

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

<p>United States of America,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p style="padding-left: 100px;">vs.</p> <p>Michael Lacey, et al.</p> <p style="padding-left: 100px;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. 2:18-cr-00422-DJH</p> <p>Phoenix, Arizona</p> <p>August 27, 2024</p> <p>9:37 a.m.</p>
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BEFORE: THE HONORABLE DIANE J. HUMETEWA, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SENTENCING - DAY 1

PAGES 1-129

Official Court Reporter:
Hilda Elizabeth Lopez, RMR, FCRR
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, Spc 30
Phoenix, Arizona 85003-2151
(602) 322-7256

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

A P P E A R A N C E S

1
2 For the Government:

3 UNITED STATES ATTORNEY'S OFFICE

4 By: **Mr. Kevin M. Rapp, Esq.**

Mr. Peter S. Kozinets, Esq.

Ms. Margaret Wu Perlmeter, Esq.

5 **Joseph Franklin Bozdech, Esq.**

6 40 North Central Avenue, Suite 1200

Phoenix, Arizona 85004

kevin.rapp@usdoj.gov

peter.kozinets@usdoj.gov

andrew.stone@usdoj.gov

8 margaret.perlmeter@usdoj.gov

9 For the Government:

10 UNITED STATES DEPARTMENT OF JUSTICE

By: **Mr. Austin Berry, Esq.**

11 1301 New York Avenue, NW, 11th Floor

Washington, DC 20005

12 austin.berry2@usdoj.gov

13 For the Defendant Michael Lacey:

LIPSITZ GREEN SCIME CAMBRIA, L.L.P.

14 By: **Mr. Paul J. Cambria, Jr., Esq.**

Erin McCampbell Paris, Esq.

42 Delaware Avenue, Suite 120

15 Buffalo, NY 14202

16 pcambria@lglaw.com

17 For the Defendant Scott Spear:

FEDER LAW OFFICE, P.A.

18 By: **Mr. Bruce S. Feder, Esq.**

2930 East Camelback Road, Suite 160

Phoenix, AZ 85016

19 bf@federlawpa.com

- and -

20 KESSLER LAW OFFICE

By: **Mr. Eric Walter Kessler, Esq.**

21 6720 N. Scottsdale Road, Suite 210

Scottsdale, AZ 85253

22 eric.kesslerlaw@gmail.com

1 **APPEARANCES CONTINUED**

2 For the Defendant John Brunst:

3 BIRD MARELLA BOXER WOLPERT NESSIM DROOKS
4 LINCENBERG & RHOW, P.C.

By: **Mr. Gopi K. Panchapakesan, Esq.**

Mr. Gary S. Lincenberg, Esq.

5 1875 Century Park E, Suite 2300
6 Los Angeles, CA 90067

gpanchapakesan@birdmarella.com

7 glincenberg@birdmarella.com

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P R O C E E D I N G S

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(Proceedings commence at 9:37 a.m.)

4

THE COURT: All right. Please be seated.

5

COURTROOM DEPUTY: We are on the record in case number 09:37:50

6

CR-18-422, United States of America vs. Michael Lacey,

7

Scott Spear and John Brunst, on for sentencing.

8

MR. RAPP: Good morning. Kevin Rapp, Peter Kozinets,

9

Margaret Perlmeter and Austin Berry on behalf of the United

10

States. 09:38:06

11

THE COURT: Good morning.

12

MR. RAPP: And also, Joe Bozdech also for the United

13

States.

14

THE COURT: Good morning to each of you.

15

MR. CAMBRIA: Good morning, Your Honor, Paul Cambria 09:38:19

16

and Erin Paris for Mr. Lacey.

17

THE COURT: Good morning.

18

MR. FEDER: Bruce Feder and Eric Kessler for

19

Mr. Spear.

20

THE COURT: Good morning. 09:38:32

21

MR. LINCENBERG: Good morning, Your Honor,

22

Gary Lincenberg and Gopi Panchapakesan for Mr. Brunst, who is

23

present in court.

24

THE COURT: Good morning. All right. I think I'll

25

explain to you how I intend to proceed in this matter. There 09:38:56

1 are, I know, some unresolved objections that I need to address.
2 There may be some lingering objections that the individual
3 defendants have filed that I may not have addressed or
4 overlooked. And to the extent that I've done that, I'll
5 address those.

09:39:24

6 I will then resolve those objections and then provide
7 Mr. Spear, Brunst and Lacey with the sentencing guideline
8 calculation and range.

9 I will then proceed to hear from the respective
10 defendants, character witnesses, family members, if they wish
11 to be heard, and then I will proceed to hear from the
12 government if there are victims who wish to make a statement
13 here in open court.

09:39:49

14 Depending on how long that proceeds, then I will this
15 afternoon hear from each defense counsel, if you wish to
16 provide information to either enhance, or if there's something
17 in addition to your Sentencing Memorandums you have each
18 submitted, and then I will hear from the government.

09:40:10

19 I don't have an idea really from any party the number
20 of witnesses you intend to have heard here in open court. Let
21 me start with you, Mr. Rapp, do you have any indication?

09:40:43

22 MR. RAPP: Yes, Judge, we expect that three victims
23 will address the Court. In addition, we just recently received
24 a letter from a victim who actually testified at trial, and we
25 intend to read that into open court.

09:41:09

1 THE COURT: All right. And Mr. Cambria, do you have
2 any indication as to the number of character references or
3 family members who wish to speak?

4 MR. CAMBRIA: Your Honor, we attached a number of
5 character letters to --

09:41:30

6 THE COURT: I've read those.

7 MR. CAMBRIA: We have no live witnesses other than
8 that.

9 THE COURT: All right. Mr. Kessler.

10 MR. KESSLER: I believe that we're in the same
11 position as Mr. Lacey. We provided a number of character
12 letters. We do not have any additional live witnesses to
13 present today.

09:41:41

14 THE COURT: All right. Thank you. Mr. Panchapakesan,
15 or Mr. Lincenberg.

09:42:00

16 MR. LINCENBERG: Yes, Your Honor, I believe the
17 Court's order was that if people wrote a letter they shouldn't
18 be speaking in court, and so we'll be submitting on the letters
19 with no additional people speaking or any of those persons
20 repeating.

09:42:14

21 THE COURT: So then after the government's
22 presentation of their testimonies, then I will permit counsel
23 then to provide the Court with any argument. And then if any
24 of the defendants, Mr. Lacey, Mr. Brunst, Mr. Spear wish to
25 speak, I can hear them.

09:42:45

1 In the event that we run long today -- of course, I'm
2 going to take a break in the morning. I will have a lunch for
3 my staff and you. My objective is to then move to the actual
4 imposition of sentencing phase tomorrow morning. And so,
5 again, that depends on how long we take this morning and this
6 afternoon. 09:43:14

7 All right. So I do want to say that I have reviewed
8 the mounds of submissions to the Court. I reviewed some of the
9 renewed and amended objections to the presentence reports that
10 had been revised. I have reviewed the respective government's 09:43:39
11 and defendants' responses to the objections of the opposing
12 party. I have reviewed the summary Sentencing Memorandums from
13 the government as to all of the defendants. I reviewed the
14 responses from each defendant to the government's Sentencing
15 Memorandums. I received yesterday late Notice of Errata, and 09:44:13
16 frankly I haven't had a chance to read that.

17 Mr. Rapp, do you want to explain the Notice of Errata?

18 MR. KOZINETS: Your Honor, Peter Kozinets. The Notice
19 of Errata just corrected an inadvertent mathematical error in
20 the Exhibit A that we attached to the filing we made last 09:44:33
21 Monday, I believe it's Doc. 2137. So we had Exhibit A. We had
22 a table regarding Mr. Spear's guideline calculation and the
23 grouping analysis, and there was just a discrepancy in the unit
24 calculation, whether it's a half unit per count group that
25 deserved a unit, or a full unit. As it turns out, a full unit 09:45:01

1 applies. So it just increased the total offense level by one
2 offense level, still above the statutory maximum.

3 THE COURT: All right. I'll take a look at that and
4 see if it addresses anything that I need to revise or have
5 revised in the Presentence Investigation Report. 09:45:31

6 The Court notes the presence of each of the probation
7 officers here who interviewed Mr. Spear, Brunst and Lacey and
8 who drafted each of the reports.

9 I intend to begin with Mr. Spear, and then I will move
10 to Mr. Brunst and then Mr. Lacey, and then I will again resolve 09:45:54
11 the objections.

12 I think for purposes of resolving some of these
13 objections and beginning the procedure, I'll have all
14 defendants remain seated at counsel table.

15 And so Mr. Spear, you were convicted by a trial jury 09:46:25
16 of Count 1, conspiracy to commit Travel Act violations;
17 Count 2, which relates to using a facility in interstate
18 commerce to promote or facilitate the promotion of

19 prostitution, in violation of Massachusetts law; Counts 3, 6
20 through 11 and 18, which relates to using a facility in 09:46:51

21 interstate commerce to promote or facilitate the promotion of
22 prostitution, in violation of Washington state law; Counts 4
23 and 5, which relate to using a facility in interstate commerce
24 to promote or facilitate the promotion of prostitution, in
25 violation of Massachusetts law; Counts 12 and 13 relate to 09:47:15

1 using a facility to, in interstate commerce, to promote or
2 facilitate the promotion of prostitution, in violation of
3 California law; Count 14 and 15 relate to using a facility in
4 interstate commerce to promote or facilitate the promotion of
5 prostitution, in violation of Arizona law; Counts 16 and 17
6 relate to using a facility in interstate commerce to promote or
7 facilitate the promotion of prostitution, in violation of
8 Colorado state law.

09:47:44

9 The statutory term of each Travel Act violation is not
10 more than five years and a \$250,000 fine.

09:48:09

11 The jury also convicted you of Count 52, conspiracy to
12 commit money laundering, in violation of Title 18 United States
13 Code Section 1956(h), which relates to the money laundering
14 counts in Counts 53 through 62. The statutory term of sentence
15 for each count is not more than 20 years and a \$500,000 fine.

09:48:41

16 You were also convicted of Counts 53 through 62,
17 concealment money laundering, in violation of Title 18 United
18 States Code Sections 1956(a)(1)(B)(i) relating to the
19 concealment of Backpage funds deposited in Website Technologies
20 to Cereus Properties, on various dates from May 18th of 2016
21 through August 31st of 2016. The statutory term of sentence
22 for each count is no more than 20 years and a \$500,000 fine.

09:49:11

23 Now, as to Mr. Brunst, Mr. Brunst, you were convicted
24 by a trial jury of Count 1, conspiracy to commit Travel Act
25 violations, in violation of Title 18 United States Code Section

09:50:27

1 371, and the statutory sentence is not more than five years and
2 a \$250,000 fine. Though, the jury acquitted you of all
3 substantive Travel Act counts.

4 You are also convicted of Count 2, conspiracy to
5 commit money laundering, in violation of Title 18 United States
6 Code Sections 1956(h) relating to the money laundering counts
7 in Counts 53 through 62.

8 MR. LINCENBERG: Your Honor, I may have misheard you.
9 I think you said Count 2. Should that be Count 52?

10 THE COURT: Count 52. Yes. I left the five off.

11 You were also convicted of Count 53 through 62,
12 concealment money laundering, in violation of Title 18 United
13 States Code Section 1956(a) (1) (B) (i), and that relates to the
14 concealment of Backpage funds deposited in Website Technologies
15 to Cereus Properties from various dates beginning on May 18th,
16 2016, through August 31st of 2016. The statutory term of
17 sentence for each count is no more than 20 years and a \$500,000
18 fine.

19 You were also convicted of Count 64 through 68,
20 international promotional money laundering, in violation of
21 Title 18 United States Code Section 1965(a) (2) (a) relating
22 to --

23 MR. LINCENBERG: Did the Court say 1965? I think it's
24 1956.

25 THE COURT: 1956. Yes. Relating to transferring of

1 Backpage funds to and through Ad Tech BV in the Netherlands to
2 Cereus Properties from August, various dates from August 5th
3 2016, to November 15th of 2016. The statutory term of sentence
4 for each offense is not more than 20 years and a \$500,000 fine.

5 Now, I do want to clarify for the record that I 09:53:02
6 identified an error in the presentence report and in the
7 court's record. There was to have been a judgment of acquittal
8 as to Mr. Brunst with regard to Counts 69 and 70 which allege
9 transactional money laundering, and that for some reason wasn't
10 lodged on the docket and it will today, and so there -- the 09:53:39
11 presentence report will be revised to reflect that or remove
12 any reference to Counts 69 and 70.

13 Mr. Lacey, the jury did not reach a verdict on the
14 conspiracy to commit Travel Act violations or any Travel Act
15 count, and you do remain under indictment for those violations. 09:54:29
16 The Court also directed a verdict in your favor as to Counts 19
17 through 51, which did charge you with Travel Act violations.
18 The jury, however, returned a guilty verdict as to Count 100
19 alleging a violation, international concealment money
20 laundering under Title 18 United States Code Sections 09:54:55
21 1956(a)(2)(b)(1), and the statutory term for this offense is 20
22 years and two times the value of the laundered funds, or
23 \$500,000.

24 Now, having resolved numerous objections there remain
25 a couple outstanding. And there was an objection, and they 09:55:28

1 were made in a variety of forms either to specific paragraphs
2 in the presentence report or verbiage in the presentence
3 report, but it all, in my view, relates to an argument of what
4 is relevant conduct.

5 The Court is aware that pending before the United 09:55:54
6 States Sentencing Commission is an amendment which directs the
7 courts not to consider acquitted conduct. That amendment is
8 not today in effect. It does not take effect until November.

9 All right. Please, whomever is on their cell phone,
10 please step out. Step out. There's a large door or a large 09:56:20
11 sign on the door that says, "No cell phones." Or turn off the
12 cell phones. Not to be on vibrate; turn them off. I will have
13 anyone who has a cell phone go off in this courtroom removed
14 and you won't be able to return. Save for counsel.

15 Well, where was I? Well, in any event, the guidelines 09:57:14
16 do indicate that there is this new amendment that will in the
17 future guide courts in that regard, however, the case law of
18 this circuit has made it historically clear that relevant
19 conduct can be considered in certain circumstances. And here,
20 the dilemma is that the counts of conviction of each defendant 09:57:52
21 are so closely intertwined with one another.

22 For example, the money laundering and concealment
23 counts, the reason they were charged and the reason there was a
24 conviction was because there had to have been a finding by the
25 jury that it derived from illegal proceeds, and you can't put 09:58:17

1 blinders on to the legality of how those proceeds were gotten.
2 They originated from the sex-for-money ads posted on Backpage's
3 platform, which, by the way, was created for that purpose, and
4 so the jury obviously considered the conspiracy, the *Pinkerton*
5 instruction, which attributes the acts of one conspirator to 09:58:54
6 another. And similarly, the Court cannot separate out that
7 conduct, the acquitted conduct.

8 And I do want to say that the revisions in the PSRs
9 were developed because of the Court's Rule 29 order. So the
10 findings then and the reiteration of those findings in the 09:59:22
11 various offense conduct paragraphs then rely on indicia of
12 reliability as to those facts, which the Court listened to and
13 the evidence which the Court reviewed. And so the objection as
14 to relevant and or, excuse me, the objection to acquitted
15 conduct is, therefore, overruled. 09:59:55

16 There were instances where, again, counsel raised what
17 I determine to be an advice of counsel argument as an
18 objection. Each defendant in some form or fashion, whether it
19 be in their Sentencing Memorandum or the objections raise or
20 reassert their reliance on attorney counsel for acts that are 10:00:31
21 the subject of their convictions. The Court wholly overrules
22 any sort of objection for all the reasons that are peppered
23 throughout the Court's docket in this case.

24 The record belies this assertion, and the Court relies
25 on its own Rule 29 order, again, reiterating defendants' 10:01:03

1 obligation to put forth that information that was given to
2 every counsel he says provided advice, and that has never
3 happened in this case. So advice of counsel in terms of the
4 objection or Sentencing Memorandum, I'm going to set that
5 aside.

10:01:35

6 There was also a request to rely on the Judiciary
7 Sentencing Information. Now, I did review the Judiciary
8 Sentencing Information, and oftentimes I do find that data
9 informative and indeed it is useful in some instances, but the
10 unique and complex circumstances of this case, the counts of
11 conviction here make it wholly inapplicable, especially in view
12 of the multiple enhancements related to the counts of
13 conviction, and really the underlying Travel Act conspiracy
14 convictions, and so I do not rely on the JSI information.

10:02:00

15 Now, each defendant objected to particular victim
16 impact information. They also objected to restitution. I did
17 address those objections. But I've considered, once again, the
18 counts of conviction for Travel Act, and in my observation of
19 the jury conviction I determined that the jury likely found the
20 conspiracy to commit Travel Act violations ended upon the sale
21 of Backpage to Carl Ferrer in 2015. So the Court is hesitant
22 to rely upon victim information or testimonials for acts
23 occurring outside of the last count of conviction.

10:02:36

10:03:22

24 And the Court will consider, however, victim impact
25 information and testimonies prior to 2015, the date of the last

10:03:55

1 count of conviction. The presentence reports will be amended
2 accordingly.

3 And I want to -- so, for example, the -- let me point
4 out paragraphs 146 and 147, therefore, will not be considered
5 and they will be amended out of the presentence reports. The
6 paragraph should be the same in every presentence report. 10:05:04

7 The victim information, however, may be preserved.
8 That victim information for victims beyond 2015 may be
9 preserved as it relates to the pending proceeding of
10 Mr. Ferrer, and so the Court will not wholesale dismiss that
11 information. It will retain it for later proceedings. 10:05:34

12 All right. Now, let me just move to then Mr. Spear.
13 There are specific objections that you made and I want to see
14 if I understand them. You objected to the enhancements, and
15 you essentially say that the enhancement should only apply in
16 one substantive guideline calculation, and that is the
17 application of guideline section 3B1.1A stating that it should
18 only be applied a single time. The government did not respond
19 to that objection, but I've reviewed the section 3B1.1A, and
20 I've also reviewed the application notes 3D1.3, along with the
21 Chapter 2 and 3 provisions outlined, and I find that this is a
22 correct application of the enhancement to each group. Each
23 group is to be determined individually and then the units
24 counted, and that's precisely what the probation officer did
25 here, and so the objection is overruled. 10:06:18
10:06:57
10:07:29

1 Mr. Spear, you also objected because the presentence
2 report does not identify downward departures under guideline
3 section 5H1.1, and 5H1.4, but I don't know if you overlooked
4 it. The presentence report does include those considerations
5 as potential downward variance recommendations. And so given
6 that, the objection will be overruled. 10:08:04

7 Mr. Spear, have I resolved all of your objections?

8 MR. FEDER: I don't think so, but --

9 THE COURT: What remains? Yes.

10 MR. FEDER: First, Judge, and I don't know how you
11 want to proceed, but -- 10:08:39

12 THE COURT: I'm proceeding the way I want to proceed,
13 and so I'm asking you beyond all of the objections that I've
14 already resolved by written order, the ones I have just
15 resolved that relate to all defendants, you all made a similar
16 objection in that same form or fashion. Are there any
17 outstanding objections that you made on behalf of Mr. Spear
18 that I have yet to resolve? 10:09:05

19 MR. FEDER: Yes.

20 THE COURT: Which ones? 10:09:24

21 MR. FEDER: Well, in the offense conduct paragraphs,
22 which the probation officer identified as having been prepared
23 by the government, there were a number of objections made
24 throughout those offense conduct paragraphs that need to be
25 resolved pretty much sentence by sentence or paragraph by 10:09:42

1 paragraph.

2 THE COURT: I guess I didn't state clearly enough that
3 I adopt the offense conduct paragraphs. And the reason I do is
4 because it relates to relevant conduct. It's information that
5 is in the record. It's information that was gathered from the 10:10:11
6 trial from the pleadings in the case, and it's information that
7 was included in my Rule 29 order. And so to the extent you
8 wish to bring out certain sentences, I've read all of the
9 offense conduct, and I am going to overrule the objection.

10 MR. FEDER: Judge, what we don't want to happen, and 10:10:35
11 as I understand Rule 32 dictates, the Court needs to -- we
12 don't want this to apply as if we had not objected in the Court
13 of Appeals. And so if the Court is going to basically adopt
14 wholesale the offense conduct submitted by the government that
15 is not from trial testimony but from their various 302s, et 10:10:59
16 cetera, then I object to that in general. And I am guessing
17 the other defendants will do the same.

