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May 28, 2015

BY ECF

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Ross Ulbricht,
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted in response to the Court's May 27, 2015, Order, regarding whether certain Counts in the Superseding Indictment are duplicative for sentencing purposes. *See* Order (Dkt #258). Regarding Counts One and Three, Mr. Ulbricht concurs with the government that those Counts must be dismissed pursuant to *Rutledge v. United States*, 517 U.S. 292 (1996).

However, Count Two, which charges distribution of narcotics by means of the Internet [21 U.S.C. §841(h)], should also be dismissed because, pursuant to the appropriate analysis, it is subsumed within Count Four, which charges participation in a Continuing Criminal Enterprise [21 U.S.C. §848(a)]. As a result, Count Two is either multiplicitous with respect to, or a lesser included offense of, Count Four, and must be dismissed.

Counts in an indictment are multiplicitous when they charge a single offense as separate offenses, when in law and fact only one crime is alleged to have been committed. *See United States v. Chacko*, 169 F.3d 140, 145 (2d Cir. 1999). A multiplicitous indictment violates the Double Jeopardy Clause of the Fifth Amendment because it subjects a person to punishment for a single crime more than once. *United States v. Dixon*, 509 U.S. 688, 696, (1993).

A defendant may be convicted only once for each offense, and the rule against

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multiplicity protects against multiple *convictions* for the same offense, not just against the imposition of multiple *sentences* for the same offense. *Ball v. United States*, 470 U.S. 856 (1985).

The test for determining whether offenses charged in separate counts of an indictment are the same, and thus multiplicitous, is whether each statutory provision requires proof of an additional fact the other count does not. *See Blockburger v. United States*, 284 U.S. 299 (1932). In *United States v. Josephberg*, 459 F.3d 350, 356 (2d Cir. 2006) (*per curiam*), the Second Circuit explained that the *Blockburger* inquiry entails determining whether there is an element in each offense that is not contained in the other, and not whether the conduct underlying the separate counts is identical.

As the Court in *Josephberg* advised, “the touchstone is whether Congress intended to authorize separate punishments for the offensive conduct under separate statutes [. . .] it is critical [to determining] whether the ‘offense’ – in the legal sense, as defined by Congress – complained of in one count is the same as that charged in another.” *Josephberg*, 459 F.3d at 356 (quoting *Chacko*, 169 F.3d at 146).

The elements subject to the *Blockburger* inquiry must be determined by reference to those the prosecution needs to prove for the charges to which jeopardy attaches, not by reference to the statutes in the abstract. *See, e.g., Dixon*, 509 U.S. at 698 (contempt conviction barred a subsequent prosecution of predicate offense); *Harris v. Oklahoma*, 433 U.S. 682, 682-83 (1977) (felony murder conviction resulting from a killing during the commission of robbery barred a subsequent robbery prosecution despite the fact that the elements of robbery were not necessarily included in every felony murder); *Chacko* 169 F.3d at 145 (comparing elements of 18 U.S.C. §1014 and §1344 as-charged).

Thus, if one offense, among many possibilities, serves in a particular case as the predicate for a greater offense, the defendant cannot be prosecuted or punished twice for both offenses. *See Dixon*, 509 U.S. at 698 (“[h]ere, as in *Harris*, the underlying substantive criminal offense is ‘a species of lesser-included offense’”).


Here, Count Two, in charging distribution of controlled substances via the internet, is in fact the only means by which such distribution was charged against Mr. Ulbricht in the Superseding Indictment. Thus, regardless of the abstract language of the respective statutes at issue, the elements proved by the prosecution for both counts were precisely the same, with precisely the same proof. Indeed, Count Two served as a predicate offense for Count Four.

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Accordingly, it is respectfully submitted that Count Two should be dismissed along with Counts One and Three.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joshua L. Dratel", written in a cursive style.

Joshua L. Dratel

JLD/

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

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500 Pearl Street
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Re: *United States v. Ross Ulbricht,*
14 Cr. 68 (KBF)

Dear Judge Forrest:

This letter is submitted on behalf of Ross Ulbricht, defendant in the above-entitled matter, and supplements the previous submissions made on his behalf with respect to sentencing. This letter, in particular, will:

- (1) reply to the government's sentencing letter dated May 22, 2015 (Dkt # 256);
- (2) provide two additional letters on Mr. Ulbricht's behalf (and which were not received until after my May 22, 2015, letter was submitted); and
- (3) the May 26, 2015, report by Board-certified forensic pathologist Mark L. Taff, M.D. (and also Clinical Associate Professor of Pathology at Mount Sinai School of Medicine), which is attached hereto as Exhibit 7,¹ regarding the six deaths the government seeks to attribute to Mr. Ulbricht.

¹ The Exhibits attached hereto are numbered sequentially starting with Exhibit 5 in order to avoid confusion with the four Exhibits attached to my May 22, 2015, letter.

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I. *The Government's Sentencing Submission*

A. *The Silk Road's Harm Reduction Measures*

The government's claim that the Silk Road web site represented an enhanced danger because it "lowered the barriers" for drug purchasing and selling is based not on a canvass of users of the site – as was the case for the researchers who provided Declarations in conjunction with my May 15, 2015, letter – but rather on Michael Duch, a single convicted felon providing cooperation in return for extraordinary leniency,² and whose testimony at trial was so riddled with inconsistencies and insupportable claims that he lacks credibility – even if the experience of a single person were somehow a valid substitute for the comprehensive research conducted by the Declarants (Tim Bingham, Meghan Ralston, and Dr. Monica Barratt), and the contact Fernando Caudevilla, M.D., had with many of the site's visitors. *See* May 15, 2015, Letter from Joshua L. Dratel, Esq., to the Court (Dkt #241), at 2-8.

Also, while the government repeats Mr. Duch's claim that he did not begin selling drugs until he became a vendor on Silk Road, that contention is belied by Mr. Duch's 2008 arrest for possession with intent to distribute a felony-weight quantity of drugs. T. 1596.³ Also, in 2009-09 (as reflected in his cooperation agreement, *see* T. 1542), Mr. Duch had traded prescription medication for heroin. Mr. Duch also sold drugs on multiple internet sites, including Atlantis and Black Market Reboot. T. 1592.

In addition, Mr. Duch's claim that he consumed 600-700 bags per week for his own heroin addiction is not corroborated at all. *See* T. 1535-36. Indeed, that astronomical amount more than likely included bags that he sold to others to support his extensive and prohibitively costly habit. In any event, Mr. Duch's claims are without any verification.

Yet the government urges the Court to rely exclusively on that self-serving,

² While Mr. Duch acknowledged selling three times the amount of heroin required for a charge carrying a ten-year mandatory minimum prison term pursuant to 21 U.S.C. §841(b)(1)(A), he was permitted to plead guilty to a charge, under §841(b)(1)(B), that carried only a five-year mandatory minimum. T (Trial Transcript) 1532-34. In addition, the government has not filed against Mr. Duch a prior felony information, which would double any applicable mandatory minimum sentence. *Id. See also* T. 1538-39. Mr. Duch's cooperation agreement with the government also insulated him from charges for a host of other criminal activity, including theft, assault (throwing a telephone at his girlfriend), and use and distribution of other drugs. T. 1541-42.

³ "T." refers to the trial transcript in this case.

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unsubstantiated anecdotal account and ignore the independent, objective clinical professional research provided by Mr. Bingham, Ms. Ralston, Dr. Barratt, and Dr. Caudevilla. Moreover, as even the government's figures establish, heroin sales did not constitute a significant portion of the sales made by Silk Road vendors. Rather, they comprised 3.5% of all sales on the Silk Road site, and were not in the top 20 drugs for the U.S., the U.K., and/or Australia. *See* Declaration of Dr. Monica Barratt, at ¶ 6 (attached as Exhibit 13 to the May 15, 2015, Declaration of Lindsay A. Lewis, Esq. (Dkt. #242)). *See also* Monica Barratt, Jason A. Ferris and Adam R. Winstock, "Use of Silk Road, the online drug marketplace, in the United Kingdom, Australia and the United States," *Addiction* 109, at 774-783 (2013) (attached as Exhibit 8 to the Lewis Dec.). Indeed, Mr. Duch's sales may very well have represented a considerable portion of the total of heroin sales from Silk Road in the U.S.⁴

The government discounts entirely the harm reduction measures instituted on the Silk Road site, but that categorical approach defies the reality of the demand, and consequent supply, of controlled substances (which are detailed in my May 22, 2015, letter, at 52-67). Of course Mr. Ulbricht is being sentenced for his participation in the Silk Road site, but the government's approach would deprive the sentencing of any context with respect to the atmosphere that Silk Road engendered in its totality – perhaps unprecedented, but certainly in more respects than simply internet availability of illicit drugs within the anonymized TOR network. In that context, the harm reduction measures were as much a part of that environment, and highly relevant for sentencing, as the means of buying and selling.⁵

B. *Attributing to Mr. Ulbricht the Six Deaths Cited By the Government Would Create An Unwarranted Disparity In Contravention of 18 U.S.C. §3553(a)(6)*

As discussed in my May 22, 2015, letter, at 43, 18 U.S.C. §3553(a) directs a sentencing court to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." Here, in addition to the lack of sufficient proof linking the six deaths to drugs purchased from vendors on the Silk Road site – the government has not engaged any forensic expert or analysis sufficient under any standard of proof –

⁴ Mr. Duch's testimony included other prevarications and evasions, including his persistent denial that he made statements (or heard statements made to him) that were reflected in government interview memoranda. *See, e.g.*, T. 1538-39, 1597-98, 1600-01 & 1605-06.

