he is specifically looking
19 at applying for citizenship in the Caribbean island of
20 Dominica.

21 Elsewhere on the defendant's computer there's a
22 brochure about Dominica's Economic Citizenship Program where
23 you can buy citizenship with a cash investment in the form of a
24 donation to the government, to the Dominican government. And
25 there's a filled-out application form signed by -- or with the

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Summation - Mr. Turner

1 name "Ross Ulbricht," and the metadata is May 2012. How do you
2 know that it's the defendant who is talking with VJ about these
3 things? Well, in the defendant's Gmail account there are
4 several emails to friends where he says May 1, 2012, lines up
5 with the chat, "I'm applying for a second citizenship to an
6 island in the Caribbean called Dominica." And then he says in
7 the second paragraph, "You may wonder why I'm doing this crazy
8 thing. There are opportunities available, tax opportunities."
9 And he says at the end "It's a bit of a political hedge if
10 things ever get dicey here in the U.S." What does that mean,
11 ladies and gentlemen? Why would things ever get dicey for the
12 defendant here in the U.S.? Because he was still running Silk
13 Road at the time, and that's why he's talking with VJ about
14 getting non-U.S. citizenship.

15 This isn't the only time you see the defendant
16 thinking about things getting dicey for him. You saw on
17 July 2013, he orders nine fake IDs from Silk Road, nine fake
18 IDs with different guises from different states, from different
19 countries. Is this normal, ladies and gentlemen? You saw the
20 messages on the Silk Road where those IDs were ordered. He
21 doesn't use his own DPR account to write those messages because
22 you have to give an address for the order. He uses a sham
23 buyer account, shefoundme account, Government Exhibit 935.

24 And what does he ask the vendor of those IDs in
25 placing the order? He says things like will these IDs get me

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Summation - Mr. Turner

1 through airport security; will these IDs work if I get pulled
2 over by a cop? He's not going bar-hopping with these IDs,
3 ladies and gentlemen. He's worried about the possibility of a
4 life on the lam.

5 So back to the Tor chats: There's another chat on the
6 defendant's computer with, again, VJ. And you can see in this
7 chat the defendant actually crosses over chatting with VJ to
8 his Gmail account and then back to the chat with VJ. Here
9 they're talking about improving the bitcoin tumbler on Silk
10 Road, part of the bitcoin payment system. And VJ suggests find
11 me some statistician they can consult somehow about the math
12 involved. And DPR says he knows a statistician, he knows her
13 and her husband well. And VJ tells DPR to ask her who are the
14 top five statisticians in the world.

15 Five days later, we see the defendant emailing
16 someone, apparently the husband, with this very question. "Who
17 are the top five statisticians in the world besides Heather?"
18 An exchange of emails ensues. "Wow. Good question. In terms
19 of lifetime achievement or current hotness?"

20 And then we see after that DPR passes the exact same
21 email exchange to VJ. It says "Here is my convo with my stats
22 friend. Who are the top five statisticians in the world? Wow.
23 Good question."

24 So it's undeniable that these chat logs from the
25 defendant's computer, hundreds of pages of chats, in which DPR

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Summation - Mr. Turner

1 is assigning tasks to people, consulting about matters with
2 VJ/Cimon, the person behind those chats reflected as "myself"
3 is the defendant, Ross Ulbricht.

4 The evidence on the laptop does not stop by any means
5 with the journal entries in the chat logs. There's still more.
6 There's a file labeled "sr accounting," Silk Road accounting.
7 It's a bookkeeping record of Silk Road. How do you know that
8 it was created by the defendant? Well, for one thing, it
9 starts all the way back in July 2010, July 17, 2010 start.

10 What sort of expenses does it list to start off? This
11 is the same time when, according to the defendant's journal,
12 he's renting a cabin in Bastrop to grow magic mushrooms, and
13 that's what you see here: Lab clothes, petri dishes, HEPA
14 filter. And in the defendant's Gmail account, you find
15 matching receipts for the same items: HEPA filter, carryover
16 from 2009. 2009, 88.94. \$89. The same thing later:
17 Humidifier, August 15, 2010, \$33. There's an August 16 receipt
18 from Amazon, \$33.

19 And the SR accounting document keeps going for months.
20 It doesn't stop after a few months. It keeps going all the way
21 through July 2013 like the journal entries keep going well
22 after the site is launched.

23 And notably, it contains a number of entries for
24 commissions and that matches up with data found in the Silk
25 Road server. The commissions start on the spreadsheet in

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Summation - Mr. Turner

1 May of 2011. As Brian shaw testified, the transaction data
2 from the server starts up in May 2011. And this also matches
3 up with the 2011 journal entry in the defendant's computer. He
4 says there after making about 100k and up to a good 25k
5 monthly, I decided it was time to bring in some hired guns and
6 that's what you see. He starts making 25k or so monthly.
7 There's no break in the document or an indication that someone
8 different starts to maintain it. In fact, there's an entry in
9 that sr accounting spreadsheet for the defendant's laptop,
10 Okay. This is, like, a year later, April 28, 2012, \$1,150 for
11 a laptop. What do you see in the defendant's Gmail account? A
12 matching receipt, April 27, 2012, just a day apart, \$1,149.99,
13 one cent off, and it's a Samsung silver laptop, Model 700Z, the
14 same laptop that was seized from the defendant at the time of
15 his arrest. He considered it a Silk Road business expense at
16 the time, and it's clear why: Because he planned to use it to
17 run Silk Road, just as he was caught doing on the day he was
18 arrested.

19 There's another spreadsheet on the defendant's
20 computer. This one is labeled "networth calculator," and the
21 entries on it go all the way from August 6 through June 2012
22 and it lists a bunch of different assets, including one that is
23 astronomically bigger than the rest labeled "SR Inc.,
24 \$104 million." Now, how do you know it's the defendant who
25 gave SR Inc. that valuation? Look at the other items in the

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Summation - Mr. Turner

1 spreadsheet. There's the Samsung 700Z, there's the laptop.
2 There's also entry for USAA and PayPal accounts. And if you
3 look at the USAA records for June 2012 where the last entry was
4 made in the spreadsheet, you see matching balances: 1347 in
5 the USAA account, \$1,400; 46.89 in the PayPal account, \$50.
6 So, this shows you in June 2012, the defendant counts SR Inc.
7 among his assets. Why? Because he is, of course, still
8 running it.

9 Another document in the defendant's computer worth
10 noticing, it's labeled log.txt, and on its face, it's clearly a
11 log of actions taken in connection with operating Silk Road.
12 So there are entries in there like tried moving forum to
13 multi.onion config, finished rewriting Silk Road.PHP
14 controller, rewrote orders page, paid attacker -- it was a
15 hacker -- 50,000 weekly ransom. And these entries go from
16 March 20, 2013, all the way through September 30, 2013, the day
17 before the defendant's arrest.

18 How do you know that the defendant was the person who
19 maintained this log? Because, again, every now and then there
20 are references to personal details that match up with
21 information known about the defendant. So there's an entry for
22 May 3, 2013, "I'm sick." What do you see in the defendant's
23 Gmail account? Same date, "How are you feeling today?"

24 "A lot better. I took NyQuil last night. Got a good
25 night's sleep."

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Summation - Mr. Turner

1 September 11, four months later to 18th says he got
2 covered in poison oak. What does the defendant's email account
3 show? "I have poison oak from head to toe."

4 It also says went on a first date with Amelia from
5 OKC. What do you see in the Gmail account: Okaycupid messages
6 dating services, involving Amalia, "Be there in a few. Nice
7 meeting you."

8 But perhaps the most revealing of the defendant's
9 emails is a May 2, 2013 email. If you look at the log file
10 around this time, you'll see a number of entries relating to
11 smed, smedley, one of the programmers that worked for Silk
12 Road. And these log entries reflect that who ever is keeping
13 the log, DPR, was working closely with smed in early May to
14 deal with attacks on Silk Road: Helping smed to fight off
15 attacker, working with smed to put up more defenses.

16 Well, smed shows up in the defendant's Gmail account
17 at this time. And what appears to be a keyboard accident, this
18 email is sent to -- this is May 2, 2013 -- sent to somebody
19 named Curtis and has a screenshot attachment, no body in the
20 message, just a screenshot. And the screenshot appears to have
21 been taken just a minute earlier before the email was sent if
22 you adjust for Pacific timezones. And there is the photo that
23 was attached, the screenshot.

24 Now, presumably what the defendant was trying to do
25 was just send a screenshot of his desktop with this

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Summation - Mr. Turner

1 bizarre-looking lizard on it. But he probably didn't realize
2 that what happened was he had two monitors open and when he hit
3 "print screen," both screens are included in the screenshot
4 because on the other screen at the time was a chat with smed,
5 "smed: Morning, hey, good morning," the same programmer that
6 according to the log DPR was busy working with at the time.
7 And if you look even further at the chat window, you'll see
8 there's another tab indicating the defendant had a chat going
9 with the username MG. MG is also mentioned in the log file,
10 that Pidgin chat working with inigo working with MG. And
11 what's more is that both MG and smed show up on the defendant's
12 computer the day of the arrest on his chat buddy list along
13 with cirrus, libertas and all the other Silk Road employees,
14 and the part of the defendant's chat buddy list where his own
15 username was listed as dread.

16 So in short, there is overwhelming evidence that all
17 of the files on the defendant's computer relating to Silk
18 Road -- the journal entries, spreadsheets, TorChats, the log --
19 all of them were authored and created by the defendant in the
20 course of operating Silk Road.

21 But there is even more, there's even more on the
22 computer that links the defendant to Silk Road. There's
23 evidence that links him directly to the Silk Road server, the
24 server that hosted the website. Remember that the name of the
25 defendant's computer, the name of his user account on that

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Summation - Mr. Turner

1 computer was frosty. And we see from his Gmail account that
2 this is a nickname of the defendant's. The email is referring
3 to him as Rossty Frosty. And you remember that when the
4 defendant was arrested, frosty was the name of his user account
5 on his computer.

6 And you're familiar with this: When you have a
7 computer at home, you log in, you can set up an account where
8 you can name it anything you want. And the name of the
9 defendant's computer itself was frosty. So you know, you have
10 a Windows computer. It might be called "My Computer," but you
11 can rename it anything you want. The defendant's user account
12 was frosty. His computer name is frosty. And Special Agent
13 Chris Beeson told you that's how that's reflected in sort of
14 the computer terminal on the defendant's screen, frosty@frosty.

15 Well, then, let's look at the Silk Road server at the
16 authorized keys file that you heard about. As Mr. Shaw
17 explained, this authorized keys folder defines the computer
18 users -- the computers that can log into the Silk Road server
19 automatically without having to enter a password. So it's a
20 way for a website administrator to log on quickly. The server
21 just recognizes the person's computer so he can automatically
22 log in. And you can see from the top entry in the file that
23 one of the computers that had the special permission was
24 frosty@frosty, the defendant's computer.

25 How long had the defendant's computer had this access

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Summation - Mr. Turner

1 to Silk Road, the Silk Road Marketplace server? Since the very
2 time the server had been set up. The last modified date of
3 this file is March 26, 2013. That's the last time it would
4 have been changed. And if you look back at the log file on the
5 defendant's computer, you see that that's exactly when this
6 server was being set up by the defendant. On 3/27, there's an
7 entry, "set up servers." So we have the Silk Road server was
8 set up right around this time, including the authorized keys
9 folder, and from the very beginning, the defendant's computer
10 had automatic access to it.

11 There's another revealing connection, though, between
12 the defendant's computer and the servers used to run Silk Road,
13 and that's the bitcoin wallet on the defendant's laptop. The
14 defendant had simply an enormous trove of bitcoins on his
15 laptop, 144,000 at the time he was arrested, worth \$18 million
16 at the time. Those were Silk Road bitcoins.

17 How do you know that? Besides the obvious, besides
18 the obvious fact that no one is going to store \$18 million
19 worth of bitcoins on their laptop as opposed to, you know, a
20 bank if you're dealing with proceeds from legitimate activity
21 but you know these are Silk Road bitcoins from the mastermind
22 page for one thing that was on the defendant's laptop at the
23 time he was arrested.

24 There's an entry there for cold BTC, 144,000 bitcoins,
25 the same amount of bitcoins found on the defendant's laptop

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Summation - Mr. Turner

1 wallet. Remember Agent Yum explained that cold storage refers
2 to a bitcoin wallet that's offline, not constantly being
3 accessed on the Internet. There are wallets on the Silk Road
4 servers that had a lot smaller amounts of bitcoins on it, and
5 they're used to process the payments on a daily basis. But if
6 the site gets hacked, those bitcoins are vulnerable. So as a
7 result, you want to keep the excess funds offline.

8 Just think of it like a business owner, okay? You
9 have a cash register at a store and you have a safe at home.
10 You don't want to keep too much cash in the store because if it
11 gets robbed, you're going to lose it. So you take your excess
12 cash and you keep it in a safe at home protected. You can
13 always move it back if you need it, but if you have access,
14 you're going to keep it at home, and that's exactly what the
15 defendant did.

16 Mr. Yum, former Special Agent Ilhwan Yum, showed you
17 how there was a long history of bitcoin transfers from the
18 wallets on the Silk Road server to the wallet found on the
19 defendant's laptop from September 2012 to August 2013 totaling
20 over 13 million based on the transfers -- the value of the
21 transfers at the time they were made, and that's because the
22 laptop was being used for cold storage. It's the defendant
23 taking money out of the register for the night and putting it
24 in a safe at home.

25 And the evidence is also clear that the wallet on the

F23gulb3

Summation - Mr. Turner

1 defendant's laptop had been on the laptop for months. It
2 didn't suddenly appear on the day of his arrest. Look at the
3 metadata for the wallet file. Date created: 4/7/2013.
4 Computer scientist Tom Kiernan told you the "date created" date
5 means that's the date the file initially hits the computer,
6 either it's created on that computer at that point or it's
7 transferred in from somewhere else. That April 7 date matches
8 up exactly again with an entry on the log file on the
9 defendant's laptop: 4/7/2013, moved storage wallet to local
10 machine. In other words, the defendant must have kept the
11 storage wallet elsewhere before on a server he controlled. On
12 April 7, he decides to move it to his local machine, his
13 laptop, which is exactly where it was found on the date of his
14 arrest. Again, this is just more evidence that the defendant
15 controlled the Silk Road website, including the massive
16 proceeds from the website.

17 There's one more truly damning connection between the
18 defendant's laptop and the Silk Road server, and that's the
19 connection with the murder-for-hire messages found in the Dread
20 Pirate Roberts' account on the Silk Road server. You remember
21 what those messages were about. A Silk Road vendor,
22 FriendlyChemist, was trying to blackmail the defendant
23 threatening to leak the names of thousands of Silk Road
24 customers, as well as a handful of vendors. So Dread Pirate
25 Roberts tries to identify this person. He's told his name is

F23gulb3

Summation - Mr. Turner

1 Blake Krokoff and then he gets in touch with the username
2 redandwhite who he is told is involved with Hell's Angels.

3 And Dread Pirate Roberts tells redandwhite
4 FriendlyChemist is causing me problems, that he wants to put a
5 bounty on his head. And he elaborates: "He's threatening to
6 expose the identities of thousands of my clients. This kind of
7 behavior is unforgivable to me. Especially here on Silk Road,
8 anonymity is sacrosanct."

9 And Dread Pirate Roberts contracts with redandwhite to
10 put a hit out on FriendlyChemist for the price of \$150,000 for
11 1,670 bitcoins. Redandwhite answers back a day later, "Your
12 problem has been taken care of." Dread Pirate Roberts says
13 "Excellent work. Send me a picture," which redandwhite
14 apparently does.

15 Well, you see that the log file on the defendant's
16 computer contains entries matching up with the private messages
17 that are recovered from the Silk Road server. So the private
18 messages with redandwhite, they're from the Silk Road server.
19 Here you have the log entries that match up with that
20 precisely:

21 3/28/2013: "Being blackmailed with user info.
22 Talking with large distributor (Hell's Angels.)"

23 3/29/2013: "Commissioned hit on blackmailer with
24 angels."

25 4/01/13: "Got word that blackmailer was excuted.

F23gulb3

Summation - Mr. Turner

1 Created file upload script. Started to fix problem with bond
2 refunds over 3 months old." He is doing this as he's fixing
3 server bugs, ladies and gentlemen.

