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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 December 17, 2014
2:00 p.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 SERRIN A. TURNER
18 TIMOTHY HOWARD
19 Assistant United States Attorney

20 JOSHUA LEWIS DRATEL
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23 Attorneys for Defendant
24
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1 THE DEPUTY CLERK: In the matter of United States of
2 America versus Ross William Ulbricht, 14 CR 68.

3 Counsel, please state your names for the record.

4 MR. TURNER: Good afternoon, Your Honor. Serrin
5 Turner, for the government. With me at counsel's table is AUSA
6 Timothy Howard. Paralegal Molly Rosen, and Paralegal Nicholas
7 Everett will be joining us shortly.

8 THE COURT: All right. Good afternoon.

9 MR. HOWARD: Good afternoon.

10 MR. DRATEL: Good morning, Your Honor. Joshua Dratel,
11 for Mr. Ulbricht, who's standing besides me. And also for
12 Mr. Ulbricht is Lindsay Lewis from my office and Joshua
13 Horowitz.

14 THE COURT: All right. Good afternoon, all of you.

15 We are here this afternoon for the final pretrial
16 conference for this matter. We start trial on January 5th, and
17 we've got the processes all lined up for the jury questionnaire
18 to go out and to proceed, as we've all discussed now numerous
19 times. And if there are any issues or questions about that,
20 we'll take them up maybe at the end. I assume that I've issued
21 so many orders on this and so many versions of the
22 questionnaire and of the spreadsheet, that hopefully we're all
23 on the same page at this point.

24 Now, in terms of how we're going to proceed this
25 afternoon, I want to talk first about the motions in limine.

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1 And in that regard, I do want to talk a little bit, though we
2 don't need to belabor this too much, about the nature of the
3 conspiracy questions that I had posed and that the government
4 answered, and I want to thank the government for responding so
5 quickly with a much longer piece than I had thought you'd be
6 able to put together, and I didn't mean to give you an
7 assignment that would really cause somebody to have lost some
8 sleep perhaps. You've got enough of those assignments on your
9 own. But I do want to talk about that and about the motions in
10 limine because they do relate together to one another, and then
11 go through the jury selection, how the peremptories are going
12 to work, some of those logistics, through things like just how
13 the exhibits are going to be presented at trial, jury books,
14 making sure we're all on the same page, and so we'll go through
15 then the normal final pretrial checklist.

16 In terms of the nature of the conspiracy, it's an
17 unusual thing, I do understand, for the Court to be focusing on
18 this so much at this stage, but this is an unusual case. It's
19 a case that has got aspects to it which I think we can probably
20 all agree we've searched far and wide for and don't quite fit
21 any fact patterns of any case anywhere precisely on all fours.
22 Now, that's the common-law system, that happens all the time.
23 The common-law system is a system which is designed to account
24 for and be able to subsume within it any manner of fact
25 patterns, and indeed, the country was founded at a time when

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1 cars didn't exist, and then certainly the Internet didn't
2 exist, but we've managed to accommodate. So the mere fact that
3 this is novel doesn't mean that it can't be encompassed within
4 existing law. The question is to what extent do we have to
5 figure some of those issues out now and what is the existing
6 law we're going to end up applying to it.

7 The reason that I need to do some of it now is because
8 I do believe that there are gatekeeping issues which the Court
9 needs to undertake which cannot await decision of the jury.
10 The Court is required to determine what relevant evidence is,
11 and that's a determination of law for the Court, and if things
12 are irrelevant, I need to exclude them, the jury should not be
13 burdened with irrelevant pieces of evidence.

14 Even relevant evidence has to go through a 403
15 analysis where one weighs whether the probative value is
16 substantially outweighed by any prejudicial effect, and that
17 prejudicial effect can include things like confusing the jury,
18 being duplicative, wasteful of time, as well as all of the
19 other pieces of 403. So there's a 403 analysis that has to go
20 on as well.

21 I do need to understand your theory, the government's
22 theory in this case, because I can't, I think, rule in a just
23 manner unless I do.

24 Now, it may be that you folks are so comfortable --
25 and by you folks, it could be all of the counsel and the

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1 defendant here, or it could be the government, or it can be
2 some subset of -- are so comfortable with what the theory is,
3 that it's easy for you to imagine, and you can't understand why
4 I'm struggling with this, but so be it, you'll bear with me,
5 and I appreciate the fact that you gave me your letter. I can
6 promise you that, in my view, the biggest issues in this case,
7 in terms of difficulties, is precisely with what I'm focusing
8 on right now. This is, I think, a lot of the difficulty of, in
9 my view, some of the legal issues in this case. So I think to
10 the extent we can sort through some of this now and figure out
11 where we are now, the better. So that's why we're doing it
12 now, not just because I'm the judge, and I say I want to do it
13 now, I actually think we need to do it now.

14 I want to reiterate, having carefully studied the
15 government's most recent submission of today, but also, I
16 have -- and I know that this is what I am supposed to do, and
17 so is this is not to say anything other than what you expect --
18 I have spent an extraordinary number of time reading every
19 conspiracy case that I can possibly conceive of that could be
20 anywhere near many different aspects of this case. And that's
21 what I was doing when I wrote the decision on the motion to
22 dismiss, that's what I have been doing ever since, I've got
23 cases, and cases, and cases on this. I do believe -- and I say
24 that because I am aware of the law that you wrote in the
25 decision on the motion to dismiss, and I am aware of the law

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1 that you folks cited to me, though I had not read the 1976 Kue
2 Chin case, which I've now read. I think that's the name of the
3 case. You folks know it, but I've now read it. But I wanted
4 to say to the government that I'm troubled by the breadth of
5 your theory on the conspiracy. I want you just to hear that
6 from me and take that seriously. I understand what you're
7 saying. I am not of the view that -- and I do believe you
8 passed the motion to dismiss, right. I think that as a matter
9 of law, the motion to dismiss the indictment is a very
10 different standard, but I just want to -- as we're on the
11 precipice of trial, and you've got some time to think about
12 this, I just want you to understand you're hearing it from me
13 now in as close to words of one syllable as I can give you, and
14 let me tell you why. I have no theoretical issue with the fact
15 that for a narcotics conspiracy, that one could put together
16 proof -- whether you will or not is for you folks to do and for
17 the jury to decide -- you could put together proof where, for
18 instance, Mr. Ulbricht, as a for instance -- this is
19 arguendo -- is the center point of a narcotics conspiracy, he
20 designs something, the system, the Silk Road World, which he
21 then, as the -- I'm going to use the example of the hub of the
22 conspiracy -- puts out there, gets a lot of people to want to
23 sell, and buy, and look at drugs on that website. The people
24 are the spokes, the buyers and the sellers are the spokes, and
25 the website -- conceivably the website itself is the flypaper,

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1 the stickiness that's around it. So you've got him in the
2 center, you've got the website in the center binding everybody
3 together, and you've got the spokes. So that's your rim,
4 right, would be the website with the stickiness. The defendant
5 and the website, then, are separable. The website becomes the
6 stickiness. I understand that.

7 The question for me is whether -- and this is, I
8 think, a very hard question, so if you think it's easy, then
9 one of us is really misled, and I will tell you that I think
10 it's so hard, that I've spoken to a bunch of other judges about
11 it, and I'm not the only one who thinks it's hard just to sort
12 of give you a sense of am I the only person out there in the
13 ether thinking this is difficult.

14 The issue is, can you have a conspiracy -- let's take
15 it very broadly -- of heroin at all times during the life of
16 the website, also and all those folks in the same conspiracy
17 with people selling Gucci belts that are counterfeit, all
18 right, the contraband, such that, for instance, you can get
19 around coconspirator statements and the hearsay issues you'd
20 otherwise have with the website screenshots, to put it in terms
21 of the legal issues for the Court.

22 So one of the arguments were are these people together
23 with Mr. Ulbricht all in a conspiracy for the illegal? I find
24 that extraordinarily broad.

25 Now, it may well be that when you put together the

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1 proof at trial, that it will appear as if there are things that
2 I had not expected, but then I have a different issue, which is
3 are the folks in the LSD conspiracy allegedly the same folks,
4 are they also in the conspiracy with the cocaine, with the
5 heroin, with the prescription drugs, with the oxycodone, with
6 the stimulants, with whatever, and it may be the answer is yes,
7 and I really have much less of an issue with the narcotics,
8 it's when you mix narcotics with different things, but also the
9 time frames and the theories.

10 So one of the theories is for mutual dependence, that
11 the success -- that there was mutual dependence on the overall
12 success of the website. Success means different things to
13 different people at different times. There is success at the
14 outset, there is a different expectation of success on day one
15 when it's launched, and you might have X number of eyeballs
16 versus success when you're on -- when you're talking about day
17 300, when you may have -- of unique users, you may have
18 millions. And so there's different views of success. You may
19 have evidence that's going to talking about all of that, it's
20 got to be percipient, I think, in some respects, otherwise
21 you're going to have a hard time with some of the inferences.
22 And I think that the time frames become anyway more of an
23 issue. So I just want to lay it out there in terms of why I'm
24 troubled. So it's the nature of the goods, the breadth, it's
25 the time frame.

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1 Now, why does it matter? And I am familiar with the
2 cases where in single-defendant cases, when you show a
3 multiplicity of conspiracies, there's a question after, if you
4 were able to get a conviction, is there a variance, have you
5 varied from the terms of the indictment in terms of what was
6 proven at trial, and is the case somehow defective for that
7 reason?

8 I acknowledge that the cases out there where there
9 have been variances found are multidefendant cases where the
10 Courts of Appeals, including the Second Circuit, look at
11 whether or not the defendant, a particular defendant, has been
12 prejudiced. When it's a single defendant as to whom multiple
13 conspiracies have been shown, the Second Circuit typically says
14 here there has not been prejudice, we find no prejudice. And
15 in multiple defendant conspiracies, it can go the other way,
16 depending upon the nature of the multiple conspiracies shown.

17 The principle is not, there can never be prejudice --
18 this is what I want to emphasize -- with a single person with
19 multiple conspiracies. Imagine, for instance, you need to get
20 your heroin quantity up to a certain amount, and one conspiracy
21 is different from the other, is there prejudice if you've added
22 the quantity together, and you've charged a single conspiracy,
23 but you've got a multiplicity? Maybe the answer is no, but
24 maybe the answer is yes. What if -- let's take a harder
25 example than just quantity -- statutory maximum. Statutory

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1 maximum for, let's just say, heroin, let's say it was life, but
2 let's say the statutory maximum for something else was not
3 life, if you combine your conspiracies for a single defendant,
4 do you have prejudice? I don't know. These are the kinds of
5 things that I am struggling with. I think these are hard
6 issues. I'm not saying that there aren't answers to them, but
7 I'm struggling with them.