⁵ In fact, the chat passages between Dread Pirate Roberts and site administrators quoted by the government (in its letter, at 12-13) demonstrate not an amoral disregard for the consequences, but rather a recognition of the sometimes uncomfortable moral ambiguity, including adverse impact on others, that unavoidably attended the Silk Road site's commitment to an unregulated free market for all forms of commerce and merchandise.

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enhancing Mr. Ulbricht's sentence because of those deaths would institute an unwarranted disparity.

In that context, the government's argument, in its letter at 9-10, with respect to foreseeability proves too much. If it is axiomatic that facilitating the sale of illegal drugs is inherently dangerous for purchasers, then it applies in *every* drug-trafficking case, particularly in those involving sales by organizations that exist over a period of time.

Yet the government cannot cite a single case in this district, and only one in the Second Circuit, discussed and distinguished below, in which *any* enhancement applied in such a case. Thus, the government would have Mr. Ulbricht serve additional time for a factor that is present in *every* drug-trafficking case of any magnitude or duration, but which is subject to an enhancement within this district only in this case (and in only a minute fraction of cases nationwide, and in very different factual circumstances). That is the essence of an unwarranted disparity.

Also, here the disparity is not merely generalized. This past Tuesday, May 26, 2015, in *United States v. Peter Nash*, 13 Cr. 950 (TPG), the Honorable Thomas P. Griesa sentenced the defendant, Peter Nash, a/k/a Samesamebutdifferent, a forum moderator and one-time administrator on the Silk Road site for nearly a year prior to its closure (during which time the Silk Road site experienced its highest volume of sales), to "time served" – essentially a 14-month sentence. *See* Judgment (Dkt. #36), *United States v. Peter Nash*, 13 Cr. 950 (TPG). *See also* Gov't Nash Sentencing Letter, at 4, 7, 8.

Mr. Nash pleaded guilty to conspiracy to sell drugs in an amount that made him subject to a ten-year mandatory minimum sentence pursuant to 21 U.S.C. §841(b)(1)(A). *See* Government's Sentencing Submission, *United States v. Peter Nash*, 13 Cr. 950 (TPG) (Dkt. # 35) (hereinafter "Gov't Nash Sentencing Letter"), at 4. As a result, Mr. Nash's Sentencing Guidelines Base Offense Level was 36, the same as Mr. Ulbricht's is here. *See id.*, at 5. *See also* Mr. Ulbricht's Pre-Sentence Report (hereinafter "PSR"), at ¶ 94. Yet even with multiple downward adjustments for his minor role and his safety valve proffer, Mr. Nash's adjusted Guidelines range was still 121-151 months. *Id.*, at 5.

The government did not seek any enhancement for Mr. Nash for the deaths it cites here, even though Mr. Nash, who worked for the Silk Road site from January 2013 through its closure in October 2013, was involved with the site during a period in which five of the six deaths occurred. *See* Gov't Nash Sentencing Letter, at 4 & n.1. In fact, the PSR for Mr. Nash clearly noted the drug-related deaths, as the government, in its submission, remarked that Mr. Nash involved himself with the Silk Road site with full knowledge of its activities and "with predictably harmful (and in some cases deadly) consequences, as the PSR makes clear." *Id.*, at

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10.

Yet, as noted above, the government did not seek an enhancement of Mr. Nash's sentence on that basis, and clearly, in imposing a "time served" sentence, the Court did not enhance Mr. Nash's sentence on that ground, either. Indeed, the government recommended a below-Guidelines sentence for Mr. Nash. While certain factors, *i.e.*, Mr. Nash's minor role and his safety valve proffer, could justify a disparity in his sentence and that of Mr. Ulbricht, the gulf between time-served and even the 20-year mandatory minimum Mr. Ulbricht faces represents too drastic a disparity, particularly when the government selectively decides against whom to seek enhancements for unintended events, even accidents, that are by the government's rationale attributable to *every* participant in a drug-trafficking conspiracy.⁶ Of course, that includes as well Mr. Duch, who sold heroin directly to customers (and against whom it is extremely doubtful the government will seek such an enhancement).

The cases cited by the government only reinforce the conclusion that any enhancement here (pursuant to §3553(a), the Guidelines, or otherwise) would be inappropriate factually and legally, and in contravention of §3553(a)(6). Indeed, none are from this district, or the Eastern District of New York, both of which have an inordinate volume of drug-trafficking cases without a single reported case in which such an enhancement has been applied.

For example, *United States v. Faulkner*, 636 F.3d 1009 (8th Cir. 2011), and *United States v. Westry*, 524 F.3d 1198 (11th Cir. 2008), cases from the 8th and 11th Circuits, respectively, addressed issues of conspiratorial liability for overdose deaths caused by a co-conspirator. Neither opinion discusses the evidence at issue, or whether it, or the causation, was contested by the defendant(s). Rather, the opinions *presume* that the drugs distributed by the charged conspiracies caused the charged overdose deaths. *See, e.g., Faulkner*, 636 F.3d at 1022 (defendant's liability established because *jury found beyond a reasonable doubt* that overdose was reasonably foreseeable, although the defendant did not play a "direct role in manufacturing or distributing heroin *that caused* [the victim's] death") (emphasis added); *Westry*, 524 F.3d at 1220 ("[b]ecause [the victim] died from a drug overdose from drugs distributed by a member of the conspiracy . . . , and the goal of the conspiracy was to distribute drugs, [the victim's] death was reasonably foreseeable and within the scope of the conspiracy").

⁶ The government's insinuation, in its letter herein, at 16 (that Mr. Ulbricht "at no time [] has accepted full responsibility for his actions) that Mr. Ulbricht be penalized for exercising his right to trial should be disregarded entirely, especially since the government did not extend to Mr. Ulbricht a plea offer that would have ameliorated any aspect of the Guidelines calculation ultimately adopted by the PSR.

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In *United States v. Pacheco*, 489 F.3d 40 (1st Cir. 2007), in contrast with the circumstances here, the government presented medical records which established that the victim, who survived (and is therefore incorrectly described as deceased in the government's submission) was admitted to the hospital with a "provisional[] diagnos[is of] a ketamine overdose" which was confirmed by the victim's later statements to hospital staff regarding his ingestion of heroin and a substantial ketamine dose, as well as "subsequent diagnoses [which] reflected . . . ingestion of both drugs." *Id.* at 42-43.

In addition to the well documented cause of the victim's injuries, the defendant in *Pacheco* in fact admitted to mailing ketamine to the victim regularly, including a shipment five weeks before the overdose. *Pacheco*, 489 F.3d at 43. As the government notes, in its letter herein, at 9, the defendant's argument in *Pacheco* that the five-and-a-half week gap between the last shipment and the overdose raised a "serious question" as to whether he had actually supplied the fatal dose was rejected by the Court, in part because another package of ketamine from the defendant was waiting in the victim's mailbox at the time of his overdose, dispositively undermining the defendant's claim that the last shipment he sent was more than a month before the overdose. *Pacheco*, 489 F.3d at 45.

Similarly, in *United States v. Nossan*, 647 F.3d 822 (8th Cir. 2011), the government was able to rely on the defendant's own admissions to establish the connection between the drugs and the overdose. The defendant told police she had mailed a package "containing black tar heroin, a single balloon of cocaine, and syringes" to the victim using the name of one of his former girlfriends as a return address. *Nossan*, 647 F.3d at 824. Following the victim's death, established by an autopsy to be the result of heroin toxicity, the police recovered "a small balloon containing . . . black tar heroin" and two padded envelopes, one of which had "a return address of 'Michelle Lampert'," an ex-girlfriend of the victim. *Id.*

The only case cited by the government on this issue which arises from a court in the Second Circuit is *United States v. Russow*, 2015 WL 1057513, at *1-2 (D. Conn. Mar. 10, 2015), in which the victim's overdose occurred only a few hours after several text messages between the victim and the defendant discussing heroin availability and quality. The heroin sale was corroborated by surveillance video of the victim arriving and leaving the defendant's home around the same time he sent a text informing someone else that the defendant had "Much Better" brand heroin. *Russow*, 2015 WL 1057513, at *1-2. He was found dead about three hours later with two empty bindles labeled "Much Better," and the autopsy report concluded that the cause of death was "acute heroin toxicity." *Id.*

The government's focus on drug abusers' addictions, and other harms associated with drug abuse, *see* Government's Sentencing Letter, at 9-13, should also not be grounds for enhancing Mr. Ulbricht's sentence. Those aspects are already factored into the severe

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punishment matrix and high Guidelines levels for drug offenses in the first place. Singling out Mr. Ulbricht in that regard would not only be, in effect, inappropriate “double-counting,” but would also create further unwarranted and unjustified disparity.

C. “General Deterrence” Would Not Constitute An Appropriate Reason to Enhance Mr. Ulbricht’s Sentence

Regarding general deterrence, the government’s citation, in its letter, at 14, to *Empress Casino Joliet v. Balmoral Racing Club, Inc.*, 651 F.3d 722, 728 (7th Cir. 2011), that “deterrence is never perfect” is entirely unpersuasive. Not only is that a civil case, but as demonstrated by the research and studies discussed in my May 22, 2015, letter, at 50-64, in the criminal context not only is deterrence “never perfect,” it is *illusory*.

