

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 CR 243 (JSR)

UNITED STATES OF AMERICA

-against-

CHARLIE SHREM,

Defendant.

SENTENCING MEMORANDUM ON
BEHALF OF CHARLIE SHREM

BRAFMAN & ASSOCIATES, P.C.
Attorney for Defendant
Charlie Shrem
767 Third Avenue - 26th Floor
New York, New York 10017
Tel: (212) 750-7800
Fax: (212) 750-3906

MARC AGNIFILO
JACOB KAPLAN
Of Counsel

Table of Contents

I.	Introduction.....	1
II.	Outline of Legal and Factual Arguments.....	2
III.	The Guidelines Calculation	3
IV.	Charlie Shrem’s Background.....	4
	A. Introduction to Bitcoin and BitInstant	5
	1. Bitcoin.....	5
	2. BitInstant, and Its Place Within Bitcoin	8
V.	Argument	10
	Point One	
	The Sentencing Guidelines in this Case Do Not Properly Reflect the Degree of Charlie Shrem’s Culpability	10
	A. The Loss Figure is Not Rationally Related to Shrem’s Conduct.....	11
	B. The Six-Level Drug Enhancement Does Not Reflect Shrem’s Intent.....	12
	Point Two	
	Shrem’s Facilitation of Faiella’s Transactions Was Aberrant as He Never Did it with Anyone Else	13
	Point Three	
	Shrem Repeatedly Assisted Law Enforcement Agencies in Their Effort to Understand Bitcoin.....	16
	A. Meetings with DHS	16
	B. Meetings with Manhattan District Attorney	18

Point Four

Shrem Never Denied His Guilt or Demeaned the Prosecution in Press Comments.....	19
--	----

Point Five

Shrem's Character Warrants a Non-Incarceratory Sentence	21
---	----

VI. Conclusion	24
----------------------	----

Table of Authorities

Cases

<u>United States v. Adelson</u> , 441 F. Supp. 2d 50, 509 (S.D.N.Y. 2006)	10
<u>United States v. Gupta</u> , 904 F. Supp. 2d 349, 350 (S.D.N.Y. 2012)	10, 14

Senate Committee Testimony

Beyond Silk Road: Potential Risks, Threats and Promises of Virtual Currencies: Hearing before the Senate Committee on Homeland Security and Governmental Affairs (2013) (testimony of Jeremy Allaire)	6-7, 8
Beyond Silk Road: Potential Risks, Threats and Promises of Virtual Currencies: Hearing before the Senate Committee on Homeland Security and Governmental Affairs (2013) (testimony of Patrick Murck)	7-8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 CR 243 (JSR)

UNITED STATES OF AMERICA

-against-

CHARLIE SHREM,

Defendant.

SENTENCING MEMORANDUM ON
BEHALF OF CHARLIE SHREM

I. INTRODUCTION

Had the Greeks known of crypto-currencies and of certain provincial Brooklyn neighborhoods, a tragedy could have been written about a boy who, through Dionysian passion and a little hubris, helped nurture an idea – bitcoin - that was new to the world, and that could change how the world – the whole world – passed value from one person to another. This new idea would take the boy far from his neighborhood. The boy would see himself as an almost sacred guardian of this new idea, charged with the awesome responsibility of bringing it out of the darkness and into the light of widespread, mainstream acceptance. However, in the chaos of developing the new idea, he would drop his guard, and allow the dark forces to caste it in shadow. He would be to blame. He would be viewed not as its protector but as its destroyer, the destroyer of the one thing - the idea - he loved most. He would be sent back to his provincial neighborhood and, for a while, would live in his parents' basement, all the while dreaming of the time he could return to his lifelong task of helping – of being just one of many - to bring this new idea further into the light.

The rest of the story remains to be written.

II. OUTLINE OF LEGAL AND FACTUAL ARGUMENTS

This sentencing memorandum is submitted on behalf of Charlie Shrem who will be sentenced by this Court on December 19, 2014 at 2 PM. For the following five reasons, we ask that this Court allow Charlie Shrem to return to his life's work, and that the Court not impose a sentence of incarceration.

First, while the guidelines must legally be considered, see 18 U.S.C. § 3553(a)(4)(A), they are not helpful in determining the blameworthiness of this offense, which is more fairly determined by other 3553(a) factors.

Second, Shrem's facilitation of Faiella's transactions was aberrant behavior, as there is no evidence he did this for any of the other 49,000 BitInstant customers. Moreover, after Shrem parted ways with Faiella, Shrem never again had any compliance lapses.

