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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 Cr. 68 (KBF)

5 ROSS WILLIAM ULBRICHT,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 21, 2015
9:22 a.m.

10 Before:

11 HON. KATHERINE B. FORREST,

12 District Judge

13
14 APPEARANCES

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

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

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

21 - also present -

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

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1 (Trial resumed; jury not present)

2 (Case called)

3 THE COURT: Good morning to all of you.

4 The first thing I would like to do is to have you,
5 Mr. Dratel, while I am addressing a couple of other matters
6 gather up what I have been referring to as the AA posts that
7 you wanted to compare to the mises piece, the mises.org piece,
8 so I can just take a quick look at them. I have reviewed the
9 portion of the transcript yesterday, as I had told you I would,
10 early relating to that discussion. So I just want to take a
11 quick look and see whether or not we're able to do anything
12 with that.

13 MR. DRATEL: I'm not sure what the Court means in
14 terms of are you talking about the language analysis?

15 THE COURT: Yes. We dealt at sidebar with an
16 evidentiary issue, and you wanted to use some mises posts of
17 some sort with the Silk Road forum.

18 MR. DRATEL: No, it is not the mises posts with the
19 Silk Road forum. What it was was --

20 THE COURT: Two different. One was a mises.org.

21 MR. DRATEL: It was not mises.org necessarily. It was
22 this witness' analysis, comparison of the writing that he
23 attributed to Anand Athavale and Dread Pirate Roberts' writing
24 as well in comparison.

25 THE COURT: Do you have --

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1 MR. DRATEL: Yes. I can find it from the 3500 --

2 THE COURT: If you can. Because what I am wondering
3 is whether or not there is a way of doing something that is a
4 factual-based series of questions. In other words, in terms of
5 were you familiar with these mises whatever they are called,
6 whatever the right word is called. Did you review them in the
7 course of your investigation? Yes. And did they have the
8 following name associated with it? Or whatever they are. Did
9 you separately look at Y? And then you can draw -- he can't
10 talk about his conclusions, and I won't let him talk about his
11 assumptions, but you can, through argument, draw whatever
12 inferences you want to draw. This is the first issue. Yes.
13 But I need to see the stuff -- before I even know if that
14 works, I need to see the materials.

15 MR. DRATEL: Sure.

16 MR. TURNER: Your Honor.

17 THE COURT: Yes.

18 MR. TURNER: I don't think the defense has the actual
19 mises.org. The defense is referring to the defendant's own
20 analysis.

21 THE COURT: I understand he has referred to it like
22 that. I'm trying to get underneath that and to see if there is
23 something factually that will work. So let me see what he's
24 got and then we'll figure out if there is anything that we can
25 do with it.

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1 The conclusions of the analysis I'm not allowing in,
2 but whether or not there is the data that he used to do the
3 comparison, this witness used to do the comparison, whether or
4 not that could be presented to him. Did you use this data?
5 Yes. Did you compare it to this? Yes. That is something that
6 I want to assess.

7 MR. TURNER: We would still be left with the
8 authentication issue, your Honor. This witness does not have
9 the necessary foundation to --

10 THE COURT: I believe that if he physically possessed
11 the documents, then Mr. Dratel can resolve that by saying did
12 you do anything to determine other than the fact that you
13 printed these off the Internet. I mean, it is up to argument,
14 the weight that the jury gives it. They are not coming in for
15 the truth. They are not going to be -- let me just see what
16 he's got. OK? We've got other issues to deal with. Let me
17 deal with some other issues first. OK?

18 The other issue is Complaint Paragraph 22C. I have
19 reviewed case law relating to the admissibility of complaints
20 signed by government agents. I believe that Mr. Dratel is
21 correct that that one paragraph can be put in. I didn't
22 receive any letters from you folks. So it's Paragraph 22C.

23 Now, the way that that would be done would be stating:
24 In September 2013, the government made the following statement,
25 and the paragraph would be read in its entirety. But based

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1 upon the Ramirez case, in the Second Circuit 1990, as well as
2 some certain other cases, that appears to be something which
3 can be done.

4 Mr. Turner.

5 MR. TURNER: Your Honor, we haven't had a chance to
6 look at that case. We ask for the opportunity to do so.

7 THE COURT: Did you find any other cases? You folks
8 were tasked last night with coming up with any case law you
9 felt was supportive of your respective positions?

10 MR. TURNER: That was considered hearsay. The problem
11 is the defendant isn't even offering it for the truth. They
12 are offering it to try to impeach him, essentially.

13 THE CLERK: He offered them separately. He made a
14 proffer. I agree with you, and I had considered whether or not
15 this should be done in the context of the defense case. That
16 is one possible issue.

17 However, Mr. Dratel did specifically recite the
18 hearsay rules to get it in as an admission. In fact, he cited
19 three of them, one of which I think is more applicable than the
20 other two; that is the party admission.

21 MR. TURNER: But, your Honor, that principle applies
22 when the party is trying to put that proposition in for the
23 truth. What they're trying to do is say the government made an
24 inaccurate statement. They are trying to sort of impeach this
25 statement.

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1 THE COURT: No. I think his theory, from his opening,
2 which is why I've also considered the materiality of it and
3 wondered whether this is a collateral issue solely for
4 impeachment but then I recalled that in his opening Mr. Dratel,
5 as I understand part of your point, it's that this website was
6 alleged to have been making money hand over fist. So where
7 is -- show me the money. Basically, where's the beef. And if
8 the defendant wasn't caught with the beef, then that's a point
9 Mr. Dratel wants to make, that that absence is an additional
10 circumstantial fact supportive of identity.

11 I think that is the argument. So I think he wants it
12 in for the truth. Am I wrong about that?

13 MR. DRATEL: No, your Honor. You are correct. It is
14 an admission and it doesn't have to impeach, and the Court is
15 correct with respect to the GAF case.

16 THE COURT: Yes, I have read the GAF case.

17 MR. DRATEL: It is really dispositive. It also says
18 that a party -- and, also, the Court mentioned Ramirez, also,
19 Warren, you know -- and I will just quote from it, where,
20 quote, the government has indicated in a sworn affidavit to a
21 judicial officer that it believes particular statements are
22 trustworthy, close quote, the Court -- and then the quote
23 continues -- may not sustain an objection to the subsequent
24 introduction of those statements on grounds that they are
25 hearsay.

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1 THE COURT: Right.

2 MR. DRATEL: That is 22 --

3 THE COURT: Yes, I read the Warren case. I think that
4 is a D.C. Circuit case. The GAF case had to do with a bill of
5 particulars, but I think it is sufficiently close that the
6 principle applies.

7 MR. DRATEL: Right. And I think, also, GAF also
8 stands for the proposition that even if the party changes its
9 strategy or its position in litigation, that prior position is
10 admissible.

11 THE COURT: That was the situation in GAF where they
12 had two different bill of particulars.

13 MR. TURNER: Your Honor, if I may?

14 THE COURT: Yes.

15 MR. TURNER: First of all, the government would like
16 an opportunity to look at this law, and this is law that we
17 haven't had an opportunity to see. It is not an urgent --

18 THE COURT: You were supposed to look at it last
19 night. I did last night go over the things that were going on
20 for this morning.

21 MR. TURNER: We did, your Honor, but we never received
22 anything from the defense. We don't know what specific cases
23 your Honor looked at. We would simply like an opportunity to
24 take a look at those cases ourselves and address them.

25 I want to make clear, though, your Honor, the

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1 government is not changing its position. The amount of
2 bitcoins we're talking about is still the same.

3 THE COURT: It is still 1,229,456?

4 MR. TURNER: It is slightly higher, but the point is
5 the valuation --

6 THE COURT: That is actually stated here. That
7 bitcoins had fluctuated greatly. That actually is why, in
8 terms of completeness, I had suggested that Mr. Dratel would
9 read the entirety of the paragraph.

10 MR. TURNER: Precisely. That is why this is going to
11 cause juror confusion. The amount of bitcoins is not
12 significantly changing --

13 THE COURT: If you folks can find cases contrary to --
14 I think Mr. Dratel has got his hands on the rights cases, which
15 are the same ones I have looked at, with the addition of the
16 Santos case, which is a case where the Second Circuit
17 actually -- it was an old case. It was pre-rules. But then
18 later on, in a later case, the Second Circuit ends up saying we
19 want to reaffirm the holding in Santos. If you want to take a
20 quick look?

21 But at this point, Mr. Dratel, if you wanted to use
22 this for impeachment, you can use anything for impeachment.
23 But in terms of reading it, we'll hold off for a little while.
24 You can do that at any point in time. You can do it when the
25 government rests, but I'm not at this point going to have a

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1 ruling stand yet that he is precluded from reading it, because
2 I think the better reading is that as to this paragraph he can
3 read it.

4 MR. TURNER: Your Honor, one more suggestion. We're
5 going to have a witness toward the end of our case who is going
6 to testify about the statistics, about the bitcoins that were
7 seized from the defendant's computer, from the Silk Road
8 server. If the defense wants to use it in the course of
9 cross-examination to try and impeach the witness' statement or
10 something like that, I think it would make a lot more sense
11 then. All I'm saying is that there is no urgency now in case
12 you --

13 THE COURT: The point is that I want to make sure that
14 while the current witness is still on the stand Mr. Dratel has
15 an opportunity to use this. The witness may have in fact read
16 the Complaint in this action. If the witness, who has
17 testified about the amount that he found in certain accounts
18 was X, if this is of any value to impeachment, I don't know
19 that it is, but I want to make sure that there is no ruling
20 precluding the use of 22C from the Complaint for impeachment
21 purposes.

22 Moreover, separately, and at another time, it is my
23 inclination to allow it to be read in as a party admission. A
24 party admission need not be an inconsistent statement to come
25 in. But we don't have to -- I agree with you on the latter

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1 point that we don't have to face that issue until a little bit
2 later. But I want to make sure Mr. Dratel understands he can
3 use 22C.

4 MR. DRATEL: Thank you, your Honor.

5 THE COURT: All right. Now, the other issue is -- I'm
6 waiting for the mises.org --

7 MR. DRATEL: I'm trying to look for them and engage in
8 the discussion at the same time.

9 By the way, your Honor, yesterday I believe what he
10 said was you did not ask for a letter from us, you had the
11 cases, indicating the cases.

12 THE COURT: The last thing, while you are looking for
13 the mises stuff -- let me just tell you while you are looking
14 for it, what I am thinking of, Mr. Dratel, is literally taking
15 the two factual pieces, the mises piece and the other piece,
16 asking him have you looked at each of them. Not asking him
17 about his conclusions. And if then you want to ask him did he
18 notice the word ABC and it happens to match ABC, he can stay
19 yes, but not ask him if he drew any conclusions about whether
20 this guy was DPR. What you can then do is through argument
21 draw whatever inferences you believe are appropriate. But it's
22 the factual back and forth that I think could be appropriate
23 while the speculative conclusions would not be.

24 MR. DRATEL: OK.

25 THE COURT: OK. That is what I am thinking. We'll

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1 see if the evidence would work.

2 MR. TURNER: Your Honor, again, the evidence is being
3 offered that Anand Athavale posted these things, and all that
4 would be relied upon would be a page that the agent --

5 THE COURT: You can go back and say -- I mean, I would
6 expect Mr. Dratel would have no problem saying: Do you know
7 for a fact who posted these?

8 MR. TURNER: Right.

9 THE COURT: And this guy can say: No. All I know is
10 they were associated with this name. I didn't do any
11 independent verification.

12 MR. TURNER: Then it should not come in. It is a
13 threshold issue, your Honor --

14 THE COURT: No. Because I will tell you why it is
15 relevant. It is relevant because during the course of the
16 investigation there was an exercise that was done, and I'm not
17 putting it in for the truth of whether these are from Anad,
18 whatever his name was, or not, that there were certain
19 materials -- they could have been from a trashcan -- compared
20 to other materials. It was part of what he did. I'm not
21 asking or confirming whether or not Anad was in fact the author
22 of the mises piece at all. It is just that he did this
23 analysis. He compared the two. And then we can figure out
24 where to go.

25 But the fact of the comparison I don't believe is

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1 hearsay. I don't believe it's irrelevant because it's
2 probative of identity, which is a material issue in dispute.
3 And I believe that his exercise -- whether the exercise was
4 based upon competent evidence or not is a different issue.
5 It's not the pages which are being admitted for some sort of
6 truth-finding exercise, it is the exercise.

7 MR. TURNER: It is not a hearsay issue, your Honor. I
8 am not arguing it is a hearsay issue. It is an authenticity
9 issue --

10 THE COURT: No. But the authenticity is that -- I
11 mean, all I need these pages for, to come in for, the only
12 purpose is that those are the pages he used. They're authentic
13 pages which he used. Whether they are in fact authentic from
14 mises or in fact authentically from a particular person is
15 different from whether he in fact held them in his hands or
16 looked at them on the screen and used them. If you have doubt
17 that these are the pages he used, then we have an authenticity
18 issue. If there is no doubt that these are the pages he used,
19 it is not about authenticity of the pages, it's about
20 authenticity of the underlying information.

21 MR. TURNER: The government, your Honor, so if you
22 look at Vayner, the issue there was the document -- there has
23 to be evidence the document is what it purported to be.

24 THE COURT: And that was a pause. What it purported
25 to be were the pages this fellow used.

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1 MR. TURNER: Right. In Vayner it was purported to be
2 the Russian Facebook page of the defendant. OK? And the Court
3 just didn't say, well, there are pages on the Internet and that
4 is fine. The Court said that they're being offered as pages of
5 this particular defendant and there has to be authentication.

6 If I may? Here, it's clear the defense is offering
7 this as pages posted by Anad Athavale. So Vayner carries over.
8 You can't simply have the agent say, well, I had his name Anad
9 Athavale on it and, therefore, that is enough to authenticate
10 it.

11 THE COURT: No. I think that the purpose in Facebook
12 was to show that particular statements in Facebook were true
13 and that were statements of the posting party. That's not part
14 of this exercise.

15 MR. TURNER: It wasn't to show that they were true.
16 It wasn't a hearsay issue, your Honor. It was an
17 authentication issue.

18 THE COURT: Before they got to the hearsay issue.

19 MR. TURNER: The point is this exercise your Honor is
20 referring to is only relevant insofar as they are trying to
21 show an alternative perpetrator theory.

22 THE COURT: Yes.

23 MR. TURNER: The alternative perpetrator theory is
24 there is this guy out there, Anad Athavale, and he posted all
25 of these things on mises.org, and his language choices match up

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1 with Dread Pirate Roberts. Things like he spelled "a lot"
2 a-l-o-t instead of with a space. It is actually quite silly
3 when you look at it closely. In any event, in order to prove
4 that theory, like your Honor explained yesterday, you have to
5 have the chain of inferences laid out. You have to be able to
6 offer the chain of inferences. Here it is a key inference or
7 it is a key point along that chain of inference that the pages
8 at mises that this Agent looked at were Anad Athavale's actual
9 posts.

10 THE COURT: What I'm suggesting is he cannot testify
11 and would not be allowed to testify that these were Anad
12 Athavale's posts. All he can say is I found these -- as part
13 of my investigation, I found these things on the Internet. I
14 did the following comparison to things on Silk Road. Full
15 stop.

16 MR. TURNER: And as long as there is absolutely no
17 mention of Anad Athavale --

18 THE COURT: Not "no mention." He can look at the page
19 and say this, but he can also say I have no idea whether it was
20 him or not. I have no idea if John Doe posted these. All I
21 know is that was the name.

22 MR. TURNER: But, your Honor, if that had been the way
23 things go in Vayner, then the Court would have said, well, no,
24 it is fine, just let it in and then the jury can be instructed
25 that the agent has no way of authenticating this issue but it

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1 should go to the jury anyway. That is not how the Vayner Court
2 applied the rule. It is a threshold issue.

3 THE CLERK: I hear you. I am using it for a different
4 purpose.

5 Let me see the information on both sides of this. I
6 don't know if it works in the way that I'm suggesting.

7 MR. TURNER: And, again, we just stress that the
8 proper way -- if the defense wants to establish this theory,
9 the proper way to do it is actually put the mises.org posts
10 before the jury, properly authenticate them. Then they can
11 draw the inferences. They don't need the agent to do so. The
12 agent's opinion --

13 THE COURT: He is not going to draw -- I am not going
14 to let him draw his conclusions.

15 MR. TURNER: Then there is really no need for the
16 agent to testify about it.

17 THE COURT: Here's the point. Part of his
18 investigation was looking at a variety of information, and
19 there were a variety of facts which indicated circumstantially
20 and built a case. These are among the facts that eventually
21 circumstantially fell off. The jury might credit them more
22 than he credited them, but it is up to them to credit them.
23 And --

24 MR. TURNER: This is exactly what the Johnson line of
25 cases talks about, that sort of the investigative background,

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1 the story of how the investigation proceeded, is not relevant
2 and that --

3 THE COURT: But that was for the investigative
4 background to show -- in the Johnson case, it was to show
5 really sort of important things coming in that were hearsay as
6 background. And the Court said no, no, no, no, no, you can't
7 wedge in as background these clearly disputed issues of fact.
8 That's the Johnson case.

9 That's not this. Let me see what Mr. Dratel has.
10 This may or may not go anywhere, but I do want to see what the
11 lay of the land is.

12 MR. TURNER: OK. But just to finish the thought, I
13 think the Court in Johnson emphasized the dangers of
14 introducing background evidence like this, because it can give
15 the impression the agent found this important, the agent, you
16 know, had suspicions about this evidence at the time. That is
17 why the Court said it's generally not relevant, and --

18 THE COURT: I hear your point.

19 Mr. Dratel, do you have anything to hand over?

20 MR. DRATEL: Yes, I do, your Honor. Thanks. Some of
21 them are not consecutive so I've -- well, there are a couple --
22 I've categorized them --

23 THE COURT: Can I have the prosecution come up here as
24 well? Walk me through these.

25 MR. DRATEL: Oh, sure. This is all from the 3500,

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1 obviously. This is from emails, and then the top part is a
2 profile of Mr. Athavale.

3 MR. TURNER: Can we be clear when you are talking
4 about emails?

5 MR. DRATEL: Emails from the agent. This is an email
6 from the agent or a report, really, from the agent. And it
7 lists first the usernames -- I mean the IP addresses,
8 usernames. And then on this page it starts with the writing
9 analysis that he has done.

10 There is an earlier -- there is also a report that he
11 has written, which is another part, which is essentially the
12 same but it just appears in a different part of the 3500, where
13 he talks about there is an extensive analysis of distinct
14 writing styles, sayings, spelling mistakes, clichés, and
15 specific nuances which have led to determining -- and then it
16 is redacted -- it is a highly likely target. In fact, four
17 pages are redacted. I think it is what is in this report and
18 in other parts of the 3500. I don't really understand the
19 redactions. There are a lot of redactions in the 3500 of the
20 agent. For a period, I assume, that they had things that were
21 properly redacted. I think this is not properly redacted, but
22 I imagine that we have it in this report so I'm not sure that
23 there is an issue.

24 But, anyway, then he goes on to list them in about six
25 pages worth. And he also talks at another point about -- and

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1 I'm not sure if it is in this one. Let me just see if it is in
2 this part, where he talks about having sent it to a college
3 professor.

4 MR. TURNER: Is it irrelevant?

5 MR. DRATEL: The fact that he sent it is not a
6 conclusion. If the government wants to bring out a conclusion,
7 that's fine.

8 (Pause)

9 THE COURT: Do you have the -- what you have here --
10 and I'm focused on the "boths," do you have the two things that
11 were being looked at that resulted in that determination?

12 MR. DRATEL: No, I don't have the mises posts because
13 it is just digested here. This is the sort of longer version
14 of that in terms of it has the quotes pulled out, to a certain
15 extent, on what he based it on. There is another section in
16 this part that goes into it in greater detail in terms of the
17 analysis.

18 MR. TURNER: Your Honor, what's being done here is we
19 are talking about thousands of posts. Instead of trying to get
20 a competent representation of those posts, he is just drawing
21 on this agent's memories, this agent's perceptions. If it is
22 going to be done right, the right way to do it is to have the
23 actual documents themselves. This is akin to us drawing
24 somebody off the streets and saying, hey, do you remember
25 looking at a bunch of posts on a website and were there

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1 similarities between the posts and what you saw on the Web
2 page. That is an improper way to prove our case. It should be
3 an improper way for the defense to prove their case.

4 THE COURT: The difference is this is an agent who is
5 not pulled off the street who was tasked with being careful and
6 accurate within the constraints.

7 Here's what we're going to do. We're going to -- let
8 me just sort of see if I can do a series of questions.

9 (Pause)

10 THE COURT: What are these things called, these posts?

11 MR. TURNER: It is a report of email. I can go back
12 and find the first page.

13 THE COURT: What was he comparing it to, the mises
14 compared to?

15 MR. TURNER: To DPR posts.

16 THE COURT: On what?

17 MR. TURNER: On the forum -- also, everything he gets
18 his hands on from DPR.

19 THE COURT: OK. This is what I am going to allow.
20 I'm going to allow questions along the following lines.

21 MR. TURNER: Should I take notes?

22 THE COURT: No, I'm going to hand you my page.

23 Did you look at the posts from the mises.org? Whose
24 name appeared? Do you know if in fact it was this person? He
25 will say no. Did you confirm that it was this person? So it

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1 is clear he did not confirm. Did you compare what you found
2 from the mises' posts to anything else, in fact, to the DPR
3 forum? Yes. Did you look at words? Yes. Did you make
4 certain factual determinations as to the appearance of words in
5 certain places? Yes.

6 What I do not want, and will not allow, is his
7 conclusion here where he talks in the first one: "Both use the
8 same writing style." OK? He can't say that.

9 MR. DRATEL: Right.

10 THE COURT: But he can say both spell the word
11 "realtime" with a hyphen. That is an English language
12 comparison. The government can then go back on cross and
13 unsettle, undo the mises posts.

14 MR. TURNER: Your Honor, I just want to make sure we
15 have a clear record. When your Honor says the agent can be
16 asked did you do anything to confirm this came from this
17 person, that goes to the reliability of the document. And
18 that's the whole point of the rules of evidence, that documents
19 that aren't proven to be reliable should not come in in the
20 first place. That is the very reason -- the same thing with
21 the LinkedIn pages yesterday. If they cannot be shown to come
22 under a hearsay exception, they can't just go to the jury with
23 the instruction that they can't be -- that the agent didn't do
24 anything --

25 THE COURT: Well, what you can do on cross-examination

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1 is bring out that he has no idea if this was from this person
2 or another person or the man on the moon. But I am going to
3 allow this. I understand the government's position is that
4 they oppose vigorously.

5 MR. DRATEL: Your Honor, just two things. One is with
6 respect to instead of asking him a sort of imperative question,
7 "Did you confirm," can I ask him "Did you do anything to
8 confirm?" because I don't know the answer?

9 THE COURT: Fine.

10 MR. DRATEL: Can I say, "Did you send all of this
11 material to a college professor for analysis?" Just that
12 question.

13 MR. TURNER: We argue that it is irrelevant to
14 anything.

15 THE COURT: Well, it is not irrelevant.

16 Yes.

17 MR. DRATEL: Thank you.

18 THE COURT: All right. The last thing we'll take up
19 at another time is how to deal with the strikes. I don't want
20 to take it up now.

21 Do we have a full jury, Joe?

22 THE CLERK: We do.

23 THE COURT: We are going to proceed. All right?

24 MR. DRATEL: Your Honor, the government has provided
25 me a proposed instruction which I have some problems with, so

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1 we'll try to work on that.

2 THE COURT: All right. Thank you.

3 Let's bring out the jury. Get Mr. Der-Yeghiayan on
4 the stand.

5 MR. TURNER: Are we going to redirect, your Honor, or
6 back to cross?

7 THE COURT: We are going to go to redirect and then go
8 back to cross. But I will allow Mr. Dratel, if necessary, to
9 go beyond the scope of the redirect to correct my rulings from
10 yesterday.

11 MR. DRATEL: Thank you, your Honor.

12 (Pause)

13 MR. DRATEL: Your Honor, while we are waiting, could
14 we just do a quick sidebar?

15 THE COURT: They will be horrified if the jury walks
16 out and see us at the sidebar. It will be like, you know,
17 Groundhog Day.

18 THE CLERK: All rise as the jury enters.

19 (Continued on next page)

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Trial

1 (Jury present)

2 THE COURT: All right. Ladies and gentlemen, as we
3 get to our seats, let's all be seated.

4 And we are still on the redirect of Mr. Der-Yeghiayan.

5 And you remain under oath, sir. Do you understand
6 that?

7 THE WITNESS: I do. Thank you.

8

9 JARED DER-YEGHIAYAN,

10 Resumed, and testified further as follows:

11 THE COURT: Thank you.

12 You may proceed, Mr. Turner.

13 MR. TURNER: Thank you, your Honor.

14 REDIRECT EXAMINATION (Resumed)

15 MR. TURNER: Could we put Government Exhibit 149 on
16 the screen, please?

17 Your Honor, I believe the defense is now going to
18 stipulate to the admission of this document.

19 MR. DRATEL: Yes, but just as it appeared on
20 archive.org at that time.

21 THE COURT: All right. Thank you. 149 is received.

22 (Government's Exhibit 149 received in evidence)

23 MR. TURNER: Mr. Evert, could you zoom into the top
24 Paragraph there.

25 BY MR. TURNER:

F1ldulb1

Der-Yeghiayan - redirect

1 Q. OK. So it says, "This is not the Silk Road, but you are
2 close. The Silk Road is an anonymous online market. Current
3 offerings include marijuana, harsh, shrooms, LSD, ecstasy, DMT,
4 mescaline and more. The site uses the Tor anonymity network,
5 which anonymizes all traffic to and from the site, so no one
6 can find out who you are or who runs Silk Road. For money, we
7 use bitcoin, an anonymous currency."

8 Yesterday you testified that this website was hosted
9 at a Web hosting company controlled by Mr. Karpeles, right?

10 A. Yes, it was.

11 Q. And the name, again, of the company was what?

12 A. It is KalyHost.

13 Q. Did it go by another name as well?

14 A. There is AutoVPS.

15 Q. And you testified yesterday you searched emails associated
16 with Mr. Karpeles' Web hosting company, is that right?

17 A. Yes, I did.

18 Q. Did you find any emails from the email address
19 staff@silkroadmarket.org in there?

20 A. Yes, I did.

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

22 THE COURT: You may.

23 Q. Do you recognize this exhibit? I'm showing you what's been
24 marked as Government Exhibit 151.

25 A. I do.

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Der-Yeghiayan - redirect

1 Q. How do you recognize it?

2 A. It's one of the emails that I observed in Mark Karpeles'
3 email account.

4 MR. TURNER: Your Honor, the government offers
5 Government Exhibit 151 into evidence.

6 MR. DRATEL: Objection.

7 THE COURT: Give me one more word.

8 MR. DRATEL: Oh, hearsay. Foundation.

9 MR. TURNER: It is not being offered --

10 THE COURT: Overruled. Government Exhibit 151 is
11 received.

12 MR. DRATEL: Your Honor, also authenticity. There are
13 no headers. There is nothing. This could have been --

14 THE COURT: Why don't you do a little more to lay a
15 foundation as to this, and then subject to that foundation it
16 is received.

17 BY MR. TURNER:

18 Q. Where did you receive the documents from?

19 A. The email came from Gmail from Google.

20 Q. OK.

21 THE COURT: Was that part of the subpoena response.

22 THE WITNESS: It was the search warrant results that
23 were returned by Google.

24 THE COURT: Thank you. You may proceed. It is
25 received.

F1ldulb1

Der-Yeghiayan - redirect

1 (Government's Exhibit 151 received in evidence)

2 MR. TURNER: Could you put it up on the screen,
3 Mr. Evert. Could you zoom in on the top.

4 Q. It is from "staff@silkroadmarket.org." The date is
5 March 18, 2011. It's to "support@autovps.net." The question
6 is: "How do I upgrade my memory for my VPS with AutoVPS?"

7 Do you know what the terms "VPS" refers to?

8 A. It is virtual private server.

9 Q. Do you know what that term means?

10 MR. DRATEL: Objection.

11 THE COURT: Sustained.

12 Q. Have you ever rented server space before?

13 A. I have.

14 Q. From that experience, are you familiar with the term
15 "virtual private server"?

16 A. I am.

17 Q. So based on that --

18 MR. DRATEL: Objection.

19 Q. -- can you explain what virtual private server space is?

20 THE COURT: No. This question is fine.

21 You may answer.

22 A. Essentially, it's space that's allocated or taken from a
23 server that's assigned to you. So it acts as if it is a server
24 of its own. So it is just taking space and giving it to you
25 and allowing you to use it like a regular server would.

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Der-Yeghiayan - redirect

1 Q. And this email address, to support@autovps.net, in
2 reviewing the emails that you saw in that search warrant
3 return, did you see other emails that were addressed to
4 support@autovps.net?

5 A. I did.

6 Q. What are those emails generally about?

7 MR. DRATEL: Objection.

8 MR. TURNER: Not for the truth, your Honor.

9 MR. DRATEL: Objection.

10 THE COURT: You could give some topics. You may
11 answer.

12 A. Basically -- I mean, for the most part,
13 customer-support-related inquiries related to the hosting
14 service.

15 MR. DRATEL: Just objection, your Honor, with respect
16 to any inference that it is from silkroadmarket.org. He is
17 talking about entirety, right?

18 THE COURT: Let's talk about that at the break but I
19 have allowed the answer.

20 BY MR. TURNER:

21 Q. Just to be clear, are you talking about customer support
22 inquiries from multiple other customers or just
23 staff@silkroadmarket.org?

24 A. There were multiple customers.

25 Q. OK. So support@autovps.net was used to receive customer

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Der-Yeghiayan - redirect

1 support inquiries?

2 MR. DRATEL: Objection.

3 Q. Is that basically your testimony?

4 MR. DRATEL: Objection.

5 THE COURT: Overruled.

6 A. Yes.

7 Q. Now, did -- and just to be clear, when you were talking
8 about the search warrant for emails, it is a search warrant for
9 emails associated with Mark Karpeles' Web hosting company, is
10 that right?

11 A. There were multiple, yeah, email accounts, I mean, we
12 looked into for Mark Karpeles.

13 (Continued on next page)

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Der-Yeghiayan - redirect

1 BY MR. TURNER:

2 Q. Now, did Mark Karpeles' web hosting company KalyHost
3 AutoVPS help their customers register their websites?

4 MR. DRATEL: Objection.

5 THE COURT: Based upon your review, was there
6 information which indicated that to you? You may answer.

7 A. Based upon my review and then also had registered before, I
8 participated in registering -- also from my review, I've seen
9 it and from registering the site through KalyHost.

10 Q. So you yourself tested it out by registering a site on
11 KalyHost?

12 A. Yes, I participated in that.

13 Q. Can you explain briefly what it means to register a
14 website?

15 A. It means to provide information to basically claim
16 ownership over a website name and to provide your personal
17 details to take ownership of it.

18 Q. So when you registered a website on KalyHost, did KalyHost
19 ask you for any information like that?

20 A. They did.

21 Q. What sort of information?

22 A. There was information such as like a point of contact, so
23 it asked for your name, email address, address, telephone
24 number, as well as technical point-of-contacts and
25 administrative point-of-contacts.

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Der-Yeghiayan - redirect

1 Q. Were you required to verify that information in any way?

2 A. No.

3 Q. Is there any way the public can view register information
4 associated with website addresses?

5 A. Yes, there is.

6 Q. And how can they do so?

7 A. It's called a who.is database, so it's a public database
8 that records that information when you do register a website.
9 It keeps track of basically what information you provide when
10 you do register it so you can search that publicly.

11 Q. Is that information available in the who.is web page that
12 we looked at earlier?

13 A. That available there; yes.

14 Q. Can you put GX 150 back on the screen, please. Can you
15 zoom in here.

16 Going back to this web page, who does it reflect
17 registered the silkroadmarket.org website?

18 A. The information provided shows that it was registered to
19 Richard Page at 11640 Gary Street, Garden Grove, California,
20 92840, and it's a telephone number, and then as well is an
21 email address which is richardpage@gawab.com.

22 Q. Did you look into whether this address -- and, Mr. Evert,
23 can you zoom in here so it's very clear.

24 Did you look into whether this address, 11640 Gary
25 Street, Garden Grove, California, was a real address?

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Der-Yeghiayan - redirect

1 A. I did.

2 Q. And whether the phone number was a real phone number?

3 A. I did.

4 Q. How did you do that?

5 A. The address I looked up in our -- the Clear database that
6 we have access to, as well as the telephone number I checked as
7 well.

8 Q. What is the Clear database a compilation of?

9 A. It's a compilation of credit data that's provided, as well
10 as, like, utility bills and public information generally about
11 people, so it stores that information.

12 Q. And is Clear generally accepted and relied upon by law
13 enforcement to check address and phone number information?