Given the lack of any empirical evidence supporting an enhanced sentence for purposes of achieving general deterrence, the government would have the Court enhance Mr. Ulbricht’s sentence on a hope – as yet unproven by any clinical studies – that it could have an impact on a hypothetical person who may, at some point in the future, contemplate a crime. The number of conditional elements in that construction are far too numerous to permit, much less justify, a longer sentence on that ground. That is not criminal justice; rather, it is a lottery in which only Mr. Ulbricht suffers.

Relying on general deterrence to enhance Mr. Ulbricht’s sentence would also aggravate the disparity between his sentence and others, both generally and specifically with respect to the Silk Road web site, because any such enhancement is neither quantifiable nor consistent with other “general deterrence” components of sentencing. As a result, it represents a recipe for disparity untethered to any objective standard or ability to measure.

D. Mr. Ulbricht’s Lifestyle and the Money Generated By the Silk Road Site

The government’s contention that the Silk Road web site’s purpose was, like other drug-selling operations, based on the profit motive is belied by several factors. Mr. Ulbricht neither displayed nor possessed any of the traditional material, ostentatious trappings of drug-trafficking, or of financial success at all. Indeed, with respect to Dread Pirate Roberts (hereinafter “DPR”), certain TOR chat logs provide a window to a very different set of priorities.

For example, in TOR log chat TV32, at 785-90, between DPR and Cimon, DPR suggests using profits from the possible sale of the Silk Road site for “feeding and empowering” Africans

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by providing seeds for agricultural and other growth.⁷ Later in that same TOR chat, at 499-501 519-20, 523, 526 & 708, DPR and Cimon discuss channeling Silk Road proceeds to Kiva, a global micro loan charity. *See* <www.kiva.org>. Similarly, in TOR chat log GX50, between DPR and Flush, DPR notes that certain Silk Road funds would be passed on to certain non-profit organizations that DPR supported.

E. *The Two-Point Enhancement for “Credible Threats of Violence” Should Be Denied and Deleted from the Pre-Sentence Report*

As the government notes, in its letter at 16 n. 19, the PSR, at ¶ 94 and pursuant to §2D1.1(b)(2) of the Guidelines, assesses a two-point enhancement for “credible threats of violence.” For all the reasons set forth above and in the previous submissions on his behalf, Mr. Ulbricht objects to that enhancement, which should be deleted from the PSR.⁸

II. *Two Additional Letters on Mr. Ulbricht’s Behalf*

Attached hereto as Exhibits 5 & 6 are two additional letters on Mr. Ulbricht’s behalf. Exhibit 5 is from Michael Van Praagh, an inmate at the Metropolitan Correctional Center (hereinafter “MCC”). As Mr. Van Praagh recounts in his letter, he met Mr. Ulbricht at MCC while Mr. Van Praagh was teaching General Education Diploma (hereinafter “GED”) classes for other inmates, recalling that “Mr. Ulbricht approached me after class to inquire how he too, might get involved in teaching classes.” *See* Letter from Michael Van Praagh (attached hereto as Exhibit 5).

Mr. Van Praagh was “moved immediately by [Mr. Ulbricht’s] sense of concern for what we were doing in trying to share our gifts and help teach some of the other dedicated inmates who haven’t been so fortunate to have had some of the same privileges afforded to Ross and myself.” *Id.*

Even during trial, Mr. Ulbricht remained committed to the other inmates, including Mr. Van Praagh, who writes,

[a]s difficult of a time as it was [during Mr. Ulbricht’s trial], he always was available for me and for my students. Sharing his

⁷ The excerpts from these TOR chats will be provided as soon as defense counsel can collect them and prepare them as Exhibits.

⁸ The PSR includes that enhancement within the Base Offense Level computation in ¶ 94 instead of as a separate offense-conduct specific enhancement.

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knowledge and his experiences had inspired me to do something that I always wanted to do but never managed to accomplish. I enrolled in College.

Id.

Thus, even during a period of extraordinary stress and concentration on a matter of utmost importance to him, Mr. Ulbricht nevertheless found the time and energy to devote to others. Yet Mr. Ulbricht's positive influence on Mr. Van Praagh did not stop there. As Mr. Van Praagh relates,

[a]s a first generation college student, the whole ordeal of choosing a school, enrolling, picking a major, and registering for classes was completely foreign to me and frankly intimidating. I am forever grateful that Mr. Ulbricht patiently walked me through the entire process. He has provided me the advice and confidence necessary to take those vital first steps.

Id.

In addition, Mr. Van Praagh reports, "[t]here are three other students in my class that are grateful to Mr. Ulbricht, for he convinced them too that as proud as they should be to have made such valuable strides and receive their GED's, that it is only the first step to ensuring a successful life that is free of recidivism." *Id.*

As a result, Mr. Van Praagh and the three other inmates "are degree seeking students, enrolled at Adams State University." *Id.* Yet Mr. Ulbricht did not stop even there. The correspondence courses provide materials and a note of encouragement, but little else in the form of guidance. As Mr. Van Praagh admits, "[t]hat is pretty scary. I know that it is nothing that has not been done before, but with no personal instruction, it's a daunting task."

Mr. Ulbricht fills that void. According to Mr. Van Praagh, "Mr. Ulbricht sits with the four of us every single day and we've made such great progress that I fear what it will be like when we are no longer able to take advantage of his wealth of knowledge [and] the unparalleled generosity with which he shares it." *Id.*

In addition, Mr. Van Praagh recognizes that "Mr. Ulbricht does all this without any expectation of something in return. It's [] solely to help others and I have found that to be of the most endearing and noble qualities I have found in anyone I have met throughout this entire unfortunate experience." *Id.* As a result, even in an environment as desolate and despairing as

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the MCC is in many respects, Mr. Ulbricht's "kindness and devotion to excellence has truly inspired us all." *Id.*

Exhibit 6 is a letter from Joseph Ernst, the son of Thomas J. Ernst, "[a] Georgetown Law Graduate, Air Force intelligence officer and tireless philanthropist," and also a convicted felon currently serving a 48-month sentence at FCI Fort Dix. Joseph Ernst contacted defense counsel yesterday because he wanted to write a letter to the Court on Mr. Ulbricht's behalf after identifying certain similarities between Mr. Ulbricht and his father, who "like Ross, . . . spent a life in service to others, only to make a mistake" which led to his conviction and incarceration. *See* Letter of Joseph Ernst, attached hereto as Exhibit 6.

Mr. Ernst's chief concern is that Mr. Ulbricht, if imprisoned at a higher security level facility for a long period of time, will suffer the same fate as his father who even "incarcerated for what seemed like a short period of time" has experienced irreparable damage to his ability to be a high-functioning and productive member of society. *Id.* As Mr. Ernst explains in his letter, his father

[a]s a man with considerable education, has been unable to find programs to better himself or prepare himself for life outside beyond basic correspondence courses. . . . As a convicted felon, his job prospects are non-existent. . . . In sum, he is a man that while educated at the highest levels, now finds himself unemployable at even the most entry level jobs. He has no place to live once released, nor means of subsistence and finds himself in an endless cycle of indignity, spiraling ever downward.

Id.

Accordingly, "[h]aving seen the affects that even a short period of incarceration can have, it is [his] fervent hope that Ross is not subject to an unduly long period away from his family and friends" given that "[a] man like Ross Ulbricht, with an impressive education, demonstrated ability to favorably impact people around him and prior experience in business with community service components, could add something so positive to [the national] fabric" and "is not someone who has placed himself beyond the edge of society." *Id.*

III. Dr. Taff's Report

Attached as Exhibit 7 hereto is Dr. Taff's report regarding the six deaths the government seeks to attribute to drugs purchased from vendors on the Silk Road site. As Dr. Taff notes, he possesses "over 30 years of clinical, investigative, teaching, testimonial, and administrative

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experience,” and has “conducted hundreds of death investigations and autopsies, including dozens of drug-related fatalities in urban, suburban and rural communities.” *Id.*, at 1.

As Dr. Taff’s report states, based on his “review of the available documentary evidence,” *id.*, at 2, each of the six deaths “lacks information about or more the 6-stages of death investigation.” *Id.* See also *id.*, at 1 (listing the six stages of a death investigation); Lewis Dec., dated May 15, 2015, at ¶ 10-12.⁹

Elaborating, Dr. Taff’s report cautions that

[p]artial death investigations and/or partial autopsies yield partial answers which is as bad as no autopsy at all. Without certain pieces of information, it is impossible for medical examiners to render opinions about issues that typically arise during criminal and civil litigation (*e.g.*, cause, manner and time of death, time of onset of injury, pre-existing pathological (medical and/or psychiatric) conditions, interactions of drugs, drug metabolism (absorption, breakdown and elimination of drugs), conscious pain and suffering, life expectancy, quality of medical and surgical care, etc.).

Id., at 2.

Also, Dr. Taff’s report points out that

[t]he interpretation of drug levels is difficult because of multiple variables, including: a) use of multiple drugs in varying amounts; b) administration of drug[s] via different or multiple routes (inhalation (snorting, sniffing), ingestion, injection); c) use of drugs at different times; and d) use of drugs by individuals of different ages and body weights with varying levels/degrees of drug tolerance.