Third, after the offense conduct here and prior to his arrest in this case, Shrem assisted different law enforcement agencies to help law enforcement understand bitcoin, at a time when law enforcement needed this new information.

Fourth, despite Shrem's intemperate and untimely remarks to the press, he has never denied his guilt and is genuinely and deeply remorseful.

Fifth, as the many letters accompanying this sentencing submission show,¹ Shrem is a kind-hearted, generous person who, during his few adult years, has given much to society and those around him.

¹ The nearly 70 letters in support are contained in the accompanying appendix and are arranged in alphabetical order.

For these reasons, the sentencing factors set forth in 18 U.S.C. § 3553(a) should lead to a sentence substantially below the guidelines. We ask that the Court therefore not send Charlie Shrem to prison.

III. THE GUIDELINES CALCULATION

While, for the reasons that follow in POINT ONE, we believe that the U.S. Sentencing Guidelines are not terribly helpful to the Court in fashioning an appropriate sentence, the law is clear that the Guidelines must be appropriately considered. So, we set forth that calculation here.

We agree with Probation that the base offense level is 22 insofar as the value of the funds involved in the overall offense was between \$400,000 and \$1 million, and that this level is increased by six additional levels because the defendant believed that the funds involved included funds that were intended to promote offenses involving controlled substances. We also of course agree that Mr. Shrem has shown a timely acceptance of responsibility through his guilty plea, through his admitting his actions directly to the Probation Officer during the pre-sentence interview (as is required by the rules of this Court) and by his actions up until this point,² such that the level should be decreased by three levels. The final adjusted level is accordingly a level 25. In a criminal history of I, this leads to a suggested range of 57 to 71 months. However, because the offense of conviction is statutorily-capped at five years, this range becomes between 57 and 60 months.

² Shrem's comments to the media during the pendency of this case will be addressed in POINT FOUR.

IV. CHARLIE SHREM'S BACKGROUND

Charlie Shrem is by all accounts good-natured, generous, and kind. He has an affinity for mathematics and is a gifted computer programmer. Described as shy by his father, he found himself unfailingly comfortable at a computer. Seeing the economic turmoil of six years ago, he came to believe that the computer code he was writing and the mathematical premises on which it was based was somehow purer and better than the seemingly self-interested motivations of politics and corporations.

Charlie Shrem is a true humanitarian. He genuinely loves people. He exalts them. He puts them first. His love and devotion to people is not distorted through the prism of their religious affiliation or their national origin or what corporation they work for. He doesn't care about that. He cares instead about forging an authentic bond with each person he meets, a bond that is based on true character, and not on the commonality of social, political or economic factors.

Coming from a strong religious background, he had a special appreciation for community. But, in his early 20s, he would question his own religious beliefs because he came to see religion as something that separates people from each other, rather than bringing them closer together. This would leave a hole in his psyche. He wanted to be part of something big and transformative, something new and different.

He also had an acute social awareness, even at a very young age. While in high school, he raised money for a boy in Israel who lost his leg in a terror attack. The world was bigger than his Brooklyn neighborhood. He knew this, and he wanted to live in this bigger world.

In 2011, he discovered bitcoin. The concept was beauty itself: no Government, no corporation, no self-interested intermediary; just people trading directly with each other without the interference and complexities of Government-backed (fiat) currency and without a corporation taking an unnecessary share of the transaction. He also saw the social and economic utility of empowering students in Africa or India to conduct business with merchants in New York or Moscow or Beijing through a common currency. He also marveled that it was truly independent – its value was not tethered to a government but to the value placed upon it by the users of the world.

He would devote an inordinate amount of his time and energy to bitcoin. He would be seen as a Bitcoin evangelist and would play a large role in raising its profile and causing it to be more accepted.

And then, in one fell swoop, he would ruin everything he worked for.

A. Introduction To Bitcoin and BitInstant

While this memorandum is not intended to be a referendum on bitcoin, the role of bitcoin, or the roles played by different bitcoin companies, there is value in sharing with the court the reasons why Shrem was so taken by bitcoin as a concept, the true place bitcoin has in the world and Shrem's role in helping it achieve that stature.

1. Bitcoin

Like most popular revolutions, the rise of bitcoin was due, in part, to a widespread perception that many of the leading financial institutions of the day had been corrupted or mismanaged, and had collectively breached an unwritten social contract between those who handle the peoples' money and the people themselves. Bitcoin was invented in 2008, at the precise moment that the financial industry was collapsing under the weight

of its own malfeasance and recklessness. During the November 2013 hearings conducted by the U.S. Senate Committee on Homeland Security and Governmental Affairs, Jeremy Allaire, the Chairman and CEO of Circle Internet Financial,³ testified that

the global financial crisis shattered the trust of many consumers and businesses around the world. It should not be surprising to anyone that in the midst of what appeared to be an emerging global depression in late 2008 that innovative mathematicians, cryptography experts and computer scientists designed a system, Bitcoin, with the goal of providing a resilient yet decentralized platform for finance.