18 As I understand Rule 32, if the Court, unless we
19 object, then the Court adopts essentially those assertions as
20 fact, and we don't agree to that. 10:11:22

21 THE COURT: Well, your objections are on the record.
22 You filed your objections to the presentence report. You filed
23 addendums to that, and so it is in the record, but I overruled
24 them.

25 MR. FEDER: Okay. Just if we can go back to a couple 10:11:37

1 things you already said to make sure I am clear and whether or
2 not I need to make an additional record. You've talked about
3 the proceeds and how you have determined that the proceeds are
4 connected, are connected to the conspiracy, and I just want to
5 be sure that on the record that the Court understands that the
6 Court also found, I think in the Rule 29 motion, that the
7 government never connected in any way a single dollar to a
8 count in the indictment, to an alleged victim in the
9 indictment --

10:12:18

10 THE COURT: I think that's an overstatement,
11 Mr. Feder.

10:12:33

12 MR. FEDER: -- to an alleged ad. Well, that's why I
13 am trying to make a record, Judge.

14 THE COURT: But you said that's what I said, and what
15 I'm saying is that's an overstatement. Okay.

10:12:44

16 MR. FEDER: I misspoke.

17 THE COURT: Yes, go ahead.

18 MR. FEDER: We have the situation that has been
19 identified in the sentencing memos and the objections where
20 Judge Brnovich initially said that this conspiracy is bound by
21 the 50 ads, and then during trial it became unbound when
22 Mr. Berry, in his closing argument, said that basically
23 everybody is a co-conspirator, whether or not they are in the
24 50 ads or not, and the Court overruled our objections to that.
25 But I want to make sure that the record is clear that we do not

10:13:00

10:13:24

1 agree that any monies for advertisers outside of the 50 ads,
2 and in Mr. Spear's case outside of the 18 counts of the Travel
3 Act that he was convicted of, can be used as, A, as victims;
4 but B, can be counted in as part of the conspiracy. That, in
5 our belief, would violate the Fifth and Sixth Amendments since 10:13:53
6 we haven't been notified. There was no trial, there was no
7 cross-examination, there was no nothing as to the essentially
8 amorphus alleged victims that Mr. Berry referred to in his
9 closing argument.

10 Next is the -- did the Court just say that our 10:14:11
11 objection to the double billing, double, sorry, the double
12 counting in paragraphs, I think it's 279, sorry, 275 and 279
13 that the Court had overruled, that there was a role adjustment
14 twice, plus four?

15 THE COURT: Yes. 10:14:48

16 MR. FEDER: Okay.

17 THE COURT: That's the application of 3B1.1 and the
18 note 3D1.3.

19 MR. FEDER: In the application note 2C and 2S1.1 says
20 that the application of any Chapter 3 adjustment shall be 10:15:09
21 determined based on the offense covered by this guideline,
22 i.e., laundering criminally-derived funds and not on the
23 underlying offense from which the laundered funds were derived.
24 So we, I mean, just to clarify what the Court has said.

25 Next is the objections as to whether or not probation 10:15:32

1 is available.

2 THE COURT: I resolved that.

3 MR. FEDER: So it's clear, Judge, in the presentence
4 report the presentence investigator identified that while the
5 guidelines indicate that probation is not available. If it's
6 an offense level D, the statute of 18 U.S.C. 3561(a)(3)

10:15:50

7 indicates as follows: The defendant is sentenced at the same
8 time to a term of imprisonment for the same or a different
9 offense that is not a petty offense. That you can't give

10:16:16

10 probation and prison for the same thing. That's what the
11 statute says. The guidelines, as the Court knows, are advisory

12 at best. And based on some recent Supreme Court decisions,

13 it's a question whether or not even that advisory role will be
14 recognized. So we would ask the Court to follow the statute

15 and not the guidelines in regard to whether or not probation is
16 available as to all defendants.

10:16:35

17 THE COURT: I see that as a sentencing recommendation
18 or argument, not an objection to the PSR. The PSR correctly,
19 as I pointed out in my written order, correctly states that if
20 a defendant is in Zone B probation is not eligible.

10:16:54

21 MR. FEDER: Well, Judge, actually the presentence
22 report indicates that probation is available under this
23 statute, but is not available under -- under the guidelines.

24 THE COURT: Yes, it's a correct statement of law, so
25 that's why I overruled the objection.

10:17:12

1 MR. FEDER: Okay. As to the Court's indication
2 regarding acquitted conduct, acquitted conduct is not a
3 proposal. The amended -- this amendment took place by an act
4 of Congress bipartisan.

5 THE COURT: Yes, I understand. 10:18:47

6 MR. FEDER: So I mean, we believe, I mean, again, over
7 the Court's assertion, we believe that acquitted conduct should
8 not have any place in the PSRs and, therefore, in the Court's
9 sentencing.

10 I think that's it, Judge. Thank you. 10:19:06

11 THE COURT: All right. Having resolved your
12 objections, Mr. Spear, your Sentencing Guidelines are
13 calculated as follows: With regard to Count 1 and Count 2,
14 conspiracy to commit Travel Act violation, the base offense
15 level is determined by the offense level applicable to the 10:20:00
16 underlying crime of violence. And because Count 2 involved a
17 minor victim, the guideline manual references 2G1.3 in
18 determining the offense level, and it guides the Court that the
19 base offense level involving a minor victim in a Travel Act
20 violation is an offense level 24. 10:20:44

21 Two levels are added because the Court has previously
22 found that there was a use of a computer or interactive
23 computer service to entice, encourage, offer or solicit a
24 person to engage in prohibited sexual conduct with a minor.

25 Two points are added because subsection (a)(4) applies 10:21:09

1 and this offense involved a commercial sex act. That is the
2 offense involved the solicitation of illegal prostitution
3 services in exchange for money through a paid advertisement
4 feature -- featuring a minor on Backpage.com.

5 Four levels are added, as the Court has previously 10:21:44
6 found that Mr. Spear was an organizer or leader of the criminal
7 activity involving five or more participants, or his role was
8 otherwise extensive.

9 Here, Mr. Spear directed Backpage's daily operations
10 from 2004 until 2015, and he directed the activities of 10:22:08
11 Mr. Ferrer. He oversaw the website's moderation policies and
12 practices, he approved the website's financial and strategic
13 relationships with the prostitution review site known as The
14 Erotic Review, he directed the website's implementation of a
15 program that aggregated conduct from other website prostitution 10:22:40
16 websites, and he also encouraged partnerships with others to
17 purchase advertising on Backpage. Ultimately, profiting
18 millions of dollars in laundered funds from soliciting illegal
19 prostitution. The four-level enhancement applies.

20 The adjusted offense level for Counts 1 and 2 is 10:23:16
21 therefore 32.

22 Now, rather than go piecemeal count by count, the
23 various sentencing guideline calculation changes whether a
24 minor victim was involved in the ad or an adult victim, so I'm
25 going to first go through the calculation as to the adult 10:23:50

1 victim counts. Those Travel Act counts of conviction involving
2 adult victims are Count 3, 6, 8, 10, 11, 13, 15, 16 and 17.
3 The guideline for a Travel Act violation under 18 U.S.C.
4 1952(a)(3)(A) is guideline 2E1.2. And under that guideline and
5 applying guideline 2G1.1, the base offense level number for 10:24:40
6 these counts is 14.

7 There is a four-point increase for having been an
8 organizer or leader, as previously stated, and the adjusted
9 offense level subtotals for each of these counts is 18.

10 With regard to the remaining Travel Act violations 10:25:10
11 that involve minor victims, they are Counts 4, 5, 12 and 14.
12 Again, the guideline violation for 18 U.S.C. Section
13 1952(a)(3)(A) is guideline 2E1.2.

14 Applying section (a)(2), the base offense level which
15 involves a minor victim, therefore, applies guideline 2G1.3, 10:25:48
16 and the base offense level is 24.

17 Two levels are added because there was a use of a
18 computer or interactive computer service to entice, encourage,
19 offer or solicit a person to engage in a prohibited sex act
20 with a minor in each of these counts. 10:26:11

21 Two levels are also added because the offense involved
22 a commercial sex act. Here, specifically with regard to Counts
23 4, an online advertisement was published on January 29th of
24 2014 which depicted Victim 8 who is a minor female at the time
25 of the offense. 10:26:47

1 There is a four-level enhancement for being an
2 organizer or a leader as stated previously, and the adjusted
3 offense level is therefore 32.

4 MR. KOZINETS: Your Honor, I apologize if I misheard,
5 but did you in that discussion, did you mention both of the
6 plus two enhancements? 10:27:40

7 THE COURT: Yes.

8 MR. KOZINETS: Okay. Thank you.

9 THE COURT: Now, with regard to the conspiracy to
10 commit money laundering, that is Count 52 through 62, the base 10:27:56
11 offense level for a 1956(h) violation is determined by the
12 offense level for the underlying offense from which the
13 laundered funds derived, and the laundered funds derived from
14 the Travel Act violations. And so the violation was committed
15 under 1952(a)(3)(A) and, therefore, guideline 2E1.2 applies, 10:28:46
16 and the base offense level is determined by the underlying
17 crime of violence. And here, because the underlying crime of
18 violence both referred to adult victims and minor victims, the
19 guidelines counsel that we must use the base offense level that
20 yielded the highest range, and that was -- that was those 10:29:18
21 counts related to the minor victims. And so the highest base
22 offense level is 24.

23 Adding the four-level role adjustment, then the base
24 offense level for conspiracy to commit money laundering, those
25 Counts 52 through 62 is 32. And the guidelines say add two 10:29:47

1 more points because the defendant was convicted of a violation
2 of 18 U.S.C. 1956(h). There is an additional two-level
3 enhancement for the offense involving a sophisticated
4 laundering scheme, and there's a four-level enhancement for
5 being an organizer or leader of a criminal activity. The
6 adjusted offense level, therefore, is 40.

10:30:24

7 Now, applying the multiple count adjustments to each
8 of the groups, there were 19 in total, the number of units
9 assigned to the combined group is 3.5. And the guidelines
10 instruct that the offense level is increased by the number of
11 units assigned and, therefore, there is a four-point
12 enhancement that is added. The combined adjusted offense level
13 is 44.

10:30:58

14 Now, you know that the sentencing guideline table only
15 goes to 43, so your resulting offense level is off of that
16 guideline chart.

10:31:31

17 MR. KOZINETS: Your Honor --

18 THE COURT: Yes.

19 MR. KOZINETS: Thank you. This relates to the Notice
20 of Errata that we filed yesterday. The government has
21 indicated in its filings that there is a modification that I
22 think is called for in connection with Count through 18 or 19,
23 the one that involves the money laundering calculation.

10:31:50

24 I think in the course of calculating the number 40 for
25 the adjusted offense level, the four-point role adjustment is

10:32:20

1 considered two times in reaching the number 40, and the
2 government respectfully submits that with respect to that
3 particular calculation it would be appropriate only to count
4 the four-point adjustment once. And if -- if that is the case,
5 then 40 becomes 36 in the adjusted offense level for that money 10:32:51
6 laundering count.

7 THE COURT: Do you have a copy of your Notice of
8 Errata? I am not following you. All right. Now, let me see
9 if we are now on the same page. In paragraph -- well, they've
10 been renumbered. But in any event, in the multiple count 10:34:51
11 adjustment, group one would qualify for one unit, group three
12 would also qualify for one, as would group four. Group 11
13 would qualify for one unit, as would group 13. The adjusted
14 offense level, therefore, is 36. The total number of units
15 would then be six. So then the greater of the adjusted offense 10:35:42
16 level would then be 36. Instead of the four-level increase
17 there would be a five-level increase.

18 MR. KOZINETS: Due to the way the grouping unit
19 calculations resolve, that is the end result of this.

20 THE COURT: And so the combined adjusted offense 10:36:14
21 level, the total offense level is 41.

22 MR. KOZINETS: Correct.

23 THE COURT: We will make that modification. All
24 right. Okay. Now, Mr. Spear, your resulting sentencing
25 guideline range, based on an offense level 41, and having no 10:37:29

1 prior criminal history, you are in a Criminal History Category
2 of I. The resulting sentencing guideline range is a low end of
3 324 months to a high end of 405. Because of that range
4 essentially the statutory maximum for each of the offenses is
5 the applicable sentencing range.

10:38:02

6 All right. Let's run through Mr. Brunst's resulting
7 guideline, but I want to make sure that I hear from counsel.
8 Have I resolved all objections with regard to Mr. Brunst?

9 MR. LINCENBERG: I'm not sure. I'm not sure, and I
10 can explain why if the Court wants me to.

10:39:10

11 THE COURT: Well, I either have or I have not,
12 Mr. Lincenberg.

13 MR. LINCENBERG: Your Honor, I believe I understand
14 that the Court is applying 2G1.3 to Mr. Brunst as well.

15 THE COURT: Yes.

10:39:36

16 MR. LINCENBERG: The Court's order may have just had
17 some language that was confusing, but that was -- that's my
18 understanding. So if that's the case and the Court is -- the
19 Court's order did not address the *McEnry* case about looking to
20 the charge as opposed to the underlying offense conduct, but I
21 think implicit in the Court's order is addressing it and
22 denying our position on that as well.

10:39:53

23 THE COURT: Yes.

24 MR. LINCENBERG: With regard to use of acquitted
25 conduct, we are in a slightly different position from Mr.

10:40:05

1 Spear, but I believe I understand the Court to be ruling that
2 the Court is using conduct even in connection with the 50
3 counts that Mr. Brunst was acquitted on as part of relevant
4 conduct; is that correct?

5 THE COURT: Yes. 10:40:25

6 MR. LINCENBERG: With regard to the -- I would note
7 that in addition to the arguments made, I would just add for
8 the record not only that the sentencing commission indicated it
9 would be fundamentally unfair to do that and would frustrate
10 the goals of sentencing, but even the original PSR at paragraph 10:40:44
11 157 where the probation office had contacted the sentencing
12 commission for advice and the sentencing commission advised not
13 to use the acquitted conduct, I would submit on that point.

14 With regard to role in the offense --

15 THE COURT: Well, let me say that I also discussed 10:41:04
16 that post meeting with the commission and the probation office,
17 and that was not my understanding.

18 MR. LINCENBERG: Okay. With regard to role in the
19 offense, I believe the Court has decided that. The Court did
20 not address specifically our citation to U.S. vs. Whitney where 10:41:20
21 the Court talked about exercising control over others.

22 Mr. Brunst supervised no one. There was no evidence that he
23 did. The Court did, in the Court's Rule 29 order, have a
24 statement that I believe was just incorrect that Mr. Brunst
25 supervised Mr. Spear. But as I understand it, the Court is not 10:41:43

1 looking to entertain further argument on our objections about
2 role in the offense; is that correct?

3 THE COURT: That's correct.

4 MR. LINCENBERG: All right. We would note that it
5 appears that the Court is treating prostitutes or advertised on 10:41:59
6 Backpage as, quote, victims and treating them whether or not
7 they are in the counts of conviction for Mr. Spear or not. We
8 object to that, but I believe that our record is preserved on
9 that and the Court has addressed that as well.

10 And then -- 10:42:18

11 THE COURT: Well, they were proximally harmed. That
12 was my finding. Your briefing makes it sound like there has to
13 be some physical harm. There is ample information in the
14 record that many of these individuals were advertised not of
15 their own free will and they were minors, and that many of them 10:42:39
16 to date suffer from extreme emotional psychological traumas.
17 That, in my view, aligns with the definition of victim.

18 MR. LINCENBERG: Right. Our argument was, in part,
19 that no acts of my client proximately caused this. If people
20 were victimized by their pimp or whoever, that is not a victim 10:43:06
21 for purposes of this statute, and --

22 THE COURT: Proximate harm analysis.

23 MR. LINCENBERG: Okay. And then the last thing I
24 would just raise with regard to offense conduct, we still have
25 in the presentence report conduct that was objected to, for 10:43:25

1 example, at paragraphs 108 through 118 referencing alleged
2 kidnappings and rapes and murders which were not part of this
3 case, which are not met proximate harm and the like, we
4 objected to those. We have laid out our objections in our
5 papers. I am not going to repeat them. We break them down
6 into various categories of offense conduct, and we give
7 specific examples of statements in the PSR that are just
8 blatantly at odds with testimony even by Mr. Ferrer, and I just
9 want to make sure that the Court has carefully considered all
10 of our objections to the offense conduct as well.

10:43:46

10:44:05

11 THE COURT: Well, I think, Mr. Lincenberg, the indicia
12 of reliability is as to what I find reliable, and having
13 presided over the case and having ruled on pretrial motions
14 what comes in is too prejudicial to come in in front of a jury,
15 that is all adequately provided for in the PSR, and my findings
16 related thereto had to do with prejudicial evidence being
17 presented in front of that jury in support of your respective
18 motions.

10:44:32

19 MR. LINCENBERG: Okay.

20 THE COURT: And so, however, I do find it reliable and
21 relevant, and that's why it is included in the PSR. I did not
22 take it out.

10:44:56

23 MR. LINCENBERG: Then in that event I believe in
24 response to the Court's questions the Court has covered all of
25 our objections. Thank you, Your Honor.

10:45:11

1 THE COURT: All right. And so Mr. Spear, excuse me,
2 Mr. Brunst, your Sentencing Guidelines are calculated as
3 follows: With regard to the conspiracy to commit money
4 laundering offense, the base offense level is guided by
5 guideline section 2S1.1, and under subsection (a)(1) that level 10:45:54
6 is determined by the underlying offense from which the
7 laundered funds were derived. And considering the jury's
8 verdict and the relevant evidence and conduct, then we look to
9 the Travel Act allegation and 2E1.2 is therefore used to
10 determine the offense level. Under subsection (a)(2), we then 10:46:37
11 look at the underlying crime or other unlawful activity.

12 And applying all of the chapter adjustments, we also
13 have to consider that the offense included minor victims as
14 well as adults, and so we must apply 2G1.3 because it yields
15 the greater offense level as opposed to the offense level that 10:47:17
16 applies to adult individuals.

17 Because the relevant conduct involves counts of
18 conviction pertaining to three minors, those in particular in
19 Counts 2, 4, 5, 10, 12 and 14, the base offense level is 24.
20 Two levels are added because there was a computer or 10:47:59
21 interactive computer service used to entice, encourage, offer
22 or solicit a person to engage in prohibited sexual conduct with
23 a minor.

24 There are two additional levels that are added because
25 the offense involved a commercial sex act, sex-for-money ads 10:48:18

1 essentially, and the four levels are added because the Court
2 has already found that you were an organizer and leader of that
3 conspiracy. The adjusted offense level for that count is 32.

4 With regard to the Counts 4 and 5, the base offense
5 level is 24 and there are two levels added, again, for the use 10:49:02
6 of a computer or interactive computer service. There are an
7 additional two levels that are added for a commercial sex act.
8 There is the organizer leader role that applies a four-level
9 enhancement, and the adjusted offense level is 32.

10 MR. LINCENBERG: Your Honor, can I ask for 10:49:38
11 clarification? Your Honor mentioned Counts 4 and 5, I believe
12 Mr. Brunst was acquitted on those counts.

13 THE COURT: Well, Counts 4 and 5 are necessary to
14 understand the application of the 24 offense level. They
15 involve the minor victims. Those are the relevant conduct. 10:49:57

16 The -- and we have to go through that exercise because
17 it results in the grouping and the identification of what the
18 final offense level is with all of the adjustments. And Mr.
19 Brunst is entitled to know the origin of his highest offense
20 level, but if -- but if you do not necessarily need me to go 10:50:37
21 through that, I can, if he wishes to waive reading of that.

22 MR. LINCENBERG: No I don't wish to waive reading. I
23 appreciate the Court going through it. We disagree, but the
24 Court knows that. So that's okay.

25 THE COURT: And again, leaving off the adjusted role 10:50:56

1 in the offense is four, a four-level enhancement, so the
2 adjusted offense level subtotal is 32.

3 The guideline calculation is the same for Counts 12
4 and 14, and then you apply the multiple count adjustment which
5 results in a unit subtotal of three. 10:51:48

6 And so the total number of units is three and the
7 greater of the adjusted offense level, therefore, is 32. We
8 use the 32 as the offense level. That is increased by the
9 number of units assigned, so there is a three-point adjustment
10 there. And the combined adjusted offense level that applies to 10:52:59
11 the group with the highest offense level then results in an
12 offense 35.