⁹ Mr. Ulbricht submitted to the government a number of discovery requests regarding the six deaths. However, the government failed to provide any additional information or materials with the exception of a coroner’s and toxicology report with respect to one death, a toxicology report with respect to another death, and scant information as to what the government described as Silk Road drug user profiles.

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JOSHUA L. DRATEL, P.C.

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Id.

In addition, Dr. Taff's report notes that "[d]rug-related homicides are rare[,]” and “medical examiners rarely classify drug overdoses as homicides.” *Id.* As Dr. Taff's report explains, “[b]ecause of the lack of reliable circumstantial, testimonial and scene information surrounding many drug overdoses, the manner of many drug-related deaths are not clear-cut.” *Id.*, at 3. As a result, “[m]any medical examiners have opted to rule the manner of many drug-related deaths as ‘undetermined’ (possible accident, suicide or homicide) with the understanding that such a classification might be amended if additional (compelling) information comes forth in the future. *Id.*

Dr. Taff's report proceeds with the evaluation of the six deaths, which findings are summarized in the May 15, 2015, Declaration of Lindsay A. Lewis, Esq. (which is attached as Exhibit 1 to my May 15, 2015, letter). Dr. Taff's report also discusses the coroner's and toxicology report for Alejandro A. (which was provided to the defense May 14, 2015, after Dr. Taff had provided his preliminary findings to defense counsel).

In addition to analyzing the documents provided, including the exclusion of certain factors – such as the presence of two other drugs, marijuana and Prozac, as well as a pre-existing heart disease – from the cause of death, *id.*, at 9, Dr. Taff, based on his review of Mr. A.'s records, offered an opinion to a reasonable degree of forensic medical certainty that Mr. A.'s cause of death was “due to multiple drug (25I-NBOMe, marijuana and Prozac) intoxication.” Dr. Taff's report adds that “[c]ardiomegaly (enlarged heart) of undetermined origin was a significant associated condition contributing to [Mr. A.'s] death. *Id.*¹⁰

Ultimately, Dr. Taff concludes that “the incomplete records raised several questions and precluded [Dr. Taff] from rendering opinions regarding the cause, manner and time death as well as, possibly, other forensic medicine issues of interest to the criminal justice system.” *Id.*, at 3. Thus, he was “unable to render opinions to reasonable degree of medical forensic certainty in 5 of 6 cases regarding cause, manner and time of death as well as several other forensic issues typically addressed by medical examiners investigating drug-related deaths . . .” *Id.*, at 9.

Dr. Taff's report cites as reasons the following:

¹⁰ Dr. Taff's report notes that “[a]fter a 7-month long investigation, California[] officials concluded that the manner of [Mr. A.'s] death should be classified as an accident.” *Id.*, at 9. Finding “nothing the records to suggest otherwise,” Dr. Taff rendered an opinion to a reasonable degree of medical forensic certainty that Mr. A.'s “manner of death was appropriately ruled an accident.” *Id.*

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- a) paucity of information;
- b) confusing interpretations, selective/partial/incomplete diagnoses;
- c) omissions; and
- d) inability to inspect original death investigation and autopsy reports and primary autopsy evidence.

Id.

Regarding the sixth case, that of Mr. A., in which Dr. Taff does posit a cause of death, Dr. Taff, as noted **ante**, “disagreed with the official cause of death[]” because “the California[] forensic team failed to factor in the presence of other drugs and a pre-existing heart condition into [Mr. A.’s] cause of death.” *Id.*, at 9-10.¹¹

Regarding the other five deaths, Dr. Taff’s report cites, *inter alia*, the “paucity of post-mortem medical-scientific evidence and the decedents’ ante-mortem histories of medical and mental health and substance abuse problems . . .” among the reasons for his inability to render an opinion. Also, he explains that “[a]lthough all the decedents had drugs in their systems at the time of death, toxicology labs cannot match illicit drugs present in a person’s body fluid and tissues to an exogenous (outside) source of drugs.” *Id.*, at 10.

Also, “[b]ased on the available information,” Dr. Taff was unable to

correlate the time of purchase/acquisition from an alleged Silk Road vendor, time of usage of the alleged Silk Road purchase, time of usage of other illicit drugs and prescribed medications, the amount/dose of drugs used, time of mixing/cocktailing of alleged Silk Road purchase with other drugs, pre-existing pathological health conditions and cause, manner and time of death.

Id.

Indeed, Dr. Taff’s report points out that “[i]t is unknown when each decedent, with other

¹¹ In noting that Mr. A.’s death was ultimately declared an accident, Dr. Taff notes that “[t]his ruling indicates that local authorities had insufficient evidence to criminally charge another person for contributing to or directly causing [Mr. A.’s] death.” *Id.*, at 10. Dr. Taff was “not surprised” at that conclusion, although he points out that during his career, “law enforcement has conducted dozens of in-depth investigations with the intention of making drug dealers legally/criminally responsible for the deaths of individuals to whom they sold drugs.” *Id.*

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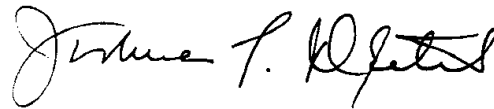
drugs in his system, took alleged Silk Road drugs.” *Id.* In that context, as Dr. Taff’s report states, “[t]he mixing of drugs in low levels can cause more powerful and potentially fatal effects than each drug used individually (so-called synergism).” *Id.* Consequently, “[m]edical examiners must look at all of the results in a post-mortem drug screen[,]” *id.*, and “[i]t is bad science to be selective or hierarchical about drugs (*e.g.*, heroin in more dangerous than cocaine which is more dangerous than alcohol, and, thus, if not for heroin, the person would still be alive) when rendering opinions about the cause of drug-related fatalities.” *Id.*, at 10-11. As a result, “[p]ost-mortem drug results must be viewed in context with the findings from other phases of a death investigation.” *Id.*, at 11.

Accordingly, the information provided by the government fails to establish a sufficient factual, medical forensic basis for attributing the deaths either to drugs purchased from vendors on the Silk Road site, or to Mr. Ulbricht. That would be not only “bad science,” but, in the context of the Due Proces requirements for considering information at sentencing, legally unsustainable. While, as the letters from the decedents’ family members make clear, unquestionably the six deaths represent personal and family tragedies and trauma, there is simply not an adequate basis to attribute them to Mr. Ulbricht.

Conclusion

Accordingly, for all the reasons set forth above, as well as in Mr. Ulbricht’s prior submissions, it is respectfully submitted that he should be sentenced to a term of imprisonment substantially below the advisory Guidelines range.

Respectfully submitted,



Joshua L. Dratel

JLD/

cc: Serrin Turner
Timothy T. Howard
Assistant United States Attorneys

EXHIBIT 5

Honorable Katherine Forest
United States District Court
Southern District
500 Pearl Street
New York, NY 10007

Michael Van Praagh
Reg # 70470-054
MCC-NY 150 Park Row
New York, NY 10007

May 21, 2015

My name is Michael Van Praagh and I am an inmate currently being held at the Metropolitan Correctional Center in Downtown Manhattan. I am not proud of my current living situation but I am thankful because I know now that this experience has not only changed me, but probably saved my life. I have been fortunate enough to be able to use the resources available to me to become someone who I always wanted to be and grow to my fullest potential.

After just a few months here I started working with the Education Department and formed some GED prep classes on my unit. I found a passion for teaching and I held and still hold, one year later, two classes everyday for six days out of the week. I spend a major portion of my day in the classroom, in fact, it was in the classroom where I first met Mr. Ross Ulbricht. Mr. Ulbricht approached me after my class to inquire about how he too, might get involved in teaching classes. He explained that he was fortunate enough to have had a good education and that he was interested in getting involved with the Education Department or at the very least, helping me out in any way he could. I was moved immediately by his sense of concern for what we were doing in trying to share our gifts and help teach some of the other dedicated inmates who haven't been so fortunate to have had some of the same priveleges afforded to Ross and to myself.

Mr. Ulbricht began joining me every morning at 8:00 am in the classroom. His consideration and dedication made me realize that he is the kind of person that being around I found would prove to be in my best interest. From that point on, he and I became friends. That is not, however, why I am writing this letter. I would like to share with Your Honor, not that Mr. Ulbricht and I became friends, but why, and to shed some light, from my perspective, on the kind of person he is and how he has affected, not only me, but many of our other fellow inmates. Of course, I have no knowledge of who he was or how he lived before coming here, but I can speak for who he is today.

Ross Ulbricht and I share the common experience of having gone to trial, so I know how stressful of a time that can be for anyone. As difficult of a time as it was, he always was available for me and for my students. Sharing his knowledge and his experiences had inspired me to do something that I always wanted to do but never managed to accomplish. I enrolled in College.

As a first generation college student, the whole ordeal of choosing a school, enrolling, picking a major, and registering for classes was completely foreign to me and frankly intimidating. I am forever grateful that Mr. Ulbricht patiently walked me through the entire process. He has provided me the advice and confidence necessary to take those vital first steps. There are three other students in my class that are grateful to Mr. Ulbricht, for he convinced them too that as proud as they should be to have made such valuable strides and receive their GED's, that it is only the first step to ensuring a successful life that is free of recidivism.