4 Then you saw that the messages between Dread Pirate
5 Roberts and redandwhite didn't stop there. Redandwhite tells
6 DPR that before FriendlyChemist was killed, the hitmen
7 extracted information from him that he was working with another
8 person, Andrew Lawsry. And Dread Pirate Roberts says "I would
9 like to go after Andrew, too." Redandwhite says, "Well, he's
10 living with three other people. You can put a hit out on just
11 Andrew. But redandwhite says "I prefer to do all four because
12 it would be better than having to get Andrew somewhere else and
13 having no chance of recovering any potential product/money he
14 may have." And astoundingly Dread Pirate Roberts says "Hmm,
15 okay, I'll defer to your better judgment and hope we can
16 recover some assets from you." And he agrees to pay
17 redandwhite \$500,000 this time for four more murders-for-hire,
18 3,000 bitcoin. And a week later redandwhite reports back "The
19 problem was dealt with." So again, you see that in the log
20 file, 4/6/2013: "Gave angels go ahead to find tony76."

21 4/8/2013: "Sent payment to angels for hit on tony76
22 and his three associates."

23 Again, how do you know that the Dread Pirate Roberts
24 behind these chilling chats was Ross Ulbricht? Because it's
25 the same log file that has the entry "I'm sick" in May. It

F23gulb3

Summation - Mr. Turner

1 matches up with the defendant's emails that has the poison oak,
2 the date with Amalia. It's the same person.

3 And there's also a separate file in the defendant's
4 computer labeled ops.txt like black ops, operations, and the
5 file contains information that appears verbatim in the Dread
6 Pirate Roberts messages about the murders-for-hire. Blake
7 Krokoff lives in an apartment near White Rock Beach, tony76,
8 Andrew Lawsry. This is the same information that's discussed
9 in the communications between redandwhite and DPR.

10 And there's a chat with Cimon where "myself" talks
11 about it, again, the same "myself" that we've already matched
12 up with DPR in numerous ways. The same date range, April 3,
13 2013:

14 "Myself: I get blackmailed by a guy saying he's in
15 deep shit with hell's angels. He says he was fronted \$700k in
16 LSD from them. I said, have the hells angels contact me so i
17 can work something out.

18 Cimon: ha!

19 Myself: very foolishly he did. They said they caught
20 up with lucy, got the product back and killed him.

21 Cimon: Well, I bet ya he won't use the HA," the
22 Hell's Angels, "as a reference again any time soon."

23 But beyond that, the most devastating link between the
24 defendant and DPR's murder-for-hire message is the payment
25 trail. The payment trail shows that March 31, 2013 redandwhite

F23gulb3

Summation - Mr. Turner

1 is talking with FriendlyChemist about sealing the deal and he's
2 given a bitcoin address to send the money to redandwhite. So
3 he tells redandwhite I paid you, here is the transaction info
4 for 1,670 btc, the bitcoin address that redandwhite gives him,
5 and he even gives him the transaction number so you can look it
6 up on the block chain and make sure the payment is done. And
7 if you look it up on the block chain, as there was testimony,
8 those payments were made. Same thing for the April payment of
9 \$500,000 in bitcoins.

10 Here is the text where he says after redandwhite said
11 I prefer to kill all four, DPR: Hmm, okay, I'll defer to your
12 better judgment. 500,000 has been sent to bitcoin address,
13 transaction number. You look it up on the block chain. There
14 is the payment. The payment was made. How do we know that the
15 payments were made by the defendant? Because they were sent
16 directly from the defendant's bitcoin wallet. That's what
17 Special Agent Yum testified to. Those payments came from
18 addresses that were found on the defendant's laptop, the same
19 wallet we were just discussing earlier, the wallet that was
20 moved to the defendant's local machine right around the same
21 time; in fact, it was moved to the defendant's laptop on
22 April 7 and then on April 8th, he's making the payments. So it
23 was the defendant who made these payments. It was the
24 defendant who was trying to murder five people.

25 Now, to be clear, the defendant has not been charged

F23gulb3

Summation - Mr. Turner

1 for these attempted murders here. You're not required to make
2 any findings about them. And the government does not contend
3 that those murders actually occurred. The defendant may have
4 fallen for a big con job, which would only go to show that the
5 Dread Pirate Roberts is not a criminal super-genius that the
6 defendant wants to make him out to be, but what the
7 murder-for-hire exchanges do show is how far the defendant was
8 willing to go to protect his criminal enterprise if users got
9 the idea that their anonymity wasn't safe on Silk Road, that
10 their identities could be leaked en masse, they weren't going
11 to use the site, and the defendant was going to lose business,
12 and he was willing to use violence to stop that from happening.

13 For him, it was trivial. The click of a mouse, send
14 \$500,000, half a million dollars' worth of bitcoins, wait for
15 the picture of a dead body. Thank goodness it does not look
16 like any murders occurred. Thank goodness that this man's
17 power trip was stopped before he managed to connect with a true
18 hitman through his criminal website.

19 Let's talk about how he was finally stopped. Let's
20 talk about his arrest, which gives you even more evidence,
21 perhaps the clearest evidence of all that Ross Ulbricht and
22 Dread Pirate Roberts were one in the same because he was caught
23 red-handed, okay.

24 You heard from Agent Der-Yeghiayan, the first witness
25 that took the stand and the second witness, computer scientist

F23gulb3

Summation - Mr. Turner

1 Tom Kiernan about how the arrest unfolded. The afternoon began
2 with the defendant at home. He was under surveillance by FBI
3 agents. Meanwhile, Agent Der-Yeghiayan was sitting on a bench
4 elsewhere in the neighborhood with Mr. Kiernan keeping DPR
5 under surveillance online by monitoring him on the Silk Road
6 staff chat.

7 And while Mr. Ulbricht was at home, DPR was online and
8 at 2:47 p.m., DPR goes offline. And a few minutes later, the
9 defendant is seen leaving his home heading towards the area
10 where Agent Der-Yeghiayan and Mr. Kiernan are stationed. Just
11 to be clear, you remember it says 9:47 here but Agent
12 Der-Yeghiayan testified it was UTC. It was seven hours ahead
13 of the local time.

14 So what happens? Well, about 15 minutes later, Agent
15 Der-Yeghiayan and Mr. Kiernan see the defendant approach. He
16 crosses the street, pops his head into an Internet cafe, sees
17 it's crowded and then he heads next door to the public library.
18 Mr. Kiernan follows him inside with a number of other FBI
19 agents. And they assemble at the top landing of the stairwell
20 waiting to get a signal for the arrest.

21 Meanwhile, Agent Der-Yeghiayan remains outside waiting
22 for DPR to pop up online, and that's what happens. A few
23 minutes later, after the defendant enters the library at
24 3:08 p.m. DPR shows up on staff chat. At this point, the
25 defendant's had enough time to open his computer in the library

F23gulb3

Summation - Mr. Turner

1 and log on. And Agent Der-Yeghiayan starts chatting with him
2 at that point using his undercover account as a Silk Road staff
3 member, cirrus. He says hi. And DPR responds, and he knows
4 who cirrus is. He's been chatting with him for months. And
5 that's why when Agent Der-Yeghiayan tells DPR "Can you check
6 out one of the flagged messages for me," DPR knows exactly what
7 he's talking about. DPR had trained cirrus, had trained Agent
8 Der-Yeghiayan, on the use of that flagged messages screen a
9 month and-a-half earlier in August, we went over that during
10 Agent Der-Yeghiayan's testimony. DPR doesn't say hmm, you'll
11 have to remind me what the flagged message screen is all about
12 cirrus, I don't remember that. No. He says sure, let me log
13 in. In fact, a couple lines later, DPR says you did bitcoin
14 exchange before you started working for me, right? Agent
15 Der-Yeghiayan told you that was not something he had told DPR
16 before; the person he took over the cirrus account from back in
17 July had operated a bitcoin exchange. She had told DPR that
18 months before the arrest, and the defendant remembered that
19 because he was DPR back then, just as he was on the day of his
20 arrest.

21 A minute later into the chat, when it's clear DPR had
22 logged in where he says "okay, I'm here, which post," Agent
23 Der-Yeghiayan gives the signal to arrest. It's approximately
24 3:14 p.m. Remember, it's seven hours ahead. So agents quickly
25 move in for the arrest. The defendant is behind his laptop.

F23gulb3

Summation - Mr. Turner

1 Two agents distract him by faking a domestic dispute. The
2 defendant turns his head, they grab him, they pull away the
3 laptop and handed it to Tom Kiernan.

4 And Mr. Kiernan immediately starts keeping the
5 computer alive and taking pictures on the screen. This is just
6 a minute or so after Agent Der-Yeghiayan had given the signal
7 to arrest. Remember, Mr. Kiernan had a Blackberry set to
8 Eastern Time because he's from the New York field office. It
9 was from 3:15. And there's the chat right there on the screen
10 where the discussion had left off.

11 Not only that, but they go back in the web browser.
12 They see the defendant had logged in as Dread Pirate Roberts
13 and gone to the Silk Road mastermind page, which Agent
14 Der-Yeghiayan had never seen before. Not only that, but agents
15 follow up by searching the defendant's residence, and what do
16 they find there? They find a couple of crumpled notes in the
17 trash. And what are those notes about? They're about a revamp
18 of the Silk Road buyer rating system -- seller rating system,
19 excuse me, that Dread Pirate Roberts had been posting about on
20 the Silk Road forums since way back in August, August 11. And
21 there's a match of specific terms: Solid, would recommend. It
22 matches a post from September 12 where he's talking about the
23 changes he's thinking about making to the rating system. And
24 agents also find a couple of thumb drives on the defendant's
25 night stand, one of which contains a backup of many of the same

F23gulb3

Summation - Mr. Turner

1 Silk Road-related files that were found in his laptop.

2 So the evidence is overwhelming, ladies and gentlemen,
3 that this man Ross Ulbricht is the same person who started Silk
4 Road and kept it running up until the very end, up until the
5 moment he was arrested logged into the Silk Road server as the
6 mastermind of the site under the Dread Pirate username chatting
7 with someone he believed was a Silk Road employee. There is no
8 way he can credibly explain away this evidence, and the
9 defense's attempts to do so throughout this case have been
10 absurd.

11 At the beginning of this case, Mr. Dratel admitted, he
12 had to, admitted that the defendant started Silk Road, but he
13 said the evidence would show that operating the site became too
14 stressful to him, so he handed it off to other people. There's
15 been no evidence to show that. It's just the same bogus cover
16 story that he told to Richard Bates to throw him off his trail.

17 The defendant is trying to dust off the old Dread
18 Pirate Roberts play and try it out one last time on you, ladies
19 and gentlemen. It's not surprising the defendant is used to
20 living a lie at this point.

21 Remember, this chat, he was talking with inigo, one of
22 his customer support representatives. Inigo asks: "If you
23 don't mind me asking, what do you tell your family that you
24 do?"

25 "I live a modest life still. Security requires it.

F23gulb3

Summation - Mr. Turner

1 So I have my little alibi. I'm clever, so I can bs when I need
2 to but I hate having to lie to people. And friends will tell
3 me shit like why don't you do this or that, like I have all
4 this free time. I just want to scream at them 'because I'm
5 running a goddam multi-million dollar criminal enterprise!!!!"

6 (Continued on next page)

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Summation - Mr. Turner

1 MR. TURNER: He still thinks he's clever. He thinks
2 he can pull one over on you.

3 MR. DRATEL: Objection.

4 THE COURT: Sustained.

5 MR. TURNER: And then there is the defendant's attempt
6 to explain await mountains of evidence on his computer. It's a
7 hacker.

8 MR. DRATEL: Objection.

9 MR. TURNER: It's a virus.

10 THE COURT: Overruled.

11 MR. TURNER: It's a Stephen Colbert show he was
12 watching or downloading into his computer. It's ludicrous.
13 There were no little elves that put all of that evidence on the
14 defendant's computer. It was the defendant who put all that
15 evidence on the defendant's computer and in his trashcan, in
16 his nightstand, in the Silk Road server, his Gmail account and
17 his Facebook account, from the bitcoin talk forum and the
18 shroomery, everywhere else you have seen the digital
19 fingerprints. Use your common sense, ladies and gentlemen.

20 But even if there were any reason to believe the
21 defendant's story, which there is not, it wouldn't even make a
22 difference under the law. The government doesn't have to prove
23 that the defendant's criminal activity continued from start to
24 finish, from the beginning of Silk Road to the end. As I
25 expect the Judge will instruct you, it doesn't matter when a

F23dulb4

Summation - Mr. Turner

1 person becomes part of a criminal conspiracy, even if it's just
2 at the beginning or just at the end, he is liable for
3 everything that happens as part of the conspiracy as long as it
4 is foreseeable to him, before or after he joins. You don't
5 need to go there because the evidence is absolutely clear.
6 This man ran the site from start to finish.

7 So let me now talk with you about what the defendant
8 is charged with, what he's liable for as a result of
9 masterminding Silk Road. The defendant is charged with seven
10 offenses. The first four relate to drug trafficking. The
11 fifth relates to the computer hacking tools and services sold
12 on the site. The sixth, to the fake passports and IDs that
13 were sold on the site, and the seventh relates to money
14 laundering, the laundering of the proceeds from all the illegal
15 sales conducted on the site.

16 Let's take the drug charges first. Count One charges
17 the defendant with distributing illegal drugs or helping others
18 to do so. Count Two charges the defendant with much the same
19 thing, distributing drugs but over the Internet specifically,
20 or helping others do so.

21 MR. DRATEL: I object to this, your Honor. We were
22 not given this in advance.

23 THE COURT: Overruled.

24 MR. TURNER: And Count Three charges the defendant
25 with conspiring to distribute drugs, which just means agreeing

F23dulb4

Summation - Mr. Turner

1 with others to distribute drugs.

2 To be clear, the Judge will instruct you after the
3 addresses about what the law is and her instructions control,
4 but this is what I expect her to instruct you.

5 Now, these charges -- these first three charges, they
6 are not complicated. The basic question is were drugs
7 distributed through Silk Road and did the defendant help
8 distribute them, or agree with others to do so. Now, if you
9 don't believe that drugs were distributed through Silk Road,
10 then you must have been watching the wrong trial because that
11 is what the site was all about. There were thousands of
12 listings on Silk Road every day for drugs -- heroin, cocaine,
13 LSD, methamphetamine, ecstasy, speed, steroids, prescription
14 pain killers, pretty much every possible controlled substance
15 you can imagine; even cyanide the defendant was willing to sell
16 on the site.

17 You heard Agent Der-Yeghiayan explain how Silk Road
18 first came to his attention. Right? Ecstasy and other drugs
19 started showing up in the international mail in O'Hare in ways
20 that had never been seen before. The packaging was stealthy
21 and professional. There was a business model behind it. And
22 those packages started as a trickle and eventually turned into
23 a flood. And he told you how he was able to tie many of those
24 packages back to drug dealers operating on Silk Road.

25 He also told you about the undercover buys he himself

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Summation - Mr. Turner

1 did on Silk Road, over 50 of them, from dealers in more than
2 ten different countries, and all of those purchases, except
3 one, tested positive for illegal drugs.

4 You also heard a stipulation that the DEA New York
5 Field Office here, in the Southern District of New York, did
6 undercover buys from Silk Road as well, more than a dozen of
7 them from September 2011 to May 2013 -- heroin, cocaine,
8 oxycodone, and all of them positively tested for drugs.

9 You also heard from Brian Shaw, who told you about the
10 staggering sales figures in the transaction database on the
11 Silk Road server. The silk Road server showed that the site
12 executed over one-and-a-half million transactions during its
13 lifetime, involving over 100,000 unique buyer accounts. Nearly
14 3700 unique seller accounts. And it took in over \$213 million
15 in revenue. Some of those sales were done before Silk Road
16 kept track of the categories being sold. But of the 190
17 million reflected in the database of categorized sales, sales
18 that had a category of goods associated with them, 96 percent,
19 \$182 million of them were for illegal drugs. So there is no
20 doubt that drugs were sold through Silk Road in massive
21 quantities.

22 You also heard from Michael Duch, who once ran his IT
23 business, his own IT business, but started dealing drugs on
24 Silk Road as a way of supporting his own heroin addiction, and
25 he told you how easy it was to become a Silk Road drug dealer.