13 There are two points that are added because Mr. Brunst
14 was under section 1956(h). There are an additional two points
15 that are added because he was involved in a sophisticated money 10:53:30
16 laundering scheme. He also received a four-point adjustment
17 for role in the offense. His adjusted offense level,
18 therefore, is 43.

19 Mr. Brunst has no prior criminal history, so he is in
20 a Criminal History Category of I. Because the sentencing 10:54:07
21 guideline table ends at 43, there is no guideline range
22 applicable and the statutory term of sentence applies to each
23 count in this case.

24 MR. LINCENBERG: So then Your Honor, is the Court
25 going to double count the leadership enhancement? 10:54:35

1 THE COURT: It had to be counted because you have to
2 apply the enhancement to the underlying offense, so yes. All
3 right. With that, let me --

4 MR. KOZINETS: So Your Honor.

5 THE COURT: -- stand in recess for about 15 minutes 10:54:57
6 and then we will resume.

7 MR. KOZINETS: Just as to this prior calculation, we
8 did point out in our papers that there is consideration twice
9 of the role adjustment in this calculation. So we've pointed
10 out that instead of 43, the total would be 39 if the role 10:55:19
11 adjustment is just considered once in that final step in your
12 calculation.

13 THE COURT: Well, I will consider your late errata
14 notice on the break. And I will say that it makes my
15 responsibility difficult when I receive these last-minute 10:55:41
16 addendums, errata notices, late objections, renewed objections.

17 MR. KOZINETS: I apologize for that, Your Honor. We
18 did raise that issue, though, in our prior brief as well.

19 THE COURT: All right. We will stand in recess for
20 15 minutes. 10:56:02

21 COURTROOM DEPUTY: All rise.

22 (Recess was taken at 10:56 a.m.)

23 (Proceedings reconvened at 11:20 a.m.)

24 THE COURT: Please be seated. All right. We are back
25 on the record. And the Court notes the presence of counsel and 11:20:32

1 all defendants.

2 And I have had our probation officers provide to you
3 the various sections of the sentencing guideline manual that
4 supports the counting of the leadership role, and the beginning
5 of that analysis is in 2S1.1, and so I don't agree with the 11:21:03
6 government's memorandum because clearly, as outlined and
7 instructed by the commission, when you have multiple counts,
8 and especially when you have counts involving money laundering,
9 you necessarily have to look at the source, the illegal
10 activity that produced the funds, and that's why those 11:21:46
11 sentencing guideline enhancements apply.

12 And though it may seem like double counting, the
13 commission instructs the Court to arrive at whatever the
14 greatest offense level is for the underlying offense, and
15 that's precisely what the Court did. And so that's how we will 11:22:09
16 proceed.

17 Now, let's continue with the review of Mr. Brunst's
18 sentencing guideline calculation. We had arrived at the
19 greater of the adjusted offense level, which is 32, applying
20 the three-unit increase to a combined adjusted offense level of 11:22:48
21 35. Adding the two points pursuant to 2S1.1 (b) (2) (B), because
22 Mr. Brunst was convicted of a 1956(h) offense, the guidelines
23 instruct to add two points. Two points are then added because
24 the Court has found that this involved a sophisticated
25 laundering acts. 11:23:25

1 Four points are then added for Mr. Brunst's organizer
2 and leadership role. And to be clear, the objections were as
3 to this, the fact that Mr. Brunst didn't directly supervise
4 five or more individuals, its organizer or leadership role, and
5 the Court has sufficiently held that he had such a role. The
6 adjusted offense level is, therefore, 43. 11:23:58

7 Now, Mr. Brunst does not have any prior criminal
8 convictions, and so he is in an offense level of 43. The
9 sentencing guideline table ends at 43 and the guideline
10 provision on the guideline table indicates a life term. So, 11:24:40
11 therefore, we revert to the statutory maximum terms as to those
12 counts as I stated earlier.

13 Now, with regard to Mr. Lacey, Mr. Cambria, have I
14 resolved all of Mr. Lacey's objections?

15 MS. PARIS: Your Honor, I will be addressing 11:25:09
16 objections. I would like to address them from the podium. But
17 first I have a, actually, a housekeeping matter that's relevant
18 here. When Your Honor was laying out the counts with regard to
19 Mr. Lacey, Your Honor discussed Counts 2 through 51 and then
20 Count 100, but there are a number in between. Should I lay 11:25:25
21 them out in the resolution, or I could perhaps just submit
22 something on the record afterwards? I got it in front of me if
23 you want me to read it.

24 THE COURT: I am not sure what you mean because he is
25 only being sentenced here as to Count 100. 11:25:39

1 MS. PARIS: Yes. And so Your Honor went through the
2 open Counts 2 through -- 1 through 18, the acquitted Counts 19
3 through 51. He also has open Counts 52 through 62, acquitted
4 63, open 64 to 68, and acquitted 69 to 99. So I wanted to make
5 sure that was complete before I took the podium. 11:26:02

6 THE COURT: I am not sure what you mean by "complete."
7 I issued my Rule 29 order. I directed verdict in his favor as
8 to 19 through 51. He is only being sentenced here today for
9 Count 100, but there do remain standing indictments against
10 him, and so we're only here to address Count 100. 11:26:26

11 MS. PARIS: Correct. I just wasn't sure at the
12 beginning when you listed the counts and what the resolution
13 were for each of them for Mr. Lacey, there were a portion that
14 were not addressed, and I wanted to make sure for the record
15 that was addressed. 11:26:42

16 THE COURT: Yes, you may come forward. What were the
17 outstanding objections as to Mr. Lacey?

18 MS. PARIS: Okay. I'll do my best to streamline this.

19 THE COURT: I'm sorry?

20 MS. PARIS: I will do my best to streamline this in 11:27:02
21 light of everything that's occurred today. At the outset we
22 object to the rulings that have occurred thus far, both in the
23 order from August 25th, Docket No. 2161, and the rulings that
24 have been made today with respect to the codefendants that are
25 applicable here as well. We join. They're maintaining their 11:27:19

1 objections on those.

2 The key things we want to talk about, and there is
3 just a few I want to address, the first was a point of
4 clarification we had. With respect to Your Honor's ruling on
5 restitution, in Docket 2161, we had indicated that under 11:27:35
6 controlling Ninth Circuit precedent, in order for them to be a
7 victim for purposes of restitution, the person must suffer a
8 pecuniary interest directly related to and as a result of that
9 wire transfer. Your Honor mentioned that in the order, but
10 then resolved the restitution order or issue on discussion of 11:27:54
11 Brunst and Spear's issues, which are separate and distinct from
12 Mr. Lacey's, so we weren't sure if we are appearing at that
13 hearing to be able to address restitution further there and how
14 it's not applicable to Mr. Lacey, or if the ruling is that it
15 is applicable to Mr. Lacey and his separate count and he should 11:28:16
16 appear for the hearing for purposes of restitution.

17 THE COURT: Well, as I mentioned, with regard to
18 Mr. Lacey, he's in a different posture because, of course, he
19 was not convicted, although he was not acquitted, of the
20 conspiracy to commit Travel Act violations or a Travel Act 11:28:39
21 violation, and again, there remains a pending indictment on him
22 for those offenses. But my ruling is, I guess to be clear,
23 because you have to look at the source of funds from which he
24 was convicted, if the jury found that his international
25 transfer of funds didn't derive from an illegal source, then 11:29:16

1 they would have returned judgment in his favor and they did not
2 do that.

3 So again, going through the exercise of determining
4 his sentencing guideline range, I have to look at the
5 underlying conduct, the relevant conduct. Where did the money 11:29:37
6 come from? The money came from, by my review of the trial
7 record, as pointed out in my Rule 29 order, it came from the
8 Backpage platform, the sex-for-money ads, and so necessarily
9 there has to be some consideration in terms of restitution, but
10 at this juncture I can't make that determination. But for my 11:30:08
11 purposes, for sentencing purposes, I will have to consider it.

12 MS. PARIS: I guess what I'm saying is there's two
13 kinds of separate issues here with respect to the victims, and
14 so I do want to address it with respect to sentencing and how
15 that impacts his guidelines range. But the preliminary issue 11:30:27
16 was just we weren't clear if Your Honor was ruling that we
17 should be attending the restitution hearing because Your Honor
18 had found that there was someone who had suffered pecuniary
19 harm who had a property interest in those funds because that's
20 the standard for restitution, and was harmed as a result of 11:30:46
21 that transfer. That's like a separate technical thing from
22 what I'll address in a minute here, which is the sentencing.

23 THE COURT: Well, I think we're jumping the gun a bit
24 as to Mr. Lacey because, again, he has not been convicted of a
25 conspiracy to commit Travel Act violations or a Travel Act 11:31:02

1 violation, so he may be in a different standing. That's all to
2 say that that's something that I don't want to address here.
3 It's a separate restitution hearing that I instructed the
4 parties to consider and think about in terms of when that
5 should occur.

11:31:20

6 So beyond that, what else?

7 MS. PARIS: So the first thing I want to address is
8 what are these funds derived from? And that is the standard
9 here. The reason why we're looking at, potentially, this
10 underlying conduct is there's this finding that the funds have
11 been derived from underlying conduct. In this particular
12 situation, it's a factual impossibility for anyone who is
13 associated with an ad that was published prepublication, sorry,
14 presale to Mr. Ferrer, to have anything to do with Count 100
15 because under the government's own exhibit, Exhibit 1479, that
16 final page, the funds can --

11:31:33

11:31:53

17 THE COURT: Let me stop you there. It sounds like
18 you're making a renewed motion for judgment of acquittal, and
19 it also sounds like you're making a sentencing argument.

20 MS. PARIS: No, Your Honor. The issue would be which
21 method for calculating Mr. Lacey's sentence do we look at? Do
22 we do the loss table method, which is what we advocate, or do
23 we look at the underlying conduct method, which is what
24 probation and the government here have advocated? The method
25 they advocated here is a factual impossibility. So you can't

11:32:09

11:32:26

1 use the underlying conduct method here because the ads that are
2 affiliated with the people who are identified in the PSR as the
3 purported victims here, those funds are not at issue in Count
4 100, period. Government Exhibit 1479 shows us that. Count
5 100's funds were solely derived from ads published after the
6 sale of Backpage to Ferrer. 11:32:51

7 So a second reason why we don't want the underlying
8 conduct method to be used here is that those counts are
9 unresolved as to Mr. Lacey. So any punishment here has a
10 potential to be a double jeopardy issue. 11:33:12

11 But even if Your Honor doesn't want to go down that
12 path, there's actually a third reason why those counts can't be
13 used here with respect to Count 100, which is that at this
14 third trial for Mr. Lacey we believe he'll be acquitted of
15 Counts 1 through 18. It's not known yet, but at some point in
16 time in the future we will know what the resolution of those
17 counts are. And so you're being asked here to use this
18 conduct, which very well may be acquitted conduct in the
19 future, and to greatly increase his sentence from a base
20 offense level we believe of 10 to one of 43, based solely on
21 conduct that is unresolved, that factually is impossible to be
22 used here, and that may in the future be acquitted conduct,
23 which I'm not even sure at that juncture what the procedure
24 would be to then come back and rectify the sentence if it's
25 subsequently acquitted. So there's a number of issues here, 11:33:28
11:33:45
11:34:03

1 and we think that the key outstanding issue for Mr. Lacey here
2 is that we believe that the loss table method is the
3 appropriate method to be used here in calculating his
4 guidelines range.

5 I just wanted to thumb through my notes. 11:34:16

6 THE COURT: Well, let me hear from the government on
7 that argument. Who is speaking for the government?

8 MR. KOZINETTS: Thank you, Your Honor. First of all,
9 with respect to that loss table method as we outlined in our
10 filings, even application of that method gets us in the end to 11:34:48
11 the same result, so I don't think that would make any
12 difference overall in the calculations.

13 But with respect to the underlying conduct method, as
14 Your Honor has observed, the jury implicitly found in its
15 verdict that the source of these funds were illegal 11:35:09
16 prostitution ads that had been published by Backpage and that
17 Mr. Lacey knew that to be the case, and I think overall you
18 can't divorce Count 100 from the underlying context of how
19 those funds came to be and why those funds were transferred
20 overseas by Mr. Lacey. 11:35:34

21 You found in your role adjustment ruling that
22 Mr. Lacey was a leader or organizer of this organization
23 throughout its history; that he had been involved over the
24 course of more than a decade in the development, growth and
25 sustained viability of the website. So that is all relevant to 11:35:55

1 determining what his sentence would be here.

2 And I think that, you know, you've made multiple
3 findings about that. In, for instance, your Rule 29 order
4 where you talked about on page 21 about how Lacey, Spear,
5 Brunst and others knew that demand for Backpage adult ads were 11:36:22
6 especially high in proportion to the total business of the
7 website, they derived the majority of their revenues from those
8 ads, and the sale of those ads constituted the dominant portion
9 of their business. You found that, and that's at page 21 of
10 that ruling. 11:36:40

11 At page 31, you found that Mr. Lacey's wealth depended
12 on the success of Backpage's adult section, and it was -- and
13 then that suffices to establish his membership in the Count 1
14 conspiracy; that there was sufficient evidence at page 40 of
15 that ruling; that each defendant knew what was occurring 11:37:04
16 through the Backpage ads, and that the vast majority of revenue
17 came from prostitution ads.

18 So we have all of that. And then in your ruling from
19 this weekend, Doc 2161, we have additional rulings that support
20 the notion that, as that order puts it, that there was clear 11:37:24
21 and convincing evidence that the defendants, including
22 Mr. Lacey, were on notice that minors were among those who were
23 being advertised on Backpage; that that notice came from
24 multiple sources over multiple years; that NGOs, attorney
25 generals, media reports, meetings that were personally attended 11:37:48

1 by the defendants all involved this kind of notice.

2 There were multiple requests to make changes to the
3 website to address this issue. The defendants hired an
4 Internet safety expert that recommended certain things like not
5 using prepaid gift cards, not running ads that many of which 11:38:06
6 tied to the same phone number, not running ads that had the
7 phrase "New In Town," which indicated possibility of a child
8 being shuttled from town to town where it's more difficult for
9 them to get help, many of the same recommendations made a
10 couple years later by NCMEC to the defendants, the 11:38:26
11 recommendation being disregarded so as not to hurt the bottom
12 line. This is all part of the trial record. We respectfully
13 submit this is all relevant conduct that can be considered
14 here.

15 So there is that clear and convincing evidence that 11:38:40
16 minors were involved. We think there is at least a
17 preponderance of the evidence to show, for sentencing purposes,
18 not for -- not for offense related purposes, not for double
19 jeopardy. The *Monge* case from the Supreme Court makes clear
20 that sentencing determinations are not offense determinations. 11:38:58
21 They don't count for double jeopardy purposes.

22 So the Court could properly make a finding by a
23 preponderance of the evidence that Mr. Lacey was a member of
24 the Count 1 conspiracy, and the Count 1 conspiracy encompassed,
25 I think you could also find the publication of the ads that 11:39:19

1 involved the minors that are referenced in the PSR here.

2 So there is all of that, and does Your Honor have any
3 questions about that?

4 THE COURT: No. Thank you.

5 MR. KOZINETS: Thank you. 11:39:39

6 MS. PARIS: May I respond, Your Honor?

7 THE COURT: No. I will tell you that I have
8 considered this, and I have looked at the filed objection. I
9 have heard your renewed objection. And simply put, he was not
10 acquitted of the conspiracy to commit Travel Act, nor was he 11:39:53
11 acquitted of Count 2 through 51.

12 MS. PARIS: Yes, we understand that, Your Honor.

13 THE COURT: So I am entitled to look at relevant
14 conduct, and that's what I intend to do as I noted in my
15 written ruling on that objection. So my ruling stands. 11:40:15

16 Okay. You can cover whatever the next matter is.

17 MS. PARIS: Yes. So the next thing, if Your Honor is
18 going to use the underlying conduct method, we have a couple of
19 issues we just want to raise with respect to that. The first,
20 again, would be that you can't use any of the enhancements that 11:40:34
21 will be victim related because those particular ads have
22 nothing to do with the dollars at issue in Count 100. Count
23 100's dollars derived from post sale ads. That's conclusive
24 based on the government's own proof. So we'd ask that you
25 strike those particular enhancements from his calculation. 11:40:54

1 The next point I would raise is that, and we have
2 raised this in our briefing, but just briefly --

3 THE COURT: Let me just respond to that. It's the
4 same conduct.

5 MS. PARIS: Yes. 11:41:11

6 THE COURT: So again, it's relevant conduct.

7 MS. PARIS: So first, we were arguing, right, that
8 this method shouldn't be used, but if you're going to go within
9 this method, again, the conclusive evidence is that the dollars
10 at issue were post sale dollars. So whatever happened presale, 11:41:23
11 cannot be the dollar -- like those ads -- those dollars are not
12 derived from those particular ads. It's a factual
13 impossibility.

14 So even if we use this conduct method, our approach
15 would be you don't count the victim-related enhancements. 11:41:38

16 THE COURT: I understand, and I overruled that.

17 MS. PARIS: Thank you. Let's see --

18 MR. LINCENBERG: Your Honor, excuse me, this is
19 Mr. Lincenberg. Just for the record, we join in that argument
20 because it equally applies to Mr. Brunst. 11:41:54

21 MS. PARIS: I am not going to rehash the admitted,
22 pardon me, acquitted conduct. I have been through that one.

23 We just want to relate that this method can't be used
24 without acquitted or unresolved conduct, which I understand
25 Your Honor is overruling. That's why it's a problem. 11:42:15

1 And additionally, when we look at who would qualify as
2 a victim, it's the direct and proximate harm. In fact, judges
3 in this courthouse, Judges Campbell and Teilborg, in United
4 States vs. Avila and United States vs. Mason, have said that we
5 don't even go to proximate and direct harm unless we have even
6 gotten to but for harm, and here that's not even met with
7 respect to these particular people with respect to Count 100.
8 So that's another bases I wanted to raise to make sure the
9 record is complete.

11:42:43

10 We also join in the challenges of the four-point role
11 adjustment being counted twice. An example where it's being
12 done here is paragraphs 187 and 200 for Mr. Lacey. We also
13 believe that 2G1.1 should not be applied here. We join our
14 colleagues' objections with respect to that guideline.

11:42:58

15 THE COURT: All right. I think, Ms. Paris, I ruled on
16 these in my written order.

11:43:21

17 MS. PARIS: I just want to make sure the record is
18 clear we objected to those rulings.

19 One final point. There are a number of factual errors
20 in the PSR. We have laid them out in depth and in Docket No.
21 2124-1, which is Exhibit A to our last round of objections, and
22 a number of those remain outstanding. My understanding is that
23 Your Honor has ruled on those, but just to be clear, there's
24 things like Mr. Lacey being the creator of Backpage when we
25 provided testimony from Mr. Ferrer himself that it was him and

11:43:34

11:43:59

1 Mr. Larkin; not Mr. Lacey. Mr. Lacey's sons have never had an
2 interest in any entity owned by these individuals. It was
3 Mr. Larkin's sons. And I can go down the whole litany list,
4 but those factual errors I believe are still outstanding and we
5 believe should be ruled in our favor. 11:44:18

6 THE COURT: Where is the reference to the sons?

7 MS. PARIS: One moment, Your Honor. It's on page 6 of
8 our Document 2124-1 and --

9 THE COURT: I'm talking about in the PSR.

10 MS. PARIS: Yes. It would be paragraph, I believe, 11:45:12
11 290. And this is just an example, right. This is not all the
12 errors, but this is an example that is just out there that
13 sticks out. I don't think that's the right paragraph number.
14 Just a minute. Pardon me, Your Honor, paragraph 29. I'm so
15 sorry. 11:45:42

16 THE COURT: So you're alleging that the statement that
17 Mr. Lacey's two sons each held an ownership interest of 2
18 percent, however, Lacey controlled his son's stake, that's an
19 error?

20 MS. PARIS: There is nothing in the record on that. 11:46:24

21 THE COURT: So what you're saying the sons never had
22 the 2 percent ownership?

23 MS. PARIS: Never did. It was Mr. Larkin's sons.

24 THE COURT: We will strike that sentence.

25 MS. PARIS: If we are allowed to, I'd like to go 11:46:42

1 through all of the other errors. I just grabbed this one
2 'cause it's kind of silly.