Beyond Silk Road: Potential Risks, Threats and Promises of Virtual Currencies: Hearing before the Senate Committee on Homeland Security and Governmental Affairs (2013) (testimony of Jeremy Allaire) (Exhibit A at 3).

Bitcoin offered the people of the world something new: a way of conducting financial transactions, on a peer to peer basis – from one person to another - without the need of large corporate intermediaries, which at the time were rightly being criticized for having mishandled financial matters on an unprecedented scale.

The rise of bitcoin was made possible because of developments in technology in several areas, including (a) the “broad-based adoption of the internet on a world-wide basis;” (b) “the adoption of smartphones and mobile devices, now used by nearly 4 billion people, and which enable digital payment to be available ubiquitously;” (c) advances in distributed and peer-to-peer computing that enable highly efficient global and low-cost systems and infrastructure, enabling decentralized systems of finance;” (d)

³ Circle is a digital currency company based in Boston, Massachusetts. In its website, it describes itself as “a consumer finance company focused on transforming the world economy with secure, simple, and less costly technology for storing and using money.” www.circle.com

“advances in cryptography and digital signature technology, which provides a tremendous foundation for establishing trust, security and privacy in financial transactions,” and (e) “accelerating globalization of trade and labor which is driving demand for more efficient, secure and cost-effective cross-border payments.” (Exhibit A at 2-3)

However, while bitcoin was made possible by these technological developments, it gained popularity because it adds true value to individuals and businesses. First, bitcoin allows people to send and receive any amount of money, instantly, anywhere in the world at any time. There are no governmental borders, no bank holidays and no limits imposed by a financial intermediary. Second, bitcoin payments are currently processed with either a very low fee or no fee at all. Third, bitcoin transactions are secure, cannot be reversed, and do not contain a customers’ personal information, making identity theft in a bitcoin transaction virtually impossible. Fourth, bitcoin transactions are fully transparent, as each transaction appears on the block chain for anyone to verify in real time.

At the Senate hearings, Patrick Murck (General Counsel of the Bitcoin Foundation) noted that “Bitcoin software is open-source and non-proprietary, developed by a community of volunteers in collaboration with” a scientist with the Bitcoin Foundation. Beyond Silk Road: Potential Risks, Threats and Promises of Virtual Currencies: Hearing before the Senate Committee on Homeland Security and Governmental Affairs (2013) (testimony of Patrick Murck) (Exhibit B at 3). Murck also noted that “There is no Bitcoin company that manages or controls the software or its

operation. . . . Instead of a central authority, the Bitcoin transaction network consists of computers around the world running the Bitcoin software.” (Exhibit B at 3)

In his testimony, Jeremy Allaire also addressed the need for innovation in banking and finance:

We need to see innovation and transformation in banking and finance, and that on a global level we need to be thinking about what new platforms and rules of the road are needed to meet the global economic challenges that we face. Specifically, our payments systems are cumbersome and inefficient, and very much built upon systems and processes that are decades old.

(Exhibit A at 3)

Allaire further stated:

(I)n many cases, our financial systems have excluded enormous bases of consumers who remain un-banked or under-banked. The combination of ubiquitous Internet-connected mobile devices and digital currency presents a tremendous opportunity to radically expand access to financial services on a worldwide basis.

(Id.)

He continued,

Today, we can communicate freely and instantly with nearly any human on the planet; we have nearly free and instantaneous access to enormous volumes of human knowledge; ... Yet, to send money between friends and family, whether across the table or across the planet, it takes days and costs a significant amount in transactions fees.

(Id.)

2. BitInstant, and Its Place Within Bitcoin

BitInstant, which was co-founded by Charlie Shrem and a partner, launched its original business model in August of 2011. As originally launched, BitInstant served as a

payment processor, and acted as an agent of various merchants in collecting payments from financial transactions in which those merchants engaged with different customers. The flow of funds in all transactions was the same, with the funds moving from (a) the customer to (b) a third-party processor to (c) BitInstant to (d) the merchant.