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Summation - Mr. Turner

1 All he had to do was buy heroin off the street in the same New
2 York City area where he bought it, and he was able to sell it
3 at 100 percent markup on Silk Road because the customers he was
4 selling to were located all over the country, where heroin is a
5 lot more scarce. Within six weeks, he told you, he was
6 shipping out around 500 glassine bags of heroin a day, making
7 60 to \$70,000 in revenue per month.

8 So did the defendant help distribute these drugs? Of
9 course he did. The defendant was the one who made this entire
10 enterprise possible. He custom built Silk Road to be an online
11 storefront for drug dealing. He attracted customers by making
12 it easy for them to buy drugs on the site anonymously. He
13 attracted suppliers by making it easy for them to deal drugs on
14 the site. And he manned the cash register to make sure that he
15 got his cut from every sale because it was his store. The
16 site's customers were his customers. The sales from the
17 purchases were his sales, just as much as they were customers
18 and sales of the individual drug dealers on the site.

19 The defendant made no bones about that. Here is a
20 post of his, January 10, 2012, in which he responds to a series
21 of complaints he was getting at the time from drug dealers on
22 the site about the commission rates he was charging. He says:
23 "Whether you like it or not, I am the captain of this ship.
24 You are here voluntarily, and if you don't like the rules of
25 the game, or you don't trust your captain, you can get off the

F23dulb4

Summation - Mr. Turner

1 boat."

2 Here is another post, where he's responding to a user
3 who is complaining about getting taxed by the site. The
4 defendant responds: "What you are referring to is more
5 appropriately called a commission or broker's fee. It would be
6 a tax if I tried to take money from you based on a transaction
7 I wasn't involved in. You are free to sell whatever you want
8 to whomever without my interference, but if you are going to
9 use" Silk Road, "the Silk Road platform to meet your customers
10 and advertise your wares, you will need to pay a commission."

11 The defendant was involved in every single sale on
12 Silk Road, and that's why it was so important to him to enforce
13 the rule the site had against vendors selling outside of
14 escrow, or OOE. Right? You heard about this. Collecting
15 payment outside of Silk Road to avoid paying commissions, doing
16 side deals.

17 That rule was prominently posted in the seller's
18 guide. Right? "Do not create listings that instruct customers
19 to pay outside of escrow. If you do your privileges will be
20 revoked." There are chats with VJ where he talks about
21 enforcing the rule by searching through vendors' listings and
22 users' private messages to check to make sure that they are not
23 doing side deals outside of Silk Road's payment system.

24 Here is a private message the defendant sent to one
25 Silk Road seller telling him why he had lost his privileges.

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Summation - Mr. Turner

1 The defendant explains, "You do not have a right to the
2 business I generate for you through Silk Road. Your status as
3 a vendor here is a privilege that is contingent on you
4 following the rules."

5 The defendant knew his site was critical to generating
6 business for the drug dealers operating on it.

7 Think back to what Michael Duch told you. Michael
8 Duch had never dealt drugs in his life. He was an IT guy. He
9 had never considered dealing drugs on the street. But with
10 Silk Road, what had once been unthinkable for him became a
11 no-brainer of a business decision. Silk Road supplied
12 everything he needed to become an online drug dealer
13 overnight -- a fully anonymous online sales portal, a huge
14 preexisting customer base, instructions on how to package drugs
15 to evade detection, an escrow system and a support staff to
16 make sure that he would get paid by his customers if he shipped
17 out the drugs as ordered.

18 And as you saw, Duch was able to reach customers all
19 over the country through Silk Road. He would never have been
20 able to do that on his own. That's the legacy of Silk Road.
21 It lowered the barriers to drug dealing by enabling drug
22 dealers to reach customers online they could have never met on
23 the street.

24 That was how the defendant facilitated drug dealing
25 through Silk Road. And because he knew the value of his

F23dulb4

Summation - Mr. Turner

1 services, he knew how prized his drug dealing territory was.
2 He required drug dealers to agree to his terms of service. You
3 remember this, the Seller Agreement that you had to click on in
4 order to create a vendor account on the site. Every time a new
5 dealer clicked on that agreement, they were agreeing with the
6 defendant to deal drugs together. The agreement was you get to
7 use my site; I get a piece of your deals. It is a criminal
8 business partnership.

9 Again, that's the defendant's own words. Here is one
10 private message where he tells a user: "Silk Road isn't some
11 bureaucracy. I consider us business partners."

12 So the defendant helped others deal drugs on the site.
13 He distributed drugs. He agreed with others to distribute
14 drugs. And that covers Counts One through Three of the
15 Indictment.

16 And, you know, he himself acknowledges this. Who knew
17 that a softie could lead an international narcotics
18 organization? Thank you for being here. Thank you for being
19 my comrades."

20 THE COURT: Mr. Turner.

21 MR. TURNER: Mm-hmm.

22 THE COURT: Would now be an all right time to stop?

23 MR. TURNER: I've probably got 10 to 15 more minutes,
24 your Honor.

25 THE COURT: Let's stop here and then we'll pick up,

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Summation - Mr. Turner

1 ladies and gentlemen, right after lunch, and so we'll pick up
2 at 2 o'clock. Joe has had lunch arranged to be brought in for
3 you.

4 Now, it's very important that while you've heard the
5 government's -- most of the government's closing summation, you
6 haven't yet heard from the defendant. You haven't heard the
7 government's rebuttal, and you haven't been charged on the law.
8 So do not be tempted to talk to each other at this point. All
9 right? Don't talk to each other about this case or anybody
10 else about this case. The time for you to do that is coming
11 soon but it's not yet.

12 Thank you very much and have a nice lunch.

13 THE CLERK: All rise as the jury leaves.

14 (Continued on next page)
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Summation - Mr. Turner

1 (Jury not present)

2 THE COURT: All right, ladies and gentlemen, the
3 reason for taking the break there, Mr. Turner, was one of the
4 jurors I thought was indicating that they needed a break. So
5 when you reached a point where it seemed like I could
6 interrupt, I did. I don't like to interrupt. I would have
7 otherwise let you go 'til 1:05.

8 MR. TURNER: I understand, your Honor.

9 THE COURT: So is there anything we need to raise
10 before we take our lunch bread? No.

11 I will see you folks back promptly at 2 o'clock.
12 Thank you.

13 THE CLERK: All rise.

14 (Luncheon recess)

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Summation - Mr. Turner

A F T E R N O O N S E S S I O N

2:06 p.m.

(Jury not present)

THE CLERK: All rise.

THE COURT: All right. Let's bring out the jury.

THE CLERK: All rise as the jury enters.

(Jury present)

THE COURT: All right, ladies and gentlemen. Let's
all be seated.

All right. Mr. Turner, you may proceed, sir.

MR. TURNER: Before I go into Count Four, let me touch
briefly on drug quantities. Assuming you find the defendant
guilty on Count One, Two or Three, you will be asked to make a
further finding, whether certain quantities of drugs were
involved in the offenses, how much of these substances did the
defendant help others distribute, or agree with others to
distribute. More than a kilogram of heroin. More than five
kilograms of cocaine. At least ten grams of LSD, or at least
500 grams of methamphetamine.

So for heroin it's easy. Michael Duch told you he
alone distributed over three kilograms of heroin as a dealer on
the site, which by itself puts the amount over the threshold
and that's just one vendor. So you know the total amount of
heroin the defendant helped others distribute or agreed with
others to distribute through Silk Road is well beyond that.

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Summation - Mr. Turner

1 For other substances, take a look at Government
2 Exhibit 940E. This is data from the Silk Road transaction
3 database. For cocaine, for example, there were 82,582 orders
4 of cocaine on the site. Even if each of those orders was only
5 a tenth of a gram of cocaine, there would still have been
6 8 kilograms of cocaine distributed through the site to be above
7 the 5-kilogram threshold.

8 If you look at Government Exhibit 911A, pictured under
9 here, all the cocaine -- 1 gram, 3.5 grams, 7 grams, 5 grams --
10 they are all well above -- well above .1 grams. And you can go
11 through the same sort of calculation for the other drug
12 quantities. The quantities of drugs distributed through Silk
13 Road were massive.

14 So let's go on to Count Four.

15 Count Four charges the defendant with operating a
16 continuing criminal enterprise. Basically what this means, as
17 the Judge, I expect, will instruct you is that the defendant
18 engaged in drug trafficking on a continuing serious basis, and
19 that he oversaw others and made substantial profits in doing
20 so.

21 So to find the defendant guilty on this charge, you
22 have to find that the defendant committed a series of three or
23 more drug crimes, oversaw five or more persons in the process,
24 and received substantial profits from his crime.

25 Now, here the defendant clearly committed a series of

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Summation - Mr. Turner

1 three or more drug crimes. He was facilitating drug deals
2 every day. You only have to agree on three such crimes. Just
3 pick a few. Pick three of the thousands of drug sales that
4 Michael Duch did himself over the site, or pick three of the
5 undercover purchases of drugs done by Agent Der-Yeghiayan or
6 DEA New York. All of those were drug deals the defendant was
7 involved in as a middleman.

8 Did the defendant oversee five or more persons as part
9 of his operation? Of course he did. First, he had employees.
10 If you look back -- this is an exhibit with his to-do list. He
11 has employees -- a list of employees that he pays every week.
12 There are chats with the employees on the computer. There are
13 other references to the employees.

14 Look at the government exhibit numbered here, if you
15 want to go back and take a look and see what those individuals
16 did as part of the operation. Basically some were the support
17 staff, the customer support, who would basically make sure
18 everything ran smoothly on the site. If there were disputes
19 between buyers and dealers, they would resolve those disputes.
20 That was partly what Agent Der-Yeghiayan, in operating his
21 undercover account, was involved in, as support staff.

22 Then you have the back-end people, the computer
23 programmers, Smedly, Syg, H7. In one of the chats with H7 they
24 talk about having a team of programmers. So he has people
25 working under him, working for him. He is a boss of the

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Summation - Mr. Turner

1 enterprise.

2 Not only that, you don't even have to limit yourself
3 to the employees that the defendant supervised. He was the
4 leader of the whole site. He organized the hundreds of vendors
5 of drug dealers that sold drugs on this site. He harmonized
6 their operations into one essentially orderly business
7 enterprise. And that is acting as an organizer. And that,
8 too, is a basis for finding that he oversaw five or more people
9 as part of his operation.

10 Finally, did he make substantial profit from his
11 enterprise? Of course he did. He earned millions of dollars
12 in commissions. So far at least, he earned the millions of
13 dollars that were recovered from his laptop in bitcoins.

14 Next there is Count Five, conspiring to commit or aid
15 and abet computer hacking. Now, computer hacking tools and
16 services were offered on Silk Road. Agent Der-Yeghiayan told
17 you that he would see those listings in the digital goods
18 section, in the computer equipment sections of the website.
19 And although we didn't look at them in detail during the
20 testimony of Brian Shaw, the government introduced a sampling
21 of the computer hacking listings found on the Silk Road website
22 when the FBI seized it. There were keyloggers. There were
23 email account crackers. There were password stealers. There
24 were DDos services for knocking websites offline. You heard
25 from Agent Alford about how he made an undercover purchase of

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Summation - Mr. Turner

1 some of this hacking software and it worked as advertised.

2 And you have seen evidence that the defendant
3 controlled what was sold on the site. Customer support chats
4 about cyanide, for example. The customer support staff part of
5 the role is looking for stuff that is not supposed to be sold
6 on the site. Computer hacking was a feature on the site
7 throughout. So this was something that the defendant allowed
8 to be sold on the site. And then vendors were only allowed to
9 sell on Silk Road at the pleasure of the defendant. He let
10 them sell on the site; they agreed to give him a cut of the
11 proceeds, he's conspiring with them as well.

12 It is the same thing with the trafficking or aiding
13 and abetting trafficking of fraudulent identity documents.
14 You've seen the fake IDs and passports regularly offered on
15 Silk Road. You even saw forum posts where the defendant
16 announced the creation of the forgery section on the site where
17 fake IDs and passports were specifically supposed to be listed.
18 And you saw that the site did over a million dollars in sales
19 in fake IDs and passports, including the ones the defendant
20 bought. Just like the drug dealers on the site, the sellers of
21 these fake IDs and passports all had to enter into an agreement
22 with the defendant to sell their wares on the site. He
23 conspired with them, too.

24 Finally, Count Seven charges the defendant with
25 conspiring to commit money laundering. Now, the Judge will

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Summation - Mr. Turner

1 instruct you on the elements of money laundering in more
2 detail. But basically money laundering is taking proceeds of
3 certain crimes, like drug trafficking, and moving the money
4 from one account to another, for example, or exchanging it from
5 one form to another, with the purpose of either promoting
6 illegal activity, where the illegal activity came from, or
7 concealing the money from law enforcement. Through his
8 operation on Silk Road, the defendant agreed to do that for the
9 sellers on the site in basically two ways.

10 First, in operating the Silk Road payment system, he
11 was agreeing to help drug dealers on the site get the funds
12 from their illegal sales and move them off the site
13 anonymously. That was why he chose bitcoins as the coin of
14 Silk Road because it is an anonymous currency. And not only
15 that but Silk Road's payment system included a tumbler built
16 into it. What this means is money didn't go straight from a
17 buyer's bitcoin address to a seller's bitcoin address when a
18 payment was made. Money would be tumbled through a bunch of
19 dummy bitcoin addresses before it hit the seller's account in
20 order to make the payments harder to trace on the block chain.
21 You read about this on the buyer's guide. "Just when you
22 thought Silk Road couldn't be more secure, we went one step
23 further. The tumbler sends all payments through a complex
24 semi-random series of dummy transactions, each one with a new,
25 one-use receiving address making it nearly impossible to link

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Summation - Mr. Turner

1 your payment with any coins leaving the site."

2 That feature, all those features of the payment
3 system, were designed to help drug dealers move their dirty
4 money through the site without being tracked. That's money
5 laundering.

6 How else did the defendant agree with others to
7 launder their money? Well, we already had a whole section on
8 the site of money laundering services. That was what the money
9 section of the site was about. And that section allowed drug
10 dealers on the site to take their bitcoins and exchange them
11 for cash or anonymous credit cards or other forms of money that
12 couldn't be traced back to them.

13 Here you have -- you can trade your bitcoins in for
14 \$10,000 in cash delivered to your door. This vendor advertises
15 you will be mailed genuine U.S. currency that has not been
16 altered or linked to criminal activity. Here is one for
17 anonymous credit cards and debit cards. It's a normal debit
18 card but hasn't got your personal information. It's totally
19 anonymous.

20 So the defendant agreed with these money laundering
21 service providers to allow them to operate on the site so that
22 they could help the drug dealers on the site anonymously cash
23 out their illegal proceeds. That's another way he conspired,
24 agreed with others to commit money laundering.

25 Let me talk about one more legal requirement and

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Summation - Mr. Turner

1 that's venue. You have to find that the defendant, or people
2 he aided or abetted or conspired with, caused something to
3 happen here in the Southern District of New York in furtherance
4 of his crime. For the drug crimes in the case, you can find
5 venue multiple ways. You know, for example, that Michael Duch
6 based his heroin dealing operation here, in Orange County, in
7 the Southern District of New York, where he lived. And as a
8 Silk Road vendor he is a co-conspirator of the defendant. He
9 is someone who is aided and abetted by the defendant, and he
10 performed his drug dealing operation out of this district.

11 You've also got undercover drug buys by DEA New York
12 in which the drugs were ordered from here and delivered here.
13 Again, the drug dealers who were to ship those orders were
14 co-conspirators of the defendant, aided and abetted by him.
15 The defendant is involved in each of those deals as a
16 middleman.

17 But there's also another basis for venue that actually
18 provides venue for all the counts in the Indictment and that's
19 the Silk Road website itself. The Silk Road website was
20 projected across the Web, accessed throughout the world,
21 including here in the Southern District of New York. And as I
22 expect Judge Forrest to instruct you, venue could be based on
23 the transmission of a website into the Southern District of New
24 York where the operation of the website is in furtherance of
25 the criminal activity at issue and where it's reasonably

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Summation - Mr. Turner

1 foreseeable to the defendant that the website could be accessed
2 by someone here.