8 So I did read your paper, Mr. Turner. I just want to
9 give you a sense of where I'm going, and then I'll go to the
10 motions in limine, but it sets the stage for some of that.

11 MR. TURNER: Should I respond now, Your Honor?

12 THE COURT: You certainly can, yes.

13 MR. TURNER: So, Your Honor, I certainly acknowledge
14 that the technological context of this case is new, but I think
15 the legal principles are quite well-established. So if you can
16 just imagine, if you and I were to agree to sell drugs, say
17 that I was a great marketer, I could find lots of people to
18 distribute drugs to, you were a great supplier, you could get
19 your hands on any kind of drug, and you and I agreed one day,
20 you know, you were going to find whatever drugs you could, and
21 I was going to find customers for them.

22 THE COURT: Okay, stop right there. You and I agree
23 on that. You and I, as stepping out of our role play, agree
24 that coconspirators have to share the same objective.

25 MR. TURNER: Correct, Your Honor.

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1 THE COURT: And you agree that you can't just guess
2 that you're sharing the same objective, you can do inferences,
3 but there has to be some proof that would lead you to a logical
4 inference.

5 MR. TURNER: Sure. Yes, Your Honor.

6 THE COURT: Okay. So then he can sell all kinds of
7 drugs, but is the other conspirator expecting him to sell more
8 than LSD or more than heroin?

9 MR. TURNER: So, again, if the agreement is simply to
10 sell drugs, that is a violation of the drug conspiracy laws.
11 It does not have to be, we are going to sell LSD or this brand
12 of heroin, anything like that.

13 THE COURT: Because what if some sellers want to sell
14 a whole variety and some sellers only care about their one
15 drug.

16 MR. TURNER: As long as they agree on a common
17 objective, which is to sell illegal drugs, that is all the
18 conspiracy laws require. There are commonly conspiracies that
19 involve different types of drugs, and it doesn't have to be
20 alleged in the indictment, and we didn't allege that in the
21 indictment. The indictment alleges a conspiracy to distribute
22 unlawful drugs, period.

23 Now, there are specific drugs we allege for purposes
24 of the sentencing enhancement under 841(b)(1), but that's a
25 different issue. In terms of the conspiracy, the underlying

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1 conspiracy, it is simply a conspiracy to sell illegal drugs.

2 And, again, if you and I agreed to --

3 THE COURT: I deal with this -- I deal with what
4 you've described all the time.

5 MR. TURNER: So then let's say we have that agreement,
6 and we're doing great, I'm attracting all the customers, you're
7 supplying all the drugs. Somebody else comes in, and they say,
8 we want to join your efforts, we have some more drugs that we
9 can -- you know, deliver to me, and I'll find customers for
10 them, and it grows over time. And then the first person -- you
11 dropped out, and somebody else comes in, that is very common in
12 conspiracy cases. The point is, as long as the intent, the
13 subject of the agreement, persists throughout those changes,
14 that all who are entering the conspiracy are agreeing to join
15 this venture to distribute illegal drugs, the conspiracy
16 remains intact.

17 THE COURT: Is it the government's position that the
18 folks who are in the conspiracy to sell illegal drugs are the
19 same -- are in the same conspiracy as the folks who are selling
20 false identification documents?

21 MR. TURNER: No, Your Honor, not necessarily. If a
22 person is only selling false identification documents, they
23 would not have the intent to share -- to sell drugs.

24 THE COURT: How about Gucci belts?

25 MR. TURNER: No, Your Honor.

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1 So we're talking about a conspiracy between the
2 defendant and the drug dealers dealing drugs on the site.
3 That's the drug conspiracy. There's certainly the false
4 identification trafficking conspiracy, which would be between
5 the defendant and the sellers of false identification
6 documents.

7 THE COURT: And then in terms of the sentencing
8 enhancements?

9 MR. TURNER: Yes. In that case, the question is, what
10 were the amounts of certain drugs involved in the defendant's
11 offense? What did he intend to -- what did he conspire to
12 distribute through his offense? And I really want to emphasize
13 that the narcotics conspiracy is the only one charged.

14 Obviously we read Your Honor's opinion, and we
15 responded in part by superseding with an indictment that
16 included not only conspiracy charges, but substantive narcotics
17 charges. And I want to point the Court in particular to
18 841(h), which that act was passed by Congress specifically to
19 apply to illegal online pharmacies. And the statute itself
20 provides an example of the sort of conduct it applies to, and
21 one of them is serving as an agent, intermediary, or other
22 entity that causes the Internet to be used to bring together
23 buyers and sellers of drugs. If that doesn't describe what's
24 going on here, I don't know what does.

25 THE COURT: I think that in terms of the substantive

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1 charges, I understand three, actually, of those. Then you've
2 got the fourth, I think it's Count Four is your conspiracy
3 charge, but some of the evidence, when I was going through your
4 exhibits, there's a huge amount of it that seems to fit in
5 mostly through the conspiracy charge, but not all, but there is
6 some stuff that does come in through the conspiracy charge that
7 otherwise might be a little further afield.

8 MR. TURNER: Your Honor, as far as I'm concerned, as
9 far as the government's concerned, that evidence is relevant to
10 all of the narcotics charges.

11 THE COURT: The Gucci belt?

12 MR. TURNER: No. So the Gucci belt --

13 THE COURT: But that's just as important to me. I'm
14 saying it lightheartedly, but the reality is, there's lots of
15 stuff on the counterfeiting, and now when I say lots, it's by
16 no means more than a tenth of the exhibits that you folks have,
17 but there are a number of these other contraband type exhibits.

18 MR. TURNER: Here's the idea why we included those,
19 and it's really only a handful of exhibits we're talking about.
20 If we're showing the jury we're giving them a walk-through of
21 Silk Road, what the site was all about, and there's a list of
22 categories, so you had apparel and books, and unless the jury
23 has a complete picture, complete understanding of what sort of
24 apparel is being sold, what sort of books are being sold, it
25 might have an inaccurate view of what the site is really about.

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1 So I know the defense wants to argue this is sort of a
2 neutral site, anybody could sell anything. If you look at the
3 underlying apparel, it's counterfeit apparel. If you look at
4 the underlying books, many of them are tutorials on how to
5 commit computer hacking and do illegal things. The point is
6 this was a marketplace that catered to criminals, and we don't
7 want the jury to get an inaccurate view of that.

8 So we do think it's relevant to provide a full picture
9 of the nature of this website. It's certainly not essential to
10 the government's case, but we think in order to get a complete
11 picture of the sort of marketplace this defendant ran, we think
12 it's a fair handful of exhibits to put in for that purpose.
13 It's the same as if you're putting in a document, and you want
14 to make sure the jury has a complete understanding of that
15 document by not omitting parts that, if omitted, might give an
16 incomplete picture.

17 And it also shows in some cases that the defendant
18 controlled what was sold on the site, so we have posts where
19 he's saying I'm going to allow this, but not that. That
20 obviously is relevant to everything in the indictment because
21 it shows his control and constant operation of this illegal
22 enterprise.

23 THE COURT: All right. And so with respect to that
24 type of document, just make a note to yourself as we go through
25 the motions in limine, and if there's something that we need to

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1 make sure we've included, that we keep track of that, because
2 that, obviously, I think would have some relevance to all the
3 charges.

4 MR. TURNER: So just in terms of the relevance, again,
5 I think irrespective of the conspiracy issues, we're alleging
6 that this defendant was an online kingpin, that he was at the
7 top of this enterprise and distributing narcotics, he was
8 supplying narcotics through his website. All these vendors
9 were his suppliers who were conspiring with him to do so. He
10 was taking a cut of every one of their sales. If you had a
11 real-life case against the kingpin, you don't have to -- the
12 government's not required to give them a narrow slice of proof.
13 The government should be entitled to present a full view to the
14 jury of what was entailed in this defendant's role, what was
15 entailed in his operation of this illegal enterprise, and
16 that's what we're trying to do. I think we've actually been
17 fairly selective in the exhibits that we have chosen for trial,
18 but I think it would be unduly constrictive if we were trying
19 to just isolate the conspiracy to the defendant and one other,
20 two other dealers or something like that, because that's not
21 the nature of the enterprise we're talking about. We're
22 talking about a sprawling drug marketplace that this
23 defendant --

24 THE COURT: And one can characterize sprawl in
25 different ways, and I'm not suggesting it has to be, by any

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1 means, a buyer/seller relationship only or even a conspiracy of
2 three, it could be a conspiracy of 150. I don't really know
3 how it would break down if it broke into separate conspiracies.
4 I am just previewing to you folks the fact that I think there
5 is a possibility that it may fit better with multiple
6 conspiracies than with single. That, I agree, ultimately on
7 the narcotics conspiracy will be an issue for the jury.

8 I'm just warning you in advance that I have concerns
9 about it. If the way the evidence comes in for the narcotics
10 conspiracy comes in in a way that there's never an issue, so be
11 it; if it comes in in a way that it becomes clear there are
12 different things at different times, then that will be
13 something to grapple with at that point. One of my concerns is
14 the conspiracies of all things illegal, okay. That's the Gucci
15 belt with the heroin, and the defendant is not charged with
16 counterfeiting. Currency, which is one of the exhibits --

17 MR. TURNER: He is charged with money laundering, Your
18 Honor.

19 THE COURT: He is charged with money laundering --

20 MR. TURNER: That's what that exhibit goes to. That's
21 exchanging Bitcoins for dollars. That's drug dealers cashing
22 out their proceeds for dollars, that's money laundering.

23 THE COURT: Okay. You've got to then connect the drug
24 dealers to the currency sellers because it could also be
25 counterfeit currency, I have no idea. But you'll figure out --

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1 I can only see what's on the exhibit, and there wasn't any text
2 to the exhibit. I just looked and saw it says currency, and
3 it's got different pictures of yen or euros --

4 MR. TURNER: I can address that quickly, Your Honor.
5 The website offered the ability to exchange Bitcoins for money.

6 THE COURT: The ability to exchange, if that's what
7 the currency pieces are geared towards, that's something
8 different. I do understand that your Count Six is money
9 laundering. Money laundering, in the indictment, is alleged in
10 terms of the narcotics, the computer hacking conspiracy, and
11 the false identification. And it's all of the narcotics
12 charges plus those, it's all of the conduct that's really
13 called out in the indictment. And I don't understand the money
14 laundering, for instance, to include counterfeiting -- the
15 sales of counterfeited belts, for instance, because we don't
16 know if they're, in fact, counterfeit. We don't know about
17 whether there were sales that were obtained thereby, but
18 that's, I think, an easier -- a much easier issue.