BitInstant registered with FinCEN on March 27, 2012. It was among the first Bitcoin businesses to so register. As stated in BitInstant's Anti-Money Laundering Policy Statement, "BitInstant has registered itself as a seller of open loop prepaid access with the U.S. Department of the Treasury . . . FinCEN) Notwithstanding such registration, BitInstant believes it offers payment processing services and does not believe itself to be a money services business (MSB) under the Bank Secrecy Act or state banking laws applicable to BitInstant."

At all relevant times, BitInstant utilized the legal services of a highly-regarded law firm, Perkins Coie LLP, to advise it on all business matters. During BitInstant's existence and after it ceased to exist, several different Government agencies would define and redefine bitcoin, and its place in a changing regulatory environment.⁴ BitInstant and Shrem tried to keep pace with the evolving regulations of this brand new technology, with varying degrees of success.

⁴ In response to a subpoena from the New York State Department of Financing Services, BitInstant provided a legal memorandum from an attorney named Adam Atlas detailing his legal opinion that BitInstant was not a money transmitter under New York law. The memorandum is over 80 pages long, and will be made available to this Court upon request.

V. ARGUMENT

POINT ONE

THE SENTENCING GUIDELINES IN THIS CASE DO
NOT PROPERLY REFLECT THE DEGREE OF
CHARLIE SHREM'S CULPABILITY

The Guidelines analysis in this case, while legally correct, demonstrate an oft-criticized aspect of the Sentencing Guidelines best described by this Court:

Imposing a sentence on a fellow human being is a formidable responsibility. It requires a court to consider, with great care and sensitivity, a large complex of facts and factors. The notion that this complicated analysis, and moral responsibility, can be reduced to the mechanical adding up of a small set of numbers artificially assigned to a few arbitrarily-selected variables wars with common sense. Whereas apples and oranges may have but a few salient qualities, human beings in their interactions with society are too complicated to be treated like commodities, and the attempt to do so can only lead to bizarre results.

United States v. Gupta, 904 F. Supp. 2d 349, 350 (S.D.N.Y. 2012); see also United States v. Adelson, 441 F. Supp. 2d 50, 509 (S.D.N.Y. 2006) (“As many have noted, the Sentencing Guidelines, because of their arithmetic approach and also in an effort to appear ‘objective,’ tend to place great weight on putatively measurable quantities, such as the weight of drugs in narcotics cases or the amount of financial loss in fraud cases, without, however, explaining why it is appropriate to accord such huge weight to such factors.”).

Here, there are two reasons why the Guidelines analysis fails to properly reflect the degree of Charlie Shrem's culpability. First, that the loss figure is not rationally-related to Shrem's conduct. Second, that the six level drug-related enhancement, while

technically applicable, does not reflect Shrem's true intent or the blameworthiness of his offense.

A. The Loss Figure is Not Rationally Related to Shrem's Conduct

The Guidelines here are heavily skewed by the fraud loss table provided by § 2B1.1 of the Guidelines. Notably, 14 of the 25 Guidelines points (56%) are attributable to the amount of money that Robert Faiella processed through Charlie's company, BitInstant. What gets lost in this analysis is that, while approximately \$950,000 went through BitInstant to eventually be used by Faiella's Silk Road customers, BitInstant itself profited only about \$14,155 from these transactions.⁵ We appreciate that the 14-point increase is proper as a legal matter; we simply note the incongruity that all such increases are punished equally under a strict Guidelines analysis – even where the defendant's company only gained \$14,155.⁶

A related point is the role played by BitInstant and Shrem in the offense conduct. It must be remembered that the Government's theory, as reflected in the Information to which Shrem pleaded guilty, is that Faiella, who operated a bitcoin exchange, was involved in a money transmission business which both (a) failed to comply with the registration requirements, and (b) supported narcotics trafficking on the Silk Road. Shrem is guilty because, by processing Faiella's orders, Shrem legally aided and abetted

⁵ The calculation is as follows: BitInstant charged its customers 3.99% of the transaction value for its services. Of that fee, 2.5% went to pay a third-party cash processor that actually accepted the money from the customer. Thus, of the approximately \$950,000 involved in this case, BitInstant only profited \$14,155 (i.e., 1.49% of \$950,000).

⁶ The PSR characterizes the amount of income that BitInstant derived from Faiella as "substantial." Regardless of the proper characterization of this sum, the sum itself is \$14,155.

Faiella in this conduct. Accordingly, Shrem is one step removed from the unlawful conduct, a fact that is not accounted for by the Guidelines.

For these reasons, the loss component of the Guidelines calculation is not rationally-related to the blameworthiness of Shrem's conduct.