3 THE COURT: It's not silly.

4 MS. PARIS: I don't mean to say "silly." It's one
5 that, you know, jumped out that hasn't been rectified yet. 11:46:54

6 THE COURT: Where are the other errors?

7 MS. PARIS: They are in that Document 2124-1, and --

8 THE COURT: 2124-1. I am looking at 2146, the PSR.

9 MS. PARIS: So I will -- if you'd like me to go on I
10 will address. I will run down our list. Okay. So beginning 11:47:18
11 on paragraph 13, we challenged the use here or anywhere of the
12 phrase that Backpage advertised prostitution. There was no
13 category of ad for prostitution. There was escorting and there
14 was dating.

15 THE COURT: Overruled. 11:47:39

16 MS. PARIS: There is no proof that Lacey ever oversaw
17 the website's policies or strategic direction. That's
18 paragraph 13.

19 THE COURT: Overruled.

20 MS. PARIS: It was listed throughout that Lacey held 11:47:51
21 an ownership interest in Backpage per se. He held an ownership
22 interest in the parent company. That's a technical thing, but
23 it's not true.

24 THE COURT: Overruled.

25 MS. PARIS: Paragraph 17 says that Ferrer was the 11:48:06

1 nominal owner of Backpage. Ferrer was the owner from 2015
2 forward. We know this because Ferrer and Ferrer alone shut the
3 website down.

4 THE COURT: We'll omit "nominal."

5 MS. PARIS: Paragraph 19, that Lacey was aware that 11:48:26
6 most adult and escort ads were ads for prostitution and took
7 steps to intentionally facilitate this activity.

8 THE COURT: Overruled.

9 MS. PARIS: Lacey, again, paragraph 23, was described
10 as having involvement in the business side and financial 11:48:55
11 issues, or finance issues for the companies. He was never
12 involved with that. The evidence at trial is conclusive on
13 that. He had nothing to do with financing or business issues.

14 Paragraph 27 --

15 THE COURT: I will modify that to he was aware of the 11:49:12
16 finance issues.

17 MS. PARIS: We maintain the objection, but thank you,
18 Your Honor.

19 Paragraph 27, Lacey was never involved in any decision
20 to acquire a newspaper in any city. Wasn't something he was 11:49:29
21 ever consulted on.

22 THE COURT: You're going to have to slow down, please,
23 for my court reporter.

24 MS. PARIS: I am sorry. I recognize I am doing it. I
25 am trying to stop myself. 11:49:40

1 THE COURT: One moment. I am still there. Overruled.
2 The statement is supported by the trial record.

3 MS. PARIS: Again, we maintain that Lacey and his
4 colleagues did not purport to sell Backpage, but they did in
5 fact sell Backpage. That would be paragraph 34. 11:50:20

6 THE COURT: Overruled.

7 MS. PARIS: Lacey never had operational control over
8 Backpage as is discussed in paragraph 31. There is no proof of
9 that. The proof is to the contrary; that people who worked
10 there didn't even know him and he was considered to be a layer 11:50:35
11 away.

12 THE COURT: Overruled. That's contrary to the trial
13 evidence.

14 MS. PARIS: The next two objections are paragraphs 33
15 and then 66 through 115, if you will, that talk about the 11:50:58
16 notice evidence and what the significance of that is. We
17 obviously maintain our position that it did not give the
18 clients notice of any illegal conduct on the site as it was
19 happening, and there is no proof of that in the record.

20 THE COURT: Overruled. 11:51:17

21 MS. PARIS: Again, we maintain the objection that, to
22 the phrase \$500 million earned from Backpage was the proceeds
23 of unlawful activity. That's at paragraph 139. There was no
24 tracing at this trial. Even with respect to the ads that are
25 the subject of these particular counts that will be used at 11:51:43

1 sentencing, those dollars were never traced to any of the money
2 laundering counts, and we don't even know if all those ads even
3 were ads for money. Sometimes there are free ads. So we
4 maintain this objection.

5 Additionally, there are plenty of activities, ads for 11:52:01
6 lawful activities on the website, and so there has never been a
7 tracing as to what was prostitution related and what was
8 generated from lawful activities like --

9 THE COURT: I think there was ample evidence in the
10 trial record in exhibits that show that the majority, sometimes 11:52:17
11 98 percent of funds, was derived from the sex-for-money ads.
12 So your objection is overruled. It's noted for the record
13 these are relevant conduct type questions, and I think the
14 issue is is that I've already made that determination based on
15 the jury's conviction that they necessarily found that these 11:52:41
16 monies came from illegal sources. And so your objections to
17 those paragraphs are overruled.

18 MS. PARIS: Okay. I believe there's a second
19 reference to Lacey's sons. I think it would be paragraph 137.
20 I just want to double-check. I think I have a printed version. 11:53:07

21 THE COURT: Did you say 147?

22 MS. PARIS: I thought it was 137. Pardon me, it's
23 136.

24 THE COURT: What is it?

25 MS. PARIS: Paragraph 136, at the bottom of that 11:53:27

1 paragraph it says that Lacey and Lacey's family, referencing
2 the sons, received these distributions, and that should have
3 been Larkin.

4 THE COURT: Mr. Rapp, I didn't laser in on that
5 sentence, and it reads: Lacey and -- it says Lacey and Lacey,
6 so I'm assuming that meant Lacey and Larkin's family members
7 received distributions which totaled over 30.3 million, and
8 Larkin separately received distributions of over 21 million.

9 So your objection is to the reference to Mr. Lacey's
10 family receiving over 30.3 million?

11 MS. PARIS: Lacey's family shouldn't be mentioned
12 there. It should be Larkin's.

13 MR. RAPP: We don't have a problem striking that
14 sentence.

15 THE COURT: The sentence that begins with "Between,"
16 will then be stricken.

17 MS. PARIS: Thank you, Your Honor. We then wanted to
18 briefly talk about the only crime of conviction here for
19 Mr. Lacey, which is Count 100, and that's only addressed, I
20 believe, in paragraph 24, and it's an incomplete discussion of
21 the evidence.

22 So for example, some of the statements were included
23 about him desiring to transfer funds abroad, but they were
24 incomplete. They did not include his statement that he wanted
25 to make sure all taxes were filed and all forms were filed, so

1 that's an incomplete picture of what the conduct was with
2 respect to Count 100. He said both in writing, and other
3 witnesses testified, that he intended to file taxes. He didn't
4 want to avoid any taxes; that he had a firm in place, I think
5 it was BMO, but he said BDO, and made sure that all taxes would 11:55:56
6 be filed and that all forms would be filed.

7 THE COURT: What I will include at the end is
8 Mr. Lacey contradicts this assertion and states he never
9 intended --

10 MS. PARIS: Separately -- 11:56:43

11 THE COURT: -- to avoid paying government taxes.

12 MS. PARIS: Yes. Additionally, we want to acknowledge
13 that the government's own witness testified that with respect
14 to Count 100, there were no fictitious names or entities used;
15 that he followed the funds from the U.S. to Hungary with ease, 11:57:08
16 and it was again demonstrated in Exhibit 1479. That's also
17 absent here.

18 MR. KOZINETS: Your Honor, the jury heard all of this
19 and rejected it.

20 THE COURT: And that is in the record, Ms. Paris, and 11:57:28
21 so I'm going to overrule that as to a modification to the PSR
22 or an added sentence.

23 MS. PARIS: Okay. I know a number of folks have hit
24 on the idea of leader, creator, founder, that type of thing. I
25 want to talk about the factual record here was that he wasn't 11:57:56

1 the creator or founder or the organizer. That's in a number of
2 paragraphs, 1325 to 26, 140, 173, 180, 187, 230. Again, the
3 evidence was contrary. When asked, Mr. Ferrer said that the
4 idea for Backpage originated with him and Mr. Larkin, and that
5 after they had had some meetings about it, Mr. Larkin made the
6 determination that Mr. Ferrer should take on that project.
7 That's the trial testimony.

11:58:20

8 So I think based on that, Mr. Lacey cannot be
9 described as the creator, the founder or the organizer. I
10 think that title would rest with Mr. Larkin --

11:58:36

11 THE COURT: Well, I think --

12 MS. PARIS: -- and Ferrer.

13 THE COURT: -- given the three-month trial, there was
14 ample evidence of his involvement of leading the organization.
15 And as I have laid out in my written order on the objection, he
16 appeared in Congress. He was the biggest cheerleader of
17 Backpage. He acknowledged that he was going to bring
18 transparency to the oldest profession in the world.

11:58:49

19 So I listened to the entirety of the testimony,
20 Ms. Paris, and you've only stated one sentence of a witness'
21 testimony. And so I'm looking at the entire trial record and
22 so that objection is overruled, and I have already made my
23 written ruling as to the enhancement for organizer or leader.

11:59:19

24 MS. PARIS: I understand that with respect to the
25 enhancement. I am saying as a factual matter. I don't --

11:59:40

1 THE COURT: I agree. Are there any other
2 unresolved --

3 MS. PARIS: I want to skim my notes real quick, if you
4 don't mind, 'cause this is so important. Just a final note
5 that we maintain the objection to the inclusion of any victim 12:00:06
6 impact information anywhere in the PSR or its attachments that
7 is not related to someone being harmed by the sending of funds
8 from the United States to Hungary, that sole transaction.

9 THE COURT: And I refer you once again to my written
10 order. 12:00:25

11 MS. PARIS: Thank you, Your Honor.

12 THE COURT: All right. Now we are at the noon hour,
13 and we will take a lunch recess. We will reconvene at 1:30.

14 (Recess was taken at 12:00 o'clock p.m.)

15 (Reconvened at 1:33 p.m.) 13:33:22

16 THE COURT: All right. Please be seated. I
17 resolved -- well let the record reflect the presence of the
18 parties and all defendants are present. I've resolved all of
19 the objections with regard to Mr. Lacey. And it is the fact
20 that, unlike Mr. Spear and Mr. Brunst, Mr. Lacey was not 13:33:57
21 convicted of conspiracy to commit a Travel Act violation, nor
22 was he convicted of a Travel Act, substantive Travel Act
23 offense.

24 While the Court has overruled the objections to
25 relevant conduct and the conduct that I consider which includes 13:34:17

1 the entirety of the trial record, I find that the testimony and
2 the evidence do have indicia of reliability.

3 It is a fine point, but an important point that his
4 sentencing guideline calculation must reflect the count of
5 conviction. And I am persuaded that the money loss table,
6 therefore, is the applicable guideline for Mr. Lacey, and so I
7 will proceed then to revise his sentencing guideline
8 calculation pursuant to that.

13:34:43

9 And so Mr. Lacey having been convicted of Count 100,
10 international concealment money laundering, the base offense
11 level assigned pursuant to Guideline 2S1.1 is eight, plus the
12 offense level from table section 2B1.1, which corresponds to
13 the alleged laundered, or having been found guilty of
14 laundering funds of 16.5 million. The guideline basically puts
15 it in the category of more than 9.5 million but less than 25
16 million. So as a result, base offense level 20 applies.
17 Excuse me, the 20-level increase then results in a base offense
18 level 28.

13:35:22

13:36:00

19 MS. PARIS: Your Honor --

20 THE COURT: The two levels are added for having been
21 convicted under section 1956(a)(2)(b)(1). The two-level
22 enhancement is added related to sophisticated laundering. Four
23 levels are added because I have previously found Mr. Lacey an
24 organizer or leader. That results in an adjusted offense level
25 of 36. There are no additional Chapter 4 enhancements. His

13:36:24

13:37:01

1 resulting offense level, therefore, is 36.

2 MS. PARIS: Your Honor, I just want to state for the
3 record, we did file objections to the calculation under the
4 loss table method. It's Document 2101. And because those
5 funds have been acquitted twice, and because Mr. Lacey and no
6 one has been convicted of a post sale Travel Act violation, and
7 the conspiracy ended at that point in time, his base offense
8 level, based on our objections, is 10. I just wanted to state
9 that objection. We didn't discuss it today at length because
10 we were talking about the underlying conduct method, but if we
11 look at the loss table method -- sorry, should I --

13:37:29

13:37:48

12 THE COURT: No. Please stand.

13 MS. PARIS: I am so sorry. If we are going to look at
14 the loss table method, we ask that you consider the objections
15 that were at 2101, our original objections to the original PSR
16 under the loss table method. We feel that you cannot count
17 those dollars for the reasons stated. They have been acquitted
18 twice in Counts 94 through 99. That's the very same dollars at
19 issue in Count 100.

13:38:03

20 And separately, additionally, as you ruled, the
21 conspiracy ends at the sale and there are no post sale Travel
22 Act violations. So by our math, that means you take the base
23 level of eight, and we understand you have to do the
24 enhancement for 1956, that's two points. That gets us to 10.

13:38:22

25 We disagree -- we understand you're going to, but we

13:38:38

1 disagree with sophistication, we disagree with leadership. But
2 regardless of that, you can't count that 16.5 million. Thank
3 you for hearing me.

4 THE COURT: I can count it because it was a count of
5 conviction. It relates to his relevant conduct. He was not
6 acquitted of Count 100. And the basis of that count is the
7 16.5 million transfer, and so it is counted. So I have
8 overruled the objection.

13:38:53

9 MS. PARIS: Thank you for hearing me.

10 MR. KOZINETS: Your Honor, I am sorry, may I be heard
11 just briefly on the loss table calculation?

13:39:13

12 THE COURT: Yes.

13 MR. KOZINETS: So there is an additional provision
14 under 2S1.1, it's B 1, little three, that involves a six-level
15 adjustment if underlying unlawful activity involved minor
16 victims.

13:39:33

17 THE COURT: Well, again, and I pointed out quite
18 clearly, that my calculation as to Mr. Lacey cannot necessarily
19 include those enhancements relating to any Travel Act
20 violation.

13:39:52

21 So, for example, at an eventual trial, perhaps he gets
22 convicted of a conspiracy count; perhaps he doesn't. Perhaps
23 he gets convicted of one Travel Act violation that involves an
24 adult. So that's the reason that I'm applying this method
25 avoiding and in erring to Mr. Lacey's benefit that he does not

13:40:14

1 get the adjustment for a minor, and that's my rationale.

2 So your total offense level is 36. You have no
3 countable criminal history. You are in a Criminal History
4 Category of I. Your resulting sentencing guideline range is
5 188 months to 235 months. 13:40:50

6 Now, having determined the objections, the sentencing
7 guideline calculation as to each defendant, I do want to note
8 for the parties that necessarily the presentence report will be
9 amended accordingly in the form and fashion we discussed here.

10 And in addition to that, just yesterday I believe there was 13:41:24
11 another Victim Impact Statement that was received by one of the
12 testifying victims. I asked that that information be included
13 into the presentence report as well. You've received that
14 information.

15 Having resolved the objections and resolved the 13:41:44
16 sentencing guideline calculation as to each defendant, I
17 understand from defense counsel, all defense counsel, that
18 there is no one to be heard had terms of oral presentment of
19 character information. I have received abundant letters and I
20 have considered those. And so let's move to the government if 13:42:14
21 you wish to provide impact information.

22 MR. RAPP: Judge, before we do that, I'd just like to
23 make a brief argument on what the Court is considering a victim
24 in this case, if I may.

25 THE COURT: Yes. 13:42:32

1 MR. RAPP: The Court has ruled that, sort of set a
2 demarcation for the conspiracy, the Travel Act conspiracy. I'm
3 not asking you to reconsider your Rule 29 ruling or your more
4 definitive ruling this morning on that. The conspiracy under
5 the Travel Act ends at the last Travel Act violation before the 13:42:51
6 sale.

7 Our concern about that is we believe that victims
8 after the sale that were trafficked on Backpage should be
9 included in the PSR for this case, and they also should be able
10 to address the Court, and for really a couple reasons. One, we 13:43:14
11 lay this out in Document 2137 at page 28, and under 18 U.S.C.
12 Section 3661, there's no limitation shall be placed on the
13 information concerning the background, character and conduct of
14 a person convicted of an offense, which a court of the United
15 States may receive and consider for the purpose of imposing an 13:43:41
16 appropriate sentence.

17 A Court can allow an individual to speak at sentencing
18 without regard to whether that individual meets the CVRA's
19 definition of a victim, and that's *United States vs.*
20 *Degenhardt*, D-E-G-E-N-H-A-R-D-T, 405 F. Supp. 2d 1341, Utah 13:43:58
21 2005.

22 So the Court really has broad discretion to hear from
23 anybody who is relevant. And in our view, just on the law,
24 anybody who was trafficked on Backpage before the sale or after
25 the sale should be able to address the Court, and their 13:44:22

1 information should be included in the PSR and considered in the
2 sentencing of these defendants. That's our first argument.

3 But more importantly, the Court has not made that same
4 determination on the Travel Act conspiracy with respect to the
5 money laundering conspiracy. The money laundering conspiracy
6 spanned the entirety of this -- of the operation of Backpage up
7 until it was taken down. And it had three objects to it:

8 Transactional. We understand the Court's ruling on that. We
9 don't want you to revisit or not asking you to revisit it here,
10 but the two other objects that are promotional money

11 laundering, which means these defendants are using the proceeds
12 of Travel Act violations to continue to promote and keep
13 Backpage viable so victims can continue to be posted and to be
14 victimized.

15 And for that reason, anybody who was trafficked after
16 the sale, and when these defendants were convicted of money
17 laundering, first Mr. Lacey on Count 100, which I'll talk about
18 in a second, but Mr. Brunst and Mr. Spear, both convicted of
19 both concealment and international promotion, and the
20 conspiracy and Mr. Spear convicted of concealment. And then
21 Mr. Lacey, of course, is convicted of international concealment
22 money laundering, and the Court should look squarely at the
23 facts underlying that count.

24 You will remember from Exhibit 1 where he says, "I'm
25 trying to keep this money from the government," that's us. But

1 he also says, "I'm trying to keep that money from litigious
2 parties." And in January of 2017 he was spiralling towards
3 trial in the case of J.S. vs. Backpage, and this is a case that
4 the defense does not talk about. It's one they lost that went
5 to discovery and was going to trial, wasn't stayed, and was
6 settled on the eve of trial. 13:46:31

7 That J.S. is Jessika Svengard who testified in this
8 trial. She was clearly a victim. She, along with a number of
9 other underage trafficking victims, had sued Mr. Lacey, and we
10 would argue that when he says "litigious parties" he's trying 13:46:50
11 to keep that money from these people who were victimized, and
12 so for those reasons, we believe that the Court should allow
13 anybody who was trafficked on Backpage, either before the sale
14 or after the sale, in light of the money laundering conspiracy
15 and in light of the broad discretion the Court has to consider 13:47:08
16 any relevant information, they should be allowed to address the
17 Court. Thank you.

18 THE COURT: Mr. Cambria, Ms. Paris, do you wish to
19 respond? I will let all parties respond.

20 MS. PARIS: Yes, Your Honor, a couple of points, and I 13:47:28
21 will try to go slowly. I did have coffee at lunch. But the
22 first point is that there is no person who is going to come
23 before the Court today who can meet the elements of a victim
24 with respect to Count 100, and the reason being is that you
25 need to look at the offense of the conviction. 13:47:54

1 So here, the wire of the funds from the U.S. to
2 Hungary. And based solely on those facts and based solely on
3 the facts that were adduced at trial, you need to determine if
4 someone suffered a harm from that wire transfer, not from the
5 stuff with Count 1, which is what the government wants you to
6 loop in here, but from that actual transfer. 13:48:12

7 And the other issue is that there's been no, you know,
8 tracing. These funds are derived from something, but we don't
9 know what. We don't know if it was ads for lawful activity,
10 ads for activity that appeared to be facially lawful, but 13:48:29
11 afterwards party to something that wasn't from the face of the
12 ad. We don't know those things. So these folks aren't here a
13 victim of Count 100.

14 Count 1 could be a different issue. There is
15 different arguments to be made there, but no one was harmed 13:48:41
16 from the wiring of funds, and that's the act at issue with
17 Count 100. It's different from some of the other charges we
18 have here. But the law is clear, we cited a case in briefing.
19 It's from the Sixth Circuit, but it reflects, you know, the
20 circuit as a whole, you have to look at what was in the record 13:48:57
21 about who was harmed by that count, Count 100. And here, there
22 is nothing in the record that someone was harmed by the act of
23 that wire transfer. That's our position, Your Honor.