14 A. Yes, it is.

15 MR. DRATEL: I'm going to object, your Honor.

16 MR. TURNER: 803.17 provides the basis.

17 MR. DRATEL: This is a database full of hearsay.

18 THE COURT: I'm going to allow it.

19 Q. So, what did you find?

20 A. The address wasn't registered to anybody, so it reflects to
21 me that it wasn't -- there wasn't anyone ever registered to
22 that address. There wasn't utility bills, anything ever
23 associated to that address.

24 Q. Did you find the real address with that number?

25 A. No, I did not.

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Der-Yeghiayan - redirect

1 Q. What about the phone number?

2 A. The telephone number wasn't registered to anyone of that
3 name.

4 Q. Have you seen this information for Richard Page anywhere
5 else?

6 A. I have.

7 Q. Where?

8 A. When I searched Ross Ulbricht's computer after the arrest.

9 Q. Where did you find it on Ross Ulbricht's computer?

10 A. There was a file by the name of "aliases" on his computer
11 and there was a text document titled "info" that had the same
12 information on there, so the same name, as well as the -- what
13 appeared to be to me names, passwords and usernames for AutoVPS
14 and for KalyHost and for I believe gawab as well.

15 Q. It included the exact same address?

16 A. It did.

17 Q. And the exact same phone number?

18 A. It did.

19 MR. TURNER: No further questions.

20 THE COURT: Thank you.

21 Mr. Dratel.

22 MR. DRATEL: Thank you, your Honor. Can we come up
23 for a second one clarification. It takes a minute.

24 THE COURT: Okay. (Continued on next page)

25

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Der-Yeghiayan - redirect

1 (At the side bar)

2 MR. DRATEL: I'm just trying to be careful, because
3 mises.org has not come up, I want to ask him what that is and
4 why he was looking at it. That's all. It's part of the
5 investigation, what was the relevance to the investigation? So
6 just two very quick questions on mises.org.

7 THE COURT: Okay.

8 MR. DRATEL: Thank you.

9 (Continued on next page)

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Der-Yeghiayan - redirect

1 (In open court; jury present)

2 RECROSS EXAMINATION

3 BY MR. DRATEL:

4 Q. Good morning, Special Agent Der-Yeghiayan.

5 A. Good morning.

6 Q. Was there a time -- I want to draw your attention back to
7 Anand Athavale we spoke about him yesterday, A-T-H-A-V-A-L-E,
8 correct?

9 A. Correct.

10 Q. He was a Canadian citizen who at one time you were looking
11 at, right?

12 A. He was one I investigated, yes.

13 Q. And during the course of your investigation, did you come
14 across a site called mises.org, m-i-s-e-s.org?

15 A. Yes, I did.

16 Q. And what is that?

17 A. It's a website that's set up for libertarian beliefs, as
18 well as there's an online forum associated with it, too.

19 Q. And as part of your investigation, did you -- what was the
20 relevance to your investigation of mises.org?

21 A. There was -- I observed on the bottom of Dread Pirate
22 Roberts' profile that he would link articles from that website
23 for things for people to read. So there would be, on his
24 signature line on his forum profile, he would link mises pages.

25 Q. And did you look at posts from the mises.org forum?

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Der-Yeghiayan - recross

1 A. I did.

2 Q. And did you look at posts under the name Anand Athavale?

3 A. It wasn't under his name.

4 Q. What was it under?

5 A. It was under Liberty Student.

6 Q. And how did you connect that to -- did you do anything to
7 connect that to Mr. Athavale?

8 A. I did.

9 Q. And what was that that you did?

10 A. I looked through his posts that were publicly available. I
11 was looking for anything that would be personal indicators to
12 help me identify who --

13 MR. TURNER: Objection.

14 THE COURT: I'll allow this.

15 MR. TURNER: It calls for the agent's conclusion.

16 A. -- who the person was that was potentially behind that
17 identity on that forum.

18 Q. And at some point, did you compare those posts for
19 libertystudent.org and -- I guess, what facts led you to
20 associate libertystudent.org with Mr. Athavale?

21 MR. TURNER: Objection.

22 THE COURT: Sustained. We'll go on to the next piece.

23 Q. So did you compare those posts from libertystudent.org to
24 anything?

25 A. I compared the posts by Liberty Student on mises to forum

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Der-Yeghiayan - recross

1 posts from Silk Road from Dread Pirate Roberts.

2 Q. Anything else from Dread Pirate Roberts?

3 A. As well as undercover chats, as well that I had access
4 to -- and I believe -- there might have been other -- whatever
5 else I had access to, if it was from the marketplace or from
6 anywhere else that was cited from Dread Pirate Roberts at the
7 time.

8 Q. And did you compare the two posts, the words in the two
9 posts, I mean in the two sets of posts, libertystudent.org
10 versus Dread Pirate Roberts?

11 A. I did.

12 Q. And did you find similarities?

13 MR. TURNER: Objection.

14 THE COURT: Did you find sometimes the same word in
15 one as well as the other?

16 THE WITNESS: There were commonalities; yes.

17 THE COURT: Why don't you go through some of the
18 factual commonalities, if there are any.

19 MR. DRATEL: Thank you.

20 Q. And do they both spell "labor," L-A-B-O-R as "labour,"
21 L-A-B-O-U-R occasionally, right?

22 A. That was one of them, yes.

23 Q. Both use and spell the word "real-time" with a hyphen
24 between real and time, right?

25 A. That's correct.

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Der-Yeghiayan - recross

1 Q. Both use the word "lemme," L-E-M-M-E as opposed to "let
2 me," right?

3 A. There were occasions, yes.

4 Q. Both end sentences with comma, right, question mark?

5 A. Yes.

6 Q. Both spell "route" R-O-U-T-E as "rout," R-O-U-T?

7 A. Yes.

8 Q. Both use the term "intellectual laziness"?

9 A. Yes.

10 Q. Both use the term and actively discussed the concept of
11 "agorism" and the "agorist"?

12 A. Yes.

13 Q. And do you know what that is?

14 A. No, no, I don't.

15 Q. Both use and spell the word "counter-economics" with a
16 hyphen between counter and economics, right?

17 A. That's correct.

18 Q. Both used the term "the ladder" in quotes before the "and"
19 after "ladder," right?

20 A. They did.

21 Q. Both quite often capitalize smaller words when they want to
22 emphasize, right?

23 A. Yeah, like a -- capitalize an entire word, yes.

24 Q. Neither uses hyphens to space out sentences or thoughts,
25 right?

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Der-Yeghiayan - recross

1 A. Yes.

2 Q. Both start sentences with "and" and "but" quite often,
3 right?

4 A. Yes.

5 Q. Both will commonly not capitalize the first word in a
6 sentence when replying short and quick?

7 A. Yes.

8 Q. Both used the term "the heart of the matter"?

9 A. That sounds correct, yes.

10 Q. Both quite often will use a backslash, the symbol for
11 backslash on the computer to split words with similar meaning
12 and the second word never having the space after the slash,
13 right?

14 A. That's correct.

15 Q. Both used the term "altruistic," right?

16 A. Yes.

17 Q. Both used the term "pal," right?

18 A. Yes.

19 Q. Both used the term "war mongering"?

20 A. Yes.

21 Q. Both used the term "phoney," P-H-O-N-E-Y, right?

22 A. Correct.

23 Q. Both discuss and mention authors Murray Rothbard, right?

24 A. Correct.

25 Q. And Samuel Konkin?

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Der-Yeghiayan - recross

- 1 A. Konkin?
- 2 Q. K-O-N-K-I-N?
- 3 A. Yes.
- 4 Q. Do you know who they are?
- 5 A. They were inspirations for Dread Pirate Roberts according
6 to his posts.
- 7 Q. Are they libertarians?
- 8 A. As far as I'm aware. I'm not too familiar with them, but
9 yes.
- 10 Q. Both commonly end sentences with a smiley face or the wink
11 smiley face emoticons?
- 12 A. On their forum posts; yes.
- 13 Q. Both sometimes end sentences with the word "amigo"?
- 14 A. Yes.
- 15 Q. Both use the term "a narco-capitalist" with a hyphen in the
16 middle?
- 17 A. Yes.
- 18 Q. Both misspell the word "alot," meaning that they spell
19 it -- that they're both spelled, in the comparisons that you
20 did, as one word as opposed to two words, "alot" A-L-O-T as one
21 word?
- 22 A. That's correct.
- 23 Q. Both have discussed the paleo human, P-A-L-E-O?
- 24 A. Yes.
- 25 Q. And they're both use the same expletive, right? There's an

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Der-Yeghiayan - recross

1 expletive?

2 A. I believe so, yes.

3 Q. And you wrote a report about that, correct?

4 MR. TURNER: Objection.

5 THE COURT: I will allow this question.

6 A. Yes, I did.

7 Q. And you also sent these sets of posts to an English
8 professor at a university to examine and analyze, right?

9 A. Yes, I did.

10 Q. Now, during your redirect yesterday afternoon, you
11 mentioned that DPR was security conscious, right?

12 A. He was, yes.

13 Q. Did he ever mention he was keeping a journal?

14 A. Not in my posts or private messages or chats, no.

15 Q. Did he ever tell you that he was saving chats on his
16 computer?

17 A. Not that I recall, no.

18 Q. Did he ever tell you that he was using public Wi-Fi?

19 A. No.

20 Q. Now, by the way, when he was out in public the day of the
21 arrest, when Mr. Ulbricht was out in public on the day of his
22 arrest, that was not at your prodding. He went out on his own
23 voluntarily into a public place, right?

24 A. He did.

25 Q. But it was you who asked him to log onto Silk Road,

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Der-Yeghiayan - recross

1 correct?

2 A. I asked Dread Pirate Roberts to log onto Silk Road, yes.

3 Q. So let's look at 129C, please, Government's 129C. Now,
4 when you talked about the chat yesterday, that's not part of
5 Silk Road, correct, the chat itself?

6 A. It's not on the marketplace or the forum.

7 Q. Right. It's a separate information called Pidgin, right?

8 A. It's -- I believe it's a Java server that was on Tor.

9 Q. Also called OTR, Off The Record, right?

10 A. It can be done in OTR, yeah.

11 Q. But it's a separate Tor chat program not part of any of the
12 Silk Road website or forums or anything like that, right?

13 A. It was separate from it; yes.

14 Q. So that's what he was logged on to when you realized he was
15 online, correct?

16 A. When I was -- when he came online, this is what indicated
17 to me that he was online, was the chat.

18 Q. Pidgin, not Silk Road, right?

19 A. Correct.

20 Q. He wasn't on Silk Road until you asked him to get on Silk
21 Road, right?

22 A. That's correct.

23 Q. And you say "check out one of the flagged messages for me,"
24 and then it says "sure," right, "let me log in"?

25 A. Yes, it does.

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Der-Yeghiayan - recross

1 Q. So he's already online on Pidgin, which is the chat
2 program, but he's not on Silk Road at that point, right?

3 A. From -- yeah, from this, yes.

4 Q. And you were asked by Mr. Turner yesterday about who was on
5 the other side of the screen that day, right?

6 A. Yes.

7 Q. And you satisfied yourself based on going into the library
8 looking at the screen that Mr. Ulbricht was on the other side
9 of the screen that day, right?

10 A. Yes.

11 Q. But you can't testify, can you, about who you know was on
12 the other side of the screen (in)any other communication you
13 had with Dread Pirate Roberts, can you?

14 A. No, I cannot.

15 Q. After all, everybody on Silk Road thought you were somebody
16 else for a couple of years, right?

17 A. For the --

18 MR. TURNER: Objection.

19 THE COURT: Why don't you reframe it.

20 MR. DRATEL: Okay.

21 Q. You were on Silk Road from some time in early 2012 through
22 the end of September of 2013 under various account names,
23 correct?

24 A. I utilized multiple account names, yes.

25 Q. And no one knew your real identity, right?

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Der-Yeghiayan - recross

1 A. I only actively chatted, though, with -- primarily with the
2 cirrus account, though, but the rest of the ones were primarily
3 used for either buys or for screen shots.

4 Q. They didn't know your identity, your real identity, right?

5 A. Not on any one of them, no.

6 Q. They had no idea who was on the other end of that screen,
7 did they?

8 A. No. I never told them, no.

9 Q. Also with respect to "flagged messages," you identified the
10 post you were looking for, right?

11 A. At the end of the chat, I told him "the one with atlantis."

12 Q. Right. In terms of who is on the other end of the screen,
13 we went through that exchange before with respect to there was
14 a period of time in which you weren't sure whether DPR was
15 operating someone's account, whether it's SSBD, right, that's a
16 username, correct?

17 MR. TURNER: Objection.

18 THE COURT: Hold on one second. Sustained.

19 Q. Now, you were asked about Government Exhibit 130 on
20 redirect, right, the handwritten notes, right?

21 A. Yes.

22 Q. And you asked whether they said anything about Silk Road or
23 illegal drugs, right?

24 A. I was asked that, yes.

25 Q. But you're aware that in July of 2013, just a couple of

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Der-Yeghiayan - recross

1 months before Mr. Ulbricht's arrest, that he was interviewed by
2 Homeland Security, right?

3 MR. TURNER: Objection; foundation.

4 Q. You're aware that he was interviewed, aren't you?

5 A. Yes, I was.

6 Q. And you're aware that it had to do with a shipment from
7 Silk Road, right?

8 MR. TURNER: Objection; foundation, hearsay.

9 THE COURT: You need to go back over that and lay a
10 foundation for it.

11 Q. During your investigation, you became aware, right, that
12 Mr. Ulbricht -- withdrawn.

13 That Homeland Security interviewed Mr. Ulbricht
14 about -- and you've read -- withdrawn.

15 During the course of your investigation, you were kept
16 apprised of what was going on, correct?

17 MR. TURNER: Objection; hearsay, vagueness.

18 Q. For purposes -- you read reports --

19 THE COURT: Hold on. Ask the question.

20 Q. You read reports about an interview of Mr. Ulbricht by
21 Homeland Security, correct?

22 THE COURT: You can answer that yes or no.

23 A. Yes, I did.

24 Q. And the subject matter was about a package shipped by Silk
25 Road, a Silk Road vendor, correct?

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Der-Yeghiayan - recross

1 MR. TURNER: Objection to the hearsay.

2 THE COURT: Right. That's sustained.

3 Q. Now, you were asked also on redirect about travel records,
4 right?

5 A. That's correct.

6 Q. And you said there were some aliases. You ran those
7 aliases for travel records, too, didn't you?

8 A. The aliases for travel records?

9 Q. In other words, any aliases for Mr. Ulbricht that you might
10 have found, you ran them for travel records, too, didn't you?

11 A. I can't recall if I did.

12 Q. Now, we talked about that he takes about a trip a year out
13 of the country. And you were asked about international travel,
14 whether you could determine whether he went from one country to
15 another country, right; you couldn't tell that from the travel
16 records that you looked at in terms of a sheet that you got
17 from border authorities, right --in other words, either leaving
18 the country or coming into the country is what you said, right?

19 A. The records that were reflected in the database that we
20 have access to just shows where they're coming from and where
21 they travel to.

22 Q. But you also had the passport, right?

23 A. I didn't have that until after the arrest.

24 Q. Right, but you had it now and you've had it for quite some
25 time, right?

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Der-Yeghiayan - recross

1 A. Yes.

2 Q. So the case passport is in evidence, right?

3 A. Yes.

4 Q. It's Exhibit 134, right?

5 A. I believe so, yes.

6 Q. If we can go to the next page, please. Those are the only
7 stamps in there, right, there's one for Australia, one for the
8 Island of Dominica and one for Costa Rica, right?

9 A. Correct.

10 Q. So if he went from Costa Rica to Brazil, there would be a
11 stamp, wouldn't there, on his passport?

12 A. Not necessarily. There's -- I've worked as border
13 inspector for a lot of years, so I do know that sometimes there
14 aren't always the stamps for the countries they enter into. It
15 just depends.

16 Q. So you know whether he would have been stamped or not?

17 A. I couldn't tell you if another country would for sure stamp
18 it or not. Sometimes they do, sometimes they don't.

19 Q. Those three stamped it, right?

20 A. They did stamp it.

21 Q. And it matched exactly what you had on the travel records,
22 right?

23 A. I'd have to go back and review it, but --

24 Q. The MediaWiki, right, we talked about that?

25 A. We did.

F1LGULB2

Der-Yeghiayan - recross

1 Q. And the fact is, though, that the commonality between the
2 Karpeles website and silkroadmarket.org was about the version
3 of MediaWiki, right?

4 A. The version was the same, yes.

5 Q. But it was an outdated version, right? It wasn't the
6 current version at the time, right?

7 A. At the current time, it was an outdated version; yes.

8 Q. So of all the people who use MediaWiki, do you know how
9 many use an outdated version?

10 A. I don't know how many use an outdated version.

11 Q. It's free, right? You can upgrade it for free, right?

12 A. You can, yes.

13 Q. Now, with respect to -- I'm showing you what's marked --
14 and I'll go back to travel for a second and show you what's
15 marked as 3505-3051 and just ask you to review it. Let me know
16 when you're finished.

17 A. Thank you. Okay.

18 Q. Does that refresh your recollection that the travel records
19 that you reviewed from your database matched exactly the stamps
20 on the passport?

21 A. The stamps match, yes.

22 Q. Now, with respect to the AutoVPS, the Karpeles company,
23 right, is another one of Mark Karpeles' company, right?

24 A. Yes.

25 Q. By the way, silkroadmarket.org moved from one Karpeles

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Der-Yeghiayan - recross

1 company to another Karpeles company, right, at one point, from
2 KalyHost to XTA?

3 A. It was, yeah, I believe registered through the one and then
4 I think the domain name server changed over to XTA, yes.

5 Q. And those subpoenas -- I mean, the warrants that you got to
6 look at those emails was part of your investigation of
7 Mr. Karpeles, correct?

8 A. Yes, it was.

9 Q. But, in fact, you did not get those emails, they were not
10 produced until months after Mr. Ulbricht was arrested, right?

11 A. It took a while for the return to come back, yes.

12 Q. If we can look at Government's 149, please, if we could go
13 to the bottom, the very bottom, please, to the URL.

14 In fact, that's from archive.org in March of 2011,
15 right?

16 A. I believe March 4.

17 Q. That's what that 20110304 is right after web slash, right?

18 A. Yes, it's the date.

19 Q. So that's the date that appeared -- going back,
20 archive.org, again just to refresh, just captures pages of the
21 Internet, right?

22 A. It does.

23 Q. And then it puts them in an archive, right?

24 A. It maintains it, yes.

25 Q. And what they do at the bottom in that webarchive.org URL,

F1LGULB2

Der-Yeghiayan - recross

1 the Internet address, is that it tells you what date it
2 captured it, right?

3 A. Correct.

4 Q. So it captured this particular screen March 4, 2011, right?

5 A. March 4, 2011, yes.

6 Q. By the way, if we go back up to the message, it's from Silk
7 Road staff, correct?

8 A. It was signed, yes, Silk Road staff.

9 Q. Not Dread Pirate Roberts or anything like that, right?
10 There's no Dread Pirate Roberts there?

11 A. That didn't come until I believe January 2012.

12 Q. Correct. At one point you showed us I think it's
13 Government Exhibit 123, the Dread Pirate Roberts profile on
14 Silk Road, the profile page and the registration?

15 A. Yeah.

16 Q. Do you recall?

17 A. I recall, yes.

18 Q. You don't know when that may have been changed to the name
19 Dread Pirate Roberts from another username, right?

20 A. That one was the Silk Road account that changed to Dread
21 Pirate Roberts after he announced his new name on that post.

22 Q. Now, let's look at Government Exhibit 150 which we just saw
23 this morning. Can we look on the left side. There's a date of
24 registration -- no, further down, right there.

25 A. Correct.

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Der-Yeghiayan - recross

1 Q. It's registered on February 28, 2011, right?

2 A. Yes.

3 Q. And then it expires -- it expired February 28, 2012. It
4 says "expires on," right?

5 A. Yes, it did.

6 Q. Now, if we look to the right side, that's the one by
7 Richard Page, right?

8 A. The one on the left is by Richard Page, yeah.

9 Q. The one on the right, the registration date is May 18,
10 2012, right?

11 A. Correct.

12 Q. That's roughly two and-a-half months after the expiration
13 of the one on the left, correct?

14 A. Correct.

15 Q. So let's see who it's registered to as of May 18, 2012. Go
16 down further. There it is. So it's registered to Qin Shu
17 Tong, correct?

18 A. Correct.

19 Q. In China, right?

20 A. In China.

21 Q. And you checked that out, right?

22 A. I looked into that, yes.

23 Q. No apparent connection to anything, right?

24 A. No.

25 Q. So this particular registration with respect to anything

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Der-Yeghiayan - recross

1 connected to Richard Page was over by April of 2012, right?

2 A. It wasn't renewed and then it was bought by someone else.

3 Q. Right. Now, you talked about the emails you got from Mark
4 Karpeles' companies, right?

5 A. Correct.

6 Q. Those are the only accounts at Google, right?

7 A. There was -- for him, I believe there was a few. He had a
8 personal one and then he had one that was to Evoni (ph) which
9 is a company.

10 Q. But from Google?

11 A. It all is through Google, yes.

12 Q. You don't know about email accounts that he may have had on
13 proprietary servers of his own, right?

14 A. I do not know of any.

15 Q. So you didn't get to look at those if they exist, right?

16 A. I didn't.

17 Q. Did you ever get to look at any of his Tor chats?

18 A. I did not find any Tor chats from him.

19 Q. Any Java or Off The Record or Pidgin chats of his?

20 A. I did not.

21 Q. Did you get anything from any other servers with respect to
22 Mark Karpeles other than Google?

23 A. Nothing about -- I mean, we did a broader search on another
24 individual from his company, but no.

25 Q. Do you know whether he keeps a journal?

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Der-Yeghiayan - recross

1 A. No.

2 Q. Going back to Dread Pirate Roberts for a second, that is
3 announced in the early part of 2012, right, February 2012?

4 A. Yes. I believe so.

5 Q. Now, Mr. Karpeles owns web hosting companies, right?

6 A. He does.

7 Q. A number of them?

8 A. He is -- yeah, well, KalyHost and then he has the AutoVPS,
9 which is a virtual server hosting.

10 Q. And XTA, right?

11 A. XTA, I believe that was the name server. I don't know if
12 that was -- you might be able to register sites on that, too.

13 Q. But a web host can monitor the traffic of their customers,
14 right?

15 A. I believe so, yes.

16 Q. In fact, they can also set rules for their customers,
17 right?

18 A. They can.

19 Q. They also know identifying information about the people who
20 rent space on their server, right?

21 A. They should have, yeah, like registration information or
22 things that are provided to them, yes.

23 Q. I'm sorry. I didn't mean to cut you off.

24 A. That's okay. It's just basic information, whatever is
25 provided, as well as, like, account billing information they

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Der-Yeghiayan - recross

1 should have.

2 Q. And also IP addresses and things like that. In the way
3 that the server connects to the outside world, the web host
4 knows all of that because it comes through their equipment,
5 right, correct?

6 A. They should be able to tell that, yes.

7 Q. Kind of like a landlord, right?

8 A. That's a way to describe it, yes.

9 Q. The same thing is true of anyone who runs a bitcoin
10 exchange, right, in terms of knowing about their account
11 holders?

12 A. It changed over time. I think originally a lot of them
13 didn't require very much information to register an account,
14 but a lot of them changed where they started requiring sort of
15 know your customer information. Some actually requires Social
16 Security numbers.

17 Q. But also they can monitor account activity and account
18 movement, they're in a perfect position to do that because it
19 all has to come in and out of their exchange, right?

20 MR. TURNER: Object; foundation.

21 THE COURT: Sustained.

22 Q. As part of your investigation, you looked at MtGox records,
23 right?

24 A. I did.

25 Q. And you looked at how exchanges operate, correct?

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Der-Yeghiayan - recross

1 A. I did.

2 Q. And exchanges have all of the information with respect to
3 transactions that their account holders do in the context of
4 bitcoins? Everything that goes through that exchange is
5 information that's -- that the bitcoin exchange has?

6 A. It should be visible to them; yes.

7 Q. So any of the tracing that you could do on the block chain,
8 the bitcoin exchange can certainly do with respect to each
9 account holder?

10 A. They should.

11 Q. Now, we had a car rental analogy yesterday about bitcoin
12 and about servers and rentals. Using bitcoin and even in the
13 context of web hosting, so you may have a fleet of cars that
14 you own but people are driving them but you can put a GPS in
15 there, right, and know exactly what everyone is doing in every
16 one of your cars, right?

17 A. You could.

18 Q. Now, the bitcoin issue: Total commissions collected by
19 Silk Road totaled -- as computed by the government, 614,305
20 bitcoins was the total commissions collected by Silk Road
21 during the course of its operations, correct?

22 MR. TURNER: Objection; foundation for this witness.

23 THE COURT: Lay a foundation for this witness.

24 Q. You looked at Silk Road, right, as a business, correct, you
25 examined it in terms of revenue and things like that, right?

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Der-Yeghiayan - recross

1 MR. TURNER: Objection; form, vagueness.

2 THE COURT: I'll let you answer it if you understand
3 the question.

4 A. I mean, I reviewed the site. I reviewed the transactions
5 on it, the vendors, what was publicly available to me.

6 Q. All right. And you are also familiar with the complaint in
7 this action, right?

8 A. The complaint for Mr. Ulbricht?

9 Q. Against Mr. Ulbricht?

10 A. Yes.

11 Q. The complaint -- so you know that the amount of bitcoins
12 the government computed for the commissions for Silk Road were
13 614,305 bitcoins?

14 A. I'd have to see the complaint, but yes, it sounds right.

15 Q. I'll show you what we'll mark as Defendant's I for
16 identification and just ask you to read that paragraph, please.

17 THE COURT: So he said this is consistent with what he
18 thinks. This is just to refresh his recollection?

19 MR. DRATEL: Correct.

20 A. Okay.

21 Q. Does that refresh your recollection that the government
22 computed the amount of bitcoins of commission -- I'm sorry --
23 that the amount of commissions Silk Road earned during the
24 course of its existence up until the point of Mr. Ulbricht's
25 arrest was 614,305 bitcoins?

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Der-Yeghiayan - recross

1 MR. TURNER: Your Honor, object. Again, a foundation
2 and also beyond the scope of redirect.

3 THE COURT: I'll allow this one because we're into it
4 just to finish it off.

5 You may answer.

6 A. It does reflect that, yes.

7 Q. And that would be -- and at the time of Mr. Ulbricht's
8 arrest, the government put the total revenue of Silk Road at
9 \$1.2 billion, right, in current -- in the value of bitcoin at
10 the time of his arrest, right?

11 MR. TURNER: Objection; foundation, relevance and
12 beyond the scope of redirect.

13 THE COURT: All three of those are true.

14 Why don't you try it a different way --

15 Q. The government --

16 THE COURT: -- with this witness.

17 MR. DRATEL: Sure.

18 Q. The government was looking to estimate or get a handle on
19 the revenue that Silk Road had earned during the period of time
20 from the beginning of its existence through Mr. Ulbricht's
21 arrest, correct?

22 THE COURT: Let me ask it this way: I want to see
23 whether or not this is the right witness for this.

24 Were you involved in the efforts by the government to
25 calculate the total number of transactions on Silk Road?

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Der-Yeghiayan - recross

1 THE WITNESS: No, I was not.

2 THE COURT: Were you involved in any efforts by the
3 government to calculate not only the number of transactions,
4 but any corresponding value in terms of bitcoins or U.S.
5 Dollars at any particular point in time?

6 THE WITNESS: No, I was not.

7 THE COURT: I think you'll need another witness for
8 these questions.

9 MR. DRATEL: I have nothing further.

10 THE COURT: All right. Thank you.

11 Mr. Turner, are we okay or do we need a break? Let me
12 take a look at the jury. We're all right. Let's continue.
13 Thank you. This will be the end of this witness. I think
14 we're almost done. We'll see how this goes. There's always a
15 bit of back and forth, but I think we're close.

16 MR. TURNER: Mr. Evert, if you can put GX 134 back on
17 the screen. The passport, can you zoom in on the bottom dates
18 there.

19 REDIRECT EXAMINATION

20 BY MR. TURNER:

21 Q. The date of issue on the passport is what, Agent
22 Der-Yeghiayan?

23 A. The date that the government issued that document.

24 Q. Right. But what does it appear here?

25 A. April 26, 2012.

F1LGULB2

Der-Yeghiayan - redirect

1 Q. Any trips that the defendant took before this date, there
2 are not going to be stamps on the passport, right?

3 A. Not on this passport, no.

4 Q. KalyHost. In terms of monitoring or collecting information
5 about its customers, when you registered a website on KalyHost,
6 you didn't have to verify your information, correct?

7 A. No, I did not.

8 Q. And in terms of their ability to see what IP addresses
9 you're logging in from, if you're coming in through Tor, can
10 they see your true IP address?

11 A. They would see the Tor exit node.

12 Q. Can they see your true IP address?

13 A. No.

14 Q. Mises.org, you said is a libertarian website, right?

15 A. Yes, it is.

16 Q. And it's a particular brand of libertarianism, is that
17 right?

18 A. I believe so, yes.

19 MR. DRATEL: Objection.

20 THE COURT: There's very little you can do on this.
21 I'll allow one more question on it.

22 Q. You looked at posts on mises.org, right?

23 A. I did.

24 Q. Were there terms that were commonly discussed on the
25 website?

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Der-Yeghiayan - redirect

1 A. There were commonalities, I mean, the way the people spoke
2 on there.

3 Q. Did they speak about agorism?

4 A. They did.

5 Q. And you mentioned some names. Samuel Konkin and Murray
6 Rothbard, did those names come up?

7 A. Yes, they did.

8 Q. Not just on the liberty whatever it is you were looking at,
9 but across the site, is that right?

10 A. It was not just on Liberty Student's account. It was
11 across the site.

12 Q. Users of that site generally were interested in those
13 concepts and authors?

14 A. There was discussions about those authors, yes.

15 Q. Did you find any profile in liberty reserve -- excuse
16 me -- any profile on mises.org in the defendant's name?

17 A. I did.

18 Q. With the defendant's picture on it?

19 A. I did.

20 Q. Did you find a profile of the defendant on YouTube?

21 A. I did.

22 Q. With the defendant's name on it?

23 A. I did.

24 Q. And the defendant's picture on it?

25 A. Yes.

F1LGULB2

Der-Yeghiayan - redirect

1 Q. Did you see the subscriptions on the YouTube page?

2 A. I did.

3 Q. Did they include any subscriptions to mises.org?

4 A. Yes, there were.

5 MR. TURNER: No further questions.

6 THE COURT: Thank you.

7 MR. DRATEL: A couple, your Honor just based on that,
8 based on that.

9 THE COURT: My goodness. Okay. Just two or three.

10 MR. DRATEL: Yes.

11 RECROSS EXAMINATION

12 BY MR. DRATEL:

13 Q. With respect to travel, your records go back before
14 April 2012 with that passport, right, your database goes back
15 much further than that, right?

16 A. Not on that particular passport --

17 Q. Not the passport. For Mr. Ulbricht, when you looked at the
18 database for travel in and out of the United States, it's not
19 limited to the time of that passport?

20 A. No, it's not.

21 Q. It goes well before that, correct?

22 A. The travel history is not based on the passport.

23 Q. And with respect to --

24 THE COURT: That was two.

25 MR. DRATEL: I'm sorry?

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Der-Yeghiayan - recross

1 THE COURT: I was counting. That was two. You get
2 two more.

3 Q. Mr. Ulbricht had his accounts on mises.org and YouTube in
4 his own name, right?

5 A. He did.

6 Q. Mr. Athavale, you associated him with an alias, correct?

7 MR. TURNER: Objection.

8 THE COURT: Sustained.

9 Q. And you said the commonalities that you found with respect
10 to the mises.org posts of Liberty Student and DPR you sent to a
11 college professor for analysis, right?

12 MR. TURNER: Objection; asked and answered and
13 relevance.

14 THE COURT: It's been asked and answered.

15 You can answer it again.

16 A. It was analyzed; yes.

17 THE COURT: We're all set.

18 You're all done, Mr. Dratel?

19 MR. DRATEL: Yes. Thank you.

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

21 THE WITNESS: Thank you.

22 (Witness excused)

23 THE COURT: We're going to go on to your next witness,
24 ladies and gentlemen. And maybe this is a good time, just
25 because we're at the next witness, to take a quick break.

F1LGULB2

Der-Yeghiayan - recross

1 Let's not take a long break. Come back in. Just to stretch
2 our legs. We'll get the next witness already on the stand just
3 to save some time and we'll start right up. So it's just a
4 five-minute, seven-minute break as quickly as we can get out
5 and get back in.

