

THE CROOKS WHO TOOK DOWN SILK ROAD

You've no doubt heard that a DEA and a Secret Service Agent involved in the Silk Road investigation got charged yesterday for stealing Bitcoin from Ross Ulbricht.

According to the complaint, Force was a DEA agent assigned to investigate the Silk Road marketplace. During the investigation, Force engaged in certain authorized undercover operations by, among other things, communicating online with "Dread Pirate Roberts" (Ulbricht), the target of his investigation. The complaint alleges, however, that Force then, without authority, developed additional online personas and engaged in a broad range of illegal activities calculated to bring him personal financial gain. In doing so, the complaint alleges, Force used fake online personas, and engaged in complex Bitcoin transactions to steal from the government and the targets of the investigation. Specifically, Force allegedly solicited and received digital currency as part of the investigation, but failed to report his receipt of the funds, and instead transferred the currency to his personal account. In one such transaction, Force allegedly sold information about the government's investigation to the target of the investigation. The complaint also alleges that Force invested in and worked for a digital currency exchange company while still working for the DEA, and that he directed the company to freeze a customer's account with no legal basis to do so, then transferred the customer's funds to his personal account. Further, Force allegedly sent an unauthorized Justice Department

subpoena to an online payment service directing that it unfreeze his personal account.

Bridges allegedly diverted to his personal account over \$800,000 in digital currency that he gained control of during the Silk Road investigation. The complaint alleges that Bridges placed the assets into an account at Mt. Gox, the now-defunct digital currency exchange in Japan. He then allegedly wired funds into one of his personal investment accounts in the United States mere days before he sought a \$2.1 million seizure warrant for Mt. Gox's accounts.

Along with all the WTF questions I have about this, I have a slew of questions about how it affects – or should have affected – the Ulbricht prosecution.

Among my questions: why is this being charged in San Francisco and not New York or Maryland? Why is this just a complaint? Has the government already arranged plea deals? What are the discovery obligations for a defendant who is being robbed by the guys running the investigation.

Ulbricht's lawyer, Joshua Dratel, suggests the questions go even beyond that. In a post, he hints at the timing of the revelations he got, when he got them, and what protection orders he was under once he did get them. The statement reveals that the defense didn't learn about the investigation into these officers for 9 months, suggesting they first learned about it in June 2014, which would be 9 months after Ulbricht was charged. But apparently they only got details on the investigation 5 weeks before trial, so perhaps in early December (there are sealed documents entered in the docket on October 15, November 4, December 1, and then four sealed documents entered on December 19, 2014). The defense asked for continuance of the trial, so

that these charges would have been made public and so that the defense could have used evidence about them, but the government wouldn't agree to that. Technologist Kevin Gallagher notes he informed Ulbricht's team in September 2014 that one of the officers, Carl Mark Force IV, had been bragging about his covert relationship with Ulbricht on LinkedIn, so it's not clear how much DOJ was giving that wasn't already becoming publicly known. Moreover, it appears DOJ only told Dratel about one of the agents, not both.

More interesting still, Dratel notes that the timeline of the investigation into Ulbricht maps onto the corruption of the officers investigating it.

Also, it is clear that Mr. Force and others within the government obtained access to the administrative platforms of the Silk Road site, where they were able to commandeer accounts and had the capacity to change PIN numbers and other aspects of the site – all without the government's knowledge of what precisely they did with that access.

In light of the information provided in the Complaint, it is now apparent to all just how relevant some of the issues raised by the defense at trial were, including:

1. The payment by Dread Pirate Roberts to a law enforcement agent for information about the investigation;
2. The ramping up of the investigation of Mr. Ulbricht in mid-2013, soon after that paid information began flowing;
3. The creation of certain evidence at trial, such as the 2013 journal that conveniently begins – again – in Spring 2013, after the corruption alleged in this Complaint ripened.

As the evidence at trial – particularly from the government's law enforcement

witnesses – demonstrated, the Baltimore investigation and agents were inextricably involved in the evolution of the case and the evidence, as well as with alerting Mark Karpeles that he was under investigation, and meeting with his lawyers and exchanging information.

At Mr. Ulbricht's trial, knowing full well the corruption alleged in the Complaint made public today, the government still aggressively precluded much of that evidence, and kept it from the jury (and had other similar evidence stricken from the record).

Admittedly, Dratel has an incentive to blow this up big – to suggest these corrupt cops set up his client. He doesn't seem to deny that Ulbricht was getting information from them.

But there is at least the possibility that some of what Ulbricht got charged with (and convicted, on the central charges) was trumped up by the crooked officers for their own advantage.

I noted yesterday that the government recruits government hackers by promising they will get to do what would be illegal if anyone else did it. It's not surprising, then, that some of their officers went beyond that.