24 THE COURT: Mr. Lincenberg.

25 MR. LINCENBERG: Your Honor, I would just briefly add 13:49:20

1 that the same argument applies to Mr. Brunst. The money
2 laundering convictions were all post sale under the Court's
3 Rule 29 ruling. There was no conspiracy to violate the Travel
4 Act, at least to Mr. Brunst or Mr. Spear or Mr. Lacey were a
5 part of post sale, so the arguments apply the same to
6 Mr. Brunst. 13:49:40

7 THE COURT: Mr. Kessler.

8 MR. KESSLER: Join.

9 THE COURT: All right. Well, I think, Ms. Paris, your
10 argument isn't supported by the record. Again, it's not the
11 transfer. It's the source of funds. It's the fact that
12 there's the allegation, and the jury finding that the source of
13 funds was illegal, otherwise we wouldn't be here. And the
14 source of funds were derived from sex-for-money ads in
15 violation of state prostitution laws, and that's very clear
16 from the record. 13:49:55 13:50:20

17 The concern that I have, Mr. Rapp, is that there was
18 an obvious, as explained in my prior order, there was an
19 obvious determination by the jury as to when the conspiracy
20 likely ended, and that sale, but at the same time there were
21 counts of a conviction for Travel Act violation as to
22 Mr. Brunst and Mr. Spear, and I'd like to consider that and
23 other similarly-situated individuals who were posted, whether
24 they be minor or adults under the control of what we heard as
25 pimps and so on. That's information that I'd like to hear. 13:50:47 13:51:15

1 I'm not going to disregard any information with regard
2 to the eventual sentencing of Mr. Ferrer. I think that's a
3 wholly different circumstance.

4 I can consider all of the victim information related
5 to up to the time that the Backpage was seized. I can consider 13:51:40
6 that today if they are here so that I don't have to have them
7 repeat or come back, and I can consider it and compartmentalize
8 it as best I can, but I think that's the best determination
9 here going forward.

10 So understand, though, let's assume that you go to 13:52:07
11 trial, Mr. Lacey, I don't necessarily know that you want to
12 bring back a victim or victims to, again, provide information.
13 That's the gray area that we are in. And so I'll leave it to
14 your discretion as to what you want to do, but certainly if you
15 present victim testimonies of individuals who are not involved 13:52:36
16 in any of these counts, then I got to kind of compartmentalize
17 it to the best that I can in all transparency to the parties.
18 But I may not in sentencing necessarily apply them to the
19 defendants. So that's how we will proceed.

20 MR. RAPP: Very well. 13:53:03

21 MS. PERLMETER: Your Honor, we have three individuals
22 who wish to address the Court in person this afternoon. We'll
23 have them come up one by one, and then there is a fourth person
24 who was unable to be here today. She has submitted a writing
25 to Your Honor, and she's also requested that it be read aloud 13:53:35

1 in the courtroom.

2 THE COURT: And you may do so.

3 MS. PERLMETER: Thank you.

4 THE COURT: Ma'am, I am going to ask you to place
5 yourself in front of the microphone probably right here. And 13:53:44
6 please state your full name. Spell your last name for the
7 record.

8 DESTINEE ORTIZ: My name is Destinee Ortiz, O-R-T-I-Z.

9 THE COURT: And what is it you wish the Court to know,
10 Ms. Ortiz? 13:54:00

11 DESTINEE ORTIZ: I would like to start by saying thank
12 you to Judge Humetewa for giving me the chance to speak today.
13 I know there are a lot of different things you will consider
14 when sentencing these defendants, but I think one of the most
15 important things to consider is how their actions have impacted 13:54:14
16 me and young women and girls like me throughout the country.

17 As a result of their actions of these men, my life has
18 been changed forever for the worse. At the time that I was
19 trafficked on Backpage, I was still in school and had dreams of
20 finishing high school. Because of what happened to me, I have 13:54:31
21 never been able to do that. I have also struggled to maintain
22 positive relationships in my personal life as a result of what
23 happened to me. I have issues with affection, both with adults
24 and children. That has been very difficult for me because I
25 have children of my own now. 13:54:49

1 My physical health has also suffered as a result of
2 what happened to me. Being trafficked --

3 THE COURT: Ms. Ortiz, I recognize you're reading, and
4 you're doing so very quickly. I have a court reporter who is
5 working really diligently. Can you just slow down? I know
6 you're nervous, and you can take your time. 13:55:02

7 DESTINEE ORTIZ: Thank you.

8 Finally, these defendants' actions also negatively
9 impacted my mental health. I have been diagnosed with Bipolar
10 I, reactive attachment disorder, as well as anxiety and 13:55:18
11 depression. At times I have struggled with substance abuse as
12 a result. I have to see a therapist twice a week to help me
13 work through everything that happened to me related to
14 Backpage.

15 To this day, I have trouble sleeping. I have 13:55:34
16 insomnia. I still have night terrors about what happened to
17 me. I have to take medication to sleep at all. It impacts the
18 way I interact with people and limits what I am able to
19 accomplish.

20 It is very important to me that the people responsible 13:55:49
21 for creating and running Backpage spend the rest of their lives
22 in jail. They were free for so many years before this, and
23 they chose to use that freedom to operate their company this
24 way and make money at the expense of so many young women. It
25 is fair that they should have to spend the rest of their lives 13:56:09

1 in jail as a result. Thank you.

2 THE COURT: Thank you, Ms. Ortiz.

3 MS. PERLMETER: Next, Your Honor, is Nacole Svendgard.

4 MS. NACOLE SVENDGARD: My name is Nacole Svengard,

5 S-V-E-N-D-G-A-R-D, and I am here today just speaking on behalf 13:56:47

6 of my daughter who couldn't be here due to the emotional trauma

7 that not only being sold on Backpage's had, but the course of

8 the 14-year battle and court cases that we have fought with the

9 owners of Backpage.

10 My daughter was recovered in September of 2010, and 13:57:08

11 here we are in August of 2024 finishing what we started back

12 then.

13 I would like to tell you today a story of courage,

14 strength and perseverance. In the face of great odds that, and

15 a promise kept to my daughter that I made, in 2010 when she was 13:57:35

16 recovered and we went to our first trial with the pimp

17 Brody Hobson, I promised her then that we would find all people

18 involved in her exploitation and hold them accountable, and

19 that is what brings us to this court today.

20 You see, since my daughter's recovery in 2010 by law 13:57:58

21 enforcement where she was sold on a Backpage ad and recovered

22 in a prostitution sting, Backpage has done everything in their

23 power to prevent us from speaking.

24 In 2010 I had never heard of Village Voice Media or

25 Backpage, but it wouldn't take long for me to see the role that 13:58:30

1 they had played, and it was also a surprise to me to learn --
2 to learn that not only a year earlier they had been made aware
3 that human trafficking and prostitution of young minors was
4 something that happened on their website and they did nothing
5 to stop it.

13:58:50

6 You will see that over the course of the last 14 years
7 it has been a tale of courage and cowardness while the women
8 and the victims in these cases have done everything to try and
9 have their voices heard. The men behind me have sat behind
10 their lawyers in these desks and hidden in the courtrooms; that
11 every turn they have tried to waylay and prevent us from having
12 our day here in court.

13:59:13

13 It is because of this my daughter is not here today.
14 This is the third time we have set a sentencing hearing. It is
15 the second time we have traveled to this state from half way
16 across the country and she could not physically do it one more
17 time to be here to speak for herself.

13:59:37

18 She too suffers from those night terrors. She too
19 struggles with those relationships, trust, anxiety, the ability
20 to hold down a job and to care for her children.

14:00:04

21 But through all of that she has been a passionate
22 advocate. She has fought diligently for other victims so that
23 this would not happen to them. She testified on Capitol Hill
24 trying to change laws that would prevent other websites like
25 Backpage from ever existing, and to hold these men accountable

14:00:31

1 for the acts that they have done. And we are not talking about
2 one or two victims. We are talking thousands and tens of
3 thousands of victims.

4 See, in 2011 several of Attorney Generals from all
5 across this country asked Backpage to look at their fundamental 14:00:52
6 website and what was happening on there. And what did they do?
7 They expanded their outreach. They opened their website in
8 more cities and in more countries. In fact, they were just
9 getting started. Over the next few years they would continue
10 to grow becoming the world's largest platform for human 14:01:22
11 trafficking, and all the while ignoring the damage done and
12 leaving in their wake broken lives.

13 And yet, through all of this, the survivors have
14 persevered. They have been strong each in their own way taking
15 their own turns, testifying before you, coming and pleading to 14:01:49
16 courts all across this country, on Capitol Hill and in their
17 cities and states, and telling their stories of what had
18 happened to them and the exploitation that they suffered at the
19 hands of Backpage, and these men have made choices themselves.

20 In 2012, after the filing of the lawsuit by my 14:02:11
21 daughter and two other victims, Backpage and Village Voice
22 Media decided to split ways. Now, you would say that this
23 might be a good thing. For these men had made a media empire,
24 and they were to be respected amongst their peers. And
25 although it sounds good, they held the purse strings. They 14:02:38

1 were still there. They were still involved. Nothing changed.
2 The money never stopped rolling in.

3 And the devastation continued. They were asked to
4 speak or to come to Capitol Hill under subpoena to testify at a
5 Senate hearing. They didn't even respect that enough to show. 14:03:11

6 It wasn't until they were held in contempt that they would show
7 up. And the arrogance that was displayed was awful. It was at

8 this hearing, while walking in the hall, that Mr. Lacey looked
9 at my family and said, "If these fucking yahoos would just shut

10 up." And I am here to say that I will never stop seeking 14:03:40

11 justice for my child. I will not be quiet. I will not shut
12 up.

13 This will be my legacy. This will be my daughter's
14 legacy. Just as yours will be a cautionary tale of what

15 happens when men follow greed instead of compassion for human
16 beings. 14:04:07

17 For this I am asking the Court to impose -- impose the
18 harshest possible sentence under the law, and I thank you for
19 your time.

20 THE COURT: Thank you, Ms. Svengard. 14:04:21

21 MS. PERLMETER: Next, Your Honor, will be
22 Yvonne Ambrose.

23 YVONNE AMBROSE: Thank you, Your Honor, for allowing
24 me to speak here today on behalf of myself and my daughter

25 Desiree, who is no longer here with us. 14:04:54

1 THE COURT: And your last name is Ambrose?

2 YVONNE AMBROSE: A-M-B-R-O-S-E.

3 THE COURT: Your first name?

4 YVONNE AMBROSE: Yvonne, Y-V-O-N-N-E. When you have

5 your first child, your whole world changes. You're not the 14:05:09

6 same person that you were before children. So on May --

7 March 29th of 2000 was the day I became a mother, one of the

8 greatest gifts that God has ever given me. Desiree was my

9 firstborn child and my only daughter. She had a smile that was

10 so contagious. She will light up any room that she entered. 14:05:33

11 She was loved by all and loved everyone she encountered. She

12 grew up in a family full of love, laughter and spent almost

13 every weekend with her family.

14 Our family did everything together, vacations, church,

15 dinners, or just hanging around the house for the weekend. 14:05:55

16 She shared the same experiences they did until she was

17 taken advantage of by adult men that care more about making

18 profits than human life.

19 Desiree was a good person with a great -- with a very

20 bright future, with a goal of becoming a physician in the 14:06:24

21 United States Air Force. She had dreams of graduating high

22 school. She had dreams of going to college. She had the same

23 goals and dreams that all children have, but all of her dreams

24 were stolen from her the day she was introduced on

25 Backpage.com. 14:06:48

1 She was preyed upon and exploited by adults who sold
2 her as if she was a piece of clothing until the day they
3 murdered her. December 24th, 2016, my daughter was murdered.
4 That was the worst day of my life. Desiree has been missing,
5 was missing since the beginning of December, and I was praying 14:07:18
6 for her safe return home, but unfortunately this never
7 happened. I received a call about 11:50 that night from a
8 detective, Christmas Eve, saying that they found my daughter's
9 slain body in a garage outside of Chicago, a suburb outside of
10 Chicago. I screamed. I cried. I didn't know what to do or 14:07:47
11 where to go. I wanted my baby home with my family. I wanted
12 to hold her and kiss her red cheek as I always did. I wasn't
13 able to tell her goodbye. I wasn't able to tell her how much I
14 loved her. I didn't know what to now tell my son on Christmas
15 morning. 14:08:13

16 How do you tell your son that he is now the only child
17 because his big sister was murdered after being sex trafficked?
18 This stole the most wonderful time of year, Christmas, from our
19 entire family. I don't get Merry Christmas texts anymore. I
20 get now, "Thinking of you; praying for you" from friends and 14:08:39
21 family. You not only stole Christmas from us, but you also
22 stole my being able to celebrate the birth of my Lord and
23 Savior Jesus Christ on that day. I have had a hard time
24 celebrating this, and I know Christmas is the time for
25 celebrating his birthday, but I have not been able to do that 14:09:03

1 because I'm too sad and depressed to think of anything else
2 other than the day that I got the call that my daughter was
3 murdered.

4 You have forever changed not only my connection to my
5 family, but my connection to God. The days following her death 14:09:21
6 were a blur other than having to identify her body and signing
7 her death certificate. I don't even remember how she looked in
8 her casket. I had to bury her body forever, and my last memory
9 is of her is actually identifying her body.

10 I could not process what happened to her, but what I 14:09:55
11 do know is I will not rest until everyone is held accountable
12 for their part in my baby's murder, Charles McFee for
13 introducing her to Hazley, Hazley for selling her and driving
14 her to the person who murdered her, Rosales for murdering an
15 innocent girl who was forced to do unimaginable things, and 14:10:20
16 Backpage.com and its owners for not only allowing this to
17 continue on their site, but also for teaching pimps how to
18 traffic girls by having their moderators catch keywords like
19 "New" or "Girl," not to alarm the face of the FBI of their
20 wrongdoing. 14:10:51

21 Since her murder I have had a very difficult time with
22 life itself. I am no longer the same person I was before she
23 was taken from me. My son was 14 when this happened. During
24 the vital time in his life when he was trying to figure out who
25 he is as a person, how can I be a good mom without the person 14:11:10

1 who made me a mom? How can my son be a brother without a
2 sibling? We struggle everyday trying to find our new normal.
3 Our conversations are now awkward between my son and I because
4 we don't know what to say to each other anymore.

5 I've gotten a divorce because I didn't know how to be 14:11:35
6 a part of a family with a key part of my life gone.

7 My mom died from uncurable cancer due to her
8 depression. She didn't get the help she needed due to the pain
9 she was feeling over the loss of her grandbaby. The pain of
10 losing Desiree was more painful to my mom than death to 14:12:04
11 herself.

12 My dad has gone through a lot of health issues,
13 extreme weight loss and depression.

14 My siblings suffer as well. And all of the first
15 cousins, they are all in the age range within two years of each 14:12:23
16 other, birthdays within two weeks of each other. There used to
17 be happy times in the family as the girls got to celebrate each
18 other, but losing Desiree was just as hard on them as it is for
19 us. It was like losing a sibling of theirs.

20 I not only carry the pain of losing my baby, my first 14:12:51
21 child, my only daughter, but I also carry the pain of watching
22 my family in pain. It's hard seeing everyone go through so
23 much agony and not being able to help them. I can barely get
24 out of bed most days myself. So how can I be a comfort to
25 anyone else? This is why myself and the other victims are 14:13:16

1 survivors of these crimes are seeking restitution.

2 Her death not only affected my family but also her
3 friends. I had to explain to her friends, her teenage friends,
4 about the horrible, horrible world of people exploiting
5 children. 14:13:44

6 These are children whose lives you've ruined due to
7 lack of caring for humanity. They did not deserve to be
8 exposed to this at a certain age, but unfortunately they were
9 not the last.

10 I suffer everyday from the loss of my baby. I wake up 14:14:00
11 every morning hoping that this was a dream, but then reality
12 sets in that she's never coming home. Having to live these
13 past seven years without my baby has been the worst pain a
14 mother could ever endure. Not only did I have to bury my
15 child, which no parent should ever have to do, but I still must 14:14:22
16 consistently go to court and relive these horrors of the day
17 and the events surrounding her murder.

18 I couldn't say bye to her, kiss her on her cheeks,
19 tell her I love her, but she's always with me. Excuse me. I
20 won't even be able to see her grow up, get married, or have 14:14:48
21 children. I haven't had a chance to even grieve properly. I
22 have had several numerous breakdowns since her murder that have
23 completely incapacitated me. How does one heal for this? I
24 don't know who I am anymore. So I am asking for the harshest
25 penalty for them so that they can understand the hurt and pain 14:15:12

1 that they have caused my daughter, my family, and other
2 victims. Thank you so much.

3 THE COURT: Thank you, ma'am.

4 MS. PERLMETER: Finally, Your Honor, we'd like to read
5 aloud a statement that has been prepared by Naiomy Figueroa,
6 N-A-I-O-M-Y, F-I-G-U-E-R-O-A. 14:15:45

7 "First I want to thank you, Judge Humetewa, for
8 listening to my testimony during the trial and for allowing me
9 to submit this statement today. Testifying at trial about what
10 happened to me on Backpage was very difficult and scary, but it 14:16:09
11 was incredibly important to me because the people who worked at
12 Backpage and owned Backpage need to be held responsible.

13 I hope that what I have to share today will help you
14 to understand how they have changed my life and the lives of so
15 many other young women and girls for the worse. 14:16:30

16 What I experienced as a result of the defendants'
17 actions have affected my entire life. Because of what happened
18 to me, I have severe anxiety. That makes it difficult for me
19 to stay still and to focus. Because of my anxiety, I was never
20 able to finish high school. I have tried to go back to class 14:16:56
21 many times, but I get too anxious sitting still in class, so I
22 still have not been able to complete my courses.

23 It has also impacted the lives of my three beautiful
24 children. It caused me to have severe trust issues and
25 separation anxiety. Those issues have a serious impact on my 14:17:20

1 children because it makes me paranoid and it makes me feel that
2 I cannot trust any male figure with my children, even my close
3 family.

4 This experience has also negatively affected me --
5 negatively affected the other relationships in my life. For 14:17:41
6 example, it has damaged the bonds that I had with my family. I
7 was very close with certain members of my family before I was
8 trafficked on Backpage, but they do not understand what I have
9 gone through, or I feel like they judge me for what happened,
10 so we aren't close anymore. 14:18:00

11 I am still broken and trying to heal the scars that I
12 have for being trafficked on Backpage. While these defendants
13 have been able to continue living their lives, they should have
14 to spend the rest of their lives in jail so that they could not
15 cause this type of pain to anyone else in this life and so that 14:18:18
16 they can understand the consequences of their actions." Thank
17 you.

18 THE COURT: Thank you. All right. Is there anyone
19 else to be heard from?

20 MS. PERLMETER: No, Your Honor. 14:18:34

21 THE COURT: All right. Well, I think at this point
22 I'll permit defense counsel, if they wish to make any
23 additional statement on behalf of your client, I will permit
24 the government to do the same.

25 Mr. Cambria. 14:18:51

1 MR. CAMBRIA: Yes, Your Honor.

2 THE COURT: And again, I have reviewed all of the
3 sentencing memorandums, the responses to opposing memorandums,
4 and so I have all of that information. I've also reviewed all
5 of the letters, as I mentioned, and the documents that were
6 attached to your Sentencing Memorandum. 14:19:07

7 MR. CAMBRIA: Thank you, Your Honor. May it please
8 the Court, I'm the parent of six girls, four adopted, two
9 natural. I understand when parents lose their children or they
10 feel that their children are abused or used, that it's painful. 14:19:42
11 It's sincere, and I don't question any of that by any of the
12 women who spoke here today. I know that I would obviously feel
13 great pain if anything had occurred to any of my daughters.
14 They are my life.

15 I do say, however, that Mr. Lacey, who I represent, 14:20:06
16 Mr. Lacey is not responsible for what happened to these young
17 girls. We're not in a position to know what their life was
18 about, how they were raised, what their friendships were. They
19 had -- we know from the evidence in this case that there were
20 so called pimps, people who, if you will, handle women and men 14:20:35
21 in sexual encounters for money, and we don't know what those
22 relationships were and how much responsibility those
23 individuals should shoulder.

24 I do know that we sat through this trial and we
25 participated in this trial and heard from a number of 14:21:00

1 witnesses, and I had an opportunity over the several years that
2 we've been involved to get to know Mr. Lacey and to get to know
3 the number of the other individuals who were charged in this
4 case. There isn't a single person charged in this case who in
5 any way would condone or not feel respect and sorrow for
6 parents who go through the loss of their children over the
7 abuse of their children.