6 (Jury excused)

7 (Continued on next page)

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Der-Yeghiayan - recross

1 (In open court)

2 THE COURT: This was to take a quick break before we
3 get the next witness out. If we can get him or her on the
4 stand. Is it still Mr. Kiernan?

5 MR. TURNER: Yes.

6 THE COURT: All right. Is there anything you folks
7 want to raise? I want to take a quick break.

8 MR. TURNER: An issue to flag: We want a jury
9 instruction about this Anand Athavale thing, that the testimony
10 about the mises.org cannot come in in order to prove that Anand
11 Athavale was an alternative perpetrator. No link was made in
12 any authentic way.

13 THE COURT: Why don't you do this: If you are asking
14 for an instruction, draft up something, share it with
15 Mr. Dratel. If you can't come to any agreement, you'll present
16 that to me without agreement. And if you can, then I would
17 consider what you folks prepare, but the request is noted.

18 MR. TURNER: Thank you.

19 MR. DRATEL: Just one other thing, 151 we never
20 received until this morning. We keep getting exhibits on the
21 fly, and I just wish that we could have a stationary target to
22 prepare from. That's all I'm asking.

23 THE COURT: It was, I think, in the nature of
24 rebuttal.

25 MR. DRATEL: We got it when he testified.

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Der-Yeghiayan - recross

1 THE COURT: Sometimes they're hard to get in advance.

2 MR. DRATEL: I literally got it handed to me during
3 the examination.

4 MR. TURNER: As I received it.

5 THE COURT: Do the best you can. I expect you'll do
6 the best you can. Let's take a quick break.

7 (Recess)

8 (Continued on next page)

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Der-Yeghiayan - recross

1 (In open court; jury present)

2 THE COURT: Mr. Kiernan, I'm going to ask you to
3 remain standing and I'll have my deputy swear you in.

4 (Witness sworn)

5 THE COURT: Thank you, Mr. Kiernan. Please be seated,
6 sir.

7 THE WITNESS: Thank you.

8 THE COURT: There's water there and I see you have a
9 bottle of water also on the side.

10 It will be important for you to pull yourself up to
11 the mic. and speak clearly and directly into the mic.

12 Mr. Howard.

13 THOMAS KIERNAN,

14 called as a witness by the Government,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HOWARD:

18 Q. Good morning.

19 A. Good morning.

20 Q. Who do you work for?

21 A. The FBI, the Federal Bureau of Investigations.

22 Q. And how long have you worked with the FBI?

23 A. Twenty-three years.

24 Q. And what is your position at the FBI?

25 A. I'm currently a computer scientist with the FBI.

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Kiernan - direct

1 Q. What are your duties and responsibilities as a computer
2 scientist?

3 A. Sure. I collect, review and analyze digital evidence.

4 Q. Are you familiar with what a forensic image is?

5 A. I am.

6 Q. And what is a forensic image?

7 A. It's a image of a hard drive or a digital media that makes
8 an exact duplicate of the original drive that you are looking
9 at, so you're making a copy of someone else's drive basically.

10 Q. In your role as a computer scientist at the FBI, do you
11 have experience in reviewing the forensic images of computers?

12 A. Yes.

13 Q. In the course of your career, how many forensic images of
14 computers would you say you have examined in total
15 approximately?

16 A. Hundreds of computers that we have gone through.

17 (Continued on next page)

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F1ldulb3

Kiernan - direct

1 Q. Do you have any specialized training with computers?

2 A. Yes. I'm a FBI -- I am a CART technician, which is a
3 Computer Analyst Response Team, which I have training in also.

4 Q. And what is your educational background?

5 A. I have a computer science degree from St. John's
6 University.

7 Q. I am going to draw your attention to October 1, 2013.

8 A. Sure.

9 Q. Were you involved in an arrest that day?

10 A. I was.

11 Q. And whose arrest was that?

12 A. The defendant, Ross Ulbricht.

13 Q. Do you see that person in the courtroom today?

14 A. I do. He is at the second table wearing the pink-collared
15 shirt.

16 MR. HOWARD: May the record please reflect that the
17 witness has identified the defendant?

18 THE COURT: So reflected.

19 Q. Now, in what city did this arrest take place?

20 A. This was in San Francisco.

21 Q. And what part of day did this take place?

22 A. Afternoon, approximately 3:15.

23 Q. When did you first arrive in San Francisco for the arrest?

24 A. For the arrest, I was there two days prior to the arrest.

25 Q. And what were you involved in in the days leading up to the

F1ldulb3

Kiernan - direct

1 arrest?

2 A. I had helped out with some of the surveillance that was
3 going on during that time period.

4 Q. And what was the initial plan for the defendant's arrest?

5 A. The initial arrest was going to be on October 2nd, which is
6 at his residence, but it was on this -- it was geared to the
7 2nd of October.

8 Q. And did that plan, did it go as planned?

9 A. No, it did not.

10 Q. And why not?

11 A. We had the opportunity to arrest the defendant with his
12 laptop and his laptop on at the time.

13 Q. And what was the importance of arresting the defendant with
14 his laptop on?

15 A. So with the laptop on we can beat or get past any type of
16 encryption problems that would arise on a laptop. Usually --
17 encryption is when you have your laptop, or a hard drive, and
18 the data on top of it is in a format that is not humanly
19 readable that we can't get to. So to get there with the laptop
20 on and at a point where it is on, we were able to get the
21 machine and pull up live data from the machine.

22 Q. Now, were there other people involved in the arrest team?

23 A. Yes.

24 Q. Where was the arrest team deployed on October the 1st?

25 A. On the 1st we were situated all around the area at the

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Kiernan - direct

1 time, all in a -- in plainclothes, just trying to blend in with
2 the surroundings.

3 Q. And what location were you in? Where were you?

4 A. I was -- myself, I was across the street from the library,
5 from a little cafe and back from the library spot, but right
6 across the street from the library.

7 Q. And why were you in that specific location?

8 A. We had witnessed the defendant in that area before, a
9 couple of days before that, when we were there doing
10 surveillance. So we knew he was in that area, or we were
11 hoping that he would come back to that area.

12 Q. Do you know where Mr. Ulbricht was living at the time?

13 A. Yes, I do.

14 Q. And how do you know that?

15 A. We had done surveillance in front of his residence.

16 Q. And approximately how close was his residence from the
17 place where you were stationed near the public library?

18 A. Maybe a five-minute walk from his spot down to the cafe and
19 the library.

20 Q. At some point did you learn that Mr. Ulbricht was
21 approaching the area?

22 A. We did.

23 MR. HOWARD: Now, Ms. Rosen, could you please publish
24 Government Exhibit 128C, which has already been admitted into
25 evidence.

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Kiernan - direct

1 Q. Do you recognize what this photograph depicts?

2 A. I do.

3 Q. And what does it depict?

4 A. That is the area where we were actually sitting before we
5 entered the library.

6 I could use my pointer, right?

7 Q. Go ahead, Mr. Kiernan.

8 A. Here we go. So this area here, this cafe area, we were
9 directly across the street, on this side of the street, from
10 there, just sitting on a bench, me and the UC at the time,
11 Jared -- I can never pronounce his last name but it was Jared.
12 The library was right over here, where we were waiting to enter
13 into.

14 Q. Now, sorry, you were sitting with Special Agent Jared
15 Der-Yeghiayan, correct?

16 A. Yes.

17 Q. Were there other agents involved, too?

18 A. Not where we were sitting but in the area, yes, there were
19 other agents in that area.

20 Q. And they were also in plainclothes?

21 A. Yes.

22 Q. So at some point did you observe the defendant when you
23 were at this location?

24 A. I did. I did. I just saw him take a -- when he was
25 walking on this side of the street, he took a quick peek in

F1ldulb3

Kiernan - direct

1 that little doorway there, which seemed like a coffee cafe, and
2 then he just continued on past this area right into the library
3 right there.

4 Q. Now, after you witnessed the defendant enter the library,
5 did you see the undercover officer do anything?

6 A. He just opened up his laptop to start a session, I guess.

7 Q. And what was the plan for the undercover opening his
8 laptop?

9 A. To try to get into a conversation with DPR.

10 Q. What did you do next?

11 A. That's when I left my area and entered into the library,
12 just across the street.

13 Q. And once you entered the library, where did you go?

14 A. The library was two -- it was a couple, it was two
15 floors -- well, the library itself, the entranceway and then I
16 went up to the second floor, where the actual entrance to the
17 main library section was.

18 Q. Now, I'm going to ask you to flip in the binder that is
19 sitting in front of you to what's been marked for
20 identification purposes as Government Exhibit 128G.

21 A. Got you.

22 Q. Do you recognize this?

23 A. I do.

24 Q. What is this exhibit?

25 A. This is a photograph of that second floor entrance into the

F1ldulb3

Kiernan - direct

1 library.

2 Q. Did you take this photograph?

3 A. I did not take this.

4 THE COURT: May I pause for one second? I think that
5 my binders have taken a walk, and they will walk back.

6 (Pause)

7 OK. So what number are you on, Mr. Howard?

8 MR. HOWARD: 128G.

9 THE COURT: Thank you, sir. You may continue.

10 BY MR. HOWARD:

11 Q. Is it correct, you just testified that you did not
12 personally take this photograph, correct?

13 A. No, I did not take this photo.

14 Q. But does this photograph fairly and accurately depict the
15 area of the library that you just described?

16 A. Yes, it does.

17 MR. HOWARD: The government offers Government Exhibit
18 128G.

19 MR. DRATEL: I have no objection, your Honor.

20 THE COURT: Received.

21 (Government's Exhibit 128G received in evidence)

22 MR. HOWARD: Could you please publish it on the
23 screen.

24 Q. So you described it as the area of the library that you
25 first went to after you entered, correct?

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Kiernan - direct

1 A. Yes.

2 Q. Was there anyone else with you while you were at this
3 location?

4 A. Not with me going in but inside there were some agents
5 already stationed.

6 Q. Could you depict where in the photograph this was?

7 A. Sure. Right back in here, just behind this pole, basically
8 in front of this little terminal there.

9 Q. Once you arrived at that location, did you meet with the
10 other agents?

11 A. We did, yes.

12 Q. And what happened during that meeting?

13 A. During that -- it was a pretty quick meeting, but we were
14 trying to come up with a way to have the defendant turn away
15 from his laptop. So he was sitting inside. So we were trying
16 get him -- a diversion. We were trying to create a diversion
17 so we could grab the laptop, take it, and start processing it,
18 start looking at it.

19 Q. This is to obtain the laptop in an unencrypted state,
20 correct?

21 A. Correct. Yes. Again, the goal was to get to the laptop in
22 its unencrypted state. We wanted to look at that laptop.

23 Q. Did you have a search warrant for the defendant's laptop at
24 the time?

25 A. We did.

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Kiernan - direct

1 Q. Can you please flip to what's been marked for
2 identification purposes as 128H in your binder.

3 A. Yes. OK.

4 Q. Do you recognize this exhibit?

5 A. I do.

6 Q. And what is it?

7 A. A picture internal of the library approximately where the
8 defendant was sitting.

9 Q. Did you take this photograph?

10 A. I did not.

11 Q. Does the photograph fairly and accurately depict the area
12 that you just testified about in the library?

13 A. It does.

14 MR. HOWARD: The government offers Government Exhibit
15 128H.

16 MR. DRATEL: No objection.

17 THE COURT: Received.

18 (Government's Exhibit 128H received in evidence)

19 BY MR. HOWARD:

20 Q. Mr. Kiernan, you described this as the area that you first
21 observed the defendant in the library, correct?

22 A. It is, yes.

23 Q. Can you describe where in this photograph you observed the
24 defendant?

25 A. Sure. I was situated to the left over here. You see this

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Kiernan - direct

1 pole standing there? I was in that area behind the case of
2 books or magazines in that area. About 20 feet away, something
3 like that.

4 Q. And where was the defendant specifically located?

5 A. He was approximately in this area here, almost in this same
6 spot as that gentleman in there, in that picture.

7 Q. What were you able to observe about the defendant before he
8 was arrested?

9 A. Just that he was using his -- his laptop was on and he was
10 using his machine, just sitting there.

11 Q. What did you see next?

12 A. I saw two agents come from this area here, walking this
13 way. I mean, towards the windows, right, would be better,
14 toward that "Science Fiction" sign there. And I witnessed
15 them. They tried to do our plan that they were talking about.

16 So they get into a verbal dispute. They start, the
17 male and the female agent, like a domestic dispute, and they
18 started yelling at each other right behind the defendant's
19 area.

20 Q. And so what happened after they started yelling behind the
21 defendant?

22 A. Sure. The defendant, like anyone would do, would look like
23 what's going on. And that's when the male agent reached,
24 grabbed the laptop, pulled it over to the side. The defendant
25 started to rise, as anyone would do. Then the female agent

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Kiernan - direct

1 grabbed it from the male agent, and that's when I came from my
2 position and took the laptop from the female agent.

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

4 THE COURT: You may.

5 Q. I just handed you what's premarked for identification
6 purposes as Government Exhibit 200. Do you recognize this
7 exhibit?

8 A. Can I open it?

9 Q. Go ahead.

10 (Pause)

11 A. Maybe I can't. It is not going back in the bag, that's for
12 sure.

13 All right. Let's see. Got it. OK. Yes.

14 Q. Do you recognize this exhibit?

15 A. I do.

16 Q. And what is this exhibit?

17 A. This was the laptop taken from the defendant.

18 Q. And how do you recognize it?

19 A. From the serial number and bar code and the paper with it.

20 MR. HOWARD: The government offers Government Exhibit
21 200.

22 MR. DRATEL: No objection, your Honor.

23 THE COURT: Received.

24 (Government's Exhibit 200 received in evidence)

25 BY MR. HOWARD:

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Kiernan - direct

1 Q. What brand of laptop is this?

2 A. This is a Samsung 700Z.

3 Q. And when you say "700Z," what are you referring to?

4 A. That is the model number of the laptop.

5 Q. Now, what did you do with Mr. Ulbricht's laptop after you
6 seized it?

7 A. After I grabbed it I went to the other side of the table,
8 where the arrest was made, and started a triage on the laptop.

9 Q. So what is a triage?

10 A. A triage is, again, looking for if encryption is running on
11 the machine. So I start looking for signs of that, and then I
12 start taking pictures of what I'm doing at the time. It is
13 just I'm going through the computer in as safe a way as
14 possible to start collecting evidence from the machine.

15 Q. And why was it necessary to do this triage?

16 A. Again, the encryption is tough, it is tough to defeat. So
17 the triage is, again, to make sure that I can start getting
18 valuable evidence from the machine in its live state, while the
19 machine is on.

20 Q. How can a laptop become locked or encrypted?

21 A. Sure. By the closing of the lid will usually enable
22 encryption. Screen savers, little programs that lock it out.
23 Things like that will enable encryption on the machine if it is
24 running.

25 Q. Does every laptop have encryption running on it?

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Kiernan - direct

1 A. No, not every laptop.

2 Q. Did you extract any documents as part of the triage?

3 A. Yes, I did.

4 Q. And how did you do this?

5 A. I had a USB drive with me, a brand new USB drive that I
6 plugged into the defendant's laptop and started what I could
7 take documents from his current home directory folder, which is
8 the directly that most of your documents remain in. That is
9 the stuff you use most. That is where you put your documents.

10 MR. DRATEL: Objection.

11 THE COURT: All right. Well, the portion of the
12 answer "stuff you use most" is struck but the remainder of the
13 answer stays.

14 You may continue, Mr. Howard.

15 BY MR. HOWARD:

16 Q. Mr. Kiernan, what kind of operating system was the computer
17 running?

18 A. Linux in a flavor called Ubuntu.

19 Q. What is an operating system?

20 A. It's the software that lets you interface with your
21 computer. It lets a human actually interface with your machine
22 so you can get to your files and your Web browsers and things
23 like that.

24 Q. What are other popular kinds of operating systems?

25 A. Sure. You probably know Windows or Macintosh OS's. Those

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Kiernan - direct

1 are other types of operating systems that are out there,
2 popular ones.

3 Q. Do you have training in reviewing computers running the
4 Linux Ubuntu system?

5 A. I do.

6 Q. Is the home directory you testified about part of the Linux
7 Ubuntu system?

8 A. It is.

9 Q. And how many computers have you reviewed that have had the
10 Linux Ubuntu system on it?

11 A. Hundreds of computers.

12 THE COURT: How do you spell the Ubuntu?

13 MR. HOWARD: I believe that is you U-b --

14 THE WITNESS: U-b-u-n-t-u.

15 THE COURT: All right. Thank you.

16 BY MR. HOWARD:

17 Q. And what is the significance of the home directory, that
18 you testified about, on a Linux Ubuntu system?

19 A. It's the directory where you keep most of your files.
20 That's the directory that holds your data. And it holds the
21 user accounts is in the home directory of the Linux system.

22 Q. What is a user account?

23 A. A user account is an account that is created by usually the
24 person setting up the laptop to give yourself access to the
25 machine, to the parts of the machine that you would use. So it

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Kiernan - direct

1 is that part of the machine.

2 Q. And how are user accounts labeled?

3 A. The name that you give it, the name that you send to that
4 account.

5 Q. In other words, the user can choose any name they want,
6 correct?

7 A. Correct, yes.

8 Q. Now, what, if anything, did you do to document what you
9 were doing while you were performing what you were calling the
10 triage of the laptop?

11 A. Sure. I was taking pictures of what I was doing with a
12 BlackBerry, my BlackBerry FBI-issued phone.

13 Q. And why were you using a BlackBerry?

14 A. Ah, that's what I had with me at the time. That's what I
15 received.

16 Q. Now, if you could please flip in your binder to what has
17 been marked for identification purposes as Government Exhibit
18 201A.

19 A. Sure.

20 (Pause)

21 Q. Do you recognize this exhibit?

22 A. One second. Sorry.

23 (Pause)

24 Yes, I do.

25 Q. And what is this exhibit?

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Kiernan - direct

1 A. This is a photograph of the defendant's computer at the
2 time of the arrest, or the time that I had it.

3 Q. Did you take this photograph?

4 A. Yes, I did.

5 Q. And how soon after obtaining the laptop did you take this
6 picture?

7 A. Right after.

8 MR. HOWARD: The government offers Government Exhibit
9 201A.

10 MR. DRATEL: No objection.

11 THE COURT: Received.

12 (Government's Exhibit 201A received in evidence)

13 BY MR. HOWARD:

14 Q. So, Mr. Kiernan, is it your testimony that this is the
15 first photograph you took of the defendant's laptop?

16 A. Yes.

17 Q. Did you do anything to the laptop, click on any windows, do
18 anything at all before you took this picture?

19 A. Ah, no. No.

20 MR. HOWARD: If we could please just zoom into this
21 window right here, Ms. Rosen.

22 Q. Can you describe what this window contains?

23 A. Sure, except for that big flash I had there when I first
24 started taking the pictures. That's the Pidgin chat client,
25 the Pidgin chat program that allows communications between

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Kiernan - direct

1 individuals, and this is a chat with the username Cirrus.

2 Q. Do you recognize the username Cirrus?

3 A. I do.

4 Q. And how do you recognize it?

5 A. That's the account that our undercover was using.

6 MR. HOWARD: Now, if you could, Ms. Rosen, if you
7 could just zoom in on the upper left-hand corner of the screen.

8 Q. Here it says "Ubuntu desk-top." What does that mean?

9 A. That was the software -- the operating system that was
10 running on the defendant's computer.

11 Q. Now, does Government Exhibit 201A indicate -- anywhere
12 indicate the time that the photograph was taken?

13 A. Yes, it does, on the second page.

14 MR. HOWARD: Ms. Rosen, could we please flip to the
15 second page and zoom in on the upper right-hand corner.

16 Q. Here it says, "Properties." What is the information that's
17 depicted here?

18 A. Sure. That's metadata that comes with files. So the
19 picture is part of your file that you look at. This metadata
20 is sometimes -- not "sometimes," it is embedded within these
21 files. So this is just the date and times of the times that I
22 took the pictures.

23 Q. So let's first look down here at the bottom where it says
24 "Camera Properties."

25 A. Sure.

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Kiernan - direct

1 Q. "Camera model: BlackBerry 9930."

2 What is BlackBerry 9930?

3 A. That is my phone.

4 Q. And below that it says, "Date Taken, October 1, 2013,
5 6:15:56 p.m."

6 A. Yes.

7 Q. What does that refer to?

8 A. That's the time I took the picture in Eastern Time.

9 Q. And why is it reflected in Eastern Time?

10 A. That is what my phone settings were at.

11 Q. And what time zone is San Francisco in?

12 A. Pacific.

13 Q. And at that time how many hours back was it?

14 A. Three.

15 Q. If you look up here under "Picture Properties," there is a
16 line that says, "Modified: October 1, 2013, 3:15:56 p.m."

17 What does that reflect?

18 A. That the converted time from Eastern to PST, minus the
19 three hours. We just took the three hours off. That is what
20 it looks like.

21 Q. Now, Mr. Kiernan, could you just take a moment and flip
22 through your binder of what's been marked for identification
23 purposes as Government Exhibits 201B through 201G, and let me
24 know when you are ready.

25 A. OK. B through G?

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Kiernan - direct

1 Q. B through G.

2 A. Got you.

3 (Pause)

4 OK.

5 Q. Sir, do you recognize what all of these exhibits are?

6 A. Yes.

7 Q. What are they, generally?

8 A. Photos that I took of the defendant's laptop at the time of
9 the arrest.

10 Q. Did you take these photographs?

11 A. I did, yes.

12 Q. Now, as with Government Exhibit 201A, is the time of each
13 photo reflected in the metadata on the second page of each
14 exhibit?

15 A. Yes, it is.

16 Q. And for each one under "camera properties," is the time
17 reflected in Eastern Time rather than Pacific Time?

18 A. It is, yes.

19 MR. HOWARD: The government offers Government Exhibits
20 201B through 201G.

21 MR. DRATEL: No objection.

22 THE COURT: Received.

23 (Government's Exhibits 201B through G received in
24 evidence)

25 MR. HOWARD: Ms. Rosen, could you please publish

F1ldulb3

Kiernan - direct

1 Government Exhibit 201C, please.

2 Q. Now, Mr. Kiernan, what time was this photograph taken local
3 time?

4 A. 3:17 p.m.

5 Q. And earlier you testified that the defendant got arrested
6 at about 3:15, correct?

7 A. About, yep.

8 MR. HOWARD: Ms. Rosen, if we could just zoom in on
9 the top bar here, please.

10 Q. Here it says, "Tuesday, October 1, 3:17 p.m."

11 What does this mean?

12 A. The date and time that the computer had on it when it was
13 running. So the time stamp of the computer.

14 Q. And right to the right here, there is the word "frosty"
15 next to a little white picture. Now it is yellow after the
16 highlighting.

17 A. That was the username that was logged in at the time.

18 Q. And is this the username that you were talking about before
19 on the Ubuntu system?

20 A. Yes, the created username, correct.

21 Q. And who's username?

22 A. Frosty, the defendant. That's his username that he created
23 for that.

24 MR. DRATEL: Objection.

25 Q. What user account was the defendant logged into at the time

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Kiernan - direct

1 that you took this computer?

2 A. The Frosty account.

3 MR. HOWARD: Could you please zoom out, Ms. Rosen, and
4 zoom in on this window right here.

5 Q. What is this window?

6 A. That is a picture of the active buddy list, again, from
7 that Pidgin client that -- from the other pictures which were
8 the actual conversations, there is a buddy list from that same
9 program that shows you contacts that -- your contacts that you
10 use on the chat.

11 Q. Right here, what is the first contact on the buddy list?

12 A. Cirrus.

13 Q. And the second one right under here?

14 A. Inigo.

15 MR. HOWARD: Ms. Rosen, could you please publish
16 Government Exhibit 201D.

17 Now, if you could zoom in on this window that starts
18 up here.

19 Q. What is this window on defendant's computer?

20 A. This is a browser window pulled up to the foreground. So
21 it is a browser window of a website.

22 Q. And what kind of browser was this?

23 A. This was the Tor browser.

24 Q. If you could just look up here, it says, "Support Tor
25 Browser" on the top.

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Kiernan - direct

1 What is a Tor browser, Mr. Kiernan?

2 A. It is a browser, the same as your regular browser,
3 basically, except you are connecting through the Tor network to
4 sites that aren't available to your regular browser. It is a
5 program that allows you to view those things.

6 Q. Was this Tor browser running when you arrested -- sorry,
7 when you seized the defendant's computer?

8 A. Yes, it was.

9 Q. Now, if you could just zoom in here on the little tab here.

10 Here it says "Support" and a little thing to the left
11 of it. What is that?

12 A. That is the -- it is the support page of the Silk Road
13 server, and to the left is the Silk Road icon, the logo
14 associated with Silk Road, a man on a camel.

15 Q. And right here, this white box here, what is that white
16 box?

17 A. That's the URL, the page that is actually visited on your
18 browser that was present -- that it was looking at at the time.

19 Q. So turn to the first part of the address,
20 silkroadvb5piz3r.onion, are you familiar with that address?

21 A. I am.

22 Q. And what is that address?

23 A. That is the address of the Silk Road server.

24 Q. And right here it says dot-onion. What does dot-onion
25 mean?

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Kiernan - direct

1 A. Dot-onion is how you route to a -- or how you get to sites
2 on Tor, dot-onion Tor sites, as opposed to the sites that you
3 are usually used to going to, like a dot-com or dot-edu, not
4 that you can't get to them through the Tor browser but the
5 dot-onion is a special category on the Tor network that you can
6 get to through the Tor browser.

7 MR. HOWARD: Ms. Rosen, could you please publish
8 Government Exhibit 201G, please.

9 Q. And, Mr. Kiernan, what is this window here, the white
10 window?

11 A. That is a picture, again, of the full buddy list that was
12 running on the computer at the time.

13 Q. You had taken photographs by this point, correct?

14 A. At this point, yes, I was.

15 Q. What is the white window here?

16 A. Yes. Again, that is the buddy list from that Pidgin
17 software.

18 Q. So, again, we have cirrus and inigo and also later on the
19 list we have mg and smed?

20 THE COURT: Is that right?

21 A. That is correct, yes.

22 MR. HOWARD: Now, Ms. Rosen, could you please publish
23 Government Exhibit 201J.

24 Q. And what is this window, Mr. Kiernan?

25 A. This was the bottom of that buddy list that you just saw.

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Kiernan - direct

1 Q. I direct your attention to the little icon here on the
2 bottom right-hand corner. Do you recognize what that is?

3 A. I do. That's the logo associated with or the avatar
4 associated with the user account Dread Pirate Roberts on the
5 Silk Road site.

6 Q. Up here there is a little what appears to be some sort of
7 stop sign or some sort of traffic sign?

8 A. Yep.

9 Q. Then next to it is "dread@pl5mmj2ron" and I can't tell,
10 that looks like h-u-t-y, a bunch of characters, dot-onion?

11 A. Yes.

12 Q. Do you recognize what this is?

13 A. Yes. That's the account of the -- that is the Pidgin
14 account to log into the Pidgin client.

15 MR. HOWARD: Ms. Rosen, could you please publish
16 Government Exhibit 201D to the jury.

17 Q. Earlier you testified this is the Tor browser, correct?

18 A. Correct.

19 Q. What, if anything, did you do to look at what other Web
20 pages had been visited previously by the user of this computer?

21 A. Sure. I used the Tor's -- the Tor's, the browser's back
22 button to go back.

23 Q. Could you indicate where the back button is?

24 A. Sure. It's right under the word "Support" with the little
25 icon and the arrow facing to the left.

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Kiernan - direct

1 Q. And what does clicking on the back button do?

2 A. It brings you to one page before the one that you are
3 currently on. It brings you back one page in your browser.

4 MR. HOWARD: Ms. Rosen, could you please publish
5 Government Exhibit 201K.

6 Q. And so what does this depict, Mr. Kiernan?

7 A. This is the result of clicking that back button, bringing
8 you to the one page before.

9 MR. HOWARD: Ms. Rosen, if you just again zoom in on
10 the URL bar at the top.

11 Q. So here at the beginning it says "silkroadvb5piz3r.onion."
12 Is that the same Silk Road address you testified about earlier?

13 A. Yes.

14 Q. Here at the end it says "slash support." What does that
15 mean at the end of an address?

16 A. That is the page that you are actually on, the actual -- it
17 is the page that you are on.

18 Q. And who picks the name of the page?

19 A. The person designing the website.

20 Q. Did you click on the back button again?

21 A. I did.

22 MR. HOWARD: Ms. Rosen, could you please publish
23 Government Exhibit 201L.

24 Q. Mr. Kiernan, do you recognize what this depicts?

25 A. I do.

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Kiernan - direct

1 Q. And what is this?

2 A. This, again, is the previous page to the one we saw before.
3 This is the mastermind page of the Silk Road site.

4 Q. And why do you call it the mastermind page?

5 A. I am just going by the name that it is called on the site
6 itself.

7 MR. HOWARD: Ms. Rosen, could you zoom in on the top,
8 please.

9 Q. So here at the end of the address it says slash mastermind;
10 is that what you are referring to?

11 A. That is, yes.

12 Q. Again, this would have been chosen by the designer of the
13 site, is that correct?

14 A. Yes.

15 MR. HOWARD: If you could zoom out for a second? And
16 zoom in on this fifth row right here.

17 Q. Here it says "cold BTC" and below it "144,336.40," correct?

18 A. Correct.

19 MR. HOWARD: Ms. Rosen, could you please publish
20 Government Exhibit 201M, please.

21 Q. And what does Government Exhibit 201M depict?

22 A. Again, this is the -- hitting the previous button, this is
23 one page before the mastermind page.

24 MR. HOWARD: So let's zoom in on the top of the URL
25 bar on the top of the page, please, Ms. Rosen.

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Kiernan - direct

1 Q. And here at the beginning is the same Silk Road address
2 that you testified about earlier?

3 A. It is, yes.

4 Q. And what is the name of this page?

5 A. Landing.

6 Q. And down here in this box, what does it say?

7 A. Dread Pirate Roberts.

8 Q. And what does this indicate?

9 A. This was the login name associated with -- the login name
10 used to get to those other pages that you saw before, the
11 mastermind, the support page, all of those pages there.

12 Q. Now, approximately how long did you spend with the laptop
13 in the library performing this triage?

14 A. The whole time, for about three hours.

15 Q. What did you do with the laptop after you completed the
16 triage?

17 A. I gave it over to RCFL, which is a computer team out in San
18 Francisco. The agent's name was Beeson, Chris.

19 Q. So let's take a step back for a second.

20 After you were done with the laptop in the library,
21 what did you do next with the laptop?

22 A. We transported it back to the defendant's residence.

23 Q. And at what point did you provide it to Special Agent
24 Beeson?

25 A. After we were back at the residence, we gave it back to

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Kiernan - direct

1 Special Agent Beeson. I gave it to Beeson.

2 Q. Did there later come a time that you had access to the
3 contents of the laptop again?

4 A. Yes.

5 Q. And how did that occur?

6 A. That occurred -- after they imaged the drive or made a
7 duplicate of the drive, we got a copy -- we got that copy back
8 to us in New York.

9 Q. And in what format did you get the copy of the hard drive?

10 A. It came on a hard drive. It was a digital -- a forensic
11 image of the defendant's computer that came on a hard drive
12 back to us.

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

14 THE COURT: You may.

15 (Handing)

16 THE WITNESS: Thank you.

17 Q. So I just handed you what's been marked for identification
18 purposes as Government Exhibit 500.

19 Do you recognize this?

20 A. Yes.

21 Q. And what is this?

22 A. This is the result of the images taken by Chris Beeson that
23 we got back to us in New York.

24 Q. And how do you recognize it?

25 A. Again, by the serial number on it and the serial number bar

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Kiernan - direct

1 codes that match on this.

2 MR. HOWARD: The government offers Government Exhibit
3 500.

4 MR. DRATEL: Your Honor, I think that has to be
5 subject to connection.

6 THE COURT: Let me ask, that is the hard drive that
7 you understand was provided to you from Beeson?

8 THE WITNESS: Correct.

9 THE COURT: All right.

10 All right. It is received.

11 (Government's Exhibit 500 received in evidence)

12 BY MR. HOWARD:

13 Q. Now, what did you do after obtaining this hard drive?

14 A. After obtaining this hard drive, I made a staging copy of
15 it. So what I do is I take the drive from Beeson that has the
16 image on it. I plug this into a write locker, just a device, a
17 piece of hardware that connects to the hard drive. And I take
18 the images that were there and I copied them to a drive, or a
19 NAS drive that I have with me.

20 Q. So you create a staging -- what is a staging copy?

21 A. A staging copy. It is a copy that I can work on without
22 working on this one.

23 Q. And you indicated that you plugged it into a write locker.
24 What is a write locker?

25 A. A write locker just takes -- makes this so I cannot write

F1ldulb3

Kiernan - direct

1 anything to it. Even with the format it is in, the images -- I
2 don't want to write anything to the hard drive, basically.