19 MR. TURNER: That's much more discrete, Your Honor, if
20 we're just talking about the handful of exhibits that deal with
21 uncharged sales items, a very discrete set of exhibits.

22 THE COURT: Right. So let me just take you through
23 where some of these things come out, and we will sort our way
24 through it. My point that I wanted to make is not only to set
25 the stage for some of the contraband discussion and the

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1 manuals, the various texts that are being discussed and are at
2 issue, but also just to give you sort of my read more
3 generally. I just wanted to have time when I just -- and I
4 know I said it in the last conference -- you know, you hear me.

5 MR. TURNER: I understand, Your Honor.

6 THE COURT: All right.

7 Mr. Dratel?

8 MR. DRATEL: Also because obviously the government's
9 letter came in this morning, we're preparing for it and looking
10 at the cases, et cetera, so I will address some of that here.

11 I think the Court has correctly recognized the apples
12 and oranges aspect of this multiple-conspiracy question. We're
13 really talking about multiple conspiracies, we're talking about
14 the conspiracy charged in the indictment versus what
15 conspiracies get proved, and if the government doesn't prove
16 the conspiracy charged in the indictment, but instead proves a
17 series of other conspiracies, that's a sufficiency question.

18 And the government wants to concentrate on the
19 sufficiency aspect of it, but as the Court has recognized,
20 there's a whole gatekeeping aspect, particularly when you look
21 at the volume of evidence that could come in for conspiracies
22 not charged in the indictment, and then at the end of the day,
23 we're having this giant tail wagging this tiny dog, and the
24 case really comes in in a way that can't be cured by any
25 limiting instruction. That's why I think the gatekeeping

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1 function is so important, to avoid a position where there's no
2 alternative, but a mistrial. If we come to the end of the
3 day -- that's why I'm talking about subject to connection
4 previously, which is that this could be an entire case subject
5 to connection that's never made or at least with respect to an
6 extraordinary amount of material.

7 The question of -- the government's application of
8 many of these principles is completely abstract, it has nothing
9 to do with the specific contours of those cases, again as the
10 Court has recognized. When it talks about a real-life case,
11 yeah, that's right, those are real-life cases, this isn't an
12 imagined case, in the sense that it's completely abstract. The
13 notion of mutual dependence is not about success, or wanting to
14 have marketing, or depending on some sort of -- it's the mutual
15 dependence on a real concrete aspect of people doing different
16 things in the conspiracy known to others, exchanged with
17 others, preplanned with others, conscious of others. It's not
18 mutual dependence in the abstract in some sort of theoretical
19 context.

20 THE COURT: It's possible, though, just so that I'm
21 clear, because I had mentioned mutual dependence, that I think
22 there is a way of having mutual dependence with a website in
23 terms of audience attraction, et cetera, et cetera. There
24 needs to be proof of that in order to lead to the appropriate
25 inferences to the extent there have to be inferences -- to the

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1 extent that the government believes there need to be
2 inferences, but I don't think it's impossible through the
3 Internet by any means to have mutual dependence. How far it
4 extends, I think, is a question of both fact and law.

5 MR. DRATEL: But I don't think that mutual dependence
6 is the same type of mutual dependence that the Courts are
7 talking about when they defined conspiracy. That's what I'm
8 saying. That mutual dependence is a different kind of mutual
9 dependence. It's not the same as sharing profits, and sharing
10 personnel, and sharing suppliers, and all of that, which is
11 completely absent from this context. The brick and mortar
12 aspect of those cases is critical.

13 Also, the government's proposition has no limit, and
14 that's why it can't be a single conspiracy, which is this: The
15 government's proposition applies the same way as follows, and I
16 will give two analogies: One is if I subscribe to the AT&T
17 network, I'm a subscriber of AT&T, I know people are using it
18 for drug deals, they're texting, they're making calls, I know
19 that, it's foreseeable to me. If I'm selling drugs to one
20 person using my AT&T phone, does that make every other drug
21 seller on AT&T a coconspirator of mine? Does that make AT&T a
22 coconspirator? No. There has to be an agreement, there can't
23 just be common conduct over a common carrier. There has to be
24 agreement. Agreement is the conspiracy, not mutual dependence,
25 not any of these other aspects. The agreement is the key to a

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1 conspiracy. And you can have all that other stuff and not have
2 an agreement. And I understand about inferences, and that's
3 fair, but the fact is, the inferences can't be ones that aren't
4 appropriate, or ones that are prejudicial, or ones that
5 ultimately -- that infer that there's a completely separate
6 conspiracy, or a bunch of separate conspiracies that are being
7 shoehorned to try to prove the conspiracy charge in the
8 indictment.

9 The second one is a landlord analogy, which we used in
10 our papers, and that's why there's a whole separate statute,
11 856, to cover that kind of conduct, which is, I have a
12 building, I'm renting it out, I know there are drug dealers in
13 the building, I collect rent from them, I know they deal drugs,
14 I know some -- I may have an idea that some deal heroin, and
15 some deal cocaine, and some deal marijuana, they're not all
16 conspirators, and they're not my conspirators. There has to be
17 more. The notion of facilitating some kind of common conduct
18 is not a conspiracy.

19 And just to get into some of the cases: At AT&T,
20 everybody is mutually dependent, too. In the sense we're all
21 mutually dependent, AT&T stays in business, that it has plans
22 that allow us to text, and phone, and do all those things, but
23 that doesn't really make a conspiracy. So first I wanted to
24 talk about a couple of the cases the government has cited. One
25 is Gibel -- I don't know if I'm pronouncing it right -- but

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1 G-I-B-E-L, a securities fraud case, which even though the
2 government cites it for a general principle about conspiracy
3 law, the facts actually go the complete other way and very much
4 supports our position, which is this concept of remote tippees
5 in an insider trading case. Just because everyone who insider
6 trades knows there might be remote tippees doesn't make them
7 all coconspirators. There is a limit to all of that, just like
8 there's a limit in the AT&T concept. There has to be a limit
9 on some of these.

10 Some of the other cases, the marketplace cases. The
11 marketplace cases, again, the brick and mortar concept is
12 critical because the marketplace cases, if you look, there's a
13 tremendous overlap among the functions of the people involved.
14 They share expenses, they share profits, they share runners,
15 they share security, they share all of these things in a way
16 that is very much -- some of them are extended families in some
17 of these cases. And so that aspect is, I think, important.

18 Also, they all come -- one of the cases, I think it's
19 the first one that the government cites, which is -- I think
20 it's Brown, which they had the same supplier, it's a single
21 supplier. So there are all sorts of very, very significant
22 distinguishing features from those cases from the type of
23 conspiracy that the government is alleging here and claims it
24 can prove.

25 Also, the case that the Court cited today, the Sir Kue

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1 Chin case, which the government quotes from, but we're talking
2 about a single supplier selling to different customers. No one
3 alleges that can't be a single conspiracy in the context of
4 different -- of the suppliers' multiple sales to different
5 customers, but that's not what we have here. These are all
6 very different situations.

7 Also, the case is a multiple-drug case, there are
8 different drugs, but they're all part of an underlying
9 agreement among the people that can be inferred from very solid
10 facts, not the mere fact that they're all using the same
11 website, just like there's not the fact that they're all using
12 AT&T, that they're somehow a conspiracy for everybody using
13 AT&T to be in the same conspiracy. So that doesn't define a
14 single conspiracy or the same conspiracy.

15 Also, drug types are elements of the offense now, at
16 least for the greater offenses in this circuit, Thomas, Adams,
17 Santos. We've cited those in another context in the requests
18 to charge, so I won't go into that. But, again, that
19 gatekeeping function, as the Court has recognized, is crucial
20 here because at the end of the day, we could have a volume of
21 inadmissible evidence about other conspiracies that overwhelms
22 evidence that properly goes to the charged conspiracy.

23 Thank you.

24 THE COURT: Mr. Turner?

25 MR. TURNER: A few things, Your Honor.

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1 So the defendant just pointed to the fact that these
2 objections concern sufficiency. That is not an appropriate --

3 MR. DRATEL: I have to interrupt, Your Honor. I said
4 the opposite. It's not a sufficiency argument. The government
5 wants to make it. I'm saying it's not sufficiency.

6 MR. TURNER: I believe the argument was that if the
7 proof is about multiple conspiracies, then it wouldn't suffice
8 to prove the conspiracy charged. There is no such thing as a
9 motion for summary judgment in the criminal context, and the
10 Court's role is not to --

11 THE COURT: Except Rule 29 is analogized to Rule 56,
12 but that's at the close of the evidence.

13 MR. TURNER: Precisely, Your Honor. So in terms of
14 gatekeeping here, it's not a proper gatekeeping role to say,
15 well, that evidence wouldn't be sufficient, so it shouldn't be
16 presented to the jury.

17 THE COURT: I understand it's not a sufficiency issue,
18 it's really about relevance and about 403. I have to be
19 convinced that things should come in for those reasons.

20 MR. TURNER: In terms of the AT&T arguments and the
21 landlord arguments, again, these are all issues that the Court
22 has addressed already in the motion to dismiss. As the Court
23 held itself, it was not just a landlord, this was a dream
24 house, it was intentionally designed to provide a haven for
25 drug-dealing, and that's the difference with the AT&T case.

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1 AT&T is not agreeing with anybody to sell drugs, the defendant
2 did.

3 Again, I want to stress, the government's whole theory
4 here, the government's case, is that it was through the
5 operation of this website, that he aided and abetted
6 distribution of drugs, that he aided and abetted the
7 distribution of drugs through the Internet in violation of
8 841(h), that he conspired with others to distribute drugs, that
9 he operated a continuing criminal enterprise. In order to
10 establish those charges, the government has to be able to
11 present its case, that here's what the website did, and the
12 defendant was the one who ran it. That's what the government's
13 case consists of.

14 So I'm not sure -- that's what all the evidence
15 relates to. So if there's a problem with the government
16 presenting its evidence as to those two propositions, then we
17 have a problem, and I don't think we should, because, again,
18 we've passed the motion-to-dismiss stage, we have the right to
19 present our case to the jury, and the case really consists of
20 doing the things alleged in the indictment through the
21 operation of this website.

22 THE COURT: All right, thank you. I think that we
23 have now had a full discussion on the topic, and let me just go
24 on now to the motions in limine.

25 I want to start by saying that I intend, I hope, to

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1 put out a written decision on the motions in limine before
2 trial just so that you can have what I'm about to say in a form
3 where you can refer back to it. But I haven't written it yet,
4 and although I've got part of it done, I wanted to give you
5 what the decisions are now.