14:21:23

8 Mr. Lacey, as the record indicated here, was a
9 journalist. He was an individual who was responsible for a
10 number of newspapers across the country. He joined while he
11 was in college Mr. Larkin. Mr. Larkin is no longer with us.
12 Apparently the pressure of the charges here and so on caused
13 Mr. Larkin to take his life.

14:21:50

14 Mr. Lacey, on the other hand, everybody who knows him
15 and who was involved with him, various writers who testified in
16 this case, people who encountered him in connection with the
17 running of the newspapers, said he was a newspaper man, he was
18 a writer, he was an editor. The testimony was clear that he
19 wasn't involved in the day-to-day business aspect of Backpage.
20 He was the person who wrote the hard hitting, if you will,
21 articles that maybe some of the general media overlooked. He
22 has a long history of being a sincere journalist.

14:22:17

14:22:42

23 As you know, the testimony in this case was that
24 Mr. Ferrer, for example, who was one of the star witnesses for
25 the prosecution, told, when asked by Mr. Lacey, because we did

14:23:09

1 have testimony from people who said, "We told the people at
2 Backpage that there was prostitution on their publications,"
3 and we know just from general knowledge as a citizen, a person
4 part of a community, that you can take a phone book and look at
5 the Yellow Pages and you'll see ads for people there for so 14:23:40
6 called massage and all this other stuff.

7 We know that phones, for example, are used in order to
8 set up dates and tricks and encounters. And so the people who
9 own the phones know that people use their mechanism, if you
10 will, their phones, to commit crimes, and I guess we have a 14:24:04
11 choice. One is do we ban all phones because some people abuse
12 them, or do we do what we can to report police, et cetera, the
13 users of these things?

14 Now, we do know because in this case we had a number
15 of law enforcement people come in and testify that the Backpage 14:24:28
16 individuals cooperated with them in prosecuting people who were
17 abusing Backpage. We also had testimony that there were a
18 number of other outlets, Craigslist, some other lists that are
19 out there that were used and abused by individuals, and we
20 collectively as citizens in the country have decisions to make. 14:24:52
21 So if there are some people who misuse something like a
22 telephone or a firearm, do we eliminate every one of those so
23 that it will never happen again, or do we focus in on the
24 people who committed the crimes and we punish them?

25 We have a long history in this case and the testimony 14:25:20

1 in this case of time after time when Backpage sent records to
2 police authorities to prosecute individuals who were preying
3 upon young girls and boys and to, if you will, bring them to
4 justice. We have testimony of employees of Backpage being
5 called by the prosecution to trials to testify and to connect 14:25:46
6 the dots so that the police are in a position to find, detect
7 and punish those people who were actually hands-on abusing the
8 individuals, selling them, splitting the money that they were
9 getting with them, having phone numbers, having hotel rooms and
10 all the rest of it that so called pimps were with. 14:26:10

11 Backpage even got, as you know, a citation from the
12 head of the FBI thanking them for the cooperation and for the
13 help that they gave them to bring people to justice who were
14 abusing others.

15 And the same thing with other police officers and 14:26:30
16 police agencies around the country. And the testimony here and
17 the evidence shows that Backpage, at their expense, sent people
18 to be witnesses at these trials and help have -- helped the
19 police convict individuals and bring them to justice. Were
20 there people that abused Backpage? Yes. There is no doubt 14:26:55
21 about it. Just like people that abuse the Yellow Pages.

22 Yellow Pages kind of dates me a little bit because -- you're
23 smiling -- before there were cell phones this kind of activity
24 was in the Yellow Pages, or it was in the, you know, the little
25 boxes you see on the street with the newspapers in there, in 14:27:16

1 those as well. And in some of the other major papers there
2 would be want ads and so on.

3 The idea there is that there are always people who are
4 going to figure out how to gain things that are innocent,
5 newspapers -- I'm sorry -- telephones, guns, we see that 14:27:38
6 happen. You know, innocent people have the right to a gun
7 under the Second Amendment, but there are all kinds of people
8 who abuse that and go out and use them for bad things. And
9 that happened here with Backpage. There is no doubt about it
10 that it happened here with Backpage. 14:27:59

11 And the evidence shows that Backpage individuals
12 cooperated with the police. Now, of course, the prosecution
13 has a different view of all of this. That's their job. They
14 are supposed to have a different view of all of this, and they
15 do. They will say, oh, well, their buzz word was "plausible 14:28:18
16 deniability" that they just may believe that they would agree
17 or they would help on a few areas, but really it was all about
18 the money. Well, there are people always in society are going
19 to take things that others use lawfully and use them
20 unlawfully, and that did happen here. 14:28:41

21 We had a number of individuals, and I go back to this,
22 the police officers, and we had a lot of them, and we had even
23 ones we didn't bring here to trial, thanked them for helping
24 them. There was never a time that somebody came in here and
25 testified that was in the police department and said: Well, we 14:29:03

1 asked Backpage to help us and they told us no. Every time the
2 answer was yes, they helped us, they gave us records, they gave
3 us a trail, and we were able to bring people to justice, and
4 that happened.

5 Like I say, there are always going to be people to 14:29:19
6 figure out a way to gain everything in society that hopefully
7 we all use in a lawful situation.

8 Mr. Lacey. Mr. Lacey was the real deal newspaper man.
9 The chief witness for the prosecution, Mr. Ferrer, even said
10 that Mr. Lacey was, quote, "a layer away from the Backpage 14:29:44
11 operation" that Ferrer was so intertwined with. And the reason
12 was Lacey, as the testimony demonstrated, was the person who
13 was writing the articles. They were proud hard-hitting
14 articles that sometimes would take the government and others to
15 task for things that they had done. That was what he did. He 14:30:04
16 was that person.

17 We had Carl Ferrer, the same government witness, in a
18 situation where at one time Mr. Lacey inquired of him about,
19 "Do we have prostitution, or what's going on with this
20 prostitution?" And Carl Ferrer wrote, "We don't have 14:30:24
21 prostitution." That's what Carl Ferrer said to him when asked.
22 Sure, there were other companies that said, and news agencies
23 and so on that said, you know, we're putting you on notice that
24 there are people advertising, and these people are advertising
25 prostitution. 14:30:53

1 Your Honor, today you could take your cell phone, you
2 could go to TikTok and you can find people marketing themselves
3 as prostitutes. Do we eliminate TikTok? No. We try to fix
4 it. We try to regulate it. You can do the same thing. You
5 can go online and you can find all the people you want all day 14:31:14
6 long who are using computers to do the same thing, and we don't
7 just say, well, we are going to ban all the computers. That
8 punishes the people who aren't going to doing anything wrong.
9 We are going to ban the phones. That punishes those
10 individuals. 14:31:33

11 Here, we are in a situation where Mr. Lacey is part of
12 this business as a writer. We had a number of writers come in
13 and they said he was serious; he traveled all over the country,
14 edited their stories. They won 3800 awards for their
15 journalism, and everybody agreed he was the head of the 14:31:51
16 journalistic aspect of Backpage.

17 Mr. Larkin was somebody who ran the business side and
18 eventually Backpage, and also ran -- so did Mr. Ferrer.
19 Remember Mr. Ferrer's testimony where when he described
20 Mr. Lacey, he said he was a layer away, and that's buttressed 14:32:13
21 by Mr. Hyer. Mr. Hyer was a longtime employee of Backpage. He
22 was front and center up to his hips in Backpage business, day
23 in and day out. And he said in the 13 years that he worked for
24 Backpage, he never once met Mr. Lacey.

25 There was a separation between the newspaper side and 14:32:40

1 the business side. I know the government is going to come up
2 here and, 'cause they have done it 400 times in the last three
3 years that we've been here, and they will say: Oh, well, he
4 said, you know, we -- forgot exactly the words -- we legit --
5 not legitimize -- we created transparency for prostitution. 14:33:06

6 And of course, they take that and twist it into this: Oh,
7 well, see, he knew all about prostitution. No. What he was
8 saying is that we cooperated with the authorities and we gave
9 them the information that we have and they get exposed. And
10 all these cases that we heard about where they prosecuted pimps 14:33:29
11 and people who were actually doing these things, Backpage
12 supplied the information so that they could connect the dots
13 and they could convict these individuals.

14 And so we look again to Mr. Lacey. You know, he spent
15 his whole life creating an editor, a writer. As we know from 14:33:52
16 the evidence, Mr. Lacey started off with a pretty kind of rough
17 life. He had alcoholic parents. They abused him. He was
18 beaten. In fact, his mother and father died of a suicide
19 murder. They had drinking problems. There were lots of issues
20 in his early life, but he hung in there and got himself 14:34:19
21 educated. Do you remember the testimony was he was like sent
22 across the country at 18 years of age all by himself and came
23 out here and went to school in Arizona. That's where he met
24 Mr. Larkin.

25 And the two of them together started these various 14:34:36

1 publications. And the publications were valuable because they
2 would take government agencies to task. If there was an
3 expose' that should have happened, they did it. It was such
4 that even at one time for one expose' they were arrested in the
5 middle of the night. And as it turned out, they sued because 14:35:02
6 of that arrest because it was wrong. They recovered that
7 \$3.7 million. And what did they do with it? They donated it
8 all to charity, to minority groups, to women groups, to lots of
9 different groups, which demonstrates to you, and should anyway,
10 that, you know, this wasn't just all about money. I know they 14:35:28
11 will say they made millions of dollars and so on, but they did
12 a lot of good things as well, and he did.

13 The thing that I know that you've said, and we were
14 talking about using certain conduct and so on, we think and we
15 have said in our papers, that this should be a level 10. And 14:35:49
16 one of the reasons is because it should be the crime of
17 conviction as opposed to underlying. And I say that for a
18 couple of reasons.

19 Number one, there is no proof in this case that a
20 majority of the money was ill-gotten and criminal. As a matter 14:36:10
21 of fact -- and the reason is because there was never any
22 tracing of money that came in, and it was then identified as to
23 whether it came as a result of some illegal act or whether it
24 came as a result of all the other things that they advertised
25 and so on on Backpage, including adult things, which were not 14:36:32

1 criminal. There were many adult things not criminal. So
2 number one, there is no tracing, so you can't say, oh, yes,
3 there is proof that most all the money was as a result of some
4 crime.

5 And the other part of that is, because everything that
6 was on Backpage was published, that means it's First Amendment
7 area and the rules of the First Amendment. And don't get me
8 wrong, I am not hiding behind the First Amendment. What we're
9 saying is, in a court of law you apply the law. Well, one of
10 the laws is that the First Amendment presumptively protects all
11 speech communication, which means that the ads in Backpage,
12 unless there is specific proof that that ad was for an illegal
13 service, it is presumed to be legal.

14 So there was no evidence in this case of tracing all
15 the ads in Backpage, and there were millions, and saying a
16 majority of them were criminal activity involving sex. And
17 some of those statements that have been made here today, they
18 are just not true. They are not supported by the record.
19 There was no such tracing that happened. There was nothing to
20 overcome the presumption that the First Amendment has, that we
21 all enjoy, that speech is protected unless it's demonstrated
22 beyond a reasonable doubt in a courtroom that it is not
23 protected. And that did not happen here.

24 And we know from the testimony, there were a number of
25 ^ STOP people who testified to services that may have been

1 adult, but they were not illegal. And so to say a majority of
2 the money demonstrates -- generated here was illegal, is not
3 backed up by the record.

4 So when we go to, and you know, we submitted some
5 affidavits of individuals who are -- who were involved and 14:38:37
6 employed by the Bureau of Prisons and worked on the Sentencing
7 Committee and so on, and those individuals, number one, said,
8 this Mr. Allenbaugh, for example, said at one point that the
9 suggested sentence here by probation would set an all-time
10 record for somebody who was charged with the particular conduct 14:39:06
11 that my client was charged with.

12 And as far as whether or not the conduct that
13 underlies his charge is legal or is criminal, there is a
14 presumption. It has not been overcome. The only way it would
15 be overcome is if the prosecution went ad by ad by ad and was 14:39:29
16 able to demonstrate that it wasn't protected because there's a
17 presumption that it is protected, and so --

18 THE COURT: Let me just remind you, Mr. Cambria, the
19 jury was so instructed with regard to a First Amendment
20 instruction. They nevertheless convicted your client of Count 14:39:56
21 100 necessarily finding the proceeds were illegal. I want you
22 to recall.

23 MR. CAMBRIA: I understand what the elements are, Your
24 Honor, but since nobody ever talked to the jury, we don't know
25 how they understood that, whether they applied it in the way 14:40:14

1 that we all know it's supposed to be applied. We don't know
2 that. We do know that obviously sending these funds overseas
3 is not illegal.

4 Another thing, if you want to go down what we think
5 the jury found, well, you might say, well, the jury obviously 14:40:35
6 found concealment. Now, we were all here. We heard the
7 evidence. This is going to be a very major topic on an appeal.
8 They -- they -- first of all, the government asks that you put,
9 you know, an organizer and special effort person addition on
10 here for Mr. Lacey for Count 100. He didn't create this trust. 14:41:02

11 What happened is he went to attorneys. These
12 attorneys have never been in any way discredited in this
13 courtroom. And we had one of them, the principal one testify
14 here, and basically said, "Where can I go so that the
15 authorities can't access my funds?" And the testimony was what 14:41:27
16 he meant by that was that government individuals would say,
17 "Oh, what they are doing is wrong." And then agents would show
18 up at a bank, and the banks would say, "Oh, we are banks. We
19 don't do anything wrong" and then close the account. And so
20 Mr. Lacey had said, "I need some stability in my banking." 14:41:48
21 That was testimony in this case.

22 And so what he meant by that was we need to do this in
23 a way that I am not going to get my bank account closed down
24 every time some agent walks in and starts asking questions.
25 Because the bankers who are like, well, what time are we going 14:42:06

1 to the Country Club, are worried that they are going to look
2 bad. Okay.

3 So what happens is, and the testimony is unrefuted
4 here, he goes to an attorney here, Mr. Becker, and he says,
5 "How can I do this so that they, so that litigious people and
6 others can't access my funds?" Okay. Now, "access" is
7 different than "discover," or know about. This is -- one of
8 the elements is that it has to be concealment. There was no
9 concealment here. And what he asked to be done, he said, and
10 if you recall the testimony, "and I am not trying to avoid
11 taxes." So what does that mean? That means he reports this
12 money to the IRS. That's not concealment. That's revelation,
13 if you will.

14:42:22

14:42:46

14 And then he filed so called FBARs. That was our
15 testimony. They are in evidence. And what are they? They are
16 written documents to the Department of Treasury that says: I
17 took this money. Here's how much it is, and sent it here, and
18 that's where it is. And if there are beneficiaries, here's who
19 they are, and so on. No concealment whatsoever in this case.

14:43:06

20 But we don't -- obviously the jury thought something,
21 we don't know what. We didn't question the jurors. We didn't
22 see whether they said: Well, wait a minute, this went to
23 Hungary, so it must have been wrong. Why would it go there?
24 Money can go to other countries all over the place as long as
25 you follow the rules.

14:43:27

14:43:48

1 Now, think about what the testimony was here. Was
2 there an intent on the part of Mr. Lacey to conceal the funds?
3 Do you remember the testimony, Your Honor, he said to
4 Mr. Becker, who -- he said it in an e-mail or an e-mail or text
5 message, one or the other, in writing, "Who will be responsible 14:44:08
6 for the reporting requirements of this trust?" That's what he
7 asked Mr. Becker. Now, does that sound like the intent of
8 someone who is trying to conceal something? He's saying, "Who
9 is responsible for reporting?" And he got a response and the
10 response was, "We're taking care of that." And then it turned 14:44:31
11 out they did take care of it and they did file what they call
12 an FBAR with the Department of Justice, and in that FBAR they
13 had all the details revealing all of the facts concerning that
14 trust. So there wasn't any concealment there.

15 And also, when they talk about access funds, access is 14:44:55
16 different. Access is to take something. That's not an issue
17 and that's not an element of the offense he was convicted of;
18 concealment is, and there was no concealment and that is the
19 proof.

20 We also gave the Court some affidavits by people who 14:45:16
21 were -- worked in the past for the Sentencing Commission and so
22 on, and basically what they indicated is that this would be a
23 level 10, I believe, a level 10 or 12. A level 10. And that
24 as a result of that, we're talking about a sentence nowhere
25 near what has been suggested here. And as I indicated, you 14:45:53

1 know, we were told that the sentence suggested here would be an
2 all time record for that offense. But in any event, it was
3 some six to ten months was the actual sentence that if you
4 looked at comparable charges, and that's what this expert did
5 for us, he looked at comparable defendants throughout the 14:46:18
6 country and what they had been sentenced to for the very same
7 offense, and the average apparently was six to 12 months, and
8 77 percent were not jailed as a result of this offense.

9 And so if we look at the statistics for the very same
10 offense that Mr. Lacey was convicted of, all of those 14:46:50
11 individuals, that percentage, were not even incarcerated let
12 alone incarcerated for the, you know, all the year 200 and
13 whatever years, or months rather, that had been recommended
14 here.

15 And there are other factors that need -- so what I'm 14:47:06
16 saying is when you look at this and you look at the statistics
17 in others in similarly-situated positions, they have not been
18 sentenced anywhere near what is being recommended here. The
19 other things that were told, and we put these in our sentencing
20 materials, that are important is that, that they take into 14:47:32
21 consideration the age of the defendant. The elderly defendant,
22 it turns out, incarcerated for these kinds of charges, number
23 one, there is a diminution of life expectancy, there is a
24 history of being victimized by other inmates, there are a
25 number of other negative factors there that we discovered as a 14:47:59

1 result of that.

2 We also did express an opinion, and you discussed it
3 when, a little while ago, when we talked about acquitted
4 conduct, and so you pointed out to one of the other speakers,
5 well, your client wasn't acquitted and so, but here is the 14:48:25
6 equivalent of being acquitted. It's First Amendment
7 advertisement, First Amendment generated dollars. So there's a
8 presumption of innocence. There's a presumption of legality
9 there. That is the functional equivalent of an acquittal of
10 that same charge because what the law says when it comes to 14:48:50
11 First Amendment is that there is a presumption that the law has
12 not been violated. That is -- that is the same.

13 And so here we have a number of other things that
14 should be taken into consideration. His age. We are told that
15 at some point in the Presentence Investigation Report they keep 14:49:14
16 talking about child sex trafficking and so on. He's not
17 convicted of child sex trafficking. And unfortunately, because
18 that's all over this report, our experts tell us that he will
19 be targeted if he's incarcerated.

20 And the next thing is there is, if you will, a 14:49:37
21 hierarchy of places. Number one, we think he's a base level
22 10, and the advisory sentence on that is six to 12 months.

23 We look at a number of things that are important.
24 Number one, self-surrender. Probation doesn't disagree with
25 self-surrender. Self-surrender is very important to people at 14:50:06

1 the Bureau of Prisons. It means a lot to them, and there is no
2 reason to think that he would in any way not show up if he were
3 incarcerated. And we would ask you specifically that if you do
4 sentence him to incarceration, that it should be a situation
5 where he could voluntarily surrender so he can, you know,
6 attend to his affairs and so on and get things in order so he
7 can serve the sentence.

14:50:31

8 There is the probation people that really have given
9 him a great report. He had an ankle bracelet on. There was a
10 minor violation, and in the beginning there was a restriction
11 on the ankle bracelet. As he went on, because he demonstrated
12 that he was not someone who would flee, they took the bracelet
13 off so he was able to make that self-surrender.

14:50:51

14 There is nothing that's preventing the Court from
15 sentencing him to probation. There's nothing here that stops
16 that or says that can't happen. He is 76 years old. He has
17 shown up in court all the time. As I said, he wasn't a
18 problem. Took the ankle bracelet off. We would hope that you
19 would put him on probation as opposed to incarcerated. If not,
20 there's a declining scale here. The next thing is house
21 arrest. The next thing after that would be for a prison camp,
22 a camp facility, and then, of course, the last part would be a
23 low level situation.