3 Q. Was the working copy the same as the original?

4 A. Yes, it was.

5 Q. And how do you know that?

6 A. I performed an MD5 Hash on my copy that I made. And an MD5
7 Hash is just a digital fingerprint of the files that I
8 received. And I performed one on what I got from Beeson, and I
9 do my own, just make sure that those match, and I know I'm
10 working on a good copy of the data. That's all.

11 Q. So you are doing a comparison of the hash values to show
12 that they match and they show that they are the same copy?

13 A. Correct.

14 Q. Please flip to what has been marked as Government Exhibit
15 200A, please.

16 A. Sure. I am running out of room up here.

17 Q. Mr. Kiernan, would it be helpful if I remove the laptop?

18 A. Please. I don't want it to wind up on the floor.

19 MR. HOWARD: May I approach, your Honor?

20 THE COURT: You may.

21 (Pause)

22 Q. Do you recognize what Government Exhibit 200A is?

23 A. I do.

24 Q. And what is it?

25 A. A screenshot I took of the MD5 Hashes.

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Kiernan - direct

1 Q. You said you took this screenshot, correct?

2 A. Yes. I'm sorry. A screenshot I took.

3 MR. HOWARD: The government offers Government Exhibit
4 200A.

5 MR. DRATEL: No objection.

6 THE COURT: Received.

7 (Government's Exhibit 200A received in evidence)

8 MR. HOWARD: Ms. Rosen, if you would publish 200A,
9 please.

10 Q. So here it says, "MD5 Hash, Computed hash" and a long
11 string of characters that start with a 1e61.

12 A. Yes.

13 MR. HOWARD: If you could zoom in on that.

14 Q. What is this?

15 A. That is the result of the mathematical -- the equation of
16 the program run on the imaged drive that make that hash, make
17 that value.

18 Q. This was the value that you compared with the value of the
19 file from Special Agent Beeson?

20 A. Correct. Right.

21 THE COURT: Wait.

22 Q. Down here it says January 5, 2015.

23 THE COURT: Wait a second. I want to make sure that I
24 understand what the two things are that are being compared.

25 So there is the hard drive that you received from

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Kiernan - direct

1 Beeson?

2 THE WITNESS: Right, which had the -- I'm sorry.

3 THE COURT: Which had had the image?

4 THE WITNESS: Right. It had a hash on it, too, but it
5 is the actual hash from the defendant's laptop when they made
6 that image.

7 THE COURT: OK. So when there was an initial image
8 made on the defendant's laptop that Mr. Howard just took back
9 from you and on the hard drive on the laptop, did it have a
10 hash there?

11 THE WITNESS: Yes.

12 THE COURT: Was there a hash there?

13 THE WITNESS: Yes. That is what I am comparing it to.

14 THE COURT: So you are measuring the hash on the
15 laptop to the hash on the Beeson drive?

16 THE WITNESS: Right, that is coming back.

17 THE COURT: All right. I am with you now.

18 BY MR. DRATEL:

19 Q. To be clear, this hash, is this hash of the Beeson drive or
20 it's a hash of the staging copy that you made?

21 A. Both, yeah. So when they perform the image, right, when
22 they said sda4_crypt.dd, that is the name of the file that was
23 made by Beeson from the laptop. All right? That gets put on
24 the drive here, this one. And when I look at it, I compare
25 that hash value with the one that is here, which is the image

F1ldulb3

Kiernan - direct

1 of the drive from the defendant.

2 THE COURT: I see.

3 THE WITNESS: That is all.

4 Q. Just real quickly, at the bottom here, on the bottom right,
5 it says January 5, 2015.

6 A. Mm-hmm.

7 Q. That is the date that you took the screenshot?

8 A. Yes.

9 Q. This was after you performed the analysis of the hard
10 drive?

11 A. Yes.

12 Q. Now, what would have happened if one file had gotten
13 changed during your analysis of the laptop?

14 A. Those MD5s change. They would be different.

15 Q. They would no longer be a match?

16 A. Right. The fingerprints wouldn't match.

17 Q. So after you received the image and made a staging copy,
18 what, if anything, did you do to analyze the contents of the
19 laptop?

20 A. I mounted the image, the DD file, using a tool called FTK
21 Imager.

22 Q. What does it mean to mount the image?

23 A. You see, it's one file right now. When you mount an image,
24 when you -- you take that file and you put it back into the
25 contents over there, the file system comes back up. So you can

F1ldulb3

Kiernan - direct

1 actually read what was on that drive at the time. You can read
2 the files on it.

3 Q. And what kind of software did you use to read the files
4 that were in the image?

5 A. That was the FTK Imager software.

6 Q. Do you have any training using FTK Imager?

7 A. Yes.

8 Q. Approximately how many computers have you analyzed using
9 FTK Imager?

10 A. Hundreds.

11 Q. Mr. Kiernan, if you could take a moment and flip in your
12 binder to what has been marked for identification purposes as
13 Government Exhibits 211 through 216.

14 A. OK.

15 Q. Do you recognize what these are?

16 A. Yes.

17 Q. And what are they?

18 A. These are screenshots of FTK Imager and some of the
19 results.

20 Q. Who took those screenshots?

21 A. I did.

22 MR. HOWARD: The government offers Government Exhibits
23 211 through 216.

24 MR. DRATEL: No objection.

25 THE COURT: Received.

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Kiernan - direct

1 (Government's Exhibits 211 through 216 received in
2 evidence)

3 MR. HOWARD: Ms. Rosen, could you please publish
4 Government Exhibit 211, and if you could zoom in on the left.

5 Q. What does this left -- upper left-hand corner window
6 represent?

7 A. Sure. So that's the file structure from the defendant's
8 laptop.

9 MR. HOWARD: Could we just zoom in on that window.

10 Q. Right here at the top it says "sda4_crypt.dd." What is
11 that?

12 A. That is the file created during that image. That is the
13 file that gets created during the imaging of the drive.

14 Q. And below here we have all of these little folders with
15 names by them. What are these?

16 A. So that's your file structure, your directory, kind of like
17 a filing cabinet that you have at your house where you put all
18 your different files into them. So each drawer is a different
19 folder. And then under that you could have more folders and so
20 on and so on to get to --

21 Q. I'm sorry. I didn't mean to cut you off.

22 A. That's OK.

23 Q. If you could zoom in down here where the folder is labeled
24 "home."

25 A. Sure.

F1ldulb3

Kiernan - direct

1 Q. And "frosty." This is the home directly on Ubuntu Linux
2 system that you testified about earlier?

3 A. It is.

4 Q. And what does the home directly contain on the Ubuntu Linux
5 system?

6 A. That contains user accounts.

7 Q. How many user accounts did you find on the defendant's
8 computer?

9 A. Just this one.

10 Q. What was the name of that account?

11 A. Frosty.

12 Q. Did you review the contents of files that you found on the
13 defendant's computer?

14 A. I did.

15 Q. During your review of the defendant's laptop, did you find
16 any photographs of the defendant?

17 A. I did.

18 Q. Can you please take a minute to look at what's been marked
19 for identification purposes as Government Exhibit 273 in your
20 binder.

21 A. Sure.

22 (Pause)

23 OK.

24 Q. Do you recognize what this is?

25 A. I do.

F1ldulb3

Kiernan - direct

1 Q. And what is the exhibit?

2 A. It is a file found on the defendant's laptop.

3 Q. And how many pages is this exhibit?

4 A. It is two.

5 Q. What is the second page of the exhibit?

6 A. The second page contains the file structure again and some
7 metadata associated with where I found the file.

8 Q. By the way, are there other files that you extracted from
9 the laptop other than this?

10 A. Yes, there are.

11 Q. And for every file that you extracted, did you also include
12 a screenshot of where it was located and its metadata, as you
13 described?

14 A. I did.

15 MR. HOWARD: The government offers Government Exhibit
16 273.

17 MR. DRATEL: No objection.

18 THE COURT: Received.

19 (Government's Exhibit 273 received in evidence)

20 MR. HOWARD: Ms. Rosen, could you please publish
21 Government Exhibit 273. Zoom in on the top.

22 Q. Mr. Kiernan, is this the contents of the file you just
23 testified about?

24 A. Yes, it is.

25 Q. It says, "Ulbricht, Ross William." It is a passport.

F1ldulb3

Kiernan - direct

1 Can we go to the second page, please.

2 Now, this is the screenshot from FTK Imager, is that
3 correct?

4 A. Yes.

5 Q. And so what is depicted along the very bottom? If you
6 could zoom into this. What does "home/frosty/documents/
7 archive/documents/reference/ids.jpg mean?

8 A. That is the folder structure or where the file actually was
9 contained on the drive, like what you saw before.

10 MR. HOWARD: Could you zoom out, Ms. Rosen.

11 Q. And what is this window right here on the lower left-hand
12 corner?

13 A. That is the metadata or the data which is describing what
14 that file actually is.

15 Q. Now, are you familiar with metadata on the Ubuntu Linux
16 operating system?

17 A. I am.

18 Q. So, first, I want to draw your attention to the "Date
19 Modified" field, January 5, 2007.

20 What does the date modified field mean?

21 A. The date that it was modified, or changed, or made a change
22 to it.

23 Q. So how could, let's say, a document be modified?

24 A. Going into a document, adding something to a document,
25 removing something from a document, that will change the date

F1ldulb3

Kiernan - direct

1 modified.

2 Q. So this represents the last date that the file was changed,
3 is that correct?

4 A. Yes.

5 Q. Right above that, we have a field called "Date Created."
6 What does date created refer to?

7 A. That's the time or the date that the file was actually put
8 on that machine or that volume, that computer.

9 Q. Does this field refer to the date that the file was
10 created -- first created anywhere?

11 A. No, not a born date but when it is on that machine.

12 Q. So here to the right we see a date of May 8, 2012.

13 A. Correct.

14 Q. That is the date created, correct?

15 A. Correct.

16 Q. Now, in this instance the date created is after the date
17 modified?

18 A. Correct.

19 Q. So what does that indicate to you, Mr. Kiernan?

20 A. That the files were put there at a different time. That is
21 all. They were probably copied over or moved over --

22 MR. DRATEL: Objection.

23 A. -- or backed up. They were copied over --

24 MR. DRATEL: Objection.

25 THE COURT: I will allow it.

F1ldulb3

Kiernan - direct

1 A. They were just moved at a different time.

2 Q. Does this indicate to you whether or not this file was
3 first created on this computer?

4 MR. DRATEL: Objection.

5 THE COURT: Based upon your experience, what does that
6 information indicate to you?

7 THE WITNESS: That it was just on a different machine
8 or a drive at a different time and put here later on.

9 Q. Now, this date created of May 8, 2012, is this the only
10 file you found on defendant's computer with a date created of
11 May 8, 2012, or were there others?

12 A. Oh, there were others. Sure.

13 Q. Approximately how many others?

14 A. Hundreds of them. I mean, there are others there.
15 Probably when that user account was created on the machine.

16 MR. DRATEL: Objection.

17 THE COURT: Overruled.

18 Q. Based on your training and experience, in seeing that
19 many -- that quantity of files with that same date created,
20 what does that indicate to you?

21 MR. DRATEL: Objection.

22 THE COURT: I will allow it.

23 A. I'm sorry. Can you repeat that?

24 Q. From your training and experience --

25 A. Yes.

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Kiernan - direct

1 Q. -- based on seeing the large quantity of files with the
2 same date created of May 8, 2012, what did that indicate to
3 you?

4 A. Yeah. The files were moved from either another computer or
5 another piece of media to the machine for later on.

6 Q. What is the "date accessed" field? It says October 2,
7 2013.

8 A. Just when it was looked at or accessed, touched.

9 Q. That was the day after the defendant's arrest, correct?

10 A. Correct.

11 Q. And why would this date be after the defendant got
12 arrested?

13 A. Because we were doing a live image. The machine is on. So
14 all those files, you know, they unfortunately get -- not
15 "unfortunately." They are just accessed during that time,
16 during that imaging of the machine. The machine is on so we're
17 not turning it off to take it so that gets changed.

18 Q. Does this metadata indicate whether or not the file was
19 changed when it was accessed for the purpose of your image?

20 A. It does not.

21 Q. Does it indicate whether or not the file was changed when
22 it was accessed for the purpose of the image?

23 A. No.

24 Q. Was it changed?

25 A. No. The files weren't changed.

F1ldulb3

Kiernan - direct

1 Q. So, Mr. Kiernan, if you could now flip to Government
2 Exhibit 274 in your binder.

3 A. Sure.

4 Q. Do you recognize what this is?

5 A. I do.

6 Q. And what is it?

7 A. Again, a file taken from the defendant's laptop.

8 Q. And who took it from the defendant's laptop?

9 A. A file that I extracted from the defendant's laptop, yes.

10 MR. HOWARD: The government offers Government Exhibit
11 274.

12 MR. DRATEL: I have no objection.

13 THE COURT: Received.

14 (Government's Exhibit 274 received in evidence)

15 MR. HOWARD: Ms. Rosen, could you please publish it.

16 Q. Did you find any chat logs on the defendant's computer?

17 A. I did.

18 Q. And what is a chat log?

19 A. Depending -- it's a file that records or keeps the
20 conversations between two people. Like if you use your phone,
21 if you go back and check your text messages, the same type of
22 deal. It just puts it into a file, depending on the client
23 that you are using at the time on the machine.

24 Q. And what kind of chat program did you find on the
25 defendant's computer?

F1ldulb3

Kiernan - direct

1 A. I found Tor chat on the defendant's computer.

2 MR. HOWARD: If you could please publish Government
3 Exhibit 215, which is already in evidence. And if we could
4 zoom in on the left, upper left window.

5 Q. Mr. Kiernan, this is the directory structure of the
6 computer again, is that correct?

7 A. Yes, it is.

8 MR. HOWARD: And if we could zoom in on this little
9 area here.

10 Q. Here is a folder that says ".torchat," correct?

11 A. Correct.

12 Q. What is that folder?

13 A. That is the full folder for Tor chat when you load -- when
14 you install Tor chat on your computer.

15 Q. Now, Mr. Kiernan, you testified earlier that when you first
16 got the defendant's computer, you saw a Pidgin chat program
17 window open, is that correct?

18 A. That is correct.

19 Q. Is that a different program than Tor chat?

20 A. Yes, it is.

21 Q. Did you find the Pidgin program also installed on the
22 defendant's computer?

23 A. I did.

24 MR. HOWARD: Now, Ms. Rosen, could you please publish
25 215 again. Sorry. I had one more question.

F1ldulb3

Kiernan - direct

1 Could we just zoom in on the upper right window.

2 Q. What are these lists on the left side of the window?

3 A. That's the log files associated with Tor chat as it keeps
4 the logs on your computer.

5 (Continued on next page)

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Kiernan - direct

1 Q. And if we can just zoom in on a couple of those. That's
2 good. Here you can see there's a whole bunch of characters
3 followed dot log. What does dot log mean?

4 A. Just the formality or the extension of the file that's
5 there. It's just called dot log in this case.

6 Q. So Mr. Kiernan, what is Tor chat?

7 A. A program, again, to allow you to communicate with other
8 people in a program. It -- it's person to -- it's
9 communication between people on the Tor network as opposed to
10 open network.

11 Q. Have you personally ever used Tor chat?

12 A. I have.

13 Q. Have you tested Tor chat?

14 A. I have.

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

16 A. I have.

17 Q. If you save a Tor chat log to your own computer, how is
18 your part of the conversation labeled?

19 A. The username "myself."

20 Q. And if you save a log of a chat you have on your computer,
21 how is the other side of the conversation labeled?

22 A. With the name given to that other user, your other buddy.

23 Q. And who gives that name to the other user?

24 A. The user of the computer. The user of the Tor chat
25 program.

F1LGULB4

Kiernan - direct

1 THE COURT: Why don't you ask the same question,
2 Mr. Howard, in terms of "myself." I'm unclear whether it's a
3 name you designate for yourself or whether it's an automatic
4 name given.

5 Q. Mr. Kiernan, is "myself" something that you choose for
6 yourself as a user of Tor chat, or is it automatically selected
7 to you by the program?

8 A. The program gives you that user account, the username and
9 the log as "myself."

10 Q. And the name of the other party in the conversation, is
11 that automatically selected for you?

12 A. No. You can assign that a name.

13 Q. Could it be assigned anything the user wants?

14 A. Yes.

15 Q. So, for example, if you're chatting with your mother, you
16 can label it "mom" if you want, right?

17 A. Correct, because the usernames in Tor chat are long,
18 tough-to-read names. You can see, as a matter of fact, from
19 that log file it's the actual name of the user on there. So to
20 make it human-readable, you give it an easier-to-use name like
21 "mom."

22 Q. So if we could please look at Government Exhibit 222 in
23 your binder, please. Do you recognize what this exhibit is?

24 A. I do.

25 Q. What is this exhibit?

F1LGULB4

Kiernan - direct

1 A. This is a log file from that Tor chat directory.

2 Q. This is from the defendant's computer?

3 A. From the defendant's computer; yes.

4 Q. And did you extract this file?

5 A. I did.

6 MR. HOWARD: The government offers Government
7 Exhibit 222.

8 MR. DRATEL: No objection.

9 THE COURT: Received.

10 (Government's Exhibit 222 received in evidence)

11 MR. HOWARD: Ms. Rosen, can you please publish
12 Government Exhibit 222, please. Zoom in on the first few lines
13 there.

14 Q. Is this what a Tor chat log looks like, Mr. Kiernan?

15 A. It is.

16 Q. So let me just describe the very top line it says "This log
17 file is not signed and has no cogency of proof."

18 Are you familiar with what that is?

19 A. I am.

20 Q. What is that?

21 A. That's, again, a default setting when the log file starts
22 getting created, it puts that in there.

23 Q. So in other words, all Tor chat log files automatically
24 include that at the top, correct?

25 A. They'll put it in there, yes.

F1LGULB4

Kiernan - direct

1 Q. And you testified that you tested and used Tor chat
2 yourself, right?

3 A. I have.

4 Q. And you've saved your own logs, correct?

5 A. I have.

6 Q. Have the logs been true and accurate copies of the
7 conversations that you logged?

8 A. They have been, yes.

9 Q. Now, if we can just -- I'm going to direct you to the
10 second line here where it says 2012-04-24, 17:06. What does
11 that mean?

12 A. It's the date and time of the chat.

13 Q. So it's April 24, 2012, correct?

14 A. Correct.

15 Q. And what format is the time depicted in?

16 A. It's based on the 24-hour clock.

17 Q. So what time is that in time that we more commonly use?

18 A. 5:06.

19 Q. To the right of there, you see this sSh, it's a lower-case
20 S, big S, little H. What is that?

21 A. That's the name given -- that's the name that was assigned
22 to one of the chat participants.

23 Q. It's the other participant in the chat that was logged,
24 correct?

25 A. Yes.

F1LGULB4

Kiernan - direct

1 Q. And it says "greetings" to the right. What is that?

2 A. That's what was typed in, "Greetings."

3 Q. And the next line next to date and time it says "myself: hi
4 there."

5 A. Yes.

6 Q. What is "myself"?

7 A. "Myself" is the user of the client software on the
8 computer.

9 Q. The user who is logging the files on the computer, correct?

10 A. Yes.

11 Q. Now, Mr. Kiernan, can you please flip to what's been marked
12 for identification purposes as Government Exhibit 22B in your
13 binder. Do you recognize what this is?

14 A. I do.

15 Q. What is this?

16 A. An excerpt from the full chat log.

17 Q. Is that an excerpt of the Tor chat log we just looked at?

18 A. Yes, it is.

19 Q. Did you participate in the creation of this exhibit?

20 A. I did.

21 Q. Is this a true and accurate excerpt from the full Tor chat
22 log?

23 A. Yes. they are. Yes.

24 MR. HOWARD: The government offers Exhibit 222B.

25 MR. DRATEL: No objection.

F1LGULB4

Kiernan - direct

1 THE COURT: Received.

2 (Government's Exhibit 222B received in evidence)

3 MR. HOWARD: Ms. Rosen, can we publish this and zoom
4 into the top.

5 Q. Right at the top it has 4XSB, a long list of characters,
6 dot log. What does this refer to?

7 A. That's the log file this was found in. It's the user's Tor
8 name.

9 Q. Is this the name of the file as it was stored on the
10 defendant's computer?

11 A. Yes.

12 Q. And here it says "page 1/5." What does page one of five
13 refer to?

14 A. That's the -- "1" being the page that this was on and "5"
15 is how many pages were in the whole chat.

16 Q. So this indicates, in other words, that this is the first
17 page of the larger Tor chat file, correct?

18 A. Yes.

19 Q. And that the larger file had a total of five pages,
20 correct?

21 A. Correct.

22 Q. So I'm going to read it right now.

23 "It's sSh: May I ask to whom I am speaking? A
24 formality of course, myself DPR and you are.

25 SSh: This squid."

F1LGULB4

Kiernan - direct

1 Whose computer was this chat recovered from?

2 A. The defendant's.

3 Q. Mr. Kiernan, I want you to take your time and look through
4 what's been marked in your exhibit binder as 222A all the way
5 through 232E, and let me know when you're done. Look at them
6 generally and let me know.

7 A. I'm sorry. 222A to?

8 Q. To 232E.

9 A. Okay.

10 Q. So do you recognize these exhibits?

11 A. I do.

12 Q. What are they?

13 A. All excerpts from the Tor chat logs that were found in the
14 defendant's computer.

15 Q. And again, these are not full chat logs. They're excerpts,
16 correct?

17 A. Correct.

18 Q. Did you participate in the creation of these exhibits?

19 A. Yes.

20 Q. Are they true and accurate excerpts of the entire log
21 files?

22 A. They are, yes.

23 Q. Does each also contain the file name of the full log file
24 at the top like Government Exhibit 222B?

25 A. Yes.

F1LGULB4

Kiernan - direct

1 Q. And does each excerpt also indicate where in the larger Tor
2 file -- the Tor chat log file it was located?

3 A. Yes.

4 MR. HOWARD: The government offers Government Exhibits
5 222A, 2223, 2224, and 2225 and 225B, 2226A through 226I, 227A.

6 Apparently, I said four "2's" at one point when I
7 should have only said three "2's."

8 Where was I?

9 THE COURT: 227A.

10 MR. HOWARD: Through 227H, 2228, 222 -- sorry. Just
11 two "2's", 9A through 229E; 231A through 231C; and 232A through
12 232E. And that's it.

13 THE COURT: So no 228?

14 MR. HOWARD: All of them start with "22." Why don't
15 we do it this way: So we have 2A, 3, 4, 5A and 5B, 6A through
16 6I, 7A through 7H, 8, 9A through 9E. Now, it's 231A through
17 231C and 232A through 232E and that should cover it.

18 THE COURT: All right.

19 MR. HOWARD: Just note that 229B was cut at the last
20 second, so that's not one that should be included.

21 THE COURT: All right. Thank you.

22 Mr. Dratel.

23 MR. DRATEL: We had some prior objections which we
24 repeat.

25 THE COURT: Yes.

FILGULB4

Kiernan - direct

1 MR. DRATEL: To the extent they weren't covered, the
2 others, we make the same objections Vayner, 403. And because
3 there has been some alteration of numbers, there have been some
4 changes.

5 THE COURT: Understood. Those objections are noted.
6 They're overruled. And those documents are received.

7 (Government's Exhibits 222A, 223, 224, 225A-225B
8 received in evidence)

9 (Government's Exhibits 226A-226I, 227A-227H, 228
10 received in evidence)

11 (Government's Exhibits 229A-229E, 231A-231C, 232A-232E
12 received in evidence)

13 MR. HOWARD: Thank you, your Honor.

14 Q. In your review of the defendant's laptop, did you discover
15 files that appeared to be journal entries?

16 A. I did.

17 Q. Mr. Kiernan, can you please look in your binder what has
18 been premarked for ID purposes as Government Exhibit 240A
19 through 240D and 241.

20 A. Yes.

21 Q. Do you recognize these exhibits?

22 A. I do.

23 Q. And what are they?

24 A. Files I extracted from the defendant's laptop.

25 MR. HOWARD: The government offers Government Exhibits

F1LGULB4

Kiernan - direct

1 240A through 240D and 241.

2 MR. DRATEL: The same prior objections.

3 THE COURT: All right. Those objections are noted,
4 overruled and those documents are received.

5 (Government's Exhibits 240A-240D, 241 received in
6 evidence)

7 MR. HOWARD: Ms. Rosen, can you please publish
8 Government Exhibit 240A.

9 Q. What is the title of this file, Mr. Kiernan?

10 A. 2010.docx.

11 Q. And what is the date that this file was last changed as
12 reflected in the meta data?

13 A. 2/27/2011.

14 MR. HOWARD: Ms. Rosen, can you please add the
15 highlights to this document just for the ease of reading them
16 in. I'm going to read the highlighted portions now. If we can
17 zoom in at the top.

18 "2010. I started the year in the middle of my stint
19 with Good Wagon Books. Donny and I had worked on it the last
20 quarter of 2009 and we were trying to ramp up by hiring people
21 to go door-to-door. It was a real struggle and by the end of
22 our trial partnership, it was clear that we hadn't grown the
23 business to the point that it made sense for me to stay on.

24 "I had to find a job quickly, so I turned to Craig's
25 List and found American Journal Experts. For the next six

F1LGULB4

Kiernan - direct

1 months, I edited scientific papers written by foreigners. It
2 sucked. The hours were flexible, but it drained me. I hated
3 working for someone else and trading my time for money with no
4 investment in myself."

5 Can we go to the next page, please.

6 "While all of this was happening, I began working on a
7 project that had been in my mind for over a year. I was
8 calling it Underground Brokers, but eventually settled on Silk
9 Road. The idea was to create a website where people could buy
10 anything anonymously, with no trail whatsoever that could that
11 could lead back to them. I had been studying the technology
12 for a while, but needed a business model and strategy. I
13 finally decided that I would produce mushrooms so that I could
14 list them on the site for cheap to get people interested. I
15 worked my ass off setting up a lab in a cabin near Bastrop off
16 the grid. In hindsight, this was a terrible idea and I would
17 never repeat it, but I did it and produced several kilos of
18 high quality shrooms. On the website side, I was struggling to
19 figure out on my own how to set it up. Driving out to Bastrop,
20 working on Good Wagon, and trying to keep up my relationship
21 with Julia was taking all of my time. By the end of the year,
22 I still didn't have a site up, let alone a server."

23 Ms. Rosen, can you zoom out to the next page, please.

24 "In 2011, I am creating a year of prosperity and power
25 beyond what I have ever experienced before. Silk Road is going

F1LGULB4

Kiernan - direct

1 to become a phenomenon and at least one person will tell me
2 about it, unknowing that I was its creator. Good Wagon Books
3 will find its place and get to the point that it basically runs
4 itself. Julia and I will be happy and living together. I have
5 many friends I can count on who are powerful and connected."

6 Ms. Rosen, can you please publish Government Exhibit
7 240B.

8 Q. Mr. Kiernan, what is the name of this file?

9 A. 2010.ODT.

10 Q. And where was it located on the computer?

11 A. I'm sorry. 2011.ODT.

12 Q. And where in the defendant's computer was it located?

13 A. This was in his home/frosty/Documents/journal/2011
14 directory.

15 Q. And what was the date when this file was last changed?

16 A. 2/5/2012.

17 MR. HOWARD: Ms. Rosen, can you please add the
18 highlights to this document as I'll read them, if you can just
19 zoom in the top.

20 "2011. Still working on Good Wagon Books and Silk
21 Road at the same time. Programming now. Patchwork php mysql.
22 Don't know how to host my own site. Didn't know how to run
23 bitcoind. Got the basics of my site written. Launched it on
24 freedomhosting. Announced it on the bitcointalk forums. Only
25 a few days after launch, I got my first sign-ups and then my

F1LGULB4

Kiernan - direct

1 first message. I was so excited I didn't know what to do with
2 myself. Little by little, people signed up, and vendors signed
3 up, and then it happened. My first order. I'll never forget
4 it. The next couple of months, I sold about ten pounds of
5 shrooms through my site. Some orders were as small as a gram
6 and others were in the qp range. Before long, I completely
7 sold out. Looking back on it, I maybe should have raised my
8 prices more and stretched it out, but at least now I was all
9 digital, no physical risk anymore. Before long, traffic
10 started to build. People were taking notice, smart, interested
11 people. Hackers. For the first several months, I handled all
12 of the transactions by hand. When they came into my local
13 bitcoin client, I matched them up with the amount of time" --
14 I'm sorry -- "with the amount and time of the purchase and did
15 all of the necessary account adjustments. Between answering
16 messages, processing transactions, and updating the codebase to
17 fix the constant security holes, I had very little time left in
18 the day, and I had a girlfriend at this time!"

19 I'm skipping ahead.

20 "So, while still manually processing transactions and
21 responding to a bigger and bigger message load, I learned to
22 use codeigniter and began rewriting the site. At some point
23 around this time, I also learned how to host my own site and
24 was on my own servers."

25 "Rewriting the site was the most stressful couple of

F1LGULB4

Kiernan - direct

1 months I've ever experienced. I worked all day everyday, still
2 processing transactions by hand, dealing with scammers,
3 answering messages, meeting new strange people through my site
4 and getting to know them. When I finally got the site ready,
5 there were several new features including a tumbler and
6 automatic mated payment processing."

7 "AND in addition to these stressors, Silk Road got its
8 first press, the infamous Gawker article. When you look at the
9 historic #s, you can see right when it happened. A huge spike
10 in signups, and the beginning of an upward trend in commerce
11 that would continue until the time of this writing, and
12 hopefully for much longer. There was really a smattering of
13 press at this time including the local news in FL! Most
14 interestingly, two U.S. senators came out against the site and
15 against bitcoin. They made a big deal out of it and called for
16 a shutdown of the site."

17 "Some major advances were price pegging, vendor
18 ranking, a more sophisticated feedback system, buyer stats,
19 transaction logging and building up the admin toolset. Most
20 importantly, the market began its path to maturity. Vendors
21 and buyers forged great relationships, more vendors came in to
22 fill holes in the market, other completed and variety, customer
23 service, and professionalism emerged. After making about \$100k
24 an up to a good 20-\$25k monthly, I decided it was time to bring
25 in some hired guns to help me take the site to the next level.

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Kiernan - direct

1 This would prove to be the biggest challenge I ever faced. I
2 actually got to see a fairly wide range of employee types.
3 SYG, the schmoozer who winds up being a waste, DA, the model
4 employee. Super enthusiastic, hard working and trainable.
5 Then there was Utah, professional who does it for the money.
6 Gets the job done, but his heart isn't always in it. First I
7 put up an ad for a system administrator. I needed someone to
8 help me take the back end to the next level in security. I had
9 many candidates duke it out in the forum on many topics from os
10 to isolation to software to security. In the end, I made what
11 I thought was a wise decision."

12 "I was still working with SYG, so Utah was set to work
13 on rewriting the site. Around this time, Variety Jones showed
14 up. This was the biggest and strongest willed character I had
15 met through the site thus far. He quickly proved to me that he
16 had value by pointing out a major security hole in the site I
17 was unaware of."

18 "He convinced me of a server configuration paradigm
19 that gave me the confidence to be the sole server administrator
20 and not work with someone else at all. He has advised me on
21 many technical aspect of what we are doing, helped me speed up
22 the site and squeeze more out of my current servers. He also
23 has helped me better interact with the community around Silk
24 Road, delivering proclamations, handling troublesome
25 characters, running a sale, changing my name, devising rules,

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Kiernan - direct

1 and on and on. He also helped me get my head straight
2 regarding legal protection, cover stories, devising a will,
3 finding a successor and so on. He's been a real mentor.
4 Shortly after I met VJ, I started looking for a right hand man,
5 an administrative assistant of sorts. Someone to answer
6 messages, manage the forum and Wiki, and eventually even
7 dispute resolution. I found that man in Digital Alchemy, who
8 was one of the original members of the site and had been
9 modding the forums for pretty much the whole time. There were
10 lots of applicants, but for some reason DA stuck out as
11 promising, and he has turned out to be invaluable. He quickly
12 learned how to respond to messages and keep things running
13 smoothly. Before long he was managing the forums, the wiki,
14 the messages, the resolution center, scam prevention, and odd
15 jobs for me like mini-research projects and tedious tasks."

16 Q. Now, Mr. Kiernan, at the end of this excerpt, there was a
17 reference to an employee named DA. Did you find any references
18 to DA in the Tor chat log files?

19 A. I did, yes.

20 MR. HOWARD: Ms. Rosen, can you please publish
21 Government Exhibit 232B, which has already been admitted into
22 evidence. Zoom in on the top half, a half at a time.

23 "myself: Are you ready to become judge jury and
24 executioner.