B. The Six-Level Drug Enhancement Does Not Reflect Shrem's Intent

As noted, the Guidelines analysis includes a 6-point enhancement because Charlie Shrem "knew or believed that the funds involved in the offense included funds that were intended to promote offenses involving the distribution of controlled substances or listed chemicals." PSR at ¶ 79. Once again, we readily agree that this enhancement is legally-applicable to the facts of this case. Charlie knew that Robert Faiella advertized on Silk Road⁷ and that many of Faiella's customers used the bitcoins obtained through BitInstant to purchase drugs through Silk Road. Under a strict Guidelines analysis, that is all that matters. But that should not be. Instead, this Court should consider that Charlie's true motivation in committing his crime was to promote bitcoin in general (and BitInstant in particular), and not to promote Silk Road.

When it came to Silk Road, even Charlie's motivation to promote bitcoin and BitInstant had limitations. For example, Charlie refused to advertise BitInstant's services on Silk Road even though BitInstant's co-founder thought it was a way to increase business. See PSR at ¶ 36(d) (detailing the co-founder's January 28, 2012 email to Charlie: "You said you found [Faiella] on silk road, he's obviously trying to be a meta layer over us and selling [bitcoins] there and possibly even not telling his customers that

⁷ The PSR repeatedly states that Faiella operated a bitcoin exchange "on the Silk Road." A more accurate depiction is that Faiella operated a bitcoin exchange that advertised on the Silk Road.

it's our service moving the funds. Advertise us on silk road, and then ban him. . . . This way we still get the same level of business . . . , possibly even increasing it and get less fuss."'). However, Shrem rejected his partner's suggestion that BitInstant should advertise its services on Silk Road. Had Shrem truly had an interest in promoting the illegal activities of Silk Road or even in promoting his own company through its association with Silk Road, he would have advertised BitInstant's payment processing services on Silk Road. However, he didn't do this, going so far as to ignore the request of his partner that he do so.

What is clear from his actions is that while Shrem had no interest in promoting Silk Road, he clearly abdicated his well-defined role as the Anti-Money Laundering (AML) coordinator of BitInstant. He is guilty because he could have tried to stop Faiella's activities, had an obligation to do so, and failed to do so. The gravamen of his wrongdoing is that he was trusted to perform an important function as the AML coordinator and that rather than trying to stop Faiella, he assisted him in violating his company's AML policies.

POINT TWO

SHREM'S FACILITATION OF
FAIELLA'S TRANSACTIONS WAS
ABERRANT AS HE NEVER DID IT
WITH ANYONE ELSE

While Shrem was associated with BitInstant, he processed the orders for about 49,000 bitcoin customers. The transactions of these customers resulted in about \$108 million that were processed through BitInstant. Shrem violated the AML policy in regard to precisely one such customer, Robert Faiella.

Shrem is not asking for a departure under 5K2.20 (Aberrant Behavior). Rather, Shrem uses the term “aberrant” in the spirit in which the same term was used in this Court’s decision in United States v. Gupta, 904 F. Supp. 2d 349 (S.D.N.Y. 2012). Quoting the probation report in the Gupta case, this Court wrote, “(w)e believe the defendant’s commission of the instant offense was aberrant behavior – not aberrant as defined by the U.S. Sentencing Guidelines, but rather as defined by Merriam-Webster: ‘. . . atypical.’” Id. at 354.

The Court found that Gupta’s conduct was indeed aberrant, and was a relevant consideration in fashioning a reasonable sentence under § 3553(a) even though Gupta had committed a course of criminal conduct on an ongoing basis by giving repeated insider trading tips to a separately charged defendant.

The situation with Shrem is roughly analogous. Undoubtedly, the unlawful conduct Shrem committed with Faiella was not a one-time deal. Rather, like Gupta, the conduct here extended over a period of time. While there were many emails and different transactions between Shrem and Faiella during this period, the theme was the same – helping Faiella to sell bitcoins on Silk Road. While the fact that the offense extended over a lengthy period of time is certainly relevant to a consideration of the aberrant nature of the conduct, it is not dispositive. Rather, it is a fact to be viewed alongside other facts.

The most compelling fact – the one fact that counsel suggests overwhelms the others – is that Shrem broke the law with one customer out of 49,000. An additional compelling fact is that Shrem was only 21 years old and had no formal business training or experience when he started BitInstant. As colleague at Shrem’s at BitInstant describes: “BitInstant was a clear case of a wildly successful business that was moving

too fast for anyone to keep up. The team was inexperienced, and a little naïve, but trying their best to understand their business and the greater ecosystem in which they found themselves operating.” (Letter of Marcie Braden) Similarly, Deepak (Dave) Goel, a computer security consultant and entrepreneur wrote:

In 2011, just three years ago, Bitcoin was a very new technology. Most enthusiasts came from the technical, rather than the legal or financial backgrounds...they had never heard of... ‘money transmission’ restrictions...It was in that space that Charlie’s was among the very first bitcoin services to even attempt an active discovery of and compliance with applicable money transmission guidelines.