3 Here, the operation of the website was critical for
4 the offense, and it was obviously reasonably foreseeable that
5 people in New York, in this district, could access it. In
6 fact, you know it was accessed here because, for example, it
7 was accessed by DEA New York in conducting their undercover
8 buys. It was accessed by Mr. Duch every time he had to log
9 onto the site in order to do his business.

10 So, for example, for the fake ID charge, it's enough
11 for venue that the defendant ran a website with offerings for
12 fake IDs and broadcast those offerings through the Web into
13 this district. It is as if he put a billboard up here in this
14 district in furtherance of the effect. The same thing with the
15 computer hacking and money laundering charges and the drug
16 charges.

17 And that's where the action was in this case, ladies
18 and gentlemen. The hundreds of thousands of drug deals and
19 other illegal transactions that occurred on Silk Road didn't
20 take place on some street corner; they took place in a dark
21 corner of the Internet. That was the defendant's criminal
22 turf.

23 But just because he operated in cyberspace doesn't
24 make his crimes any less real. Those were real drugs he was
25 selling through his site, just as dangerous and addictive as

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Summation - Mr. Turner

1 drugs sold on the street. Think of Michael Duch. All he was
2 doing -- all he was doing was taking drugs off the street and
3 using the defendant's site to redistribute them across the
4 country. Think of the messages he got from his customers that
5 you saw. On a daily basis, anxiously waiting for their
6 shipment to arrive before debilitating withdrawal symptoms set
7 in. I am extremely dope sick and need something by tomorrow.
8 Those are real people, real families, with real addictions.
9 And it was the defendant's website that made it easier than
10 ever before to feed those addictions, for people to get hooked
11 in the first place, and it was the defendant's website that
12 made it easier for drug dealers to get users hooked, users from
13 all over the world.

14 Based on his operation of the website, which the
15 government has proven beyond a reasonable doubt, the defendant
16 is liable for all the crimes charged in the Indictment. His
17 conduct was brazenly illegal. He knew perfectly well what he
18 was doing the whole time, and you should find him guilty on all
19 counts.

20 Thank you.

21 THE COURT: Thank you, Mr. Turner.

22 Mr. Dratel.

23 MR. DRATEL: Could we just have one second just for
24 the technical changeover?

25 THE COURT: Yes.

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Summation - Mr. Turner

1 (Pause)

2 MR. DRATEL: May it please the Court?

3 Thank you, ladies and gentlemen of the jury, thank you
4 for listening. Thank you for paying attention thank you for
5 being here sometimes in weather that was inclement and
6 difficult. So we really appreciate it, and it is a reflection
7 on your recognition of how important this case is for
8 Mr. Ulbricht.

9 This will be my last chance to speak to you about the
10 case. The government is going to get another opportunity after
11 I'm done, and I'll talk about that towards the end of my
12 closing statement.

13 Obviously, in a trial that's lasted this long with as
14 much testimony and documents as have come in, I am not going to
15 be able to talk to you about everything. I'm going to pick
16 items and concepts that illustrate why Ross Ulbricht is not
17 guilty of each and every count in the Indictment; why the
18 government has failed to prove beyond a reasonable doubt, as it
19 must do, each and every element unanimously to all of you, to
20 each of your satisfaction, and the other counts in the
21 Indictment.

22 Some of this stuff has been technical. Some of it may
23 be a little technical during my summation. But as I told you
24 in opening, the fundamentals, the foundation of all of this is
25 common sense. It's your life experience. It's what you know

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Summation - Mr. Dratel

1 and what teaches you, from the evidence in this case, that
2 Mr. Ulbricht is not guilty.

3 I talked about this in my opening. It is apparent
4 from everything we've heard in the case. It is that the
5 Internet is not what it seems. The very first witness, a
6 government agent, assumed multiple identities on the Silk Road
7 site. Multiple. As many as a dozen. So he had dozens of
8 accounts that he was controlling. No one realized that the
9 usernames had changed when he assumed an account. No one
10 realized when he created an account that he was law
11 enforcement. He never took a lesson. He didn't know anything
12 about computer technology, necessarily, more than the average
13 person. He was able to do it, just like his colleagues. He
14 said they all had accounts. All of them were operating
15 accounts.

16 The Internet permits, and thrives on, to a certain
17 extent, deception and misdirection. They were never caught as
18 law enforcement operating undercover. In all of the posts that
19 they did and all of their interaction here on Silk Road -- the
20 buyers, sellers, administrators, moderators, all of that. You
21 heard Michael Duch talk about his wariness of customers because
22 he agrees, you never know who precisely is on the other side of
23 that computer screen.

24 Even Agent Der-Yeghiayan, during cross-examination,
25 recalled that there was a period of time where he was so

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Summation - Mr. Dratel

1 convoluted in his own mind that he didn't quite know who was
2 supposed to be who. He said who's on first. And he was a
3 person who knew the inside of it, that he was playacting, that
4 his colleagues were running accounts. He even knew that and he
5 couldn't keep track.

6 You don't even know if any of the screen names that
7 the government has pointed to, that any of them, is a separate
8 person. They could all be the same person and you wouldn't
9 know. You can't conclude that here, I submit to you. You have
10 no evidence that there are different people. They could all be
11 Agent Der-Yeghiayan -- not that they're Agent Der-Yeghiayan,
12 but just like Agent Der-Yeghiayan, they could all be the same
13 person operating multiple usernames. Where is the proof that
14 they are separate people? Where is the proof from the witness
15 stand, from anyone who came in and said that was me, that was
16 me, that was me? No. We don't know. You don't know. And you
17 can't make a conclusion beyond a reasonable doubt based on
18 that.

19 Reasonable doubt, it is what protects us all. It
20 protects Mr. Ulbricht. It protects us all in this system. It
21 is the bedrock of the system. It requires the government to
22 prove its case, to satisfy you beyond a reasonable doubt. The
23 Judge will instruct you, reasonable doubt is a doubt that
24 appeals to your reason, your judgment, your experience, your
25 common sense. Proof beyond a reasonable doubt must, therefore,

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Summation - Mr. Dratel

1 be proof of such a convincing character that a reasonable
2 person would not hesitate to rely and act upon it in the most
3 important of his or her own affairs. If you have such a doubt
4 as would reasonably cause a prudent person to hesitate in
5 acting in important matters in his or her own affairs, then you
6 have a reasonable doubt and it's your duty to find the
7 defendant not guilty.

8 One of the fundamental principles in this case is that
9 DPR and Mr. Ulbricht cannot be the same person. That's what
10 the evidence, I submit, shows you. And the government hasn't
11 proved beyond a reasonable doubt -- certainly, that's the
12 burden -- that they're the same person. Let's just look at
13 some of the evidence.

14 DPR starts February 5, 2012, with a post that says I'm
15 announcing my name. By that time the only witness with
16 firsthand knowledge, Richard Bates, has already testified that
17 Mr. Ulbricht is already out of Silk Road by February 2012.
18 They could talk all they want about documents -- and we'll talk
19 about them -- that could be created, edited, moved. But their
20 witness, the only person who actually knew Mr. Ulbricht, told
21 you Mr. Ulbricht said it was sold as of November 2011. I
22 submit to you it was even before that. That's just when they
23 talked about it.

24 There is also just a difference in the way security is
25 handled here so you can tell that Mr. Ulbricht is not DPR, and

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Summation - Mr. Dratel

1 the evidence hasn't proved that to you beyond a reasonable
2 doubt that they are the same person. First, if you look at
3 Mr. Ulbricht from what we know, you have those posts attributed
4 to him in early 2011. That's even before Silk Road starts, and
5 then where he started he posts as Altoid, which is directly
6 linked back to him.

7 Does that sound like DPR? The day of his arrest he's
8 facing out the window with his back to the people in the
9 library. He's already said in a chat that they've -- DPR has
10 already said in a chat that they put in evidence to someone
11 working for him, he said: The worst that could happen, your
12 only vulnerability is someone coming behind and looking over
13 your shoulder, which is exactly the position that Mr. Ulbricht
14 was in in that library the day he was arrested.

15 Saving those chats, does that sound like DPR? You
16 have to actually enable the chats to be saved. The government
17 witness, Mr. Kiernan, testified to that. You actually have to
18 choose to save all of the incriminating evidence. Does that
19 sound like DPR?

20 Keeping a journal like that and then saving it on your
21 laptop? A little too convenient. Does that sound like DPR?
22 That's Government Exhibit 241. And we'll talk more about that,
23 too.

24 Keeping your PGP keys in a file named "Key," something
25 that's supposed to be secret, something that's supposed to

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Summation - Mr. Dratel

1 keep -- that's something that is supposed to enable you to
2 communicate in an encrypted fashion. There are a lot of
3 blinking neon signs in this case that have been created to
4 incriminate Mr. Ulbricht, and I submit to you DPR wouldn't do
5 any of that.

6 BitTorrent, a program, a peer-to-peer file sharing
7 program for people on the network, on the Internet. At the
8 time that he was arrested Mr. Ulbricht is on a program that
9 connects him to other people on the Internet. The photos that
10 we put in as Defendant's G and Defendant's H show that he is
11 connected to nine people. That he uploaded the Colbert Report.
12 There were nine peers on his system, nine people connected to
13 an open port on his computer. Think about that from the point
14 of view of Internet security, computer security, when you've
15 seen from government witnesses, one after the other, talk about
16 hacking tools and what can be done when someone gets access to
17 your computer. I will talk more about that, too.

18 They had said he had a thumb drive of the entire site.
19 Why do you have it on your laptop if you have it on a thumb
20 drive if you want to be secure? What's the purpose? Would DPR
21 do that?

22 Let's look at DPR for a second on that issue. You had
23 a long -- first of all, in the seller's contract, which is
24 Government Exhibit 121B, it says -- basically, it is all about
25 security. It is how to keep your -- the vendors had to keep

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Summation - Mr. Dratel

1 them secure, how to keep their customers secure about
2 destroying addresses and identifying information and all of
3 that packaging and all of these things to make sure that
4 everyone is secure on the site and that this security is
5 paramount for DPR. You had a law enforcement professional,
6 Agent Der-Yeghiayan. You had many of his colleagues -- he
7 doesn't even know how many around the world -- in the United
8 States, and he said, around the world, who were on that site
9 trying to identify DPR.

10 He got on that site first -- the first time he went on
11 that site was October of 2011. Two years. Did DPR give away
12 anything to him? No. He was an administrator. He was inside.
13 By August of 2013, he was inside. He took over an
14 administrator account. He had direct communication and private
15 chats with DPR. Still, this law enforcement professional, who
16 is all over the Silk Road site, thousands of hours on the site,
17 could not get any personal information about DPR.

18 I submit to you -- and I'll talk more about this as I
19 continue, but I submit to you that that in and of itself and
20 the Cirrus chats, which is Agent Der-Yeghiayan, for a
21 three-month period, prove that those other chats, that pretend
22 to have personal information about Mr. Ulbricht, are phonies.
23 Maybe not in the entirety in the sense that they are not
24 Mr. Ulbricht, but they're DPR's, but that they're edited,
25 sprinkled with facts about Mr. Ulbricht's life that are out

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Summation - Mr. Dratel

1 there and available not only in the public but to anyone who
2 would have access to his computer and his accounts.

3 Look at Government's Exhibit 936, which is the
4 redandwhite friendly chemist, series of chats. I read some of
5 that yesterday. There is one section where DPR gives
6 redandwhite advice. We will put it up there for you. Where he
7 gives redandwhite various concrete detailed advice about how to
8 scrub metadata from a photo image so that it could be sent
9 without revealing incriminating information.

10 Look at Mr. Ulbricht's computer. Look at all the
11 metadata the government showed you. Metadata, of course, that
12 can be edited, as the government witnesses acknowledged.

13 It is not the same person. It is not like a person
14 who has two contrasting character traits that don't seem to go
15 together. It is not something like a virtuoso player who can't
16 boil an egg. It's not a virtuoso piano player who can't play
17 Happy Birthday. That is what this really is when they talk
18 about security, when they talk about DPR, what they are trying
19 to say about Mr. Ulbricht. It doesn't fit. It is a little too
20 convenient.

21 Now, one of these chats -- and the government talked
22 about it in summation earlier -- that said "told two people."
23 Well, in fact, whoever wrote that chat didn't know that there
24 were more than two people involved in this whole thing.
25 Whether all of them had to do with Mr. Ulbricht or not is

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Summation - Mr. Dratel

1 unclear. But I submit to you, they put one of those people in
2 there because they didn't know about a couple of others that
3 Mr. Ulbricht had been in contact with at the early part. So,
4 for example, they put in someone named Jessica, and that's
5 240C. Let's show that.

6 Well, he talks in a chat. There is a journal that
7 says "I went out with Jessica and I told her I have secrets and
8 I'm so stupid. I trust people."

9 That's one. Bates would be two. Mr. Ulbricht's real
10 girlfriend, Julie Alan, would be three. A woman with the
11 Facebook post, that's four. That's not two.

12 Just to give you an another example of how easy it is
13 or how convenient it is to say something and then to try to
14 make something of it by putting together facts that don't fit,
15 which make an assumption that doesn't fit beyond a reasonable
16 doubt. If I say to you "beaches," do you think Thailand? So
17 you have to say Thailand in return? That's the first guess?
18 He's in Australia at the time, Mr. Ulbricht.

19 They want to create the person or persons who created
20 those chats, they wanted to create this as if it were somehow
21 connected to Mr. Ulbricht's life.

22 Now, how do we know that DPR was not Mr. Ulbricht?
23 Well, first of all, like I said, Mr. Bates told you. And then
24 Mr. Ulbricht leaves for Australia for six months in October of
25 2011. Then in April of 2013 there is evidence that DPR has

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Summation - Mr. Dratel

1 changed again. That's from Agent Der-Yeghiayan.

2 And, by the way, he had been on that site from
3 October 2011. But he doesn't know anything, by the way, about
4 the beginning of the site. No one knows anything about the
5 beginning of the site. There are no witnesses, there are no
6 documents, there is no anything about Silk Road in terms of
7 transactions or anything like that from the beginning of the
8 site. We haven't heard any evidence of that.

9 Now, with respect to a timeline for 2011, I think it's
10 important to look at the timeline for 2011.

11 If you look in March -- February, March and April,
12 there is a lot of conversation between Bates and Mr. Ulbricht
13 about programming. And of course we know that the site was
14 launched around that time. But then that part drops off after
15 June. And there are things that happen in June. You heard
16 this morning, the Silk Road site in its current form, June 18,
17 2011, with that first post from the Silk Road site that they
18 were down for a little bit, and then they're back up. It
19 sounds like a transition.

20 Now, you know from Mr. Bates also that Mr. Ulbricht
21 had another project going on before Silk Road and in the
22 beginning of it, Good Wagon Books, through the early part of
23 2011. Also, the government pointed out 240B this morning, but
24 240B also says no commissions at the beginning. You don't have
25 a single piece of evidence that Mr. Ulbricht was responsible

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Summation - Mr. Dratel

1 for any commissions.

2 Mr. Ulbricht was never a conspirator, as charged in
3 the Indictment. He is not a conspirator at all. There is no
4 agreement here. There is no evidence when that seller's
5 account contract came into being on the site. Again, we don't
6 have anything from the site until later on in 2011, after he's
7 already gone from it.

8 (Continued on next page)

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Summation - Mr. Dratel

1 MR. DRATEL: No evidence of when an escrow system was
2 set up on the site, no evidence of Mr. Ulbricht set up an
3 escrow system.

4 Now also on that timeline as we get through 2011, we
5 see that it's only in October of 2011 that Agent Der-Yeghiayan
6 starts to monitor the site and that November 11, 2011,
7 Mr. Bates testified that Mr. Ulbricht tells him I've already
8 sold it to someone else. Mr. Ulbricht leaves for Australia
9 four days later for six months.

10 Now, there's a chat in April of 2013 that the
11 government did not discuss in its submissions, Government
12 Exhibit 1004, it's between Mr. Bates and Mr. Ulbricht. Okay.
13 If we can blow up the first part. April 2013, baronsyntax,
14 this is Mr. Bates: Did you see slashdot last week.

15 Mr. Ulbricht: Negative.

16 Mr. Bates: There was something posted on Friday that
17 you might have found interesting.

18 I'll take a look. Thanks.

19 And then it says -- this is Mr. Ulbricht -- in April
20 of 2013: "glad that's not my problem anymore," with a smiley
21 face.