6 As with all motions in limine, you folks understand as
7 trial lawyers, that motions in limine are necessarily pretrial.
8 There are things which can come up sometimes even pretrial
9 where the Court gains a better understanding of the evidence
10 and of the parties' positions with respect to the evidence that
11 should change a particular ruling. And certainly during trial,
12 all kinds of things happen that change the Court's
13 understanding and even the parties' understanding of the nature
14 of the evidence, and as a result, it is certainly appropriate
15 for the parties to, at trial, if they believe that a basis has
16 changed of the Court's ruling, to make an application to have
17 the ruling reconsidered. And I will not take offense at that
18 by any means because of the uncertainties of trial. So I say
19 that as a preliminary, and I am going to now go through the
20 motions in limine, and let me get through them all, if I can.
21 I don't really want to have a lot of reargument on them right
22 now, because we've got a lot of things to do today, but let's
23 just sort of see how it plays out.

24 In terms of the false identification documents, both
25 the government and Mr. Ulbricht moved for and against

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1 introduction of materials relating to the false identification
2 documents. The defendant argues that those materials are not
3 relevant to the offenses charged. The government argues the
4 opposite. There's also a discussion on both sides about
5 whether or not that evidence would be evidence of potential
6 preparation for flight and whether that's necessary to get to
7 here.

8 In particular, we're talking about the IDs that the
9 defendant is alleged to have obtained for himself in a variety
10 of different jurisdictions with certain, I think, facial hair
11 on some and not on others, et cetera. My view is that this is
12 a direct evidence of Count Six, that Count Six is a count which
13 alleges a charge relating to false identification documents
14 specifically. These false identification documents, based upon
15 the Court's pretrial understanding, were allegedly purchased
16 through Silk Road, they show Silk Road's capability for that
17 kind of sale and, therefore, go directly to the substantive
18 charge. It's in a way one could think of it as a sampling of
19 the goods.

20 And in addition to that, it's potentially relevant to
21 showing or having an inference of consciousness of guilt and is
22 potentially probative of that. Apparently, during the -- the
23 government has proffered that during the controlled delivery,
24 there was a potential statement or a statement by the
25 defendant, the government contends, indicating that

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1 hypothetically one could purchase such goods through Silk Road,
2 and that could be probative of knowledge.

3 In terms of conduct offered for flight, I don't think
4 we need to get there, but to the extent that there would be any
5 argument of potential flight associated with those documents, I
6 want to make it clear that the Second Circuit, while it has
7 said that you've got to be quite careful -- the Court needs to
8 be quite careful of allowing in information which is for the
9 purpose of supporting flight, when the facts that are proffered
10 around it are sufficient to that point, it's possible that you
11 can support an inference of flight. You just need to be sure
12 there is not an equally weighty explanation that's consistent
13 with innocence. So I do think that there could be argument
14 potentially with the right foundation laid for those documents
15 of flight. I don't know what the evidence would be around
16 that.

17 Now, in terms of 403, of course, just because I found
18 this relevant, I still have to do a 403 analysis, the Court
19 does not find that the probative value, which is directly
20 probative of Count Six, is substantially outweighed by the
21 prejudicial effect. The fact that the defendant is charged
22 with a crime relating to false identification is certainly no
23 more inflammatory or these documents are no more inflammatory
24 than the charged crime. In fact, they're along the same lines.
25 So that would be allowed in at this point.

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1 In terms of murder for hire: There was a substantial
2 amount of argument on both sides in terms of the murder for
3 hire allegations. There are two parts to the defendant's
4 motion. One is to preclude it altogether, and the second is to
5 strike a surplusage. The defendant's motions are denied. I
6 will allow the murder-for-hire allegations for the following
7 reasons:

8 The defendant argues that the murder-for-hire
9 allegations are entirely irrelevant to the crimes that have
10 been charged, and that in any event, it's highly prejudicial,
11 and under Rule 403, even if relevant, would arouse the
12 irrational passions of the jury. That is the argument, and
13 that it would also require a mini trial effectively, and I have
14 looked at each of those arguments.

15 The government, for its part, intends to offer six
16 potential examples of communications, I should say, relating to
17 murders for hire because the government, as I understand it --
18 and this is important -- is going to stipulate to the fact that
19 there is no evidence of any murders, that the information --
20 there is no information as to five whether or not there ever
21 was -- whether it was ever carried out, and as to one, we know
22 it was a sting. So that is an important fact.

23 But this -- and the government does argue that this
24 would be evidence of the defendant's alleged attempt to protect
25 the otherwise illegal businesses, in particular those which are

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1 charged in the indictment of Silk Road, and that is a
2 compelling argument. It is certainly supported in the case law
3 that there can be circumstantial evidence of one crime by
4 looking at how a defendant acts. And the evidence that's been
5 proffered relating to the murders for hire do have references
6 to narcotics transactions, to the particular role of some of
7 the targets and what they were doing or alleged to have been
8 doing. There are indications -- so that's relevant to the
9 various narcotics charges potentially and circumstantial
10 evidence of that.

11 There also is a great deal of relevance to the CCE,
12 the continuing criminal enterprise, charge, where the defendant
13 is alleged to have been in a supervisory position, and as to at
14 least the first of the alleged murders for hire, that is
15 alleged to have been of someone who was formally associated in
16 a particular capacity with Silk Road and goes -- and there is a
17 description of -- throughout in the materials that were
18 provided to the Court of the capability of that individual,
19 that third party, the target, if you will, to do certain things
20 and of the defendant wishing he had earlier prevented the
21 target from doing certain things so that this problem might not
22 have arisen in the first place, but in fact, he had not, and
23 therefore, this problem arose. There is also a description and
24 an association with narcotics there.

25 So it's relevant to the existence of the substantive

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1 narcotics crimes charge of the conspiracy, of the role as
2 supervisor, which is an element of the CCE charge, and of his
3 supervisory -- potentially supervisory role.

4 It also goes to identity potential, to whether or not
5 the defendant, number one, is the same person, but is the
6 person who is alleged to be the Dread Pirate Roberts.

7 Now, the fact that it didn't occur, and there are no
8 bodies, that's one of the defendant's arguments, I have
9 considered that, but the fact that there aren't any bodies
10 doesn't erase the fact that there was a desire to take
11 extremely harsh action against individuals who were alleged to
12 have threatened, and threatened Silk Road, and also been acting
13 adverse to the interests of Silk Road. If a drug dealer, for
14 instance, in the brick and mortar world said to someone, I
15 would kill you to protect my drug organization, that would be
16 something which would be likely, very likely, after a 403
17 analysis, depending upon the case, allowed in as evidence that
18 there was a drug organization. And there is an analogy between
19 that and this in terms of the circumstantial evidence that it
20 provides.

21 I then go into whether or not, under Rule 403, if I do
22 find that this is relevant, whether or not it's probative
23 value, as I've described it, is outweighed by -- is
24 substantially outweighed by its prejudicial effects. There is
25 no doubt that the murder-for-hire allegations are prejudicial,

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1 but the law does provide that essentially all evidence against
2 the defendant is prejudicial. These allegations are certainly
3 allegations which are extremely serious, and they do bring a
4 particular issue into the case. However, the allegation in the
5 case is that the defendant was presiding over a sprawling
6 enterprise that extended worldwide and that obtained tens of
7 millions of dollars, which is really not just your
8 run-of-the-mill allegation about a narcotics enterprise, this
9 is the most sprawling enterprise in terms of the reach that can
10 exist because it's considered -- it's being alleged as a
11 worldwide enterprise with folks everywhere, and the quantities
12 that are alleged are huge.

13 So when you think about how the allegations in the
14 indictment compare to these allegations, one has to keep in
15 mind that the allegations in the indictment are of such a very
16 large and significant drug organization and of the size and the
17 scope of that organization, and what's involved in protecting
18 that enterprise all go into whether or not the murder-for-hire
19 allegations -- and, again, it's communications about murder for
20 hire, it's not actually a murder for hire -- whether or not
21 that is substantially outweighed, and I do not find that it is.
22 I find that the probative value is greater than that
23 prejudicial effect.

24 The jury presumably will be provided with the evidence
25 and context, and if I need to give a particular limiting

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1 instruction as the evidence comes in, we will consider that,
2 but I do find that it's more probative than prejudicial.

3 Now, in terms of the third motion, which I have dealt
4 with, which I think of as the contraband motion, this is the --
5 in fact, some of what we were just talking about, it's things
6 such as -- and I'm not going to list all the exhibit numbers, I
7 will give you the examples, and you will know what they are,
8 and we will talk about some of them specifically -- they're
9 things such as the homemade silencers, the recipe for survival,
10 the counterfeit goods, the counterfeit music, those kinds of
11 things, it's the belts that I was talking about, the Gucci
12 belts and things of that nature. And here -- as well as the
13 gun sales. Very importantly, as well as the gun sales, okay,
14 so the armory and all of the bits and pieces around the armory.

15 Now, the argument is that these are goods of interest
16 to criminals, and that's what makes them relevant generally.
17 The government also argues that these are inextricably
18 intertwined with the story of Silk Road, and that it's
19 necessary to complete the story, and I do not find that that is
20 the case. I will preclude all of that additional contraband.
21 I believe that if it has any probative value, and it may have
22 some probative value, it is substantially outweighed by its
23 prejudicial effect. You have quite a story without all of
24 that. It is possible to talk about a sprawling marketplace for
25 the illegal and be referring to the large variety of narcotics

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1 that will be part of your story. You can talk all the
2 computer-hacking materials that are available and the false
3 identification materials that are available. All of that is
4 part of a sprawling marketplace of the illegal.

5 However, I don't know, and the government doesn't
6 know, I don't think, there's no evidence before me that we know
7 that those Gucci belts were, in fact, counterfeit. I think,
8 Mr. Turner, we -- in discussing the conspiracy, there's not a
9 position that we necessarily know or we're not going to spend
10 time at trial proving whether or not these Gucci counterfeit
11 dealers are in the same conspiracy or not. Therefore, I have a
12 hearsay issue with the word "counterfeit" because some of it
13 says counterfeit, but that would be offered for the truth.

14 So it leads -- the contraband leads to a variety of
15 complicated evidentiary issues that we don't need to get to.
16 And so I do think that there will be instances in which the
17 government may want to characterize the Silk Road marketplace
18 as an enterprise for the underworld. There are certain aspects
19 of that which I think are consistent with what I have allowed
20 in, which is all the narcotics, all the charged pieces, but if
21 there's a particular way of wording it that you want to discuss
22 before the openings, let's do that so that we don't run into
23 particular problems, but I think there's a fair amount of
24 leeway, but it can't be one-stop shopping for criminals for all
25 of their desired wears. That would not be consistent with this

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1 ruling.