14:51:17

14:51:45

24 If you -- if you decide that regardless of everything
25 I've said here today that you are going to in some way

14:52:16

1 incarcerate him, we have another couple other things to think
2 of. Because of some of the language in the presentence
3 investigation, we'd like this sex offender, you know, underage
4 sex offender kind of vibe, if you will, in this probation
5 report, and we were told by the -- by the people that we hired
6 who were involved with the Bureau of Prisons in the past and so
7 on, that if he's given that -- if that's the mantel they put on
8 him, the other prisoners and so on, that he will be in trouble.
9 He will be subject to violence and so on. And so I would ask
10 that we make it clear that he's not been convicted of some kind
11 of underage sex situation.

14:52:47

14:53:12

12 This is a financial crime. It is -- it's not, you
13 know, underage trafficking or anything like that.

14 Recommendations that you make would make a huge difference in
15 what happens also. I know this from past cases that I've been
16 involved in. As I say, we think that he should be put on
17 probation and that he would be a fine candidate for that.

14:53:38

18 The next thing down the scale, obviously, would be
19 house arrest. The next thing would be low level, would be
20 camp, and after that low level. Low level puts him into the
21 danger zone. The camp would be better, but recommendations by
22 the Court mean a lot to the Bureau of Prisons. I know that
23 because I have had that experience in the past.

14:53:59

24 Indeed, I had a case where when the judge made a
25 recommendation about a camp, the prisoner was immediately taken

14:54:20

1 from the low security area and taken right to a camp. It made
2 a very big difference.

3 He's 76 years old. This kind of sentence is, you
4 know, sort of the end of the trail there. It would be a
5 difference if you had a sentence and you're 30 years old and 14:54:48
6 you got a great life expectancy. The experts that we gave you
7 reports on, one indicated that life expectancy dramatically
8 drops once somebody is in prison, especially if it's a
9 situation where, number one, they are isolated for their own
10 safety because they are either viewed as elderly and 14:55:11
11 vulnerable, or there is this so-called underage, you know, they
12 think there's an underage element to the crime of conviction,
13 which there isn't here. This is a money laundering case, a
14 financial case.

15 So those things all matter in what you say in 14:55:29
16 connection with that matters. If you were to recommend a camp,
17 for example, if you reject our request that it be probation and
18 you recommend a camp, that would go a long way to having a camp
19 be the place that he would go. Whatever the sentence, life
20 expectancy, and I have to tell you, I paid a lot of attention 14:55:58
21 to this because Mr. Lacey and I are fairly contemporary in age,
22 and I was like, what? When we talked about what your life
23 expectancy would be, I was hoping they would be like 30 years.
24 It's not even close. We are talking less than seven years, and
25 it's hastened down as a result of prison. 14:56:27

1 So all and all, all and all we have a financial crime
2 with a person who specifically instructed his lawyers to follow
3 all the rules to report it. It was in fact reported several
4 times several years in a row. We have someone who's a
5 journalist. We have testimony in the case. Ferrer told him,
6 "Hey, we don't have prostitution." And Ferrer ran the thing.
7 There is no doubt about Ferrer ran that site. We know that.
8 Not only from Ferrer, who characterized him as a layer away
9 from the Backpage business, but Hyer, who never even met him.

14:56:54

10 I ask you, Your Honor, to take all these circumstances
11 into consideration and to sentence him to probation or a camp,
12 I think that he's a perfect candidate for that, and allow him
13 to self-surrender. Self-surrender is a big deal with the
14 Bureau of Prisons, and there's no reason to not let himself
15 surrender. He's always appeared every time for every court
16 appearances that have been going on for years. As we know,
17 it's been a real strain for everybody involved, including Your
18 Honor, because there is a lot to do here and a lot to look at.

14:57:17

14:57:45

19 I hope that during the course of this case I conducted
20 myself appropriately and I did not upset the Court, and I think
21 you would have told me. I don't think you would have held back
22 if it was there. But I ask you from the bottom of my heart to
23 see that this is -- this is a real journalistic person here.
24 This is the real deal, and he -- he can -- this whole situation
25 sent a message out to the world. And deterrence here doesn't

14:58:07

14:58:34

1 require a long prison term. For any of these individuals who
2 are up in their years, you know, a sentence of five years or
3 more is basically a life sentence.

4 I appreciate, Your Honor, all the kind consideration
5 you've given to us during the course of this trial, and it was 14:58:56
6 a pleasure for me to be in front of you, Your Honor. Thank
7 you.

8 THE COURT: Thank you, Mr. Cambria. We are upon the
9 3:00 o'clock hour. We will stand in recess for approximately
10 20 minutes. 14:59:09

11 (A recess was taken at 2:59 p.m.)

12 (Proceedings reconvened at 3:20 p.m.)

13 THE COURT: All right. Please be seated.

14 The record will reflect the presence of counsel. The
15 defendants are all present. 15:20:47

16 Let me turn now to Mr. Brunst. Mr. Panchapakesan,
17 Mr. Lincenberg, who is speaking?

18 MR. LINCENBERG: Want us to go next, Your Honor?

19 THE COURT: Yes.

20 MR. LINCENBERG: Your Honor, there were a few things 15:21:07
21 at the end of Mr. Cambria's comments dealing with bail pending
22 appeal, designations if there were prison sentences, sex
23 offender status. I'm assuming we should leave that argument
24 for arguments about bail pending appeal if we get there, or
25 should we -- 15:21:31

1 THE COURT: Well, I'm considering your Sentencing
2 Memorandum. If you want to emphasize or add anything to that,
3 now is the time to do that.

4 MR. LINCENBERG: I didn't know if the Court wanted to
5 separate out those arguments or not. 15:21:45

6 Your Honor, this case had 22 witnesses and 21 of them
7 were witnesses who did not say a word about Jed Brunst. There
8 was one witness, Carl Ferrer, was the only percipient witness
9 who gave any testimony about Mr. Brunst. The government's
10 witnesses, including -- included Dan Hyer. I believe his title 15:22:15
11 was vice president of marketing, somebody who had pled guilty,
12 one of the stars of the show, said zero about Mr. Brunst in a
13 case which is focused on the marketing of ads.

14 No more important is lack of testimony about the fact
15 that Mr. Brunst should not be here as part of a Travel Act 15:22:44
16 case. He had zero to do with the operations of the business or
17 the creation of the business.

18 The government called Jess Adams, and I believe that
19 they wanted to get some testimony from Mr. Adams since he was a
20 business manager. I believe they argued that he reported up to 15:23:09
21 Mr. Brunst. He had essentially nothing to say about
22 Mr. Brunst.

23 For all of the testimony that the government elicited
24 to, incriminating about the case, there was nothing involving
25 Mr. Brunst. The only witness who testified about Mr. Brunst is 15:23:28

1 Mr. Ferrer, and he went after all of the defendants, and the
2 Court knows our view about his credibility and certainly about
3 his motivation.

4 But putting that aside, I think for purposes of
5 sentencing, the most important piece of testimony that 15:23:52
6 Mr. Ferrer gave was when I asked him, "Isn't it true that
7 Mr. Brunst always insisted that you be honest?" And he said,
8 "Yes, that's correct." The Court may recall this came up in
9 connection with testimony about Website Technologies and the
10 creation of some of the companies as they were looking for new 15:24:17
11 payment processes, and we had gone through those documents,
12 which also all showed that Backpage was connected, and that was
13 disclosed to the banks and the like.

14 And so whatever efforts were being made to bring in
15 new payment processors after the credit card companies would no 15:24:38
16 longer process the payments, Mr. Brunst always insisted on
17 being transparent and honest.

18 And that came through with regard to both the lack and
19 lack of testimony in connection with the banks, for example,
20 where you recall there was that partially redacted letter to 15:25:03
21 BMO involving the legal challenges that were facing Backpage
22 and the advice that was coming from the lawyers that Mr. Brunst
23 would forward on.

24 And although Mr. Brunst himself had very little to do
25 with the lawyers or defending the operations or arguing the 15:25:22

1 case under the Communications Decency Act or First Amendment or
2 whatever the case may be, what he did do is whether it was
3 investors or banks, if they wanted information, he put them in
4 touch with those who had the information, whether that were the
5 operational executives or the lawyers, as was the case in that 15:25:45
6 partially redacted -- the Court admitted part of the letter but
7 not all of the letter. That was the day he dealt with
8 everybody.

9 And so as we -- and in this case, the government kept
10 pushing part of their theme or mantra, this idea, they kept 15:26:06
11 calling Mr. Brunst the CFO of Backpage because there were
12 documents that would list people under positions, even though
13 all of the testimony was that he had no CFO role at Backpage.
14 He wasn't the CFO of Backpage. He was a CFO of a parent
15 company. 15:26:29

16 Also, what is interesting was the absence of witnesses
17 in this regard because there were CFOs of Backpage, Nathan
18 Kopecky, Michael Gage, they were never put on the stand because
19 the idea was to present Mr. Brunst, who was indicted, as if he
20 were the CFO of Backpage. 15:26:48

21 And when it came to meetings with these different
22 organizations that were attacking Backpage, whether it was
23 Polaris or NCMEC or Congress or interactions with the attorney
24 generals, you never heard Mr. Brunst's name because he had no
25 role with regard to the operations or how moderation can or 15:27:07

1 should be changed, or the compliance efforts or their subpoenas
2 and so forth.

3 He was a CFO of a media holding company that he went
4 to work for in 1992. It was much smaller than the newspaper,
5 and he remained the CFO of that company as they purchased
6 different newspapers, as they formed Backpage and the like.

15:27:32

7 And his role with each of those, we'll call them
8 subsidiaries, was once a year to have a budget review meeting.
9 And the government, of course, focused on the meeting at the
10 end of the year at Backpage where there would be a big document

15:27:55

11 and he would look at it from a budget point of view. And he
12 did the same as he did with the newspapers. He would look at
13 the overall budget. And you'll recall Mr. Ferrer's testimony
14 on cross-examination, asked him, "Isn't it true that the main
15 thing he was reviewing it for was executive compensation,
16 salaries things like that?" And Mr. Ferrer said, "Yes." That
17 was his role. But because buried in some of those large
18 documents, was a page that mentioned TER and then that
19 mushroomed into somehow he knew about TER or what they were
20 about even though the Jess Adams of the world and the likes
21 conceded even Mr. Ferrer that Mr. Brunst had no connection with
22 any of those folks.

15:28:11

15:28:33

23 Ad moderation, TER, referrals, the operation not only
24 of Backpage, but he had no role with the operations of the
25 newspapers.

15:28:51

1 So who is he? If I'm a sentencing judge, I want to
2 give as good of a sense as I can. He didn't testify. The
3 Court got some of that sense from our submission as to what he
4 would testify to, as well as the letter that we submitted, and
5 I would suggest that part of the story of who he is we learned 15:29:16
6 in the trial with Mr. Ferrer that say he's honest. Nobody
7 else. Not one other witness saying a negative word about him.
8 If they -- not even a mention of him.

9 But the reason why we included the letters to the
10 Court that we did was because these are the people who know 15:29:35
11 Mr. Brunst the best. And in the courtroom today -- briefly
12 stand up if I mention your name -- is Mr. Brunst's wife
13 Maryanne, who Your Honor has seen throughout the trial in
14 support of her husband, wife of 30 years, who described to the
15 Court how Jed raised four children after his previous wife, 15:29:58
16 they got separated, and she passed away, raised four children
17 as a single father. Then took on her children. Wonderful
18 husband. Legally took on her son. He helped her parents
19 through their declining health; always cared for the entire
20 family. 15:30:19

21 His daughter Kate, who described what her father has
22 meant for her and her community. Kate is here from Virginia.
23 His daughter Kelly, who lives here in Phoenix. The Court
24 probably recognizes Kelly. Kelly was here during the large
25 part of the trial. When Kelly's mother died, Jed, she 15:30:40

1 described, as shock absorber for Kelly's grief, always setting
2 aside his own needs.

3 His son Michael, Jed's oldest son, a command master
4 chief and 30-year Navy SEAL, has been involved in the riskiest
5 most important missions of our country, some of which are 15:31:02
6 public but cannot be discussed because they are classified, but
7 being privy to some of this, it's incredible what this man has
8 done for his country. And he writes that his father raised him
9 that way; that his father was not preachy, but taught him to
10 work hard, tell the truth, and stand up for what you believe 15:31:28
11 in.

12 Here with Michael is Jed's oldest grandson John and
13 daughter Sarah, who is the youngest daughter, described her
14 close father-daughter relationship, how she relied on her
15 father to help her struggle through some periods of anxiety, 15:31:52
16 and that Jed taught her to stay true to who I am and not let
17 any storm drag me under, and she's with her boyfriend Ethan who
18 is also here in support of Mr. Brunst.

19 Scott Brunst who is here is an adopted son, adopted
20 legally through Maryanne, and described that having Jed as a 15:32:14
21 dad answered my prayers and guided me through my challenges.

22 The Court received letters from some sister-in-laws
23 who are not here. His brother-in-law Clyde is here describes
24 how Jed selflessly cares for everyone in the entire family,
25 knows him, has known him for a long time to be a humble, honest 15:32:40

1 and kind gentleman. Clyde is here from Chicago.

2 Friend Bob Mayfield who attended much of the trial, we
3 submitted a letter from Mr. Mayfield because he described the
4 charitable and community work that they've done together over
5 the past 25 years, and I believe Bob's wife Mary is here as
6 well. 15:33:02

7 John and Amy Schraeder. John and Amy adopted Jed's
8 grandson, whose name I won't mention, he's a minor, and have
9 become part of the Brunst broader family. And a number of
10 other friends who are here today to provide support who did 15:33:27
11 not -- we were limited to 10 letters and we submitted 10
12 letters, but there's a community that is a very close community
13 and an important community, and what they say universally is
14 that Mr. Brunst is an honest man with integrity and he is a
15 rule follower. 15:33:57

16 So one of the issues that Your Honor and I argued a
17 lot about during the trial was the evidence we wanted to
18 introduce of good faith, and I noted in our sentencing brief,
19 Your Honor, that while the Court has decided on that issue,
20 it's certainly relevant for sentencing separate and apart just 15:34:31
21 as there was evidence as the Court noted earlier in the
22 sentencing hearing that was excluded from the trial, but it's
23 still important for the Court to consider.

24 We find ourself in this interesting almost catch-22
25 type of position where Mr. Brunst, who his boss Jim Larkin 15:34:51

1 said, "Do your job as CFO. Stay in your lane. Others in the
2 company will deal with the legal issues, will deal with ad
3 moderation, will deal with marketing and so forth," and the
4 word that came back to Mr. Brunst was either through them,
5 people like Jim Larkin primarily, little bit Don Moon and 15:35:11
6 others, and then on occasion some of the lawyers.

7 One of the Court's rulings was that we couldn't
8 reference legal advice because we didn't meet the test for full
9 disclosures to the lawyers. And my response was, first of all,
10 it's not reliance on advice-of-counsel defense. Mr. Brunst 15:35:34
11 would not be in a position to raise that defense as the law
12 defines it because he wasn't the one who was deciding what
13 facts to disclose to the outside lawyers. He doesn't know what
14 was disclosed to the lawyers. But as a CFO, what his job is,
15 is to make sure that there's, you know, controls in place, 15:35:55
16 counsel in place, and that the responsible people, and that's
17 what he did.

18 And we submitted this declaration to the Court from
19 this expert Professor Chookaszian. Professor Chookaszian had
20 been on our witness list. Judge Brnovich ruled that testimony 15:36:15
21 would be admissible in support of Mr. Brunst's testimony and
22 when Mr. Brunst didn't testify, we didn't include that, but we
23 submitted, because I think it gives the Court a sense of what a
24 CFO does and doesn't do in a company. And we're in this
25 situation here where we believe that while the government 15:36:36

1 discusses a message of deterrence that needs to be sent, that
2 really the wrong message can be sent to CFOs of a wide variety
3 of companies, whether it's Meta or Instagram or Internet
4 companies or other types of companies, that they somehow should
5 have to take responsibility, take over the role of general
6 counsel or CEO or dealing with outside counsel, and that in an
7 organization they can't just stay in their lane. They can't
8 rely on others to do their jobs in good faith.

15:37:02

9 We think that's important because that's what
10 Mr. Brunst tried to do. He tried to act in good faith. He
11 tried to do his job responsibly, make sure the taxes were paid,
12 make sure that the accounting and books and records were right,
13 make sure if there were banking relationships and the banks had
14 questions they could get answers from the appropriate people.
15 And if a sentence of a CFO who didn't play that role is a
16 prison sentence, particularly the lengthier, I would ask the
17 Court to consider what message that sends to other CFOs of
18 other companies.

15:37:21

15:37:42

19 And particularly when the other thing that Mr. Brunst
20 is notified of is court decisions which support what the CEO
21 and the counsel were doing. And the government's argument on
22 these court decisions is that they shouldn't have been
23 considered, they shouldn't have been allowed into evidence
24 because we don't know what those judges were told. Well,
25 whether or not that's an accurate legal argument or not, from

15:38:05

15:38:28

1 Mr. Brunst's perspective, he certainly would have no reason to
2 believe that others are not doing their jobs in good faith. In
3 fact, it's really belied by the entire prosecution case because
4 there are Attorney Generals, there are ladies who testified
5 here today as victims saying, you know, Ms. Svengard said: We 15:38:52
6 brought a lawsuit. All of this was out in the public. All of
7 these Attorney General letters. These other letters, the Court
8 opinions in the Seventh Circuit, they all talk about the
9 different allegations. So there's no reason for Mr. Brunst to
10 believe that the judges are, that something is being hidden 15:39:13
11 from them, or that something is being hidden from the counsel
12 for advising the company or otherwise.

13 Again, I am not re-litigating right now the question
14 of liability, of course. But for purposes of sentencing, I
15 think it's probably the most important factor for the Court to 15:39:32
16 consider in granting leniency to Mr. Brunst because otherwise
17 we're in this position where somebody almost can't defend
18 themselves in the sense that, well, I first of all, I am not
19 the holder of the privilege; I can't waive the privilege; I
20 wasn't involved with counsel; I don't know everything that was 15:39:53
21 disclosed anyway. So how could he even raise it? He can only
22 try to act in good faith and do his job as a CFO should do,
23 which is what he did.

24 The other -- two other points I wanted to mention,
25 Your Honor, that make this case a little bit unique and the 15:40:11

1 Court has to consider in sentencing, one is, in general, this
2 applies to everybody, the uniqueness of a federal prosecution
3 which is based on state statutes, prostitution, misdemeanor
4 statutes and the like, for which case after case we know that
5 the CDA applies, talk about the First Amendment applying, and
6 yet it's sort of being wedged in this federal angle which makes
7 it unique, and there is not a lot of, you know, prior precedent
8 in that arena that the government says would put somebody on
9 notice that there's something criminal going on.

15:40:34

10 More importantly, and particularly unique for
11 Mr. Brunst, is that the Court is sentencing a man who was
12 acquitted on every single Travel Act count. And I understand
13 the Court has indicated that the Court is going to consider all
14 of the evidence and all of the testimony in the case whether
15 there was an acquittal or not, but does the Court then say: I
16 am going to completely ignore the fact that there were 50
17 counts and he was acquitted on every count? And I understand
18 legally the argument one can make that's not inconsistent with
19 conspiracy, you could be guilty of conspiracy but not the
20 substantive count, but there is something there. When a jury
21 goes back and unanimously acquits Mr. Brunst of every count
22 that's the heart of the case, and it's a case that it was a
23 conspiracy essentially to commit these 50 counts, I'm not sure
24 how the Court, you know, considers that. I am not here to tell
25 the Court you shouldn't consider all the evidence because the

15:41:02

15:41:22

15:41:47

15:42:11

1 Court will, as the Court has said the Court would, but I would
2 ask the Court to give some weight to those acquittals. They
3 should mean something in terms of the assessment of what type
4 of punishment Mr. Brunst should receive.

5 And with regard to the money laundering, we also have 15:42:29

6 this unique circumstance that I've never seen before in my

7 almost 40 years of practicing law of where you have presale

8 Travel Act counts, Mr. Brunst was acquitted, but put that

9 aside, presale Travel Act counts, and all of the money

10 laundering counts are post sale. And the money laundering 15:42:54

11 counts are just any old wire out there. There were wires where

12 there was zero evidence involving Mr. Brunst other than he's

13 signatory on a bank account and that he did banking. So he

14 would know that wires are going back and forth, but these wires

15 were basically all repayments of, or payments on a purchase of 15:43:17

16 a business.