22 It says afterwards: "I have regrets, don't get me
23 wrong...but that shit was stressful."

24 That's the only chat the government doesn't want you
25 to believe, the only one that an actual witness came in and

F23gulb5

Summation - Mr. Dratel

1 told you that he participated with Mr. Ulbricht. Not a single
2 other chat is verified in any other way that Mr. Ulbricht was a
3 participant. That one we know happened, and that one is the
4 one the government doesn't want to talk about. It's the only
5 government witness that ever met or spoke with Mr. Ulbricht
6 until July of 2013. Won't talk about that interview with Agent
7 Critten who testified.

8 Now, the chat in October of 2011, the government
9 showed that today as well, but the one that says are you doing
10 anything besides the site for a job, well, in fact, we put in
11 the rest of the chat, which is R57, and it's all about the
12 bitcoin exchange site that Mr. Bates and Mr. Ulbricht are
13 working on at that time. Throughout the summer, Mr. Bates'
14 testimony - again, a live witness telling you what happened,
15 not a document created on the Internet, on a computer that
16 anyone can do at any time - he testified that throughout the
17 summer of 2011, they were working together on a bitcoin
18 exchange website that people would go to and be able to
19 synthesize prices and availability in the market.

20 Mr. Bates said he was working on the code. There was
21 a contract that Mr. Ulbricht had sent him that was never
22 signed, but they got as far as a contract to be partners in
23 this. And in R57, it's all about the bitcoin site. It's not
24 about Silk Road he says. Nobody talks about the site. That's
25 a presumption. I submit to you that based on the rest of the

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Summation - Mr. Dratel

1 chat, it's not a valid presumption. It's not a presumption
2 that permits you to conclude beyond a reasonable doubt that
3 they're talking about Silk Road, but it doesn't come up
4 anywhere in the chat.

5 There's also an Altoid post, posted by Altoid on the
6 bitcoin forum chat, Government Exhibit 306, in which, again,
7 this is a post where Mr. Ulbricht is asking for advice about a
8 bitcoin exchange. That's what the post is about. It's
9 October 2011. It's at the very same time. That's what he's
10 working on at that time. He didn't even change his address
11 from the earlier Altoid post from early 2011. You know why?
12 Because Silk Road -- he wasn't worried about security at that
13 point but Silk Road was in his rear-view mirror. He was
14 already out of it.

15 Now, Mr. Ulbricht's background: Physics degree,
16 Master's of Material Sciences from Penn State University.
17 There was a chat where something about the laws of gravity that
18 was said in a way as if you have to be a physics major to know
19 that gravity is a law of physics. I don't know what the other
20 purpose was to try to make that kind of a leap for you.

21 Agent Shaw, the government's last witness -- not Agent
22 Shaw, Mr. Shaw, I'm sorry -- said the first commission charge
23 was May 16, 2011. There's no proof that Mr. Ulbricht was still
24 involved at that time. He also didn't know -- couldn't tell
25 you -- understand he had access to the entire server, all of

F23gulb5

Summation - Mr. Dratel

1 these transactions. Look at what he went through to make those
2 charts. He could not say when the first heroin sale was, could
3 not say when the first cocaine sale was. We have no evidence
4 of when any drug sale was made on Silk Road before that date.
5 Talk about proof, not just taking a line and then extending it
6 because it seems like it could have happened that way or it
7 should have happened that way or it might have happened that
8 way; it has to have happened that way beyond a reasonable
9 doubt.

10 The changes in Silk Road over time, again,
11 transitions, changes. We talked before, the site shut down in
12 2011, it was split from the Marketplace and the forum as two
13 separate sites at that time. Big changes. I submit to you
14 it's part of that transition from Mr. Ulbricht to the person he
15 sold it to. The forgeries don't start until August of 2011.
16 And again, in October of 2011, there's more activity, there's
17 more shutdown, there's more transition. The URL changes at the
18 end of 2011. DPR becomes -- is announced in February of 2012,
19 a new commission schedule in January 2012.

20 Silkroad.org, remember that thing, that advertisement
21 that takes you from the open web to Tor, that's not renewed.
22 That is registered in March of 2011 and in April of 2012, it's
23 not renewed. It's now owned by a guy in China who has nothing
24 to do with it. It was not renewed. It was only up for a year.

25

F23gulb5

Summation - Mr. Dratel

1 Didn't make any seizures before -- Agent Der-Yeghiayan
2 did not start making those particular seizures until October of
3 2011. By the way, as he admitted on cross-examination, what
4 was coming in, he has no idea whether it was from the Silk Road
5 or not specifically. That's like saying I order a book -- I go
6 on Amazon and I see a book, and then I go to another site and I
7 like the price better or the shipping costs or whatever it is
8 or I got points, I'm a member, who knows what it is, I buy it
9 from the other site, but it's advertised on Amazon and when it
10 comes from my house, it means it comes from Amazon? No. You
11 have to prove that. There's no proof. We know there are
12 multiple sites out there.

13 These people can be working directly -- he admitted
14 all of that. Buyer and seller can be working directly. They
15 can be working over email. They can be working over a variety
16 of different ways. There's no proof that that whole room --
17 there's no proof that anything in that room that is Silk Road.

18 They tell you about assumptions and being careful
19 about assumptions, and they're all after Mr. Ulbricht has left
20 Silk Road even if they could be attributed.

21 The same thing, by the way, with Michael Duch. He was
22 not even on the site as a buyer until October 2012, not as a
23 seller until April 2013, well after Mr. Ulbricht is gone. You
24 know, he has spreadsheets he said he actually worked on for
25 this trial. And I'm sorry, do you believe a thing he said

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Summation - Mr. Dratel

1 without some real corroboration, without some verification?
2 Could you actually believe a thing he said for several reasons,
3 one of which is at the time this is all happening he is doing,
4 by his own account, a volume of heroin that probably defies
5 reality, he's probably selling most of that that he says he's
6 doing and he's probably selling it on the street. Second is,
7 he's got a deal to get him out from under a life sentence, so I
8 submit you can't take his word for anything without proof and
9 not proof of a spreadsheet that he created. Do you know that
10 what's on this spreadsheet is reliable? Can you trust it
11 beyond a reasonable doubt in a matter of importance in your own
12 affairs?

13 I want to look at the timeline again for the early
14 part of 2013. A lot happens in the early part of 2013, the
15 spring of 2013 in particular. First we have February 5 -- I'm
16 sorry. I had the wrong date. The February 5, 2013 post of the
17 chat where Ross says "Glad that's not my problem anymore, I
18 have regrets, don't get me wrong, that shit was stressful,"
19 that's what he says to Bates, that's a chat that's in evidence,
20 Government Exhibit 1004.

21 Then in March on the 16th, there's a Stack Overflow,
22 that site the gentleman came in where you ask computer
23 questions, Stack Overflow, all of a sudden, Ross Ulbricht is on
24 there asking a question and then 30 seconds later he changes
25 his screen name to frosty. I mean, really? Really? Do you

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Summation - Mr. Dratel

1 think DPR would do that? Get on your own name and then change
2 it to the name that supposedly connects you, absolutely
3 connects you to Silk Road? This is March of 2013.

4 March of 2013 is also when the denial of service
5 attack occurs on the Silk Road site. March of 2013 is also
6 when the FriendlyChemist/redandwhite sets of chats all begin.
7 And by the way, with respect to those, I submit it doesn't
8 really matter because it's not Mr. Ulbricht, but I submit that
9 it's indicative again about the Internet. There are no people
10 of the type they named there. Can you explain what those chats
11 mean since those people never existed? Can you explain it?
12 Can you explain it beyond a reasonable doubt?

13 Money was paid? We don't know where the money went.
14 It could have gone anywhere. Who knows who was on the other
15 side of that wallet. Did we hear evidence of that? No. It
16 could have been a way for DPR to get his money out of Silk
17 Road. Who knows? You can create an entire fiction, an entire
18 fictional episode on the Internet, and you can sit here right
19 now and not know whether it was real or not, much less beyond a
20 reasonable doubt, and that's all the evidence in this case.

21 Let's keep going. In 2013, that's also the date of
22 the first log entry of 241, Government's 241, that journal,
23 that log journal. We have one for 2010, which is one entry of
24 maybe a page; we have one for 2011, which is one entry, maybe a
25 page; we have one at the beginning of 2012, January 1, 2012,

F23gulb5

Summation - Mr. Dratel

1 "I'm going to start a journal," nothing else for 2012 and then
2 all of a sudden in March of 2013, presto, we have this very
3 detailed piece trying to correspond to things.

4 Also you heard -- March 26, you heard from Mr. Shaw.
5 March 26, 2013, the SSH key, the security key to get into the
6 site was modified to frosty@frosty. We don't know what it was
7 before then. We do know there's another key that allowed
8 someone else access at root@bcw. Any evidence about that, who
9 that could be? No.

10 So Mr. Ulbricht, they want you to believe, on
11 March 16, 2013 outs himself as frosty by affirmatively changing
12 on the Stack Overflow site his name from Ross Ulbricht to
13 frosty, his account name, and then ten days later, puts that as
14 the SSH key for Silk Road. Does that sound like DPR?

15 You know what else happens in the spring of 2013, it's
16 not on the timeline, but you just heard it today? It was the
17 last thing that was read, and this is not a coincidence -
18 that's when DPR learns that the investigations are for real;
19 that's when he's paying for information; that's when he knows
20 they're look at bitcoin exchanges; they're look at moderators;
21 they're trying to turn all of his people against him. He knows
22 the walls are closing in and it's time to implement an escape
23 plan.

24 And what you have is a series of events that no one
25 would do with respect to frosty@frosty -- and by the way, you

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Summation - Mr. Dratel

1 heard from frosty@frosty with the SSH keys and they made it
2 seem like it was something important when you heard it on
3 direct, but on cross, it turns out you could do that from any
4 computer. I could get on a computer right now and create a
5 frosty@frosty SSH key. It's that simple and that fast. But in
6 terms of speed, when you start it in March and you have until
7 October, there's a lot you can do to frame somebody.

8 And then you have the May 2013 seizure of the accounts
9 from Mr. Karpeles, and you heard that. You heard about
10 Mr. Karpeles. By the way, Mr. Yum was able to do a very
11 detailed bitcoin analysis in a week. Thousands of
12 transactions. What if you had four, five, six months to work
13 on a project like that? It's easy to create or edit chats and
14 computer files and spreadsheets and all of that. You heard
15 that.

16 The prosecutor in summation said there's no break in
17 the documents. How would you know? How would you know? You
18 know you can get on a document, edit it, save it in a way that
19 no one is going to know it was edited. Sophisticated people
20 know how to eliminate, modify, manipulate metadata. You heard
21 that, too: Metadata can be edited just like content and you
22 saw evidence of it. You have a FBI computer scientist standing
23 in San Francisco, California with a phone on Eastern Time. You
24 have an FBI computer forensic examiner whose phone is 40
25 minutes off the real time. You can do any of this stuff

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Summation - Mr. Dratel

1 manually. You can manipulate it all.

2 And it was easy to reconstruct Mr. Ulbricht's
3 activities from Facebook pages, from YouTube, from access to
4 his email account. Again, you heard about all the hacking
5 stuff that goes on. It's a bit disturbing, all of them. Think
6 if someone were trying to frame you. Even Agent Alford's
7 searches that got him to the original Altoid posts on
8 bitcoinforum talk and shroomery.org, those are regular Google
9 searches he found those. Anywhere you find those. That was
10 out there. It's easy to reconstruct this in a way that would
11 frame Mr. Ulbricht. Not only can it be edited, it can be moved
12 from computer to computer over the Internet. And Mr. Yum
13 acknowledged that these bitcoin wallets can be moved from
14 computer to computer. The addresses in a bitcoin wallet can be
15 moved from wallet to wallet. It's not as if you know it was
16 created there, it's not as if you know the money went in there
17 when it was there.

18 Also, these text files, all these chats, all these
19 spreadsheets, they are tiny files. They take no time to upload
20 onto someone's computer without them knowing.

21 You know, trying to think of an analogy: If you saw
22 footprints of a shoe in the snow and I said a-ha, here is
23 Mr. Ulbricht's shoe, it fits, I submit to you, not unless you
24 see him walking, you don't know who was wearing those shoes
25 when he was walking. You don't know if they're a different

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Summation - Mr. Dratel

1 pair of shoes. You don't know if it's someone on his shoes.
2 And on the Internet, it's much worse. Remember, it has to be
3 beyond a reasonable doubt, not a set of circumstances that
4 sounds convenient. There are some metadata anomalies the
5 government didn't even try to explain.

6 Let's look. Now, remember, Mr. Ulbricht was arrested
7 October 1, 2013 at about 3:00 in the afternoon, Pacific Time.
8 Let's look at Government Exhibit 250. There's a file on there
9 called todo.txt and what's the time? 9:45 p.m. on October 1,
10 2013. How do you explain that? Now, by the way, with respect
11 to Pacific Time, they wanted you to believe that the computer
12 was set to Pacific Time on the conversations with cirrus
13 before, not that day, but before they said what's -- this was
14 during Agent Der-Yeghiayan's testimony: And what does it say?
15 It says Pacific Time.

16 Let's look at 251, it's the same directory, it's the
17 same document, todo.txt, the same time: 9:45 p.m., six hours
18 after Mr. Ulbricht is arrested.

19 Let's look at 212A, again, Government Exhibit, a
20 document called homepage.php, again, October 1, 2013 at
21 8:46 p.m. on October 1, 2013. How is that explained?

22 Now, let's talk a bit about Mark Karpeles. And as you
23 heard, he was under investigation. You heard he had computer
24 experience. He had computer expertise. He had resources. He
25 ran the primary bitcoin exchange in the world. You heard he

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Summation - Mr. Dratel

1 had confederates. You heard that his platform for some of his
2 sites was the same as the Silk Road site, and it was a
3 non-updated version that forum hosts don't use very much. It's
4 MediaWiki 1.17.

5 You heard that he was the original -- that his
6 companies were the original hosts for the Silk Road site, his
7 hosting company. We know that also that web host -- there was
8 testimony web hosts know their customers' activity very
9 carefully, just like a GPS in a rental car, the same thing as
10 bitcoin exchange -- bitcoin exchange owners and their
11 customers' accounts. Just like in a bank, they know.

12 I submit to you he also had motivation because Silk
13 Road was a major player in the bitcoin market, and look what
14 happened after Mr. Ulbricht's arrest: The price went from 100
15 to \$1,000 for bitcoin. Who profits by that?

16 And you heard also about someone named Anand Athavale
17 who Agent Der-Yeghiayan investigated, did a whole comparison,
18 pages and pages, a comparison of language between those posts
19 on mises.org that he linked to Mr. Athavale and DPR, the
20 commonality. You can do that with anyone, same here with
21 Mr. Ulbricht - you take pieces of people's lives and you can
22 put them together in a way that makes it look like anything
23 could happen.

24 By the way, with respect to Karpeles and Athavale, the
25 government has never seen their electronic devices. They have

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Summation - Mr. Dratel

1 never seen their computers or laptops or phones. These are
2 people who don't live in the United States. Agent
3 Der-Yeghiayan also told you that the government was under
4 pressure to make an arrest in this case. They had the servers,
5 the government had access to the Silk Road servers since
6 July 2013. Think about it. They're letting the largest drug
7 operation in the world operate from July 2013 through the end
8 of September. You think there was pressure to make an arrest?
9 All this money flowing out of the country to drug dealers
10 overseas unrecoverable, drugs coming into the country, which
11 they didn't capture, which they didn't seize. Think about
12 those families, Michael Duch's customers. You think the
13 government wasn't concerned about that that they needed to make
14 an arrest? They needed to make an arrest. They wanted to shut
15 it down. They needed to make an arrest.

16 Now, let's talk about computer insecurity, the hacking
17 tools you saw. Slaves, botnets, things that allow you to get
18 inside somebody's computer, keylog, there are all these things.
19 You saw it in other aspects of the evidence, too. It gives you
20 full access to computers.