2 MR. TURNER: Could I ask one question about that, Your
3 Honor?

4 THE COURT: Yes.

5 MR. TURNER: Because I have a concern on the other
6 side, which is, if the defense tries to make the argument that,
7 A, it's not just about drugs, it's about any type of good could
8 be sold, look at the apparel, look at the books, look at these
9 other categories, if they open that door, I think at that
10 point, the government would be entitled to actually look at the
11 sort of apparel being offered, look at the sort of books being
12 offered, to rebut that argument.

13 THE COURT: I think this is one of those "sufficient
14 unto the day." I hear your point, the defense may have been
15 planning one thing, but now hearing my ruling, they may plan
16 something else. I hear -- there's always an issue about one
17 when one opens a door, and we have to figure out how widely the
18 door is opened, if it's opened very widely, it may be opened
19 very narrowly. You may be able to stipulate that not a hundred
20 percent was illegal, but you may not. So I won't get there
21 until I have to get there. I hear your point.

22 Let me just spend a moment on the armory, because I
23 know that the armory and the guns -- there were more documents
24 when I was going through the exhibits on -- not more, there
25 weren't that many of them, but there were a few. The armory

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1 and the gun issue, that's one of the places where the
2 substantially outweighed prejudicial effect really does come
3 into play more than, for instance, the copyrighted music. If
4 we were talking just about copyrighted music or Gucci belts,
5 that's one thing, but the contraband, that includes things like
6 the armory, it lends a whole gun aspect to this case that's not
7 otherwise in this case.

8 So the defendant is not charged with being in a
9 conspiracy to sell illegal firearms. That could have been a
10 charge, I suppose, if the government believed there really were
11 firearms, and it may be that that's being taken up elsewhere, I
12 don't know, but it's not part of this. I don't want to
13 interject firearms. Apparently some of the pictures -- there
14 are all kinds of firearms. So I don't want to go down that
15 road.

16 So I do find that if there is any relevance, that is
17 substantially outweighed by its prejudicial effect, and so the
18 contraband and the noncharged goods, if you will, will be
19 precluded. If you have any questions about what those are, let
20 me know, but I assume you know what those are.

21 The government had made a motion relating to
22 punishment and keeping references of that out, and the
23 defendant has -- Mr. Dratel has suggested that he's not going
24 to go anywhere near there. And we'll talk about surprises --
25 you know I hate surprises as part of my remarks for the final

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1 pretrial -- so if anybody is going to go anywhere near, you
2 don't want this guy to spend a lifetime behind bars, like that
3 would be off limits.

4 Mr. Dratel, do you agree?

5 MR. DRATEL: Yeah, I've never said that in my life. I
6 know what the limits are.

7 THE COURT: All right. Okay.

8 Now, the defendant also made -- there's also, I think,
9 a thing about the defendant's political issues, and there is no
10 reason for anybody's political views to be raised one way or
11 the other. This case will be decided on the elements and
12 whether or not the elements of the crimes charged have been
13 met, not why someone may have undertaken a particular course of
14 conduct and not a different particular course of conduct. It's
15 irrelevant on both sides. Whether you like the politics or
16 don't like the politics is entirely irrelevant to whether the
17 government has met its burden of proof.

18 Now, in terms of the authenticity of electronic
19 communications, I have read the Second Circuit's case in this
20 regard. This is definitely a sufficient unto the day question.
21 I've got to see how these come in.

22 I expect, Mr. Dratel, that you will be listening
23 closely to the foundations as they are laid, and we will take
24 it one by one. The government is correct that there is no
25 across-the-board prohibition on electronic communications

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1 coming in if a foundation is appropriately laid. They come in
2 all the time in all sorts of cases. There can also be
3 deficiencies.

4 The case having to do with the Russian Facebook, that
5 was, I think, what everybody would agree was not a foundation
6 that one would expect would hold a big house, right, it was a
7 weak foundation, and they put somebody on the stand who
8 basically had almost zero familiarity with the site and then
9 tried to authenticate that Facebook for a particular person.
10 There were a number of different pieces of that exercise that
11 one could dig at. So we'll take those as they come.

12 MR. DRATEL: I just didn't want you to be surprised.

13 THE COURT: I won't be surprised by your arguments.
14 What we can do is, if it becomes repetitive, what we'll do, so
15 you don't have to look like you're being slammed by the judge
16 each time, is we can do a couple of them, then we'll take them
17 up at a break, and if you've got a similar objection to a line,
18 we will deal with it, you'll preserve your position, and then
19 that way, you won't appear in front of the jury as if you're
20 being told to go away again and again.

21 MR. DRATEL: Thank you, Your Honor.

22 THE COURT: Although I will give the jury the normal
23 instruction that just because that you've got to raise
24 objections, everybody's got to raise objections, I've got to
25 give rulings, and the jury should take nothing from it, but I

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1 do understand sometimes people feel sensitive even when the
2 jury is properly instructed.

3 Now, there were issues relating to Silk Road product
4 listings and Silk Road transactions. Let me take these a
5 little bit separately.

6 The narcotics transactions for New York and Chicago,
7 I've given my views on some of the potential issues there, the
8 government has given their views on their response, the
9 defendant has given his views. The narcotics, I will allow in
10 at this point.

11 In terms of the New York/Chicago and whether or not
12 those could be coconspirators, there are alleged to be at least
13 three co -- in every transaction, there are three participants
14 from the alleged conspiracy, as I understand the government's
15 theory. It would be Silk Road, it would be the buyer, and it
16 would be the seller. The recipient was only the buyer.

17 MR. TURNER: I'm not sure the buyer would be included
18 in that, Your Honor. I think the conspiracy is to distribute
19 drugs, and that agreement lies between the seller and the
20 defendant.

21 THE COURT: All right. In many of your papers, you
22 throw in the buyer, I think, a bunch, but I understand. It is
23 a distribution conspiracy, and it may just be that that's --
24 maybe I overread the position.

25 So they were undercover buys in New York and Chicago,

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1 right? So the buyer is not a coconspirator. In any event, you
2 don't need -- for purposes of a coconspirator's statement, you
3 don't need every participant to be present every time, right?
4 So if you've got the seller, and the middle persons are
5 coconspirators, and you've got evidence as to whatever the --
6 if it's going to be a hearsay issue, whatever the hearsay might
7 be, if it's labeled LSD, or labeled heroin, or whatever it is
8 are sold to the New York person as heroin, as being what is
9 advertised as heroin, you've got coconspirators who are in the
10 mix, if you will, for the various aspects of the potential
11 statement to meet the evidentiary rules.

12 The Chicago has got some of the issues we've already
13 discussed, but it can be potentially, even I would read it to
14 be a sprawling enough conspiracy during the appropriate time
15 frame that Chicago would be included. When I say even I agree,
16 what I mean is just this is an issue I'm continually thinking
17 about in terms of how far, where, et cetera. So the Chicago, I
18 will allow in as well.

19 In terms of manuals, let me just make sure that
20 everybody understands: The manuals, the how-to manuals, the
21 books and things, that's part of what I am calling the
22 contraband. It's not, strictly speaking, contraband in the
23 sense that I don't know that a manual to do anything is
24 contraband in this country, but to whatever extent it's
25 probative of anything, and I don't think it is probative of the

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1 charged conspiracies. If it were, I would preclude it under
2 403 because it injects a whole element of explosive devices and
3 all kinds of things that just don't need to be part of this
4 case, so just to make that clear.

5 And the undercover buys are also probative of the
6 actual existence of a distribution conspiracy where the
7 distribution is through the coconspirators, and it's the
8 New York evidence is direct evidence of Counts One, Two, Three,
9 and Four, so this stuff, the buys, all the narcotics stuff, can
10 come in at this point, unless we have specific objections to
11 the specific documents at the time, but I don't see any
12 immediate hearsay objections based upon the way in which the
13 government has cast their theory of the case.

14 I believe that takes care of the motions in limine.
15 Anybody think I've left one out? Well, there's one issue, but
16 that's a separate issue. But for motions in limine, is there
17 any other motion in limine I have missed?

18 MR. DRATEL: Just --

19 THE COURT: Wait. I've got --

20 MR. DRATEL: It's a subissue in terms of something the
21 Court talked about today, and I don't know whether the Court
22 had incorporated it within any of the other rulings or was
23 still thinking about it, which is the currency issue.

24 THE COURT: Well, I think I misunderstood. I've got
25 to go back to the currency. Let's put -- as they say, let's

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1 put a pin in it, because I had thought the currency was really
2 selling counterfeit currency. To the extent it's selling
3 counterfeit currency, it falls under contraband. To the extent
4 that it's an exchange of in some manner that really can be
5 characterized as money laundering consistent with Count Six, it
6 would come in consistent with the government can provide
7 evidence of the money laundering.

8 MR. DRATEL: Right. But it would have to be the
9 connection of that type of exchange being part of that process
10 for it to be --

11 THE COURT: Yes. For instance, if you have a user ID
12 of User 123 who's buying currency, and you can show that User
13 ID 123 also sold drugs through the site at any point in time,
14 you could draw the inference. You could also draw the
15 inference that you have no idea that his grandmother gave him
16 the money for his birthday, you know, but that would not be an
17 unfair inference. There may be other ways of doing it. That's
18 just one example.

19 Mr. Turner?

20 MR. TURNER: One footnote, Your Honor: As to the
21 contraband, in their motion in limine, the defense mentioned --
22 sort of threw in with that issue the manual recovered from the
23 defendant's own laptop, which was the construction and
24 operation of clandestine drug laboratories. I think that would
25 present a different issue, and then we would want to introduce

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1 that as evidence of identity and evidence of intent, et cetera.
2 So this is not contraband that was sold on Silk Road, but this
3 was a manual that --

4 THE COURT: I did think about the manual for the labs,
5 and I don't want to rethink about everything, but let me just
6 tell you what my thinking was on that particular manual,
7 because I did recognize that it had a narcotics aspect to it,
8 if you will, but there are particular crimes that can be
9 charged for the manufacture of drugs, and there can be
10 particular crimes that are charged for manufacturing illegal
11 prescription drugs, for instance. And there was a pill
12 machine, also, so let me throw this in. One of the government
13 exhibits is of a pill machine -- I can give you the number --
14 the pill press, Government Exhibit 116F. Both of those things,
15 I felt, are not relevant to a distribution conspiracy. You're
16 suggesting that at least the manual should be 404(b) evidence
17 as lack of mistake?

18 MR. TURNER: No, Your Honor. Actually, it goes deeper
19 than that. So the way the defendant got the site off the
20 ground was by clandestinely growing magic mushrooms so that he
21 would have something to sell on the first day that the site
22 opened. So that was in furtherance of the conspiracy, that was
23 distribution of drugs, so it's clearly relevant to charges One
24 and Three.