25 Da: Yep."

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Kiernan - direct

1 And then there's an emoticon.

2 "myself: OK, click resolutions, form your support
3 panel.

4 Myself: This will pull up the most past-due
5 resolution.

6 Da: It's loaded.

7 Myself: Top line is how many past due resolutions
8 there are. It says "under review" to the users. The next six
9 lines are the transaction details. Kill resolution link
10 finalize the resolution without crediting buyer or seller. You
11 rarely need to use this, but sometimes both parties are
12 completely unresponsive and you need to clear it out of your
13 queue."

14 By the way, I note this is a conversation from
15 January 8, 2012. The conversation continues:

16 "myself: Left stats table is the buyer. Purchases
17 are the number of purchases that were eventually finalized and
18 not canceled and doesn't count open orders. Refund rate is the
19 total money returned to the buyer from the resolution center
20 divided by the total money spent. And the time-frames are the
21 stats from the past 30 days, 90 days, and the life of the
22 buyer's account. Keep notes of what these numbers mean so you
23 can review them if you forget."

24 Ms. Rosen, can you please publish Government
25 Exhibit 232A, which has already been admitted into evidence.

F1LGULB4

Kiernan - direct

1 Q. Mr. Kiernan, at the top it says here pages "148-149 out of
2 257"?

3 A. Yes.

4 Q. Does 257 refer to the total number of pages in the full Tor
5 chat log?

6 A. Yes, it does.

7 Q. So now I'm going to read dated March 14, 2012.

8 "myself: Do you make purchases with a DigitalALCH
9 account.

10 Da: [...] No, not for a while. I had at one point
11 but only to way out there drop location. States away :)"

12 Emoticon.

13 Da: I use the KindestDaze generally.

14 Myself: That's good. Your name is getting higher
15 profile on the forums and we wouldn't want anyone with your
16 address from past orders to compromise you.

17 We might want to construct a new identity for you
18 though.

19 Da: Say that I'm quitting. Yea?

20 Myself: Maybe, or just disappear. Let's think on it
21 for a few days.

22 Da: IRL or online?

23 Myself: No, just online. My concern is that LE will
24 see that DA is a player at Silk Road by your forum presence and
25 then track down who you bought from and sold to under that name

F1LGULB4

Kiernan - direct

1 and then find you irl.

2 Da: Damn. I really like the DigitalALCH moniker. It
3 really fit me. Oh, well freedom is better than prison."

4 Emoticon.

5 "myself: Yep. I got to protect my assets too.

6 Da: Do you mean me? Or outside assets.

7 Myself: You."

8 MR. HOWARD: Ms. Rosen, can you please publish
9 Government Exhibit 222A, which has already been admitted into
10 evidence.

11 Q. Mr. Kiernan, this is page one of a Tor chat log chat that's
12 a total of 16 pages, correct?

13 A. Correct.

14 Q. It's dated April 20 -- the first excerpt is dated April 20,
15 2012, correct?

16 A. Yes.

17 Q. "sSh: I have the forum to manage and the profile updates
18 review. Is there anything else you'd like me to get doing, or
19 shall I refer to DA for such business.

20 Myself: Normally DA, but since he is out of
21 commission, he can't manage it.

22 Myself: That's fine for now. Once we get you trained
23 on support, you'll have plenty to do before he's recovered."

24 It picks up again on April 21, 2012, correct,
25 Mr. Kiernan?

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Kiernan - direct

1 A. Yes, it does.

2 Q. "Myself: OK, go to .onion/support and tell me what you
3 see.

4 SSh: I see an entire screen of new options! Many
5 radio boxes with various labels.

6 Myself: Perfect. I'll give you a little tour. New
7 vendors, you are familiar with. Click messages. The number
8 next to it is the number of unread messages for SR support and
9 vendor support.

10 Vendor messages go to the front of the queue. It's
11 just like the bulk reply view in the main messages area, but it
12 pulls up something like 75 messages at a time and the options
13 to the right of the message are a little different.

14 SSh: All right. I've got it loaded. It seems that
15 quite a few people need assistance today.

16 Myself: Actually the only difference is the forward
17 to DPR box. If this is checked it forwards all unread messages
18 from the user to me."

19 And once again, the next section starts on April 21,
20 2012, right?

21 A. Correct.

22 MR. HOWARD: "myself: We already gave him his seller
23 status back, so just tell him to change it.

24 We should have told him to change it before we made
25 him a seller again.

F1LGULB4

Kiernan - direct

1 But I don't want to go back and forth taking and
2 giving.

3 SSh: Okay then. Should I put in a direct message, or
4 add it to the support message on the list page.

5 Myself: Just add it to the message since we haven't
6 sent them off yet.

7 SSh: How's this sound: Your Vendor Status has been
8 restored. Please change your profile to comply with the
9 seller's guide. Best of fortune regarding your business here
10 on the Silk Road.

11 Myself: That's good, but give him a warning too.
12 Something like.

13 Please read the seller's guide very carefully. If we
14 find you out of compliance again, your selling privileges will
15 be permanently removed."

16 Ms. Rosen, can you please publish Government
17 Exhibit 240C, which is already in evidence.

18 Q. Mr. Kiernan, what is the name of this file?

19 A. Daily.ODT.

20 Q. And where was it located on the defendant's computer?

21 A. This was under the
22 home/frosty/documents/journal/2011Q4/December/week 4 directory.

23 Q. And does the meta data indicate the date on which the file
24 was last saved?

25 A. Yes. 12/29/2011.

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Kiernan - direct

1 Q. "12/29/2011 chatted with VJ again today. Him coming onto
2 the scene has reinspired me and given me direction on the SR
3 project. He has helped me see a larger vision. A brand that
4 people can come to trust and rally behind. Silk Road chat,
5 Silk Road exchange, Silk Road credit union, Silk Road market,
6 Silk Road everything! And it's been amazing just talking to a
7 guy who is so intelligent and in the same boat as me, to a
8 certain degree at least. So, today we talked mostly about the
9 exchange, what to charge, boundary conditions, etc. Then I
10 went for a surf with Billy Becket. Caught a couple of good
11 waves, chatted with him took some wipe outs and went in. Soon
12 after, I ran around the city with Ashley and Kelly. We drank
13 some beer, walked around the city and botanical gardens. I
14 then went out with Jessica. Our conversation was somewhat
15 deep. I felt compelled to reveal myself to her. It was
16 terrible. I told her I have secrets. She already knows I work
17 with bitcoin which is also terrible. I'm so stupid. Everyone
18 knows I am working on a bitcoin exchange. I always thought
19 honesty was the best policy and now I didn't know what to do.
20 I should have just told everyone I am a freelance programmer or
21 something, but I had to tell half truths. It felt wrong to lie
22 completely so I tried to tell the truth without revealing the
23 bad part, but now I am in a jam. Everyone knows too much.
24 Dammit."

25 Mr. Kiernan, during this excerpt, there was a

F1LGULB4

Kiernan - direct

1 reference to an employee named VJ?

2 A. Yes.

3 Q. Did you find any references to VJ in any Tor chats?

4 A. I did, yes.

5 MR. HOWARD: Ms. Rosen, can you please publish
6 Government Exhibit 226G, which has already been admitted into
7 evidence.

8 THE COURT: Just for your planning purposes, we'll end
9 in about three minutes for lunch.

10 MR. HOWARD: Maybe it makes sense to do this exhibit
11 and then take the break.

12 THE COURT: That's fine.

13 Q. Mr. Kiernan, was this another Tor -- this is an excerpt of
14 another Tor chat log recovered from the defendant's computer?

15 A. Yes, it is.

16 Q. And up here it says "page 312 of 1,096." Does that reflect
17 that there were 1,096 pages in the full chat log?

18 A. Yes, it does.

19 Q. And this takes place on January 15, 2012, correct?

20 A. Correct.

21 Q. "VJ." Emoticon or some sort of symbols. "Kicks self for
22 assuming. Should have asked for the code long ago. Just
23 didn't see the need. Mark it down as a learning experience for
24 me as well.

25 Myself: This whole thing has been on a wing and a

F1LGULB4

Kiernan - direct

1 prayer. Besides basic php and html I've learned everything on
2 the fly.

3 Vj: Well, I'm glad I didn't go for that nap, this was
4 much more rewarding.

5 Vj: And you've done a damn fine job but you're
6 becoming more of a target for hackers and better ones as time
7 goes by.

8 Myself: I hadn't opened a Linux terminal until I left
9 freedom hosting a month after the site launched.

10 Vj: Just thank FSM that they didn't start on you
11 earlier.

12 Myself: FSM?

13 Vj: #Diety.

14 Myself: Ahh.

15 Vj: Flying Spag.

16 Myself: I've been incredibly blessed.

17 Vj: I have a lot of admiration for the big brain on
18 you.

19 I don't know two other people that could have done it.

20 Myself: I was a hairs breath from going to jail
21 before the site even launched for growing shrooms."

22 Q. Mr. Kiernan, all of these chat logs that we have reviewed,
23 whose computer were they recovered from?

24 A. The defendant's.

25 THE COURT: Ladies and gentlemen, let's take our lunch

F1LGULB4

Kiernan - direct

1 break now. We'll resume at 2:00. I want to remind you not to
2 talk to anybody, including each other about anything having to
3 do with this case. Thank you.

4 (Jury excused)

5 (Continued on next page)

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Kiernan - direct

1 (In open court; jury not present)

2 THE COURT: Mr. Kiernan, you can take a break. We're
3 going to pick up again at 2:00.

4 THE WITNESS: Yes.

5 (Witness temporarily excused)

6 THE COURT: Let's all be seated. I just had two
7 things: One, Mr. Dratel. You had asked for the hard drive to
8 be received subject to connection. I thought that I heard
9 enough for it to be received, but if you perceive by who is
10 going to testify, if anything occurs that undoes that, then
11 obviously we'll take that into consideration, but it did appear
12 to me there was enough to get it authenticated.

13 MR. DRATEL: That's the reason why it's sort of the
14 cart before the horse to a certain extent.

15 THE COURT: I understand.

16 MR. TURNER: We'll complete the chain with the next
17 witness.

18 THE COURT: Thank you.

19 Then there were the series of exhibits with the 22s
20 that we had, all of which were subject to various objections,
21 including some that weren't noted on the pretrial order because
22 they came in afterwards. I just wanted to make it clear the
23 nature of the Court's rulings. The objections were, among
24 others, the *Vayner* objection. The Court does believe that
25 given the testimony of this witness, that there is sufficient

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Kiernan - direct

1 grounds for authenticity.

2 In terms of it not being part of the charged conduct,
3 that's really a relevance objection, and the Court finds that
4 these are directly relevant to a number of issues in the case.

5 In terms of 403, the Court does not find that these
6 are substantially outweighed by the danger of unfair prejudice
7 or misleading the jury or wasting time; indeed, they are
8 evidence which is necessarily to the government's case in terms
9 of the theories that they have posited and not unduly
10 prejudicial, so the Court did allow those, and all of those
11 really fall under the same rationale.

12 Was there anything that you folks wanted to raise
13 before we took our own break?

14 MR. TURNER: No, your Honor.

15 MR. DRATEL: No, your Honor.

16 THE COURT: Thank you. I do have one matter at 1:00.
17 Oh, I don't. It's been taken off-calendar. I don't have a
18 matter at 1:00, so you folks are welcome to keep all of your
19 things there as you see fit.

20 Thank you. We'll return at 2:00.

21 (Continued on next page)

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Kiernan - direct

1 AFTERNOON SESSION

2 2:10 p.m.

3 (In open court; jury present)

4 THE COURT: Let us all be seated.

5 Mr. Howard, you may proceed, sir.

6 MR. HOWARD: Thank you, your Honor.

7 THOMAS KIERNAN, resumed.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. HOWARD:

10 Q. Good afternoon, Mr. Kiernan.

11 A. Good afternoon.

12 Q. So in the morning, you testified that it took approximately
13 three hours to do the triage of the laptop, right?

14 A. That's correct.

15 Q. Again, what were you trying to do with the laptop triage?

16 A. Preserve evidence and not let the laptop get into a state
17 of encryption.

18 Q. And following the triage, you provided the laptop to
19 Special Agent Beeson?

20 A. I did.

21 Q. And approximately how long were you performing the triage
22 in the library itself?

23 A. In the library? About an hour or so.

24 Q. And what happened after you were finished in the library?

25 A. We took the laptop and I carried it and transported it to

F1LGULB4

Kiernan - direct

1 the defendant's residence.

2 Q. And how did you transport it there?

3 A. We had a van or we had a car outside.

4 Q. Did you drive?

5 A. I did not drive, no.

6 Q. And what, if anything, did you do while you were in the car
7 with the laptop?

8 A. Just ensured that the laptop stood on. I didn't want the
9 laptop to turn off during that time.

10 Q. And what did you do after you arrived in the defendant's
11 residence?

12 A. I continued triage, kept the laptop running and then waited
13 for Special Agent Beeson to show up to give it to him.

14 (Continued on next page)

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F1ldulb5

Kiernan - direct

1 MR. HOWARD: Now, Ms. Rosen, could we please publish
2 Government Exhibit 222G again for just a quick moment.

3 Sorry, I meant 226G. Pardon me.

4 Q. So, Mr. Kiernan, this was the excerpt that we read before
5 we took the break for lunch, correct?

6 A. Correct.

7 Q. Right here at the top it indicates it is page 312 out of
8 1096, correct?

9 A. It does, yes.

10 Q. Were there other chat excerpts that were taken from this
11 1096 page file involving VJ?

12 A. Yes, there was.

13 MR. HOWARD: So at this point, Ms. Rosen, if you could
14 please publish Government Exhibit 226F, please.

15 Q. Mr. Kiernan, this is page 964 of the 1096-page chat log,
16 right?

17 A. Correct.

18 Q. This conversation took place on June 1, 2012.

19 A. Yes.

20 Q. "Vj: Also, Variety Jones is dead, poor fella. No more seed
21 biz for him.

22 "Myself: :(

23 "Myself: you goin by cimon now?

24 "Cimon: I was keeping that going as a way to get btc
25 legally in the UK, but I'm leaving the UK, and the legality

F1ldulb5

Kiernan - direct

1 elsewhere means it's best I shut it down.

2 "Cimon: I have no idea what i'm going by now, dammit!

3 "Myself: well I just changed you from vj to cimon on
4 torchat.

5 "Myself: so yer cimon.

6 "Cimon: there ya go.

7 "Cimon: and that's how changes are made.

8 "Cimon: cimon it is."

9 Now, Mr. Kiernan -- actually, Ms. Rosen could you put
10 that back up for a second.

11 So, Mr. Kiernan, up here at the top, we have the name
12 "VJ," correct?

13 A. Correct.

14 Q. And who names the other side of a Tor chat that's logged on
15 a one zone computer?

16 A. The user of that computer.

17 Q. And so down here at 5:53 p.m., you see "Simone"?

18 A. Correct.

19 Q. Is that a different user than VJ?

20 A. A different username.

21 Q. Right, but is it the same person in this chat?

22 A. Yes.

23 Q. What appears to have happened?

24 A. The associated name given by the user of the computer, the
25 defendant, changed it to Cimon.

F1ldulb5

Kiernan - direct

1 MR. HOWARD: Ms. Rosen, could you please publish
2 Government Exhibit 227B, which has already been admitted into
3 evidence, and zoom in, please.

4 Q. This is on August 31, 2012, correct?

5 A. Correct.

6 Q. "Cimon: Hey, could you scratch together a little org chart
7 for me, so I know who's supposed to be doing what, on the
8 forums and support?

9 "Myself: sure

10 "Myself: support

11 "Me

12 "Indica|Sativa

13 "SquidShepherd

14 "Forum

15 "Admins

16 "Me

17 "Indica|Sativa

18 "Mods

19 "SquidShepherd

20 "Limetless

21 "Nomad bloodbath

22 "Guru

23 "Myself: Squid talks to indi, indi talks to me. very
24 occasionally Squid and I will talk."

25 Ms. Rosen, could you please publish Government Exhibit

F1ldulb5

Kiernan - direct

1 227A, which has already been admitted into evidence.

2 And this chat occurred on October 24, 2012, correct?

3 A. Correct.

4 Q. "Myself: DA and squid both went awol

5 "Myself: squid said his comp died and is waiting on a
6 replacement, but that was about 5 days ago now

7 "Myself: DA is gone for good

8 "Cimon:" expletive, "I haven't seen DA onlne since we
9 talked, what happened with him?

10 Myself: got a new guy on who seems good and am looking
11 for another

12 "Myself: he slowly flaked out. the last I heard he had
13 a family emergency to rush off to and didn't know when he'd be
14 back

15 "Myself: right now I'm spending about an hour a day on
16 resolutions and inigo (new guy) is chipping away at the
17 messages

18 "Myself: I tried recruiting from bitcointalk.org

19 "Myself: but I may just dip into the local community

20 "Cimon: dude, really?

21 "Myself: well?

22 "Myself: working for a criminal enterprise isn't
23 exactly attractive

24 "Myself: to everyone

25 "Cimon: What were you paying squid?

F1ldulb5

Kiernan - direct

1 "Myself: \$900/week

2 "Cimon: What are the major issues CSRs deal with now?

3 "Myself: the toughest stuff is keeping up with the

4 vendors and knowing when to demote them

5 "Cimon: not including resolutions

6 "Myself: that ties into the resolutions

7 "Myself: besides that, answering messages is pretty

8 trivial, just time-consuming

9 "Cimon: how many vendors get demoted, and how many
10 permanently?

11 "Myself: messages, resolution, vendor quality control

12 "Myself: 1-3 per week

13 "Cimon: what are the issues, just non-delivery?

14 "Myself: it varies

15 "Myself: just a sec

16 "Myself: faking feedback, going around escrow, loan
17 scamming, exchange scamming, fake product..."

18 MR. HOWARD: Ms. Rosen, could you please publish
19 Government Exhibit 240D, which is already in evidence.

20 Q. Mr. Kiernan, what was the name of this file as it was saved
21 on the defendant's computer?

22 A. 240D? Excuse me. "Daily.odd."

23 Q. Where was it located on the defendant's computer?

24 A. This is the "home/frosty/documents/journal/2012/Q1/January/
25 week one" folder.

F1ldulb5

Kiernan - direct

1 Q. And what was the date that this file was last changed,
2 according to the metadata?

3 A. 1/1/2012.

4 Q. "January 1st, 2012

5 "Well, I'm choosing to write a journal for 2012. I
6 imagine that some day I may have a story written about my life,
7 and it would be good to have a detailed account of it. I did
8 some work in the morning, can't remember now exactly what it
9 was, but it wasn't long before I was responding to text
10 messages and making plans to hang out on the beach. It was a
11 holiday for everyone, so the beach was as packed as I've ever
12 seen it, a teeming mass of humanity, helicopters flying
13 overhead, waves crashing, a real spectacle. I was offered a
14 ticket to a warehouse party by Nicole, but just couldn't bring
15 myself to accept. I just was not in the partying mood. George
16 also invited me to join him camping for 2-3 nights. I wanted to
17 go, but the swell is low and it's just too much time away from
18 Silk Road, and there is so much to do before the rents get
19 here, and before I leave for Thailand. I need to get
20 DigitalAlch set up handling the resolutions, and it just seems
21 like Variety Jones gives my broad sweeping tasks on a daily
22 basis. Emma, Jessica, Cally, Kim, Tim and a couple others,
23 Mike, were all on the beach with me. Playing paddle ball and
24 soaking up the sun. I've been thinking a bunch about what is
25 next for me. I like my little life here in Bondi, but what if I

F1ldulb5

Kiernan - direct

1 love Thailand, or want to go on even further? I don't want to
2 go backwards, and while I could see a lot more in Australia,
3 I'm not even taking the opportunities that are coming up as it
4 is. I need to find a place I can work from cheap and off the
5 beaten path."

6 MR. HOWARD: Ms. Rosen, could you please publish
7 Government Exhibit 225A, which has already been admitted into
8 evidence.

9 Q. Mr. Kiernan, this is page 2 of the 15-page chat log, is
10 that correct?

11 A. Correct.

12 Q. "Myself: go here

13 "Myself: <http://silkroadvb5piz3r.onion/support>

14 "Myself: let me know when you are there

15 "Scout: just waiting for tor ... okay, i'm there and
16 it's saying 'no access'

17 "Myself: you are signed in with scout?

18 "Scout: yes

19 "Myself: do you know how to figure out your account
20 id?

21 "Scout: i did many months ago. lol. remind me?

22 "Scout: oh i found it

23 "Myself: what is it?

24 "Scout: 77594f7023

25 "Myself: try again

F1ldulb5

Kiernan - direct

1 "Myself: refresh

2 "Scout: okay, it worked - i'm in.

3 "Myself: cool

4 "Myself: it's kind of a mess

5 "Myself: but once you learn the tools, it's not so

6 bad."

7 MR. HOWARD: Ms. Rosen, could you please publish that
8 again, and can you zoom in on the first three lines of the chat
9 and put it at the top of the screen, please.

10 And you could please publish 201K on the bottom of the
11 screen, please, and zoom in on the URL bar.

12 Q. So, Mr. Kiernan, here you see during the chat "myself" says
13 "http" and then an address. Do you recognize that address?

14 A. Yes.

15 Q. And is that the same address that you saw in -- on the Tor
16 browser that was running on the defendant's computer?

17 A. It is, yes.

18 MR. HOWARD: Ms. Rosen, could you please publish
19 Government Exhibit 225B, which has already been admitted into
20 evidence.

21 Q. Mr. Kiernan, this chat is on January 26, 2013, correct?

22 A. Correct.

23 Q. "Myself: so, im down a set of hands as of 12 hours ago

24 "Myself: now would be a great time for you to come on
25 board if you are still interested

F1ldulb5

Kiernan - direct

1 "Myself: or do you still have reservations?

2 "Scout: the only reservation i have is about the
3 safety of being part of the staff. safety from legal issues,
4 that is. having a hell of a time getting past that worry.

5 "Myself: the way i got over it is by looking at the
6 risk/reward

7 "Myself: if you look closely at the risk part of it

8 "Myself: you can break it down into 2 parts

9 "Myself: chances of getting caught, and what will
10 happen if you get caught

11 "Scout: right - and i have no idea what the answer is
12 to either of those hypotheticals

13 Myself: I'm not 100% about the what will happen part.
14 It's not like there have been cases in the past like ours. But
15 when you look at the chance of getting caught part, it's
16 incredibly small

17 "Myself: put yourself in the shoes of a prosecutor
18 trying to build a case against you

19 "Myself: what evidence could they pin on you?

20 "Myself: there is nothing on your laptop for them to
21 use, if you obscure your bitcoins properly, there is no way
22 for them to trace them back to me. Realistically, the only way
23 for them to prove anything would be for them to watch you log
24 in and do your work.

25 "Scout: right. which, as i understand it, they could.

F1ldulb5

Kiernan - direct

1 "Myself: this is just a realization I've come to after
2 doing this for almost 2 years

3 "Myself: sure, someone could stand behind you without
4 you realizing it

5 "Myself: we are definiely on the cutting edge, the
6 fringe. I'm not sure how else to put it, but the biggest con
7 about this work is not the risk of going to jail or having your
8 life disrupted

9 "Myself: it's getting used to and living with that
10 possibility no matter how remote

11 "Myself: and keeping your work a secret."

12 Ms. Rosen, could you please publish Government Exhibit
13 241.

14 Q. Mr. Kiernan, what is the name of this file as stated on the
15 defendant's computer?

16 A. "Log.text."

17 MR. HOWARD: Ms. Rosen, could you just add the
18 highlights to the portions that we will read for now.

19 Q. And, Mr. Kiernan, the first entry on the top of the first
20 page is labeled March 20, 2013, correct?

21 A. Correct, yes.

22 Q. "Someone posing as me managed to con 38 vendors out of 2
23 btc each with a fake message about a new silk road posted about
24 cartel formation and not mitigating vendor roundtable leaks.
25 Worked on database error handling in CI."

F1ldulb5

Kiernan - direct

1 "4/9/2013: Ssbd considering joining my staff.

2 "04/10/2013: Some vendors using the hedge in a
3 falling market to profit off of me by buying from themselves.
4 turned of access log pruning so I can investigate later.
5 Market crashed today. Being blackmailed again. Someone says
6 they have my ID, but hasn't proven it."

7 "4/11/2013: Set up tor relays. Asked scout to go
8 through all images on site looking for quickbuy scam remnants.
9 Cimon told me of a possible ddos attack through tor and how to
10 mitigate against it. Guy blackmailing saying he has my id is
11 bogus."

12 "4/13/2013: Inigo is in the hospital, so I covered
13 his shift today. Zeroed everything and made changes to the site
14 in about 5 hours."

15 "4/14/2013: Did support. inigo returned. Started
16 rewriting orders->buyer_cancel, been getting error reports
17 about it."

18 "5/1/2013: Symm starts working support today. Scout
19 takes over forum support."

20 "5/3/2013: Helping smed fight off attacker. site is
21 mostly down. I'm sick. Leaked IP of webserver to public and
22 had to redeploy/shred. Promoted gramgreen to mod, now named
23 libertas."

24 MR. HOWARD: And now, Ms. Rosen, could you actually
25 just stay on the next-to-last page of this exhibit and just

F1ldulb5

Kiernan - direct

1 focus on the very, very bottom, the last entry.

2 Q. What is the date of the last entry in this log file?

3 A. 9/30/2013.

4 Q. What does the metadata reflect about the date that this
5 file was last changed?

6 A. That's not on my copy I have here.

7 MR. HOWARD: Do you want to go to the next page. Can
8 we zoom in on the bottom left-hand window here.

9 Q. And what does the metadata, Mr. Kiernan, indicate about the
10 date that this file was last changed?

11 A. 10/1/2013.

12 Q. Now, Mr. Kiernan, could you flip in your binder to what's
13 been marked for identification purposes as Government Exhibit
14 242.

15 A. Yes.

16 Q. What is this exhibit?

17 A. A file that I exported from the defendant's laptop.

18 Q. What was the name of the file?

19 A. "Weekly_report1-4-13.txt."

20 Q. Where was the file located on the computer?

21 A. This is from the home/frosty/backup/reference/reports
22 folder.

23 Q. On what date was -- according to the metadata, on what date
24 was this file saved to the defendant's hard drive?

25 A. 1/5/2013.

F1ldulb5

Kiernan - direct

1 MR. HOWARD: The government offers Government Exhibit
2 242 into evidence.

3 MR. DRATEL: The same objections, your Honor.

4 THE COURT: All right. Those objections are
5 overruled. GX242 is received.

6 (Government's Exhibit 242 received in evidence)

7 MR. HOWARD: Ms. Rosen, could you just please add the
8 highlights. Just go to the very top, including the title.

9 Q. "Weekly Report 1-4-2013.

10 "I. Important

11 "A.) Still getting dozens of users who have fallen for
12 the fake SR phishing sites."

13 Zoom out. At the bottom:

14 "Demoted: NorCal420HookUp

15 "Reason: blatant ooe deals, he even had a listing for
16 ooe deals so he could get feedback."

17 Would you go to the last page of the metadata, and
18 could we focus in on the left bottom corner.

19 Mr. Kiernan, what is indicated about the date -- where
20 does it indicate when this file was saved from the defendant's
21 computer?

22 A. 1/5/2013.

23 Q. Where on the file is it? Can you just point with your
24 laser pointer?

25 A. Somebody took my laser pointer. The "Date Created" entry,

F1ldulb5

Kiernan - direct

1 right there.

2 Q. And does the file indicate when the file was last edited?

3 A. Yes.

4 Q. And what date was that?

5 A. 1/5/2013.

6 Q. Now, Mr. Kiernan, was this the only report of this format
7 that you found on the defendant's computer, or did you find
8 other similar ones?

9 A. I found similar ones.

10 Q. And where were they located on the defendant's computer?

11 A. In that same directory.

12 MR. HOWARD: Ms. Rosen, can we zoom out on this file
13 and look at the top right-hand corner.

14 Q. Is this the folder in which you found these similar
15 reports?

16 A. Yes.

17 Q. Do the other reports similarly have dates in the title?

18 A. They do, yes.

19 Q. Did the dates correspond to the dates within the documents?

20 A. They did, yes.

21 Q. And are the dates modified generally consistent with the
22 dates in the titles and in the documents?

23 A. They are, yes.

24 MR. HOWARD: If you could zoom a little further,
25 Ms. Rosen, just the ones that are labeled "weekly report," from

F1ldulb5

Kiernan - direct

1 here to here.

2 Q. So we have weekly report 11-3-12, 11-12-12. We have
3 1-25-13 at the bottom.

4 If you would scroll down.

5 (Pause)

6 We have some dated in February and March of 2013,
7 isn't that correct, Mr. Kiernan?

8 A. That is correct, yes.

9 Q. In your review of defendant's laptop, did you find any
10 copies of individuals belonging -- sorry, identification
11 documents belonging to other individuals?

12 A. I did, yes.

13 Q. Could you please flip in your binder to what's been marked
14 as government -- sorry, actually, Ms. Rosen, could you publish
15 Government Exhibit 216, which has already been admitted into
16 evidence.

17 Do you recognize what this depicts, Mr. Kiernan?

18 A. I do. It's the directories where I found those files.

19 Q. And what is -- Ms. Rosen, could we just zoom in on the path
20 name down here.

21 What is the name of the folder that you found these
22 ID's in?

23 A. Sure. The home/frosty/backup/reference directory.

24 MR. HOWARD: Could we zoom back out, Ms. Rosen, and
25 zoom in on the upper right-hand corner of the screen.

F1ldulb5

Kiernan - direct

1 Q. What does this depict, Mr. Kiernan?

2 A. This is just a file listing of everything that was in that
3 directory, the directory I just spoke of.

4 Q. Here we have files that are labeled inigo.jpg.gpg,
5 symm.tar.gz.gpg, libertas.jpg.gpg, cirrus.jpg.gpg and then
6 another file pics.tar.gz.gpg. Are you familiar with files with
7 the extension ".gpg"?

8 A. I am, yes.

9 Q. What kind of files are those?

10 A. Those are encrypted files.

11 Q. Were you able to access the contents of those encrypted
12 files?

13 A. I was, yes.

14 Q. How were you able to do that?

15 A. I used PGP to unencrypt them. I found a password on the
16 defendant's laptop that I tried to put in and was able to
17 recover those files.

18 Q. So, Mr. Kiernan, would you please flip to what has been
19 marked as Government Exhibit 256 in your binder, please.

20 A. Sure. OK.

21 Q. Do you recognize this exhibit?

22 A. I do.

23 Q. What is it?

24 A. It's the unencrypted file that I found in that directory
25 structure.

F1ldulb5

Kiernan - direct

1 Q. This is after you used the password you found on the
2 defendant's computer to successfully decrypt the files?

3 A. Yes, this was after.

4 Q. What is the file name?

5 A. This was "inigo.jpg.gpg."

6 Q. And this file was located in the directory that we were
7 just looking at?

8 A. In the IDs directry, yes.

9 MR. HOWARD: The government offers Government Exhibit
10 256.

11 MR. DRATEL: No objection.

12 THE COURT: Received.

13 (Government's Exhibit 256 received in evidence)

14 BY MR. HOWARD:

15 Q. Here you can see it is a Virginia driver's license with the
16 name Andrew Michael Jones, with an address and other personal
17 identifiers, correct?

18 A. That is correct, yes.

19 MR. HOWARD: Ms. Rosen, could you please -- I'm sorry,
20 what was the file name again? What was the name of the file?

21 A. Inigo.jpg.gpg.

22 Q. Now, Mr. Kiernan, in reviewing the Tor chats on the
23 defendant's computer, did you find any chat logs involving
24 communications with anyone identified as Inigo?

25 A. I did, yes.

F1ldulb5

Kiernan - direct

1 MR. HOWARD: Ms. Rosen, could you please publish
2 Government Exhibit 229A, which has already been admitted into
3 evidence.

4 Q. And this is dated October 17, 2012, correct?

5 A. That is correct, yes.

6 Q. "PatHenry: I got that DL scanned for you

7 "Myself: hi

8 "Myself: send it over

9 "PatHenry: let me know if you got it

10 "Myself: handsome devil

11 "Myself: is your address the same?

12 "PatHenry: :)

13 "PatHenry: why thank you

14 "PatHenry: yes for now

15 "PatHenry: I will be moving in the next few months to
16 northern virginia

17 "PatHenry: where im originally from

18 "Myself: ok

19 "Myself: I'm just getting your permissions set up so
20 you can access the support panel

21 "PatHenry: cool. I log into the main site for that
22 correct?

23 "Myself: how was doing your assignment?

24 "Myself: yes, login as inigo and I'll give you the url
25 in a sec

F1ldulb5

Kiernan - direct

1 "PatHenry: squid gave me the support link, just let me
2 know when I have access

3 "Myself: is the page loading for you?