I am so very proud to broadcast to anyone that will listen that Michael Jimenez, Elvin Soto, Leon Santiago, and I, aside from being inmates here at MCC, are degree seeking students, enrolled at Adams State University. We take classes through correspondence. The school mailed us books, course syllabi, due dates, and a note from our professors that says, basically, "Good Luck." That is pretty scary. I know that it is nothing that has not been done before, but with no personal instruction, it's a daunting task. Mr. Ulbricht sits with the four of us every single day and we've made such great progress that I fear what it will be like ~~when we are no longer able to~~ take advantage of his wealth of knowledge the unparalleled generosity with which he shares it. Mr. Ulbricht does all this without any expectation of something in return. It's is soley to help others and I have found that to be of the most endearing and noble qualities I have found in anyone I have met throughout this entire unfortunate experience. Ross Ulbricht kindness and devotion to excellence has truly inspired us all.

I cannot even begin to understand the pain and the stress this most exceptional person harbors because that is the only way that he would have it. He does not wear his misery like most people around here do and if I didn't know about it, I could never imagine what it is he is going through. He does not share most of the details but I am aware of his pre-sentencing recommendation. If I may most respectfully share with Your Honor, my feelings, to sentence this young man to a lifetime detained behind bars, kept from society, would not only be tragic but also a detriment to Mr. Ulbricht, his family, and society.

Respectfully and Humbly Submitted,

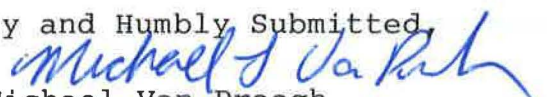

Michael Van Praagh

EXHIBIT 6

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Dear Judge Forrest,

I write to you on behalf of Ross Ulbricht, who is scheduled for sentencing this Friday, May 29, 2015. I write in sincere support of his attorney's submission that Ross receive a sentence substantially below the applicable sentencing guidelines and be allowed a chance to reclaim part of his life to spend in the service of others, where his considerable intellect, interest in people and compassion for others could find him in a position to affect many lives for the better.

It is worth mentioning that I do not know Ross Ulbricht personally in any way. Like many in the computer forensics business, I have followed his case with great interest, given the technology involved and technical matters presented at trial. In reading the ninety seven letters to the court in support of Ross, I was struck by the universal overtones of love, respect and gratitude in each one. I found myself compelled to reach out to his attorneys, as it became apparent that Ross is not a career criminal, a technically proficient supervillain or evil, but rather an educated man who cares for others, is interested in the world around him, and has no prior history of criminality before making an extraordinarily bad choice. This is a man, who with the help of such an impressive support system, could truly give back to society if given the chance.

This apparent duality resonated deeply with me. My own family has been forever altered by the extraordinarily bad choices of my Father, Thomas J. Ernst, a man much like Ross, who spent a life in service of others, only to make a mistake which saw our family cast into a whirlwind that ultimately destroyed it. My Father was convicted of tax crimes in 2011 and sentenced to 48 months in prison in the Eastern District of Virginia.

A Georgetown Law Graduate, Air Force Intelligence officer and tireless philanthropist, my Father was an advocate for the disadvantaged regardless of race, creed or station. He was honored by no less a moral compass than Nobel Prize recipient Elie Wiesel with a place on the board of the Elie Wiesel Foundation for Humanity. In spite of his success, accolades and the love of his family, he made a series of tragically bad decisions that led to his incarceration at Fort Dix, the loss of all family assets and in part contributed to the untimely death of my Mother three months ago.

While incarcerated for what seemed like a short period of time, the effects of this time have been incredibly hard to believe. Over the course of his first year, he experienced a series of falls that have now left him increasingly incapacitated physically. He has received a preliminary diagnosis

of Parkinson's disease, brought on in part by these falls where he has hit his head. He is unable to recall names, events or places and is unable to groom himself. As a man with considerable education, he has been unable to find programs to better himself or prepare himself for life outside beyond basic correspondence courses, only some offering college credit. Most of all, my Father knows his actions led to him never seeing his wife of forty one years ever again, and that, coupled with the experiences above, have had a tremendous impact on his mental state.

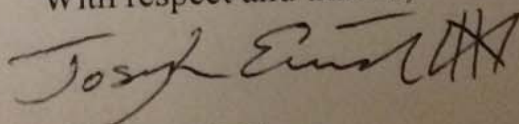
My Father knows as a seventy year old convicted felon, his job prospects are non-existent. His attempt to serve as a volunteer mentor at a school where many of my family members attended was rebuffed. He's been unable to even get an interview to be a greeter at a large retailer. In sum, he is a man that while educated at the highest levels, now finds himself unemployable at even the most entry level of jobs. He has no place to live once released, nor means of subsistence and finds himself in an endless cycle of indignity, spiraling ever downward.

While brought about by his own decisions, our hope as a family was that someone with his experience and education would at minimum, be well placed to be a mentor to someone at risk of doing something similar. While obviously more of a national conversation with clear political components, I believe it is fair to say that we can do and ultimately must do more to give incarcerated citizens a path back toward reintegration that leads to personal fulfillment and community benefit. That path could begin as early as the first day of their sentence.

Having seen the affects that even a short period of incarceration can have, it is my fervent hope that Ross is not subjected to an unduly long period away from his family and friends, which at a minimum will be a decade and a half longer than my father will be away from his friends and family. While not based on personal acquaintance, this hope is based on the firm personal belief that all of us as citizens, whether we be free or incarcerated, have something to add to the national fabric. A man like Ross Ulbricht, with an impressive education, demonstrated ability to favorably impact people around him and prior experience in business with community service components, could add something so positive to that fabric. This is not someone who has placed himself beyond the edge of society, but someone who made an awful mistake and yet can find redemption still in reach.

As a young man with an impressive array of people that obviously are personally invested in his well-being and ultimate path in life, Ross is far better poised for success once released than the average person. With the right placement in a lower security level facility, Ross could be working towards a larger goal from day one. He could be the force for good that was mentioned so often in his letters of support. He could be that caring friend, doting cousin, loving brother and son to not only his own family, but maybe to others who really need that sort of person in their lives. Most importantly, Ross could realize the potential in his tomorrows that may have eluded him in the present.

With respect and thanks,



Joseph Ernst

EXHIBIT 7

Mark L. Taff, M.D.
Forensic Pathologist
511 Hempstead Avenue
Suite 2
West Hempstead, New York 11552
Telephone: (516) 292-2300

May 26, 2015

Joshua L. Dratel, Esq.
Attorney at Law
29 Broadway, Suite 1412
New York, N.Y. 10006

Re: U.S. v. Ross Ulbricht
14 Cr68 (KBF)

Dear Mr. Dratel:

As per your request, I have expeditiously reviewed and analyzed a variety of records from 6 drug-related deaths from different parts of the world. Mostly incomplete record files regarding six deceased individuals were reviewed between 5/8-20/15, including: 1) Jordan [REDACTED] (JM); 2) Bryan [REDACTED] (BB); 3) Alejandro [REDACTED] (ANA); 4) Preston [REDACTED] (PB); 5) Jacob [REDACTED] (JLG); and 6) Scott [REDACTED] (SW). In addition, I also reviewed Attorney Lindsay Lewis' declaration in support of defendant Ross Ulbricht's pre-sentencing submission dated 5/15/15 containing my preliminary assessment of the alleged overdose deaths.

As a Board-certified forensic pathologist with over 30 years of clinical, investigative, teaching, testimonial and administrative experience, I have conducted hundreds of death investigations and autopsies, including dozens of drug-related fatalities in urban, suburban and rural communities.

Medical examiners (coroners' pathologists, forensic pathologists) typically conduct 6-stage death investigations consisting of: 1) history intake from next-of-kin, police, healthcare personnel and/or subpoenaed medical, psychological, criminal, education, military, etc. records; the history phase corresponds with what lawyers refer to as circumstantial-testimonial evidence; 2) scene findings supported by diagrams, sketches, photographs, videos and documentary evidence; 3) autopsy (external and internal (surgical or invasive) examination of a corpse); the autopsy is usually performed in a government medical laboratory; 4) lab (toxicology, DNA, serology, histology, anthropology, dental, ballistics, trace evidence (hairs, fibers, paint chips, glass, fingernail scrapings, fingerprints, footwear analysis, tool marking analysis); 5) bureaucratic (creation and preservation of autopsy file with test result reports and medical examiner notes and communications); and 6) signing of death certificate regarding cause, time and manner (natural, accident, suicide, homicide, undetermined and/or pending) of a person's death.

When a medical examiner rules a manner of death to be an accident, the ruling often results in some civil action. In contrast, if the manner of death is classified as a homicide, prosecutors usually initiate criminal investigations with the intention of charging a person(s) for the crime.

Based on my review of the available documentary evidence, each case in *U.S. v. Ulbricht* lacks information about one or more of the 6-stages of death investigation. The autopsy is the ultimate diagnostic tool for the medical profession. If no autopsy is performed, no information is available to establish the cause, manner and time of death. Partial death investigations and/or partial autopsies yield partial answers which is as bad as no autopsy at all. Without certain pieces of information, it is impossible for medical examiners to render opinions about issues that typically arise during criminal and civil litigation (e.g. cause, manner and time of death, time of onset of injury, pre-existing pathological (medical and/or psychiatric) conditions, interactions of drugs, drug metabolism (absorption, breakdown and elimination of drugs), conscious pain and suffering, life expectancy, quality of medical and surgical care, etc.). In their search for the truth, lawyers frequently ask medical examiners on the witness stand to integrate/correlate circumstantial, testimonial, scene and medical evidence. The request is made difficult when gaps exist in a death investigation. The task is even more complicated when deaths involve individuals with substance abuse and mental disorders. The drug subculture is composed of individuals who chronically seek, purchase and use/mix illicit drugs, prescribed medications and alcohol to satisfy their cravings. Anyone who has studied (interacted, treated) drug addicts know that they are notoriously unreliable historians regarding type, dose (amount), route of administration and time of drug usage. They are also known to frequently lie about how they obtain their drugs and support their habits. Malingering is another personality trait of drug addicts seeking to receive free health care treatment and/or narcotics for short-term gratification of their conditions.