25 So the fact that he has a manual on his laptop about

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1 how to operate a clandestine drug laboratory, that corroborates
2 the other evidence about --

3 THE COURT: All right. In terms of that particular
4 manual, is it of a time frame that is consistent with your
5 theory? In other words, is it a 2012 manual when your theory
6 is that he made mushrooms in 2008?

7 MR. TURNER: We'll have to check, Your Honor.

8 THE COURT: So that would be the kind of thing when
9 you're laying a foundation, if you want to put it in for that
10 reason, that it's corroborative of your theory, I would want to
11 make sure that it's, in fact, corroborative. It doesn't have
12 to be the manual, your suggestion is that he was looking for a
13 way and found a way to try to get the site off the ground. And
14 I've heard that theory, I think, before, that that was a method
15 in terms of the government's theory, but let's just tie that
16 manual to the right time frame.

17 MR. TURNER: Okay. So this would be an exhibit that
18 gets tabled for further consideration?

19 THE COURT: Yes. If you can tie it to the right time
20 frame, I hear the theory. Now, Mr. Dratel is standing up,
21 so --

22 MR. DRATEL: I'll just await the government's attempt
23 to connect it.

24 THE COURT: So if you could tie it in, that gives me
25 more comfort in terms of what you're doing with it that would

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1 not be -- it would fit in with the story the government's
2 telling as opposed to opening up a new story, which is my
3 concern.

4 The pill press?

5 MR. TURNER: The pill press was an item sold on Silk
6 Road.

7 THE COURT: All right. So that would fall under my
8 contraband ruling. It's not purely contraband, but it falls
9 under the -- in and of itself, a pill press, that's a
10 manufacturing operation, it's not about the distribution
11 conspiracy. Of course, you've got to make in order to
12 distribute, but --

13 MR. TURNER: It would be an item of interest to the
14 sellers on Silk Road who needed that to manufacture pills they
15 were selling, Ecstasy pills or whatever the item was.

16 THE COURT: Although the evidence isn't necessarily
17 going to be that these -- some of the evidence is going to be
18 that the pill machine -- well, there was Oxycontin and things
19 that were sold that was prescription that was sold.

20 MR. TURNER: Sure. There was a category on Silk Road
21 that you had drugs, you also had lab supplies. If you clicked
22 on that, drug dealers could buy things like pill presses, they
23 could buy things like glassines to package their drugs in. So
24 these were items that were not drugs themselves, but they're
25 certainly in furtherance of the drug conspiracy.

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1 THE COURT: You really want the pill press?

2 MR. TURNER: We can do without it, Your Honor. I just
3 want to explain why it was in there.

4 THE COURT: All right. Well, right now, the pill
5 press is out, as are all the other little sort of bells and
6 whistles, like the glassine envelopes, but let me think about
7 them, and if there are specific exhibits, which when you go
8 back, and you reflect on this, and you say we really do want
9 the following products in, and we believe they are consistent
10 nevertheless with what the Court has described, then maybe my
11 net has been cast too broadly. But right now, I'm just
12 thinking that the heroin pictures, right, those are in if you
13 can lay a foundation, but the pictures of the narcotics and all
14 of that, those are in, of the packages of the narcotics that
15 have the narcotics in them, those, if you can lay a foundation,
16 are not precluded. So when I say in, what I'm saying is I'm
17 not precluding them pretrial.

18 MR. TURNER: I understand. Thank you.

19 THE COURT: Okay. Now, I think I've also dealt with
20 the particular items that were on pages 19 and 20 of the
21 government's memo in opposition, which is some of the little
22 bits and pieces.

23 We've been going for an hour and 15 minutes. Are
24 folks okay?

25 All right, let's continue.

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1 So those are the motions in limine. I hope to put out
2 something in writing on them so that you can have that and have
3 the rationale with the case cites, but the case cites are --
4 there isn't really a difference as to the law on the 403 test,
5 for instance, relevance test, for instance, and things of that
6 nature. In terms of contraband and the exclusion of
7 contraband, it's both 403, I also would just note the 2009
8 Second Circuit Williams case cited by the defendant,
9 distinguishable facts, but there are some interesting pieces of
10 that case that are relevant to that decision.

11 Move on to the next piece?

12 I had issued an order, which you folks may have
13 already been thinking of doing in any event, I don't know, but
14 I've done it in other kinds of both criminal and civil complex
15 cases, which is having something that the jury cannot just hear
16 when they have the witness on the stand in terms of technology,
17 but actually have with them that they can refer to now and
18 again, because they hear it so quickly, and these are people,
19 some of whom may have a lot of familiarity with the Internet,
20 and you may have, for all we know, a computer programmer, but
21 they can't be in the back room talking about it with the other
22 jurors until they're deliberating, and so each of the 16 have
23 to sit there listening with whatever knowledge they have or
24 don't have, and I do think they need to understand this stuff
25 in order to administer justice here. So in order to come to a

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1 result without losing track of things, it would be nice to have
2 something which they could have with them.

3 What are your respective thoughts? Do you think
4 that's desirable from your point of view and possible?

5 MR. TURNER: I think it's an excellent idea, Your
6 Honor. Our witnesses are planning to explain those concepts as
7 necessary as they went along, but I think having something that
8 the jury can consult as needed is a very useful suggestion. I
9 would suggest that we can work out stipulations on those
10 definitions and just read them into evidence, and then the
11 document can be distributed to the jury for them to consult as
12 needed.

13 THE COURT: And, Mr. Dratel, do you think this is a
14 desirable thing, and do you think it's possibly doable?

15 MR. DRATEL: I'll start with the second one. It's
16 possibly doable. Desirable is really a turn-by-turn situation,
17 because obviously I'm not inclined to help the government
18 explain its case to the jury. However, if they're not
19 controversial, and they advantage both sides in terms of making
20 the points that we need to make, I don't have an
21 across-the-board objection. So we're engaged in discussions
22 with the government. We've begun that process of doing it.

23 THE COURT: Okay. I appreciate you folks talking
24 about it and trying to reach an agreement. There's a heavier
25 handed way of doing it, which is if the government puts on one

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1 of their first witnesses, I know both of whom are computer
2 folks, and goes through a list of terms and introduces such a
3 thing, I can just have the jury hold onto it for the rest of
4 the case, but I'd prefer that you guys try to find some common
5 ground, at least as to some core set of terms, like
6 administrative capabilities, that's going to come up a lot.
7 Now, there may well be -- and you can build that in --
8 administrative capabilities and administrative capabilities,
9 and it may be that you want to say that they consist of a whole
10 variety of things.

11 MR. DRATEL: Some of it depends, obviously, on our
12 ability to agree on precise terminology.

13 THE COURT: Absolutely. That, I understand. That's
14 why it's thrown out there for you folks.

15 MR. DRATEL: I appreciate that. Thank you, Your
16 Honor.

17 THE COURT: Okay.

18 In terms of people, places, and things that belong in
19 the voir dire, I just need to make sure I've gotten your
20 complete list. I've gotten a list before. If anything has
21 come onto the list as you folks have gotten closer to trial,
22 just make sure we have that.

23 Current estimate of trial duration, are we still at
24 about four to six weeks?

25 MR. TURNER: I think it's going to be shorter than

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1 that, Your Honor, but I hate to predict that in advance, but
2 our number of witnesses is fairly limited, and we may cut a few
3 if we can reach some stipulations with the defense.

4 THE COURT: All right.

5 MR. DRATEL: I think that the defense case is the same
6 as we thought, somewhere about a week or two, but somewhere --
7 give or take somewhere in that, but I don't think it will be
8 longer than two, but I'm saying it could be less than a week,
9 but it could go into the second week pretty easily.

10 THE COURT: The only reason I try to poke and prod in
11 advance is because with a case over three weeks, the jury --
12 you lose certain people, frankly, who can't sit for four weeks
13 or for six weeks. So it will make a difference to how I
14 introduce it to them, but it is what it is.

15 The jury selection process, we've talked about this, I
16 think, now a number of times, but let me just go through it. I
17 use a hybrid approach.

18 Mr. Howard, you've tried a case in front of me. So
19 has Mr. Dratel. Mr. Turner, have you -- you have.

20 Mr. Howard, you have?

21 MR. HOWARD: No, Your Honor. We came close, but we
22 didn't actually go to trial. We just talked about this in the
23 abstract. I've never been there in practice.

24 THE COURT: So Mr. Dratel and Ms. Lewis have tried a
25 case in front of me, and it's the same process. So once we've

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1 got whoever the pool is going to be -- and I think I actually
2 made the same statement before -- once we have the pool of
3 whoever is going to be out there, we'll take randomly out of
4 literally of the big old bingo wheel, we'll draw 16 names, the
5 first 12 and then four alternates. I think 16 is probably the
6 right number if we think the trial might be four to six weeks.
7 I'm tempted to go to three alternates, but somewhere, I don't
8 think we need more than four. I know like choosing six
9 alternates is all the fashion, but I just don't think we need
10 it. I think that folks -- we might not use any of them.

11 So we'll put them into the box. My questions will be
12 directed to those folks who are in the box. The people who
13 will be out in the audience will be given a piece of paper and
14 a pencil to write down any questions to which they had a yes
15 answer. I'll then direct questions to the folks in the box.
16 When it becomes clear that they've got issues and things to
17 talk about, depending on whether it's the kind of private thing
18 that we take over at the sidebar, that will be one scenario,
19 otherwise if it turned out that they thought they understood
20 English and don't understand English, and they really don't
21 understand English, then I'll excuse them from here, so that
22 will go a little faster. We will then fill them in with
23 somebody randomly from the bingo wheel, and we will continue --
24 catch them up, and then we will continue. So we will end up
25 with the 12 and then the four who will have made it through the

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1 Court's voir dire process with appropriate sidebars as we all
2 deem necessary. If I don't excuse somebody who you think
3 should be excused, you'll have raised that with me by making
4 appropriate requests for discussion about that.

5 Then we'll get into the peremptories. I typically
6 tell the prospective jurors that peremptories are the
7 opportunity for the lawyers to strike people, and they should
8 not think twice about why, and they will not know which side
9 strikes them because the way that I do it is simultaneous and
10 blind. And so it's a use-it-or-lose-it system, so if you waive
11 a strike, you can't accumulate your strikes. And so I have you
12 both, even if you waive, hand a Post-it, or a piece of paper if
13 you don't have a Post-it, to Joe as we go along, so we'll say
14 this is round one, people, please hand your Post-its to Joe is
15 the way I phrase it.