21 It's interesting that Agent D'Agostino used
22 eharmony.com as a way of stealing passwords and things like
23 that. Well, we saw an okaycupid exhibit from Mr. Ulbricht.
24 I'm not actually saying that things on Gmail are necessarily
25 invented, though they might be, we don't know, but the point

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Summation - Mr. Dratel

1 is, if you have access to that and you know when someone takes
2 a trip, then you create a chat that says, oh, I'm traveling
3 tomorrow, and you have no way of knowing when that chat was
4 created and whether what's in that chat is real or not.

5 You heard about PGP keys. I don't think the
6 government went into it on summation, but again I won't be able
7 to speak to you again, so I'm trying to anticipate, but there's
8 nothing customized, nothing personal. It's spit out by a
9 computer, you cut and paste. And you see people sending their
10 public keys. Private keys can be sent the same way; they can
11 be shared. That key was created in April of 2011, so
12 Mr. Ulbricht could very easily have that key.

13 THE COURT: Mr. Dratel, we're going to take a break in
14 just a couple of minutes.

15 MR. DRATEL: Five minutes good?

16 THE COURT: Five minutes. Thank you.

17 MR. DRATEL: With respect to computer manipulation,
18 remember this peaceloveharmony discussion I had with Agent
19 Der-Yeghiayan, there was someone named peaceloveharmony, a
20 username at Silk Road, sitting on DPR's profile for hours right
21 around the time that Mr. Ulbricht was arrested, like the day
22 before, someone monitoring that account, not law enforcement
23 because we know because it wasn't anybody on the arrest team
24 because Agent Der-Yeghiayan asked. It wasn't anybody. Someone
25 monitoring what was going on on DPR's account. We don't know

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Summation - Mr. Dratel

1 who peaceloveharmony is. Can't find that out.

2 By the way, BitTorrent was still open, connected to
3 the Internet, even after Mr. Ulbricht's arrest. If you look at
4 G and H, you'll see that it goes from about nine megs up loaded
5 to 26 megs uploaded by the time Beeson takes the photo later
6 that night. It's uploaded -- it's been uploaded from four to
7 five to six hours depending on how you count Mr. Beeson's
8 clock.

9 And you heard about Live Capture. By the way, you
10 heard also about the belt program, about the hacking stuff,
11 that you can actually embed something that then disappears that
12 destroys itself so that you can't even tell, but we don't even
13 know that because the FBI crashed the laptop. They lost the
14 RAM memory, and they acknowledge it. We'll never know what
15 processes were running on that computer that day at that time.

16 Agent Beeson did not get even an MD5 Hash value, which
17 is not the gold standard, obviously, because we know there are
18 vulnerabilities with respect to that to try to make sure one
19 file is the same file that you're looking at in terms of
20 copying, but he didn't even do that until October 3rd.

21 Mr. Shaw didn't get a hash value on the Silk Road servers for a
22 week after Mr. Ulbricht was arrested, October 8. There is so
23 much to question in this case, and when we come back from the
24 break, I'll continue. Thank you.

25 THE COURT: All right. Ladies and gentlemen, take a

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Summation - Mr. Dratel

1 short break. Then we'll come back, we'll hear from Mr. Dratel,
2 and then we'll hear once more from the government for their
3 rebuttal. Then after that, I think we'll have time where I'll
4 start instructing you on the law, all right? So let's just
5 take -- again, do not talk to each other, we're not at that
6 point yet, or anybody else about this case but we're close.
7 Thanks very much. Take a short break.

8 THE DEPUTY CLERK: All rise as the jury leaves.

9 (Continued on next page)

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Summation - Mr. Dratel

1 (In open court; jury not present)

2 THE COURT: Is there anything we need to raise before
3 we take our own break?

4 MR. TURNER: Not from me, your Honor.

5 THE COURT: The reason I stopped you, Mr. Dratel, is
6 one of the jurors needed a break.

7 MR. DRATEL: I understand.

8 THE COURT: I appreciate your breaking now because I
9 don't know how much leeway we had, and I want them to be able
10 to concentrate.

11 Mr. Howard, are you going to do the rebuttal?

12 MR. HOWARD: Yes, I am.

13 THE COURT: Approximately how long? I'm not trying to
14 constrain you. I just want to get a sense of what kind of
15 timing we've got.

16 MR. HOWARD: It's hard to say. Maybe a half an hour
17 or so.

18 THE COURT: One thing I want to make sure is -- we
19 won't finish, I don't think, charging the jury today, but I
20 want to make sure that you folks have ample time to discuss
21 exactly what exhibits are going to go back into the jury room
22 with the jurors.

23 As soon as they're fully instructed and released to go
24 speak to each other in the jury room, I'll want at that minute
25 the cart with things to go in. And that requires you folks to

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Summation - Mr. Dratel

1 confer to make sure that you've got the right things and not
2 other things. You folks will take care of that.

3 Here is the indictment, a copy of the indictment. If
4 you folks want to inspect it to make sure that it's the correct
5 version, you are welcome to. And that will go into the jury
6 room with the jurors at the appropriate time. That may not be
7 until tomorrow.

8 Let's take our own short break and come back. I'm
9 hoping for ten minutes, but I always hope for that. Thanks.

10 THE DEPUTY CLERK: All rise.

11 (Recess)

12 (In open court; jury not present)

13 THE COURT: Let's bring out the defendant and then
14 let's bring out the jury.

15 (Pause)

16 Now let's bring out the jury.

17 (Continued on next page)

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Summation - Mr. Dratel

1 (In open court; jury present)

2 THE COURT: Let's all be seated. Thank you.

3 Mr. Dratel, you may proceed.

4 MR. DRATEL: Thank you, your Honor.

5 I want to go to October 1, 2013, the date of
6 Mr. Ulbricht's arrest, and recapping again what happened that
7 day in the sense that Agent Der-Yeghiayan, acting as cirrus,
8 saw that Mr. Ulbricht was online, not on the Silk Road site,
9 but on Pidgin chat, separate and completely from Silk Road,
10 engaged him in a conversation and asked him to get on the site.
11 And as you saw during the prosecutor's summation, he said okay,
12 I'll log on.

13 Now, there was a lot made of the mastermind page, but
14 we found out from Mr. Shaw that if you log on as DPR, you
15 automatically go to the mastermind page for the tech support
16 panel, which is where cirrus asked Mr. Ulbricht to go.

17 By the way, we know that more than one person could
18 have access to the Silk Road servers or log on as DPR as long
19 you have the credentials.

20 Now, some other things we know, that during the period
21 of a couple of days before Mr. Ulbricht's arrest, Agent
22 Der-Yeghiayan noted, and Agent Alford, too, that DPR on the
23 Silk Road forums and on the site was unusually quiet during
24 those couple of days. And then you have Mr. Ulbricht out, talk
25 about security, out in a public place using a public Wi-Fi when

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Summation - Mr. Dratel

1 he could have easily been in his room at 235 Monterey
2 conducting the business of Silk Road if that's what he was
3 doing and he was DPR.

4 Now, want to go back to Government Exhibit 225B
5 because, again, this is DPR in January of 2013 talking to
6 scout, just to demonstrate how complicated it can get about
7 identity, scout becomes cirrus, but it's still the original
8 scout and cirrus, it's not yet Agent Der-Yeghiayan. That
9 doesn't happen until July of 2013.

10 This is January 2013, this is scout, and DPR gives
11 scout some advice and about -- if you go down further -- here,
12 "There is nothing on your laptop for them to use." Nothing on
13 your laptop for them to use; that's what DPR is saying, nothing
14 on your laptop. Think about what was on Mr. Ulbricht's laptop.
15 "And if you obscure your bitcoins properly," another security
16 measure DPR is instructing, then it says "realistically, the
17 only way for them to prove anything would be for them to watch
18 you log in and do your work." And let's go further down, the
19 third one in "Sure, someone could stand behind you without you
20 realizing it." There's Mr. Ulbricht -- that's DPR. And there
21 is Mr. Ulbricht in the library looking out the window with his
22 back to everyone who walks in, including a squad of FBI agents.

23 Now, there was -- in the prosecution's summation this
24 morning, he talked about the exchange between cirrus, who you
25 recall at that time was Agent Der-Yeghiayan, on October 1, 2013

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Summation - Mr. Dratel

1 and Mr. Ulbricht about the bitcoin exchange: Did you use to
2 work at a bitcoin exchange? Well, I submit to you that if he
3 had been working with him all that time, he would have know
4 that. He wouldn't have had to have asked that question. If he
5 had been communicating with him for all those months, it
6 indicates someone who is not familiar with cirrus as opposed to
7 someone who is.

8 And then the day of the arrest when the arresting
9 officers go to Mr. Ulbricht's residence, and you heard, by the
10 way, from Mr. Kincade this morning so I'm not going to go into
11 it about Mr. Ulbricht's time there, under his own name living
12 there, and the Government's Exhibit 130, those handwritten
13 notes found in the waste basket. And we heard from Agent
14 Der-Yeghiayan that as early as August of 2013 and then
15 throughout September of 2013, the subject that's on those
16 handwritten notes has already been discussed for six weeks by
17 DPR in great detail. Does DPR sound like a guy who takes pages
18 of handwritten notes? What we put in today may not have looked
19 like anything, but that Exhibit M that we put in this morning
20 through Ms. Prince, it's a to-do list. DPR knows how to make a
21 to-do list on a computer. I submit to you that those
22 handwritten notes are much more likely to have been notes that
23 someone takes during a telephone call.

24 It's also interesting how much in those last ten days
25 shows up in these documents. The Amelia from OKC, who, by the

F23gulb5

Summation - Mr. Dratel

1 way, has not been identified, poison oak, except for that "I'm
2 sick," which, again, you could go find those emails and then
3 create one in three seconds of typing, "I'm sick," to put it in
4 there to match something that's part of Mr. Ulbricht's life.
5 DPR and his confederates would be able to do that in a matter
6 of seconds. But then it's only at the end when you see that in
7 the last couple of entries, it's gilding the lily, it's a
8 set-up, it's way too convenient, and you cannot rely on it
9 beyond a reasonable doubt.

10 There's an instruction about withdrawal from a
11 conspiracy, we're not relying on that. Mr. Ulbricht was never
12 a conspirator at the beginning or at the end. Remember, that
13 first -- that 240A: I want to establish a site where anyone
14 can sell anything. Not a drug site, not an illegal site.
15 Where anyone can sell anything. It sounds like Amazon. It
16 sound like eBay.

17 And about the thumb drive, why wasn't that updated?
18 It's about ten days old, the date on that one. I submit to you
19 that's not because it's a backup from the computer; it was
20 something that was uploaded into the computer, received by
21 Mr. Ulbricht.

22 Now, a couple of concepts, bitcoin, Tor, I think they
23 were demystified for you enough that you know that they're not
24 synonymous at all with anything illegal. I think that was
25 established to everyone's satisfaction.

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Summation - Mr. Dratel

1 Mr. Yum acknowledged that the bitcoin wallets and the
2 bitcoin addresses -- excuse me -- that Silk Road was used and
3 could be used as a wallet itself putting money in and out,
4 putting money in and out. And if you look at those amounts of
5 bitcoins, those were small amounts of bitcoins going into those
6 addresses.

7 But the one thing he never did was where the money
8 went, the 700,000 bitcoins going into Mr. Ulbricht's wallet --
9 in the wallets, the addresses, the ones that are on his
10 computer; by the way, they're not, again, necessarily his. We
11 don't know. We don't know. They're on the laptop the day he's
12 arrested.

13 And they may come back and talk about metadata. We
14 know metadata can be edited. Metadata can be manipulated, but
15 where is the money? 700,254 bitcoins in; 144,000 there.
16 There's no analysis of anything going out. There's no evidence
17 of anything going out.

18 (Continued on next page)

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F23dulb6

Summation - Mr. Dratel

1 MR. DRATEL: Where is the money?

2 Now, that 556,000 bitcoins that are unaccounted for,
3 if you look at -- that would be worth at the time of
4 Mr. Ulbricht's arrest about \$85 million. By November 22, 2013,
5 six weeks later, they were worth a thousand dollars a bitcoin.
6 Do you know what that comes to? \$556 million. Would you spend
7 13 million -- would you spend 144,000 bitcoins, 19 million, to
8 get 556 million? Would that be a sacrifice worth making, to
9 put that on someone's wallet, if you could get away with the
10 rest of it? And we know that November 22, 2013, from Mr. Yum,
11 that there was a transaction of 195,000 bitcoins that was
12 quickly broken up into three smaller numbers. Whose bitcoins
13 are those? DPR's. Not Mr. Ulbricht's.

14 The government was absolutely correct this morning.
15 They said who stores \$19 million of bitcoins on a laptop?
16 Exactly.

17 Also, there were 90,000 bitcoins -- 89,854, almost 90,
18 not attributed to the Silk Road wallet. Some of them may say,
19 well, they were from wallet to wallet, but we didn't hear how
20 much. If there had been a significant amount, I'm sure you
21 would have heard about it from the government.

22 No evidence of Mr. Ulbricht cashing out, ever. He's
23 living with roommates for a thousand dollars a month, three
24 different places. One place he is living with three people.
25 Another place three people -- four people, rather.

F23dulb6

Summation - Mr. Dratel

1 DPR knew as of April 2013 that the bitcoin exchanges
2 were being monitored. They were under scrutiny. Does
3 Mr. Ulbricht, do we know that Mr. Ulbricht did anything during
4 that time period with respect to his bitcoins? No. And we
5 know that he was a trader. We know from the Bates chats that
6 he was interested in bitcoins. We know that he wanted to start
7 a bitcoin site. We know that he was an investor and a
8 speculator. And we know that bitcoin in 2010 was infinitesimal
9 pricing, perhaps a dollar, maybe even less. So you could make
10 money and then reinvest and reinvest and continue to make
11 money. Think about even a price that goes from 60 cents to
12 \$60, think of what your return on investment is after a year,
13 year-and-a-half period. At one point it went up to \$250.

14 So we don't know who DPR is, but we do know who Ross
15 Ulbricht is. You heard from four witnesses, three of them
16 character witnesses.

17 The government says that those redandwhite chats,
18 Government Exhibit 936, demonstrates that DPR would resort to
19 violence to protect this site. Assuming that those are true at
20 all, agreed. That's why, you know, that DPR is not Ross
21 Ulbricht. Because one thing that the people who know him for
22 his whole life know is that his reputation is for peacefulness
23 and nonviolence. Challenge yourself. Look at the credibility
24 of those witnesses. Assess the sincerity of those witnesses as
25 to the honesty of those witnesses and their experience with

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Summation - Mr. Dratel

1 Ross Ulbricht, which is real corporeal, like you and I speaking
2 here today, not behind a computer screen, where you cannot tell
3 who is who, when is when, or what is what.

4 You also know that Ross is a person who gets stressed
5 out. It is the only evidence we have that's real. You heard
6 that voicemail, Government Exhibit 1005, to Mr. Bates. I'm
7 panicked. You saw 1004. Silk Road was too stressful. You
8 heard Mr. Bates. Again, these are real witnesses, really
9 experiencing things that actually happened. That he thought
10 Ross was stressed out, that he thought Ross was overwhelmed.

11 And then 2012, by the way, what's the message from
12 Ross when Bates reaches out to him? Chillin'.

13 Look at the journal entries in 2010, 2011, full of
14 crises and anxiety. Look at 2013, starting in March, that one
15 that is 241. There is nothing like that in there. There is
16 nothing from Ross except at the very end. They talk about
17 Amelia and poison oak, which is stuff that you could get from
18 his Gmail account in two seconds.

19 What about those IDs? Life on the lam. What did he
20 ask KingOfClubs. Let's assume it is Mr. Ulbricht. It was
21 delivered to his address. Domestic U.S. flights, life on the
22 lam in the U.S. like that? Really. For a guy sitting on
23 700,000 bitcoins. That's safe?

24 He is asking, if you look at those -- look at
25 Government Exhibit 935. He asks about the details -- and I

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Summation - Mr. Dratel

1 read it yesterday so I want to go over it today, I spent time
2 on it. But he asks about features of these fake IDs. Does
3 that sound like DPR, or a novice? He asks about being held at
4 customs. Do you have any problems with your customers? Does
5 that sound like DPR, or a novice?

6 He knew about all of that, and yet when Homeland
7 Security, Agent Critten came to him, he spoke to him
8 voluntarily, even though he did not have to. Does that sound
9 like DPR, or a novice? Critten, by the way, had no idea that
10 it was a Silk Road package.