(Letter of Deepak (Dave) Goel)

The fast-moving nature of the bitcoin business between 2011 and 2013 left Charlie poorly prepared to provide comprehensive AML regulation. On this point, Alan Safahi, the CEO of a payment processor called Zip Zap, wrote that at some point after Shrem had committed his transgressions with Faiella, both Safahi and Zip Zap’s Chief Compliance Office “worked closely with Charlie to help him understand the rules and the reasons for their existence.” (Letter of Alan Safahi) While we are not excusing Shrem’s conduct – he should have known better – we ask the Court to consider his young age and inexperience when he committed his crime.

Yet another compelling fact is that after Shrem and Faiella parted ways, Shrem never engaged in similar conduct again. One more compelling fact is that when invited by law enforcement to do so, Shrem provided bitcoin tutorials to the Manhattan District Attorney’s Office and the Department of Homeland Security, as is set forth further below. These facts, when taken together, show that Shrem’s conduct with Faiella was atypical, aberrant, out of the norm.

Accordingly, the court is respectfully asked to consider the aberrant nature of Shrem's conduct when fashioning a reasonable sentence.

POINT THREE

SHREM REPEATEDLY ASSISTED LAW
ENFORCEMENT AGENCIES IN THEIR
EFFORT TO UNDERSTAND BITCOIN

In 2012 and 2013, Shrem met with, and provided information to, law enforcement agents to help the agents better understand bitcoin, and ways it could be misused by criminals. While the defense is not aware of any information that would amount to "substantial assistance" within the purview of U.S.S.G. 5K1.1, Shrem's efforts to assist law enforcement to understand the new phenomenon of bitcoin, and how it could be misused as a vehicle for money laundering or other crimes was valuable and timely, and should be considered by this Court as an appropriate mitigating factor.

Shrem met on at least three occasions with Special Agents with the Department of Homeland Security (DHS). These agents were based in New York City and were charged with conducting financial investigations. Shrem also met with Assistant District Attorney Cory Jacobs⁸ and another ADA with the New York County District Attorney's Office.

A. Meetings with DHS

On October 3, 2012, a Special Agent⁹ with the DHS sent an email to a general BitInstant email address. In the email, the agent identified himself and the nature of his

⁸ ADA Jacobs has given his consent to have his identity appear in this memorandum.

⁹ In order to maintain the confidentiality of any investigation this agent may be conducting, the agent's name, his email address and other identifying information are not being included.

employment, and then wrote “I read the article on your company in Money magazine and thought it would be interesting to learn how your company does business. We are seeing a movement toward a cashless society and as an investigative agency it is always good to learn about the new methods of moving money.” The next day, Shrem sent an email to the agent, saying “I’d be glad to help in any way that I can. Did you have some questions?” The agent then wrote back, “Thank you for the quick reply. Some members of my group (about 4 of us) are interested in learning about your industry, what we call the “cashless society.” We’re not looking for anything formal just an introduction to what your business does and of course, how the money moves.” The email then addresses certain logistics of where and when such a meeting could take place.

Following this email exchange, Shrem met with DHS agents on three separate occasions. Shrem provided the agents with detailed information about how bitcoin works, how money can be moved through bitcoin, and other things that law enforcement should know in preventing and investigating crime with bitcoin. As is apparent from the tenor of the agent’s email, law enforcement was concerned in 2012 that it was not sufficiently knowledgeable about bitcoin, which was exploding in popularity. It would also stand to reason that the best way for law enforcement to learn about bitcoin is to speak in detail to someone like Charlie Shrem, who has a command of the subject that no agent could possibly have. By agreeing to meet repeatedly with the agents and to share his in depth knowledge and experience, Shrem was doing a true public service to the law enforcement community.

B. Meetings with Manhattan District Attorney

In late April 2013, Assistant District Attorney Cory Jacobs, together with another Assistant District Attorney and an investigative analyst, contacted BitInstant's legal counsel. The DA's office posed four areas of inquiry. First, the DA's office wanted assistance in understanding why 45% of bitcoin exchanges had been "hacked." Second, it wanted to understand the volume of bitcoin trading, the typical sizes of bitcoin trades, the frequency of large transactions and whether bitcoin purchasers can change identity. Third, it wanted to understand the frequency and predictability of bitcoin trades. Fourth, it wanted to understand BitInstant's business model in greater detail to determine whether it was a money transmission business under New York law.