The interpretation of drug levels is difficult because of multiple variables, including: a) use of multiple drugs in varying amounts; b) administration of drug via different or multiple routes (inhalation (snorting, sniffing), ingestion, injection); c) use of drugs at different times; and d) use of drugs by individuals of different ages and body weights with varying levels/degrees of drug tolerance.

The manner of death is ruled "accident" for the majority of drug overdoses investigated by medical examiners. Some accidental drug overdoses turn out to be suicides when medical examiners make the effort to use their subpoena power to obtain decedents' ante-mortem medical and psychiatric records which frequently contain information about prior self-destructive behavior, depression, anxiety, anti-social behavior, unemployment, rehabilitation therapy, criminal activity, incarceration and/or multiple life crises. Each time a drug addict willfully "self-medicates", he/she is engaging in potential self-destructive behavior similar to Russian roulette. Sometimes a drug user wins and lives to enjoy the temporary high. Other times a drug addict loses and dies.

Drug-related homicides are rare. Unless a poisoner confesses to intentionally killing another person with a "hot shot" (acute death by injection or ingestion with a large dose of an illicit drug and/or medication) or the event is witnessed or captured on video, medical examiners rarely classify drug overdoses as homicides. Occasionally, heavy metals or insecticides are administered in low doses over time to cause a slow death by poisoning. Because American lawmakers/policymakers have declared "war on drugs" several times during the past 100 years or so, law enforcement agents (police, prosecutors) have been charged with waging the battles against users and dealers. Medical examiners are licensed physicians who work in government medical laboratories. Although medical examiners are supposed to be independent of law enforcement in many jurisdictions, they frequently collaborate with police and prosecutors during death investigations. Depending on their findings and rulings, medical examiners are

frequently adopted as State/People's prosecutorial witnesses at homicide trials. In the majority of cases, medical examiners use the term to mean the decedent died at the hands of another individual(s). The cause of death of a person is traced back to another person(s) whose actions either contributed or caused the death. The majority of traumatic/violent deaths investigated by medical examiners are caused by physical force/agent such as firearms, cutting instruments, blunt objects, asphyxia and/or fire/arson. The cause and manner of death are usually clear-cut. Deaths due to chemical substances are, more often than not, equivocal. Over the years, laws, circumstances and politics have changed with respect to drug deaths. These changes have created differences of opinions between medical examiners and lawyers regarding manner of death. Debates have arisen over the classification of manner of death related to alcohol, tobacco, pharmaceuticals and, even, food. Traditionally, deaths due to chronic alcoholism and tobacco use have been classified as natural. Several medical examiners feel that these deaths should be classified as suicides. Because alcohol and tobacco are, in effect, toxic substances legally sold to the public, deaths due to these substances, to my knowledge, have never been classified as homicides. Each fatality must be evaluated on a case by case basis. Although medical examiners are frequent and important players in the criminal justice system, the final disposition of each case handled by medical examiners is left to the courts to decide.

Because of the lack of reliable circumstantial, testimonial and scene information surrounding many drug overdoses, the manner of many drug-related deaths are not clear-cut. Medical examiners are not mind readers and typically refrain from speculating about the thought processes of drug users. Many medical examiners have opted to rule the manner of many drug-related deaths as "undetermined" (possible accident, suicide or homicide) with the understanding that such a classification might be amended if additional (compelling) information comes forth in the future.

On 5/13/15, based on governmental documentary evidence provided to me by Ms. Lewis, I expeditiously submitted an outline of my preliminary impressions about the death investigations and the cause, manner and time of death of each decedent. The information contained therein became the basis of Ms. Lewis' declaration in support of defendant Ross Ulbricht's pre-sentencing submission dated 5/15/15.

Since I first prepared the outline, I have received the partially redacted El Dorado County Sheriff and Sacramento County Coroner's report and NMS Labs toxicology report regarding the death of Alejandro [REDACTED] (ANA). These documents were received on 5/20/15 as part of new discovery provided by the government. No additional documentary evidence was received after 5/8/15 concerning the other 5 decedents. Accordingly, my unrevised outline is now being incorporated into this formal/final report to show that the incomplete records raised several questions and precluded me from rendering opinions regarding the cause, manner and time of death as well as, possibly, other forensic medicine issues of interest to the criminal justice system.

Jordan [REDACTED] (JM):

- 27-year-old black male (5'10" or 6'7"/260 or 265 lbs)
- Seattle, Washington
- Found dead at home containing drugs and drug paraphernalia on 8/31/13 on or around 11:06 p.m.
- File lacks death certificates with dates and times of onset of injuries, death and signing of death certificate

- Alleged history of multiple drug-related arrests (1992 - 2001), marijuana, opiate, anti-histamine, alcohol, hydrocodone and anti-pain usage for chronic pain related to a spleen ailment.
- Dr. Timothy W____, Medical Examiner of Kings County, should have subpoenaed JM's past medical/psychiatric records to better understand JM's ante-mortem issues.
- Is Dr. W____, board-certified in forensic pathology?
- Post-mortem drug screen reported alprazolam (anti-anxiety) and diazepam (anti-anxiety).
- Were these drugs found at death scene?
- Autopsy showed presence of acute brain (cerebellar) hemorrhage (bleeding) consistent with a stroke which could be a competent cause of death.
- Stroke omitted from opinion as either cause or contributing factor to death.
- Liver was heavy and enlarged probably due to fatty changes from overeating and alcohol use.
- Microscopic exam of liver shows "hepatocyte necrosis".
- Did JM suffer from drug-induced acute liver failure? Ante-mortem (before death) of codeine, morphine, alprazolam and diazepam were low levels which acted together (synergistically) to impair JM's ability to breathe.
- Tox report issued on 11/4/13.
- Autopsy report issued 11/12/13 - 2 months after autopsy.
- Medical examiner ruled manner of death as "accident".
- Washington State Police Crime Lab labeled death "controlled substance homicide" on either 8/13/13, 9/4/13 or 12/19/13.
- Why didn't medical examiner also use homicide in autopsy report?
- The time of onset of brain bleed cannot be correlated with times(s) of drug usage.
- Drugs probably used prior to brain hemorrhage which was most likely the terminal event.
- JM was an obese black male who may have suffered from (untreated) hypertension, a condition that frequently causes strokes.
- JM's heart was at upper limits of normal weight which is suspicious for chronic high blood pressure.
- Spleen was normal at autopsy.
- Autopsy report correctly attributed death to multiple/combined drug intoxication.
- Heroin/opiate was not singled out as primary cause of death.
- Source of heroin is unknown.
- For reasons unknown, brain hemorrhage was ignored from opinion.

Bryan [REDACTED] (BB):

- 20-year-old white male.
- Boston, Massachusetts.
- Found dead in residence on 10/7/13.
- According to death certificate, cause of death: "acute opiate intoxication" (morphine) due to substance abuse.
- Date and time of injury "unknown".
- Pronounced dead on 10/7/13 at 11:46 a.m.
- Time of death is "unknown".

- Death certificate signed by Dr. Marie _____ on 2/27/14 - 4 months after death.
- Box # 31 on death certificate omits information about performance of autopsy.
- Unknown if Dr. Marie _____ is board-certified in forensic pathology.
- BB file omits autopsy report.
- Toxicology report positive for opiate (morphine) and alcohol.
- Blood-alcohol concentration (BAC) was 0.06% which is equivalent to about 3 12-ounce of beer for average body weight of about 170 lbs.
- BB's body weight is unknown.
- Alcohol and morphine have central nervous system depressant effect.
- Both alcohol and opiate (morphine) should have been mentioned on death certificate.
- Manner of death ruled an "accident".
- Source of heroin unknown.
- Route and time of usage unknown.
- Unknown if other sources of heroin at scene.
- According to Boston Police report, "victim known to Commonwealth".
- What does this mean? Does BB have a prior drug-related arrest record?
- Levels of morphine lower in femoral artery blood than pooled/cavity blood.
- Femoral artery blood more accurate.
- Modafinil (anti-sleep stimulant) also found in low level in pooled/cavity blood.

Alejandro [REDACTED] (ANA):

- 16-year-old Hispanic male.
- Found dead on garage floor of friend's house in Camino, CA on or around 9/10/13.
- ANA had history of wanting to buy marijuana, get high and party.
- File provided is useless for forensic medical evaluation.
- No autopsy, toxicology and death certificate reports provided.
- No medical information available to comment.
- ANA might have used a hallucinogen which triggered aggressive behavior and apparent drug-related seizure.
- Seizures can cause acute respiratory failure and death.