11 Mr. Ulbricht volunteered the information about Silk
12 Road when they said speak hypothetically about -- help us out.
13 Speak hypothetically. Would DPR do that? Does that sound like
14 DPR to you? To say, well, on Silk Road you could order
15 anything. Imagine DPR doing that.

16 Now, Ross gave Agent Critten his valid Texas driver's
17 license. He gave him an email address -- on Tor, no less.
18 Imagine DPR doing that.

19 He said he was a currency trader. That's what Ross
20 told him. And he admitted that he used a false name with his
21 roommates at that time. Later on, when you heard that he moved
22 to Crazy Cape after knowing that homeland security had come to
23 him and he had spoken about Silk Road with them, he goes back
24 to using his real name when he moves. Sound like DPR?

25 You heard about his travel. There is no evidence of

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Summation - Mr. Dratel

1 anything going on, foreign-to-foreign travel, or anything like
2 that. You saw the passports.

3 By the way, after the visit by Homeland Security, what
4 does Ross do? Does he make travel plans? Does he leave the
5 country? Are there bitcoin movements? Does he go underground?
6 Live under an assumed name? No. The exact opposite. He does
7 nothing.

8 And what did they find when they arrested him?
9 Only -- the only passport was his. That's more than two months
10 after his encounterer with Agent Critten. He didn't run. He
11 didn't go underground. He didn't remove any bitcoins or any
12 money. He doesn't do anything that one would expect someone
13 like DPR to do. Nothing that would indicate the
14 security-savvy, security-conscious DPR.

15 Agent D'Agostino gave you an example of how people get
16 into other people's emails and get into their computer. You
17 send an email that says "cute puppies" and you hope that people
18 click on the link. Well, sometimes it comes from people you
19 know. A phishing email. Would you judge that person you know
20 based on that phishing email? Would you judge a person you know
21 based on an email that says I'm stuck in a foreign country and
22 I just got robbed, please send me a thousand dollars so I can
23 get home? Would you judge that person on that email?

24 I submit to you that you cannot find proof beyond a
25 reasonable doubt in this case -- there is so much at stake for

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Summation - Mr. Dratel

1 Mr. Ulbricht, his future -- based on evidence that so easily
2 can be fabricated, edited, distorted, moved and manipulated.

3 We experience with our senses. We make decisions
4 based on our perceptions. And we employ our common sense based
5 on facts you can rely on. We reach conclusions based on all of
6 those elements. Yet, the Internet and the impenetrability of
7 the computer screen deprives us of the ability to do that the
8 same way we do "IRL," in real life. There is a reason that's a
9 phrase, that is an acronym on the Internet, because there is a
10 distinction between the Internet and IRL. We are here in IRL,
11 and we have to make judgments based on IRL.

12 The Internet denies us the ability to say for sure
13 what is a masquerade, what is truth, what is fiction, what is
14 transparent, and what is hidden from us. With all this digital
15 evidence of chats and journals and logs and private messages
16 and bitcoin wallets, not a single witness, other than
17 Mr. Bates -- you ought to have a look at that material -- other
18 than Mr. Bates, not a single witness came in and said created
19 by Mr. Ulbricht, that Mr. Ulbricht was the person on the other
20 side of the screen, except, again, that day of the arrest,
21 after he was lured back in, I submit to you, with a phone call
22 about the rating system, with a thumb drive. Again, we don't
23 have to prove anything. It's up to the government to prove
24 beyond a reasonable doubt.

25 Your common sense and your life experience will tell

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Summation - Mr. Dratel

1 you this kind of evidence we've seen here cannot be trusted
2 beyond a reasonable doubt. Think about yourself. Think about
3 those close to you. Think about the definition of reasonable
4 doubt in important parts of your own affairs, important
5 decisions in your own affairs. Judge that way.

6 This case is not about a specific document here or
7 there, because the entire process lacks integrity in terms of
8 your ability to judge its reliability. That's what reasonable
9 doubt is all about.

10 Again, this is the last time I'll speak to you during
11 the case. And because of that, I would ask you that when the
12 government gets up again and speaks to you, that in your head
13 you challenge the government on these issues. Where is the
14 proof? Where is the reliability? Where is anyone who said
15 that Ross Ulbricht composed those? Where is anyone that said
16 they were composed on that laptop? Where is anyone that says
17 when they were composed that the metadata isn't manipulated
18 somehow. All we know is as easy as a keystroke.

19 Challenge the government in your head. Where is the
20 proof beyond a reasonable doubt that can be relied on in a
21 matter of such importance in your own affairs. I'm confident
22 when you do that, and when you do that in deliberations, you
23 will reach only one conclusion: Ross Ulbricht is not guilty on
24 every count in the Indictment.

25 Thank you very much.

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Summation - Mr. Dratel

1 THE COURT: All right. Thank you, Mr. Dratel.

2 Mr. Howard.

3 MR. HOWARD: Thank you, your Honor.

4 So I get it. The defense theory appears to be that he
5 was the victim of a complicated conspiracy, a huge setup with
6 many, many layers. He admitted that he started the site, but
7 then he quickly left and was set up at the very end. He was
8 the fall guy. He was just in the wrong place at the wrong
9 time.

10 The defendant's story is absolutely ridiculous and
11 defies all common sense. This is a desperate attempt to create
12 a smokescreen, a distraction from the mountain of evidence that
13 shows that that man created and ran Silk Road.

14 Ladies and gentlemen, his digital fingerprints are on
15 everything, which shows that he ran Silk Road from beginning to
16 end. All the files on his laptop computer, the thumb drive
17 found on his bedside table, the \$18 million worth of bitcoins
18 that were found on his laptop computer, his personal email,
19 Facebook account and bank records, the posts on the various
20 Internet forums that he made advertising the site, and on top
21 of all of that evidence, the defendant simply cannot escape the
22 fact that he was caught with his fingers on the keyboard. He
23 was caught redhanded in the middle of a conversation as the
24 Dread Pirate Roberts with an undercover agent who he thought at
25 the time was posing as a member of his support staff.

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Rebuttal - Mr. Howard

1 He was right there, logged into Silk Road as the Dread
2 Pirate Roberts. But he claims that he had no control over what
3 he was doing. He was not running Silk Road at the time. He
4 had absolutely nothing to do with the thousands of pages of
5 chat logs on his computer, journal entries, expense reports,
6 all regarding the operation of Silk Road. Those aren't his,
7 even though they were mixed with very intimate personal details
8 about his life, details that match precisely in dates and
9 content with his personal email account, on his Facebook
10 account, and his bank accounts. These documents cover years
11 and years. In the face of actual evidence, his story is
12 absolutely ridiculous.

13 This case is about -- this is about the evidence in
14 this case. It's about the conduct of the defendant in this
15 case. It's what each of the witnesses told you about the
16 evidence against the defendant in this trial. It's about all
17 the evidence that shows through and through that that man was
18 the digital kingpin of the Silk Road underground criminal
19 empire.

20 The defense theory is a complete distraction that is
21 not supported by any actual evidence. He tries to create
22 boogie men and talk about hypothetical computer
23 vulnerabilities. He comes up with an incredible fantasy, that
24 he set up, that all the evidence was planted, all of the
25 evidence was fabricated.

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Rebuttal - Mr. Howard

1 He was caught redhanded, with a computer full of
2 incriminating evidence. So what does he do? He pedals the
3 same Dread Pirate Roberts story that he invented after he
4 realized a mistake by telling too many people that were close
5 to him about his secret. The one that came up with VJ -- the
6 one that VJ and him came up with together after he had told VJ
7 that he had told a couple of people in real life and told them
8 that he had sold the site. And VJ said, you remember that
9 chat. VJ said, you know what, you should come up with a new
10 identity on the site. Remember the Princess Bride? You should
11 become the Dread Pirate Roberts. That's exactly what he did in
12 real life, and that's exactly the story he's trying to sell to
13 you now, that he sold the site and someone else was the one
14 running in.

15 He knows he has to carefully craft the defense story
16 right now because there are some things he simply cannot deny.
17 He simply cannot deny that he started the site; the evidence is
18 way too powerful on that point. And he can't deny that he was
19 caught redhanded at the end. So he tells us now that he
20 started and created Silk Road. He may have gotten too
21 stressful, left quickly, and then was set up at the end by some
22 mysterious hacker or little elves that put all of these files
23 on his computer. This story does not add up. It defies all
24 common sense. The defendant is the Dread Pirate Roberts and
25 ran the Silk Road empire the entire time.

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Rebuttal - Mr. Howard

1 Now, let's just start with something simple, the
2 money, something that he does get. During opening arguments he
3 didn't claim it was planted on his laptop, the 144,000 in
4 bitcoins, almost worth \$18 million at that time. And during
5 open arguments this was legitimate investment income, or
6 something about bitcoin mining. He admitted that they were his
7 back then. But that's not true. You heard the testimony of
8 former Special Agent Ilhwan Yum, which is absolutely
9 devastating to that story that that was investment income.

10 He showed you that he analyzed the bitcoin addresses
11 that were recovered from the servers that were running Silk
12 Road, and he analyzed the bitcoin addresses that were found on
13 the defendant's laptop, the personal laptop that had 144,000
14 bitcoins, almost \$18 million at the time of his arrest.
15 Mr. Yum's analysis was clean and simple. It looked at direct
16 transfers from Silk Road to the defendant, to the defendant's
17 computer.

18 The defendant is trying to cause confusion by trying
19 to make bitcoins sound more complicated than they are. But
20 don't be distracted. As Mr. Yum explained, it's much like bank
21 accounts. You had one set of bank accounts here from Silk Road
22 and another set that was associated with the defendant's
23 laptop. And he found over 700,000 bitcoins and over 4,000
24 transactions in a year's period that flowed directly from Silk
25 Road to the defendant's computer. He did that by looking at

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Rebuttal - Mr. Howard

1 public records, the block chain. This was not legitimate
2 investment income. This was Silk Road money.

3 But now, after hearing Mr. Yum's testimony, there is a
4 suggestion that that was planted, too. Just like the chat logs
5 and the journal entries and the expense report, like all of
6 those things, that was planted, too.

7 But this is just the beginning. Let me just talk
8 about a few of the things the defense also told you that defies
9 common sense, the smokescreens that are designed to take your
10 focus off the actual evidence in this case.

11 Mr. Dratel talked a lot about this theme that the
12 Internet is not what it seems. Multiple people company use
13 different accounts. It thrives under deception and
14 misdirection. Yet, the only deception and misdirection is the
15 story they're trying to push right now. This is not that
16 complicated.

17 Imagine a bank robber in a case where the bank robber
18 is robbed just as he's leaving the bank, holding the bag of
19 cash, the bag with the gun, the getaway plan, and the cell
20 phone with text messages going back for months where he's
21 planning every single detail of the robbery. This is no
22 different just because it happened on the Internet. He was
23 caught red-handed with his hands at the keyboard. Computer
24 crimes can be solved just like any other crime. The
25 investigation showed that that man was the man behind the

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Rebuttal - Mr. Howard

1 keyboard, the Dread Pirate Roberts.

2 Now, the defendant makes a whole series of arguments
3 that there's no way that he could have been the Dread Pirate
4 Roberts because there is no way that the Dread Pirate Roberts
5 could have been that sloppy. DPR was so careful and security
6 conscious that he could not be the defendant. He would never
7 have stored his encryption keys in a folder labeled "Keys" or
8 accessed Silk Road from a library. He would have never kept a
9 journal detailing all of the stuff that he did on Silk Road.
10 The defense wants to paint the Dread Pirate Roberts as a
11 perfect cybercriminal.

12 Ladies and gentlemen, criminals make mistakes all the
13 time. That's how they get caught. No one is perfect. And
14 there are plenty of opportunities to make mistakes when you're
15 running a massive online criminal enterprise for a period of
16 years, which is processing hundreds of millions of dollars in
17 illegal transactions. But the fact is he thought he was
18 completely protected. He thought he was completely safe for
19 two reasons. First, he thought he was safe because of the
20 protections that he got from the Tor network. Second, he
21 thought he was safe because he had a fully-encrypted computer.
22 That was what he relied on to preserve his anonymity and
23 protect himself from law enforcement.

24 This was not the first time he had used someone else's
25 wireless connection to access Silk Road. You may remember the

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Rebuttal - Mr. Howard

1 testimony of Richard Bates, how when the defendant went over to
2 Bates' house to show him Silk Road after he was forced to do so
3 otherwise he wouldn't get any more help from Mr. Bates. He
4 used the neighbor's Wi-Fi just to be sure in case -- in case he
5 was wrong and something would get traced back to him. That's
6 why he didn't use his house, ladies and gentlemen. That's why
7 he went to a library. In case there was a mistake, it could
8 have been any of the patrons in the library. It wouldn't be
9 traced back to the defendant's home. He did that for his own
10 protection.

11 Tor was his shield. Sure, he told Special Agent
12 Critten, after Critten tried to deliver the nine counterfeit
13 driver's licenses to him, that hypothetically someone could buy
14 these kind of things or drugs from Silk Road. He thought he
15 had no chance of being caught. He thought he was smarter than
16 everyone else. It's his ego, ladies and gentlemen. You see it
17 in the journal entries. He thought he was safe because of Tor.
18 He thought he was completely anonymous. And it didn't matter
19 what Special Agent Critten might have learned about Silk Road
20 based on his statements.

21 He thought he was completely safe from law enforcement
22 because his computer was encrypted. The defense showed you
23 Government Exhibit 225B, the chat with Scout talking about
24 where the Dread Pirate Roberts tells Scout put yourself in the
25 defendant's -- the shoes of a prosecutor. They'd have to get

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Rebuttal - Mr. Howard

1 right behind you and see you logon. Ladies and gentlemen,
2 that's exactly what we did here. The FBI did exactly that.
3 They were able to get behind him and catch him redhanded,
4 logged on to the site, before he had a chance to close his
5 computer and protect all the files that were in there through
6 encryption.

7 It doesn't matter what the names of the files were or
8 the folders on the computer, whether the keys were stored in a
9 folder named "Keys" or the aliases that he used, like Richard
10 Page, you might remember, were stored in a folder named -- it
11 didn't matter because no one would get anything so long as the
12 encryption worked. But the FBI made sure that they got the
13 computer before he could engage the encryption.

14 If he had closed the laptop, it would have been, as
15 Mr. Kiernan told you, a brick. He thought he was safe. He
16 thought Tor and the encryption was going to save him. He
17 thought we would never be able to show you all the documents
18 we've shown you in court over the past few weeks.

19 The defendant talks about Mark Karpeles. I am not
20 going to talk about him very long. There is really no real
21 evidence to support that. It is an utter distraction and a red
22 herring. Remember what we learned about the ask any
23 connection, any real connection that Mark Karpeles had to Silk
24 Road. The Silk Road market.org website, not the Silk Road
25 market on Tor but a simple website that was used to advertise

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Rebuttal - Mr. Howard

1 the Silk Road, tell people how to get there. But it's even --
2 Mark Karpeles is even farther away than that. He owned a -- he
3 ran a company that hosted hundreds and hundreds of websites, or
4 servers where people could host their websites, and someone
5 registered -- someone else registered the Silk Road market.org
6 Web page, Web server at his company. And who was that? That
7 was Richard Page. We showed you the registration information.
8 That was Richard Page. There was a phone number. There was an
9 address. And where do we find all of the same information
10 about Richard Page? On the defendant's computer, in the folder
11 labeled "Aliases."

12 Silkroadmarket.org was not -- was tied to the
13 defendant, not Mark Karpeles. Without -- and that's all you
14 have. It's completely, completely smoke.

15 Let's talk a little bit about Mr. Bates, Richard
16 Bates. Mr. Turner told you you could tell he wasn't happy to
17 be here to talk about his friend. They want to use his
18 testimony and he did. He got up there and told you that on
19 November 11, 2011, he had a party, the 11/11/11 party. They
20 were excited that the days were all the same.

21 And at that party the defendant got there early, had a
22 private conversation with Mr. Bates, because he was worried.
23 Mr. Bates told you that he saw that the defendant was nervous.
24 Who else have you told? Who else have you told my secret to?
25 Because he was having a crisis. He was having a crisis because

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Rebuttal - Mr. Howard

1 he had also told his girlfriend, who was sloppy with the
2 secret, and someone else posted on his Facebook. He was
3 freaking out.