This inquiry prompted a meeting between Shrem, his legal counsel and the ADAs. Shrem provided the information requested by the DA's office and also provided information that BitInstant was not a money transmitter under New York law. ADA Cory Jacobs stated that there was a second meeting between the ADAs and Shrem's counsel, which Shrem did not attend.

As with the DHS, Shrem provided a great benefit to law enforcement generally by providing information to the Manhattan D.A. about the role of bitcoin and bitcoin businesses in money transmission. As New York City and the Government generally continue to be concerned about the illicit and secretive movements of funds, law enforcement relies on experts, like Shrem, in order to keep them current.

POINT FOUR

SHREM NEVER DENIED HIS GUILT OR
DEMEANED THE PROSECUTION IN
PRESS COMMENTS

While the PSR concluded ultimately that Shrem's personal statement to Probation was genuine and complete, and amounted to a full acceptance of responsibility,¹⁰ it observed that Shrem minimized his role in the offense in press statements. See PSR's Sentencing Recommendation at p. 45. The PSR indicated that these press statements have "fueled a false perception that Shrem's prosecution lacks credibility," even though the PSR concluded that such was not Shrem's intent.

We can safely start from the proposition that it is NEVER good for a criminal defendant to say anything to the press during a case. That said, a review of Shrem's statements that were provided by the prosecution to the probation officer reveals that at no time did Shrem minimize his own actions or fail to take responsibility for his conduct.

In the October 25, 2014 interview, Shrem truthfully told the interviewer that he pleaded guilty to one count of operating his business without a license. The PSR (at ¶ 71) cites Shrem for failing to also state during the press interview that "he was facilitating the purchase of drugs on Silk Road." Two comments must be made regarding this observation. First, what a defendant fails to say during a press interview is generally not germane to the eventual sentence, and it is not germane here.¹¹ Second, taken as a whole,

¹⁰ At ¶ 69, the PSR indicates that "Shrem accepted responsibility for his conduct, and appeared to be genuinely contrite."

¹¹ Since it is preferable for a defendant to say nothing, he should not be punished for what he does not say.

Shrem's press comments appear to adequately discuss the name (unlicensed money transmission), and general nature of the charge to which he pleaded guilty.

In the August 30, 2014 New York Times article, Shrem said "they want a guilty plea on their books, and that's what they're going to get...They got a Bitcoiner." PSR (at ¶ 72). That Shrem's explanation is that he thought he made this comment to a reporter off the record is the product of his being 24 years old at the time. While the comment was intemperate, it did not deny guilt.

In or about October 2014 (the PSR places the date as "approximately two months ago), Shrem participated in a public forum. Another individual commented, in substance, that Shrem had been charged on a relatively minor issue while "others have literally worked with criminals, laundered billions and avoided prosecution." Shrem then wrote that he agreed, and invited the poster to read a well-known article in the New York Review of Books. At a time when so many people read lesser news sources, the law should not discourage anyone from recommending the New York Review of Books under any circumstances, particularly given the particular article that was recommended. Far from being a minimization of his personal guilt, Shrem's statements reflect views that seek to promote, not undermine, justice and the roles of the court and government in achieving just results. Shrem's belief that "there is inequity in who gets caught and punished in the United States," is a sentiment shared by some with far more experience than Mr. Shrem. What is important, however, is that he makes it clear that this inequity "does not excuse his own conduct." (PSR at ¶ 73)

In early September 2013, Charlie made brief posts on a bitcoin forum. His posts are essentially that he agreed with someone else's assessment that the role played by

BitInstant was small compared to criminal activity perpetrated by other parties involved with Silk Road. Shrem's agreement with this notion presages arguments raised in this very memorandum. (PSR at ¶ 74)

At another point, someone expressed disappointment with the fact that Shrem pleaded guilty, prompting Shrem to offer the sound observation, "No one ever wins at trial." This is more a statement about the well-established conviction rate at federal trials and not about his own guilt. (PSR at ¶ 74)

At another point, someone mis-stated the basis for Shrem's guilty plea, prompting Shrem to write that the prosecution alleges that Shrem promoted Silk Road, which, by virtue of the six point drug-related sentencing enhancement, is entirely correct. Shrem also stated that the offending transactions amounted to a small percentage of the overall bitcoins processed by his company, yet another fact that is altogether true, as shown in POINT TWO. (PSR at ¶ 74)

Therefore, to the extent that the Probation Department has written that Shrem minimized his criminal activity through these posts, PSR (at ¶ 75) we respectfully disagree. At no time did Shrem ever deny his guilt or fail to accept responsibility for his actions. In any event, after meeting with Shrem, and hearing from Shrem directly (not through counsel), probation concluded that Shrem fully accepted responsibility for his actions.