17 So you have this disconnect. It will be an issue on

18 appeal in its own right. But for purposes of sentencing, I am

19 not sure how the Court deals with it, but it seems that some

20 weight should be given with this disconnect because there is no 15:43:37

21 money laundering count which, as Ms. Paris noted, traces back

22 to any count of conviction or count of acquittal even with

23 regard to Mr. Brunst.

24 So what the Court is left with is a 72-year-old man

25 who has lived his life as a rule follower, who is somebody who 15:44:07

1 religiously pays his taxes. He's a guy who, if there is a
2 yellow light -- I spent a lot of time in the car with
3 Mr. Brunst driving to court -- he doesn't speed up for the
4 yellow light. He slows down. That's the way he is. He drives
5 slowly. He slows down. He follows the rules. He teaches his 15:44:28
6 wonderful family these same lessons and serves as a role model,
7 and to this day everyday cares for his family.

8 And he did the best he could to act in good faith.
9 And whether or not that met the legal requirements in the
10 Court's mind or a jury's mind for purposes of sentencing, I 15:44:52
11 would ask the Court to give great weight to that.

12 Your Honor, then I would just address the issue of
13 bail pending appeal if the Court does decide to sentence
14 Mr. Brunst to incarceration. And I am not going to repeat the
15 arguments in my brief. I know the Court has read them. We've 15:45:17
16 laid them out between the three counsel. I think we've
17 identified the very significant issues on appeal, which Your
18 Honor, at least as to some of them has also recognized these
19 are important issues and tough issues and fairly debatable
20 issues. 15:45:37

21 There is one argument that we didn't have in there
22 that was raised earlier today, which is the issue that I raised
23 a moment ago about the disconnect between the lone Travel Act
24 conspiracy count that was presale and the all post sale money
25 laundering counts, but basically you have a presentence report 15:46:00

1 which notes that Mr. Brunst is no danger to the community, nor
2 is he a flight risk. He lives in this community. He has
3 children in this community. His entire life is his family, and
4 the last thing in the world he would ever do would be to do
5 anything to intentionally mar the Brunst name when he has
6 children who are serving their country in the highest capacity.

15:46:20

7 So with no danger and no flight risk and a number of
8 fairly debatable important issues that are substantial on
9 appeal, we would ask the Court to allow Mr. Brunst to continue
10 his defense through the appellate process on the condition of
11 bail that he has religiously observed for the past six years.

15:46:45

12 I would note one other point with regard to the bail
13 issue that I don't believe was mentioned in the papers. The
14 Court is aware, we mentioned in the papers that there was a
15 settlement of the financial issues. That settlement, depending
16 on the value of certain things at a given time, is something
17 like 160 to \$200 million that the Larkin estate and the three
18 gentlemen here in court today, have forfeited their right to
19 fight over.

15:47:05

20 And the main reason they forfeited the right to fight
21 over that was, number one, to be able to have funds to secure
22 and be able to prepare as good of an appeal as possible because
23 this is obviously their life's mission, as Mr. Cambria
24 eloquently noted, to defend the position they are on.

15:47:28

25 And also second, while we strongly disagree with the

15:47:51

1 idea that these offenses involve restitution, we've also taken
2 the position that if the Court ends up ordering restitution,
3 that we have no objection to funds going to individuals, people
4 who were prostitutes or former prostitutes who suffered, and if
5 the Court deems that they should receive money. So there's a
6 huge pool of funds that is available to them to deal with that.

15:48:09

7 And then with regard to --

8 THE COURT: Are you saying -- was there an agreement
9 that with regard to Mr. Larkin's estate and the other funds
10 that were sought forfeited, that you and the government have an
11 agreement that any of those funds go to restitution payment, is
12 that what I just heard you say?

15:48:36

13 MR. LINCENBERG: We have an argument that all of those
14 funds are forfeited. I am stating it from memory. I believe
15 that the government's -- I believe the government's position is
16 that those funds can be applied to satisfy the restitution, and
17 we don't object to those funds satisfying restitution.

15:48:54

18 So the last point I would raise, because it was
19 mentioned by Mr. Cambria, if there is a prison sentence in
20 terms of designation, Your Honor, is that one of the reports
21 noted that it was critically important that the defendants not
22 be designated as sex offenders, and I believe that Mr. Rapp, I
23 think it was in a pleading indicated he has no objection to
24 that taking place, so we'd ask the Court if there is going to
25 be a sentence of incarceration, that that be a part of the

15:49:21

15:49:47

1 sentence.

2 Otherwise, Your Honor, unless the Court has any
3 questions for me, I thank you for your courtesy, and ask the
4 Court to sentence Mr. Brunst to probation.

5 THE COURT: All right. Thank you. 15:50:04

6 Mr. Feder, how much time will you need?

7 MR. FEDER: Half an hour probably.

8 THE COURT: All right. You may proceed. I will give
9 you up to 4:30. That's more than a half hour.

10 MR. FEDER: I represent the 4 percent owner of 15:50:58
11 formerly Backpage. We join in the comments that have been made
12 by other counsel. I have known Scott Spear probably for
13 40 years. He's been a friend. He's been an honest friend.

14 He's been a charitable friend. I have known him to be a law
15 abiding person. So I guess I add my comments to the 10 letters 15:51:21
16 that have been submitted to you. He's a wonderful human being.

17 He is not going to allocute because I told him that I
18 would try to say what he would say. And the reason that he is
19 a law abiding person is that he follows what he's been told.
20 And I don't want to get into trying to re-litigate the case. I 15:51:52

21 know the Court doesn't want to hear re-litigation at a
22 sentencing hearing, but what the Court does know is that
23 Mr. Spear in 2011 went to a psychiatrist named Dr. Bernstein,
24 whose letter was filed under seal, and has been today given to
25 the government, and that Dr. Bernstein, knowing the bad 15:52:20

1 condition that Mr. Spear was in, experimented until he found
2 the right diagnosis for Mr. Spear and the right prescriptions
3 for Mr. Spear, and that's the middle of 2011.

4 And how that fits into the testimony that was at trial
5 is that in 2011 Hemu was hired by Mr. Larkin to essentially 15:52:44
6 guide moderation and the rest of Backpage.

7 And then in early 2012 Liz McDougall was hired as
8 general counsel, and the Court has the documents to show where
9 she took over moderation, and there's a reason for that, and
10 that is that Mr. Spear's role in Backpage receded substantially 15:53:13
11 from about 2011 when these diagnoses occurred and these new
12 prescriptions occurred until the end of Backpage.

13 Now, the government went to great length to put
14 Mr. Spear cc's on e-mails into evidence, but he's not the CEO,
15 he wasn't the financier, he wasn't the CEO, he wasn't the CFO, 15:53:41
16 and his role receded after this diagnosis. Nevertheless, he
17 was convicted of these Travel Act counts probably because

18 Mr. Ferrer claimed that he was the head of moderation
19 notwithstanding the documentary evidence that the court saw,
20 notwithstanding the fact that Backpage in trying to thread the 15:54:14
21 needle of being certainly on the right side of the law, hired a
22 woman named Liz McDougall, formerly of Perkins Coie law firm,
23 formally counsel for Craigslist, to help them make sure that
24 their moderation efforts were legal.

25 Similarly, they hired, at least -- they didn't hire, 15:54:41

1 Don Moon had been on their board for a number of years by that
2 time, and he too began to supervise the moderation process as
3 the Court knows, and that was Exhibit 171 admitted maybe
4 inadvertently by the government into evidence. But as the
5 Court may remember, Mr. Moon articulated chapter and verse what 15:55:05
6 he had told Mr. Spear, Mr. Lacey, Mr. Brunst about how they
7 were compliant with the First Amendment, protected by the First
8 Amendment, and what they were doing was on the right side of
9 the law.

10 Similar to what Mr. Lincenberg said and what 15:55:29
11 Mr. Cambria said, this is a case where you have the first
12 prosecution and trial of a website regarding third-party ads
13 posted on that site being criminally prosecuted and convicted
14 for that.

15 Since that has happened, there have been lawsuits 15:55:53
16 where they are suing, "they" meaning people that believe they
17 have been harmed, hotels where prostitutes would go to do their
18 services; they sued Salesforce for their Internet programs. In
19 the papers recently there have been lawsuits against parents
20 for the crimes of their children. And these are societal 15:56:19
21 questions, in my humble opinion, better served by Congress
22 doing something than the criminal law picking out somebody
23 experimentally to see if they can get a conviction.

24 As the Court will remember, in 2018 after Backpage was
25 closed, the Congress did try to close some of the loopholes by 15:56:45

1 FOSTA and SESTA, which they characterized as the,
2 quote/unquote, anti-Backpage laws. The inference being the
3 laws before 2018 didn't apply.

4 But that's not really what I want to talk about. What
5 I want to talk about is whether or not this Court is going to 15:57:18
6 impose, essentially, a death penalty on Mr. Spear. And I am
7 not trying to be ridiculous, but as the Court has seen by the
8 declarations of Mr. Allenbaugh and Ms. Purdue, one, the prison
9 system, the Bureau of Prisons, cannot, is not operating as
10 prisons in a way that can guarantee in any substantial way the 15:57:47
11 safety of these aging men if the Court sends them to prison.

12 Similarly, as the Court knows from those declarations,
13 whether the Court does as Mr. Lincenberg asked, designate on
14 the sentencing order and on the sentence, there is another
15 document I am forgetting right now, that these are not sex 15:58:12
16 offenses, that the inmates in facilities, especially in the
17 upper levels of security, find out about what the crimes of
18 conviction are, and they take it out on the inmates
19 accordingly.

20 And then third is, of course, the prisons are 15:58:31
21 overpopulated, understaffed. I'm going to ask you at the end
22 that if you are going to send Mr. Spear to prison, that you
23 send him to a camp. There is one in Phoenix and there is one
24 in Tucson, but if you give him 10 years or more, then that's
25 medium security automatically. And if it's a sex offense, 15:58:54

1 again, as these declarations indicate, then the Bureau of
2 Prisons is going to assert that a prison camp is not allowed,
3 therefore, at the very least or best minimum security which,
4 again, not to repeat what Mr. Cambria and Mr. Lincenberg said,
5 for Mr. Spear and the health concerns that he has physically 15:59:21
6 and mentally, it's a death sentence for him in a very short
7 period of time.

8 And the question is, maybe a death sentence for
9 somebody that traffics children, why a number of years as a
10 pimp directly associating himself with girls and women and 15:59:45
11 taking advantage of them, maybe a life sentence is fine for
12 them. But these are men who had a business that sold ads for
13 five bucks, or gave free ads, and they are essentially
14 facilitators of facilitators of facilitators of potentially
15 illegal activity, and I don't think that a death sentence is 16:00:11
16 appropriate for that.

17 In the Sentencing Memorandum that was filed by
18 Mr. Spear and others in June, and then in the subsequent ones
19 that have been filed, the Allenbaugh and Purdue declarations
20 were included, and the government did not in any way oppose 16:00:37
21 what they were saying or assert that they were not right. This
22 is the Bureau of Prisons under the same Department of Justice
23 that the prosecutors work for. And so the question for the
24 Court is, is it appropriate, Judge, in a sentence where under
25 3553 that you give a sentence not greater than necessary, is it 16:01:03

1 appropriate to give essentially a death sentence to them for
2 this offense?

3 The Office of the Inspector General has recently found
4 in a report these prisons are just not operating appropriately.
5 They are not safe. They are overcrowded. The medicine, you
6 can't get the proper medicines. Uncontested by the government.

16:01:30

7 The Tucson prison camp, the Phoenix prison camp, the
8 Tucson minimum security camp, the Phoenix minimum security
9 camp, the minimum security facility in Safford, all
10 overpopulated well beyond their capacity.

16:01:58

11 Ms. Purdue talked about the medications that Mr. Spear
12 needs, not wants, but needs in order to survive. They are not
13 going to be available. I was sent the -- I forgot what it's
14 called, but it's the thing that shows what the Bureau of
15 Prisons, the medications that they allow. Many of the
16 medications Mr. Spear relies on to live and be sufficient are
17 not on it.

16:02:21

18 In my Sentencing Memorandum, Judge, I articulated the
19 experience that Mr. Spear had six years ago just by spending
20 the weekend in CCA down in Florence where the marshals wouldn't
21 take the medications. I personally tried to give them to him
22 and I drove down to CCA personally to give them the medication,
23 and they didn't take them either, so Mr. Spear spent just three
24 nights at CCA without medications for his physical well-being
25 and his mental well-being. And when he came back Monday when

16:02:41

16:03:05

1 the Magistrate Judge released him after three days of
2 incarceration, it took him months to recover.

3 We are here because Mr. Spear and others have been
4 convicted of a felony, and it seems like very few people take
5 that very seriously. There's a wonderful case called *United* 16:03:37
6 *States vs. Nesbeth*, N-E-S-B-E-T-H, 188 F. Supp. 3d 179, Eastern
7 District of New York 2016, and in that case a Senior Judge
8 spent probably 50 pages in a drug case involving a lot of
9 cocaine for which there would be a substantial prison sentence
10 usually, spent about 50 pages talking about the consequences of 16:04:08
11 a felony conviction. Let me read. He articulated that there
12 were 50,000 federal and state laws that impose penalties,
13 disqualifications and disadvantages on people with a felony.
14 12,000 federal collateral consequences for a conviction.

15 Then I think in our moving papers we cited the Court 16:04:44
16 to *United States vs. Colucci*, August 5th, 2024, a case where
17 two judges were identified as not wanting to send anybody that
18 they wanted to send to prison to a local facility in the New
19 York area. And I assert to you, Judge, that given the
20 condition of the Bureau of Prisons and the specific 16:05:08
21 conditions -- facilities in Arizona that are overcrowded and
22 not safe, for somebody especially like Mr. Spear, that the
23 Court shouldn't do that.

24 I have been to CCA recently. It's not any better than
25 it was six years ago. I'm asking the Court, I know the Court 16:05:33

1 has said that it agrees with the presentence report that you
2 cannot give probation, but given the fact that Mr. Spear has
3 spent three days, I would ask the Court to give him time
4 served, put him on supervised release. If the Court wants to
5 give him home confinement for some period of time in that 16:06:05
6 regard, then we're fine with that. The Court has seen where
7 Mr. Spear has lived. It's not palatial by any means. It's A
8 two-bedroom, one bath and a living room, kitchen on 12th Street
9 in Phoenix. And at least if he's in that small space, just
10 like he would be in a small space in prison, he'll have access 16:06:29
11 to his medications, access to his psychiatrist, access to his
12 medical doctors, many of whom he needs, access to spine
13 surgery, if he needs to get spine surgery, because he had a
14 fusions years ago and the statistics are that if you have a
15 fusion at one level you got a 50 percent chance of needing 16:06:53
16 further surgery above and below because of the damage the
17 fusion does.

18 He has other problems, as the Court knows from the
19 moving papers. So I would ask the Court for that sentence. If
20 the Court decides that prison is appropriate, then I would ask 16:07:15
21 the Court to designate either the Phoenix or Tucson prison
22 camp. One is called FCI-Phoenix; one is called USP camp
23 Tucson. Would ask the Court to attach Dr. Bernstein's report
24 to any orders that the Court issues. According to Ms. Purdue,
25 because of Mr. Spear's physical and mental conditions, he will 16:07:45

1 not be designated for a lengthy period of time because it will
2 not be done at the typical level. It will have to go to
3 Washington for them to try to figure out what to do with him.

4 As we've already talked about recommending that this
5 not be viewed as a sex offense. It may have a beneficial
6 effect. I would ask that the Court do that, and put that also
7 in the Statement of Reasons. 16:08:06

8 But as the papers show, elderly people convicted of
9 what can only be characterized as an experimental prosecution
10 obviously learn their lesson and obviously are not going to
11 reoffend given their age and physical and mental condition. 16:08:37
12 They are not a flight risk. The presentence report says they
13 are not a flight risk, the Pretrial Services says they are not
14 a flight risk, and in the motion that we filed regarding
15 release on appeal, this Court found in releasing them for after 16:08:55
16 conviction before sentencing that by clear and convincing
17 evidence they were not flight risks or dangers to the
18 community. That's what the statute requires.

19 THE COURT: That was prior to conviction?

20 MR. FEDER: No. After conviction. After conviction. 16:09:16

21 THE COURT: Yes. Yes. Okay.

22 MR. FEDER: Sorry.

23 THE COURT: I thought you were referring to the
24 pretrial release.

25 MR. FEDER: I got it right here, 18 U.S.C. 3143(a). 16:09:27

1 THE COURT: Yes, I am familiar.

2 MR. FEDER: Release of detention pending sentencing.

3 That is the very same criteria for 3143(a)(B), which is where
4 we are today after sentencing. It's the same clear and
5 convincing evidence that they are not a flight risk or a danger
6 to the community. 16:09:50

7 Then the only question really before the Court is
8 whether or not there are substantial issues on appeal. In my
9 humble opinion, there are many, and the Court's opinion that
10 was expressed that there are substantial issues. So I would
11 ask the Court to release them pending appeal, or at the very
12 least let them self-surrender so that we can go to the Ninth
13 Circuit on an emergency motion to attempt to get release
14 pending appeal from that Court. Thank you, Judge. 16:10:08

15 THE COURT: Thank you. 16:10:30

16 MR. LINCENBERG: Your Honor, is now the time if my
17 client does have a statement to read to the Court? The Court
18 had invited argument. I may have misunderstood as to
19 whether --

20 THE COURT: Yes, you did. You misunderstood. I asked
21 this morning how you would proceed and you suggested that -- 16:10:46

22 MR. LINCENBERG: We had no character witnesses, right,
23 other than the letter. Well, then it's my mistake. Can I have
24 Mr. Brunst address the Court? Thank you, Your Honor.

25 THE COURT: Sir, please come forward. And I guess I 16:11:02

1 should have asked Mr. Cambria and Mr. Feder, again, do your
2 clients wish to address the Court?

3 MR. CAMBRIA: Yes.

4 THE COURT: He does, Mr. Cambria?

5 MR. CAMBRIA: Sorry. 16:11:39

6 THE COURT: Mr. Feder, I ask you the same, does your
7 client wish to address the Court?

8 MR. FEDER: He does not.

9 THE COURT: All right. You may proceed, Mr. Brunst.

10 MR. BRUNST: Thank you. Thank you, Your Honor. Just 16:12:00
11 a short statement.

12 These last six and a half years have been the toughest
13 years of my life. I have lost many of my longtime friends,
14 business associates. I have lost a lifetime of building my
15 credibility and my reputation, and most of my life savings. 16:12:21

16 The effect on this on myself and my family has been
17 devastating. I have lived my life with honesty and integrity.

18 My time with VVMH was no different. I have held many
19 senior financial positions during my career. I know the role
20 of a corporate CFO and have not strayed from that. This role 16:12:49
21 does not include managing subsidiary business operations, its
22 personnel or its strategy decisions. At Backpage those matters
23 were the direct responsibility of the subsidiary's operating
24 officers, including Mr. Larkin, Mr. Ferrer and Mr. Hyer.

25 I'm a compassionate person who has never wished harm 16:13:13

1 on anyone. I have no part in the management, daily operations,
2 approvals or decisions made by others regarding moderation or
3 marketing.

4 Because my role was outside the Backpage operations, I
5 relied on advice of lawyers, outside counsel and other experts. 16:13:33
6 I was an open book with lenders and investors.

7 I took direction from the CEO, Jim Larkin, who kept me
8 informed regarding legal advice of experts, court decisions in
9 favor of Backpage, and prior investigations. These facts
10 helped me form my decision that Backpage was operating legally 16:13:54
11 and I would not ever participate in a conspiracy.

12 Your Honor, I do have remorse and I deeply regret
13 those harmed through the misuse of Backpage's website. I
14 understand their grief, and I pray for their healing. I hope
15 you will consider these and other facts in deciding my 16:14:19
16 sentence, and I humbly ask you for leniency.

17 Thank you for allowing me to speak.

18 THE COURT: Thank you, Mr. Brunst.

19 Mr. Cambria, does your client wish to address the
20 Court? 16:14:38

21 MR. CAMBRIA: Your Honor, he indicated that I covered
22 the things that he was going to discuss. I appreciate that.

23 THE COURT: All right. How long will the government
24 take in its oral statement?

25 MR. RAPP: I would say probably a little bit over an 16:14:55

1 hour.

2 THE COURT: All right. We will recess and reconvene
3 tomorrow at 9:30. I will then hear from the government.

4 (Recess was taken at 4:15 p.m.)

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