16 Both of you will hand them to Joe for each of the
17 rounds, irrespective of whether or not you're, in fact,
18 striking anybody. That way, the jury has no idea who's
19 striking whom.

20 And if you both strike the same person, you don't get
21 your strike back, then you both strike the same person. The
22 way it will work will be, the defense gets the two, two, two,
23 two, one, one, so they get four rounds of two and two rounds of
24 one, for a total of ten strikes -- this is now the first 12 --
25 and you'll strike against the first 12 separately from striking

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1 against the alternates. And then the government will get one
2 strike each of those rounds, so that's just what the rules
3 provide, ten for the defendant, six for the government in those
4 kinds of rounds, but we'll do the rounds simultaneously. Does
5 that all make sense?

6 We then fill them in each time, catch that person up,
7 are there any questions to which I asked to which you had a yes
8 answer, because they would have been told to write down their
9 yes answers. Yes, I didn't realize before when I was filling
10 out the questionnaire, but I can't possibly sit for this length
11 of trial. Why not? I'm a first grade teacher, whatever it is,
12 and we'll decide what we think about that. If they get struck,
13 we'll put somebody else in there until we get that person ready
14 to go, we'll have them stand up and do their 30 seconds of --
15 which all of them do before the peremptories, 30 seconds of who
16 they are, so you can hear from them, and we'll approach the
17 next round of peremptories.

18 So we'll do that, and then we'll have -- because it is
19 four alternates, unless we go to three, by Rule 24 of the
20 Federal Rules of Criminal Procedure, that entitles you both to
21 two additional strikes. That would be in two rounds of one
22 each.

23 The way this works, it actually goes relatively
24 quickly, and I would think we would hopefully -- might hope to
25 have a jury certainly day one, and to do openings day one, and

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1 maybe even get into a witness day one.

2 Does that all make sense to folks?

3 MR. TURNER: Yes, Your Honor. Thank you.

4 MR. DRATEL: Yes, Your Honor.

5 THE COURT: Now, in terms of the charging conference,
6 we're going to have that the second week after trial commences
7 earliest, right? We'll see how things are going. Your charge
8 is actually -- I appreciate the fact that you folks used one of
9 my prior criminal cases because it helps with the review of it.
10 You folks will all premark your documents, right? The
11 government's, I think, are already marked on the exhibits that
12 I saw on the screen.

13 MR. TURNER: With exhibit stickers, yes.

14 THE COURT: So if you can, that's terrific.

15 In terms of jury books, how is the government planning
16 on putting its evidence up?

17 MR. TURNER: I guess we were going to use paper
18 exhibits to show the witness and then ask to publish on the
19 screen to the jury in lieu of handing out exhibit binders.

20 THE COURT: All right. Whatever you want. I just
21 want to understand how it's going to flow.

22 And then my practice -- it's not for the formality,
23 it's just to keep control of what's happening when -- is to
24 have you folks ask to approach. So if it's easier to have a
25 witness book that's got five different witnesses, and they turn

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1 to the first tab -- not the jury, I'm talking about what the
2 witness has -- that's fine.

3 MR. TURNER: That sounds good. That's what we will
4 do.

5 THE COURT: Either way.

6 Mr. Dratel?

7 MR. DRATEL: With cross-examination, obviously, with
8 impeachment, if it's 3500 material, things like that, we would
9 be putting it up on the screen, we'd be approaching with it,
10 and then if we wanted to admit a specific piece, we'd obviously
11 do it electronically as well.

12 THE COURT: It's just the same way you did it during
13 the prior trial.

14 MR. DRATEL: Yes.

15 THE COURT: Yes.

16 You folks will coordinate on the use of technology and
17 make sure that if the defendants are going to piggyback on the
18 government's technology, that you folks know how to use it.

19 MR. DRATEL: Yes.

20 THE COURT: So we don't have issues with just trying
21 to piggyback on their paralegals as well. Unless you guys have
22 agreed to that, but just so that you are all have worked out
23 your issues.

24 MR. DRATEL: Right.

25 THE COURT: Demonstratives, I don't care how you

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1 exchange demonstratives or when, but you should in a manner
2 that you both agree is fair. If you can't agree, I'm happy to
3 impose some rules, but if you can agree, I'm happy to have you
4 folks work that out.

5 MR. TURNER: So the exhibits that are marked with a
6 parenthetical D on our exhibit list are demonstratives, and
7 we've already --

8 THE COURT: If that's what they are, then the
9 defendant has already got them.

10 This goes into surprises, which is sometimes there are
11 demonstratives which come up at the last minute, and generally
12 there are always things which are surprising to you and would,
13 as a result, if I understood the importance of it, be
14 surprising to me. I hate surprises at trial, because that's
15 where we really run into problems or could run into problems,
16 and I want to have this go as smoothly as possible with the
17 trial conducted in as clean a fashion as we can. There's no
18 perfect trial, but we can try.

19 So if anybody thinks there's likely to be a surprise,
20 let me know, and let all of us know beforehand. And by
21 beforehand, it can be that morning. If we needed to grapple
22 with an issue, it can be two days before. If you see an issue
23 coming down the highway at us, it certainly can be at a sidebar
24 if we really need to get there. But when I say surprises, I'll
25 give you an example -- there are lots of different examples.

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1 There's a type of cross-examination which you know is going to
2 be inflammatory, not just a really great gotcha, but I had a
3 case where there was an elderly fellow on the stand, and he was
4 a witness against defendants in an organized crime case, and
5 while he was being cross-examined about money laundering stuff,
6 he was suddenly asked about some very scurrilous allegations
7 that had been made against him in a lawsuit that had zero to do
8 with the case and a lot to do with trying to unsettle this
9 person. That kind of thing shouldn't happen. If you've got
10 something really, really juicy and really, really far afield,
11 we'll need to figure out how to handle it. And I don't want to
12 have you give up your best cross. You know where the lines
13 are. You've all tried a lot of cases.

14 Schedule: 9:00 to 5:00. We start at 9:00, the jury
15 comes in at 9:30. This is all except for day one. Day one, on
16 the 5th, we'll have gotten a preview of who's going to be
17 coming in. We'll still start at 9:00 on day one, but I hope
18 everybody's ready -- we've got some people ready to come in at
19 9:30. But there's going to be a lot other people coming in
20 that day for another major jury selection, we're going to be
21 ahead of them, and our group is going to be defined, but there
22 are going to be hundreds of people coming in that day. Judge
23 your time accordingly for that day. It's a very, very heavy
24 day of people coming in, not just for our case.

25 MR. DRATEL: A civil case, right?

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1 THE COURT: No, it's a criminal case starting that
2 day.

3 I take two breaks and lunch. If you folks need
4 another break, you'll let me know. If the witness needs a
5 break, you'll let me know. But my schedule is typically we
6 start at 9:00 on housekeeping, whatever we need to deal with,
7 the jury comes in at 9:30, sometimes we get three minutes in
8 between, 9:27 and 9:30, and we start. Hopefully the jury will
9 be the kind of jury where they're on time. You know, it will
10 be the personality of the jury. Every jury has their own
11 personality. I typically take a break at about 11:00 in the
12 morning. Everybody -- again, including the defendant,
13 everybody can have, so long as it's okay with the marshals,
14 coffee and water, or green tea, or whatever people's preference
15 is. I will be drinking coffee, and I will tell the jury that
16 they can do the same. I don't mind if everybody has things.

17 It does sometimes result in more frequent breaks
18 requested by the jury. That's life, but actually remarkably
19 not so much, and they appreciate that I am sitting here
20 drinking coffee. I'm not just -- I wouldn't do that anyway,
21 this is really all to make us all feel comfortable generally.

22 So 11 o'clock, and then we'll go to 12:45. At every
23 break, I will ask you, is there anything counsel would like to
24 raise. Typically, one of the first things I do at the
25 beginning of the trial is for several breaks, I will tell you

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1 often why I made certain rulings, so that we can try to get our
2 heads in the same place. It doesn't mean that you should
3 change anything you are doing to protect what you believe is
4 the appropriate appellate record. It just gives you a sense of
5 where I'm coming from. It's also an opportunity for you, if
6 you think I'm really off base, and I am missing what you're
7 doing, that you tell me that. And so I'll do that, but you at
8 every break, when I say is there anything you'd like to raise,
9 if you'd like to make a fuller record, that is an opportunity
10 to do that.

11 In the afternoon, I will take a lunch break, 12:45 to
12 2:00, but we often use the 12:45 to 1 o'clock for housekeeping,
13 1:00 to 2:00 is lunch. I believe I have filled up the entire
14 time for between now and the end of the trial with luncheon
15 matters. Often it's the only time I can do a sentencing for
16 any criminal matters or other things, and so I will ask to have
17 two seats available, you can just push things aside, it doesn't
18 matter to me which side it is. Sometimes it's civil matters,
19 and if I can do them in the robing room, I will, if it's civil,
20 but just to give you a sense that -- you can stay in the
21 courtroom, everybody can stay in the courtroom, it's always an
22 open courtroom except in unusual situations, which you know the
23 rules for, but I'll need you to clear the benches.

24 Sidebar use, which brings me to sidebar use: I hate
25 sidebars, they take up a lot of time. There are some people

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1 who love sidebars. I don't really understand what the desire
2 for sidebars are, but some people just love sidebars. And so I
3 have a one free sidebar use rule, which is, I will trust you
4 with your sidebar requests at least once. The first time you
5 ask, I will give you a sidebar, and then if it turns out that
6 you really love sidebars, and I don't think that they're really
7 necessary, it may lead to a time when I deny sidebars. So use
8 them judiciously if you really, really, really need sidebars.
9 As Mr. Dratel knows, I will give you a sidebar mostly.

10 So even if I have denied a few, if you say to me, Your
11 Honor, I really need one this time or something like that, you
12 don't have to beg, but you know what I mean, make it clear that
13 this is an unusual situation, but I have my one free sidebar
14 use.

15 MR. DRATEL: Do I have any store credits from the
16 previous trial?

17 THE COURT: I can assure you that you used your
18 sidebars. It's a good thing that it's refilled each trial.

19 Objections: You know how to do this, right, just try
20 to make it so it's one word as much as possible. After that,
21 objection, hearsay. I also -- we can do it with the rules, you
22 know, objection 401, objection whatever your rule is, and
23 you're familiar enough with the rules, but you can also just do
24 one word, but don't do speaking objections or I'll cut you off,
25 and I hate to cut you off in front of the jury. We will take

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1 them up at the next break that we need to.

2 The questioning is from the podium. If you're
3 walking, and you're presenting something to the witness, and
4 then on your way back, you're starting to ask a question,
5 that's fine, but this is to prevent people from trying to
6 intimidate people by shaking their finger in their face. I
7 don't think that you folks or any counsel here is quite like
8 that, but that's just to let you all know.