POINT FIVE

SHREM'S CHARACTER WARRANTS A NON-INCARCERATORY SENTENCE

As set out in the PSR and as revealed by the many letters, Charlie Shrem grew up as a vital member of a close religious community in Brooklyn. He was loved by the

Rabbis, by his teachers, by his neighbors, and by his family. He is uniformly described as generous, kind, good-natured, altruistic, and big-hearted. From taking care of his sister when she suffered from Hodgkins Lymphoma, to raising money for a victim of terrorism, the letters submitted on Charlie's behalf are replete with examples of Charlie giving his time, computer-expertise, and his sincere devotion to different people in order to help them succeed in whatever they are trying to accomplish

The Dean of Students at Yeshivah of Flatbush, Rabbi Naftali Besser, expressed thanks for the hours of community service Shrem gave to his school. The Rabbi wrote, "(u)sing both his talents in audio visual equipment, organizational skills, and his outgoing warm personality he earned the respect and admiration from the faculty at the Yeshivah and his peers." (Letter of Rabbi Naftali Besser) Isaac Cohen writes how he and Charlie founded the "Hands on Technology Commission." Isaac observed that "Charlie was putting his efforts into this club as a selfless act to teach others how to use technology." He also praised Charlie's passion for charitable giving. (Letter of Isaac Cohen)

When he learned about a young boy in Israel who lost his leg in a terror attack, Charlie raised money through sports contests to pay for an artificial leg. Several of his neighbors describe how touched they were by Charlie's drive and generosity, especially that he did this at such a young age. Rocky Muravitz, Chairman of Tikvot, a non-profit organization that helps Israeli terror victims, wrote that "Charlie immediately took upon himself the task to raise money" for this young boy. (Letter of Rocky Muravitz)

The Ishak family wrote that they have a "child with Down Syndrome and Charlie's love for her is truly an amazing sight to see and her love for him is pure. The

way her eyes light up when just mentioning his name is not something that happens with anyone else.” (Letter of Teddy Ishak)

He was a role model for his family and community. His sister, Emily, wrote, “Charlie was and forever will be my role model.” She wrote, “I was diagnosed with Hodgkin’s Lymphoma Cancer when I was 15 years old. As a 15 year old, I thought my life was over but Charlie taught me how it had only just begun.” (Letter of Emily Shrem)

While he became involved in different social causes and charities, Shrem’s altruistic nature was reflected in his business practices.

Time and again I saw (Shrem) put customers first, refunding fees, on at least one occasion from his personal funds. I saw him seek guidance – from colleagues, top lawyers and industry experts – before making decisions. I saw him make the right decision time and again, often in the face of irritable investors telling him to make the decision that was most profitable. I witnessed him make long-term decisions that were detrimental to short-term profits in an effort to run a business that was compliant and fair to his customers.

(Letter of Marcia Braden)

Sean’s Outpost Homeless Outreach is a Florida organization that accepts bitcoin for homeless meals and programs. As detailed by Charlie’s friend, Jason King: “Charlie was an important influence on the success of Sean’s Outpost. To date, we have fed over 136,000 meals to the homeless since we started accepting bitcoin.” King continues, “we would not have reached that level of success without the influence and advice of Charlie Shrem...helping and supporting other people is fundamentally part of his nature.” (Letter of Jason King)

In a similar vein, Patrick Murck (Executive Director of the Bitcoin Foundation, writing as an individual) noted that, “[w]hile Charlie clearly made mistakes he has also

done much good for spreading awareness about global inequity and the need for inclusive economic outcomes for systemically disenfranchised groups.” .


Lastly, Jordan Modell wrote a short letter that contains a quote that fairly sums up Shrem’s legal transgressions. He wrote, “(t)here is a saying that is attributed to Robert Hanlon but is actually rooted in Goethe which goes: Never attribute to malice that which is adequately explained by stupidity.” (Letter of Jordan Modell) (emphasis added)

VI. CONCLUSION

For the reasons set forth above, this Court is humbly asked to sentence Charlie Shrem to a term of probation and not to a term of incarceration.

Dated: December 12, 2014
New York, New York

Respectfully submitted,



Brafman & Associates, P.C.
Attorney for Charlie Shrem
767 Third Avenue - 26th Floor
New York, NY 10017

Marc Agnifilo
Jacob Kaplan
Of Counsel