4 "Myself: a bunch of boxes with forms in them

5 "PatHenry: it just said no access but I havent tried
6 again since giving you my user id

7 "Myself: try again

8 "PatHenry: trying now

9 "PatHenry: okay im in

10 "PatHenry: thanks

11 "Myself: cool, I'll let squid take over. don't touch
12 anything you haven't been fully trained on, and take lots of
13 notes, don't trust your memory!

14 "PatHenry: yes sir

15 "PatHenry: notebook handy.

16 "PatHenry: thanks again sir :)

17 "Myself: you bet :)"

18 Mr. Kiernan, the next part of this file starts on
19 October 17, 2012, correct?

20 A. Yes.

21 Q. And in this excerpt we have the user "myself" and the user
22 "inigo," correct?

23 A. Correct.

24 Q. Were the prior excerpts taken from the same file?

25 A. Yes.

F1ldulb5

Kiernan - direct

1 Q. And the prior excerpts involve PatHenry and myself,
2 correct?

3 A. That's correct.

4 Q. So what does this indicate that this name is now Inigo?

5 A. Just that that buddy list that we talked about before, the
6 contact list had been changed by the defendant.

7 Q. And this chat box, the next excerpt is from October 17,
8 2012, correct?

9 A. Correct, yes.

10 Q. "Myself: How's your first day going?

11 "Inigo: Tor has been giving me such a headache."

12 The next excerpt is on October 21, 2012, correct?

13 A. Yes.

14 Q. "Myself: CSR = customer support rep

15 "Inigo: how many of us are there?

16 "Myself: right now just you and squid.

17 MR. HOWARD: Ms. Rosen, could you please publish
18 Government Exhibit 229C, which has already been admitted into
19 evidence.

20 Q. Mr. Kiernan, is this another chat with Inigo from the same
21 log file?

22 A. It is, yes.

23 Q. And is this dated November 5, 2012?

24 A. Yes.

25 Q. "Inigo: So uhh we have a vendor selling cyanide.

F1ldulb5

Kiernan - direct

1 "myself: Link please

2 "inigo: Getting it now."

3 Then Inigo sends a link:

4 "http://silkroadvb5piz3r.onion," and then a lot more text.

5 "myself: was it reported, or did you stumble on it?

6 "inigo: it was reported

7 "inigo: not sure where we stand on this, hes not

8 listing it as a poison, but its only the most well known

9 assasination and suicide poison out there

10 "inigo: lol

11 "inigo: at the same time, fentanyl has been used to

12 assasinate people too, but we allow that to be sold for

13 recreational use

14 "inigo: but this isnt a drug

15 "inigo: its tricky

16 "myself: cyanide has a bad reputation

17 "myself: as you say

18 "myself: the vendor lists a bunch of legit uses

19 "myself: and there are plenty of poisions you can get

20 off the shelf

21 "inigo: very true

22 "myself: some of the drugs we allow are poisons in

23 certain dosages

24 "inigo: so we're going to allow this?

25 "myself: it's bad for image/pr

F1ldulb5

Kiernan - direct

1 "myself: just brainstorming with ya

2 "inigo: ah ok

3 "inigo: yeah it deff is

4 "inigo: i almost want to order some haha :X

5 "inigo: just to keep on hand

6 "myself: I think we'll allow it

7 "inigo: ok

8 "inigo: i kind of like the idea of allowing all kinds

9 of industrial chemicals, whatever they may be used for

10 "myself: it's a substance

11 "myself: and we want to err on the side of not

12 restricting things

13 "inigo: absolutely

14 "inigo: this is the black market after all :)

15 "myself: it is, and we are bringing order and civility

16 to it."

17 Ms. Rosen, could you please publish Government Exhibit

18 223, which has already been admitted into evidence.

19 Mr. Kiernan, this is from a different log file,

20 correct, than the last one we read?

21 A. Yes, it is. Yes.

22 Q. And this chat occurred on October 25, 2012?

23 A. Yes.

24 Q. "Cp: do you need to see my id?

25 "Myself: yes

F1ldulb5

Kiernan - direct

1 "Cp: or can i just tell you my name? like i did a few
2 months ago

3 "Cp: yea, I can do that, ill have to get brave enough
4 to do so, lol

5 "Myself: I'll need your id with current address. It
6 will be stored encrypted

7 "Myself: and I will probably never need to decrypt

8 "Cp: so, I guess ill just have to trust you on that

9 "Cp: thats a big trust

10 "Myself: Yea, that's true."

11 Mr. Kiernan, the next section starts on October 25,
12 2012, correct?

13 A. It does, yes.

14 Q. Up here, the entire chat log that this was taken from was
15 259 pages, correct?

16 A. Correct.

17 Q. "Myself: you'll need to keep notes all week and then write
18 a report

19 "Myself: at the end of each week

20 "Myself: so that's the only thing you'll keep local

21 "Myself: that's a bit incriminating

22 "Cp: okay, I have a true cryptd hd"

23 Now, Mr. Kiernan, in your role as a computer
24 scientist, have you encountered something called TrueCrypt?

25 A. I have, yes.

F1ldulb5

Kiernan - direct

1 Q. What is TrueCrypt?

2 A. TrueCrypt is a piece of software that enables people to
3 encrypt or basically take your files, put them into a safe type
4 of deal, and so other people can't access them, basically.

5 Q. Now, Mr. Kiernan, the next portion of the chat is on
6 October 26, 2012, correct?

7 A. Yes.

8 Q. "Cp: what will be my main responsibilities?

9 "Myself: at first, answering support messages.

10 "Myself: We get 100 - 200 per day

11 "cp: are those just from vendors? or are they from
12 buyers as well?

13 "Myself: both

14 "cp: will I answer directly to you? or is there
15 someone in between?

16 "myself: you will talk to me and inigo

17 "myself: did you come up with a new name for yourself?

18 "cp: havent really thought about that yet

19 "myself: I'll be introducing you to inigo shortly

20 "cp: okay, any names that you like?

21 "myself: it's up to you

22 "cp: ill think of one shortly

23 "myself: how about pokerface

24 "cp: lol

25 "cp: thats a great one

F1ldulb5

Kiernan - direct

1 "myself: or holdem
2 "cp: i like holdem too
3 "cp: or fullhouse
4 "cp: fluh
5 "cp: flush
6 "myself: flush?
7 "cp: its a poker hand
8 "myself: yea, is that what you'd like to be called?
9 "cp: full house, flush, straight
10 "cp: I like flush
11 "cp: how is my identity protected
12 "cp: thinking of worst case scenario --
13 "cp: of course
14 "myself: well, the only record I'll have of it is your
15 scanned photo id, which I will encrypt and store on my laptop
16 where I use whole disk encryption on a hidden OS volume
17 "cp: okay, I think i already have my driverslicense
18 here on my computer
19 "cp: i had to scan it a year ago
20 "cp: so, that should be easy
21 "myself: is the address the same? I'm going to send
22 you a letter to confirm
23 "cp: yes it is
24 "cp: Also, are you the only person that knows all the
25 employees?

F1ldulb5

Kiernan - direct

1 "myself: Yes, no one knows anyone else

2 "cp: Good."

3 Mr. Kiernan, the next part of the chat or the next
4 excerpt starts on November 4, 2012, correct?

5 A. Correct, it does.

6 Q. "Flush: was my salary of 1200 that you paid me last friday
7 was that for this week?

8 "Myself: your pay is \$900/wk

9 "Flush: 900 i mean

10 "Myself: friday's pay is for the preceeding week."

11 Mr. Kiernan, the next part starts at November 7, 2012
12 at 11:44 a.m., correct?

13 A. Correct.

14 Q. "flush: i had a few people letting me know that someone is
15 selling cyanide

16 "Myself: yea, we're allowing it

17 "Flush: do we allow that?

18 "Flush: okay

19 "Myself: what do you think

20 "Myself: ?

21 "Flush: cyanide can be used for other purposes

22 "Flush: than nafarious ones

23 "Flush: its actually a blood pressure medication

24 "Flush: but its very dangeous

25 "Flush: and there are other purposes for it as well...

F1ldulb5

Kiernan - direct

1 its very popular for poisoning."

2 Mr. Kiernan, the next excerpt is from November 8,
3 2012, correct?

4 A. Correct.

5 Q. That is from the same chat log?

6 A. The same log, yes.

7 Q. "Myself: if you find yourself idle while I'm gone, I would
8 like you to do some recon on the competition. see what's out
9 there in terms of alternatives to Silk Road. what are they
10 doing better than us. how big are they. read up on BMRs forum
11 and site and see what they are up to for me

12 "Flush: thats funny, I had planned on looking into
13 BMR."

14 Mr. Kiernan, the next chat is from page 81 of 259 of
15 the same chat log?

16 A. The same log, yes.

17 Q. November 22, 2012?

18 A. Yes.

19 Q. "Flush: got a ? for you.. How much are we growing each
20 month? Just out of curiosity..

21 "Myself: hmm

22 "Myself: lemme pull up the latest

23 "Myself: looks like around 15%

24 "Flush: wow, thats huge

25 "Myself: that # is confidential fyi

F1ldulb5

Kiernan - direct

1 "Flush: and its the darknet

2 "Flush: understood

3 "Myself: dude, we're selling drugs

4 "Myself: there is nothing to compare this to

5 "Myself: or course this last month the data is quite
6 skewed. There is a massive tank in sales on the chart. should
7 snap back though."

8 Mr. Kiernan, the next excerpt is on December 11, 2012,
9 correct?

10 A. Correct.

11 Q. "Myself: where I think we are lacking is in quality
12 control. We don't have the tools built and I am sure there we
13 can improve there. I'm talking about making sure vendors are
14 complying with the rules"

15 Mr. Kiernan, the next section is from December 22,
16 2012, correct?

17 A. That is correct.

18 Q. "flush: selling stolen credit cards is vioalation right?

19 "Myself: yes

20 "Flush: k."

21 "flush: also accepting moneypak instead of bitcoins

22 "flush: right?

23 "myself: yes, that would be going around escrow.

24 The next section is five days later, on December 27,
25 2012, correct?

F1ldulb5

Kiernan - direct

1 A. Yes.

2 Q. "myself: you're in charge of vendor support for now, and
3 inigo is in charge of customer support. Also, I want you to go
4 back through all of the vendors you demoted and give them a
5 second chance. Send them a message like this:

6 "We'd like to give you a second chance to get your
7 account back in good standing. This will be your last warning.
8 If you disregard the Seller's Guide again, your vending
9 privileges will be lost permanently. To bring your account
10 back into good standing, you must pay for the commissions you
11 should have paid on all of your out of escrow transactions to
12 date. It is your responsibility to determine how much this
13 comes to. If you low-ball it, we will investigate and
14 permanently demote your account. If anything you should include
15 a little extra as an apology and show of good will. Send this
16 money to 'SR Quality Control' via your account page. Message me
17 when this is done."

18 Mr. Kiernan, this next excerpt is from December 31,
19 2012, correct?

20 A. Yes, it is.

21 Q. That's page 190 of the 259-page Tor chat log, correct?

22 A. Correct.

23 Q. "Myself: one more thing. We have investigated your account
24 have found that you have done many out of escrow deals, meaning
25 you take the coind directly to by pass SR fees. This is in

F1ldulb5

Kiernan - direct

1 violation of the Seller's Guide and your vendor agreement. Your
2 account has been suspended.

3 "We'd like to give you a second chance to get your
4 account back in good standing. This will be your last warning.
5 If you disregard the Seller's Guide again, your vending
6 privileges will be lost permanently.

7 "Flush: yea, thats a good one, ill replace the one
8 that i have with this one."

9 Mr. Kiernan, can you please flip to what has been
10 premarked as Government Exhibit 255 in your binder.

11 (Pause)

12 Do you recognize this exhibit?

13 A. Yes, I do.

14 Q. And what is it?

15 A. A file pulled off of the defendant's laptop.

16 Q. What is the file name?

17 A. To do underscore weekly.

18 Q. And what does the metadata reflect about the date that this
19 file was saved to the defendant's computer?

20 A. 10/1/2013.

21 MR. HOWARD: Would you please publish -- I'm sorry.
22 The government offers Government Exhibit 255.

23 MR. DRATEL: The same objection as previously.

24 THE COURT: All right. The objection is overruled.
25 GX255 is received.

F1ldulb5

Kiernan - direct

1 (Government's Exhibit 255 received in evidence)

2 MR. HOWARD: Ms. Rosen, could you please zoom in on
3 the very top section here.

4 You see here: "Pay employees.

5 "inigo - \$1500

6 "libertas - \$1500

7 "batman73 - \$1000 // ssbd

8 "cirrus - \$1000

9 "smedley - \$2500

10 "spock8642 - \$500 // drx."

11 Would you zoom out, Ms. Rosen.

12 Ms. Rosen, could you please publish Government Exhibit
13 229E, which has already been admitted into evidence.

14 Q. Mr. Kiernan, is this a chat log excerpt dated October 19,
15 2012?

16 A. It is, yes.

17 Q. "Inigo: another question. do you recommend that i wash my
18 btc from you through bitcoin fog? or are they already mixed
19 sufficiently that I can send them to Mt. Gox to exchange? Also,
20 should I even use Mt. Gox? Or should I be converting them more
21 anonymously? I was thinking maybe one of those prepaid VISA
22 cards that you can load with bitcoin

23 "Myself: I would avoid mtgox if possible. I wouldn't
24 worry about bitcoin fog unless you are trying to move a large
25 amount.

F1ldulb5

Kiernan - direct

1 "Inigo: ok

2 "Myself: read up on the bitcoin wiki for alternatives

3 "Inigo: k

4 "Myself: you could also hit up the exchangers on sr."

5 Now, Mr. Kiernan, in your review of the defendant's
6 laptop, did you discover any files that appeared to be an
7 expense report?

8 A. I did, yes.

9 Q. Mr. Kiernan, could you please flip in your binder to what
10 has been marked for identification purposes as Government
11 Exhibits 250.

12 THE COURT: Two-five-zero?

13 MR. HOWARD: Yes.

14 A. OK.

15 Q. Do you recognize this exhibit?

16 A. I do.

17 Q. What is it?

18 A. A file extracted from the defendant's laptop.

19 Q. What was the name of the file?

20 A. SR underscore accounting.ods.

21 Q. And what type of file is it?

22 A. It seems to be -- or it is a spreadsheet.

23 MR. HOWARD: The government offers Government Exhibit
24 250.

25 MR. DRATEL: The same objection, your Honor.

F1ldulb5

Kiernan - direct

1 THE COURT: All right. There wasn't an objection on
2 the pretrial order but we'll talk about that at the break.

3 GX250 is received.

4 (Government's Exhibit 250 received in evidence)

5 BY MR. HOWARD:

6 Q. So, Mr. Kiernan, focusing on the top "sr_accounting.ods" --
7 Ms. Rosen, could you just zoom in on that. I am having trouble
8 seeing it myself -- what does that refer to?

9 A. That is the file name.

10 Q. And who picks the name of the file?

11 A. Whoever created it.

12 Q. And what are the columns in this chart?

13 A. "Date, expense, total expense, revenue, total_revenue,
14 total" and "notes" are the columns.

15 Q. Mr. Kiernan, now, are the rows in this chart in
16 chronological order?

17 A. Yes, they are.

18 Q. And what is the first -- the first row here, what is the
19 first date?

20 A. 7/17/2010.

21 Q. July 17th, 2010?

22 A. July 17th, 2010.

23 Q. How many pages does the spreadsheet go?

24 A. Eight pages.

25 Q. And what is the date of the last entry in the spreadsheet?

F1ldulb5

Kiernan - direct

1 A. 7/3/2013.

2 Q. And what does the metadata in the file indicate about the
3 last date that this file was changed?

4 A. 7/3/2013.

5 MR. HOWARD: Ms. Rosen, if you could please go back to
6 the first page of the exhibit and add the highlights. Would
7 you zoom in on them so we could read off a couple.

8 The first page, July 18, 2010, under the "expense"
9 column, it is \$25. "Notes" column says "lab clothes, carry
10 over from fall 2009."

11 Underneath that there is July 18, 2010. And in the
12 "Expense" column it is \$31. In the "Notes" column, "Petri
13 dishes, carry over from fall 2009."

14 Further down the page, we have July 26, 2010 and
15 "Expense" of \$80, and the "Notes" say "Pressure cooker."

16 Down here, October 15, 2010, \$33 expense. The notes
17 say "humidifier."

18 Ms. Rosen, actually, can you go to the May 2012.

19 Q. Do you see here -- this one isn't highlighted, but
20 April 28, 2012, \$1,150 and the notes say "laptop," correct,
21 Mr. Kiernan?

22 A. Yes. It does, yes.

23 MR. HOWARD: Ms. Rosen, can you move up to the top of
24 the page.

25 Q. Here we have February 21, 2012, an expense listed of

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Kiernan - direct

1 \$132 for "server rent," correct, Mr. Kiernan?

2 A. That's correct.

3 Q. Mr. Kiernan, was this the only reference to server rent in
4 this chart or are there others?

5 A. There are others.

6 Q. Below that there is a date, March 2, 2012. And in the
7 "Income" column, \$65,933, and under "Notes," "commissions,"
8 correct?

9 A. That's correct.

10 Q. Is this the only reference to commissions in this chart or
11 are there others?

12 A. There are others.

13 Q. Down here we have March 10, 2012. "Expense" of \$3,200, and
14 the "notes" say "payroll," correct?

15 A. That's correct.

16 Q. Is this the only reference to payroll in this chart or are
17 there others?

18 A. There are others.

19 MR. HOWARD: Ms. Rosen, could we now publish
20 Government Exhibit 226C, please.

21 Actually, there is just one more thing on the last
22 one, pardon me, 250. On that page with the highlights, please.
23 Can you zoom in on the last highlighted row.

24 Q. Mr. Kiernan, here it says May 11, 2012, a \$4,000 listing in
25 the "Expense" column, and the notes say "420 grand prize,"

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Kiernan - direct

1 correct?

2 A. That's correct.

3 Q. Now, in your review of the Tor chat logs, did you find any
4 references around this date to a 420 sale?

5 A. I did, yes.

6 MR. HOWARD: Ms. Rosen, could you please now publish
7 Government Exhibit 226C, which has already been admitted into
8 evidence.

9 Q. Now, Mr. Kiernan, this is, again, pages 575 to 576 of a
10 1096 page chat log, correct?

11 A. That is right, yes.

12 Q. This conversation starts on March 23, 2012?

13 A. Yes.

14 Q. "Myself: here's a rough draft for ya. Roll up a doobie and
15 put your party hat on because the biggest stoner holiday is
16 just around the corner, and we've got alot of ganja to deliver!
17 We're pulling out all the stops to celebrate 420 this year.
18 Starting at 4:20 pm on 4/20/2012, we'll be giving away 420
19 prizes every 420 seconds! WOO!!! Gift cards, badass consumer
20 electronics, real gangsta shit! And to top it all off, we're
21 sending one lucky buyer on a dream vacation with all the
22 trimmings!!! The buzz around this is going to be HUGE!"

23 Now, Mr. Kiernan, this picks up and this is from the
24 same Tor chat log, correct?

25 A. The same log, yes.

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Kiernan - direct

1 Q. Pages 576 to 577 of 1096 pages?

2 A. That is correct.

3 Q. And it is on March 23, 2012, correct?

4 A. Yes.

5 Q. "vj: hmm - I wuz thinkin' dat we'd mebbe not go commission
6 free for this one

7 "Myself: really?

8 "Vj: mebbe 1/2? on 'em?

9 "Vj: I'd like to think that we can bring more to the
10 party than just dropped commissions. We're filling the prize
11 barell already.

12 "Myself: nah, it's just 3 days!

13 "Vj: and a mil in sales

14 "Vj: But ok, this time. But seriously, read the
15 announcement, and you'll see it doesn't lose much if you drop
16 that one fragment on comission free ;)

17 "Myself: we'll be doing a mil in sales every week at
18 full commission before long

19 "Myself: I think it's leading by example for the
20 vendors. they will be more generous if we are

21 "Vj: true. There is that, and no one will have a klew
22 what the sale totals are.

23 "Myself: and we're selling drugs here, first one's
24 free little jonny! damn that sounds awful

25 "Vj: ha!!! Let's give away a couple of playground

F1ldulb5

Kiernan - direct

1 sets, with swings and slides, just to complete the picture.

2 "Myself: sponge bob canoe and life size my little pony
3 with every hash purchase of 50 btc or more!"

4 Mr. Kiernan, now, this continues -- this is from the
5 same Tor chat log, correct?

6 A. The same log, yes.

7 Q. This is pages 917 to 918 of a 1096-page chat log, correct?

8 A. That is correct.

9 Q. And it starts: "vj: Dude, I'm worried about our winner.

10 "Myself: whasamatta

11 "Vj: He's trying to dry out

12 "Vj: Heroin

13 "Vj: it's not working.

14 "Vj: and I think his recent influx of cash didn't help

15 "Myself: oh geez

16 "Myself: fuck, what are we doing

17 "Vj: Yeah, he told me some time ago he was trying to
18 quit, but SR made it kinda tough

19 "Vj: So I've been doing sessions with him, giving him
20 someone to talk to

21 "Myself: do you think he can't make the trip?

22 "Vj: I dunno, I'm sure he's gonna run out of spending
23 money early, that's for sure.

24 "Vj: Now, his friend coming from Aus doesn't imbibe,
25 so I'm hoping he'll be a good influence.

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Kiernan - direct

1 "Vj: I'm just worried that it's not the kinda place
2 you wanna get caught trying to score H, or posessing it.

3 "Myself: what does he want to do?

4 "Vj: Oh, he's all gung ho to go, it's me that's
5 worried ;)

6 "Vj: We'll go ahead as planned, the situation was just
7 getting to me, so I'm spreading around the Dread

8 "Vj: so to speak ;)

9 "Myself: shoulda thought more carefully about dropping
10 \$4k on an addict

11 "Myself: maybe our next prize will be 3 months in
12 rehab."

13 Mr. Kiernan, could you please flip to what's been
14 marked for identification purposes as Government Exhibit 251 in
15 your binder.

16 A. Yes.

17 (Pause)

18 OK.

19 Q. What was the name of this file?

20 A. Networthcalculator.ods.

21 Q. And what was the date of this file -- according to the
22 metadata, what was the date that this file was first saved on
23 the defendant's computer?

24 A. Umm, let's see. 6/17/2012.

25 Q. And what was the date that it was last edited?

F1ldulb5

Kiernan - direct

1 A. 12/2/2012.

2 Q. What kind of file is this?

3 A. A spreadsheet.

4 MR. HOWARD: The government offers Government Exhibit
5 251.

6 MR. DRATEL: Objection, your Honor. Vayner and
7 hearsay.

8 THE COURT: All right. There weren't any objections
9 noted in the Pretrial Order, but we'll talk about that at the
10 break.

11 GX251 is received.

12 (Government's Exhibit 251 received in evidence)

13 THE COURT: The objections are overruled.

14 MR. HOWARD: So, Ms. Rosen, could you please zoom in
15 on the columns from here to the first black line.

16 Q. So the columns here, Mr. Kiernan, are "Date," "Liquid
17 Assets," "Hard Assets," "Total Debt," "Net Liquid," "Net
18 Worth," and "Notes," correct?

19 A. Correct.

20 Q. And here it says, "August 06." Net worth is listed at 821,
21 and "Notes" say "started at PSU," correct?

22 A. That's correct.

23 Q. And here we have May 07. The net worth is listed as
24 13809.78, with a note saying "Just before buying house,"
25 correct?

F1ldulb5

Kiernan - direct

1 A. Correct.

2 Q. January 11 -- we'll skip one -- it says -- under the "Net
3 Worth" column, it is 29,539, and the note says "start as CEO of
4 Good Wagon."

5 A. That's correct, yes.

6 Q. April 2011, net worth is listed here under that column as
7 29948, and the notes column says "launch sr," correct?

8 A. That's correct.

9 Q. Let's skip down all the way to September 11, this one. Net
10 worth -- under the net worth column, it says "100992." Notes
11 column says "hire syg and h7"?

12 A. That's right, yes.

13 Q. December 11, the first one, under the net worth column,
14 "238645," "fire syg"?

15 A. Correct.

16 Q. Jan 12, under the net worth column, it says 68647, and the
17 notes say "bitcoin theft," correct?

18 A. That is correct, yes.

19 Q. And in June 2012, or June-12, under the net worth column,
20 it says "14238400"?

21 A. Yes.

22 Q. And what was the date that this file was last saved?

23 A. 12/2/2012.

24 MR. HOWARD: Could you zoom out, please.

25 And now zoom into this column right here in the light

F1ldulb5

Kiernan - direct

1 blue.

2 Q. The columns are titled "Hard assets inventory" and "value
3 (USD)," correct?

4 A. Correct.

5 Q. And the first row says "sr inc" under "Hard assets
6 inventory," correct?

7 A. Yes.

8 Q. What is the number under the value column listed next to
9 "sr inc"?

10 A. 104 million.

11 Q. The next one down here says "Samsung 700z?"

12 A. Correct.

13 Q. And the value is listed as \$800, right?

14 A. That's right, yes.

15 Q. What was the model and brand of the defendant's laptop?

16 A. Samsung 700z.

17 Q. And down here there is a section entitled "Bitcoins,"
18 correct?

19 A. Correct.

20 Q. And there seems to be a number of entries under there with
21 various values, correct?

22 A. Yes.

23 Q. And, Mr. Kiernan, what was the title of this spreadsheet?

24 A. "Networthcalculator.ods."

25 MR. HOWARD: Ms. Rosen, could we just go back to the

F1ldulb5

Kiernan - direct

1 left side real fast.

2 Q. So here you see this one, September 11. The reference says
3 "hire syg and H7," correct?

4 A. Yes.

5 Q. In your review of the Tor chat logs, did you find a Tor
6 chat with a user identified as H7 around September 2011?

7 A. Yes, I did.

8 MR. HOWARD: Ms. Rosen, could you please publish
9 Government Exhibit 224, which is already in evidence, and zoom
10 in, please.

11 Q. Mr. Kiernan, this is an excerpt taken from an 88-page log
12 file, is that correct?

13 A. Yes.

14 Q. And the first excerpt starts on September 30, 2011,
15 correct?

16 A. Yes.

17 Q. It says: "[Logging started]

18 "H7: Hi, I wanted to let you know whats going on
19 before the weekend. Ive got a SRM instance running on my end. I
20 have created a revised SQL search query, now i need to change
21 it to the Active Record Class used on the site.

22 "Myself: great, glad you are up and running and
23 starting to make progress. When do you think you'll have the
24 new search function ready for me to test?

25 "H7: soon

F1ldulb5

Kiernan - direct

1 "H7: if i do any work over the weekend ill let you
2 know, but probably monday or tuesday

3 "Myself: ok, that doesn't tell me much :P I'm not
4 trying to put pressure on you or anything, it just helps me to
5 know.

6 "Myself: that sounds good

7 "Myself: have a great weekend. I've got another little
8 project for you after the search is done before you start the
9 security audit, so message me Monday or Tuesday when it's
10 complete.

11 "H7: thanks, ill talk to you then. have a nice weekend
12 :-)."

13 (Continued on next page)

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F1LGULB6

Kiernan - direct

1 BY MR. HOWARD:

2 Q. The next part is October 3, 2011, is that correct?

3 A. Yes.

4 MR. HOWARD: "h7: Hi, i've written a new search
5 function. Im pretty happy about it, although it does contain
6 one "work around."

7 H7: the only changes are in controllers/silkroad.php
8 search_results function.

9 H7: what format do you want it in?

10 Myself: just send me your version of
11 controllers/silkroad.php

12 Myself: I'll let you know if I have any trouble with
13 it, or questions. Are you ready for your next challenge?

14 H7: yes, whats next?

15 Myself: We've been having issues with users getting
16 their accounts hacked. I think the main issue is from sites
17 pretending to be Silk Road and stealing the user's login info.

18 Myself: Can you look at the login functions and see if
19 you can come up with a way to mitigate this problem?"

20 Q. Mr. Kiernan, the next excerpt starts October 21, 2011, is
21 that correct?

22 A. That's correct.

23 MR. HOWARD: "H7: Silk Road, i would like to take next
24 week off. I have to take care of some other projects and i
25 figure you are busy with this outage anyways. The git repo

F1LGULB6

Kiernan - direct

1 should not take long after i get back.

2 Myself: ok, hopefully I won't be busy next week like
3 I've been busy this week. How much did you work this week?

4 H7: 35 hours

5 H7: Ive got the notes on cleaning the code for thrid
6 pary audit if you want it now.

7 Myself: sure, send it over. I'll see you on the 31st
8 then?"

9 Q. And the next excerpt starts from the same chat log,
10 correct?

11 A. The same log, yes.

12 Q. October 30, 2011, is that right?

13 A. That is correct.

14 MR. HOWARD: "H7: How was your week?

15 Myself: not bad. I will be travelling soon, so I have
16 much to do before I go and I didn't get as much as I wanted,
17 but this week I will focus on getting out of town.

18 H7: Ok."

19 THE COURT: I think you left out the word "done."

20 MR. HOWARD: Pardon me. "Myself: Not bad. I will be
21 traveling soon, so I have much to do before I go and I didn't
22 get as much done as I wanted, but this week I will focus on
23 getting out of town.

24 H7: Okay."

25 Thank you, your Honor.

F1LGULB6

Kiernan - direct

1 THE COURT: When we are done with this one, let's take
2 our afternoon break.

3 MR. HOWARD: Sure.

4 "H7: Is it just you over there?

5 Myself: I have people to take care of, but I'll be
6 travelling alone. is that what you mean?

7 H7: No, When you leave town will anyone be looking
8 after the servers?

9 Myself: oh, yes indeed

10 H7: Because i see "The Silk Road Staff" written in
11 messages, but i dont know if its just you or not.

12 Myself: it's basically just me, but more and more I am
13 trying to spread the responsibility around. You are a big part
14 of that.;)" Emoticon.

15 Did you want me to stop in the middle or should I
16 finish the exhibit?

17 THE COURT: You can finish the exhibit and then we'll
18 take our break.

19 MR. HOWARD: Thank you, your Honor.

20 Q. Mr. Kiernan, the next section starts on November 9, 2011,
21 correct?

22 A. Yes, it does.

23 Q. And this is page 27 of a total of 88 pages in this chat
24 log?

25 A. In this log, yes.

F1LGULB6

Kiernan - direct

1 MR. HOWARD: "Myself: Okay, I want to give you a 50
2 percent raise to \$1,500 per week. You're going to be managing
3 people and that always comes with extra headache so I want you
4 to be well compensated for it.

5 H7: Thank you.

6 Myself: Sure, thank you! So, we've received several
7 applicants already. They are sending their applications to the
8 username Silk Road HR on the main site. There is a link in the
9 footer now called "careers" that is directing them there.

10 Myself: I'll give you access to that account so you
11 can see who you want to bring in for a trial period.

12 H7: Okay.

13 Myself: We've talked about it before, but basically I
14 want you to create tasks that can be given a dollar value
15 corresponding to your estimate of the time they should take at
16 a rate of \$25/hour. If a new person is giving you bad results,
17 or isn't communicating well, or for whatever reason they aren't
18 working out, gently let them go and block them out of the repo.
19 You'll probably want to figure out a good way of communicating
20 with your team, either through torchat, or the git site, or
21 whatever. You'll need to keep track of what your team members
22 have earned, and each week I'll send you the coins for you to
23 disburse. Try to keep it below \$2,000 per week unless I let
24 you know that we can support more.

25 H7: Okay. Sounds good."

F1LGULB6

Kiernan - direct

1 Q. Mr. Kiernan, the next excerpt starts on December 15, 2011,
2 correct?

3 A. That's correct.

4 MR. HOWARD: "Myself: By the way, I'm going to be
5 unavailable from about 4:00 a.m. UTC Friday to about the same
6 time on Sunday, so I'll send you your pay tomorrow.

7 H7: K, you forgot me last week.

8 And can you send 100USD to Silk Road HR for this weeks
9 bounties.

10 Myself: You are right, so sorry about that. Sending
11 \$3,000 now for last week and this week.

12 H7: Why \$3,000 for two week?

13 Myself: Aren't I paying you \$1,500/WK?

14 H7: It was 2,000 a week last time you paid me.

15 Myself: Our sales were up a bit that week so I
16 thought I'd give you a bonus. The last rate we had talked
17 about was \$1,500 a week, though.

18 H7: I recall you asked me to work full time on the
19 group development and the new server/hosting. Since then you
20 have told me to focus on group development. Was I supposed to
21 revert to part-time.

22 Myself: No.

23 Yeah, I guess you are right, sorry my memory isn't
24 serving me right now."

25 THE COURT: All right. Is this a good time for a

F1LGULB6

Kiernan - direct

1 break?

2 MR. HOWARD: Yes, your Honor.

3 THE COURT: Ladies and gentlemen, let's take our
4 afternoon break. I want to remind you not to talk to each
5 other or anybody else about this case. Thank you.