Preston [REDACTED] (PB):

- Once again, the autopsy report and death certificate with crucial medical information are unavailable for review.
- PB was a 16-year-old male.
- He has a history of being a drug user (alcohol and marijuana).
- His pre-death health records and prior police arrest records are important in the defense of your client.
- A post-mortem drug screen was performed by the Perth Coroner.
- The drug levels are useless out of context with the other autopsy findings.
- On Saturday, 2/16/13, PB fell or jumped from a balcony at the Sunmoon Resort hotel in Perth, Australia after taking a psychedelic drug reportedly purchased/obtained from Silk Road.
- Other youngsters celebrating their prom night witnessed PB acting bizarrely shortly before they heard him loudly scream "Fuck" during the fall.

- The drop height is unknown.
- It is assumed that PB sustained multiple blunt force impact bodily injuries associated with bone fractures and internal organ (e.g. brain) and blood vessel lacerations.
- He survived in the hospital for 2 days before death reportedly occurred on or about 2/18/13.
- The date of blood collection for drug testing is unknown.
- Specimens received in lab on 2/21/13.
- Only 1 of 2 pages of Chem Centre received for review.
- Chest blood is usually contaminated and not a reliable specimen for testing.
- Chest blood revealed presence of low levels of morphine (narcotic drug) and midazolam (a benzodiazepine sedative).
- Methodology used to test specimens assumed to be immunoassay.
- Levels may be lower than at time of fall due to 2-day survival (and continued metabolism/breakdown) of drugs and introduction of fluids/blood transfusions to prevent fall in blood pressure.
- Femoral blood was negative for alcohol, but low positive for morphine, active component of marijuana (tetra-hydrocannabinol/THC) and benzodiazepines.
- It is unknown if PB received benzodiazepines in hospital.
- It is unknown if marijuana was laced with any hallucinogens.

Jacob [REDACTED] (JLG):

- 22-year-old male (175cm/65kg/143 lbs).
- Incident occurred on or about 2/14/13 (Valentine's Day) in Adelaide, South Australia.
- History of mirtazapine treatment for anxiety and depression, polydrug abuse and overdoses in 2010 and 2011.
- It is unknown if JLG is suicidal.
- Need to see his past medical and psychiatric records.
- Day before death (2/13/13 at 1425 hours/2:25 p.m.), JLG was treated (and discharged!!) for ringing ears, difficulty swallowing, nausea and fever after night of alcohol, amphetamine and heroin.
- Recently completed course of antibiotics for bronchitis (this diagnosis is extremely important with respect to cause of death: "Aspiration Pneumonia").
- His white blood cell count was elevated.
- He received IV fluids and metoclopramide (anti-heartburn medication), paracetamol (pain reliever, fever reducer) and ibuprofen (anti-muscle aches and fever) and discharged at 1700 hours (5 p.m.) - 2 3/4 hours after admission.
- LIG was found by his mother unresponsive at home on 2/14/13.
- EMS found JLG dead with "established rigor mortis (stiffness) and lividity (post-mortem pooling of blood in dependent parts of body)".
- Death was pronounced at 8:40 p.m.
- Autopsy performed by Dr. John G_____ on 2/15/13 at 10:50 a.m.
- It is unknown if Dr. John G_____ is board-certified in forensic pathology.
- It is unknown if Dr. John G_____ knew that JLG was recently treated for bronchitis (which could have developed into pneumonia).
- It is unknown if Dr. John G_____ subpoenaed JLG's medical records or reviewed his most recent chest x-rays.

- It does not appear that JLG had a chest x-ray the day before death.
- Autopsy reveals old and recent intravenous injection sites in superficial veins of elbow creases.
- A large amount of partly digested food and fluid were present in stomach contents.
- No pills were found.
- Post-mortem drug screen for low levels of "4 different illicit drugs" (methylamphetamine, heroin, cocaine and 4-methylmethcathinone) and therapeutic levels of mirtazapine and metoclopramide.
- Cause of death due to multiple drug (narcotic, depressants and stimulants) intoxication complicated by aspiration pneumonia was not entertained.
- This is a very important finding that was completely omitted from the diagnosis.
- More importantly, manner of death also omitted.
- Was JLG's death natural, accident, suicide, undetermined or homicide (controlled substance homicide)?
- Time of death important because no one knows when aspiration occurred with respect to drug overdose (synergistic effect of multiple illicit drugs in low doses working together to kill).
- It is common to find some agonal/terminal aspiration in people who are intoxicated at time of death.
- Microscopic exam of lungs shows "widespread patchy pneumonic consolidation associated with some vegetable material".
- Such an extensive tissue reaction suggests pneumonia existed **before** agonal aspiration of food while intoxicated.
- JLG's death might represent some medical malpractice (failure to diagnose and treat pneumonia/premature hospital discharge).
- Chronology of events suggest that overdose and death occurred between 2/13/13 5 p.m. and 2/14/14 before 8:30 p.m. - 27 1/2 hour time frame.
- This means JLG "self-medicated" during this period and aggravated his pre-existing pneumonia which caused/contributed to his death.
- Autopsy also showed mild steatosis (fatty changes), a condition commonly associated with alcohol use/abuse.
- Several portal/abdominal lymph nodes were enlarged, a condition commonly found amongst I.V. drug addicts.

Scott [REDACTED] (SW):

- 36-year-old male (1.75 meters/5'9"/100kg - 220 lbs.) found dead (and decomposed) by aunt on floor next to computer of his residence in Adelaide, South Australia on 5/19/2013.
- Drug paraphernalia and heroin found at scene.
- Last seen alive on 5/16/13.
- Time of death "on or about 5/16/13".
- History of deafness with cochlear implants, deep vein thrombosis (? blood clots in deep veins of legs) and heroin abuse (Silk Road customer between Jan-May, 2013).
- Dr. Stephen W _____ performed autopsy on 5/23/2013 at 11:50 a.m. - 4 days after discovery of SW's body.
- Why 4 day delay before autopsy?

- Unknown if Dr. Stephen W____ is board-certified in forensic pathology.
- Probable recent injection site found in SW's left elbow crease corresponding to his rolled up left shirt sleeve.
- Body and internal organs markedly decomposed/autolyzed; Evidence of pre-existing coronary artery disease (partially occlusive (40-50%) arteriosclerotic narrowing of left anterior descending coronary artery, a pathological finding, in and of itself, sometimes associated with fatal cardiac arrhythmia (irregular heart beat) and sudden cardiac death.
- Cause of death listed as "multiple drug toxicity".
- Toxicology screen reported 8 different drugs.
- Morphine level, in and of itself, was potentially lethal/toxic.
- Codeine was considered a "therapeutic concentration".
- Doxylamine, tramadol, 7-aminoclonazepam, alprazolam, oxazepam and warfarin levels were "non toxic/therapeutic concentration".
- According to Note, above mixture of drugs "can all act as central nervous system depressants whose interaction produces an effect greater than the sum of their individual effects". This description is consistent with "synergism".
- Manner of death is unknown.
- Manner most likely accident.
- However, multiple drugs in low levels might be some covert act of suicide.
- Making generalizations about different drugs and levels in different individuals is junk science.
- It is bad science to extrapolate from one person to groups of people.
- Each case must be evaluated on its own merits.

In reference to Alejandro [REDACTED] (ANA), he was reportedly a 16-year-old Hispanic male (6'0"/200 lbs. or 5'8" 182 lbs.) who was witnessed to have a seizure and subsequently found unresponsive in cardiac arrest somewhere (? garage floor of a friend's house in Camino, CA) on Sunday, 9/9/2012 on or around 1:48 a.m. He was transferred to Marshall Medical Center (location unknown) where he was subsequently pronounced dead at 3:04 a.m. - about 1 1/4 hours after discovery - despite some resuscitative efforts. The sheriff's investigation revealed that ANA wanted to buy marijuana, get high and party. He "intentionally" ingested an unknown type of drug for a "party". Supplemental Narrative indicated that ANA purchased an illicit drug known as 25I-NDOMe or "trips" from a local drug dealer before overdosing. The apparent drug-related death prompted a criminal investigation which eventually led to the arrest of the dealer who sold the illicit drugs to ANA. The death was referred to Dr. Gregory R____ of the Sacramento County coroner's Office for certification.

An autopsy was performed on Monday, 9/10/2012. Because Dr. R____ was unable to determine a preliminary cause of death, the cause of death was listed as "pending". Other significant conditions were described as "none". On 9/10/2012, a Case Advisory form indicated the "Homicide/Rule-Out" case was pending toxicology. "Designer drug screening-specific type pending investigative information" and a "BA & Comprehensive toxicology screen" were requested.

A NMS Toxicology Report issued on 10/16/2012 indicated that femoral (thigh) blood was positive for caffeine (coffee), active components of marijuana (Delta-9 THC/tetrahydrocannabinol - a central nervous system depressant) and therapeutic levels of fluoxetine and norfluoxetine (Prozac - an anti-depressant drug). Page 2 of 5 of another NMS Lab report issued on 10/16/2012 indicated the femoral blood was "positive for 25I-NBOMe; the presence of this compound was confirmed through LC/TOF-MS analysis". A quantifiable level of 25I-NBOMe was not reported.

On 1/29/2013 (about 3 1/2 months after the drug results were issued), Dr. Gregory R. ___ attributed the cause of ANA's death to "cardiorespiratory arrest following major seizure due to acute 25I-NBOMe toxicity". In Dr. R. ___'s opinion, he claimed that the toxicology screening was "positive" for the designer drug 25I-NBOMe, a synthetic psychedelic drug. However, the precise dose used in the death of ANA was unknown. His report also mentioned that "seizures and death have been rarely reported with high doses (700-1,500 micrograms or more)". Dr. R. ___ did not include the name of the authoritative treatise/reference describing the above symptoms and levels in his final report. It must be noted that Dr. R. ___ excluded the presence of marijuana and Prozac as well as pre-existing heart disease (mild left ventricular cardiac hypertrophy) (thickening) (heart weight 440 grams) as conditions contributing to death. A microscopic exam of tissues was not performed. It is unknown if ANA suffered from any significant pre-existing pathological conditions at the microscopic level which might have caused or contributed to his death.