9 What's your anticipated opening length? Anybody have
10 any idea? It's early.

11 MR. HOWARD: Approximately 15 to 20 minutes.

12 THE COURT: That's all?

13 MR. HOWARD: Yes.

14 THE COURT: I wouldn't cut you off anyway, just to get
15 a sense.

16 Mr. Dratel?

17 MR. DRATEL: I think it will be that long, maybe a
18 little longer.

19 THE COURT: All right. Then we're very likely to get
20 to initial witnesses, I think, on the first day. You folks, I
21 think, know my style, which is I like to have them stacked and
22 to go one witness after another until we rest. We'll talk
23 about closings in due course, but we'll figure out whether or
24 not they're going to happen the same day as the last witness or
25 whether or not I'm going to charge the jury after the close of

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1 all evidence on both sides, so to give you time effectively to
2 prepare for the closing, which is another way of doing it,
3 starting the charge, to take up the remainder of the time. I
4 try to use the jury's days, if I can.

5 I have just one final matter that I wanted to raise,
6 which is, I wanted to have a direct discussion with the
7 defendant in open court about his knowledge that he gets to
8 make a decision as to whether or not he wants to testify, that
9 that's his decision ultimately, that he should realize that,
10 and also about whether any plea offers have been extended.
11 These are typical matters I always raise during final pretrial.

12 Is there anything else anybody would like to ask or to
13 raise right now?

14 MR. TURNER: Two housekeeping matters, Your Honor.

15 THE COURT: Yes.

16 MR. TURNER: So the jury questionnaire, my
17 understanding is that it will be filled out by the potential
18 jurors and will be -- the questionnaires will be ready for the
19 paralegals to be input into a spreadsheet that same day?

20 THE COURT: Correct. By mid-day, I think. Mid-day at
21 1 o'clock.

22 MR. TURNER: So then the question is: At what point
23 does the Court expect the government to provide that
24 spreadsheet to the Court and the defense? Because it does
25 require a lot of work.

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1 THE COURT: I think that I put out a process order
2 that was labeled "Process Order" that went through the minutiae
3 of that. Joe is looking for at it right now. I may need to
4 look at that, Mr. Turner, and find out whether with the changes
5 of dates and things, it still got everything correct, but I
6 think that the way it was staged is, I need you folks -- I
7 don't need the spreadsheet till you folks have talked, but I
8 need it after you've talked. So what I need to get from you is
9 on the 1st -- I think we said the 1st at --

10 MR. DRATEL: 5:00 p.m.

11 THE COURT: -- 5:00 p.m., I need to get your list of
12 joint agreed strikes and proposed, but not agreed, if there are
13 any. I will then look at that. There's almost no chance that
14 a joint agreed strike wouldn't be struck, but it may be that
15 when I look at your proposed strikes that somebody hasn't
16 agreed to, that I actually am looking at the questionnaire,
17 it's possible that I would think that there should be a strike
18 there as well, and I would strike that person. You would be
19 notified of that.

20 And if it was cause, if somebody answers, for
21 instance, I am biased on the questionnaire, the answer to the
22 very last question; I am biased -- it's order number 100 --
23 then it's hardly worth their -- it would be very hard to
24 overcome that unless they didn't understand the question, which
25 presents its own issues in terms of ability to read English,

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1 the English language. That's what I mean by those kinds of
2 things.

3 But you will have complete clarity on that because
4 you'll know what you sent me, and I will, on the 2nd, put out
5 an order that will list the juror numbers of everybody that the
6 Court is going to call and tell them to stay home. And those
7 are the people who have all of your joint agreed strikes and
8 anybody else that I have come up with that I think is
9 appropriately struck. Everybody else will be called and will
10 be sitting in an appropriate undisclosed location waiting to
11 come up in the manner in which the Court has previously
12 indicated.

13 MR. TURNER: Thank you.

14 The second matter is exhibits.

15 THE COURT: Yes.

16 MR. TURNER: Obviously, we've tried to put as many of
17 our exhibits in the spreadsheet as possible. We are, as we are
18 developing our Q&As, coming across some additional items we
19 want to add, and rather than providing those to the defense or
20 Court piecemeal, our thought was that we could provide an
21 updated exhibit list at the time that we disclose our initial
22 3500 material.

23 THE COURT: And give me that date again. When's the
24 initial 3500 coming?

25 MR. TURNER: I think it's the 29th.

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1 THE COURT: What is the volume that you're thinking of
2 right now?

3 MR. TURNER: I really don't think it will be that
4 much.

5 THE COURT: "Not much" meaning a dozen --

6 MR. TURNER: Yes.

7 THE COURT: -- or 50?

8 MR. TURNER: Much closer to a dozen.

9 THE COURT: All right. Well, because, then, the
10 defendant will have an opportunity, Mr. Dratel, of course, to
11 look at those, and I would not -- you can raise any issues of
12 any kind at that point.

13 MR. DRATEL: Thank you, Your Honor.

14 THE COURT: All right. Those were the two
15 housekeeping matters you had.

16 Mr. Dratel, do you have some?

17 MR. DRATEL: No. I would just like a moment to speak
18 to Mr. Ulbricht.

19 THE COURT: Yes.

20 (Pause)

21 MR. DRATEL: Thank you, Your Honor.

22 THE COURT: Before we get to the last matter, I just
23 want to say I hope it's clear, but if it's not, let me say
24 explicitly: If you have an objection to a document that you
25 believe has been ruled upon in my in limine rulings, and it

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1 gets offered at trial, you should preserve your objection by
2 objecting at trial, otherwise I will be convinced that you have
3 been so persuaded by my reasoning. Now, if I have precluded
4 things altogether, and there's no opportunity to have a moment
5 at trial where you can say anything, then obviously there's no
6 second chance, but if you are provided with a chance, and
7 there's a document that's offered, and you don't object to it
8 coming in, then you'll have waived your objection.

9 MR. DRATEL: I understand, Your Honor.

10 THE COURT: Now, Mr. Ulbricht --

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: -- sir, you have -- there are two
13 decisions which are yours and yours alone to make. One of them
14 is whether or not you choose to testify at trial. Do you
15 understand you have a right to testify, if you choose to do so?

16 THE DEFENDANT: Yes, I do, Your Honor.

17 THE COURT: And do you understand that if you do
18 choose to testify, that that decision will be ultimately yours?
19 You will be advised by your lawyer, but ultimately, it will be
20 your decision if you want to testify, right?

21 THE DEFENDANT: I understand completely.

22 THE COURT: And if you choose not to testify, that's
23 also your decision ultimately. Do you understand that?

24 THE DEFENDANT: I understand, Your Honor.

25 THE COURT: Now, if you choose not to testify, I want

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1 you to understand that the jury will be given an instruction
2 that they cannot draw any inference or suggestion of guilt from
3 the fact that you do not testify. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Now, in terms of plea offers, has there
6 ever been a time when the government has made a plea offer that
7 has been conveyed to you?

8 THE DEFENDANT: Nothing in writing, Your Honor, but
9 there was a verbal offer.

10 THE COURT: All right. Was that just one offer so far
11 as you understood?

12 THE DEFENDANT: Yes.

13 THE COURT: Mr. Dratel, is that your understanding,
14 that there was one oral offer that was made?

15 MR. DRATEL: Correct, Your Honor.

16 THE COURT: Is that consistent with what the
17 government believes has been extended to the defendant?

18 MR. TURNER: Yes. Preindictment, Your Honor.

19 THE COURT: And that was a preindictment plea offer?

20 MR. TURNER: Yes.

21 THE COURT: All right.

22 Mr. Ulbricht, did you turn that offer down?

23 THE DEFENDANT: I suppose by not responding, it was a
24 declining, yes.

25 THE COURT: And I take it that there is no plea offer

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1 that is currently on the table; is that right, Mr. Turner?

2 MR. TURNER: Correct.

3 MR. DRATEL: That's my understanding as well, Your
4 Honor.

5 THE COURT: All right.

6 All right. Thank you.

7 THE DEFENDANT: Your Honor?

8 THE COURT: Yes.

9 THE DEFENDANT: I wonder if I could have just a moment
10 with my lawyer? There was an issue regarding the presentation
11 of evidence that I haven't had a chance to bring it up with
12 them, and it seemed like since we went over that earlier, it
13 would be a good time?

14 THE COURT: Yes.

15 THE DEFENDANT: Just a couple of minutes.

16 THE COURT: I'll give you a couple of minutes and
17 wait.

18 MR. DRATEL: Thank you, Your Honor.

19 (Pause)

20 THE COURT: Mr. Dratel, is there anything further?

21 MR. DRATEL: Just that -- I'll just tell the Court
22 what this is about. It's about the chats, the issue about how
23 the government is going to present them with readers, and what
24 I think what I'd like to do is just get an opportunity to go
25 back, write a letter to the Court about that, just so that

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1 we're clear on where we are and just whether I can find
2 anything on that one way or another.

3 THE COURT: All right. I think we had mentioned that
4 at a prior conference, that that was the way the government
5 would prefer to proceed, and I think that I -- am I recalling
6 the right matter?

7 MR. DRATEL: Yes, Your Honor.

8 THE COURT: That was with you folks, right?

9 MR. DRATEL: Yes.

10 THE COURT: Then I think I had said at the time that
11 at that point in time, I didn't have any opposition to it, so
12 long as it is done without any inflection at all, because we
13 don't know what's sarcastic, what's not sarcastic, what is
14 expecting an emphasis versus not. If you folks -- it would be
15 useful for you folks to talk if you have any concerns about it
16 before you write to me, but I'm happy to read whatever you
17 write.

18 MR. DRATEL: Right. It's about the medium. In other
19 words, it's a written medium, it's a medium that's read and not
20 spoken, and the question is whether two people speaking it is
21 really a proper replication of the medium. So I'm just going
22 to do a little work on that hopefully in the next couple of
23 days, and if we can't agree something with the government,
24 we'll write a letter.

25 THE COURT: All right. And then after you've done

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1 your research, talk to the government, maybe you can come to
2 some resolution.

3 MR. DRATEL: Yes.

4 THE COURT: Anything else we should go over today?

5 MR. TURNER: No. Thank you, Your Honor.

6 THE COURT: All right. I'm sure we will have some
7 back-and-forth with letters and things, otherwise the next time
8 I will see you will be 9:00 a.m. on the morning the trial
9 begins, which is January 5th.

10 MR. DRATEL: Thank you, Your Honor.

11 MR. TURNER: Thank you, Your Honor.

12 THE COURT: We are adjourned. Thank you.

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