6 (Jury excused)

7 (Witness temporarily excused)

8 (Continued on next page)

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F1LGULB6

Kiernan - direct

1 (In open court; jury not present)

2 THE COURT: Let's all be seated. One request that we
3 had gotten from the jury was that they wanted some magazines to
4 read while they were just spending time in the jury room.

5 MR. DRATEL: Not during the testimony.

6 THE COURT: Not during the testimony. I have had
7 four, five just random magazines picked up in which I do not
8 believe there are any articles or reporting on Silk Road. They
9 are Vanity Fair, New York Magazine, Sports Illustrated, the NFL
10 Sports Illustrated and Vogue, and they're all from the current
11 newsstand.

12 If you folks would like to look at them and assure
13 yourself that there is nothing in here that you object to in
14 terms of them just being used as sort of doctor-room, dentist's
15 office reading.

16 MR. DRATEL: Did the Court look through them already?

17 THE COURT: We looked through them. I personally have
18 not. That's why I'm offering them to you folks to look at
19 them.

20 MR. DRATEL: It's New York Magazine, right?

21 THE COURT: I believe it's New York Magazine. I
22 encourage you folks to take a quick look to ensure yourselves
23 there's no problem and then we'll put them in there. There's
24 no rush. If anybody finds any articles on this case, please
25 let me know. I don't intend to be turning over anything that

F1LGULB6

Kiernan - direct

1 requires the jury to themselves avert their eyes, but that's
2 the only issue that I had on that one.

3 We had a couple of documents that were objected to:
4 GX 242, GX 250, 251 and 255. And as to those, for the Silk
5 Road expense report, there had been no objection lodged. You
6 had said, I believe, Mr. Dratel, Vayner and some of the other
7 objections and hearsay.

8 MR. DRATEL: I'm not quite sure why we missed that
9 one, but yes, in the same character in terms of some of the
10 other documents.

11 THE COURT: I'm not holding you to a waiver.

12 Would the government like to respond in terms of 250?
13 Mr. Howard.

14 MR. HOWARD: This document was recovered from the
15 defendant's computer. We had the testimony from the computer
16 scientist. I think it's properly authenticated under Vayner.

17 THE COURT: The Court agrees. And in terms of
18 hearsay, there's either the information is not there for the
19 truth or to the extent it is, it would be an admission subject
20 to connection by a preponderance of the evidence.

21 Exhibit 251 is the net worth calculator spreadsheet.
22 I believe that your objections were the same for 251.

23 MR. DRATEL: That's correct.

24 THE COURT: And the Court's rationale for that is the
25 same as well.

F1LGULB6

Kiernan - direct

1 For 255, that was the weekly to-do list and the only
2 objection there was hearsay. I don't believe that that was
3 offered for the truth.

4 Mr. Howard.

5 MR. HOWARD: That's correct, your Honor.

6 THE COURT: So it doesn't fall within the hearsay
7 rules.

8 And 242 was the weekly report. That similarly had a
9 *Vayner* issue. We have talked about that. I do believe that
10 the *Vayner* issues had been eliminated by the foundation, and
11 then in terms of hearsay, it's not offered for the truth. Am I
12 correct, Mr. Howard?

13 MR. HOWARD: Yes, your Honor.

14 THE COURT: That's the bases for those rulings. Now,
15 we do need to talk about, as I said I would do, not this
16 morning but at another break, the striking of the testimony
17 that I had said I would strike.

18 I wanted to elicit from you folks, if you want to make
19 any suggestions, your views as to how that should be done. I
20 have previewed what the Court was suggesting was its thoughts
21 on that, which was to give a generalized instruction.

22 You'll note that the testimony that has been struck
23 has now gone up on ECF as an order of the Court. It should
24 have been posted. So the court reporters should strike and
25 will make sure that they strike the portions which are referred

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Kiernan - direct

1 to in the shaded portions of today's ECF filing related
2 thereto, and we'll make sure that it's absolutely clear.

3 But in terms of instructing the jury, Mr. Turner.

4 MR. TURNER: I drafted something for your Honor's
5 consideration. It's fairly simple.

6 You heard testimony while Special Agent Der-Yeghiayan
7 was on the stand concerning his personal beliefs or suspicions
8 about particular individuals at various points during his
9 investigation. I instruct you that what the agent believed or
10 suspected at any particular time, whether about the defendant
11 or others, is not evidence, and you are to disregard any such
12 testimony.

13 THE COURT: Can you repeat that. Pick up with
14 "personal beliefs and suspicions."

15 MR. TURNER: Sure. Personal beliefs or suspicions
16 about particular individuals at various points during the
17 investigation I instruct you that what the agent believed or
18 suspected at any particular time, whether about the defendant
19 or others, is not evidence, and you are to disregard any such
20 testimony.

21 THE COURT: Mr. Dratel.

22 MR. DRATEL: Yes. One is, I don't think it was
23 mentioned, the defendant. The witness said nothing about any
24 suspicions about the defendant. That's highlighting something
25 that wasn't in the testimony. So I don't think you should say

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Kiernan - direct

1 about the defendant because he didn't talk about that.

2 THE COURT: I actually think it was more helpful to
3 have it about it the defendant.

4 MR. TURNER: That's how it was intended.

5 MR. DRATEL: But it makes it seem like he somehow
6 suspected the defendant and they're supposed to ignore that,
7 but he never testified about that.

8 THE COURT: Fine. If you want it out, that's fine.

9 MR. DRATEL: Yes. And after that first sentence it's
10 sufficient. The personal beliefs and suspicions about other
11 people, that testimony should be ignored. You don't need to
12 repeat it. It should be streamlined.

13 THE COURT: I also intend to say, so that the jury is
14 not confused, I'm going to actually give the entirety. I don't
15 think that it's very long. It's going to take seconds: As to
16 other testimony from Mr. Der-Yeghiayan, you may consider it
17 during your deliberations and give it the weight that you
18 believe it deserves.

19 I don't want there to be any confusion and somehow
20 have the jury misunderstand that we're only striking a piece
21 and not all.

22 MR. DRATEL: Could you just add to that the
23 usual -- consistent with my general instructions at the end of
24 the case about credibility?

25 THE COURT: Yes.

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Kiernan - direct

1 MR. DRATEL: So that it doesn't --

2 THE COURT: I'll say consistent with all my
3 instructions at the end of the case.

4 MR. DRATEL: Right.

5 THE COURT: I'm not going to pull out one instruction.
6 I will give that instruction, all right --

7 MR. TURNER: Thank you, your Honor.

8 THE COURT: -- when they come back as a housekeeping
9 matter.

10 Is there anything else that we should go over before
11 we take our own brief break?

12 MR. HOWARD: Not from the government.

13 MR. DRATEL: No, your Honor.

14 THE COURT: Thank you. Let's take our own break.

15 (Recess)

16 (Continued on next page)

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Kiernan - direct

1 (In open court; jury present)

2 THE COURT: I had one housekeeping matter that I
3 wanted to go over with you folks. You heard testimony while
4 Mr. Der-Yeghiayan was on the stand regarding personal beliefs
5 or suspicions he may have had about particular individuals at
6 various points during his investigation. And I instruct you
7 that what the agent suspected about others isn't evidence and
8 should be disregarded.

9 Now, consistent with all of the instructions I'm going
10 to give you at the end of the case, there was other testimony
11 that Mr. Der-Yeghiayan provided which you may consider during
12 your deliberations and give it the weight that you deem that it
13 deserves. So it's the suspicions, all right? Thanks.

14 Mr. Howard, you may go ahead and proceed, sir.

15 MR. HOWARD: Thank you, your Honor.

16 THE COURT: I realize sometimes I have to think about
17 how what I'm saying reads in the transcript. When I use the
18 word "suspicions," I meant it's the suspicions that should be
19 disregarded. I hadn't finished that last sentence. Thank you.

20 Mr. Howard, you may proceed.

21 MR. HOWARD: Thank you.

22 Q. Mr. Kiernan, in your review of the defendant's laptop, did
23 you have files with reference to computer servers?

24 A. I did, yes.

25 Q. What is a computer server?

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Kiernan - direct

1 A. It's a machine that will actually host or run a website or
2 a database, something to that effect. It's the place that you
3 connect to when you actually go to the site, like Google has
4 servers behind it. When you go to Google's website, there's a
5 machine behind it that's actually producing the answers for
6 you. That's what a server basically does.

7 Q. How are computer servers identified on the Internet?

8 A. Through an IP address.

9 Q. What is an IP address?

10 A. An IP address is a numeric number used to actually get to a
11 computer, kind of like a phone number, how you call somebody on
12 your phone. It's a unique number associated with the server or
13 any computer any time you're on a computer, and it allows you
14 to actually get to that destination point.

15 Q. Mr. Kiernan, can you please flip to what has been marked
16 for identification purposes as Government Exhibit 264, please.

17 A. Sure. Okay.

18 Q. Do you recognize what this is?

19 A. I do.

20 Q. And what is it?

21 A. It's a file extracted from the defendant's computer.

22 Q. And what was the name of the file?

23 A. Servers.ODS.

24 Q. And what is an ODS file?

25 A. It's a -- this is a spreadsheet.

F1LGULB6

Kiernan - direct

1 Q. And according to the meta data, what was the date this file
2 was first saved on the defendant's computer?

3 A. 3/24/2013.

4 MR. HOWARD: The government offers Government
5 Exhibit 264 into evidence.

6 THE COURT: Mr. Dratel.

7 MR. DRATEL: Just the hearsay and Vayner.

8 THE COURT: Those objections are overruled and GX 264
9 is received.

10 (Government's Exhibit 264 received in evidence)

11 MR. HOWARD: Ms. Rosen, can you please publish the
12 zoomed-in highlighted version of this chart, please. Why don't
13 we look at the column titles, please. Let's try part of it at
14 the top.

15 Q. So here we have the columns are alias, type, host,
16 email/user, host, pass, username, pass, IP address, correct?

17 A. That is correct, yes.

18 Q. And the IP address what you just testified about being a
19 unique way that servers are identified on the Internet?

20 A. How they communicate on the Internet, yes.

21 MR. HOWARD: I've been advised the team is working on
22 getting a clearer version up.

23 THE COURT: Thank you. That or you may want to hand
24 around a piece of paper to the jury so they can actually see it
25 because I don't think that it's legible on the screen.

F1LGULB6

Kiernan - direct

1 Q. For the record, the highlighting, that's been added by the
2 government.

3 The file and the computer, Mr. Kiernan, did not
4 contain any highlights, correct?

5 A. No highlights, no.

6 MR. HOWARD: I'm going to get a copy to pass around to
7 the jury, if that's okay.

8 THE COURT: Yes. Do you want to maybe go on and come
9 back to this or does this fit right where you are now?

10 MR. TURNER: I think it takes a second to autofocus.
11 We should have it.

12 Q. Mr. Kiernan, are you able to read the titles of the columns
13 in the version that's in front of you?

14 A. Yes, I can see them in this version right here.

15 THE COURT: Could you pull down this for a second so I
16 can just see. He was referring to some columns before in the
17 dark. I see. Okay.

18 THE WITNESS: That's nice.

19 Q. The columns are alias, type, host, email/user, host pass,
20 username, pass, IP address, correct, Mr. Kiernan?

21 A. That's correct.

22 Q. And the IP address, as what you testified, is the unique
23 way that servers are identified on the Internet, correct?

24 A. That's correct, yes.

25 Q. And the other is the remaining columns are location,

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Kiernan - direct

1 expires, use, notes and there are some additional columns
2 further down the page, correct?

3 A. Correct.

4 Q. Now, to draw your attention to a couple that the government
5 has highlighted. There's one here that you can see, what is
6 the alias of this server I'm pointing to?

7 A. Bora.

8 Q. And what is the IP address that's listed for that server?

9 A. It's 193.107.86.49-53.

10 Q. And what -- does the chart describe the location of the
11 server?

12 A. Iceland.

13 Q. And what does it describe about the use of the server?

14 A. Market back end.

15 Q. I'd like to direct your attention to the other rows
16 highlighted here labeled "gala" under the alias.

17 A. Yes.

18 Q. What does it reflect about the IP address for this server?

19 A. 207.106.6.25.

20 Q. And what does it say about the host for the server?

21 A. Jtan.com.

22 Q. And what does it list as the email/user of this server?

23 A. Ggb.

24 Q. What does it list about the location of the server?

25 A. USA.

F1LGULB6

Kiernan - direct

- 1 Q. And what does it describe about the use of the server?
- 2 A. Backup.
- 3 Q. I just want to draw your attention to one more row that's
- 4 not highlighted, this one right here, there's Bora and then
- 5 there's one that says BTC, correct?
- 6 A. Yes.
- 7 Q. And there's an IP address?
- 8 A. Sure.
- 9 Q. What is the IP address?
- 10 A. 193.107.86.34.
- 11 Q. Where is that located?
- 12 A. Iceland.
- 13 Q. What is the described use for that server?
- 14 A. Live wallets, and then in parenthesis, archive wallets.
- 15 Q. Now, Mr. Kiernan, what is listed on the very next line as
- 16 the use of the following server? We haven't talked about this
- 17 server, but what is listed in the "use" column?
- 18 A. I'm sorry. For which?
- 19 Q. It's this one -- you just said live wallets?
- 20 A. Yes.
- 21 Q. What is the use of the following server?
- 22 A. Oh, the one after it?
- 23 Q. Yes.
- 24 A. The 178 -- that's smed has.
- 25 Q. In your review of Tor chats recovered from the defendant's

F1LGULB6

Kiernan - direct

1 computer, did you find any references to smed?

2 A. I did; yes.

3 MR. HOWARD: Ms. Rosen, can you please publish
4 Government Exhibit 231A, which has already been admitted into
5 evidence.

6 Q. And this chat is dated May 4, 2012, correct?

7 A. Yes.

8 MR. HOWARD: "Myself: can I get your thoughts on
9 something?

10 Smed: always

11 Smed: i am your slave :)

12 Myself: vm isolation vs. seperate physical machines
13 vs. jails, permissions, etc.

14 Smed: yeah

15 Smed: interesting stuff

16 Smed: the more moving parts you have, the more doors
17 you have to protect

18 Myself: "attack surface" yea?

19 Smed: yeah

20 Smed: i have been staring at the ceiling a lot over
21 this project and how to go about it

22 Myself: lots of ins and outs, lots of what have yous,
23 lots of strands in the 'ol duder

24 Myself: shead

25 Smed: i think a medium footprint is best.. it's

F1LGULB6

Kiernan - direct

1 impossible to be small.. you just cant do it. all paths lead
2 down to the same road.. you will have 1 or 2 servers under
3 constant attack by people you dont want getting in

4 Smed: so my job, as I see it, is to make sure that
5 when they do get in that you can get back up and running with
6 minimal damage

7 Smed: for example.. moving btc to cold storage offline
8 as soon as daily funding estimates are reached

9 Myself: prevent, detect, redeploy

10 Smed: yes!

11 Myself: patch

12 Myself: and on and on

13 Smed: yeah, exactly"

14 Just leave us on this page for a second.

15 Q. Mr. Kiernan, in the first line it says by smed, "For
16 example, moving BTC to cold storage offline as soon as daily
17 funding estimates are reached."

18 Do you see that?

19 A. I do. Yes.

20 Q. Do you have familiarity with bitcoin transactions?

21 A. I do.

22 Q. Do you have familiarity with what cold storage refers to in
23 the context of bitcoins?

24 MR. DRATEL: Object; foundation.

25 THE COURT: Why don't you build more foundation for

F1LGULB6

Kiernan - direct

1 that before he answers, before he answers that last question,
2 all right?

3 MR. HOWARD: Sure.

4 THE COURT: In connection with his work how has he
5 encountered cold storage, etc.

6 MR. HOWARD: Yes.

7 Q. In connection with your work as a computer scientist at the
8 FBI, have you had experience with bitcoin wallet files?

9 A. Yes, I have.

10 Q. Have you had experience in dealing with bitcoin wallet
11 files on computers you've examined?

12 A. Yes.

13 Q. Are you familiar with how bitcoins are stored?

14 A. I am.

15 Q. Are you familiar with terminology used to refer to various
16 bitcoin wallets and where they are stored?

17 A. Yes.

18 THE COURT: Go ahead.

19 Q. So do you -- are you familiar with what the phrase cold
20 storage means in reference to bitcoins?

21 A. Yes.

22 Q. And what does it refer to?

23 A. Sure. So when you're running a bitcoin wallet, you have
24 a -- it's a live, working device, not device but software.

25 It's -- what you do is, when you take your wallet from the live

F1LGULB6

Kiernan - direct

1 working machine, basically you move it offline; you take it and
2 copy it someplace else so the computer doesn't have access to
3 it, others don't have access to it and the wallet is basically
4 in a cold storage state. You can't make changes to it at that
5 point.

6 THE COURT: You move the wallet off the computer?

7 THE WITNESS: You can. You just move it to a place
8 that it's not working in that program anymore. So it's not
9 accessible to the actual coins, to the actual program running.

10 THE COURT: I see.

11 You may continue.

12 MR. HOWARD: Ms. Rosen, would you please publish
13 Government Exhibit 231B, which has already been admitted into
14 evidence.

15 Q. And this chat is dated May 4, 2012. Is that correct?

16 A. Yes. Sorry.

17 MR. HOWARD: "Smed: i should be pushing you some code
18 tonight or tomrrow

19 Smed: i'm up against multiple deadlines due to travel
20 schedule

21 Myself: stress!

22 Smed: :)

23 Smed: i'm going to finish mods to your login function
24 hopefully tonight

25 Myself: hey smed, run into some trouble with the code

F1LGULB6

Kiernan - direct

1 you mentioned yesterday?

2 Smed: what code did you have problems with?

3 Myself: none, just wondering if you had trouble since
4 you said you'd push me some by now, but it sounds like you are
5 just busy getting out of town

6 Smed: actually.. i should have something in a bit"

7 (Pause)

8 MR. HOWARD: I'm sorry. I didn't realize it was done.

9 Ms. Rosen, can you please publish Government
10 Exhibit 231C, which has already been admitted into evidence.

11 Q. This chat begins on May 15, 2012, is that correct,
12 Mr. Kiernan?

13 A. Yes.

14 MR. HOWARD: "Myself: hey, got a minute?"

15 Smed: always

16 Myself: thanks, just wanted to check in with you. can
17 you give me a quick rundown of where we've been, where we are,
18 where we are going in the development process? I'm getting a
19 bit disoriented as new things have come up since we began and I
20 don't have anything tangible to orient around.

21 Smed: Sorry about that. My bad completely

22 Myself: no worries, we don't exactly have the most
23 freedom communication wise

24 Smed: exactly!! I'm glad you see it.. Normally, my
25 development process is quite open. The nature of the firewall

F1LGULB6

Kiernan - direct

1 between you and the rest of the world has left a large gap in
2 my normal way of doing things and my habits have not been
3 suffificantly corrected to make that extra step

4 Smed: Where we are..

5 Smed: We have a fully functional "escrow management
6 system" in it's most raw form

7 Smed: it moves BTC between users, in both roles as
8 shoppers and merchants

9 Smed: admin/overlord role has the power to do anything
10 it wants as far as approving or rejecting transactions

11 Smed: this 'system' in it's current form is going
12 through some fine tooth comb work right now to ensure that
13 nothing has been missed when it comes to decimal places,
14 confirmations etc

15 Smed: existing test results have shown a high degree
16 of accuracy in regards to all transactions

17 Smed: i have not yet been able to cheat the system,
18 however those final tests (trying to cheat) have not been
19 marked as complete yet because we have not let cimon loose on
20 it ;)

21 Smed: That side of the project is Team 1

22 Smed: Team 2 is working on the more public side of the
23 shopping system

24 Smed: the vendor management piece

25 Smed: I have had several set backs and delays in the

F1LGULB6

Kiernan - direct

1 vendor part and that side was behind for about 3 weeks due to
2 the moron factor

3 Smed: however, team 2 came through last week with part
4 2 of 3

5 Smed: really where i'm at is this..

6 Smed: I have replaced your entire foundation.. i
7 probably have a little bit more efficient approach only because
8 hindsight is 20/20

9 Myself: always good to get a fresh set of eyes on a
10 problem

11 Smed: exactly

12 Smed: from what I have seen.. if you did it right now
13 i dont think you would change much from what i'm doing

14 Smed: i've focused a lot on abstraction of the
15 concepts

16 Smed: making each one of them a bit more accessable
17 individually

18 Smed: but the concepts are yours either way

19 Myself: well, I'm not one to hold your feet to the
20 fire on estimates, I know you are working hard, but are we
21 behind our intial estimate at this point?

22 Smed: I'm going to be testing the latest submission
23 tonight and tomorrow.. the order management stuff.. will know
24 more about that side afterwards

25 Smed: I am a little behind on part, but some of the

F1LGULB6

Kiernan - direct

1 additional code work (ykey etc) will allow me to catch up

2 Myself: how does additional work equal catching up?

3 Smed: because i'm bringing in more people to help me

4 Myself: ahh

5 Smed: Just so it's said.. I have lots of motivation to

6 get this done to where I stay in your good graces"

7 Q. Would you flip to what has been marked as Government

8 Exhibit 254 in your binder for identification purposes.

9 A. Okay.

10 Q. Do you recognize this exhibit?

11 A. I do.

12 Q. What is it?

13 A. It's a file pulled from the defendant's laptop.

14 Q. What was the name of the file?

15 A. Interview_questions.txt.

16 Q. And what was the location of the file?

17 A. This was found in the

18 home/frosty/backup/reference/directory.

19 Q. And on what date was this file last saved on the

20 defendant's computer?

21 A. 6/5/2013.

22 Q. And when was it first created on the defendant's computer?

23 A. Also 6/5/2013.

24 MR. HOWARD: The government offers Government

25 Exhibit 254 into evidence.

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Kiernan - direct

1 MR. DRATEL: Prior objections, your Honor.

2 THE COURT: Those objections are overruled. GX 254 is
3 received.

4 (Government's Exhibit 254 received in evidence)

5 MR. HOWARD: Zoom in on the top, Ms. Rosen.

6 Q. And I'm sorry, the name of the file was
7 interview_questions.txt, right?

8 A. Correct, yes.

9 MR. HOWARD: "What kind of computer did you use
10 laptop/desktop? What model and how old is it? What OS do you
11 use? Do you use whole disk encryption? Do you use a Tor
12 bridge? Do you use a VPN or proxy? Who in your life knows of
13 your involvement with Silk Road? Does anyone IRL know you are
14 a mod on the forums? Does anyone (IRL or here) know I've
15 offered you a promotion? How long will it take you to wrap up
16 your other responsibilities and begin training? Are there any
17 major situations in your life that might pull you away from
18 your responsibilities here on short notice (health, family,
19 etc.)? Do you have an income stream outside of SR? How do you
20 intend to launder your earnings?"

21 Q. Mr. Kiernan, could you please flip to what's been marked as
22 Government Exhibit 270 in your binder for identification
23 purposes.

24 A. Yes.

25 Q. And do you recognize this exhibit?

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Kiernan - direct

1 A. I do.

2 Q. And what is it?

3 A. Again, a file extracted from the defendant's laptop.

4 MR. DRATEL: Objection, your Honor. Withdrawn.

5 THE COURT: All right. Proceed, Mr. Howard.

6 Q. And what was the name of this file?

7 A. 1.text.

8 Q. Where was it located in the defendant's computer?

9 A. Sure. This was under the
10 home/frosty/documents/archive/documents/op/prof/sec/security/
11 Arto directory.

12 MR. HOWARD: The government offers Government
13 Exhibit 270.

14 MR. DRATEL: Same objections as prior.

15 THE COURT: All right. Those objection are overruled.
16 GX 270 is received.

17 (Government's Exhibit 270 received in evidence)

18 MR. HOWARD: Ms. Rosen, can you just zoom in on the
19 top section maybe down to about there. It starts "On Sep. 15,
20 2009, at 17:01, Ross Ulbricht wrote," and now there's a section
21 with the little caret signs:

22 "Dear Arto. Thank you for being open to my questions.
23 I don't want to bother you too much, but I find this topic
24 fascinating and very applicable. The impression I get is that
25 the technology is getting close but not quite there yet."

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Kiernan - direct

1 Q. What does the sections that is marked with the caret signs
2 in this document appear to be?

3 A. An email.

4 Q. And what does the section that is marked with these little
5 caret signs appear to be?

6 MR. DRATEL: Objection as to drawing conclusions.

7 THE COURT: Why don't you describe whether in your
8 experience in your job you've seen documents which have a
9 format similar to this.

10 THE WITNESS: Okay. Yes, I've seen emails or
11 documents with this type of format where it has the -- this
12 conversation split between basically a "from" and a "to," like
13 a thread of emails or a thread that keeps getting included on
14 your emails before.

15 This is based in a text file as opposed to a real
16 email would look like from your email clients, but it's the
17 appearance from that same type of format. So to me, it looks
18 like an email conversation and it's divided by the greater-than
19 signs.

20 Q. What does the greater sign portion refer to?

21 A. That would be the person -- that would be, in this case, it
22 would be what Ross Ulbricht wrote in his email.

23 MR. HOWARD: Now, Ms. Rosen, I just want to read only
24 the parts that have the carets by it.

25 "Dear Arto. Thank you for being open to my questions.

F1LGULB6

Kiernan - direct

1 I don't want to bother you too much but I find this topic
2 fascinating and very applicable. The impression I get is that
3 the technology is getting close but not quite there yet. What
4 do you think of Tor browsing and Tor hiding services? Is it as
5 anonymous as they say it is? The hidden services part sounds
6 interesting, but I have been unsuccessful in actually accessing
7 any of the existing ones yet including eCache."

8 Ms. Rosen, can you zoom in on the bottom part and
9 highlight the section with the carets, please.

10 "With Pecunix, I understand it is a goldbacked digital
11 currency. Can I anonymously and securely deposit funds? Can I
12 anonymously and securely withdraw funds in the form of fiat
13 currency or gold? I can see how it would work as a closed
14 system, but is there a way to integrate it with the rest of the
15 economy securely?

16 "I would love to be able to set up an online
17 storefront that couldn't be traced back to me (Tor hidden
18 services?) where my customers could buy my products (revealing
19 their identity only to me) and transferring funds to me
20 anonymously and securely (Pecunix?). I suppose this is the
21 ideal. What are the key pieces that are currently missing that
22 would make this a reality. Once again, I appreciate your
23 willingness to discuss these matters with me."

24 Q. Mr. Kiernan, would you please turn to what's been marked
25 for identification purposes as Government Exhibit 280 in your

F1LGULB6

Kiernan - direct

1 binder.

2 A. Okay.

3 Q. Do you recognize this exhibit?

4 A. I do.

5 Q. And what is that?

6 A. A file extracted from the defendant's computer.

7 Q. And where was it located on the defendant's computer?

8 A. This was found in the
9 home/frosty/backup/reference/directory.

10 Q. What was the name of the file?

11 A. XMPP.txt.

12 MR. HOWARD: The government offers Government
13 Exhibit 280.

14 THE COURT: Mr. Dratel.

15 MR. DRATEL: Hearsay and Vayner.

16 THE COURT: All right. Those objections are overruled
17 and GX 280 is received.

18 (Government's Exhibit 280 received in evidence)

19 MR. HOWARD: "1. download and install pidgin."

20 And then there's a weblink to add Pidgin.

21 "2.10.7.exe"

22 2. close pidgin

23 3. download and install off-the-record (OTR)

24 4. start pidgin

25 5. enable OTR from the plugins menu

F1LGULB6

Kiernan - direct

1 6. make sure Tor is running

2 7. create a new account

3 8. basic settings

4 8.a. protocol: XMPP

5 8.b. username: ***

6 8.c. domain: pi5mmj2ronhutyxv.onion

7 8.d. password: ***

8 9. advanced"

9 Some more instructions 9a through 10c.

10 "11. add the account. if it doesn't connect, double

11 check the socks port

12 Tor is listening on and change step 10.c. accordingly

13 13. add buddy "dread@pi5mmj2ronhutyxv.onion". if I'm

14 online we'll connect. There are a few more steps to finalize

15 OTR, but those can be done once we're chatting."

16 Ms. Rosen, can you please move this to the left-hand

17 side of the screen and publish Government Exhibit 127 on the

18 right side of the screen, which is already in evidence, which

19 is a forum post from the Dread Pirate Roberts -- sorry -- a

20 private message from the Dread Pirate Roberts. Can you focus

21 on actually on the instructions part, the text.

22 Q. Mr. Kiernan, how does the instructions that appear in the

23 private message from Dread Pirate Roberts on the right side

24 compare with the document you recovered from the defendant's

25 computer?

F1LGULB6

Kiernan - direct

1 A. They're identical except for the username and the password
2 fields on the right-hand side of the screen have been filled
3 in.

4 Q. Mr. Kiernan, can you please flip to what's been marked as
5 Government Exhibit 271 in your binder.

6 A. Okay.

7 Q. Do you recognize this exhibit?

8 A. I do.

9 Q. And what is it?

10 A. It's a file extracted from the defendant's computer.

11 Q. And what was the date that the file was last modified?

12 A. 8/21/2009.

13 Q. And what was the date that this file was saved to the
14 defendant's computer?

15 A. 5/8/2012.

16 Q. Is this the date that you described previously that there
17 were a lot of files that were saved on the computer on that
18 date?

19 A. Yes.

20 MR. HOWARD: The government offers Government
21 Exhibit 271.

22 MR. DRATEL: Same objections as previously.

23 THE COURT: All right. Those objections are
24 overruled. GX 271 is received.

25 (Government's Exhibit 271 received in evidence)

F1LGULB6

Kiernan - direct

1 THE COURT: "The construction and operation of
2 clandestine drug laboratories, second edition. Revised and
3 expanded, Jack B. Nimble." It says Jelly PDR version.

4 The second page, can we zoom in on the table of
5 contents. And I'm just going to read the section contents:
6 "Preface to second edition, the risks, security, scanners and
7 monitoring equipment, safety, location and facilities, when to
8 stop and how, glassware, heating, stirring and mixing, fume
9 hoods, miscellaneous equipment, scaling up, procurement of
10 suspicious items, tablets, capsules, and other packaging
11 materials, computers."

12 "Appendix one is more equipment; appendix two, watched
13 chemicals; appendix three, watched laboratory equipment;
14 appendix four, legitimate businesses that use laboratory
15 equipment; appendix five, common products and the valuable
16 chemicals they contain; and appendix six, recommended reading."

17 Ms. Rosen, can you flip through some of the pages.
18 Don't spend too much time with it.

19 (Continued on next page)
20
21
22
23
24
25

F1ldulb7

Kiernan - direct

1 MR. HOWARD: OK. Ms. Rosen, you can take it off.

2 BY MR. HOWARD:

3 Q. Mr. Kiernan, could you please flip to what has been marked
4 as Government Exhibit 272 in your binder.

5 A. OK.

6 Q. Do you recognize this exhibit?

7 A. Yes, I do.

8 Q. And what is it?

9 A. A file extracted from the defendant's computer.

10 Q. And what is the date this file was last changed?

11 A. 9/21/2013.

12 Q. What does the metadata reflect about the date that the file
13 was first saved in the defendant's computer?

14 A. 9/24/2013.

15 MR. HOWARD: The government offers Government Exhibit
16 272.

17 MR. DRATEL: The same objections, your Honor.

18 THE COURT: All right. GX272 is received. The
19 objections are overruled.

20 (Government's Exhibit 272 received in evidence)

21 MR. HOWARD: Ms. Rosen, publish Government Exhibit
22 272. Let's zoom in on the text on the back.

23 "Silk Road proof September 20 DPR," and then a heart
24 symbol.

25 Ms. Rosen, you can take that down.

F1ldulb7

Kiernan - direct

1 Q. Mr. Kiernan, could you please flip to what has been marked
2 as Government Exhibit 275 in your binder?

3 A. OK.

4 Q. Do you recognize what this exhibit is?

5 A. I do.

6 Q. What is it?

7 A. A file extracted from the defendant's computer.

8 Q. What is the title of the file?

9 A. "Ops.txt."

10 Q. Where was the file located in the defendant's computer?

11 A. This was in the "home/frosty/backup/reference by me"
12 directory.

13 MR. HOWARD: The government offers Government Exhibit
14 275.

15 MR. DRATEL: The same as before, your Honor.

16 THE COURT: All right. Those objections are
17 overruled. Government Exhibit 275 is received.

18 (Government's Exhibit 275 received in evidence)

19 MR. HOWARD: We'll publish this at a later time, your
20 Honor.

21 THE COURT: All right.

22 BY MR. HOWARD:

23 Q. Mr. Kiernan, could you please flip to what has been
24 premarked as Government Exhibits 290 and 291 in your binder.