Although ANA's final/amended death certificate was not included in his file, a Supplemental Narrative 03 dated 2/20/13 indicated that the case status was "closed - accident". In addition, a Coroner's Case Property Disposition dated 4/24/2013 described the case type as "accidental". These two documents indicate that the El Dorado County Sheriff's Office and Sacramento County Coroner's Office joint death investigation concluded that the manner of ANA's death was an accident. Apparently, homicide had been ruled out.

Based on my review of ANA's records, it is my opinion to a reasonable degree of forensic medical certainty that ANA's cause of death was due to multiple drug (25I-NBOMe, marijuana and Prozac) intoxication. Cardiomegaly (enlarged heart) of undetermined origin was a significant associated condition contributing to ANA's death.

After a 7-month long investigation, Californian officials concluded that the manner of ANA's death should be classified as an accident. I found nothing in the records to suggest otherwise. Therefore, it is my opinion to a reasonable degree of forensic medical certainty that ANA's manner of death was appropriately ruled an accident.

SUMMARY:

I am unable to render opinions to a reasonable degree of forensic medical certainty in 5 of 6 cases regarding cause, manner and time of death as well as several other forensic issues typically addressed by medical examiners investigating drug-related deaths because of the following reasons: a) paucity of information; b) confusing interpretations, selective/partial/incomplete diagnoses; c) omissions; and d) inability to inspect original death investigation and autopsy reports and primary autopsy evidence. I have only opined on the death of ANA and, in that case, I disagreed with the official version of his cause of death. In my opinion, the Californian forensic team failed to factor in the presence of other drugs and a pre-

existing heart condition into ANA's cause of death. It must be emphasized that ANA's death was initially pended to rule out a homicide. After 7-months, ANA's manner of death was classified as an accident. This ruling indicates that local authorities had insufficient evidence to criminally charge another person for contributing to or directly causing ANA's death.

For reasons previously discussed above, I am not surprised at the results of the ANA death investigation. During my career, law enforcement has conducted dozens of in-depth investigations with the intention of making drug dealers legally/criminally responsible for the deaths of individuals to whom they sold drugs. To the best of my recollection, no one was ever charged with murder. Several factors, singly or in combination, play into a prosecutor's decision not to bring charges against drug distributors, including: a) unreliable witnesses; b) reluctant witnesses; c) discarded physical evidence (e.g. flushing bags of drugs down the toilet; concealment of drug paraphernalia); d) complicated causes of death; e) non-homicidal manners of death; f) politics (justifying the spending of taxpayer money on drug addicts and dealers); g) multiple drugs acting synergistically (together); and h) victim's background (criminal record, history of substance abuse and mental disorder, lifestyle, poor state of health).

It is my understanding that Ross W. Ulbricht was recently convicted of being the founder of the website Silk Road, a black market for the sale of heroin, cocaine, LSD and other drugs. It is also my understanding that, on Friday, 5/29/15, federal prosecutors intend to present "evidence" to Hon. Katherine B. Forrest, the sentencing judge, that the six drug deaths were linked to drugs bought from vendors on Silk Road.

In addition to paucity of post-mortem medical-scientific evidence and the decedents' ante-mortem histories of medical and mental health and substance abuse problems, the physical/geographical distance between Mr. Ulbricht/Silk Road and the six decedents has basically eliminated any chance of applying Locard's Theory of Exchange/Transfer/Linkage to scientifically connecting the death scenes and decedents to Mr. Ulbricht through trace (e.g. fingerprints, fibers, footwear impressions, etc.) and/or biological (e.g. DNA, blood, saliva, semen, hair, etc.) evidence. At this time, I have not seen any evidence that scientifically links Mr. Ulbricht to the six decedents and the death scenes.

Although all the decedents had drugs in their systems at the time of death, toxicology labs cannot match illicit drugs present in a person's body fluids and tissues to an exogenous (outside) source of drugs. Heroin, cocaine and marijuana are heroin, cocaine and marijuana on a post-mortem drug screen. However, if a person's fingerprints, blood and/or DNA are found on the outside of a glassine bag containing drugs, the physical identity of a drug user/dealer can be scientifically established. Based on the available information, I cannot correlate the time of purchase/acquisition from an alleged Silk Road vendor, time of usage of the alleged Silk Road purchase, time of usage of other illicit drugs and prescribed medications, the amount (dose) of drugs used, time of mixing/cocktailing of alleged Silk Road purchase with other drugs, pre-existing pathological health conditions and cause, manner and time of death. It is unknown when each decedent, with other drugs in his system, took alleged Silk Road drugs.

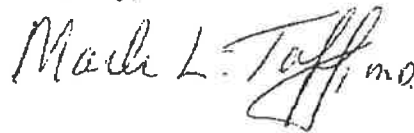
The mixing of drugs in low levels can cause more powerful and potentially fatal effects than each drug used individually (so-called synergism). Medical examiners must look at all of the results in a post-mortem drug screen. It is bad science to be selective or hierarchal about drugs (e.g. heroin is more dangerous than cocaine which is more dangerous than alcohol, and, thus, if not for heroin, the person would still be alive) when rendering opinions about the cause

of drug-related fatalities. Post-mortem drug results must be viewed in context with the findings from other phases of a death investigation. Different people react differently to different drugs in different doses at different times. Each drug-related death is unique and must be evaluated on a case by case basis. Medical examiners should refrain from extrapolating the findings of one death to those of groups of people.

I reserve the right to amend the above opinions in the event additional information comes forth during future legal proceedings.

I declare, under the penalty of perjury, that the above opinions are true and accurate to the best of my professional ability. The above opinions are based on over 30 years of clinical experience as a practicing Board-certified forensic pathologist who has investigated dozens of drug-related fatalities.

Sincerely,



Mark L. Taff, M.D.
Forensic Pathologist

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BY ECF

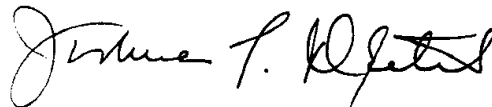
The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Ross Ulbricht,
14 Cr. 68 (KBF)

Dear Judge Forrest:

Enclosed please find an additional letter, from Elizabeth Oden, submitted to defense counsel this afternoon in support of defendant Ross Ulbricht. Ms. Oden's letter is attached hereto as Exhibit 1.

Respectfully submitted,



Joshua L. Dratel

JLD/
Encls.

The Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street New York, New York 10007

Dear Judge Forrest,

Abraham Lincoln once said, "I have always found that mercy bears richer fruits than strict justice." It was a particularly warm fall evening and I was feeling excited, nervous and important all at once. I was a young, middle-class girl that had grown up with a good education, friends, and a mother who worked hard to provide for me and my siblings. My feelings of excitement and importance quickly turned to fear, despair and ignorance. I was soon exploring those feelings in the back of a police car and then in a 10 x 10 cell. I had a lot to learn that fall and in the years to come.

My possession and distribution of narcotics crime carried a 75 year prison sentence. In the year I waited for my sentencing, I had nightmares every night about what 75 years in prison would be like and I desperately tried to find some peace in my mind. I was finally able to exhale when the judge sentenced me to 90 days in a "boot camp" program. I was a youthful offender and the judge believed I should be given a second chance to contribute to society in a positive way.

The lessons I was learning only increased as I began to serve my shortened sentence. I realized the path I was on before was the wrong one. The drugs I was dealing were affecting peoples' lives in ways I could not determine. I had more potential than being a drug dealer. Prison was more than a deterrent, it was a catalyst for a new beginning. If I had been sentenced to 75 years in prison, I'd still be there today and there would be no new beginning. Instead, I'm now a mother, a teacher, and a wife. I've taught children to read, built a school in a foreign country, helped to free women and children from abusive homes, and spent countless hours volunteering for community organizations.

I met Ross in Costa Rica in 2003. He was bright and eager and well on his way to changing the world. We surfed together and enjoyed the beauty and uniqueness of the biologically rich jungle which surrounded us. In the evening we talked about community, integrity, politics and religion. I distinctly remember being impressed meeting someone of his age (then just 18-19) who had altruistic visions to unite and help communities around him. I periodically saw him throughout the years as he continued to visit Costa Rica and I always found his demeanor to be kind and caring.

I was shocked when I read a *Time* article about his arrest in late 2013. I've followed his trial and as I read testimony on the internet, I could not help but come back to my own feelings and lessons from my bout with the law.

I regularly read to my son and one of the books he loves is *It's Okay to Make Mistakes*. The message in the book is that we learn from our mistakes and the lesson we learn from our mistakes often leads us down a new path. I believe, like me, Ross has made a horrible error in judgement. He went down the wrong path, and, yes, there should be consequences, but should the justice be strict? I know that the mercy I received has allowed me to be a "richer fruit" and I believe that Ross, too, has the potential, desire and strength to walk a new path and be a positive and contributing member of our society. I thank you for your time and consideration of my plea.

Sincerely,

Elizabeth Oden