4 That's not a man who had sold the site six months ago.
5 That's a man who was connected to the site.

6 So Bates got up there and told all of you that he
7 believed the defendant when he told him he sold the site. The
8 defense makes a big deal about Government Exhibit 1004, our
9 exhibit which we showed, the 2013 conversation. Do you
10 remember that conversation where Mr. Bates tells the defendant
11 do you see the article on I think it was slashed out -- some
12 article he was referencing on the Internet. And the defense
13 says, Sheesh, I'm glad that that is not my problem anymore.

14 Those are lies. Those are lies that are part of the
15 story that he invented back then, that he had sold the site.
16 You saw that almost exactly one month later, on December 9,
17 2011, he talked to VJ. VJ asked him whether he had told anyone
18 else in real life. He told him he had told two people. He
19 claimed that he had sold this story on them. He spun the story
20 on them that he had sold the site and they believed him.
21 Mr. Bates believed the defendant, that's true. But there you
22 have it, a chat log on his computer where he admits that that's
23 a lie. And then one month after that, that's when VJ comes up
24 with the bright idea, let's deal with those loose ends, those
25 people that you shared your secret with. Let's invent this new

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Rebuttal - Mr. Howard

1 identity on the site, the Dread Pirate Roberts, as part of this
2 whole scheme from the very beginning to claim that it's someone
3 else.

4 It's the same story from the very beginning. And he's
5 trying to pull it over on you right now.

6 None of this really matters. As Mr. Turner told you,
7 he admitted to starting the site. He was logged in at the end.
8 He had to have known the Dread Pirate Roberts' password. He
9 was running Silk Road. Listen to the Judge's instructions,
10 ladies and gentlemen. Just listen to the instructions.

11 Once you put all the distractions off to the side,
12 there is overwhelming evidence the defendant is guilty -- the
13 laptop and everything on it. The defendant wants you to
14 believe that it was all planted there at the last second,
15 through BitTorrent or something, but this is ridiculous. He
16 wants you to believe that all of those writings weren't his.
17 Those weren't his words. But they absolutely were. He wants
18 you to believe that literally thousands of pages of highly
19 incriminating chats were invented from thin air and planted.
20 That's not all. During the hundreds of files on that computer,
21 all of those files were neatly organized by some boogie man who
22 downloaded them to his personal computer at the last minute --
23 the Silk Road keys, the list of servers, the Silk Road
24 accounting spreadsheet, the copy of the Silk Road website and
25 the transaction database that was on his computer, the computer

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Rebuttal - Mr. Howard

1 filled with documents, and the same documents talk about Silk
2 Road and also talk about his personal life. Remember the
3 spreadsheet in which he listed all of his assets, which had
4 showed that he thought that Silk Road was worth \$104 million to
5 him, but then also had references to his job at Good Wagon
6 Books and entries to the exact amount of money that he had in
7 his USAA account and his PayPal account the last time that
8 spreadsheet was updated. It is the same thing with the chats.

9 Those chats, as I've mentioned, and as Mr. Turner
10 mentioned, include details about his personal life that match
11 up exactly with things you saw from his Facebook account and
12 his email account. The trip to Thailand, his travel and his
13 weekend getaways, the poison oak incident, getting sick.
14 Remember the email in 2012 to his friend about statistics? The
15 same email that was found copied almost exactly into the chat
16 that was talking about Silk Road?

17 He wants you to -- he's claiming that the part about
18 his personal life are real but everything else is fabricated
19 and planted. You have got to be kidding me.

20 And how about the evidence seized from his residence?
21 I just want to hold up. This is Government Exhibit 502A.
22 These are the thumb drives. They are very small, but one of
23 these is very, very important; it is a powerful piece of
24 evidence. It was a thumb drive that the FBI found on that
25 man's bedside table.

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Rebuttal - Mr. Howard

1 Now, Mr. Kiernan talked to you about this thumb drive.
2 It contained backup copies of the Silk Road website, the same
3 copies of files that were also found on the computer. It
4 contained backup copies of other files from his computer, many
5 of the incriminating documents you've seen during this trial.
6 And Mr. Kiernan showed you the date that backup was made,
7 September 23, 2013, weeks before he was arrested.

8 So these files were planted on both the laptop and the
9 thumb drive weeks apart? The same mysterious hacker or Mark
10 Karpeles, or whoever you want it to be, broke into his house
11 and planted that thumb drive on his bedside table?

12 This shows that he was running the Silk Road website,
13 ladies and gentlemen. He backed up his files to a thumb drive
14 and he had left it on his table. It was encrypted. But
15 Mr. Kiernan was able to figure out the encryption, and the
16 evidence is very powerful.

17 Mr. Kiernan showed you one of the files, the log file,
18 the one that also contains the references to the murders for
19 hire, when he talks about, you know, getting confirmation that
20 the blackmailer was executed, the same file that had details
21 about his personal life, about getting sick, that's
22 corroborated by his Gmail account about the poison oak, about
23 the date with Amelia. There were two different copies. There
24 was a copy on the thumb drive that was up to date as of the
25 date that the backup was made, September 23rd, and he had a

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Rebuttal - Mr. Howard

1 copy on the laptop which had a more recent update about what he
2 had done on Silk Road since the backup was made. It's
3 devastating evidence, ladies and gentlemen. It's devastating.
4 The story does not make sense, his story that has no actual
5 evidence to support it.

6 How about the piece of trash? Was that planted, too?
7 The piece of paper with details about the vending system
8 formula that was on the Silk Road website for weeks. Someone
9 placed a telephone call and he blindly listened and wrote it
10 down on a piece of paper, the exact same formulas that the
11 Dread Pirate Roberts was talking about on Silk Road for
12 changing the vending system? It doesn't make sense. This
13 simply cannot be explained away.

14 And, third, the money trail. The absolutely
15 devastating evidence the bitcoins on his laptop were from Silk
16 Road and not from legitimate investing as, you know, they
17 wanted you to believe in opening statement. That money trail
18 also shows you that he made two payments of hundreds and
19 hundreds of thousands of dollars for those murders for hire.

20 Again, we don't think -- there is no evidence those
21 occurred, and hopefully they did not. But he felt threatened
22 and he made those payments to arrange for a hitman to take out
23 five different people. Thank God that didn't work out. As
24 Mr. Turner explained, it showed he was willing to stop at
25 nothing to protect his illegal empire, his multimillion-dollar

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Rebuttal - Mr. Howard

1 empire.

2 Ladies and gentlemen, the evidence is overwhelming
3 that that man, Ross Ulbricht, built and operated Silk Road.

4 At the end of the day, Judge Forrest will tell you
5 that what I say is not evidence, what Mr. Dratel says is not
6 evidence. Reasonable doubt is not about flights of fancy,
7 ridiculous stories of conspiracy theories that do not match up
8 with the actual evidence. It's your job to apply the evidence
9 that you've heard, the actual evidence, to the law as the Judge
10 will instruct you. Use your common sense and don't let the
11 defendant insult your intelligence.

12 You, the jury, are entrusted with finding the facts.
13 Look past all of these distractions and look at the actual
14 evidence. Listen to the Judge's instructions. Use your common
15 sense. If you do these things, I expect that you will see the
16 defendant's wild conspiracy theories do not hold water. There
17 is only one real conspiracy here. That's the conspiracy that
18 was created and run by that man -- to create Silk Road, to
19 control every single aspect of that illegal empire, and for
20 that he took his cut, his piece, of all the drugs and illegal
21 goods that were sold on the site.

22 (Continued on next page)

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Rebuttal - Mr. Howard

1 MR. HOWARD: The evidence overwhelmingly shows that
2 Ross Ulbricht was the digital kingpin of the underground online
3 illegal marketplace that was Silk Road. We respectfully
4 request that you return the only verdict consistent with the
5 law, the defendant is guilty as charged. Thank you.

6 THE COURT: All right. Thank you, Mr. Howard.

7 Ladies and gentlemen, I don't think we have quite
8 enough time to really get going with the jury instructions this
9 afternoon, so instead, we'll adjourn for the day and then pick
10 them up tomorrow morning.

11 It will take me about, so you have your mind set, it
12 will take me about an hour and 15, 20 minutes to get you the
13 instructions. Now, let me just assure you that you're each
14 going to have a copy of them on with you. We'll hand them out
15 to you tomorrow morning so you can follow along. It will be
16 what I say that's actually the instruction, but the
17 instructions, it's pretty scripted, but every once in a while,
18 I make a change. So it's important that you listen, even if
19 you're following along. But we'll go through that and then and
20 then immediately after that, you'll be allowed to go and
21 deliberate. My expectation is that if we all can get going
22 with our usual hope springs eternal, as soon as we can tomorrow
23 morning, that you'll be deliberating before lunch for sure and
24 then you can deliberate through lunch.

25 One thing that I want to tell you about now which is

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Trial

1 you all have to be there together in order to deliberate. In
2 other words, if somebody takes a cigarette break, you have to
3 wait, right? Also, you can't in the morning start before
4 everybody is there. So same thing with the instructions: We
5 have to have everybody in our seats to get going. All right.

6 And we'll talk about the role of the alternates also
7 tomorrow as part of that whole discussion. So for tonight, I
8 know that you have now heard all of the evidence in the case.
9 You have now also heard the closing statements. However, you
10 haven't been given the instructions on the law.

11 So it does remain extremely important that you not
12 talk to anybody, including each other or anybody else about
13 this case. We're very close to the point that you'll be able
14 to deliberate, but it's important that you hear my instructions
15 on the law before you even speak with each other about the
16 case. As you read news articles and things, anything that you
17 think might be related to this case, you must turn your eyes
18 and do not read that article. I instruct you that you cannot
19 read any news articles until this case has been fully
20 completed. I'll see you folks tomorrow morning and we'll
21 hopefully start as close to 9:30 as we can. We're always
22 trying. Have a good night.

23 (Jury excused)

24 (Continued on next page)

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Trial

1 (In open court; jury not present)

2 THE COURT: Is there anything that you think we should
3 go over before we break ourselves, before we break for the
4 evening?

5 MR. TURNER: Not from the government.

6 MR. DRATEL: No, your Honor.

7 THE COURT: Unless there is anything to be raised
8 tomorrow morning, I don't think we need to gather before being
9 all in our places and ready to go at 9:30.

10 MR. DRATEL: Just as long as our previously stated
11 objections are incorporated for purposes of the final charge
12 that the Court has prepared. In other words, that we don't
13 have to go through all of our prior objections that we made
14 during the charge conferences.

15 THE COURT: Yes. So let me just describe how it works
16 because you have received now a final and then you've received
17 an "as delivered." The difference between the two are some of
18 the changes that I had given yesterday. I have given you
19 absolutely every iteration. You're welcome and I encourage you
20 to run a blackline against it if you want to look for any
21 additional typographical errors, things that may have changed
22 in there. Otherwise, I believe I released an opinion yesterday
23 that went through my resolution of most of the substantive
24 objections.

25 To the extent that I didn't have a particular

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Trial

1 objection expressly pointed out in that written decision, it's
2 relatively obvious after our discussion, I just went with one
3 position or the other based upon the Court's review of the law.
4 So all objections that were lodged, either orally or in the
5 written submissions, there were both letters which the Court,
6 when this is all done, will post on the docket for the jury
7 instructions, as well as the additional defense instructions.

8 My practice is to have 100 percent of that go onto the
9 docket so that if anybody ever chose to do so, they could
10 recreate, between the transcript and those written submissions
11 and the track changes, exactly what's occurred, so I think
12 there will be a complete record.

13 MR. DRATEL: I'm saying it so we don't have to restate
14 again. I prefer not to. Believe me.

15 THE COURT: Your objections as they have been set
16 forth so far are preserved. If there's anything new that you
17 think you needed to raise, then you'd have to do it. But the
18 ship has sort of sailed, but if you did have something, I
19 wouldn't want you not to say something, but the objections
20 you've already made have been made.

21 MR. DRATEL: Thank you, your Honor.

22 THE COURT: If there is anything that you folks want
23 to go over, get ahold of each other and I'll be here in any
24 event and we can deal with things at 9:00; otherwise, let's try
25 to be here as close to 9:30 as possible.

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Trial

1 MS. LEWIS: One logistical matter.

2 THE COURT: Let's sit down. I thought it would be
3 quick.

4 MS. LEWIS: One logistical matter and we mentioned the
5 exhibits, there are a lot in this case, would you prefer we
6 check the exhibits tonight then?

7 THE COURT: I don't mind, frankly, logistically
8 whether you do it tonight or tomorrow morning before 9:30, but
9 you need to have resolved everything that's going into the jury
10 room in agreement between the parties. And if there's any
11 dispute, I will resolve it.

12 In other words, if there's a demonstrative and
13 somebody thinks they're sending it back into the jury room,
14 right, and there's a dispute, then you folks need to discuss it
15 and then you need to raise it with me if you can't resolve it.

16 The reason I say that is I've actually had cases where
17 after it's gone back into the jury room, a verdict is ready to
18 come out before they have the documents rolled in because it
19 can sometimes -- that, I don't expect to occur in this case,
20 but it has trained me that it needs to get rolled in at the
21 same time because I do want to recite that all the documents
22 were there and available to the jury.

23 Whenever you want to do it, do it, but the moment that
24 I'm done with the charge, I wanted to launch that there.

25 MR. TURNER: So I'm perfectly clear, are you saying

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Trial

1 that all of the exhibits should go in or that the parties
2 should confer about which selection go in?

3 THE COURT: Here is my view: Anything that has been
4 received into evidence as evidence in this case, in other
5 words, let's put aside things that were just shown marked for
6 identification and potentially depending upon your view of the
7 demonstratives, and that can be how you folks decide, that
8 should go back, right? I'm not saying pick and choose ten
9 exhibits here, ten exhibits there.

10 There's an entire list of exhibits and my view is they
11 should go in order, all of them, into the jury room.

12 MR. TURNER: Okay. Understand. Thank you.

13 THE COURT: Now, the other issue, and I assume that
14 you folks will have this automatically, is to have -- the U.S.
15 Attorney's Office always has this -- is an electronic version
16 of the transcript available in case there are questions which
17 require us to extract testimony so that we can do that
18 relatively quickly. It's a lot easier than the cutting and
19 pasting, so I assume you folks have that capability on this
20 case.

21 MR. TURNER: We have been working on that.

22 THE COURT: Terrific. I told you I'm going to send
23 the indictment back, and I left it up for inspection. It's up
24 here as well. I will send back into the jury room -- the four
25 alternates will be told to go home. They are not going to be

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1 dismissed. I'm sure we've all had it, I've had it, where
2 there's been an alternate called upon and the jury
3 deliberations must commence anew, so the alternates remain part
4 of the jury panel until it's done, but they won't, in the
5 initial instance, deliberate with the panel of 12.

6 But I will send 13 copies of the verdict form into the
7 jury room; that's one for each juror and an extra because they
8 tend to mark them up and they need an extra. So, that's why we
9 have the 13 here. If you're wondering what they look like,
10 they're right here. It's what you've seen before. It's what
11 was already circulated. I hadn't made the initial changes
12 apart from adding signature lines. It is my practice to have
13 each of the 12 jurors sign, as well as whoever they choose as
14 the foreperson, the actual verdict form.

15 The one thing I did want to say was in terms of once
16 the jury is charged, I need one lead counsel from each side --
17 and, of course, the defendant will need to remain available
18 throughout the entire deliberation process all day -- until we
19 get a verdict in how ever many days it takes, so if we have
20 questions, people aren't running over from wherever they're
21 running over from. So we can reach you, it doesn't mean you
22 have to be right here, but Joe needs to know exactly where in
23 the building you are. So if you have gone to the cafeteria or
24 someplace else, Joe needs to know exactly where to find you.
25 And you guys I'm sure your experience is the same: Typically,

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Trial

1 if you're going to get a question, you often get it in the
2 first hour, hour and-a-half and then there might be a delay
3 when they're talking, but they might have an initial question
4 and then a delay before additional questions.

5 Anything else?

6 MR. DRATEL: No, your Honor.

7 THE COURT: We are adjourned for the evening then
8 until tomorrow morning.

9 THE DEPUTY CLERK: All rise.

10 (Adjourned to February 4, 2015 at 9:30 a.m.)

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