25 A. 290 and 291, OK.

F1ldulb7

Kiernan - direct

- 1 Q. Do you recognize these exhibits?
- 2 A. I do.
- 3 Q. And what are they?
- 4 A. Files extracted from the defendant's computer.
- 5 Q. And what is the name of Government Exhibit 290, the name of
- 6 the file?
- 7 A. 290, yes. "Dominica-economic-citizenship2011.pdf.
- 8 Q. And where was it located on the defendant's computer?
- 9 A. This was in the "home/frosty/backup/reference/
- 10 politics/Dominica" folder.
- 11 Q. And what is the title of Government Exhibit 291, the title
- 12 of the file?
- 13 A. Oh, "Disclosure form."
- 14 Q. And where was that located on the defendant's computer?
- 15 A. The location, file location was in "home/frosty/backup/
- 16 reference/politics/dominica" folder.
- 17 Q. Is that the same folder that Government Exhibit 291 was
- 18 found in?
- 19 A. Yes.
- 20 Q. What are the dates -- what is the date that Government
- 21 Exhibit 291 was first saved to defendant's computer?
- 22 A. 5/1/2012.
- 23 Q. And how about Government Exhibit 291?
- 24 A. I'm sorry, that was 291.
- 25 Q. So to be clear, let's go to 291 --

F1ldulb7

Kiernan - direct

1 A. I'm sorry, 291, yes.

2 Q. What date was that?

3 A. 5/8/2012.

4 Q. How about the other one, 290?

5 A. Sorry about that. 290, 5/8/2012.

6 MR. HOWARD: The government offers Government Exhibits
7 290 and 291.

8 MR. DRATEL: Objection on 403, hearsay, Vayner, and
9 that is it.

10 THE COURT: All right. DXs -- sorry, Government
11 Exhibits 290 and 291 are received. The objections are
12 overruled.

13 (Government's Exhibits 290 and 291 received in
14 evidence)

15 MR. HOWARD: Thank, your Honor.

16 Ms. Rosen, could you please publish Government Exhibit
17 290.

18 Q. Mr. Kiernan, this is the first page of the document that is
19 depicted on the screen, correct?

20 A. Yes.

21 Q. Here it says "Commonwealth of Dominica Economic Citizenship
22 Program, Guide of Reference 2011."

23 MR. HOWARD: Ms. Rosen, could you add the highlights
24 to the document. Let's zoom in on the bottom here.

25 "Benefits of passport of the Commonwealth of Dominica.

F1ldulb7

Kiernan - direct

1 Dominica recognizes dual citizenship, and you are not required
2 to renounce your other citizenships. Besides that, Dominica
3 does not notify authorities of your country of residence or
4 citizenship on your Dominican citizenship."

5 "Dominican citizenship is the most affordable option
6 and the one quicker to obtain. It requires a \$75,000 U.S.
7 donation for a single option and \$100,000 U.S. for a family
8 option, and normally takes 2 to 5 months."

9 Could we now publish 291, please? Zoom in on the top.

10 It's titled, "Disclosure Form - Individual."

11 Q. And, Mr. Kiernan, this was found in the same folder you
12 said as the guide that we just saw, correct?

13 A. Yes, the same folder.

14 MR. HOWARD: Ms. Rosen, could you zoom back out. Can
15 you zoom in on the name, this box here.

16 Last name Ulbricht, first name Ross, middle names
17 William. And then we have the beginning of a Social Security
18 number on the last line.

19 Could you go to the next page, please.

20 Zoom in on this additional personal information. OK.

21 Q. I'm not going to read all of this in, but we have fields
22 including date of birth, place of birth, names of family
23 members, and other identifiers; correct, Mr. Kiernan?

24 A. Correct.

25 MR. HOWARD: Ms. Rosen, could you slide down just a

F1ldulb7

Kiernan - direct

1 little bit on that page.

2 Q. And here you see a cell phone number that's been redacted,
3 an email address, "rossulbricht@gmail.com," correct?

4 A. Correct.

5 MR. HOWARD: Zoom out, Ms. Rosen.

6 Down -- can we just zoom in on this bottom section,
7 please.

8 Q. "Residences: (List all residences) (other than your
9 current) you have had for the last 10 years."

10 One from 9/2009 to 5/16/2012. There is an Austin,
11 Texas reference. And then lower than that there is a July 2006
12 to September 2009 State College, Pennsylvania, reference.
13 Correct?

14 A. Correct.

15 MR. HOWARD: Can you go to the next page, Ms. Rosen.
16 Just keep on going. Can you zoom in on the "Education" section
17 here?

18 Q. "Education: "List all academic and trade schools
19 attended." I'm not going to read all of it, but
20 College/University, University of Texas at Dallas from August
21 2002 through May 2006, and then Pennsylvania State University
22 from July 2006 through September 2009.

23 At the bottom we have "List All Academic Degrees
24 Conferred." "BS Physics, UT Dallas, May 2006; M.S. Materials
25 Science, Penn State University May 2009."

F1ldulb7

Kiernan - direct

1 On the next page, the columns are "Name of Employer,
2 Address of Employer, Position Held, Dates, Month and Year, and
3 reason for leaving."

4 And the first row is "Self (IT consulting)," and the
5 reason for leaving, it says "Current" there, right?

6 A. Yes, it does.

7 Q. And what is the time period that he has been self-employed,
8 according to this column -- row, I'm sorry?

9 A. Sure. March 2011 to the present.

10 Q. And what is his previous employment listed as?

11 A. Good Wagon Books.

12 Q. What are the dates that are listed for his employment at
13 Good Wagon Books?

14 A. November of 2009 to May of 2011.

15 Q. And what is listed as the reason for living -- for leaving?

16 A. "Business was liquidated."

17 MR. HOWARD: Ms. Rosen, could you please move to the
18 last page of this exhibit. And then right here above the
19 signature line. Above it, please. Thank you.

20 Q. The last paragraph: "I authorize investigation of all
21 statements contained herein and the references and employers
22 listed above to give you any and all information concerning my
23 previous employment and any pertinent information they may
24 have, personal or otherwise, and release the company conducting
25 the investigation and the government of Dominica from all

F1ldulb7

Kiernan - direct

1 liability for any damage that may result from utilization of
2 such information."

3 Mr. Kiernan, can you please flip in your binder to
4 what has been marked for identification purposes as Government
5 Exhibit 295.

6 A. OK.

7 Q. Do you recognize this exhibit?

8 A. I do.

9 Q. And what is it?

10 A. A file extracted from the defendant's computer.

11 Q. And what date was this file first saved on the defendant's
12 computer, according to the metadata?

13 A. 5/8/2012.

14 MR. HOWARD: The government offers Government Exhibit
15 295.

16 THE COURT: Any objection?

17 MR. DRATEL: Yes, your Honor. Hearsay and Vayner.

18 THE COURT: All right. Those objections are
19 overruled, and Government Exhibit 295 is received.

20 (Government's Exhibit 295 received in evidence)

21 BY MR. HOWARD:

22 Q. So, Mr. Kiernan, how many pages is this exhibit?

23 A. Two.

24 Q. And so what is depicted right here on the -- is this
25 another screenshot from FTK Imager?

F1ldulb7

Kiernan - direct

1 A. Yes.

2 Q. And where was this file located?

3 A. This was in the "home/frosty/documents/archive/documents/op
4 prof sek/security/aliases/Richard Page" folder.

5 MR. HOWARD: Can you zoom out please, Ms. Rosen, and
6 can you zoom in on the top left-hand corner here.

7 Q. Is this an image showing -- another image showing the
8 directory structure of the defendant's computer?

9 A. Yes.

10 MR. HOWARD: And can you zoom in on this part,
11 Ms. Rosen.

12 Q. And so is the directory that you just referenced as to
13 where the file was located reflected in this?

14 A. Yes.

15 Q. Can you just point it out?

16 A. Sure. The name of the folder is "Richard Page."

17 Q. That was in a folder called "Aliases," correct?

18 A. Correct.

19 Q. Which is, in turn, in a folder called "security," correct?

20 A. That's correct.

21 Q. What does the metadata of the document reflect about the
22 date that this file was first saved to the defendant's
23 computer?

24 A. 5/8/2012.

25 Q. Is that this reference right by the "Date Created" field?

F1ldulb7

Kiernan - direct

1 A. Yes.

2 Q. And earlier you testified that there were a lot of files
3 with that date on them?

4 A. Yes.

5 MR. HOWARD: Can you zoom out, please.

6 Q. What is contained on the bottom right-hand corner of this
7 exhibit? What does this part of the screenshot represent?

8 A. Oh, the contents of the file, what was in the file. It is
9 a viewer for that.

10 Q. So we have: "Name: Richard Page. DOB: 5/13/1977.
11 Married. Address, or "Addr:" 11640 Gary Street, Garden Grove,
12 California 92840, United States. Phone is 714-620-7320. PGP
13 pass phrase, and then a redacted area there.

14 Is there text in that section that is redacted?

15 A. Yes.

16 Q. And down here we see the word KalyHost, AutoVPS, Silk Road,
17 staff@SilkRoad.org, correct?

18 A. Correct.

19 MR. HOWARD: Ms. Rosen, can you please move this to
20 the left-hand part of the screen.

21 Could you publish Government Exhibit 150 on the
22 right-hand side, which has already been admitted into evidence,
23 which is the who.is information for silkroadmarket.org. Can
24 you just zoom in here.

25 Actually, a little higher, please. Right there.

F1ldulb7

Kiernan - direct

1 Actually, you were in the right place. That is my fault.

2 And a little higher. Just a little bit.

3 Q. So here it says, "Domain history info for
4 silkroadmarket.org," right?

5 A. Correct.

6 MR. HOWARD: Could you scroll down, Ms. Rosen. Here
7 it says -- I'm sorry. Pause it for a second.

8 Q. "Old registrar information, March 12, 2011," correct?

9 A. Yes.

10 Q. Could you go down Ms. Rosen.

11 And this says -- can you focus on this little block
12 right here? Right here.

13 Here it says: "Registrant contact information. Name:
14 Richard Page. Address: 111640 Gary Street. City: Garden
15 Grove. State: California. Zip: 92840. Country: U.S.
16 Phone: +1.7146207320. And email: Richardpage@gawab.com.

17 Mr. Kiernan, how does the information on the who.is
18 lookup compare to the information on the file that was
19 recovered from the defendant's computer?

20 A. It's the same.

21 MR. HOWARD: Ms. Rosen, could you please publish
22 Government Exhibit 212, which has already been admitted into
23 evidence.

24 Q. Mr. Kiernan, what does Government Exhibit 212 depict?

25 A. 212 is the file structure of the defendant's laptop, of the

F1ldulb7

Kiernan - direct

1 "var/www/market" directory.

2 Q. Let me zoom in over here. Is this upper left-hand window
3 again the file structure of the defendant's computer?

4 A. Yes.

5 Q. And so you are talking about the var/www directory,
6 correct?

7 A. I am, yes.

8 Q. Is this one of the folders you are referring to?

9 A. Correct, that is one of the folders.

10 Q. So what is -- you have experience with Linux-based
11 computers, correct?

12 A. I do, yes.

13 Q. Approximately how many have you analyzed in the course of
14 your career?

15 A. Hundreds.

16 Q. So what kind of files are stored in var/www directory on a
17 computer running Linux?

18 A. Typically website files, Web server files.

19 Q. And what can such website files found on a laptop in this
20 kind of directory be used for?

21 A. For maybe backup there or to test out, to try --

22 MR. DRATEL: Objection. Objection.

23 THE COURT: Well, apart from this document, your
24 general experience, why don't you discuss that.

25 THE WITNESS: Sure. Usually that directory structure

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Kiernan - direct

1 on a Linux machine will house or hold Web files for the actual
2 Web server working. So for this you can run it to practice, to
3 test, to backup a website, or things like that would generally
4 appear in this file structure.

5 Q. Did you review the files in this directory?

6 A. I did.

7 Q. And did this directory contain files associated with any
8 website?

9 A. Yes, they did.

10 Q. And what website was that?

11 A. The Silk Road website.

12 Q. Mr. Kiernan, could you please flip in your binder to what's
13 been marked for identification purposes as Government Exhibits
14 268 and 269.

15 (Pause)

16 A. OK.

17 Q. And what are these exhibits?

18 A. These are files extracted from the defendant's laptop.

19 Q. And from what part of the laptop?

20 A. This was from the "var/www/market/public" directory.

21 Q. And you testified that this is a part of a Linux system in
22 which Web page files could be stored, correct?

23 A. Sure. Yeah.

24 Q. Did you take these screenshots?

25 A. I did, yes.

F1ldulb7

Kiernan - direct

1 MR. HOWARD: The government offers Government Exhibits
2 268 and 269.

3 THE COURT: Mr. Dratel.

4 MR. DRATEL: I am just going back to the page, your
5 Honor.

6 (Pause)

7 On Vayner, your Honor.

8 THE COURT: All right. That objection is overruled.
9 Government Exhibits 268, 269 are received.

10 (Government's Exhibits 268, 269 received in evidence)

11 THE COURT: There wasn't an objection noted pretrial,
12 but we will go over that at the break.

13 MR. HOWARD: Ms. Rosen, would you please publish
14 Government Exhibit 268.

15 Q. So is this another screenshot from FTK Imager?

16 A. It is.

17 Q. And as with the other ones we've seen, is the contents of
18 the file contained in the bottom right-hand corner?

19 A. Yes.

20 Q. What is the title of this file? What is it called?

21 A. This is called "closed.PHP."

22 Q. What does "php" mean?

23 A. It's a scripting file or files that can sit on a server
24 running php software. Basically, they are Web pages. That is
25 how they look on the machine hosting that website.

F1ldulb7

Kiernan - direct

1 MR. HOWARD: And, Ms. Rosen, can you zoom in on the
2 bottom right-hand corner.

3 Q. This is the one that contains the contents of the file,
4 correct?

5 A. Yes.

6 Q. And here it says, "Silk Road anonymous market."

7 Do you recognize what this is, what I am pointing to
8 on the screen?

9 A. Yes. That is the Silk Road logo.

10 Q. It says here: "Silk Road is down for maintenance. More
11 information can be found on the forum here," then a link,
12 correct?

13 A. Correct.

14 Q. And the link includes a dot-onion address, isn't that
15 correct?

16 A. That is correct.

17 MR. HOWARD: Ms. Rosen, would you please publish
18 Government Exhibit 269, please.

19 Q. Is this another file that was recovered from the part of
20 the computer used to store website files?

21 A. Yep. Ah, yes.

22 Q. And what was the names of this file?

23 A. This was "dpr_key.php."

24 Q. And this is also a website code -- it is a php file?

25 A. Right, it is a php file.

F1ldulb7

Kiernan - direct

1 MR. HOWARD: Could you zoom in on the bottom
2 right-hand corner of the screenshot, please.

3 Q. And this, again, this part of the FTK Imager shows the
4 contents of the file, correct?

5 A. Yes, it does.

6 Q. It says: "The following PGP key can be used to verify
7 messages signed by the Silk Road administrator Dread Pirate
8 Roberts. Begin PGP public key block," a bunch of text here and
9 then "End PGP public key block."

10 What is a PGP key, Mr. Kiernan?

11 A. It's a key to enable -- to verify or to enable people to
12 share documents back and forth. The keys basically lock the
13 message that's being shared. To actually read it, you share
14 your public key with other people so they can open or verify
15 things that you get from them.

16 MR. HOWARD: Ms. Rosen, can you just move this to the
17 left-hand side of the screen and just focus on the actual
18 contents.

19 And on the right side, can we please publish
20 Government Exhibit 133, which is a screenshot taken by Special
21 Agent Der-Yeghiayan of the Silk Road website.

22 And can we zoom in on the text here. Above that,
23 please.

24 "The following PGP key can be used to verify messages
25 signed by the Silk Road administrator Dread Pirate Roberts.

F1ldulb7

Kiernan - direct

1 Begin PGP public key block." A bunch of text. And "End PGP
2 public key block."

3 Q. Mr. Kiernan, how did this file on the defendant's laptop
4 compare to this page from the Silk Road website?

5 A. They were the same.

6 Q. Now, what kind of -- is this a public key or private key,
7 Mr. Kiernan?

8 A. These are public keys.

9 Q. Did you find in your analysis of the defendant's computer,
10 did you find a corresponding PGP private key?

11 A. I did, yes.

12 Q. Mr. Kiernan, would you please flip in your binder to what
13 has been marked for identification purposes to Government
14 Exhibit 296.

15 (Pause)

16 Do you recognize what this is?

17 A. Yes.

18 Q. And what is it?

19 A. This is the file extracted from the defendant's computer.
20 It's the Silk Road private key.

21 Q. How many pages is this exhibit?

22 A. Two.

23 Q. What is the second page of this exhibit?

24 A. The second page is when I imported that key into a
25 different program, a PGP -- a GPG program to get the statistics

F1ldulb7

Kiernan - direct

1 of that file.

2 Q. Mr. Kiernan, is that a screenshot that you took?

3 A. Oh, I'm sorry. Yes, it is. Yes.

4 MR. HOWARD: The government offers Government Exhibit
5 296.

6 MR. DRATEL: Objection. Vayner and hearsay.

7 THE COURT: All right. Those objections are
8 overruled. GX296 is received.

9 (Government's Exhibit 296 received in evidence)

10 BY MR. HOWARD:

11 Q. So, Mr. Kiernan, is this another screenshot taken from FTK
12 Imager?

13 A. It is, yes.

14 Q. What is the name of the directory that's depicted here on
15 the upper -- the files, what directory are they from?

16 A. The "Home/frosty/backup/keys" directory.

17 MR. HOWARD: And could you focus in on the top
18 right-hand window, Ms. Rosen.

19 Q. These are the files that are located in that directory?

20 A. Yes.

21 Q. And where did you find the corresponding private key for
22 the Dread Pirate Roberts?

23 A. In this directory.

24 Q. And which file was it?

25 A. SilkRoad.asc."

F1ldulb7

Kiernan - direct

1 Q. Can we please flip to page second -- page 2 of the exhibit.

2 Can you explain what is depicted in this screenshot?

3 A. Yes. So this was the gpg software where I imported the
4 keys from that other public -- from that file, from the
5 defendant's laptop.

6 Q. What is gpg software?

7 A. It's software to trade -- not trade, but it's software used
8 to create keys, pass out keys. So when I sign my stuff, my
9 mails or my documents, I can give you the other key to actually
10 verify it is my stuff.

11 MR. HOWARD: And so can we zoom in on this window
12 here, Ms. Rosen, the whole window. If you could do the whole
13 window.

14 Q. And so what does this depict, Mr. Kiernan?

15 A. That depicts the opening of that ASC file that you saw
16 before, and it shows the name of the key, the Silk Road, the
17 email associated with the key, the staff@silkroadmarket.org.
18 And then if you go down, the date that the key was created.
19 And if you continue down, it says "key." And right next to it
20 it has "secret and public key" contained within that file.

21 Q. So what does "secret and public key" mean?

22 A. So I could build -- well, it contains both keys. I could
23 sign stuff and open stuff using this and verify stuff using
24 these keys.

25 Q. If this wasn't a private key, if this was a public key,

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Kiernan - direct

1 what would it say there?

2 A. Just have the public -- "secret" would be off there.

3 Public key would be the only thing you could see there.

4 Q. What was the date this private key was created?

5 A. April 1st, 2011.

6 Q. And were you able to verify that this matched with the
7 public key?

8 A. I was able to extract the public key from it, yes.

9 Q. And did it correspond to the public key for the Dread
10 Pirate Roberts that you found on the Silk Road website and the
11 on the defendant's computer?

12 A. Yes.

13 THE COURT: Mr. Howard, you've got about eight minutes
14 left. All right? Just to give you a sense of timing.

15 MR. HOWARD: For the day, your Honor?

16 THE COURT: For the day.

17 MR. HOWARD: I think there would be a few more
18 questions, and then it would be an appropriate time for a
19 natural breaking point, if that works.

20 THE COURT: Absolutely, I want you to use the time or
21 for sure. I just wanted to give you a sense of what you've got
22 left.

23 MR. HOWARD: Thank you, your Honor.

24 BY MR. HOWARD:

25 Q. Mr. Kiernan, can you please flip in your binder at what has

F1ldulb7

Kiernan - direct

1 been marked for identification purposes as Government Exhibit
2 212A.

3 (Pause)

4 A. OK.

5 Q. How many pages is Government Exhibit 212A?

6 A. Three pages.

7 Q. Do you recognize what this exhibit is?

8 A. I do. Files extracted from the defendant's computer.

9 Q. And where on the computer were these files located?

10 A. These were in the var/www/market/application/views
11 directory.

12 Q. Is this part of the same var.www directory that you
13 described that was used to have Web page files?

14 A. Yes.

15 Q. Did you take these screenshots?

16 A. I did, yes.

17 MR. HOWARD: The government offers Government Exhibit
18 212A.

19 THE COURT: Mr. Dratel.

20 MR. DRATEL: Objection on Vayner and hearsay grounds,
21 your Honor.

22 THE COURT: All right. Those objections are
23 overruled. Government Exhibit 212A is received.

24 (Government's Exhibit 212A received in evidence)

25 MR. HOWARD: Ms. Rosen, could you please publish page

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Kiernan - direct

1 1.

2 Q. Are all the pages in this exhibit various screenshots of
3 files found within that directory used for website files?

4 A. Yes.

5 Q. What is the name of the file that's depicted on the first
6 page?

7 A. About.php.

8 Q. Could you focus on the bottom right-hand corner.

9 A. I can, yes.

10 MR. HOWARD: Ms. Rosen, why don't we just focus on
11 maybe the top of this. We will see it a little bigger.

12 Q. So, Mr. Kiernan, there is also -- there is this text here
13 that's inside little brackets.

14 A. Yes.

15 Q. What does that represent? What is that?

16 A. That's actually code within the file. It doesn't get
17 rendered correctly in this viewer.

18 Q. Are you familiar with that kind of code?

19 A. Yes.

20 Q. Can you describe -- can you read or point to on the screen
21 if this file was loaded in a browser, what is the text that
22 would appear?

23 A. Sure.

24 Q. Read it, please.

25 A. "Greetings and welcome to Silk Road." That would be one of

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Kiernan - direct

1 them. "I know you can't wait to get to the good stuff, but
2 please take a moment to read this message. It's been written
3 to help keep you safe," and things like that.

4 Q. That's enough.

5 Can we go to the second page of this exhibit. What
6 was this file called?

7 A. This was called "logo_hi-res.jpg."

8 Q. What kind of file is a JPG file?

9 A. An image file, a picture file.

10 Q. Was this also found in that same section of the defendant's
11 computer?

12 A. The same section, yes.

13 Q. Do you recognize the photograph that that file contains?

14 A. I do, yes. It's the Silk Road logo.

15 MR. HOWARD: Ms. Rosen, can we flip to the last page
16 of this exhibit.

17 Q. What is the name of this Web page?

18 A. "Sellers_guide.php."

19 MR. HOWARD: Ms. Rosen, can you zoom into the bottom
20 right-hand window.

21 Q. Again, this contains certain Web page code, correct?

22 A. Correct, it does.

23 Q. Could you please read the first two lines of what the text
24 would appear like and point to it on the screen if this was
25 loaded into a Web browser?

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Kiernan - direct

1 A. Sure. "Sellers Guide. You and you alone will have your
2 client's shipping address" -- I'm sorry. Above that, it is
3 "Client Anonymity." Yes. Right there. "This information must
4 be destroyed as soon as it is used to label their package," and
5 so on.

6 Q. Now, if you read the next couple of lines.

7 A. Oh, sure.

8 "Never ask your clients for personal information.
9 Under no circumstance should you save a copy of your client's
10 address. Publish a public encryption key in your user
11 description on your settings page."

12 Sorry. All the way over here.

13 MR. HOWARD: Ms. Rosen, can you zoom out, please.

14 Can you zoom in on the upper right-hand window.

15 Q. And, Mr. Kiernan, what are all of these files that include
16 ".php" at the end?

17 A. They are all Web page files.

18 Q. Here we have "Buyers_guide.php," "Category." We discussed
19 some already, like "DPR_key.php," correct?

20 A. Correct.

21 Q. Reviews.php?

22 A. Yes.

23 Q. Support.php, user.php?

24 A. Yes.

25 Q. Write_review.php?

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Kiernan - direct

1 A. Yes.

2 Q. These are all Web pages?

3 A. Yes.

4 Q. Mr. Kiernan, would you please flip in your binder to what's
5 been marked for identification purposes as Government Exhibit
6 212B.

7 A. 212B?

8 Q. Do you recognize what this is?

9 A. Yes.

10 Q. And what is this?

11 A. A file extracted from the defendant's computer.

12 Q. And did you take this screenshot of this file?

13 A. I did, yes.

14 MR. HOWARD: The government offers Government Exhibit
15 212B.

16 THE COURT: Mr. Dratel.

17 MR. DRATEL: The same objections, hearsay and Vayner,
18 your Honor.

19 THE COURT: Those objections are overruled.
20 Government Exhibits 212A and B are received.

21 (Government's Exhibits 212A and 212B received in
22 evidence)

23 MR. HOWARD: Can you zoom in on the upper right-hand
24 corner.

25 Q. What was the name of this file, Mr. Kiernan?

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Kiernan - direct

1 A. This file was mastermind.php.

2 Q. Are you familiar with the "mastermind" page from the Silk
3 Road website, Mr. Kiernan?

4 A. I am.

5 Q. And when have you seen it before?

6 A. I've seen it when I was doing this laptop, looking at the
7 laptop, and when I was on the defendant's -- when I took the
8 pictures of the defendant's laptop.

9 Q. And who chooses the titles for Web page files?

10 A. The designers of the website.

11 MR. HOWARD: Your Honor, this would be a natural
12 breaking point if you want to stop here.

13 THE COURT: Yes. Ladies and gentlemen of the jury, we
14 will end for the day. We'll pick up tomorrow morning at 9:30.

15 I want to remind you not to talk to each other or
16 anybody else about this case. I want to remind you, also, to
17 avoid any news articles or media that may discuss this case in
18 any way. If you run across anything, avert your eyes. I
19 instruct you that you must do so.

20 And, also, I want to remind you not to try to go on
21 the Web and do any research on your own. It is very important
22 that the only evidence that is used to decide this case is the
23 evidence you receive in this room. So don't try to go off onto
24 Google and become an expert in Linux or anything else.

25 All right. Thank you. We are adjourned for the

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Kiernan - direct

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evening. We'll pick up tomorrow morning.

THE CLERK: All rise as the jury leaves.

(Continued on next page)

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1 (Jury not present)

2 THE COURT: Mr. Kiernan, we'll pick up at 9:30
3 tomorrow morning. So you can also step down. Thank you.

4 THE WITNESS: Thank you, your Honor.

5 (Witness not present)

6 THE COURT: All right, ladies and gentlemen. Let's
7 all be seated for just one moment.

8 I just wanted to very quickly go through the exhibits
9 that had had objections as to which the prior rulings, I wanted
10 to be sure that we understood that they apply.

11 GX264 was received and the Court overruled the Vayner
12 objection for all of the reasons that we've already discussed,
13 and, indeed, that is the same for each of the electronic
14 documents, that this witness has authenticated them
15 appropriately.

16 And in terms of hearsay, these are not for the truth,
17 nor is 254 for the truth or 270, 275, 295, 280, 268, but I want
18 the government to make sure with 268 that that is right, that
19 you are not offering it for the truth. 269 not for the truth.
20 296 not for the truth. 212A and B not for the truth. There is
21 one of them, the Dominica Guide, 290 and 291, not for the
22 truth, 291 being the application.

23 272 was the photograph with the bags of what could be
24 whatever they are. That was objected to in the Pretrial Order
25 under 403. So the Court additionally had undertaken a 403

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1 analysis, and finds that given the charges in this case, that
2 evidence is both relevant but it is not unduly prejudicial.
3 Its probative value is not substantially outweighed by any
4 prejudicial effect. Certainly, at most, the inferences that
5 could be drawn are consistent with the charges in this case,
6 and it is no more serious than that. It also was properly
7 authenticated.

8 Mr. Howard, were any of the documents which I had
9 mentioned things which the government had intended to offer for
10 the truth?

11 MR. HOWARD: Your Honor, to the extent that some of
12 them included statements of the defendant, we would seek to
13 admit them as party admissions.

14 THE COURT: All right. To the extent that there are
15 portions where it is not only by the -- allegedly by the
16 defendant subject to connection, but that it's for the truth
17 associated with the defendant, as opposed to associated and not
18 for the truth, then they would be party admissions in the same
19 manner that we previously discussed subject to connection.

20 MR. HOWARD: Yes, your Honor.

21 MR. DRATEL: Your Honor, just because it is on his
22 laptop doesn't mean it is a party admission. Everything on his
23 laptop is not by the defendant.

24 THE COURT: Subject to connection. As we all know,
25 the subject to connection will be a finding by a preponderance

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1 of the evidence. That is what the evidentiary objections
2 require. And so when the government's case is in, we'll
3 determine whether or not ultimately all the "subject to
4 connection" statements have been met or not met, and we'll take
5 that up at that time.

6 All right. Anything else that you folks wanted to
7 raise?

8 MR. DRATEL: Just one thing. I will wait for the
9 government first, just in case.

10 MR. HOWARD: Yes, your Honor. There is an additional
11 witness that we plan on calling tomorrow. It is a very short
12 witness. It is Special Agent Gregory Fine from the Federal
13 Bureau of Investigation.

14 THE COURT: All right. And tell me why Mr. Fine is
15 coming in now and was not on your original list.

16 MR. HOWARD: Yes. Special Agent Fine is only going to
17 be testifying about the seizure of thumb drive devices from the
18 defendant's residence. The relevance of the files to the
19 government became more clear following what the defense
20 previewed in their opening statement. So he will be
21 authenticating the seizure of thumb drives.

22 Mr. Kiernan tomorrow will testify about an analysis of
23 files that were recovered from that thumb drive.

24 THE COURT: All right. So he is simply to
25 authenticate the thumb drives?

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1 MR. HOWARD: Yes.

2 THE COURT: That is really his entire purpose is to
3 say I was there, I got the thumb drives, do a chain of custody?

4 MR. HOWARD: Yes, your Honor.

5 THE COURT: All right. Mr. Dratel.

6 MR. DRATEL: Do we have all of the exhibits that they
7 are going to put in? I want to make sure.

8 THE COURT: Do you have everything that you are going
9 to use with this fellow?

10 MR. HOWARD: Yes. They are in the 200 series.

11 THE COURT: And they have already been turned over to
12 the defense?

13 MR. HOWARD: They have, your Honor.

14 THE COURT: All right.

15 MR. DRATEL: OK.

16 THE COURT: Any 3500 material, I take it there
17 probability isn't any, but if there is, you have given it to
18 the defendant?

19 MR. HOWARD: Yes. We just need to verify that he
20 didn't send any emails that we can assert 3500. Based on his
21 role in the search, we doubt there is anything. We'll get that
22 immediately and promptly provide it to the defendant.

23 THE COURT: Thank you.

24 Mr. Dratel.

25 MR. DRATEL: Not 5,000 pages.

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1 The only thing I wanted to add, your Honor, not about
2 that, but about some of the exhibits that came in -- I think
3 most of the exhibits that came in today through Mr. Kiernan
4 were different than the original ones that we had. I don't
5 mean different altogether, but in terms of how they were sent
6 to us. So, for example, many of them, in terms of the time
7 that we interposed objections, did not have metadata or a
8 different kind of presentation of metadata.

9 So I think that may be one of the reasons why there
10 may not be objections to some of them previously and there are
11 now. I'm not saying that is all of them, but I just wanted --
12 there are differences. We are getting the series of exhibits
13 as the government has posted them.

14 THE COURT: I have not found that you have waived
15 objections. I have been allowing you to put them on the
16 record, and we have been dealing with them.

17 If there are any other issues which you want to raise,
18 you can either raise them on cross-examination with this
19 witness if there are differences, or if there is anything that
20 you should bring to my attention, go ahead and bring it to my
21 attention either now or tomorrow morning about that.

22 MR. DRATEL: It is just more about timing for that
23 particular issue.

24 THE COURT: All right. Anything further, folks, that
25 we should go over tonight? Otherwise we will meet tomorrow

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1 morning at 9.

2 MR. HOWARD: Nothing from the government, your Honor.

3 MR. DRATEL: Nothing, your Honor. Thank you.

4 THE COURT: One thing I do want to encourage you
5 folks, because things have a way of coming up, as we know, if
6 we could be here close to 9, that would be helpful. Otherwise
7 we end up starting with ourselves at 9:20. We don't get the
8 jury out here until 9:40 or 9:45, today at 9:50. So let's just
9 give it a go.

10 All right. Thank you. We are adjourned.

11 THE CLERK: All rise.

12 (Adjourned to 9 a.m., Thursday, January 22, 2015)

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